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Consent to Trial Without a Jury in Criminal Cases

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CONSENT TO TRIAL WITHOUT A JURY IN CRIMINAL CASES—The Supreme Court of Pennsylvania has held that a defendant may validly consent to a trial by a jury of less than twelve in case of misdemeanors and felonies not capital; *Com. v. Egan*, 281 Pa. 251; but has held that he cannot validly consent to a trial *without* a jury. The latter decision was to some extent based upon a construction of the Pennsylvania statutes, but an attempt was also made to justify the distinction upon constitutional grounds.

In a recent case the Supreme Court of the United States has held that trial by jury in criminal cases may be entirely waived, *Patton v. U. S.* 50 Sup. Ct. Rept. 253. The court expressly repudiated the distinction made by the Pennsylvania court, saying:

"We are not unmindful of the decisions of some of the state courts holding that it is competent for the defendant to waive the continued presence of a single juror who has become unable to serve, while at the same time denying or doubting the validity of a considerable number of jurors or a jury altogether. But in none of these cases are we able to find any persuasive ground for the distinction.

A constitutional jury means twelve men as though that number had been specifically named; and it follows that, when reduced to eleven, it ceases to be such a jury quite as effectively as though the number had been reduced to a single person. This conclusion seems self evident, and no attempt has been made to overthrow it save by what amounts to little more than a suggestion that by reducing the number of the jury to eleven or ten the infraction of the Constitution is slight, and the courts may be trusted to see that the process of reduction shall not be unduly extended. But the constitutional question cannot thus be settled by the simple process of ascertaining that the infraction assailed is unimportant when compared with similar, but more serious infractions which might be conceived. To uphold the voluntary reduction of a jury from twelve to eleven upon the ground that the reduction—though it destroys the jury of the Constitution—is only a slight reduction, is not to interpret that instrument, but to disregard it. It is not our province to measure the extent to which the Constitution has been contravened and ignore the violation, if, in our opinion, it is not, relatively, as bad as it might have been".

W. H. Hitchler

PRESUMPTIONS IN COMMERCIAL VEHICLE NEGLIGENCE CASES—Let us picture a trial in which the