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American Volunteer.

BY G. SANDERSON & E. CORNMAN.]

"OUR COUNTRY—RIGHT OR WRONG."

[AT TWO DOLLARS PER ANNUM.]

Whole No. 1311.

Carlisle, Pa. Thursday September 12, 1839.

New Series—Vol. 4, No. 13.

AGENTS.

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GOLDEN BALL



HOTEL,

WEST HIGH STREET CARLISLE. The subscriber respectfully informs his friends and the public generally that he has taken that well known tavern stand at the West end of High street in Carlisle, formerly kept by Mr. Henry Rhoads, and that he is now prepared to accommodate Drivers, Waggoners, Travellers, and all others who may favor him with a call, in the very best manner.

His Table will be constantly furnished with the best the country can produce. His Bar is supplied with the choicest liquors, and his Stable which is large and convenient, will be in charge of a careful and attentive ostler.

He flatters himself that, from his experience as an Innkeeper, he will be able to render general satisfaction. GEORGE SHAFFER, Carlisle, May 2, 1839.

HARDWARE & GROCERY STORE.

The subscriber respectfully informs his friends and the public in general that he has just received from the city of Baltimore, an extensive assortment of merchandise suitable to the present and approaching season, such as

Hardware,

consisting of Case Knives and Forks, Spoons, Locks, Bolts, Hinges and Screws, Pen and Pocket Knives, Razors, Tacks and Spikes, Spades & Shovels, Hay and Dung Forks, scythe stones, Axes, &c. &c. Also, superior American and English Soap.

He has also on hand an excellent assortment of Patent Family Medicines, such as pills, oils and ointments. Also, all kinds of Essences. He has also on hand Horse Medicines, such as the Oil of Spike, Oil of Stone and Horse Powders, &c. &c. &c.

He has also an extensive and superior assortment of China, Glass & Queensware, twenty per cent cheaper than can be had elsewhere.

GROCERIES.

Rice, St. Domingo, and Java Coffee. New Orleans and Porter Sugar, Orleans and Sugar House Molasses. Young Hyeon, Imperial and Black Teas, Chocolate, Rice, Barley, Soda and Water Crackers. Spices of all kinds. Nuts and Confectionaries. Prunes, Raisins. Ground Apples and Fine Salt. Tea, Soap and Candles Wholesale and retail, at city prices.

Liquors.

White, Brandy, New England Rum, Harvest Whiskey, Wines and Cider Vinegar, &c.

TOBACCO.

Cavendish, Roll and Plug. Spanish and Half Spanish Cigars. Mucubau, Rappee and Scotch Snuff.

SHOES & BOOTS.

Riding, Gie and Jockey Whips and Lashes. Brushes. Brooms. Painted Buckets, &c.

Carpet Chain of all colors.

The above articles being carefully selected, are offered to customers at the lowest prices. JOHN GRAY, Agent, Carlisle, July 4, 1839.

DR. J. C. ZEEB,

SURGEON DENTIST,

RESPECTFULLY informs the Ladies and gentlemen of Carlisle and its vicinity that he sets Artificial Teeth in the most approved manner. He also scales, plugs and separates teeth to arrest decay. Dr. Z. prepares a tooth powder, which whitens the teeth, without injuring the enamel, colors the gums a fine red and refreshes the mouth. The tooth ache will be cured, in most cases, without extraction; and an odontalgic wash is prepared for healing sore gums and fester teeth.

Ladies and gentlemen are requested to call and examine his collection of Porcelain or Incomparable teeth, which will never decay or change color, and are free from all unpleasant odour, durable and well adapted for chewing, which will be inserted in the best manner and at fair prices. All persons wishing Dr. Z. to call at their dwellings will please to leave a line at his residence, No. 7 Harper's Row, where he will punctually attend to every call in the line of his profession. From a long and successful practice, he hopes to give general satisfaction. Carlisle, August 1, 1839.

NOTICE

I hereby give notice that the testamentary of the last will and testament of John Snyder, late of Allen township, Cumberland county, deceased, was this day issued by the Register in and for said county, to the subscriber, the executor named in the said will, who resides in Monroeville township in the said county. All persons having claims or demands against the estate of said decedent, are hereby requested to make known the same without delay, and those indebted to the said estate to make payment to JOHN HOUSER, Executor. August 3, 1839.

NEW DRUG & VARIETY STORE.

Stevenson & Dinkle, HAVE just received at their store, corner of High and Pitt streets, opposite Col. Ferree's hotel, an assortment of

DRUGS.

Medicines, Paints, Dye Stuffs & Varnishes. Their great care and is warranted to be entirely fresh and of the very best quality. The store will be under the immediate superintendance of Mr. Dinkle, who has acquired a thorough knowledge of the duties of an apothecary under the direction of Mr. Samuel Elliott of this place. Carlisle, August 15, 1839.

A CARD.

DR. WM. S. ROLAND, Office North Hanover Street, at the Drug Store, opposite Geo. W. Sheaffer's Store, Carlisle, August 15, 1839.

PUBLIC SALE.

WILL be sold at public sale on Saturday the 14th of September next, in the borough of Mechanicsburg, Cumberland county, all the following property, to wit:

One Lot of Ground.

Lot No. 1, being part of lot No. 5, fronting on the south side of Main street, thirty nine feet wide and one hundred and fifty five and a half feet deep to a contemplated alley; whereon is erected a two story

BRICK HOUSE,

twenty four feet in front and thirty feet back, with a good cellar underneath, and would be suitable for a store house—also a number of choice apple trees on said lot.

Another Lot of Ground.

Lot No. 2, being parts of lots No. 5 and 6, fronting on the south side of Main street and adjoining lot No. 1 on the west, forty three feet wide and one hundred and fifty five and a half feet deep to said contemplated alley, whereon also is erected a two story BRICK HOUSE, twenty six feet in front and thirty feet back, with a good cellar underneath, and a number of choice fruit trees on said lot.

Also, another Lot of Ground.

Lot No. 3, being part of lot No. 6, fronting on the south side of Main street and adjoining lot No. 2 on the west, fifty feet wide and one hundred and fifty five and a half feet deep to the aforesaid alley—the improvements are a Garden with an elegant grape vine and a good number of first rate fruit trees on said lot.

Also, another Lot of Ground.

Lot No. 4, being part of lot No. 5, fronting on the north side of Locust street, forty four feet wide and one hundred and thirty eight feet deep to the above mentioned alley, whereon is erected a frame weatherboarded Stable and a number of choice apple trees on said lot.

Also, two other Lots of Ground.

Lots No. 5 and 6, on the west of No. 4, fronting on the north side of Locust street, each forty four feet wide and one hundred and thirty eight feet deep to the aforesaid alley, being parts of lots No. 9 and 10, with a number of choice apple trees on said lots.

Also, two other Lots of Ground.

Lots No. 5 and 6, as designated in the town plat by Brentzer and Lease, fronting on the south side of Main street, each forty three and a half feet wide and two hundred feet deep to Stouffer's alley, whereon is erected a two story Frame House, weatherboarded, about eighteen feet wide and about twenty six feet back, with a cellar underneath, and also a two story log House, weatherboarded, and a cellar under it, with a Kitchen attached thereto, also a frame shop weatherboarded and plastered inside, suitable for a silver smith shop, and likewise a good number of choice fruit trees on said lots. The above two lots will be sold together or divided into sundry lots to suit purchasers.

Also, another Lot of Ground.

Lot No. 18, designated by Brentzer and Lease, as aforesaid, fronting on the south side of Locust street, forty nine feet wide and one hundred and ninety three feet deep along Arch, alley to St. John's alley, whereon is erected a two story

BRICK HOUSE,

about twenty four feet in front and eighteen feet deep, and has an elegant bake oven and a cement cistern on it—also, a first rate grape vine and sundry young thriving fruit trees.

Also, another Lot of Ground.

Lot No. 19, designated as aforesaid, fronting on the south side of Locust street, forty nine feet wide and one hundred and ninety three feet deep to St. John's alley, with a good number of first rate apple trees on said lots. Sale to commence at 10 o'clock, A. M. of said day when due attendance will be given and terms of sale made known by

JOHN RUPP,

Assignee of Jacob Styler, 6t. August 26, 1839.

A VALUABLE PLANTATION FOR SALE.

IN pursuance of the directions of the last will of Jacob Balmer, late of Cumberland county, Pennsylvania, deceased, will be exposed to public sale on the premises, on Tuesday the 13th day of October next, at 1 o'clock, P. M. the following described real estate of said decedent, to wit:

139 ACRES AND 100 PERCHES, neat measure, of first rate limestone land, situated in Allen township, Cumberland county and state of Pennsylvania, bounded by lands of Jacob Merket, Daniel Shelly, John Shelly, George Rupp, and the heirs of John Rupp. The improvements are a NEW BANK BARN, 80 feet by 40, the lower story stone and the upper frame.

A TWO STORY LOG DWELLING HOUSE,

Wagon Shed, Spring House, and other out houses, a well of never failing good water near the house with a pump, an orchard with the choicest fruit trees, a about 100 acres are clear and in a good state of cultivation, the remainder is covered with thriving timber. The state road leading from Harrisburg to Gettysburg runs through said land close to the house. This property is situated in the rich Cumberland Valley, about 5 miles from Harrisburg and 12 from Carlisle.

The terms will be made known on the day of sale by

GEORGE HOUCK,

Executor of Jacob Balmer, dec'd. N. B.—On the same day, at 5 o'clock, P. M. will be sold a lot in Shiremanstown, late the property of said decedent, bounded by lands of Daniel Grubill and Christian Balmer, containing fifty feet in front—being a town lot. August 26, 1839.

Silk, Scotch Gingham & Cotton

Umbrellas and a large assortment of plain and figured Parasols for sale by

ARNOLD & CO.

At their store in Mechanicsburg, have just received a large assortment of summer goods, consisting of Coats, Dresses, Millinery and Hempian Goods, Nankeens, &c. &c. FOR SALE, a lot of Dearborn Type of the best quality. Hamilton & Grier, August 1, 1839.

For the Volunteer.

FAREWELL.

My heart is troubled I confess— It doth with anguish dwell, To leave the friend I now possess, And bid with her farewell. My heart is fill'd with serious grief, Where shall I go to dwell? There's none but thee can give relief With whom I bid farewell. The days of absence now draw nigh, In vain do I repeat— It brings from me the throbbing sigh, To bid my love farewell. How shall I the pangs endure, How long in absence dwell— When shall I be with thee sweet, No more to bid Farewell.

Mechanicsburg, Aug. 30. ROMULOUS.

TRIALS AT HARRISBURG.

Opinion of the Court, delivered by Judge Porter, on quashing the Indictment proferred by the mis-called Grand Jury.

Independent of the objections to the selection and return of the jurors, which will be considered by themselves, there have been several objections urged against the indictment itself, and the manner in which it has found its way into this court.

As it regards the absence of the attorney general's name; if it ought to be there, and the bill has been properly introduced to the grand jury and found by them, the court would direct his name to be inserted, as a mere matter of form.

As it regards the objection that the indictment contains a charge of a conspiracy to commit a riot as well as the charge of actually committing the riot, and that these offences cannot be joined in one indictment, the court do not think that this is a valid objection. It is true the doctrine contended for, has the highly respectable authority of chief justice Parsons, in the case of the Commonwealth vs Kingsbury, 5 Mass 106 to sustain it. But according to the practice in the criminal courts of Pennsylvania, such is not held to be the law here. With us, as in England, the court think it will be found that this doctrine is confined to cases of felonies: such too was the decision of the supreme court of New York in the case of the People vs. Mather, 4 Wendell 265, in which an indictment containing a count for a misdemeanor as well as a count for a conspiracy to commit it, was held good.

The remaining objection growing out of the manner in which the indictment found its way into court remains to be considered. By an act of assembly passed on the 28th day of March, 1805, it is provided, that "in all cases where one or more persons have committed an indictable offence the names of all concerned (if a prosecution shall be commenced) shall be contained in one bill of indictment; for which not more costs shall be allowed than if the name of one person only were contained therein." This act is only making imperative, a principle, which the court, in exercising a sound legal discretion, and having a due regard to the rights of individuals, would have enforced without it. In civil cases, where separate suits are brought on a number of bonds between the same parties, the court order the actions to be consolidated, and in every instance it is their duty to prevent the abuse of the process of the court, as well as its proceedings. But there is no need of vindicating statutory provisions where the express enactments of the legislature are found. They are obligatory on the court and must be observed.—The only inquiry here is, whether the case comes within the statute. Let us examine the facts. In December 1838, commencing about the 6th of that month and extending for several days, on the complaint or affidavit of Charles B. Penrose, Thos. H. Burrows, Thaddeus Stevens, Geo. M. Phillips, Geo. Bergner, John P. Rutherford, George V. Hall, and sundry other witnesses, made before or produced to Calvin Blythe, Esq., then president judge of this judicial district, a number of persons were bound over for their appearance at January sessions andoyer & terminator; 1839, to answer to charges relative to the disturbances on the 4th of December last, at which sessions a bill of indictment was preferred to the grand inquest, against Charles Pray, John J. McCahen, John W. Ryan, John Savage, Joseph Hall, Aaron F. Cox, George W. Barton, John Snyder, Martin Dunlap, James Black, George Sanderson and E. J. Penniman which was found a true bill as to all the defendants, except George Sanderson and E. J. Penniman, and as to them not true. Of the eleven persons thus indicted, seven only, to wit: George W. Barton, John Savage, John J. McCahen, Joseph Hall, Charles Pray, John W. Ryan, and Aaron F. Cox were bound over with surety for their appearance at the next April Court. The indictment in question charged the defendants therein named jointly, together with others unknown, with having conspired to commit and actually committing, a riot, &c. in the Senate Chamber on the 4th of December last.

At the same sessions the witnesses for the Commonwealth to the number of twenty were recognized for their appearance at April sessions, 1839. At April sessions a motion to quash the indictment was successfully made on the ground of defect in the process or venue for summoning the jury for January sessions, and the seven defendants who had been bound over to April sessions were on the 19th of April, 1839, again recognized with security for their appearance at the present sessions; and sixteen witnesses for the Commonwealth were also bound over. At the present sessions, on the 21st day of the present month, Mr. J. A. Fisher, on behalf of the prosecutors, asked the court to direct the attorney general to affix his name to an indictment for conspiracy and riot &c. in the Senate Chamber, on the 4th of December last, which he proposed to send

up against Charles Pray, John J. McCahen and Aaron F. Cox, omitting the defendants then and now held under recognizance to answer at this Court for participating in the same offence. The Court distinctly asked the counsel for the prosecution, if it was intended also to indict or prosecute the other persons charged with having been concerned in the same transactions. To this at first no answer was given. On the question being repeated, it was said they did, as soon as they saw fit and obtained evidence to identify them. But no evidence was offered to the Court to show that such evidence was not to be had at this time.—

The attorney general stated, that from his own knowledge of their testimony, the witnesses in attendance would identify other persons who were said to be implicated, besides those named, which statement was not denied by the counsel for the prosecutors.—The Court, after hearing the argument of the counsel decided, that the prosecutors must include in one bill of indictment all the persons under recognizance to answer, which it was their intention to prosecute, and that they would not direct the attorney general to sign the bill, nor would they permit it to be sent to the grand jury against the three, unless the persons conducting the prosecution would consent to the entry of a nolle prosequi against those not intended to be named in the bill. They declined to do. The persons composing the grand jury were in Court and heard this decision of the Court. They heard the Court say, that the attorney general was in the strict line of duty and that this conduct received the approbation of the Court. They then retired to their room to attend to the remaining business which was legally before them, and there *somehow*, but in what manner it is unexplained to the Court, except that it was not by the consent of the attorney general or the Court, this very bill of indictment which the Court had decided could not according to law be legally sent up to them, did get before them, and *Nor* Middlewarth, Charles B. Penrose, Thos. H. Burrows, Thaddeus Stevens, George M. Phillips, Geo. Bergner, Daniel Eckles, M. Ritter, H. H. Etter, John Strohm, George J. Gross, Geo. V. Hall, Abraham Miller and John Harper, as appears by their return, were examined as witnesses by them, and they then returned to the Court this same paper as a presentment or indictment, endorsing it "a true bill," having signed it by their foreman, Joseph Wallace, Esq. Subsequently they handed into Court a paper signed by all the eighteen grand jurors, called a presentment, relative to the conduct of Ovid F. Johnson, attorney general of the Commonwealth of Pennsylvania, which it is only material here to notice as stating "that the witnesses examined before them fully prove that the said Charles Pray, John J. McCahen and Aaron F. Cox, together with a great many other individuals to the number of one hundred and more did commit the crime and outrage charged upon them in that bill," and also stating, that they were in Court and heard what there transpired, when the Court approved of the course taken by the attorney general and refused to permit the bill of indictment, in the shape in which it had been brought up to go before them. And yet it has been urged that the Court has no judicial knowledge on the subject of these transactions.—We have on the records of the Court the following entry in relation to the matter:

"Commonwealth vs. Charles Pray, John J. McCahen and Aaron F. Cox. The Court directed the attorney general to sign a bill of indictment to be sent to the grand jury against the three defendants named, or to permit him on behalf of the persons prosecuting to use the attorney general's name in so sending the bill to the grand jury, alleging that the attorney general had refused to sign or send the bill to the grand jury. And the attorney general having stated his reasons for so refusing, that other persons implicated in the same transaction and who are now under recognizance to answer with the defendants named for the same offences with which they are charged, who are not named in the bill proposed to be sent. He declines signing or sending such bill to the grand jury unless the names of all whom it is intended to prosecute for the same offence are included. The Court deem the attorney general's reasons sufficient and refuse to direct the attorney general to sign the bill or permit it to be sent to the grand jury unless all the names are included or a nolle prosequi be entered as to those who are not named in the bill."

And we have, independent of all recollection on the subject, and the written opinion of the Court filed, this presentment of the grand jury themselves, setting forth the facts before stated.

The Court on the fullest reflection are satisfied that they were right in the decision which they made in regard to this matter; that the bill was improperly introduced before the grand jury, and as improperly acted upon by them. The Court has the power of controlling the course of their proceedings, and it is right they should have it. The errors of the Court can be revised and corrected, by a higher tribunal which would not be the case were the mode of conducting the business of the Court committed to a body like the grand jury, whose erroneous proceedings could not be corrected at all, if they were in which they sit and of which they are a constituent part, when in the line of their duty, have not the power to do it. On this ground then alone, independent of any other exceptions the Court is bound by every principle of law and justice; by every regard to the order and system necessary in conducting the business of the Court, as well by the positive provisions of an act of assembly which extends to and governs the case, to quash this indictment.

But there are other exceptions being made and urged, the Court are bound to notice and decide.

From the first settlement of Pennsylvania up to the 29th of March, 1805, the Sheriffs of the different counties selected the jurors as well for the 'grand inquest,' as for the trial of issues. It is true, that by the act of 1789, the Sheriff was required to take an oath to make his selections with impartiality, and it is equally true that in very many instances the oaths was disregarded and the jurors were selected by a system of favoritism that deserved scarcely a milder appellation than *packing*. So flagrant had this system become, in relation to the political opinions of jurors, and so constantly, in certain counties, were political prejudices brought into the jury box, that public confidence in the system then in operation was lost; for it was found that political prejudices and opinions with jurors were often paramount to their oaths, which required them to decide causes according to the evidence. The act of 20th March, 1805 (4th Smith's laws 237) was passed as an experiment, to test the possibility of remedying the evil, and was originally limited in its operation to three years, and thence to the sitting of the next general assembly. The provisions of this act are mainly in accordance with those of the act of 1854, now in force, so far as regards the mode of selecting and drawing jurors.

By this act of April 4, 1807, the assessors of the several townships, or districts, &c. were required to return the names of the white male citizens to the County Commissioners, who were to deposit the names of the persons so returned in the proper jury wheel, in proportion to the numbers requisite for each; whence they were to be drawn, as jurors should be required, and to make a new return triennially or oftener if the names were sooner exhausted.

By the act of 4th April, 1809, the above provisions of the act of 1807 are repealed, and the original act of 1805 is made perpetual, and with the remaining sections of the act of 1807, left in force, and certain supplements not affecting the general provisions of the law, continued in force until supplied by the act of 14th April, 1834, which prescribes an entire system, according to which all juries are to be selected by the sheriff and commissioners, and summoned and returned to their respective courts "and not otherwise." [Sec. LXXIX, Pardon 565.]

It follows then, if the jurors have been selected, summoned and returned, "otherwise" than is provided in that act, any party objecting thereto, can successfully challenge the array, or if he has not pleaded, can quash an indictment found by a grand jury so irregularly selected, summoned or returned. It also follows, that if either corrupt partiality or prejudice shall have operated upon the minds of the sheriff and commissioners in making the selection, or that, with a view to the operation of political feeling upon verdicts, in cases in which political feelings may be naturally supposed to operate, an undue preponderance has been given to any political party in the selection, then a challenge to the array will be sustained, or the indictment quashed, although all the forms of law have been observed in making the selection and return. Because it is well known, that it was to prevent these very things that the present mode of selecting jurors was adopted; instead of the former one, and courts are bound to give the proper effect to the intention of the legislature in passing statutes.

It appears to the court in the present case that the following irregularities, occurred in making the selection of jurors for the service of the year 1839.

I. The act of assembly requires that the sheriff and commissioners, under the oath, which it prescribes, shall every year select from the taxable inhabitants a sufficient number of sober, intelligent judicious persons to serve as jurors of the several courts of such counties for the ensuing year, and that sufficient number is to be so regulated, that at the end of the year there shall remain in each wheel as near as may be the number of names requisite to compose the panels of jurors for one court at least, and not any greater number. (See Sections LXXXV and LXXXIX.)

Here 950 was agreed upon as about the requisite number. It appears that 1300 or 1400 were selected by the sheriff and commissioners, and then some 400 of the jurors whose names were actually on the ballots folded up, were drawn out of the number selected, not from the wheel, but from heaps on a table into which the names in the respective townships were thrown, where part were removed and the balance only were deposited in the jury wheel. This is not the mode of selection which the act directs. The sheriff and commissioners are to pass judgment on each person in making the selection, and not submit it to lot; and especially to a lot so objectionably conducted.

II. The sheriff and commissioners are required to make the selection themselves, and to write or cause to be written the name, surname and addition or occupation and place of abode of each one of the persons selected, and to roll up or fold the slips, &c. and deposit them in the wheel, &c. It appears here, that the sheriff and commissioners were engaged from the 6th to the 8th of December, 1838, in making the selection. That when they had completed the selection they directed their clerk, Henry Peffer, to write out the names, additions and places of abode of the jurors on slips. That Mr. Peffer, with the assistance of Mr. Aaron Bombaugh; between that time and the 19th of the same month, wrote off the names on the slips, and that the sheriff and commissioners without examining them by comparison with the list selected, proceeded to fold up the slips; and having removed what they considered the superfluous names as before mentioned, deposited the remaining slips folded up, in the jury wheel.

There is some controversy in the evidence as to whether the sheriff and commissioners knew of the intended employment of Mr. Bombaugh to assist Mr. Peffer, which however, the court

think immaterial, as when the work was done, the fact of a part of it having been done by him, at Mr. Peffer's request, was made known to the sheriff and commissioners, and no objection was made to it. The irregularities here committed were these: That the names not being copied in the presence of the commissioners, but in a part at the dwellings of the persons employed, the sheriff and commissioners should have carefully compared them before they proceeded to roll up the slips, and deposit them in the wheels. It is true that both Mr. Peffer and Mr. Bombaugh say that they intended to copy them correctly and think that they did, but they say they did not compare them because they thought the sheriff and commissioners would.

III. The act of assembly requires, (Sec. LXXXIII) that every of the said wheels shall be provided with a sufficient lock and key. The wheel shall remain and be in the custody of the commissioners of the respective county, and the keys thereof in the custody of the sheriff of the same county. And again (sec. XC) as soon as the selection of jurors, and the depositing of their names in the wheel, as aforesaid shall be completed, the sheriff shall cause the same to be locked and secured by sealing wax, and thereon the said sheriff and commissioners shall impress distinctly their respective seals.

Here it appears that the lock used on the wheel is one of the small old fashioned iron spring saddlelock locks, which is easily opened, by almost any key. The sheriff having three keys which will open it, and which he received from his predecessor. When locked, sealing wax has been put on the joints of the lid, upon which the commissioners or their clerk have made two impressions with the office seal of the commissioner's office. This seal is kept in a drawer in the commissioner's office, to which, of course, the commissioners and their clerk have constant access. There has never been impressed upon the sealing wax used, the respective seals, to wit: the private seals of the sheriff and each of the commissioners. The act intended that the wheel should be so kept that the greatest possible security would be afforded against its being opened. As it was to remain in the custody of the commissioners, it requires that in addition to their own individual seals, it should have impressed upon it, the individual seal of the sheriff, so that if opened and the seals broken, without the sheriff's knowledge, the violence could be at once discovered. This security is not afforded when the seal used is only the office seal of the commissioners, the impression from which on wax, could at any time be supplied, without the sheriff's knowledge or consent. Hereafter the sheriff and commissioners should be more particular in complying with the directions of the act, and ought also to procure a more secure lock.

IV. Exception is also taken to the interference of Henry Peffer the clerk, in the selection of the jurors, by adding names to the number selected by the sheriff and commissioners. There is a discrepancy in the evidence, as to the time, when the dispute occurred about selecting Mr. Clarke's name. Sheriff Cochran and Col. Whitley speak of it as having occurred on the 19th of December, when the names were put in the wheel, and say that Mr. Peffer suggested his name along with that of three other gentlemen in Middle Paxton township, and had written them down on slips. Mr. Peffer and Mr. Hummel say, that Mr. Hummel marked Mr. Clarke's name before the selection was concluded on the 8th December; but they all agree that Mr. Peffer had written down and produced the names of the other three gentlemen, when they met on the 10th; and it would appear that one of their names, according to Mr. Peffer's testimony, was put in by the Sheriff without the knowledge of the commissioners, and the name of the other one according to Col. Whitley's testimony, got into the box without the consent of either himself or the Sheriff. The Sheriff, Col. Whitley, Mr. Peffer, and Mr. Hummel, also disagree as to whether there was or was not an implied assent on the part of the Sheriff to put Mr. Clarke's name in.

The selection of the jurors clearly ought to be made by the Sheriff and Commissioners. They are sworn, the clerk is not, and although perhaps, he might often suggest good names to them, it would be better, to say the least of it, in order to avoid censure and suspicion that the clerk should not interfere; more especially, in times of high political excitement, when he is an active partizan.

There is another irregularity in drawing the jurors, which, although not made a specific ground of exception, the court will notice, as it affords an opportunity of interfering with the names of the persons drawn; in a manner not warranted by the act of assembly. Henry Peffer, the clerk of the commissioners, says in his testimony, when endeavoring to account for the fact that at the end of the year 1838, there was but twenty ballots in the wheel, more than sufficient to compose the panels of Jurors for one court, that "in drawing out the jurors there are sometimes names drawn out which are destroyed, such as those who may have died or removed, or the names of post servers and mail contractors, not liable to serve on juries, and incompetent persons whose names may have been inadvertently put into the wheel, and that more than one hundred tickets were destroyed that year." This practice might lead to gross abuses and ought not to be tolerated, further than as regards those who have died or removed. The judgment of the Sheriff and Commissioners, as to the competency and qualifications of Jurors, is to be passed at the time of their selection, not at the time of their names being drawn out of the wheel.

There is another exception to the consideration of which we proceed with pain, but not with any hesitation, as to making and deciding it. We mean to touch much of the exception as charges, by inference at least a combination to pack the jury; or, at all events, such a political preponderance of the