## One of Walker's Captains on the Stand, but is Not Very Communicative State Documents Relative to Nicaragua given in Evi-

The seventh day of the examination of the arrested fillibusters was entered upon yesterday at

12 M. Mr. Joachimssen offered in evidence the correspondence two years since between Secretary Marcy and Schor Marcoleta, former Minister Planipotentiary from Nicaragua to the United States, relative to Nic caragua matters. He also offered the preclamation of President Peirce, of Dec. 8, 1855, warning parties against enlisting for Nicaragua, as also a translation of the old laws touching emigration to that country.

The documents are us follows: UNITED STATES OF AMERICA. DEPARTMENT OF STATES.—To all whom these presents shall come greet-

I certify that the paper hereto annexed is a correct translation of the original, made by the official translator of this Department. In testimony whereof, I WILLIAM L. MAROY, Secretary of State of the United have hereunto subscribed my name, and caused the seal of the Department of State to be uffixed.

Done at the City of Washington, this 4th day of June, A. D. 1855, and of the Independence of the United States of America the 79th. W. L. MARCY. [L 8.]

[Translation.]

NICAEAGUAN LEGATION, NEW-YORK, May 9, 185% The Hon. Secretary of State will by this time have been informed of the results of the trial, and the decision of the Circuit Court of New York, and in the suit brought against Colonel Kinney, Mr. Fahens and their associates, indicted for having attempted to violate the neutrality laws of the United States.

According to the decision of said Court, the de-

fendants were released from the recognizances which had been imposed upon them to the amount of ten thousand dollars each, although they are to remain subject to the insignificant one of one thousand; that is to say, a less sure than the pretended indemnity of fifteen hundred dollars which Kinney, Fabens and Webster are to pay Captain Graham for each day's detention, after the 7th of May inst., of the steamers United States, Bird of the Sea and others chartered for the projected expedition. The undersigned has been informed that the indi-

viduals referred to, in company with 600 or 700 persons, are making arrangements to depart immediately from the port of New York for San Juan, whence they will penetrate into the Territory of the Republic of Nicaragua. In order that the Hon. Secretary of State may form a thorough estimate of the circumstances, the nature

and the objects of this new project, the undersigned

will proceed to make a succinct statement of the means which have been employed, and of the real

purposes which are intended to be carried out, by these pretended organizations. Kinney, in his letter published in the New-York Herald of the 19th of April last, among other things asserts: 1st, That he and his associate Fabens have obtained a grant of land from the Nicaraguan Government; 2d, That Fabens has effected several purchases of land which, according to the Journal of Commerce

of the 25th or 26th of the same month, amount in the aggregate to two millions of acres.

These two assertions are absolutely and totally false, and they have been published and circulated merely for the purpose of swindling money out of the

The same article in the Journal of Commerce also announces that, up to that date, there had been enlisted 600 or 700 colonists, and that it was intended to enlist as many as two thousand, and that the most cordial and perfect harmony existed between the company represeted by Fabens, Kinney and Webster, the Transit Company and the Government of Nica-In another subsequent article, of the 30th of April the editors of said newspaper, desiring, undoubtedly to avoid the responsibility of having published absurd

and erroneous statements, and ashamed, perhaps, of their easy credulity, represented that they were in-debted for the facts they had formerly published to information imparted to them personally by Col. Kinney, by Mr. Webster, and by the United States Commercial Agent at San Juan. The undersigned leaves it to the judgment of Hon. conduct of these men, who, in the absence of good, valid and substantial reasons, resort to artifice and

fraud in order to blind the community, to lead public opinion astray, to satisfy at the expense of their victims a badly dissembled cupidity, and to carry into execution plans of the most criminal description against the security, the integrity and the independence of a friendly, weak and inoffensive Republic, which has constantly lavished the most positive and convincing proofs of the cordial, although unprofitable, friendship which attaches it to the American Government and people. There are, moreover, various other circumstances closely connected with those which have just been

Mr. Fabens presented himself some weeks ago at

the office of the Nicoragua Transit Company, stating that the territory of that Republic would some day or other fall into the power of the Americans and that now that an opportunity was offered he and his associates ought to take advantage of it Fabens concluded his visit by expressing the strongest desire that Mr. J. L. White would have an interview with A few days afterwards, if not on the very next, Fabons again visited said office in company with Kinney, who stated to Mr. White, in the presence of said Fabons, that his intentions were to join one of the

belligerant parties in Nicaragua, by this means to overcome the other, and after putting both of them down to form down to form a new Government. A characteristic circumstance, which demonstrates the mad enthusiasm produced by the excitement of,

and thirst for, adventure, is the existence and circulation of a new map of Nicaragua, embellished with likenesses of Kinney and Fabeus, and in which the points are marked where the new cities of Montezuma, Cortez, Fabensville, and Kinneyville are to be These facts, and the enlistments which were being publicly made in Philadelphia and New-York, the condition of those enlisted, who, for the most part, do not belong to those classes which produce tiliers

of the soil and workers of the mines, filled the un-dereigned with the most violent and well grounded suspicions, and induced him to make the affiduvit submitted to the decision of the Grand Jury, before whom Mr. White likewise made his appearance, for the purpose of making a declaration and swearing to And it being now very notorious that Kinney, Fabens, Webster, and their pretended colonists, are making arrangements to carry their criminal designs into execution, without the least delay, the undersigned believes that he would incur the greatest and strictest responsibility did he refrain from soliciting

of the Hon. Secretary of State, as he does in fact, and strenuously solicit here, those measures and means of suppression which, in the judgment of the United States Government, may seem best adapted to pre-vent, if it be possible, the departure from ports of the United States of every vessel which may have been chartered for the purpose, and which may convey the originators, the promoters and the accomplices of the new outrage which is meditated. the same time the undersigned has the honor to call the attention of the Hon. Secretary of State to the unbecoming and unlawful course pursued in this affair by the United States Commercial Agent at the

port of San Juan. The Government of Nicaragua would experience the greatest satisfaction in perceiving that the Hon. Secretary of State believed he had sufficient and well-grounded reason for removing Mr. Fabens from the position he now holds at San Juan, as an atonement for the act of aggression which he is on the point of committing, as well against his own Government, as against a friendly people, who are now in the most perfect harmony with the American In the Circuit Court in New York, Messrs. Hoffman and Eager, counsel for the accused; made an appeal in behalf the interests of their clients, and urged the expense, injury and damages which they would incur

in case of a postponement of the trial of the cause. As if there were not still greater interests to be defended and respected, when the attempt was made to violate the most sacred laws of society, to commit accordance in the committee of the case of the cas aggressions upon and appropriate the property thousands of individuals, and to outrage the rights of two friendly and brotherly nations, wounding the one in its very honor, and assaulting the other in its most precious prerogatives and its dearest interests; and this, too, by lawless individuals, in whose eyes truth, justice and morality have lost all their force and vigor, all their brilliancy and all their splendor. There are acts against which, although reason can-not prevail, justice can have influence; and there are in favor of which reason will have influence if

justice is against them. A court may leave unpunished, in the absence of material proof, certain real and positive acts which can and ought to claim the forcible intervention and energetic exercise of Executive authority. Such an one, in the opinion of the undersigned, is the case here submitted for the consideration and approval of the honorable Secretary of State, to whom the undersigned has the honor to renew the assurance of his most distinguished consideration.

J. DE MARCOLETA. Hon. W. L. MARCY, &c., &c., &c.

United States of America, Department of STATE -To all to whom these presents shall come,

I certify that the paper hereunto annexed is a true copy, transcribed from and carefully collated with the original paper on file in this Department.

In testimony whereof, I, WILLIAM L. MARCY, Secretary of State of the United States, have hereunto

subscribed my name, and caused the sent of the Department of State to be affixed.

Done at the city of Washington, this twenty-sixth day of January, A. D. 1856, and of the Independence of the United States of America, the eightieth.

[L. 8.] W. L. MARCY.

BY THE PERSIDENT OF THE UNITED STATES OF AMERICA -A PROCLAMATION.

Whereas, Information has been received by me that sundry person, citizens of the United States and others, residents therein, are preparing, within the jurisdiction of the same, to enlist or enter themselves,

or to hire or retain others to participate in military operations within the State of Nicaragua— Now, therefore, I, Franklin Pierce, President of the

United States, do warn all persons against connecting

themselves with any such enterprise or undertaking, as being contrary to their duty as good citizens and to the laws of their country, and threatening to the pruce of the United States,

I do further admonish all persons who may depart

from the United States, either singly or in numbers, organized or unorganized, for any such purpose, that they will thereby cease to be entitled to the protection of this Government. I exhort all good citizens to discountenance and

prevent any such disreputable and criminal under-taking, as aforesaid, charging all officers, civil and military, having lawful power in the premises, to ex-ercise the same for the purpose of maintaining the authority, and enforcing the laws of the United States. In testimony whereof, I have herounto set my hand,

and caused the seal of the United States to be af

snd caused the sear of the fixed to these presents.

Done at the City of Washington, the eighth day of December, one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

By the President, FRANKLIN PIERCE.

By the President, FRAN W. L. Marov, Secretary of State.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE -To all to whom these presents shall come I certify that the papers bereunto annexed are true

copies, transcribed from and carefully collated with the original papers on file in this Department. In testimony whereof, I, William L. Marcy, Secretary of State of the United States, have hereunto subscribed my name and caused the soal of the De

partment of State to be affixed. Done at the city of Washington, the twenty-eighth

day of January, A. D. 1856, and of the Independence of the United States of America the 80th. [SEAL.] W. L. MARCY. DEPARTMENT OF STATE,

WASHINGTON, Dec. 21, 1855. PARKER H. FRENCH, Eeq., Washington:
Sir; Your letter to me of the 19th instant, with the inclosed copy of "an autograph letter from the Presi-

dent of Nicaragua to the President of the United

States of America," has been received and hid before

the President. I am directed by him to reply to your communication that he has not yet seen reasons for establishing diplomatic intercourse with the persons who now claim to exercise the political power in Those who were chiefly instrumental in suspending or overthrowing the former Government of that State were not citizens belonging to it, nor have those citizens or any considerable part of them, so far as is

now known here, freely expressed their approval of, or acquiescence in, the present condition of the political affairs of Nicaragus. Until such shall appear to be the case, the President does not does it proper to receive you, or any one, as a Minister to this Government duly appointed by the Supreme Government of Nicaragua. I am, Sir, your obodient servant W. L. MARCY. Mr. Marcy to Mr. Wheeler. [Copy.] No. 13. DEPARTMENT OF STATE, )

WASHINGTON, Nov. 8, 1855. Sin: I have received and laid before the President your disputches numbered 25 and 26, together with

The miserable condition of Nicaragua is much regretted, and devolves upon this Government perplexing duties. While adhering to our settled policy of

leaving to every nation the management of its own internal affairs, we have important duties to perform in regard to our citizens who may be resident within, or passing through, its territories. The recent murders and outrages committed upon them in the State of Nicaragua must be atoned for by the authorities of that country. The perpetrators of those crimes must be punished, the sufferers indemnified, and the families of the murdered be provided for. Whenever that country has a responsible Government, a due measure of satisfaction will be demanded. In the present condition of affairs there it is difficult to decide who has the responsible Government on which the demand for satisfaction can be made. It appears that a band of foreign adventurers has invaded that unhappy country, which, after gaining recruits from the residents, has by violence overturned the previously existing Government, and now pretend to be in possession of sovereign authority. The knowledge we have of their proceedings does authorize the President to recognize it as

facto government of Nicaragua, and he cannot hold, or permit you to hold, in your official character, any political intercourse with the persons now claiming to exercise the sovereign authority of that State. It appears to be no more than a violent usurpation of power, brought about by an irregular, self-organized military force, as yet unannetioned by the will or acquiescence of the people of Nicaragua. It has more the appearance of a successful marauding expedition than a change of Government or ru-

Should the mass of the people of Nicaragua be un-willing or unable to repel this inroad or shake off this

usurpation, and ultimately submit to its rule, then it may become de facto a Government, and responsible for the outrages which have been committed upon the rights and persons of American citizens. Then this Government will demand and exact ample indemnity and satisfaction from it. The President instruc official intercourse with the persons now exercising a temporary control over some parts of Nicaragua.

such a dubious state of affairs you cannot be expected to act in your official character until you receive instructions from your Government; but you will be entitled to all the immunities of a Minister if you do not act to forfeit them. You will remain in the country and keep your Government well advised of the actual condition o affairs therein. You will observe great circumspestion in your conduct. You cannot retain a right to the privileges of a Muister if you intermeddle in the concerns of any parties. The difficulties you have al-

ready encountered arose, as it appears, from an apprehension that you had improperly interfered in the conflict between the contending parties. Though the President has no doubt that you acted from the purest motives, intending only to subserve the cause of hu-manity, yet your course was aside from that which your duty as the representative of a foreign Government, imposed upon you. It has exposed you to the charge, by one party, of interfering in the concerns of the other, and on this ground an attempt will be made to justify the restraint put upon you. In regard to this matter the President will, hereafter take such a course as is dictated by a regard to your rights as a public functionary of this Gov-

Orders having been issued for some of our public ships to visit the Atlantic and Pacific coasts of Nicaragua. They will have instructions to look to and protect the persons and property of our citizens, but there should be no appreheusions as to the extent to which they have a right to interfere. The

tent to which they have a right to interfere. The commanders of such ships have no right, except in very extraordinary cases, to send forces to operate on land; and in no case could they be permitted to take any part in the conflicts of the contending parties within the limits of the country. They can and should protect our merchant vessels from illegal seizure and pillage, and afford an asylum to our citizens who wish to escape from scenes of violence and bloodshed, and secure a depository for their prop-Should the officers of the national armed ships sent to the coasts of Nicaragua confer with you as to acts proper for them to do in any emergency, you will be careful in the advice you may give them. Acts of war cannot be committed without the authority of Coagress. Repelling threatened outrage upon our citi-

zens, or shielding their property from unjust seizure, or protecting their persons, are not acts of war. They me exertions of power not inconsistent with the relations of peace.

I am, Sir, respectfully, your obedient servant Messrs. Blankman and Meagher objected to the admission of the documents as evidence.

Mr. Joachimssen urged their admission, on the

ground that they had an important bearing upon the

accusation against the defendants, as showing the view Government had taken since 1854 relative to Nicaraguan emigration.

The Commissioner admitted the documents. Charles W. Cruger. (Captain in the army of Walker,) was called to the stand, and being sworn, testified as follows-I live at No. 304 Broad way and keep a liquor and wine store; I formerly lived at No. 308 Pearlstreet; January a year ago I went to San Juan del Norte in the Northern Light; how much was paid for my passage I cannot say; Mr. Bartlett who keeps the Washington Hotei paid my fare; I went to Nicaragua to see the country; my passage ticket carried me to Virgin Bay; I gave the ticket I think to the purser of the steamer San Carlos; between five and six hundred

passengers went with me; some stopped at San Juan del Sur, some at Virgin Bay, and others at Granada; about seventy or eighty went to Granada; Virgin about seventy or eighty went to trimina; virgin Bay is fifteen miles from San Juan del Sur; I remained at Virgin Bay six hours, and from there went to Granada; the parties who went to Grenada went in the same boat with invself; a friend of mine paid my passage; his name is Maxamilian A. Thornan; Mr. Thornan never said anything to me about having enlisted men for the British; I have heard that he did; having arrived at Grenada I accepted a commission in the army of General Walker; I had no letters to General Walker, and did not see him till I had been several -Where did this man come from?

months in the army; I received my commission from President Rivas; my company consisted of sixty Q.—Where did this man come from? Mr. Blankman objected to the question, and asked that the Commissioner instruct the witness that he was not obliged to answer any question that might tend to criminate him. The kind of evidence pro-

posed to be elicited, he contended, might form a link

to a chain of testimony that might thereafter be used

to the injury of the witness. Mr. McKeon gave his assurance the witness should not be injured by any testimony he might give. The Commissioner instructed the witness to answer no questions that might tend to criminate him.

Testimony resumed-I came back to New York last January; when I was at Granada there was a military company stationed there; the force numbered about three hundred and fifty men; this was in April last; of this force some three hundred men were na-

tives of the country, and the remainder Americans, ry force of some six hundred men, of which three hundred and fifty were natives and the balance forcigners.
Q.—Do you recognize any persons as parties you to three persons present, witness giving their names—one he said was a book in Niguragua, another un art-

ist, and the third one who followed no special em-

ployment.

Q.—Are these boys New-Yorkers? A.—I believe they are; they came back with me in the James Adger; some of the men who went out with me in the Northern Light joined the Nivaraguan army.
Q.—Was you in any battle in Nicaragua? A.—I de-

oline unswering.

Q.—Do you not know that there is a state of war existing between Qeneral Walker and the Costa I decline answering. A,--

Q.—When did you leave Virgin Bay? A.—On the 25th of April; I came through Castillo Rapids.

Q .- Was not Castillo Rapids occupied by a military force? A.-I decline answering. -When did you loave Castillo Rapids? A -On Q.—When did you leave Castillo Eapids? A.—Un the 7th of last June; I went from there to Hipp's Point, at the junction of the San June River and the

Cheropokee; on the 26th of September I left Hipp's Q.—Was there a military force at Hipp's Point when

you were there? A.—I deciline answering. Q.—How many Americans were there? A.—About fifty men were there, from New-York ?

Q.—Did you ever see the Costa Rican Army? A.—I decline answering. Q.—Did you not have command of the force at

Hipp's Point? A .- I decline answering. Q-Had you any superior officer? A.-I decline Mr. Blankman objected to the District-Attorney

nutting any further questions about military opera-tions in Nicaragua, as it was obvious the witness would not unswer them. Commissioner-The District Attorney oan ask what question he chooses, and the witness is at liberty to answer or not as he thinks fit.

Q.—How did you go from the Castillo Rapids? -In the stemmer J. N. Scott; I refuse to tell whether I paid my passage; from Hipp's Point I went to San Carlos; I know Col. Lockridge; he was at Greytown

when I was there. Q.-Why did you leave Nicaragua? A .- I decline Q .- Have you ever been at the Nicaragua agency in

Broadway? A .- I have, Sir; it is since I came back from Nicaragua. Q .- Will you describe the uniform of the Nicaragua urmy? A.—I will not, Sir.
Q.—Was you ever taken prisoner by the Costa Ricans? A.—I decline answering.

Cross-examined by Mr. Meagher.—Previous to going in the Northern Dight to Nicaragua, did you not call at the office of the old Accessory Transit Company in Bowling-green? A .- I did not; I know Col. Fabens,

but have never had any conversation with him; I do not know Mr. Bolton; no one enlisted me to go to Q-Was any inducement held out to you to go to Nicaragua? A.—I decline answering.
Q.—Is it not a fact that you went as a traveler to Nicaragua? A .- Such is a fact.

Q.—What is your impression of Nicaragua? A.—It is one of the finest countries on the globe, and the lest place to go to for colonization; I saw Mr. Wheeler, the American Minister, in Nicaragua.

knowledged by Mr. Wheeler?

Q.-Was the Government of President Rivas ac-

Mr. McKeon objected to the question, as being

wholly irrelevant to the issue.

Mr. Blankman contended that the question was more relevant than Attorney-General Cushing't letter.
Mr. McKeon jumped up at this remark and repeat

ed his challenge to the other side to produce tee Sidney Webster letter.

Mr. Meagher urged patience upon the District-Attorney, and promised that the letter should be forthcoming in good time.

Cross examination resumed-Mr. Wheeler did acknowledge the Government of President Rivas.
Q.—Was you present at the imaguration of President Rivas ? A.—I was not; there is an old disman' tled fort at the Castillo Rapids.

Q.—Was you at Virgin Bay when a number of American citizens were murdered there? A.—I was: Rev. Mr. Wheeler was among those murdered by the Guatemaleans. A controversy here arose between the opposing

counsel as to the admissability of restimony about the alleged murder of Americans at Greytown. Mr. Mengher threatened that before the examination was concluded they would subpona President Pierce and members of his Cabinet, and other high

officials, if necessary, to clear up this point. Mr. McKeon pronounced the threat Buncombe, and defied its execution. Q.—Is not Nicaragua a good farming country? A.
—It is; cattle are raised there, and an extensive

business done in hides; there are a large number of Americans engaged there in agricultural business; gold is found in some quantities; English Compalies are located there in digging at the gold mines; the climate is about the same as Louisiana and Mistalian and M sissippi; at Chantalas it is very healthy; Captain O'Keefe recovered his health in Ni aragua; I enjoyed good health in Nicaragua; I do not know that either of the defendants hired or retained Mr. Fuller or Mi. Roberts to go to Nicaragua as soldiers under General Direct examination resumed-Have you received or

do you expect to receive any land from the Nicaragua Government in Nicaragua. A.—I decline answering. Q.—Have you never seen Col. Faben's in Nicaragua? A.—I have, but had no conversation with him. Q.—Why did you leave Nicaragua,? Mr. Blankman-I will answer that question for the witness, as he has refused to answer it once; he was

taken a prisoner of war by Commodore Vanderbilt's agents and sent on his parolecto this City.

1. McKeon-I have never seen the witness previous to this morning.

Mr. Blankman—It would do you good to read of Nicaragua news and get posted before entering upon an examination like the present.

Witness—Counsel can make their own statements

and comments; I decline answering the question. Both sides here declared that they were through with the witnesses, and the examination was adjourned till 12 M. to-day. UNITED STATES COMMISSIONER'S COURT.

Before Commissioner Morton. COMPLAINT OF STABBING DISMISSED An examination was had to-day upon the charge against Edward Keeler, a sailor on board the bark

Thetis, for stabbing Wm. Forrest, a fellow sailor. The

evidence, which was quite lengthy and complicated, failed to identify Forrest as the party inflicting the stab, and the complaint was accordingly dismissed. COURT CALENDAR—TUESDAY, Feb. 10. Superior Court.—Nos. 114, 796, 810, 55, 774

781, 548, 690, 474, 753, 271, 280, 742, 822, 823, 825, 555, 3, 463, 464, 693, 442, 814, 166, 580, S13, 233. COMMON PLEAS—Part I.—Nos. 422 to 436 inclusive. Part 11.—Nos. 341, 23, 418, 373, 437 to 445 inclusive,

244, 377. Supreme Court.—Circuit.—Nos. 421, 637, 433, 139, 655, 794, 297, 1166, 525, 500%, 539%, 671, 672, 674, 265, 587, 611, 182, 554, 587. S. DISTRICT COURT.—Nos. 51, 55, 60, 63, 42, 65 to 70 inclusive.

SUPERIOR COURT-SPECIAL TERM.-Feb. 9. Before Hon. Justice Duer. DECISIONS. MARINE INSURANCE-SPECIFICATION OF ABAN-DONMENT. - Alexander McConochie et al. vs. The Sun

Mutual Insurance Company.—Demurrer to complaint.

The action was upon an open policy of insurance upon goods, and was brought to recover a constructive total loss upon the goods mentioned in the com-plaint, upon the ground that they had been damaged y the perils of the sea to more than half their value. The complaint averred that an abandoment had been made, and set forth a letter of abandonment, addressed to the President of the Company, (the defendants.) in these words: "DEAR SIR: Understanding that the bark M. L. Grant, on her voyage from Mantanzas to New-York, has been compelled to seek the port of Savannah in distress, where she arrived, we hear, with several feet of water in her hold; the cargo was landed and found

very seriously damaged; we therefore hereby abandon to you two hundred and eighty hogsheads of sugar, valued at \$55 per hogshead." &c., &c. The complaint admitted that the loss-considered as partial—had been satisfied. The ground of demurrer was, that the abandonment set forth in the complaint was not sufficient to warrant the plaintiffs in claiming as for a constructive total

all cases set forth the grounds upon which it is made, and that these must be such that, admitting them to be true, the right of the assured to recover a total loss is a necessury consequence; that, tested by this rule, the abandonment set forth in the complaint was defective and void; that the allegation that the goods insured were "very seriously damaged" did not insured were "very seriously damaged" did not necessarily import that the damage exceeded half their value. It might be true, yet the plaintiff would not be entitled to recover the total loss which they Demurrer allowed, with usual liberty to plaintiffs to amend complaint upon payment of costs.

J. E. Parsons for plaintiffs; F. B. Cutting for de-

SPECIFIC PERFORMANCE. John Schemerhorn et al., vs. William Niblo .- This ease was heard upon pleadings and proofs. Larocque for plaintiffs; De Witt for defendant. The complaint

sets forth that the defendant had purchased from the plaintitts, at public auction, a house and lot in Twenty-fourth-street, between Fifth and Sixth avenues, in the City of New-York; that a deed, duly executed and with full warrants, had been tendered to him, which he had refused to accept, and that he had refused to pay, or cause to be paid, the purchase money, according to the terms of the agreement. The relief sought was a specific execution of the con-

The answer admitted the agreement and the refusal of the defendant to accept the deed, and admitted that Peter B. Schemerhorn, whose heirs at law the plaintiffs claimed to be, had been seized in fee of the premises; but averred, as a full defence, that the plaintiffs were not competent to give a title that the defendant was bound to accept. The grounds of objection to the title were :

Fir. f. That any title that could be given by the laintiffs was liable to be defeated by the proceedings for ditors, whose debts the personal estate of P. B. chemernorn might be insufficient to satisfy; and

Schemernorn night be instanced to satisfy; and Second, That such title was also liable to be defeated by the production, at any time within four years after the death of P. B. Schemerhorn, of a last will, c., duly executed by him and duly attested.

It was proved, on the trial, that the plaintiffs were the sole heirs at law of P. B. Schemerhorn; that no could executed by him area, search had been found. will executed by him upon search had been found; and that upon the ground of his intestacy, letters of

administration had been granted to G. R. Bowdoin;

that the value of his personal estate was \$10,000; that his debts, so far as known, did not exceed \$500.

Held, That as no proof his bear given on the part of the defendants of the existence of any debts beyond the amount admitted, nor any reasons shown to justify the belief or suspicion that my more debts existed; nor any proof given or reason shown to justify the belief or suspicion that P. B. Schemerhorn had ever executed a will; the bare possibility that the ti-tle which the plaintiffs were competent to give might be defeated by the farther proceedings of creditors or the production of the will, was not a sufficient ground for releasing the defendant from his agreement, and denying to the plaintiffs the relief demanded. Judgment for plaintiffs, decreeing a specific execution of the contract of sale, but without costs.

CAN THE INSURANCE MONEY BE RECOVERED AFTER A LOSS, WITHOUT DELIVERY OF A POLICY? Before Hon. Instice Berworth.

Rockwell vs. The Hartford Fire Insurance Com-

pany.—Bosworth, J.—This action has been noticed to be tried before the Court and a Jury. The plain tiff moves (the action having been reserved generally that a day be designated for the trial of it. The de fendant objects that it is only a trial by the Cour without a Jury, while the plaintiff insists that it is ar action for the recovery of money only, and that th Code requires all issues of fact, in such an action, to be tried by a jury. Code, \$253.

The action is brought to recover the sum of \$3,000 and interest, and the only relief which the complain prays is a judgment for that sum. The complaint al

leges an agreement made by the defendant, by its agent to insure, and to deliver a policy and payment of the stipulated premium, a loss by fire, non-payment of it, and a non-delivery of the policy, and as assignment of the assured's claim and demand to the The authority of the alleged agent to make any agreement is denied, as is also his authority to make

such an agreement as is set forth in the complaint.

I think the whole matter turns upon the point whether the \$3,000 can be recovered, assuming the facts to be as alleged in the complaint, without first facts to be as alleged in the complaint, without are obtaining the delivery of an executed policy, or a judgment declaring that the plaintiff is entitled to such a policy. This would be the test of this action, as between the original contracting parties.

The prayer of a complaint, after issues of fact are joined by answer to it, does not of itself necessarily determine whether the action be one for the recovery of money only

of money only. If there be no answer, the relief granted to the plaintiff cannot exceed that demanded by the complaint. Hence, in this case, if no answer had been put in, if the plaintiff could not recover the \$3,000. without having other relief first granted, as being in dispensable to the existence of the right to a judg

But when an answer has been put in, the cour may grant any relief consistent with the case made by the complaint and embraced within the issues Code, § 275.

ment to recover the money, a serious difficulty would

be presented.

In this case, therefore, if all the facts alleged in the complaint be proved, the assured, if plaintiff, could have a judgment that a policy be executed and de livered, if that were a necessary preliminary to an award of a further judgment for the amount of the

In that aspect the action would be one for special relief, in addition to the recovery of money.

But I do not think any such critical construction of the Code need be made to reach a correct conclusion on this motion. Nhen there has been an agreement to execute a pol-

icy, and no loss has occurred, the execution and de

livery of one may be indispensable to the full and per fect relief of the assured. That relief could only be granted by a Court of Equity. But when a loss has occurred, the execution and delivery of a policy is an idle ceremony, and does not

appear to have been decreed in Perkins vs. Washing ton Insurance Company, 4 Cow., 666. The Company was decreed to pay the loss. In Carpenter vs. The Mutual Safety Insurance Company, (4 Sand., Ch. R 408.) the opinion of the learned Vice-Chancellor is occurried with the careful washest to be considered. cupied mainly with the question whether the complainant had not a perfect remedy at law. Withou expressing a definite opinion on that point, he came to the conclusion that the fact of a loss having occur red before suit was brought did not deprive the Cour of Chancery of the jurisdiction, which it would alread have had if no loss had occurred, In Lightbody vs. New-York American Insuranc Company, (23 Wend., 25) an opinion is intimated that the assured had a perfect remedy at law.

If it is unnecessary to obtain a judgment that policy be executed and delivered, then the action is clearly one for the recovery of money only.

The Court should not order the action to be tried by the Court without a Jury, unless it is clearly opinion that the execution and delivery of a policy opinion that the execution and delivery of a policy of the court without a Jury of the court without a Jury or the second sec

must be adjudged to warrant a further judgment tha In this case, if the delivery of a policy was to bordered, conforming to the contract, the policy would be issued, not to the plaintiff, but to the person in Whether the conditions annexed to the policies in

the form commonly used by the Company allowed as assignment of it, without the written consent of the Company, the pleadings do not disclose.

If a valid agreement to insure and deliver a policy was made, under which the Company are liable fo the loss sought to be recovered, I am not prepared t say that any judgment should be given, except the the plaintiff recover the amount of the loss, not ex

ceeding the sum insured. ceeding the sum insured.

If that is a correct view of the case, the action i one which the Code requires should be tried by Jury, and a day should be designated for the trial.

Same Plaintiff vs. The Connecticut Fire Insurance. Company of Hartford .- Same order made.

COURT OF COMMON PLEAS-SPECIAL TERM. Before Judge Brady.

Catherine Monk vs. Charles Strehl .- Bail reduced Janus D. Cornall vs. Thomas J. Stewart.—Motion to dismiss complaint granted.

Michael R. Wilson vs. John Schenck.—Motion de

> MARINE COURT. Before Judge Maynard.

nied, with \$10 costs.

Schroder vs. Kuhlenberg.—This was a suit to re cover \$50 alleged to have been received from Europe by the defendant to hand over to the plaintiff. It was testified that defendant had the money and had of fered to pay it over on the plaintiff signing a paper probably a receipt. The latter, however, refused, al leging he could not write. This testimony proving the defendant's offer to payithe money over, the plain tiff was non-suited.

Before Judge McCarthy.

Horatio P. Call vs. H. B. Kirk.—This suit was brought by the plaintiff as preprietor of Rathburk Hotel, Fulton street, Brooklyn, against the defendan for a board bill, which the detendant contested on the ground that he had been overcharged and the price of board raised without notice having been given to him Also that Horatio P. Call was only nominally the proprietor, while his father, who was called as a wirness George Burns vs. Thomas M. Leland .- This was mit brought by a tenant against his landlord fo

rater in the house in which he resides, caused, it was lleged, by defective plumbing. It was testified that the water in plaintil's store was two inches deep and that the cellar was continually overflowed. On plumbing was in good order, and that the leakage was an unavoidable accident. COURT OF GENERAL SESSIONS.-FEB. 11. Before Recorder Smith Peter Loughlin, a young man of most unprepos sessing appearance, was tried and convicted of assault

and battery on Andrew Schaffner, a German, with in tent to kill him. Some time in August last, Schaffner in company with a friend, was passing along Forty ninth-street to the Seventh-avenue. On arriving at

the corner of Seventh-avenue they were assaulted by two men, one of whom was proved to have been Loughlin, who is employed as a butcher in a slaugh ter house in that vicinity He stabbed Schaffner with a knife, inflicting two fearful wounds—one in the neck a knife, inflicting two fearful wounds—one in the needs, another in the thigh—so that the poor man had to keep his bed for nearly seven weeks. The wounds were evidently intended for some other person, as Loughlin's friend was heard to exclaim, "That isn't the right man." The escurrence took place on a Sunday night, and the defence attempted to prove that Loughlin, at the time the assault was committed, was down at Washington Market, but they did not succeed satisfactorily; besides, it came out in evisuccest satisfactorily; heades, it came out in evidence that defendant's friends had offered to compromise the neatter by paying \$125 to complainant if he would not appear against Longhlin. The Jury deliberated an hour before giving their James Wilson, a young man, was found guilty of roblery in the first degree. He forcibly took the watch of Mr. Ferdinand Caspang, a steward, employed on the steamship Harmann, on the night of

the 3d of January last, at the corner of Chathau and Duane streets. A police officer arrested him on the spot, and found the watch in his possession. The Recorder, on account of his youth, sentenced him to the State Prison for the lowest term, ten years and

three months. Eliza Kaats, an elderly German Hebrew woman, was convicted of stealing a large amount of plate, jewelry and wearing apparel from Mrs. Hannah Jacobson, by whom she was employed. The Recorder sentenced her to the State Prison for two years and six months. When the sentence nad been translated to

her, she wept and wailed so much that she had to be removed from the Court room. The Grand Jury then came into Court with their presentments. The forman, Anthony J. Bleecker, asked, respectfully, to resign the position of Foreman of the Inquest, as the duties interfered with his business at the Exchange. He, however, should ever be ready to act as a Grand Juror, as the association was a pleasant one to him. The Court, under the circumstances, accepted the resignation, and appointed Joseph P. Brewster to the vacant foremanship. He

James Mackay, known well to the Pelice as a petty thicf, pleaded guilty to petit larceny. Sent to the Pententiary for six months.

John Mitchell, a colored boy, pleaded guilty to a charge of petit larceny, and received a like isent much the Court adjourned to the morrow, at 11 o'clock.

The Court adjourned to to morrow, at 11 o'clock.