

# The St. Andrews Standard.

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*Evans sumendum est optimum.*—Cic.

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## A Criminal Case of the Defendant can not waive his right to a full Jury.

COURT OF APPEALS—Albany.—After the opinion of the Court on the appeal of Anderson had commenced, it was discovered that one of the jury had been tampered with before he was sworn in. He was therefore removed from the panel, and the prisoner consented that his trial should go on with only eleven jurors. He was convicted, and writ of error was brought in his behalf.—The opinion of the Court on the appeal was delivered by SROOK, J., and after giving a very full statement of the proceedings at the trial and subsequently, and the points raised, he said—

But it is insisted, that the plaintiff in error might waive his right to a trial by a jury of twelve persons, and that having done so, the trial and conviction in this case were valid. The researches of counsel have not enabled them to refer the Court to any case directly in point, either in favor or against his proposition, nor are the Court aware of any such case; and hence it must be examined and decided in the light of principle and such analogies as reported decisions afford.

There is, obviously, a wide and important distinction between civil suits and criminal prosecutions, as to the legal right of a defendant to waive strict substantial adherence to the established constitutional, statutory and common law modes and rules of judicial proceedings. This distinction arises from the great difference in the nature of such cases, in respect to the interests involved, and the objects to be accomplished.

Civil suits relate to, and affect, as to the parties against whom they are brought, only individual rights which are within their individual control, and which they may part with at their pleasure. The design of such suits is the enforcement of merely private obligations and duties. Any departure from legal rules in the conduct of such suits, with the consent of the defendants, is, therefore a voluntary relinquishment of what belongs to the defendants exclusively; and hence there is manifest propriety in the law allowing such consent to have the effect designed by it in most cases, as to matters within the jurisdiction of the courts. The law does recognize the doctrine of waiver to a great extent; in some instances, even to the deprivation of constitutional private rights.

*Banker vs. Conner*, 3 Coms. 511; *Tombs vs. The Rochester and Syracuse Railroad Company*, 18 Barb. 583. But it is even settled that in civil cases consent will not confer jurisdiction of the subject matter; and where such jurisdiction exists, a change may be so extensive as to convert the case from a judicial proceeding into a mere arbitration. (*Green vs. Patchin*, 13 Wend. 298; *Silvester vs. Redfield*, 19 id. 11; *Dederick vs. Admin. vs. Riechle*, id. 109.) The substantial constitution of the legal tribunal and the fundamental mode of its proceeding, are not within the power of the parties. It was deemed necessary to insert in our present constitution a provision that "a jury trial may be waived by the parties in all civil cases in the manner prescribed by law," to authorize even the Legislature to confer a right to dispense with that mode of trial.—This is a solemn judgment of the organic law that, without such a provision, the trial by jury, in cases where it had theretofore been used, could not be dispensed with.

Criminal prosecutions involve public wrongs—a breach and violation of public rights and duties—which affect "the whole community, considered as a community, in its social and aggregate capacity." (3 Bl. Com. 2, 4, id. 4.) The end they have in view is the prevention of similar offences, notatonement or expiation for crimes committed (id. 11). The penalties or punishments, for the enforcement of which they are means to the end, are not within the discretion or control of the parties accused; for no one has a right, by his own voluntary act, to surrender his liberty or part with his life. The State—the public—have an interest in the preservation of the liberties and the lives of the citizens, and will not allow them to be taken away "without due process of law." (Const. art. 1, sec. 6.) When forfeited, as they may be, as a punishment for crimes, criminal prosecutions proceed on the assumption of such a forfeiture, which, to sustain them, must be ascertained and declared as the law prescribed. Blackstone, volume 4, page 189, says: "The king has an interest in the preservation of all his subjects." And again, in vol. 1, page 133, that the "natural life, being the immediate donation of the great Creator, cannot legally be disposed of or destroyed by any individual, neither by the person himself nor by any other of his fellow-creatures, merely upon their own authority." These considerations make it apparent that the right of a defendant in a criminal prosecution to affect, by consent, the conduct of the case, should be much more limited than in civil actions. It should

not be permitted to extend so far as to work radical changes in great and leading provisions, as to the organization of the tribunals or the mode of proceeding prescribed by the Constitution and the laws. Effect may justly and safely be given to such consent in many particulars, and the law does, in respect to various matters, regard and act upon it as valid. Objections to jurors may be waived; the Court may be substituted for triers to dispose of challenges to jurors; secondary, in place of primary evidence may be received; admissions of fact are allowed; and in similar particulars, as well as in relation to mere formal proceedings generally, consent will render valid what without it would be erroneous. A plea of guilty to any indictment, whatever may be the grade of the crime, will be received and acted upon if it be made clearly to appear that the nature and effect of it are clearly understood by the accused. In such a case the preliminary investigation of a Grand Jury, with the admission of the accusation in the indictment, is supposed to be a sufficient safeguard to the public interests. But when issue is joined upon an indictment, the trial must be by the tribunal, and in the mode which the constitution and laws provide, without any essential change. The public officer, prosecuting for the people, has no authority to consent to such a change, nor has the defendant.

Applying the above reasoning to the present case, the conclusion necessarily follows that the consent of the plaintiff in error to the withdrawal of one juror, and that the remaining eleven might render a verdict, could not lawfully be recognized by the court at the circuit, and was a nullity. If a deficiency of one juror might be waived, there appears to be no good reason why a deficiency of eleven might not be; and it is difficult to say why, upon the same principle, the entire panel might not be dispensed with, and the trial committed to the Court alone. It would be a highly dangerous innovation, in reference to criminal cases, upon the ancient and invaluable institution of trial by jury, and the Constitution and laws establishing and securing that mode of trial, for the Court to allow of any number short of the full panel of jurors; and we think it not to be tolerated.

The opinion of the Judges of the Court of King's Bench, in the case of Lord Dacres, tried in the reign Henry VIII. for treason, strongly fortifies the conclusion above expressed. One question in that case was, whether the prisoner might waive a trial by his peers and be tried by the country; and the judges agreed that he could not, for the statute of Magna Charta was in the negative and the prosecution was at the King's suit. (*Kelyng's Reports*, 59.) Woodson, in his Lectures, vol. 1, 346, says, the same was again resolved on the arraignment of Lord Audley, in the seventh year of the reign of Charles I. and that the reason was that the mode of trial was not so properly a privilege of the nobility as part of the indispensable law of the land, like the trial of commoners by commoners, enacted, or rather declared by Magna Charta. In 3 Inst. 30, the doctrine is stated that a "nobleman cannot waive his trial by his peers and put himself upon the trial of the country, that is, of twelve freeholders; for the statute of Magna Charta is that he must be tried *per pares*, and so it was resolved in Lord Dacres's case. It is unnecessary to pursue this discussion further; and it remains only to add, as the result of the foregoing views, that in the opinion of the Court the judgment below should be reversed and a new trial ordered.—[From the Boston Daily Courier, Oct. 25.]

## Teaching the Prince Religion.

The notion of teaching religion, in the way of drill exercise, which is a very strange notion, though not a common one, and not peculiar to Noltenuus and Friedrich Wilhelm. Piety to God, the nobleness that inspires a human soul to struggle heavenward, cannot be taught by the most exquisite catechisms, or the most industrious preachings and drillings. No; alas, no. Only by far other methods—chiefly by silent, continual example, silently waiting for the favorable mood and moment, and aided them by a kind of miracle, well enough armed "the grace of God," can that sacred contagion pass from soul into soul. How much beyond whole libraries of orthodox theology is, sometimes, the mute action, the unconscious look of a father, of a mother, who had in them "Devoutness, pious nobleness!" In whom the young, not observant, though not consciously observing, came at length, to recognize it; to read it, in this irrefragable manner: a seed planted thenceforth in the centre of his holiest affections for evermore.

## A Courageous Girl.

On Saturday, the 21st ult., as the pupils of Mrs. Well's school at Richmond were walking near Lord Russell's residence in Rich-

mond park, a ruffian having thrown one of the young ladies on the ground attempted to steal her watch and chain; the fair one however, held it fast; and whilst the other girls together with the governess accompanying them, ran for assistance, Miss Jesse, flying to her school-fellow's rescue, attacked the man with such determination that he left the field without booty. From the description given of him by the ladies he was afterwards captured by the police, and at the Richmond Petty Sessions on Tuesday was committed for trial.

## From Fraser River.

The Sea Bird and Wilson's Hunt arrived on Saturday at Victoria from Fraser river, brought no news of special interest.—The river still continued high, and the miners were still waiting for the waters to fall. Nothing has been heard of Gov. Douglas's proceedings.

The depression still continues in Victoria. Merchandise is selling at very low prices.—Merchants can be seen in all the streets, in front of their stores, wearing very gloomy faces, and watching in vain for customers. There is nevertheless a considerable degree of confidence that the mines will ultimately prove rich, though many doubt whether they will be able to sustain themselves until the day of prosperity.

The steamer Sea Bird, which had been aground on a bar in Fraser River, twelve miles below Fort Hope, since the 24th of June, was successfully launched on the 21st inst., and arrived safely at Victoria. She will now run regularly between Victoria and Fort Langley. She will connect with the Enterprise, under command of Capt. John Wright, which will run between Fort Langley and Fort Yale.

## Steam-Carriage in London.

On Thursday, July 29, an experiment was made on the Westminster road, and witnessed by thousands of spectators, who seemed much interested and astonished on seeing a steam-engine traversing the streets of London. The machine was steered by a person who handled a wheel about the size and appearance of those used on our river steamboats, but made of metal. Two other men were at the end of the engine, one acting as stoker, and his companion assisting as a kind of brake when it was necessary to turn. This was all the manual aid required for its progress. Attached was a truck or platform on wheels loaded with packages of several tons weight. It proceeded from the manufactory of Maudslay & Field, along the Westminster road to their wharf, close to the Westminster bridge and here it was guided round with the utmost ease, and without a moment's delay. The engine is the invention of a Mr. Bray who has obtained a patent. It is adapted to travel up hills or down, and its speed may be increased at pleasure. On this occasion it went through the throng of carriages and people at walking pace, and it was several times stopped and then got in motion, showing it to be perfectly safe and easy of control.

(The extent to which this new application of steam power may be made available, cannot at present be determined; but in the case of the engineers who have matured his construction, its use has been practically demonstrated. These immense masses of iron work produced at the workshop of Maudslay & Field, gigantic boilers and other machinery, weighing many tons, when removed had to be drawn by ten, twelve, and sometimes sixteen horses. Now here is a motive power occupying no more room than a van, or an omnibus, performing the same work with an economy of space most desirable in crowded thoroughfares, and doubtless with a great saving.)

The time may soon arrive when the invention may be used for carrying passengers in our streets, for drawing heavily laden carts or waggon, on the highway, or dragging ploughs in the field, or for performing other necessary and important services which no animal force could accomplish.—[London Illustrated News.]

## ARRIVALS OF THE PERSIA AT NEW YORK.

NEW YORK, Oct. 26. Persia, from Liverpool, 16th, arrived. Consols 98½ a 98½. Money Market easier. Breadstuffs and provisions at Liverpool continue dull, with little change in quotation Coffee and sugar firm. Common Congo Tea, 11d. Pannic at Vienna, caused by intended specie payment by Bank. Duke of Malakoff married on the 12th. Prospectus issued to establish Galtway Steamship Line with capital of half million sterling. France accepted mediation of a friendly power in dispute with Portugal, and pacific solution considered certain.

## Great decrease in specie in Bank of France.

Bombay advices to Sept. 24th. Disarmed troops at Mooltan had multiplied, and been nearly exterminated.

British destroyed forts at Narat n, China, but spared the town.

Priores beaten for Caezarowitch hand-cap by half a head. Rocket was winner.—34 horses ran.

## MASSANIELLO.

Massaniello, or properly, Thomas Aniello, the Neapolitan patriot, was born at Amajli, and gained a living in Naples as a fisherman, and dealer in fish and fruit. He was very poor, but possessed a proud and enterprising spirit. His love of freedom, and the bold manner in which he expressed himself on that subject, and respecting the oppressor which he declared Naples had long endured from Spain, procured him a large number of followers among the people of Naples, who admired him for his boldness and the principles which he preached. He was quite eloquent, and he soon stirred up the populace to such a pitch of excitement, that nothing but a good opportunity was wanting for him to appear at their head in an attitude of defence against the Government. The opportunity came in the year 1647. Massaniello had brought a basket of fruit to the city, for which the collectors demanded a tax. He refused, and they, using force he threw himself on the earth and implored the populace to aid him against the violence of the tax-collectors. The multitude at his call immediately assembled, and with him at their head, they advanced to the tax office crying, "Long live the King but down with the bad Government." They then repaired to the castle of the viceroy the Duke of Arcos, and demanded that he should receive Massaniello as a colleague. In vain did the Archbishop of Naples seek to appease their fury, in vain did John of Austria, a natural son of Philip IV of Spain, appear in the harbour of Naples with twenty-two galleys; the rage and power of the populace only increased the more, and was directed against the nobility as its chief object. The revolution succeeded, the nobility was overthrown and Massaniello was made governor of this city. Seven days passed, and the people began to talk of capitulation. It was agreed that the tax on fruit should be abolished and the ancient liberties restored. The King of Spain gave the promise of his assent within a certain time. Massaniello, on this assurance, laid down his arms, and returned to his former occupation of fisherman, without demanding any distinction for what he had done. But the viceroy determined to get rid of him, knowing that he still possessed great influence over the populace. He invited him to his house, and it is said mingled poison with his wine. The poison did not kill him, but made him delirious; and in this state he ran through the streets of Naples, shooting his best friends and committing the greatest excesses. The people now believing that he had turned against them, poured forth in crowds upon him, shouted for the viceroy, and demanded Massaniello's death. He fled before their fury to a Carmelite convent, but four persons who had formerly been his friends shot him dead with several balls. This occurred on July 16, 1647. Soon after this the true sentiments of the viceroy becoming manifest, the people again gave signs of tumult. They now remembered Massaniello, considered him a martyr to liberty, and buried his body with every mark of respect.

## A WARNING TO YOUNG MEN.

Those who have never been brought into close contact with parties committed to Newgate can have little idea of the dreadful scenes of distress witnessed, when charges of embezzlement, or forgery or breaches of trust, are alleged against members of respectable families.

I often think that if a young man could, on a visiting day, see a heart-broken father have his first interview with his criminal child—or if he could behold an agonised widow sinking to the earth with agitation at the sight of a boy in confinement—could he witness the shame and disgrace felt by near and dear relatives, who are involved in all the consequences though free from the guilt of his offence, he would surely pause before he appropriated his employer's money to his own purpose; and he would suffer any extremities of poverty rather than subject his dearest relatives to such heartrending sufferings. Our feelings are continually harrowed by such spectacles, and I wish that the guilty could see them in time to avert their repentance.

Most affecting circumstances are elicited by the correspondence of such persons with their friends. Some of the most distressing pictures of sorrow are exhibited in the affectionate letters of a sister or confiding wife—the desolation in the domestic circle

—the heart-stricken parent the manly and yet merciful reproof of a well-informed brother. But the most striking affliction of all is in the poor widowed mother. No crime can kill her feelings; they remain in the most deplorable cases of guilt, as a ruin in a desert, to show what has been in former days and what is now. The painful feelings ought to be dwelt upon. They contain almost the ray of hope that will effectually deter offenders from their crimes. Many painful instances transpire, some at every session, of vicious otherwise happy; of children looking to a father for bread, but finding him in gaol. Can words describe the distress of a virtuous wife thus surrounded, and worse than widowed by the dissolute conduct of her husband? And can any young man, read this exact picture of what is continually occurring, and yet be heartless enough to plunge his relatives into such wretchedness?

It would be happiness if these remarks could reach a guilty youth and induce him to abandon his associates his pleasures, and his criminalities, before they involve himself and his friends in the fearful severities of penal inflictions.—[Rev. Mr. Davis's Newgate Report.]

## A Dream at Sea.

"The aforesaid Sir Henry Digby, in the command of a frigate, had shaped his course for Cape St. Vincent, and was running to the southward in the latitude of Cape Finis-terre. He rang his bell at eleven o'clock for the officer of the watch, and asked him—

"How are we standing?"  
"South-west, sir."  
"What sort of weather?"  
"The same, sir, as when you left the deck; fine strong breeze; starlight night."  
"The same sail?"  
"Yes, the same; double reefed topsails and foresails."  
"Has there been anybody in my cabin?"  
"I believe not, sir; I shall ask the sentry."

"Sentry," asked the officer of the watch, "has there been anybody in the Captain's cabin?"  
"No, sir," said the sentry, "nobody."

"Very odd," rejoined the Captain, "I was perfectly convinced I had been spoken to." At two o'clock the bell was again rung. The same questions repeated, and the same answers given.

"Most extraordinary thing," said Captain Digby; "every time I dropped asleep I heard somebody shouting in my ear, 'Digby! Digby! go to the northward!' 'Digby! Digby! go to the northward!' 'Digby! Digby! go to the northward!' I shall certainly do so."

"Take another reef in your topsails," he continued to the officer of the watch; "haul your wind and tack every hour till daylight and then call me."

The officer of the middle watch did according as he was ordered, and when relieved at four o'clock his successor was greatly astonished at finding the ship on a wind and asked the meaning of it.

"Meaning, indeed," said the other; "the Captain has gone mad, that's all, and he then told his story, at which they laughed heartily."

There was, however, nothing to do but obey the orders; and the ship was tacked at four, at five, at six, and at seven. She had just come round for the last time, as the day was breaking, when the look-out man cried out.

"Large ship on the weather bow!"  
A musket was fired to bring her to, and she proved a Spanish vessel laden with dollars and a rich cargo, which gave the fortunate dreamer a large portion of the great fortune which he amassed in the naval service. The story was told to my friend the late Sir Jahiel Brenton, and by him repeated to me; the high character of him and Sir Henry Digby forbidding the possibility of fabrication.—[From Scudrift, by Rear Admiral Sir H. Robinson.]

## Business in England.

Letters from Liverpool say the firmness of the English cotton market is owing to the limited arrivals and the moderate quantity of American known to be at sea. The supply of East India on the way to arrive during the year, is estimated at only 79,000 bales, against 166,000 bales last year.

The Manchester spinners continue to show great sympathy in giving orders for cotton from the United States, and those which are given are at very moderate limits. Business in the manufacturing districts had become quiet and the transactions small, although no concession in prices was offered. The last year had not given any further impulse to the India trade.

The grain crops through Great Britain and Ireland fully secured; wheat full average.