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Editorials

EDITORIALS

DEVELOPMENTS AT SING SING.

The public is already informed of the triumph of Mr. Thomas Mott Osborne in his having been cleared of the charges brought against him in connection with his conduct and management as Warden of Sing Sing prison. On July 15, he was reinstated in office. On page 463 of this number we publish abstracts from an interview given by Mr. George W. Kirchwey, Warden during Mr. Osborne's absence, to the *Evening Post* of July 19 in which it appears that very important developments for science have already begun to grow out of the new Sing Sing. The Rockefeller Foundation has made it possible to secure the services of Dr. Bernard Glueck of the Government Hospital for the Insane at Washington who will make psychiatric investigations among the prison population. Dr. Glueck's training in medicine and psychiatry and his standing in his profession will inspire the confidence of those who are acquainted with his work in the expectation of scientific and practical results.

Unfortunately we do not have space in which to reproduce the entire statement by Mr. Kirchwey. Those who are primarily interested in the more immediate effects of the Sing Sing system will want to know the bearing of Mr. Osborne's self-government scheme upon the discipline of the prison. On this point Mr. Kirchwey's statement is to the effect that the problem of discipline has been solved. He says:

> "In looking up the records of men applying for parole, I found an almost invariable record of misconduct down to the period when Mr. Osborne became Warden. From that time on the punishment card was almost invariably a blank. Again and again when I inquired as to the character of an inmate, I have been told by the principal keeper or by other officers that he was a pretty bad man under the old system, but that he was well-behaved under the new. Men have come to Sing Sing from other prisons with their record-card, showing repeated instances of misconduct in the prison

from which they have been transferred, and then immediately took their places as orderly well-behaved members of the Sing Sing community. This was not the exceptional case, but the usual one.

"In the few instances in which there has been serious misconduct under the new order, a 'cutting' affair, or something of that sort, the man guilty of the act was almost invariably found to be insane or so mentally defective as to call for his removal to an asylum.

"Regarding discipline in the prison, I have never found the least difficulty in securing from the Executive Board, the Judiciary Board, or the Sergeant-at-Arms of the Mutual Welfare League, the support I needed in the maintenance of good order. The Executive Board has repeatedly recommended to me that I have an offending member examined to determine his mental condition or that I obtain his transfer to another prison on the ground that he proved himself by his conduct an undesirable member of our prison community. I should say that the success of a warden in maintaining discipline would depend entirely upon the extent to which he brought the inmates' organization, the Mutual Welfare League, into co-operation with him. Of course, no warden can divest himself of his responsibility for the maintenance of good order in the prison. He must exercise unceasing vigilance and supervision over matters of that kind."

ROBERT H. GAULT.

PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE OF THE STATE OF NEW YORK, REGARDING COMPULSORY ATTENDANCE OF WITNESSES.

Sections 607 to 619 inclusive of the New York Code of Criminal Procedure contain the provisions for compelling the attendance of witnesses in Criminal Cases in that State. It is unnecessary to refer to all the sections. I shall quote those sections which are important for our purposes, and comment upon them.

Section 608 reads:

"Magistrate may issue subpoenas, on information or presentment.

"A Magistrate before whom an information is laid, may issue

subpoenas, subscribed by him, for witnesses within the State, either on behalf of the people or of the defendant."

Now this is encouraging. Seemingly everything is plain sailing for the prisoner. It is clear the prisoner may obtain subpoenas as well as the State, in cases before a Magistrate, that is, as the term is here used, one who is a judge of an inferior Court of first instance. But there is more.

Section 611 is as follows:

"Clerk may issue blank subpoenas, for witnesses for defendant on trial.

"The Clerk of the Court at which an indictment is to be tried, must at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, under the seal of the Court, and subscribed by him as clerk, for witnesses within the State, as may be required by the defendant."

This is indeed good—on the face of it. It is true the defendant may get a subpoena from the Clerk of the Court, but who is to serve it? The district attorney paid by the State has process servers, trained and experienced, who serve the subpoenas for him; but the defendant, ignorant, poor, and helpless,—where is he to get the trained and experienced process servers. And suppose he cannot locate a witness—what is he to do then? He cannot hire detectives to search him out. But the District Attorney can, at the expense of the County. The Magistrate, then, before an indictment is found by the Grand Jury, and acting only upon a sworn affidavit, called an information, "may issue subpoenas on behalf of the defendant; and the Clerk of the Court, after an indictment found by a Grand Jury "must at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas as may be required by the defendant." In both cases the defendant has to find one to serve the subpoenas: he receives no help from the State. But, in addition, in the case in the Magistrates' Court, he is not of right entitled to a subpoena—nor, for that matter, is the people—since the Magistrate need not, because the law does not read with the word *"must"* but with the word *"may."* He *may* issue subpoenas.

Section 611 is illuminating and pregnant with history, especially in the country districts of the State of New York.

The United States Congress has investigated conditions in the Colorado mining towns and discovered in the midst of our "free" country, the most abject slavery. Whole towns are owned by cor-

porations, and no one not *persona grata* to the officers of these corporations is allowed within the sacred precincts. The land is owned by the corporation, the roads are owned by the corporation, the lots are owned—by the corporations; the stores, the places of business of all kinds, the means of subsistence—everything—the bodies and the souls of the inhabitants who all work for the corporation. Everything is owned by the corporation. And the workers, the whole population, are kept in a state not of peonage but downright and outright slavery, without the mitigating, the tender, the sympathetic, the noble relations, frequently existing between master and slave, when the master completely owns the slave, when he is responsible for his well-being, and when it is to the master's advantage to take care of the physical, mental, moral, and spiritual welfare of the slave. In such towns as are above mentioned there is no responsibility, there is no recognized legal ownership and property, there is the theoretic freedom to work or not to work, to move about from place to place, to hold employment or leave it, and the practical fact of forced stationary employment, and the lack of anything approaching freedom; there is no responsibility for the lives, the soundness, and the good of those who are entrusted not to the *care* of the corporation but to the *greed* and the immorality of the masters.

In New York State, we have conditions approaching those above described. There are country places, towns, and villages which are completely dominated, and domineered over by influential persons, or companies. The reports of the State Bureau of Industries and Immigration are a golden mine of information upon this point. People, especially foreigners, ignorant of our laws, our ways, and our institutions are maltreated and arrested without due process of law at the instigation and the instance of unfriendly employers, to keep them tame, and subdued, and to force them to labor for a pittance.

The next section I quote is a fruitful source of injustice when the Magistrate is owned as is often the case,—as the official reports in New York State have it,—by the powerful individual, or corporation, and does his or its bidding. The Magistrate, under this section of the law, receives pay only for subpoenas issued for the people; he does not receive pay for subpoenas issued for the defendant. How zealously will he act, how ready will he be to issue subpoenas for a defendant? The fee system in the administration of justice is a scandal, and an anomaly in a civilized country. In the West, in Texas, for instance, as well as in New York State, Justices of the Peace receive fees only upon the conviction of the prisoner. This

puts a premium on convicting the defendant. What shadow of justice will raise its head where such a system rules.

"Section 611a: General Regulations concerning subpoenas.

Whenever any magistrate shall issue any subpoena in any criminal proceeding or trial, he shall endorse upon the back thereof a memorandum showing whether the same was issued for the prosecutor, or for the prisoner; and every officer or other person who shall insert the names of witnesses in a subpoena issued for the people, intended for the prisoner, with intent thereby to deceive any person, or to obtain any pay as for services in subpoenaing witnesses for the people, shall be deemed guilty of a misdemeanor; and no such magistrate shall charge or be allowed for more than six subpoenas in any one criminal case, nor shall any board of supervisors allow any charge for issuing any subpoena in any criminal case or proceeding issued on behalf of a defendent."

It is seen, then, (1) that witnesses for the people may be subpoenaed by the magistrate; (2) that if the magistrate does issue a subpoena for the people he will be allowed a fee: "no such magistrate shall charge or be allowed for more than six subpoenas;" (3) that since the magistrate is paid for issuing subpoenas up to the number of six, beyond which he cannot go, he is apt to issue subpoenas on behalf of the people with alacrity; (4) that the magistrate may issue subpoenas for the defendant; (5) that the magistrate, if he issue such subpoenas for the defendant, will not be paid—there is no provision of law for payment; (6) that since the magistrate cannot make any charge for his services in issuing subpoenas to the defendant, and on his behalf, he is not likely to trouble himself to issue them. Theoreticians had better take notice. Idealism may rule the world, but it surely does not goven in the myriad humdrum affairs of life.

In all this is there equality? Is there fairness to a person accused?

Section 614 provides "that a peace officer must serve any subpoena delivered to him for service, either on the part of the people, or on the part of the defendant." But this section is not existent, so far as its execution is concerned, in large cities. It will have to be an officer of heroic mould who will condescend to serve a subpoena for a defendant. The theory and the practice do not correspond. And the remedy in case of refusal to serve—what may it be? A report to the Commissioner of Police—who, in the ordinary administration in a large city, will pay no attention to it. The complainant, you see, is poor, helpless, and ignorant. In ninety-nine cases out of a hundred

there is not even a report to the Commissioner of the neglect of duty on the part of the officer. But how about the lawyer for the poor person. Well, suppose he is an assigned lawyer, what will happen? Suppose he goes so far as to make a complaint—a thing which is not likely for a number of reasons—will he after complaint press the complaint? He will not take that trouble. But the attorney because he does not wish to make any trouble, because he is not much interested, because he is afraid of the "system," will not complain. The privately retained lawyer will not go much farther unless he is well paid. But the situation is almost an impossibility since, if the prisoner can retain a lawyer for complaint in such circumstances, he can retain him to defend him against the charge brought against him.

Section 616 provides for the payment by the State of witnesses on behalf of the people.

Secion 617 provides that "in any such (criminal) action, the Court *may also, in its discretion,* by order, direct the County treasurer to pay a reasonable sum, to be specified in the order, to any witness attending on behalf of the defendant, not exceeding the amount payable to a witness in a civil action in the same Court," (which amount is exactly the same as in the case of the people's witnesses) (see section 616).

Finally, section 615a provides that "whenever it shall become necessary to send subpoenas into another county for witnesses on criminal process, the district attorney is hereby empowered to send them to the sheriff of the County in which the said witnesses reside, whose duty it shall be to serve the same, and make his return without delay to the district attorney." This means that the district attorney issues his own subpoenas, while the defendant must go to the Court Clerk for his, and in addition has the advantage of the power of sending these subpoenas to the sheriff of the county in which the witnesses he wants reside, and that sheriff must make his return without delay to the district attorney.

But section 618 shows how different the case is with the defendant who wants to serve a subpoena on a witness outside his county. "No person is obliged to attend as a witness upon a subpoena, issued by any person or court other than a judge of a court of record, a court of record, a district attorney, or a county clerk, out of the county where the witness resides or is served with the subpoena, unless the county judge of the county where such subpoena is returnable, a justice of the supreme court, or a court of record, upon an affi-

davit of the prosecutor, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material, and his attendance at the trial or examination necessary, shall indorse on the subpoena an order for the attendance of the witness."

Section 618b adds to the list of inequalities. It provides that whenever a judge of a court of record is satisfied that "a person residing or being in this state is a necessary and material witness for the people in a criminal action, he may—order such person to enter into a written undertaking in such sureties, and in such sums as he may deem proper, to the effect that he will appear and testify at the court in which such action or proceeding may be heard or tried, and upon his neglect or refusal to comply with the order for that purpose, the judge must commit him to such place other than a state prison, as he may deem proper, until he comply or be legally discharged."

What provision is there for the securing of material witnesses for the defense?

ROBERT FERRARI.

ANNUAL MEETING OF THE ILLINOIS STATE SOCIETY.

At the annual meeting of the Illinois Branch of the American Institute of Criminal Law and Criminology in Chicago, on May 31 and June 1, 1916, the following officers were elected:

President—JESSE L. DECK, State's Attorney, Decatur.

Vice President—F. EMORY LYON, Sup't. Central Howard Association, Chicago.

Secretary—WILLIAM G. HALE, Professor of Law, University of Illinois, Urbana.

Treasurer—ROBERT W. MILLAR, Professor of Law, Northwestern University, Chicago.

Executive Council—O. A. HARKER, Chairman, Dean of the College of law, University of Illinois (Urbana). WILLIAM N. GEMMILL, Judge Municipal Court, Chicago. THOMAS M. KILBRIDE, Clerk State Board of Pardons, Springfield. JACOB M. LOEB, of the Chicago Bar. WILLIAM C. GRAVES, Sup't. State Reformatory, Pontiac.

The following program was presented:

FIRST SESSION—3 P. M. THURSDAY, JUNE 1.

1—Address by the President—Judge Albert C. Barnes, Appellate Court, Chicago. "Causes of Delay in Criminal Cases."

2—"Vocational Education in Relation to the Prevention of Juvenile Delinquency"—William N. Gemmill, Judge Municipal Court, Chicago; William C. Graves, Superintendent Illinois State Reformatory, Pontiac; William J. Bogan, Principal Lane Technical High School, Chicago; Professor Frank M. Leavitt, School of Education, University of Chicago.

3—"A Brief Review of the Criminal Cases in the Supreme Court for the Past Year"—William G. Hale, Professor of Law, University of Illinois, Urbana.

Discussion—Robert W. Millar, Professor of Law, Northwestern University Law School, Chicago.

DINNER—6:30 P. M. WEDNESDAY, MAY 31, HOTEL LA SALLE.

Members of the Bar Association, the State's Attorneys' Association, their wives and friends, joined with the State Society in this dinner.

SECOND SESSION—8:00 P. M. THURSDAY, JUNE 1.

Joint Session of the Illinois State Society and the Illinois States Attorneys' Association.

1—"Probation and Parole in Their Relation to Crime"—Hayden Bell, Ass't State's Attorney, Chicago, and Thos. M. Kilbride, Clerk State Board of Pardons, Springfield.

Discussion—John W. Houston, Chief Probation Officer Cook County, Chicago; F. Emory Lyon, Superintendent Central Howard Association, Chicago; Lowell B. Smith, State's Attorney, Sycamore; Jesse L. Deck, State's Attorney, Decatur; Edmund Burke, State's Attorney, Springfield.

THIRD SESSION—8:00 P. M. FRIDAY, JUNE 2.

Joint Session of the Illinois State Society and the Illinois State Bar Association.

1—"Practical Phases of Medico-Psychological Work for Courts"—Dr. William J. Hickson, Director Psychopathic Laboratory, Municipal Court, Chicago, and Dr. William Healy, Director Psychopathic Institute, Juvenile Court, Chicago.

Discussion—Harry Olson, Chief Justice, Municipal Court, Chicago; Robert H. Gault, Editor Journal of Criminal Law and Criminology and Associate Professor of Psychology, Northwestern University, Evanston, and Nathan William MacChesney, President Illinois State Bar Association, Chicago.