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Proposed Reforms in Criminal Procedure

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PROPOSED REFORMS IN CRIMINAL PROCEDURE.

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There prevails among the laity, and even among the members of the legal profession whose practice is confined wholly to the civil side of the law, an impression that the safeguards surrounding the liberty of the citizen are not sufficient.

Being one of those who, until the close of the year 1909, had seen little or nothing of the interior of a criminal court, I not only shared that notion, but was perhaps an ardent advocate of its truth, and attempted often to impress it upon others. However, a short experience in the responsible position of one of the prosecuting attorneys for the State, has brought to light so many facts, that when massed together, I now marvel at my ignorance of existing conditions of the criminal practice in the United States.

It is conceded on all sides that the number of criminals, and the extent of crime committed in this country, greatly exceeds that of continental Europe. Unquestionably no one reason can explain this condition, and it is no doubt due to many. But I hazard the remark, without fear of contradiction, that the principal cause is the knowledge by the criminal of the many chances in his favor, to escape detection, apprehension, indictment and conviction. And, perhaps a principal reason for this is, that we continue to cherish in our law, rules which were originally invoked to safeguard the rights of the citizens; the reasons for which have largely disappeared; so that to-day these cherished bulwarks of liberty have come not only to insure the certainty of escape of the criminal from punishment for his illegal act, but to some extent, to jeopardize the liberty of the innocent. No one could be more earnest than I in the desire to safeguard the rights of the innocent, but to harp on the protection of the liberty of the individual, which has now come, in its present application, to mean the liberty of the criminal, is, to my mind, a mistake.

I shall not enumerate the opportunities of a wrongdoer to escape prosecution, either before a charge is lodged against him, or while the magistrate or grand jury is investigating the charge, by unwise sentimentalism, intimidation or spiriting away of witnesses; but what seems to me

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so helpful to the criminal classes is, that when put on trial, the chances of final escape are all in favor of the defendant.

Take, for example, the provision of law that no man shall be compelled to give evidence against himself. At a time when a conviction for felony meant death, and the conviction of misdemeanor meant branding, mutilation or transportation, such a provision was obviously just. Especially so, when it is recalled that then one charged with crime was not entitled to counsel, could not take the stand and testify in his own behalf, and had no right of appeal.

If the defendant fails to take the stand in his own behalf, the district attorney is forbidden even to refer to that fact; on the contrary, the court, upon request, will instruct the jury that such failure to testify must not prejudice the defendant. I hold the opinion that every defendant should be as available to the prosecution as a witness, as any other person. Others do not go so far. Some urge that he should be required to give explanation before a magistrate or forfeit his right to testify upon the trial; the argument being that to make a choice at that time is no greater hardship than at the close of the people's case. The English Court of Criminal Appeals will generally refuse relief where it appears that the appellant did not set for th his defense before the magistrate, but reserved it until the trial.

One charged with a crime is presumed to be innocent; that presumption continues until the close of the case, and can only be overcome by the district attorney convincing twelve men, beyond a reasonable doubt, that the defendant is guilty. In my experience, the average juror understands reasonable doubt to mean, "No doubt," and the more the court attempts to define and describe reasonable doubt, the more convinced the juror becomes that his conscience will not permit him to bring in a verdict of guilty, because there exists in his mind, a human possibility that no crime was committed, or if committed, was accomplished by another. The favorable conditions continue even after conviction, for there is no certainty of punishment. This may be due to the proper exercise of judicial discretion, to a tender-hearted judge, or to sinister influences.

Then, there is the right of appeal given to the defendant; a right which is denied to the people; also, the opportunity to obtain a certificate of reasonable doubt. In the appellate court, if the record discloses any error on the part of the district attorney or the judge, with the general presumption which arises that the error must have been prejudicial, there is a reversal. Thus again the defendant escapes

punishment, for the instances of second trials after reversal are not many.

After this recital, is it any wonder that so few convictions are obtained, and does this condition of affairs, well known to and appreciated by the criminal classes, act as a practical deterrent?

In passing, I should mention that during this period of time, there is no limit to the number of writs of *habeas corpus* that the defendant can secure. His absence from the state any time may not be prevented, and his forfeiture of bail may be a very satisfactory business transaction.

About a year ago President Taft, in speaking of this subject, used this strong language:

"There is no subject upon which I feel so deeply as upon the necessity for reform in the administration of both civil and criminal law. To sum it all up in one phrase, the difficulty in both is undue delay. It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization, and that the prevalence of crime and fraud which here is greatly in excess of that in European countries, is due largely to the failure of the law and its administration to bring criminals to justice."

I will now take up serriatim, a few of the agitated reforms, and foremost of these is the question of

THE RIGHT OF APPEAL IN CRIMINAL CASES.

On this question, the district attorneys should seek to unite upon a common ground of contention, and when they do, the evil, if one exists, will no doubt be corrected; for there is little doubt in my mind that if so influential and powerful a body will undertake a reform in regard to appeals in criminal cases, first agreeing as to what is wanted, the remedy will come speedily. There are several fixed notions in this regard, and the advocates of each seem to be immovable on account of the earnestness of their belief in their respective contentions.

First, there is that large class who believe, that an appeal should be granted neither to the defendant nor to the people, an opinion championed successfully by almost the entire English bar until 1907, during which year appeals as such to the defendants were first granted in England. The change was, and since its establishment, has been bitterly opposed by the Lord Chief Justice of England.

Justice David J. Brewer, one of the ablest of the Justices of the United States Supreme Court, in the course of an address before the American Bar Association in 1895, made the following statements:

"In criminal cases there should be no appeal. I say it with reluctance, but the truth is that you may trust a jury to do justice to the accused with more safety than you can an appellate court to secure protection to the public by

he speedy punishment of the criminal. To guard against any possible wrong to an accused, a board of review and pardons might be created, with power to set aside a conviction or reduce the punishment, if on the full record it appears, not that a technical error has been committed, but that the defendant is not guilty, or has been excessively punished."

In 1895, President Taft, then Secretary of War, addressing the graduating class at the Yale Law School, declared in favor of the abilition of the right of appeal in criminal cases, *"leaving to the pardoning power, as in England (at that time), the correction of judicial wrong."*

Other distinguished publicists agree that there should be no appeal in criminal cases. The judicial mind of Judge Story on the advisability of allowing appeals to the defendant in criminal cases is shown in ex parte Kearney (1822), 7 Wheaton 38:

"And undoubtedly, the denial of this authority (to revise the judgment of the Federal Circuit Court in criminal cases) proceeded upon great principles of public policy and convenience. If every party had a right to bring before this court every case in which judgment had been passed against him for a crime or misdemeanor or felony, the course of justice might be materially delayed and obstructed, and in some cases, totally frustrated."

There is a second group, who maintain that whenever an appeal is given to the defendant, the right of appeal should also be vested in the people. This class is growing steadily.

Finally, there is a third group, who maintain that the right of appeal should be preserved to the defendant, but not given to the people. In this group are not to be found the prosecutors of the country, nor the great students of the subject, but generally only the laymen and the civil lawyers, who are unacquainted with the criminal practice and procedure. This group is so strong in numbers that it has heretofore outweighed the other groups and has prevailed both in England, the American States and in the Federal courts. But even the advocates of this policy are beginning to limit the extent to which the appellate courts shall go.

In the message of the President of the United States to Congress in 1906 occur these words:

"I would like to call attention to the very unsatisfactory state of our criminal law, resulting in large part from the habit of setting aside the judgments of inferior courts on technicalities absolutely unconnected with the merits of the case, and where there is no attempt to show that there has been any failure of substantial justice. It would be well to enact a law providing something to the effect that: 'No judgment shall be set aside or new trial granted in any cause, civil or criminal, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which the application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.'"[1]

[1]Substantially, this recommendation was embodied in an act of Congress passed in March, 1911. See this *Journal* for May, 1911, pp. 9-11.

In the United States, originally, there were, strictly speaking, no appeals in criminal cases; but by statutory provision, appeals have become known to the federal jurisdiction and generally throughout the United States, with the exception of Delaware. Whether that state has lately adopted it or not, I do not know. In New York, neither the evidence in the case nor the rulings of the judge in the trial court could be brought up in criminal cases; and as late as 1827, the supreme court of this state held, that a question as to the admissibility and sufficiency of evidence was not raised by a writ of error or of *certiorari,* and that a bill of exceptions was not authorized in criminal cases. The change came with the revised statutes, and the adoption of the code of criminal procedure. Gradually, the right of appeal for the defendant has been enlarged in New York state, until to-day, no other state gives to the defendant such extensive appellant rights.

Whatever arguments may be advanced for and against these different theories, it is my belief that too little weight has been given to the importance of the deterrent effect of certain and speedy judgment in criminal cases; and too much given to reckless, unsubstantial and sentimental clamoring for the protection of the right of the individual, uttered while unmindful of the necessity of the preservation of law and order—the protection of life and property—the broader principle of public policy.

Whatever may be said in regard to the fact that no appeal for the people is now a necessity in order to preserve the rights of the people in given cases, it is certainly true that if such right of appeal existed, the conduct of our trials would be changed for the better. The presiding judge, realizing the district attorney's right to have his judicial conduct and action reviewed, would hesitate to rule and comment adversely to the people; thus proceedings in criminal cases would take on more the aspect of judicial proceedings. In the event of such a change, the actual taking of appeals by the people would not be so much the result, as the beneficient effect upon the trial, in consequence of the court's realization that there existed in the people the power of appeal. The power to call ou the militia is seldom exercised. The fact that it exists, however, influences the conduct of every citizen. The existence of a power is frequently all that is necessary; the exercise of it may rarely of necessity be invoked.

THE NECESSITY FOR A COURT OF CRIMINAL APPEAL.

Perhaps a majority of the advocates of the foregoing theories might unite in urging the establishment of a court of criminal appeal, such as was suggested in an able paper by Mr. John D. Lindsay, read be-

fore the State Bar Association of New York last year.[1] This contemplates a court with exclusive jurisdiction to hear and determine all criminal issues, including those in *habeas corpus* cases directly involving the penal law, such court to consist of not less than seven members and to sit in the various judicial departments, with power to entertain original applications for stays of proceedings, or, after the denial of similar applications to the trial judge, to admit to bail, and to exercise all the other powers now possessed by the Appellate Division and the Court of Appeals.

Perhaps there might be added exclusive jurisdiction to grant certificates of reasonable doubt. But such a court should be created and continued always with a view to a prompt hearing and speedy disposition of appeals, with final judgment in all cases. It is my personal opinion that these appeals should, as in California, be taken immediately in open court upon the rendition of the verdict, and heard upon a transcript of the shorthand reporter's notes certified to by the reporter and the court. No reversal should be allowed on any technical ground whatsover. The verdict of the jury should not be lightly regarded, and if substantial justice has been done, it should remain undisturbed. Only when the rights of the individual have been substantially invaded, should the verdict of the jury be disregarded, and only questions of law should be passed upon. In a proper case, the defendant being too poor, the judge or appellate tribunal should have power to cause the state to pay the expense of taking the appeal, where there are questions of law that should be reviewed.

RIGHT OF PEOPLE TO APPEAL FROM DISMISSAL OF INDICTMENT.

An appeal should be allowed to the people upon the dismissal of an indictment. It has been suggested that it should also be allowed to the defendant; but the error in this reasoning is the fact that that right is preserved to the defendant upon appeal from the final judgment of conviction. The dismissal of an indictment is, as to the people, a final judgment; and all that is asked is, that they should have an appeal from same. The defendant, notwithstanding the denial of a motion to dismiss, still has his right of appeal, as I have said, from the final judgment of conviction.

PRESUMPTION OF INNOCENCE.

The principle that the defendant shall be presumed innocent until proven guilty as originally enforced, was sensible and proper. The

[1]See this *Journal* for July, 1910, pp. 114-116.

principle was first laid down in the "Digest," where it is ascribed to Emperor Trajan(but its form then was, that it is better for one guilty man to escape, than for an innocent man to suffer. We next find it in this same form in the Year Books (30 & 31 Edw. I., 538). It was gradually extended from time to time, till it became twenty to one, ten to one, five to one, and even a thousand to one, in the time of Titus Oates. It was laid down in the familiar form of ninety-nine to one, in some Irish cases in the beginning of this century. Chief Justices Parker, Paley, and Fitzjames Stephen attacked the principle as laid down in Blackstone's Commentaries (ten to one), but were prepared to adopt it in its original form, one to one. Professor Thayer concludes: "And thus we may return to the moderation of the early proportion in the *corpus juris*. Obviously these phrases are not to be taken literally. They all mean the same thing, differing simply in emphasis, namely, that it is better to run risks in the way of letting the guilty go, than of convicting the innocent." It is simply meant that a man was not presumed to be guilty; that all people were presumed to be law abiding and orderly citizens, but the doctrine has been expanded beyond all sense of reason until writers of ability and standing, and judges of our highest courts, have proclaimed that it is a principle of evidence, and that the presumption that a man shall be considered innocent, is so great, that it must be considered in weighing the evidence; so that the instructions that are given in the American courts, in regard to this presumption of innocence, have, in the light of its historical development, made it an absurd protection to the criminal classes. One has but to read the very scholarly and able article by Professor Thayer on "The Presumption of Innocence," published in the Yale Law Journal, vol. 6, to appreciate the force of this contention.

PRIVILEGE OF SILENCE.

The defendant should not be granted the privilege of silence. It is not to be denied that in the days when almost every offence was punishable by death, and the defendant himself was not permitted to testify, it was eminently proper that he should not be compelled to testify against himself. It would be effrontry on my part to call your attention to the changed conditions in which this rule is now invoked. Suffice it to say, that the honest and innocent man when accused, demands a hearing and insists upon explanation. The Lord Chief Justice of England has said: "For an innocent man, the sooner his defense is raised, the better." (*Rex.* v. *Maxwell,* 2 Crim. App. Cases, 28.) The rule has therefore come to be only another aid to the hard-

ened criminal in his efforts to escape punishment, with no corresponding benefit to the innocent; thus adding another of the causes that have made the administration of the criminal law a disgrace. A change in this respect would tend to abolish the examination by the police before hearing, which is now necessary because of this privilege, and which has caused so much adverse comment.

POWER OF TRIAL JUDGE TO COMMENT ON EVIDENCE.

The judge should not be restrained from commenting upon the facts. The successful operation of this rule in England has made every thinking prosecuting attorney admit that it is, in theory at least, the better practice; and the only substantial and effective argument that has been offered against it is, that the character and ability of the elected judges in certain localities, would make the rule unworkable here. An argument to which I must admit there is some force.

DOCTRINE OF REASONABLE DOUBT.

It is asserted that the doctrine that the defendant is entitled to the benefit of every reasonable doubt, is without justification. It seems to me sufficient that he has the benefit of non-concurrence of any one of twelve men in the finding of a fact. The argument being that there is no more reason under the present merciful provisions of our penal law, why the prosecution should be compelled to prove the state's case beyond a reasonable doubt, than that, in a civil action, a man's property shall not be taken away from him except upon the same rule.

RIGHT OF SEPARATE TRIAL OF DEFENDANTS.

Defendants should not have, as a matter of right, the privilege of separate trials. This right should rest in the discretion of the trial court. Such is the rule, as I understand it, in the Federal Courts. Under proper direction of the trial court, no injustice would be done, while expedition and proper consideration of the evidence of a crime committed by persons in concert, would be secured.

RES INTER ALIOS ACTAE.

Where one is charged with the commission of a series of crimes, similar in character and not too remote, the people should be at liberty either to charge the defendant with all of thm in an omnibus indictment, or, evidence of all other similar and not too remote acts, should be admissible upon the trial of the indictment for any one. I realize fully that there are among the members of the profession, many who stoutly maintain that the present condition of the law as to sim-

ilar transactions, is ample to cover the case, but I cannot agree with them; and I believe that a bill, such as has been prepared by the Bar Association of the City of New York, and as finally corrected by that master hand, the late Justice Edward B. Whitney, would go much toward remedying what is now an evil. To cite an instance: A man commits a series of offences involving enormous sums of money and is indicted on a single charge; and yet, assuming that it is a case where the court properly excludes evidence of similar transactions, the jury are misled as to the true nature of the defendant's guilt. It has been said that, the proof of such similar transactions is objectionable, not because it has no appreciative probative value, but because it has too much; but this argument may not be convincing and may be used both ways.

POWER OF JUDGE AS TO CHALLENGE.

The decision of a trial judge in admitting or rejecting testimony on the trial of a challenge for actual bias for any juror, or for not allowing or disallowing such a challenge, should be final. In England the challenge of a juror is almost as rare as the challenge of a judge in the United States, and in fifty cases observed by two American investigators, not one juryman was challenged. This is accounted for by the fact that there a newspaper is not permitted to comment upon the evidence or express opinions upon the guilt or innocence of the prisoner. At 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.

The views of a few of our judges and publicists may not be out of place. Judge A. T. Clearwater, of Kingston, said at a meeting of the New York State Bar Association last year:

"The difficulties which beset the administration of justice in criminal cases are greater than the public, or the body of the profession believe. It is rarely in the United States an innocent man is convicted. It is marvelous that a profession, the members of which are absorbed in the affairs of clients who are able and willing to pay for their services, are always willing to defend a person as to whose innocence there is any fair doubt. The chivalry of the profession, its love of justice is so profound that you scarcely can put your finger upon any county in this Republic where you will not find some qualified member of the Bar who is willing to give his time and services in behalf of one he or the community regards as innocent. The difficulty in this country is not that rich offenders go free. The wealthy offender is a rara avis. When he is brought to the bar he attracts attention because of his rarity. In my opinion the danger that confronts this Republic is the disregard of law, and what is needed is not to make the path of the offender easier, not to surround him with additional inexpensive safeguards, but to see that justice is dealt out to him fairly and impartially and that he is not made the fad and protege of the Legislature or of the public. I should be sorry to say that there is a disposition to cultivate that excessive sentimentalism regarding offenders which Lombroso, of the University of Turin, has done in Italy, and which in

Italy has caused so much mischief. The criminal is not an object of sentiment. Nothing can be more sordid than crime. And the machinery of justice provided by the existing law, is ample to protect the innocent."

In a scholarly paper by Judge Simeon E. Baldwin, of Yale University, on "American Jurisprudence," read before the Ohio State Bar Association in 1892, is the following passage:

"Not until the great popular movement which found voice in the Reform Bill, and has made England more a democracy than the United States, were the cruelties swept away from English law. But in guarding against their presence here, American jurisprudence may have gone too far . . . And is there a reason which is really good for giving the convict an appeal to our highest courts on the most trivial points of law, where the rights of the public are generally determined finally by the trial judge? It is this overkindness to the individual to the prejudice of the state which renders possible, and, as many say, defensible, such things as the killing of the Italians at New Orleans, and the lynch-law executions, that in some of our states outnumber every year those had pursuant to the sentence of the courts."

The late Judge Isaac C. Parker of the Federal Bench presented startling figures showing the increase of crime, particularly homicides, in this country, and a corresponding decrease in the number of convictions for such offences, accompanied by an increasing number of lynchings, and attributes these facts to

"the corrupt methods resorted to to defeat the law's administration, and because courts of justice look to the shadow in the shape of technicalities rather than to the substance in the shape of crime."

David Dudley Field, who did so much in early days to extend the scope of appeals in criminal law, in a report prepared by him on behalf of a committee of the American Bar Association on Judicial Delays, which was presented in 1886, said in regard to "Delay and Uncertainty in the Administration of Criminal Justice":

"In some of the American states, years intervene between the commission of a crime and the infliction of the punishment. In consequence of this long delay, the value of the punishment as a public example is in a great measure lost . . . The delay in the administration of criminal justice and the multiplication of new trials have ultimately the effect of defeating justice in many cases, because witnesses die, or are scattered, or somehow get out of the way; and new crimes, apparently more atrocious because more recent, produce new prosecutions, which take their places upon the calendar of the Criminal Courts, and seem to demand greater attention on the part of the prosecuting officers, so that every month of delay increases the chance of escape in the old cases. These delays are due to various causes, chief among which is the extreme technicality of the rules of criminal procedure, which too frequently results in the granting of new trials and the reversal of criminal judgments . . . As the substantive law of crimes became ameliorated, the reasons which had moved the judges to countenance these technical objections and escapes from the rigors of the law measurably passed away; but the rules have, to many of them, remained . . . Instances of miscarriage of criminal justice are so frequent and have so shocked the sense of law-abiding people, as to lead to a general feeling of want of confidence in the administration of criminal law, and of disrespect for those who are concerned in its administration . . . It does seem that such could be done in the way of immediate amelioration, if the rules of appellate action in criminal cases were so changed as to require a full report of the evidence, taken by a stenographer employed by the states, to be sent to the appellate court in case

of an appeal, and so as to prohibit the appellate judges from reversing any criminal judgment, whenever, upon examination of the evidence so reported to them, they shall be of the opinion that the jury has rightly decided the essential question of guilt or innocence. It is the monstrous practice of reversing righteous decisions, rendered in conformity with the overwhelming weight of evidence, upon grounds which are technical, and which do not touch the substantial merits, that outrages public opinion and leads to the results already stated. Punishment, certain and swift, should be the fate of all who violate the penal laws. How to compass that end, and at the same time give a reasonable appeal, is the problem . . . Whenever imprisonment only may be the penalty, we see no sufficient reason why the imprisonment should not begin at once upon conviction and sentence, although an appeal be pending, for the presumption of guilt becomes so great when a jury has convicted and a judge has sentenced, that though a chance for reversal upon appeal may still be allowed, the execution of the sentence should not be stayed in the meantime. And where death may be the penalty, although, in favor of life, we would allow an appeal so long as there was a reasonable chance of reversal, we would, nevertheless, upon conviction and sentence, subject the convict to imprisonment at hard labor in the state prison while the appeal is undecided."

TRIALS SHOULD BE SHORTER.

With some of these reforms suggested in this paper, trials should be shortened. In London a case is disposed of in the same time it takes in New York to secure, in an important case, two or three jurymen.

Taking ten London cases I find as follows:

Rape	2 hours	2 hours	2½ hours
Murder	2 hours	2 hours	2 hours
Carnally knowing an imbecile	.....	.....	2½ hours
Attempted murder	.....	.....	4 hours
Wounding with intent to kill	.....	.....	1½ hours
Arson	.....	.....	4 hours

Compare these with our own American experience. If necessary, more judges should be provided in our large cities where the calendars are too crowded. The salaries of the judges should be more equal to the English pay, and our district attorneys should receive a salary to tempt the best legal talent of the country.

In the *Journal of the American Institute of Criminal Law and Criminology,* the case of Crippen is considered, and the editor says:

"If concrete examples of the superior efficiency of English methods of criminal procedure as compared with those of the United States are desired, they can be furnished in abundance. The Thaw and Rayner cases of two years ago, afford striking illustrations of the widely different ways in which criminal cases are disposed of in the two countries. The facts in the two cases were essentially the same. In each the charge was murder, and in each the plea was insanity. The first trial of Thaw, with its disgraceful accompaniments, dragged on through a period of twelve weeks, and finally resulted in a disagreement of the jury. The second trial, concluded a year and a half after the offense was committed, resulted in a verdict of insanity, and has since been several times renewed by means of *habeas corpus* proceedings, and the end is probably not yet. While the Thaw performance was being enacted

Rayner's case was called in London and disposed of in five hours, to the complete vindication of the majesty of the English law.

Compare again the Tucker and Crippen cases. Tucker murdered Mabel Page at Weston, Mass., March 31, 1904, and was arrested April 4. He was indicted June 9, though the trial did not begin until January 2, 1905. It was concluded 22 days later, on January 24. The usual motion for a new trial, accompanied by a bill of 26 exceptions, followed. On January 22, 1906, a year later, the motion for a new trial was denied by the Supreme Court. Five days later Tucker was sentenced to be electrocuted. A petition was then filed before one of the Justices of the United States Supreme Court for a writ of error, and in the meantime a petition for pardon was laid before the governor of the state. The governor thereupon asked the Supreme Court for an opinion concerning his power in the premises. On May 29, the court gave its opinion; the governor thereupon refused to interfere, and in June, 1906, Tucker was executed, two years and three months after his arrest. Crippen, on the other hand, was arrested July 21, and was arraigned August 29. The trial began October 17. The jury was impaneled in eight minutes, the trial was concluded in five days, a verdict of guilty was returned in 29 minutes, appeal was taken and promptly disposed of, and on November 23, five weeks after the trial began, Crippen paid the penalty for his crime. The trial was conducted in an orderly, dignified and businesslike manner and with every regard for the rights of the accused. No one, we believe, has advanced a single good reason in support of the claim that Crippen's right to a fair trial was in some way abridged. We are told by the London correspondent of the *New York Sun* that only once during the trial did counsel protest against anything that happened. The judge, Lord Alverstone, took an important part in the trial. Not a witness was examined or cross-examined by counsel on either side without his intervention. He repeatedly asked questions of witnesses, both for the prosecution and the defense, so as to make their answers clearer, and what little was to be said in Crippen's favor he pointed out in the summing up. His whole lucid retelling of the story from the evidence, says an eye-witness, could not have been more damaging had it come from the mouth of the prosecuting counsel. Indeed, its impressive delivery and its aloofness from all personal feeling, made it far more convincing of the prisoner's guilt than the final address of the prosecution to the jury. The participation of the judge in the trial has been the subject of some criticism by American lawyers, but many members of our bar, like President Taft, have expressed an opinion in favor of allowing the judge a larger share in the trial of cases."

In conclusion, our criminal procedure should be so remodeled, that no safeguard now existing in favor of an innocent man should be taken away, but the absurd presumptions, rules and laws that have lapsed by the statute of limitations to permit the wily and ingenious, with the aid of unscrupulous counsel to escape just punishment, should at once be abrogated, and when the time comes that the undesirable citizen realizes that a violation of the law, and the invasion of the right of life and property of his fellow-citizen will meet with prompt, sure, swift and severe punishment, the deterrent will be so great that the present invitation to commit crime will be somewhat removed.[1]

[1] I wish to acknowledge much assistance received from a paper by Max J. Kohler of New York, published in England, and entitled, "Criminal Appeals."