

## TESTIMONY OF PARTIES IN CRIMINAL PROSECUTIONS.

12. Every assignee applying to be discharged from the office of assignee, shall pass and file in Court his final account, together with the bank certificate of deposit required by the act, if any money remains in his hands, and at the time of granting such discharge he shall deposit in Court all documents and papers in his hands belonging to the estate."

## SELECTIONS.

## TESTIMONY OF PARTIES IN CRIMINAL PROSECUTIONS.

Some eight years have elapsed since the writer published in these pages some reasons, which presented themselves to his mind, in favour of repealing the rule of evidence which prohibited parties to law suits from testifying in their own behalf. This was a subject then strongly agitating the mind of the legal profession in the State of New York, and in the spring of 1857, the contemplated change was effected, and ever since, parties to civil suits have stood on the footing of other witnesses in the courts of our State. It is confidently claimed that the change worked a great reform. Occasionally an ex-judge or lawyer of a very old school may be met, who, although he sees the manifest convenience and justice of the new enactment in every suit that he tries, yet is so wedded by habit and association to the old rule, that he experiences a pang at parting with it. He feels, at best, like an invalid who has obtained a release from a chronic tumor or wen—a strange sense of freedom, a constrained sort of relief. He misses the accustomed exercise of his ingenuity in the picking up of shreds of facts from those but remotely connected with the subject of the litigation, and having but an imperfect knowledge of it, and the dexterous weaving of a thousand threads together into a web, (how often "of the whole cloth,") while in the bosom of his client all the time rested the complete and perfect knowledge, which he was not permitted to disclose. He is terribly tried about "total depravity," and man's natural bent towards falsehood. And therefore he gravely shakes his head (not that there is anything in that, as an eminent British advocate once said of an antagonist who indulged in the like dumb show), and sighs—*acti temporis laudator*—for the good old times of chancery, common law pleading, and pay by the folio, and everybody as witnesses except those who knew something about the subject-matter;—the days when law was an expensive and narrow monopoly, rather than the great conservator of order and the champion of truth. He will not give you any reason for his faith: he has none. He simply runs into the formal rut of cant, and rehearses phrases to you such as the judges use when they decide without a reason: "the exercise of a sound discretion," "the danger of innovation,"

or, "man is at best but a fallen and unreliable creature." There is not a great deal of this idolatry of the dead rule, for the public opinion is overwhelmingly in favour of the present practice. It is seldom that an acting judicial officer can be found who does not heartily approve the reform, and unhesitatingly avow that it has saved the time of the court and of the parties, has simplified the trial of causes, has discouraged dishonest litigation, and has promoted the elucidation of truth. And if a vote could be taken to-day upon the subject, among our profession, at least nine out of ten would hold up their hands for a continuance of the rule as now administered. Indeed, we doubt whether any sane man can be found in our State who would be willing to return to the old system.

But reform is progressive, and the active mind of the nineteenth century is already agitating the inquiry: "If we make parties to civil suits witnesses for themselves, why not permit the defendant in criminal proceedings to testify on his own behalf?"

There was some show of reason in a rule which enacted that both parties are disqualified from testifying on their own behalf; there was some faint sense of justice in it; it seemed at least impartial. But it must be remembered that in criminal actions only one of the parties is disqualified. The people may always be heard; *vox Populi vox Dei* in the courts of justice; but the defendant is infamous—let his mouth be closed. And so we see presented the extraordinary spectacle of an interested man testifying against his neighbour who cannot open his mouth in exculpation. Who can tell how often revenge or avarice may impel to perjury or prevarication, and the consequent punishment of innocent men? In every criminal proceeding the prisoner is set up as a mark for the arrows of the public prosecutor, with all his crowd of clients behind him, while the accused is compelled to be dumb.\*

\* A recent case in England having attracted much attention, we give a statement of it, condensed from the *Law Times* of September 30th, 1865, and subsequent numbers, as a strong illustration of the remarks in our text.

A. Madame Valentin had lived for thirty years with a merchant of Bordeaux, who, on his death, gave her, as she alleged, certain railway shares of considerable value. His heir, one Madame Buillon, disputed the validity of this death-bed gift, charged Madame Valentin with obtaining the shares surreptitiously, prosecuted her before one of the tribunals at Paris, obtained a conviction and a sentence of six months imprisonment. The railway stock having been brought to England, the question was again raised there in the form of an action in the Court of Exchequer. The trial lasted five days, and Madame Valentin succeeded in practically reversing the decision of the Paris court and establishing the validity of the gift to herself. While these proceedings were pending Madame Valentin went to England for the purpose of selling a portion of the stock, accompanied by a man called Lafourcade. After a while she quarrelled with him, and he then allied himself with the other party. He made an affidavit alleging that Madame Valentin intended to leave England. She was arrested under the Absconding Debtors' Act, and not being able to find bail, was committed to prison, where she lay for five months, until the trial by the Court of Exchequer and the verdict in her favour discharged her. She then prosecuted Lafourcade for perjury in the affidavit that had obtained