

# New York Supreme Court.

JOHN KELLY,

Late Sheriff of the City and County of New York,

*against*

LUTHER R. MARSH

AND

ALEXANDER H. WALLIS.

Copy Judgment Roll on Dismissal & Complaint.

SHERWOOD & HOWLAND,

*Plaintiff's Attorneys.*

MARSH & WALLIS,

*Defendants, in pro. per.*

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New York :

McDIVITT, CAMPBELL & CO.,

Law Publishers,  
79 NASSAU STREET

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## PREFACE.

The correspondence in rhyme, here reprinted, sprang up, we learn, between the attorneys in the suit therein referred to, incidentally, and as a pleasantry, outside of the regular proceedings ; and on the termination of the action, a few copies were printed as an amusing diversion from the ordinary severity, and set forms of legal papers. The calls upon us for it have been so frequent, that we have decided to reproduce it.

McDIVITT, CAMPBELL & CO.



# Judgment Roll.

1

## N. Y. SUPREME COURT.

JOHN KELLY, late Sheriff of the  
City and County of New York,

*vs.*

LUTHER R. MARSH and ALEXAN-  
DER H. WALLIS.

### Preliminary Statement and Abstract of Pleadings Under the Rule.

This suit in '74 was brought,  
By which the plaintiff vainly sought  
An attachment's grasp, in law to hold  
Upon a poor attorney's gold.  
'Twas said that Hubbard had procured  
A judgment (on appeal secured),  
By aid of the defendants here,  
Who as attorneys did appear ;  
Which judgment 'gainst E. Matthews was,  
Being the defendant in that cause.  
'Twas then averred that Fassin had  
A claim 'gainst Hubbard, good or bad,  
(Ten thousand dollars was the figure,  
And interest added made it bigger).

2

3

And that said judgment he could seize  
 By attaching those who got the fees ;  
 And so said Matthews went acquit,  
 Not being served with any writ ;  
 Although 'twas Matthews owed the debt,  
 Which was the fund that all were at.  
 Said Marsh thereafter transfer took,  
 And got the cash on his own hook,  
 Wherefore 'twas claimed that these attorneys  
 Should pay to Fassin all his moneys ;  
 And so the Sheriff sued the same,  
 Bringing the suit in his own name.

The attorneys claimed that they, as such,  
 Had naught the Deputy could touch ;  
 And that the writ were served much better  
 Had it been on the judgment debtor ;  
 They were mere officers of Court,  
 To invoke its judgment and support ;  
 Invested with a simple power,  
 Nor held the judgment for an hour.  
 The judgment was the Court's decision,  
 Announcing rights with due precision,  
 And evidenced by " Roll " and " Docket,"  
 Which were not in the attorney's pocket,  
 But were required by law to be  
 Kept by the clerk in custody ;  
 And thus the judgment got by Hubbard  
 Was stored away in the clerk's cupboard ;  
 That Marsh a perfect right possessed  
 To buy the judgment, if thought best ;  
 That such writ not being served aright,  
 Should be knocked higher than a kite ;  
 And that the claim that they should pay  
 Was too ridiculous any way.

The plaintiff's count, defendants' plea,  
 Thus formed an issue, as you see ;  
 " Which the same " was fully tried,  
 Witness these papers on each side.

7

MARSH & WALLIS,  
*Def'ts' Att'ys.*

---

SUPREME COURT.

MARCH 16TH, 1874.

JOHN KELLY, late Sheriff,

*agst.*

LUTHER R. MARSH,  
 Impleaded, &c.

*Admission of service  
 of Summons and  
 Complaint.*

Your compliments were just received,  
 In which you mildly count  
 That we should pay two thousand pounds,  
 Or some such small amount.

8

"Twould give us pleasure to behold  
 Your pile so roundly swell,  
 If but the money you would get  
 From *others*—just as well.

Quite anxious must a lawyer be  
 To fill his hungry maw,  
 When he can break the family peace  
 And sue his *brother-in-law*.

9

Perhaps you'll feel, some future day,  
 When sued for paltry pelf,  
 How disagreeable it is,  
 And "know how it is yourself."

I did not think that Walpole's sen  
 Her grandson would pursue,\*  
 And thus prove recreant to the town  
 To which his birth was due.

10 But Sherwood, armed with tomahawk,  
 Might seek to raise your hair ;  
 For what else could you well expect  
 From that old Delaware ?

"I would serve him right, that famous chief,  
 To call him but a mingo ;  
 Who seeks the Onondaga's scalp  
 Must guard his own—by Jingo.  
 Ugh !

You must percieve, attorneys dear,  
 We can't be charged with follies ;  
 As sure we would, if pay we should.  
 11 Yours truly,

MARSH & WALLIS.

To SHERWOOD & HOWLAND,  
 (Let it not miss 'em)  
 At sixty Wall street,  
*Pax Vobiscum.*

\* Howland and Marsh's father were natives of Walpole, N. H.

## SUPREME COURT.

MARCH 18TH, 1874.

JOHN KELLY, late Sheriff,

*against*LUTHER R. MARSH,  
Impleaded, &c*Plaintiff's admission  
of service of De-  
fendants' answer.**Our dear young friends,*

We have received

Your answer, and, no doubt,

The Court will hold it frivolous :

12

We move to strike it out.

The motive of the suit we bring,

To an unbiased view,

Has its foundation solely in

*Attachment* strong for you!

Oh! not in anger or in wrath

Do we hold up the lash,

But just to see you "hump yourselves,"

And "rustle out your cash."

If you so like the law's delay,

Its glitter and its sham,

You'll have a chance to "toot your horn

If you don't sell a clam!"

13

Defective notice, points unknown,

Are your trust and reliance ;

*"Mens conscia recti"* is the spear

With which we hurl defiance.

14      Against defences technical,  
          Construction strict of laws  
          Of doubtful meaning, we invoke  
          The justice of our cause.

         The gauge of battle is thrown down,  
          All compromise is past.  
          "The whole or nothing," is the word  
          Until the die is cast.

         The ranks press on, the Sheriff leads  
          Fassin to victory !  
          But Marsh & Wallis turn the tide,  
          And Hubbard is the cry!

15      The Sherwood glades are dense and dark,  
          The Roman Marsh is deep,  
          And he who would the battle win,  
          Must know no rest nor sleep !

         And if the Onondaga chief  
          Has trod his last war trail,  
          Or if the Delawarian brave  
          Shall learn what 'tis to fail,

         We know that *either* with his shield,  
          Or on it, will be found,  
          And for the vanquished in the strife  
          The Coronarch shall sound !

         Yours, &c.,

SHERWOOD & HOWLAND,

*Plaintiff's Attorneys.*

To MARSH & WALLIS,  
          (Prepared to nail us),  
          170 Broadway,  
          *Pax et salus !*

### Additional Points for the Plaintiff.

The Howl-and-cry and fearful din 17  
 And screams of victory for Fassin  
 Mingle with shouts for Marsh & Wallis,  
 And occasional calls for the police.

JOHN SHERWOOD,  
*of Counsel.*

### SUPREME COURT.

MARCH 21ST, 1874.

KELLY, Sheriff, &c.,

*vs.*

L. R. MARSH, &c.

*Letter of Edward T.  
 Bartlett, Associate  
 Counsel for Defen-  
 dants.* 18

LUTHER R. MARSH, ESQ.,

*My Dear Sir—*

I send herewith the papers  
 In Kelly *vs.* Marsh,  
 And look upon the issues  
 As something rather harsh.

And yet if I am able  
 The future to forecast,  
 The scalp of that old “Mingo”  
 Will deck your Lodge at last. 19

He dreams not of the danger  
 When the Onondaga fights;  
 He recks not of the fallen  
 When the Onondaga smites.

He knows not of the mighty  
 Who in spirit form are near,  
 To bend the bow of battle  
 And hurl the glittering spear.

20

But when he sings his death song,  
 And bids the world good night,  
 He'll have a dim conception  
 Of an "Onondaga fight."  
 Yours until then,  
 \_\_\_\_\_ NED.

## SUPREME COURT.

NEW YORK, MAY 22D, 1874.

21

MATTHEW J. FASSIN and his  
 Sheriff

vs.

LUTHER R. MARSH and his  
 Partner.

*Admission of due service  
 of notice of trial and in-  
 quest.*

To MESSRS. SHERWOOD & HOWLAND,  
*P'lff's Att'ys.*

This is to say that in this case,  
 In which our firms are pitted,  
 Your notice that you'll try the cause  
 Is duly here admitted.

32

We notice, too, the threat therein  
 That "inquest" you will hold:  
 But whether "crownor's quest" or no  
 Is not so clearly told;

Or whether 'tis "*lunatico*"  
 Or other "*inquirendo*,"  
 You do not plainly specify,  
 But leave to inuendo.

We think that Howland now should cease  
 His bitter litigation,  
 Since he will voyage to France or Greece  
 For peaceful recreation.

23

Where'er he goes, whate'er he does,  
 His conscience still will tremble,  
 And many a guilty pang will sting,  
 Which he can scarce dissemble.

If, steaming o'er the ridgy deep,  
 Fire, gale, or buccaneer  
 Should suddenly molest his sleep,  
 This suit he'll seem to hear.

His feet may press Italia's soil,  
 Or Egypt's narrow belt,  
 May fresh disturb the Trojan dust,  
 Or seek the Gaul or Celt ;

24

Though he may skate on Artic ice,  
 Or tread the hot equator,  
 May swim the Dneiper or the Po,  
 Or play with Faun or Satyr ;

If he shall seek great Ætna's brink  
 Or mount old Chimborazo,  
 Or visit all our Western peaks,  
 From Denver to El Paso ;

25

Though leagues of flowers may deck his way,  
 As in the famed Cashmere,  
 And odors ride the spicy breeze,  
 And orange groves appear,

He ne'er the sense of such great wrong  
 Can carry in his soul,  
 And yet enjoy bright nature's scenes,  
 As spread from pole to pole.

26

And when, at last, the time shall come  
 For him his checks to pass in,  
 There'll rise to his affrighted eyes  
 This wicked suit of Fassin.

Its venue sure will follow him  
 To whiche'er world he'll go ;  
 Whether he'll rise above the skies  
 Or gravitate below.

27

Plaints, pleas, demurrers, cannot save  
 Attachment or injunc.,  
 But Destiny will claim her own,  
 And seize him *tunc pro nunc*.

Pray be advised, good neighbors, then—  
 This persecution stop,  
 And Howland then can go in peace  
 To Cheops' lofty top.

E'en Sherwood's cold and callous heart  
 Will sense a new relief,  
 His tomahawk sleep in the belt  
 Of Delaware's gallant chief.

Cordially yours,

28

MARSH & WALLIS.

## SUPREME COURT.

JUNE 1ST, 1875.

JOHN KELLY

vs.

LUTHER R. MARSH, &amp;c.

*Request to put cause  
on the short calen-  
dar and consent to  
adjournment.*

*Dear Sirs,*

We entertained the hope  
That you'd consent to try  
This case of *Kelly vs. Marsh*  
Before the next July.

29

But the senior member of your firm,  
We are distressed to find,  
Has nothing but a vacuum  
In what he calls his mind.

The ruin of that mighty brain  
Would the stoutest heart appal ;  
We therefore do not press the case,  
But let it go till Fall.

30

We think this lawsuit illustrates  
The good old robber plan,  
That they shall keep who have the cash,  
And they shall get who can.

They knew the rule, those robber knights—  
“*Conditio possidentis*”—  
And chuckled, from their eyrie heights,  
“*Melior es defendentis.*”

31 They always were aggrieved in strife,  
 It never seemed to vary  
 Their case—that they were fully proved  
*“Jus dicere—non dare.”*

We, having such a *Martial* foe,  
 Armed fully at all points,  
 Must try his armor well to find  
 The weakness of its joints.

Our Mr. Howland goes abroad  
 For health, but in the course  
 Of travel will investigate  
*Brigandage* at its source!

32 He'll tread the plains of Marathon,  
 Where lawless Greeks hold sway;  
 He'll learn the ways of other chiefs  
 By Naples' charming bay.

Grenada's groves, Bilbao's walls,  
 Will not be sought in vain;  
 Much useful knowledge can be had  
 From Carlist knights of Spain.

33 The Cossack, Schamyl, may impart  
 The experience of years;  
 And valuable hints be got  
 From Arabs of Algiers.

And if these masters cannot teach  
 Their business and their rates,  
 Bushwhackers can be studied to  
 Advantage in the States.

At all events, he'll learn the way  
 These wild freebooters roam,  
 And the exact per cent. it costs  
 To send the ransomed home.

And if you find he's gained a point  
 Or two, while out of town,  
 Like Captain Scott's once famous coon,  
 We hope that you'll come down.

34

This "*Debitum in presenti*,"  
 Our client mutters—" *Juro*  
 "*Diis et deis omnibus*"  
 "*Solvendum in futuro*."

You don't scare well, it's very true;  
 We freely admit that;  
 You having proved your valor, say  
 "*Justitia fiat*."

35

We're hungry, we would have you know,  
 And the venerable Hubbard  
 Must show what bones he's got to pick  
 Inside his classic cupboard!

In our vocabulary we  
 Know no such word as fail;  
 Your ears can even now discern  
 "*Vae Victis!*" on the gale.

Yours truly,

SHERWOOD & HOWLAND. 36

## SUPREME COURT.

JUNE 10TH, 1874.

JOHN KELLY, late Sheriff, &amp;c.,

*agst.*

LUTHER R. MARSH, &amp;c.

*Def'ts' protest against  
Howland's foreign  
studies.*

We have received your last effusion,  
Which gives but little thought to muse on.  
More highly do we prize its metre  
Than your infusion of saltpetre.

37 'Twas thought, when rumor first got air,  
Our friend would cross the main;  
He merely left the Marine Court  
To visit Gaul or Spain.

But now we learn he goes abroad  
To educate himself;  
To be, in arts of "brigandage,"  
As cunning as an elf.

*Cui bono?* will his friends all say;  
What can *he* learn afar

38 Which he does not already know—  
Wherein he plays as star?

Pray, shall the master of his art  
Seek distant schools for study,  
When, compared with his special skill,  
All other minds are muddy?

Need Cicero leave old Roma's walls  
 To fence with rhetoricians ?  
 Or Blôt come over here from France  
 To learn from Yankee kitchens ?

Must Demosthènes Athens quit,  
 Philippics to be taught ?  
 Or Hannibal from Carthage go  
 To be with tactics fraught ?

Shall Shakspeare leave bright Avon's stream,  
 Or Burns bid Ayr adieu,  
 To seek the sweet poetic muse,  
 And learn to sing anew ?

29

When Antæus touched his mother earth  
 New vigor filled his veins ;  
 Micawber trod his native heath  
 And gave his genius reins.

Why, then, should Howland leave the scene  
 He filled without a peer,  
 To learn from ribboned brigands  
 Or picturesque mountaineer

40

What he already knows so well,  
 And has so full at heart—  
 None but himself his parallel,  
 The sovereign of his art ?

Here, then, should Howland spend his days,  
 To bless his native land ;  
 Leave not his "ash" in distant soil,  
 Nor lie in foreign strand.

41       How useless, then, for such an end,  
           That Howland should depart;  
       Whate'er he goes for, let him not  
           Send back a Parthian dart.

Yours, verily,

MARSH & WALLIS,

# SUPREME COURT.

OCTOBER 8TH, 1874.

KELLY, Sheriff,

*vs.*

MARSH, *et. al.*

*Defendants consent that  
 Plaintiffs may discon-  
 tinue without costs.*

Dear Sirs :—

42       I hear that Howland has returned,  
       And has not been, in peace inured  
           In any foreign city.  
       Has he come back to practice law,  
       And pick in every one a flaw?  
           If so, it is a pity.

Had he been drowned by Jove, the Pluvius,  
 Or pushed headlong into Vesuvius,

43       Better would be his state  
       Than to stir up his endless strife,  
       To terminate only with his life—  
           Repentance then too late.

If discontinuance he will send,  
 And thus the suit of Kelly end,  
     The same would not be lost ;  
 Such paper we'd consent to take,  
 Simply for Howland's pleasant sake,  
     And let you off from cost.

Cordially thine,

MARSH & WALLIS.

44

To SHERWOOD & HOWLAND, Esqs.

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SUPREME COURT.

OCTOBER 20TH, 1874.

KELLY, late Sheriff,

*vs.*

MARSH & WALLIS.

*Proposition to refer.*

An issue has been joined herein by plea without demur,  
 And on the pleadings, it would seem a fit case to refer ;   42  
 We could no doubt, dispose of it upon a single meeting,  
 So that the victor speedily might give the beaten "Greet-  
     ing."

There's no important point, I think, that doth demand a  
     jury,

Or furnishes e'en slightest food for eloquence or fury ;  
 Indeed, the facts involved herein are mainly undisputed,  
 And legal questions, chiefly, are those that will be mooted.

Six names or so—of men of rank—please, therefore, nominate,

46 And from the list we'll cull out one to hold the balance straight :

Or, if you choose, six names we'll name, and leave it to your pleasure.

To take such one as you may think will give the fairest measure.

Your loving brethren-in-law,

MARSH & WALLIS.

To SHERWOOD & HOWLAND, Esqs.

---

### SUPREME COURT.

OCTOBER 30TH, 1874.

47 KELLY, Sheriff,

vs.

MARSH & WALLIS.

*To H. E. Howland,  
Esq., on his nomination for Alderman.*

“Thou hast it now—King, Cawdor, Glamis, all”—

Commissioner, and Judge, and Alderman ;

Therefore, good sir, thou should'st be quite content.

Let golden honors stream in showers upon you.

No more stir up a wicked litigation,

But let your brothers, less lucky than yourself,

Dwell in their humble cots, in peace secure.

Thou should'st methinks, the rather hold thy shield—

48 Embossed with truth and every high device—

To guard the heads of thy constituents fond,

Than seek to beat them with its triple weight.

For no one e'er was born beneath the sun  
 Who should monopolize, within himself,  
 Official stations, honors, salaries,  
 And seek, besides, the pockets to invade  
 Of those in private rank, o'er whom he reigns ;  
 Nor can old Time himself furnish enough  
 Of weeks, and days, and hours in which to wield  
 The duties high of these most sacred trusts,  
 And yet sustain the weight of unjust warfare.  
 Therefore, withdraw thyself from the unseemly  
 Fight. Though large to me, 'tis small unto thyself ;  
 "In shape no bigger than an agate-stone  
 On the forefinger of an "Alderman."

49

Yours,  
 MARSH.

---

### SUPREME COURT.

NOVEMBER 17<sup>TH</sup>, 1874.

50

JOHN KELLY. late Sheriff,

*against*

MARSH & WALLIS.

*Plaintiff's refusal to  
 discontinue.*

Whence come these sad complaints, this piteous wail,  
 Which frequently of late our ears assail,  
 Of wicked strife, where friend attacks a friend—  
 Of litigation without cause or end ?

So have we heard the wolf accuse the lamb  
 (Constrained to find excuse, though but a sham,  
 For his fell purpose off of him to dine)  
 Of being the most quarrelsome of kine !

51



First on the list is Bosworth, Judge,  
 An honor to the bar,  
 Who from the right would never budge 54  
 Though all the world should jar.

Next will we name Judge Peabody,  
 Of referees a prince,  
 Whose judgments—always clear and right—  
 Make the guilty wince.

Perhaps Judge Fancher would consent  
 To hear our litigation,  
 Although his time is mainly spent  
 In the Court of Arbitration.

We've lost 'tis true, Judge Robinson, 55  
 Who to the bench is forced,  
 As also Lawrence and Van Brunt,  
 And Curtis, Speir, Van Vorst.

But Lawrence yet (John S.) remains,  
 And Speir, the younger, too ;  
 Garvin, Nelson, Fitch, Tremain—  
 All solid men and true.

Ruggles, Leonard, Townsend, Clark,  
 Jackson (Charles and Joe),  
 Van Santvoord, Calvin, Sullivan, 56  
 Traphagen and Roe.

There's Harrison and Patterson,  
 Parsons, Nash, and Hull :  
 There's Allison and Tomlinson,  
 And Marrin, Booth and Trull ;

There's Winterton and Fulerton,  
 Scribner, Barrett, Blair ;  
 There's McMahon and McKeon,  
 Fred Smyth and Fred Coudert ;

57 North and Southmayd, Eastman, West,  
 Weeks and Early, Day,  
 Grove, De Forest, Hill and Mount,  
 Fithian and Fay ;

Ireland, Britton, Paris, French,  
 Martin, Phoenix, Crane,  
 Bell and Pell, and Fox and Cox,  
 Chambers, Street and Lane ;

Abbott, Pryor, Palmer, Monk,  
 Furlong, Yard and Foote,  
 58 Archer, Fowler, Fisher, Hunt,  
 Ash, Beach, Greenwood, Root ;

Moses, Noah, Solomon,  
 O'Brien and Odell,  
 Alexander and Jerolomon,  
 Stone, Cutter and Rockwell ;

There's Sterling (standard every way),  
 Scudder, Brainard, Bird ;  
 If Samuel Hirsch you should select,  
 His opinion sure'll be *heard* ;

59 There's Ammidown and Todhunter,  
 White, Black, Gray, and Green,  
 Geissenhainer, Edelstein,  
 Bishop, Church and Dean.

If in this list there is not one  
 To whom you will refer,  
 Why, hard indeed you are to please,  
 But, still we are, dear sir,  
 Yours truly,

MARSH & WALLIS.

---

SUPREME COURT.

60

NEW YORK, MARCH 22, 1875.

KELLY, Sheriff,

*vs.*

MARSH & WALLIS.

*Notice to produce  
 Warrant of Attach-  
 ment, and Notice en-  
 dorsed thereon.*

To SHERWOOD & HOWLAND,

*Plaintiff's Attorneys.*

*Gentlemen—*

Please produce upon the trial,  
 Without evasion or denial,  
 Your fond "Attachment" warmly prest,  
 By *writ*, and not by *sighs* exprest ;  
 For, unsophisticate and coy,  
 And modest as a timid boy,  
 You only ventured your demand  
 By proxy, through the Sheriff's hand.  
 The notice, too, inscribed or printed,  
 In which it was so dimly hinted  
 That you would like us to transfer  
 From our account to yours, dear sir,

61

62 All things of every name and nature  
 Standing to Hubbard's nomenclature ;  
 Stocks, money, bonds, and other stuff,  
 So that you get them—that's enough.  
 If, therefore, you shall not produce  
 These covetous papers, drawn so loose,  
 Their full contents we shall unroll  
 By memory's aid and proof parol,  
 And 'fore the jury, beyond dispute,  
 Prove the injustice of your suit.

63 Your obedient servants, sirs, we are,  
 Whether in peace or legal war,

MARSH & WALLIS.

---

SUPREME COURT.

MAY 10TH, 1875.

JOHN KELLY, &c.,

*agst.*

LUTHER R. MARSH, *et al.*

*Plaintiff's suggestion  
 of additional names  
 for Referee.*

64 Your offer to refer this case,  
 Permit us here to say,  
 Should have been answered at the time,  
 Without this long delay.

Your list is choice. The names you send  
 Compel us to confess  
 That in reading them we only feel  
*L'embarras de richesses.*

To choose the man to hold the scales  
 Balanced between us two,  
 May be an easier duty, if  
 We supplement a few :

Take Wheeler, Barrows, House or Barnes,  
 Or Angel, Bliss, Divine, 65  
 Or Blythe or Bonney, Lovejoy, Joy,  
 Or Cannon, Bangs, Cantine !

Chew or Eaton suit us well,  
 Or Sharp, or Steele, or Blunt,  
 And Flagg or Ensign, Frost or Gale  
 Would suit, or Hyde or Hunt.

There's Brann, or Cobb, Duff, Oates or Pease,  
 There's Broom, or Bush, or Burr,  
 Doolittle, Drone, or Duer, Dunn,  
 Some lawyers might prefer. 66

Weeks, Day, Early, Daily, Knight,  
 Lux, Ray, Sparks and Starr,  
 Doughty, Rank, and Strong and Stout,  
 And Gross, and Little, Farr.

Wait and Hurry, Swift and Wing,  
 Eastman, North and West,  
 Buckham, Burnham, Ketcham, Boyce,  
 Are names we would suggest.

With Craft or Graber, Hooker, Crook,  
 Judge, Lynch and Law, and Dodge, 67  
 Buck, Bull, Bullock, Wolf, Whelp, Fox,  
 Justice would surely lodge.

Bidgood, Bidlack, Wager, Betts,  
 Hope and Lucky, Swain,  
 Felt and Fonda, Breed and Child,  
 Aiken, Burns and Paine.

Crane, Bird, Graybill, Gosling, Drake,  
 Martin, Finch and Jay,  
 Hawke, Phoenix, Swan and Robinson  
 Are good men all will say.

68

Suppose, for sake of euphony,  
 We take Aub, Fabb or Bott,  
 Or Bilger, Spink, or Schwab or Sink,  
 Or Schuck, or Sprouts or Spott !

With Beam, or Boardman, Carpenter,  
 Broadnax, Brackett, Brace,  
 Ash, Beach or Linden, Oakey, Thorn,  
 We might entrust the case.

69

Waddell, Hoppin, Treadwell, Trippe,  
 Berry, Plum or Appel,  
 Boswell, Johnson, Kowper, Gwynne,  
 This complex case could grapple.

There's Cleary, Riley, Romer, Sands—  
 There's Brewster, Beers or Bruen—  
 There's Darling, Lovelock, Sultan, Turk,  
 For your or our undoing.

Lore, Learned, Wise or Silliman,  
 Dukes, Earl, King, Prince or Lord,  
 Or Archer, Bowman, Arrowsmith,  
 Good referees afford.

70

By Banta, Witters or De Witt,  
 Or Clinch, or Cling. or Weld,  
 By Hand or Glover, Hill or Mount,  
 Justice would be upheld.

With Shear or Shedlock, Rumbold, Wines,  
 Or Coffin, Graves or Grieff,  
 Atwater, Banks or Bywater,  
 Either would find relief.

True, Lyman, Were, are all good men ;  
 Bien, Fine, Ritch, Poor and Pride,  
 Croak, Croaker, Crowell, Cropper, Chrest,  
 Are also true and tried.

71

And thus the list we might prolong,  
 But still we think that we,  
 Out of the names we have exchanged,  
 On some man might agree.

Yours truly,

SHERWOOD & HOWLAND.

To MARSH & WALLIS, Esqs.

**Consent to refer to Wm. C. Barrett, Esq.**

72

From lists so rich and so complete  
 'Tis easy to determine  
 Which of the numerous referees  
 Shall for us wear the ermine.

We, therefore, having talked it o'er,  
 Now stipulate and agree  
 That we will take to be our judge  
 Said Barrett (William C.)

73

Before him will we lay our proofs,  
 And then submit our cause ;  
 Then let him say which side is right  
 According to the laws.

MARSH & WALLIS,

*Defendants in person.*

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SUPREME COURT.

JULY 21ST, 1875.

KELLY, Sheriff,

*vs.*

MARSH *et al.*

74

*Before HON. WM. C. BARRETT, Referee.*

**Defendants' Brief on Motion for Nonsuit.**

The plaintiff now has closed his proof,  
 And either thinks he's proved enough  
 Or else he stops, both dry and wasted,  
 Because his pond's become exhausted.  
 We humbly to the Court submit  
 That he has not advanced a whit  
 Towards getting judgment 'gainst defendant,  
 If on this proof he is dependent.

75

We therefore move your Honor, now,  
 For privilege to make our bow.  
 Please send " King Kelly " out of court  
 Nonsuited, and the wiser for't.

We ought not to be put to proof  
 To meet a case so thin in woof.  
 Look at their evidence and see—  
 It don't amount to bite of flea.

'Tis clear that all that *Cumings* swore to,  
 Though it were doubled twice, and more too,  
 Would not a grain of anise weigh,  
 Nor tend to make defendants pay.  
 So, too, the things that *Mealio* stated,  
 Whether or not *ameliorated*,  
 Would be as pertinent or amiss  
 In any other case as this.

76

Nor have the *attorneys* helped their cause  
 By proving facts or citing laws ;  
 Nor have they sworn, tho' quite defiant,  
 To any fact to help their client.

*Howland* and *Sherwood* sure must fail  
 To swear a case that can prevail.

77

What right, I ask, has plaintiff shown  
 To take from me what is my own ?  
 Is't 'nough that he *attachment* feels—  
 Wants gold or land beneath his heels—  
 To give him right to seize the same  
 In virtue of the Sheriff's name ?

By Code, 'tis true, in a certain case,  
 The bailiff may his grapples place  
 On certain property of Doe

78

Which may be in the hands of Roe ;  
 But if it chance that Roe has not  
 Of Doe's a chattel—not e'en a pot—  
 And if, besides, he does not owe  
 A single cent to Mr. Doe,  
 Then naught, either seen by mortal eyes—  
 Intangible, or otherwise—

- Incapable of manual pass,  
 79 Or e'en invisible with glass,  
 Doth Richard in his hands possess  
 Which Sheriff can with writ caress.  
 The reasons, then, are numerous  
 Why, in this move, the Court'll humor us :
1. The process served, as 'twas that day,  
 Was not served in a lawful way ;
  2. Nor by the man the law permits  
 To handle edge-tools like these writs.
  3. Also, the copy served on us  
 80 Was certified by *Amicus*,  
 The deputy's friend, or clerk, or ally,  
 And might as well been signed by Sally.
  4. Nor was there anything in hand  
 The Sheriff could by law command ;
  5. Nor did the Sheriff mention make  
 Of such things as he claimed to take ;
  6. Nor inventory file or sign,  
 As is the statute's plain design ;
  7. Nor has he with the Code complied,  
 81 (But its provisions quite defied)  
 Either in spirit or in letter,  
 By serving writ upon the debtor ;
  8. Nor has the plaintiff proved, of facts,  
 Enough to stand upon his tracks ;
  9. Nor did demand, on Wallis made,  
 Help to maintain his writ, as laid.
  10. To hold that the complaint averred  
 A proper case is quite absurd.
  11. The proper parties are not sued,  
 82 In whate'er light the case is viewed.  
 We ask the Court to let us go,  
 Freed from the suit of old John Doe,

And that the plaintiff pay the fee  
 Of stenographer, referee,  
 And all the costs that counsel ought  
 To have for battle stoutly fought.

LUTHER R. MARSH,  
*of Counsel.*

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**Decision of the Referee on Motion for Nonsuit. 83**

Defendants move for nonsuit,  
 Now the plaintiff's case is tried.  
 After reflection by the Court  
 The motion is denied.

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JULY 23D, 1875.

**Defendants' Exceptions to the Denial of Motion  
 for Nonsuit.**

Exceptions we take to the rule of the Court,  
 By which motion for nonsuit's denied,  
 And shall the same questions, and more of the sort,  
 Present when the case is all tried. 84

MARSH & WALLIS,  
*Defendants.*

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KELLY, Sheriff,

*vs.*

MARSH & WALLIS.

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**Defendants' Suggestions for Summing Up.**

The points on former motion made  
 Cannot be answered or gainsaid.  
 We might cite law books by the score,  
 A hundred volumes, less or more—  
 Bacon, Viner, Chitty, Croke,  
 85 Blackstone, Comyns, Vesey, Coke.  
 Kent and Parsons, Greenleaf, Story,  
 Put the matter hunkey-dory.  
 The old Reports, abroad and here,  
 Would demonstrate our case quite clear.  
 The mighty change the Code effected  
 Has not from this line deflected.  
 Digests, Treatises, Reports,  
 Statutes and holdings of the Courts.  
 “Drake on Attachments” states the law  
 86 So plain you cannot find a flaw ;  
 Nor can a single case be found  
 Where Judge has held the plaintiff’s ground.  
 The principle stands clear and strong—  
 Has always stood, and will stand long  
 If B is creditor of A  
 You can’t make C the money pay,  
 Nor can attach in hands of M  
 What he has never had in them.  
 The proposition, thus you see,  
 87 Is just as plain as A B C.

MARSH & WALLIS.

## SUPREME COURT.

KELLY, Sheriff, &amp;c.,

*vs.*

MARSH &amp; WALLIS.

*Notice of motion for  
extra allowance.*

The parties having tried their cause before the referee,  
And given all their evidence, and each one made his plea,  
The duty on the Court devolved to study it with care,  
And such decision render as should be just and fair.

This high responsibility, to hold the balance true,  
Between the plaint, and the defence, in clear and open view, 88  
Has by the Court been now discharged, according to the  
law,  
And the defendants held to be free from the attachment's  
claw.

We therefore give you notice now, that costs we shall  
demand,

Taxed by the proper officer, by statute of the land,  
And an allowance extra, too, as by the Code is meant,  
When, in the cases specified, it mentions five per cent.

Please, therefore, at the Chambers be, on Monday next, at 89  
ten,

And say, if you have aught to say, like reasonable men,  
Why compensation, as above, should not be fully made  
To the defendants for the work unjustly on them laid.

This motion will be founded on papers herewith served,  
Certificate, and affidavits of what we have deserved ;  
Besides the pleadings and proceedings, motions, proof and  
all,

Which, through the progress of the cause, give witness of  
our toil.

One circumstance all will regard as evidence complete  
That for the labor we've bestowed, such allowance would  
be meet,

For all will sure acknowledge, how plain soe'er the case,  
If Sherwood & Howland are opposed, it is no easy race.

Served duly,  
Yours truly,  
Though M. & W.  
Are sorry to trouble.

91

## SUPREME COURT.

OCTOBER 14TH, 1875,

KELLY, Sheriff,	}
<i>vs.</i>	
MARSH & WALLIS.	

**Notice of Entry of Judgment.**

We give you notice now, kind sirs,  
That judgment has been entered ;  
All costs, allowances and fees  
Are in the judgment centred,

92

We will not ask the Coroner  
To serve the execution :  
For if you will send in your check  
We'll give you absolution.

And now, good friends, 'tis hard to part,  
 We've been so long a-fighting  
 In prose, in verse, on land, in air.  
 'Tis not so easy lighting.

Damas exclaimed, in Claude Melnotte,  
 And, sure, no one could doubt him,  
 "I like a man exceeding well  
 Whenever I have fought him."

So let us take you by the hand,  
 Each pardoning the other 93  
 For anything he may have said  
 Unwelcome to a brother.

Could such a happy end be had  
 To every litigation,  
 We could, 'gainst slanders of our art,  
 Plead much in mitigation.

The Onondaga wampum sends,  
 But guards with jealous care  
 The scalp that decorates his hut  
 Of that old Delaware. 94

Ugh ! Sago.

Not in formal language merely,  
 But we are, in truth, sincerely,

Yours,

MARSH & WALLIS.