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BRITISH JUSTICE

AN OUTLINE OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN ENGLAND AND WALES

BY

SIR MAURICE SHELDON AMOS

K.B.E., K.C.

With eight pages of photographs

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BRITISH JUSTICE[1]

1. Introduction

The Administration of Justice in England and Wales

According to old tradition, it is the business of the King, acting through his judges, sheriffs, coroners, and other officers, to preserve public order in his realm of England. In the words of Blackstone[2]: "the King's Majesty is, by office and dignity royal, the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept and to punish such as break it; hence it is usually called the King's Peace". And so, until recently, the formal act of accusation, called an "indictment",[3] closed with the declaration that the offence with which the prisoner was charged was "against the peace of our lord the King, his Crown and dignity".

It is the purpose of this essay to give a popular account of the institutions and methods by which the criminal law is enforced and the King's Peace preserved in England and Wales at the present day. But for the popular explanation of these institutions and methods it is desirable to begin with two sections of a prefatory character, the first on the so-called "accusatorial system", and the second on the classification of offences.

The Accusatorial System

There is a fundamental difference between the criminal law of England and that of the principal countries of the European Continent. This difference consists in the fact that the English system is still, in theory at any rate, *accusatorial* in character, whereas the Continental

1 In spite of the title, the present survey relates only to England and Wales. The legal institutions of Scotland, though similar in fundamentals, are sufficiently different to require separate treatment.

2 Sir William Blackstone (1723–1780), author of the famous "Commentaries on the Laws of England" (1765–1769). (Lippincott.)

3 Pronounced "inditement".

system is *inquisitorial*. To explain the distinction, it is necessary to make a short digression into history.

In the early Middle Ages, crimes were generally regarded throughout western Europe as matters which chiefly concerned the parties—the criminal and the victim, or his relations. It was the business of the injured party, or of his family, to bring the wrongdoer to justice, and both parties were regarded as standing more or less on a footing of equality, as they do today in a purely civil suit; so much so that some customs required the accuser no less than the accused to be imprisoned until judgment was pronounced. Then the question of the guilt or innocence of the accused was not regarded as a matter fit to be decided by human authority; it must so far as possible be referred to Divine judgment. The principal way in which the judgment of God was invoked was by requiring the accused, against whom there existed sufficiently strong presumption of guilt, to submit to the Ordeal. Or, again, the accused might be required to clear himself, if he could, by compurgators, that is to say, by the oaths of a prescribed number of his kinsfolk or neighbours to the effect that in their belief he was not guilty; a requirement which, in an age which was confident that a false oath would surely attract Divine retribution, also implied a preference of Divine to human judgment. Then, thirdly, resort was for many purposes had to trial by combat; the parties, or their champions, fought a public duel, with weapons and according to rules strictly prescribed by custom, and the issue of the battle was held to settle the truth or falsehood of the accusation.[1] This was the accusatorial system in its most uncompromising form.

In the course of time this generally prevalent system was, under the influence of the increasing concern of Government with the repression of crime, modified in England and abandoned on the Continent. On both sides of the Channel reliance upon ordeals, compurgation, and trial by battle gave place to reliance upon proof submitted to the judgment of reason. In England, the duty of deciding the issue of guilty or not guilty was increasingly cast upon the "petty jury", the "twelve good men and true", who (after passing through a

1 The last occasion on which trial by battle was awarded was in 1623; but the combat did not actually take place. The institution remained a half-forgotten possibility, until it was abolished by statute in 1819, in consequence of the case of *Ashford* v. *Thornton*, in which battle was offered by an accused man, and refused by his accuser.

stage when they were investigators and witnesses) became what they are today, the independent judges of the evidence given before them by the witnesses for the prosecution and for the defence. And the accusatorial system, which relies for the prosecution of crime upon the initiative of private persons, still remains in vigour to a considerable extent. Although today, as we shall see, a far-reaching organisation of various official persons and bodies—coroners, Justices of the Peace, police, and the Director of Public Prosecutions—some ancient, some modern—control, assist, and largely supplement private prosecutions, it remains largely true (indeed it is truer now than at one time it was) that the spirit which governs English criminal procedure is the accusatorial spirit of impartiality between the accuser and the accused. Of this spirit the most significant illustration is the fact that the accused on his trial is subjected to no peremptory questioning by judge or prosecutor; and that in the preliminary investigation he is warned to be careful not to give himself away.

The Inquisitorial System

Contrasted with the accusatorial system of criminal justice is the so-called inquisitorial system, which prevails in European Continental countries. This system owes its origin in the twelfth century to the example of the Church. Having to govern a great international organisation, with far-reaching administrative and disciplinary responsibilities, the higher authorities of the Church found themselves continually called upon to adjudicate upon charges of crime, misconduct, and breaches of canonical discipline on the part of their subordinates. When a bishop had reason to suspect that a priest in his diocese was leading an immoral life or was misappropriating Church property, he required, in order to take appropriate action, to be satisfied in his own mind as to the true facts. The question would be of too domestic and administrative a character to be referred to the vote of lay neighbours; clergymen could not fight duels; ordeals (which, incidentally, generally resulted in an acquittal) had lost the confidence of educated men. So the practice grew up of appointing an ecclesiastical officer to investigate the facts, for the information of the bishop or of the bishop's court, by closely questioning the suspected person and his accusers. The inquisitor never had more than an incidental concern with heresy; and the inquisitorial system came to be looked upon, on the other side of the

Channel, as representing a triumph of enlightenment, and as such it was adopted by the lay courts, and so firmly established that it dominates the institutions of the European Continent to the present day. In contrast with the accusatorial system, it represents the principle that it is the business of the judge, co-operating with an official prosecutor, to discover the truth for himself; and that in the pursuit of this object no method is better or more rational than the peremptory cross-examination of the suspected person. That this led to attaching undue importance to extorted confessions, for centuries to the use of torture, and even in modern times, to an inevitable bias, or appearance of bias, have been unfortunate consequences in the working out of an idea which, in its origin, had a considerable claim to represent good sense. And it must be admitted that it is at all times difficult to control the natural tendency of the police to become "inquisitors".

The Classification of Crimes

In the principal European criminal codes, such, for example, as the French Penal Code, offences are classified very simply according to the maximum penalty which they can involve. The French Code recognises three classes: *crimes*, *délits*, and *contraventions*. To each of these classes corresponds its appropriate tribunal—the *cour d'Assise* for "crimes", the *tribunal correctionnel* for "délits", and the *tribunal de simple police* for "contraventions", and to each class of offence corresponds its appropriate procedure.

It is not possible to present the classification of offences under English law in an equally simple plan.

As a first, and not very accurate, approximation we may say that the law of England distinguishes offences into two main categories: (1) indictable offences and (2) non-indictable offences. Indictable offences are the more serious crimes, which must, or may, be tried before a jury in pursuance of the formal act of accusation, or indictment, to which we have already referred. Non-indictable offences are all the rest; and since the alternative to trial by jury [1] is trial by Justices of the Peace at petty sessions, or by the equivalent court of a "stipendiary magistrate", non-indictable offences are sometimes cumbrously referred to as "offences triable by courts of summary jurisdiction".

1 But for treason or felony a peer is triable only by the House of Lords or the Court of the High Steward.

Indictable offences are subject to an ancient distinction into three classes; namely, treasons, felonies, and misdemeanours. Of treason, "the atrocious crime of endeavouring to subvert by violence those institutions which have been ordained in order to secure the peace and happiness of society",[1] it is unnecessary to say more. The difficulty of defining felony must be regarded as an enduring, though not perhaps a very important, defect in our law. In the words of a great authority,[2] "the distinction between felonies and other crimes is very old; it comes to us from a time when almost all felonies were capital crimes, and when it was nearly, or quite, correct to define a felony as a crime for which a man forfeits lands and goods. In course of time the distinction has become capricious, and of no great substantial importance; that is to say, we know little about the punishment that a criminal will get when we know only that his crime is felony, or (as the case may be) misdemeanour. On the whole, a felony will be a bad crime, but there are bad crimes which are not felonies; perjury, for instance, is a misdemeanour, and the distinction between larceny which is, and the obtaining by false pretences which is not a felony, is often very subtle; both would be called theft by any but lawyers. This distinction still complicates criminal procedure; for there is often one rule for felony, another for misdemeanour." For example, whenever a felony has (in fact) been committed, anyone who, on reasonable grounds, suspects a particular person of being the culprit, may lawfully arrest him without a magistrate's warrant; but not so in the case of a misdemeanour.[3]

It remains the fact that the most important distinction in our present law is that between indictable and non-indictable offences.[4] But the simple generalisation with which we began, to the effect that indictable offences are those which are tried by jury, and non-indictable offences those which are tried by the magistrates in their petty-sessional courts, is too sweeping and must be corrected. In fact, the two jurisdictions

1 Chief Justice Marshall, of the Supreme Court of the United States.

2 Maitland, *Justice and Police*, p. 16.

3 The Penal Code of New York State cuts the Gordian knot by defining as felonies all crimes punishable by death or imprisonment in a State prison. All other crimes are misdemeanours.

4 It may be noted that neither the word "felony" nor "misdemeanour" occurs in the index to the *Criminal Statistics* for 1937 published by the Home Office.

overlap. As the result of modern legislation designed to give greate
elasticity to the law, there are nowadays many offences which ma
either be tried on indictment by a jury or by a court of summar
jurisdiction. It is to be remembered that the justices of the peace, i
petty sessions, constitute not only the jurisdiction for the trial of " sum
mary offences ", but also the authority which, after preliminary inquir
has power to commit an accused person for trial on indictment before
jury. When, therefore, a person is brought before the magistrates charg
with one of the " overlapping " offences of which we are speaking, t
court may in many cases, and if it thinks it expedient, treat the charg
as being for a non-indictable offence. But it is the duty of the court,
it wishes to take this course, to inform the accused that he is entitl
to be tried by jury. If he rejects this privilege (the acceptance of whi
involves the risk of higher penalties than the summary court can inflic
the magistrates proceed with the trial as for a summary offence. If, o
the contrary, the accused elects for a jury trial, the magistrates proce
accordingly with the preliminary inquiry, at the conclusion of whi
they will either discharge the prisoner or commit him for trial o
indictment.[1]

Whatever be the maximum penalty prescribed by the law for a
offence, the punishments which the magistrates who dispose of
summarily can impose are limited to a fine which cannot exceed £10
or imprisonment for a term which cannot exceed six months.[2]

The remarkable extent to which the magistrates make use of th
power to dispose of indictable offences in summary proceedings
shown by the following figures for the year 1937. In that year th
total number of persons found guilty of indictable offences in all th
criminal jurisdictions of England and Wales was 77,529. Of th
number, only 7648, or 9.8 per cent, were tried and convicted by th
higher courts.

. . . . . .

The principal authorities concerned in the detection and prosec
tion of crimes are (1) the coroners; (2) the police; (3) the Justices

1 There are, however, certain cases, such as those of offences committe
by mental defectives, where the magistrates may find the charge proved, b
neither proceed to a conviction nor commit for trial.

2 And, in the case of certain offences, when committed by juvenil
whipping.

the Peace; and (4) the Director of Public Prosecutions. Of these the coroners, though not the most important, are the oldest and may conveniently be discussed first.

2. The Coroners

The office of coroner can be traced back to the twelfth century. Its functions were originally very various, and embraced the duty of inquiring into practically all circumstances out of which might arise a claim by the Crown to a fine or a forfeiture of specific property. The office was established for the purpose of safeguarding the pecuniary interests of the Crown, and more especially its pecuniary interests arising from the administration of the criminal law."[1] In course of time the coroners' duties have come to be confined to those of inquiring into the causes of unexplained or unnatural death, and cases of concealment of hidden treasure. Of these the former are of course far the more important, and have long ago ceased to have any connection with forfeitures or other fiscal claims by the Crown.

Coroners must be either barristers or solicitors or legally qualified medical practitioners. Some have both legal and medical qualifications. There are 354 coronerships in England and Wales, the duties of which are discharged by 309 coroners, some of whom consequently hold more than one coronership.

For the purpose of his inquiry, the coroner (in many, but not all cases) must summon a jury of not less than seven or more than eleven persons. The body is in general viewed both by the coroner and by the jury. Witnesses are examined on oath; and where murder is suspected, their evidence is recorded in writing. The verdict of the jury is also recorded in writing, and the paper containing the record is called an " inquisition ".

Since it is the duty of the coroner's court, when investigating a case of unnatural death, to ascertain its cause, it may, if it finds that the deceased met his death by murder or manslaughter,[2] not only find the immediate physical cause of death, such as poison by arsenic, shooting through the heart, or a negligently conducted operation, but also find that the poison was administered, the shot fired, or the operation

1 Holdsworth, *History of English Law*, I, p. 84.

2 " Manslaughter " is " the unlawful and felonious killing of another without malice either express or implied ".

conducted by a named person. An " inquisition " which so accuses a named person of murder or manslaughter is equivalent to an indictment, and involves the necessary consequence that the accused person shall be committed for trial as though he had been indicted in the usual manner.

It is usual for an independent investigation to be held in the ordinary way by the Justices, and both sets of depositions to be sent to the trial court. But in order to avoid the duplication of such proceedings it has been provided by a recent statute that, if the coroner is informed that some person has been charged before examining justices with the murder or manslaughter of the deceased, he shall, in the absence of reason to the contrary, adjourn the inquest until the conclusion of the criminal proceedings. He may resume the inquest after the conclusion of the proceedings before the magistrates, if there seems to be sufficient cause, but the findings of the inquest must not be inconsistent with the result of the criminal proceedings.

There has been much public discussion of the question whether it is desirable that coroners and their juries should push their inquiries beyond the investigation into the immediate physical cause of the death. In cases of suspected crime there is not unlikely to be some person who is the suspected criminal. " The suspect is subpoenaed to attend. He may not know by whom, or on what grounds, what is in truth a charge is being made. Though the fiction is maintained that it is not a trial but an investigation, the evidence may be built up to make a case against him, sometimes when he is not even present throughout the inquest. The rules of evidence may not be, and sometimes are not, fully observed in such cases. He is eventually called as a witness on the subpoena and questions are put to him. However the matter is disguised, the real object of these questions is to elicit his guilt . . . The result has been in several of these cases a severe cross-examination of a suspected person." [1] In short, it has come to be recognised that there is a real danger that in the coroner's court a fundamental principle of English criminal justice may be lost sight of, namely, the accusatorial principle, that a suspected person must not be entrapped by artful or peremptory questioning into self-incrimination unless being fully apprised of the evidence against him, he freely offers himself for examination.

It may be anticipated that before long the powers of coroners' courts to carry their investigations beyond the question of the physical cause of death will be limited, and all formal preliminary inquiries as to the identity of the criminal, if there be one, be left to be conducted by the magistrates alone.[1]

But it is certainly useful that there should exist a judicial officer whose duty it is to inquire almost automatically, without delay and independently of the police, into cases of unexplained or violent death. Such inquiries are particularly valuable where there is no obvious reason to suspect that a crime has been committed, since the insistence on an explanation of the death may very well bring to light grounds for suspicion.

In the year 1937, 31,575 coroners' inquests were held in England and Wales, and in 53 cases verdicts of wilful murder were found.[2]

3. The Police

The modern policeman, or police constable, is the lineal descendant of the mediaeval officer, the " petty constable ", who is first heard of under that name in the year 1252. The office of petty constable was a parish office, it was an annual office, and it was an obligatory and unpaid office ; and since it was obligatory it came in course of time to be discharged in general by an inferior class of paid deputies.

The functions of the constables have been summed up in the old saying that they are the eyes and the hands of the Justices of the Peace ; the eyes to see, by detecting and informing of offences ; the hands to act, by the service of the Justice's summonses and the execution of his warrants of arrest. But a system which provided the Justices with eyes and hands so ill-selected, ill-paid, ill-organised, and undisciplined

[1] *Report of the Departmental Committee on Coroners*, 1936, p. 24.

[1] Some sixty years ago an inquiry into a case of suspected murder by poisoning before a coroner's court, which was carried no further than that court became a *cause célèbre* of outstanding notoriety. This was the inquiry in 1876 into the circumstances of the death of a barrister of the name of Charles Batho. The proceedings lasted over a month, and were conducted on behalf of the Crown by the Attorney-General in person. The person, a woman, who was most vehemently suspected, was publicly examined for five days. An account of this case is to be found in Sir John Hall's *The Batho Mystery*.

[2] But in 33 of these cases the person against whom the verdict of murder was found committed suicide at the time of the murder. It is somewhat surprising to learn that of these determined criminals 22 were women and only 11 were men.

seems never to have afforded much ground for national complacency. Shakespeare's village constables, Dogberry and Verges,[1] are far from flattering portraits. A century after Shakespeare's time London and the country rivalled each other in the numbers and audacity of their burglars, footpads, and highwaymen.

We owe the first effective movement for reform to two distinguished men, Henry Fielding, the author of *Tom Jones*, and his half-brother, Sir John Fielding, who held office in succession as magistrate at the Bow Street police court in London from 1748 to 1780. "By the employment of regularly paid detectives", Sir John Fielding "did more to render the streets of London safe than the whole body of watchmen, beadles, and constables, to the number of about two thousand, had previously been able to effect, and soon afterwards obtained permission to establish, by way of experiment, a small police force organised on novel lines. This force, called the Bow Street Foot Patrol, was divided into eighteen parties, thirteen of which (called the Country Parties) patrolled the principal highways outside the Metropolis, whilst the remaining five (known as the Town Parties) watched the streets of the central district. The remuneration of the patrols was high in comparison with the wages then customary, no patrolman receiving less than two shillings and sixpence a night. The system proved a great success, and a few years later its sphere of usefulness was enlarged by the formation of a horse patrol, which was posted for the protection of travellers on one or other of the main roads leading into the country. Though consisting only of eight men, who, however, were well mounted and well armed, it afforded a better state of security to the suburbs than they had previously enjoyed." [2]

The Bow Street Constables, who were popularly known as the "Bow Street Runners", became famous for their skill and sagacity.

The "New Police"

The Fieldings had made a notable beginning; but it was only a beginning. It was not till nearly fifty years had passed that the next great step forward was made. It was in 1829 that Sir Robert Peel, Home Secretary, procured the passage of the Act of Parliament which created the Metropolitan Police, and led in a few years to the complete reorganisation—perhaps it would be truer to say the first organisation

1 *Much Ado About Nothing.*

2 W. L. Melville Lee, *A History of Police in England*, p. 156. 3 *Ibid.* p. 15



Fox

A policewoman, wearing the war-time metal helmet and carrying a gas-mask



Sport and General

A Metropolitan Police Constable on duty





Topical Press

New Scotland Yard, headquarters of the Metropolitan Police. One end of the wireless room. Operators are taking down wireless reports from mobile police, while the Inspector in charge records them on a large scale-map





Sport and General: Photographic Publications

Above: Inside a Police Station. *Below*: Mobile Police

of the police of the country. The new Metropolitan Police was placed under no local control, but under the direct authority of the Home Office. Its immediate administration was committed to two magistrates, later known as Commissioners, and its headquarters were placed, where they are still, at Scotland Yard. To emphasise their civilian character the new police were equipped, as may be seen in any old volume of *Punch*, with top-hats, a head-dress which was not replaced by the modern helmet until 1864. From the name of their creator the members of the new force were popularly known as "Bobbies" and "Peelers".[1]

Strange to relate, the new police force aroused at first very strong popular opposition. "Week by week certain newspapers continued to publish the most preposterous attacks; no story was too improbable to gain credence. A *coup d'état* was contemplated—it was Sir Robert Peel's intention to place the Duke of Wellington on the throne—English liberty was to give place to military tyranny—under the pretence of providing protection for the people, the Government aimed at the creation of a secret political inquisition—in fact, anything that was at once inconsistent and absurd was listened to with avidity and partly believed."[2] But the authorities adhered to their policy; the new force soon became the model of all British police forces, and in course of time was imitated in the Dominions and Colonies. The Municipal Corporation Act of 1835 required all Borough Councils to establish in the same way a paid and permanent force under the control of the Watch Committee of the Council. In 1839 the counties were empowered, and in 1856 required, to establish similar forces under the control of the Justices in Quarter Sessions.[3]

"There are thus at the present time four [types of] Police organisations in England and Wales . . . the Metropolitan Police, the [separate] City of London Police, the County Police, and the Borough Police."[4] The Metropolitan Police Force alone is placed under the direct authority

[1] "Bobby" seems to have survived, while "Peeler" has become archaic.

[2] Melville Lee, *op. cit.* p. 245. "The perversion of the French police system to purposes of political espionage was one of the factors which delayed police reform in England, and the suspicion that the establishment of an organised body of police under Government control had political motives behind it accounted for much of the hostility with which the Metropolitan Police were at first viewed."—J. F. Moylan, *Scotland Yard* (Whitehall Series, Putnam), p. 218.

[3] Sir Edward Troup, *The Home Office* (Whitehall Series, Putnam), p. 96.

[4] Troup, *op. cit.* p. 96.

of the Home Secretary, the other forces being governed by the variou local authorities ; but Acts of general application secure uniformity i the conditions of police service.

In September 1938 the Metropolitan Police Force had a tot strength of 19,455, of whom 15,703 were simple constables, and th remainder belonged to the higher ranks of superintendents (38), in spectors (910), and sergeants (2804). The total strength of the poli forces of England and Wales was approximately 60,000, that is to sa that the Metropolitan Police make up about one-third of the total poli forces of the country. The Metropolitan force is commanded by Chief Commissioner—who at the present time is Air Vice-Marshal S Philip Game, a former Governor of New South Wales. The Chi Commissioner and the Deputy and Assistant Commissioners are a pointed by the Crown on the recommendation of the Home Secretar The Borough and County Police are commanded by Chief Constable who are commonly retired officers of the Army : they are appointe by the Special Committees of the local Justices, which, in the Borough are known as " Watch Committees ".

Scotland Yard

Scotland Yard,[1] the headquarters of the Metropolitan Police For has a world-wide fame. But the popular belief that " the Yard exercises a general authority over all the police forces of the count is without foundation. Even in a case of suspected murder, the detec ives from the " Yard " can take part in the investigation only if ask to do so by the local Chief Constable. The Metropolitan Police Fo is, as its name implies, primarily the police force for London. B apart from the occasional aid rendered by special emissaries to the lo police forces at their request, there are two important fields in wh Scotland Yard fulfils functions of a national character. It is the Spec Branch at the Yard which is charged with the protection of public m and distinguished foreign visitors, with the supervision of aliens, a with matters relating to arms and explosives. The other field is t of Criminal Records. The Central Bureau at Scotland Yard ke impressions of the finger-prints of all persons who have been senten to imprisonment for serious crime in Great Britain : it now posses more than half a million such prints. The Bureau also maintain Crime Index, consisting of records of criminals classified according

[1] More properly, New Scotland Yard.

their individual idiosyncrasies in methods of " work ", which has proved a valuable aid in the tracking of offenders.

Women Police

An interesting and important development of recent years has been in the enrolment of women police, who have proved particularly useful in the performance of duties relating to women and children. In June, 1938, there were 68 policewomen in London, and 111 in the boroughs and counties. Gloucestershire recently had 4 policewomen who covered rural areas on motor cycles.

Special Constables

An Act of 1673 first gave statutory authority for an already old practice under which Justices appointed " special constables " for special duties, such as assisting in the preservation of the peace when serious disorder was apprehended. They often did good service in the days when regular police forces did not exist, or were in their infancy. " The most noted instance of their employment was at the monster Chartist demonstration in 1848, when it is said 170,000 Special Constables (among them Louis Napoleon, afterwards Emperor of the French) held the London streets." [1] Under the present law, any two or more borough or county Justices may, on receiving sworn information that public disorder is to be apprehended, appoint and swear in special constables. Recent statutes provide for the maintenance of a special constabulary reserve on a permanent footing. In 1938 the strength of this permanent special constabulary for the Metropolis stood at 9255. Permanent special constables may be, and are, appointed at the request of railway companies, the proprietors of canals, and the owners of harbours, docks, and piers, for the maintenance of order and the protection of property on their premises. The Chancellors and Vice-Chancellors of the universities of Oxford and Cambridge have power themselves to appoint special constables for their respective universities.

Special constables have all the powers of a constable, throughout the jurisdiction of the Justices who appointed them.

Powers and Duties of the Police

" The oath taken by Constables before the Justices of the Peace on assuming their office has been described as ' the characteristic mark of

[1] Troup, *The Home Office*, p. 45.

the conversion of a local administrative officer into a ministerial office of the Crown'." [1]

"The most important general duties of Constables are to preserve the King's Peace, and with that object to keep watch and ward in their several districts, and to bring criminals to justice. As part of his general duty to keep the King's Peace it is the duty of a Constable to prevent breaches of the peace and the commission of offences; and if he has reasonable grounds for apprehending that any person intends to provoke a breach of the peace, and that such action will result in a breach of the peace, it is his duty to prevent such action." [2]

Except when he is acting in execution of a warrant lawfully issued, a police constable acts on his own responsibility. If he does something which the law does not empower him to do—and the law is somewhat meticulous in defining the limits of his powers—he lays himself personally open to an action for damage at the suit of the injured party.[3] For purposes of legal liability a constable is a servant of the Crown, and not of the authority which appointed him: and the Crown cannot be held liable for the illegal acts of its servants.

Powers of Arrest

A constable's powers of arrest are derived from three sources: (1) the common law: (2) particular statutes: and (3) the warrant of a magistrate.

(1) A constable's common-law powers of arrest are confined to cases of treason, felony, and breaches of the peace—that is to say, they do not extend to misdemeanour or non-indictable offences other than breaches of the peace. These powers the police share with every citizen. The only additional power, over those of a private citizen, which a constable derives from the common law is that he has the right to arrest on reasonable suspicion that treason or a felony has been committed, and that the person he arrests is the guilty party, even if he is mistaken on both points.[4]

[1] Lord Halsbury, *Encyclopaedia of the Laws of England*, 2nd ed., vol. 2, p. 321.

[2] Halsbury, *loc. cit.*

[3] Though in practice, if justice to the injured party, or to the offending constable, require it, the damages awarded will usually be paid out of public funds.

[4] For the present purpose it is sufficiently accurate to say that a private citizen is only authorised to arrest without a warrant if treason or a felony has actually been committed, and there is good reason to suspect the person arrested.

(2) The powers conferred by particular statutes of arresting without warrant for offences which are not treason or felony are for the most part conferred upon constables alone, and are generally restricted to the arrest of persons caught in the act.[1]

The Right to question: the "Judges' Rules"

"Although it is the duty of the police to obtain all possible information regarding crimes or offences which have been committed, they have in general no power to compel any person to disclose facts within his knowledge or to answer questions put to him." [2]

In 1912 the then Home Secretary requested the judges to set down, in the form of a series of rules, the principles which they considered ought to guide the police in questioning members of the public, whether suspected or not, in regard to crimes.

The status of these Rules has been thus described by the Court of Criminal Appeal in the following words: "In 1912, the Judges, at the request of the Home Secretary, drew up some rules as guides for police officers.[4] These Rules have not the force of law, they are administrative directions, the observance of which the Police authorities should enforce on their subordinates as tending to the fair administration of justice. It is important that they should do so, for statements obtained from prisoners contrary to the spirit of these Rules may be rejected as evidence by the Judge presiding at the trial."

The Rules are nine in number. It is not necessary for our present purpose to quote them in full.

Rule 1. When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

Rule 2. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions, or further questions, as the case may be.

Rule 3. Persons in custody should not be questioned without the usual caution being first administered.

Rule 4. If the prisoner wishes to volunteer any statement, the usual caution should be administered. (The remainder of the rule is omitted.)

[1] Halsbury, *op. cit.* p. 324.

[2] Halsbury, *op. cit.* p. 322.

[4] The first four rules were drawn up in 1912; the remaining five in 1918.

Rule 5. The caution to be administered to a prisoner, wh
he is formally charged, should . . . be in the following word
"Do you wish to say anything in answer to the charge? Y
are not obliged to say anything unless you wish to do so, but whatev
you say will be taken down in writing, and may be given in evidence

Care should be taken to avoid any suggestion that his answers c
only be used in evidence against him, as this may prevent an innoc
person making a statement which might assist to clear him of t
charge.

Rule 6. (Omitted.)

Rule 7. A prisoner making a voluntary statement must not
cross-examined and no questions should be put to him except f
the purpose of removing ambiguity in what he has actually sa
(The remainder of the rule is omitted.)

Rule 8. When two or more persons are charged with the sa
offence and statements are taken separately from the persons charg
the police should not read these statements to the person charged, b
each of such persons should be furnished by the police with a copy
such statements, and nothing should be said or done by the police
invite a reply. If the person charged [1] desires to make a statement
reply, the usual caution should be administered.

Rule 9. Any statement made in accordance with the above ru
should, whenever possible, be taken down in writing and signed
the person making it after it has been read to him, and he has be
invited to make any corrections he may wish.

It will be noticed that it is the purpose of these rules to reconci
so far as possible, the two desiderata: (1) that it should not be ma
impossible for the police, by questioning, and by recording statemen
to discover the authors of a crime and to procure evidence which sh
be admissible before a trial court; and (2) that suspected persons sh
not be beguiled or terrified into self-incrimination. But the reconcili
tion is not easy. The mere fact that a person shows reluctance
answer questions is an admission of his sense of embarrassment. A
the fact that under Rule 2 the duty to caution the suspected pers
arises only when the police officer "has made up his mind to charg
him, makes the duty depend on a somewhat subjective test. T
reader familiar with methods of criminal investigation employed
the Continent of Europe will, however, observe that these rules rend

[1] One of the persons charged?

it practically impossible for the English police to have recourse to the "confrontation" of accused persons, or to the "reconstitution of the crime" with their participation.[1]

4. The Justices of the Peace[2]

One of the most important and successful of the mediaeval inventions in the organisation of government was that of the Justices of the Peace, who go back to the year 1360, in the reign of Edward III. These magistrates appear originally to have been designed to be superior policemen—a few men in each county, of considerable social rank, appointed by the King, whose duty it was to search out and to arrest malefactors, or cause them to be arrested, to examine them and to take measures to secure that they were duly indicted and sent for trial. It was not long before the Justices of the Peace were given jurisdiction to try cases themselves; their numbers were greatly increased; and they continued in general not to be qualified lawyers.

In the course of time, as the centuries went by, there was cast upon the justices, by a multiplicity of statutes, so wide a range of administrative and governmental duties, that by the middle of the nineteenth century it could be said that the government of the counties—which knew nothing of prefects or of sub-prefects—was conducted by the county magistrates.[3] The establishment, however, of other administrative authorities, and in particular of the County Councils in 1888, relieved the county magistrates of the greater part of their purely governmental responsibilities, leaving to them their more magisterial or judicial functions.

The Commissions of the Peace

The Justices are divided among, and their names figure in, a number of different "Commissions of the Peace", one for each county (save

[1] The Judges' Rules do not apply to Justices of the Peace: but the Justices, as we shall see, are no longer concerned, as they once were, with detection and the active collection of evidence.

[2] There is an ambiguity in the title "Justice". To say that Mr. Smith is "a County Justice" means that he is one of the Justices of the Peace for a County; one of a class of about 20,000 persons. To speak of "Mr. Justice Smith" is to convey that Sir Robert Smith is one of "His Majesty's Judges", a judge of the High Court, and a member of a class of about 40 persons.

[3] This was not true of the boroughs, which were administered by their respective corporations, or municipal councils.

that in Yorkshire and Lincolnshire there is one for each of the thre divisions of these counties), one for each of the ancient " liberties " the Isle of Ely, Ripon, and Peterborough, and one for each of abou 200 boroughs. To be in the Commission of the Peace was at one tim a high social distinction as the Commission (in the counties) wa confined to the more important landed proprietors, and commonl included members of the higher nobility. The property qualificatio has now been abolished, and there is a tendency for appointments to b made under the influence of political parties, and for the authorities t seek to maintain a balance.[1] Though to be able to put J.P. after one name is no longer a high honour, it is still a valued distinction.[2] The continue to be unpaid.

Perhaps the greatest change which has taken place in modern time in the nature of the office of a Justice of the Peace has been due to th creation of the New Police. Before the days of Sir Robert Peel' reforms, it was not uncommon for magistrates in person to seek ou offenders, to examine them, and to give evidence against them at the trials. But when the duties of detection and pursuit had been hande over to the police, the magistrates were able to withdraw almos entirely to the more dignified and judicial functions of trying case within their limited jurisdiction, of committing (or refusing to commit accused persons for trial before superior courts, of issuing (or refusin to issue) summonses and warrants.[3]

There are certain powers which a magistrate may exercise whe sitting alone. He has in general the power to issue a summons or warrant [4] to procure the attendance of an accused person or of necessar witnesses. He has the power, in cases of indictable offences, to admi to bail, or to commit for trial—except in cases of felony, where th circumstances are not such as to call unequivocally either for committa or for discharge ; in which cases it is his duty to adjourn the case befor two Justices. In some cases of minor offences a single Justice may tr

[1] There are now about 20,000 Justices of the Peace.

[2] " In old times . . . the justices were paid four shillings a day for attendin sessions, but for a long while past the office has in fact been honorary, and now it is so even in theory ; patriotism, a love of public affairs, the honour an glory of the thing, have supplied names enough for the Commission of th Peace " (Maitland, *Justice and Police*, p. 81).

[3] It has been said that " the Policeman kicked the Justice upstairs ".

[4] A summons directs the person summoned to appear ; a warrant authorise his arrest.

the accused and award a penalty ; but this cannot exceed fourteen days' imprisonment or a fine of twenty shillings.

Petty Sessions

Two or more Justices sitting as a Petty Sessional Court to exercise " summary jurisdiction ", have, as we have already seen, a very wide range of duties and powers. In the year 1937, in addition to disposing by summary proceedings of more than nine-tenths of the indictable offences in which there was a conviction, the Petty Sessions dealt with various non-indictable offences. They also conducted practically all the preliminary inquiries which culminated in committal for trial and indictment before a jury.[1]

Committal for Trial

Where a suspected person is charged before the Justices at Petty Sessions, they may, of course, discharge him if they consider that the evidence is insufficient to justify any further proceedings. If the evidence offered precludes immediate discharge, and the offence belongs to the limited category of graver indictable offences which they have not the legal power to try, the Justices will commit the accused for trial by indictment before a jury. They will also commit the accused for trial by indictment before a jury where the offence charged belongs to the overlapping class, and is therefore within their jurisdiction, if in their judgment it ought to go to a higher court, either because of its difficulty, or because, if proved, it ought to attract a higher penalty than they have power to impose. In either case the court to which they will commit will be either a Court of Quarter Sessions or an Assize Court.

Quarter Sessions

The Justices also participate in the higher jurisdiction of the Quarter Sessions, which, as the name implies, meet four times a year, for the

[1] There are certain jurisdictions where the full powers of a Petty Sessional Court can be exercised by a single magistrate. These are the jurisdictions exercised by the Lord Mayor of the City of London, by the Aldermen of that City, by the Metropolitan Police Magistrates, and by the so-called " Stipendiary Magistrates " in certain other large cities. The " Metropolitan Magistrates " and the " Stipendiary Magistrates " are whole time, professional, and salaried judges. There are 27 of the former, and 18 of the latter.

trial of indictable offences other than capital crimes and certain oth of the more serious offences. Though two justices are enough constitute such a court, it is common in fact for a number of the cou magistrates to attend.

But the outstanding feature of the Quarter Sessions' Court is th it sits with a jury. The functions of presiding judge are in practi discharged by one of the Justices, who holds the distinguished office " Chairman of Quarter Sessions "; and the presence of the oth Justices on the bench serves chiefly to lend further solemnity to t proceedings.[1]

In those boroughs which not only have their own Commission the Peace, but are also entitled to their own Quarter Sessions, the s judge (of course with a jury) is the Recorder, an officer of the Corpo tion, and a professional lawyer, who, since his municipal duties seldo occupy more than a few days in the year, is commonly a practisi member of the Bar, often on his way to higher preferment.

The Riot Act

One of the more picturesque duties which it may fall to a Justice the Peace to discharge, though happily this does not often happen, to " read the Riot Act ". In the year 1714, in the first year of t reign of George I, there was passed an Act of Parliament which pr vided in its first section that " if any persons to the number of twel or more, being unlawfully, riotously, and tumultuously assembl together, to the disturbance of the public peace . . . and being requir by any one or more Justice or Justices of the Peace . . . by proclam tion to be made in the King's name . . . to disperse themselves a peacefully to depart to their habitations or to their lawful busine shall, to the number of twelve or more (notwithstanding such p clamation made) unlawfully, riotously, and tumultuously remain a continue together by the space of one hour after such command request made by proclamation, that then such continuing together . shall be adjudged felony." The following section provides that " Justice of the Peace . . . shall, among the said rioters, or as near

[1] It is not necessary for the Chairman of Quarter Sessions to be a professio lawyer. But under a recent statute strong pressure will be brought to bear procure that trained lawyers, paid or unpaid, shall be chosen for that offic and the extent of the powers of the court will depend upon whether or no t Chairman is so qualified.

as he can safely come, with a loud voice command or cause to be commanded silence to be while proclamation is making, and after that shall openly and with a loud voice make or cause to be made, proclamation in these words, or like in effect: Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to dispense themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies." [1]

The Act goes on to direct that the magistrates are to seize and apprehend members of a riotous mob who refuse to disperse, and to indemnify the magistrates and those who act under their orders if persons are killed or maimed in the process. This has been taken to mean not only that it is lawful for troops to fire on the mob so soon as an hour has elapsed from the reading of the Riot Act, but that it is unlawful for them to fire sooner. This is erroneous. " The law acknowledges no distinction between the soldier and the private individual." [2] " Where the danger is pressing and immediate; where felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is afforded of obtaining a requisition from the proper authorities, the military subjects of the King, like his civil subjects, not only may, but are bound, to do their utmost of their own authority to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people." [2]

The Assize Courts

The Assize Courts are the courts which are held three or four times a year in a number of provincial towns and cities, under presidency of one of " His Majesty's Judges ", that is to say, one of the judges of the High Court of Justice. The jurisdiction of the Courts of Quarter Sessions extends to all indictable offences, *excepting* treason, felonies punishable with death,[3] and certain other grave crimes. The juris-

[1] It is a serious omission for the Justice to fail to end with the words " God save the King ".

[2] Sir James Stephen, *History of the Criminal Law of England* (3 vols., 1883), i. 204.

[3] The offences which are punishable with death are treason, murder, setting fire to a King's ship or dockyard, or military or naval stores, and certain forms of piracy; but in practice the death penalty is rarely inflicted save in the case of murder.

diction of the Assize Courts is unlimited. Consequently, when t offence for which the accused is to be committed for trial is within t jurisdiction of Quarter Sessions, the Committing Magistrates have discretion as between that court and the Assizes ; and they are direct by law to exercise this discretion in such a manner as, without caus hardship to the accused, to secure a speedy trial.

5. The Director of Public Prosecutions

It has already been explained that in England there is no "*parque* as in France, no "Procuratore del Regno" as in Italy, no "Procura Fiscal" as in Scotland, and no "District Attorney" as in the Uni States ; in other words, that, speaking generally, there is, in En land, no such official as a Public Prosecutor. The prosecution offences is, in theory, a public duty cast upon the citizens at lar But it was from old times the practice of the Justices to "bind ove the injured person to prosecute. A person was "bound over" being required to enter into an undertaking, involving liability a money penalty payable to the Crown, in case of default. It however, more common at the present time for some member the police force to be so "bound over" to prosecute, particula if the injured party is unwilling to prosecute, or if for reasons expense he would not be likely to be able to do so effectively, if there are reasons for thinking that improper influences might det mine his subsequent attitude. But to secure a prosecutor is only ha and often it is much less than half, the business of getting a prose tion on its feet before the trial court. In many cases further eviden and new witnesses, who had not deposed before the magistrates, m be sought out, and counsel, perhaps two or more, must be selected a instructed to present the Crown case to the jury. For the solution these practical problems there is, in England and Wales, no single ca iron system. Sometimes the arrangements are made by the mag trates, through their clerk ; sometimes by the police ; sometimes t "briefs", or instructions for the prosecuting counsel, are distribut by the Clerk of the trial court ; finally, in a certain small proporti of cases of importance, the management of the prosecution is taken ov by high officers of the Crown.

Of these high officers, the first and the oldest are the Attorne

General and the Solicitor-General[1] ; and they have always taken charge of a few of the most important prosecutions, one or other of them in these exceptional cases appearing himself at the bar of the Court. But the law officers have many other duties beside the conduct of prosecutions ; and being members of the Bar, and not solicitors, they have never been equipped with the office organisation needed for the preparation of a heavy case. For a long time the business of preparing prosecutions in which it was contemplated that one of the Law Officers would appear, or in which some Government department was interested, were handled by the "Treasury Solicitor", who has a large official organisation for the management of Government legal business of all sorts ; and it is for this reason that counsel appearing for the Crown in criminal cases are still often referred to as "Treasury Counsel". But from the middle of the nineteenth century it was again and again proposed that a Public Prosecutor should be established, with a staff and organisation sufficient to enable him to replace the real or nominal private prosecutor, and to take charge of all criminal prosecutions. None of these more far-reaching proposals met with sufficient support to be successful, one of the objections urged against the change being that it was to be feared that it would put the machinery for the enforcement of the criminal law in the hands of political parties. In 1879, however, an Act was passed which created the office of Director of Public Prosecutions, and authorised this official, under the superintendence and subject to the directions of the Attorney-General, to institute and carry on criminal proceedings, "in cases which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of such Director necessary to secure the due prosecution of an offender".

In the sixty years which have elapsed since the office of the Director of Public Prosecutions was first established, numerous changes, some of an experimental character, have been made in the definition of this official's powers and duties. But we have still stopped a long way short of instituting a universal system of public prosecutions under the direction and control of the central government. As the law stands at present, the Director is required to undertake the prosecution in certain

[1] Who are invariably (*a*) members of the Bar, (*b*) members of Parliament, and (*c*) members of the Ministry (though even the Attorney is generally not in the Cabinet). They are known as "the Law Officers".

classes of cases, of which the most important are all offences punishab
with death, offences against the coinage and analogous offences agai
the public at large, and all cases in which he is ordered to take acti
by the Attorney-General or a Secretary of State. But he has a w
discretion to take charge of and to conduct the prosecution of offenc
whether indictable or non-indictable, where, in his judgment,
circumstances for any reason call for his intervention. The m
usual types of offences prosecuted by the Director are: (1) mur
cases; (2) offences against the coinage; (3) fraudulent bankrupt
(4) offences against the election laws; (5) most manslaughters
attempts to commit murder; (6) sale of dangerous drugs, and obs
literature; (7) thefts and similar offences committed by Governm
employees; (8) the more serious types of sexual offences; (9) so
vicious assaults, particularly when firearms are used; (10) burgla
and robberies having unusual features; (11) many commercial fra
particularly where the persons defrauded are unable to employ lawy
or where, because of the systematic or unusual character of the fr
practised, or the number of persons defrauded, a prosecution is deem
to be essential to protect the public; and (12) offences by member
local authorities affecting public funds.[1]

But " even though the offence be serious it does not follow that
State will take over the prosecution. For instance, the Director
not, under ordinary circumstances, prosecute in the case of a fr
perpetrated on a bank, railway, or wealthy commercial house, beca
here the complainant is able to hire its own lawyers and carry on
own private prosecution. Prosecutions of ordinary larcenies,[2] espe
ally those involving thefts from business firms by their employees,
left either to the complainants themselves or to the police." [3]

In the year 1937 the Director undertook 494 prosecutions
indictable offences[4] and 61 for non-indictable offences, making
very modest total of 555 prosecutions in all.

In addition to his duties as a prosecutor, the Director has the gen
duty of adviser to Clerks to Justices, chief officers of police, and s
other persons as he thinks proper, with respect to any case wh

[1] Summarised from *Criminal Justice in England*, by Pendleton How
(Macmillan), p. 105.

[2] Thefts, and similar offences.

[3] Pendleton Howard, *op. cit.* p. 104.

[4] The total number of persons tried for indictable offences in 1937, whet
at Assizes, at Quarter Sessions, or summarily, was 85,017.

appears to him to be of importance or difficulty. " It is the practice
of the police in the country districts, during the course of their investi-
gations, to take up with the Director by letter many doubtful questions
of law or expediency. The police are not at all hesitant about bringing
matters to the Director's attention, and a considerable portion of his
time and that of his staff is taken up in solving their problems. The
office has, in fact, of late years become very much like a central bureau
of legal information for the police." [1]

Finally, it is the duty of the Director of Public Prosecutions to take
up and manage the defence of the Crown in all appeals to the Court
of Criminal Appeal[2] (such appeals being admissible only *against* the
crown).

A recent American critic makes the following observations on the
working of the Director's department: " The fact that the number of
public prosecutions undertaken by the Director is small when com-
pared with the entire criminal business disposed of in the English
courts does not, in any sense, prove that his work is not of the most
vital importance in the administration of the criminal law. The
significance of the Director, when viewed in relation to the English
system as a whole, does not depend upon the number of prosecutions
he conducts, but in the valuable assistance he renders the police and
other agencies engaged in enforcing the penal law, in the effective
manner in which he carries on the prosecution of homicides and other
cases of gravity and difficulty, in the advice and aid he often gives to
poor complainants, in his conduct of the defence of the great majority
of criminal appeals, and in the restraining influence his very existence
has on the activities of private prosecutors, due to their knowledge of
the power which the law gives him of intervention and control.
On the whole, it may be said that the gradual development during
the last half-century of a speedy and efficient method of conducting
governmental prosecutions in important cases has been a powerful
factor in bringing about a restoration of popular confidence in the
administration of criminal justice in England." [3]

[1] Pendleton Howard, *op. cit.* p. 110.

[2] Unless the Solicitor to a Government department, or a private prosecutor,
undertakes the defence of the Appeal. But where the defence has been under-
taken by a private prosecutor, the court may at any stage direct the Director
of Public Prosecutions, or the Solicitor of a Government department, to take
over the defence.

[3] Pendleton Howard, *Criminal Justice in England*, p 156.

6. Criminal Trials

Under this heading some account will be given of the manner which an English criminal trial is conducted, and first, how a trial a jury at the Assizes or at Quarter Sessions is conducted.

The following is an outline of the course of procedure.

The accused being present in court—having either come voluntar or under arrest—the Clerk of Assize (or the Clerk of the Peace,[1] as case may be) reads the indictment to him. At this initial stage accused, or his counsel, may raise various pleas to the effect he should not, in law, be tried at that time, for that offence, bef that court. As for example, that he has been previously convicted acquitted of the same charge, or that he has received a pardon fr the Crown. These are unusual objections: in the normal case accused either "pleads guilty", *i.e.* confesses, or else pleads " guilty".[2] If he pleads guilty, the court is at liberty to sentence h without trial; but in practice he is usually advised by the judge substitute a plea of not guilty, so that the circumstances may be prope investigated.

There must now be a trial; and for this purpose the clerk c upon twelve men or women[3] from the group of qualified persons w have been summoned by the sheriff to attend the court for the purpos Subject to ancient and somewhat complicated rules, the twelve pers so called upon may be objected to, either as a group, or individuall but such "challenges" are rare in England.[5] The jury are then swo

[1] The Clerk to the Magistrates at Quarter Sessions.

[2] Nearly half of the persons indicted at Assizes and Quarter Sessions pl guilty. Of the remainder, those who plead not guilty, about two-thirds tried and found guilty, and one-third are acquitted.—C. S. Kenny, *Engl Criminal Law* (Cambridge University Press), 1934, ed., p. 485 n. 5, and p. 4

[3] Very commonly ten men and two women.

[4] The persons qualified (and required) to serve on juries are citizens betwe the ages of 21 and 60 who occupy houses of a certain value or have intere in land of a certain value. The most important qualification is residence premises of the net annual value of £20 (£30 in Middlesex and the Coun of London; special rules apply to the City of London). Many classes persons are exempted—peers, the clergy, judges, practising members of t legal and medical professions, officers and men in the defence forces, etc.

[5] Though very common in America, where, in some cases, several da may be spent in selecting a jury.



Barratt

The Opening of the Quarter Sessions at Saffron Walden, Essex. The Recorder, in wig and gown, enters the court-house, preceded by officials in ancient ceremonial dress

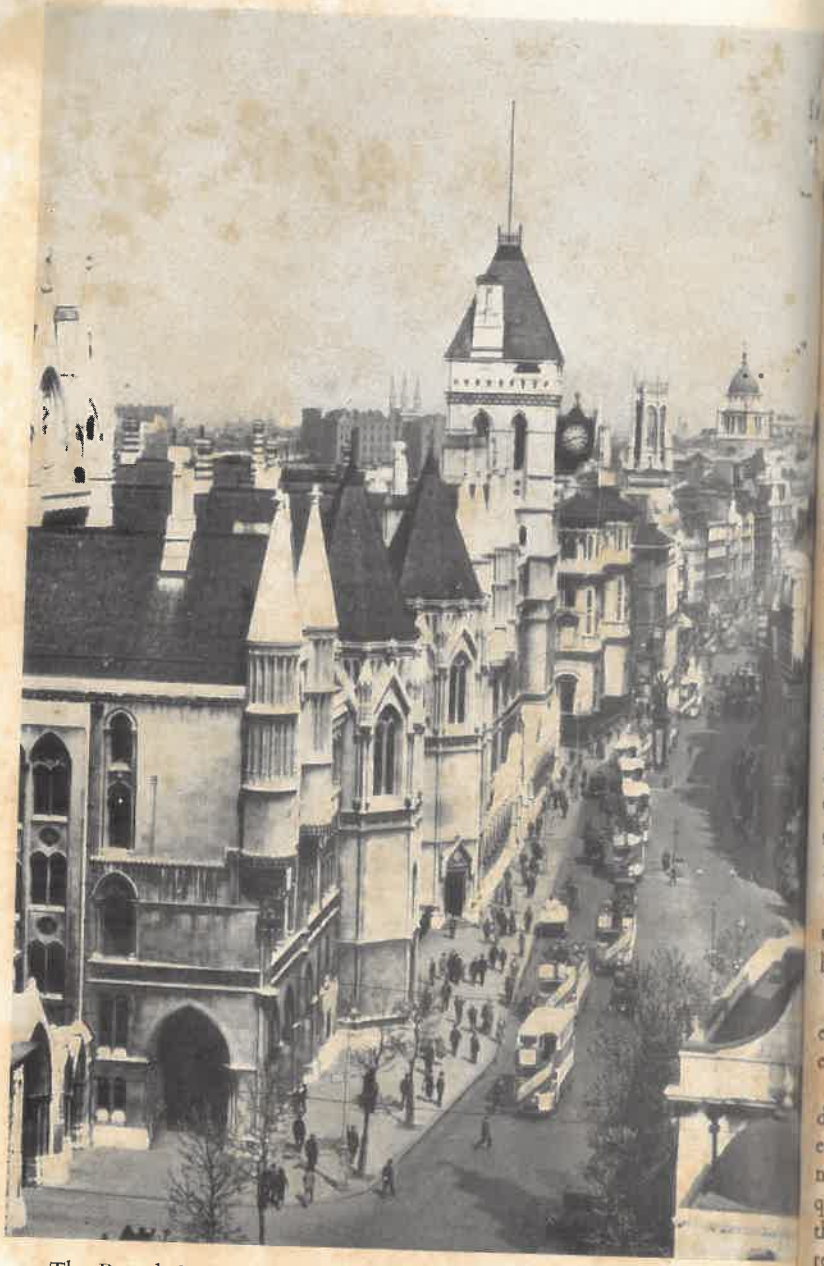


A TRIAL AT ASSIZES



2. The prisoner, between two policemen, stands facing the Judge. The Clerk of Arraigns asks the Foreman of the Jury whether the Jury are agreed upon their verdict

(Photography in British law-courts is forbidden. Consequently these two pictures are taken from a representation of a court in the cinema film "The Ware Case" made at Ealing Studios)



The Royal Courts of Justice in the Strand, London, usually referred to as the "Law Courts"

and, in cases of treason or felony (but not in cases of misdemeanour),[1] the indictment is read out to them. The case is then usually explained to the jury by the leading counsel for the prosecution. After this speech, the Crown counsel calls upon his witnesses, one after the other, to go into the witness-box, where they are sworn. The Crown counsel examines each witness "in chief", that is to say, he guides him, by appropriate questions, through the evidence which he is believed to be ready to give—and which he has, in general, already given before the magistrates, and possibly also before a coroner. Witnesses are not permitted to talk at large and as they please—they might contravene the laws of evidence, or ramble irrelevantly. In this examination in chief the barrister who is questioning is required (except in matters which are of no controversial importance) to avoid putting "leading questions", that is to say, he must not put questions which prompt the answer; as, for example, "Was the prisoner, when you saw him on Tuesday evening, at the door of Thompson's house, carrying a revolver?"[2]

When the examination in chief of each of the Crown witnesses is concluded, the defence proceeds to cross-examine, seeking to show that the witness has contradicted himself, or has exaggerated the accuracy of his memory, or that for any other reason, intellectual or moral, his evidence is unreliable. In cross-examination "Leading Questions" are not forbidden. When the cross-examination is finished, the Crown counsel may, if he thinks fit, re-examine the witness, in order, if possible, to correct any damaging effect produced by the cross-examination.

When the case for the Crown is completed, the prisoner's counsel may, and sometimes does, submit to the judge that no such evidence has been produced that any reasonable jury could convict on it. The

[1] Because in cases of misdemeanour the accused was, in former times, always entitled to a copy; nowadays a person accused of treason or felony is equally entitled to receive a copy of the indictment.

[2] A proper form of questioning would be: "After the quarrel at the inn, did you see the prisoner again?" "Yes."—"When?" "On Tuesday evening."—"Where?" "At the door of Thompson's house."—"Did you notice anything in his hand?" "Yes."—"What?" "A revolver." The question "Did you see a revolver?" suggests the answer "Yes", whereas the question "Did you see anything in the prisoner's hand" would very likely receive the reply "I thought I saw a weapon"—which is a very different matter.

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judge may agree ; and if he does so he may withdraw the case from the jury If this does not happen, the defence is entered upon. If the accused has no witnesses (except witnesses to character) he may nevertheless himself give evidence, and be cross-examined. Then, if he is not defended by counsel, he may address the jury. But if the accused has counsel, the next turn is for the prosecuting counsel, who may now sum up the Crown evidence, and comment on the prisoner's evidence (if any), after which the counsel for the accused makes his speech to the jury.

But if the accused calls witnesses to matters of fact, so soon as the Crown witnesses have finished, either he, or his counsel, explains his defence and calls his witnesses, of whom, as before, the accused may be one. These are examined in chief, cross-examined, and re-examined as was done with the Crown witnesses. Then the accused, or his counsel, makes a second speech, summing up his defence, and finally the prosecuting counsel makes a speech in reply. The judge then sums up, and the jury retire to consider their verdict.

It may be said that the leading principle in the conduct of a criminal trial is that the Crown, that is to say the prosecution, shall neither have, nor appear to have, any advantage over the defence.[1] Counsel for the Crown, even the Attorney-General or the Solicitor-General, wear no official insignia, and address the court from the same bench as do other members of the Bar, sitting side by side with counsel for the prisoner. In presenting the case, prosecuting counsel are expected to be scrupulously fair in manner as well as in fact, to abstain from dilating on the heinous character of the offence charged, from intimidating witnesses, and from even seeming to desire a conviction ; in short, they are expected to seek to assist, and to seem to seek to assist, the jury to ascertain the truth rather than to incite them to return a verdict for the Crown.

The primary duty of the judge is to preside. It is emphatically not his duty to prosecute, or to give any assistance to the prosecution which he would not give to the defence. But for all that, he is not a mere indifferent umpire : it is his business to correct the effects of misunderstandings, and of incompetent or intemperate advocacy, and to exclude

[1] Perhaps the only exception to this principle is that if the Attorney or the Solicitor-General is conducting a prosecution *in person* he is entitled as of right to make the final speech, whereas in many circumstances any other counsel appearing for the Crown would not have this privilege.

inadmissible evidence, so that right may be done—the innocent be acquitted, and the guilty be convicted. The judge's guidance is exercised by his rulings on questions of procedure and evidence, by occasionally putting supplementary questions to witnesses—though a judge who intervenes too frequently lays himself open to criticism—and by summing-up the case to the jury. In his summing-up it is the business of the judge to explain to the jury what are the essential features of the crime with which the prisoner is charged, as to which they must be satisfied before it would be proper for them to convict. He then reviews the evidence, critically but impartially, with a view to helping the jury to take a judicial and connected view of what they have heard. But " it is a rare occurrence for the English judge to ' tell ' the jury to do anything. Most judges understand the psychology of juries well enough to know that the surest way to cause them to bring in a verdict contrary to the court's wishes is to order them to find a verdict which conforms to the court's wishes. If judges do not know this when they first ascend the bench, they soon learn it." [1]

If the prisoner has been previously convicted, that fact is carefully withheld from the jury ; and if the prisoner's criminal record were, by an oversight, to be disclosed to the jury before they had returned their verdict, the proceedings would be vitiated.[2]

The husband or wife of an accused person cannot be called as a witness for the prosecution, except where the offence charged is one against the spouse or the children. With this exception as to the spouses, there are, as the result of various statutes passed during the last hundred years, no persons, whatever their connection with the accused, or whatever their interest in the upshot of the prosecution, who are not competent witnesses in a criminal case, whether it be for the prosecution or for the defence. Since 1898 it has been open to the accused himself, if he chooses, to go into the witness-box and be examined on oath on his own behalf—with the consequence of laying himself open to cross-examination. And it is sometimes a difficult question for the prisoner's counsel to decide whether to advise him to " go into the box " or no. If the prisoner does not thus offer himself for examina-

[1] Pendleton Howard, *Criminal Justice in England*, p. 378.

[2] To this important rule there are, however, certain exceptions. For example, if the accused expressly sets up his own good character as an argument for his innocence, evidence of previous convictions may be given, provided they are not too remote or irrelevant.

tion, the prosecution is forbidden to comment to the jury on his silence. But the judge may do so. If the prisoner does not elect to go into the box as a witness he is (apart from the question asked at the outset, whether he pleads guilty or not guilty) *subjected throughout the proceedings to no examination at all.* He is certainly not asked after each witness against him has concluded his evidence, what he has to say to it—nor is he permitted to offer his comments.

It is probably unnecessary to remind the reader that, to return a verdict, the jury must be unanimous. It is a remarkable fact, explicable perhaps by a strong national tradition, that criminal trials are not often rendered abortive by the operation of this rule.[1]

The Law of Evidence

In the conduct of criminal (as well as of civil) trials regard has at all times to be paid to the due observance of the rules of that peculiarly Anglo-Saxon institution, the Law of Evidence. The Law of Evidence has no analogy with the elaborate and artificial calculus of presumptions and "adminicles" which was elaborated on the Continent of Europe in the later Middle Ages, to be swept away in the eighteenth century. The English law of evidence, on the contrary, owes little or nothing to mediaeval tradition, and is largely the product of eighteenth- and nineteenth-century rationalism—rationalism directed to the better working of trial by jury. This branch of the law has been chiefly built up by the rulings of the judges, inspired by two principal objects—first, to prevent trials being confused and prolonged by the introduction of evidence not really relevant to the questions to be decided; and, second, to protect juries from being led astray by testimony of a kind more likely to impress an untrained than a trained mind. The result has been the creation of a large and elaborate chapter in the law, of which, in this place, only a few illustrations can be given.

We have already seen how careful the law is to protect the jury—and the prisoner—from the perilous influence of evidence of the latter's bad character or previous convictions.

[1] Some little time ago a Recorder told a jury that if any of their number felt hesitation, the majority being satisfied that the evidence for the prosecution was sufficient for a conviction, it was not improper for him to allow his opinion to be swayed by the judgment of his colleagues. The Court of Appeal quashed the conviction.

Evidence of an alleged confession by the prisoner is admissible only if the court is satisfied that it was not elicited by any promise or threat made by a person in authority.

"Hearsay is not evidence." By "hearsay" is meant evidence of somebody else's statements—second-hand evidence. Hearsay evidence is excluded because the author of the reported statement has not been sworn, and is not present in court to be cross-examined, and to enable the jury to judge of his veracity by his demeanour.[1]

Though as a rule a jury may convict on the evidence of a single witness, in some cases the law expressly requires such evidence to be corroborated, *e.g.* in cases of treason, perjury, personation at elections, procuring women for purposes of prostitution. Where the prosecution relies upon the evidence of an accomplice, it is the duty of the judge to warn the jury that it is dangerous to convict on that evidence alone, and if no such warning has been given, the conviction will be quashed.

Trial before a Court of Summary Jurisdiction

The chief differences between a trial at the Assizes or Quarter Sessions and a trial by summary procedure before a petty sessional or "police" court, are that in the latter case (1) there is no jury; (2) the court is composed (in general) of lay Justices who are assisted by a legal adviser in the person of their clerk; (3) the prosecution is (generally) conducted by a police officer; (4) the Justices and their clerk take a more active part in the conduct of the case than is done by the judge in the higher courts. But "we must not be misled by the word [summary]. There is a full trial in open court conducted according to the general principles of English justice. There is a process for compelling the attendance of witnesses on behalf of either party, for arresting such witnesses if need be, for committing them to prison if they refuse to testify. Either party may conduct his own case or be heard by his solicitor or counsel. The elaborate rules of evidence in force in the higher courts are in force here also; the witnesses are sworn, examined, cross-examined, and will commit perjury if they swear to a lie."[2] The defendant may, if he has pleaded not guilty, and if he elects to do so, give evidence on oath in the witness-box, and is then liable to cross-examination. Or he may content himself with

[1] But there are many exceptions to the rule.

[2] Maitland, *Justice and Police*, p. 127.

making a statement from the dock, on which he will not be cross-examined.

Penalties

If the prisoner is convicted of an offence punishable with death—which, in practice, means in a case of murder—the judge has no option but to pronounce sentence of death ; though the death sentence is by no means always carried out.[1] In all other cases the law restricts the discretion of the judge in awarding the penalty only by fixing the maximum penalty. Even if the maximum is a long term of penal servitude or imprisonment the judge can, if he thinks it proper to do so, content himself with imposing a sentence of one day's imprisonment, or direct that the prisoner be " bound over to come up for judgment when called upon ", which, in substance, means that he is dismissed with a warning.

Appeals

1. From Convictions on Indictments

Until the year 1907 a person convicted by a jury of an indictable offence had no right of appeal on the facts, and only a limited right, subject to the permission of the judge, to appeal on a matter of law.[2] But in the year 1907 an Act was passed which set up a Court of Criminal Appeal, composed of at least three High Court judges. It is in general presided over by the Lord Chief Justice. To this court appeals can be taken by persons convicted on indictment on matters of fact, on matters of law, and on the quantum of the sentence. Where the appeal is based upon some other ground than a matter of pure law, the right to prosecute it is in general subject to the permission of the trial judge, or of the Court of Appeal itself. On an appeal against the sentence, the court may, and occasionally does, increase the sentence.[3]

[1] In 1937, 19 persons were convicted of murder, of whom 1 (apparently because he was under eighteen) was "ordered to be detained during His Majesty's pleasure ", 2 were found to be insane, 8 had their sentences commuted to penal servitude, and 8 were executed. The total number of cases of murder known to the police was 78 ; in 27 cases the suspected person committed suicide, and in 48 he was arrested.

[2] The jury had retained, as arbiter of fact, some of the peculiar authority of the Divine judgment. On the other hand, appeals on matters of fact were long a distinguishing feature of jurisdictions employing the " inquisitorial " system, which avowedly depended upon the verdicts of professional judges.

[3] In the year 1937, 7649 persons were convicted on indictment. There were 478 applications for leave to appeal, and 58 appeals were " heard or otherwise disposed of ". An " application for leave to appeal " is, in some respects, not very different from an appeal.

2. From Courts of Summary Jurisdiction

Persons convicted at Petty Sessions have a general right of appeal to Quarter Sessions, either against the conviction (unless they have pleaded guilty or confessed) or against the sentence. The appeal is heard by a specially constituted " appeal committee " of the county or borough magistrates. On the hearing of the appeal either party may call evidence, even that of witnesses who were not heard in the lower court.[1]

There is also a general right of appeal from Petty Sessions to the High Court, on grounds of law alone, by " case stated " In order to avail himself of this right, the would-be appellant calls upon the Justices who have convicted him to deliver a written statement of the facts (as found by them) on which the matter of law in dispute arises. Should the Justices refuse this request, the would-be appellant may apply to the High Court to overrule their refusal, and to direct them to state a case, an application which the High Court, in its discretion, may grant or may refuse. A person who appeals to the High Court on a " case stated " definitely abandons, by so doing, all right to appeal to Quarter Sessions.

7. An Illustration : The King *v.* Thorne

It will help the reader to understand the manner in which the King's peace is vindicated in the supreme stage of a prosecution for murder, to relate here the course of an actual case. For this purpose we have selected the prosecution of one Norman Thorne for the murder, on 5th December, 1924, of a young woman named Elsie Cameron.[2] The facts were as follows.

Thorne, who at the time of his trial was 24 years of age, had been trained as an engineer ; but two years previously he had taken up chicken-farming for a livelihood ; and having leased a plot of land for this purpose near Crowborough in Sussex, he lived there alone in a

[1] In 1937, 656,953 persons were convicted by Courts of Summary Jurisdiction, and 884 appealed to Quarter Sessions.

[2] See *The Trial of Norman Thorne*, edited by Mrs. Helena Normanton, published by Geoffrey Bles, London (undated). Citations are made with the kind permission of the editor and the publishers.

small one-roomed hut. At Christmas 1922 Thorne had become engaged to be married to a girl named Elsie Cameron, whom he had known since childhood, and who lived with her parents in the suburbs of London. Thorne had seduced Elsie Cameron, who in December 1924 believed, though mistakenly, that she was pregnant. Meanwhile Thorne had entangled himself with another girl named Elizabeth Coldicott, and he had come to prefer the new love to the old. On the afternoon of 5th December, 1924, Elsie Cameron left her home and came down to Crowborough to visit Thorne. She was seen by three witnesses approaching his hut at about five o'clock ; and she was not seen alive again, except by Thorne.

Thorne professed at first to know nothing of the girl's movements, or what had become of her. On 7th December and again on the 8th, when (as he afterwards admitted) Thorne knew that Elsie was dead, he posted letters to her inquiring why she had not come to see him on the 6th. On the 10th, Elsie's father telegraphed to him, " Elsie left Friday have heard no news has she arrived reply ? " and on the same day he received Thorne's reply, " Not here open letters cannot understand ". On 13th December Inspector Edwards of the East Sussex Constabulary, who was investigating the case, received a visit from Thorne at the police station. Thorne there made a statement to the effect that he had last seen Elsie on 28th November ; that he had expected a visit from her on 6th December ; that he had been to the railway station to meet her, and that she had not arrived. This statement Thorne repeated on the 18th to another police officer, who took it down in writing, and it was subsequently produced at the trial. On 13th January *The Times* reported that " the Sussex police have requested the assistance of Scotland Yard in their efforts to solve the mystery of the disappearance of Elsie Cameron, a London typist, and yesterday Chief Inspector Gillan, of Scotland Yard, went to Crowborough ". On the 14th the Chief Inspector invited Thorne to the police station, cautioned him, and took from him a long statement which was read over to him, which he signed, and which was also produced at the trial.[1] In this Thorne repeated the statement that he had received no visit from Elsie Cameron on 5th December, and had expected in vain a visit from her on the 6th. He admitted that he had seduced Elsie, who had frequently visited him at the hut ; that she had stated that she was pregnant ; that she had

[1] The taking of Thorne's statement on this occasion went on from 8 P.M. on the 14th until 3.30 A.M. on the 15th.

pressed him to marry her ; and that he had told her that he was involved with another girl : but if it was true that she was pregnant he would marry her.

On the morning of 15th January the police, who had been digging on Thorne's farm, found Elsie's attaché-case, containing clothing and jewellery which were identified as hers. On receiving this information Chief Inspector Gillan told Thorne that he would now be detained, and would probably be charged with causing the girl's death ; to this he made no reply. In the evening of the same day Thorne offered to make another statement. In this he admitted that Elsie had paid him an unexpected visit at his hut between 5.15 and 5.30 on 5th December, and stated that she said that she intended to stop there till she was married ; and that at half-past nine he had told her that he had arranged to meet Mrs. and Miss Coldicott at the station ; which he did. When he returned at about half-past eleven he stated that he had found Elsie Cameron hanging from the beam which supported the roof. He cut her down, but she was dead. Realising that he was gravely compromised, he burned her clothes, cut off her head and her legs, and at dawn next morning buried her remains in the chicken run, the head being separately enclosed in a tin box.[1] In consequence of this information the police dug in the place indicated by Thorne, and found the dismembered body. On the following day, the 16th, Thorne was charged with murder before Mr. J. Hallett, J.P., at the Crowborough Police Court. No evidence was given, and the prisoner was remanded for a week. The magistrate advised Thorne to reserve what he had to say until he was brought up again.

On 19th January the local coroner began an inquest on the remains, which were identified by Elsie Cameron's father, and the inquest was adjourned to 11th February.[2]

On 31st January proceedings were continued before the local bench of magistrates, the Crown being represented by counsel instructed by

[1] Perhaps, it has been suggested, in order the better to preserve, in case the worst happened, the marks on the neck.

[2] Because the police were investigating the case with a view to a prosecution for murder. On 11th February evidence was given before the coroner that Elsie had visited Thorne's hut on 5th December, and that her body had subsequently been found buried on the premises. Thorne was present in custody. The inquest was then again adjourned to the 18th, and from that day till after the Assizes. At the conclusion of the adjourned inquest the jury brought in a verdict so phrased as not to be inconsistent with death by manslaughter.

the Director of Public Prosecutions. The accused was also represented by counsel, instructed by a solicitor. The preliminary inquiry before the Petty Sessions was continued on 7th February, on which day Chief Inspector Gillan told of Thorne's last statement, and Sir Bernard Spilsbury, the Home Office pathologist, having examined the remains, testified that death was not due to hanging, but to shock due to injuries to the deceased's face, head, and limbs. He was cross-examined by prisoner's counsel with a view to establishing that death was due to hanging. The issue was now clearly defined—Was the girl's death due to suicide or to murder? For the defence it was relevant to show that Elsie Cameron was a neurasthenic who had every reason for being in great distress of mind. The case of the prosecution largely depended on the evidence of the medico-legal expert, to the effect that the deceased had not hanged herself.

Thorne, who reserved his defence, was committed for trial at the next Sussex Assizes.[1]

On 9th March, a " true bill " was found by the Grand Jury at the Assizes.[2]

The Sussex winter Assizes opened at Lewes before Mr. Justice Finlay[3] on 11th March, 1925. Sir Henry Curtis Bennett, K.C., M.P.,[4] was leading counsel for the Crown, and Mr. J. D. Cassels, K.C., M.P., led for the defence. The prisoner having pleaded not guilty, and the jury having been sworn, Sir Henry Curtis Bennett opened the case for

[1] It will be noticed that the preliminary inquiry before the magistrates was not conducted in the manner of an *enquête* before a *juge d'instruction*. The prisoner was not questioned; and since he " reserved his defence " the only part his counsel took in the proceedings was to cross-examine the Crown witnesses.

[2] The Grand Jury is an institution of mediaeval origin which was abolished in 1933. So long as it existed no indictment could be brought before a common or trial jury, unless the " bill of indictment " had been submitted to a Grand Jury, who, after hearing evidence for the Crown only, either found a " true bill ", that is to say, authorised the indictment, or " threw out the bill ", which meant that the prosecution was stopped. The Grand Jury was abolished because in the general (but not the universal) opinion it had become little more than a formality. The real preliminary inquiry is entrusted to the magistrates.

[3] 2nd Viscount Finlay, only son of Lord Chancellor Finlay, called to the Bar 1901; raised to the Bench 1924; now Lord Justice Finlay.

[4] K.C. (King's Counsel); M.P. (Member of Parliament). The title of " King's Counsel " is an honorific title, granted by the Lord Chancellor to leading members of the Bar. It involves no official duties. No " King's Counsel " can appear in court unless assisted by a " junior ".

the prosecution by rehearsing the facts summarised above. He read Thorne's statements to the police, and two letters from Elsie to Thorne, one dated 26th November, in which she said, " Please arrange about getting married as soon as possible. I feel sick over it, and things will soon be noticeable to everybody, and I want to be married before Christmas ", and one dated the 28th in which she said, " I have the first claim on you. . . . Well, Norman, I expect you to marry me, and finish with the other girl, and as soon as possible. My baby must have a name. . . ." Let the jury ask themselves, said counsel, why, if Thorne's story was true, he did not immediately call for assistance. The answer, in the submission of the Crown, was because the police would have found the girl's body covered with bruises, no marks of hanging upon her neck, and no signs upon the beams of any body having been hanged from any one of them.

The case for the prosecution lasted two days, during which time twenty-two witnesses were heard. It is sufficient to mention the following.

Mr. Donald Cameron, the deceased's father, identified the letters and telegram received from Thorne after 5th December, and testified that he had identified his daughter's body and the contents of her attaché-case. In his cross-examination of this witness Mr. Cassels sought to bring out that his daughter had for some time past showed signs of mental depression and neurasthenia, to such an extent that she was unable to retain employment as a typist, and that, having consulted a doctor, she had believed, though without certainty, that she was pregnant. In spite of a letter from Mrs. Cameron to Thorne dated 16th December, in which the writer spoke of her fear lest Elsie had " done something rash ", the witness refused to admit that her parents had thought of the possibility of her committing suicide. Mr. Cameron, under cross-examination, was, not unnaturally, a reluctant witness. In re-examination Sir Henry Curtis Bennett brought out that during the week preceding 5th December Elsie had appeared to be in the very best spirits. Throughout the examination of Mr. Cameron, as throughout the trial, we find the judge from time to time interposing a word or two, to make sure that the jury understood what the witness really wanted to say.

Mr. Robert Cosham, with whose wife Elsie Cameron used sometimes to stay when visiting Crowborough, gave evidence in chief of a not very significant conversation with Thorne; but in cross-examina-

tion he admitted having said to a police officer, on 12th December, that " there was no knowing what might happen to a person who got so low as she was getting, from what Mrs. Cosham had told me ". He might, he said, have expressed the opinion that Elsie had perhaps committed suicide.

The police officers testified to having taken the prisoner's successive statements, and to finding the body and the jewellery. Chief Inspector Gillan related that he had made experiments to ascertain whether there were marks on the beams of the hut such as would be made by a body hanging from them, and that the results had been negative.[1] The beams on which the experiments were made were produced to the jury.

In cross-examination the Chief Inspector stated that he had verified the truth of a very large part of Thorne's statements as to his earlier life, and added that " he is a man of good character, and no incident connected with any part of his life, so far as I have been able to make any inquiry, is connected with violence. A quiet, well-disposed young man."

Sir Bernard Spilsbury,[2] the Home Office pathologist, was the principal witness for the prosecution. He testified that the deceased died as the result of shock due to bruises on the face, head, legs, and feet, and particularly to two violent blows, one on each side of the face. These blows could have been given by one of the Indian clubs found in the hut. There were no signs of asphyxiation, and no such marks on the neck as would be caused by even an ineffectual hanging. The deceased was not pregnant.[3] The witness was cross-examined at length by Mr. Cassels with a view to preparing the ground for the defence, to the effect that the girl died in an attempt to commit suicide, and that the bruises she received—which did not break the skin—were

[1] The experiments consisted in hanging weights of about 8 stone by variously arranged cords from the beams, both with and without a drop. These made marks on the beams ; there were no such marks before the experiments were made. Chief Inspector Gillan admitted in cross-examination that no one representing the defence was present when the experiments were made. Elsie's father had stated in his evidence that her weight was just under 8 stone.

[2] The reader will notice that all the medical evidence was given orally in court, and subjected to vehement cross-examination. There were no written reports.

[3] A fact of which she may possibly have become aware in the course of the evening. If she was not pregnant, Thorne's conditional promise to marry her failed.

received just at the moment of death, or in the act of being cut down and being put on the bed.

The case for the defence occupied two days and a part of a third, and in the course of it nineteen witnesses were examined. Mr. Cassels, in his introductory speech, stated the theory of the defence to account for the girl's death. He then related Thorne's life story, and referred to incidents in Elsie Cameron's life which pointed to a suicidal tendency. It was difficult to believe that blows given with an Indian club, and with murderous intent, could fail to break the skin. If the story of the hanging was invented by Thorne, how came it that, in the six weeks during which he was left in solitary occupation of the hut, he had not made corroborating marks of a rope on the beams ? [1] Evidence would be called to show that, in the opinion of medical experts, marks found on the neck might well be due to unnatural pressure, viz. that of a rope. Mr. Cassels concluded with the words : " if, after listening to the evidence, you think there was some crushing of the neck, my submission is that must mean a verdict of acquittal "

After a first unimportant witness Mr. Cassels put his client in the witness-box, where he was duly sworn. In his examination in chief Thorne told the story which has already been sufficiently indicated. Sir Henry Curtis Bennett, in his cross-examination, covered the whole ground of Thorne's evidence.[2] A series of questions was directed to exhibiting the callous nature of his treatment of the girl, even supposing his account of her death was true. Thorne was pressed to account for the bruises on the body, but was unable to do so. At the end of the cross-examination, the judge put a number of questions to the prisoner ; he pressed him to explain why he had not gone for a doctor, in the hope of resuscitating the girl. Thorne only replied that he thought she was dead.

Several witnesses then testified to the deceased's neurotic condition and occasional strange behaviour. Dr. J. C. Woods, a specialist in mental disease, testified that he had been in court since the beginning of the case, and had heard all the evidence. His opinion was that the deceased was " potentially a suicidal person, and under grave distress might have quickly become actively suicidal ".

[1] This point seems to have been first made in Mr. Cassels' final speech.

[2] It will be noticed that this was the first occasion on which Thorne had been submitted to an examination which can be called hostile—that is to say, directed to demonstrating his guilt.

A Mr. Robinson, who had known the prisoner since he was a boy, testified to his amiable and unselfish character. " He is the last person with whom I would credit any act of violence." Cross-examined, he said : " I could not have imagined from my knowledge of the defendant that he would be able to dismember a body ".[1]

Dr. Robert Bronté, who had been the chief Crown pathologist in Ireland, testified to having been present at a second post-mortem, held at the instance of the defence, on 24th February. He was of the opinion that, if the blows on the deceased's face had been delivered with murderous violence, the injuries would have been more extensive and one or more of the facial bones would have been broken. He had noticed creases or grooves in the neck ; and had examined under the microscope sections of tissue taken across these creases, and had found conditions which might be the effect of the pressure of a rope. He thought that the cause of death was shock following an unsuccessful or interrupted attempt at self-strangulation. In cross-examination Dr. Bronté said that he did not think it possible for Sir Bernard Spilsbury to assert so confidently as he had done that the bruises had been caused before death.

Dr. H. M. Galt, pathologist to the Sussex County Hospital, agreed with the previous witnesses as to the injuries to the neck, and expressed the opinion that the bruises were trifling, such " as one might see at Rugby football every Saturday. They do not cause shock or sudden death in my experience."

Sir Bernard Spilsbury was recalled, and gave his reasons for differing from the medical witnesses for the defence.[2] Sir Bernard was again cross-examined, re-examined, and questioned by the judge.

The final speeches for the defence and for the Crown were short, and did not add materially to the conflicting theories of the case already presented to the jury.

The judge, in summing up the case to the jury, told them, as a matter of law, that intentional killing was murder, even if there were no long previous premeditation. The whole burden of proof lay upon the Crown ; there was no obligation upon the defence to prove the

[1] Yet he had certainly done so. Mrs. Normanton (*op. cit.*) calls attention to the skill of the single question which elicited this reply, and destroyed the effect of the testimony to character.

[2] The doctors had met out of court, had re-examined and discussed the neck sections together, and had all adhered to their previous opinions.

negative ; and the onus of proof had been in no way shifted by the fact that the defence had put forward a very definite theory. The judge reminded the jury that in reviewing the evidence, as it was his duty to do, he could not relieve them of any part of their sole responsibility to decide as to its effect. He then went through the evidence in considerable detail ; first as to the relations between Thorne and Elsie ; her belief that she was pregnant and her painful anxiety as to his intentions ; his transfer of his preference to another girl ; Elsie's knowledge of this fact. The judge warned the jury against attaching too much importance to the evidence as to Elsie Cameron's neurotic history. He suggested that the evidence of suicidal tendency, and of an adequate motive for suicide, were alike weak. Passing to the medical evidence, the judge remarked that whatever might be thought as to the violence, or absence of violence, with which the bruises had been caused, it was a fact not without importance that they were eight in number, in different parts of the body. In regard to the alleged marks on the neck, he suggested that the evidence of Sir B. Spilsbury was more reliable than that of the medical witnesses on the other side. The judge then commented on Thorne's behaviour after the girl was dead, and in particular upon his failure to summon assistance.

The jury, after an absence of 28 minutes, brought in a verdict of guilty, and the judge pronounced sentence of death.

On 6th April Mr. Jowitt, K.C.,[1] appeared before the Court of Criminal Appeal, composed of the Lord Chief Justice, Mr. Justice Shearman, and Mr. Justice Salter, to submit Thorne's application for leave to appeal. Of several grounds put forward the most important was the unsatisfactory conflict of medical evidence. Of such controversies, Mr. Jowitt urged, a jury was ill qualified to judge : but the Criminal Appeal Act empowers the court, " where any question arising on the appeal involves—any scientific . . . investigation, which cannot in the opinion of the Court be conducted before the Court, [to] order the reference of the question . . . for inquiry and report by a Special Commissioner appointed by the Court " ; and this course the court was pressed to take. The court, however, was not satisfied that this was a proper case for resorting to this exceptional procedure, and leave to appeal was refused. In giving judgment the Lord Chief Justice said : " where the question was whether the verdict of a jury in a criminal case should be disturbed, the Court would hesitate long before

[1] Now Sir William Jowitt.

it transferred, or seemed to transfer, to a medical expert, or medical experts, the determination of a question on which a jury, with conflicting views before them, had arrived at a unanimous conclusion". Indeed, it is difficult to see what assistance the court could have received in this case from a medical referee who had not seen the body at a sufficiently early stage.

Thorne was executed on 22nd April, 1925.

8. Conclusion

The survey of the criminal branch of the English legal system briefly summarised in the foregoing pages brings into prominence the following features.

1. The importance attached to securing to accused persons a large measure of equality in their controversy with the representatives of the State.

2. The large reliance upon the collaboration of unofficial persons, whether as prosecutors, as jurymen, or as prosecuting counsel (other than the "Law officers"). Leading barristers as often appear for the defence as for the prosecution in criminal cases.

3. The very large discretion given to the judges in the management of trials, and in the fixing of penalties.

It seems appropriate to add that severe rules are enforced to prevent the due conduct of justice being interfered with by injudicious press comment. Any comment or news-items published by a newspaper about pending proceedings, of such a nature that they might affect the attitude and opinion of the jury, constitute "contempt of court", punishable in a summary manner with fine or imprisonment.

Let it be said in conclusion that English criminal justice is sustained and pervaded by the profound confidence of all classes of the population in the integrity of the English judges, and their complete inaccessibility to official pressure or other corrupt influences. The great Chancellor Lord Bacon (1561–1625), the author of the *Novum Organum*, was dismissed from his office and fined and imprisoned for corruption. This is believed to be the last example of such delinquency.

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