

help it, an appeal to the prosecuting officer, or, in the last resort, to the executive clemency, could not fail to be effectual. Meanwhile, the person who persists in a prohibited practice, which he knows may be injurious or fraudulent as against the public—a fact which he may, if he will, determine—whereby he is to profit at the risk of the public, is not in a position to assert his want of wrongful intent. The peril should be his, as well as that of his poisoned or defrauded victim."

Here is a close worthy of the beginning. And no judge ever adorned a bench who could do better at throwing intellectual mud in defence of a bad *stare decisis*. Was there ever, in fact, a Legislature so demented as, by express enactment, to dispense with the criminal intent in crime? Has it been so much as proposed to punish insane men and sucking babes as criminals? Did any law-maker, any demagogue on the stump, ever recommend the passage of a law that men and women who marry shall do it at the risk of being sent to the penitentiary should a latent impediment, unsuspected and impossible to be discovered at the time, appear afterward? It takes a bench of wise judges, in a state whose ripened jurisprudence rises golden above the green of the younger states, to do that.

Let us see, a little, how this stands: A police-officer, if he arrests a man for being drunk when he is not, is excused; because, as the foregoing explanations have shown, he was required to act, and he should not be punished when his intent accorded with his duty. That, it is agreed on all sides, was right. But he was not obliged to become a police-officer. Both scripture and the law of nature command that man shall replenish the earth. Our laws encourage people in doing this, quite as much as they do in becoming police-officers. Not long would police-officers be required, not long would courts, if the places of the present inhabitants passing away were not filled. Well, a man has made up his mind to do his part toward keeping up the population. But, in Massachusetts, fornication and adultery are both indictable; the law requires him to marry and live by his marriage vows. Yet, let him be as circumspect as he may, he cannot take the first step toward population without being in peril of penitentiary. If he chooses fornication,

he must be punished; if adultery, he must be; if he selects lawful marriage as the means, he is liable to bring up at the same end. Should he choose a widow, her former husband may not, after all, be dead. Should his choice be a maid, she may have indulged in the fun of a mock marriage, supposed to be of no binding force, never cohabited under, and never heard of by him, yet held afterward, by the courts, to be valid. So the door of the state prison swings open, and in he must walk! Well, if he cannot in safety become a married man, he may find refuge in the badge of a police-officer. If he will "indulge" in the evil of an honest endeavour to provide inhabitants for police-officers to look after fifty years hence—why, "the peril should be his!"

We have already been told that the creating of a crime out of an endeavour to obey the law is productive of no more hardship than sometimes proceeds from the rule of a presumed knowledge of the law. And, as a remedy for all, we have "the executive clemency." The ship glides on over the blue sea; the captain is on deck and his young bride by his side. "You look pensive, love," she says. "I was thinking of jurisprudence; I learned it a little while after the happy day when we were married." "And what is jurisprudence? Teach jurisprudence to me." "Do you not think," he replies, "it was very hard for that sailor-boy to drop from the jib-boom yesterday, and be drowned?" "Yes;" and she dashes the tear from her eye. "And would it be any harder if I should throw you overboard?" "Dying would be no harder." Then, tossing her over, he continues, as she lifts up her cry for help, "The Governor, my dear, will save you with his whale, as in the case of Jonah." Great is Jurisprudence!

*III. Remedies for Judicial Blunderings.*—No man ever lived without committing a blunder. Nor was there ever a wise man unwilling to review his steps and correct his mistakes.

These propositions are applicable to ordinary life; but, by some opinions, they properly admit of two exceptions—in first-class journalism, error in a newspaper being impossible; and in judicial affairs, where "the perfection of reason" prevails. It is within the scope of this article to consider only the latter.

If we look at this question in a spirit of candor, we shall see that, of necessity, and without