THE DISPATCH.
BY COWARDIN & ELLYSON.
CASH—INVARIABLY IN ADVANCE.
The DAILY DISPATCH is delivered to subscribers at FIFTEEN CENTS per week, payable to the carrier weekly. Mailed at $6 per annum; $3 for six months; $1.50 for three months; 50c. for one month.
The SEMI-WEEKLY DISPATCH at $2 per annum, or $1 for six months.
The WEEKLY DISPATCH at $1 per annum.

DAILY DISPATCH.

VOL. LV. RICHMOND, VA., SATURDAY MORNING, MAY 3, 1879. NO. 106.

Richmond Dispatch.

SATURDAY.....MAY 3, 1879.

☞ THE CIRCULATION OF THE DISPATCH IS LARGER THAN THE COMBINED CIRCULATION OF ALL THE OTHER DAILY NEWSPAPERS OF THE CITY.

WEATHER REPORT.

INDICATIONS FOR TO-DAY.—For the Middle Atlantic States, rising barometer, northwest winds, slightly warmer, and partly cloudy or clear weather.

For the South Atlantic States, rising barometer, slightly cooler, northwest winds.

THE WEATHER YESTERDAY was clear and cool.

THERMOMETER YESTERDAY: 6 A. M., 50; 9 A. M., 59; noon, 72; 3 P. M., 76; 6 P. M., 72; midnight, 60.

Mean temperature, 64 5-6.

LOCAL MATTERS.

Fatal Casualty.

UNEXPECTED EXPLOSION OF A BLAST AT GRANITE—ONE CONVICT KILLED AND THREE OTHERS WOUNDED—DETAILS OF THE AFFAIR.

The village of Granite, on the Richmond and Danville railroad, about five miles from this city, was thrown into considerable excitement yesterday, occasioned by a terrible explosion of a heavy blast at the Old Dominion Granite-Works about 10 o'clock, and which resulted in the death of one of the penitentiary convicts at work there and the wounding of three others.

Several blasts were made during the early morning with the usual success, and finally a charge was put in for the blast which resulted so seriously, and the slow-match applied. After a considerable time had elapsed, and the powder failing to go off, several of the convicts went up to see whether the match had gone out, and if so, to recharge and relight the blast. When they had gotten within a few feet of the point where the powder had been placed it went off very unexpectedly, tearing up the ground and throwing fragments of granite in every direction.

A piece of stone struck John Meade (colored), mutilating him terribly, from the effects of which he died in a few hours. One of Meade's hands was found about one hundred yards from the place of the accident, having been completely torn from his arm. It was terribly mutilated. His intestines were also torn out, and one side of the man was a mass of mangled and bleeding flesh. Dr. Walker, surgeon to the penitentiary, was telegraphed for, and arrived a few minutes before Meade died, but pronounced him beyond reach of medical skill. The remains of Meade were taken in charge by the authorities at the convicts' blockade, and will be interred to-day in the vicinity of the accident.

Another convict, named Walker, was fatally wounded internally. By direction of Dr. Walker he was removed to the penitentiary hospital for treatment. At the latest accounts he was lying in a critical condition, with but slight hope of recovery.

Jim Boots, also a convict, was painfully injured by being struck in the forehead with a piece of the flying stone, inflicting an ugly gash. He was standing at the time of the explosion farther from the place of the accident than Meade, and consequently escaped with but slight injury.

Another convict, named Morris, had one arm broken by being struck with a small piece of granite, but escaped without sustaining more serious injuries.

Every assistance that could be given was rendered the wounded convicts by Superintendent Graham, of the Granite-Works, and others residing in the vicinity.

There are about 160 prisoners employed at the works where the accident occurred, and some of them were eye-witnesses to the terrible casualty.

DEATH OF DR. THOMAS.—Dr. Howell L. Thomas, who was attacked by apoplexy on Thursday morning, died last night at 10:30 at the residence of Mrs. Bransford, No. 13 north Fifth street. Deceased was born on the 15th of May, 1824, and had therefore nearly reached the age of fifty-five. He received a very liberal education, and studied medicine in the best schools of the country, and after graduating spent some time in Paris.

He stood in the front rank of his profession, and was relied upon not less for his learning than for sound, practical judgment. He was a man of gentle disposition and kindly qualities, and enjoyed in a rare degree the respect and regard of the community.

He was never married.

His funeral will probably take place to-morrow.

A meeting of the members of the faculty will be held at the City Hall at 2 o'clock to-day to take suitable action.

SUDDEN DEATH.—F. P. Harris (colored), for many years the janitor at John H. Tyler & Co.'s, died yesterday quite suddenly, aged seventy years. He was very well known here, and highly respected. He will be buried on Sunday by the lodge of which he was a member.

CITY BONDS DUE IN 1880.—Mr. Henry G. Cannon, acting president of the Board of Commissioners of the Sinking Fund, and chairman of the Committee of Finance of the city, gives notice in another column that the city will on and after the 1st day of July next redeem its 6 per cent. bonds falling due in July and August, 1880, amounting to $105,019 65. The city of Richmond has always promptly paid the interest on its bonds, and we are glad to see that it is able to anticipate by more than a year the payment of the principal of its bonds falling due next year.

CLOSING EXERCISES OF MISS POWERS'S GYMNASTIC CLASS.—The closing exhibition of Miss A. H. Powers's calisthenic class, at Miss Jessie Gordon's school, No. 3 east Grace street, took place Thursday night, and was witnessed by an interested throng of spectators. The young ladies, who wore useful uniforms, went through the different drills with the precision of regular soldiers. Dumb-bells, Indian clubs, wands, and rings, were used in the exercises. The most successful feature of the entertainment was the drill of the class with dumb-bells to the music of the "Anvil Chorus." Altogether the drill was creditable to teacher and scholars.

THE MISCEGENATION CASE.—A movement is being made for a mass-meeting of colored people at Odd-Fellows' Hall on Tuesday night to consider measures for the relief of Jerman Kinney, sent to the penitentiary from Hanover for marrying a white woman. The woman is also in the penitentiary.

THE FRENCH TOBACCO.—The samples of the several types of Virginia tobacco required for the French contract have arrived, and can be seen by those interested at the French consulate, Fifth and Cary streets, between the hours of 12 o'clock M. and 3 P. M.

THE FIRST MOONLIGHT EXCURSION OF THE SEASON.—Next Saturday night a party of gentlemen will make an excursion by moonlight down James river on the steamer Ariel. They will leave here at 8 o'clock, spend Sunday and Sunday night at Old Point or Norfolk, and return to Richmond about 4 o'clock Monday evening. Only those who possess invitation cards are expected to go.

CINDERELLA.—Last night the final rehearsal of Cinderella took place at the Theatre, and from indications the opera will be produced next week without a hitch. Reserved seats may be had at Johnston's.

UNSUCCESSFUL.

Refusal of Judge Christian to Give John E. Poindexter a New Trial.

AN OPINION IN WHICH JUDGE CHRISTIAN REVIEWS THE LAW POINTS AND DECIDES THEM ALL AGAINST THE PRISONER—EXPRESSIONS OF SYMPATHY FROM THE BENCH FOR THE YOUNG MAN—THE PRISONER NOT SURPRISED AT THE JUDGE'S CONCLUSIONS—THE BILL OF EXCEPTIONS PREPARED—SENTENCE.

Judge George L. Christian, of the Hustings Court, yesterday morning refused to set aside the verdict of the jury finding John E. Poindexter guilty of voluntary manslaughter in killing Charles C. Curtis, and fixing his term of imprisonment at two years in the penitentiary. The prisoner heard the announcement with composure. He was evidently prepared for the worst.

The Judge said that he had had but a brief time to write out his views, and had hastily sketched them off in pencil, as follows:

Commonwealth vs. Poindexter. On a motion for a new trial.

The first ground assigned for this motion is, "Because the Court erroneously admitted as evidence to the jury the testimony of V. S. Carlton and other witnesses concerning an assault made upon the deceased by the prisoner between 9 and 10 o'clock on the morning of the day on which the homicide was committed; the prisoner alleging that said proof failed to show such a legal connection between the said assault and the subsequent killing as would justify admitting as evidence, without limitation, the said assault of the morning and the particular circumstances attending it; and because the admission of said evidence operated to greatly prejudice the prisoner's case before the jury."

The Horsewhipping Affair.

Our first inquiry then is, Was it error to have admitted this testimony of the assault made upon the deceased between 9 and 10 o'clock in the morning by the prisoner? It will be remembered that the killing took place between 11 and 12 o'clock on the same morning, and that prior to the coming of the deceased to the place where the killing occurred, the prisoner had stated to the witness (Lyon) that he had made the prior assault on the deceased that morning, the place at which it was made, and the circumstances which led him to do so. It is true that when Lyon warned him that the deceased would shoot him for it if he didn't mind, the prisoner replied, "I reckon not;

I THINK THAT IS ALL OVER,"

and that there was other evidence before the jury tending to show that when the prisoner and the deceased parted, after the first assault, a reconciliation had been effected. Mr. Carlton says he thinks they shook hands; Mr. Gordon and Mr. Thomas Poindexter swears that they did shake hands, and that it appeared to them that a reconciliation between them had been effected. But does not the subsequent acts of the parties tend to show that there was no such reconciliation, and that the alleged handshaking was merely mechanical? If the reconciliation was complete and real, why did the deceased, two hours later, procure

A FRIEND AND STICK,

seek the accused, demand an apology for his previous conduct, and upon a failure to obtain one, assault him at the point of his pistol and pay his life as the price for the redress he had sought for in the apology?

Why, when the apology was demanded by the deceased of the accused, did the accused say, "You can't get one from me?" If the reconciliation had been real, would not he most naturally have replied then that there was no controversy or difference existing between them, that all had been settled, or words to this effect? Certainly it must be admitted that this conduct of the parties, the fact of the excitement of the deceased after the prisoner and he parted at Wingo, Ellett & Crump's, and the fact that when the prisoner was attacked by the deceased he had

A DEADLY WEAPON READY,

with which the homicide was committed, are facts strongly tending to show that the reconciliation was not complete, and that the two transactions were so connected as to form really but one whole. But whether the reconciliation was real or pretended was a question entirely for the jury. (State *vs.* Rash, 22 Iredell, 382.) I think this evidence was clearly admissible as a part of the *res gestae*. In Haynes's case (28th Grattan, 942) Judge Christian, in defining this what some writers term a "legal obscurity," says: "As a definition of what in law is *res gestae* the following may be adopted as accurately defining its limit and meaning: Facts which constitute the *res gestae* must be such as are so connected with the very transaction or fact under investigation as to constitute a part of it." I think the evidence of

THIS PREVIOUS ASSAULT

comes clearly within this definition. Take away that evidence from the killing, and there is no explanation whatever of the conduct of the deceased in seeking and making the attack on the accused. The evidence shows that they had never met before that morning when the previous assault was being inflicted. To show the extent to which the courts have gone in admitting evidence as constituting parts of the *res gestae*; In Heath's case, 1 Robinson's Reports, 796, on a trial for murder, evidence that the prisoner on the same day that the accused was killed, and shortly before the killing, shot a third person, was held admissible as a part of the *res gestae*, under the circumstances of that case, notwithstanding such evidence tended to prove a distinct felony committed by the prisoner. In Dock's case, 21st Grattan, 909, the declarations of the deceased when

HE GOT UP FROM BREAKFAST

that morning that he was going to the house of one Mrs. Reed to see if he couldn't employ her son or husband to work in case the prisoner wouldn't work, was held clearly admissible as a part of the *res gestae*, when the killing occurred some time thereafter; and in People *vs.* Stonecifer, 6th California, 405, on a trial for murder, evidence of a difficulty between the prisoner and other persons connected with the deceased, on the same day, prior to the killing, and at which the deceased was not present, was held admissible, for the purpose of showing a conspiracy upon the part of the prisoner and others against the deceased and others, and of connecting the two difficulties together.

But not only is this evidence admissible as part of the *res gestae*, but, in my opinion, it is also admissible under other distinct and well-known rules of evidence. Mr. Stephen, in his excellent little work called Digest of

THE LAW OF EVIDENCE,

art. 7, p. 9, says "when any act done by any person is a fact in issue, or relevant to the issue, any fact which supplies a motive for such an act, or which constitutes preparation for it," is relevant. Now, the indictment in this case is for murder, the grand criterion of which is malice aforethought, and I think the evidence of the previous assault was admissible, not only as tending to show a motive for, but malice in, the preparation therefor.

"On an indictment for murder former attempts of the defendant to assassinate the deceased are admissible in evidence; so are former menaces, or expressions of vindictive feelings toward the deceased; or, in fact, the evidence of any motive likely to instigate him to the commission of the offence in question." Arch. Crim. Pr. & Pl. 892, 1 Wharton's Cr. L. sec. 635 (a) and cases cited.

Evidence as to

A VIOLENT ALTERCATION

between the prisoner and the deceased, on the day previous to the offence, is admissible to show the grade of the offence. Haynes *vs.* State, 17 Ga., 465, cited in 1 Arch. Cr. Pr. & Pl. 897. Again: Mr. Stephen says (art. 9, p. 14): "Facts, whether in issue or not, are relevant to each other when one is, or probably may be, or probably may have been, the cause of the other, the effect of the other; an effect of the same cause, a cause of the same effect."

Can it be said that the killing in this case was not the probable effect of which the previous horsewhipping was the cause? There are so many cases in which evidence of former occurrences have been admitted, under one or the other of

THESE THREE HEADS,

that it is impossible to comment on or even refer to them within the limits of this opinion. For some of them, see Rex *vs.* Ellis, 13 E. C. L. Rep., 123; La Bean *vs.* People, 34 N. Y., 223; Pitman *vs.* State, 22 Ark., 354; State *vs.* Wentworth, 37 N. H., 196; State *vs.* Rash, 12 Iredell, 382; Johnson *vs.* State, 17 Ala.; Stewart *vs.* State, 1 Ohio St., 66; State *vs.* Neeley, 20 Iowa, 379; Isaacs *vs.* State, 25 Texas, 174; Bristow's Case, 15 Grattan; McWhirt's Case, 3 Grattan; Heath's Case, 1 Rob. And when we remember, as before stated, that in this case the foundation for the admissibility of the evidence of the previous assault was laid by the statements of the prisoner to the witness Lyon, it seems to me that the evidence of what occurred at that assault becomes admissible on the highest grounds recognized by the rules of evidence.

Nor are these views antagonistic to the only three cases cited by the

COUNSEL FOR THE ACCUSED.

They are: First, People *vs.* Smith, 26th Cal, 665, in which it is held that if two persons have a quarrel and a fight, and after an interval of six hours one of them seeks the other, forces a contest, and takes his life, and is afterwards indicted for murder, he cannot in defence introduce evidence of the first quarrel as part of the *res gestae*. But while the Court says the accused cannot introduce the evidence of the first fight as part of the *res gestae*, it closes its opinion with this language: "Under all the circumstances, we think it is a little surprising that the district attorney did not prove the first fight for the purpose of showing a grudge and deliberate revenge on the part of the defendant; and had he done so it is more than probable that the verdict would have been for murder in the first degree instead of the second." In the case at bar evidence of the first fight was introduced by the Commonwealth, as the case cited clearly holds it might have done in that, where there was no evidence even tending to

CONNECT THE TWO FIGHTS,

and where there was an interval between them of six hours, while in this case the interval was only two hours. The next case is that of Rawlings *vs.* Commonwealth, 1 Leigh, 581, in which it was held that on a trial of an indictment for an assault the defendant could not, in mitigation of the fine, offer evidence that the prosecutor was on bad terms with him, and had on days previous to the assault used provoking and abusive language of and to him. But the Court says in that case that if the prior provocations were so recent as fairly to be considered a part of the same transaction, then evidence of it would be admissible, and "that this rule is adopted in analogy to the one which prevails in cases of homicide." The third case is Rosenbaum *vs.* State, 33 Ala., 354, in which it was held that on an indictment for an assault and battery the prisoner cannot be allowed to prove what took place between him and the prosecution at a previous

INTERVIEW IN THE FORENOON

of the same day, which is too far removed, in point of time, from the actual engagement, to constitute a part of the *res gestae*. Because, says the Court, that evidence could not qualify or mitigate the breach of the peace of which the public complained. It nowhere intimates that if the two transactions were connected that evidence of one could not be introduced on the trial of the other to explain or mitigate the other. It seems to me, however, that a complete answer to these two last cases is the fact that they are prosecutions for simple breaches of the peace, while the case at bar is for murder; that the ingredients of the two crimes are so essentially different that the nature or kind of evidence adducible on the trial of the two must *ex necessitate rei* be very different.

This disposes of all the cases which the ability and industry of counsel for the defence have referred me to in support of their views on this ground, and, as before stated,

I SEE NOTHING IN THEM

in conflict with the admissibility of the evidence objected to, which is supported by an irresistible array of authority.

It will be observed, however, from the form of the objection taken by the counsel for the prisoner, that by a general objection to the whole evidence of Carlton and others they seek to take advantage of any objection that may exist to any particular portion of it without at the time pointing out their objection, and if the Court should decide against them, excepting thereto. I apprehend that this cannot be done in this way. For, where an objection is taken to evidence, the counsel must call the attention of the Court to the particular portion to which they object, and if the objection is to the whole evidence of a witness, most of which is unobjectionable, the objection will go for nothing. (1 Phil. on Ev. 619, Keller *vs.* New York Central Railroad Company, 24 How., Pr. 172; Daniels *vs.* Patterson, 3 Comst., 47; Elwell *vs.* Dodge, 33 Barb., 336, 342; Murphy *vs.* State, 37 Ala., 143, and Trogden's case, 3d Virginia Law Journal, 20.)

The Law and Evidence.

The second ground assigned for the motion is that "the verdict is contrary to the law and the evidence." In criminal trials the jury are judges both of the law and the evidence. In this case no instructions were asked, and none were given by the Court, and I cannot say that the verdict is contrary to the law. In Ross *vs.* Overton, 3d Call, 309, Judge Roane has laid down the rule in regard to granting new trials on the ground that the verdict is contrary to the evidence, and he says they "ought to be granted only in a case of plain deviation, and not in a doubtful one, merely because the Court, if on the jury, would have given a different verdict, since that would be to assume the province of the jury, whom the law has appointed the triers." See also Brugh *vs.* Shanks, 5th Leigh; Slaughter's case, 11th Leigh, 681; McCune's case, 2d Rob., 771; Hill's case, 2d Grattan, 594; McWhirt's case, 3d Grattan, 594; Vaiden's case, 12th Grattan, 717; and Read's case, 22d Grattan, 924. On these authorities it is impossible for me to say that the verdict in this case is contrary to the law and the evidence, and I must therefore overrule the motion on this ground also.

Mr. Doggett's Qualifications.

The third ground assigned is that "one of the jurors, O. J. Doggett, had formed and expressed previously to his being summoned on the jury such a decided and substantial opinion touching the guilt of the prisoner as disqualified him from being a competent juror." In disposing of this question it will be necessary first to state substantially what was testified to by the juror on his examination on the *voir dire*, and then what was testified to on the examination on this motion. On the *voir dire* the juror said substantially that he had an impression about the case from reading, without care or study,

DISCONNECTED NEWSPAPER ACCOUNTS,

but had formed no decided or substantial opinion of the case; that he had no prejudice for or against the prisoner; could give him a fair and impartial trial; and had no conscientious scruples against the infliction of capital punishment.

On this motion he swears that he answered the questions propounded to him on his *voir dire* conscientiously and correctly, without bias or prejudice towards any one; that he listened to the evidence and arguments adduced on the trial carefully, and came to the verdict rendered on those alone.

[Then follow the substantial portions of the statements of Messrs. Doggett, Chancellor, Dickerson, and Cole, published at length in this paper within the past three days.]

All of the circumstances, of the relations between

THE PRISONER AND THE JUROR,

repel the idea that his case was prejudiced by any opinion previously conceived by him of it, and, looking over the whole case I am satisfied that no injustice has been done him by any such opinion, if he had one. Without stating the facts of all of the decisions in Virginia on this point, I will simply state a few to show the rule as laid down by our Supreme Court.

In Smith's case (2 Virginia Cases, 6), after a verdict of murder in the second degree, the prisoner moved the court to grant him a new trial on the ground that one of the jurors had expressed himself unfavorable to him, which was unknown to him until after the trial. It was proved by two respectable witnesses—one that he had heard the juror remark of the prisoner, "Damn, him, he ought to be hung," and the other that he had heard him say "that the prisoner entertained malice against the deceased for several years past, and that his offence was murder in the first degree and ought to be punished as such." The Superior Court refused the new trial on this ground, and the General Court refused to award the writ of error to this judgment.

In Kennedy's case, 2d Va. Cases, 510, it was proved by a witness that just half an hour before the court sat to try the prisoner for rape one of the jurors was heard to say "that Kennedy was

DOOMED FOR THE PENITENTIARY;

that he would go to the penitentiary if he ever attempted to commit a rape." It is true that the juror in this case denied having expressed any opinion; but the General Court said, taking the affidavit as true, it was no ground for a new trial, and referred to the principle as settled in Smith's case, *supra*.

In Brown's case, 2d Va. Cases, 216, the juror was charged with and admitted after the verdict that he had made up and expressed an opinion of the guilt of the accused before the trial; but as the juror swore that his judgment was not influenced on the trial by the reports he had previously heard, but that he was governed by the testimony only, the court below refused to grant a new trial on this ground, and the General Court affirmed the judgment. These cases have been followed by an

UNBROKEN CHAIN OF DECISIONS

as far as I can find in Virginia, and the industry of the counsel have referred me to none, in or out of it, in conflict with the principles laid down in them. Without protracting this opinion further to state them, I will simply refer to them. They are Poore's case, 2d Virginia Cases, 474; Heath's case, 1 Rob.; Hughes's case, 5 Rand.; Jones's case, 1st Leigh; Hailstock's case, 2d Gratt.; Curran's case, 7 Gratt.; Bristow's case, 15 Gratt.; Shinn's case, decided only on yesterday. In every one of these the causes assigned for the motion were much stronger than in the case at bar, and to grant this I should be violating the principles established in every one of them without a single authority to sustain me in doing so.

The Poll-Tax Question.

The fourth ground assigned is, "Because two of the jurors from Fredericksburg—to wit, J. E. Woody and George H. Peyton, Jr.—were and are not competent jurors according to the Constitution and laws of Virginia, in this—to wit, that neither they, nor either of them, are or were entitled to vote or hold office in their respective corporations at the time they were sworn upon and acted as jurors in the trial of said cause." The basis of this objection will be found in article 3, section 1, of the amended Constitution of the State, and the act of Assembly to carry the same into effect. The first will be found in the Acts of 1866–'67, page 402, and the latter on page 281 of the same book. The section referred to provides that

EVERY MALE CITIZEN

of the United States twenty-one years old, who shall have been a resident of the State twelve months, and of the county, city, or town, in which he shall apply to vote three months next preceding any election, and shall have paid to the State, before the day of election, the capitation tax required by law for the preceding year, shall be entitled to vote for members of the General Assembly and all officers elected by the people, provided," &c. * * (Then come certain exceptions, which it is useless to enumerate.)

Section 2. "All elections shall be by ballot, and all persons entitled to vote shall be eligible to any office within the gift of the people, except as restricted by this Constitution."

Section 3, "All persons entitled to vote and hold office, and none others, shall be eligible to sit as jurors."

The only reason shown by the proof, or alleged, of the incompetency of these jurors, is that at the time of their services as such in this case they had

NOT PAID THEIR CAPITATION TAXES

for 1878, and it is admitted that this is proved.

Without deciding whether or not if this objection had been taken in time it would prevail, I am satisfied that it comes too late, when made for the first time after verdict. Section 20 of chapter 158 of the Code of 1873 provides that "no exception shall be allowed against any juror after he is sworn upon the jury on account of his age or other legal disability, unless by leave of the Court," and I think this section is conclusive of this question. It is argued by the counsel for the prisoner that, because many of the provisions of the chapter of the Code in which this section is found apply to civil cases; because the provision is not found in the new Code of Criminal Procedure, and because section 24 of the same chapter says: "Nothing contained in the preceding sections shall apply to the empanelling of

JURIES IN CASES OF FELONIES,

but the jurors shall be called, chosen, and sworn for the trial of every case of felony according to chapter 202, concerning juries in such cases," said chapter 202 being now embraced in the Code of Criminal Procedure; that said section 20 applies only to civil and not to criminal cases; and that the only mode of challenge now is that provided for by section 6 of chapter 17 of the new Criminal Code, which provides that "no challenge of a juror shall be allowed the Commonwealth except for cause, and all challenges shall be tried by the court in which they are made." In this I think the counsel are clearly mistaken. I think the 24th section clearly refers only to the "empanelling" of jurors in cases of felony, which is essentially different from the mode of "empanelling" in other cases, and that it does not refer in any way to the "qualifications" of jurors, which is under the head in which the 20th section is embraced, "*expressio unius, exclusio alterius.*" It will be also seen, first, that the chapter in the Code in which this 20th section is embraced refers to

"JURIES GENERALLY,"

that there are many provisions now in it referring to criminal cases; that in the title to the Code of Criminal Procedure which specifies the different chapters and sections of the Code that are revised, amended, and re-enacted thereby this chapter is not mentioned; and that this section has been expressly recognized as applying to criminal cases. See Jones's case, 1st Leigh; Thompson's case, 8th Grattan; Dilworth's case, 12th Grattan, and Toel's case, 11th Leigh. If it is repealed it is only by implication, which is never favored by the courts. See Hogan *vs.* Guigon, 29th Grattan, and cases there referred to on this point. And certainly the reason for continuing the section in force in criminal as well as civil cases are even stronger now than they were before, and as upon the whole case I am unable to see that the prisoner has been injured by reason of the objection alleged to these jurors, I am forced to overrule this ground for a new trial also.

The Windsor Exception.

The reason which applies to the fourth applies with even more force to the fifth and last assignment, which is that the juror Richard S. Windsor, of Alexandria, is not, and was not at the time he served, a competent juror for the reason that he had not paid his capitation tax for the year 1877. The only disqualification for the non-payment of the capitation tax named in the Constitution is "the preceding year," and the Court cannot add an exception not named in the Constitution. Craft's case, 24 Gratt., 617. Inasmuch, then, as I cannot see that the accused has been injured by any of the alleged disqualifications complained of

I MUST OVERRULE

this ground also, which disposes of all the grounds assigned for granting the new trial.

In the language of the Court in Bristow's case, 15th Grattan, 648: "To permit prisoners to avail themselves after verdict of preexisting objections to the competency of jurors, as a matter of right, would not only be undesirable, but most mischievous in its consequences. The delays in the administration of criminal justice and the chances for the escape of the guilty would be greatly increased. Proper verdicts, especially in trials for grave offences, would be continually set aside.

A PRISONER KNOWING

or wilfully remaining ignorant of the incompetency of a juror would take the chances of a favorable verdict with him upon the jury, and if the verdict should be adverse, would readily enough make the affidavit necessary to avoid its effect." I do not pretend to intimate that this prisoner has or could be induced, for any consideration, to make any affidavit that was not absolutely true, but I simply quote the foregoing language to show how the Court of Appeals regards efforts of this sort made to set aside or annul trials conducted properly in other respects.

On the whole case I am forced to overrule the motion for a new trial.

Sympathy.

It may not be improper for me to add in concluding this hastily-prepared opinion that I have felt, and still feel, the deepest sympathy for the accused; his former exceptionally good character, and the manner in which he has demeaned himself during this terrible trial, together with the deep sorrow that I know this deed (a calamity that may overtake any young man in this community) has brought to his heart and to the hearts of those dear to him, have touched every chord of sympathy in my heart.

Every doubt that I have had during this trial has been resolved in his favor, and if I had any doubt whatever of any position now taken for a new trial I would gladly, at any cost to myself or the Commonwealth,

GRANT THE NEW TRIAL;

but entertaining no such doubt, I am forced to decline, according to the law as I understand it; and he having been found guilty by a jury of his country of an offence against the law, which I am sworn to enforce, it simply becomes my duty to enter the judgment of the Court on their verdict.

In doing this I have to perform one of the most painfully sad duties of my life.

If I have committed any error I will afford every facility in my power to have that error corrected, and no one will rejoice more than I will when this is done.

Counsel for defence were occupied from 12 until 3 o'clock in the preparation of the bills of exception, including the evidence. The prisoner will be brought up this morning for sentence, but the execution of the sentence will be suspended until defence have time to apply for a writ of error.

The Supreme Court has adjourned for the term, and will meet at Wytheville in July.

THE COURT OF APPEALS adjourned yesterday, having been in session since November last. It is believed that the Court has decided more causes during that period than were ever disposed of in the same time in the history of the State. Many of these causes were of great interest and importance.

POLICE COURT, YESTERDAY—*Acting Police-Justice Crutchfield presiding.*—W. H. Michaels *alias* James C. Virtue, a bogus land-buyer from the North, waived an examination, and was sent on to the Hustings Court for forging a draft for land purchased from Chaffin, Staples & Co. The accused "bought" several fine farms in this vicinity, but never got the title-deeds. He is either a lunatic or a big scamp.

A young lady was fined $5 for plucking flowers in Shockoe-Hill Cemetery.

William Wyatt (colored) was fined $2.50 for assaulting and threatening Eliza Jackson.

Lee Rolin (colored) was fined $1 for throwing rocks in the street.

ROLL OF HONOR AT THE RICHMOND HIGH-SCHOOL.—The following is a list of the pupils on the roll of honor at the Richmond High-School for the past week: Senior Class—Augusta Anderson, Belle Brown, Imogene Cottrell, and Fannie Wyatt. Intermediate Class—Amelia Brimmer. Junior Class—Lummie Cunningham, Maggie Ferrell, Jennie Martin, Mary Pulliam, Joseph Dickerson, Kenneth Morton, and William Wills. Attendance for the week, 94 per cent.

ARRANGEMENTS FOR THE RACES.—During race-week a line of stages, connecting with the street-cars, will be run to and from the Fair-Grounds, making the connection every fifteen minutes with the cars at the corner of Laurel and Broad streets.

MANCHESTER AND VICINITY.

City Council.—A meeting of the City Council was held last night at the Council chamber. The following members were present at roll-call: Messrs. Perdue (president), Royall, Patteson, Gentry, Howle, Spain, Gibbs, Owens, and Kahn.

The Committee on Finance, through Mr. Patteson, chairman, presented their report recommending the payment of a number of bills, amounting to about $236; which was received and adopted.

The Committee on Fire Department, through Mr. Howle, chairman, presented a resolution recommending the approval of the petition of John O'Conner to erect a frame dwelling on his premises, situated on the corner of Ninth and Brook streets. Adopted.

The Committee on Lands and Public Buildings, through Mr. Gentry, chairman, presented their report, recommending that the large room in the house owned by Robert Beattie, opposite the Old Tavern, on Hull street, be given to the colored military company of this city, to be used as an armory by them, the rent of said room to amount to $100 per annum, and to be deducted from the taxes of Mr. Beattie, provided the Council will agree to rent it for two years. The above resolution occasioned considerable discussion, and was finally laid over.

The committee, being authorized, also rented out the stalls in the market, and obtained $1 for each stall for three months.

Mr. Perdue presented an ordinance, amendatory to several other ordinances recently enacted, instructing the City Attorney to prepare a trust-deed conveying the property known as Maury Cemetery, together with other property belonging to the city, as a security for the citizens who signed the bonds relating to the Ericsson suit. Adopted.

Mr. Gentry offered the following:

Resolved, That the attention of the chief of police be called to a nuisance now existing on Decatur between Fourth and Fifth streets, and that he notify the owners of said property to comply with the revised ordinance.

Resolved, further, That he be required to examine the city culvert in that vicinity and ascertain if there is any way in which the said place can be drained at a moderate cost, and report to this body at the next regular meeting.

Adopted.

A communication from the Secretary of the Free-Bridge Company of Richmond was received, being a resolution passed by the Bridge Commissioners of Richmond, and reads as follows: "That in view of the fact that the city of Richmond has been keeping the approach to the bridge in repair within her jurisdiction, that the city of Manchester be requested to do the same within her limits." Referred to a special committee.

Mr. Patteson presented a lengthily-prepared ordinance amending the ordinance concerning the sale of lands for taxes, and under a suspension of the rules was passed.

The body then proceeded to cast lots for councilmen, as required by an act passed by the Legislature relating to the charter of Manchester. For the First Ward, the term of office of Mr. Spain was determined at one year, Mr. Ballowe two years, and Mr. Gentry three years; and from the Third Ward, Mr. Owens for one year, Mr. Howle for two years, and Mr. Kahn for three years.

Mr. Perdue presented a resolution assessing a fine, at the option of the Council, upon any member absenting himself from a meeting of the Council; the fine to be not less than $5 nor more than $10. Adopted.

Adjourned.

Public Schools.—The following pupils were on the roll of honor at the public high-schools for the week ending May 2, 1879, as presented by E. Morrissette, A. M., principal:

At the Male High-School were John Broaddus, Oliver Blankinship, Frank Dunford, Thomas Dornin, Kirk Matthews, Alex. McCulloch, and R. Lee Traylor.

At the Female High-School—Mrs. A. L. Walker teacher—were Misses Lena Anderson, Maggie Callaghan, Louie Duval, Maud Howlett, Edna Matthews, Maggie Noud, Hattie Owens, Orie Vaden, and Sallie Whitworth.

At the Intermediate Female School—Miss Bettie Irvin teacher—were Misses Ida Alsop, Eva Archer, Clara O'Brien, Emma Turner, Maggie Topham, Anna Vanderslice, Hattie Wells, and Lucy Day. Percentage of attendance for the week, 94.

Roll of Honor.—The following pupils were on the roll of honor at the Colored High-School for the week ending May 2, 1879, as presented by Rev. A. Binga, Jr., principal: Horace Jackson, P. Mosby, David Moon, James Powell, Edward Smith, and Mary J. Harris. The attendance for the week was unusually large.

Moffett Register.—The following is a statement showing the amount of revenue derived from the Moffett-register tax for the month of April, as presented by the Commissioner of the Revenue for this district: Number of alcoholic drinks registered, 6,332; amount of revenue derived, $158.33. Malt drinks, 1,871; amount of revenue derived, $9.39. Total, $167.72. The above is an increase of $43.90 as compared with the report for the month of March.

The number of licenses issued for the ensuing year were to seven retail dealers, twelve bar-room dealers, and three ordinary-keepers.

County Statistics.—The following are the statistics for the month of April as prepared and presented by the deputy clerk of the Chesterfield County Court: Number of deeds recorded, 43; number of marriage-licenses issued, 9—6 white and 3 colored.

The above report is a slight decrease as compared with the statement for the month of March.

Brief Items.—Rev. Mr. Jackson, of Grace church, Richmond, is announced to preach at the Meade-Memorial church to-morrow (Sunday) afternoon at 4½ o'clock.

Henry A. Jordan has opened his well-arranged ice-cream saloon on Hull street.

Samuel D. Atkisson has commenced the manufacture of terra-cotta pipes.

The *musicale* at the Beethoven Hall last night was well attended. The music, both vocal and instrumental, was frequently applauded.

THE MOST EXTENSIVE AND HANDSOMEST DISPLAY OF DRY GOODS now offered in this city is to be found at COHEN BROTHERS'.

The extent of their business gives them advantages EQUAL TO ANY HOUSE IN THIS COUNTRY.

THEIR PRICES ARE WARRANTED AGAINST ANY HOUSE IN THE UNITED STATES, jobbing or retail.

Those who make their purchases as this house can positively rely that they not only get their GOODS AT THE LOWEST PRICES, but that ALL GOODS ARE AS REPRESENTED.

They, besides, give their patrons the advantage of many various GREAT BARGAINS, of which they have hundreds to offer the coming week.

FINE, LARGE YELLOW BANANAS at PIZZINI'S.

ICE-CREAM.—D. COLUMBUS is now making his celebrated ICE-CREAM of the following flavors: Vanilla, Strawberry, Lemon, Chocolate; also, Orange and Lemon Ice and No. 1 Pure Cream, for invalids.

He uses the best and freshest materials, and with his personal supervision of his steam factory, he turns out such cream as will please the most fastidious taste. Send your orders to 321 Broad street, and you will be sure to be well served.

Orders by telephone promptly filled.

ICE-CREAM is an excellent dessert for Sunday's dinner. By leaving your order with PIZZINI to-day he will furnish you with some of his superior ice-cream.

Rheumatism comes from inactive kidneys. HOP BITTERS never fail to cure it. Read advertisement.

NO REMEDY IN THE WORLD ever came into such universal use, or has so fully won the confidence of mankind, as AYER'S CHERRY PECTORAL for the cure of Coughs, Colds, and Consumption.

DATES, DATES.—Four pounds for 25 cents, at PIZZINI'S.

WE HAVE ACCEPTED THE AGENCY for ROEDERER CHAMPAGNE, and offer it at such low figures that lovers of good wine will find it to their interest to call and examine.
W. D. BLAIR & CO.,
903 Main street.

THE CROWD INCREASES.—The people go to the old established DRY-GOODS STORE to make their purchases. It is an established fact that LEVY BROTHERS sell first-class Dry Goods at the lowest prices. They show a large stock from which you can make your selections. New goods received by every steamer.

LEVY BROTHERS have made further reductions in the prices of many articles. We advise all in want of first-class goods at the lowest prices to call at LEVY BROTHERS' and make their purchases.

AN ECONOMICAL FLOOR-COVERING.—LINOLEUM, being composed of cork, is as elastic as a carpet; is waterproof, accumulates no dirt, and will outwear the best oilcloth three or four times. It is manufactured in handsome patterns, and sold by all first-class carpet dealers. None but the genuine article has the word "LINOLEUM" on the back of every yard of cloth.

SWEET ORANGES.—PIZZINI has a fine lot of juicy oranges selling very low.

DO NOT POISON YOURSELF by indiscriminate application of cheap preparations, but call for Toilet Waters, Powders, Cosmetics, &c., made by J. A. E. ATKINSON, London.

SAVE MONEY by having your printing done at the DISPATCH PRINTING-HOUSE. Good work, low prices, and satisfaction guaranteed.

AN ESTABLISHED FACT!—HERMAN BOSCHEN & BROTHER keep the largest and best-assorted stock of Boots, Shoes, Trunks, Valises, &c., in the city—509 and 511 Broad street.

THE DISPATCH.
TERMS OF ADVERTISING.
CASH—INVAR