mother that she had tried to get it changed at several places, but the shopkeepers informed her that it was bad. Mrs. Carey then took the bill, saying she would go out and see if she could not pass it. After the expiration of ten or fifteen minutes she returned, without attempting to pass or having even offered the bill to any one, but told Margaret that she had offered the bill, and that it had been kept by the man to whom she tried to pass it. Margaret would not believe but that Mary had passed the bill, and, becoming very angry, vented threats and imprecations upon her friend. Soon after Margaret's departure, Mary went to the Eighteenth Precinct Station-House and gave the bill aforesaid to Officer Birdsall, at the same time narrating the above circumstance to him. The officers forthwith proceeded to Margaret's residence and took her in custody. Justice Quackenbush, before whom the accused was subsequently taken, committed her to answer in default of $1,000 bail.

[Advertisement.]

FREDRICKS'S PHOTOGRAPHIC TEMPLE OF ART, Nos. 560 and 567 Broadway, opposite Metropolitan Hotel.—PHOTOGRAPHS, HALLOTYPES, DAGUERREOTYPES and AMBROTYPES, in every style.

[Advertisement.]

PURDY'S NATIONAL THEATER.—Great attractions at this popular Theater to-night, for the benefit of that youthful wonder, Master ALFRED STEWART. Mr. CHANFRAU and all the Company appear. Four lively and amusing pieces.

[Advertisement.]

THE METALLIC TABLET STROP—Invented by OEO. SAUNDERS A. D. 1816.—This, the genuine article, has never been equaled for producing the keenest possible edge to a razor. Can be obtained of the subscribers and sole manufacturers, J. & G. SAUNDERS, store No. 7 Astor House.

BROOKLYN ITEMS.

BROOKLYN-HIGHTS SEMINARY.—The anniversary services of this Institution were briefly noticed in our Monday's paper. We now add some particulars which will be of public interest, as indicative of the advancing cause of female education in this country, and we take the occasion to make some reflections applicable to other institutions as well as to this popular Academy.

The reports upon scholarship by the Committees of the Board of Visitors, who had attended upon the examinations, are perhaps not altogether to be relied upon, as it is too much the custom in such reports to praise with but little discrimination.

There might be great advantage in a really impartial review of the proficiency of a class, with proper suggestions in respect to the mode of instruction or the comparative attention due to the different subjects of study. But whoever has listened often to the reports annually read in our Female Seminaries on such occasions would probably be of opinion that the greater part of them might as well be omitted, and certainly that the publication of them as is the practice of some Institutions, is altogether puerile.

The range of studies, however, which was referred to in the reports read at this anniversary may give us some idea of the grade of female education as here pursued.

A literary course extending through the whole series of the great English authors, as exhibited in Chambers's selections, and the study of history, with Guizot's great work on modern civilization as one of the text-books, which constitute one department under the charge of Miss Hall, must, if thoroughly taught, impart a sound and healthful tone to the mind, and so far as could be judged from the Theses of the young ladies, which were read this part of the course has been faithfully attended to.

In Mathematics and Natural Science, taught by Prof. Gray, the course appears to be of a high order, and it was mentioned in a report which was more discriminative than usual, that a rigid examination, continued for five hours consecutively, had fully proved the conversance of the pupils with every part of the subjects taught.

Mental and Moral Science, Logic and Butler's Analogy (in which the Rev. Dr. Spear gives instruction), would formerly have been thought to lie quite outside of the proper limit of female education. The report on these branches was not very circumstantial, but there was good evidence, in the writings of the young ladies, of familiarity with moral and theological truth, and modes of reasoning.

Logic, in our opinion, might as well be thrown out of the schools. It is difficult indeed to imagine why a jargon which was repudiated by Bacon and Locke should still be retained for the torture and perversion of the youthful mind.

When looking at such a class of young ladies, all of them between the ages of 15 and 19, it is pleasing to think that their youthful minds can be so imbued with abstruse science, and especially the psychological, as to bear a favorable comparison with the average of the young men in the senior class of most of our colleges.

Of the compositions read (which were six in all) most of them had the unusual merit of being free from the affectation of sentiment without sense. The "Searches After Truth," by Miss Goodell, was a good specimen of sound natural thought and expression. "The Meeting of the Centuries," by Miss C. A. Dana, was a fine artistic grouping of historical events under a personification of the different centuries—the conception of the subject had indeed a poetical beauty, and it was filled up with uncommon affluence of illustration and a delicate and discriminating taste. The poem of Miss M. H. Chitterden, on the "Poetry of Life," displayed in many passages a fertility of thought and a rhythmical beauty of expression which certainly reflected much credit upon the writer.

We ought not to omit mention of the original odes which were sung, the productions of Miss Chittenden and of Miss Anna Olcott, one of which, by the young lady last named, was especially worthy of praise.

And we would also remark as to the compositions not read, that if, as Dr. Farley said, some of them had perhaps more merit than several of those which were read, then injustice was done by omitting them. The selection of the pieces should not be for the mere entertainment of the audience, but reference should be had to their real merit, and the natural ambition which the young authoresses have for the honorary distinction which they have justly earned.

FIREMAN'S FUNERAL.—Yesterday afternoon Robert R. Smith, a member of Engine Co. No. 13, was buried with Fireman's honors from his late residence. The members of his own company and delegates from other companies attending the funeral. The flags on the engine houses were raised at half mast, and during the passage of the procession the fire bells were tolled.

DEATH OF AN EX-ALDERMAN.—Absolom Roper, formerly an alderman of the city of Williamsburgh, died on Tuesday afternoon at his residence in North Second street, between Fifth and Sixth. His death was caused by an affection of the heart under which he had been laboring for some time.

TILL THEIF.—Peter McGovern was arrested yesterday by the police of the Seventh Precinct, having robbed the till of a baker in Franklin avenue of $3. He was held for examination. This is the third time that he has been caught in similar larceries.

NEW-JERSEY ITEMS.

COMMON COUNCIL.—On Tuesday evening the Mayor sent in a veto to the tax ordinance for 1858. The grounds of the veto are that the amount to be levied is entirely too high. The actual city debt is $50,000. A motion to pass the ordinance over the veto was lost by a tie vote. A motion to lease the Commercial Buildings for a Council Chamber and city offices was lost by a tie vote (7 yeas to 7 nays). The School Committee reported in favor of erecting a building in the Third Ward for the use of the public schools at an expense not exceeding $12,000. The report was tabled till the next meeting.

Several inn, tavern, and other licenses were granted by the Board, after which it adjourned.

POLICE APPOINTMENTS.—The following Police appointments were made by the Common Council on Tuesday evening: First Ward—Fisher, Callahan, Carroll, Harley, Chase and Valoid. Second Ward—Shields, Murphy and Strong. Third Ward—Chorotte, Jordon, Moles McLaughlin, McNamara, Duffy and Ayres. Fourth Ward—Townsend, Van Riper, Halloway, Van Voorhies, Daley, Sandford and Smith.

COLLISION AT TRENTON.—A collision occurred yesterday morning between a coal and a freight train on the Belvidere and Delaware Railroad, at Trenton, by which both engines and several cars were smashed. The conductor and fireman of the freight train were dangerously injured; the engineer of the coal train badly scalded, and several others slightly injured. None were killed.

FATAL ACCIDENT AT PERTH AMBOY.—As the sunrise salute was being fired at Amboy yesterday morning, a boy about 14 years old, son of Mr. Smith, who was engaged with his father in raising the flag, accidentally got in range of the cannon, and was struck by the wad in the neck, which carried away the side of his face and rendered him insensible, in which condition he lay till 5 o'clock in the afternoon, when he died.

LAW INTELLIGENCE.

COURT OF GENERAL SESSIONS—JULY 7.—Before Recorder BARNARD.

THE INDICTMENT AGAINST JUDGE RUSSELL, B. ULLMAN AND OTHERS.

DECISION ON THE MOTION TO QUASH.

This morning, Recorder Barnard, on taking his seat, delivered the following written opinion:

The People ats. Edward S. Malloy et al.

At the last June term of this Court three indictments were found against the defendants in the above matter, two for assault and battery, and one for a riot and assault and battery. A motion was made to quash these indictments the last day of that term. Upon this motion the indictments themselves and the papers that were before the Grand Jury when found the indictments can alone be considered. Those papers are the affidavits of H. J. Brent, John Williams and John Darcie, a letter of Geo. Wilkes, accompanying a communication containing the names of the witnesses in the matter, with a statement of the points as to which each would testify, a copy of a letter written by him to Bernard Ullman, dated April 15, 1858, also another dated April 28, 1858, and a printed piece of paper containing the following portions of a warrant said to have been granted upon the letter of April 28, 1858, by defendant Russell, to wit: "Whereas complaint on oath has been made before the undersigned, City Judge of the City of New York, by Bernard E. Ullman, that one John Darcie has been in the habit of annoying him within his place of business, and that he threatens to do so again on the evening of 26th of April, and has reasonable grounds to apprehend disturbance, difficulty and riot, so as to interrupt his business, &c." This letter to the Grand Jury, with its accompanying communication, in an envelope directed in the handwriting of George Wilkes, "To the Foreman and gentlemen of the Grand Jury," on which envelope was indorsed by the Foreman of the Grand Jury, "Mr Vandervoort will send down to the Grand Jury the papers in this case to-morrow (Wednesday) morning."

It was contended that certain papers, which were before the Grand Jury for the purpose of procuring an indictment against John Darcie, should also be taken into consideration. But being unable to discover any evidence that these papers were before the June Grand Jury, I am obliged to lay them out of consideration. A considerable portion of defendant's argument was based upon matters not appearing in the papers (which alone can be considered), and can therefore have no bearing on the decision of this motion. The three affidavits before mentioned as having been before the Grand Jury, present a state of facts which, unexplained, show an aggravated assault and battery. The remaining papers (the transmission of which to the Grand Jury I may here say defendant's counsel insists was unlawful, and avoids the indictments,) do not contain matters which explain away or justify the case made by the affidavits. They do not, however, state that case, but rather, on the contrary, contain some matters which are rather favorable to the accused than otherwise, and from which their counsel have drawn various presumptions, some correctly, and on which they have based numerous arguments. These presumptions and arguments I will consider, for the double purpose, first, of showing that the communication had no effect upon the Grand Jury, and secondly, that those presumptions which are properly to be drawn, afford no ground for quashing these indictments. The matters referred to are the letters of April 15 and April 28, and the extract from the warrant which are as follows:

OFFICE OF PORTER'S SPIRIT OF THE TIMES, NEW-YORK, April 15, 1858.

B. ULLMAN—Sir: Your letter of yesterday, repeating your determination to exclude Mr. John Darcie, the musical and dramatic reporter of *Porter's Spirit*, from the public performances at the Academy, even though he purchased his ticket, has reached me, and I have carefully read what you say in justification of that act.

My answer is, that I send Mr. Darcie to the Academy, and other places of public entertainment, not as John Darcie, but as the representative of the paper I conduct; and I claim that, so long as he bears himself lawfully and decorously while in attendance at such places, his personal characteristics are merged in his representative position.

Were editors to submit to any other rule, and make managers the umpires of the private standing of their employees, they would be continually subject to theatrical dictation and might at any moment have their employees turned upon their hands, and their paper left deficient in a reporter. This was the case with us in your arbitrary and invidious exclusion of Mr. Darcie.

We sent him to the Academy as our reporter, with directions, in accordance with our rule, to pay for his ticket, and you, knowing him to be our reporter, directed him to be excluded, and did not deem it worth the while to acquaint us with the rescript. It is for this wrong and indignity we seek redress, and we expect to get it by law.

I see nothing in the charges you make against Mr. Darcie that may not be easily explained away, and it matters little whether or no he was the original "Touchstone" of *The London Era*, since I find him to be a better writer than the person who has charge of that department, in the indicated London journal.

Moreover, my personal observation of Mr. Darcie has been entirely in his favor. I have always found him to be a quiet, well-mannered, self respecting gentleman; and, notwithstanding what you say of his character, I have yet to hear the first person speak ill of him.

I am free to admit, however, that if any evidence can be furnished me that he has acted corruptly while in my employ, or violated the decorum due to any respectable place of public entertainment, he will at once be dismissed from all connection with *The Spirit*. More than this I have not to say, except that I desire to assure you, that I am not actuated in the steps I am taking by any personal animosity to you, but simply by a desire to vindicate the rights of the paper I conduct, and to establish the principle that editors have the same privilege of admission, for pay, to licensed places of public entertainment as all other members of the community.

Yours, &c., GEORGE WILKES,
Editor Porter's Spirit of the Times.

OFFICE OF PORTER'S SPIRIT, New-York, April 28, 1858.

MR. BERNARD ULLMAN—Sir: It is my intention to visit the Academy of Music on Monday evening next, accompanied by the musical reporter of *Porter's Spirit*, for the purpose of witnessing the performance on that occasion, and write his opinion of it for the above-named paper. We will both be provided with tickets, which we will purchase of your agents, in accordance with the invariable rule of all persons attached to *Porter's Spirit* when visiting theaters and other places of public entertainment in the city.

The gentleman who will accompany me will be Mr. John Darcie, who, you are aware, has for a long period acted as the regular musical reporter of *Porter's Spirit of the Times*. I send you this notice, in order, after what has happened, that no person may persuade you Mr. Darcie or myself intend to visit the Academy for any illegal purpose.

Yours, &c., GEORGE WILKES,
Editor Porter's Spirit of the Times.

"*Whereas*, Complaint on oath has been made before the undersigned, City Judge of the City of New York, by Bernard E. Ullman that one John Darcie has been in the habit of annoying him within his place of business, and that he threatens to do so again on the evening of the 26th of April, 1858, and has reasonable grounds to apprehend disturbance, difficulty and riot, so as to interrupt his business, &c."

Defendant's counsel contend that these letters show that Messrs. Wilkes and Darcie, in defiance of Mr. Ullman's desire, surreptitiously obtained tickets of admission, with the intent of enforcing their right to admission by committing a breach of the peace; and that they made precisely such preliminary arrangements, tending to the production of a riot, as experience would have commended to the keenest intellect. They also contend that the presumption to be drawn from these letters, contained in this communication, is that the matters upon which these indictments were found arose out of a dispute as to whether the manager of the Academy of Music has a right to exclude, without cause, out of his own caprice, whomsoever he may please, or whether, by notifying a person that he will not be admitted, such person is precluded from purchasing a ticket and enforcing by lawful means an admission thereon. Upon this last presumption the counsel has framed an argument which I will subsequently consider.

It is also contended that a further presumption arises from the above extract of a warrant, viz: that the riots and assaults and batteries complained of arose out of the endeavor to properly execute a good and sufficient warrant duly issued. Now as to all these presumptions I might say that the papers from which they are drawn, together with the affidavits, were before the Grand Jury, who also, as appears by their minutes, orally examined witnesses, whose testimony is not before me, and it would therefore be equitable as to the sufficiency and effect of the whole evidence upon which the Grand Jury has already passed, and their conclusion upon which I am not authorized to reconsider upon a motion of this kind. To do this would be in effect to try every criminal case upon a motion to quash. Conceding, for the purpose of argument, that upon such a motion the evidence before the Grand Jury can be looked into and its sufficiency passed upon, still the whole of that evidence must appear before the Court, and the motion should only be granted under such circumstances as a civil court would grant a nonsuit.

But I will cursorily answer the presumptions drawn by the defendants' counsel. It does not appear to me from the tenor of the two letters in question, that Messrs. Wilkes and Darcie either surreptitiously obtained tickets, or had any design or intent either to create a riot or commit a breach of the peace, but simply to lay the foundation for the assertion of the rights they contended for by lawful means. It is too forced a presumption to say that the above extract of a warrant forms the basis of the complaints in this matter, for it nowhere appears that such warrant had not already been executed, and the defendant properly discharged, or that it was at the time of the assaults and riot complained of, in the hands of any officer, for such purpose as the there present with it for execution. I am bound to presume that the negative of these various propositions appeared before the Grand Jury, for it would be wholly unauthorized to assume that the Grand Jury found indictments for matters arising out of a proper execution of a warrant, unless such fact appeared clearly and positively upon a return of the whole evidence before them.

The remaining presumption drawn by defendants' counsel is that the matter arose out of the assertion, on the part of Messrs. Wilkes and Darcie, of a right to purchase tickets, and thereon to be admitted to the Academy of Music, despite the will and desire of the manager or lessee. As to whether they really had such a right or not, is perhaps not a material inquiry—for they certainly were at liberty, in any aspect of the case, to purchase tickets to go to the Academy, present them to the doorkeeper, and demand admission, so as to lay the foundation for legal proceedings; and if they committed no breach of the peace in so doing, they were not liable to any arrest. I have already stated in my conclusion that there is nothing that would justify me in assuming or holding that there was any breach of the peace.

The defendants' counsel, however, upon their presumption made in this behalf, contend, as a matter of law, that Mr Wilkes committed a grave error in supposing that he had an absolute right to visit the Academy of Music, without the consent and against the will of the manager, and they lay it down as having been "repeatedly, often, solemnly again and again decided that "admission to a theater is not a matter of right; no citizen can "claim it; the proprietor admits whom he chooses, and he may "refuse admission to the most eminent and respectable citizen." If this were so, it would be naturally supposed that the eminent counsel would have been able to cite some one of such adjudged cases, deciding the point in question; but this he has not done, although he made an elaborate argument upon this very question; he, however, cited upon his brief under this point several cases, which, on examination, will be found not to touch the point in any respect.

The question in the first case of Clifford agt. Brandon (2 Campbell's Report, 358) was whether the plaintiff, who sued for an assault and battery and illegal arrest, conducted himself disorderly or incited a riot, and also whether at the time of his arrest the riot was over. The circumstances which gave rise to this case were that the managers raised the price of admission to the boxes and pit, and excluded the public from the private boxes; and, thereupon, the audience used to go to the theater with horns, tin pans, &c., and generally create noise and confusion, and placed in their hats badges with the letters O. P. (old prices) and N. P. B. (no private boxes) thereon. The plaintiff had the O. P. badge in his hat. The Jury found £5 damages in favor of the plaintiff. It is curious to note that the result of this case was a compromise between the managers and the public. It will be seen that the defense in this case, in Campbell's Reports, rested substantially upon the same claim as the defense in this action, and yet the Jury found against that claim.

When I say that the claims are substantially the same I mean that in both cases there was an arrest, and that such arrest was made for disorderly conduct. The other two cases referred to, viz: "Macklin's case and Gregory vs Duke of Brunswick, were actions for a conspiracy to prevent an actor from acting. The Court in these cases while holding that no person or body of persons have a right to band together with a predetermined intent to go to a theater there to behave in such a disorderly manner as to interrupt the performances, yet distinctly admit the right of persons to evince their approbation or displeasure by applause or hissing, when such approbation or displeasure is naturally prompted and voluntarily arises upon the occasion itself.

Although the case does not call for a decision upon the general right of the community to visit places of amusement, irrespective of the caprice of the manager, yet as the eminent counsel laid down the proposition that the public have no such right, so broadly and positively, as having been so repeatedly adjudged, and has laid so much stress upon the point, in his argument in this case, I have deemed it advisable to say thus much on the subject. The Academy of Music is a corporation, established by the laws of this State for the purpose of encouraging and cultivating a taste for music by concerts, operas and other entertainments, "which shall be accessible to the public at a moderate charge." Session Laws 1852, p. 26.

This act, from its very purport, was passed not for the sole benefit of the manager or stockholders, but for the public, and it declares that the performances given by this institution shall be accessible to the public at a moderate charge. It is not, therefore, to be considered in the light of a private institution over which the owner and proprietor might have exclusive control, but as a public one, access to which the public have a right to demand. It stands upon the same basis as the right or privilege the public have of enjoying public parks and squares dedicated to common use; and I understand defendant's counsel to admit that the public have a right to enjoy the public parks, and can enforce that right by law; and he also states that the remedies which may be employed for the enforcement of such rights are the writs of mandamus, complaint to superiors in authority, indictment and civil action, as the case may be.

In the present case, consequently, it is wholly unimportant whether the manager or proprietor of a private institution, used for exhibition for the public amusement, can, of his own mere will and caprice, exclude whomsoever he pleases or not; for the Academy of Music is a public institution, the right of admission to which depends upon the statute. Mr. Wilkes, therefore, did not commit a grave error, but was justified by the law in supposing that he or any other person had, despite the will of Mr. Ullman, the right to purchase tickets at a reasonable price and to be admitted thereon, and Mr. Ullman committed a grave error in supposing that he had a right to prevent any one he pleased from purchasing a ticket and from being admitted. Of course, if any one with a ticket, or after admission is disorderly or has any infectious or contagious disease, he may be properly excluded, and, perhaps, this rule will extend to many other cases. Spontaneous applause or disapprobation will not expose the person giving vent thereto to the charge of being disorderly, nor will the exercise of the right of criticism.

Defendant's counsel argues that public policy requires the Judges of Courts of Record should not be indicted for mistakes or errors of law or fact. This proposition, as an abstract question of law, is undoubtedly correct, but I do not perceive what application it has to the present case. The facts before me on this motion do not show that the indictments, as I have above remarked, were found for any act of the defendants, or any one of them, committed in an official capacity. If, on a trial, it should appear that a warrant had been duly issued, upon proper and sufficient evidence by an officer authorized to issue it, and that all the facts upon which the complainant bases their complaints grew out of the issuing, and in the proper and legal execution of such warrant or of any other legal warrant, then, if such warrants were issued by the magistrate honestly, in the bona fide performance of his duty, he would be completely protected, and if the execution of such warrants were properly done, and they were legal on their face, then the officers and persons engaged in such execution would also be shielded if they acted honestly and bona fide in the performance of their duty. These views bring us to the consideration of the only questions of law which arise upon the papers before me, and these are:

First: Whether, after a dismissal of a complaint by one Grand Jury, a subsequent Grand Jury can inflict upon the same complaint and the same evidence. The statute requires that a Grand Jury to consist of at least sixteen, and at most twenty-three, and requires twelve to concur in order to find an indictment. It follows, consequently, that if, of a Jury of sixteen, eleven be in favor of finding an indictment, and five opposed, no bill can be found, and yet the proposition goes to the extent that those five members have found a verdict of not guilty in opposition to eleven, and thereby prevent all further investigation. This is contrary to the rule that obtains in respect to a Petit Jury; for in order to give their verdict such conclusive effect the whole must concur, and if even one dissent the matter must be submitted to the consideration of another Jury. It is contrary also to the rule that ordinarily governs in all cases of submission to the decision of three or more persons, in which cases the majority rule and not the minority. It seems to me the only effect of a Grand Jury failing to find a bill is the same as the disagreement of a Petit Jury.

As long ago as 1791, the doctrine was established that a complaint made to, and dismissed by, one Grand Jury might be renewed upon the same evidence and a bill found before a subsequent Grand Jury—Addison's Penn. Rep. and Charges. As far as I can ascertain this has been the practice ever since, and in my judgment there is no objection to it, but on the contrary, there are many reasons for its support and continuance.

Second: That the communications addressed to the Grand Jury coming from a private party, and not from the District Attorney, constituted an irregularity, and that they contain unsworn statements of fact upon which it must be assumed that the Grand Jury in part acted; and that, being unsworn, they tend to find a bias on the minds of the jurors, and that acting upon such unsworn statements renders the whole finding invalid. As an ordinary rule, all matters presented to the Grand Jury should pass through the District Attorney, or, at least, be submitted with his sanction; and this is the usual course. But I am not aware that there is any positive rule of law prohibiting a private individual from bringing to the notice of a Grand Jury any cause of complaint he may have.

The Grand Jury, as I shall subsequently hold, have a right to originate complaints upon their own motion. To do this they must in some way—either from their own knowledge or by information from others—become cognizant of the matters which constitute the cause for the complaint, which they originate. I deem it well settled that, if they see the crime being committed, or themselves have knowledge or receive information that a crime had been committed, it would not only be their right but their duty to investigate the matter without the consent, or even in opposition to the District-Attorney. They having this power, it surely can be no objection to an indictment found, that the first information they received of the matters upon which it is based came through channels other than the District-Attorney, or even from the aggrieved party himself. Almost all complaints of a quasi private character are first put in motion by the aggrieved party, who lays the complaint before the District-Attorney.

He is, to be sure, a sworn officer, independent also of the Grand Jurors, and therefore is not justified in supposing that a large number of sworn officers, acting in a body, will give heed to an unfounded complaint than that a single officer will. Although the District-Attorney is the ordinary legal adviser of the Grand Jury, yet they, in the sphere of their action, are his superiors, and can refuse to find bills on cases sent before them by him, and find them in cases not transmitted through him. It, then, a District-Attorney, through fear, favor, corruption or delicacy, should either refuse or decline to send to the Grand Jury a complaint, I cannot see any reason why that complaint should not be brought directly to the notice of his sworn superiors by the complainant.

These remarks apply only to the mere bringing of the matter of complaint to the notice of that body, leaving them to investigate the matter and find or not find, according to their best judgment. It cannot be permitted for a prosecutor to labor with them, to inflame their passions by exciting appeals, or to operate upon them through fear, favor or any undue means. If any such course was pursued, the indictment found, in pursuance thereof, should be set aside. It becomes, therefore, material to inquire as to whether these indictments were obtained in any such manner.

The letter of June 10, with the accompanying document to the Grand Jury, contains a statement of the case, a list of the witnesses, with the points to be proven by them. These were intended to bring the matter in the first instance to the notice of the Grand Jury. They were not papers transmitted during the investigation of the matter, and intended to influence their judgment upon that investigation—they were the initiative, and, for aught we know, every solitary statement of fact contained in them was proved by the witnesses called and examined before the Grand Jury; and there are no mistaken conclusions of law contained in it. They do not contain any inflammatory or exciting appeals, but simply express a desire and hope that the position of the defendants should not interfere with the action of the Jury against him, if it shall appear to them that such action is proper.

If these papers had not been the initiative step, but had been submitted after all the evidence had been taken, it might, perhaps, then be deemed an attempt informally to communicate with and influence the jurors. But it appears that these papers were transmitted at the commencement to call the attention of the Grand Jury to the subject; and that after their transmission there was no communication, threats, or undue influence used to control or bias the judgment which they should exercise upon a due and patient investigation of the whole matter. There was, indeed, a subsequent communication informing the Grand Jury that a Mr. Mouitrie, who appeared before them, was the counsel for Mr. Ullman, and could, if called, give the origin of the affair. This communication appears to me to be very harmless, and if of any effect would naturally be one prejudicial to the prosecution, as it proposes the examination of a witness for one of the defendants.

The case of the Commonwealth ex rel. Jack vs. Cuns, was cited by defendant's counsel, upon this point. That case had its origin in certain riots which occurred in the City of Philadelphia. A military force had been called out under the command of Gen. Patterson, who issued an order desiring that until the excitement should have passed away, no county, town, district or ward meeting be held, and giving notice that if any attempt should be made to hold tumultuous and excited meetings or gather large and riotous assemblies he would clear and occupy, by an adequate force, any street or place where such meeting should be held.

The Grand Jury had made a presentment to the Court concerning the riots, and the Court had specially charged on the subject. Mr. Jack had been in some way connected with those riots, and after the presentment by and charge to the Grand Jury, he addressed a letter to them in which he referred to the order issued by Gen. Patterson, and said: "It is calculated to lead to bloody and unconstitutional measures." He further said: "It is regarded as an attempt to put down the Native American Association by military force. That is arbitrary, illegal and unconstitutional, and will be resisted to the utmost by him." The Grand Jury entered the Court, and called the attention of the Court to the letter.

Both the Grand Jury and the Court seem to have considered this to have been an attempt to paralyze the arm of civic power, and a bold effort to obstruct an honest and fair administration of justice by the action of a Grand Jury, and that the very language of the letter manifested a disposition to deter the Grand Inquest of the county from the performance of a duty incident to their office. Upon this view of the character and circumstances under which this letter was addressed to the Grand Jury, the Court held the defendant liable to the crime of attempting to obstruct the course of public justice.

Admitting the construction put by the Grand Jury and the Court upon the act of the defendant, the decision of the Court was undoubtedly correct, and the views of the law which I have above laid down are conformable to that decision. The difference between the two cases rests in the difference between the facts. That case was one which in view of the Court was an attempt made by a party liable to be affected by the action of the Grand Jury, to forestall their action, and in effect with the execution of the laws by incendiary writings, transmitted to them pending their investigations into the subject matter.

The case in hand, on the contrary, is simply the calling the attention of the Grand Jury to an offense alleged to have been committed for the purpose of sustaining the laws and the course of justice, leaving them free, untrammeled and unintimidated in their subsequent investigation into the matter brought to their notice.

Third: That the Grand Jury have no power to originate a complaint. As to this point, both of the Judges of this Court have held to the contrary, and have regularly charged the Grand Jury that they could originate all complaints for felonies and misdemeanors. This is the established doctrine of this Court, and I do not feel at liberty to depart from our established practice until we are overruled by a superior tribunal. For these reasons, the motions to quash are overruled. It has been suggested by defendant's counsel that the Court should suggest to the District-Attorney the propriety of entering a *nolle prosequi*.

The Court, under the views which it has expressed, does not feel at liberty to make any such suggestion. If the District-Attorney, however, who is charged with the duty of trying their indictments, and necessarily has access to all the evidence, and must enter into an examination of it for the purposes of trial, is satisfied that the prosecutions ought not to be proceeded with, he can move for a *nolle prosequi*.

GEORGE G. BARNARD, Recorder.

Before the Hon. Recorder BARNARD and Judge RUSSELL.

The following gentlemen were sworn as a Grand Jury:

William V. Brady, John Babcock, Samuel M. Beckley, Benjamin Betts, Edward N. Kellogg, Albert N. Peck, Wm. F. Frost, Samuel Smith, Walter Seely, Cesper Trumpy, Geo. W. Platt, Cruel Adams, Fred. E. Townsend, Edward M. Osborn, Nathan C. Ely, John A. Currier, James W. Otis, George Quinly, Jas. R. Bartholomew, Moses W. Dean, Isaiah C. Babcock.

HONORA Collins, charged with stealing two pawn tickets, was tried for grand larceny. The Jury could not agree. She subsequently pleaded guilty to petit larceny, and Judge Russell suspended judgment.

William Jones pleaded guilty to forgery in the 4th degree and was remanded for sentence.

John Cajav pleaded guilty to petit larceny, and was sent to the Penitentiary for six months.

George Brandt was tried for an assault and battery on John Weaver, on June 5, and was acquitted.

Robert Ellis was tried for grand larceny. He stole $70 from Wm. Posten. The Jury, after being absent two hours, came into Court. The Foreman said they had found the prisoner guilty of petit larceny, but strongly recommended him to mercy. Whereupon the sixth Juror arose and told the Judge that the verdict, on his part, was rendered under protest, because he disagreed with the other Jurors, and thought the prisoner should be acquitted. The Court said that such verdict could not be received. The Jury then held a small conference, and found the prisoner guilty of grand larceny. In many years' experience we never met with so funny a Jury as this.

UNITED STATES DISTRICT COURT—MAY TERM, 1858.—Before Judge BETTS.

William E. Collis and William Mitchell agt. The Schooner Coeur-ane, Finley W. Moore, Simeon J. Latham and Lorenzo A. Webb, Claimants.

The libelants, ship chandlers and traders, residents and doing business in New-York, were in the habit of dealing on credit in the line of their trade with Gilbert L. Moore, a resident of Wilmington, in North Carolina, engaged in building and selling vessels, and other transactions, in that State.

The correspondence between these parties proves that such course of dealing was in use between them antecedent to the month of September, 1856, and was continued subsequently on open accounts of debit and credit. At that time, in an interview between them in New-York, it was agreed that the libelants should supply the equipments and outfits necessary to complete the schooner *Coeur-ane*, which Moore was about constructing at his residence in North Carolina; and that they should furnish whatever should be required to that end upon the written or verbal orders of Moore.

On the 5th of March, 1857, Moore wrote the libelants from Wilmington, by Samuel D. Hines, introducing the latter as the intended master of the Coeur-ane when completed, and requesting that his memoranda of materials and supplies should be filled by the libelants "at as low rates as possible," the large amounts of course on the reg lar times, "in order to give the vessel some time to make a part before it is due;" "the small memoranda of which I shall expect to pay between one and three months;" for instance "the bill for making sails from work, &c." The same letter had advised the libelants that Moore would, between July and September, pay them a considerable amount for the purchase of the sails and rigging for the Coeur-ane; those, as it appears from the correspondence between the parties, being articles not dealt in by the libelants, but with some others were to be purchased by them in New-York for Moore.

By letters of dates of March 14 and 20, the libelants advised Moore that they were hastening to fulfill all Capt. Hines's orders; that hemp, sails, blocks, &c., had been purchased by them. On the 14th of March they further wrote that all the goods were then ready and requested a remittance of funds, as they had to make large purchases, and their payments for duck, &c., "then and for the next sixty days will be heavy."

By letter of April 8, the libelants informed Moore that the goods were all on board the vessel in New-York for transportation to North Carolina, and that they inclose "bill of lading and amount of supplies, amounting in all to $4,674 35," "the cash bills, amounting to $816 77," they desired him to remit immediately.

On the 11th of July, 1857, Moore executed at North Carolina a promissory note to the libelants, or order for $600, payable a ninety days, and on the 31st of July, at the same place, another note for the same amount ($600), payable in ninety days thereafter to the libelants or order; and on the 24th of September following, another promissory note, dated at New York, payable to libelants or order for $1,000, four months after date.

These several promissory notes were produced in open court by the counsel for the libelants on the hearing of the cause, as having been given for the debt in prosecution, and were delivered up to be cancelled.

It appeared in proof that the materials supplied by the libelants were necessary for the construction and use of the schooner, and could not have been procured at the place where she was built and fitted out. They were supplied for her service, and after her completion she was dispatched by Moore, her owner, from Plymouth, North Carolina, her port of registry, upon a series of foreign voyages. June 2, 1857, she sailed for Guadeloupe, thence to Marie Galante, thence to St. Pierre, Martinique, thence to the Island of Nevis, on trading voyages; thence to St. Thomas, where she was chartered for Porto Rico and New-York, at which last place she arrived in the month of August, remained in the port fifteen days at quarantine, and eight days afterward in discharging and reloading, and on the 22d day of September sailed again on round charters by the way of the West Indies back to New York, where she arrived January 26, 1858, and the libel in this cause was filed the next day. The libelants were personally apprized of the vessel being in this port within two or three days after her first arrival here, and also knew the whole period of her continuance in port. The libelants knew that the schooner belong at Wilmington, North Carolina, and in want of ship chandlery, sails, rigging, materials, labor, and supplies, to render her seaworthy and fit to navigate the high seas and proceed upon a voyage to the West Indies, they furnished and delivered such articles to the vessel at that place, &c. These claimants intervened and set up a title to the vessel under an assignment of her in trust for the payment of debts made to them by Gilbert L. Moore prior to the commencement of this action; and by formal answer they denied every material allegation in the libel upon which the action is based. They especially denied the jurisdiction of this Court over the subject matter, and insisted on the argument upon an explicit judgment on the question, although the point is of eminent importance to the interests of navigation and commerce in American vessels and because it is supposed the law governing that subject is obscure or indefinite in its provisions, or has become seemingly so, under the rules by which it is interpreted and administered by the Courts.

There was also a separate intervention and defense to the action in the name of James C. Willett, Sheriff of the City and County of New-York, who interposed and claimed the vessel by virtue of process of attachment out of a State Court in favor of a creditor of Gilbert L. Moore, the alleged owner of the schooner. This branch of the defense was disposed of at the last May Term of the Court, on an issue in law (4 vol. MSS. Decisions, 49), and will not be further regarded in the report of this case.

The case was argued upon the pleadings and proofs by Messrs. N. Hyde and E. C. Benedict, for libelants, and Messrs. J. Gerard, jr., and B. D. Silliman for claimants.

BETTS, J.—The libelants place their right of action in this cause upon the grounds that the transaction between them and Gilbert L. Moore, in relation to the outfit and supply of materials for building and equipping the schooner Coeur-ane, was a maritime contract, concerning a foreign vessel and her employment in navigation and commerce, and that a debt was thereby created, which became by implication of law a lien upon the vessel, accompanying her wherever she might go, or that by the local law of North Carolina, under which she was built, registered and owned, and where the supplies were used, the schooner was made subject to a lien for that debt, which, by the principles of the general maritime law, is enforceable in this Court.

The position on the part of the claimants is, that this Court has no jurisdiction over the subject matter of the suit, in any aspect of the case under which it is presented by the pleadings and proofs, and the cases of Pratt agt. Reid (19 How. R., 359), and The claimants of the steamboat Jefferson agt. Beers et al. (not yet published, but a copy of which has been furnished me), are relied upon as having settled, by the solemn adjudications of the Supreme Court, the law definitively to that effect.

In view of the magnitude of interests depending upon the general question in this District, and its importance practically in the every-day business dealings within the port between mechanics and material men, and shipowners and masters, it is deemed desirable that this specific point should be made the prominent subject of consideration and decision; especially if those judgments of the Supreme Court have worked any change in the rules heretofore applied to this class of cases, and have diminished the securities formerly enforced in this Court in behalf of that order of creditors.

In the first place, it is important to consider what were the special features in the case of Pratt agt. Reed, adjudged upon by the Supreme Court, and what character was affixed by that decision to the contract or credit in regard to necessaries supplied a foreign vessel on a voyage, in order to give them a privilege or lien against the vessel.

The steamboat Sultana was employed on the Western Lakes, in the transportation of passengers and freight. She was enrolled and owned at Buffalo, and a debt was contracted at Erie, in Pennsylvania, by her owner and master, for supplies of coal to her during the performance of a succession of trips for a period of about two years. It was assumed by the Court to have been necessary for the navigation of the vessel that she should be furnished with coal on those occasions, although the proof on that head was held to be loose and indefinite. The libelant furnished her coal in that manner when demanded, from June, 1852, to May, 1854, and rendered a bill therefor, containing a running account of debits and credits. The owner of the boat usually navigated her as master, and was present when the supplies were furnished. When he was not present they were furnished at the request of the person in command. The answer denied that the supplies were furnished on the credit of the boat, and averred they were furnished on the credit of the master.

The Court laid out of view the inadequacy of proof that the supply of coal was an actual necessity to the navigation of the vessel, within the Admiralty rule at the time it was supplied her, because of the more serious difficulty in the case of the libelant, in the entire absence of any proof to show that there was also a necessity at the time of procuring the supplies for a credit upon the vessel, which was asserted by the Court to be as essential as that of the necessity of the article itself. It seems to be supposed, from the Court