

Democratic Sentinel

FRIDAY MAY 8 1885.

The colored Register of the Treasury, Mr. Bruce, has resigned, in compliance, it is said, with a request.

The Republicans captured the odd member of the Legislature in Illinois Thursday. John A. Logan is not yet elected Senator, however.

A sensation occurred in the Circuit at Vincennes, Monday, by the arraignment of a number of prominent attorneys and wealthy real estate owners upon indictments charging them with renting property to prostitutes.

Peter H. Weber, of New Albany, baggage-master on the L. N. A. & C. R. R., shot by the robber near Harrodsburg last week, is able to go out. His face is still bandaged up. Weber says he would readily recognize the robber should he lay eyes upon him.

We devote considerable space today to the discussion of the subject of Wartner's execution. A very strong showing is made that the proceedings in the trial of the condemned man were possibly not regular. Let the Supreme Court settle the dispute, and that quickly.

Postmaster Palmer, of Chicago, has been removed for "offensive partisanship," and Mr. Judd was appointed. Just now some of these men are hugging close to the red line as a means of saving face, forgetful that many instances of "offensive partisanship," can readily and truthfully be laid to their charge. Over-zeal may lead to the discovery that they are not gods elect after all.

At Louisville, Monday last, the bullet lodged in Express Messenger Davis's brain was extracted and he regained consciousness. The operation was a very delicate one and its success is highly gratifying. The chances for his life are greatly improved and it is the opinion of the physicians that he will recover.

The corporation election Monday last passed off quietly, and good feeling prevailed throughout. Of course the republican nominees were elected, as was expected, but the varied majorities for the successful candidates—ranging from 9 to 106—show that personal preferences had something to do with the result. Below we give the vote:

Tru tee—Third District.
E. L. Clark, Rep. 159
M. Eger, Dem. 85
Geo. Havens, Pro. 10

Rep. Plu. 74
Trustee—Fourth District.
A. W. Cleveland, Rep. 147
Geo. H. Brown, Dem. 101
N. Warner, Pro. 12

Rep. Plu. 46
Trustee—Fifth District.
T. J. McCoy, Rep. 270
John Chamberlain, Dem. 74
S. A. Henry, Pro. 11

Rep. Plu. 96
Clerk.
Val. Seib, I. ep. 179
J. H. Jessen, Dem. 73
R. P. Benjamin, Pro. 8

Rep. Plu. 106
Treasurer.
T. J. Farden, Rep. 173
Ludd Hopkins, Dem. 78
Berry Paris, Pro. 9

Rep. Plu. 95
Marshal.

J. Q. Alter, Rep. 130
Chas. F. Latt, Ind. 121
Holdridge Clark, Pro. 5

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The constitution guarantees a trial by jury to determine the law and facts.—Art. 1, secs. 58 and 64. The statute authorizes the accused to waive a jury, however, "except in capital cases."—Sec. 1821, acts of 1881.

A capital sentence is reasonable, just and constitutional, but the death penalty must be carried into effect in strict accordance with law and pursuant to a prima facie valid judgment of a court, or the execution would be murder. A court, in a capital case, has two branches. The Judge may receive and record a plea of guilty, but can not proceed with the trial farther without having the opinion of a sworn jury as to whether the accused shall suffer life imprisonment or death.—Moore's cr. law, sec. 837; 2 Bish. cr. law, sec. 630: Rice vs. State, 7 Ind. 332.

In capital cases a judge ought to hesitate in accepting a plea of guilty, and as the accused has no power to choose a tribunal, and as the law names the jury, the judge must conform to the law as to jurisdiction and place no reliance on defendant's consent.—Griffith vs. State, 36 Ind. 406.

In no way can a judge be clothed with a power to punish against a statutory direction.—1 Bish. cr. pro. sec. 893.

In all except capital cases a jury can be waived, which, in effect, states that in capital cases a jury can not be waived.

The right of trial by jury is immutably interlined in the constitution and statute, as applied to Wartner's case.

The paramount law embodied in the words, "in the discretion of a jury in capital cases" cannot be altered by anything that can be done by the Judge, Pros. Atty., or accused.—People vs. McKay 18 Johns 219.

Wartner can stand in the Supreme Court upon all his rights not waived by his own acts, within his power to act. No possible act, word, or waiver on the part of court, attorneys, or Wartner could enact any new law enlarging the ultimate scope of Judge Ward's authority in the case.

In this case a trial included all proceedings in court after the plea. The Judge, as a branch of the court, could accept a plea of "guilty," when, if he had doubts whether the punishment should be capital, he ought to have called the other branch of the court to his aid in solving that judicial problem. The jury should inform the judge whether the punishment should be capital.

I am of the opinion that there are plausible reasons for reversing the proceedings back to the plea of "guilty" on account of being void and insufficient to authorize the Sheriff to take Wartner's life.

If my Bro. Babcock secures the opinion of the Supreme Court directly on the question he will deserve the plaudit of being a faithful servant to his client and the law. I am not employed by Wartner, nor any one in his behalf, but as a lawyer, believing as I do, that no man, however clear his guilt may appear, should be hung without a trial by a proper tribunal, I am willing to assist Mr. Babcock in avaying the case reviewed by the Governor and Supreme Court and after consultation with the Attorney General, whom I believe to possess a degree of integrity and learning sufficient to seek the right result, I have filed a short paper to-day calling the attention of the Court to a few authorities on the point.

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