

happened in some of the older states of this Union, when a man under arrest, charged with crime, has been snatched from the custody of the law, taken to a public place, tied to a post, acid poured in his ears and eyes, his fingers and toes cut off as mementoes of the event, and women then applying the torch in his execution—suppose that had occurred in the Philippine Islands, what would we have said about the fitness of the Filipinos for self government?

I say that our administration of the criminal law has broken down. It is an unworkable machine. I know we convict men and send them to the penitentiary, but I state it here as a fair statement of the administration of the criminal law in America, that if a man has the means to employ able counsel, so as to make a fight, as we say, that in the great majority of cases he can escape punishment for crime. The trial can be so protracted and enmeshed in such a complication of pleading and evidence as to result, not in every case, oh, no, but in the majority of cases, in error which, under this pernicious doctrine of presumed prejudice, will nullify a conviction. I appeal from this practice to the practice that has obtained across the water. The main feature of that practice is not the doing away with the right of appeal, it is the other matter to which I have already pointed, viz., that only substantial error be regarded.

What have we met here together for? Surely not just to talk, or just to hear talk, and go away without its making any more impression than a Sunday dinner. Something ought to be done by the legal profession to correct this confessedly serious fault of American law. As one of the means for its rectification, a statute substantially like the following, which embodies the rule that has proven so beneficent in England for a generation, ought to find a place in all our codes of procedure, and, what is more important, in the mind and conscience of every American lawyer and judge:—

No judgment shall be set aside or new trial granted in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error