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Barthels v. Garrels (1921) 206 Mo. App. 199, 227 S. W. 910; *Frear v. Lewis* (1922) 201 App. Div. 660, 195 N. Y. S. 3.

Where the settlement was made in good faith, there is great conflict as to what is the attorney's proper remedy. In Missouri his only action is a suit at law, as the settlement extinguishes the principal cause of action. *Mills v. Metropolitan Street Railway Co.* (1920) 282 Mo. 118, 221 S. W. 1. In New York the proper relief is by a summary proceeding in equity to foreclose the lien. *In re Reisfeld* (1919) 187 App. Div. 223, 175 N. Y. S. 365. Several jurisdictions allow intervention in the original suit. *Schutt v. Bush* (1920) 210 Mich. 495, 178 N. W. 48; *Johnson v. Mo. Pac. R. R. Co.* (1921) 149 Ark. 670; 234 S. W. 979. In Oklahoma the attorney can get the original suit reinstated but must do so before the expiration of the term of court in which it was dismissed; otherwise his only remedy against the former defendant is a proceeding in equity. *Wood v. Hines* (1927) 117 Okla. 86, 245 Pac. 846.

The situation in Oklahoma is somewhat anomalous. The statute obviously tends to prevent secret settlements by making the amount of fees for which the defendant is liable uncertain. By the holding that the new suit against the former defendant should be in equity, a judge is put in the position of having to fix the amount of damages that would probably have been assessed by a jury. G. W. S., '33.

CONSTITUTIONAL LAW—JURY TRIAL—PETTY OFFENSES IN THE FEDERAL COURTS.—The defendant was charged with having operated a motor vehicle over a public highway recklessly at a greater speed than twenty-two miles an hour, contrary to statute, in such manner and condition as to endanger property and individuals. Having been denied a jury trial by the police court of the District of Columbia, the defendant appealed. The decision was reversed by the Court of Appeals, which was sustained by the Supreme Court. *Held*, driving an automobile recklessly so as to endanger life and property is a "crime" within the constitutional provision guaranteeing jury trial. *District of Columbia v. Colts* (1930) 51 S. Ct. 52.

Constitutional provisions guaranteeing the right of trial by jury insure the right as it existed at common law. *Ex parte Mana* (1918) 178 Cal. 213, 172 Pac. 986; *Jernigan v. Garrett* (1923) 115 Ga. 390, 117 S. E. 327; *Laska v. Chicago Rys. Co.* (1925) 318 Ill. 570, 149 N. E. 469.

Some 170 minor offenses in colonial Massachusetts were punished in the first instance by the unaided magistrate. HILKEY, LEGAL DEVELOPMENT IN COLONIAL MASSACHUSETTS (1910) 37 COLUMBIA UNIV. STUDIES, cited in Frankfurter and Corcoran, *Petty Federal Offenses and Trial by Jury* (1926) 39 HARV. L. REV. 917, 940. Such was also the case in most of the other colonies where, because of the general inability to pay heavy fines and lack of manpower to guard jails, it was necessary to inflict light penalties in all except very serious offenses. Frankfurter and Corcoran, above. It is known that at the time of the drafting the Constitution the Committee on Detail deliberated be-

tween providing that "trial of all crimes" and "trial of criminal offenses" should be by jury, as phrasings of its purpose in Article III, and chose the latter. On the floor of the Convention a motion to substitute "trial of all crimes" for the Committee's choice prevailed without debate. 2 FARRAND, RECORDS OF THE FEDERAL CONVENTION 144, 173, 187, 433, cited in Frankfurter and Corcoran, above, at 969. The language, "criminal offenses," if it had remained, could have been construed to include both petty and serious offenses, in the light of the distinction between that expression and "crimes" which had been drawn by Blackstone. It was obviously the Convention's intent to exclude the trial of petty offenses from the constitutional requirement of a jury. *Schick v. United States* (1904) 195 U. S. 67. The Sixth Amendment guarantees jury trial in "all criminal prosecutions."

At present the criminal legislation of England provides at least 350 offenses, the enforcement of which is in the exclusive keeping of the magistrate. Frankfurter and Corcoran, above, at 934.

Since the traditional Federal crimes have been serious, the question of the constitutionality of summary proceedings for petty offenses has not raised much discussion, except in the territories and the District of Columbia. In the latter jurisdiction cases have arisen, and the courts of the District have decided that persons charged with receiving stolen goods, gaming, petty larceny, and assault and battery are entitled to jury trials. *U. S. v. Jackson* (1892) 20 D. C. 424; *U. S. v. Herzog* (1892) 20 D. C. 430; *In re Fauldon* (1892) 20 D. C. 433; *In re Robinson* (1892) 20 D. C. 570.

The foundation for the present law on the matter was laid in two significant cases. In *Callan v. Wilson* (1888) 127 U. S. 540, in the District of Columbia, the accused was convicted of conspiracy without a jury, although he was allowed a jury on appeal. In passing on the constitutionality of the proceeding the Supreme Court held that conspiracy was not a petty offense. Hence under Article III and the Sixth Amendment a jury trial was necessary, and moreover these clauses were violated if the jury was not allowed until appeal. In *Schick v. United States*, above, where the defendant, charged with violating the Oleomargarine Act (1886) 24 Stat. 211, sec. 11, 26 U. S. C. sec. 550, waived a jury, the Court intimated that the offense was a petty one and as such was not included in Article III, since it was not a "crime," and that whatever rights the defendant had under Amendment VI could be waived as to petty offenses.

The principal case draws the distinction between mere reckless driving, which is a petty offense, and reckless driving so as to endanger lives and property, which is a grave offense. The latter has also been said to be a common-law offense. *Bowles v. District of Columbia* (1903) 22 App. D. C. 321. The same case brings to light certain statutes which were involved, providing for jury trial in cases according to the punishment. The instant case seems to base its distinction primarily on the nature of the offense, while the *Schick* case intimates a distinction based rather on the penalty provided. See also *City of Fremont v. Keating* (1917) 96 Ohio St. 468, 118 N. E. 114.

In the light of the variant moral and social standards which are current, there seems to be little uniformity in the interpretation of what is or is not a petty offense, thus leaving the courts much leeway to decide individual cases according to judicial prejudices and standards. See further, Frankfurter and Corcoran, above, n. 278, appendixes A, B, C, D. H. R. S., '32.

CRIMINAL LAW—CONSPIRACY—CONVICTION OF ONE DEFENDANT.—Four persons were charged with conspiracy to violate the National Prohibition Act by the illicit manufacture of intoxicating liquor. Conviction of defendant was upheld, notwithstanding two were acquitted and one had not been apprehended. *Rosenthal v. United States* (1930) 45 F. (2d) 1000.

The general rule is that only one of several defendants cannot be convicted of conspiracy. *People v. Hamilton* (1915) 165 App. Div. 546, 151 N. Y. S. 125; *Sherman v. State* (1925) 113 Neb. 173, 202 N. W. 413; *Bartkus v. U. S.* (1927) 21 F. (2d) 425. Where the conviction as to one of two defendants was reversed, it was held to carry with it a reversal as to the other, *Morrow v. U. S.* (1926) 11 F. (2d) 256; *Turinetti v. U. S.* (1924) 2 F. (2d) 15, and reversal of conviction as to three of four defendants proceeded against as conspirators required the same ruling as to the fourth. *Cofer v. U. S.* (1930) 37 F. (2d) 677.

But where a defendant is charged with conspiring with persons unknown, a different rule governs. As held in *U. S. v. Hamilton* (1876) F. Cas. No. 15, 288, if the jury find from the evidence that one of the defendants has conspired, not with his co-defendant, but with other unknown persons a verdict of guilty could be had as to him, accompanied by one of not guilty as to his co-defendant. Where two defendants were charged with having unlawfully conspired together and with other persons unknown to the grand jury, to violate the National Prohibition Act, held, the acquittal as to one did not require the acquittal of both. *Donegan v. U. S.* (1922) 287 F. 641. Where three persons were engaged in a conspiracy and one of them died before trial and another was acquitted, it was held that the survivor might be tried and convicted. *People v. Olcott*, 2 Johns. Cas. 301. Where one of four conspirators was not indicted, in order to obtain his evidence for the prosecution, and the indictment of two other conspirators was dismissed on the motion of the prosecuting officer, leaving the question of guilt or innocence undetermined, these conspirators were held not to have been acquitted or discharged under such circumstances that the remaining conspirator might not be indicted and sentenced. *Bradshaw v. Territory* (1887) 3 Wash. Terr. 265, 14 Pac. 594.

Thus one defendant may be convicted of the offense of conspiracy provided the acquittal of co-conspirators does not remove the basis of the charge. *Browne v. U. S.* (1905) 145 F. 1; *People v. Richards* (1885) 67 Cal. 412, 7 Pac. 828. It is only when all of the co-conspirators have either been acquitted, or discharged under circumstances tantamount to acquittal that a conspirator cannot be convicted. *Bradshaw v. Territory*, above.

H. H. G., '33.