

Portia's description of the quality of mercy—it was twice blessed; it blessed him that gave and him that took. England was relieved of an ugly burden and the slave-driver had a new victim without cost. Later on this system had to be abandoned and many criminals were then sent to Australia until such a course could no longer be followed. The next step was incarceration in the foul prisons, the earthly hells in the heart of society, which prevailed until Howard's time.

Gradually, however, the impression had grown in the community that all the people outside the gaols were of kinship with the unfortunate offenders against the law, and that it might be desirable to study the question of their treatment from a humane standpoint. Naturally those who advocated this view were for a long time a minority, but as "history is the record of the triumphs of minorities" the changes made by the law in the treatment of criminals since that time down to to-day have been characterized by a steady, if slow, humanizing of the criminal law in all its divisions.

The mental or physical condition of the offender was given no consideration by our fierce forefathers, and a trace of the old ferocious spirit which sent diseased, insane and irresponsible persons to the dungeon may still be found in the inhuman system which lingers in some of our cities and municipalities of punishing the chronic inebriate by sending him to a prison where there is no attempt to cure the disease of inebriety.

3. Evidence of prisoners.—Not only were the loathsome old prisons with their debasing tendencies abolished, but the person charged with crime was gradually given fair opportunity of defending himself. Each change, however, was stoutly resisted. The last important change whereby the accused himself is made a competent though not a compellable witness was viewed with the deepest apprehension by some leading jurists. The chief arguments against it were that perjury would be increased by it, and that it would frequently lead to the conviction of innocent accused prisoners who might be nervous or clumsy in giving their evidence.

In Canada, however, the result of the provision of our Evidence Act has been most beneficial in aiding in the discovery of truth. Jurors were quite as able in criminal as in civil cases to make allowances for the distress or nervousness of any innocent witness and the innocent accused is under no disadvantage in that respect.