The Ebensburg Alleghanian.

BARKER, Editor and Proprietor.
ODD HUTCHINSON, Publisher.

I WOULD RATHER BE RIGHT THAN PRESIDENT.—HENRY CLAY.

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VOLUME 7. EBENSBURG, PA., THURSDAY, APRIL 12, 1866. NUMBER 26.

IRECTORY.

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...hite—REV. R. C. CHRISTY, Pastor.—...ery Sabbath morning at 10½ o'clock ...ers at 4 o'clock in the evening.

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...n, daily, at 9.55 o'clock, A. M.
..., " at 6.25 o'clock P. M.

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...n, daily, at 8 o'clock, P. M.
..., " at 8 o'clock, P. M.

The mails from Grant, Carrolltown, ...rrive on Monday, Wednesday and ...day of each week, at 3 o'clock, P. M.

...to Ebensburg on Tuesdays, Thursdays ...Saturdays, at 9 o'clock, A. M.

RAILROAD SCHEDULE.

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Phila. Express	"	9.56 A. M.
Fast Line	"	10.33 P. M.
Mail Train	"	9.02 P. M.
Altoona Accom.	"	4.32 P. M.
...Phila. Express	"	8.40 P. M.
Fast Line	"	2.20 A. M.
Day Express	"	6.41 A. M.
Cincinnati Ex.	"	1.55 P. M
Altoona Accom.	"	1.21 P. M.

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...sor—Thomas J. Davis.

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...M.—Summit Lodge No. 312 A. Y. M. ...n Masonic Hall, Ebensburg, on the ...Tuesday of each month, at 7½ o'clock, ...

...O. F.—Highland Lodge No. 428 I. O. ...eets in Odd Fellows' Hall, Ebensburg, ...Wednesday evening.

...F.—Highland Division No. 84 Sons of ...ance meets in Temperance Hall, Eb... every Saturday evening.

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"THE ALLEGHANIAN:"

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THE PAUL-MUNDAY MURDER.

IN THE SUPREME COURT OF PENNSYLVANIA.

John B. Houser and Daniel Buser vs. The Commonwealth---Error to Oyer and Terminer of Cambria County.

Opinion of the Court—Woodward C. J.

Polly Paul, an elderly maiden lady, who was reputed to possess money, and Cassie Munday, a young girl who lived with her, were both cruelly murdered on the evening of the 7th June, 1865, in Summerhill township, Cambria county.—The plaintiffs in error were defendants below in an indictment which charged only the murder of Miss Paul, and after a full and careful trial, were both convicted of murder in the first degree. The evidence was circumstantial. A great number of independent and connected facts were proved, and were so placed before the jury by the learned Judge who presided at the trial, that no exception was taken to his charge, and consequently no question arises out of his instructions to the jury for our consideration upon this writ of error. But several bills of exception to evidence were sealed, and these are assigned for error. Although the evidence as a whole chain led irresistibly to the conviction of guilt, yet if any material link of it was defective, and such as ought to have been rejected, the prisoners have good right to complain in this Court. Let us therefore carefully examine the errors assigned, to see if any of them are well founded.

The 1st and 9th errors complain of the admission of John Buck and George W. Kerbey, two of the jurors in the box, as witnesses on the part of the Commonwealth. In respect to the first of these witnesses, it might be sufficient to say that the objection was not made until after he was sworn as a witness, when it was too late to object to his competency; and in respect to both, it might be said that they were called to incidental and comparatively immaterial points that did not touch the *corpus delicti*; but waiving these answers, let it be distinctly said that jurors are not incompetent witnesses in either criminal or civil issues. They have no interest that disqualifies, and there is no rule of public policy that excludes them. On the contrary, it has been our immemorial practice to examine jurors as witnesses when called by either party; it is sanctioned by Archbold, see 1 vol. of Evidence, p. 151; was recognized in principle by us in Plank Road *vs.* Thomas, 8 H. 92, where a viewer was held to be competent, and is regulated by the 158th sec. of the Act of Assembly of 14th April, 1834, relating to juries, Purdon 586, which requires every juror, impanneled in any cause, to disclose his knowledge of anything relative to the matter in controversy in open Court, before the jury retires to make a verdict.

The learned counsel argue that the practice violates the constitutional rights of the accused, who are entitled to a speedy and public trial by an *impartial* jury, and to be confronted with the witnesses. Our law takes the utmost care to secure to the accused in capital cases an impartial jury; it almost allows prisoners to select their own triers. They may examine jurors as to their knowledge of circumstances, their expressions, opinions or prejudices, and challenge as many as they can show cause for, and may challenge twenty without showing cause, and then if any juror happens to have knowledge of any pertinent fact, he is bound to disclose it in time for the accused to cross-examine him and to explain or contradict his testimony. If this be not a fulfilling of the constitutional injunction in behalf of *impartial* jurors, it would be difficult to invent a plan that would fulfill it, and at the same time be consistent with the demands of public justice.

But counsel imagine that the constitutional right to *confront* witnesses would be abridged in the instances of witnesses taken from the jury-box, because their truth and veracity could not be attacked without damage to the attacking party. As to material witnesses, those, we mean, upon whose testimony the event is essentially dependent, we think they ought not to be admitted into the jury-box, and we believe the general practice is to exclude them where the fact is discovered in time, but we do not think the constitutional provision alluded to nor any rule of law is violated by the examination of a juror as a witness. The *a priori* presumption is that he is a man of truth and veracity, or he would not have been summoned as a juror; and *confronting* witnesses does not mean impeaching their character, but means cross-examination in the presence of the accused.

When the Common Law of England was transported to these Colonies, it gave a person charged with a capital crime no compulsory process to obtain witnesses, and entitled him to no examination by himself or his counsel of witnesses brought against him. As Queen Mary said to her Chief Justice, Sir Richard Morgan, "it did not admit any witness to speak on any other matter to be heard in favor of the adversary, her majesty being party." To remedy this state of the law, our constitutions all declared—what statutes had then provided in England—that the accused should have an impartial trial by jury, should have process for witnesses, and be entitled to counsel to examine them, and to cross examine those for the prosecution, in the presence of *confronting*—the accused.

And this is now our inflexible rule. I have known one case in which a great question was made whether a magistrate's written examination of a prisoner who afterward broke jail and escaped, was evidence against a confederate under the provisions of the statute of 2d & 3d Philip & Mary, ch. 10. The case did not reach this Court, though the opinion of some of the then Judges were taken, and it was finally decided that notwithstanding the above named statute had been extended to Pennsylvania, it was displaced by our Constitution, and that no *ex parte* testimony could be given against a prisoner in a capital case. Such, then, is the meaning of the Constitutional provision which counsel invoke, and it is impossible to apply it to exclude a juror witness. He, like all other witnesses, must confront the accused, that is, be examined in the presence of the accused, and be subjected to cross-examination, but he is not disqualified to be a witness.

It became necessary for the Commonwealth to show in the course of the trial that the prisoners had been in the Western Penitentiary, and in intercourse with other prisoners there, and particularly one Philip Fulgert, a convict sent from Cambria county, and from whom the prisoners heard of Miss Paul—the theory of the prosecution being that the prisoners had plotted the robbery and murder of Miss Paul whilst in prison, and that they proceeded to execute the plot as soon after their enlargement as circumstances permitted. Sheriff Buck, who took Fulgert to the Penitentiary, was called to prove that fact, and David M'Kelvy proved that the defendants had been in the Penitentiary, and fixed the time of their discharge. This testimony was objected to, and forms the basis of the 2d and 4th assignments, because the Warden of the Penitentiary is required, by the Act of Assembly of April 23d, 1829, Purdon 651, to keep a journal in which the reception and discharge of prisoners is regularly entered, and that record, it is argued, was the best evidence of the facts to which these witnesses swore.

The Act of Assembly does not make the Warden's journal a record, nor declare that it shall be evidence of the facts therein entered. The main purpose of keeping it is to inform the Inspectors of the prison of the name, age, condition and circumstances of each prisoner, that their duties may be intelligently performed. If the question had been whether Fulgert and these defendants had been legally incarcerated, it might have been necessary to show every formality prescribed by law, but the main point was the conspiracy to rob and murder, and the fact of their being together in the penitentiary was only incidental or introductory to that point. Says Mr. Greenlief, 1 vol. pl. 68, where the record or document appointed by law is not a part of the fact to be proved, but is merely a collateral or subsequent memorial of the fact, such as the registry of marriages, births and the like, it has not an exclusive character, but any other legal proof is admitted. If the marriage or birth of the prisoners had been wanted as introductory to evidence of the crime charged, it would scarcely be argued that a witness who was present at the birth or marriage was incompetent to prove it because a registry existed. In questions of identity, records and registries are not the best evidence, for after the entries are received, it is necessary to individuate the persons mentioned, and this must be done by evidence *de hors* the document. We have an illustration in the third error assigned, which complains of the admission of the record of Fulgert's conviction and sentence without identification of his person. We do not mean to say that we consider the 3d assignment any better than the 2d and 4th, but simply that it illustrates the necessity to add even to a judicial record oral evidence of identification. The record proved Fulgert's conviction and sentence, and Sheriff Buck identified him as the individual he took to the penitentiary, whilst M'Kelvy identified defendants on trial as inmates of the prison. We cannot be persuaded that there was any error in submitting such evidence to the jury.

The 5th assignment relates to the witness William M'Creery; when this individual was called by the Commonwealth, he stated in answer to questions by the prisoners' counsel, that he had recently got out of the penitentiary, where he had been confined on conviction for burglary, that he had been in before on a similar charge, and had been pardoned, and that the pardon was in Washington county.—The counsel for the Commonwealth then exhibited an Executive pardon for the last offence, and the Court admitted the witness. This is assigned for the 5th error.

If the pardon exhibited did not cover the first as well as the last conviction, (of which we cannot judge, for the pardon is not shown to us,) the fact that he had been pardoned for the first offence was elicited by the examination of the defendant's counsel, and it is not for the defendants to object that the fact was improperly proved. Both pardons were sufficiently proved to justify the Court's admission of the witness. And we think there was nothing in the testimony of this witness on which to ground the 7th and 8th assignments of error. He was permitted to explain the situation and relation of the cells, and the arrangements made of prisoners, to show what opportunities he possessed of acquiring knowledge of the facts he detailed. And when he was recalled, he was permitted to detail what occurred when Messrs. Noon and Johnston visited him in his cell, that he showed them how communications between adjoining cells could be made, and he was permitted also to testify that no promise of a pardon or other inducement had been held out to him to testify in this case.—All this was objected to, because it tended to corroborate the witness when no attempt had been made to impeach him, and the question about a pardon compelled the witness to discredit himself or commit perjury if such promise had been held out.

Though not formally impeached, this witness, as a pardoned criminal, testified necessarily under circumstances that tended strongly to discredit him. The jury would inevitably regard his testimony with suspicion. It was very proper, therefore, to corroborate him, and surely if he could demonstrate to his visitors that communication between cells was possible, he had a right to prove the fact in corroboration of his statement that such communication had actually taken place. And he was entitled also to the fact that no inducement had been held out to him to testify against the defendants. Those were rights of the witness, and he was in circumstances to justify his claim of them, and the Court's concession of them.

The conversations of prisoners among themselves about "points" to be made when they got out, is not the most satisfactory kind of evidence, especially when proved by only one of their number, pardoned for the purpose of being made a witness; but the credibility of this witness was fairly submitted to the jury, and there were many circumstances in proof by other witnesses that tended strongly to corroborate him. True, his testimony was most damaging to the defendants, if believed, but the Commonwealth was entitled to lay it before the jury, and it is not for us to doubt that the jury scanned it closely, and gave it no more weight than was due to it.

The 6th error is founded on the declaration of Mary Stipoliski, made to her parents the evening of the murder. This little girl had been sent out at nightfall to fetch home the cows, and when she came home, she told her father what she saw and heard, and that she thought the men she saw at Polly Paul's were not the right kind of persons.

In itself considered, this evidence was of little importance, for it did not lead even to an early discovery of the murder. Nobody seems to have attended to the girl's story, and it might be considered irrelevant and harmless evidence if subsequent discoveries had not shown that these defendants were prowling about the neighborhood, and were the very two men the witness saw at Miss Paul's. The fact that she saw men there, and heard sounds of distress, was competent and relevant, and it was rendered no less so by the additional fact that she told it to her parents directly after she returned home. This circumstance she had a right to refer to, as refreshing her memory. And what her parents said in reply, was also a circumstance to refresh her memory. The damaging part of this evidence does not consist in the narrative that burst from the lips of this little girl on her return home, much less in the responses of the parents, but it consists in the facts themselves, and to which she swore on the trial, and which interwove themselves with facts furnished by other witnesses, in such a manner as to form what the jury considered a web of guilt. The facts, that is, what she saw and heard, are not objected to as improper evidence, but only her relation of the facts to her parents, and their replies. Ordinarily, declarations of third parties in the absence of the accused are not evidence, but these declarations were so connected with the circumstances as to become a part of them—or if they cannot be so considered, they were immaterial and harmless, and therefore afford no ground for reversing.

The 10th assignment relates to the administration account of the estate of the deceased. It was a public record, and, we think, properly admitted. It is usual to prove the circumstances of the decedent's estate, where the murder was committed *lucri causa*, and the administration account is the best possible evidence of what personal estate was possessed. If it failed to show a personal estate which other evidence proved to have belonged to the deceased, and the Commonwealth was thus enabled to furnish the jury with an inference of robbery, it was an inference to which the Commonwealth was entitled.—A lone woman, shown to have had money, is foully murdered, and her administrator finds no money to administer. When men are on trial for her murder, who spoke of making a "point" to rob her, and, if necessary, to murder her, and who spoke also of the "pile" they expected to obtain, we think it was competent to shew by the public records that her personal representatives found no money.

As to the overruling the motion for a new trial, it is not a proper subject for an assignment of error. The discretion of the Court is not reviewable here. Nor is the complaint that the Court misapplied its own rules of practice a matter of which we can take notice. The rule is prescribed by the Court itself to regulate its own discretion, and the refusal to grant a new trial is an exercise of discretion with which we cannot interfere, whether it conformed to the rule of Court, or disregarded it.

We have thus gone carefully through the several errors assigned upon this record, and finding no one that would justify us in reversing the judgment, it must stand *affirmed*.

THE ASSIGNMENT OF ERRORS.

Following is the assignment of errors submitted by the counsel for plaintiffs in error:

1st. The Court erred in overruling the prisoners' objection to the competency of John Buck, who had been sworn as a juror in this cause, and in allowing him to be sworn as a witness for the Commonwealth.

2d. The court erred in overruling the prisoners' objections, and allowing John Buck, a witness for the Commonwealth, to testify to the delivery of a prisoner to the warden of the Western Penitentiary, it being objected that the fact of said prisoner's reception at the Penitentiary was matter of record and should be proven by record evidence, and also that it is not competent to prove the fact without first proving his conviction and sentence by record evidence.

3d. The court erred in overruling the prisoners' objections and admitting in evidence the record of the case of the Commonwealth vs. Philip Folgert, No. 6, December Term, 1861, Cambria County, it being objected that it did not appear that this was the same man testified to by Sheriff Buck, nor did it appear that said Folgert was ever taken to the Penitentiary.

4th. The court erred in overruling the prisoners' objection, and allowing David M'Kelvy, a witness for the Commonwealth, to testify to the fact that the prisoners were in the Penitentiary, and when they were discharged, it being objected that the facts offered to be proven can only be proven by the records of the institution referred to.

5th. The court erred in overruling the prisoners' objections to the competency of William M'Creery, and allowing him to be sworn as a witness for the Commonwealth, it appearing from his own statement that he had been twice tried, convicted, sentenced, and incarcerated in the Penitentiary for burglary, a pardon for the last conviction only being produced, and no pardon being produced for the first conviction, though the witness stated that he had been pardoned.

6th. The court erred in overruling the prisoners' objections, and allowing Mary Stipoliski, a witness for the Commonwealth, to testify in chief to the conversations between herself, her father and family, said conversations not being in the presence of the prisoners and occurring before the discovery of the murder, it being objected that she could not legally state what she said when she came home, and what her family or any of them said or did.

7th. The court erred in overruling the prisoners' objection, and allowing William M'Creary, a witness for the Commonwealth, to testify in chief that he showed Mr. Johnston and Mr. Noon how cummunications between adjoining cells in the Penitentiary could be made, it being objected that the witness could not thus corroborate himself.

8th. The court erred in overruling the prisoners' objection, and allowing Wm. M'Creery, a witness for the Commonwealth, on his direct examination, to answer the question, "Whether there was any promise of a pardon or any other inducement held out to him to testify in this case?" It being objected that such evidence could not be given in chief—that it tends to corroborate the witness when no attempt is made to impeach him, and that it compels the witness either to discredit himself or commit perjury if such promise was held out or such implied understanding existed at the time.

9th. The court erred in overruling the prisoners' objection to the competency of George W. Kerby as a witness, he having been sworn as a juror in this cause, and allowing him to be sworn as a witness for the Commonwealth.

10th. The court erred in overruling the prisoners' objection, and allowing the letters of administration on the estate of Polly Paul, dec'd., and the inventory filed by the administrator in the office of the register, to be read in evidence to show what personal estate was left by the said Polly Paul, it being objected that the record cannot be evidence against these prisoners for that purpose, because they could have had no chance to cross-examine the witnesses who made the inventory.

11th. The court erred in overruling the prisoners' motion for a new trial on the ground of after-discovered evidence, verified by affidavit, (see reasons for a new trial,) on the same day when made, and immediately after reasons were filed, without allowing time to substantiate the facts alleged by proof, or for preparations, contrary to Rule No. 60, which is as follows:

"Reasons for a new trial which allege after discovered evidence, or misconduct of a party, or the jury, or any other matter of fact which was not brought to view, on the trial, must be verified by affidavit; and in such case the motion shall be *placed at the head of the argument list for the next term*; but when the reasons specified are not alleged or not verified as aforesaid, the motion shall be put upon the list for the term at which it is made and then disposed of."

JUST THINK OF IT!—A new invention for the manufacture of paper socks is announced. The socks are made of paper and muslin combined. The inventors say that they will last as long as an ordinary pair would keep clean, and that they can be made so cheaply that their cost will not equal the price of a washing. These socks are intended to bear the same relation to knitted or woven socks that paper collars do to linen or muslin collars.

Equalization of Bounties.

Hon. Harry White has introduced the following joint resolutions in the Senate, asking Congressional action with regard to the equalization of bounties:—

Whereas, There is eminent justice in the petitions and desires of a large majority of the late soldiers and sailors in the war to suppress rebellion, that the General Government shall equalize, by appropriate legislation, as far as possible, the bounties paid at different times during the war to secure enlistments;

Whereas, It is believed this equalization can be done without too largely increasing the public burdens, and it is proper that Pennsylvania, always contributing as promptly and liberally of her citizens and resources to save the Nation's life, should formally express her wishes and desires on so just a measure; therefore, be it

Resolved, &c., That our Senators and Representatives in Congress be instructed and they are hereby requested to advocate and vote for a measure that will equalize the bounties paid by the General Government at different times, among the late soldiers and sailors in the war against the rebellion, adopting in such equalization the principle of paying those enlisted men who have been honorably discharged the service, $8.33 per month, for the time actually served, deducting therefrom the amount of bounty they have already received from the General Government, so that the amount to be paid with that already received, shall in no case exceed the rate of eight and one-third dollars per month for the time actually served. That no bounty whatever in this measure for equalization should be paid to those soldiers and sailors whose term of enlistment was for a less period than one year, nor to those who have deserted the service, nor to those who have been discharged before the expiration of their term of enlistment at their own request, except for the purpose of re-enlistment or accepting promotion, where such promotion has been subsequently received. Nor to those who were prisoners of war from the rebel armies at the date of their enlistment, nor to those who have sold and disposed of in any way for gain their final discharge papers or an interest in any bounty provided for by any act of Congress. That where a soldier or sailor, who would be entitled to the bounty above proposed, is dead, the same should be paid to that class of his personal representatives who are entitled to receive pensions under the present laws.

Resolved, That Congress should provide for the payment of the bounties above proposed by authorizing the issuing of United States five per cent. bonds, payable within a reasonable period, out of a fund to be raised by a tax on the cotton growing interest of the country, and out of the proceeds of the public lands, giving however to the person entitled to the bounty the privilege to receive the whole or a part of the same in land warrants, at a specified price not exceeding seventy-five cents per acre.

Resolved, That in the measure hereby recommended for the equalization of bounties, the persons entitled to the same and the Government should be fully protected against the fraud, imposition and enactions of unscrupulous speculators and claim agents.

Resolved, That His Excellency, the Governor, be requested to forward a copy of these resolutions to our Senators and Representatives in Congress.

WINSHIP OUTDONE.—An Iowa paper gives an account of a powerful man living in Hardin county, Iowa, who, though unknown to fame, possesses far greater strength than the celebrated Dr. Winship. His name is Walter Hadlock, and he resides at Hardin city. He was a member of company C of the Sixth Iowa infantry. In the march of Sherman's army to the sea, he lost his right arm, from a wound received in a skirmish near Macon, Ga. He seems to suffer little inconvenience from the loss of it, for he can chop wood with his remaining arm as well as most men can with both. It costs him no unusual effort to cut and cord two and a half cords per day, and he will wager fifty dollars that he can, with his remaining left arm, split one hundred and fifty rails per day.

THE EIGHT HOUR LAW.—The following is the bill, known as the "Eight Hour Law," which has passed the House of Representatives:

"*Be it enacted, &c*, That hereafter labor performed during a period of eight hours on any secular day, in all cotton, woolen, silk, paper, bagging, flax, and other factories or workshops, in the Commonwealth, shall be considered a legal day's labor, and hereafter contracts made for the employment of mechanics and laborers, in all the various branches of trade for daily laborers, shall be construed to be for eight working hours to the day, in any employment; *provided*, that this act shall take effect from and after the first day of July next; *and provided further*, that this does not apply to farmers or teamsters."

Reed Bigler, eldest son of Ex-Gov. Bigler, of Clearfield, committed suicide on the 2d inst., while laboring under temporary mental aberration.