Pierce v. State (1914), 130 Tenn. 24, 168 S. W. 851.

Where defendant pleads to the indictment and goes to trial upon the merits, the defect in description is cured by the verdict. Jordan v. State (1928), 156 Tenn. 509, 3 S. W. (2d) 159.

18. Right to Be Informed of Constitutional Rights.

Where a defendant, immediately after the homicide, was arrested and taken before a justice of the peace who was a friend of defendant, and the justice questioned the defendant and heard his statement as to how the homicide occurred but defendant was not advised of his constitutional rights, the court could properly consider that defendant told his story to justice as a friend rather than as a magistrate, and justice could not testify as to such statement on trial of defendant for homicide. Giles v. State (1947), 185 Tenn. 429, 206 S. W. (2d) 412.

19. Right to Meet Witnesses Face to Face.

The provision that "the accused hath a right to meet witness face to face" has no application to witness summoned in behalf of the defendant. State v. Bomer (1942), 179 Tenn. 67, 162 S. W. (2d) 515.

In this state disbarment proceedings are not regarded as criminal in nature and therefore a defendant is not deprived of his constitutional right to meet witnesses face to face where testimony is available in form of a deposition. State v. Bomer (1942), 179 Tenn. 67, 162 S. W. (2d) 515.

20. —Accused May Take Depositions.

The provision giving the accused the right "to meet the witnesses face to face" has reference to the witnesses for the state, and not the witnesses for the accused himself. The accused may, by order of court and upon notice to the district attorney, take the depositions of witnesses. Petty v. State (1880), 72 Tenn. 327; Curtis v. State (1884), 82 Tenn. 503. See Code, §§ 40-2405, 40-2428, 41-605.

The right of the accused "to have compulsory process for obtaining witnesses in his favor" is a provision that may not imperatively demand their presence in any case, yet where the witnesses are within the reach of the process of the court, the compulsion of the accused to take a mere written statement as the equivalent of the personal presence of the witness contemplated by the use of the process guaranteed to him by the Constitution ill accords with the spirit of that right, and the view that such statement cannot be substituted for the testimony of the witness given personally in court is certainly more in accord with the fair implications of that provision than the opposite view. State v. Baker (1884), 81 Tenn. 327; Louisville & N. R. Co. v. Voss (1902), 109 Tenn. 718, 72 S. W. 983.

21. —Absence of Witnesses—Affidavits.

The attorney-general's admission that the absent witness under subpoena is credible and that he would swear to the statements made in the affidavit for a continuance will not prevent the continuance. Rhea v. State (1837), 18 Tenn. 258; State v. Baker (1884), 81 Tenn. 327. The practical operation of such an arrangement upon the rights and fate of the accused must often, if not always, be wholly illusory. Rhea v. State (1837), 18 Tenn. 258; Goodman v. State (1838), 19 Tenn. 195; State v. Baker (1884), 81 Tenn. 327. Where the admission of the attorney-general is not merely that the absent witness would testify as stated in the affidavit for a continuance, but that the facts are true as set forth therein, such admission should not preclude the defendant in a criminal case from his constitutional right of having the witnesses personally present at the trial. Goodman v. State (1838), 19 Tenn. 195; State v. Baker (1884), 81 Tenn. 327; Louisville & N. R. Co. v. Voss (1903), 109 Tenn. 718, 72 S. W. 983. The statement perhaps goes too far, in assuming that the agreement to admit that the facts are true as set forth in the affidavit might not be sufficient. The admissions thus made could not be disputed, and would stand as absolutely conceded for all the purposes of the case. State v. Baker (1884), 81 Tenn. 327; Louisville & N. R. Co. v. Voss (1903), 109 Tenn. 718, 72 S. W. 983.

The testimony of a candid and respectable witness, delivered in person, and in the presence of the jury, giving the facts in all their details, ramifications, and bearings, is so superior to the general admission of these facts by an attorney-general, little impressing, perhaps, the minds of the jury, and constituting, as to its extent and bearing, a fruitful source of difficulty and dispute, that, in every view, as it regards the rights of the accused, and the safe, equal, and pure administration of justice, the practice of receiving affidavits as the testimony of an absent witness, upon the admission of the truth thereof by the attorney-general, is improper and erroneous. Goodman v. State (1838), 19

Tenn. 195; State v. Baker (1884), 81 Tenn. 327; Louisville & N. R. Co. v. Voss (1903), 109 Tenn. 718, 72 S. W. 983.

Where an absent witness resided out of the state and was not subject to the compulsory process of the court, and the attorney-general proposed to agree that the affidavit of the accused for a continuance on account of the absence of such witness might be read as the deposition of the witness, and the court gave permission to the accused to amend his affidavit by the addition of any other material facts he expected to prove by the witness, and then allow it to be read as the deposition of a credible witness, announcing that he would, and accordingly did, charge the jury to consider such statement as the testimony of a credible witness, the Supreme Court refused to reverse. Petty v. State (1880), 72 Tenn. 327; State v. Baker (1884), 81 Tenn. 327.

There is no reversible error for refusing a continuance for the absence of witnesses, even in a criminal case, where the facts that could be proved by them are proved by other witnesses, and are uncontradicted. Conatser v. State (1883), 80 Tenn. 436.

The reason for the rule applies with equal force in criminal and civil cases, and the rule should be enforced in all cases. Louisville & N. R. Co. v. Voss (1903), 109 Tenn. 718, 72 S. W. 983. The offer of the adverse party in a civil case to allow the statements made in the affidavit for a continuance on account of the absence of a witness to be read on the trial as the testimony of the absent witness is insufficient to defeat the right to a continuance. There must be an admission of the truth of the statements to defeat the continuance. Louisville & N. R. Co. v. Voss (1903), 109 Tenn. 718, 72 S. W. 983.

22. —Evidence Received Out of Court.

The verdict must be based upon the evidence and testimony delivered before the jury in court in the presence of the judge and the parties. A juror's statement of additional facts, not put in evidence, but made to the jury after their retirement, which may affect their verdict, will vitiate the verdict, and will be ground for a new trial. Booby v. State (1833), 12 Tenn. 111; Hudson v. State (1836), 17 Tenn. 407; Donston v. State (1845), 25 Tenn. 275; Sam v. State (1851), 31 Tenn. 61; Nolen v. State (1859), 39 Tenn. 520; Wade v. Ordway (1872), 60 Tenn. 229; Morton v. State (1878), 69 Tenn. 499; Whitmore v. Ball (1882), 77 Tenn. 35; Carter v. State (1882), 77 Tenn. 440 (or for the reading of a newspaper article about the case); Nile v. State (1883), 79 Tenn. 694; Ryan v. State (1896), 97 Tenn. 206, 36 S. W. 930; Citizens Street R. Co. v. Burke (1897), 98 Tenn. 650, 40 S. W. 1085; Knoxville Iron Co. v. Pace (1898), 101 Tenn. 476, 48 S. W. 232; Forsyth v. Central Mfg. Co. (1899), 103 Tenn. 497, 53 S. W. 731; Irvine v. State (1900), 104 Tenn. 132, 56 S. W. 845; Jackson & S. S. R. & Tel. Co. v. Simmons (1901), 107 Tenn. 392, 64 S. W. 705; Lee v. State (1908), 121 Tenn. 521, 116 S. W. 881.

23. —Testimony Heard on Former Trial.

24. ——Deceased Witness.

The deposition of a witness given before the committing magistrate, in the presence of the accused, with an opportunity for cross-examination, may be read in evidence against the accused upon the trial, if the witness be then dead. Johnston v. State (1821), 10 Tenn. 58; Beets v. State (1838), 19 Tenn. 106; Bostick v. State (1842), 22 Tenn. 344; State v. Miller (1878), 69 Tenn. 595. The testimony of a witness before the committing court, and in the presence of the accused, may be proved on the trial, if the witness be then dead. Kendrick v. State (1850), 29 Tenn. 479; Wade v. State (1872), 66 Tenn. 80; Mattox v. United States (1895), 156 U. S. 237, 39 L. ed. 409, 15 Sup. Ct. 337. The testimony of a deceased witness on a former trial may be proved on a subsequent trial. Planters Bank v. Massey (1870), 49 Tenn. 360; First Nat. Bank v. Oldham (1881), 74 Tenn. 718; Mattox v. United States (1895), 156 U. S. 237, 39 L. ed. 409, 15 Sup. Ct. 337. The substance of the testimony of a deceased witness, or the substance of the whole of it on any particular subject, may be proved. Kendrick v. State (1850), 29 Tenn. 479; Planters Bank v. Massey (1870), 49 Tenn. 360.

The testimony of the deceased witness may be proved by a person swearing from his own memory, or from his memory as refreshed from reading his written notes, or if he cannot recollect the facts detailed in the notes, they may be proved by the introduction of the notes themselves, if their correctness and accuracy is sworn to by him. Rogers v. Burton (1823), 7 Tenn. 108; Beets v. State (1838), 19 Tenn. 106; First Nat. Bank v. Oldham (1881), 74 Tenn. 718.

The exact words of the deceased witness need not be proved, nor even the substance of all he said. It is sufficient to prove, by persons who heard it, the substance of the testimony of the deceased witness on the particular sub-