

Appendix I.

us except upon such evidence. No doubt the existence of such correspondence may lead the Court to make further inquiries, and to require the production of further evidence. It must not be supposed, however, that the reading of such communications amounts to the giving of evidence. If it did, people would say that we had allowed our minds to be influenced by them. Therefore, we have confined our attention to the evidence given by Hall on oath. We did not think the other further evidence sought to be given was of any importance, and therefore we refused to allow it to be given. The second point I desire to take is that elicited from Hall in cross-examination by Mr. Mitchell-Innes to the effect that when he went down for the purpose of seeing if he could identify Dickman he was first invited by somebody, possibly on behalf of the police, to look through a window, and on doing so did see, sitting alone, the person who was afterwards convicted. We need hardly say that we deprecate in the strongest manner any attempt to point out beforehand to a person coming for the purpose of seeing if he could identify another, the person to be identified, and we hope that instances of this being done are extremely rare. I desire to say that if we thought in any case that justice depended upon the independent identification of the person charged, and that the identification appeared to have been induced by some suggestion or other means, we should not hesitate to quash any conviction which followed. The police ought not, either directly or indirectly, to do anything which might prevent the identification from being absolutely independent, and they should be most scrupulous in seeing that it is so. In the present case we have come to the conclusion that, although Hall's identification of the actual individual might have been slightly influenced by what had previously taken place, it has so little bearing on the real merits of the case that it is quite impossible for us to interfere with the verdict on this ground.

Now, it has been suggested by Counsel for the appellant that the murder might have taken place north of Morpeth—that is to say, after the appellant had left the train, it being admitted that in that case the murderer must have left the train while in motion: but there is no substantial ground for thinking that that was the case. The learned judge, in a summing up which is one of the most able I have ever read, dealt with that suggestion. It was not disputed that the appellant was in the train which carried the deceased man, that he took a ticket for a station short of Morpeth, but that he travelled as far as the latter place, where he left the train, paying excess fare, and that Nisbet's bag was found down the air-shaft of the Isabella pit, about $1\frac{1}{4}$ miles from Morpeth