TWEED GETTING FREE.

JUDGE DONOHUE'S DECISION IN HIS FAVOR.

PROCEEDINGS AGAINST HIM DELAYED FOR SEVERAL MONTHS—THE PEOPLE'S COUNSEL APPEAL FROM THE ORDER DIRECTING A BILL OF PARTICULARS—OPINIONS OF EMINENT LAWYERS.

Notice of an appeal by the people to the General Term of the Supreme Court from the decision of Justice Donohue in favor of William M. Tweed in the $6,000,000 civil suit was served upon Messrs. Field & Deyo, the defendant's lawyers yesterday, and was duly acknowledged by them. This movement of the people's lawyers was very necessary, as the furnishing of a detailed bill of particulars in strict accordance with the order of the court is regarded in legal circles as an impossibility. The order, as published, after directing that the complaint in the case shall be amended, requires that full details shall be given of every part of, and item in, each of the bills, accounts, vouchers, or warrants mentioned in the complaint, and alleged to have been false, fictitious, and fraudulent, and that in each case shall be set forth the parts, portions, or items of such bills, accounts, or warrants which the plaintiffs claim represent supplies, materials, or labor not furnished to them, and that the description, date, and amount of the different parts, portions, or items of the bills, vouchers, or warrants shall be slearly shown. To do all that is demanded by the court, it would be necessary for the prosecution to have in their possession the 141 vouchers stolen from the Controller's office in the early stages of the proceedings against the Ring. As the matter stands at present, the only details that can be given in obedience to Justice Donohue's order are those to be found in the ten claims of Keyser, the plumber, safely preserved. The decision of the court has thus made the people's case more difficult, but it is believed that it will only have the effect to retard the progress of the suit for a few months, and that the order will be vacated.

If the order stands, similar ones could be granted in the suits against Sweeny, Connolly, and other members of the Ring, and the proceedings against them might be indefinitely delayed, and at the best only a very small portion of the money they have stolen could be recovered.

Ex-Attorney General Barlow, who had just returned to the City, said in conversation with a TIMES reporter yesterday that the order for a bill of particulars virtually estopped all proceedings in Tweed's case for the present. The only thing the prosecution could do under the circumstances was to endeavor to have the order vacated. A vigorous effort would certainly be made in this direction, and the prosecution are hopeful of success.

Mr. Wheeler H. Peckham was absent from the City yesterday, but a member of his firm stated that it had been determined to appeal from Justice Donohue's decision to the General Term of the Supreme Court, and that the notice had been served upon the defendant's lawyers. He felt sanguine that the order would be vacated, and he regarded the whole matter only as a temporary triumph of the defense.

On application at the office of Messrs. Field & Deyo, the full text of the notice of appeal was obtained. It is as follows:

SUPREME COURT.—*People of the State of New-York vs. William M. Tweed, impleaded with the Mayor, Aldermen, and Commonalty of the City of New-York.*—Take notice that the plaintiffs in the above entitled action, appeal to the General Term of the Supreme Court from the decision of the Special Term of this court, made by Mr. Justice Donohue, directing the plaintiffs to serve an amended complaint and a bill of particulars, and other directions, and entered the 20th day of July, is one that might be made, without question, between two honest litigants.

Again, the decision requires that the State shall specify what right or interest the Mayor, Aldermen, and Commonalty have in the premises. The suit has been brought by the people of the State, though the people of the City have been the swindled parties. If the money is recovered it will pass into the hands of the State, and very probably be returned to the City. As the Mayor, Aldermen, and Commonalty have an interest in this money, in accordance with the regular legal custom, they have been made defendants in the suit. This really is a matter of no consequence whatever to Tweed, and the court should so have decided, if in the interest of the people, but it has not, and Judge Donohue orders the State to show this within the complaint. Through this action Tweed will hope to show that the money does not belong at all to the State, but wholly to the City, if any party, and this be made the ground for a motion to throw the State out of court. The decision in every way, considering the circumstances, has been a very extraordinary one, and probably is without precedent."

CHARLES O'CONOR'S OPINION.

The order entered in Supreme Court, Chambers, by Judge Donohue, on Tuesday, declaring William M. Tweed entitled to a bill of particulars of the warrants forming the basis of the civil action [illegible] was not unexpected by the counsel for the plaintiff, but they are united in their assertions that if the order holds good further prosecution will have to be abandoned.

A TIMES reporter called upon Hon. Charles O'Conor, at his residence, at Fort Washington, last evening, to ascertain whether he had been able to devise a way out of the difficulty. Mr. O'Conor emphatically stated that it would be absolutely impossible to furnish the bill of particulars required. The order of Judge Donohue, he said, was equivalent to a defeat of the suit if it was allowed to stand. The affidavits before the Judge, he stated, showed the utter impossibility of attempting to comply with the order. An appeal has been taken to the General Term, which would be heard during the latter part of August. This motion, he said in reply to a question as to when it had been prepared, was made a long time ago, and had been held by the Judge, subject to advisement, ever since. Further than this Mr. O'Conor was unable to state what action would be taken by the counsel for the plaintiff until after the motion is heard and a decision rendered.

Supreme Court from the decision of the Special Term of this court, made by Mr. Justice Donohue, directing the plaintiffs to serve an amended complaint and a bill of particulars, and other directions, and entered the 20th day of July, 1875, and from each and every part of said order, except so much thereof as denies certain motions or parts of motions.

JULY 21, 1875. Yours, &c.

DANIEL PRATT,
Attorney General, Plaintiffs' Attorney.

To FIELD & DEYO, attorneys for defendant Tweed.
WILLIAM WALSH, Esq., Clerk of County.

A DECISION TECHNICALLY RIGHT AND EQUITABLY WRONG.

A prominent lawyer of this City, in conversation with a TIMES reporter last evening in regard to Judge Donohue's recent decision in the Tweed case, said: "I am disgusted; so disgusted that I hardly know what to say in the matter. It seems to me as if the 'evil one' had got into some of our courts, and that every little technicality of any legal importance or vitality was being dug up and used in favor of William M. Tweed. Such, at any rate, this decision has been. You know that the larger part of the vouchers for the money obtained by the Ring were stolen from the Court-house in September, 1871. The amounts of these can be easily obtained, as the books in the Finance Department will show all the amounts paid, but the bill of items was inclosed in the account audited or supposed to have been audited by Tweed, and most of these were stolen. If Tweed can get an order from the court that shall compel the State to specify each particular item in the vouchers either false or overcharged, and specify which are correct and which fictitious, the vouchers having been stolen, it will be impossible for the State to comply, and, failing to do so, motion may be made to throw the case out of court. This is the key to the wondrous efforts that Tweed's counsel have made to obtain a bill of particulars of fictitious bills and bills raised, knowing it was impossible for this to be done, as all proofs had been destroyed. In business relations, if a merchant brought suit to recover moneys alleged to have been obtained through similar means, and the defendant asked for a bill of particulars, it would be perfectly right to grant it, but not if the latter had destroyed all evidence. Judge Donohue is without doubt an honest Judge. He has always been a Tammany Hall Democrat, attending at all times to his legal business, and never mixing in politics, except at such times as he voted the straight Democratic ticket. He was put on the bench by the Democrats, and never having interested himself in the overthrow of Tammany Hall, he has not appreciated the great efforts that have been made to throw Tweed upon his back. He has acted in this matter as he would in a legal contest between two respectable citizens, granting a bill of particulars as if the one had not destroyed the evidence of the other. Technically he has acted correctly, but equitably, wrong, and his decision may work to the reversion of justice. It is like a man passing a counterfeit note, and upon trial, knowing the note to have been stolen, demands its production in court. There is no real evidence that Tweed committed this theft, but it has been the work of his lawyers to bring about this corner. They have been careful not to bring their motions before Judge Davis, for though he would recognize such a motion in many civil suits, he could not have done so in this.

Tweed had a Board of Audit to examine and audit bills of a certain character against the City, consisting of himself, Connolly, and Hall. They only held one meeting, and then not a single claim came before them for audit, and yet claims to the amount of $6,312,347 were paid as audited. To audit is to examine, yet it was never done, and a large amount of money passed into Tweed's hands. Every one of the bills was fraudulent, in fact a mere fiction; others had some foundation, but were overcharged either in quantity or price. The complaint sets up that Tweed neglected to audit these bills, and thereby allowed the City to be swindled. The complaint also charges conspiracy in his causing the bills to be raised in amount, and through this alleged neglect and conspiracy the City claims to recover. Judge Donohue orders that suit shall be limited to one ground of complaint, either that of neglect or of conspiring in having bills manufactured to swindle the City. They are the same set of bills, and the same iniquity reaches both. The City claims to recover on both grounds, and it seems to me should be allowed to do so. The decision takes away one of the two oars in the boat, leaving it to get along as best it may with one. The court has full discretion in this matter. There is ample law in support of the decision and to the contrary, and it would seem that this discretion should be used in the interest of a swindled City. It

The reasons which Judge Barrett gives for denying the motion to vacate or reduce Wm. M. Tweed's bail are as satisfactory as the decision is welcome. It seems to be eminently a common-sense view of the case, that the sum of money stolen should determine the amount of bail. Doubtless the friends of Mr. Tweed think it very hard to require $3,000,000 of bonds as a security against his flight from the city; but even the forfeiture of this whole sum would not restore half the plunder which occasions the suit. The absurdity of the plea that nothing can justify holding any human being to bail in so large an amount, is very happily illustrated by the Judge. There will have to be very much more wind than this in the bellows that shall fill Mr. Tweed's sails with public sympathy.