



Court of Appeals of Kentucky many years ago declared, "The power of removal is a *judicial* power." (Graham v. Sackett, 6 B. Monroe, page 146).

It may be said that a trial before your Board is more in the nature of a trial by court-martial than an ordinary case in a criminal Court; and we may concede that in a court-martial, usage, though not any positive law, sanctions a more liberal rule in the reception of evidence than prevails in ordinary courts of justice. Though this may be true, a *substantial* departure from accepted rules of evidence would be fatal to the validity of the proceedings. A standard authority remarks that "As the rules which govern courts-martial are the same as those obtaining in the criminal Courts of the land, it is of essential importance that military men should well understand the general principles of the law of evidence." (De Hart on Courts-Martial, chapter 16, page 334).

Under these principles, which must govern you in the present trial, it requires little argument to determine that the paper in question cannot be admitted in evidence, nor be permitted to take a place in the case for any purpose.

First—The prisoner who makes the statement is a convicted felon, having in *this State* served a term of imprisonment at hard labor for an infamous crime; and having resumed a place in the community without pardon; and having, also, in England, been again convicted of one of the highest felonies, and been actually under sentence for this second crime when his statement was made.

Second—The statement is *ex parte*.

Third—Although technically acknowledged and made in the presence of one of the counsel of the Bank of England, it is not sworn to.

Fourth—While it is true that accomplices are permitted, if personally present at a trial, to be sworn and examined upon the condition that their testimony is to be disregarded unless corroborated, yet this rule does not reach the case of persons already convicted of felony. And in this case the prisoner is not averred to be an accomplice in the alleged criminal acts of the accused, but on the contrary is the perpetrator of a crime for which he was arrested by the officers whose rain he now seeks to accomplish.

Fifth—If the prisoner were here present, his personal examination would not be permitted, even with every opportunity of cross-examination.

Sixth—If the prisoner were personally competent as a witness, still an unverified statement of this character emanating from him must upon its face be rejected.

In the reported remarks of the counsel for the complainants it seems to be intimated that the paper may be received as a statement of what was read and repeated to and in the presence of the accused, in order to give in evidence what was said by them in respect to the charges, or what, by their silence, they must be regarded as having admitted. Admissions of an accused person are competent testimony; although judicial tribunals invariably pronounce them as of an exceedingly weak and unsatisfactory character. Indeed, they are regarded with great disfavor, because they are subject to the misunderstanding of the witness who narrates them. But it has been expressly determined by high judicial authority that it is not competent to produce in evidence a document which has been read in the presence of accused parties in order to prove their statements or their silence when the reading took place. This decision meets the very point we are now considering. (See the case of Sheridan against Smith, in the old Supreme Court, where the opinion was given by the eminent jurist, Mr. Chief-Justice Samuel Nelson, supported by Chancellor Walworth, Mr. Justice Bronson, Mr. Justice Cowen and other distinguished judges. 2 Hill's Reports, page 538). In that case, Mr. Justice Nelson said: "It was insisted upon the argument that the proof of what James testified to before the justice in the presence of the plaintiff was admissible upon the assumption that the plaintiff heard and assented to it." This the learned Chief-Justice pronounces incompetent, and a new trial in that case was granted upon an error of the Court below in admitting just such testimony as we are now considering in the proceeding before you.

If you should deem and declare that the accused officers are guilty and ought to be branded and dismissed from the force, it will be important that the decision be based upon evidence of a character which the law and the judgment of mankind regard as competent and admissible. If, however, when such evidence shall have been adduced, the accused shall stand with no actual proofs against them, it is equally important to public justice, as well as to individual rights,

that a judgment in their case should be in no way influenced by a paper coming from such a source and presented under such circumstances as characterize the statement which we have been considering. In any case of a convicted felon, imprisoned for an infamous crime, it might be easy to produce a "confession" of this character, to malign the supposed authors of his downfall. Such a statement could be made plausible by the skill of counsel or the cunning of the culprit.

In my judgment, and I am confident the eminent counsel for the Bank of England will agree with me, the paper must be rejected and utterly excluded from the case.

I am, gentlemen,  
With great respect,  
Your obedient servant,  
E. DELAFIELD SMITH,  
Counsel to the Corporation.

NOTE.—Since this opinion was given, the Counsel of the Bank of England have stated, in effect, that under the laws of Great Britain, the statement must be regarded as a sworn deposition. The explanation must be, that the Parliament of that country, regarding the too common administration of oaths as demoralizing, have in many cases substituted regularly acknowledged declarations for affidavits, and visited falsity in the former with the penal consequences of perjury. No legislation can obliterate essential distinctions. An oath is an appeal to the Supreme Being. A man already sentenced to a penal colony has little more to apprehend from human penalties. If he speaks falsely, it could not seriously harm him in this world. But if under oath, some possible scruples might influence his testimony. The legislation referred to may, upon the whole, be wise; but no such change in the law of evidence has yet been made in this State.

Chapter 335 of the Laws of 1873 provides that the detailed canvass of votes at every election shall be published at the expense of the city only in THE CITY RECORD. Chapter 823 of the Laws of 1873 provides that the official canvass shall be publicly advertised for one day only, and that all advertising provided for in this later statute shall be done in two daily newspapers only published in the City of New York, to be designated by the Board of Police. HELD, that the two acts must be construed together, and that the publication must be made in THE CITY RECORD, in addition to the two newspapers to be selected by the Board of Police.

It appears that THE CITY RECORD is not to be legally and technically held to be a "newspaper."

LAW DEPARTMENT,

OFFICE OF THE COUNSEL TO THE CORPORATION,  
NEW YORK, November 7, 1873.

Abraham Disbecker, Esq., Supervisor of the City Record:

SIR:—The one hundred and eleventh section of chapter 335 of the Laws of 1873 provides that "The detailed canvass of the votes at every election shall be published at the expense of the city only in THE CITY RECORD."

The fourth section of chapter 823 of the Laws of 1873 provides that "The official canvass, immediately upon its completion and declaration by the Board of County Canvassers, shall be publicly advertised for one day only; all advertising provided for in this section shall be done in two daily newspapers only published in the City of New York, to be designated by the Board of Police."

You request my opinion whether the official canvass of the votes at the recent election should be published in THE CITY RECORD.

It is an established rule that, in construing two statutes relating to the same subject, both should be construed together, and, if possible, effect be given to the will of the Legislature thus doubly expressed. It is true that where the later law is plainly repugnant to that first passed, the last expression of the legislative will must prevail. In this instance, while the earlier statute declares that the publication in question must be in THE CITY RECORD, the more recent act seems to require that the publication should be made in only two newspapers, to be designated by the Board of Police. In the first place, the official publication called THE CITY RECORD can hardly be considered a "newspaper" for the purposes now under consideration. Indeed, it is restricted by law to the publication of an official record of the transactions of the executive and legislative departments of the municipal government. General news is by the very act under which it is established excluded from its columns. I think it safer to give effect to the two laws in this respect, rather than to throw ourselves upon the idea that by implication, in the absence of any express repeal, the provision which I have cited from the

later act is to be regarded as abrogating the provision quoted from the first statute.

Upon the whole, it is my opinion that the publication to which you refer must be made in THE CITY RECORD in addition to the two newspapers which the Board of Police Commissioners are called upon to select.

I am, sir,  
Very respectfully yours,  
E. DELAFIELD SMITH,  
Counsel to the Corporation.

BOARD OF CITY RECORD.

The Board of CITY RECORD met in the Mayors Office, Monday November 10th, 1873.

Present, The Mayor, Commissioner of Public Works and Counsel to the Corporation.

On motion the reading of the minutes of last meeting was dispensed with.

The Counsel to the Corporation offered for adoption the following resolution:

Resolved, That in pursuance of section 19, chapter 757 of the Laws of 1873, the clerk of the Common Council, be and he is hereby authorized to have the work hereinafter specified, performed without contract such as is provided for in chapter 335 of said Laws known as the Charter, and without the formalities in said charter mentioned, and he is hereby authorized to procure the same in such manner and on such terms and conditions as shall reasonably insure its proper performances at the lowest cost, to be ascertained in such manner as by advertisement for bids or otherwise he shall find practicable.

MEMORANDUM.

The following is the work mentioned:

- 1.—For preparing index to the proceedings of the Boards of Aldermen and Assistant Aldermen, for the year 1872, the price per page for such preparation, to be similar to specimen, to be seen at this office.
- 2.—For printing the said index, which is to accompany each of the 4 volumes of the proceedings of each Board; the price per page for such printing;—for an edition of 250 copies each volume.
- 3.—For binding 250 copies of each volume of proceedings, in full sheep, as per specimen shown—in all for both Boards 2,000 volumes; the price for binding each volume.
- 4.—For preparing index to the volume of documents for each Board for the year 1872; the price per page for such preparation—similar to specimens furnished at this office.
- 5.—For printing such index, when prepared, which is to be bound as part of each volume of documents; the price per page for an edition of 300 copies of each volume.
- 6.—For binding 300 copies of each volume—600 volumes in all—for both Boards; half muslin binding; to be equal to specimen furnished at this office.
- 7.—For printing, preparing index, printing the same, and binding the joint proceedings of the Common Council for the year 1872 (being volume 39 of the series); the price per page for such printing, including the index (the edition being 300 copies); the price per page for preparing the index, and the price per book for binding in full sheep—such printing, indexing and binding to be in all respects equal to the sample work to be seen at this office.
- 8.—For re-printing any portion of the proceedings of either Boards that may be required, the price per page for such re-print, for an edition of 250 copies, as per sample to be seen at this office.

The Clerk of the Common Council, Joseph C. Pinckney, stated that the Board of Apportionment had made an appropriation of \$4,225 for said work, and explained the same.

The chairman put the question whether the Board would agree with such resolution; which was decided in the affirmative by the following vote:

Affirmative—The Mayor, Commissioner of Public Works, and Counsel to the Corporation.

The Counsel to the Corporation offered for adoption the following:

Whereas, Direction has been given under misapprehension by the Board of Aldermen to print a letter of Mr. McMurdy in THE CITY RECORD, and—

Whereas, Said letter not being matter allowed by law to be published therein; therefore—

Resolved, That the publication of said letter in THE CITY RECORD be omitted.

The chairman put the question whether the Board would agree with said resolution; which was decided in the affirmative by the following vote:

Affirmative—The Mayor, Commissioner of Public Works, and Counsel to the Corporation.

The Counsel to the Corporation offered for adoption the following resolution:

Resolved, That the Mayor be requested to cause to be published in THE CITY RECORD the proceedings of the Board of Supervisors, the Board of Education, and the Board of Excise.

Which was adopted by the concurrent vote of all the members of the Board.

A claim of P. W. Rhodes, amounting to \$333, for "average standing matter on galleys, 60,000 ems per day for 111 issues, at 5 cents per 1,000 ems," was, on motion, referred to the Supervisor of THE CITY RECORD and Mr. Rhodes, to obtain the opinion of two experts thereon, and report the same to this Board.

The following bill was, on motion, referred to the Mayor for certification, and requisition on the Comptroller for payment:

New York Era, advertising . . . . . \$121 40

D. S. WENDELL,  
Secretary.

DEPARTMENT OF FINANCE.

CITY OF NEW YORK,  
DEPARTMENT OF FINANCE,  
COMPTROLLER'S OFFICE,  
Appointments.

Nov. 8, 1873—Robert Christie, Bureau for the Collection of Assessments, to serve notices.

Nov. 11—Charles M. Eisig, temporary clerk, Bureau for the Collection of Taxes.

Nov. 12—John Thomas, temporary clerk, Bureau for the Collection of Taxes.

Removals.

Nov. 5—Robert Grace, sweeper Jefferson Market.

Nov. 10—William E. Sackett, assistant clerk Comptroller's office.

Nov. 10—M. M. Livingston, assistant clerk in Auditing Bureau.

Designation of Salaries and Transfers.

Nov. 11—John H. Brooch, assistant clerk, Comptroller's office, \$1,700 per annum.

Nov. 11—Charles H. Swan, clerk Bureau for the Collection of Taxes, \$2,500 per annum.

Nov. 1—Washington T. Romaine, transferred from position of deputy clerk, Washington Market to that of clerk of West Washington Market, \$1,500 per annum.

ANDREW H. GREEN,  
Comptroller.

BOARD OF EDUCATION.

Nov. 12, 1873.

A special meeting of the Board convened at 4 o'clock, in response to the call of the President, to take into consideration the report of the Joint Committee of the Committees on By-Laws and Finance, relative to the annexation of the lower portion of Westchester county to New York, and also to consider in Committee of the Whole the report of the Committee on Salaries and Economy.

Present—Wm. H. Neilson, Esq., President, and Commissioners Baker, Beardslee, Brown, Dowd, Farr, Halsted, Jenkins, Lewis, Kelly, Klamroth, Man, Mathewson, Patterson, Townsend, Traveley, Vermilye, West and Wetmore—

19. Absent—Commissioners Hoe and Seligman—

2. The report of the Joint Committee on By-Laws and Finance was read, submitting the estimate of the amount of school moneys required for the year 1874 for the "Eighth School District," composed of these portions of the County of Westchester, as will be annexed to the County of New York under the law. The amount reported by the Committee is one hundred and sixty-six thousand five hundred and eighty-six dollars, (\$166,586), as follows:

For Teachers' salaries . . . . .	\$112,086 00
" Janitors' salary . . . . .	8,000 00
" Supplies, books, maps, &c. . . . .	9,000 00
" Fuel . . . . .	9,000 00
" Incidental, printing, &c. . . . .	1,000 00
" Rents of buildings . . . . .	2,500 00
" Repairs to buildings . . . . .	25,000 00
	\$166,586 00

The report of the Committee was unanimously adopted.

The Board then went into Committee of the whole, Commissioner Beardslee in the chair, to consider the report of the Committee on Salaries and Economy. The report was taken up by paragraphs, and several amendments were made, when the Committee rose reported progress, and asked leave to sit again. Which was granted.

On motion of Commissioner Dowd, the application of the Trustees of the Tenth Ward to advertise for proposals to repair the wall of the rear building of Grammar School, No. 7, was granted, on the report and recommendation of the Committee on Buildings.

The President laid before the Board a communication from Hon. Andrew H. Green, Comptroller, transmitting a copy of the minutes of the Board of Estimate and Apportionment for 1873.

Commissioner Townsend presented a communication from the Board of Education of School District No. 1, West Farms, and Commissioner Man presented a remonstrance from citizens and taxpayers of the same district against the said communication.

The communication and remonstrance were referred to the Joint Committee of By-Laws and Finance.

The President laid before the Board communications from the School Boards of Kingsbridge and West Farms inviting the Board of Education to meet with them and visit the schools of these towns.

Referred to the Joint Committee on By-Laws and Finance.

Commissioner Vermilye presented a report from the Finance Committee, stating that the Board has the "financial ability" to furnish a new piano for the female department of Grammar School No. 39.

Also, to appropriate \$2,000 for the use of the committees in the Nautical School.

The reports were adopted and the appropriations made.

The Board then adjourned.

L. D. KIERNAN, Clerk.

TREASURER'S REPORT TO THE COMMISSIONERS OF EMIGRATION, FOR THE PERIOD ENDING NOVEMBER 11, 1873.

Table with columns for RECEIPTS and DISBURSEMENTS, listing various financial items and their amounts.

Table with columns for RECEIPTS and DISBURSEMENTS, continuing the list of financial items and amounts.

FINANCIAL RECAPITULATION OF PRESENT COMMISSION. Balance on hand June 1, 1873. Total receipts since. Total disbursements since June 1. Balance on hand at date.

Total amount of bills passed by Finance Committee since last report. GARRET BERGEN, Treasurer.

BOARD OF ASSISTANT ALDERMEN.

From the proceedings of the Board of Assistant Aldermen, November 13, 1873:

MOTIONS AND RESOLUTIONS. By Assistant Alderman Clancy—Whereas, By reason of the panic now existing in the financial corporations of our City, many of the factories employing thousands of workmen are wholly or in part suspended...

G. O. 233. By Assistant Alderman Keating—Resolved, That One hundred and Thirty-first street, from Tenth avenue to Boulevard, be regulated and graded so as to conform to the grade of Tenth avenue and Boulevard...

By Assistant Alderman Healy—Whereas, The appropriation made by the Board of Apportionment for the completion of the different improvements now being made under the supervision of the Commissioner of Public Works is nearly exhausted...

By Assistant Alderman Simonson—Resolved, That the Special Committee appointed November 3d, to which was referred the resolution authorizing a loan of \$2,500,000 on the part of the city to the Industrial Exhibition Company...

G. O. 234. By Assistant Alderman Beyea—Resolved, That the sidewalk on the south side of One Hundred and Twenty-fifth street, between First and Second avenue, from 312 to 326, be flagged full width...

REPORTS. G. O. 235. The Committee on Lamps and Gas of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance in favor of laying gas mains, &c., in One Hundred and Thirty-first street, from Fourth to Fifth avenues...

REPORT: That having carefully examined the subject, they are in favor of the proposed improvement, believing the work to be necessary, and no objection having been made thereto. Accordingly, your Committee recommend that said resolution and ordinance be adopted.

Resolved, That gas mains be laid, and street lamps lighted, in One hundred and Thirty-first street, from Fourth to Fifth avenue, and One hundred and Eleventh, One hundred and Twelfth and One hundred and Thirteenth streets, from First avenue to Harlem River, by the Harlem Gas Company...

That having carefully examined the subject, they are in favor of the proposed improvement, believing the work to be necessary, and no objection having been made thereto. Accordingly, your Committee recommend that said resolution be adopted.

they believe the proposed improvement to be proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution, and accordingly respectfully recommend that such action be had thereon by this Board. Resolved, That permission be and the same is hereby granted to Thaddeus Hyatt, to flag the sidewalk in front of the premises No. 25 Waverly Place, on both the Greene street and Waverly Place sides...

Assistant Alderman Strack moved that the resolution lay upon the table, which was lost. Assistant Alderman Kehoe moved that the same be laid over, which was carried. Assistant Alderman Healy moved that the vote just taken be reconsidered, which was carried. Assistant Alderman Healy moved that this Board concur in the action of the Board of Aldermen...

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of curbing, gutting and flagging full width both sides of One Hundred and thirty-first street, from Fourth to Fifth avenues, respectfully

REPORT: That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That on both sides of One Hundred and Thirty-first street, from Fourth to Fifth avenues, curb and gutter stones be set, and the sidewalks be flagged and reflagged full width, where not already done, under the direction of the Commissioner of Public Works...

REPORT: That having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly recommend that such action be had thereon by this Board.

Resolved, That Ninety-fifth street, from First to Fifth avenues, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works...

REPORT: That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

- 3. Jenkins Van Schaick, place of business, 13 Broad street; residence, 1 University place. 4. Stephen V. R. Cooper, place of business, 177 Broadway; residence, 218 West 51st street. 5. John Falconer, place of business, 472 Broome street residence, 308 East 15th street.

- STANDING COMMITTEES. ARTS AND SCIENCES, INCLUDING PUBLIC INSTRUCTION. Aldermen Billings, Monheimer, Reilly. FERRIES. Aldermen Falconer, Cooper, Lysaght. FINANCE. Aldermen Van Schaick, Clausen, Kehr, Morris, Ottendorfer.

NAMES, RESIDENCES AND PLACES OF BUSINESS OF THE MEMBERS OF THE BOARD OF ASSISTANT ALDERMEN, FOR 1873.

- 1.—Thomas Foley, place of business 24 Morris street residence, 18 West street. 2.—Jeremiah Murphy, place of business 45 Cherry street; residence, 45 Cherry street. 3.—Charles M. Clancy, place of business 191 Mott street residence 191 Mott street.

- STANDING COMMITTEES FOR THE YEAR 1873: ARTS AND SCIENCES. Assistant Aldermen Kreps, Theiss, Codington. DONATIONS. Assistant Aldermen Codington, Clancy, Wissner.

MAYOR'S MARSHAL. Licenses granted and amount received for licenses and fines by Marshal D. S. Hart, for week ending November 8, 1873: Licenses granted 274 Amount received \$636 75

