

which it is always the duty of a Judge to make the jury feel, in a case of such moment as the one now under review. A reference to the right that a jury have to accompany their verdict with a recommendation to mercy is not an impropriety or such an act as we could hold to amount to a misdirection. An allusion of this kind is probably made by counsel in most murder trials at some stage or other of the trial, and in these days of wide-spread reading it ought to be pretty well known to juries that it is open to them to make such a recommendation, and that such a recommendation, if made, must be dealt with by the Governor in Council. With circumstances that might be considered to render it expedient or proper to reduce the penalty, this Court has nothing to do. They should be referred to a different tribunal than the trial Judge or this Court; they can be acted upon by the Executive alone. It is there that such considerations are to be urged, and it is there that they are to be acted upon, if at all.

We have had an opportunity of fully considering in another case* all the points that were brought out in argument. We have also had the advantage of Mr. Kerr's forcible presentation of the case. If we thought that further consideration of the case would lead to a conclusion different from that which we have reached, we would be only too glad to postpone our decision. As it is, we do not believe that it would be merciful to the prisoner to raise any hopes of that kind. It is better that he should know that, so far as the Courts are concerned, he has nothing more to hope for. The responsibility for further action is now with the Executive; a recourse to executive clemency is open to him to the last moment.

The questions submitted will be answered in accordance with the views I have endeavoured to express.

* *Rex v. Ventricini*, ante 961.