THE TRIAL OF THE GAMBLERS.

Decision of Judge Capron upon Motion to Quash Indictment in the Case of the Gamblers—Motion to Arrest Judgment in the Case of those who have Pleaded Guilty.

COURT OF GENERAL SESSIONS.

Before Judge Capron.

In the Court of General Sessions there was an immense concourse of people yesterday morning at 11 o'clock, it being understood that Judge Capron would, at this time, dispose of the cases of the gamblers. Hundreds who were anxious to get into the Court found the crowd so great that they could not even approach the outside doors. The company was composed of clergymen, gamblers, tapers, temperance men, thieves and loafers, being all in all a very motley company.

At 11 o'clock precisely Judge Capron came upon the bench and the Court was opened. Judge Capron then said that he prepared a decision in the case of Joseph L. Hall, upon the motion to quash the indictment, and had filed a copy of his decision with the Clerk of the Court, of whom the counsel on both sides might obtain it.

DECISION.

This is an indictment for violations of the various provisions of the "Act more effectually to Suppress Gambling," passed July 10, 1851. The defendant moves to quash the indictment on several grounds, and I will consider them in the order in which they have been presented and discussed. Before proceeding in my task, it is due to the counsel who have argued the motion before me to state that I have been prevented, by pressing employments which could not be consistently neglected, from bestowing upon the subject the attention and study which its importance demands; and I make this apology with the greater freedom from the consideration that any error which I may have committed may be promptly corrected by superior jurisdiction, without inflicting on the defendant any serious injury. The defendant's first objection is, that this Court has not jurisdiction to entertain this indictment, because the offences set forth in it are misdemeanors. This objection is founded on the 5th section of the statute of 1855, which confers exclusive jurisdiction on the Special Sessions in all cases of misdemeanors in this city, and it distinctly presents the question whether offences against the gambling act are misdemeanors or are felonies. The language of the statute is, "If any person, for gambling purposes, shall keep or exhibit any gambling tables, &c., he shall be taken and held as a common gambler, &c., and shall be sentenced to not less than ten days hard labor in the penitentiary, or not more than two years hard labor in the State prison, and be fined in any sum not exceeding one thousand dollars," &c. Common gambling, it is said, was, at common law, only a misdemeanor, and the term "felony" not being used in the gambling act, the crime is not raised to felony by increasing the punishment to imprisonment in the State prison. (2 R. S., page 702 sec. 34, 30.) In support of this position, "The case of the People vs. Ward, 3 Hill, 395, affirmed in 6 Hill, page 144," is cited; but I have never considered that case as settling the construction of the 30th section, just mentioned. The learned Judge who delivered the opinion of the Supreme Court in that case admits that the question was in no way involved in the case which he was examining. He mentions it only incidentally, and says, "I am inclined to think the Legislature did not accomplish their object; i. e., fix the legal characteristics of all felonies in this State, and consequently, of misdemeanor. He was "inclined to think" that the Legislature had only defined felony in the cases in which the crime was named a felony in statutes, leaving common law felonies unaffected, and the argument deduced from the case, and applied here, is that violations of the gambling act are not felonies because they are not so declared in that statute. I have always regarded the language of the thirtieth section as tantamount to this: an offence for which the offender, on conviction, shall be liable by law to be punished by death, or by imprisonment in a State prison, shall be construed to mean a felony. The language of the section is:—"The term felony when used in this act, or in any other statute, shall be construed to mean an offence for which the offender, on conviction, shall be liable by law to be punished by death or imprisonment in a State prison." This is but another form of speech for saying that a felony shall be an offence which may be punished by imprisonment in a State prison, and when used in any statute the term shall be so understood. Upon this interpretation the offence of gambling is a felony, because the offender may be punished in a State prison. I am aware that one or two other decisions similar to this in 3d and 6th Hill, have been since made by Judges who simply cited that case, and made no argument; not I regard the construction of the thirtieth section as still an open question. But we are not without high authority for the construction on which we insist. Say several English writers, "At common law the only felonies were murder, manslaughter, treason, arson, burglary, robbery, rape, sodomy, mayhem and larceny. By statutes, however, running from earliest periods, new felonies were from time to time created, till, finally, not only almost every heinous offence against person or property was included within this class, but it was held that whenever judgment of life or member was affixed by statute, the offence, to which it was attached became felonious by implication, though the word felony was not used in the statute." Upon what principle was this decision of the English courts formed? It was upon that of analogy drawn from the fact that Parliament had for a series of years attached to felonies created by statute a similar character of punishment. When, therefore, a statute offence was created, if its grade on the scale of crime was not named in the enactment, it was by implication held to be a felony, if the prescribed punishment was the same in character that has been established by Parliament in statute felonies. (1 Holl, 703. 1 Hawk c. 40, 52.) If we apply this very reasonable rule in the construction of our statutes, gambling is a felony. It is a statute offence, and although it is not named "felony" in the act, yet, as it may be punished with the same grade of punishment prescribed by the Legislature for all statute felonies, it is itself a felony. It will be perceived that this argument is maintained wholly irrespective of the construction which may be given to it. (R. S. 702, sec. 30.) It is also argued that "similarity of punishment, when not the only punishment, does not necessarily make crimes felonies." The soundness of this position is not transparent in the bare statement, and to appreciate its force reference must be had to the particulars stated or law under consideration. It is not allowable in the interpretation of a statute to wrest the plain language from its obvious meaning even to favor liberty. The words of the 30th section are, "When the offender shall be liable to punishment in a State prison," &c. No matter, then, that another punishment may be inflicted in the discretion of the court. The argument proves too much; for if applied in all its force the power of exercising discretion would be wholly taken away; and in all cases judges would be forced by the rules to inflict the lowest degree of penalty in every case. There is another view which may further elucidate this question. Gambling is not a statute offence in this State. Our statute embraces every act that was adjudged criminal in gambling at common law, and comprehends many others. Violations of it are not declared in the act to be misdemeanors in terms, and by 2 R. S., page 696, sec. 39, only those acts forbidden by law are misdemeanors which are prohibited in the statutes prescribing no penalties. Our gambling act does prescribe penalties, and violations of its provisions are not therefore misdemeanors within the meaning of the 39th section cited. The 40th section fixes the maximum of punishment of all cases of misdemeanors not named such in the statutes creating the offence. The fair deduction, therefore, is that any statute offence which, by the term of the act creating it, involves a punishment in the state prison, is a felony, although the act may have been a misdemeanor at common law, unless the creating act expressly declares it to be still a misdemeanor. Upon the defendant's first point, therefore, until the superior courts shall definitely settle the question, I feel bound to hold that offences against the gambling act are by implication, if not expressly raised from misdemeanors to felonies, and that this Court has original jurisdiction of them. The second ground on which the defendant moves to quash the indictment, is that proceedings were pending before a police justice under title 21, chapter 2d, of part 4 of the R. S., entitled, "Of the arrest and examination of offenders, their commitment for trial and letting them to bail." It is insisted that the institution of these proceedings confers upon person arrested certain vested rights in respect to the examination and cross-examination of the complainant, and other witnesses on the part of the prosecution, and the examination of the witnesses on behalf of the accused, and that these rights cannot be wrested from a party by the interposition of a Grand Jury convened and finding an indictment for the same charge pending those proceedings. It is alleged that either the two modes of proceeding are concurrent, and that the proceeding first instituted acquires thereby exclusive jurisdiction, and retains it until the proceedings are closed, or that criminal charges must, in all cases, be preferred before the police justices, and the party accused be either committed or bailed as an incipient step to the action of the Grand Jury. I have examined this point carefully, and studied all the authorities cited in support of it by the counsel for the defendant, but I have entirely failed to discover that they offered any support to this proposition. The authority which is most in point arose in Pennsylvania, on an application made to the Court by a Grand Jury for leave to issue a process to procure the attendance of witnesses before them, on whose evidence and information bills might be found and filed against the officers of the Board of Health. The language of Judge King, who refused the application, as well as the fact that application for subpœnas was made to the Judge, indicates that the powers and the duties of the Grand Jury are in that State regulated by some local statutory provisions which are not referred to in the opinion of the Judge. That case, therefore, cannot be authority in this State, which has its own statutes on the subject. The whole scope of the 47th section of the title of the Revised Statutes under consideration, very clearly contemplates a system of proceedings intended for especial use during the vacation of courts of justice. When arrests are made and examinations had as prescribed by that title, the prisoner, if held for trial, is either committed or is bailed, to appear at the next court having cognizance of the offence. The terms of the recognizance taken on letting prisoners to bail, relate to future time—the next court—thus clearly indicating proceedings instituted when the courts are not in session, are affording very conclusive evidence that the arrest and safe custody of supposed criminal offenders are the sole objects of the enactment. The fact that the accused have certain rights secured in the proceedings affords no just ground of objection to this view of the question; because all the provisions which respect the accused are necessary to enable the committing magistrate to decide upon the propriety of detaining the party until the next court. These proceedings are instituted primarily for the protection of the public against crime, and the rights of the accused are but incidental in favor of liberty during the progress of the proceedings. So long, therefore, as the people continued the proceedings before the committing magistrate, the accused may insist on the strict observance of all the provisions which respect his own rights; but when the people choose to discontinue further proceedings, the accused cannot object or set up the proceedings even while they are pending, in bar of any other form of complaints which the people may choose to institute. Parties accused of crime are not prejudiced by that construction of the statutes respecting arrests and bail. They cannot, if acquitted, be again tried for the same offence, and if the case may be supposed in which a citizen should be indicted and even be tried, while proceedings were pending against him before the committing magistrate for the same offence, sufficient remedies are provided in the powers of the court in which the indictment is found to afford ample and prompt relief. The Grand Jury have original jurisdiction and absolute power, subject only to the qualification that their proceedings must be regular in form and instituted in good faith. I should have felt less embarrassment in the discussion of this point in the case, if counsel had not informed me that a distinguished member of the bar, who formerly sat in the judiciary in this city, held while in office, a different opinion from that which I have been constrained to form; but as I have not been favored with his reasons, and as I have been told that another eminent Judge on the same bench has expressed an opinion similar to my own, and as a Judge of one of the federal courts also, who as I understand, has examined the subject, concurs in my opinion, I have ventured with great respect to consider the question still open to discussion, and to decide that this objection to the indictment is not valid. As the view which I have taken of this point is entirely independent of the question respecting the rights of a party to go behind the record further than the statute law expressly permits, in search of irregularities for the purpose of quashing an indictment, I shall not on this occasion notice the argument of defendant's counsel on that subject: I have assumed that point in his favor. The third objection taken by defendant, respects the frame of the indictment as a pleading in court. The allegation is that the indictment is not drawn with sufficient definiteness. Much of the strictness of description exacted by the rules of the common law for pleading in criminal cases, is now swept away by the more sensible and practical views which have prevailed in modern times, and which are, I trust, to continue the good work of legal reform, until the last vestage of those musty technicalities shall be obliterated from the record of our courts. An important move in that direction was made by the Legislature in the enactment of the provision respecting indictments contained 2 R. S., page 728, sec. 24. This section has received a judicial interpretation, [5 Wend. 271,] and it is now held that "an indictment is good if it contain the substance of the offence, with the circumstances necessary to render it intelligible, and inform the defendant of the allegations against him." I have examined the nine counts of this indictment, and carefully compared them with the statute on which they are founded. These counts are, in my judgment, not only sufficient within the rule to which I have referred, but are good even at common law. I will briefly consider the several objections which are raised to these counts by the counsel:—

1st. The second, third and fourth counts do not describe the device. The sufficient answer to this objection is that the crime described in the statute is general "any establishment, device, or apparatus," if used for gambling, is within its meaning. The kind of instrument used does not alter or even justify the offence, and it need not therefore be described. [2 Barn and Ald, 204; 1 Strange, 139, 140.] Again the indictment states the offence in this respect, not only by the adoption of the descriptive words contained in the statute, but by the statement of all those circumstances which constitute the definition of the offence in the act. Surely this is sufficiently specific. At common law, it was not necessary in gambling cases, to do more than the pleader has here done. [9 Cowen, 580; Spencer, Senator, 2 Hawkins, chap. 25, sec. 57, 59.] The superfluous words expressive of intent or motive, may be rejected as surplusage, and do not taint the pleading. The words of intention used in the act would have been a sufficient allegation in those counts in which the averment of an intent is necessary. [2 Hawkins, ch. 25, sec. 96. Hawk. C. C. 43.]

2d. The first five counts omit the words "gambling purposes," and annex one of the essences of an alternative and distinct set of crimes. It is always advisable in framing an indictment to use the precise and technical language of the statute on which it is framed; but neither at common law nor under our statutes is such strictness of expression deemed indispensible. Where a word, or words not used in the statutes are substituted in the indictment for a word or for words that are in it, and the word or words thus substituted are equivalent to the word or words used in the statute or are of more extensive signification, the indictment is sufficient; as if the word "knowingly" be used in the place of the word "advisedly," or the word "wilfully" for "maliciously" in the indictment is sufficient. [1 Bos. p. 181.] The words "for gambling purposes," omitted and in their place are substituted the words "for the purpose and with the felonious intent to tempt with playing a certain game called faro, being a game on the result of which money depended." Are not the substituted words equivalent in their meaning with the words "gambling purposes?" This appears to be an objection to a mere matter of form; the pleader, instead of simply averring the intent, has described it. The only serious question not presented here is whether the necessary ingredients of the offence "for gambling purposes," are stated with sufficient certainty; and I am of the opinion that the statement is sufficient in this respect.

The other branch of this point, viz, that the pleader has incorporated into the counts "one of the essences of an alternative and distinct offence," is the less formidable of the two grounds of objections. I cannot discover that this ground of objection is real, actually "to deal" faro, "and to bank for others to deal faro," &c., are declared crimes, but the allegation in the indictment is of an intention to play a certain game called faro.

Finding among the objections which have been thus hastily considered, none that, in my judgment, destroys the integrity of the indictment, I must deny the motion made to quash it.

MOTION TO ARREST JUDGMENT IN THE CASE OF HEARN AND OTHERS.

Senator Daniel E. Sickles, counsel for P. L. Hearn and others, then said:—

May it please the Court, I desire that the cases of Hearn and the other defendants, for whom I appear, should now be called. It will be remembered that when I had the honor, on last Monday, to address the Court with reference to the indictments found against these parties, on their behalf I pleaded guilty in the several cases, and asked for a suspension of judgment on condition that the parties should not again be guilty of violating the act under which they were indicted. It will also be remembered that the District Attorney, in his place in Court, acquiesced in the suspension of judgment for which I asked, and stated to the Court that these proceedings, having for their object to abate the evil of gambling, and that, moreover, the condition on which the suspension of judgment would rest, being, in his opinion, sufficient security to the public against a further violation of the statute, he should, therefore, not consider that his duty demanded of him to move for judgment in the cases in which this plea had been entered. I did not fail to observe that the Court then said it would be a subject for its serious consideration whether or not, under these circumstances, judgment should be suspended; intimating also that, notwithstanding the views expressed by the District Attorney, it might come to the conclusion to subject these parties to the punishment prescribed by the statute. I had not supposed, for a moment, that, when the District Attorney, representing, as he does, the public, had acquiesced in the application for a suspension of judgment, the Court would deem it necessary to make any order or take any action other than that agreed upon by the counsel of the respective parties to the indictment before the Court—the people and the defendants. Your honor is aware that I then stated that the defendants, in pleading guilty, had not been actuated so much by a distrust of their ability to establish a good defence against the charges of Jennings, as from a disinclination to subject the public to the expense and the tribunals to the loss of time which would be involved in the trial of the cases, especially as they had determined to cease from that time forward to be concerned with or connected in any manner with gambling houses. I had anticipated, and I thought reasonably anticipated, that a pledge of this kind, the faithful performance of which might be guaranteed by the serious consequences to the defendants inevitably to result from its violation, would be considered by the public prosecutor a sufficient security for the protection of the public against the evils complained of. The assent of the District Attorney, on Monday last, proved the entire correctness of this supposition. The Court will bear in mind that, on the first occasion when these cases were called up, in January last, I stated that I entertained grave doubts of the sufficiency of the indictments, and these doubts have been strengthened by the intimation which the Court has thrown out to-day, in passing on the motion in the case of Hall, that though it dissented from the views of his counsel, it still considered the questions raised on the indictments to be of a grave and important character; that it had, therefore, bestowed on them much anxious attention, and that they deserved to be brought to the notice of a court of review. Under all the circumstances, therefore, having given the subject my careful attention, and in view of the fact that the Court, on Monday last, assuming a responsibility which I had never doubted, rested entirely upon the public prosecutor, more than hesitated whether it would acquiesce in the disposal of the cases asked for by me, as counsel for the defendants, and agreed to by the public prosecutor, I have deemed it my duty to advise the defendants that they ought to avail themselves of every legal ground of objection which exists to the indictments. In addition to the exception to the indictments, taken in the case of Hall, there are others, of an equally grave character, which, in my view, ought to be considered; and I have, therefore, advised the defendants to move in arrest of judgment, and I now make that motion on behalf of the parties in whose case I appear. I shall be prepared to argue this motion at any time which may suit the convenience of the Court and the District Attorney.

The Court—Can a man who has pleaded guilty afterwards move in arrest of judgment?

Mr. Sickles—Undoubtedly.

The Court—I have never heard of such a thing. I have serious doubts whether any such right exists. When a man pleads guilty he waives every defence.

Mr. Sickles—With very great deference to the opinions of the Court, I must say that I was not prepared to hear the proposition disputed that the defendants have a right to move an arrest of judgment. It may of course be a subject for the serious consideration of the Court, whether the grounds on which the motion shall be made are sufficient. I would remind the Court that a plea of guilty amounts to no more on the record than a verdict of guilty. Nothing is more usual than a motion in arrest of judgment after verdict; and, indeed, there would be no occasion for such a motion, except after the guilt of the party appeared on the record, since, if acquitted, he certainly could have no desire to stay the judgment.

The Court—My mind is made up on the question. I have never known such an application to be made, and I am perfectly clear in the opinion that it ought not to be entertained.

Mr. Sickles—I was certainly not prepared to hear, from any quarter, the proposition disputed that, at any time, before a final judgment, a party could move in arrest. I have, therefore, not brought with me into court any of the authorities which abound in the books, in support of this clear right, and this, hitherto, undisputed point of practice. I am quite sure that the Court must be familiar with many cases, both civil and criminal, to which I can refer your Honor, in which this right has been recognized, and I hope the Court will be disposed to hear a preliminary argument, before passing upon this question, so important to the rights of the defendants. I may men ion now, however, that it has been decided in this State, in a civil case, that where a party has suffered a default to be taken against him, he he can move in arrest of judgment; and it has also very recently been decided in the United States Court for this district that that where a party consented to a verdict of guilty on one of the counts of an indictment, he could afterwards move in arrest of judgment. In both these cases judgment was arrested. The default in the civil case, and the consent to a verdict of guilty in the criminal case, meant no more, in contemplation of law, than a plea of guilty, and, therefore, the same rule would apply here.

The Court—When a man pleads guilty, nothing remains to be done but for him to receive the sentence of the Court. He has no right to appeal, or to bring a writ of error, or to move an arrest of judgment, or to take any other step in the case. This is my firm belief.

Mr. Sickles—It is quite true, may it please the Court, that, after a plea of guilty, a party cannot plead in abatement, or move to quash, or demur to the indictment. A motion in arrest of judgment, however, is based upon error appearing on the record, and may be made at any time before final judgment. Because, if it appears from the record that the Court has no jurisdiction of the case, or that the counts in the indictment do not sufficiently charge an offence, or that the alleged acts do not amount to a crime at common law or by statute, then a case is presented in which a motion in arrest of judgment is not only proper, in accordance with the practice in criminal cases, but it is the only mode by which these objections can be brought to the notice of the Court. These are some of the objections which I intend to raise in these cases. Surely no Court could desire to imprison a party who had committed an offence over which it had no jurisdiction. Still less would your Honor desire to sentence a party for a supposed crime, should it appear from the record that no crime is alleged against him in due form of law. A plea of guilty confesses that the party has done the acts charged in the indictment. These acts, however, may not constitute a crime; and if they do not, then the party has not confessed himself guilty of a crime. This and analogous questions may be raised on a motion in arrest of judgment. I might multiply these illustrations, but I presume it is hardly necessary to proceed farther with the discussion till I am informed whether my learned friend, the District Attorney, disputes the proposition for which I contend; and I am confident he will not do so, as the course I propose to pursue is in unison with the practice of this and the other courts of the State.

The District Attorney—It is quite true, as the learned counsel has stated, that the motion in arrest of judgment is based on matters appearing on the record. I have always supposed that it is competent for a party to avail himself of any valid objection appearing on the record after verdict, and I am unable to perceive any distinction between the right of the party to raise such questions after conviction and his right to do so after a plea of guilty. I know of no case in which any such distinction is recognized, and, on principle, I see no foundation for it. If however the Court has examined the question, and is satisfied that the defendants have no right to make this motion, I am disposed to yield with deference to its determination.

Mr. Sickles—It turns out I was correct in assuming that my learned friend, the District Attorney, would not venture to dispute the proposition which I maintain, and which is so entirely in accordance with the uniform practice of the courts. I submit, therefore, to your Honor, in view of the fact that the question, according to the intimations which have fallen from Court, is novel to your Honor, whether it is not best to hear a preliminary argument on the right of the defendants to move in arrest of judgment. If such be the pleasure of the Court, I will attend on Wednesday morning, for that purpose, if that time will suit the convenience of the District Attorney.

The Court—I desire these defendants to have all the rights they are entitled to.

Mr. Sickles—We ask nothing on this motion but our legal rights; and these, I am sure, the Court will rather accord than abridge.

The Court—Yes, I am disposed to do all that, if I can, and even more. Let these cases stand over till Wednesday morning, at which time I will hear argument on the question whether the defendants can move in arrest of judgment, after the plea.

WILLIAM MATTHEWS.

Mr. Busteed asked if Wm. Matthews' case would take the same course.

The Court—Oh, I think the same course ought to be adopted.

Mr. Busteed—I have, perhaps, different views from those of Mr. Sickles, which I shall present at the proper time. Postponed accordingly.

WILLIAM AND EDEN NORRIS.

Mr. Brewer—In the case of Wm. and Eden Norris I will apply for a postponement to the same day.

The District Attorney thought the cases ought to go on to-day.

The cases were postponed eventually to Tuesday, to enable affidavits to be put in.

MICHAEL SMITH.

In the case of Michael Smith, Mr. Holmes put in an affidavit for a postponement, on the ground of the absence of an important witness.

The District Attorney supposed it was a perfect answer, that the witness (John Morris) was under indictment himself for assault and battery, and should have been in court to answer this day. His opinion was, that gentleman was not coming back in a hurry, and he would therefore move for a forfeiture of bail; and he knew his Honor would not grant a forfeiture of bail in one breath, and in the same breath postpone a case in which the man who forfeited his bail was a principal witness.

Mr. Holmes said his client had just received a notice that Morrisey was on his way, and was detained at Chicago. It would be cruel to press on the case, and a material witness absent.

The Court agreed that it would not be proper to force on this case to trial, if necessary diligence had been used to bring the witnesses there. He agreed to postpone the case.

JOHN R. LYNG.

Ex-Judge Beebe appeared for Mr. Lyng, and said he would put in a demurrer in this case. From what he now knew of the case he thought this would be his course. He asked that the case might go over to the next term.

The District Attorney thought it would be difficult to get a jury from the present panel, who had not made up their minds. He did not feel the same readiness to press these cases to trial that he did before the commencement of the term, for he felt pretty well assured that gambling in the city was now pretty effectually broken up.

The case was then put over till the next term.

CASE OF ABRAHAM BLACKMAN.

Mr. Busteed asked that this case be put over for the term, which request was granted by the Court. This ended the gambling cases for the day.

Court of General Sessions.

Before Judge Capron.

CASE OF JAMES IRVING INDICTED FOR ASSAULT AND BATTERY.

At the close of the case of the gamblers, this case was called for trial.

General Ney and Mr. Devolin appeared for James Irving.

General Ney said he was not ready for trial on this charge, inasmuch as his client was already under indictment for murder in the Poole affair. This indictment was calculated to prejudice the mind of the public, and he submitted that this greater indictment should be disposed of before this other offence for which he was now before the Court should be pressed for trial. Again, one of his important witnesses, Mr. Grover, was absent in the State of Ohio; also, Mr. Gurney, another important witness, was out of the city. Upon these facts he would submit the whole case upon the motion to postpone.

Mr. Hall said this case was called on for trial on the 14th of February, 1855, some days before the Poole tragedy and was put off. This offence was committed in July, 1854, and Mr. McKeon had been engaged in this case and understood the law and facts as applicable to it, and would, if his business permitted him, assist him in the trial of the case. He had made his arrangements for trying this case to-day. It should have been tried long ago. So far as the prejudice which might exist against this man, in the Poole tragedy was concerned, with this the Court had nothing to do.

Mr. McKeon said he had been referred to in the case, and he would explain his connection with it. This assault was made as long ago as July, 1854, upon James H. Suydam, an unoffending private citizen, and he then not being the District Attorney, but a private citizen, was called into this case, and being acquainted with the case he was willing and ready to assist Mr. Hall in its trial.

General Ney still pressed for a postponement of this case, upon the ground of the indictment for murder in the Poole affair being still pending over the head of his client.

Judge Capron said his views from what he had heard of the counsels on both sides, were against postponement. As far as the indictment in the Poole matter was concerned, it was understood that the District Attorney intended to enter a *nolle prosequi* in this case, and this would relieve the defendant from all the prejudice of such an indictment. This was an old case, that happened more than a year ago in this city, and it was high time that it was tried. The absence of witnesses was indeed important. If, as alleged, the defence could prove that the complaint was urged or by violence for the sake of revenge, this would shake his (the Judge's) confidence in the prosecution. If the defence would make an affidavit, swearing they expected to prove this, he would postpone the case.

General Ney said he would make such an affidavit with the greatest pleasure.

This affidavit was prepared, and the case postponed till Wednesday.

After the trial of some petty cases, the Court then adjourned till this morning.

Obituary.

The New Orleans papers chronicle the death there of CHARLES, formerly owned by W. W. Montgomery, at the advanced age of 120 years. He remembered many of the events of the revolution, and had resided in New Orleans all his life. He took a particular pride in visiting his master, who in latter days had supported, but exercised no control over him, on New Year's day, and always walked a couple of miles to call on him.

The Hon. BEV. C EASTMAN, a democratic member of Congress from Wisconsin during the two terms following March 4, 1851, died at his residence in that State, lately after a long and painful illness. At the last Congressional canvass he declined a renomination by his party. He leaves to his wife a handsome fortune.

ADVANCE IN COAL FREIGHTS.—The boatmen engaged in the Schuylkill coal trade held a meeting last week in Schuylkill Haven, and fixed their freight rates a $2 per ton, or ten cents higher than last year. The Pottsville boatmen were in favor of last year's rates, but were overruled, it is said, by the Richmond boatmen. The *Miner's Journal* regards this increase as bad policy, tending to diminish the trade. Last year provisions were high and horse feed dear. This year, every indication points to a reduction in the price of these articles, so that the necessity for these high rates of freight is not as great now as then, and a paying freight of last year may prove a profitable one the coming season. The true policy, it says, is to start at low and paying rates and thereby cause a regular and steady business throughout the season, and by all means guard against a falling market towards the close of the year. There appears to be reason in the journal's opinions on this subject, but the boatmen doubtless understand their own interests and the laws of trade will be sure to regulate the price, if it has been fixed too high.—*Philadelphia Ledger, Feb. 18.*

The $16,000 in gold, belonging to the Treasurer of Grant county, Wisconsin, and which fell through the bottom of a stage coach, on its way to Madison, has been found in the road safe in its bags.

The Alleged Abortion Case in Houston Street.

RE-ARREST OF MRS. CROCKER, AND HER COMMITTAL TO THE TOMBS.

Since the conclusion of the inquest upon the body of the late Elizabeth Ann Smith, supposed to have died from the effects of an abortion, Coroner Hills has succeeded in obtaining further and more direct testimony against Mrs. Crocker, who, it will be recollected, was arrested on suspicion of having been implicated in the case, but was discharged on the rendition of the verdict. The witness now procured, Maria Leavenworth, sets forth in a lengthy affidavit (which will be found annexed) that Mrs. Crocker told her the infant was born in the premises occupied by the accused, and furthermore that Mrs. Crocker asked her if she would have any objections to taking a false oath; that on the witness saying she would have every objection, Mrs. C. felt very uneasy, and requested witness to keep herself out of the way, so that she could not be used as a witness by the Coroner. Upon the strength of this affidavit Mrs. Crocker was re-arrested yesterday morning, and was taken before Justice Osborne, at the Mayor's office, where she was committed for examination on the charge preferred against her. A hearing will take place in the case this morning, when Mrs. Crocker's counsel will produce witnesses for the defence. The following is the

AFFIDAVIT

of Maria Leavenworth, who being sworn said:—I reside at 523 Broadway; I am a dressmaker; I have been acquainted with Mrs. A. L. Crocker about one year and a half; I first saw Mrs. Crocker at the house of Mrs. Byrnes, in Thompson street, for whom I worked, and so obtained sewing from Mrs. Crocker; I believe she was studying medicine at the time; I never stayed with Mrs. Crocker over night, as I have at other places making dresses; I always took the work home; I have been in the habit of seeing her twice a week or more, but sometimes not so often; I have been to her place in Houston street very often to get work; Mrs. Crocker always treated me very kindly; I have seen one young lady who was staying there with Mrs. Crocker; I think I saw her twice, it was some time in the summer or fall; Mrs. Crocker called her Susan; said she was from Boston; seemed in good health; I have frequently seen ladies passing in and out; Mrs. Taylor is the only one I know by name; I went to Mrs. Crocker's on the 29th of January, and asked Dr. Johnson for her; he said she was unwell, in the inner room; I went in, and found some one lying in the bed in the middle room; I said, "Mrs. Crocker, I am sorry you are sick," when she replied, "I am not Mrs. Crocker;" I then went into the back room, and saw Mrs. Crocker sitting in a rocking chair; I had no further conversation with deceased on that visit, but bade her good bye when I went out; I don't know if I asked Mrs. Crocker that day who the sick young lady was, but she afterwards told me it was a young lady from Washington, and called her Annie; Mrs. Crocker said that the young lady was sick, and thou ht she had taken cold; she also told me that she was the deceased, and that she had a child; she did not say when; Mrs. Crocker told me that the young lady came from Washington, with a letter of introduction to herself, for medical treatment; Mrs. Crocker said she never meant to take patients in her office, but had taken deceased in on account of her friend who sent her; I do not know the nature of the treatment to which she was recommended, but my impression is, from what was said, that the deceased expected sickness, and was not an invalid seeking to recover her health; Mrs. Crocker told me that the gentleman who sent deceased was then in Baltimore; Mrs. Crocker told me that the deceased was a young lady who had been seduced under a promise of marriage within a week; Mrs. Crocker gave me to understand that it was a friend of the gentleman who sent her who had seduced the young lady; that he was a man of wealth and belonging to Kentucky; these facts were repeated several times; the second time I called while deceased was there; I think it was on the 31st of January; it was in the afternoon; Mrs. C. was preparing to go out; I asked the patient if she would like me to stay while the former went out, and she said "Yes;" I was there about three hours; Mrs. C. told me she was going to the Metropolitan Hotel to dinner; Dr. Johnson did not go with her; I was alone with deceased; the deceased complained of a pain in her bowels, and I had before understood she had been confined; Mrs. C. had said that deceased had been *enciente* somewhere between three and four months, when she was deserted; I think no particular conversation occurred between deceased and myself; on the Saturday following I saw deceased again; Mrs. C. was out; Dr. J. was there; I saw she was getting worse; it was about noon; Annie told me that Mrs. C. had been out the whole of the preceding night, and was out till one o'clock on Thursday night; the day I was there alone with deceased she said she thought she would die, and said, "Mrs. C. thinks I will die, and she goes out thinking I will, and then she will come back again;" she also complained of being neglected by Mrs. C.; she said she never could get what she wanted; things were not hot and ready for her; she sent me for some oranges; she told me to get the money from a watch pocket in her dress; I found some change and a bill pinned in; I have no idea how much money was in it; deceased asked me to stay with her and take care of her; I told her I could not, but I promised to come and stay with her as often as I could; I asked if she had friends to take care of her; and she said, "No, not here;" she said she had a mother in Washington; she told me her own name was Anna Smith; on Thursday, January 31, a letter came for her; I did not see the address; I think it was in a man's hand; I helped her into a chair while she read it, and then she gave it to me to put it in the stove; I think deceased told me she had a father also, and brothers and sisters; I suppose she wished to conceal where her friends or relations were, so I placed little confidence in what she said about them; she said if she died there she would or could not let them know what had become of her; I thought and still think her name was not Smith; she seemed to have taken cold, and I asked her when she was confined; she answered the preceding Monday, and had got up on Friday, when she took cold in doing so; deceased did not say anything had been done to her to bring on labor; I suppose some artificial means had been employed to bring on delivery, but Mrs. Crocker told me the child had not, and deceased did not say there had; deceased did not deny that anything had been done to her; I did not ask her; I supposed something had been done to her from the circumstances, her great secrecy and unwillingness to inform her friends; I never knew anything about Mrs. Crocker having brought on premature labor, or having produced abortion; I only judge from the prejudice which always exists in regard to female physicians; I never knew or asked anything in regard to who came to Mrs. Crocker's place, or for what purpose; deceased complained of pain in the bowels or side, and also said it was at this place that she had been confined; she had a peculiar accent, which led me to think she came from Londonderry, as I knew a lady who came from there, and looked and spoke like her; but Mrs. C. said she came from the South, where I thought she must have lived some time; she seemed to be well educated; when she asked me to stay with her, she said she could have plenty of money to pay me or Mrs. C., but was in want of proper care; I thought Mrs. Crocker did not understand good nursing, and that she had not been properly attended; I called again on Sunday, the next day, when I thought her better; she wanted broth, but I could not get it on Sunday, so I got Dr. Johnson to promise to get it on Monday morning; staid awhile, and during the time Mrs. C. slept, having complained of being tired with watching deceased; deceased told me she came from Washington, but did not say when, neither did she say that she had been sick in the care; had no further conversation with her, and did not see her after that Sunday until she was dead, which was on Tuesday evening; Mrs. Crocker and Mrs. Edwards were beside the bed on which deceased lay; the former told me deceased had just breathed her last; I asked Mrs. C. what deceased said, and Mrs. C. replied that she said, "I am gone forever;—I die a Catholic;" this was in the afternoon; Mrs. C. also told me deceased had wanted to take something to put an end to her life; once, in taking some tea, the deceased complained of its being bitter, and tried my cup, which she said was just the same, and then she took her own willingly; she seemed to have an antipathy to everything that was done for her, and liked worst I did or made much better; I told Mrs. C., on Saturday, that deceased required better care, and if she did not get it she would die; deceased had a great anxiety to go home, and would ask repeatedly when she could go, she never expressed a wish to die to me; Mrs. C. paid more attention to her after I told her deceased was so very sick as to be in danger; staid with deceased on the night she died about one hour and a half; Mrs. C. told me deceased had died mysteriously, and she thought she had taken something, as she did not understand the cause of her death; she also told me that she had called in another doctor; I am confident she said it was Dr. Marcy; I had seen him once, and in going out that night I was met by a man coming in, whom Dr. Johnson said was the Doctor; it was not Dr. Marcy; he had a cap on, and had his coat collar turned up; think his clothes were brown or gray; called again on Wednesday, at about nine o'clock; Mrs Crocker then told me deceased had been examined by the Doctor; I think she said Dr. Marcy; he said she had died of congestion of the lungs, and he would give her a certificate; she told me that if the girl's friends did not come for the body she thought she would have trouble, and desired me to remain away until after the body was removed; she gave me no reason why she feared trouble but said she had telegraphed to the gentleman who had sent her, and she had received no answer; have not seen Mrs. Crocker since that time; have been there once since, but she was out; she said to me that it was very unfortunate that deceased had died there; she seemed to be troubled and worried in mind, and apprehended danger; she said she would rather give five hundred dollars than have the deceased die there; she said as much as that she feared being taken up for having caused the young lady's death, and wanted me to remain away; she asked me if would swear falsely, and I said I would not; I suppose she thought that in the event of her being arrested I might be called upon, and what I would say would injure her, she knowing that I had been alone with deceased; Mrs. C. did not know what had transpired between me and deceased; I told Mrs. C. I would not swear falsely, but would remain away, which I have done; I know Mrs. Taylor; have seen her several times at Mrs. Crocker's; know no thing of her; Mrs. Crocker told me she was a friend, a widow, and that her name was Emma Taylor; don't recollect any conversation with the latter about deceased; met Mrs. Taylor at Mrs. Crocker's on Wednesday morning, after deceased's death; left Mrs. Taylor there; nothing particular was said; have searched for Mrs. Taylor since, as I was desirous of learning the result of the case, but I could not find her; when I went some days after deceased's death, to Mrs. Crocker's, I found several men there, and thought there was something wrong, so I would not go there again; I stayed away, and would have done so for my own sake, as I did not wish to be connected with the matter, publicly or otherwise; deceased said Dr. Johnson was always very kind and attentive to her, being so different from Mrs. Crocker's conduct; think I have all the above dates correct, but will not be positive; Mrs. Crocker told me when the child was born it was very offensive; I do not think Mrs. Crocker would wilfully neglect or injure deceased, or had any wish to do so.

On Wednesday last the police of Montreal seized two hundred and ninety loaves of bread, at the different bakeries, on account of their being of light weight, and distributed them among the charitable institutions of that city.

Our Harrisburg Correspondence.

HARRISBURG, Feb. 14, 1856.

The Fusion Movement—Meeting of the Caucus—Call by the Americans and Old Line Whigs—Petition to the American State Council for the Abolition of the Pledge of Secrecy.

Since my letter of yesterday the fusion movement has taken another course. The caucus met last night and issued the following call:—

The undersigned, members of the Legislature of Pennsylvania, having been solicited by their fellow citizens in different parts of the commonwealth, to devise a plan of united action, by which all opposed to the destructive policy and principles of the national administration, may co-operate in the support of a State ticket, respectfully invite all who are in favor of such movement, to assemble in city and county conventions on the 19th of March next, to elect delegates, equal in number to their representation in the State Senate and House of Representatives, to a convention, to be held in Harrisburg on the 26th of the same month, for the purpose of nominating candidates for Auditor General, Canal Commissioner and Surveyor General, to be supported at the ensuing fall election; and to take such other political action as may be necessary to the crisis.

This call is signed by the Americans and old line