

TESTIMONY OF PARTIES IN CRIMINAL PROSECUTIONS.

reform, since the Spartan law-giver's time, has never been accomplished by ploughing too deeply or planting too abundantly. For, as the prince of reformers, Bacon, somewhere remarks, "The work which I propound tendeth to pruning and grafting the law, and not to ploughing up and planting it again: for such a remove I should hold indeed for a *perilous innovation*."

And thus to plough up the prime root and element in criminal jurisprudence, which is made the more worthy of veneration from its duration and time-tried wisdom, would indeed be *perilous*. And Lord Erskine thus eloquently and eulogistically says of evidence: "The principles of the law of evidence are founded in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of common life." (24 Howell's State Trials, 966.) And likewise observes Chief Justice Story, in the case of *Nichols v. Webb* (8 Wheat. 326-332): "The rules of evidence are of great importance, and cannot be departed from without endangering private as well as public rights."

It is peculiarly fitting to consider and ponder these wise opinions, when a proposition is made to undermine and overthrow a charitable rule of law, whereof the mind of man runneth not to the contrary.

Some jurists have held that confession alone is a sufficient ground for conviction, even in the absence of independent evidence. (Best on Pres. p. 330, and cases there cited.)

But by the established law of England, a voluntary and unsuspected confession is not sufficient to warrant conviction, unless there is independent proof of the *corpus delicti*. This rule is certainly more in accordance with the principles of reason and justice. Those who would hold a confession competent for conviction, would doubtless advocate the rule which is adopted in Maine. The voice, whether bold or timid, of the accused, would doubtless turn the scale for conviction or acquittal, in the minds of disciples of that school.

By an ordinance of France, passed in 1667, the testimony of relatives and allies of parties, even down to the children of second cousins inclusively, is rejected in civil matters, whether it be for or against them. This institution has, in modern times also, been considered sound and reasonable (1 Seid. 1497, Wilk. ed.); for it becomes not the law to administer any temptation to perjury. By the civil law, relatives could not be compelled to attest against those to whom they were allied; thus showing that fundamentally the law has not favored the testimony of prisoners, or of their friends and relatives.

The able and pointed contributor, "B.," in the *Register*, of January, 1866, avers that it is owing to prejudice in the minds of men, which prevents their acquiescence to give fair scope for the experiment of allowing parties in criminal prosecutions to testify, and states that, Connecticut having passed an act, wherein the

Legislature inadvertently made the provision so broad as to cover criminal proceedings, it was repealed from "prejudice." It is true, mankind are naturally opposed to innovation, but especially so when it is aimed to root up a fundamental principle; and, too, when the injustice and iniquity of such innovation is palpable, and been so proved to the satisfaction of a state or people. In the State of Connecticut, where the "new rule" had a fair trial, it was found to work incalculable hurt to innocent persons; for adroit and cunning lawyers were prone either to hold up to the minds of the jury the fact—the astounding fact!—that the prisoner at the bar had not testified, as was his privilege, or had evaded questions, and therefore suspicion should attach. So that, whichever position the accused might assume, he placed himself in a critical and unfavorable aspect. Like the very ancient custom among the Romans, to prove a man's guilt, or indebtedness, by the "water test"—if he floated, he was guilty; if he sunk, he was innocent: so that he lost his life, or case, in either event.

The contribution referred to by "I. F. R.," in his editorial remarks upon Chief Justice Appleton's judiciary letter aforementioned, which was apparently written by an able member of the bar of Connecticut, says, in so many words, that "prejudice had nothing to do with the repeal of the act in that State, but that after one year's trial, the impression with the profession and judges was, that *mercy to the accused demanded its repeal*," and then proceeds to say, he thinks "those usually denominated criminal lawyers * * * were loudest in calling for a repeal of the act." The repeal was therefore the result of one year's experiment, and not from mere "prejudice," as charged in the January article referred to.

It was in the early part of the session of the Connecticut Legislature of 1848, that a bill, which was substantially drawn by Judge McCurdy, and introduced by the Hon. Charles Chapman, was passed, in these words: "No person shall be disqualified as a witness in any suit or proceeding at law or in equity, by reason of his interest in the event of the same as a party or otherwise, or by reason of his conviction of a crime; but such interest or conviction may be shown for the purpose of affecting his credit."

The introducer of that bill informs the writer that it was not intended to make a man indicted for crime a competent witness in his own case, and that he presumes Judge McCurdy had no such purpose. At the first term of the Supreme Court after the passage of the act, it may be seen, the presiding judge held that by said law the accused was made a competent witness, and the decision was concurred in by all the judges.

At the following session of the Legislature it was, that an act was passed to the effect that, "so much of the 141st section of said act (it being the feature in question) as autho-