THE EVENING TELEGRAPH.

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FIRST EDITION

THE BROOKS CASE.

Justice at Last!

The Motion for a New Trial of Dougherty and Marrow Overruled.

THE SENTENCE.

Each Gets a Fine of $1000 and an Imprisonment of Seven Years!

This morning the Court of Quarter Sessions demonstrated, to the sorrow of the ruffians and to the gratification of the law-loving public, that there is law for our protection, and that assassins cannot live in Pennsylvania outside of a penitentiary. About half-past nine o'clock this morning a strong guard of policemen filed down Fourth street, much to the bewilderment of the citizens who were hurrying to and fro in their business affairs, and next made their appearance about the avenues leading to the Court House and in every corner of the court-room, preventing any access whatever to the prison-van and any undue rush into court, and giving out to the friends of the would-be assassins of Mr. Brooks that any attempt at a rescue would be foiled. This unusual scene attracted large numbers of citizens of all professions to the Court, who had the satisfaction of seeing the hired murderers, Hugh Marrow and Jas. Dougherty brought before the tribunal of justice to receive that judgment which they so richly merited. Having reached the court-room, the prisoners were at once escorted to one of the ante chambers and there searched, to see if they carried any weapons concealed about their persons, and were then seated in the dock. Messrs. Ransford and Cassidy, of counsel for the prisoners, being present, Judge Ludlow made his appearance and proceeded to decide the motion for a new trial and pronounce judgment, which was that each convict should pay a fine of one thousand dollars and undergo an imprisonment in the Eastern Penitentiary of six years, eleven months, and twenty-three days.

The decision of the Court was as follows:—

The prisoners having been convicted of an assault and battery, with intent to kill and murder, move the Court for a rule for a new trial. Fourteen reasons have been filed in support of this motion, and as several of them involve important principles, they will first be considered.

First. It is said the Judge who tried the cause erred "in allowing the Commonwealth to set aside jurors without assigning cause therefor."

It is contended that the State has no such power in a case not capital. The consideration of the question involved in this reason has obliged us to examine the law relating to it very thoroughly, and aided as we have been by the elaborate and very learned arguments of the counsel on both sides in the case, we have arrived at the conclusion now to be stated.

It cannot be doubted that at the common law the King might have challenged peremptorily, without seeking cause, any number of jurors, and for this reason the statute 33 Edw. I, St. 4., was enacted, which declared that "if they that sue for the King will challenge any of those jurors, they shall assign for their challenge a cause." Rob. Dig. p. 329.

Since the passage of this statute, and to the present day, it has been the practice in England to permit the Crown to "stand aside" jurors until the panel has been exhausted; or, in other words, cause need not be shown until all the jurors have been called. 2 Hale, Pl. Cr., 271; 2 Hawd., Pl. Cr., ch. 43, sect. 10; Ros. Crim. Ev., 1868. Blackstone, vol. 4, p. 353, says:—"This privilege of peremptory challenges, though granted to the prisoner, is denied to the king by the statute 33 Edw. I. st. 4, which enacts that the king shall challenge no jurors without assigning a cause certain, to be tried and approved by the court. However, it is held that the king need not assign his cause of challenge *till all the panel is gone* through, and unless there cannot be a full jury without the person so challenged; and then, and not sooner, the king's counsel must show the cause, otherwise the juror shall be sworn."

In Judge Sharswood's edition of Blackstone I find a note by Christian, that the practice is the same both in trials for *misdemeanors* and for capital offenses, for which principle he cites 3 Harg., st. 4, 519.

An examination of this case proves that it fully supports the doctrine named in the note, for in the trial of Lord Grey and others for a *misdemeanor*, in 1682, the Lord Chief Justice said:—"If they challenge any person for the king they must show cause in due time, for I take the course to be that the king cannot challenge without cause, but *he is not bound to show his cause presently*—it is otherwise in the case of another person."

The English statute being in force in Pennsylvania, the law remained unchanged, until the passage of the act of 29th March, 1813, 6 Sm. Laws, p. 68, wherein it was declared, that the Commonwealth, "except in cases of felony" might challenge no greater number than the defendant or defendants, and as by the act of April 4, 1809, in all criminal cases, "wherein peremptory challenges have not heretofore been permitted by law, the defendant or the defendants shall be allowed to challenge four persons peremptorily," the act of 1813 gave the Government four peremptory challenges in misdemeanors.

Doubtless when the act of 1813 was passed the legislators overlooked the fact that under the statute 33 Edw. I, the Commonwealth had no peremptory challenges; the act, therefore was to that extent unnecessary; though as to the right to challenge in misdemeanors, in one point of view, the law might have been useful and necessary.

In 1834 another act of Assembly was passed, and it is to be remarked that this act is identical with the law of 1813, and both are but repetitions of the English statute. Ch. J. Gibson, in Commonwealth vs. Jolliffe, 7 Watts, 586, remarks that "the provision that in any case of felony the Commonwealth shall not challenge without cause, was *repealed* by the act of 1834," this, however, is a mistake, or it may be a misprint, as was remarked by Mr. Dwight upon the argument, for if we read for "repealed" *repeated*, we will settle the difficulty.

It is abundantly clear, from what has already been said, that up to the passage of our penal code in 1860 the Commonwealth, in felonies, had no right peremptorily to challenge any juror, the statute of Edw. I having taken away that right, and our acts of Assembly simply re-enacted in terms the English statute.

The right to "set aside" jurors being well settled in practice in England, the question of the power of the Commonwealth never seems to have arisen in this State until 1838, when, in Commonwealth vs. Jolliffe, 7 Watts, 586, the Supreme Court expressed an opinion upon the subject.

By the act of April 23, 1829, arson was no longer a capital offense. Sec. 10, Sm. Laws, 435, Jolliffe was indicted for arson, and the Attorney-General claimed the right to "set aside" a juror, without presently assigning any cause, and this right was affirmed by the Court.

It has been argued that inasmuch as the crime of arson had been a capital offense, and the right to challenge twenty jurors had not been taken away by the act of Assembly, which changed the punishment to imprisonment, in place of death, that therefore the court in Commonwealth vs. Jolliffe decided as it did. Doubtless this reason may have had weight with the Court, but in view of the English practice, it can hardly be contended that this circumstance alone settled the controversy. As the case stands, it is a plain decision that, at any rate in felonies, the Commonwealth can claim this indulgence, and nothing less than a reversal of that decision by the court which pronounced it will shake its authority.

Indeed, in Warren vs. Commonwealth, 1 Wr. 45, the Supreme Court, although the act of 1860 gave to the Commonwealth four peremptory challenges, refused to disturb the practice, saying that it "descended to us, like many other customs, from the country whence most of our laws and customs were derived, as is proved by Gibson C. J. in Jolliffe vs. Commonwealth, 7 Watts." Thus in this case, a capital one, notwithstanding the act of 1860, the court affirmed the decision in a case not capital, and a felony in which the point now under consideration was directly decided.

We have nothing to do with the policy of the practice, and with the English statute, acts of Assembly, and decisions before us, we can only say that we would have erred had we refused to permit the jurors to "stand aside," as requested by the District Attorney.

The power is undoubtedly a great one, but as long as the prosecuting officers discharge their duties according to law, the citizen will not be in danger. Any attempt upon the part of the prosecuting officer to prostitute this power would inevitably consign him to public contempt. It is right, in conclusion, to say that I have been informed that the practice of standing aside jurors is well settled in the United States courts in this district.

Second. The second reason assigned in support of this rule is as follows, viz.:—"The judge erred in refusing to allow the defendants to challenge Joseph Miller."

The facts in relation to this branch of the case are briefly these:—

This jury were called together into the box, and the right of challenge was freely exercised either for cause or peremptorily until the twelve were seated.

At one time I intended to direct the jury to be sworn as in homicide cases, but a moment's reflection determined me to direct the jury to be sworn *together*, as is our uniform practice *in all cases* not capital. I then gave notice to counsel as follows:—

Judge—"Swear the jury, unless there are more challenges to make." After a considerable delay I said to counsel, "What have you to say, gentlemen?"

Mr. Cassidy (of counsel for prisoner) replied—Nothing.

I then said, "The Court has directed the counsel to challenge, and therefore not availing themselves of the right, the jury will be sworn."

Mr. Mann (of counsel for prisoners) replied—We claim the right to challenge until the juror comes to the book.

After some conversation between the Court and counsel, I said, "I will not depart from the rule in all cases below the grade of capital felonies; I did contemplate having each juror sworn separately; they will, however, be sworn together, according to our uniform practice, and I now say to the prisoner's counsel that they have a right to exhaust their challenges."

Mr. Mann—We claim the right to challenge until the jurors come to the book.

After some delay, one or two of the jurors saying they were not impartial, and leaving the box, and others being called in their places, the whole twelve being in the box, the following took place:—

Judge—I again say to the counsel for the prisoners that if they have no challenges to make, the jury will be sworn according to our usual practice.

A deliberate delay of several moments then took place, the counsel for the prisoners remaining mute, when I directed the jury to be sworn.

The Clerk of the Court then said:—"Those who swear will rise and take the book."

The oath was administered to six or seven of the jurors, when the Clerk said:—"Those who affirm will rise."

At this point my recollection, supported by that of the District Attorney and several persons standing in the Court, differs from that of the counsel for the prisoners. I believe the juror subsequently challenged was upon his feet when Mr. Mann challenged him.

Affidavits of two jurors have been presented to us, but we can take no notice of them, for the reasons assigned by my brother Allison, in the very able opinion delivered in Commonwealth vs. Thompson, Pa. Rep., 217, and the fact must remain established as reported by me to my colleagues. I regret the difference of opinion, and am very glad to say that, in the opinion of two of the judges, upon two other points, this decision does not rest entirely upon the facts as above stated upon this point.

The practice in regard to challenges varies in different States of the Union. In some of the States a juror is challenged as he comes to the book, and this is believed to be the English practice; in others he may be challenged after he has been sworn; in some for cause arising after the oath has been administered. With us, in this county, the practice has been as follows:—

In capital cases, where the jurors are sworn separately, challenges may be made at any time before the book has been tendered to the juror or the formula of affirmation has been commenced. In cases not capital, our uniform practice has been to swear or affirm the jurors together, and no case is remembered in which the right of challenge has either been claimed or allowed after any of the jurors have been sworn or affirmed.

Admitting the principles contended for by the counsel for the prisoners, and supported by a number of authorities, the Court is unanimously of the opinion that upon the facts, as reported, the challenge was too late.

Two of us are of the opinion that, after the swearing of the seven jurors, the challenge was too late, and two of us are also of the opinion that, under the circumstances, the right by reason of a mere caprice was fairly waived.

Upon these three grounds, therefore, the ruling at the trial is sustained. Speaking for myself, I have no hesitation in saying, that after the deliberate and protracted delays which occurred at the trial, with the repeated invitations to counsel to exercise their right, the case became one clearly within the rule stated in Commonwealth vs. McFadden, 11 Harris, 17, wherein the Court say, "This power to challenge for cause at any time before the oath is tendered might be abused. If the objection to a juror be kept back at the regular time, for an improper reason, or from motives of mere caprice, it would be just enough to declare the right wholly waived, and the discretionary power to do so ought not to be denied."

If, as now stated, the counsel for the prisoners desired to *secure* the seven jurors who were first sworn, and thus by adopting an unusual practice, deprive the Commonwealth of her right to challenge either of them, the reason was an improper one; and if no reason existed, then the challenge was a matter of mere caprice; in either case the challenge was properly disregarded because it was waived, and of this opinion are two of the judges. Again, as under our practice, *in cases not capital*, the whole twelve jurors are in the box together, and are thus sworn or affirmed, the reason does not exist for the rule which permits each juror to be challenged as he comes to the book, for as stated in Hartzel vs. Commonwealth, 4 Wr. 466, "the last man may be as readily challenged as the first," and the right of the prisoners is not to select but to *reject*. Twitchell's case, Brewster's Rep. 601. It was too late, therefore, to challenge after seven were sworn, and of this opinion are two of the judges.

If I had not, almost in terms, invited counsel to challenge any one of the twelve jurors in the box, and delayed the trial for that purpose; if the juror, after having declared himself perfectly impartial, upon a challenge for cause, had not been seated in the box for some time, and thus presented himself as one of the twelve jurors about to try the cause, who could at any time have been challenged—in a word, if every reasonable opportunity had not been extended to the prisoners and their counsel to challenge any one of the twelve, I should feel some injustice had been done; but under all the circumstances of the case, I think it would be trifling with the administration of criminal justice to permit this reason now to disturb the verdict, especially as the course adopted by counsel at the trial upon this point was during the trial, and continues to be to me, a mystery. Beside all this, the opinion of my brother Allison, in Commonwealth vs. Thompson, p. 216, applies to this case. He then said:—"Courts are required to exercise great caution in the allowance of technical and purely legal reasons for setting aside verdicts after a trial fairly and fully had, and where, upon the review of the whole case, the conclusion is that, in sustaining the verdict, substantial justice is done, and that the verdict is such a one as ought to have been rendered in view of all the facts proved upon the trial of the case."

The fourth, fifth, and sixth reasons, as they relate to the admission of the testimony of Mayor Fox, will be considered together. Neil McLaughlin, a most important witness for the Commonwealth, was called to the stand; in a few moments it became evident that he was not a reliable witness, for instead of testifying for the Commonwealth, he proceeded to make a statement which not only did not implicate the prisoners in the attempted assassination of Mr. Brooks, but told most strongly against the prosecution. At first he denied having identified the prisoners or either of them at any time as the men who were at the store or in the carriage; then he said he was "skeered" when he made the former statement, he then prevaricated, then he qualified his former statement, and did it in a way most damaging to the prosecution.

Under these circumstances the Commonwealth called Mayor Fox and offered to prove, that on previous occasions the witness had made, under oath, statements clearly identifying the prisoners as the two men who had hired the carriage, and who, a few moments after 12 o'clock, got into it and were driven over the streets to a certain point, when they left the carriage, together with other detailed statements made by McLaughlin to the Mayor of the transactions of the day on which Mr. Brooks was shot, and of the subsequent escape of the parties from the city, their places of sojourn in New York, and final arrest.

After some consideration, and an examination of authorities, I determined to admit the testimony; but at the time of doing so I said to the jury that the evidence about to be admitted was not to be considered as testimony proving the fact specified in the statement made to the Mayor, but was admitted simply to show that the Commonwealth was not bound by anything McLaughlin had said, and to that extent his credibility would, of course, be shaken. It is said that an error was thus committed.

The question thus presented for consideration is one of great difficulty, and is, moreover, one about which the most distinguished judges have differed. In England the weight of authority was against the admission of such evidence, and so I stated at the trial, though in one case, Oldroyd's Russell & Ryan, Eng. Cr. Ca. p. 88, the Judge at nisi prius admitted the evidence, and his course was sanctioned by the twelve judges on appeal.

The manifest impropriety of the rule, it is supposed, led to the passage of the Sec. 22, Common Law Procedure act, wherein it is declared that "a party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove 'adverse,' that is, 'hostile,' as contradistinguished from being merely unfavorable, contradict him by other evidence, or by leave of the Judge prove that he has made another statement inconsistent with his present testimony," but his attention must first be called to the circumstances under which he made the supposed statement, so as to designate time and place, and he must also be asked if he made it. 2 Taylor on Ev. 1212, 4th Ed. 64, Sec. 1282. Stearns vs. Bk., 3 P. F. Smith, 493.

In the United States the authorities produced on the argument by counsel prove that at least there are as many decisions one way as the other, while Greenleaf, in his work upon evidence, vol. 1, sec. 444, declares the weight of authority to be in favor of the admission of the evidence.

In this condition of things, I determined to adhere to the weight of authority in my own State, especially as reason and the due administration of justice sustained and sanctioned the principles acted upon by the courts.

In Stearns vs. Merchants' Bank, 3 P. F. Smith, 490, our Supreme Court examined the subject, and in the learned opinions of Judges Read and Thompson we have a clear exposition of the law and review of the authorities.

By a careful examination of the decisions cited in these two opinions, it will, we think, clearly appear that the weight of authority is in favor, in Pennsylvania, of the admission of this evidence; and even in the cases in which with us different opinions are apparently announced it will be discovered that they do not conflict with the point decided in this case.

But it may be contended that Stearns vs. Merchants' Bank is itself an authority against the very opinion now stated by the Court. This may be true if the syllabus of the case is alone to be depended upon; but as this is not the case, we will briefly state what was, in fact, decided.

In this case, the defendants first took out a commission to take the deposition of two witnesses; then the plaintiffs took out a commission, in which the defendants joined; the same witnesses were examined, depositions again taken, and these showed that the witnesses were totally mistaken in their former depositions.

In this state of the testimony, the defendants entered another rule for a commission; nothing was done under it, but an attorney for the defendants, without notice to plaintiff, went to Cleveland, had an *ex parte* private conversation with the witness, and then the gentleman is offered to prove the conversation of the witness, to impeach and destroy his former testimony.

The Court say (and this is the only point decided in the case):—"This is a very striking proposition, evincing an entire disregard of the rights of the opposite party, and a sacrifice of the witness without his having the slightest opportunity to tell the real truth under oath. It is substituting a private conversation with counsel for an open examination by a tribunal or by its duly appointed officer." In this decision the whole Court agreed. It is one which undoubtedly commends itself to the profession as being eminently just and proper; and yet in this very case, the present Chief Justice wrote a powerful concurring opinion discussing the whole subject, and proving beyond a doubt, we think, what the law of Pennsylvania not only was, but had been. Justice Agnew concurred in this opinion—the other judges simply decided the case before them. We see nothing in Stearns vs. Bank to shake the correctness of my ruling, but much to strengthen it, and therefore upon authority in Pennsylvania we see no error in the admission of this testimony.

Upon principle, we wonder how any court could adopt a different rule from that acted upon at the trial.

McLaughlin was not only an important witness, but the Commonwealth, having examined him before the Grand Jury, were fairly bound and driven to call him. Had the District Attorney neglected to do so, serious injury would have befallen the Commonwealth's case.

The witness is called, and proves not only to be a hostile one, but we think artfully so; he not only did damage, but did it in the most efficient style.

Sad, indeed, would be the condition of the Commonwealth if she could not prove the true state of the case, not as evidence of facts, but to show that she is not to be bound by the present statements of the witness.

To hold any doctrine which would thus paralyze the arm of criminal justice would be monstrous, and we will not do so unless commanded by a legislative enactment, or by a direct decision of our Supreme Court upon the very point. No injustice has been done to the prisoners, for I not only told the jury that the statement of Mayor Fox was not proof of the facts contained in it, but in my charge said, expressly and pointedly, to them, "Of the testimony of Neil McLaughlin I will dispose at once. If the jury believe his statement delivered on the witness-stand, you will at once arrive at the conclusion that the prisoners are not the men who did this deed. The Commonwealth have, however, offered in evidence the statements which this witness made before the Mayor; these statements are not evidence of the facts contained in them, and were only admitted to show that the Commonwealth should not be bound by the evidence of McLaughlin, and to this extent his credibility would of course be shaken, if you believe he made these statements to the Mayor."

The last important reason assigned for the motion for a rule for a new trial, is that the verdict was received on Sunday.

It is an undoubted fact that in very early times the entire year was by Christians considered one continued term for the trial of causes, and the purpose was to distinguish Christian magistrates from heathens, and as these last were extremely anxious to celebrate days and seasons, the Christian went to the other extreme, and held courts upon all days alike, even upon Sunday. Lord Mansfield, in Swann vs. Broome, 3 Burr, 1595, gives another reason why the ancient Christians always kept their courts open on all days alike; it was because by keeping the courts always open Christian suitors were not obliged to resort to heathen courts.

A canon was adopted in 517 providing:—"Quod nullus episcopus vel infra positus die dominico causas judiciare praesumat." This was followed by other canons, fortified, says Lord Mansfield, by Theodosius, in an imperial constitution, decreed by the Emperors Carolus and Ludovicus, adopted by the Saxon Kings, and finally confirmed by William the Conqueror and Henry the Second, and thus became part of the common law of England, and as such a part of the common law of Pennsylvania. See 3 Burr, 1595; 8 Cowen, 28.

Lord Coke, in 1 Inst., 354, declares that at common law there be *dies juridici* and *dies non juridici*, and that the Sabbath day is not a judicial day.

The construction put upon the ancient canon of 517 never included ministerial acts, and therefore the statute of 29 Charles II, c. 7, was passed, which prohibited the serving or executing of any "writ, precept, warrant, order, judgment, or decree, except in treason, felony, and breach of the peace," and our act of 1705 simply re-enacts the English statute.

That statute had received a judicial construction in Mackalley's case, 9 Co., where it was resolved, "That no judicial act ought to be done on that day; but ministerial acts may be lawfully executed on Sunday."

I have been informed that in Pennsylvania courts in the ancient days were held open on Sunday, and it is abundantly clear that for the purpose of performing *ministerial* acts, such as receiving a verdict, the power has never been doubted. Heidekoper vs. Cotton, 3 Watts, 59; Kepner vs. Keefer, 6 Id. 231; Fox vs. Mensch, 3 W. and S., 444.

We also refer to an able opinion filed by Lewis, J., afterwards Chief Justice, in a homicide case tried in Lancaster county (Earl's case), and reported in Lewis' Criminal Law, p. 321; and also to the very able, learned, and exhaustive concurring opinion of Mr. Justice Read, in Sparhawk vs. Union Passenger R. R. Co., 4 P. F. Smith, pp. 439-40.

In Eaton's case we took the verdict upon Sunday. Having thus disposed of the important reasons assigned for a rule for a new trial, we can readily dispose of the remainder.

We see no error in the admission of the evidence specified in the eighth and ninth reasons; the court did not suspend the trial to procure the attendance of Mayor Fox, though the District Attorney requested us so to do, but went on with the examination of the witness upon the stand.

The Judge specially called the attention of the jury to the testimony specified by counsel, and although an officer was directed by the Court to inquire whether the jury had agreed, yet they came into Court of their own motion; as they took their seats I said, "I sent an officer of the Court to inquire whether you were likely to agree or not, but did not intend to hurry you.

"I desire that all the jurors shall have the fullest and most ample time to weigh the evidence and consider their verdict; and if any juror thinks that he has not had such time, I desire that he should speak, and time shall be accorded him." After a reasonable delay, I said, "Well, gentlemen, what have you to say?" Whereupon the jury intimated that they had agreed.

With the law as stated by the Court no lawyer can, as the counsel in this case have not, contend, and with the verdict of the jury, I am constrained to say, no fault can be found. A careful and anxious examination of the evidence has satisfied the Court of the guilt of these prisoners; it would be most pleasant to discover, for the sake of these young men, that the jury had been mistaken; that they (the prisoners), at least, had not been guilty of a most serious crime. Our duty, however, requires us to declare that the verdict is a most just and righteous one, and that, beyond a reasonable doubt, the prisoners are in deed and in fact guilty in manner and form as they stand indicted.

As this motion was heard by myself alone, I thought it but just to the prisoners to submit every reason assigned in support of the motion and the arguments of counsel to my colleagues. This case has, therefore, received a protracted and very careful consideration by the whole Court, and I am authorized to say that we all concur in the conclusion stated in this opinion.

The motion for a rule for a new trial is overruled.

The sentence announced above was then imposed by the court, after which the prisoners were removed to the Penitentiary under guard of the police, the van being followed by an ambulance containing Chief Mulholland and a squad of office, to provide against any attempt at escape or rescue.

Court of Common Pleas—Judge Ludlow.

In the matter of the Twelfth and Sixteenth Sts. Passenger Railway Company, the Court this morning refused to grant the mandamus compelling them to lay the Nicolson pavement, but enjoined them not to lay any pavement which had not the cubical stones.

In making this decision Judge Ludlow said:—

That the Legislature have unqualified constitutional power "to take possession of the streets of an incorporated city, and appropriate them to the purpose of a railroad, either directly or through a company created for the purpose," has been so often settled, that the question is no longer an open one. See City vs. Empire R. R. Co., *Legal Intelligencer*, July 2, 1869.

The charter of this company is therefore the law of the case, though its provisions are to be strictly construed.

The city, however, has its clearly defined rights, and where these are exercised in subordination to the expressed will of the Legislature, and otherwise according to settled law, these rights must be enforced.

Ordinances must, however, not conflict with any constitutional law upon the statute books, and they must not be unreasonable.

The Legislature, by the act of April 11, 1868, declared that "the city shall have no power to regulate passenger railway companies, unless authorized so to do by the laws of this Commonwealth, expressly, in terms relating to passenger railway companies in the city of Philadelphia; *Provided* that nothing contained in this act shall be construed to release the said companies from keeping in good repair the streets on which their rails are laid and from paying to the city the additional cost of construction sewers."

Here is an act which directly conflicts with the power claimed by Councils in the ordinance of 1869, and when, in this instance, we look at the peculiar provisions of this charter, under which defendants exercise their rights, we cannot doubt that in this case the right of the city to enforce the ordinance of Oct. 21, 1869, has been taken away, for not "until the railways shall be laid and used by running passenger cars thereon," shall "the said company be subject to the ordinances of the city of Philadelphia regulating the running of passenger railway cars," and this company may lay their railway "without the consent of the City Councils of Philadelphia."

WHISKY.

Is Philadelphia the Sodom of America?

To the Editor of The Evening Telegraph.

Philadelphia has achieved such an enviable notoriety lately by reason of its whisky frauds, and as our exchanges take such particular delight in reading us moral essays on the subject, that we have been led seriously to ask the question at the head of our article.

We confess that we have read with a pardonable sort of satisfaction the whole pages of criminal calendar that adorn the pages of our New York and Western contemporaries, and we religiously believed that if history should repeat itself, certainly Philadelphia would not be selected as the modern Sodom. Many frauds and crimes can be laid at the door of whisky, but we are not one of those who believe that the infernal deity who presides over illicit distillation has his sole headquarters in Philadelphia. Offenses against the law always exist in proportion to the depravity of public morals, and if this be true—and who can doubt it?—we are undoubtedly not the first on the list of cities.

Our observation has brought us to believe that the many cases of newspaper report concerning whisky men have mainly been the result of technical violations, which the many and conflicting character of the regulations on the subject render it impossible to avoid; and that Philadelphia has been selected as the scapegoat of the country while the cities of the West are passed unnoticed. We will not stop to inquire why this is so, we only know that it is the fact. Frauds do not confine themselves to whisky, but are general. If the amount realized by the Government from whisky forfeitures is any evidence of the extent of its frauds, it certainly speaks bad for the great mass of other taxpayers. Since the inception of the excise law the Treasury has realized from its investigation of income returns five times, and from manufacturers' returns (other than whisky) fifty times the amount it has from whisky forfeitures, and we challenge denial of our statement. It may be asked, that if the frauds on distilled spirits are as one to five against incomes, and one to fifty against other manufacturing interests, how is it that the public has never been made acquainted with the facts? The reasons are, that while special revenue officials are appointed at large salaries and enormous perquisites in shape of moieties, to take charge of whisky, our local officers attend to the other, with the results stated. While our home officials are actuated by a desire to faithfully enforce the law, their actions are not biased by a greed for a share of the penalties. If a taxpayer, other than a whisky man, is suspected, a careful and private examination is make, and if an understatement exists the tax is promptly assessed and collected, and that without needless expense and litigation. Be it a distiller or liquor dealer, on the flimsiest of excuses his place is seized, the conspirators trusting that the possession of his business accounts will give them sufficient data to make up a case. If they fail in this, they then prefer criminal charges against the unfortunate wretch, to drive him either to confess judgment, or to compromise with the Government by the payment of a sum of money. The charge is then abandoned, and the mercenary detective claims and receives one-half. This is no idle fiction, as many a reader of this will testify. Of the many arrests made, consequent upon whisky seizures, how many have been tried?

This crusade is not conducted against open violators of the law, of whom we will speak hereafter, but against the licensed grain distillers and established dealers who have capital at stake and can afford to pay.

Is the revenue benefitted by a whisky detective force? We feel safe in asserting that the money realized by the Government solely through the agency of this class of detectives has not paid for their salaries.

In the Fifth Collection District, around the Richmond coal wharves, is really where the whisky cancer is located. Frauds are there committed in open defiance of law, and without an attempt at concealment. Molasses is the material used, being easier handled, and requiring no great outlay of money. Local officers wink at the matter, and detectives aid and abet it. Why? Because there is no money in it, and where there are no moieties there are no detectives. But why do detectives abet it? Ah! hereby hangs a tale. The Richmond contrabandist, after supplying local wants, starts for business centres to peddle his surplus. This is the opportunity Mr. Detective has been waiting for. He seizes the whisky, of course? Not a bit of it. He follows the wagon it is in until it stops opposite some responsible dealer's store, when presto! the store is seized.

How long, oh! Lord, how long?

Philadelphia, November 20, 1869.

Virginia Granite Going West.

The schooner Lucy D., Captain Higgins, will leave this port to-morrow with a cargo of 550 tons of Virginia granite, shipped by the Richmond Granite Company for New Orleans. It will be shipped thence to St. Louis, and will be used in the construction of the famous suspension bridge crossing the Mississippi at that point. We have hitherto chronicled the use of this granite East and North, where it is regarded as the best for many purposes. There is reason to believe that it will soon be equally in demand at the West.—*Richmond Dispatch.*

Stock Quotations by Telegraph—1 P. M.

Glendinning, Davis & Co. report through their New York house the following:—

N. Y. Central R.	182¾	Western Union Tele.	36¾
N. Y. and Erie R.	28¾	Tol. and Wab. R. R.	58¾
Ph. and Rea. R.	97⅝	Mil. and St. Paul R. c	68⅜
Mich. S. and N. I. R.	89⅜	Mil. and St. Paul pf.	83⅜
Cle. and Pitt. R.	82¾	Adams Express	58
Chi. and N. W. com.	71¾	Wells, Fargo	19
Chi. and N. W. pref.	86	United States	52¾
Chi. and R. I. R.	103½	Gold	126⅝
Pitt., Ft. Way. & Ch.	85½	Market steady.	
Pacific M. S.	55		

SECOND EDITION

LATEST BY TELEGRAPH.

The Stonewall Disaster—Captain Washington Censured—Grain Transportation in the West—A Heavy Libel Suit—Effects of the Great Storm.

The Falling Building Accident in St. Louis—Army Resignations—Verdict for $5000 Against a Railway Company.

FROM THE WEST.

The Stonewall Disaster—Captain Washington Censured.

Despatch to The Evening Telegraph.

St. Louis, Nov. 20.—The committee of merchants, appointed to investigate the conduct of Captain Washington in passing the wreck of the steamer Stonewall without rendering aid, reported as follows:—Your committee, appointed at the request of Captain Washington to investigate his conduct, as Master of Submarine No. 13, in passing the burning steamer Stonewall, beg leave to submit the following report:—

We have examined all the witnesses at our command, also the affidavits of persons living near the scene of the disaster, and, after carefully weighing the evidence, we think that Captain Washington committed a grave error, not characteristic of our Western steamboat men under similar circumstances, in failing to lend his boat, as he could undoubtedly have rendered great assistance in the matter to those in the water and others who had succeeded in getting ashore.

Grain Transportation.

The President of the Merchants' Exchange has received a letter from the agents of the Hamburg Company at New Orleans, relating to the business of forwarding grain by steamers. They state that the present undesirable condition of the bar will prevent them from making engagements for large quantities on account of the considerable draft of water of these steamers with a heavy cargo at present. They state that ample cargoes are offered in cotton, which pay better, and the Hamburg steamers have no compartments to carry grain in bulk.

A Heavy Libel Suit.

Judge Wolf, of the Court of Criminal Correction, has sued the St. Louis *Times* for $25,000 for an alleged libellous article charging him with partiality and incompetency.

A Fatal Altercation.

John S. Turner, of Glasgow, Mo., a large stock raiser, had an altercation with a deck hand on the steamer Nile this morning. The man struck him with a mallet, inflicting probably a fatal injury.

The Falling Building Accident in St. Louis.

By the accident to the new building at the corner of Fifth and Olive streets, some six laborers lost their lives, being buried in the ruins.

FROM WASHINGTON.

A Judge Advocate a Philadelphian.

Special Despatch to The Evening Telegraph.

Washington, Nov. 20.—Major Henry Goodfellow, U. S. A., is announced as having entered on his duties as Judge Advocate of the Department of the South. Major Goodfellow is a native of Philadelphia, an attorney-at-law of the courts of that city, and entered the army as Second Lieutenant, 26th Regiment Pennsylvania Volunteers, U. S. A., on April 15, 1861. He was formerly a clerk in the United States District Court of Philadelphia, and served with Dr. Kane in his celebrated Arctic Expedition.

Army Resignations Accepted.

Second Lieutenant Samuel Purdy, Jr., 14th Infantry, U. S. A., has resigned, with pay to February 1, 1870. Second Lieutenant Samuel R. Crumbaugh, 2d Infantry, U. S. A., has resigned, with pay to January 1, 1870. First Lieutenant William W. Tompkins, 3d Artillery, U. S. A., has resigned, with pay to April 24, 1870. Captain Abraham Bassford, 8th Cavalry, U. S. A., has resigned, with pay to November 9, 1869. Second Lieutenant William H. Sloane, 12th Infantry, U. S. A., has resigned, with pay to November 30, 1869.

FROM BALTIMORE.

Jones' Falls Risen.

Special Despatch to The Evening Telegraph.

Baltimore, Nov. 20.—Rain fell in torrents nearly all last night, and Jones' Falls and other streams are considerably swollen.

The Bremen Steamer.

The steamer Ohio, of the Bremen line, is now reported coming up the bay.

Verdict Against a Railway Company.

In the Court of Common Pleas yesterday Margaret Trainer and her children got $5000 damages against the Baltimore and Ohio Railroad Company for killing her husband. Juries now seem determined to make examples in all such cases, but the impression is they are going too far in some recent instances.

FROM NEW YORK.

The Storm and the Telegraph Wires.

Despatch to The Evening Telegraph.

New York, Nov. 20.—The heavy gale of last night has interrupted communication with the cables East, and no European advices have yet been received. Despatches will probably come to hand before night. The European steamer City of London sails to-day, but takes no specie.

New York Money and Stock Markets.

New York, Nov. 20.—Stocks steady. Money 6@7 per cent. Gold, 126⅝. Five-twenties, 1862, coupon, 115⅝; do. 1864, do., 113⅜; do. 1865, do., 113⅝; do. do., new, 116¼; do. 1867, 116¼; do. 1868, 115⅞; Ten-forties, 107⅝; Virginia sixes, new 54½; Missouri sixes, 92; Canton Company, 53; Cumberland preferred, 26½; New York Central, 183½; Erie, 28¼; Reading, 97⅝; Hudson River, 162½; Michigan Central, 119½; Michigan Southern, 89; Illinois Central, 138; Cleveland and Pittsburg, 82¾; Chicago and Rock Island, 103½; Pittsburg and Fort Wayne, 85½; Western Union Telegraph, 36¾.

COUNTERFEITING.

Seizure of Counterfeit Money—Arrest of Bernard Currans.

On Wednesday evening, 16th instant, U. S. Marshal John Dunn and Officer Olmstead, of the City Police, arrested Bernard Currans, a man who keeps a drinking saloon on Orange street, between Fourth and Fifth streets, on a charge of passing counterfeit postal currency. At the time of making the arrest they searched the premises, and in a large drawer back of the bar they found, wrapped up in a newspaper, covered up by about two dozen eggs, a package of twenty-nine counterfeit twenty-five cent notes, as new and as crisp as though just made. Currans claims that he has taken these notes at sundry times in change. He has certainly passed them at sundry times. He passed three on three different butchers, three on Sheriff Richardson in settling costs in an indictment against him for the illegal sale of liquor, and one on a huckster woman in Market street. He may have passed others, but these are all the officers have yet heard of.

U. S. Commissioner Harman held him to bail in the sum of $5000, in default of which he was committed, and is now in the city cells.—*Wilmington Commercial, Nov. 19.*

GOLDSBOROUGH.

Particulars of his Escape from the Georgetown Jail—Preparations in Advance—A Hoop-Skirt Plays an Important Part—Desertion of his Confederate.

The Wilmington *Commercial* of last evening has the following:—

From Sheriff Layton, of Sussex county, we get additional particulars of the escape of Goldsborough from Georgetown jail, on Sunday night, 14th inst.

The preliminary work had evidently been done by other prisoners before and during court, three men discharged at the last court, and a colored man named Lingo, convicted, participating. These prisoners not being indicted for capital offense were not confined to their cells, but had access to the prison yard, and to the common entry, or corridor, of the prison. There was a small closet opening out of this entry, and extending under the stairway which leads to the second story. Some of them entered this and took up part of the floor so as to get access to the space between the prison floor and the ground, and then, taking advantage of such opportunities as from time to time presented themselves, they got underneath the building and secretly prosecuted their work which resulted in the removal of all but one tier of bricks from the outside wall, and also the dividing wall through which Goldsborough escaped from his cell to the space beneath the prison. This left but one tier of bricks in each wall for the prisoner to remove, and his task, after getting free from his irons, was a comparatively easy one.

All these preparations, made before the Court and during its session, were part of a general plan for the escape of all who might be convicted. Goldsborough, it seems, did not expect to be convicted, and so made no attempt to escape before his trial. He appeared surprised at his conviction, and much cast down, but he told Lingo, the remaining prisoner, that that jail could not hold him, and he intended to get away. Lingo made the final preparations, and he was to escape with the murderer, the latter promising to give him $100 after they should get out. All that Goldsborough now required to secure his escape was to get rid of his leg-iron. To do this he got Lingo to make him a saw out of a knife, but the bolt proving harder than the knife, this experiment failed. He then told Lingo where he could find an old hoopskirt, and directed him to get it and make saws of the steel. Lingo found the skirt and made him eight little saws, seven of which were found after his escape concealed about the stove in his cell. Whether he sawed off the bolt with the other or not is a question no one but himself can decide, but Sheriff Layton believes some one scaled the wall and gave him a more efficient instrument. The surmise that the instrument used was conveyed to him in a can of preserves is incorrect, as he left the can in his cell unopened. The Sheriff showed us the bolt, and it was apparently over half an inch thick and very smoothly cut off. The suspicion that he was furnished with a saw by an outside party is founded on the breakage of the water pipe and other evidences that the high wall around the prison yard had been scaled.

In addition to the carriage which the tracks show to have been in waiting, it is evident that a horse was also awaiting the prisoner's escape, and it is now believed that he went off on the latter. Goldsborough told Lingo that his brother, at his last visit, gave him a roll of notes as he shook hands on bidding him good-bye. After all the important assistance that his colored fellow-prisoner afforded him, Goldsborough gave him the slip, probably to avoid the payment of the $100 promised him for his services.

FINANCE AND COMMERCE.

Office of the Evening Telegraph, }
Saturday, Nov. 20, 1869. }

The local Money market of the current week closes active and strong, with all the features indicative of a stringent and unsettled feeling. Borrowers who may not have provided for their wants early in the fall are entirely at the mercy of the "money changers," and the effete usury laws are "a dead letter," failing to afford the slightest protection, though enacted expressly for the contingencies now upon us. A large amount of unexceptionable paper is being daily hawked about the streets, and though there is apparently more disposition to buy than heretofore, the rates current are so usurious that time contracts are almost synonymous with financial ruin.

Call loans continue easy at 6@7 per cent., but discounts range between 12 and 20 per cent.

Gold is quiet and weak, opening at 126⅜. Premium at noon 126⅝.

In Government bonds there are not sales sufficient here to fix quotations. In New York the market is reported strong.

There was considerable activity in the Stock market this morning, and prices generally had an upward tendency. Pennsylvania 6s, first series, sold at 102½. City 6s were firm, with sales of the new issues at 101⅝.

There was a lively speculative demand for Reading Railroad, and prices advanced ⅛, selling at 48⅞@49 b. o.; Philadelphia and Erie Railroad improved ½, selling at 28⅝@28¾; Little Schuylkill Railroad changed hands at 42, and Pennsylvania Railroad at 53¾; 35½ was bid for Catawissa preferred, and 119½ for Camden and Amboy.

Canal shares were quiet, with sales of Lehigh Navigation at 34.

In Coal, Bank, and Passenger Railway shares no sales were reported. 40½ was offered for Second and Third; 60 for West Philadelphia, and 12 for Hestonville.

PHILADELPHIA STOCK EXCHANGE SALES.

Reported by De Haven & Bro., No. 40 S. Third street.

FIRST BOARD.

$4500 Pa 6s, 1 ser. ls. s5	102½	100 sh Read R....c	48.94
$1200 City 6s, New. ls.	101⅝	100 do.	48.94
$1500 Leh Con l....	80	700 do.......ls.	48⅞
2 sh Cam & A. Sc..	68¼	100 do.......c.	48⅞
40 sh Leh N St.....	34	100 do......s30.	48⅞
2 sh Penna R.....	53¾	100 do.....s60.	48⅞
13 do.........	53¾	500 do. s30wn. ls.	48⅞
35 sh Lit Sch R.. ls.	42	100 do.. s60wn.	48⅞
124 sh Leh V R. ls.	53½	400 do ... ls.	48.94
300 sh Read R...ls.	48.81	100 do.. s60wn.	48⅞
200 do.. s60wn. ls.	48¾	900 do ......ls.	48.94
160 do.........	48⅞	100 do.....b10.	48.94
200 do......b30.	49	200 do.......ls.	48.94
300 do.......ls.	48⅞	100 do ....s30.	48⅞
		200 do....ls. s5.	48⅞

—Narr & Ladner, Bankers, report this morning's Gold quotations as follows:—

10·00 A. M.	126⅜	11·11 A. M.	126½
10·15 "	126½	11·20 "	126⅝
10·16 "	126½	11·30 "	126½
10·45 "	126⅝	11·40 "	126⅝

Messrs. De Haven & Brother, 40 No. S. Third street, Philadelphia, report the following quotations:—U. S. 6s of 1881, 117⅞@118⅛; do. 1862, 115½@115¾; do. 1864, 113¼@113½; do. 1865, 113½@114; do. 1865, new, 115⅞@116⅛; do. 1867, do. 116⅛@116⅜; do. 1868, do., 115⅞@116⅛; 10-40s, 107⅜@108; U. S. 30 Year 6 per cent. Currency, 107¾@108; Due Comp. Int. Notes, 19; Gold, 126⅜@126⅝; Silver, 124@125½.

Jay Cooke & Co. quote Government securities as follows:—U. S. 6s of 1881, 118@118¼; 5-20s of 1862, 115⅝@115¾; do., 1864, 113½@113¾; do., 1865, 113⅞@114⅛; do., July, 1865, 116@116¼; do. do., 1867, 116¼@116½; do., 1868, 116@116¼; 10-40s, 107⅞@108⅛; Cur. 6s, 107⅞@108⅛; Gold, 126⅝.

Philadelphia Trade Report.

Saturday, Nov. 20.—The Flour market is exceedingly quiet, and in the absence of any demand for shipment, only a few hundred barrels were taken in lots by the local trade at $5@5·25 for superfine; $5·37½@5·62½ for extras; $5·75@6·25 for Iowa, Wisconsin, and Minnesota extra family; $5·75@6·25 for Pennsylvania do. do.; $6@6·75 for Ohio and Indiana do. do., and $7@7·50 for fancy brands, according to quality. Rye Flour sells at $6 per barrel.

The Wheat market is without essential change. Sales of 1000 bushels Pennsylvania red at $1·38, and 350 bushels Delaware do. at $1·37. Rye sells at $1·05@1·08 per bushel for Pennsylvania and Western. Corn is firm at former quotations. Sales of Pennsylvania yellow at $1·07@1·08; new do. at 90@93c.; and 2500 bushels Western mixed at $1·03@1·05. Oats are without change. Sales of Pennsylvania and Western at 60 cents, and Delaware at 61 cents.

In Barley and Malt no sales were reported.

Bark—In the absence of sales we quote No. 1 Quercitron at $32·50 per ton.

Seeds—Cloverseed is steady, with sales of good and prime at $6·75@7. Timothy is dull and nominal. Flaxseed is in demand at $2·39@2·40, and 2100 bushels sold at the latter rate.

Whisky is firm. Sales of Western at $1·14 for iron-bound.