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ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

Criminal Families.—Students of criminology and the members of the lay press are wont to speak of "criminal families" as though they were of common occurrence. Though there are families in which several members of both the ascending and descending branches and even members connected with the family only through marriage have been law-breakers, they are comparatively rare. In Kleemann's opinion (*Gross' Archiv,* 47, July, 1912) a criminal family is one which exhibits signs of physical, psychical and ethical degeneration and an inherent tendency to commit punishable acts, and with one or more members convicted of transgressions of the law.

There are two theories in connection with hereditary transmission and degeneracy, disclaiming the former: (1) The individual determines his own fate, and heredity is of no consequence; (2) criminal tendency is not regarded as a deviation from the normal in an originally normal individual, but as an indication that the individual has remained in the primitive, prehistoric stage. This theory distinguishes atavism from degeneracy. Atavism was upheld by Lombroso. The chief objection to applying it to criminal families in general is the difficulty of demonstrating atavistic factors, as the families can at most be traced only during one or two centuries, and most of the time only a few decades. (It might be remarked here parenthetically that American investigators are doing better work than this.) The question of progressive degeneracy, Kleemann thinks, must therefore always remain hypothetical. Moreover, even those families in which the criminal tendency is most marked possess some law-abiding and normal members, therefore hereditary influence cannot be the only reason for the decadence. Alcohol and vagabondage are probably contributing factors in each case.

Hartmann writes after his investigation in Switzerland that a considerable number of families transmit criminal tendencies from generation to generation, but true progressive degeneration is rare, and the polymorphous heredity predominates, as anomalies of character, psychosis, alcoholism and neuroses. These families do not show a tendency to die out, as the supporters of the theory of the survival of the fittest claim, but are on the contrary unusually prolific.

On the other hand, Sommer argues that post-natal influences do not adequately explain the tendency. Every individual who is somatically undeveloped, or psychologically inferior, should be regarded as a degenerate. Degeneration can therefore be endogenic or exogenic. Here the contributing factors are chiefly sociological and economical. The inherited as well as the acquired criminal tendency may be influenced and adjusted through physical, ethical and psychical attributes which are inherent in the germ plasam, and the greater the endogenous variations, the greater the adaptability, based on the assumption that acquired mental characteristics modify the germ cells. In other words, thoughts and feelings are not directly transmitted, but the motive impulses governing them are. Sommer calls this "motive-automatism" (Bewegungsautomatism). Volition is therefore a dynamic element in the development, not a mere psychical parallel to the mechanical element. Sommer maintains that

heredity is not an exclusively somatic product. Characteristics of will and temperament are also transmitted, and in the criminal families the ego and the character are in early childhood manifested in an abnormal way, and the abnormality becomes aggravated through the influence of the surroundings.

This whole article while interesting is largely a desk product, or like so many articles on criminology, drawn from a few instances only. We commend the careful work of our American investigators, Davenport, Cotton, Rosanoff and Goddard along this and related subjects, the Kallikak, Nann and Hill family trees in particular. S. E. J.

Psychological Problems of Penal Jurisprudence.—Under the head of "Psychological Problems of Penal Jurisprudence," Andreotti Algredo has in the May-June number of *Il Progresso del Diritto Criminale,* an article entitled *Della communicabilita della causa honoris ai complici extranei al delitto d'infanticidio,* which deals with one of those exemptional laws peculiar to continental jurisprudence and so foreign to English laws that they are inevitably a shock to a common law lawyer, who equally inevitably congratulates himself on his broad mindedness, when he overcomes his first surprise and accepts them even in theory. Article 369 of the Italian penal code provides that when an infant is killed under certain conditions in order to conceal an illegitimate birth by its mother, her husband, brother or sister, lineal ascendant, or adopted parent, the punishment for murder is reduced to imprisonment of from three to twelve years. This article came before the Roman Court of Cassation, who handed the following opinion in part: that article 369 was of course restricted in application to the persons therein named, and that "whoever takes part as an accomplice in the killing of an infant, committed by one of the persons named in article 369, penal code, must be held guilty as an accessory in voluntary homicide." This opinion, of course, may not appeal to American lawyers, for it gives us accessories, guilty, where there is no principal, but our author, being a Continental jurist is not worried on any such score. He takes up "the critical examination of the arguments upon which the theses of the communicability or incommunicability of this *causa honoris* rests." We must, however, before anything else note the points of view of the Italian court, which does not consider the opportunity as a reason for increasing the punishment as a deterrent, but looks upon the incentive as a reason for decreasing the punishment, because the greater the incentive the less criminality is, *ceteris paribus,* involved in the crime. This determined the opinion of the court. The exemption was personal. It was allowed out of regard for the psychological state of certain persons. It was incommunicable in fact, and law must follow fact. However much one may vicariously suffer for the disgrace of a friend, the psychological state is very different from that caused by one's own disgrace, even if such disgrace lies not in one's own shame but in that of a near member of one's family. The exemption should not, therefore, be extended, as the reasons for it do not extend in fact. An accessory is such by reason of this help in an objective fact (a *quid juris* so marks him) that the fact, by reason of the principal's age or provocation is given in his regard a different *nomen juris,* cannot affect him. Thus, the Italian Court held that though A., who killed an infant, is for sufficient personal reasons of a psychological nature held guilty of crime. B., who helped him, to whom, however the said sufficient personal reasons of a psychological nature did not apply, could be guilty of crime,

because the *quid juris* was the same. This reasoning is perfect. Its wisdom cannot be doubted. It goes to show, as so much of modern Italian law does show, the accuracy and advantage of canon law, as developed by modern science, aided by discoveries in psychology and sociology and applied by men of a scientific and philosophical juridical training.

Herein lies the interest of Alfredo's review to us. It is not the particular case that should govern. The exemption of the *causa honoris* may be bad, perhaps it is impracticable only in America, but the spirit which prompted its enactment, and the kind of examination to which it was subjected in the Italian appellate court, are qualities which could well be imported into American legislation and American criminal trials. Until this spirit does prompt us in our law making and law enforcing, we cannot hope to accomplish efficiently the great object of all criminal jurisprudence: the lessening and ultimate and final abolition of crime. J. L.

Obstinate Simulation of Insanity.—Schäfer observed a man, arrested for burglary, who simulated insanity during nine months in the hope of evading justice. (*Arch. f. Kriminal-Anthropologie u. Kriminalistik,* XVLL, June, 1912). He claimed to be an American millionaire and pretended to understand very little German. At the medical examination he simulated vertigo and nodding spasm, emitted queer sounds when told to take a deep breath, and kept the left shoulder higher than the right. He said the left shoulder was the north pole, and the right the south pole. Attempts to reduce the left shoulder forcibly to the normal position failed, but the joint and mobility were normal. The man was placed in the psychopathic ward for observation. He walked around the ward draped in his bed clothes, "like an Indian," probably to be able to drop his shoulder without being detected. At frequent intervals he would stand on the left leg, touch the floor with the tip of the right foot, and then shake the right leg violently. This, he said, was to receive telegrams through the floor.

After having kept up this character for nine months, and so perfectly that an old and experienced psychiatrist was deceived. he was condemned to six years imprisonment. The mental disturbances disappeared at once, the shoulder resumed its natural position and he regained command of his mother tongue. Schäfer emphasizes that in his opinion there was no psychopathological basis for the simulation. S. E. J.

Battaglini's Criticism of Positivism.—It is interesting to note the firmness and the heat with which adherents of opposite schools of criminology in Italy hold fast to their beliefs. Professor Guilio Q. Battaglini contributes to *"La Guistizia Penale"* for February 1, 1912, a short review of Vincenzo Manzini's "Manual of Italian Penal Procedure," in which the reviewer exults over the fact that Manzini is not held bound by the doctrines of the Italian Positive School, but rather runs in an opposite direction. He deplores the fact that faith in "the disease of criminality is riding in triumph in America, while other people, like him, relegate the doctrine that criminals are sick men and sick women to the world of Chimeras." In another part of the same issue Professor Battaglini reviews, in very brief form, an article that appeared in the November issue of this Journal and makes the comment that "in America at the present time this is a moment of great optimism in regard to delinquents, and there people believe that criminals are sick men!" R. F.

Work of the Psychopathic Society of California.—The Psychopathic Society of California has interested itself in persons committed to insane asylums. In the past six months they saved 52 women from the stigma of being sent to such an institution by sending 13 to private sanitariums, by caring privately for 23, sending 10 to employment and returning 3 to friends. They have obtained several paroles also and out of 72 thus taken from asylums it was necessary to return only 4. W. I. DAY, East Oakland, Cal.

William A. Pinkerton on the Criminal.—An interview with William A. Pinkerton is published in *The Hampton Magazine* for May, 1912, under the title "Is There a Criminal Class?" in which the famous detective expresses his views on the question framed in the title which are interesting, by reason of his long experience with criminals. He says, "I have been for more than fifty years in constant association with crime and lawbreakers. I may fairly claim to have had exceptional opportunities for the study and observation of the operation of the human mind and the motives that actuate those whom society terms criminals. I have reached certain conclusions which do not agree with the theories of some eminent scientists nor altogether harmonize with the teachings of the sociological schools. I have no new theory to advance, but it seems to me some facts have been generally overlooked.

"No one can study criminals at close range and believe in the existence of a criminal class, regardless of what Lombroso and his disciples may claim. It would not require any lengthy argument to prove this assertion. If there were a criminal class, sharply defined as such and differentiated from the rest of the human race by ascertainable characteristics, then it must follow that there would be a non-criminal class, comprising the rest of the human race and as sharply distinguished as the supposed criminal class.

"Humanity is not thus divided into criminals and non-criminals; there is but one classification that can be made—the class of those who have committed crimes and the class of those who have not yet committed crimes. Within certain limits, varying with the individual, every human being is a poptential criminal. I have seen this illustrated so often that I am never surprised to learn that any man or woman, however highly placed and however greatly esteemed, has done something which the law forbids and for which society demands a penalty. On the other hand, however—and this is the bright side of the shield—every criminal is potentially an honest man, and with the right kind of encouragement from society will remain honest by preference. It is my observation of hundreds of criminals whose reform has been complete and permanent that makes this conclusion a definite one. It is this capacity of humanity to turn from evil ways to methods of life which society recognizes as right and proper that really proves my first conclusion, which is that crime is an accident to which a moment's carelessness may subject any living person. If these criminals who have reformed and belonged to a different order of humanity from those of us who have so far been fortunate enough not to have yielded to the impulse to crime, how could they have become members of the order to which we profess to belong? * * *

"Great crimes are never planned by men of a low order of intelligence, and the better educated a man is the more dangerous does he become when he turns criminal. There was the case of a physician in a western city that illustrates

both this point and the point I previously made as to the complete reform of many criminals.

"The principal bank in this city had been robbed in a most daring manner. At the luncheon hour, when no one but the assistant cashier and a girl clerk were in the building, a stranger had walked in, covered both of them with his revolvers and demanded all the cash in sight. They gave it to him to save their own lives, some $40,000. I was asked to investigate, and certain circumstances led me to believe that some of those employed in the bank were not entirely innocent. It was plain, however, that the actual holdup had been done by some one not connected with the institution.

"A young physician in the city, a man of excellent family, well educated and highly respected, was the person upon whom the clews seemed to center. He had moved into the community from another town and on investigation I found that while he had been there a similar bank robbery had occurred. We managed, finally, to get evidence sufficient to convict him and he served his time. Upon his release he changed his name, went to New York and engaged in the practice of medicine there. He is now one of the most prominent physicians in that city and occupies a very high social position indeed. He is a member of one of New York's most exclusive clubs and is very particular to scan the lists of applicants for membership and to blackball those whom he regards as undesirable associates. I do not suppose there are three persons alive who know the identity of this exclusive gentleman with the western bank robber. * * *

"I could tell of hundreds of similar cases, all of them illustrating my main point, namely, that there is not and never has been a hard-and-fast dividing line between the criminal and non-criminal classes; that men step from one class into the other and back again with perfect ease and much oftener than the public has any idea; that it is not true that 'once a thief always a thief' any more than it is true that anyone is beyond the reach of temptation. * * *

"Hand in hand with the moral agencies which are striving to make crime less attractive, or at least to make honest labor more attractive, there are constantly being developed new methods of preventing crime and of making it more hazardous and less profitable. Not only are means of protecting life and property constantly being improved but there is no branch of science that cannot be brought to bear and is not utilized on occasion in the solution of problems of defectives that would have been unsolvable mysteries a few years ago. * * *

"It was once a very simple matter for the clever criminal to change his identity so completely that even when his crime was positively known he could remain immune from arrest under the very eyes of the police. First photography, then the Bertillon system of measurements, which has lately been supplemented by a system of classifying individual characteristics, and latest and best of all, the finger-print method of identification, are all operating to reduce the criminal's chance of escaping punishment to the minimum. * * * "

"You look forward, then, to the time when there will be no more crime?"

"I do not expect mankind to reach that state of perfection in the near future. I do contend, however, that because of the causes I have outlined, crime is decreasing, criminals are becoming fewer and the number of those who really reform is constantly increasing. After fifty years of experience in the detection of crime and the pursuit of criminals I am still an optimist." E. L.

COURTS—LAWS.

Enrico Ferri on Italy's Proposed Code of Criminal Procedure.—Since 1892 several commissions have labored to produce the new Code of Criminal Procedure which was introduced at the last session of the Italian Parliament. Enrico Ferri, one of the greatest criminologists in the world, and one of the founders of the Positive School of Italy, as well as its most powerful advocate for over thirty years, made a memorable speech in the Senate in support of the New Code. Since this speech outlines the fundamental ideas of the Code, and contains some acute criticism of it, it may be instructive to summarize briefly its contents. The speech is printed in full in *La Giustizia Penale* for Aug. 29-Sept. 5, 1912.

A code of criminal procedure is even more important than a penal code. A penal code lays down the rules that are to be followed in the case of a person who has already been convicted of a crime. But a code of criminal procedure lays down the rules which are to govern any one who may fall into the toils of the law. The penal code applies to malefactors; the code of criminal procedure to guilty and innocent alike. The one applies to anti-social men; the other may apply to social men who have by misfortune or accident come within the pale of criminal law, and who may, indeed, be gentlemen. And furthermore, it is the great instrument of social defense against antisocial men.

We have an increase of criminality which is truly disquieting because it is progressive. And in the face of such a condition we have daily proof of the paralysis of justice in respect to its penal efficacy as a system of defense. Statistics show that cases in which the perpetrators of crimes remain unknown run to the proportion of 37 per cent. Add to this fourteen per cent of cases in which the accused are set free upon examination in the inferior courts, and you already have one-half of the crimes committed in our country going unpunished. If, now, you join to these cases those in which the accused are acquitted by the judge, not because of mental irresponsibility or juridical reasons, but because the evidence is not sufficient, you will see that I was right when twenty years ago I affirmed that the majority of known crimes are without penal sanctions.

But no matter how good a code is intrinsically, if there are not competent interpreters and executors of it, it will remain dead. Laws are what their interpreters and executors make them. We may make a code which will be perfect according to theory; but if we have not policemen and magistrates who know how to apply and interpret it, and prison officials who can competently execute sentences, we shall have a good theoretical code, but a practical daily justice which is bad. I am glad, therefore, to see that the new law attacks the problem of the judiciary. But I am sorry to say that that attack is a weak one; it cannot conquer the problem. We ought to return to the judicial system of the two Sicilies where criminal judges were distinct from civil judges. In this way we should get interpreters who would be specialists. It is useless to pretend that a judge is encyclopedic, and knows well both civil and penal law, the latter of which requires specific knowledge, and special orientation in matters of the understanding of the criminal. In the case of judges and prison officials, above all others, the state confronts the grave problem of its functionaries. The current is toward a progressive statization. Justice was first to become a state function; then education; then administration. And now there are those who believe that the state should become a great industry. Justice, education, ad-

ministration require officers. But, now, when you have judges who are paid in the same proportion every 27th of the month, do they well, or do they ill, do they much, or do they little, it is humanly impossible to have state officers who are continuous in a heroism made up of sagacious and wide-awake activity. I believe that if we wish to have useful and appreciated judges, it is necessary to give to the best a compensation which will make them tranquil and content for themselves, and for their families, and will allow them to depend upon merited progress in their careers. But on the other hand, it is necessary to impose responsibility upon and to mete out disfavor to the incompetent and the idle.

The code has many good qualities, but it needs some corrections. I propose to examine the draft, and show its guiding principles.

The two fundamental principles of the Proposed Code are first the simplification of procedure and the acceleration of sentences; second, the equilibration of individual and of social rights. The oscillation that is visible in parts of the code is due in large part to the guiding principle of sustaining the balance between the rights of the individual who is defending himself against an accusation, and the rights of society, which is defending itself against crime. The makers of this Code of Procedure tend toward the accusatorial type of criminal trials. It is said that this type is a more liberal type. I do not believe the question of liberalness, or strictness in a code of criminal procedure ought to be debated. Just as it ought not to be said of a penal code that it is severe or mild, but that it is, or is not adapted to the conditions of the country for which it is made in respect to criminality and social life, so it ought not to be said of a code of criminal procedure, that it is liberal or authoritative. A code of criminal procedure ought to be technically adapted to the exigencies of penal justice for guaranteeing individual rights, without forgetting to guarantee social rights, because the function of defense against criminality consists as much in protecting the innocent as in convicting the guilty. The classical school has fought for the accusatorial type of trial, because it inherited from the French Revolution a noble defense of the rights of men, against the oppression and the tortures of the Middle Ages; so that, at its beginning, Beccaria, Mario Pagano and Filangeri were the most eloquent propounders of the rights of man caught in the meshes of penal law. But this is not all the case. The inquisitorial type also has its benefits, and in certain ways represents a superior form of procedure. The accusatorial process with its oral examination and cross-examination and its publicity, favors the individual; the inquisitorial process, with its criticisms of acts, and the initiative of the judge, favors society. In England and America, where the first type of procedure prevails, the judge remains passive. A criminal trial is there looked upon as a duel between the accuser and the prisoner; so that the judge must be inert and only declare at the end who is the victor, and who the vanquished. In a civil case, it is understood that a judge may remain passive. There, only private matters are treated. The judge hears both sides and then decides. But in a criminal case the situation is different. We cannot forget that even in civil trials procedure tends to give the judge initiative and activity in order to end the scandal of those long trials which constitute another cause of the weakness of Italian procedure.

There ought to be four fundamental directing principles in a code of criminal procedure. First: the criminal trial ought to be a technical proceeding.

Second: there should be a modification of the presumption of innocence. Third: there must be a balance of individual and social interests. Fourth: the personality of the criminal is to be taken into account.

First:—The criminal trial must be neither accusatorial nor inquisitorial. It must be a technical proceeding. Since Lombroso threw so much light upon the natural origin of crime, the criminal trial must become a gathering of evidence, a discussion of it, and a decision upon it. At present, beyond these three steps there is the traditional occupation of measuring the moral culpability of the criminal. The measuring of moral responsibility is utopian. It cannot be done. Attempts are made, and they fail, because they necessarily must fail, since no man born of woman can measure the moral blame of a human creature who has committed a crime. I believe, on the contrary, that it is the business of a criminal trial to determine only that the crime was committed, that the prisoner is the perpetrator of it, and that he is a person more or less inclined to crime, more or less dangerous, more or less adapted and readaptable to social life. No matter whether the convicted one is insane, a first offender, an habitual criminal, a person with congenital tendencies to a criminal life, or what not, our duty is to adopt the most opportune measures of social security, instead of following the chimera of measuring his moral responsibility.

This first principle will mark the criminal law of the future. In the meantime here and there in this code it shows faint signs of life. The second principle is this: the protagonist in a criminal case is not the prisoner only, but first, the prisoner who defends himself, second, society that defends itself, and third, the victim of the crime. At this point the famous question of the presumption of innocence springs up for discussion. But that question is dependent upon the conclusion we come to. Upon the third and the fourth fundamental principles I have mentioned the classical school said that the code of criminal procedure is nothing more than a barrier against the abuse of power. This mode of looking at the code is explainable historically by reference to the tortures and the inquisitorial deformities of the Middle Ages; but it is now meaningless. To say that criminal procedure is only a barrier against the abuses of power is to mutilate in great part the realities of life, in so far as this barrier regards only the prisoner, but ignores the interests of society, and of the victim of the crime, and his family. The Positive School urges that the law must strike a balance between the guarantees of the liberty of the citizen, and the measures of defense of society.

But, now, there is a further matter to be considered, the personality of the prisoner in whom the crime he has committed is simply symptomatic of a general condition of mind and body. You cannot treat a recidivist, or an habitual criminal, in the same way in which you would treat a first offender, who, maybe, is not dangerous, and who, in fact, has been brought to this pass from motives not ignoble, or because of a fit of passion. So that even the famous presumption of innocence must prevail in the case of those who come to the bar for the first time, whose previous histories are good, who have committed crimes which do not show moral perversity, and who are not dangerous, that is, are still adapted, or easily adaptable to social life, and must weigh less in the case of others, because it is naive to proceed on the presumption of the innocence of a murderer already convicted of crimes of blood, or of an habitual thief caught *in flagranto*. This personality of the offender must be studied under different aspects. There is, first, the psychologic aspect. The defendant is to be exam-

ined to discover the causes or the motives that have led him to crime. It is strange that we positivists who are idealists are called materialists by our opponents, who consider themselves the only genuine idealists. As a matter of fact they are materialists because they look at the crass external facts, and judge a man by them; and we are the true idealists because we cherish the mind of the individual offender, and study the causes that have moved it to action. Two persons may commit the same crime, but the moral and social condemnation may be different, according to the reasons which have stirred them to action. There is, secondly, the social aspect. Each person has a social personality, as well as a psychologic personality. The conduct of the defendant anterior to imprisonment, in the bosom of his family, in school, among neighbors, is under the reigning code, not taken into account. But it is the only criterion, in conjunction with the other two, by which penal justice may be administered without excessive sacrifice of the individual, as well as without the abandonment of social guarantees. North America, which attempts to follow positivist teachings, but rather empirically and fragmentarily, than systematically, has applied not a few of the practical conclusions of the Italian Positive School. There they have men in the public schools who examine the scholars from the physiological and the psychological points of view. The abnormal are separated from the normal to the great advantage of the school and the pupils. Hygienic methods must be employed, and methods of social prophylaxis by studying and caring for the personality of each individual. beginning with that individual when he is a child. In addition to the psychologic and the social personality of the defendant there is the judicial personality. In England where they have the pure accusatorial type of procedure this standard of a judicial personality is followed, but only empirically, because they distinguish between those who confess their guilt and those who plead not guilty. The inquisitorial process went to the absurd and inhuman extreme of seeking the confession of the guilty at all hazards. And the early criminalists like Beccaria and Voltaire rightly directed their effective shafts at such a system. But one extreme is followed by another; so that we saw the pendulum swing full to the other side. It is said that confession of itself is not enough to convict. I agree. But we must not even here exaggerate. Cases of false confessions are rare. But even these rare cases have to be taken into account, and so it is that even the code under which we live provides that when a judge receives the confession of a prisoner he is bound to examine into the surrounding circumstances, and by so doing show that the confession is true.

The new code contains an innovation which I am heartily in accord with. All crime should not be judged in the same manner. At present, if a man slaps another in the face, the same heavy machinery of the law is put into motion that is started when one man murders another. The new code provides different methods of procedure, simplyfying the method in the case of misdemeanors. Furthermore, although the judge convicts and sentences summarily, an appeal is allowed the defendant. But this system has already been tried in Messina, Reggio, and Palmi, and the number of appeals has been extremely small. This shows that the convicts were satisfied with the result. They saved time and expense.

Let us now take a look at some characteristic provisions and institutions in this code. And, first, of the judicial police. These are the prime movers when

a crime has been committed. They ought not be surrounded by aversion or distrust, but by sympathy. But the new code shows an evident distrust of the police. Section 170 says that the functions of the judicial police are to seek the crime, and to gather the information by which the criminal may be discovered. And section 182 establishes that the police may not perform any acts unless there are present two witnesses. This is truly remarkable. No wonder the percentage of crimes is so high, and that of convictions so low. Lawlessness is in the air; individual liberty is too sacred, and social welfare too neglected. But the judicial police must also find and preserve the traces, and the impressions of crime. They must, in addition, seek the criminal. And, finally, they must be acquainted with the person of the criminal—the physical person and the psychologic person. The new code upholds the presumption of innocence, and so we find that it prohibits the power of interrogation, not only to the judicial police but also to the magistrates, and the judges of the higher courts. Of course, abuses of the power of interrogation may obtain where it is given; but the abuse should not determine the principle. The remedy for the abuse is the change of officers. The interrogatory procedure is not only a means of social defense, but it is also a source of proof.

Another provision of the proposed code I must refer to. The accused has a right to be defended by counsel at the examination, that is, at the preliminary hearing, before a formal charge is laid against him. This does not seem to me to be necessary for the liberty of the individual, nor conducive to the protection of society. The new code makes it incumbent upon the magistrate to inform the prisoner that he is at liberty to speak or not to speak, and that he is entitled to consult with counsel first. The innocent cannot be benefited by such a course; but the guilty are surely given a chance to escape. After preparation and consultation the defense is stronger. But in almost all cases of innocent persons, the speaking out immediately cannot hurt. Innocent persons have no need of subterfuges and reservations to show the evidence of their freedom from guilt.

Penal actions are by the new code granted to certain associations constituted to further the public welfare, and to certain individuals in special cases. The power of individuals to initiate penal actions should be limited. We see that even Anglo-Saxon countries, like England and America, where private accusation is the rule are moving in the direction of instituting functionaries of state who have exclusive power in penal actions.

Still another provision I think good; the provision, namely, which makes it possible for a complaining witness to ask for civil damages in a criminal action; and for a judge to award those damages. But I believe we ought to go further. Damages should be demanded by the state; the state should protect the individual's civil rights as well as his criminal rights.

Under what conditions shall bail be given? Up to the present the criteria have been two; the kind of punishment, and the kind of crime. But I believe there ought to be a third criterion—the personality of the criminal. Evidently, if the prisoner is a recidivist, an habitual criminal, or a dangerous one, bail should be restricted, much more than if he is an occasional criminal, or one not dangerous, or one who has a good history. And as for judges in the Assize Courts shall we have three or one? I believe one is enough; the others are superfluous. No good can flow from a fount where responsibility is divided. At

present, as a priori reasoning would have led us to expect, it is only one, the chairman, who does the work; the others are ornamental.

I must refer to the provisions in respect to the jury. My ideas on the jury system are well known. I am not in favor of it. Justice is a matter for judges. Each man must follow his own trade. Citizens must do their own business. But we have jurors, and we have to discuss the law in relation to that established fact. But one of the reasons why juries do not act rightly now, is that they do not know the penal consequences of their verdicts. Often in my practise have I come to know that jurors set prisoners free because they are afraid that if they convict the defendants the latter will get a punishment which the jurors consider too severe for the crimes. The judge ought, therefore, to explain what the penal consequences of the verdict of the jury will be.

The last point I shall take up is that of expert testimony. There is no doubt that the long discussions, and the wrangles among insanity experts are due to the fact that they are required to give opinions as to that which they ought not to be called upon to consider, namely, the moral responsibility of the prisoner; that is, if he had a free will at the time of the commission of the crime. Insanity experts should be allowed to testify only as to whether the accused is or is not of sane mind.

I am not, as you see, in entire accord with the proposed Code of Criminal Procedure. I should like to see something more advanced, more approaching the ideal. But the future will, no doubt see such an approximation to an ideal code. At present I vote for the proposed code because I believe it marks a long step in advance of the old one. In passing this law we shall do our duty in giving the Italian people, even in such a difficult and delicate field as penal justice, the preparation for higher and nobler destinies. R. F.

Constitutional Amendment Adopted in Ohio Relating to Criminal Law.—The people of the State of Ohio expressed their opinion on September 3, 1912, on forty-one amendments which were submitted to them. Only four of these amendments relate to criminal law and procedure. We consider it a distinct gain that amendment No. 3 was adopted. This amendment gives the right to the state to take depositions in criminal cases and authorizes counsel also to make comment on the failure of the accused to testify. It reads as follows:

ARTICLE 1, Sec. 10. "Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court.

No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense."

Amendment No. 15 authorizes the legislature to pass laws for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings. This we consider a very salutary measure which will expedite the trial of criminal cases, will tend to uphold the dignity of the courts and will minimize the farcical juggling of experts and the endless cross-examinations by counsel.

Amendment No. 2: "Abolishing Capital Punishment" was lost.

Amendment No. 17 abolishing prison contract labor will bring about beneficial results in prison administration, also. The text of this amendment is as follows:

"Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political sub-division thereof or to any public institution owned, managed, or controlled by the state or any political sub-division thereof, shall not be sold within this state unless the same are conspiciously marked 'prison made.' Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof."

The official vote of every county in Ohio, save Paulding, shows that 257,154 voted for the abolition of capital punishment and 302,244 voted against the amendment.

The amendment regulating expert testimony fared comparatively best. It received 335,592 votes and 184,706 votes were cast against it.

Amendment No. 3 (depositions by state in criminal cases, etc.) did not receive such a majority, 290,540 voting for it and 226,687 against it. The amendment which abolishes prison contract labor received 331,725 for and 213,948 votes against the amendment. We may also add that only 55% of the registered voters have cast their ballots at the special election.

HUGO E. VARGA of the Cleveland, O., Bar.

Legislation in Iowa Compared with the Law Proposed for the Suppression of Vice in Illinois.—The following letter from Professor Elmer A. Wilcox of the faculty of law of the University of Iowa and Associate Editor of the JOURNAL was addressed on December 3, 1912, to the Managing Editor in response to a request for information respecting the operation of legislation pertaining to the social evil in Iowa, and for a comparison of the law proposed for Illinois by the Vigilance Association with that in force in the state of Iowa:

"I have compared the bill below with the corresponding Iowa statute, and have indicated all differences that were discovered, excepting the change from county attorney to state's attorney made because of the difference in the name

of the corresponding office in the two states. In substance there seems to be no difference excepting for the omission of the $300 tax from the Illinois bill.

"This act does not seem to have been used much. Perhaps the lack of private organizations for the suppression of vice may account for this, and greater use would be made of it where such organizations exist. It is possible also that greater use has been made of it here than my information indicates.

"Considerable use has been made of the so-called 'Cosson Law' under which any five electors of the county, the county attorney, or the attorney general may, and the attorney general, if ordered by the governor, must, bring an action in the District Court to remove any county attorney, sheriff, mayor, police officer, marshal or constable, for wilful or habitual neglect of duty, misconduct in office, corruption, extortion, conviction of felony, or intoxication. A few removals have been made and in many more cases a threat of proceedings has stirred reluctant officials into activity.

"Two other acts, one imposing upon the keeper of a house of prostitution from one to five years in the penitentiary for permitting any unmarried female less than eighteen years old to live, board, stop or room in such house; the other giving from one to ten years to any person who shall detain any female, against her will, in any room, or house, building or premises for purposes of prostitution, would seem to cover vital phases of the evil."

ELMER A. WILCOX.

The following is the proposed bill to suppress houses of ill-fame in Illinois. The arabic figures refer to Professor Wilcox's notes at the conclusion of the bill by which the reader can draw comparisons with the Iowa law:

A BILL.

FOR AN ACT to enjoin and abate houses of (ill-fame[1] lewdness, assignation and prostitution, to declare the same to be nuisances, to enjoin the person or persons who conduct or maintain the same, and the owner or agent of any building used for such purpose.[2]

Section 1. Be it enacted by the people of the State of Illinois represented in the General Assembly: that whoever shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building, erection or place, or the ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Sec. 2. Whenever a nuisance is kept, maintained, or exists, as defined in this act, the state's attorney or any citizen of the county, (represented by any attorney he may select,)[3] may maintain an action in equity in the name of the people of the State of Illinois, upon the relation of such state's attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court or a judge in vacation shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear (that the nuisance exists)[4] to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testi-

mony or otherwise, as the complainant may elect, unless the court or judge, by previous order shall have directed the form and manner in which it shall be presented. Three days' notice in writing shall be given the defendant of the hearing of the application, (for the temporary writ,)[5] and if then continued at his instance, the writ as prayed for shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the judicial district in which it was issued and any violation of the provisions of injunction herein provided shall be[6] contempt (of court,)[7] as hereinafter provided.

Sec. 3. The action when brought shall be triable at (once)[8] after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the state's attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the state's attorney to prosecute said action to judgment, (or)[9] any citizen of the county[10] may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen.

Sec. 4. In case of the violation of any injunction granted under the provisions of this act, the court, or in vacation, a judge,[11] may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section, shall be punished by a fine of not less than Two Hundred Dollars ($200) nor more than One Thousand Dollars ($1,000) or by imprisonment in the county jail (for)[12] not less than three or more than six, months, or by both fine and imprisonment.

Sec. 5. If the existence of the nuisance be established in an action as provided in this act (on the application for an injunction or in a proceeding for contempt,)[13] an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released, (as hereinafter provided.)[14] If any person shall break (or)[15] enter or use a building, erection or place so directed to be closed, he shall be punished[16] for contempt as provided in the preceding section. For removing and selling the movable property the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

Sec. 6. The proceeds of the sale of the personal property as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant.

Sec. 7. If the owner appears and pays all costs, (fines, penalties and forfeitures)[17] of the proceeding(s)[18] and files a bond with sureties, to be approved by the clerk, in the full value of the property, to be ascertained by the court, or in vacation by (appraisers appointed by)[19] the clerk,[20] conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation, the judge may, if satisfied of his good faith, order the premises closed under the order of abatement, to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property.[21] The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subjcet by law.

Sec. 8. (Whenever a fine may be assessed by the court for the violation of an injunction as provided in section four of this act, it shall constitute a lien upon the real estate upon which the acts constituting the contempt shall have been committed, and an order of execution shall issue.)[22]

(1) Not in the Iowa law. (2) The Iowa law inserts here as follows: "and to assess a tax against the person maintaining such nuisance and against the building and owner thereof." (3) Not in the Iowa law. (4) Not in the Iowa law. (5) Not in the Iowa law. (6) The Iowa law inserts here: "a." (7) Not in the Iowa law. (8) Here instead of the word "once" the Iowa law inserts: "the first term of court." (9) Here instead of the word "or" the Iowa law inserts: "and if the action is continued more than one term of court." (10) Here the Iowa law inserts: "or the county attorney." (11) Here the Iowa law inserts the word: "thereof." (12) Not in the Iowa law. (13) Not in the Iowa law. (14) Not in the Iowa law. (15) Instead of "or," the Iowa law has "and." (16) Here the Iowa law inserts "as." (17) Not in the Iowa law. (18) The Iowa law has the word "proceeding." (19) Not in the Iowa law. (20) Here the Iowa law inserts: "auditor and treasurer of the county." (21) Here the Iowa law inserts: "and if the proceeding be an action of equity and said bond be given, and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only." (22) This section is not in the Iowa law. The law there provides for the assessment against building and grounds, the person maintaining the nuisance, and the owner or agent of the premises a tax of $300. E. A. W.

Giacomelli's Argument on Libel Committed "for the Common Good."—*Il progresso del diritto criminale* in its September-October issue has published the conclusion Giacomelli's *Il fine nella diffamazione,* begun in the preceding chapter. The article is a refutation of the positivistic and neo-socialistic plea of truth in libel—to be more accurate it is an argument against the theory advanced by the socialists that a libel committed *pro bono publico,* or to be more socialistic in phrase, in the best interest of the people, is to be commended and not condemned. While the practical answer, that the definition of the best interest is of too difficult determination to predicate the right of privacy upon, seems full and sufficient, yet Giacomelli's many other reasons *contra,* both practical, technical, and philosophical (to make a third and unjustifiable division)

are most interesting. It is well to remember that the philosophy of law has reached a higher degree of general development in Italy than elsewhere, because of the long study and careful attention given to the revision of the code, and that, therefore, the average mind is more susceptible to philosophical reasoning and more adapted for scientific treatment of practical questions. While this, on one hand, leads to hyper-refinements, on the other, it avoids many difficulties in practise by forcing legislation to conform to recognized requirements.

Giacomelli's "Intent in Libel" is worthy of a detailed review, because of its consideration of specific and general intent and of its treatment of the relative consideration due the individual and society in conditions where a trespass is justified by a plea of public welfare.

In libel the specific intent is to harm another's reputation. It is superadded to the general intent, which is but the free publication of the fact, insufficient in itself without the legal presumption. In libel, as in every crime, there are two requisites; a minimum of either may destroy punibility, a specific intent and an objective fact. (*Del Vecchio,* "The Formal Basis of Law," Boston, fact). These exist when a defaming article is published with the object of discrediting anyone. (The presumption of the intent from the act is but a law of evidence, by which proof is waived of what common sense cannot refuse to believe). So in homicide, wilful killing is murder. No ulterior object, such as the murderer's desire to provide for his offspring affects the specific intent. While, philosophically, the object and intent are the same, legally they are very different, and the latter simply denotes the consciousness of the immediate and unavoidable consequence of the act. But, to return to our subject, it is obvious that the specific intent to wrong can co-exist with a good general object. Giacomelli's sketch shows this to be true as far as law. which deals with the regulation of human action so that each man may have the greatest freedom consistent with the similar freedom of all. And yet this simple fact has been denied by many great men. The error was due to a mistaken conception of the legal sphere, whose definition by Spencer, the greatest modern sociologist, we have just given. Law can only consider the illegality of a fact, that is, the positive detrimental force it exercises over social co-existence, it cannot consider the relative subsequent results of a wrong committed to prevent a greater wrong, save in the prevention of irreparable injury to the so-called natural rights. Thomas Aquinas wrote "Considerandum est autem qued quandoque aliud est finis operandis et aliud est finis operis." In other words, the Jesuitical maxim that the end justifies the means cannot be recognized. A wrong cannot be the philosophical solution of a dilemma. This is philosophically true, but even its consideration is extra juridical.

To give our opponent's brief—for they have some apparent if specious reasons—we can say in the first place that they claim three elements in libel, will to publish, will to harm and anti-social will. This last they made an element of all crime. Even if we accept their premises, we may not accept their conclusion; but we cannot accept their premises. The anti-social will cannot be a general vague desire to hinder the millennium, and it cannot be a minority belief in the virtue of the destruction of albinos, for example. In other words, it is too vague to be made a rule of conduct, and in the second place, society, whose protection is the object of law, cannot be predicated on the right to commit objectve wrongs with knowledge of this wrongfulness. The enforcement of

right must be rigid. The definition of right, while reformable through philosophy, sociology, and ethics, cannot be legally disregarded. But our case does not lie in the weakness of the proponements of change. For, even if truth of fact and worthiness of object accompany the libel (which in the case of public men is sufficient under English law, with the added proviso, however, that the libel is based on facts relative to public interest), still the act is criminal. In the first place, the matter can be legally tried in court. (This is a practical course in Italy, and it is submitted should be our answer here). In the second place, the accused is deprived of all defense if this method of attack is allowed. How can he question the truth of the statement, when it may not come to his knowledge for months? We have already noted a third objection as to what is best for society, *tot homines, tot opinions.* A fourth technically philosophical reason lies in the fact that the neo-positivistic position is that of Scholasticism. In his "Summa Theologica," Thomas Aquinas wrote that acts *habent rationem boni ex orcline ad finum* (II II, xxxiij, VI).

The faults of the older school have been pointed out too often to require repetition. The positivists now become more metaphysical than self-confessed metaphysicians, pardon those who do objective harm because of their subjective state.

But, to come back to positivism ourselves, Giacomelli, after developing at length the reasons, which we have sketched above, then outlines the different proposed reforms based thereon, and concludes "that the subjective purpose of universal benefit, that the belief, in other words, however reasonable of acting for the common good cannot make liberal a legal act, because, consisting in an attack on another's reputation, based on the nature of the facts alleged, it can and ought to be founded, subjectively considered, on the general intent of the will to make an unprivileged statement and the specific intent of the knowledge of and will to do a legal wrong," and that, therefore, the proposed changes, allowing a defense of a good general intent should not be considered. While this is not fully in accord with American principles, it seems to the reviewer to be sound. And, it is with regret that he can but say that the Italian propounders of reform cannot cite American politics as a proof of the legitimacy of this position with even the same probative force as a year ago. J. L.

Dr. Mueller's Criticism of German Criminal Code.—Dr. Arthur Mueller of Karlsruhe contributes a valuable philosophical, analytical and historical discussion of the so-called crime against nature by way of criticism of the preliminary draft of 1909 of the German Criminal Code to *Archiv Für Strafrecht und Strafprozess,* Bd. 59.

This is not a pretty subject, and the legislator naturally has been unwilling to explore the sexual perversions of Sodom and Gomorrah. The German draft is no more specific than our own statutes, which with the briefest designation of the crime dismiss it with a strong adjective, expressive of profoundest feelings of disgust. Plato long ago furnished the philosophical argument against this attitude, and the legal expert can no more scientifically justify a glossing over of an abomination of this sort, affecting as it does the welfare of the subjects of the State, than could medical learning refuse to take note of and investigate the loathsome diseases of the human body. The German version substantially is no more than a translation of the prescription of the Frankish Capitularies of 789,

which provides heavy punishment for those *qui cum quadrupedibus vel masculis contra naturam peccant;* and it throws the labor of fixing the limits and essence of this crime on the courts as the cases arise, with the excuse that greater clearness of statement is impossible. The treatises of Meyer, Olshausen, and von Liszt do not appreciably help matters.

The writer proceeds to make clear the conceptual reality underlying the *legis ratio.* How necessary such a procedure may be is apparent when it is seen that in earlier times sexual commerce between Christians and non-Christians (particularly Jews) was regarded so far against nature as to be punishable by death. But merely a conceptual treatment of the subject is not enough except to clear the ground and to make a fresh start. A great flood of light is afforded by experience, history, psychology, and anthropology. The contributions of Havelock Ellis in our own language in this isolated field of study learnedly demonstrate this proposition. In view of the absence of definite statutory precision, and due to the scientific questions involved, the competence of legal medicine in an important way is clearly suggested.

Punishment of crimes against nature is based on three grounds; the interests of State police, criminal policy, and social ethics. The draft makes the first ground the most important in its stringent demand for punishment. The reasons given do not, however, bear out well in the writer's critical examination except in the danger of these offenses to the youth of a country. On the ground of criminal policy, the question of abolishing punishment is considered on account of the dangerous possibilities of extortion. The writer suggests instead more severe punishments for the parasitic offense. The draft follows the ideas of Mittermaier in looking at these crimes as social-ethical offenses. They violate only psuedo-legal interests, and are not to be classed with such crimes as theft or embezzlement.

Reasons are advanced by medical men, sociologists, and ethical writers against punishment. The first in especial assert that many sexual perversions are committed by abnormal persons who should not be ground up by the legal mill, but treated by the physician. They arrive at an insupportable generalization that homosexuality generally is the mark of those of limited responsibility, and for this reason should be exempted from criminal process.

Jurisprudence is the one science which finds it necessary continually to reexamine the bases for its propositions. "No chemist first undertakes an investigation of the nature of force in making a chemical analysis; and no physiologist speculates about the nature of matter preliminary to the study of secretions of the liver." (Jellinek.) No department of criminal science has gone further in the method of procedure contrary to the other sciences, and a large part of the writer's essay is devoted to a review of the writers and the theories dealing with the necessity or justification of punishment, and the agencies of the State which should be charged with official power in a treatment of the offenses under consideration. So far as it affects adults, the writer puts the crime against nature in the same category as punishment of witches, and the use of the rack; and he commends the lawgiver to the Swiss legislative model. The reference to Switzerland will be generally approved, but the other conclusion profoundly shocks many preconceived ideas. Whether right or wrong, the statement will at least lead to a new line of thought. That alone is an advantage.

It is interesting to note the use that has been made by the writer of such books as Stammler's *Die Lehre von dem richtigen Rechte,* Ihering's *Der Zweck im Recht,* and Kohler's *Lehrbuch der Rechtsphilosophie,* all of which, by the way, are soon to appear in our own tongue. This calls to mind the statement made by Sir John MacDonnell (Berolzheimer: "The World's Legal Philosophies," xxvi). "Only certain minds feel strongly the need of a complete conception including all phenomena in a particular region, a clear view of all the facts and their fusion into a whole. Those who have been bred in the study of English law rarely experience this need." It may be hoped at least that in every department of crime the spirit of inquiry will so far assert itself that not even so hideous a thing as the obscure crime against nature will be passed over with the feeling of unspeakable aversion inspired by religious tradition, as unworthy of scientific consideration and treatment.

ALBERT KOCOUREK, of the Chicago Bar.

Balch on International Courts of Arbitration.—The republication of Thomas Balch's "International Courts of Arbitration," by Thomas Willing Balch (Philadelphia, 1912), which was originally published in 1874, and contains letters and deliberations concerning the arbitration of the Alabama claims, is of interest to that number of criminologists, who are interested in criminal law as it affects legal philosophy. It shows the development of international law, by marking an earlier stage, before Hague Conference or "literature" on the subject had made the phrase a household expression. It further shows the occasional character of legal growth. It is a small book of great interest to legal philosophers, not because of its instructiveness, but by way of illustration. and to them we recommend it. J. L.

Suspension of Sentence.—The Supreme Court of Kansas, in July, 1912 (*State of Kansas v. Sapp,* 87 Kansas 74 D) has decided that "Whenever a verdict or plea of guilty has become final, the court is under an absolute duty to pronounce sentence, and has no discretion, as a disciplinary measure, to suspend it. The rule applies notwithstanding the sentence purports to be suspended until a certain date, for the purpose of retaining control of the defendant. who is ordered to appear at that time and show that he has not violated the law in the interval" (Syllabus). This duty (to pronounce sentence) is violated whenever an order it made the purpose and natural effect of which is that the defendant shall understand that he may never be punished (opinion 742). Then the court is reallly exercising a power of parole which does not belong to it except as conferred by statute." Kansas since February, 1907, has a law permitting judges to parole after sentence for misdemeanor.

J. C. RUPPENTHAL, District Judge, Russell, Kansas.

A Progressive Decision.—In affirming recently the conviction of Charles Katz for grand larceny, the Appellate Division, First Department, of the Supreme Court of New York said: (*New York Times,* Dec. 21, 1912.)

"We should hesitate long before overturning on a mere question of veracity a verdict reached by such a jury, especially when the defendant was represented, as in this case, by counsel of long experience in criminal trials and one of unquestioned energy and devotion to his client's cause.

"So long as the verdict is not clearly against the evidence, and it appears that the defendant has had a fair trial before an impartial judge and an intel-

ligent jury of his own selection, as well as the aid of competent counsel, we cannot feel that it is our duty to reverse the conviction, because perchance, if we had been sitting as jurors, we might have decided differently. We are satisfied that the conviction was without legal error and was justified by the evidence."

This is a sound and sensible viewpoint and indicates the growing, if somewhat belated tendency of our appellate courts to take a sane and rational stand. Reversals on technicalities are becoming rapidly unfashionable even in jurisdictions which oftentimes were wont to sin in the most approved orthodox fashion. That delay of justice is tantamount to denial of justice bids fair soon to become universally recognized.

I. MAURICE WORMSER, University of Illinois.

Right of Trial Court to Review Evidence in Kansas.—The following correspondence with Judge Ruppenthal is self-explanatory.—[Eds.]

The statement that the trial court may review the evidence in Kansas may perhaps be considered sustained by two cases. "The court has the right to present the facts in its charge to the jury, but must inform the jury that they are the exclusive judges of the facts." *Horne v. State,* 1 Kansas 42. "The court may review and present the facts in a criminal case, provided the jury are informed that they are the exclusive judges of every question of fact." *State v. Baldwin.* 36 Kansas 1. But these cases, which seem to be the only ones giving expression to such views, can hardly be deemed strong enough to warrant the conclusion that in Kansas the trial court "may comment upon the evidence." (See 3 Journal 569, November). Certainly attempt to "comment" is very rare in practice, and the "comment" feeble.

In the Horne case, above cited, the court used the words "this murder," and the case was reversed because this was held to be an expression which the jury could take to be the court's opinion. The supreme court said: "All persons familiar with the trial of criminal causes have had occasion to observe with what anxiety a jury listens to catch from the court the slightest indication of its views. This is particularly the case when matters of great doubt and difficulty are before them for decision. * * * The more able and upright the court, the more likely are its intimations to have weight."

In *State v. Hughes,* 33 Kansas 23, where the judge in the presence of the jury directed two witnesses of defendant to be prosecuted for attempting to bribe a witness, this was held to be an expression of opinion concerning credibility and weight of testimony that could not be corrected by an instruction later that alleged misconduct of a witness should not prejudice defendant.

As recently as 1911, in *State v. Truskett,* 85 Kansas 804, the lower court was reversed for instructing that there was no evidence tending to justify the homicide, (together with refusal to instruct on self-defense). The supreme court in its opinion said: "It is not decided that the court may not in a proper case, where the direct facts showing the commission of a crime are given in evidence by those who witnessed the occurrence, state to the jury that there is no evidence to sustain a particular issue."

By reason of the forgoing, and perhaps other decisions, trial courts make but little use of the implied permission of the criminal code (§236). * * * If he (the judge) presents the facts of the case, he must inform the jury that they are the exclusive judges of all questions of fact."

(By your kind invitation of December 28, I submit the above. On investigation I find there is more authority for reviewing the evidence than I had thought. But I am sure little use is made of such supposed authority.)

J. C. RUPPENTHAL, District Judge, Russell, Kansas.

Rules and Suggestions for Clerks of the District Court of the Twenty-third Judicial District of Kansas. (See Secs. 2246 and 6337, Gen. Stat., 1909). 1. Each clerk of the District Court shall at all times have one or more duly appointed and qualified deputies, so that no occasion can arise at any time when proper process of court cannot be secured, Sunday or week-day, day or night.

2. Each clerk shall keep posted in his office, and also outside the door when the office is locked, the name of his deputy or deputies, and the place where he and they reside, or board and room, and where they may usually be found.

3. When a clerk absents himself from the county seat, he shall leave word posted up by his office, stating who is his deputy meantime, or where the clerk himself may be found.

4. Each clerk shall keep his office upon for the transaction of official business at least eight hours between 7:00 A. M. and 6:00 P. M. each day, except Sundays and legal holidays. The clerk shall post notice of his office hours conspicuously in his office. (See Sec. 2301, G. S. 1909.)

5. Clerks are authorized in their discretion to let files of papers from the files be taken from the office, or they may wholly refuse to let files, or any part or paper thereof, be taken out by anyone. No one, except members of the bar and the stenographer shall be permitted to take away any papers or files, except by express written order of court, provided that bonded abstracters may be permitted to take files or papers affecting real estate titles. Receipts shall always be taken before any paper or file may be withdrawn.

6. When appeals from the action of the county board, or county officers, are taken, as in road cases, surveys, etc., when the case is finally determined by the district court, the clerk shall return to the proper office, as of the county clerk or the surveyor, etc., any and all papers and files properly belonging in such county office, and file in lieu thereof the receipt of the proper officer for such files so returned.

7. When a mandate is received from the Supreme Court, determining cases appealed from the district court, the Clerk shall at once enter and spread at length such mandate upon the journal of the court without waiting for the district court to be in open session and to order such mandate spread. But the court should later order and approve the action of spreading the mandate on the journal.

8. All journal entries and orders and decrees of the court shall be recorded promptly by the clerk in the journal. Even when court is in session, this shall be done as far as practicable from day to day. (See Sec. 6327, G. S., 1909.)

9. All entries of whatever kind made upon the journal shall be diligently compared with the original order; judgment or decree, so as to avoid error and omission. In comparison, one person must read the original, and another person follow the copy upon the permanent record or journal, or vice versa.

10. All journal entries, decrees and orders shall be indexed at least by the plaintiff's name, or by the name of the party in ex parte actions.

11. No journal entry, decree, order or judgment, or what purports to be such, may be entered upon the journal unless duly and properly signed by the judge of the court, excepting only mandates of the Supreme Court as already required.

12. Oaths and affirmations shall be administered solemnly and deliberately. If there be doubt whether the person adjured understands English, the oath or affirmation shall be translated into his own language as administered. As far as possible, witnesses, jurors and others shall be sworn or affirmed several at a time rather than separately.

13. The safety vaults containing court records shall be left open only when under the direct observation of the clerk or a deputy clerk (or of some county official who is permitted to use the same vault, where two or more officials must use one vault). At least the inner doors of the vault shall be closed if the clerk or other official leave the room leading to the vault. The outside vault doors shall always be closed when the clerk (or other officials) leave the court house, and shall be both closed and locked always over night, Sundays and holidays.

14. When court is in session, and the files of cases are taken to the court room, they shall all be replaced in the vault each night. Files of cases shall not be permanently left outside the vault at any time.

15. All records shall be written in legible handwriting with good black ink, or shall be typewritten with non-fading record ribbon, or non-fading ink, other than red. Journals may be written with a typewriter on loose leaves, and these inserted in a loose leaf record cover of a kind whereby the leaves can be securely and permanently locked when the book is filled.

16. Each case shall be given a number in figures (Arabic numerals) when the petition, transcript or other initial paper is first filed. (See Sec. 6326, G. S. 1909.) These numbers shall be consecutive and in progressive numerical sequence as cases are filed. It is better to have only one series of numbers, rather than to attempt to number civil and criminal cases separately.

17. If a case inadvertently fail to receive a number when filed, or shortly afterwards, it should as nearly as possible be given the number that ought to have been given to it when filed, with the addition of a suitable letter, as "No. 480;" "No. 514B."

18. The files of successive cases shall be placed in the metal filing cases, or the pigeon holes, or otherwise as furniture may be provided by the county board, and such files shall be arranged in regular, numerical order, so that the files of any case may be readily found at any time, if its number be known.

19. As each new paper is filed, it shall be endorsed with the number as well as the name of the proper case. (See Secs. 6332 and 6333, G. S., 1909.)

20. In making up the trial docket, the cases should be entered consecutively as numbered, but should be classed into, 1. Criminal, and 2. Civil, placing state and city criminal cases in the first class, and all others in the second. But the state cases may well be bunched together; then city cases likewise; and in civil cases, the clerk may bunch divorce cases, and also any other kind that may chance to form a large class.

21. If at any time a case be found, or files, or papers thereof, which case has not been entered on the proper appearance docket, it shall be entered at once on such docket as nearly as possible at the place where it belonged when the case was first filed, and such case shall at once be numbered and indexed.

22. The clerk shall answer promptly all correspondence and communications from attorneys and litigants respecting their several cases, if return postage is provided, or messages by telegraph or telephone guaranteed to be paid, or if the applicant appear personally or by special messenger.

23. At least once after each regular session of court, the clerks shall sort over all legal blanks of every kind provided in their office at public expense, or for general court use. They shall see to it that all such blanks are properly arranged under suitable labels or headings. If any blanks are found which have become obsolete, or are of doubtful usefulness, the clerk shall call the court's attention thereto, that the worthless blanks may be removed or destroyed.

24. Blanks should be kept in such filing cases, pigeon holes, or other receptacles as the county board may have provided. As far as possible, each form of blank should preferably be in a separate, flat drawer, or at least a separate pigeon hole. All blanks of the same kind should be kept together. Blanks should be laid flat, and should not be rolled nor crumpled nor laid uneven so as to wrinkle them, or turn up the margin or corners of any sheet. When sorted, the tabs, or bunches of blanks should be wiped with a dust cloth.

25. No official's personal name should be printed in any blanks, or in any public record.

26. All miscellaneous papers and files, whether new or old, in the office of the clerk of the district court, shall be examined and sorted at once, and arranged according to their nature. They should be examined after each term of court hereafter, to see that no paper belonging to the files of any case is lost, mislaid or out of place among miscellaneous papers not properly belonging to the files of any regular case. Any and all papers found upon such examinations and sortings, including affidavits, depositions and exhibits, that belong to any case, shall be placed in the files of such case, unless of such irregular size as to be incapable of being enclosed in the ordinary filing cover, except as provided in the next rule, and in such event a memorandum slip in the files should refer to the excluded papers. (See Secs. 2246 and 2307, G. S., 1909.)

27. All papers relating to any one case shall be kept together and filed in one filing case or wrapper, except that bonds on appeal or for costs or for appearance, etc., notes, mortgages and other obligations and instruments sued on, or in judgment, may be separately filed in an orderly way in a specially secure place within the safety vault, but where any such paper is so separately placed and kept, a proper memorandum shall be placed in the files of such case, stating that the paper or instrument (naming it) is abstracted from the files, and may be found at the designated place of security. (See Sec. 6332, G. S., 1909.) At the close of each session of court, the clerk shall examine and sort the files of all the cases which have been before the court as such session, in order to see that each separate paper shall go with the files of the case to which it belongs.

28. Filing cases of tough manila paper, commonly called court wrappers, or reversible cases, are preferable to square-cornered box files, as the flat kind

are expansible to fit the needs of the case, however large, and of saving of vault space. (See Sec. 6333, G. S., 1909.)

29. For furniture of safety vaults, steel is safest from fire danger; also freest from vermin and dampness. Steel roller shelves with books laid flat, offer least wear and strain to the heavy records. Steel filing cases afford the best method of compressing files of cases into least space.

30. Jurors, witnesses, interpreters, and any other persons claiming fees at court, should be required by the clerk to sign a statement or certificate by them respectively (and to verify would be better) that such claimant has performed the service claimed for, and necessarily has traveled or has to travel by the most direct, feasible route the distance that mileage is claimed for, and where a certificate or statement is issued by the clerk of the court to the claimant, a stub, giving the foregoing facts, shall be kept, or better still, a carbon copy of the claim as signed or verified.

31. Clerks shall tax a jury fee of $6.00 as costs in each civil case in which a jury returns a verdict. (See Sec. 3692, G. S., 1909.)

32. Clerks shall tax a stenographer's fee in each case in which a stenographer is used of $2.00 for each day. (Sec. 2404, G. S., 1909.)

33. No fees shall be taxed for the same person for the same time, or same mileage in two or more cases, nor for service as both juror and witness or in other double capacity, nor for any public officer locally where the state, county, city, etc., is party. (Secs. 3673 and 3674, G. S., 1909.)

34. When a judgment in foreclosure of a real estate mortgage has become final after the sale of the property, or after payment of the debt, the clerk shall enter the proper statement of satisfaction on the margin of the record of the mortgage in the office of the register of deeds of his county. (See Sec. 5207, G. S., 1909.) Clerks shall also, whenever an instance is found or called to notice, enter such satisfaction as to all mortgages heretofore foreclosed in their courts in which such entry should have been made, but was not made.

35. When real estate is partitioned, the clerk shall promptly report details of the decree to the county clerk as prescribed by Section 19, Chapter 316, Laws of 1911.

36. No books, records or blanks should be ordered or bought except where clearly required by statute, or ordered by the court, and then only in moderate quantities, and not greatly in advance of actual needs. A record book need not be on hand over two months in order to properly season for use, if handled carefully thereafter and kept under pressure for some time. (See Sec. 6325, G. S., 1909.)

37. In ordering books, blanks, and supplies, clerks should bear in mind the express purpose of the Legislature to establish a uniform system in the keeping of public records throughout the state, and should do nothing that would tend to defeat or avoid the object of the letter and spirit of Chapter 303, Laws of 1911.

38. Neither blanks nor books of any kind pertaining to the court work or its records should be discarded or destroyed because of slight changes in law or practice, unless the change makes it dangerous to rights to continue use of said blanks or records. All blanks and records or forms that have become wholly obsolete or illegal, should be called to the attention of the court and

upon approval of court or judge, such blanks may be destroyed and such forms and records discontinued from further use.

39. All blanks of any one kind should be fully used up before opening up and using new supplies of the same kind. All books should be filled to the last page before making any entry or recording in a similar new book.

40. All books when filled and no longer in active, current use, should be kept in the less convenient parts of the safety vault as long as possible. When need of more room or newer and current business requires the removal of older records, they should be stored safely in storage vaults of the county. If there are no storage vaults, or if these are full, all bound records which cannot be kept in the vault which is in daily use, should be sent to the State Department of Archives in the Historical Society Library at Topeka for preservation, and from which, when needed, such records or certified copies thereof, may be legally secured. (See Secs. 8006, 8007 and 8009, G. S., 1909.) No bound book nor file of the office should ever be destroyed or exposed to danger of loss or destruction.

41. At the close of each official year, on the second Monday in January of each calendar year, the clerks shall make and transmit a report in writing to the court (or to the judge, if court is not in session), giving the aggregate amount of all moneys on hand, and setting forth in detail from whom and for what purpose such moneys were received, and to what cases respectively the items severally belong, and where such moneys are kept. A similar report shall be made and presented to the court at the opening of each and every regular term of court. The first report made hereafter shall state the amount of moneys of the office received by the clerk from his predecessor in the office.

42. Funds of the office of the clerk of the district court should not be mingled with any other funds, private or public. All official funds should be deposited in some bank or banks in the name of the office or of the clerk as such official, and not as a private individual. A clerk should never apply public funds for private use, however temporarily, nor check for any private purpose on the funds of the office.

43. The rules of court as revised September 1, 1911, and also these rules and suggestions, shall be entered in full on the journal of the district court in each county of the district forthwith.

J. C. RUPPENTHAL, District Judge, Russell, Kan.

Proof of Handwriting Standards.—In a case in the Queens County (N. Y.) Supreme Court, at Long Island City, an interesting ruling relating to evidence of handwriting was made by Justice Maddox recently. The case was an indictment of one Phillips, involving alleged fraudulent contracts for the city. It was claimed that the bids on which the contract was awarded were "dummy bids" made out in the handwriting of Phillips. To lay a foundation for expert testimony on the subject of handwriting the prosecution attempted to introduce standards of Phillips' handwriting to serve for comparison. According to the newspaper reports of the trial, Justice Maddox ruled that the only standard which could be received in evidence must be one the witnesses actually saw written. If correctly reported, this ruling would seem to apply a stricter requirement in regard to such proof than has been the tendency recently. It has been quite generally held that the standard writing offered must be proved to be genuine by "very

clear" testimony and that the opinions merely of witnesses that it is genuine do not afford sufficient proof. The general rules of evidence, however, apply. Testimony of witnesses who actually saw the writing done would be the best evidence, no doubt; but, while in some jurisdictions it has been held that this is the only way of identifying specimens to be used as standards, in others it has been held that other evidence may be sufficient for the purpose, as, for instance, the delivery in due course of business of a receipt or other paper purporting to bear the signature of the party. An elastic rule such as the latter, taking into consideration the facts of each case, would seem to be better than an absolute requirement that the evidence to be sufficient must be of persons having actually seen the writing done. E. L.

General Basis for a Valid Expert Opinion Concerning Questioned Writings.—A valid judgment of the authorship of any questioned writing may be well grounded upon the following axioms: everyone who has practiced writing long enough to do it automatically, having the mind intent upon the subject-matter and not at all upon the writing itself, has inevitably acquired certain writing habits. Some of these habits are common with many other writers. Some few are uncommon, and, perchance, some particular habit may even be peculiar to the single individual. Many of the habits are voluntary and conscious ones. These are subject to more or less control at will. But there are some other habits which are wholly involuntary, and quite unconscious. These, therefore, are not subject to any modification at will. They can only be gradually changed through the formation of other new habits which displace the former habits.

Careful analysis of a sufficiently large number of samples of unquestionably genuine automatic writing of any person will disclose the several classes of habits manifested by that writer. Likewise, what may appear to be the habits in any piece of questionable writing, upon a comparison of the two sets of habits, those which are alike as well as those which are different may readily be seen. If there is found to be a persistent agreement, on the one hand, in the absence of such habits, particularly as are common to many other writers, and, on the other hand, in the presence of like habits, especially of such as are involuntary and unconscious, and these, too, in such numbers and sequence of combination as could by no reasonable chance be due to merely accidental coincidence, then there is from such cumulative evidence no other conclusion to be drawn by an expert except the opinion that, beyond any reasonable doubt, the two sets of writing must be due to one and the same cause, that is, by the very same writer.

In forming an opinion, it should not, of course, be overlooked that single points of likeness and unlikeness may be of vastly different relative value. Any writing, to be at all readable, must have very many points of similarity to the conventional model type. Likewise, that no sample of genuine open handwriting of any person is ever an exact facsimile in all respects of any other sample. They may appear to be as much alike as two peas grown in the one pod, but careful examination can always differentiate between them, however much alike they may appear upon casual observation.

One seeking to disguise or hide his identity, as a writer naturally attempts to, does so by such changes of voluntary conscious habits as will change the general appearance of his writing. He changes his kind of pen and his manner of

holding it. He changes his usual form of letters, especially the capitals, and also their slant. All the little details of his involuntary unconscious habits of necessity remain as usual. Likewise, the one who seeks to assume the disguise of another, as in forging a writing, naturally attempts to affect, so far as may be, the general appearance characteristic of the other. He hopes to pass muster, therefore, without exciting suspicion, well knowing that if an inquiry is once instituted the falsity is likely to be revealed. To be able to do his best with his writing instrument he must hold it in his accustomary way, which may be quite different from that of the genuine writer. To get the correct forms of letters, he may copy them in some mechanical way, make a freehand drawing of them or practice a running-hand copying until he has more or less acquired the new habit of similar formation of the letter. His old unconscious habits of pen movements in the production of the new forms still persist, however. He has not attempted to change these. They are unknown to the common forger, his own as well as those of the original. He aims at general pictorial effect; these unobtrusive details do not enter into that.

DR. BENNETT F. DAVENPORT, Boston.

The Juvenile Court at Geneva.—Alfred Gautier, in *Schweizerische Zeitschrift für Strafrecht,* 24th year, No. 2.

To quote Professor Gautier, "this is the problem of the day." Not only in Switzerland, but all over Europe, the Juvenile Court, conditional liberation, suspended sentence, probation and reformatory institutions are spreading with great rapidity and force. M. Gautier expresses his admiration of the system as a whole and recounts the incidents of his twelve years' struggle to bring about some such reform.

A brief summary of the history of legislative action in regard to such measures is given with a criticism of the project then in the hands of a commission (1911).

The bulk of the article consists of a comparison and criticism of the proposed Swiss code, the Genevan code and a plan presented by the Women's Union—an organization of social workers in Geneva.

The writer pleads for a special judge for the children's court with no other functions to perform; but confesses despair of securing such an official. The legislators cannot bring themselves to break with the ancient court composed of a judge and two "juror judges" who sit, one on either side of the judge with advisory powers only. A judge similar to our own Juvenile Court judge is suggested to take the place of the "double tribunal," and the abandonment of an attorney and pleading at children's trials is advocated. The Swiss bar balks at the idea of combining the office of investigator, judge and "condamnator" in one person.

The adoption of the following well-known practices is urged upon the commission having the Swiss code in charge: Judicial discretion to release on probation; judicial surveillance through the medium of a probation officer; mature probation officers, at least 35 years old; female probation officers; resort to an institution of correction as a last resort only, after probation has failed signally; exclusion from the trial of all persons not directly interested in the proceedings; making discussion or comment on the case in public on the part of those present at the hearing a misdemeanor; the suppression of the publication

of the names and addresses of the delinquents and the details of the cases in the newspapers.

The foregoing propositions place the professor in the ranks of the modernists and win for him the sympathy of the American progressives whom he so much admires. The professor's difficulty is not very unlike our own, namely, a rigidly conservative bar backed by conservative or indifferent public sentiment.

PHILIP A. PARSONS, Syracuse University.

Plea of Guilty After Indictment.—The following is a letter under date of September 19, 1912, which is being sent to the various Bar Associations of the State of New York:

"*Gentlemen*:—At the Annual Conference of Magistrates of the State of New York, held at Albany, on the 9th day of December, 1911, Mr. George McLaughlin, Secretary of the State Commission of Prisons, called the attention of the meeting to what he stated was the universal practice in this state, "when a prisoner is charged with a felony or a serious misdemeanor, he cannot plead guilty until after indictment.

"The case is best presented in his own quoted remarks. 'While this is true, should it be true, isn't it our duty to ask ourselves the question,—Is this a wise provision of law? When a man is charged with a crime and has had his examination, then if he desires to plead guilty at once, instead of languishing in jail in some counties from six to eight months before the grand jury meets to take up his case and before he can plead, he should be allowed to plead and receive his sentence at once. Why should not the law provide that, at the prisoner's election, he being a man of sufficient maturity to know his own mind and to be governed by his own judgment, he should be permitted to plead guilty and receive what penalty the law is ready to inflict on him, rather than keep him housed up in jail, where he is receiving no benefit, and is maintained in idleness at the expense of the taxpayers for months, waiting for his case to come before the grand jury? I think it would be wise to have this law changed, so as to permit the district attorney to bring him at once before the county judge or other tribunal having jurisdiction to sentence him.'

"The matter was fully discussed and a committee was appointed to investigate the subject and call it to the attention of the several Bar Associations of the State, with the view to securing, if possible, suitable legislation to remedy such evils as might exist. The Committee communicated with justices, magistrates, district attorneys and other officers in the several counties, with the result that it has been found that many cases of the character described occur each year. It appears that in 1911, 6,657 convictions were had, and of this number 1,193 were after trial, while 5,452 pleas of guilty were received. In some of our counties the grand jury meets but twice a year, early in the spring and late in the fall, an interim of sometimes eight months intervening. The prisoner, therefore, who is held to await the action of the grand jury in such a county, if he is willing to plead guilty and cannot get bail, must be held without action for a long period, when, as a matter of fact, his case could be disposed of were he taken before the county court and sentence be imposed at once.

"The hardship is most marked where, on a plea of guilty, it is discovered by the court that a small sentence, or even a suspended sentence, would meet

the necessities of the law, and instead of this remedy being applied shortly after the commission of the crime, no action is taken for several months, although the prisoner has been willing and anxious to plead guilty and receive such punishment as the state, in its wisdom, might inflict.

"The committee have carefully examined the statutes and decisions of the state, in the hope of being able to suggest a remedy by legislation, but has been met with the constitutional provision (Sect. 6, Art. 1, N. Y. St. Cons.) that 'no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment by a grand jury.'

"The practical difficulty in reaching a solution is that all crimes of the grade of felony must be prosecuted by indictment, and no indictemnt can be found except by a grand jury. In some states there are few felonies, even serious crimes being prosecuted on filing of an information, but in this state it is otherwise.

"In accordance with the resolution of the State Conference, may we call your attention to this matter, at the same time soliciting your interest and such suggestions as may present themselves, looking to the solution of this, at times, most serious problem?"

(Signed) ROBERT J. WILKIN, (chairman) Justice of Court of Special Sessions of New York;
JOHN B. M. STEPHENS, County Judge of Monroe County;
JOHN J. BRAIDY, Police Justice of Albany;
OTTO KEMPNER, Chief City Magistrate of Second Division Board of City Magistrates, New York.

Grounds of Disbarment.—*The Yale Law Journal,* Vol. XXI, No. 8, at page 680 (June, 1912) contains an interesting and timely comment on the recent Michigan decision, *In re Radford,* 134 N. W. 73. It was there held that the power of the courts to disbar an attorney at law is not confined merely to cases in which the attorney has been convicted of crime or of misconduct in a professional capacity, but may be exercised in cases of misbehavior, though not in the strict capacity of an attorney, which demonstrate his character to be such as to unfit him to be entrusted with the office and functions of the lawyer. The editors of the magazine, approving the decision, promptly remark that in disbarment proceedings "the gist of the action is his (the attorney's) unfitness to manage the legal business of others." It is obvious that the existence of such unfitness may be conclusively established by conduct on the attorney's part in no manner related to, or connected with, the practice, as such, of his profession.

All efforts toward legal reform will prove nugatory until the standard of the bar is raised, and raised most materially. No more effective means of raising this standard can be devised or suggested than the maintenance of a strict and close supervision over the conduct of members of the bar. This can be done, and done effectually, by lawyers themselves through the medium of local and state bar associations. In numerous centres, e. g. New York City, strenuous and, upon the whole, successful and enlightened efforts to that end are now being made. Only by a patient continuance and steady extension of such regulation and scrutiny can even a modicum of relief be obtained.

I. MAURICE WORMSER. University of Illinois.

PENOLOGY.

The Aid of Discharged Prisoners in Germany.—According to an article by Dr. H. Seyfarth in *"Blätter für Gefängniskunde,"* Vol. 46, No. 3, there are at the present time in Germany about 600 local societies concerned with the welfare of discharged prisoners. It is not the purpose to call attention to the general work of these organizations, but rather to the efforts made for the care of discharged prisoners who come from the higher walks of society. Dr. Seyfarth points out how exceedingly difficult this problem is and justly remarks that for the class of men in question, the severest penalty begins when the prison gates are opened and they are about to seek a new foothold.

To meet the situation there has existed for ten years in Germany a society with the special purpose of aiding prisoners coming from "the educated classes." Long experience has shown that it is almost impossible to accomplish the object within the boundaries of Germany, and therefore the chief effort of the society has been to secure the immigration of suitable discharged prisoners to foreign countries.

Dr. Seyfarth emphasizes that his society has nothing in common with the methods of earlier years of shipping anti-social elements to other countries merely to get rid of them. On the contrary, the ex-prisoners whom the German society endeavors to place are carefully selected persons who "as a rule could render valuable service in Germany if the prejudices of society on account of their past did not everywhere block their way." In short, only those are helped to a foothold in foreign countries who give every assurance not only of having sufficient ability, but of having enough moral strength and energy to do well.

Before being sent away these ex-prisoners must undergo a period of probation lasting several months at the home station. During this time they are given opportunity to prepare themselves in different ways as seem necessary. Instruction is provided in English, Spanish and Portuguese. Those who wish to secure business positions may take courses in bookkeeping, stenography, typewriting, etc. For persons of other callings everything is done in order that the knowledge that they have acquired may be useful to them under the new conditions. During the time of probation the confidential agents of the society in foreign countries are informed and everything is done to prepare for the reception of new arrivals who at once are placed under appropriate guidance and care. In this way the German society in the course of ten years has been able to place 193 discharged prisoners in good positions, some of whom have become very important members of the German colonies abroad. Among these were former lawyers, doctors of medicine, philologists, theologians, business men, engineers, army officers, teachers, etc. The wards of this society are to be found in all parts of the world. Some of them have been placed in Europe, but it is chiefly in the South American states that the best chances are found for this class.

In order to extend as well as safeguard its work, the society now plans to establish temporary homes *Uebergangs Stationen,* patterned after the one at Hamburg, in the countries to which most of the wards are sent. Steps have already been taken to form branch stations in Brazil and Chile, while another is contemplated for the Argentine Republic.

Both as to extent and methods, we are far behind Germany in our work for discharged prisoners. Measured by what ought to be done, our efforts are wholly insignificant and too often of the perfunctory variety. The German intensive system is nearly everywhere lacking. JOHN KOREN, Boston.

The Cat as a Deterrent for Crime.—The New York *Sun* publishes an able article on this interesting topic. It is a noteworthy reply to such thinkers as Mr. Beverly Robinson who can't understand the old fashioned idea of the Bible as applied to the rod in the family which has been for our century and the last as orthodox a study, as the Westminster confession of faith, the thirty-nine articles or any of the conservative dogmas.

Whipping as a Deterrent.

Dr. Beverly Robinson, who for many years has been deeply interested in penal reform, can apparently find no justification whatever for flogging under any conceivable circumstances. In a recent letter to *The Evening Sun* he stated some of his objections to this method of discipline as follows:

"It brutalizes both prisoners and keepers. It is revolting to our senses. It is barbarous, unfeeling and worthless. * * * When one knows prisons and prisoners and has done what is possible to ameliorate conditions, it is sickening to hear or read any statement or report which would help return to methods of repression which were a disgrace to those who dared inflict them. * * * Flogging to a prisoner is an infamy without excuse or palliation."

It will probably grieve Dr. Robinson to learn that in the Criminal Law Amendment bill lately introduced into the British House of Commons a flogging clause was adopted by a huge majority. The bill is directed against the so-called white slave traffic, and one clause provides that a male procurer may at the discretion of the court be whipped as well as imprisoned for a second or subsequent offense. An amendment making the clause applicable to first offenders was likewise carried but by a very narrow majority.

The usual arguments against corporal punishment were advanced by several speakers. One of them said it demoralizes not only the criminal but the judge who awarded it, the officer who carried it out and the community that tolerates it. He doubted if it has any deterrent effect, but if it has, he argued, why not give it general application? These and similar arguments were used by several speakers, but they did not go down with the majority. One tried to appeal to the sensibilities of his hearers and wondered "how many members of the House would take the cat in their hands." He got a prompt answer from two of them, one a Conservative, the other a Laborite, for the debate was carried on without a trace of party feeling. Mr. Crooks said they might send for him if ever they were short of a flogger, for in such cases he would do the work without the least sense of personal degradation. The argument that there was some danger of degrading such vermin by whipping them did not appeal to many, and when the House divided 297 voted for the clause and 44 against it.

The opinion of the police, not only at home but in Australia and South Africa, too, undoubtedly influenced the voters, for it is admitted by those who are best able to judge that imprisonment has but a slight deterrent effect on these wretches. On the other side, as one observer puts it, "by a happy provision of nature the skin appears actually to become more sensitive as the moral sense becomes atrophied."

The debate in the English Commons shows the exact state of the public mind in England on the utility and substantial value of flogging, not as a punishment, but as a deterrent. The public opinion is apparently against flogging as a penalty for crime. We have abolished it in the navy, and so has England, but there with reluctance. It has not been abolished in the home in the best regulated families, nor by law in the schools of the nation, but public opinion against it is now quite pronounced in New York and in some of the states. In our boyhood no one, not one in a hundred, would have thought of conducting the common school without a birch stick. I think no boy of that period ever felt any such feeling or sense of degradation as Beverly Robinson entertains back of the sentimental view of punishment. It has always seemed to me to be a marvelous force as a deterrent against the commission of crime. Why has Delaware retained her whipping post? Why do her best judges and her ablest jurists, and other men cling to it? It is because it is one of the most formidable forces at command as a *deterrent.* It absolutely abolished crime in Delaware.

Governor Briggs of Delaware told me that in his long life he had never seen a white man come back to the whipping post. It is an unanswerable argument. They have no state prison in Delaware. The professional criminal after his first conviction moves out of the state. The professional criminals, burglars and others gave Delaware a wide berth.

Crimes of violence that are accompanied by brute force like wife beating, for example, can be exterminated and eliminated only by the whip. A jail has not the slightest possible deterrent effect upon a wife beater, and as a penalty for the offense is a farce and a disgrace to our intelligence. That judge who came down from the bench and beat with his fists the criminal who had so brutally beat the mother of the children of the brute who beat her was on the only line of successful resistance to crimes of violence and force that reaches the wife beater. Give me a Delaware whipping post in New York City, and I will eliminate wife beating in that city or in any other American city.

The Medico Legal Society once led a campaign against the wife beater by proposing the cat for him alone. For one blow he gave the mother of his children we wanted to give him five cuts of the whip on the bare back that drew the blood. The Hon. Simeon E. Baldwin, then a Supreme Court judge in Connecticut, came down and sat by my side and spoke strongly urging it. Chief Justice Gore and Associate Justice Grubb of Delaware came also and sat by my side and supported it by their experience in Delaware, and their testimony as to the deterrent value of the cat on crime of all kinds. Theodore Roosevelt, while president, strongly praised and urged it, in the District of Columbia for Washington, but as it was for the whole congress of all the states the Beverly Robinsons of that day successfully opposed it. The great army of wives who are bound and beaten make no public outcry. Not one woman in fifty enters any complaint in court against the father of their children. Their sighs are secret, their tears unseen, but they are a river, a current like the Amazon through the great ocean of womanhood. Their moans are a continual refrain of uncontrollable anguish. It is a higher humanity, a broader and deeper movement for the benefit of womankind to inquire how best to meet, stem, and master this flood of misery that American women have borne, endured, and suffered, while not a finger or a hand is lifted for their deliverance. Female suf-

frage, even, does not oppose the flood. Believing as I do in the efficiency of the cat as an absolutely positive deterrent against this one crime and shame of wife beating, I shall hail and welcome the hour when we may in our country elevate the cat as an instrument and symbol of humanity and mercy, to universal womanhood in every American state. Wife beating as a crime does not exist in Delaware. Every police magistrate knows to what extent it exists in New York City. The sobs, the moans, the tears of the wretched victims who are still drinking of this bitter, terrible cup are ignored. They are the voices of a woe that exceeds a thousandfold the sentimentalities of a wilderness of all the Beverly Robinsons and mock humanitarians of our age.

The superintendent of prisons opposes the cat! Of course the cat should not be allowed for one moment in prisons for the correction of inmates. It is not a question of the management of prisons or the inmates of institutions. It is the higher question of what shall be the punishment or penalty for crime itself. It is how we can diminish the volume of crime. Is the cat a deterrent? There is no room for any question of sentimentalism or for plea of degradation of the youth. Ten blows of a cat on the bare back of a criminal for crimes of violence, is worth sixty days' sentence. The brute side of the criminal feels and cringes at the cat. It is force against force. He will not face it the second time.

Why throw away with a sneer, the simple and best weapon that saves the boy? The English magistrate, who finds the boy has gone wrong, saves him from the degradation, not only of a commitment to prison, but from that contact with criminals that confinement in a prison entails.

Where is the father who is unable to restrain his wayward son, from 11 to 15 years of age, who has been guilty of petty offense who would not rather have his son whipped even on the bare back and done with, the boy arrested, in his downward path. and nine times out of ten cured, than to have the stain on his own, and the family name, that one hour's commitment to even a common jail and its awful consequences inflicts on a human life? If I had a boy who was going wrong by contact with vicious companions and bad surroundings in schools, which every boy has to meet, I would a thousand times prefer to have him flogged by the master, or even by order of the magistrate as is done sometimes in mercy by the father himself under the eye of the court in England. One such experiment in the life of the erring boy, may be his salvation, while the key of the jail turned on him is often the first fatal step in his path to ruin.

CLARK BELL, New York City.

Editor of *Medico-Legal Journal.* (Reprinted from the December issue of the *Medico-Legal Journal*).

American Penology Through German Eyes.—In the *Viertelgahrssohrift fur gerichliche Medecin und öffentliches Sanitatswesen,* vol. 3, No. 43 (Berlin) Dr. Hugo Marx tells of the impressions of the United States gained by a prison physician traveling in America. He is on the whole sufficiently complimentary. The use of probation, in the case of first offenders, he recommends without reserve and shows friendliness toward the indeterminate sentence. Our reformatory system appealed to him especially. He contrasts it most favorably with German methods which, in his opinion, have the effect of depriving prisoners of mental self-reliance instead of helping them to it. But he admits—and

this is of particular importance to us—that owing to lack of competent evidence nothing absolutely certain can be said about the results of the reformatory system, probation, the indeterminate sentence and parole. It is a polite way of intimating that we lack proper records and statistics. On account of this relative uncertainty Dr. Marx does not advocate the adoption of American methods without further inquiry, but recommends that one or more reformatories of the American pattern be established experimentally. He would have also an institution for juvenile delinquents like the one at Industry, N. Y.

George Stammer of Berlin has published some notes on American penology in vol. 47 of the *Archiv für Kriminalanthropologic und Kriminalistik,* Leipzig. His presentation of the principles of our penology is in the main correct; but his description of our methods is less discriminating. He rehearses them one by one with little comment. Our way of dealing with habitual criminals evidently displeases the author. One wonders what particular piece of state legislation he has in mind. Evidently the great difference in methods and practice between the states has not been fully understood. Our police system he finds defective, but where did he learn that there are 118 unpunished murderers in the United States to each million of population as against five in Germany? The author closes with a rather touching reference to our prison Sunday which he seems to regard as being observed in every church of the land, and which he takes as one indication of the general and deep concern of our people for questions of penology. If it were true! JOHN KOREN, Boston.

A State Industrial Farm for California.—Recently the writer has put in the hands of Governor Hiram W. Johnson a plan for a State industrial farm which will be brought before the next regular session of the state legislature. The bill calls for five thousand acres of land where farming, stock raising, gardening, lumbering, orcharding, quarrying and other wholesome outdoor occupations can be engaged in. This has been in the writer's mind for 20 years, but until lately he could get no hearing as the plan was declared impractical. Of late, however, state officials, jurists, prison officials, and other prominent citizens have been persuaded to see its feasibility.

It is intended to help the prisoners mentally, morally, physically, and financially before he is discharged from his term, rather than trust to charity to help him after his discharge when he has been debilitated mentally, morally, and physically during a term of confinement in the factories of the prison. The plan is to have honor men from both prisons of the state to construct the buildings and improve the land under proper supervision, and the plan further on to be operated under the indeterminate sentence and parole plan.

W. I. DAY, East Oakland, Cal.

School of Letters in the Huntingdon, Pa., Reformatory.—Among the penal institutions of America there is none more important than a reformatory, an institution for the detention and reformation of juvenile offenders who have committed the first offense against the laws of the state. Great care must be exercised in dealing with this class of law-breakers, whose ages range from 15 to 25 years. Our first aim, which we desire always to carry to successful completion, is entire thoroughness. In this we are handicapped to an extent surpassing that of schools whose environments are more satisfactory than ours. Many of the influences which prove derogatory to progress are of such a nature

that, in the course of events, can only be endured. In this list we may include past training of a nature entirely wrong. This must be broken up. In some cases we find deficient mental caliber. Others whose faculties are only alert on certain subjects, and semidormant on others. All these traits must be properly adjusted before the mental machinery can be made to run without friction. The accomplishment of this requires some tact and much time.

The effort is put forth in our schools to do all for the pupil possible. In this he will require that the "How" and "What" must follow. The second general aim in our schools is to teach only the intensely practical. The time spent in teaching technicalities would be more than lost. The aim is and should be to teach that which will prove of some practical utility in the future outside life of the learner. Mathematics (arithmetic) is one of the principal studies in our curriculum. This followed by efficient training in orthography, keeping accounts, or elementary bookkeeping, and with continued practice in penmanship, goes to make up the practical bread-earning part of our school training.

While this work is in progress the literary element is not neglected. Thorough instruction is given in language to the different classes where the grade permits. The discussion of literary and scientific subjects are freely indulged. The young man going out from our schools, if he has been at all industrious, and desirous of knowing, is able to converse intelligently on all subjects, either religious, economic, historical or political. We confidently believe if the persons with whom our pupils come in contact after going beyond the confines of our schools would treat them with true philanthropy, they will prove that the lessons relevant to good government and discipline have had the desired effect. As long as the maxim prevails, "Once a criminal, always a criminal," will our schools fail in reaching that high state of perfection, looking to the lasting reformation of those placed under our care. If proper guardianship or parental care were exercised after their term of incarceration has expired, the effect of our teaching would have ample time to materialize, and better results could be expected.

The root of evil with the majority of the young men brought to the reformatory is that some time in their lives they have been neglected; they were left to themselves. Few people who are thus left will make any decided progress, or do anything to the advantage of anybody. They have idled away their time on our streets, lanes, alleys and wharves of our cities, and learned to swear, steal and lie. A dollar spent in gathering them into homes and caring for them in youth would be worth more than many dollars in punishing them after they have grown old and hardened in their crimes. Prevention is more economical and safer than repression.

J. H. LIKENS, School Superintendent, Huntingdon, Pa., Reformatory.

Test of the Efficiency of the Probation System in Buffalo.—At the June Criminal term of the Supreme Court for Erie County, New York State made an interesting test of the efficacy of the probation system.

On May 23rd, about ten o'clock in the evening, two boys, K. and V. had taken an automobile, valued at $3500, which had been left standing in front of a downtown hotel, and, accompanied by two girls, had gone joy riding. While traveling at a high rate of speed just outside the city of Buffalo, the machine skidded on a sharp curve, turned turtle, and fell into a ditch, resulting in damage of about $600 to the machine.

The boys were arrested several days later and charged with grand larceny in the second degree, under the statute of New York. They pleaded guilty and were brought before Justice Charles A. Pooley for sentence.

Both boys were eighteen years of age, came from very respectable families, and had no previous criminal records, although one admitted that he had taken four other cars for joy rides within the last three months.

The complainant was the Michigan Commercial Insurance Company, which had insured the owner of the automobile. The President of the Automobile Club of Buffalo joined with the Insurance Company's representative in requesting the court to make an example of these boys owing to the large number of like offenses which have occurred recently in this locality.

Justice Pooley, after severely reprimanding the boys, suspended sentence upon them, placing them on probation for a year on the condition that they report regularly to the Probation officer, that each get some regular employment, and that they repay the Insurance Company from their own earnings and not from family contributions, for the damage done to the machine.

The efficient probation office at Buffalo has provided positions for both boys, enabling them to begin payment, and they are now making reparation out of their own earnings for the loss which they caused.

It is clear in this way that the boys are being saved by hard work, the wrong done is being really righted, and the state is not being put to prison expenses to subject these boys to criminal associations.

ADELBERT MOOT, Buffalo.

POLICE—IDENTIFICATION.

The Golden Rule Police Policy in Cleveland, Ohio.—The following is a copy of the daily bulletin of February 1, 1912, issued by Chief of Police Fred Kohler to the Police Department of Cleveland, Ohio:

UNDER THE OLD CUSTOM OF MAKING ARRESTS.

Arrests for the year 1906	31,736
Arrests for the year 1907	30,418

UNDER THE COMMON SENSE OR GOLDEN RULE POLICY.

Arrests for the year 1908	10,085
Arrests for the year 1909	6,018
Arrests for the year 1910	7,185
Arrests for the year 1911	9,516

DISPOSITION OF CASES AFTER ARREST IS MADE.

	1908	1909	1910	1911
Total number of arrests made	10,085	6,018	7,185	9,516
Intoxicated persons released on waivers	2,512	331	33	8
Turned over to other authorities	470	180	212	240
Bound over	653	547	510	692
Sent to the workhouse	1,124	1,030	1,365	1,459
Fined (money)	911	950	1,162	1,444
Cases continued	260	139	139	124
Persons arrested, disgraced and then allowed to go free	4,155	2,841	3,763	5,549

Take note of the 5,549 persons allowed to go free out of a total number of 9,516 arrests in the year 1911. No doubt the imprisonment and disgrace was a most severe penalty for them, but what has society gained?

There is no reason why persons should be placed in prison for minor violations only to be disgraced and then go free. It weakens their regard and respect for the law.

If you but appreciate the effect upon the moral character after incarceration in prison, you will readily agree. If the Common Sense Inquisition had been made by the proper officers in the majority of the cases, the matter could have been adjusted without arrest with better results.

In every matter that comes before you be sure to make every possible inquiry so as not to place any person in prison unless the officer in charge is satisfied that you have the necessary evidence to convict, or in felony cases, to detain.

I want to reduce useless arrests to a minimum this year, and insist that the Common Sense or so-called Golden Rule Policy is to be our watchword to achieve this result.

See table below for January, 1912.

DISPOSITION OF ARRESTS BY POLICE WITHOUT WARRANTS.

	1908	1909	1910	1911	1912
Total number of arrests for January	911	591	401	635	529
Intoxicated persons released on waivers	274	129	3	0	2
Turned over to other authorities	56	25	10	25	20
Bound over	56	45	31	59	45
Sent to the workhouse	72	46	56	73	69
Fined (money)	34	66	48	75	32
Cases continued	176	118	100	139	28
Persons arrested, disgraced and then allowed to go free	243	162	153	264	69

DISPOSITION OF ARRESTS WITH WARRANTS.

	1908	1909	1910	1911	1912
Total number of arrests for January	911	591	401	635	529
Intoxicated persons released on waivers	274	129	3	0	0
Turned over to other authorities	56	25	10	25	5
Bound over	56	45	31	59	11
Sent to the workhouse	72	46	56	73	51
Fined (money)	34	66	48	75	24
Cases continued	176	118	100	139	55
Persons arrested, disgraced and then allowed to go free	243	162	153	264	118

R. H. G.

A Policewoman for Strasburg.—The magazine, *Seeking and Saving*, published by the Reformatory and Refuge Union of London, publishes the following note concerning the first policewoman in Germany:

"The Berlin correspondent of the *Standard* gives the following particulars of the duties of what we believe to be the first policewoman in Europe. Strasburg is to have the honor of initiating this service; her salary is to come from

the funds of a private association—the Local Committee of Public Morals—and partly from the State Exchequer. The duties of this woman assistant of the police force concern the supervision of women thieves and unfortunates; but this is a mere beginning. She is to have a special office where she may receive reports on the irregular morals of servant girls and shop assistants, whom she is then to visit in order to convey words of warning, as well as sympathetic counsel to the weaker victims of temptation. By the co-operation of the Public Morals Committee she is also empowered to find suitable employment for these women.'

"'Another of her duties will be the interrogation of first offenders who, by the provisions of a special decree, will not be led before the police court. She may also be called upon by the mothers of headstrong girls to report on their doings. But police work in the strict sense of the term is not the greater part of her duties. Provided with a fund of a few hundred pounds, the new assistant is to be something of a police court missionary, something of a guardian angel to all the women who come within her ken as being out of harmony with the law.'

"'She is to be empowered to handle the earnings of all the younger women who come under her supervision, and she is advised to place one-third in the savings bank, to give one-third to the parents, and to leave the remaining third with her protegee. Her signature will also obtain for her protegees clothing and other articles at cost price. Furthermore, she will have the control of the girls' hostels.'

"'The post is not to come into being until October 1st, and the city authorities are now anxiously advertising for someone to fill it. The particulars show that the appointment is to be given a trial for one year befroe being made a permanency. It is significant that the advertisements make a direct appeal to the supporters of the suffrage movement. Here, it says, in effect, is an opportunity for the suffragists to come forward to do real work; and successful accomplishment here, through the support of the movement, it adds, would do much to remove opposition to their aims and endeavors.'" A. W. T.

Mr. McCaffrey to Study Police Organization.—It will be of interest to those who are concerned in the organization of police systems to know that Mr. George H. McCaffrey, a graduate student in Harvard University, has recently been appointed Sheldon Fellow to enable him to study police systems abroad in London, other foreign cities and in America. Mr. McCaffrey will be remembered as the author of the excellent article on The Boston Police, which appeared exclusively in this JOURNAL, Vol. II at page 672. R. H. G.

Finger Prints and Heart Pulsations.—*Law Notes* recently contained the following:

"The Supreme Court of Illinois in the recent case of People v. Jennings, 96 N. E. Rep. 1077, had occasion to pass upon the admissibility in evidence of photographs of finger prints and of the testimony of experts as to the identity of two sets of finger prints. The accused in that case was convicted of murder in the first degree, and the expert evidence figured largely in the case. The Supreme Court, in holding that such evidence was admissible, said: 'It is earnestly insisted that this class of testimony is not admissible under the common-law rules of evidence, and as there is no statute in this State

authorizing it the court should have refused to permit its introduction. No case in which this question has been raised has been cited in the briefs, and we find no statutes or decisions touching the point in this country. This class of evidence is admitted in Great Britain. In 1909 the Court of Criminal Appeals held that finger prints might be received in evidence, and refused to interfere with a conviction below though this evidence was the sole ground of identification. *In re Castleton's Case,* 3 Crim. App. 74. While the courts of this country do not appear to have had occasion to pass on the question, standard authorities on scientific subjects discuss the use of finger prints as a system of identification, concluding that experience has shown it to be reliable. Ten Ency. Britannica (11th ed.) 376; 5 Nelson's Ency. 28. See also Gross' Crim. Investigation (Adams' Trans.) 277; Fuld's Police Administration, 342; Osborn's Questioned Documents, 279. These authorities state that this system of identification is of every ancient origin, having been used in Egypt when the impression of the monarch's thumb was used as his sign manual, that it has been used in the courts of India for many years and more recently in the courts of several European countries; that in recent years its use has become very general by the police departments of the large cities of this country and Europe; that the great success of the system in England, where it has been used since 1891 in thousands of cases without error, caused the sending of an investigating commission from the United States, on whose favorable report a bureau was established by the United States government in the war and other departments. . . . We are disposed to hold from the evidence of the four witnesses who testified, and from writings we have referred to on this subject, that there is a scientific basis for the system of finger print identification, and that the courts are justified in admitting this class of evidence; that this method of identification is in such general and common use that the courts cannot refuse to take judicial cognizance of it.' The court also held that it was not error to permit the finger print experts to testify positively that the finger prints discovered at the scene of the crime were made by the same person as the finger prints obtained of the accused after his arrest. In so holding the court said: 'While it is usual for expert witnesses to testify that they believe or think, or in their best judgment, that such and such a thing is true, no rule of law prevents them from testifying positively on such subjects. It is for the jury to determine the weight to be given to their testimony.'

"While the Illinois case above cited appears to be one of first impression in an appellate court upon the admissibility of finger print evidence, such evidence has been received in numerous recent trials, among which might be mentioned a murder trial in New York in which that class of evidence was mainly relied upon in securing the conviction which followed. Finger print evidence presents many features which seem to place it above the other classes of expert evidence. One of the most striking differentiating features is the fact that, from the data now obtainable, it is possible for a finger print expert to state positively as to the identity of finger prints. It is believed that in all of the cases in which such evidence has so far been made use of, in no instance has there been that conflict of opinion between the experts which is a disgusting feature of the testimony of the so-called 'alienists.' Should this record continue, it is easy to foresee the weight which will be attached to such evidence by juries."

FINGERPRINTS AS EVIDENCE

As scientific knowledge increases and is made more exact, new methods of identification and proof are developed. The court in the Jennings case stated that it was at one time seriously questioned whether a photograph could properly be introduced in evidence. In Boyne City, etc., R. R. Co. v. Anderson (146 Mich. 328), decided in 1906, the court permitted the operation of a phonograph before the jury to reproduce the sound made by certain railroad trains. Communications through the telephone have been held admissible. In a recent sensational investigation evidence of a conversation heard through the medium of the dictagraph was received. Professor Wignore, in his book on Evidence, says the test in such cases is whether "the instrument or process is known to be a trustworthy one." Since it has been scientifically established that the papillary lines of the finger tips are different in each person and that they remain unchanged from birth to the decomposition of the body, and since impressions made by the finger tips may be photographically preserved, it would seem that the method of identification by such impressions was sufficiently trustworthy to allow the impressions to be received in evidence. The same degree of trustworthiness cannot be claimed for the process described in the following comment in the March issue of *Law Notes:*

"From California comes the report of what is claimed to be the first demonstration in a court of justice of the Münsterberg theory of criminal detection by heart pulsations. The report states that the defendant in a criminal prosecution consented to become the subject of the test, and his normal pulse was found to be 79. The pulse increased to 91 when he gave his name as 'James Smithers' and to 95 when informed by the judge that he was not telling the truth, which he admitted. In this instance of course the test worked to perfection. But suppose the defendant had been a timid female. When asked a simple question experience teaches us that she would have become at once confused, and in all probability the increase of heart pulsation upon making a truthful answer would have been at the same rate as the increase in the California case. What benefit in such a case would the increase in pulsation have supplied? Of course if an increase in pulsation is to be given weight as impeaching evidence a normal pulse must be considered as corroborating evidence, and if the defendant in the California case had 'liquored up' before the trial the heart pulsation might not have increased, and might it not then have been said that the evidence of the defendant, corroborated by the liquor, should prevail over the evidence of two witnesses for the prosecution?"

EDWIN R. KEEDY, Chicago.

Fingerprints as Evidence in a Victorian Case. "The value of fingerprint evidence as a means of identifying a person charged with a criminal offence is to be argued before the State Full Court shortly on a case to be stated by Judge Johnston, sitting as chairman of the General Sessions. On Wednesday last Edward Parker was convicted before his Honor on a charge of stealing from a warehouse, mainly on the evidence of fingerprints found on a ginger-beer bottle on the premises. Application was made today by Mr. Bryant, instructed by Mr. Sonenberg, for a case to be stated to the Full Court to determine whether the evidence in the case was sufficient to warrant a conviction.

"Mr. Bryant said the value of fingerprint evidence might be very great, but, on the other hand, might be entirely fallacious. In the interests of the community it was desirable that there should be some definite ruling on its value. In this case there was nothing to show that the accused had been in the vicinity of the warehouse. None of the stolen jewelry was found on him, nor was he found associated with any person in possession of any of the jewelry. The ginger-beer bottle might have been put in the warehouse by somebody else.

"Mr. Woinarski, K. C., the Crown Prosecutor, quoted an English case to show that fingerprint evidence was enough if it satisfied the jury. In that particular case the fingerprints were on a candle. It was the only evidence of identification, and the jury convicted the accused. The court refused a new trial, holding that it was a matter for the jury.

"Judge Johnson said as this was a matter of great public importance it would be advisable to have an authoritative opinion on the subject, and he would state a case for the Full Court as requested.

"Mr. Woinarski asked that the accused should be kept in custody in the meantime and his Honor said he would not allow him to be at liberty."—From the *Australian Advertiser,* March 15, 1912.

BENJAMIN JUDKINS, San Diego, Cal.