

THE FIFTH-AVENUE THEATRE SUIT.

MORE TESTIMONY BEFORE THE REFEREE—

THE TREASURER ACCUSES MR. FISKE OF
SELLING PRESS TICKETS AND POCKETING
THE PROCEEDS.

The suit of Daniel H. Harkins, present manager of the Fifth-Avenue Theatre, against Stephen Fiske, his late associate in the business, to secure a dissolution of copartnership and an accounting, was continued before the Referee, ex-Judge Sutherland, yesterday afternoon. Mr. Fiske was promptly on hand at the appointed hour, 2 o'clock, accompanied by his counsel. At 2:30, A. J. Dittenhoefer, counsel for Manager Harkins, put in an appearance. His client was not with him, but several witnesses were. Judge Dittenhoefer explained that Mr. Harkins was to act in the new drama of "Thro' the Dark," which was to be produced for the first time last evening, and he [Dittenhoefer] had presumed that the opposite counsel would make no objection to postponing the cross-examination until a more convenient time. Mr. Fiske's counsel said they had serious objections to postponing the cross-examination, but after a short and sharp colloquy between the counsel, it was concluded to await the convenience of Mr. Harkins, and proceed with the examination of the witnesses present.

Elisha A. Buck, one of the proprietors of the *Spirit of the Times*, testified to having received a check on Dec. 16, 1878, signed by Fiske & Harkins, for \$207 11; the check was to the order of, and indorsed by, Stephen Fiske, and was received in payment of a note given by Fiske individually, six months and three days previously. Mr. Fiske's counsel declined to cross-examine, stating to Judge Sutherland that he admitted the check was given for an individual debt, and that the check-book, which was produced, so indicated.

Theodore S. Dumont was called to show that he had received from Mr. Fiske checks signed by the firm for the aggregate sum of \$325 45 in satisfaction of debts contracted by Fiske personally. The defense admitted the testimony without question, and simply attempted to establish, by cross-examination, that Mr. Harkins had borrowed money from the witness, giving checks signed by Fiske & Harkins in payment. Mr. Dumont remembered advancing Harkins \$400 at one time and \$200 at another time; his checks were drawn to the order of Fiske & Harkins, and the payments were made by checks bearing the signature of the firm.

Joseph A. Booth, the Treasurer of the Fifth-Avenue Theatre, was next placed upon the stand. He introduced a new and unexpected element into the suit, and one not embraced in the original complaint. He said that on several occasions Fiske had brought him in the evening tickets to be sold, and had received the money for them, no account being taken of it in the partnership receipts. The tickets were those supposed to be issued to the press. The first occasion which he remembered was during the engagement of Mary Anderson. Fiske brought him six tickets to sell at that time, and he returned Fiske \$9 for them. At the time of Modjeska's engagement he sold four tickets for Fiske and returned him \$6. When Edwin Booth was playing at the Fifth-Avenue a similar transaction occurred. This time Fiske gave him eight tickets to sell and he gave the proceeds, amounting to \$12, to Stephen. On cross-examination, he said that Edwin Booth was his brother, and was entitled to at least \$6 of the \$12 which he gave to Fiske, but he said nothing to his brother or Mr. Harkins about the transaction. When pressed closely, the witness refused to swear positively that the tickets which he sold for Fiske were those issued to the press, but said that he was satisfied in his own mind that they were.

The proceedings were adjourned until Friday afternoon at 3 o'clock, when Mr. Harkins will be cross-examined.