CONSTITUTIONAL LAW—WAIVER OF JURY TRIAL IN FELONY CASES.—Defendants were charged with a conspiracy to bribe a Federal officer, this crime being punishable by imprisonment in the Federal penitentiary for a term of years. During the trial one of the jurors became so seriously ill that he could not continue to serve. Defendants, defendants' counsel and government counsel assented to continue with eleven jurors, who found defendants guilty. There is no Federal statute authorizing waiver of jury trial in criminal cases. Upon writ of error defendants contended that their waiver of the twelfth juror had been ineffective and that the trial court had no power to proceed. The Circuit Court of Appeals certified the question to the Supreme Court. *Held*, the conviction of the defendants was valid. Sutherland, J., in the opinion of the court, concurred in by Justices Van Devanter, McReynolds and Butler, held that waiver of one juror is equivalent to waiver of the entire jury, but that trial by jury may be waived notwithstanding the Sixth Amendment, which provides that, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury . . . " Justices Holmes, Brandeis and Stone concurred only in the result. Justice Sanford "agreed to a disposition of the case in accordance with this opinion" but died before the opinion was approved. Only eight justices participated in the decision, the Chief Justiceship having been vacant at the time the case was argued. *Patton v. United States* (1930) 50 S. Ct. 253.

It is not open to question that for most purposes trial by jury in this country means trial by a common law jury of twelve men. *Thompson v. Utah* (1898) 170 U. S. 343. Accordingly those courts which have held waiver of jury trial to be unconstitutional in criminal cases have refused to sustain convictions by juries whose membership, by consent of defendants, was less than twelve. *Cancemi v. People* (1858) 18 N. Y. 128, 137, 138; *Branham v. Commonwealth* (1925) 209 Ky. 734, 273 S. W. 489; *State v. Hataway* (1923) 153 La. 751, 96 So. 556; *State v. Sanders* (Mo. 1922) 243 S. W. 771.

But the dictum in the principal case, that since all twelve jurors may be waived, one may be, is unique. It is possible to accept the conclusion without subscribing to the premise. That is what three of the judges seem to have deemed it wise to do. Granting that a common law jury is dispensed with whether the waiver be of one juror or of twelve, and that the constitutional issue is the same in both cases, it may still be contended that twelve jurors can be waived only by authority of a statute whereas one may be dispensed with in the absence of statute. No waiver of jury by the defendant can give to the trial judge power to decide facts. Only the jury has this power, and jurisdiction cannot be vested in a judge alone by mere consent of a defendant. *Michaelson v. Beemer* (1904) 72 Neb. 761, 101 N. W. 1007; *People v. Harris* (1889) 128 Ill. 585, 21 N. E. 563; *State v. Smith* (1924) 184 Wis. 664, 200 N. W. 638. Mr. Justice Sutherland holds in the principal case that this distinction is unreal.

What the principal case decides, then, is that in a felony trial in a Federal court the presence of one or more jurors may be waived by the de-

fendant. Undoubtedly an act of Congress authorizing such waiver would be constitutional. But the Supreme Court has not decided that in the absence of a statute the presence of a jury can be dispensed with or even that a statute authorizing such procedure would conform to the Sixth Amendment. On these points the principal case adds only dicta to which four justices have subscribed. Earlier decisions are reviewed in Aronson, *Waiver of a Jury in Felony Cases in Missouri* (1928) 14 ST. LOUIS L. REV. 34.

Still the case represents a significant development in the solution of an important constitutional question. It shows which way the wind is blowing, even though the decision may be somewhat surprising to those individuals, who, like the early courts, believe that the institution of trial by jury was God-given and that it could not be waived even by those for whose protection it was made into a constitutional right. N. F. D., '31.

CORPORATIONS—BONDS—EXERCISE OF CONVERSION PRIVILEGE IN CALLABLE BONDS.—Because of the stringency of the money market in recent years, corporations have been forced to issue bonds at extremely high interest rates. The practice has grown of inserting a redemption privilege, thus enabling corporations to call in their bonds when it becomes possible to float another issue at lower rates. Some bonds of this type also give the holder the privilege of converting to bonds of a different series at a different rate of interest. In *Brookes and Co. v. North Carolina Public Service Co.* (C. C. A. 4, 1930) 37 F. (2d) 220, a case of first impression, a corporation issued seven per cent bonds convertible at par to six per cent bonds at 92. Both series could be called in before maturity upon the corporation's publishing notice for four successive weeks. The corporation published the first notice of its intention to call in both series—the one at 103 and the other at 105. A holder immediately presented his seven per cent bonds for conversion to the six per cent series, intending to present bonds of the six per cent series for redemption. By this simple manipulation, he expected to realize $11.13 on each bond converted since he would receive 100 six per cent bonds redeemable at 105 for only 92 seven per cent bonds which were redeemable at 103. The corporation refused. The court, in an action by the holder for this unrealized profit, held that a conversion privilege in redeemable or callable bonds terminates as soon as the first notice to redeem is published, and accordingly found for the defendant.

The district court had previously reached the same result on the ground of waiver of his rights by the plaintiff, but expressed the view that the corporation was liable in damages for refusal to convert on demand before the expiration of the period of notice. The court cited cases upholding the validity of conversion privileges: *Chaffee v. Middlessex R. R. Co.* (1888) 146 Mass. 224, 16 N. E. 34; *Bratten v. Catawissa Ry. Co.* (1905) 211 Pa. 21, 60 Atl. 319; *John Hancock Mutual Life Insurance Co. v. Worcester R. R. Co.* (1889) 149 Mass. 214, 21 N. E. 364; 33 Cyc. 453. None of these cases involved bonds of the callable variety, however.

The Circuit Court of Appeals stated that the call privilege must be con-