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ENGLISH CRIMINAL TRIALS OF TODAY

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THIS paper is not intended to be historical or to contrast the past with the present in England, but is more especially to contrast the criminal trials in England with the like trials in this country at the present time.

My opportunities for observation were not very extended while in England and they were confined to the courts of general jurisdiction in London, but the facts upon which I will comment were readily to be observed and carry their own meaning.

There was printed in the newspapers last summer, while we of the American Bar were visiting London, a summary of the annual report of Scotland Yard for the year 1923. Scotland Yard is more especially London's, but in its general service is also England's police and detective system.

By use of this report, comparisons with such criminal statistics as we have in the United States were readily made. It appeared by the Scotland Yard report that in 1923 there occurred in London twenty-seven homicides of supposedly criminal nature. In all of these the alleged offender was apprehended and dealt with by trial and punishment, or exoneration as the case required. None were left mysteries.

In the city of New York in 1921, there were reported 230 criminal homicides. In many of these the identity of the criminal was not even known; in still more the offender was never apprehended, and many have no doubt passed into oblivion as unsolved detective problems. I have not the statistics available for the succeeding years.

In the city of Chicago in 1921, there were reported 136 criminal homicides of which a large proportion remained mysteries. The Chicago record has steadily mounted in the succeeding years, until as reported by the *Chicago Tribune,* there occurred in Chicago in 1924, 350 criminal homicides; and the *Tribune's* count for the first half of 1925 showed that the number was still on the increase. One has only to consult the daily newspapers to know that the organization of the underworld of Chicago has reached the point where it has openly defied the police, and, in at least one locality, started to exterminate the officers who attempted to break up criminal haunts and criminal business, and it seems doubtful at this writing whether the police of Chicago have any

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real control over crime in that city. When the leaders of organized crime, O'Banion and Torreo and the Gennas, were successively shot in feudal war, the victims and their friends steadily refused to give the police information as to their assailants, reserving to themselves the right of punishment and saying to the police in answer to questions, "That's my business, I'll take care of that."

While the record for Wisconsin and in our big city of Milwaukee is undoubtedly much better, the statistics for Wisconsin are not at hand. However, homicides that remain mysteries are not unknown here. Several have occurred in my own circuit within the past few years that are still unsolved problems.

A comparison between London and our American cities in respect to other crimes than homicides is equally unfavorable to America. For example, there were in 1921, in all England and Wales, ninety-five robberies, in New York City over 1,400, and in Chicago over 2,400. London alone has a larger population that the city of New York and about double the population of Chicago; and England and Wales with all their large cities contain four or five times the population of New York. The daylight robberies of banks, bank messengers, pay roll messengers, mail and express vans, and the hold-ups of mail and express trains, involving booty running up into millions, which are so common here, have no counterparts in the British Isles.

Sufficient thus appears, without comparing further, to challenge our most earnest attention.

We will find the reasons for our unfavorable showing in several fields, the three principal ones being: (1) the difference in efficiency of police and detective systems; (2) the difference in the attitude of a majority of the people toward criminals and law enforcement, and (3) the difference in the systems of procedure, and more especially in the powers of courts.

To explore all of these three fields would carry us far beyond the limits of this paper.

We will only note in passing over the first field that the members of Scotland Yard have each entered the service as a life profession and have prepared for it by a course of study, that they are advanced in rank strictly upon merit, are beyond the influence of any political machine, and the officers are as well paid and as highly honored as the members of any of the learned professions, or of any other department of government. The contrast here, especially in the particular that our police and detective bodies are so often hitched to the fortunes of the political machines of the current politicians in power, is quite apparent. The underworld of Chicago, no doubt, enjoy much of their immunity because of the number of votes they can swing for or against the ad-

ministration, and leaders of such votes can make large claims to favors when in need.

With reference to the second field, we have only sufficient space to note that we are a nation of law breakers and sympathizers with criminals. We delight in making laws and then in going merrily on our way to break them. We break the traffic laws, the game laws, the Sunday laws, the liquor laws, the anti-trust laws, and many others, without a twinge of conscience, and almost as a habit, and do it with impunity. And when an attempt is made to bring the more important offenders to justice, there often seem to be as many who (with a virtuous air of regard for liberty of the individual) are more concerned with giving the criminal every possible chance to avoid conviction including every technical legal right, than to assist in the accomplishment of actual justice. The more cold-blooded and daring the criminal, the more who will insist in regarding him with a sort of hero worship. The criminal lawyer comes, the sob sister and the sentimentalist come, the psychologist and professional alienist come, the new theory criminologist comes, and their spirit pervades to some extent the juries, so that if an offender has been so unfortunate as to be brought to trial, he has some good reasons to expect an acquittal. Instead of treating the law as a thing to be sacredly observed, we seem more concerned to find means of circumventing it.

One need go no further in order to discover the prevalence of this sentiment than to try to have the legislature adopt some measure for the more stringent enforcement of the criminal law, and experience there the unsympathetic hearing that will be accorded you.

This country was colonized by those who fled from a too severe and despotic exercise of authority, and who sought, first of all, liberty. The spirit of those colonists pervaded the framing of governments here and filled our constitutions and statutes with so many provisions calculated to prevent oppression, that we have in many instances manacled the hands of justice. At the same time we have bred a sentiment, more or less prevalent, which rejoices more in the ninety and nine criminals who are freed than in the one who may be punished. It is high time that we cultivate an entirely different sentiment.

But this paper was begun more with the purpose of examining the third field to which we have referred above. The most noticeable feature of the English courts and procedure is their freedom to accomplish justice. While the system of trial by jury has been preserved, they have liberalized and humanized it, and made of it a good instrument to ascertain guilt or innocence without defeating justice. In the procedure, the presiding judge, the barristers, and the jury each have their important part. In this country we have made a fetish of jury trial. In some

states, the jury is, by constitution or by statute, made the judge of both the law and the fact, and the trial judge may not even presume to state authoritatively the law applicable to the case, or very much curtail counsel's *voir dire* examination or argument to the jury. In all states it is the rule that the trial judge must jealously guard against the admission of any improper evidence against the defendant, or the exclusion of any proper evidence for him, and must avoid the slightest expression of opinion on the weight of any evidence or upon the merits of the case, and any error is in most states (though not in Wisconsin) presumed to be prejudicial and results in a mistrial, if there has been a conviction, on the theory that the jury must have the case presented to it to a nicety before it can legally convict. Wherever it is conceived that the niceties of the defendant's rights, which have been set down in statutes or constitution, have been infringed, the result is an order for a new trial. These things taken in connection with the weakness of our police and detective systems, have provided so many avenues of escape, that the professional criminal lives his life without much fear of being interrupted in his profession. We have established the vicious circle of crime. The less we apprehend and punish, the greater is the number of crimes. The greater the number of crimes and criminals, the less able is the machinery of detection and punishment to cope with the situation. The machinery is clogged. Punishment is proportionally less and much more delayed and becomes practically of no effect.

Partly because crime is well in control in the Britsh Isles and partly because of supplying sufficient courts and prosecutors, there is always a court ready to try an accused without delay. It is a rare thing that any one accused of crime is not tried within twenty or thirty days after commission of the offense; courts are not overcrowded and they do not delay. Nor are delays granted to the defendant for any trifling reason.

There is no filibustering in trials over there. When the case is called the prisoner is in the dock—such a prominent position that no one mistakes the object of the trial. They try the defendant and not the complaining witness or some other witness or the prosecuting attorney. The jurors are drawn much as we draw trial jurors here and they file into the jury box. But there is no *voir dire* examination, or practically none. The right to examine prospective jurors exists but, in practice, it is almost never exercised. There are some rights of peremptory challenge of jurors, the exact limits of which I did not learn, but the right is very sparingly used. Such right is exercised, if at all, as each juror is successively called to arise and take the jurors' oath. Each juror is sworn separately, with Bible in hand, and is required to kiss the book. A copy of the Bible lies before each juror, and one before the witness, at all times. The empaneling of a jury occupies from ten to twenty min-

utes, and not more in even the most important cases. The trial proceeds with perfect courtesy and is free from pyrotechnics or appeals to prejudice or sympathy. It is a matter-of-fact practical investigation of the guilt or innocence of the accused. The dragging in of extraneous matter to awaken the prejudices or sympathy of the jury is not attempted. Every barrister is brought up among the traditions of the Inns of Court, and with a training that makes him, first of all, a servant of the cause of justice. He has no ambition to secure an acquittal by any hook or crook or technicality, or by eloquent appeal to the jury to override the law or the facts. If the defendant is not guilty there is every facility for making it so appear and if he is acquitted, it must be upon the merits of the case. They breed no criminal lawyers over there, great or otherwise.

The presiding judge has full power to control, direct, and restrict the trial of the case and may sum up the evidence to the jury, discuss the weight and importance, or the weakness or incredibility, of any part of it without fear of being penalized by a reversal and an order for a new trial. There are no second trials of criminal cases before the jury over there.

An appeal, if taken, must be taken in a very brief time, never over thirty days. The appellate court is always ready to hear the appeal, the record being made up and laid before the appellate court without any printing. The appeal must be argued within a very few days thereafter. Decision thereon is usually given on the day of the argument. This is the easier because the sole question is whether, upon the merits as shown by the record, the defendant is guilty of the offense of which he has been convicted, or whether he is guilty of some other offense as shown by the record. The appellate court may send out for evidence to supply any omission in the record, may affirm the sentence, or reduce or increase the punishment, may substitute an entirely different judgment, or may discharge the defendant altogether. But it never orders a re-trial of the case by the lower court.

All these things occur so speedily and punishment follows the offense so quickly that they leave upon the public mind the impression of certain and prompt retribution for every crime. As a deterrent, this feature cannot be overestimated.

On arriving in Glasgow, I read in the newspapers of the beginning of the trial in London of one Mahon for murder. On arriving in London, three days later, the newspapers carried the accounts of the conviction of Mahon and his sentence to death. The case was not a particularly simple one, but would compare with the Hoover case tried in Milwaukee last May. The London papers stated that Mahon would appeal and he did. Within thirty days, the papers carried the news of the

hearing of the appeal and the affirmance of the sentence. The commission of the offense, the trial, the hearing of the appeal, and the affirmance all occurred within sixty days. This case was not unusual in the speed with which the events transpired.

Contrast this with some of the recent trials in Illinois which have filled the newspapers. The Sweet-Highten case was begun December 1 and the verdict was received on Christmas eve of last year. More than two weeks were required to empanel the jury. The Lincoln case required as much time. In the Stokes case in Chicago (not a homicide case) more than three weeks were required to empanel the jury; and a like time was required in the Shepherd case. Each required more than five weeks to complete. In the Orpet case, tried a few years ago at Waukegan, a longer time was consumed, and a full week of the trial was spent in argument to the jury after the evidence was all in. These were not common sense investigations of the guilt or innocence of the defendants, but they were spectacular contests of wits in which sufficient handicaps had been placed upon the prosecution by statutes and rules of procedure to make the contest supposedly more evenly balanced and to give the defendant a sporting chance.

We are doing better than that in Wisconsin. Thanks to some remedial legislation and the wise application thereof by the Supreme Court, we present no such travesties as have just been mentioned. Here it seldom requires more than a day to empanel a jury in the most serious criminal case, and often it takes much less than a day. And the trials do not drag out to such weary length. But even here, too much time is used both in the empaneling of juries and in the trial work. There is too much delay before trials are begun and the same criticism applies to reviews on writ of error.

I have not written this paper for the purpose of advocating specific reforms. But a brief survey of our constitutions and statutes in the light of the English procedure ought to set us in action.