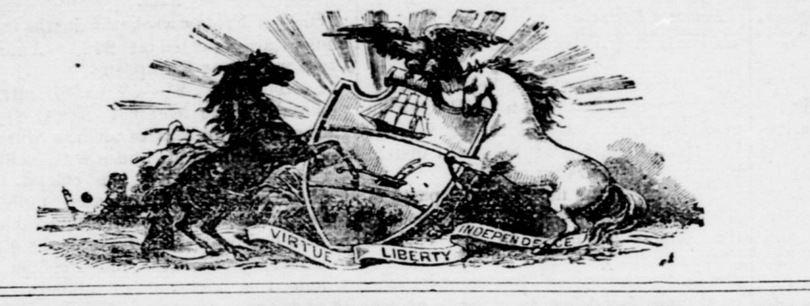
Butler Citizen.



VOL. XX. BUTLER, PA., WEDNESDAY, AUGUST 1, 1883 NO. 36

LEGAL ADVERTISEMENTS.

Estate of George S. Jamison.

Letters testamentary on the estate of George S. Jamison, dec'd, late of Venango twp., Butler county, Pa, having been granted to the undersigned, all persons knowing themselves indebted to said estate will please make immediate payment and any having claims against said estate will present them duly authenticated for settlement.
W. C. JAMISON,
Executor.
June 19, '83. Eau Claire P. O., Butler, Co., Pa.

Estate of William Ramsey.

Letters testamentary on the estate of William Ramsey, dec'd, late of Butler township, Butler county, Pa., having been granted to the undersigned, all persons knowing themselves indebted to said estate will please make immediate payment and any having claims against said estate will present them duly authenticated for settlement.
DAVID F. BORLAND, Executor.
Butler, Pa.

Estate of James H. Mechling.

Whereas letters of administration have this day been issued to me on the estate of James H. Mechling, late of Washington township, dec'd. by the Register of said county of Butler, notice is hereby given to all persons owing said estate to call and settle, and those having claims against the same will please present them for payment duly probated.
S. C. HUTCHISON, Adm'r.
June 5, 1883. North Hope, Butler Co., Pa.

Estate of Ernest Werner.

Letters of administration on the estate of Ernest Werner, dec'd, late of Forward twp., Butler county, Pa., having been granted to the undersigned, all persons knowing themselves indebted to said estate will please make immediate payment and any having claims against said estate will present them duly authenticated for settlement.
MARIA WERNER, Administratrix.
Evans City, Butler Co., Pa.
W. H. LUSK, Attorney.

Estate of Edward Campbell.

Letters testamentary on the estate of Edward Campbell, dec'd, late of Worth twp., Butler county, Pa., having been granted to the undersigned, all persons knowing themselves indebted to said estate will please make immediate payment and any having claims against said estate will present them duly authenticated for settlement.
SAMUEL H. MOORE, Executor,
Grant City, Lawrence Co., Pa.

Administrator's Notice.

Whereas letters of administration on the estate of Andrew J. Moore, late of Centre twp., Butler county, Pa., dec'd, have been duly issued by the Register of wills in and for the county of Butler, Pa., to me Nancy J. Moore, widow of said decedent. Notice is hereby given to all persons knowing themselves indebted to the said estate to call and settle the same, and all persons having claims against the said estate will please present the same duly probated for payment.
NANCY J. MOORE,
Administratrix of A. J. Moore, dec'd,
Butler, Pa.

Estate of Jacob Hunnel.

Letters of administration on the estate of Jacob Hunnel, dec'd, late of Buffalo township, Butler Co., Pa., having been granted to the undersigned, all persons knowing themselves indebted to said estate will please make immediate payment and any having claims against said estate will present them duly authenticated for settlement.
G. C. ROENIGK, Administrator.
Sarvers Station, Butler Co., Pa.

Estate of John Walters.

Letters of administration on the estate of John Walters, dec'd, late of Jackson township, Butler Co., Pa., having been granted to the undersigned, all persons knowing themselves indebted to said estate will please make immediate payment and any having claims against said estate will present them duly authenticated for settlement.
JOHN A WALTERS, Administrator.
Evans City, Butler County, Pa.

Estate of James Sterling.

Letters of administration on the estate of James Sterling, dec'd., late of Cranberry township, Butler county, Pa,, having been granted to the administrator, and all persons knowing themselves indebted to the said estate to call and settle the same, and all persons having claims against the said estate will please present the same duly probated for payment.
NEWTON GARVIN, Administrator,
Ogle P. O., Butler Co., Pa.

TRUSTEE'S SALE.

BY virtue of an order of the Court of Common Pleas of Butler county, No. 13, March Term, 1883, and to me directed, I will expose to Public Sale, on the premises on

Thursday, Aug. 9,

1883, at one o'clock P. M., the following described real estate of Samuel Vandeventer and Elizabeth Vandeventer, his wife, late Elizabeth Chranser, in right of his wife and Charles Duffy, to-wit:

All that certain piece and parcel of land situated in Washington twp., Butler county, Pa., bounded and described as follows:

Beginning at a post at the north-west corner of the tract, thence by lands of David Bond's heirs north 89 degrees east 81½ perches to a post; thence by land of F. Shira south 2 degrees west 23 3-10 perches to a stone; thence north 89 degrees east 2 perches to a post; thence by lands of Shira and Clark south 2 degrees and 74 perches to a post; thence by lands of Wm. Wasson south 89 degrees west 83½ perches to a post; thence north 2 degrees east by lane of S. A. Campbell 96 3-10 perches to place of beginning, with the appurtenances, containing fifty acres of land, strict measure.

TERMS:—One-third in hand on confirmation of sale and the balance in two equal annual payments with interest thereon, secured by bond and mortgage.
THOS. DONAGHY, (Sheriff) Trustee,
July 18, 1883.

Notice.

The Butler Camp Meeting Association will hold their annual encampment on the grounds of the association, three miles west of Butler, on Thursday, August 16th and continuing until Monday evening, August 27th. Opening service at 2 o'clock P. M. on Thursday, August 16th. Single and family season tickets can be had from the secretary or treasurer. Ample arrangements are made for boarding on the ground. Tent sites can be had upon application to any member of the Board of Trustees.
BY ORDER OF BOARD.
JEFF BURTNER, Secretary.
JOSEPH CRISWELL, Treasurer.

COMMONWEALTH VS. JOHN SMITH.

INDICTED FOR PERJURY

Opinion by Hon. Jeremiah S. Black.

I do not go into the history of this case. What I have to say would not be understood by a stranger without a long detail of the facts antecedent to the indictment. But I write for those who know all about it and who will need no explanation of any allusions which I have to make.

On the trial of this cause the defendant pleaded a former indictment for the same offence as still pending, and therefore a bar to the second.

If the first indictment was a good one on its face, he was still in jeopardy; and though not a flat bar, like an acquittal or a conviction, it was a defence to a new indictment as long as it hung over his head. The public accuser cannot pursue a party on two tracks at the same time, unless it be manifest, *as matter of law*, that on one of them he is in no possible danger of being sentenced. Here both indictments are equally good—that is to say, one was good if the other was. On the first there had been an actual trial and a verdict of guilty, but the verdict was set aside, not because the indictment was defective, but because it was not sustained by the evidence. The indictment charged that the oath had been administered by the deputy Prothonotary—the proof showed that it was administered by the court; therefore, and therefore only, a new trial was granted. That did not impugn the soundness of the indictment. It implied that, in the opinion of the court, the evidence was so far at variance with it that a new trial was necessary to see whether the *probata* could be made to come up to the *allegata*. Here then were two indictments, on either of which if proved to be true, he could be legally convicted. Had he not a clear legal right to demand that the first one be either formally abandoned, or else determined, before he was called on to answer the second? If this question be answered in the affirmative, another rises:—How could he assert this right except by pleading the fact?

The record shows that he did plead it, stating the fact and concluding to the country. The representative of the Commonwealth denied the fact and went to the country also. Thereupon a jury was called, came, and were sworn to try that very issue; and the *onus probandi* being on the defendant, he offered the record to sustain the issue on his part and the court refused to let the jury hear it, Whatever the Judge may think of the plea or its value in law, he will on reflection see that he had not a right to exclude the proof of it from the jury. If it had been demurred to he might have declared it insufficient. But when the Commonwealth conceded its validity and denied only its truth, it was certainly due to the party—nay to both parties—that the defendant should be permitted to show what the truth was.

The error committed in ruling out this evidence resulted in duplicating the proceeding against the defendant after a fashion I never saw or heard of before. The accusing party pushed the proceedings upon both indictments with hostility so unrelenting that he forced a trial on the first indictment while the jury were considering their verdict on the second one. The two lines of deadly assault converged upon the defendant almost simultaneously. No man shall be twice vexed or put in jeopardy for the same cause. Here a man was twice vexed on the same day for precisely the same cause. Conviction or acquittal upon one might have been pleaded as a full defence; but the trials were so timed that he could not show the result of one to shield him from the other. He was compelled to anticipate by pleading their pendency, which he did, but was not permitted to show the truth. The effect of this ruling was exactly the same as if the trial on one indictment had taken place and judgment of acquittal had been pronounced in time to plead it to the other, and the court had then refused to look at the record or let the jury see it.

It is no answer to this to say that the defendant was afterwards acquitted on the first indictment. On the contrary it showed more conclusively than anything else how much he was wronged. If he had been first tried on the first indictment and acquitted, his plea would most undoubtedly have been listened to with attention, and the question of fact and law which now stands undecided either for him or against him would have been legally disposed of. For reasons to be given presently I think it would have been a conclusive defence. But whether this be certain or doubtful, the defendant was deprived of a right when he was pushed into a trial and pushed through it without being permitted to raise the question.

I have said the first indictment was good upon its face. There was no cause of demurrer, nor was there any error upon which it could be quashed. The Court set aside the verdict upon it because the evidence did not sustain it in one particular, namely, that it alleged the oath to have been administered by M. N. Greer, Prothonotary, who had competent authority to administer oaths — whereas the proof showed that he was sworn by the Court. The second indictment is an effort to make the allegation conform to the fact, but it does not succeed. Instead of stating the simple truth, as the evidence in both trials showed it to be, that the oath was administered by the Court, it is alleged in the second indictment to have been administered by one Brown, who was the deputy of Greer, that Greer had authority to administer oaths and Brown as his deputy also had that authority in *the presence of the Court*, This leaves the variance between the fact and the allegation just as wide as it was at first. It is true that the pleader who drew up the indictment undertakes to say *arguendo* that because Smith was sworn *in presence* of the Court, therefore he was sworn *by* the Court, But that is a *non sequitur*. The presence of the Court gave no authority. But the Court in the exercise of its own authority might make him or anybody else its instrument or organ for the performance of its own act. It is agreed all round and laid down by the Judge as the true construction of the statut on the subject that a deputy of the Prothonotary has no general power, that is to say, no power of his own, *virtute officii*, to administer oaths. But the prosecution seems to have thought that the power became vested in him whenever he came into the presence of the Court and was divested the moment he went out. If this be true of Mr. Brown, it is true of every other citizen who crowds into a room where a court is in session. This would be an absurdity. The truth is patent that if this defendant was not sworn by the Court he was not legally sworn at all. The indictment says he was sworn by Brown, who was not the Court nor could he make his act the act of the Court merely by doing it in the presence of the Court, which is all that the indictment alleges. This verdict, therefore, ought to be set aside for all the reasons that were given by the Judge for a new trial on the first indictment.

There is another variance between the indictment and the evidence which does not seem to have been much noticed on the trial. The indictment states by way of inducement all the transactions between the parties to the judgment which was in any wise connected with it. Perhaps this was not necessary. It was enough to aver the existence of the judgment, the petition to open it, and the materiality of that part of the defendant's oath on which the perjury is assigned. But having undertaken to set forth the previous and concurrent transactions, the recital must be accurate, and the prosecution fails if it appears on the trial that it is false. The documents might be given literally (that is textually copied into the indictment) or the substance of them stated. But if in the former case the copy is false, the paper cannot be read; in the latter case the substantial effect of it must be truly stated or else it cannot be given in evidence. Here was an agreement between three joint debtors in which it is avered that one of them (the defendant) covenanted with the other two that he would release them from the obligation to pay any part of the debt. The agreement actually made and shown to the Court and read to the jury has nothing in it of the kind, nor could he have performed such a contract if he had made it. The proof did not sustain the averment.

I am quite well aware that on this point the defendant has not a strong technical hold. The proper-advantage was not taken of it on the trial. But I have faith enough to believe that a good grip on the conscience of the Court will be as available as the nicest touch of mere artificial law. The Judge will not see a man's liberty taken from him by illegal evidence admitted through an oversight. The power to correct any error by which the current of legal justice may be turned awry remains in the hands of the Court until the moment of final judgment, no matter how short a time before that it may have been discovered.

It was stoutly and ably contended by the defendant's counsel that the payment of the debt by Wolford and Hindman annihilated the obligation of all the joint debtors and extinguished the judgment, so that no oath which the defendant or anybody else could take concerning the mere equities between those who paid and the one who did not pay, was or could be material on a petition to open the judgment. The Judge's reasons for the contrary opinion are on record and they are unanswerably sound and true. He makes it clear enough that the validity of the judgment as against Smith was not affected by the fact that it was paid by and assigned to Wolford and Hindman. But suppose the law to be otherwise,—Smith certainly had a right to waive his advantage and stand upon the equity of his case. That was what he did. His petition was in effect a bill for an injunction to restrain execution. The other party denied the allegation and thus raised between them an issue fit to be heard and determined only by a chancellor. It would be monstrous to say that the defendant might swear falsely to a fact material in that issue and then clear himself of perjury by showing that the judgment he sought to open was void in law by reason of a fact not at all involved in the question which the chancellor had before him.

But in order to convict of perjury it is necessary for the Commonwealth to show beyond a reasonable doubt that the fact alleged to be falsely sworn was material to the issue or matter to be decided by the court. Incidental remarks or collateral statements are in fact not sworn to at all, for the oath does not include an obligation to be true about matters that are immaterial or not connected with the point of inquiry.

What was the question before the Court? We cannot make any mistake about that. It was whether or not John Smith had an equitable right to stay execution on the judgment or to have it opened. That was the sole point of inquiry. Every fact was material which tended remotely or proximately, directly or indirectly, to show that his claim upon the intervention of the Court for that purpose was a good one. But it is not sound law—it is not even respectable nonsense—to say that other transactions were material which lay totally outside of that under consideration and were entirely unconnected with the judgment or the agreement of the parties concerning its payment. Whether in those other affairs foreign to the point of inquiry the parties had behaved well or ill toward one another whether or not the defendant believed that he had been cheated before and was afraid he would be again unless the Court protected him—was surely as far as possible away from any thing the Court could look into in such a proceeding. But that was exactly the nature of the paragraph in the petition upon which this accusation of perjury is based. Smith said there was an unsettled account between him and one of his adversaries on which he believed that a balance was due to him. What possible difference could it make to the case then at the bar whether this was true or false? What connection had Smith's belief about this unsettled account with the matter in hand? Or what influence could it have on the decision? The judge who heard the petition was the same judge who presided at the trial of the indictment for perjury, and he knows that no proof of an unsettled account like this would have been considered by him for a moment in making up his mind.

Test the materiality of this statement in another way. Suppose that on Smith's application to open the judgment the court had ordered the plaintiffs to take out a *scire facias* and try the dispute by a jury. That would have been the shorter, the better and the more regular mode of proceeding. Evidence admissible on the trial of the scire facias would be admissible on the hearing before the court sitting in equity. Would the court permit Smith to prove before the jury, either by himself or by anybody else, that he believed there was a balance due him from Wolford on an unsettled account in addition to the terms of agreement concerning the judgment? No; his belief however sincere, or however well founded in truth, that he had a right of action against Wolford in *assumpsit* would weigh no more than a similar belief that he could recover damages if he would bring suit against the same person for *slander* or *trespass*. An offer to prove any such fact or the belief of it by the plaintiff would be rejected instantly because it is manifestly and plainly without even the shadow of materiality. Yet the statement of this fact in the defendant's petition is charged as material and wilfully false. Was ever a new trial asked for on stronger or clearer ground?

But even if we assume the materiality of the statement in question, a new trial is due because the proof of its falseness does not come up to the requirements of the law. Not having before me an entire and perfect report of the evidence, I do not trust myself to discuss the particulars of it. But the outline of it which I have seen enables me to say with confident certainty that:

1. Smith himself not only swore to his belief at the time he presented his petition, but repeated his oath on the trial of the indictment.

2. This oath of Smith was contradicted by the testimony of no witness except Wolford, who alone was able to speak directly on the subject. Even by him the contradiction was not full, because the psychological fact which the indictment puts in issue, that Smith believed what he said could not be known to Wolford more or better than to anybody else.

3. The direct testimony concerning the existence of the unsettled account being thus balanced by oath against oath, the prosecution instead of producing another witness to contradict Smith, undertook to discredit him; first, by an assault upon his general character, and then by showing that he had made conflicting statements in a loose conversation out of doors.

4. The attempt to defame him was an utter failure. It was met by overwhelming evidence of the high esteem in which he was held by his neighbors and acquaintances for honesty and good moral behavior throughout a long and active life filled with much business of various kinds.

5. From the instructions given me I infer that the prosecutors were successful, at least to a certain degree, in showing that some of the defendant's talk out of court was not in accord with his oath on the same subject. Several witnesses appear to have testified that on a certain occasion he gave utterance to what they call an admission that there was no unsettled account between him and Wolford. What he said was no such thing as an admission, but their mistaken construction of his words. This was not a part of the Commonwealth's case in chief, but introduced as rebutting Smith's testimony in his own defence, and that irregularly, for he had not been given an opportunity on cross-examination to explain it.

Now see what this amounts to. If Smith had sued Wolford in assumpsit for the balance due him on an unsettled account and these contradictory oaths of the parties had been made, they would have stood fairly off against each other. Either of them might have introduced evidence however slight to discredit the other, and whether it was sufficient or insufficient would be a question for the jury to decide after weighing it in their own minds and giving to every part its natural effect I do not think there is enough here to turn the scale against Smith even as plaintiff in a civil suit. That however is not much to the purpose, for the jury might think otherwise.

But this is not a civil suit. It is a criminal indictment. The verdict does not depend on the mere opinion of the jury. They may very honestly believe that Wolford is the true man and Smith the false one and yet have no more right to send one than the other to the Penitentiary. The law exacts from the prosecution a certain *quantum* of proof to be measured by its own rule—not by the feelings, opinons or judgment of a jury. Does the proof in this case come up to the required standard?

If there be one rule of the criminal law more clearly defined, better understood or more universally acknowledged than any other it is this: That no man can be convicted of perjury unless upon the oaths of at least two witnesses showing clearly the falsehood of the oaths upon which perjury is assigned. A single witness, however credible, is as useless to the prosecution as none at all. This is not only the established and inflexible rule, but is founded in a principle and a policy which are necessary to the common safety of all men. Our system of jurisprudence would not be respectable without it. When two opposing parties swear differently in the subject matter of a judicial controversy between them, if one can maintain a prosecution for perjury the other can have, and ought to have, the same privilege. If Smith goes to the penitentiary because in his recollection about the state of their dealings he differs from Wolford, why should Wolford not go along with him because he differs from Smith? If Smith is rightly and legally found guilty on Wolford's testimony, why can he not turn at this moment upon Wolford and prosecute him for the same offence? If cross-prosecutions were instituted and tried together, one of the parties would be in just as much peril as the other upon the evidence given in this case.

I speak with perfect confidence when I say that the counsel for the prosecution did not, and do not now believe that the evidence they gave of Smith's outside conversation was equivalent to the direct testimony of another witness. For this confidence, I have two good reasons. In the first place it is an absurdity which they could not believe in. Secondly, they did not offer it as proof of guilt, but for the mere purpose of discrediting the testimony which Smith gave in his own behalf. Knowing that this latter was the only purpose it would lawfully serve, they did not produce it in chief, but waited until the defence was closed and then gave it as part of their rebutting evidence.

I do not say that where an indictment for perjury is sustained by the positive testimony of one witness, the want of another may not be supplied by proof of collateral facts which show that the accused party must necessarily be guilty. But such facts should be so absolutely inconsistent with his innocence that the prosecution could no more spare them out of the case than it could dispense with the one witness who testifies directly to his guilt Mere moral circumstances which tend only to lower the defendant's character or to involve him in discreditable contradictions are plainly not enough. No matter what the reputation of the defendant may be or how much his testimony may be damaged by cross-examination, he still counts as one witness on his own side and he can be overbalanced by not less than two against him.

In all this I must not be understood as admitting that there was in fact any discrepancy between his conversations and his testimony. I have good reason to believe that the testimony of Thompson and Jamison makes out nothing of this kind; and I take it for granted that in a case of this magnitude the court will look carefully into every part of the evidence which it thinks of any moment.

The sum of all that can be said about this part of the case is, that the oath on which the defendant is accused of perjury was neither material nor false. It would be a scandal to the administration of justice if any court in this commonwealth would, under such circumstances, pluck down the hideous ruin of a sentence for perjury upon the head of a man whose neighbors flocked around him by scores to prove his unblemished character. Can this ever be done? Certainly not on the testimony of a single witness who swears to the falsity of a statement which is wholly immaterial.

On the question about the figure 5 in the judgment note, I have no time to speak, and it is not necessary. If the defendant gets a new trial on the point already discussed, he will have what he needs; if not, it is useless now to talk about anything in the case.

But I ought to say that if it were worth while I could show from the face of the paper itself that Smith's recollection is the true one. The figure 5 was not there when he signed it.

J. S. BLACK,

May 19, 1883. 1t.

—"What is a lady's sphere?" asked the lady principal of a public school on examination day. And a little red-headed urchin in the corner squeaked: "Mice!" In the dreadful confusion that followed the freckle-faced fiend escaped.

—When traveling on a railroad it is said that lying with the head toward the engine will often cure a headache. A more effective remedy is to lie with the head on the railroad track in front of an engine. The latter recipe is warranted or the money refunded.