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THE RAILROAD LEASE.

Speech by General President Welch.

At the annual meeting of the stockholders of the New Jersey Railroad and Transportation Company, held at Jersey City, June 8, 1871, Ashbel Welch, Esq., the General President of the consolidated companies, being called upon, spoke as follows:—

Gentlemen:—As you already know, a negotiation has been made with the Pennsylvania Railroad Company for the lease to them of your canal, railroads, property, and franchises for 999 years, at such rent as will give you a clear annual dividend of ten per cent. on your stock.

The acceptance or rejection of this offer belongs, not to your representatives, but to you alone. I have, therefore, aided in the preparations to bring the question before you, as well as in securing such provisions as most effectually to protect your interests; scrupulously avoiding, myself, as far as possible preventing in others, any action or public expression tending to take the decision out of your hands. I have also advised officers and employes not to mingle in the conflict about the lease, since it has come before the stockholders; as any hostility incurred by them as partisans impairs their usefulness as officers.

When it was proposed that the Board of Directors should express their opinion in favor of the lease, I opposed it—partly because I thought the property worth more than we were to get for it, and partly because I thought it was not a question for the directors, but for the stockholders only.

I therefore take this occasion to say a few words about the policy which the present administration has pursued since the consolidation of these companies.

This policy has been to make the avenues of traffic between the two great cities of this continent—the main trunk through which the traffic of the South and Southwest seeks the commercial metropolis—fully adequate to their purpose; to make them perform all the duties of their location, to do this at the least possible expense; to end the thirty years' war between some of the companies and the public; to guard against competition, or to make competition harmless, by the sufficiency and superiority of our facilities, and the moderation of our rates, and consequent increase of business; and to continue to show that, if corporations have no souls, they may have integrity and honor; and by all these means to add greatly to the amount, and especially to the certainty, of your dividends.

Of course the increase of facilities required a large increase of investment. This was not only wise, but unavoidable. Our railroads were calculated for a small high-priced business, and in that state of things the threatened competition, prevented only by our improvements, would have been ruinous. The aim was to prepare for and develop a heavy business, which could be but little affected by competition.

Though our increase of investment is so great, though some of the expenditures have not yet had time to become productive, though the work and materials used in the maintenance and operation of our roads have been from 60 to 80 per cent. higher than before the war, though the public demands for more luxurious accommodations have added greatly to our expenses, and though many of the rates have been very much reduced, yet the percentage of profits now made on the whole enlarged investment of our four companies is not greatly different from the percentage on the former small investment. The greater proportion of stock receiving ten per cent., to debt receiving six per cent., and the great increase of taxation, the gold premiums, etc., have prevented this equality from appearing in the dividend fund. The United States taxes since the consolidation have averaged something like one-and-a-half per cent. on our stock more than they probably will hereafter; and our works, run down at the close of the war, are now in better condition than ever before.

Our railroads have never been calculated for a heavy freight tonnage. Yet it is upon such tonnage, carried in large quantities, at low rates, and small profits per ton, that the most prosperous roads make their gains; and it is upon such that ours must mainly rely hereafter. The net profits of the Pennsylvania Railroad Company in 1869 were more than three times as much per mile run of trains with freight as with passengers. Their profit for the year was nine times as much on freight as on passengers; ours only two-thirds as much on freight as on passengers.

A fully developed business on our roads would doubtless differ in its proportions from that on the Pennsylvania Railroad, but it would differ still more from the present business. Why have we missed this important and, in our future, all-essential branch of traffic? Because we have not yet fully expiated the errors of youth.

When the companies were consolidated, and their mutual jealousies were no longer in the way, we found the transit duties which in the early inexperience of railroad legislation and railroad management had been laid upon us, a legal prohibition of a heavy freight traffic. To do such work cheaply, expensive preparations must be made, and large quantities carried; to get large quantities, rates must be low. But as the law stood, every cent of profit, at rates not very unusually low, would have been paid to the State in transit duties.

As soon as we succeeded in getting that pernicious system abolished, in the spring of 1869, we endeavored to stimulate cheap freight, and succeeded in 1870 in more than doubling the way tonnage; it being in 1868, 319,000 tons, and in 1870, 665,000 tons; or, including coal, a great deal more. In the four years since the consolidation the whole tonnage has been trebled.

But one difficulty remains. A large part of this heavy tonnage seeks the shores of the Hudson river. Much of it ought to remain on the west bank to await final distribution to the consumers; for if taken at once to New York and distributed afterwards, the extra cartage, storage, handling, and often extra ferriage costs as much as hauling over 200 miles of railroad. Now, valuable as our improved property in Jersey City is for other purposes, it is not available for this. We have no place on which to store heavy goods awaiting distribution.

Along our route there are many favorable locations for manufactories. If we had a suitable place of deposit for their products at the end of our road, a saving would be effected (partly to the Company, partly to the customer) of more than half the present freight to New York. With such a place of deposit we could adopt low rates. Our local tonnage would become very great, and sure of the profits on that, the evils of competition would not be at all in proportion to our traditional nervousness about them. Our way business now is not far from half of all.

Fully impressed with these views (though circumstances did not formerly permit their expression), feeling that the salvation of the companies required a good freight terminus, I long ago selected Harsimus Cove as the best, and, latterly, the only remaining available site for it. As soon as that essential step in the grand movement—the consolidation—was effected, means were taken to secure it. It was secured just in time to prevent it from falling into other hands.

It is to reach this seventy-five acres, now flowed by the tide, that the Pennsylvania Railroad Company offer to lease our works and pay us ten per cent. But it is a great mistake to suppose that its purchase and improvement were intended mainly for the business of that road, which gives us only a quarter of our tonnage. It is just as absolutely vitally necessary for our own local business.

This improvement was of such magnitude, and there were so many other urgent demands for expenditures, that it has been postponed to the present time. It was, perhaps, to be expected that those not practically acquainted with railroad transportation on a large scale, and with the rapid growth of traffic when it has a chance to grow, would hesitate about going into an expenditure of three millions, required for the development of this property.

The purchase of Harsimus was not a land speculation; not a lucky accident; not merely an engineer's project to bring rail transportation, shipping, lighterage, ferriage, cartage, and storage all into contact, and to save one, two, or three dollars a ton, and extend the commercial metropolis of this hemisphere to the west bank of the Hudson; not an instrument to secure a particular alliance; but an essential means of creating a great freight traffic, and carrying out the policy which has always been kept in view. If we had made the improvement at once we should probably now get twelve per cent. rent instead of ten; or make twelve per cent. ourselves. And we should have been able to carry out much more fully than we have done (and we have done something in that direction) our liberal policy.

Should the lease fail from any cause, we cannot stand still. We should lose no time in making this improvement; making it ourselves—not in connection with anybody else, but retaining all the power it confers.

Then, with our unequalled location, our ramifications among the sources of business, manufactories stimulated by low freights, and favorable locations springing up along our route, the business of the South reviving, and that of the whole country growing, with legal trammels now removed and valuable rights obtained; we, opening our doors to all connecting lines and all other parties on fair and equal terms, and giving them assurance for the future by permanent contracts; lifting ourselves out of any old grooves that no longer run in the right direction; adopting a single simple organization in place of the present provisional government; shunning the tainted air of legislative ante-chambers; then—we doing this—i the lease falls through, we shall have little r son to regret the failure.

CIVILIZATION IN WISCONSIN.

A Pleasant Party of "Respected Citizens" Lynch a Murderer.

Oconto, Wis., Letter to Green Bay Advocate.

There was a dance in this city Tuesday evening at Turner Hall. Owing to some previous disturbance some parties were shut out from the hall. One man by the name of Ludwig Nehr armed himself with a revolver and a long knife, and announced his determination of protecting the place or injuring some one before the evening was over.

At about 11 o'clock at night he rushed down the stairs from the hall, and in some fracas, drew his sabre and severely cut a man in both arms. Then, running out on the platform, where several were standing or sitting, he drew his revolver, and at some slight word of provocation, fired. At this, those sitting there began to run, and he fired again. This time, Joseph Ruelle, who had been quietly sitting on the steps, while, it is supposed, in the act of running away, was shot through the head. He was not found for some minutes. Then Nehr was arrested by an officer, assisted by parties arriving, and, after being roughly handled and narrowly escaping lynching through interference of Mayor Smith and others, he was taken to jail.

From this time popular feeling began to grow more intense. The next morning a crowd surrounded the jail, and towards noon an examination was held by E. Hart, Esq., and the prisoner committed, with directions to be taken to the Brown county jail on account of the insecurity of our present miserable structure. He was to go by the Northwest at noon, but by that time a crowd, headed by the frantic father of the boy, seemed determined to prevent his removal. Again, through the persuasion of the mayor, the father and crowd dispersed, and the prisoner was not removed; and many believed that the people would reflect and let the law take its course.

At about dusk of last night the mob gathered again, led by the exasperated father of the murdered boy, numbering something like five hundred, broke open the jail, tore the prisoner out, dragged him through the streets a short distance beyond the Methodist church, and hung him. There was no sympathy for the prisoner. Man, woman and child, high and low, were satisfied he ought to die. It is currently reported that he had acknowledged he had killed others elsewhere, and this was the third or fourth murder he had committed.

A HEROIC WOMAN.

A Passenger Train on the Western Pennsylvania Railroad Saved from Wreck.

On Thursday afternoon, as the express train on the Western Pennsylvania Railroad was proceeding eastward, and rounding a curve about midway between Leechburg and Apollo, in Armstrong county, the engineer observed a woman on the track, waving her apron violently in the air. The first thought was of danger, and he immediately applied his brakes and got the train stopped just in time to prevent a terrible accident, as a mass of rock, weighing about fifteen tons, had fallen upon the track a few rods from where the woman had given the signal. When the train stopped, the passengers were not long in ascertaining the cause, and appreciating the noble conduct of the poor countrywoman to whose presence of mind they owed their rescue from a shocking casualty.

Colonel Hicks, the conductor of the train, at once consulted with some of the passengers, and in a short time a purse of twenty dollars was made up and presented to her. She gave her name as Mrs. Frank. A passenger on the train, from whom we obtained our information, desires that we should commend the case of this humble woman to the officers of the company. Had it not been for her warning signal, the train would have been dashed into the rock, and serious damage to the train, if not to the passengers, would have been the consequence.—*Pittsburg Commercial.*

—*Tempus fugit*—Fly time.

—The "Pacific mails"—quiet husbands.

—Negroes are to be placed on the Cincinnati police force.

—Eleven white girls married colored men in Boston last year.

—Germany has nineteen zoological gardens—one bear, Bismarck.

—The thirty-fourth year of Queen Victoria's reign ends June 20.

—A glass of soda water, with syrup, costs the manufacturers a cent and a quarter.

—Miss Burdett Coutts once had the offer of the hand and heart of the Duke of Wellington.

FIRST EDITION

MALPRACTICE.

A Severe Lesson.

Case of Dr. O. W. Reid.

Judge Paxson's Decision.

Sent to the Penitentiary

For Six Years and Five Months.

Points of Law Involved.

Court of Quarter Sessions—Judge Paxson.

In the case of Dr. Oliver W. Reid, who was in January last convicted of performing a criminal surgical operation, Judge Paxson this morning, upon a motion for new trial, delivered the following able opinion, overruling the motion and settling a most vital question of law, as to the competency of a wife to testify in such a case:—

Twenty-six reasons in support of the motion for a new trial have been filed in the above case. The first, second, and third of said reasons refer to an alleged error of the Court in allowing an investigation in the presence of the panel of jurors into the reason why an officer of the court had been unable to serve a subpœna upon one Anne McKeon, a witness for the Commonwealth. The facts are that prior to the jury in the above case being impanelled and sworn, an officer of this court was called and examined publicly in court in regard to the absence of the said witness and his efforts to procure her attendance. One of the co-defendants, Washington Paynter, was shown to have been in her company the previous evening. The counsel for Dr. Reid objected to a public examination into this matter in the hearing of the panel of jurors, which objection was overruled by the Court. We do not see any error in this. Examinations of this nature are usually and necessarily in public, and if we were to sustain this objection it would be practically impossible to make any examination as to the absence of a witness without withdrawing the whole panel of jurors from the court-room.

The fourth and fifth reasons allege error in overruling the prisoner's challenge for cause as to Thomas Stephenson and Thomas Hall, who were called as jurors. The ground of the challenge in each case was that the juror had been present in court during the investigation above referred to. The prisoner's counsel called two of the reporters of the press who were in court at the time; another testified to the fact of such investigation having taken place in the presence of the panel of jurors, and upon this evidence they rested their challenge. They did not examine either juror to ascertain if he had heard what had transpired at the time. It was quite possible the attention of the particular juror was attracted by something else, and that he did not hear one word of the testimony of the officer; and even if he had, the challenge for cause could not have been sustained upon that ground. In a capital case, where the rule upon this subject is enforced with more stringency, it is not enough to disqualify a juror that he has read and heard full accounts of the supposed offense. It must be shown that his mind has received thereby impressions as to the guilt or innocence of the accused which will influence his judgment notwithstanding the evidence. In this case there was no evidence that the juror even heard that which it was alleged might bias his mind. This challenge is wholly unsupported by either precedent, authority, or reason.

The sixth and seventh reasons allege error in permitting the Commonwealth to challenge Andrew J. Damon, a juror, after the defendant had exhausted his peremptory challenges. It is to be noted that in stating these reasons the learned counsel have assumed the very point to be decided, viz., that the District Attorney had waived the challenges allowed him by law, when he came to challenge this juror. In order, therefore, that the grounds of my ruling upon this point may be understood, I will state the facts substantially as they occurred. When the clerk was about to call the jury into the box, the prisoner's counsel asked instructions of the Court whether they should challenge singly, *i. e.*, as the jurors entered the box, or make their challenges when the box was full. As there was nothing before the Court upon which a ruling could be had, I declined to give any advice as to the mode of challenging. The prisoner's counsel then commenced challenging as the jurors' names were called, as in capital cases, and when the box had been filled their challenges were exhausted. Up to this point the District Attorney had not exercised his right of challenge, nor had he been called upon to do so. When the box was full he challenged the juror Damon, which was objected to by the prisoner's counsel upon the ground that the District Attorney had waived his right of challenge. I overruled the objection and sustained the challenge.

It was contended that under the 38th section of the criminal procedure act, which provides that all challenges in criminal proceedings shall be alternate, the Commonwealth first challenging one person and then the defendant challenging one person, the District Attorney waved his right of challenge because he failed to exercise it until after the prisoner had exhausted his challenges; and the case of The Com. vs. Frazier, 2d Brewst., 490, was cited in support of this view. In Nartzell vs. The Com., 4 Wright, 466, however, it was held that this rule does not apply to capital cases when the jurors are challenged as they enter the box, for the reason that in such case the Commonwealth's challenges would be exhaused upon the first four jurors. The Supreme Court in Nartzell vs. The Com. limit the rule requiring alternate challenges to "civil cases and misdemeanors, where the jurors are all called into the box before the challenges begin." The Com. vs. Frazier was a case of misdemeanor, and the jurors were all called into the box before the challenging commenced. Here the offense charged was a felony, and the defendant challenged as the jurors entered the box. If this mode of challenge was proper, then the case comes within the rule in Nartzell vs. the Com. If, on the other hand, the challenging should not have commenced until after the box had been filled, the Commonwealth could not be deprived of her challenges by the act of the prisoner in challenging out of time. The Commonwealth can only be held to alternate challenges when the box is full.

The eighth, ninth, and tenth reasons bring us to the vital question in this cause, viz., whether the wife of a co-defendant not upon trial can be examined as a witness for the Commonwealth. It is important, because the case depends upon it; it is still more important from the fact that it involves a principle of law never yet decided in Pennsylvania, so far as I am informed, and the authorities in regard to which elsewhere are conflicting and unsatisfactory. Much as we regard the interests of the parties in this particular case, they fade out of sight when we come to settle an important principle by which the rights and liberties of hundreds of others may be hereafter affected.

The defendant was jointly indicted with one Washington Paynter, under the 95th and 96th sections of the Criminal Code, with procuring and attempting to procure by the use of certain instruments and drugs upon the body of one Anne McKeon, then pregnant and quick with child, a miscarriage. On the day, or the day but one before the trial, Washington Paynter, one of the defendants, was married to the said Anne McKeon, who was the most important witness for the Commonwealth, and without whose testimony the charge could not have been made out. When the case was called for trial, the prisoner moved for a separate trial. There being no objection on the part of the Commonwealth I allowed the motion, and the trial proceeded against Dr. Reid. When Anne McKean (now Paynter) was called to the stand, the prisoner's counsel objected to her competency as a witness upon the ground that she was the wife of a co-defendant. The witness was examined upon her *voir dire*, and said that she had been married to Washington Paynter as above stated. The objection, after argument, was overruled, the witness was examined, and it was upon her testimony mainly that the prisoner was convicted. It is upon the propriety of that ruling we are now to pass.

The general principle that husband and wife cannot be examined for or against each other has been long and well established. But the extent of the application of this principle, and the exceptions thereto, are not very generally understood, and have given rise to a variety of conflicting opinions. I shall endeavor briefly to examine some of the most important authorities bearing upon this rule; the reason of the rule; how far it has been modified by recent decisions, and the exceptions thereto; and extract therefrom, if possible, the principles which should be our guide in this and analogous cases.

The case of Rex vs. Cliviger, 2 T. R. 263, cited by the prisoner's counsel upon page 40 of their paper book, is the leading case upon the incompetency of the wife to give testimony concerning or tending to criminate her husband. This was a case of the settlement of a pauper. A marriage, in fact, had been proven between two paupers, after which the first wife was called to prove her prior marriage with James Whitehead, the male pauper. But the court held her incompetent. Says Ashhurst, J.:—"But the ground of her incompetency arises from a principle of public policy which does not permit husband and wife to give evidence that may even tend to criminate each other. The objection is not confined merely to cases where the husband or wife are directly accused of any crime; but even in collateral cases, if their evidence tends that way, it shall not be admitted."

It will be observed that this case goes to the extent of excluding the wife even in a collateral proceeding where her husband has no direct interest in the issue upon trial. It was soon seen that the court had gone too far in the King vs. Cliviger, and the law of that case was shaken in the King vs. All Saints, 6 M. & S., 194, and was overruled in the King vs. Bathwich, 2 Barn. & Ad., 639, to the extent of limiting the rule to proceedings directly against the husband. Says Lord Tenterden, C. J., in the latter case:—"The decision in Rex vs. Cliviger appears to have been founded upon a supposed legal maxim or policy, viz., that a wife cannot be a witness to give testimony in any degree to criminate her husband. This will be undoubtedly true in case of a direct charge and proceeding against him for any offense; in such a case she cannot be a witness to prove his innocence of the charge. The present case is not a direct charge so proceeding against the husband. It is true, that if the testimony given by both be considered as true, the husband, Cook, has been guilty of the crime of bigamy; but nothing that was said by the wife in this case, nor any decision of the Court of Sessions, formed upon her testimony, can hereafter be received in evidence to support an indictment against him for the crime."

The large number of English and American cases cited in the defendant's paper book, to the point that a wife may not give testimony tending to criminate her husband, had their origin in Rex vs. Cliviger, which I submit is not law now to the extent that it formerly was—the rule being that a wife may give testimony tending to criminate her husband, in a collateral proceeding, when, as was observed by Lord Tenterden, in The King vs. Bathwick, above cited, nothing that was said by the wife in her testimony, nor any decision of the Court founded upon her testimony, can affect her husband.

"But though the husband and wife are not admissible as witnesses against each other, when either is directly interested in the event of the proceeding, yet in collateral proceedings not immediately affecting their mutual interests their evidence is receivable, notwithstanding it may tend to criminate, or may contradict the other, or may subject the other to a legal demand." Greenleaf on Ev. sec. 342, citing King vs. Bathwick, and a number of other English and American cases.

"Although husband and wife are not allowed to be witnesses against each other, where either is directly and immediately interested in the event of the proceeding, whether civil or criminal, yet in collateral proceedings not immediately affecting their mutual interest, their evidence is receivable, notwithstanding that the evidence of one tends to contradict the other, or may subject the other to a legal demand, or even to a criminal charge."—Phillips on Ev., p. 78.

The same principle is recognized in Roscoe's Criminal Evidence. Says that learned author (see p. 147):—"It is not in every case in which the husband or wife may be concerned that the other is precluded from giving evidence. It was, indeed, in one case, laid down as a rule, founded upon a principle of public policy, that a husband and wife are not permitted to give evidence which may tend to criminate each other (citing Rex vs. Cliviger). But in a subsequent case the Court of King's Bench, after much argument, held that the rule as above stated was too large, and that where the evidence of the wife did not directly criminate the husband, and never could be used against him, and when the judgment founded upon such evidence could not affect him, the evidence of the wife was admissible." Citing Rex vs. All Saints. 1 Phil. Ev. 164, 8 Ed.; 6 An. & S., 194.

In Taylor on Ev. vol. 2, 5 ed., sec. 1227, sec. 1230, after stating the rule which excludes the husband or wife, or one defendant from testifying against the other, the learned author says:—"But though the rule of exclusion is thus stringent when a married person is criminally accused in conjunction with others, it is clear, that where a married defendant has pleaded guilty, or is entirely removed from the record, whether by a verdict pronounced in his favor, or by a previous conviction, or by the jury not being charged with his interest at the time of the trial, his wife may testify either for or against any other persons who may be parties to the record." Citing Rex vs. Thompson, 3 Fost. & Fin., 824; Hawksworth vs. Sholer, 12 M. and W., 94; Rex vs. Williams, 8 C. and P., 284, and other cases.

The reasons for the rule excluding husband and wife from testifying for or against each other are two-fold. First. The community of interest subsisting between husband and wife and the identity of their legal right. If the husband has such interest in the matter in controversy as rendered him an incompetent witness, *a fortiori*, the wife was incompetent. Second. Motives of public policy which excluded them upon the ground that it would tend to disturb the harmony of the domestic relations to allow the wife or husband to be a witness for or against each other.

The principle which excludes a party in interest from testifying extends to husband and wife, and applies to all cases in which the interest of the other are involved. Greenleaf on Ev., § 334-5; Rex vs. Smith, 1 Moody Cr. c. 230; Rex vs. Rand, *ibid*, 281. In the Queen vs. Densley, 2 Cox Cr. c. 330; Reg. vs. Bartlett, 1 Cox Cr., c. 105, and in Reg. vs. Sills, 1 C. and Rex, 494, such evidence was rejected, because it tends to benefit the other.

So far as the husband and wife are excluded from testifying from motives of public policy, there would seem to be no reason for any distinction as to whether they are called to testify for or against each other. And in Rex vs. Sergeant, Ry. & Moo. 352 (21 E. C. L. R. 453), it was held that there was no such distinction. The same principle is recognized by Greenleaf, "and when, in any case, they are admissible against each other, they are also admissible for each other." Roscoe lays down the rule thus:—"The circumstance of one of the parties being called for or against each other makes no distinction in the law." See page 147. To the same point is Wharton, vol. 1. § 770.

It must be borne in mind that there is a marked distinction between the competency of the husband or wife to testify where the other is upon trial, and the competency of either to testify in a collateral proceeding, or in one that is analogous thereto. That this distinction has been lost sight of in many of the cases cited by the learned counsel for the prisoner, I think is very clear. Two of the cases referred to, viz., Commonwealth vs. Shiron and Commonwealth vs. Gordon, are undoubtedly at variance with the rule I have referred to. As to the first, I have no report beyond the brief syllabus in Wh., p. 700, pl. 1310. This is to be regretted, as we have no light as to how far the case was considered, and to what extent it is to be regarded as authority. In Com. vs. Gordon, 2 Brewst. 507, in the trial of a man charged with adultery, it was held that the husband of the woman with whom the adultery was said to have been committed, was not a competent witness for the prosecution, "Not because (says Brewster, J.) this evidence can be used as evidence against him either for purposes of a defense in a desertion case or of offense in a suit by him for a divorce, but he should not be heard because the evident effect of his testimony is to affect the marital relations." There are no authorities cited by the learned judge, and it was probably ruled hastily at Nisi Prius and without subsequent consideration. Our most learned text writers, as we have already seen, and many of the modern cases are the other way. To those already cited may be added, King vs. Rudd, 1 Leach Cr. C., 157, when the wife was admitted to testify to the forgery of a bond which her husband had uttered; The King vs. Halliway, 8 Cox Cr. C., 298, when the husband was admitted to prove that the wife had no authority to sign his name in a prosecution for forgery, in which the wife was charged in one count as a co-conspirator; and Chamberlain vs. The People, 23 N. Y. R., 85, where, on an indictment for perjury, committed in a divorce suit, the wife was held competent to prove sexual connection with him, which fact he had falsely denied in the divorce suit.

Many of the cases cited upon pages 40 and 41 of the defendant's paper-book do not bear upon the principle referred to—that is, the competency of the husband or wife to testify in a collateral proceeding. In some of them other and material considerations entered into the judgment of the Court, and in others the decisions have been modified by the cases I have cited. In Rex. vs. Denslow, 2 Cox, A. C., 230, the defendants were tried jointly, and the testimony of the wife would have directly benefited the husband; Corse vs. Patterson was a civil suit, in which the husband had a direct interest; the State vs. Burlingham was a joint trial for conspiracy, and the wife was offered as a witness against her husband and his co-defendant; in Sparhawk vs. Bull, 9 Vt., 41, the wife was offered to testify directly against her husband in a suit in equity; In Rex vs. Smith and Moody, A. C., 289, the defendants were tried together for burglary. Draper, one of the defendants, after having called and examined one witness in his behalf, proposed to call his daughter in further proof of the alibi set up by him, but it appearing that she was the wife of the prisoner Smith, the learned judge held she could not be a witness because her evidence would tend to benefit her husband; in Rex vs. Wood, *id.*, the defendants were jointly tried, and the case was ruled upon the authority in Rex vs. Smith, above cited; in the Queen vs. Bartlett, Cox, A. C., 105, the prisoners were jointly indicted for stealing potatoes. It appeared upon the evidence that some of the potatoes were found in the room of one of the defendants, and others in that of the other. One of the prisoners called the wife of the other to prove that the potatoes found in his apartment were not the property of the prosecutor. Weightman, J., after consultation with his colleague, admitted the evidence. In the Queen vs. Denslow, 2 Cox. Cr. C., 105, the wife of a defendant was admitted as a witness for a co-defendant on a joint trial, upon the ground that each defendant had a distinct defense, and the conviction of the one did not necessarily involve the conviction of the other, and a doubt was expressed whether the case of Rex vs. Smith, above cited, was law. To same effect is Rex vs. Sills, 1 Car. & Kir., 494. In Rex vs. Sergeant, R. & M., 352, it was held that the wife is not competent in a trial where another and her husband were charged with a conspiracy to abduct her; and it is placed upon the ground that a conspiracy is a joint offense of which both must be convicted or both acquitted. We shall presently see that the wife is competent against her husband upon a charge of abduction when the force continued up to the marriage, and even in one case when there was no evidence of force. In Pedley vs. Wellesby, 3 C. and P., 558, it was merely held that the fact of the marriage of a witness being after subpœna served upon her did not affect the question of her competency as a witness; the cases of State vs. Welch, 13 Shep., 30, State vs. Gardner, 1 Root, 485, Com. vs. Sparks, 7 Allen, 534, Com. vs. Schriver, and Gordon vs. Com. are evidently decided upon the authority of Rex vs. Cliviger and other cases which rest thereon, and we have seen that Rex vs. Cliviger has been expressly overruled. In the cases of State vs. Smith, 2 Iredell, 402, Pullen vs. People, 1 Dougl., 48, and U. S. vs. Wade, 2 Cr. C. C, 680, it was held that the wife of one defendant is not a competent witness for his co-defendant, but these cases were decided upon the principle that the husband defendant not being a competent witness for the co-defendant, the wife was also incompetent, which was the ground of the ruling in the People vs. Bull, 10 John., 85. The reason of the rule which excludes a defendant as a witness for his co-defendant is manifest, and it would seem to extend with equal force to the wife. But no such interest exists when one defendant is called against his co-defendant, and therefore no disqualification on account of the husband's interest attaches to the wife. Hence it was ruled in Wexon vs. The People, 5 Parker's Cr. C., 119, that when a co-defendant may be called as a witness, so may the wife. Rex. vs. Georges Car. & M.; Rex. vs. Gerber, T. & M., 647; Williamson vs. Rex, 1 L. R.

Rejecting, therefore, the cases which have been overruled, or modified, or are inapplicable, or when the wife has been held to be incompetent by reason of her husband's interest, the weight of authority seems to be overwhelming that in collateral proceedings the wife may be permitted to testify against her husband, even if her testimony tend directly to charge him with crime. And I think the rule is sustained by reason as well as authority. While there is some force in the rule as laid down in Rex vs. Cliviger, that to permit a wife to give testimony that tends to criminate her husband may disturb in some instances the domestic relations, it must be borne in mind that it is perhaps a choice between evils, and that if the broad rule in that case were the law, society would suffer greatly by the closing of the mouths of witnesses as to transactions of which they are alone competent to testify. The individual evil in isolated cases must give way before the public policy and necessity which imperatively require that the mouth of a witness shall not be closed for private reasons when the general interests of the public are affected thereby.

This brings us to the question whether in the case of two defendants, jointly indicted and separately tried, the wife of the defendant upon trial may be examined as a witness for the Commonwealth?

Something may perhaps depend upon the character of the proceeding. Where the offense is joint, as in conspiracy, when the defendant not upon trial must necessarily be affected by the verdict, it may well be questioned whether she would be competent; and so in any other case where both defendants are necessarily involved. But where one may be acquitted and the other convicted the same reason does not exist. And hence it must be observed that there is a clear distinction between the competency of the witness and the privilege or right to decline to answer to facts criminating his or her husband or wife. The witness may be competent for some purposes, and not for all purposes.

Is there any solid distinction between what is proven as a collateral proceeding and a separate trial, when the offense is not necessarily joint? In other words, is there any real difference as affecting this question, between a separate indictment and a separate trial? If the prisoner had been indicted separately I have no doubt, under the authorities cited, Mrs. Paynter would have been a competent witness for the Commonwealth, notwithstanding the fact that her husband was charged with the same offense in another bill.

Why? The reason is clearly stated by Lord Tenterden in The King vs. Bathwick, that "nothing said by the wife in the case, and no decision of the Court founded upon her testimony, could be thereafter received in evidence against the husband, upon an indictment charging him with the crime." And in Tayler on Ev., before cited, the fact of "the jury not being charged with his (the husband's) interest at the time of the trial," renders the wife competent. In Phillips on evidence, p. 90, he says:—"When, however, of two or more, one of them is not upon trial at the time when the others are tried, the wife of the party not upon trial is admissible as a witness," citing King vs. Williams, F. C. and P., 284; cited by Baron Alderson, in 12 M. and W., 49; King vs. Shintell; Queen vs. Gill, 1 C. and Kir., 494. To the same point is Wh. Amer. C. L., §768.

"But although in these cases the wife will be permitted to testify against her husband, it by no means follows that she will be compelled to do so, and the better opinion is, that she may throw herself upon the protection of the Court, and decline to answer any question which may tend to expose her husband to a criminal charge." Taylor on Ev., sec. 1235.

In Roscoe's Nisi Prius Ev., p. 176, 12 Ed., the rule is thus stated:—

"There has been some confusion between incompetency and privilege; and it was at one time thought a husband or wife was in every case an incompetent witness with respect to any fact which might have a tendency to criminate the other (Rex vs. Cliviger), but that decision is no longer law; all subsequent cases, with one exception (Rex vs. Gleed, 8 Russ.), treating husband and wife, except in an indictment against each other, as competent witnesses.

"But though the husband and wife are in such cases competent, it seems to accord with principles of law and humanity that they should not be compelled to give evidence which tends to criminate each other; and in Rex vs. All Saints, 6 M. and S., 184, Bayley, J., said, that if the witness had thrown herself upon the protection of the Court, on the ground that her answer might tend to criminate her husband, he thought she would have been entitled to it."

The same doctrine is recognized in Rosco's Crim. Ev. See pages 147-8.

There are a number of cases in which the wife has been admitted to testify against her husband when separately tried, or in which the principle has been distinctly recognized.

In the Commonwealth vs. Easland, a case determined in the Supreme Judicial Court of Massachusetts (1 Mass. 15), the application was to admit the wife when her husband was on trial jointly with other defendants. The Court (Strong, Sedgwick, Sewall, and Thacher, Justices) ruled unanimously that she could not be examined. But say the Court, "To have had the benefit of her testimony they should have moved to be tried separately from the husband, which the Court would have granted had this been assigned as the reason for the motion." This Court has long been distinguished for the learning and ability of its judges, and for this reason the case last cited would seem to be entitled to great weight.

In Wixon vs. The People, 5 Parker, Cr. C., 119, it was held that the wife of a co-defendant, not on trial, might be examined for the Commonwealth against the other defendant when he is separately tried. The same point was decided in State vs. Anthony, 1 McCord, 285, while in State vs. Worthington, 31 Maine, 62, it was ruled that where one of two joint defendants defaulted on his recognizance his wife was held a competent witness for the other.

The only case cited by the defendant which I regard as his direct conflict with this principle is People vs. Colburn, 1 Wheeling Cr. C. 479. In that case John Colburn and Elizabeth Weir were indicted for forgery. The former only was placed upon trial, Mrs. Weir never having been arrested. A *nolle prosequi* was entered as to her, but the Recorder rejected the testimony of her husband as a witness for the Commonwealth. Says Recorder Riker, "The prosecutor's wife is a party to the record, and the testi-

Continued in the Third Edition.

SECOND EDITION

THE ASSEMBLY ELECTIONS.

The Communist Trials.

Chances of the Orleanists.

The Capital of Italy.

It is Transferred to Rome

Italian Commercial Treaty.

DOMESTIC AFFAIRS.

Advices from the Pacific.

FROM EUROPE.

[BY ASSOCIATED PRESS.]

Exclusively to The Evening Telegraph.

Return of the French Government to Paris

VERSAILLES, June 10.—The seat of government will shortly be removed to Paris.

The idea of

Burning the Bodies of the Victims

of the civil war in Paris has been abandoned, and they will be exhumed from their present burial places in the Park of Monceaux and the Garden of the Luxembourg and transferred to a new cemetery beyond the village and fort of Vanvres.

Pyat is Known to be Concealed

in Paris.

The committee of the Assembly upon the subject of the

Reorganization of the Army

is about ready to report, and will favor obligatory service.

The Prince de Joinville and Duke d'Aumale paid visits, yesterday, to President Thiers. the President of the Assembly, Grevy, Minister of War, Cissey, and other members of the Cabinet. They were received with the utmost courtesy, and Thiers subsequently returned the visit.

The Orleanists and the Assembly.

At their interviews with M. Thiers and M. Grevy, the two princes resigned their seats in the Assembly, and disclaimed any intention of intriguing against the republic. The Orleanists are preparing a banquet to the Duke d'Aumale.

The reported arrival of the Count de Chambord at Boulogne is contradicted.

The *Official Journal* announces that the

Elections to the Assembly

in 113 districts will be held on the 2d of July. The same journal assures the people that the deposits in the Bank of France are uninjured.

The *Official Journal* also states that the resignation of their seats by Joinville and Aumale will be communicated to the Assembly to-day.

Cold Weather in England.

LONDON, June 10.—The weather continues cold. There was a snow storm of an hour's duration at Birmingham this morning.

The Marquis of Lorne

and the Princess Louise landed at Deal this morning, on their return from the wedding tour on the continent.

The Italian Capital Transferred to Rome.

FLORENCE, June 10.—The Government has officially informed all the foreign ambassadors that the capital of Italy, on the 4th of July next, will be transferred to Rome. The Ambassadors await instructions from the home governments before making arrangements for a change of residence.

The Chamber of Deputies has adopted the treaty of commerce with the United States.

This Morning's Quotations.

LONDON, June 10—11·30 A. M.—Consols for money, 91⅛; account, 91⅛@91¼. Bonds, 1862, 90¾; 1865, old, 90¾; 1867, 92⅞; 10-40s, 88¾.

LIVERPOOL, June 10—10·30 A. M.—Cotton firmer; uplands, 8⅛@8¼d.; Orleans, 8⅛@8¾d. Sales to-day estimated at 12,000 bales.

This Afternoon's Quotations.

LONDON, June 10—1·30 P. M.—Consols, 91⅛ for money and account; Bonds, 1862, 90⅛; of 1865, 90¾; 1867, 92⅛; 10-40s, 88⅛.

PARIS, June 10.—Rentes, 53f. 10c.

LIVERPOOL, June 10—1·30 P. M.—Bacon, Cumberland cut, 37s.

FROM CALIFORNIA.

[BY ASSOCIATED PRESS.]

Exclusively to The Evening Telegraph.

Pork Overland.

SAN FRANCISCO, June 9.—A train load of hogs received overland from Iowa sold at 7½@8c. per pound, live weight, and another lot has been ordered.

Strange Cause of Fire.

The crew of the Russian war steamer Boyarin saved the brig Curlew from destruction by fire in the harbor to-day. Rats in the match-locker caused the fire. The loss is $2500.

Japan

will send an extensive contribution, embracing specimens of all her industries, to the coming Mechanics' Institute Fair in San Francisco.

FROM BALTIMORE.

[BY ASSOCIATED PRESS.]

Exclusively to The Evening Telegraph.

Trading without a License.

BALTIMORE, June 10.—Yesterday in the criminal court Edward C. Robinson pleaded guilty to a charge of being a non-resident trader, selling goods without a license, in violation of the act of the General Assembly of this State, and was fined $400 and costs.

THE WEATHER.

The Detailed Meteorological Report for To-day.

The following is the meteorological report of the Signal Bureau of the War Department for this morning, all the observations being taken at 7·43 A. M., Philadelphia time. The barometrical reports are corrected for temperature and elevation. The velocity of the wind is given in miles per hour, and the force is an approximate reduction to the Beaufort scale:—

Place of Observation.	Barometer.	Thermometer.	Direction of Wind.	Velocity.	Force of Wind.	State of Weather.
Baltimore	30·25	66	N. E.	2	V. gent.	Fair
Boston	30·17	68	N.	3	V. gent.	Clear
Cape May	30·24	65	E.	10	Brisk.	Fair
Charleston, S. C.	30·21	80	......	..	Calm.	Fair
Chicago	29·91	69	W.	19	Brisk.	Fair
Cincinnati	30·03	73	S. E.	2	V. gent.	Clear
Detroit	29·89	70	S. W.	10	Brisk.	t.strm
Key West, Fla	30·13	82	E.	14	Brisk.	Fair
Memphis	30·07	74	S. E.	3	V. gent.	l. rain
Mt. Washington	30·25	40	S. W.	2	V. gent.	Clear
New York	30·19	71	N. W.	2	V. gent.	Fair
Norfolk	30·17	76	S. E.	8	Gentle.	Fair
Omaha	29·94	66	N. W.	4	Gentle.	Clear
Oswego	30·15	58	S. E.	8	Gentle.	Fair
Philadelphia	30·25	76	N. E.	..	......	Clear
Pittsburg	30·24	68	......	..	Calm.	Clear
St. Louis	30·00	76	S. W.	8	Gentle.	Cloud
Washington	30·22	65	N. E.	6	Gentle.	Cloud
Wilmington, N.C	30·22	82	......	..	Calm.	Fair