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CRIMINAL PROCEDURE IN ENGLAND.*

JOHN D. LAWSON AND EDWIN R. KEEDY.**

As members of the Committee on Reform in Legal Procedure of the American Institute of Criminal Law and Criminology, we were commissioned last spring to visit England and make a study of criminal procedure in that country. Our mission was endorsed by the President of the United States and the Attorney-General, and the State Department furnished us with introductions to the representatives of our government in England. We spent four months in England attending the sessions of the criminal courts of London from the Magistrate's Court to the Court of Criminal Appeal, and at the invitation of a judge of the King's Bench, we went on circuit and witnessed the assizes in one of the largest cities in the country. Our work was greatly facilitated by the American ambassador and the American consul-general in London, who did all in their power to make our investigation successful; and the kindness and courtesies shown us by the members of the Bench and Bar of England with whom we became acquainted can never be repaid.

In our investigations much of the information was obtained from personal observation, interview, and conversation, and we submit herewith a concise statement of matters of special

*This paper constitutes part I of a report on criminal procedure in England undertaken in pursuance of the following resolution adopted by the National Conference on Criminal Law and Criminology, held at Chicago June 7 and 8, 1909:

"WHEREAS, It is widely asserted and popularly believed that the administration of the criminal law in certain foreign countries is more efficient than in the United States.

"Resolved, That this conference appoint a committee of five persons, preferably jurists, practicing lawyers and students of comparative legal institutions, to inquire into the systems of criminal law and procedure in other countries, particularly Great Britain, with a view to ascertaining in what respect, if any, they are superior to that of the United States, and report whether, in its opinion, the methods which have been adopted abroad for meeting certain of the evils that have developed in American procedure are suitable for adoption in the United States, and, whether, with a view to minimizing delays, decreasing miscarriages of justice and strengthening popular confidence in our present agencies for the administration of justice, a more simple, expeditious, certain and inexpensive system of criminal procedure clearly suited to American conditions cannot be devised."

Part II of the report will be published in the January number of this JOURNAL.

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interest to the American lawyer in the administration of the criminal law. This will show in what respects our criminal procedure differs to-day from that of Great Britain—the country from which our laws came—and it will be for the American lawyer to consider how improvement may be made in our practice. We do not suggest comparisons, but simply state the case. We must add, in regard to the English system of criminal procedure, that it seems satisfactory to the English lawyer and English layman, and that it results in certainty and speed in the administration of the criminal code.

I.

THE JUDICIAL ORGANIZATION.

In England the original criminal jurisdiction is vested in six tribunals, viz.:

1. The House of Lords.
2. The King's Bench Division of the High Court of Justice.
3. The Assize Courts.
4. The Quarter Sessions.
5. The Central Criminal Court.
6. The Petty Sessions and Police Magistrates.

The appellate jurisdiction is vested in:

1. The Quarter Sessions.
2. The Court of Criminal Appeal.

1. *The House of Lords.*

This Court has exclusive jurisdiction in cases of impeachment, and where a peer indicted for felony or treason claims the right to be tried by his peers.

2. *The King's Bench Division.*

The original jurisdiction of this Court, which extends over all indictable offenses, is seldom exercised except in proceedings upon information. Indictments may in special cases be removed by writ of *certiorari* into the King's Bench Division from an inferior court.

3. *The Assize Courts.*

Most indictable offenses are tried in the Courts of assize and quarter sessions. Judges of the High Court, acting under commissions of oyer and terminer, and gaol delivery, sit at the assizes, which are held in certain of the larger towns and cities, composing circuits. There are eight circuits and the assizes are held four times

a year. The arrival of the judge in an assize town is an occasion of great importance, and the court is opened with much ceremony. The judge in his red robe is accompanied upon the bench by the High Sheriff of the county, and often by the Lord Mayor and Alderman of the city. It is believed that these ceremonies foster a respect for the law and the courts.

In certain cases, when a judge is unable to go on circuit, a King's counsel is appointed special commissioner to sit at the assizes. He has not the right to wear the red robe, but sits in a black gown. It is said to be a source of much disappointment to the prisoners when a King's counsel presides at the assizes, as they consider it their lawful privilege to be tried by the "red judge."

4. *The Quarter Sessions.*

The quarter sessions, which have jurisdiction over the lesser indictable offenses, are held four times a year in the counties and borough towns. In the county sessions the justices of the peace act as judges. There must be two or more justices on the bench at each sitting of the court. The justices elect one of their number chairman. He is the presiding officer, and sums up the evidence to the jury.

In the borough sessions the recorder of the borough sits as judge.

"The justice of the peace in England is a striking figure both of society and legal administration. From very early times in England the Lord Chancellor has appointed private citizens of standing and reputation to what is called "the commission of the peace." They are, as a rule, not lawyers, but gentlemen of the particular district of each county, of known position and probity. Their office is principally to inquire into and adjudicate upon minor offenses, and in serious cases to send the accused for trial at the sessions or the assizes. In some instances, they have civil or semi-civil jurisdiction, e. g., bastardy, disputes between employers and workmen, claims for poor rates, disputes as to making of roads and the repairs of sewers, granting or withholding of licenses for the sale of intoxicating liquors, school attendance, vaccination orders, orders for the separation of husbands and wives on the ground of cruelty, and the like. Their jurisdiction is, however, principally correctional and they are the sole judges of first instance in criminal cases, but can only adjudicate effectually sitting two or more together. They sit at the courthouse and are assisted, so far as the legal aspect of their duties

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is concerned, by a clerk to the justices, who must be a lawyer of five years' standing. Cases of alleged offenses against the law come before this tribunal, either at the instance of the police, or by the intervention of private individuals or officials, whose rights are alleged to have been infringed, and every hearing before them must take place in public, and in open court. Under no circumstances is it permissible for the proceedings to be held secretly, or (except in very exceptional cases) elsewhere than in the courthouse provided for the district, thus giving the prisoner the benefit of the fullest publicity. At this hearing the accused is entitled to be represented by counsel or solicitor, may put such questions to the witnesses called against him as he thinks fit, may give evidence on his own behalf, or may make such statement in mitigation as he desires.

"After the case has been heard, unless, from its gravity, it is one of those which are bound to be sent for trial to the assizes, the justices, if they are satisfied that the offense was committed by the accused, may convict, and either fine, send to prison or bind over the prisoner to be of good behavior for a certain period. If the offense is one which the prisoner has the option of having dealt with summarily or sent for trial to the assizes, and the prisoner elects to go to trial by a jury, the chairman of the magistrates, before allowing him to make any statement, is bound to read to him the following: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you at your trial." If the complaint is in respect of an indictable offense, and the prisoner be sent for trial as above indicated, then the procedure, so far as its essence is concerned, in bringing the prisoner to trial before a jury, is the same as in a trial at the assizes."[†]

In the borough towns, the work of the justices is performed by the recorder. He is a member of the bar, of high standing, usually a King's counsel, residing in London. His judicial duties (except in the case of the recorder of London) do not withdraw him from practice and, when not sitting as recorder in his borough, he may be leading a case, either for the prosecution or defense, in the London Criminal Court or on circuit.

In the great County of London the magistrates sit in two divisions and are presided over by two permanent and paid chairmen who have all the qualifications of King's Bench judges.

[†]From a report read by Ernest Todd at the London meeting of the International Law Association.

5. *Central Criminal Court.*

This court was established by Act of Parliament in 1834, and took the place of sessions held at the Old Bailey. The jurisdiction of the court extends over all indictable offenses committed within the city and county of London, the county of Middlesex and parts of adjoining counties. The whole area constitutes an artificial county for purposes of venue. In practice the judges of the Central Criminal Court are a judge of the High Court, the recorder of London, the common serjeant, and one or both of the judges of the City of London Court.‡

6. *Petty Sessions and Police Magistrates.*

The courts of petty sessions are composed of justices of the peace. They may exercise a summary jurisdiction, or may commit an accused to trial at the assizes or quarter sessions. In the larger towns and cities specially appointed police magistrates have a similar jurisdiction.

The Appellate Procedure in England is vested in:

1. *Quarter Sessions.*

Appeals lie in certain cases, specifically named by statute, from the courts of summary jurisdiction (the petty sessions and police magistrates) to the quarter sessions, where the justices of the peace sit in banc. Upon the hearing, either party to the appeal may call evidence which was not given at the trial. The decision of the justices upon the appeal is final unless they state a case for the decision of the High Court.

2. *The Court of Criminal Appeal.* (See *post.*)

II.

THE JUDICIAL FORCE.

While the judicial force of England is small as compared to that of America, yet a mistake has been made by some writers on the sub-

‡The act creating the Central Criminal Court (4 & 5 Will. 4, c. 36) provides that the judges of that court shall be "The Lord Mayor for the time being of the City of London, the Lord Chancellor or Lord Keeper of the Great Seal, and all the judges for the time being of His Majesty's Courts of King's Bench, Common Pleas, and Exchequer, the Chief Judge and the two other Judges in Bankruptcy, the Judge of the Admiralty, the Dean of the Arches, the Aldermen of the City of London, the Recorder, the Common Serjeant, the Judges of the Sheriff's Court of the City of London for the time being, and any person or persons, who hath or shall have been Lord Chancellor, Lord Keeper, or a Judge of any of His Majesty's superior Courts of Westminster, together with such others as His Majesty, His Heirs and Successors, shall from time to time name and appoint."

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ject who have assumed that the eighteen judges of the Court of King's Bench include all the persons having jurisdiction to try indictable offenses in that country. Our investigations showed a large number of paid and unpaid officials who, without the title of judge, possess jurisdiction to hear criminal cases with a jury after indictment.

The eighteen judges§ of the Court of King's Bench go on circuit through England and Wales four times a year and hear all cases of murder and the graver felonies. But in addition to these there are engaged in criminal trials:

1. About sixty recorders in the cities and larger towns.
2. The magistrates, who, in each of the fifty or more counties, compose the quarter sessions.
3. In the city of London besides the recorder there are three other judicial officers who are engaged in trying indictments for a portion of their time, viz., the common serjeant and the two judges of the City of London Court.

It should be observed, however, that, like the judges of the King's Bench, these officers try civil cases as well. The English people do not regard with favor the idea of a judge having jurisdiction only in criminal cases and whose whole time is taken up in this kind of work, and hence the recorders, common serjeants and commissioners are also civil judges. Experience has shown that men who try criminal cases only are apt to lean too strongly toward or against the prisoner.

It is interesting to compare the salaries of the English judges with those of this country. The Chief Justice of England receives \$40,000 a year, the judges of the King's Bench \$25,000, the recorder of London \$20,000, the common serjeant \$15,000, the commissioners and the chairman of the London sessions \$10,000 each. Even a London police magistrate receives \$7,500 a year. It is not surprising to find that the Bench in England is filled by the best talent the country can produce, and it costs England proportionately less than it costs the United States because of the large number of men who serve without pay. In this class are included all the magistrates of all the counties of England who are paid nothing, but who accept the labor and the responsibility of the office on account of its dignity and out of public spirit.

§Two additional King's Bench judges were appointed this summer, making the number now twenty.

III.

BAIL.

Though the High Court judges have a right before trial to grant bail in all cases and this power is unlimited and absolute, yet it is not usual to do so in cases of felony. It is a matter of discretion. In exercising their discretion, they have to take into consideration, first, what are the probabilities of the prisoner failing to appear for trial; next, what is the gravity of the offense; and finally, what is an adequate sum to secure his attendance when required, due regard being had to the fact that the Bill of Rights forbids the requiring of excessive bail. By statute, in a number of cases of offenses therein set out, the magistrates are given a discretion as to whether or not they will admit the prisoner to bail, either before or after commitment, and in all other cases therein referred to, they are bound to admit him to bail, the solvency and amount of the sureties being the only matters for their consideration. The section, however, excludes from the jurisdiction of magistrates the case of treason, and provides that in this case bail shall only be granted by order of His Majesty's Secretaries of State or by an order of a judge of the High Court. In cases of murder, bail can be granted, but this, owing to the extreme gravity of the charge, is not usually done. In very minor cases where the accused person is arrested and taken to the police station, the inspector in charge will usually let him go free until he can be brought before the magistrates, if his address can be verified and he seems respectable and likely to come up when wanted.

The difference between our law and the English in this respect is that with us an accused is in certain cases entitled to be released on bail, whereas, in England, it is in all cases subject to the discretion of the judge. In actual practice, however, the security of personal liberty in England is very great, owing to three things: (1) That the English attitude towards an accused person is favorable to his innocence rather than his guilt, until he has been actually tried; (2) that if bail is refused by a magistrate it may always be applied for to a judge of the High Court; and (3) that the Bill of Rights prohibits the taking of excessive bail, in favor of personal liberty and as a guide and check to the judge or magistrate in exercising this particular part of his jurisdiction. A magistrate who improperly and from malice refuses bail may be prosecuted by indictment or on information.

A trial court has an inherent right to grant bail to a convicted person, but by the Criminal Appeal Act, the Court of Appeal may,

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if it sees fit, admit the appellant to bail on his application, pending the determination of his appeal.

IV.

STARTING THE PROSECUTION.

Criminal proceedings are begun in England by:

1. Arrest without warrant.
2. Arrest with warrant.
3. Summons. After commitment of the prisoner by a magistrate the proceedings are continued by:
 - A. Information.
 - B. Indictment.
 - C. Coroner's Inquisition.

1. *Arrest without Warrant.*

A private person may arrest without warrant (1) one who commits a felony or inflicts a dangerous wound in his presence; (2) a person who has committed a felony not in the arrestor's presence, where the arrestor has reasonable grounds for believing such person did commit the felony; (3) persons engaged in an affray; (4) a person about to commit a felony or treason; (5) persons who commit offenses specified in certain statutes as the Coinage Act, Customs Act, etc.

A police officer may arrest in the above named cases and also where a breach of the peace is committed in his presence. He may further arrest upon suspicion where he has reasonable grounds for believing a felony has been committed.

2. *Arrest with Warrant.*

A warrant for arrest is issued by a justice of the peace or magistrate upon a complaint made in writing and upon oath. When a person, against whom an indictment has been found, is still at large, he may be compelled to attend by a bench warrant, or by a warrant issued by a justice of the peace.

3. *Summons.*

A summons may be issued upon an oral complaint, not made under oath. It directs the accused to appear before a named justice of the peace at a time stated to answer a specified criminal charge. If a summons is not obeyed, a warrant may be issued.

The summons is used largely in offenses not involving any serious consequences, when it is not likely that the accused will endeavor

to escape. It is considered very improper to issue a warrant for the arrest of a person whose attendance can be secured by summons. In a recent case at the Old Bailey, where a shop-keeper was on trial for receiving stolen property, it appeared that he had been arrested upon a warrant. The judge inquired particularly why a warrant was issued, and then stated that a summons would have been sufficient.

A. *Information.*

An information, which lies only for misdemeanors, must be filed in the King's Bench Division of the High Court. Informations may be either (1) *ex officio*, where the Attorney-General charges a misdemeanor tending to disturb the public peace or to interfere with the government, as for instance, a seditious libel; (2) filed with leave of court by the Master of the Crown Office on the relation of a private person, against whom a misdemeanor has been committed of such magnitude as to deserve public attention, as a libel upon a public official. In practice informations are seldom used.

B. *Indictment and Grand Jury.*

A bill of indictment may be presented to the grand jury by any person without any previous proceeding against the accused, except in certain cases specially mentioned in the Vexatious Indictment Act.

The grand jury hears only the witnesses for the prosecution, and does not consider possible defenses. A "true bill" is returned if a majority of the grand jury, composed of not less than twelve nor more than twenty-three, are of the opinion that there is probable evidence in support of the offense charged.

C. *Coroner's Inquisition.*

When a coroner receives information that there is lying in his jurisdiction the dead body of a person who has died a violent or unnatural death, or suddenly from an unknown cause, or in prison, it is the duty of the coroner to summon a jury of not less than twelve nor more than twenty-three jurors, who view the body and hear the testimony of witnesses regarding the cause of death. (Coroner's Act, 1887, 50 & 51 Vict., c. 71, s. 3.)

The verdict of a coroner's jury charging murder or manslaughter is called an inquisition. This is equivalent to an indictment, and the accused may be tried upon it. In practice an indictment is also preferred. If the grand jury fails to find a true bill,

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there will be no prosecution on the inquisition. When an inquisition and indictment are both returned, the accused can be tried on one only; if the trial results in an acquittal, a formal verdict of not guilty is entered on the other.

V.

DEFECTS IN THE INDICTMENT.

This question, which plays such a weighty part in our criminal trials, is of no importance now in England. A late English writer on Criminal Law begins his chapter on "Proceedings After Conviction" in these words: "We only have to consider here defects in substance, and of those only such as are not cured by the verdict."¹ The last edition of Roscoe's Criminal Evidence states:² "The rigorous strictness in the framing of the indictment which was formerly a notorious characteristic of the law has disappeared." Citing the answer of Pollock, C. B., many years earlier to a counsel who had raised an objection of this kind, Roscoe says: "It is likely that a hundred years ago such an objection might have succeeded."

England began this reform a good many years ago. The power to amend an indictment was first conferred by a statute of 9 George IV, but it was confined to cases of misdemeanor. But in 1851 (14 & 15, Vict. c. 100), power of amendment was extended to cases of felony. Here is the preamble of the statute:

"Whereas, offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case; and, whereas, such technical strictness may safely be relaxed in many instances, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defense; and, whereas, a failure of justice often takes place on the trial of persons charged with felony and misdemeanor by reason of variance between the statement in the indictment on which the trial is had and the proof of names, dates, matters and circumstances therein mentioned, not material to the merits of the case, and by the misstatement whereof the person on trial cannot have been prejudiced in his defense. Be it therefore enacted, etc., etc."

And here is the statute:

"Sec. 1. From and after the coming of this Act into operation, whenever, on the trial of any indictment for any felony or misde-

¹Wilshere, p. 197.

²13th, p. 159 (1908).

meanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment; or in the name or description of any person or persons or body politic or corporate therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offense charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offense; or in the christian name or surname or both christian name and surname, or other description whatsoever of any person or persons whomsoever therein named or described; or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense on such merits, to order such indictment to be amended according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury, as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred."

SEC. 24. "No indictment for any offense shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words 'as appears by the record' or of the words 'with force and arms,' or of the words 'against the peace,' nor for the insertion of the words 'against the form of the statute,' instead of 'against the form of the statutes,'" or *vice versa*, nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of by his proper name, nor for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the

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offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing or the amount of damage, injury, or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offense."

"Sec. 25. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person; and thereupon the trial shall proceed as if no such defect had appeared."

"The effect of the foregoing statutes is that a formal objection, whether in respect of a defect apparent on the face of the indictment or not, will rarely be upheld. In a large majority of cases in which it may be taken, such a defect cannot effect the validity of the indictment, and in almost all other cases the court will order amendments."³

VI.

THE PROSECUTOR.

There are no such officers in England as our prosecuting attorneys. Prosecutions are begun and carried through by either (1) a private person called the "prosecutor," usually the sufferer by the criminal act, (2) the police, or (3) the director of public prosecutions.

(1) The private prosecutor begins the prosecution and employs counsel to conduct it. At the trial he has no standing other than that of a witness and is not permitted to take part in the conduct of the case. His costs are paid from the treasury and his duty ends with conviction or acquittal of the prisoner.

(2) If the complainant is poor or is unwilling to prosecute or if there is no complainant but the police, then the police carry on the prosecution with counsel supplied by the Crown.

³Bowen-Rowlands on Criminal Proceedings, 157.

(3) The director of public prosecutions is an official appointed by the government, whose duty it is, under the superintendence of the attorney-general, to institute or carry on criminal proceedings in cases which appear to him to be of importance or advise persons concerned in such proceedings; and to appear for the Crown in criminal appeals.

The office of director of public prosecutions was created by the "Prosecution of Offenses Act," October, 1879, which defines his duties and powers as follows:

"It shall be the duty of the director of public prosecutions, under the superintendence of the attorney-general, to institute, undertake or carry on such criminal proceedings (whether in the Court for Crown Cases Reserved, before sessions of oyer and terminer or of the Peace, before magistrates, or otherwise), and to give such advice and assistance to chief officers of police, clerks to justices, and other persons, whether officers or not, concerned in any criminal proceeding respecting the conduct of that proceeding, as may be for the time being prescribed by regulations under this act or may be directed in a special case by the attorney-general."

In certain cases it is the settled duty of the director of public prosecutions to institute and carry on the prosecution:

(1) Murder.—By the regulations of January 25, 1886, made under the Prosecution of Offenses Acts, 1879 and 1884, it is the duty of the director of public prosecutions to prosecute in cases of murder.

(2) Bankruptcy Offenses.—By 46 & 47 Vict., c. 52, s. 166. "Where the court orders the prosecution of anyone for any offense under the Debtors Act, 1869, or Acts amending it, or for any offense arising out of or connected with any bankruptcy proceedings, it shall be the duty of the director of public prosecutions to institute and carry on the prosecution."

(3) Corrupt and Illegal Practices.—By 46 & 47 Vict., c. 51, s. 45, it is the duty of the director of public prosecutions to institute any prosecution for any corrupt or illegal practice in reference to any election.

The consent of the director of public prosecutions is required in prosecutions for incest, and for being an habitual criminal; and the Criminal Appeal Act requires him to appear for the Crown on appeals to the Court of Criminal Appeal.

VII.

THE JURY.

In the first jury trial in England of which we have any record—in the Reign of William the Conqueror—the twelve men were not independent individuals, qualified to do justice by their ignorance of the merits of the quarrel between the parties. They were neighbors who, as such, knew something of the facts and could supplement the testimony of the witnesses, and this is why the jury is still summoned from the county where the plaintiff brings his action. Indeed for a long time it was good ground of objection to a juror that he was not possessed of private knowledge and information. In Arundel's case, a murder trial, it was argued before the judges at Serjeants' Inn—then the Court of Criminal Appeal—that as the murder had been committed in King Street, in the parish of St. Margaret, the jurors ought to have been summoned from the said parish and not, as they were, "*do vicineto civitatis Westmonasterii.*" And the judges held that as every trial ought to be held out of such place which by presumption of law could have the best and most certain knowledge of the fact, and as the parish was more certain than the city, the prisoner must be tried again. As late, again, as the reign of Charles II it was laid down by Sir Francis North, C. J., that "the juries are called from the neighborhood, because they should not be wholly strangers to the fact."

Today in England, while the witnesses can never be called jurors, yet the fact that the juror may know something about the case he is to try is no disqualification in itself.

The grounds of disqualification are (1) *propter honoris respectum*, i. e., that he is a peer or lord of Parliament; (2) *propter defectum*, i. e., that he is personally deficient, as an infant, alien, lunatic; (3) *propter delictum*, i. e., that he is an outlaw or convict; (4) *propter affectum*, i. e., that he is biased on account of words, relationship or employment.

But a man is not considered as having a bias simply because he may have expressed an opinion on the facts of the case as he has heard them from others or read them in newspapers.

The members of the jury panel are summoned by the sheriff from a list of qualified⁴ persons furnished to the clerk of the county

⁴Following are the qualifications for jury service: "Every man, except as hereinafter excepted, between the ages of twenty-one years and sixty years, residing in any county in England, who shall have in his own or in trust for him, within the same county, 10 *l.* by the year above reprises, in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient

by the churchwardens and overseers of the poor of the several parishes and townships.

In selecting the jury in the English courts, the challenge of a juror is almost as rare as the challenge of a judge in the United States. A chairman of quarter sessions said to us, when questioned on the subject: "I have been on the bench for six years—3,300 indictable offenses are tried in my court in a year—I remember only two or three challenges in my life, and not one during the last three years." We talked to more than one practitioner at the criminal bar who acknowledged that he had never seen a juror challenged for any reason, either by the Crown or by the defense.

Nevertheless the law of England recognizes the right of challenge. In felonies the accused has twenty peremptory challenges, but the Crown has none. If the Crown objects to a certain juror the court orders him to stand aside until the panel has been exhausted or a jury obtained. Then, on the panel being called over, if the jury box is not filled, the Crown must challenge for cause only. There is no peremptory challenge in misdemeanors.

Challenges for cause are unlimited, the causes being the four mentioned above. But where our practice and the English practice is so wide apart is in the matter of the examination of the juror. While the English law permits a question to be put to a juror to show that he is incompetent *propter delictum* or *propter defectum*, the question must be based on a previous challenge, naming the ground and based on evidence; neither the Crown nor the defense is permitted to go on a fishing expedition in the hope of discovering

demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents taken together, in fee simple, fee tail, or for the life of himself or some other person; or who shall have within the same county 20 *l.* by the year above reprises, in lands or tenements held by lease or leases for the absolute term of twenty-one years, or some longer term or for any term of years determinable on any life or lives; or who, being a householder, shall be rated or assessed to the poor rate or to the inhabited house duty in the county of Middlesex, on a value of not less than 30 *l.* or in any other county on a value of not less than 20 *l.*; or who shall occupy a house containing not less than fifteen windows, shall be qualified and shall be liable to serve on juries for the trial of all issues joined in any of the king's courts of record at Westminster, and in the superior courts, both civil and criminal, of the three counties palatine, and in all courts of assize, nisi prius, oyer and terminer, and gaol delivery, such issues being respectively triable in the county in which every man so qualified respectively shall reside, and shall also be qualified and liable to serve on grand juries in courts of sessions of the peace, and on petty juries, for the trial of all issues joined in such courts of sessions of the peace, and triable in the county, riding, or division, in which every man so qualified respectively shall reside." Juries Act, 1825 (6 Geo. 4, c. 50 s. 1.)

Exemptions from jury service are prescribed by s. 9 of the Juries Act, 1870 (33 & 34 Vict. c. 77.)

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from the juror's answers some ground which they had no previous evidence to support. And a challenge *propter affectum*, i. e., that the juror is not indifferent, but is biased, must be proved by evidence *abundē*; it is not allowable to ask a juryman whether he has an opinion or has expressed one. The counsel must challenge the juror he objects to, must state the ground of bias and must then produce his witnesses in support of his charge. Then follows a curious method of trying the question of bias. The judge does not decide the question, because it is not a question of law at all, but a question of fact. If it is the juror first called that is challenged, the court appoints two triers from the panel summoned or from the spectators, and these sit as a jury of two to try the issue, the onus being on the challenger to make out his case. If the triers find the juror qualified, then he and the two triers decide the next challenge. As soon as the second juror is chosen the two triers step down and out and any subsequent challenge is tried by the first two jurors. The examination on the *voir dire*, so familiar to the American lawyer, is almost unknown to the English practitioner.

While the English jury is not an arbitration board composed of trained men specially chosen to cope with difficult problems of fact, but is taken from all ranks and classes and all trades and callings, it is much more a permanent body than the American jurors, who are summoned in large numbers, from which, by lot and by sifting, a dozen are selected to try a particular case, and, having done their work, disappear and are heard of no more. At an assize court in which two judges were sitting in different rooms trying jury cases, only forty jurymen had been summoned, and we saw the same twelve men try five cases of felony, and the only reason they did not go on for the rest of the day was, that in the fifth case, the foreman rose after the judge's charge and requested that they be allowed to retire for a few moments, and so another jury had to be called to take up the sixth case. At the opening of the court the jury is in the box before the prisoner or the counsel or the judge enters the court room, and the only work done, that we saw, in the obtaining of the jury was the calling of their names to see if they were on the list and the administering of the oath to them, one by one: "I swear by Almighty God that I will well and truly try and true deliverance make between our Sovereign Lord the King and the prisoner at the bar whom I shall have in charge and a true verdict give according to the evidence."

We sat through the trial in whole or in part during our four

months in England of at least fifty criminal cases, five of them capital and most of them felonies of the higher grade. We witnessed the trial of divorce cases, between parties of prominence, where the jury is employed just as in other common law cases and where it also assesses damages against the correspondent. Yet we never saw it take longer time to choose the jury than the few minutes required to call their names and administer the oath, and we never witnessed a single challenge or heard an objection to a single jurymen.

One reason which plays a great part in the confidence of court and counsel in the fairness of the men called as jurors is the influence of the courts upon the press and the authority which they exercise in preventing the newspapers from prejudging a pending case. From the day the prosecution is begun until the jury renders its verdict, a newspaper is not permitted to comment upon the evidence or express opinions upon the guilt or innocence of the prisoner. Anything beyond a fair report of the evidence, as it is given in the magistrates' or the trial court, is a contempt of court which is severely dealt with by the judicial tribunal. In the recent notorious Crippen case it seemed to us that some of the London papers went much beyond this, and it will not be surprising if they are brought to task before the trial is concluded.⁵

[To be concluded in the January number.]

⁵At the conclusion of the Crippen trial the editor of the London *Chronicle* was fined \$1,000 for publishing as true a fact which was contrary to the evidence given at the trial.