

to such Court even *mutatis mutandis*, the statutory provision regarding a view by the jury contained in Cr. Code sec. 958, quoted *supra*. Furthermore, if there be any inherent common law jurisdiction pertaining to its quality or status as a Court of record which might authorize a view, it could hardly be held to be more extensive than the powers held by Courts of Assize and Courts of General and Quarter Sessions, and under the established English precedents the view could be taken only "upon consent:" *R. v. Redman*, 1 Kenyon, 384; *R. v. Whalley*, 2 C. & K. 376; *R. v. Justices of Tradgely*, Sess. Cas. 180.

The trial of criminal cases without a jury is a modern device and no common law practice in regard thereto is available except in so far as the common law as to jury trials may be applicable.

Some of the American decisions as to the practice of granting views by the jury may be here noted:—When there is an inspection of the scene of guilt, it must be shewn what changes, if any, have taken place since the guilty act: *State v. Knapp*, 45 N.H. 148. In most jurisdictions the jury may be taken to view the premises: *Com. v. Webster*, 5 Cush. 298; *Chute v. State*, 19 Minn. 271; *Fleming v. State*, 11 Ind. 234; *Doud v. Guthrie*, 13 Ill. App. 659, but the visit must be in the presence of the accused: *State v. Bertin*, 2 La. Ann. 46. See *State v. Ah Lee*, 8 Or. 214. The view may be granted after the Judge has summed up the case: *Reg. v. Martin*, L.R. 1 C.C. 378, 41 L.J.M.C. N.S., 113, 26 L.T.N.S. 778, 12 Cox C.C. 204. If a part of the jury are allowed to go by themselves to the view this is error: *Ruloff v. People*, 18 N.Y. 179; Wharton's Crim. Evid. 10th ed., sec. 797, p. 1555.

If a view of the property has been given to the jury, the results of it may properly be regarded as part of the evidence in the case. Chamberlayne on Evidence, sec. 2172; *Shoemaker v. U.S.* (1893), 147 U.S. 282, 13 S. Ct. 361, 37 L. ed. 170; *Re Guilford* (1903), 85 N.Y. App. Div. 207; *Wead v. St. Johnsbury R. Co.* (1894), 66 Vt. 420, 29 Atl. 631; *State v. Fillpot*, 98 Pac. Rep. 659, 51 Wash. 223.

Allowing the jury to view the place where the alleged crime was committed, or where some fact or transaction material thereto occurred, being discretionary with the Court, where the premises have been thoroughly described in the evidence, it is not error to refuse defendant to have the jury take the view. This rule applies to capital cases, but in any case if the view is likely to mislead the jury it should be denied. 12 Cyc. 537.

The cases are divided upon the question whether the purpose of the view is to furnish new evidence or to enable the jurors to comprehend more clearly, by the aid of visible objects, the evidence already received. The latter proposition is well sustained and seems more consistent with the conservative theories on which the rules of procedure and jury trials are based, but the contrary theory, holding that the purpose of a view is to supply evidence, is supported by good authorities. 12 Cyc. 537.

The enlargement of the rights of Judges and magistrates sitting without a jury as regards the taking a view of the *locus* seems to be one which calls for legislative action.