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REVIEW OF THE WORK OF THE ENGLISH COURT OF CRIMINAL APPEALS, FOR THE LAST YEAR.

WILLIAM N. GEMMILL.¹

No other court offers as many valuable suggestions to the student of criminal procedure as the English Court of Criminal Appeals.

England existed many centuries without such a court. If a man was convicted in a *nisi prius* court, his only appeal was to the Home Secretary for mercy. Sometimes persons were convicted by recorders and judges for offenses of which they were not guilty. Because of this, Parliament was led, in 1907, to create the Court of Criminal Appeals.

The creating act provided that the court should consist of not fewer than three, nor more than five judges appointed from the King's Bench. Appointments were to be made by the Lord Chief Justice, with the consent of the Lord High Chancellor.

The Lord Chief Justice generally presides over the court. During the last year five judges sat in the court most of the time. It is the most informal court in the world. When one has been convicted of a crime, whether in London or upon one of the circuits, he may apply at once to the presiding judge for an appeal. If the appeal is allowed the whole record of his case will be at once transferred to the Court of Appeals. If the appeal is denied, the defendant may then apply directly to the Court of Appeal, for leave to appeal. If leave is denied there, such denial operates as an affirmance of the judgment of the trial court. There is no delay in preparing a transcript of the record for the original record is transferred at once to the court above. The prisoner may always accompany his appeal, and may often be heard in open court by the judges of that high court. It often happens that the defendant in appealing acts in his own behalf and without counsel. The whole proceeding is informal—no briefs or abstracts are prepared—and judges and counsel address themselves at once to the alleged errors.

Appeals may be taken either from the judgment of conviction or from the severity of the sentence. If the court finds that the defendant has been wrongfully convicted, the judgment of the trial court is quashed. If it finds that the defendant has had a fair trial, but that the sentence imposed is too severe, the sentence is reduced.

¹Judge of the Municipal Court, Chicago.

If it finds the defendant had a fair trial, but a wrong judgment was entered, it enters a proper judgment. Where a defendant has appealed from the severity of the sentence, the court may increase or decrease the sentence. By reason of this informality of procedure, the court is able to administer justice with greater certainty and expedition than other courts of appeal.

It is wrong to conclude, however, that as a court of appeal it pays less attention to technical errors, and affirms judgments with greater certainty than other Appellate Courts. Quite the opposite is true. No Appellate Court in the United States sets aside as large a per cent of the judgments of the trial court reviewed by it as does this highest court of England. From August 18, 1914, to December 20, 1915, the English Court of Criminal Appeals disposed of 96 cases. Of this number the judgments of the trial court were affirmed in 28 cases, quashed in 34 cases, and the sentences reduced in 34 cases. In other words, 71% of the judgments of trial courts reviewed were set aside, 35½% of the judgments quashed, 35½% reduced, and only 29% affirmed. Of the number of cases reviewed, ten were appeals from judgments of conviction for murder. In all but one of these cases the death sentence had been imposed, and in all but two the judgments of the trial court were affirmed. In one, the conviction was quashed, and in the other the penalty was changed to manslaughter.

Owing to the War in Europe, some exceedingly interesting legal questions have arisen, both in the civil and the criminal courts, during the last year. There has been very much discussion during the last few months in the English, French and German courts, as to what are the rights of an alien before these several courts. Can an alien sue or defend in the courts of an enemy? This question has frequently been raised during the year in all three of these belligerent nations. The French courts have repeatedly held that a German arrested in France can neither be made plaintiff or defendant in a law suit in the courts of France during the pendency of the war. The English courts have taken the same position, but within the last few weeks there has been appointed in England a body of men called controllers, who are authorized to take possession of the property of an alien enemy, residing in England, and administer it much as it might be administered by a receiver, to pay the debts, and to hold the balance for the alien, to be delivered at the close of the war. Germany has not gone so far as either France or England, but has frequently permitted aliens both to sue and defend in her courts. Recently,

however, controllers somewhat like those in England and France have been appointed.

In the criminal courts many persons have been indicted upon the charge of trading, or attempting to trade, with an alien enemy. This is a serious offense, under the English law, and in one case during the year the person found guilty was sentenced to death.

Nicholanus Emil Ohlers was convicted at Durham, December 9, 1914, of high treason, and sentenced to death. He was a German by birth, but had lived in England thirty years. In 1905 he was naturalized and became a British subject. A few years ago, he was appointed German Consul at Sunderland. In November, 1914, he was accused of furnishing aid and comfort to the King's enemies. The circumstances were as follows: On August 1st, Germany declared war on Russia; on August 3rd, she declared war on France; and on August 4th, England issued her ultimatum to Germany. On the same day the defendant, who was at Durham, received a telegram from the German Consul at London, which read as follows:

"Have all able men from 17 to 45 find way to Germany."

On August 5th, the London Daily Mail announced that war had been declared by Germany against England at seven o'clock P. M. on August 4th. During the day of August 5th, the defendant met several Germans and tried to persuade them to return to Germany and enlist in the German army. To one of these men he gave money for that purpose. On the trial, the defendant admitted that he had seen in the daily papers on the morning of August 5th the announcement that war had been declared by Germany, but said he did not believe it, and thought that even if war had been so declared, yet under the law sufficient time would be given for the departure from England of all Germans who sought to return to their native land. He pleaded that he had no intention to violate the law. This conviction was quashed because the trial judge improperly told the jury that it made no difference what was the intention of the defendant, and that if he committed the acts after war had been declared, he was guilty.

M—————(owing to official secrecy, the name of this defendant is suppressed) was convicted for treason on June 4, 1915, and sentenced to be shot. He was charged with attempting to communicate information as to the number and movements of certain troops by sending a letter to an enemy who was then living in a neutral country. He had written two letters to X, both in German. Upon the trial it was ascertained that the information contained in the letters was nearly all incorrect, and that had the party to

whom the letters were addressed acted upon them, he would have certainly been misled. The judge instructed the jury that it was immaterial whether the information was true or not. There was some slight truth to it, and this was sufficient to convict. The Court of Appeals sustained the trial court on June 21st, and the defendant was executed.

George Newton Spencer was indicted on the charge of attempting to trade with the enemy. He was convicted on October 14, 1914, and sentenced to 18 months imprisonment. He was employed as a clerk by a German firm. This firm had mortgages on three German ships that were interned in neutral ports. The defendant approached Houlden Brothers of London and offered to sell them these vessels, and cancel the mortgages for \$45,000. It was arranged that the money thus to be obtained would be sent by Houlden Brothers to a firm in Holland and from thence forwarded to Germany. On appeal the sentence of the trial court was affirmed, on November 9, 1915.

William George Simpson was convicted on June 30, 1915, and sentenced to death. He was a soldier, and one day returning home, found his two year old son very sick suffering from water on the brain. He found that his wife, in his absence, had led a wild life. Much of the time she had entertained soldiers at her house, and indulged with them in many drunken carousals. He found that the child had been much neglected by the wife. During his absence, the government had paid his wife thirty shillings per week as support money, and five shillings per week had been advanced to her by the Lord Mayor of Newcastle. Most of this money had been spent for drink. The defendant upon entering the house called a neighbor, and sent to find his wife and urge her to come home. After that he went out and drank heavily, then returned and cut the child's throat. On the trial his defense was that the child was wholly neglected by its mother, and he killed it because he could not bear to see it suffer longer. Upon an appeal the Lord Chief Justice held that although there were many extenuating circumstances, yet the act was one of murder. That provocation for the commission of a crime can only proceed from the one against whom the wrongful act was committed. The judgment of the trial court was affirmed.

Ernest Douglas was convicted, October 5, 1915, of obtaining money under false pretenses. He obtained two shillings on the statement that he was a soldier stationed at Red Hill and would soon draw his pay. It was shown upon the trial that he was a soldier, but that he had deserted his post and had no pay coming. He was

sentenced to three years at penal servitude. The court of appeal reduced this sentence to twelve months at hard labor.

Annie Smith was, on October 31, 1914, sentenced to death. She killed a child two and a half years old by the use of a long handled broom. The child playing about her had from time to time annoyed her. After the conviction by a jury the defendant claimed that she was led to do the act because of ill health, and the fact that she was soon to become a mother. The judge called another jury of women to determine as to her physical condition. After this jury had made an examination, they returned a verdict, finding her statement was true as to her condition. The court of appeals on November 23rd affirmed the judgment, saying that the condition of the defendant could not be received as a defense.

Anon (a trial in camera.)

The prisoner was a British subject and was charged with attempting to communicate important information concerning the movement of troops to a German agent in Norway. He had formerly been in Germany and claimed that he had been greatly abused while there. When he returned to England he arranged to act as a spy for the Germans and was to receive a large reward. He sent a message written in invisible ink to a German agent in Norway. Most of the information thus sent was false, and his defense was that he intended to mislead the Germans. He was convicted October 22nd, and sentenced to penal servitude for life. This was affirmed November 22nd.

A very recent case has called forth much adverse comment against the bar of England. An English soldier was arrested as a spy in France, not far from where the soldiers were fighting in the trenches. He was ordered to be tried by a court martial sitting in France. He at once applied to be allowed counsel from the English Bar. His application was denied, on the ground that members of the bar were not permitted, under the established regulations, to go into France to defend a citizen of England.

2237 solicitors and 900 barristers of the English Bar have gone to the front. In addition to these 6165 law clerks have joined either the army or the navy.