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FIRST EDITION

DECIDED.

THE END OF THE ROW CONTEST.

The Supreme Court Sustains the Republican Contestants — Judges Thompson and Sharswood Dissent—The Majority Opinion in Full.

In the matter of the appeals of Sheppard, Barger, and others from the decree of the Court of Common Pleas ousting them from the offices to which they claimed to have been elected in October, 1868, Judge Agnew this morning announced the opinion of a majority of the Court, dismissing the exceptions taken by the appellants, and affirming the decree of the court below. Chief Justice Thompson dissented from this decision, delivering an opinion in which Judge Sharswood concurred. The titles of the cases are as follows:—

Furman Sheppard vs. Samuel Bell et al. *Certiorari* to the Court of Quarter Sessions of Philadelphia county.

David P. Weaver vs. Samuel Bell et al. *Certiorari* to the Court of Common Pleas of Philadelphia county.

Albert W. Fletcher vs. Samuel Bell et al. *Certiorari* to the Court of Common Pleas of Philadelphia county.

George Getz vs. Samuel Bell et al. *Certiorari* to the Court of Common Pleas of Philadelphia county.

Thomas J. Barger vs. Samuel Bell et al. *Certiorari* to the Court of Common Pleas of Philadelphia county.

John M. Melloy vs. Samuel Bell et al. *Certiorari* to the Court of Common Pleas of Philadelphia county.

OPINION OF THE COURT.

Agnew, J.—These are important cases. They are political controversies, to be met in a spirit of candid inquiry. The contest of an election is a remedy given to the people, by petition, for redress when their suffrages have been thwarted by fraud or mistake. The constituted tribunal is the Court of Common Pleas, or the Court of Quarter Sessions, as the case may be.

By the acts of July 2, 1839, and February 3, 1854, the Court is to "proceed upon the *merits* of the complaint, and determine *finally* concerning the same, according to the laws of this Commonwealth." No bill of exceptions is given to its decisions, nor appeal allowed, and its decisions are final. Consequently the Supreme Court has no jurisdiction over the subject.

The attempt to press into service the act of 1867, as giving an appeal, lacked the earnestness of conviction, and needs no refutation. It gives no appeal, while the appeal given on the receiver's consent excludes the presumption that any other appeal was intended.

The finality of the acts of 1839 and 4854 remains, and there is no implication of an appeal, for there is no incongruity in this respect. It is only in case of a strong repugnancy that a former law is repealed by a subsequent act. Street vs. Commonwealth, 6 W. 88, 209; Bank vs. Commonwealth, 10 Ban., 449; Brown vs. Commonwealth, 9 Heins, 423.

Why then have the merits been so strongly urged? Why have the cases been termed appeals, and the parties appellants and appellees? Nothing but confusion can flow from these designations. The *certiorari* is a well-known writ, bringing up the record only. The parties are plaintiffs and defendants in error, and not appellants and appellees. The argument on the facts was therefore outside of the record.

That the merits belong exclusively to the court below, and cannot be reviewed here, is a settled question. Carpenter's case, 2 Harris, 486. The court there granted the *certiorari*, Gibson, C. J., saying that "having no appellate jurisdiction, it could not be respectful or proper to express an *extra judicial* opinion on the regularity of the proceedings."

In like manner this Court quashed the *certiorari* in Ewing vs. Villey, 7 Wright, 384. "Our duty (said Lowrie, C. J.) is a very restricted one; for, as is admitted, we cannot retry the case on the evidence, but can only consider whether it was tried before competent authority and in proper form." What the *certiorari* brings up is equally clear. This is very plainly stated by Woodward, J., in Chase vs. Miller, 5 Wright, 412-13, a contested election case.

After explaining our general power of review, he says:—"But this statement is to be received with a very important qualification—that the errors to be reviewed shall appear on the record. This is necessary to all appellate jurisdiction where cases come up by writs of error or *certiorari*. The only mode provided by law for bringing *evidence* or the *opinion* of an inferior court upon what is technically called the record is by a bill of exceptions, sealed and certified by the judges, and as bills of exception are not allowed in the Quarter Sessions, no question which arises out of the evidence in that court can be got up into this court. Hence, while *certiorari* lies to the proceedings of the Quarter Sessions in road cases, in pauper cases, in contested election cases, and in other statutory causes committed to the jurisdiction of that court, the writ brings up nothing but what appears on the record, without a bill of exceptions." That neither the testimony nor the opinion of the court is brought with the record by a *certiorari*, has been reiterated over and over again. I refer to a few of the recent cases to show that we have not departed from the doctrine of our predecessors:—Commonwealth vs. Gurley, 9 Wright, 392. Indictment, per Thompson, J.; Church street, 4 P. F. Smith, 353. Road case, per Thompson, J.; Oakland R. W. vs. Kernan, 6 P. F. Smith, 198. Justice and Jury on Sheriff's Sale, per Woodward C. J.; Plunket Creek vs. Fairfield, 8 P. F. Smith. Pauper case, per Strong, J. In Pennsylvania Railroad vs. German Lutheran Congregation, 3 P. F. Smith, 445, a strong effort was made to get before us the merits of a view and assessment by a railroad jury, and the subject was again examined elaborately, and the same conclusion reached. The strenuous effort to induce us to review the testimony, calculations, and opinion of the Court in these cases was therefore contrary to the settled law of the writ of *certiorari*.

This excludes from our consideration the report of the examiner, all the calculations, and all the court did, either by striking out or purging polls. They are not in the record, and all assignments of error forwarded on them fall.

Putting aside, then, these lures to error, the remaining assignments may be treated under three heads: those affecting jurisdiction, those relating to the procedure of the court, and those relating to the frame of the complaint. This concerns the city officers only. The act of 1854 requires that "at least two of the complainants shall take and subscribe an oath or affirmation that the facts set forth in such complaint are *true*." The oath to the petitions reads "that the facts are true, *to the best of their knowledge and belief*." This addition, it is asserted, opens the strength of the oath—that the law requires the absolute truth of the facts to be sworn to, and not the best knowledge and belief of the affiants. Does the law mean absolute verity? This is the question.

The intention of the law given must be discovered not only from the words, but from the object of the law, the special purpose of the oath, the nature of its subject, and the character and jurisdiction of the tribunal. The object of the law is to give the people a remedy. It is their appeal from the Election Board to the Court from an undue election or a false return. The law is, therefore, remedial, and to be construed to advance the remedy. The special purpose of the oath is to initiate this remedy—to give it the impress of good faith and probable cause. The proof of the facts must follow, not precede the complaint. It is contrary to our sense of justice and to all analogy to say that a remedy shall not begin till the case has been full proved. The law being remedial and the oath initial only, it is not to be supposed the Legislature, representing the people, intended to subject the remedy to unreasonable or impossible conditions.

The remedy would be worthless and the Legislature stultified. Correct interpretation will show this result. This brings us to the subject of the oath. In a city of 800,000 inhabitants, embracing a surface of many square miles, no two nor two hundred men can be invested with the ubiquity and the omniscience to see and to know all the facts in every precinct necessary to contest the poll of a single ward. Besides there are essential facts they cannot know personally. They cannot pry into the ballots. They may believe or may be credibly informed, that one hundred and fifty-three unqualified persons voted a certain ticket, but they cannot know it; yet this knowledge is essential to the contest. Their knowledge, to be personal, must be as ubiquitous as the fraud and as thorough as the whole number of voters, their residences, qualifications, and ballots, and comprehend all the unlawful acts of every election board. In this instance 120,000 votes were polled in 266 precincts. Now it is simply impossible that two, nay, all the fifty petitioners could personally know the facts of necessary to contest the poll of the entire city. The Legislature did not mean this vain thing. *Lex non intendit aliquid impossibile. Lex nil facit frustra nil—jubet frustra* It is the duty of a Court to construe a statute, if possible, *ut res magis valent quam*. Huber vs. Reilly, 3 P. F. Smith, 115, 117. These principles have been stated with much force, and with a reference to the highest authority, in Schuylkill Navigation Company vs. Loose, 7 Harris 18, 19. The case comes then right to this point. The oath must be made from credible information, or not at all. In the poll of such a city the affiant cannot swear to more than to the best of his knowledge and belief. It would be an imputation on the framers of the law to think otherwise. The argument that no indictment would lie for perjury upon this form of oath is fallacious. If the act means an oath in this form, then the oath in that form is an oath authorized by law, and an indictment for its corrupt and artful breach will lie.

We must consider also the tribunal to hear and decide on the petition. It is a high constitutional court, competent to decide on its own jurisdiction. Its jurisdiction being exclusive and final, it necessarily decides it for itself. There was no omission of anything to confer jurisdiction. The petition came from the requisite number of qualified voters, was presented in due time, and its truth was sworn to by two of their number. The court having a rightful and general jurisdiction over the subject of the petition, assumed it, heard the proofs, and found the facts alleged to be actually true, and set aside the return as false.

Now, after a decision on the merits which have been established on sufficient evidence, can we oust the jurisdiction for an alleged error in the interpretation given to the language of the oath? This would be dangerous ground to take. The law does not prescribe the form of the oath. It certainly was for the Court in judging of its own jurisdiction to interpret the words of the affidavit. It did so; heard the case; found the facts to be true; and decided on the merits. See Carpenter's case vs. Harris, 486. Overseers of Tioga vs. Overseers of Lawrence, 2 Watts, 43. Plunket's Creek Township vs. Fairfield Township, 8 P. F. Smith, 209.

The question as to the power of the City Recorder to administer the oath stands on the same footing. It was a question which the Court below necessarily decided for itself. There was an oath actually taken and certified. The officer certifying it has power to administer oaths. His commission was conferred by the Governor, by and with the consent of the Senate, for a term of ten years and during good behavior. His character is also judicially recognized as magisterial. Rhodes vs. Commonwealth, 3 Harris, 277. By the act of 1817 he has authority to take the proof of deeds and other writings, and to issue writs of *habeas corpus*, and give relief thereon as fully as the President of the Common Pleas.

These powers imply his authority to administer oaths, without which he could not swear the witnesses. The act of March 31, 1860, punishes perjury committed upon an oath taken before the Recorder, classing it with oaths taken before any judge, justice, alderman, etc., before whom oaths may be taken. The Court of Common Pleas had decided also that he had the authority to administer oaths. Schuman vs. Schuman, Leg. Int., 1865, p. 21. Thus, being a commissioned officer, and having power to administer oaths, by his certificate of probate to the petition he asserted his authority to administer that oath.

Prima facie, therefore, the oath was regularly made, and being accepted, was before the Court. The Court having a general and rightful jurisdiction over the subject of the petition, assumed it, and in so doing, decided the affidavit to be sufficient. It is not the case of the absence of any affidavit, but is the case of an affidavit *prima facie* regularly made. Now, after having possession of the case in a manner clearly legal and regular, at least to a *prima facie* extent, and after having heard the case on its merits and found the truth of all the facts necessary to a case on the merits, how can we go behind the certificate of the Recorder to inquire whether his conceded authority to administer oaths extends to this particular proceeding? The oath was only necessary to initiate the proceeding, which has now been proved by sufficient evidence to be well founded and true. If we can now go behind his certificate, after a decision on the merits, no proceeding is safe. We may as well inquire whether all the petitioners were qualified voters, and if we find one disqualified by non-residence, non-payment of taxes, or a defect in his naturalization certificate, set aside the whole proceeding. This would be a dangerous doctrine, and opposed to the principles decided in the cases just referred to.

The correctness of the oath in these cases is supported by that required to contest the election of the Governor, members of assembly, judges, county officers, etr., to wit.:—That "the facts stated in this petition are true to the best of their knowledge and belief." It cannot be supposed the Legislature meant to exact severer terms in order to contest an election of city officers—indeed, to require an impossible condition. But analogies are appealed to. It has been decided that an appellant from an award must swear that he firmly believes that injustice has been done, and less will not suffice.

This is true, but the difference lies between knowledge and belief. It is not unjust to require of a suitor knowing his own case a firm belief of injustice. On the other hand, suppose we were asked to say that the appellant must swear to the absolute truth of injustice, and thus compel an ignorant man to swear to the law as well as the facts? This would be unreasonable, and it is quite as unreasonable to ask a man who cannot know all the facts to swear absolutely to the illegality of voters, for whom they voted, the law of residences, of suffrage, and of the duties of election officers, and all else that is necessary to actual knowledge of an nudue election.

Nor is the argument good that the act of 1866 requires the directions of the act of 1854 to be strictly pursued. Before a statute can be pursued, we must know what it requires. If the law require personal knowledge, the oath must be so.

But this is the very question to be decided, and it is illogical to tell us it means personal knowledge because it must be strictly pursued. What does the act of 1854 require—personal knowledge of every fact averred, or only knowledge to the best of reliable information and belief? If personal knowledge be not required that ends the question, and all the numerous authorities cited to show how strictly a statute must be pursued are inapplicable.

Nor can the petition be likened to a response in chancery. It is not a proceeding to compel a discovery of facts known to the party; but is simply a complaint to initiate an inquiry in good faith. Its foundation can be reliable information only, and therefore not absolutely, but credibly, true. In conclusion, on this, the only serious question, we have ample authority so to construe this act. "As to the construction of statutes, it is certain they are not always to be construed according to the *letter*." Bank of North America vs. Fitzsimmons, 3 Binney, 356. "Acts that give a remedy for a wrong are to be taken *equitably*, and the words shall be extended or restrained according to *reason* and *justice*, and according to their *end*, though the words be short or imperfect." Schuylkill Navigation Company vs. Leon, 7 Harris, 18, citing 2 Just., 152, 249, 395, 572, and Hob., 157, 299. The word "*void*" has been held to mean "*voidable*." Braddee vs. Brownfield. 2 W. & S., 280. "*Or*" to mean "*on*." Levering vs. R. R. Co., 8 W. & S., 463. "*Or*" also has been held to mean "*and*." Foster vs. Commonwealth, Ibid., 79, 80.

Was the jurisdiction lost by the expiration of the term in the case of the Prothonotary? In this respect the law is directory only. The act to be done is judicial, and not ministerial. The court cannot "proceed on the merits" of the contest without time to take the testimony and to hear and decide. If the testimony be voluminous, as it must be to correct so large a poll, the merits cannot be reached without time; nor can the merits be reached if delayed, as here, by dilatory motions. It would be a harsh construction to defeat its own purpose by requiring an impossibility of the Court. Analogies are against it. Commonwealth vs. Sheriff, 16 S. & R., 304. Sup. Watson, 2 Wharton, 501. Commonwealth vs. Sailor, 7 Watts, 366. Clark vs. Commonwealth, 5 Casey, 129. In these cases a similar limitation was held not to oust the jurisdiction of the Court, and it was said, "There is no doubt that necessity, either moral or physical, may raise an available exception to the statute." The act of 1810 requires *certioraries* to justices of the peace to be decided "at the term to which the proceedings are returnable." Yet what lawyer ever heard that a *certiorari* fell with the expiration of the term? It would be a mockery of justice were the people to be told when seeking redress against dishonest servants that the voice of the judge is silenced in the midst of his sentence, or the uplifted arm of the law struck down by the stroke of the clock. This matter has been well stated by Allison, J. in Stevenson vs. Lawrence, 1 Brewster, 134-5.

The next head is the alleged errors of procedure. The power of the Quarter Sessions to appoint an examiner is questioned. This affects the case of the District Attorney only. The constitution and powers of the Court of Quarter Sessions under the organizing act of 16th of June, 1836, leave no doubt of its power to take depositions, and, consequently, to appoint examiners for this purpose. This is the practice in road and pauper cases. The Quarter Sessions is classed with the other courts in this act in respect to many of its powers; and the 21st section enacts:—"Each of the said courts shall have full power and authority to establish such rules for regulating the practice thereof, and for expediting the determination of writs, causes, and proceedings therein, as in their discretion they shall judge necessary or proper: Provided, That such rules shall not be inconsistent with the Constitution and laws of this Commonwealth." This being an enabling act, is to be liberally construed. The power to establish rules for all cases embraces the power to make a rule in this particular case. *Omne majus continet in se minus.*

The next error of proceeding alleged is the allowance of the amendment in the cases of District Attorney and Prothonotaries. This was not error, but fell within the sound discretion of the Court. The grounds of allowance are not in the record, and cannot be reviewed by us. The amendment was not of an omitted prerequisite necessary to confer jurisdiction, nor of matter essential to the frame of the petition, but was a mere specification of a fact comprehended within the general terms of the complaint, and belonging only to the proof. The miscount of 40 votes for Sheppard, which belonged to Gibbons, occurred at the same election, entered into the same general return, and affected the result. The matter pertained to the same case, and was necessary to determine it "on the merits." The power of amendment exists at add Grove's appeal, 1 Wright, 443; Cambria Iron Works vs. Tomb, 12 Wright, 338; ibid, 445; Boyd vs. Negley, 4 common law, and falls within the discretion of the court, and cannot be revised. To the numerous authorities cited by the defendants in error we may Wright, 377; Same vs. Same, 3 P. N. Smith, 387; Penna. R. R. vs. German Church, 3 P. N. Smith, 445. And in point of reason, why should the court not have power to amend in a contested election case? It is a judicial remedy and concerns important rights. On what ground should the cause of the people be held so strictly that a mere specification of facts within the same general complaint, relating to the same contest, and the same returns, could not be allowed, in order to reach the very "merits" the court is ordered to try? It does not appear from the record that the matter was illegal, or was objected to, or that suspense was alleged, or was matter not developed in the testimony. The right of a court to make an order necessary to the justice of the case *nunc pro tunc* cannot be questioned. In Fitzgerald vs. Stewart, 3 P. N. Smith, 343, a power was supported to enter judgment *nunc pro tunc* six months after verdict an action of slander, to prevent an abatement of the suit by the death of the plaintiff, and after motions for a new trial, in arrest of judgment, and to abate the writ. In Slicer vs. Bank of Pittsburg, 16 Howard, 571-579, a judgment *nunc pro tunc* was entered in 1835 to support a sheriff's sale made in 1820, and was sustained upon numerous authorities.

The last head is that concerning the frame of the complaint. The refusal of the Court to quash the petition is not a ground of error. Their jurisdiction is entire and inclusive, and a motion to quash is a matter of discretion. (Resp. vs. Cleaver, 4 Yeates, 37.) In this court there can be but one inquiry—whether the petition is sufficient in its frame, and sets forth a proper ground of contest. We shall do the plaintiffs in error full justice in permitting the assignments of error to stand as an exception to the sufficiency of the petition. Like an indictment, a bill in equity, or a libel, when the record of it is before us, we can only inquire whether it sets forth a sufficient charge or complaint. The evidence in support of the charge is a different matter, and need not be set forth or specified. The law does not demand it, and no analogy requires it. Indeed, the reverse is true, for the court is required "to proceed on the merits thereof," indicating thereby that the proceeding is not to be embarrassed by technicalities. Then why should a contested election petition have more precision than other complaints at law, civil or criminal? The tendency to set aside an undue or fraudulent election is as important as remedies for other injuries. If the life, liberty, property, and happiness of the citizen demand certainty to a common intent only, why should a contested election require more? Indeed, the nature of the subject demands even less. The innumerable frauds abounding in an election where 120,000 votes are polled in 266 precincts render a minute specification impossible within ten or twenty days. The only safe course in such a case is to proceed in analogy to the practice in other cases, by a notice of particulars, ordered and governed by the discretion of the Court. It would be an intolerable technicality if the petitioners were required to set forth in their complaint within ten days after the election every illegal vote, every illegal act of the election boards, and every instance of fraud. Such a nicety would prevent investigation, and defeat the remedy itself. The general rule in all pleadings is that certainty to a common intent is all that is required. Heard & Stephen's P. C., 380. The early decisions in this city were too stringent. A much truer exposition of the law, and one to be adhered to, is found in the opinion of the late Judge Thompson in Mann vs. Cassidy, 1 Brewster, pp. 26, 27. As remarked by him:—"The rule must not be held so strictly as to afford protection to fraud, by which the will of the people is set at naught, nor so loosely as to permit the acts of sworn officers chosen by the people to be inquired into without adequate and well-defined cause."

We find many analogies to guide us. The general rule in all indictments, says Sergeant, 9, is that the charge must be positively averred; but in what cases it is or is not sufficiently averred, is not ascertained with precision, and must be left in a great measure to the legal discretion of the Court. Certainty to a common intent in general only is required, and not certainty in every particular. Sheehan vs. Commonwealth, 8 Watts, 212. Whether a bill of particulars or specification of facts shall be required is exclusively in the discretion of the presiding judge. Whart. C. L. § 291, citing Commonwealth vs. Giles, 1 Gray 466. R. vs. Kendrick, 5 Ad. and El., 49. R. vs. Hamilton, 7 C. and P., 448. See also Commonwealth vs. Hunt, 4 Metcalf, 125. In a libel for a divorce it was held that the proper practice is to give notice that between two specific dates acts of cruelty, etc., are intended to be proved. Steele vs. Steele, 1 Dallas, 409. See also Ganatt vs. Ganatt, 4 Yeates, 244.

There are many cases, at common law and under statutes, where the description is general, and because of the multitude of particulars constituting the offense or complaint, the prosecutor may be required to give notice of the acts intended to be proved. Thus in the case of a common barrator, 1 Russell on Cr., 185-6; 2d Hawkins C. L., c. 25, § 59; and disorderly houses, houses of ill fame, and gaming houses. Whart. C. L., 4 Ed., § 239. Tippling houses, Commonwealth vs. Baird, 4 S. and R., 141. Lottery tickets, Commonwealth vs. Gillespie, 7 S. and R., 469. Timber trees, Morpl vs. Commonwealth, 7 Barr, 439. The court remarked in the last case that the Legislature never intended that an indictment for timber trees should be so special as to defeat the end proposed. We may refer also to the case of Commonwealth vs. Banker, 7 Harris, 412, for using vulgar and obscene language to crowds; and Commonwealth vs. Stohn, 2 Smith, 243, the case of a common scold. And see Ely vs. Commonwealth, 7 Ban. 277, and Commonwealth vs. Kisson, 855 R., 422.

In view of this array of cases affecting the highest absolute rights of individuals, it is impossible to affirm such a stringent rule as we are asked to apply to contested election cases, or to say that this petition is so fatally defective in its frame, it should have been quashed on motion or set aside on demurrer. It sets forth in fitting terms the general election of 1868, the persons voted for, the number of votes returned for each, and the majority for the persons returned; charges an undue election and false return, alleges the election of the opponent, and sets for the grounds of the illegality of the election. It charges that the officers of the election fraudulently conducted and carried on the election, with a wilful disregard of all the requirements of the law; and then specifies their various fraudulent acts by means of which the fraud was perpetrated, and illegal votes suffered to be cast for the person returned. Here I may notice in passing the omission to set the letter V opposite the names of the electors who had voted. This is specified in the petition as one of the fraudulent acts of the election officers, and not as a cause in itself sufficient to set aside the election. The petition then avers that all these acts were done and committed with the intent and purpose of holding an undue election, and to prevent an honest expression of the popular will and a true ascertainment of the real votes of the qualified voters, and that in pursuance of this conduct the popular will was not ascertained, but was defeated, whereby the election was rendered false, fraudulent, undue and void, and the return void, and should therefore be disregarded. The petition does not close here, though much more descriptive and certain than most forms of indictment, petition, and libel, but proceeds to specify the number of fraudulent votes received in the several divisions, describing them specially, numbering in the aggregate several thousands, and largely more than sufficient to overthrow the majority for the person returned as elected. Here is certainty not only to a common but to a very specific intent. How can a petition so specific in its charges and minute in its specifications be deemed to be defective in its frame? Strong bias only can entertain a doubt of its sufficiency.

The argument that the claim of the petition to have certain returns stricken out makes it defective or unsound is wholly unfounded. If the facts set forth are sufficient, as we have seen they clearly are, the prayer to strike out does not vitiate the charge of an undue election and a false return. That charge remains, especially in view of the concluding prayers of the petition, which are strictly correct, and cover the entire ground of the case. A prayer to strike out is no part of the charge in the complaint. The court may disregard it if unfit, if too broad, or if unsupported by evidence, where there are prayers suitable to the case, and covered by the evidence; and we are bound to believe they did disregard it. *Omnia præsumuntur legitime facta, donec probetur in contrarium.* The court having exclusive and final jurisdiction, we have no right to presume that it abused its powers. The evidence, calculations, and opinion of the court as we have seen, are not before us. We cannot judicially know whether the court struck out divisions, or merely found frauds sufficient to change the result. We know only the decree, and that is clearly right. The whole argument upon the power to strike out polls is outside of the record before us.

And even if it were conceded that the prayer to strike out were a defect in itself, yet the decree cannot be affected by it. The presumption now is that if illegal the court disregarded it. This is supported by authority. Thus in Hagen vs Commonwealth, 11 Harris, 355, this court held, upon an indictment of eleven counts, where, after a motion to quash was refused, a general verdict of guilty was rendered on ten of the counts, and judgment arrested on two, that the judgment on the remaining eight would not be reversed, if any count be sufficient, and the first being found to be good. The same had been decided in Commonwealth vs McKisson, 8 S & R. 420, and in Hartman vs. Commonwealth, 5 Ban. 68, Burnside & Bell, 97, said on argument, "The law of Pennsylvania is settled that if one count be good, it is sufficient." So, also, as to several matters contained in the same count. For Cotteral vs. Cummins, 6 S. & R. 348, Justice Duncan said, "It is the law that where several matters are laid in the same count, part of which is not actionable, or not actionable in the form laid, if there are sufficient facts laid to support the action, it will be intended after verdict that damages were given only for such as are properly laid." The same is said in 1 Chitty on Pl., 632, and the reason given that the verdict will be sustained by the *intendment* and *presumption* that the judge duly directed the jury not to find damages in the defective allegations. The same intendment was made in Weighy vs. Webb, 78, and R. 310, the court remarking that it is not to be presumed the judge would direct or the jury would have given the verdict without sufficient evidence of the breach of contract. The defect was therefore caused by the verdict. There are many analogous cases. Stoever vs. Stoever, 9 S. & R., 454-5; Kerr vs. Sharp, 14 S. & R., 399; Turnpike Company vs. Rutter, 4 S. & R., 6; Sedorm vs. Shaffer, 5 W. & S., 529; Commonwealth vs. Hunt, 2 Harris, 510; Seetz & Co. vs. Buffman & Co., a Harris, 69. In this case the intendment should be even stronger, for the court being the exclusive judge of the *facts* as well as the law, we cannot suppose the decree was rendered on incompetent or insufficient evidence. "The courts make every reasonable presumption to rid themselves of objections which do not touch the merits." Per Rogers T. Seitz & Co. vs. Buffum & Co., *supra*.

Thus it is evident from this array of authority no presumption can be shown from the decree that the court struck out divisions because such a prayer is contained in the petition. The decree itself furnishes no such evidence, while the prayer, if illegal, we must now presume, was disregarded upon the legal intendment the cases all say should be made. The argument, therefore, founded on the decree following the *allegata et probata*, is a *non sequitur* and illogical. The *probata* are not before us, while the *allegata* are not presumed to be followed contrary to law. But in addition to this general principle we have an authority in point. In Erving vs. Nilby, 7 Wright, 384, it was held that the proceedings could not be reversed because of contradictory averments in the specifications, but the proper course would have been to move the court below to strike out the contradictory part, and the *certiorari* was quashed. There was no motion in the present cases to strike out this prayer as illegal. The only motion was to quash. Upon the whole record in these cases we discover no error, and the several decrees are therefore affirmed.

DR. PAUL SCHOEPPE.

Decision of His Case—The Judgment of Death Affirmed.

Supreme Court in Banc—Judges Read, Agnew, Sharswood, and Williams.

This morning Justice Read read the opinion of the Court in the case of Schoeppe vs. The Commonwealth, error to the Oyer and Terminer of Carlisle, this writ being the last resort of the prisoner for escape from the penalty of death for the crime of murder of which he was convicted. The opinion of the Court was based upon strictly technical grounds, and was to the effect that they could not consider questions of the prisoner's guilt or innocence, and had not been able to discover any error in the record of the Court below; therefore the judgment of the Oyer and Terminer of Carlisle was affirmed.

THE NEW YORK MONEY MARKET.

From the N. Y. Herald.

"The important event of the week in financial circles was the announcement of the decision of the United States Supreme Court on the question of contracts made before and falling due after the passage of the Legal-tender act, the opinion of the majority of the Court declaring all debts so created to be payable in coin. The effect was, however, less perceptible than might have been anticipated, and after a few days' discussion the topic—like all Wall street sensations—was soon dismissed from general consideration. The question is one which has lost much of its interest, for the reason that during the eight years of suspension old contracts have been cancelled or merged into new ones which will be settled without legal recourse to the decision just rendered. Of course there are numerous minor debts and money contracts which are not obviously adjusted by the general tenor of the ruling of the court, but these, if litigated, will only have to go the rounds of lengthy judicial processes, and meantime the cause of action will have disappeared in the return of specie payments.

"Wall street has become quite bearish in its views of the immediate course of the gold market. When the opinion of the Supreme Court was given it was supposed that the greater demand which would thus arise for the precious metal would influence higher prices, but whatever the eventual effect of this decision, gold has been weak and heavy. It is difficult to say why the premium did not respond to this impression, but the firmness which was temporarily given the market seemed to be taken advantage of to sell large amounts which had been held by speculative hands in expectation of a rise which did not come. The 'bulls' in gold have had a long and tedious waiting of it, and, tired of the delay and the dullness of the market, have at last unloaded to the best advantage. The outside influences are not such as to favor an advance, and as it is known that the Government is steadily opposed to a rise, a 'bull' movement does not enlist much favor among the speculators. Indeed, the chief operators abandoned the Gold Room a month ago, and have not since seen inducements to return. The specie shipments are nominal, and although the export since January 1 has been nearly four millions, the greater portion of it has comprised coin *in transitu* between Mexico, Cuba, and South America and Europe, and gold and silver bars. With the present price of exchange there is no profit in shipping American coin, and the lower range of exchange is due to the large shipments of cotton and produce. Gold is therefore gravitating to lower prices, and unless the speculators step in to sell it short, and create an unnatural demand for it, the immediate future is likely to witness one step nearer the consummation of specie payments.

"The money market during the week was steady at four to six per cent., with five and six as the prevailing rates on call loans with pledge of Government bonds and miscellaneous stock collaterals. Whatever tendency the market manifested to still lower figures was counterbalanced by the increased volume of business in stocks and the consequent absorption of more of the idle capital with which the banks are supplied at this season. An influence is now at work which may effect some fluctuations in the rate on call in the immediate future. It seems that our city banks are endeavoring to remedy the evil of the overplus of national bank notes by making them up in packages and sending them home for redemption, thereby extemporizing a process of redemption which should have Congressional regulation. How far these exchanges will affect the money market remains to be seen. Remotely they will benefit our local banks, inasmuch as they will in a few weeks strongly fortify the reserve of greenbacks, and thus afford more scope for the expansion of loans and the increase of deposits. Commercial paper was in good demand at six to eight per cent. for prime double name acceptances, and at seven to eight for the best single names. Foreign exchange was steady in the face of a lighter supply of commercial bills, and only moderately active at 108⅞@109 for prime bankers' sixty day sterling, and 109⅛@109⅜ for sight sterling. The absence of commercial bills is attributable to the fact the exports of the Southern ports are constantly growing in magnitude, and hence the drawing from Southern cities on Europe direct."

SECOND EDITION

LATEST BY TELEGRAPH.

Post Office Robbery—Decision of an Important Insurance Case—To-day's Cable Quotations.

Financial and Commercial

Etc., Etc., Etc., Etc., Etc.

FROM NEW ENGLAND.

Insurance Case Decided.

BIDDEFORD, Me., Feb. 14.—An interesting insurance case has just been decided by the law courts of Maine. The plaintiffs were H. W. Lawsey & Co., of Portland, whose store was insured by the Phœnix Insurance Company, of New York, for $3000. The store was burned at the great fire of July 4, 1866. The company refused payment on the ground that the store was situated upon leased land, and the agent of the company omitted to state the fact in the policy. The court decided in favor of the plaintiffs, awarding the full amount of the insurance with interest from 1866 and costs.

Fatal Accident.

BOSTON, Feb. 14.—Last evening a man named James McCarren, while drawing a charge from a loaded revolver, accidentally discharged it, the contents entering the body of his son William, a lad about four years of age, killing him almost instantly.

FROM THE STATE.

Robbery of a Post Office.

WILLIAMSPORT, Feb. 14.—The Jersey Shore Post Office, sixteen miles from here, was robbed last night. About forty-five dollars in cash was taken. The stamps and letters were not molested. There is no trace of the thieves.

FROM EUROPE.

This Morning's Quotations.

By the Anglo-American Cable.

LONDON, Feb. 14—11 A. M.—Consols for money 92⅝, and for account, 92⅞. American securities opened quiet; U. S. Five-twenties of 1862, 87⅛; of 1865, old, 87; of 1867, 86⅛; 10-40s, 83. American stocks quiet; Erie Railroad, 20⅞; Illinois Central, 111; Great Western, 28⅛.

LIVERPOOL, Feb. 14—11 A. M.—The Cotton market opened steady. Middling uplands, 11½d.; middling Orleans, 11⅝d. The sales to-day are estimated at 10,000 bales. The stock taken for export and speculation on Saturday should have been reported at 3000 bales.

Breadstuffs are firmer.

LONDON, Feb. 14.—Refined Petroleum, 1s. 10d.

This Afternoon's Quotations.

LONDON, Feb. 14—2 P. M.—U. S. 10-40s, 82⅞; Illinois Central, 110.

PARIS, Feb. 14.—The Bourse opened dull. Rentes, 73f. 20c.

ANTWERP, Feb. 14.—Petroleum opened firm at 59⅝f.

MEXICO.

The Revolution in San Luis Potosi—A Fine Country to Move Away From.

From a private letter received in this city from Mexico, we are permitted to make the following interesting extracts relative to the very latest Mexican revolution. The writer has been forty-five years in that "poor country." It seems to us one would have been satisfied with a somewhat shorter residence.

In my last I mentioned that a revolution had broken out in the State of San Luis. In order to post you up in affairs I will go back to the beginning. In December the elections were held and the votes computed; on the 16th, Sortenos Escaudon was declared to be elected Governor, and General Francisco Aquirre, of Saltillo, stood next; the Congress closed the session, and an hour afterwards all the members, and the Governor, Barragan, were in prison. Man'l Orellana took an active part in this. Aquirre declared himself Governor, and when orders came from Mexico to put things right he pronounced against the General Government. Our chap here was riding the fence for about three weeks, pretending to raise troops in favor of the Federal Government, and when a small conducta of $72,000 drifted down from the fair of San Juan he seized it. An order came at once from Mexico to return the money, and he threw off his mask and made just the silliest pronunciamento that I have seen in the forty-five years I have been in this poor country. He declares Ortega President, drawing the sponge across the last five years; that Ortega is President because he was President of the Supreme Corte when Juarez' term expired in '65.

He declares a general amnesty, excepting those who signed Maximilian's bloody decree of 3d October, the generals who served the empire, and D. Benito Juarez and his ministers; he raised by impressment seven hundred men, and sent them under a Sonora General, Toledo, to occupy Aquascalientas, where they refused to pronounce. The Governor of Aquascalientas retired, and the place is in possession of the pronunciados, as is also Lajos, occupied by a battalion of Federal troops, who left Guadalajara to join the pronunciados. As our communications are cut off, except with San Luis and Aquascalientos, we know nothing of what is going on outside. Corona was in Durango with eleven hundred men, said to be about moving this way; if he comes these chaps will skedaddle.

The mint was cleaned out yesterday of everything it contained—S. Martin, cash, and all—by the archthief. It is said that Aura is coming as Governor and commandante militaire, and that the General Congress has passed some very stringent laws on the subject of the revolution. The amount robbed from the mint is about $100,000.

I am told to-day that the infernal villain has given out over sixty patents for guerrillas.

D. Joaquin Ortega left on Saturday for Saltillo, with carriages, money, habio, etc., to bring on his brother, I suppose to take possession of the presidency. The capital of the republic is to be Aquascalientas.

FINANCE AND COMMERCE.

OFFICE OF THE EVENING TELEGRAPH, Monday, Feb. 14, 1870.

The week opens with only a moderate demand for loans. The supply of currency in this market is not excessive, and the rates current during the past week are maintained. Trade, in nearly every branch, is dull and unsatisfactory for the middle of February, and this condition will necessarily reflect itself on the Money market until a revival ensues. Lenders continue to act liberally towards applicants, and there was perhaps never a time when money was more accessible to all possessed of credit.

We quote call loans at 5 per cent. on Governments and 6 per cent. on mixed collaterals. Good business paper is in great demand, and is readily taken upon the street at regular bank rates.

Gold opened dull and weak; the range of fluctuations up to noon is 119⅝@119⅛.

Government securities are quiet, and prices are off about ⅛ compared with Saturday's closing quotations.

The Stock market continues exceedingly active, and prices have again advanced.

City securities were steady at 99 for the old, and 100⅛ for the new bonds. Sales of Lehigh Gold Loan at 92½, in $500's.

Reading Railroad was the chief attraction. Over 6000 shares changed hands this morning at 49¼@49·38⅜, b. o. Pennsylvania Railroad was steady at 57½; sales of Lehigh Valley Railroad at 54½, and Little Schuylkill Railroad at 41¼; 75 was bid for Norristown; 29 for Philadelphia and Erie, and 35¾, b. o., for Catawissa preferred.

Canal shares were steady, with 17 bid for Schuylkill preferred; 33¼ for Lehigh, and 64 for Morris preferred. The balance of the list was firm but not active. Sales of Mechanics' Bank at 31⅛.

PHILADELPHIA STOCK EXCHANGE SALES.

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

FIRST BOARD.

$3300 City 6s, New.	100¾	800 sh Reading...ls.	49¼
$200 City 6s, Old..	99	200 do..ls.b30.	49⅜
$1000 Leh V R n bds reg.s5wn.	96	100 do.....b10.	49⅜
$500 N Penna 6s...	90¼	100 do.........	49⅜
$300 Leh R Loan...	89	100 do.....b30.	49⅜
$1000 Leh 6s, 84.....	85	300 do..ls.b10.	49⅜
$500 Leh gold L....	92½	200 do........c.	49⅜
$260 Morris Cl B L.	78	500 do..ls.b30.	49⅜
8 sh Mech Bank..	31⅛	100 do.....b5&i.	49⅜
74 sh Cam & A R.	114¾	500 do.ls.s30.	49 1-16
150 sh Leh Val...ls.	54⅛	500 do.......b5.	49·31
100 do......2d.	54⅛	500 do..........	49·31
95 do.......ls.	54⅛	200 do.......c.	49·31
100 sh Penna..s60wn	57½	100 do.....b30	49·31
82 do........ls.	57⅛	200 do..rg&in.	49·31
22 sh Lit Sch R....	41¼	200 do.s60wn.ls.	48·94
14 sh Minehill R...	51¼	500 do.....b60.	49⅛
3 sh O C & A R R.	40½	100 do.....b60.	49·31
200 Reading...ls.s5.	49⅜	100 do..........	49⅜
200 do......ls.	49⅛	100 do.....b60.	49·31
200 do.......c.	49⅛	100 do..........	49⅜
		100 do ...s10.	49 3-16

JAY COOKE & Co. quote Government securities as follows:—U. S. 6s of 1881, 117⅛@118; 5-20s of 1862, 114⅜@114¾; do., 1864, 113⅞@114⅛; do., 1865 113⅝@114⅛; do., July. 1865, 112⅞@113⅛; do. do., 1867, 113⅜@113⅛; do., 1868, 113⅛@113⅛; 10-40s, 112@112⅛; Cur. 6s, 111⅛@111⅛. Gold, 119⅝.

MESSRS. WILLIAM PAINTER & Co., No. 36 S. Third street, report the following quotations:—U. S. 6s of 1881, 117⅛@117⅝; 5-20s of 1862, 114⅜@114¾; do. 1864, 113⅝@114; do. 1865, 113⅞@114; do., July, 1865, 112⅞@113; do., July, 1867, 113⅜@113⅛; do. July, 1868, 113⅛@113⅛; 5s, 10-40, 111⅞@112; U. S. Pacific RR. Cur. 6s, 111⅛@111⅛. Gold, 119⅛@119⅝.

MESSRS. DE HAVEN & BROTHER, No. 40 S. Third Street, Philadelphia, report the following quotations:—U. S. 6s of 1881, 117⅛@118; do., 1862, 114⅜@114¾; do. 1864, 113⅞@114⅛; do. 1865, 113⅞@114⅛; do. 1865, new, 112⅞@113⅛; do. 1867, do. 113⅛@113⅛; do. 1868, do., 113⅛@113⅛; 10-40s, 112@112⅛; U. S. 30 Year 6 per cent. Currency, 111⅛@111⅛; Due Comp. Int. Notes, 19; Gold, 119⅝@119⅝; Silver, 116@118. Union Pacific R. R. 1st Mort. Bonds, $865@875; Central Pacific R. R. 1st Mort. Bonds, $960@970; Union Pacific Land Grant Bonds, $695@710.

NARR & LADNER, Bankers, report this morning's Gold quotations as follows:—

10·00 A. M.	119⅝	11·20 A. M.	119⅝
10·02 "	119⅝	11·45 "	119⅝
10·10 "	119⅝	11·46 "	119⅝
10·19 "	119⅝		

Stock Quotations by Telegraph—1 P. M.

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

N. Y. Cent. & Hud R		Pacific Mail Steam...	41¾
Con. Stock Scrip...	97⅛	Western Union Tele	35
do. scrip......	96½	Toledo & Wabash R.	46
N. Y. & Erie Rail..	25¼	Mil. & St. Paul R com	74½
Ph. and Rea. R......	98⅛	Mil. & St. Paul pref..	88⅜
Mich. South. & Ni.R..	88⅜	Adams Express......	63¼
Cle. and Pitt. R......	100	Wells, Fargo & Co....	20
Chi. and N. W. com..	73⅛	United States.......	50⅛
Chi. and N. W. pref..	90½	Tennessee 6s, new..	53⅜
Chi. and R. I. R......	121⅞	Gold............	119⅜
Pitts. F. W. & Chi. R.	91¾	Market steady.	

Philadelphia Trade Report.

MONDAY, Feb. 14.—Seeds—Cloverseed is quiet, with sales of 100 bushels fair and prime at $8@8·12½ per 64 lbs. Timothy is nominal at $4·50@4·75. Flaxseed sells in a small way to the crushers at $2·20@2·25.

The Flour market presents no new feature, the demand being limited to the immediate wants of the home consumers, who purchased a few hundred bbls at $4·25@4·50 fo. superfine; $4·50@4·75 for extras; $5@5·75 for Iowa, Wisconsin, and Minnesota extra family; $5@5·50 for Pennsylvania do. do.; $5·25@6·25 for Indiana and Ohio do. do.; $6·50@7·50 for fancy brands, according to quality. Rye Flour may be quoted at $4·75.

There is not much activity in the Wheat market, but prices are steady. Sales of 1200 bushels Pennsylvania red at $1·24@1·26. Rye may be quoted at 98c. per bushel for Pennsylvania, and Western. Corn is scarce, and in demand at full prices. Sales of 5000 bushels new yellow at 89@91c. in the cars and from stores, and 93@93c. afloat. Oats are unchanged. Sales of 2000 bushels Pennsylvania and Western at 53@55c. Nothing doing in Barley or Malt.

Whisky is steady at 97@98c. for wood and iron-bound Western.

Philadelphia Cattle Market.

MONDAY, Feb. 14.—The market for Beef Cattle opened very firm to-day, and continued so to the close, with a slight advance on last week's quotations. We quote choice at 9½@10½c.; prime at 8¾@9¼c.; fair to good, 7¾@8½c., and common at 5¾@7c. ₩ lb gross, as in quality. Receipts, 1762 head.

Head.
54 Owen Smith, Western, 8@10.
120 A. Christy & Bro., Western, 8@10.
48 Dennis Smith, W. Penna., 7@9½.
30 Daengler & McCleese, Western, 6½@8¾.
93 P. McFillen, Western, 8@9.
50 Ph. Hathaway, Lancaster co., 8¼@9½.
43 James S. Kirk, Chester co., 7¼@9¼.
40 B. F. McFillen, Western, 8@10½.
100 James McFillen, Western, 7@9¼.
90 E. S. McFillen, Western, 9@9½.
92 Ullman & Bachman, Ohio, 8@9½.
105 Martin Fuller & Co., Western, 8@10¼.
100 Mooney & Miller, Western, 8@11¼.
30 Thomas Mooney & Bro., Western, 7@9.
60 H. Chain, Western, 7@8¼.
60 John Smith & Bro., Western, 8¼@10.
58 J. & L. Frank, Virginia, 7¼@8¼.
85 Gus. Schamberg & Co., Virginia, 7@9¼.
85 Hope & Co., Western, 6¼@9¼.
55 H. Frank, Western, 7@8¼.
45 Elkon & Co., Western, 7@8¼.
40 J. Clemson, Lancaster co., 7@9.
13 D. Branson, Chester county, 7½@9.
30 S. Frank, Lancaster co., 7@8.
31 Chandler & Alexander, Chester county, 9@15.
18 L. Horne, Delaware co., 5¾@6¼.
23 S. Blumenthal, Virginia, 6½@7.
100 G. Ellinger, Virginia, 7@10.
25 John McArdle, Virginia, 7½@9.
16 Jesse Miller, Chester county, 7@10.

Cows and Calves were in limited request, with sales of 125 head at $50@75. Springers were quoted at $45@60.

Sheep—The market was firm at last week's quotations. Sales of 10,500 head at the Park Yard at 5½@8½ per pound, the latter figure for extra. At the Avenue Drove Yard 5000 head were disposed of at 5@8c. per pound.

Hogs were dull, with a downward tendency. Sales of 2623 head at the Union Drove Yard at $11·50@12 for slop-fed and $13@13·75 per 100 pounds for cord-fed.

LATEST SHIPPING INTELLIGENCE.

For additional Marine News see Inside Pages.

(*By Telegraph.*)

NEW YORK, Feb. 14.—Arrived, steamship Manhattan, from Liverpool.

Also arrived, steamship Helvetia, from Liverpool.

PORT OF PHILADELPHIA........FEBRUARY 14

STATE OF THERMOMETER AT THE EVENING TELEGRAPH OFFICE.

7 A. M........33 | 11 A. M.......47 | 2 P. M.........54

CLEARED THIS MORNING.

Bark Marianna I., De Santos, Lisbon, Jose de Bessa Guimaraes.
Schr Wm. Wilson, Bacon, Salem, Sinnickson & Co.
Schr Mary Coyne, Facemire, Bridgeport, do.
Schr Bucephalus, Congor, Providence, do.
Schr Wm. Wallace, Scull, New York, do.
Schr A. N. Aldridge, Fisher, Fall River, do.
Schr S. L. Simmons, Janvier, Weymouth, do.

ARRIVED THIS MORNING.

Steamship Fanita, Freeman, 24 hours from New York, with mdse. to John F. Ohl.

Schr Franklin A., Millonsen, 7 days from Newfoundland, with fish to J. A. Hopkins & Co.

Schr S. Warren, Morris, 14 days from Wilmington, N. C., with lumber to D. Trump, Son & Co.

Schr A. Haines, Smith, 8 days from Bridgeport, with marble to Friedley & Co.

Schr Sarah Bruen, Fisher, 7 days from Wilmington, N. C., with shingles to Bolton & Co.

Schr Elwood Doron, Jarvis, from Providence.

MEMORANDA.

Steamship Prometheus, Gray, for Philadelphia, sailed from Charleston yesterday.

Steamer Centipede, Tilton, hence, at New York yesterday.

Bark Rachel, Norton, sailed from Matanzas 30th ult., for a port north of Hatteras.

Schr Hattie Ross, Ulrick, hence, at Demerara 17th ult., and remained 22d to return.

Schrs Adelia, Trafton, and R. A. Ford, Carpenter, hence for St. John, N. B., at Holmes' Hole A. M. 11th instant.

Schr Mary Haley, Haley, for Philadelphia, cleared at New York 12th inst.