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A REVIEW OF THE WORK OF THE ENGLISH COURT OF CRIMINAL APPEAL FROM JUNE 1, 1913, TO JUNE 15, 1914.

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England had no court of review for criminal cases for a long period. Gradually a sentiment arose in favor of such a court. Many stories were told, some which had foundation, and others which had not, of innocent persons wrongfully convicted in the English courts. In one instance a man was tried for murder and hanged. The real murderer afterwards appeared and confessed his guilt.

In August, 1907, so insistent had become the demand for a court, which could correct the errors of the trial court, in criminal cases, that an act was passed by Parliament, known as the Criminal Appeal Act, providing for a court of criminal appeals. By this act it was provided that the judges composing the court should be the Lord Chief Justice of England and eight judges of the King's Bench Division of the High Court. The eight judges are appointed by the Lord Chief Justice with the consent of the Lord Chancellor. Any three of these judges so appointed acting together constitute the Court of Appeal. It was expressly provided by the act that the court shall sit in London, but appeals may be taken to it from any criminal court of record in England. The act provides that the court shall be a superior court of record, and shall have power to determine any question necessary to be determined in a case, in order to do justice.

An appeal to this court may be had, first, by application to the trial judge, who may or may not grant it. If the trial judge denies the appeal, then application may be made directly to the Court of Appeal. If upon hearing the appeal, the court is of the opinion that the judgment below should be affirmed, the appeal is dismissed. If, however, the court is of the opinion that the judgment is erroneous and cannot stand, the court directs that the conviction be quashed and the defendant released. If the court is of the opinion that the defendant is guilty of the charge, but that the sentence is too severe or not severe enough, it may either decrease or increase the penalty imposed by the trial court.

During the last year, from June 1, 1913, to June 15, 1914, the court heard and disposed of 125 cases. Of this number the judgments of the trial court were in all respects affirmed and the appeals dismissed in 25 cases. The sentence imposed by the trial court was reduced in

[1]Justice of the Municipal Court, Chicago.

54 cases, and the convictions quashed and the defendants discharged in 36 cases. In other words, the judgments of the trial court were vacated in 72 per cent of the cases heard; in 43 per cent of these cases the sentence was reduced; in 29 per cent the conviction was quashed; and in only 28 per cent were the decisions of the trial court fully sustained.

The most frequent reason given by the court in the cases where the conviction was quashed, was that the trial judge had either incorrectly stated the facts in his summing up or had omitted to state to the jury some vital part of the evidence favorable to the accused. In several cases the court held that the evidence offered against the accused was not sufficient to sustain a conviction, and in one or two cases the court was of the opinion that the accused was innocent of the offense charged. In almost one-half of the cases considered, the court was of the opinion that the trial judge in imposing sentence was too severe and directed that such sentence be reduced. In many cases the sentence was reduced more than one-half.

Some of these cases may be of interest to our American readers.

James Whaley was convicted on January 7th of stealing a duck and sentenced to 12 months' imprisonment at hard labor. He had previously been several times convicted of minor offenses, but the Court of Appeal thought his sentence was entirely too severe and ordered it reduced to six months' imprisonment without hard labor.

Anna Jackson, Nellie Reynolds and Mary Priestly were convicted on January 14th of stealing $25.00 from a man in a disorderly house. Two of the girls were given three years' penal servitude. Mary Priestly was given four months at hard labor. The Court of Appeals, after reviewing all the evidence, held that there was a lack of evidence sufficient to convict in the cases of Nellie Reynolds and Mary Priestly, and quashed the convictions in both cases and directed the sentence of Anna Jackson to be reduced to 12 months' imprisonment without hard labor.

Two very interesting cases decided during the year were those of John Mann who was convicted on January 14, 1914, of attempted suicide, and was sentenced to six months' imprisonment at hard labor, and Alfred Wilson, who was convicted April 10, 1914, of attempted suicide and sentenced to eight months' imprisonment at hard labor. Mann, after conviction, appealed, on the ground that attempting suicide under the common law was not a felony, but a misdemeanor, and as such, no sentence could be imposed which carried with it hard labor, and on the further ground that attempted suicide was not equivalent to attempted murder. The Court of Appeal held that attempted suicide at common law was a felony, and amounted to attempted murder, but directed, that, in view of the fact that the prisoner had twice before served terms in

prison for attempted suicide that part of the judgment imposing hard labor should be stricken out. In the case of Wilson the court held that in view of the fact that he had served a term of four months' imprisonment at hard labor for a previous attempt at suicide, and in view of the further fact that Wilson was in destitute circumstances and almost starved, his sentence should be reduced to ten weeks' imprisonment at hard labor.

In the case of Arthur Jakeman, who was convicted on January 9th of obtaining a check for $35.00 under false pretenses and sentenced to five months at hard labor, the Court of Appeal found that the transaction as shown by the evidence was legitimate and the defendant was not guilty, and quashed the conviction.

Peter Malloy was convicted on January 9th of attempted larceny and sentenced to three years' imprisonment at hard labor. The Court of Appeal readily found that the offense charged was not a felony but only a misdemeanor, and that no sentence in excess of 12 months could be imposed. It thereupon reduced the sentence to 12 months.

Ernest Ludford pleaded guilty on February 9, 1914, at the Hereford Assizes, of having stolen some postal orders. He was at that time but 13 years of age. The court thereupon sentenced him to two months' imprisonment and 12 strokes with a birch rod. The case was taken to the Court of Appeal on an inquiry made by the sheriff of the prison who insisted that he could not whip the boy. The claim was made on behalf of the boy that the Children's Act more recently passed in England provided that no children at this age could be imprisoned or detained for a period of more than one month, and that this act also repealed the act which provided for the whipping of children. The Court of Appeal held that it was the duty of the sheriff or superintendent of all prisons and places of detention to carry out all orders of the court, and if the court ordered a prisoner to be whipped it was the duty of such sheriff or superintendent to whip him or to get someone else to do it for him. The court also held that the sentence of two months' imprisonment was erroneous and that only one month's imprisonment could be imposed, but held that the boy could be whipped and that the order of the trial court directing him to be whipped was proper, and that it was the duty of the superintendent of prisoners to carry out that order.

Sidney Freedman was accused of receiving stolen property and was convicted on January 21st of having received an automobile and having received from the parties who stole it two shillings to store the same. When Freedman was asked by the police whether or not the automobile was in his possession he answered "No." He was sentenced to 12 months' imprisonment at hard labor and ordered to be expelled from the

country and returned to Russia, where he was born. At the time of his trial he was 25 years of age, had been born in Russia and had lived in England twenty years, and was married to an English girl. He could not speak a word of Russian. The Court of Appeals held that the order for expulsion was cruel and unjust and directed that it be not carried out.

Joseph Conroy was convicted on a charge of false pretence and sentenced to six months' imprisonment at hard labor. The court held that at common law there could be no sentence of hard labor upon the charge of obtaining goods by false pretences.

Charles Smith was convicted of soliciting men for immoral purposes and sentenced to 15 months' imprisonment at hard labor and 25 strokes of the cat. The sentence was reduced to 15 months at hard labor and 15 strokes with the cat.

John Thompson stole two purses containing $50.00 and was sentenced to three years at penal servitude and 7 years' preventive detention. The Court of Appeal held that he was not a habitual criminal and there could be no sentence for preventive detention, and reduced his imprisonment to 18 months.

Louis R. Varley was convicted at Leeds, March 20th, of obtaining goods by false pretences and sentenced to 9 months' imprisonment at hard labor. The Appellate Court quashed the conviction on the ground that there was not sufficient evidence of the identification, and also held that when a photograph is produced at the trial by the police, the jury should not be permitted to know who produced it.

Ernest Wilmot was convicted on March 6th and was sentenced to 15 months' imprisonment at hard labor. After the jury had retired to consider its verdict the judge sent the clerk into the room to inquire whether or not they had reached a verdict. A juror thereupon asked the clerk a question concerning the case, which he answered. The Court of Appeal held that for this reason the conviction must be quashed.

Willie Hart was convicted on March 12th of an indecent assault upon a girl. The girl was 14 years of age. The defendant, who was a steward at a club, denied the offense and there was no corroboration of the girl's story. The conviction, however, was quashed, because there was no evidence that the girl did not give her consent; the age of consent in England is 13 years.

Edward Brerton was convicted on April 6th of larceny. He was charged with stealing a bicycle. He had been tried, on the same day, before the same jury, and the same judge, of stealing another bicycle, and was acquitted. The conviction was quashed largely because the judge, in summing up the evidence, gave undue emphasis to some parts of it, and omitted other parts.

William Cawthorne was convicted of having carnal knowledge of a girl under the age of 13 years. He was 15 years old at the time, and was sentenced to 12 months' imprisonment at hard labor. The judge, in certifying to the Court of Appeal, stated that he desired very much to sentence the prisoner to receive 25 strokes with the cat. When the offense was committed the boy was but 15 years of age. At the time of the trial he was 16 years old. The English law provides that if the accused minor does not exceed 16 years of age the trial judge, instead of imposing the sentence which would follow a conviction, may direct that the child be whipped. The Appellate Court, however, held in this case, that at the time of his conviction he was over 16 years of age and could not be whipped, and affirmed the judgment.

Mary Johnson was convicted of writing and uttering a letter in which she threatened to commit murder. She was sentenced to 12 months' imprisonment at hard labor. When the jury returned in open court with its verdict and was asked what was its verdict the foreman replied: "Guilty of writing and uttering, but not guilty of intent to kill." A judgment against the defendant was entered upon this verdict. The Court of Appeal quashed the conviction and stated that it did not believe the jury intended that any such judgment should be rendered.

Albert Newman was convicted of larceny on July 15th and sentenced to six months' imprisonment at hard labor. After the evidence had all been offered the trial judge, addressing the jury, said: "Would you like me to sum up this case, or is the evidence sufficient for you?" He did not sum up the case. The Court of Appeal held that the inquiry by the judge was proper, but reduced the sentence to three months' imprisonment.

Alfred Charnley was convicted of knowingly allowing his daughter 16 years of age to consort with prostitutes and disorderly people, and sentenced to three months' imprisonment at hard labor. The verdict of the jury in the case was as follows: "We find the defendant guilty of negligence." The Court of Appeal held that there could be no conviction under this state of facts, and the defendant was discharged.

Oscar Fidler was convicted on September 19th of being incorrigible and sentenced to six months' imprisonment and 12 strokes with the cat. His offense was failure to support his wife and child, who had been neglected much of the time and supported by public charity, but the Court of Appeal held that the cat was not proper in a case of this kind and quashed that part of the judgment.

From the work of this court not only during the last year, but since its creation, it is plain that judgments of conviction in criminal cases are not always just, and that serious mistakes frequently occur.

Indeed, in no court of review in the United States can there be found so large a percentage of cases wherein the judgments of the trial courts were set aside as in the English Court of Criminal Appeals. That court has been greatly hampered by the provision of the act under which it operates, which forbids the remanding of a criminal case for a new trial. Whenever a conviction is quashed the defendant must be discharged. The court has frequently expressed the view that the law should be amended so as to enable the court, where a fair trial has not been had, to remand the cause for a further hearing. Notwithstanding this apparent defect in the act, and notwithstanding the large number of judgments vacated by it, this court has very much that commends it to the consideration of law reformers in the United States. The dispatch with which it performs its duties and the informality of its proceedings are well worthy of our imitation.

There are no delays in perfecting appeals, but appellant either with or without counsel may go immediately from the trial court to the Appellate Court and have an immediate hearing, either upon his application for an appeal, or upon the appeal itself. No new record is necessary, but the record of the trial court is removed directly to the Court of Appeal, where it may be examined by that court. If it is urged that a new trial should be granted on the ground of newly discovered evidence, the Court of Appeal is prepared to hear such evidence, and, generally, if a proper showing is made, additional witnesses are called directly before the court and there examined.

The opinions of the court are rendered at once upon the conclusion of the hearing, and announced generally by the chief justice. Such opinions are usually very short and informal, often not exceeding one hundred words in length.