

A NOTABLE LAW SUIT.

By

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Magna est veritas et prevalebit.

"The inquiry of truth, which is the lovemaking or wooing of it; the knowledge of truth, which is the present of it; and the belief of truth, which is the enjoyment of it, - is the sovereign good of human nature."

Francis Bacon.

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The suit commenced some three years since by Mr. Frederic Law Olmsted against the various members of the Astor family, in the New York Superior Court, attracted considerable attention at the time, both from the prominence of the parties to the litigation and the large amount claimed by Mr. Olmsted, something over \$5,000,000. As the case has not yet come to a hearing, owing to the delays in the proceedings at law, the matter has, in a measure, passed from notice, scarcely anything connected with it having appeared in the public prints since the commencement of the action.

Through the courtesy of Mr. Olmsted, I spent several days during the summer of 1895, as a guest at his summer residence on Deer Island, which lies in Penobscot Bay off the mouth of the Penobscot River on the coast of Maine; and having heard quite in detail the history of the cause of action, which seemed stranger than fiction, I take pleasure in giving the story as told me by Mr. Olmsted and the members of his family.

An ancestor, seven generations back, of Mr. Olmsted, whose name was Cotton Mather Olmsted, was an Indian trader and spent a part of each year from 1696 to 1705 in what is now the State of Maine. His treatment of the Indians was always fair and honorable whereby he won their confidence and esteem. Winnepesaukee, then the head sachem of the Penobscot tribe, was at one time severely wounded by a bear and Mr. Olmsted, having cared for him, dressed his wounds and aided greatly in his recovery, the chief, as a token of gratitude, presented to him the Deer Isle before named, a portion of which has ever since remained in the possession of his descendants and is now the property and summer home of Mr. Frederic Law Olmsted. The original deed of gift, written on a piece of birch bark and bearing date January 24, 1699, is still in the possession of Mr. Olmsted and after the independence of the United States was acknowledged, the validity of the transfer was recognized and affirmed and a formal patent issued by the Secretary of the Treasury during the second term of President Washington's administration.

Upon the rocky shore near the residence of Mr. Olmsted, and at the extreme end of the island, is a cave, the opening of which is upon the sea. The cave is about ten feet wide and high, of irregular shape and extends back into the rock formation some 25 feet. It has evidently been excavated by the ceaseless action of the waves upon a portion of the rock somewhat softer than its surroundings. At high tide, the entire cave is under water but at low tide it can be entered dry shod, being entirely above sea level. This is visited by the family of Mr. Olmsted and the other residents of the island. In 1892, Mr. Olmsted observed upon the rock at the inner end of the cave, some marks of identification, something in the form of a rude cross, which seemed to him possibly of artificial origin. If so it was of ancient date as its edges were not well defined - were rounded and worn, as by the action of the waves and ice. Still, it appeared more regular in form than the other markings upon the walls of the cave and Mr. Olmsted one day suggested to his family, when in the cave, that as stories of Captain Kidd's buried treasures had sometimes located such treasures upon the Maine coast, they should dig at the place before the cross for such hidden wealth.

Purely as a matter of sport, the excavation was commenced. The sand was cleared away and to their surprise a rectangular hole in the clay was discovered about 20 by 30 inches on the surface and about 20 inches deep. This was filled with sand and upon the same being carefully removed, there was plainly to be seen upon the bottom of the hole the marks of a row of bolt heads some 3 or 4 inches apart and extending around the bottom for about one inch from its edge. The appearance was precisely as if an iron box, heavily bolted at its joints, had been buried in the compact clay for a period long enough to have left a perfect impression of itself in the clay, and after its removal, the excavation

having been filled in with sand, the impression had been perfectly preserved. After a perfect facsimile of the bottom of the hole had been taken in plaster of paris, the excavation was again filled with sand. The Clay was so hard that the taking of the cast did not in the least mar its surface. The bottom of the hole and such portions of the sides as had not been marred by the removal of the box was heavily coated with iron-rust so that everything indicated the former presence of an iron box which had remained buried in the clay long enough at least to become thoroughly rusted on its surface and firmly imbedded in the clay matrix. As there were various legends relative to the presence of Captain Kidd upon the Maine Coast, the discovery of the excavation was sufficient to awaken eager interest in the question of the iron box and the person who carried it away

At about the year 1801, a French Canadian named Jacques Cartier, who was one of the employees of John Jacob Astor in his fur trade, and who had for several winters traded with the Indians and hunters upon the upper waters of Penobscot River, returned from New York where he had been to deliver the season's collection of furs, and he then expressed a desire to purchase from Oliver Cromwell Olmsted, who was then the owner by inheritance of Deer Isle, either the whole island or the south end, where the cave before described was located.

Mr. Olmsted refused both requests but finally sold him a few acres near the center of the island where he built a log house and lived for many years with an Indian wife, hunting and fishing occasionally as a diversion but giving up entirely his former method of gaining a livelihood. This trader had, for several years previous to 1801, camped upon the south end of Deer Isle, collecting his furs, passing up the Penobscot River and its tributaries in a small canoe and storing his furs in a hut at his camping place until the end of the season when he sailed with his little cargo for New York. He had always seemed extremely poor, having but a meager salary from Mr. Astor, but when he purchased a portion of the island, he seemed to have an abundance of money, sufficient in fact to meet his wants for many years. Occasionally, when under the influence of whiskey, he would speak vaguely of some sudden good fortune which had befallen him, but when sober he always denied ever having made the statement and seemed much disturbed when asked about the source of his wealth, which led to various suspicions among the few inhabitants of the island as to the honesty of his methods of acquiring it. These suspicions ultimately became so pointed that he disappeared from the island and never returned. On searching his cabin, some fragments of papers were found, torn and partially burned so that no connected meaning could be determined from them. On one fragment was the signature of John Jacob Astor and on another, in the same handwriting, the words, "absolute secrecy must be observed because-". These fragments were preserved, however, and are now in the possession of Mr. Frederic Law Olmsted. From the story of the trader and from the fragmentary papers, Mr. Olmsted fancied that there might be some connection between the mysterious box and the newly acquired wealth of the trader, and that the secret, if one there was, was shared by Mr. Astor. As the trader for many years previous to his sudden good fortune had camped upon the end of the island immediately adjoining the cave, it might readily be conceived that a heavy storm had washed the sand away so as to make the top of the box visible and that he had found it and taken it to New York with him to Mr. Astor with his boat-load of furs. His desire to purchase this particular location in the island harmonized with this suggestion.

Various questions presented themselves regarding this theory. Had the box contained long lost treasures of Captain Kidd? If so, to whom did the box and its contents belong. Mr. William M. Ewerts, to whom Mr. Olmsted applied for opinion as to the legal phase of this question, after careful examination of the evidence, gave his views in substance as follows;

1. That Captain Kidd, in the year 1700, had acquired by pillage, vast treasures of gold and gems which he had somewhere concealed prior to his execution in 1701.
2. If such treasures were concealed upon Deer Isle, that island at that time was the absolute property of Cotton Mather Olmsted. For while the record title to the island bore date of a patent issued in President Washington's administration in 1794, yet this, as appeared by its tenor, was in affirmation of the title made in 1699, when the island was given to Cotton Mathew Olmsted by the Indian Chief, and established the ownership of the island in Mr. Olmsted when the box, if concealed by Captain Kidd, was buried, and that Frederic Law Olmsted, by inheritance and purchase, had acquired all rights originally held by his ancestor in the part of the island where the treasure was concealed.
3. That, as owner of such real estate, the treasure would belong to him as affixed to the land, as against the whole world, except possibly the lineal descendants of Captain Kidd, if any there were.

Mr. Olmsted learned that in his early life, Mr. Astor kept for many years his only bank account with the Manhattan Bank and as the books of the bank are all preserved, he was enabled by a plausible pretext, to secure an examination of Mr. Astor's financial transactions from the beginning. His idea, in this search, was to learn if Mr. Astor's fortune had increased at the same time as that of the French Canadian. The business of both Mr. Astor and the Bank was small in those early days and the entries of the customer's accounts were much more in detail than in our time when, as a rule, only amounts are recorded. The account commenced in 1798, being one of the first accounts opened after the picturesque organization of the bank by Aaron Burr, and for several years the total deposits for an entire year did not exceed \$4,000. He shipped some of his furs abroad and others were sold to dealers and manufacturers and whenever he drew on a customer with a bill of lading, the books of the bank showed virtually the whole transaction. Entries like the following are of frequent occurrence.

"Cr. J.J.Astor \$33. proceeds draft for sale of 40 muskrat, 4 bear, 3 deer & 12 mink skins."

"Cr. John J.Astor \$49.50, proceeds of draft for sale of 400 skunk skins."

"Cr. Jehn Jacob Astor \$131. proceeds for draft on London for £26 10s for sale of 87 otter skins, 46 mink and 30 beaver pelts."

Each year showed a modest increase in the volume of business of the thrifty furrier but the aggregates were only moderate until the year 1801, being the same year the Canadian trader bought of Mr. Olmsted a portion of Deer Isle, when the volume of bank transactions reached, for the time, enormous dimensions, springing from an aggregate for the year 1799 of \$4,011. to over \$500,000. For the year 1801. Among the entries in the latter year are two of the same date for cheques to Jacques Cartier, the French Canadian, one of \$133,40 drawn "In settlement fur account," and one for \$5,000. "In settlement to date." Inasmuch as in each previous year the aggregate for transactions with Mr. Cartier had never exceeded \$500.00 the entry of \$5,000. seemed inexplicable on any ordinary grounds.

The enormous growth of Mr. Astor's own transactions also seemed equally mysterious. Mr. Astor had evidently visited England in the year 1801 as the bank entries are filled with credits to him of drafts remitted by him from Roderick Streeter, carrying from \$10,000. to \$40,000. and aggregating during the year \$495,000. Credits of the same Streeter drafts are made also during the two following years to the amount of over \$800,000. more, or a total of over \$1,300,000. when the Streeter remittances abruptly ceased.

Edwin W. Streeter of London is, at the present time, one of the largest dealers in precious stones in the world and as in England the same business is often continued in a family for many generations, it occurred to Mr. Frederic Law Olmsted, who, from the facts already given had become greatly interested in following the matter to a conclusion, that the Streeter who had made the vast remittances to Mr. Astor might be an ancestor of the present London merchant. An inquiry by mail developed the fact that the present Mr. Streeter was a great-grandson of Roderick Streeter and that the business had been continued in the family for five generations. Mr. Olmsted thereupon sent a confidential agent to London who succeeded in getting access to the books of the Streeter firm for the years 1798 to 1802 inclusive. There was found a detailed statement of the transactions with Mr. Astor.

The first item of \$40,000. entered was "Advances on ancient French and Spanish gold coins" deposited by Mr. Astor and later another of £4,213 - 8s for "Balance due for French and Spanish gold coins." All other entries were for the sale of precious stones, mostly diamonds, rubies and pearls, which in all, with the sums paid for the French and Spanish gold, reached the enormous aggregate heretofore given. Certain of the gems were purchased outright by Mr. Streeter and the others were sold by him as a broker for account of Mr. Astor and the proceeds duly remitted, during the year 1801-02. The whole account corresponded exactly, item for item, with the various entries of Streeter remittances shown on the books of the Manhattan Bank.

The facts gathered thus far enabled Mr. Olmsted to formulate a theory in substance as follows:- That Jacques Cartier had found the box containing the buried treasures of Captain Kidd; that he had taken it to New York and delivered it to Mr. Astor; that Mr. Astor had bought the contents of the box, or his interest in them, for the cheque of \$5,000. that he had taken the contents to England and had, from their sale, realized the vast sums paid by Mr. Streeter.

Many links in the chain of evidence, however, were still missing and a great point would be gained if the mysterious box could be traced to the custody of Mr. Astor. It seemed reasonable that this box, if ever in the possession

of Mr. Astor, and if its contents were of such great value, would be retained by him with scrupulous care and that, if he had imparted the secret to his children, it would still be in their possession. If not, it might have been sold and lost sight of as a piece of worthless scrap iron after the death of the first Mr. Astor.

Mr. Olmsted learned that the last house in which the original John Jacobs Astor had lived had been torn down in the year 1893 to be replaced by a superb modern building and that the old building had been sold to a well known house wrecking firm for an insignificant sum as the material was worth but little above the cost of tearing down and removal. In the hope that the rusty box had been sold with other rubbish about the premises Mr. Olmsted inserted the following advertisement in the New York Tribune:

"A rusty iron box, strongly made and bolted, was by mistake sold in 1893 to a dealer in junk, supposedly in New York or Brooklyn. The dimensions were 15x30x15 inches. A person, for sentimental reasons, wishes to reclaim this box and will pay to its present owner for the same several times its value as scrap iron. Address F.L., Box 74, New York Tribune."

Within a few days Mr. Olmsted received a letter from Mr. Bronson B. Tuttle of Naugatuck, Conn., an iron manufacturer, stating that in a car of scrap iron bought by him from Melchisedec Jacobs of Brooklyn, was an iron box answering the description given in the Tribune, that if it was of any value to the advertiser it would be forwarded on receipt of eighty cents which was its cost to him at \$11.00 per ton, the price paid for the carload of scrap. Mr. Olmsted at once procured the box and shipped it to Deer Isle where the bolts upon its bottom and the box itself were found to perfectly fit the print in the clay bottom of the cave. The plaster cast of the bottom of the cavity, taken when it was first discovered, matched the bottom of the box as perfectly as ever a casting fitted the mold in which it was made. Every peculiarity in the shape of a bolthead, every hammer mark made in riveting the bolts, as shown in the clay, was reproduced in the iron box. There was no possible question that the iron box was the identical one which had been long before buried in the cave. On the top of the box, too, was distinguishable, despite the heavy coating of rust, in rude and irregularly formed characters, as if made by the strokes of a cold chisel or some similar tool, the letters, "W.K." the initials of the veritable and eminent pirate, Captain William Kidd.

Further inquiry developed the fact that Melchisedec Jacobs, the Brooklyn junk dealer had purchased the box in a large dray load of scrap iron, mostly made up of a cooking range, sash weights, gas, steam and water pipes, etc., from the wrecking firm of Jones & Co. and that Jones & Co. had taken much material from the family mansion occupied by the original John Jacob Astor at the time of his death, when tearing it down to make room for the new building. The indications thickened that the mysterious box had contained the long lost and widely sought treasures of Captain Kidd. One peculiarity of the box was that there had apparently been no way of opening it except by cutting it apart. The top had been firmly rivited in its place and this fact possibly indicated the reason of its purchase by Mr. Astor at the moderate price of \$5,000. as the trader who found it had been unable to open it before his arrival in New York. As, however, we have no information of the contract between Mr. Astor and Jacques Cartier, the amount named, \$5,000. may have been precisely the percentage agreed upon which he received upon the profits of his season's business in addition to a salary.

Mr. Olmsted had an accurate copy made of all entries in the books of the Manhattan Bank as to the transactions of Mr. Astor shown by such books from 1798 to 1803 and his English agent had similar copies made of all entries in the books of Roderick Streeter for the same period, also copies of many letters passing between the parties. The agent also looked up and reported everything available relative to the career of Captain Kidd, the substance of which was as follows:-

Captain Kidd had won an enviable reputation in the English and American Merchant Marine as a brave and intelligent officer. For many years the English merchant vessels had been preyed upon by pirates, numerous vessels were captured and destroyed and others robbed of all their treasure. The depredations were largely along the coast of Madagascar and Mosambique on the route of the English vessels in the India trade and off the coast of South America where the Spanish galleons bore great treasures from the Peruvian gold fields. The depredations of the pirates became so great that the English merchants finally bought and equipped a staunch war vessel, placed the same under the command of Captain Kidd and sent him out expressly to chastise and destroy the pirates.

As these pirates were known to have secured vast amounts of gold and gems, it was expected that Captain Kidd might not only clear the infested seas of the piratical craft, but capture from them enough treasure to make the operation a profitable one. After reaching the coast of East Africa news was received of the destruction by him of sundry piratical vessels containing much treasure but the capture of this treasure seemed to excite his own cupidity and he decided to himself engage in the occupation of being a malefactor. For some years thereafter he was literally the scourge of the seas. He plundered alike other pirates and the merchant vessels of every nation. Finally, after a cruise along the eastern coast of the United States as far north as the port of Halifax, he, for some reason decided to boldly make an entry at the port of Boston as an English merchant vessel, under the papers originally furnished him in England.

Before entering Boston Harbor, he put ashore and concealed on Gardiner's Island a considerable quantity of merchandise consisting largely of bales of valuable silks and velvets with a small amount of gold and silver and precious stones. These articles were afterwards discovered and reclaimed by the owners of the vessels and some £ 14,000 which was divided among them. From the great number of vessels which he had destroyed and plundered with their ascertained cargoes, it was known that the treasure thus discovered was but an insignificant fraction of which he had captured,--was known that gold and gems of vast value were concealed somewhere and thence came the endless searches from Key West and Jekyll Island to Halifax for the treasure which had thus far seemingly escaped human vision and utterly disappeared. In fact, from the little care taken by Captain Kidd as to the plunder hidden on Gardiner's Island, the owners of this ship concluded that to be merely a blind to divert their attention from the vastly greater wealth he had appropriated.

A short time after his arrival in Boston he was arrested and sent to England and at once put on trial for piracy. In two days he was tried, convicted and hanged. This illustrates the great progress in civilization since that benighted age for now the most redhanded and popular murderers are allowed months for preparation and trial, are feted, garlanded and made the heroes of the day and assigned with all priestly assurance to the mansions of the blest. His wife was not allowed to see him except for a half hour after the death sentence had been pronounced. They had a whispered conference and at its close he was seen to hand her a card upon which he had written the figures 44106813. This card was taken from her by the guards and never restored and every effort was made to induce her to tell the meaning of the figures but she utterly refused and even claimed not to herself know. The paper was preserved among the proceedings of the trial and a photographic copy.

From the records of the trial it appeared that Captain Kidd was the only child of his parents; that he had been married for several years, that two children had been born to him, a daughter who died while yet a child and before the trial, and a son who survived both his father and mother. It also appeared that his son, ten years after his father's execution, enlisted as a private soldier in the English army and was killed in battle near Sterlin in 1715. The records of the English War Office showed that the widow of this son applied for pension under the then existing law - that her affidavit and marriage certificate showed her to have been married to the son of Captain Kidd and that no child had been born to them, and the usual pension was awarded her and paid until her death in 1744. These facts settle the question as to any claims upon the treasure by a descendant of Captain Kidd.

The records of the trial also contained a report by experts upon the card given by Kidd to his wife, to the effect that they had applied to the figures upon it the usual tests for the reading of cipher writing, without avail, and that if the figures ever had a meaning, it was undiscoverable. The same conclusion was reached by several people to whom Mr. Olmsted showed the copy of the card.

In the summer of 1894 when Professor David P. Todd, the astronomer of Amherst College, was visiting the family of Mr. Olmsted at Deer Isle, he one day amused himself by calculating the latitude and longitude of the home near the cave and gave the results to Miss Marion Olmsted. As she was entering such results in her journal, she was struck by the fact that the figures for the latitude, 44 10', were the same as the first four figures on the card, 4410, and that the other four figures were 6813 and were almost the exact longitude west from Greenwich, which was 68 13', a difference easily accounted for by a moderate variation in Captain Kidd's chronometer. The altitude taken by observation of the pole-star was absolutely accurate. It appeared as though Captain Kidd had told his wife in this manner where to find the hidden treasure but that, inasmuch as the Government authorities had seized the card, she preferred silence toward those who had pursued her husband to his death and the

total loss to everyone of the treasure rather than, by a confession, to give it into the hands of his enemies. The very simplicity of the supposed cipher writing had been its safeguard since all the experts had sought for some abstruse and occult meaning in the combination of figures. So, by the happy thought of Miss Olmsted, another link was added to the chain of evidence. With the facts given, the only point needed to show that the Kidd treasure had come into the possession of Mr. Astor, was to show that some of the money or gems sold by him had been actually seized by Captain Kidd. Even this, by a happy chance, became possible through the correspondence secured from Mr. Streeter of London.

It appeared that in the year 1700, Lord and Lady Dunmore were returning to England from India when the vessel upon which they had taken passage was fired upon and captured by Captain Kidd. His first order was that every person on board should walk the plank into the sea but several ladies who were passengers pleaded so earnestly for their lives that Kidd finally decided to plunder the cargo and passengers and let the vessel proceed on her voyage. The ladies were compelled, on peril of their lives, to surrender all their jewelry and among the articles taken from Lady Dunmore was a pair of superb pearl bracelets, the pearls being set in a somewhat peculiar fashion. Another pair, an exact duplicate of these, had been purchased by Lord Dunmore as a wedding gift to his sister and the story of the two pairs of bracelets and the loss of Lady Dunmore's pearls, which were of great value and of her pleading for her life to Captain Kidd, is a matter of history as well as one of the cherished family traditions.

In 1801, Roderick Streeter wrote to Mr. Astor that the then Lady Dunmore in looking over some gems which he was offering her, had seen a pair of exquisite pearl bracelets which were a part of the Astor Assignment, and had at once recognized them as the identical pair taken by Kidd nearly one hundred years before. She returned the following day with the family solicitors, bringing the duplicate bracelets; told and verified the story of the loss of one pair by Lady Dunmore; compared the two pairs showing their almost perfect identity, showing certain private marks upon each and demonstrating beyond question that the pearls offered by Mr. Streeter were the identical gems seized by Kidd. The solicitor demanded their surrender to Lady Dunmore on the ground that having been stolen, no property in them could pass even to an innocent purchaser. Mr. Streeter then stated that he had asked for delay until he could communicate with the owner of the gems and asked for instructions from Mr. Astor. Mr. Astor replied authorizing the delivery of the bracelets to Lady Dunmore and asking Mr. Streeter to assure her that the supposed owner was guiltless of wrong in the matter and was an entirely innocent holder. He repeated the caution given also in sundry letters that to no one was the ownership of the gems sold by Mr. Streeter to be revealed. They were to be sold as the property of Mr. Streeter, acquired in the regular course of business.

Lady Dunmore sat to Sir Thos. Lawrence for her portrait and was painted wearing upon her arms the pearl bracelets thus curiously reclaimed. This portrait is considered one of the masterpieces of Lawrence and is now in the collection of Mr. Hall McCormick of Chicago. By the discovery of the hole in the cave in Maine after the lapse of nearly two hundred years was thus curiously brought to light the apparent origin of the colossal Astor fortune. Prior to the acquisition of the Kidd treasures by the first American Astor, he was simply a modest trader, earning each year by frugality and thrift, two or three hundred dollars above living expenses, with a fair prospect of accumulating by an industrious life, a fortune of twenty or thirty thousand dollars. When he became possessed of the Kidd plunder, he handled it with the skill of a great general. He expanded his fur trade until it embraced the continent. The record of his cheques given during the three years when he received the one million, three hundred thousand dollars shows that he expended over seven hundred thousand dollars of the amount in the purchase of real estate in the City of New York. The entries of the various cheques are recorded as "Payment for Wall Street Property", "The Bond Street Land" and the "Broadway Corner", etc., the descriptions being sufficiently accurate, when verified by comparison with the titles of record, to locate at this date every parcel of land bought and all of which is still in the possession of the Astor family. Some twenty different tracts of land in what is now the very heart of the business and residence portion of New York were thus purchased, each one of which is now probably of more value than the price originally paid for the whole.

In obtaining a knowledge of the various details already given, over two years had been spent by Mr. Olmsted and his agents. The results seemingly reached may be summarized as follows:-

1. Captain Kidd had sailed along the Maine coast shortly before his arrest and an iron box marked with his initials was afterward taken from the cave upon the land of Mr. Olmsted, and this box afterward came into Mr. Astor's possession.

2. Jacques Cartier had camped for many years while employed by Mr. Astor immediately adjoining the cave where the box was concealed and his rapid increase in wealth and that of Mr. Astor was simultaneous.

3. Mr. Astor's great wealth came from the sale, through Mr. Streeters of acient Spanish and French gold and of gems, some of which were proved to have been a part of the spoils of Captain Kidd, which made it reasonable presump-tion that all of such property was of the same character.

4. Captain Kidd was known to have captured and somewhere concealed gold and gems of vast value and the card given his wife just before his execution indicated, by plausible reading, the cave upon Mr. Olmsted's land as the place of concealment.

5. The family of Captain Kidd had been long extinct and no one could successfully contest with Mr. Olmsted the ownership of the property concealed upon his land.

Having his evidence thus formulated, Mr. Olmsted called upon the descendants of Mr. Astor, accompanied by his attorney, Mr. William M. Evarts, and demanded of them; Payment by them to him of the sum of \$1,000,000.00 the amount received of Mr. Streeter, with interest from the date of its receipt. The total amount, computed according to the laws of New York in force since 1796 was \$5,112,234.30; and Mr. Olmsted offered, on condition of immediate cash payment to deduct the item of \$34.30. This demand was refused.

2. Mr. Olmsted then demanded that the Astor family should convey to him all the real estate in New York City purchased by their ancestor with the money received from Mr. Streeter, with the accrued rents and profits from the date of its purchase, and this demand was likewise refused.

These refusals left to Mr. Olmsted no alternative except to resort to the courts for the establishment of his rights and an action was accordingly commenced. The declaration filed by his attorneys, Joseph H. Choate, Stewart L. Woodford and Frederick W. Hollis set out in full the history of the claim from the beginning as has been detailed herein and petitioned the court for alternative relief; either that the descendants of John Jacobs Astor pay to Mr. Olmsted the sum of \$1,000,000. with interest from the time of its receipt by Mr. Astor; or, failing in this, that Mr. Astor be adjudged a trustee for the rightful owner of the money thus received and that property purchased with such funds be ordered conveyed to Mr. Olmsted.

To this declaration the Astor family, by their solicitors Elihu Root and Edward Isham, denied all liability upon the ground that the cause of action, if ever valid, was barred by the statute of limitations. To this answer the plaintiffs demurred, alleging for grounds thereof that it appeared clearly from the pleadings that Mr. Olmsted had been vigilant in the assertion of his claim as soon as reasonable proof of its existence came to his knowledge, and further that the statute of limitations did not run against a trust. The demurrer was sustained by the court on both grounds, the court intimating, however, that when the case came to a hearing the plaintiff must select and rest his case on one or the other form of relief demanded and could not, in the same action, secure the alternative relief sought. After this decision, the defendants filed a general denial of all the claims of Mr. Olmsted.

This is the present status of the litigation, (1896) and it is expected that the case will be brought to final trial during the present year.

Should the judgment upon the trial be in favor of Mr. Olmsted or even against him upon some technical ground, it would in either event be a great boon to people along our Atlantic seaboard, in that it will reveal the actual fate of the Kidd treasures. The publicity upon this point will stop the ceaseless and fruitless expenditures of money in digging for such hidden wealth as well as the exactions of clairvoyants, Indian spiritual mediums, rappers, professional ghosts, and witch hazel experts who have yearly prayed upon the credulity of their victims in locating the Kidd deposits.

From the dramatic character of the claim, from the evident ability of the counsel for each contestant and from the large amount involved, it is need- less to add that the trial will be watched with intense interest and that it will stand as the cause celebre of our century.

The case was not tried but settled out of the courts for the sum of \$5,500,000.00 according to information supplied years later by Mr. Head, who read this article before a State Bar Association of which he was President.