

SELECTIONS.

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CRIMINAL EQUITY.

Unless the criminal law is to be allowed to sink into a state of unintelligibility, one of two things must occur. We must either have a Criminal Code, or we must have a more efficient Court of Criminal Appeal. The code of Mr. Justice Stephen, admirable example as it is of learning and logical skill, and carefully revised as it was by experienced judges, is very far from inspiring sufficient confidence to make its adoption possible. It has a tendency to break down in practice, as witness the recent case of *Regina v. Hyndman*, when the code said one thing as to the law of sedition and the Digest of its chief author another thing. The inefficiency of the Court for the Consideration of Crown Cases Reserved is due in no way to any shortcomings on the part of the judges who compose it, but to the nature of its constitution. No one who reads the judgments in *Regina v. Ashwell*, 55 Law J. Rep. M. C. 65 (reported in the May number of the *Law Journal Reports*), but will be struck with admiration at the learning, ingenuity, and dialectical power of the judges who delivered them. Each judgment is an essay in itself. The fault of them is, however, that they are wanting in practical character. The Court for the Consideration of Crown Cases Reserved consists of twenty-three judges, of whom fourteen sat on this occasion, but five of whom, varying from time to time, usually sit, and it necessarily wants cohesion. When the Court sits in full numbers there are too many judges to arrive at one conclusion; and when it sits in diminished numbers its decision will be overhauled, probably with the mischievous result of "distinguishing" on the next occasion by five fresh judges. The want of responsibility which results is the cause of the purely academic character of the judgments delivered. They are most interesting as embodying the varying opinions of judges, but any responsibility for mak-

ing the criminal law work is entirely absent. We want a Court into which this sense of responsibility may be instilled, and probably we cannot do better than adopt the existing system of appeal in civil cases. If the Court of Appeal and the House of Lords are not capable of deciding what is and what is not larceny they are certainly not capable of deciding the much more intricate questions of civil liability which come before them; and that depth and width of knowledge of law which a Court of Appeal ought to possess cannot be reached by judges not thoroughly acquainted with the law of crime. What is required is a Court of Criminal Appeal which will lay down boldly the few essential principles of criminal law and not deviate from them.

Readers of the judgments of the Lord Chief Justice and Mr. Justice Cave in *Regina v. Ashwell* will rub their eyes and doubt whether they can really be reading a judgment in a criminal case. If there is one branch of law more than another in which facts ought to be dealt with boldly and even coarsely, it is the law of crime. The question was whether when the prosecutor handed Ashwell something, and Ashwell took it, there was a giving and receiving. If so, there was an end of the charge, because both the prosecutor and Ashwell thought at that time they were passing a shilling from one to the other. The thing passed was, in fact, a sovereign, but as Ashwell did not find this out until an hour afterwards, his misappropriation of it then would be no crime, because he could not steal what was already in his possession. Lord Coleridge says: "It seems to me very plain that delivery and receipt are acts into which mental intention enters, and that there is not in law, any more than in sense, a delivery and receipt unless the giver and the receiver intend to give respectively what is respectively given and received." However sound this may be as a philosophical disquisition, is it applicable to the elucidation of the law of crime? According to this view, if a schoolboy put a toad in his sister's apron on pretence of its being an india-rubber ball, there is no receipt of the toad, yet there is a scream from the sister all the same. But Lord Coleridge modifies his proposition in his next sentence, in which he says that "all acts to carry legal conse-