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CRIMINAL LAW—HOMICIDE.

A Treatise on the Criminal Law of the United States, 3d edition. By Francis Wharton. Philadelphia: Kay & Brother.

A Treatise on the Law of Homicide in the United States. By Francis Wharton. Philadelphia: Kay & Brother.

The author of every elementary treatise, well arranged and executed, confers a gift of no ordinary value upon his professional brethren, and is entitled to their hearty thanks. Few have the taste, and fewer still the talent, to mould their studies into such a form as shall contribute to the benefit of others, and save them from a laborious search after abstract principles, amidst the cares and pressure of daily business. The value of the results thus gained, rises in proportion to the difficulties of the subject investigated, and to the paucity of those who have preceded the diligent laborer in the field explored. The volume which heads our list, was the first attempt to present a connected and comprehensive view of American Criminal law, and a third edition recently issued shows the favor with which it has been regarded and the appreciation which it has received from those for whose benefit it was designed.

As it has thus stood the test of examination by the practitioner and the student, it would seem almost superfluous to attract further attention towards it, or to attempt an analysis of its contents—and yet, when the second volume under consideration is for the first time presented to the public, it would appear a proper occasion for exhibiting the claims of both to professional regard. Whilst the peculiar branches of jurisprudence which form the contents of these volumes, are not selected by the great majority of lawyers as those in which they desire to practice, and the civil rather than the criminal courts are more usually chosen for the transaction of business, a knowledge of the criminal department of the science in its general features, is necessary in correctly instructing clients in the various matters presented by them for advice in the usual routine of professional life. A choice of remedies when either forum is opened for redress, becomes a matter involving no little responsibility, and by a correct and logical discrimination great perplexity may be avoided, whilst the means to be attained may be reached with more facility than where the knowledge is confused and uncertain. The conflicts between the two jurisdictions frequently involve technical rules and nice shades of distinction, and although the treatise on criminal law may not be needed to assist in the conviction or defence of a malefactor, its presence is always necessary, and the aid which it affords is by no means of a trivial character to every one who is engaged in constant practice.

Under our peculiar political constitutions, the law of this country bearing upon crimes has been essentially modified from that of England. Indeed, so great are the variations, that in some respects it may almost be deemed a system of a different character, except as to the great leading outlines common to both. It has acquired form under the hands of those who have administered justice amongst us, during and since our colonial condition, who in departing from the laws and usages of the mother country in many important particulars, whilst they have avoided giving immunity to crime, have greatly modified the rigor and severity of the British common and statute law, and in many cases extricated them both from the tech-

nical difficulties in which they were formerly involved. Our own State has contributed towards attaining this result, and we notice that our author, in his preface to the Law of Homicide, has rendered an appropriate tribute to the learning and judicial abilities of one, who possessed (whatever defects he may have had,) a master mind, and adorned, by eminent, well digested and well arranged learning, the station he so long occupied. Judge King, the former President of the Judicial District composed of the now city of Philadelphia, commended himself to all who practiced before him as an accurate lawyer, who with great readiness detected the existing impediments in every controversy he was called upon to determine, and seldom failed to apply the key which unlocked its difficulties. His eminence in the criminal department of his Court was always conceded, and his learning and ability have made a deep impression upon that branch of the law in our whole country.

The arrangement of both the works under consideration is admirable and lucid. The student is led by easy gradations, from the consideration of primary and elementary matters to the difficult and complex questions presented in the various subjects treated. The doctrines and positions assumed are elaborated with great care, and fortified by numerous cases which are skillfully inserted into the text, and also referred to in the notes. The duties devolving upon those who must necessarily be employed in the detection of crime, and in arranging the proofs which are requisite to put the case fairly before the court and jury, as well for the protection of the criminal as the furtherance of justice, are accurately stated, and a general knowledge of their great leading principles on the part of those whose duty it is, by a close inspection of suspicious circumstances, to fasten the probability of guilt upon the individual in whom they seem to meet, would obviate much of the uncertainty which is sometimes produced in consequence of their omission through ignorance. We extract from the first volume the mode in which the author illustrates the application of the system of indicatory tests used by the civil law to our own common law practice.

"In the indications which tend to direct suspicion against a person, there is a distinction between those which are important for

the information of the prosecuting officer, and those which authorize him in taking steps for an inquest. The former class, which would authorize him to make inquiries, to cause a person to be closely watched, or even examined without a formal charge, comprise those derived from facts which, without having a particular reference to the special crime committed, tend to show an inclination to the perpetration of offences such as the one under consideration. While it is clear such tendencies or inclinations are inadmissible on trial before a court and jury, it is proper that they should become the subject of investigation, not only for the purposes of the general policy of an arrest, but to enable the prosecution, should character be put in evidence by the defence, properly to rebut it. It will simplify the search after these indications, for the officer to inquire: 1st, what facts lead to the supposition that a particular person was the criminal; 2d, what facts concern the *effects* of the crime; or, 3d, what facts appear as necessary conditions of the perpetration, and apply to a particular person. Indications falling under the first subdivisions are: (1) the particular interest a person has in the perpetration of the act, by reason of the advantages accruing to him from the crime, as, where the accused was the heir at law of the deceased, and in impoverished circumstances, or where he had previously secured a will in which he was legatee, or where certain articles, especially documents, are stolen, which are only valuable to a particular person; (2) threats previously uttered of the crime subsequently committed, or a similar one; (3) preparations made for the act, by procuring or fitting for use the necessary instruments; by narrow inquiries into circumstances, e. g., the road which the deceased was expected to take, the knowledge of which was indispensable, or greatly auxiliary to the execution of the purpose, by practice in the arts by which the deed must have been done, or, repeated attempts to imitate handwriting, in cases of forgery, or repeated practice with fire-arms, or other murderous weapons, in cases of homicide, or by preparatory arrangements to commit the crime or to escape detection, as by alluring a person to a distant place where a murder or robbery could be committed.

"2d. Among the most significant effects of the crime are: (1)

marks on the person which may be accounted for by the commission of, or participation in the crime, as, stains of blood on his clothes, or wounds given by the victim in self-defence, as, for instance, where the wounded man says he bit his assailant in the arm, and the arm is found to have been bitten, and where the prosecutor struck the robber on the face with a key, and the mark of the wards was afterwards identified there; (2) the possession of the articles known to have been removed when the act was perpetrated, especially where their possession is attended with peculiar care or anxiety in hiding or keeping them, or with uneasiness in the behavior of the possessor, as, for instance, an endeavor to sell the article at any price; (3) intentional removal or destruction of the trace of the crime at particular places; (4) anxious inquiries into the crime, and the judicial measures against the guilty party, or into the suspicious current; (5) disclosures of circumstances which could be known only to one acquainted with the particulars of the crime, especially, boasts of the commission of the deed; (6) attempts to compound the matter with the injured party, or to remove suspicion, or to mislead those occupied with the investigation; (7) uneasy deportment, justifying the supposition of a guilty conscience; (8) flight, to which no proper or reasonable motive can be assigned.

"3. The indications derived from the conditions of the crime are such as, (1) presence of the accused at the place at the probable time that the deed was committed; (2) discovery at the *locus in quo* of articles known to have belonged to the accused shortly before; (3) footsteps leading from the place to the dwelling of the party, and which correspond in dimensions with his shoes; (4) the fact of a person being found in possession of instruments particularly serviceable in executing the design in question; (5) particular qualifications, experience, skill pre-eminently adapted for the undertaking, or perfect acquaintance with the localities."

The question of character as bearing upon the accused, whether offered on his part in vindication or extenuation of the offence charged, or by the prosecuting officer in a doubtful case, to fasten the crime more surely upon the prisoner, has to a certain extent, in the progress of a cause, frequently proved an embarrassing point

to the practitioner: and this, perhaps, not so much from any uncertainty as to the rules of law upon the subject, as to a current opinion amongst the unlearned, that in some way or other, it may be forced into the trial of every prosecution, and used indiscriminately by either side. Indeed, it is difficult to make a layman understand why the whole acts of a man's life, particularly those of a similar nature with which he is charged as a criminal, may not be dragged into the controversy, and made to tell in favor of his guilt or innocence. Indeed, in this respect the current of the civil law seems to run with the popular impression, and the general moral conduct of the alleged offender receives an examination, before a final conclusion is arrived at under that system. In this respect it differs entirely from the maxims of the common law, and the difference between them is carefully and accurately exhibited by our author. We quote here from the work on homicide, although the same point is accurately treated in the book on criminal law:

"It should be observed, however, that while evidence of distinct acts of crime is admissible when tending to show special malice to an individual, or the *scienter*, they cannot be received to prove a tendency to commit the particular class of crimes of which the defendant is accused, and, *à fortiori*, is general evidence of such a tendency inadmissible. Thus, in England, it has been held, that on the trial of a person charged with an unnatural crime, it was not evidence to prove that the defendant had admitted that he had a tendency to such practices; and so on an indictment against an overseer on a plantation, for the murder of a slave, evidence as to the prisoner's general habits in punishing other slaves, is not admissible for the prosecution. It is at this point, indeed, that the common and the civil law diverge. In the first, the issue is, whether the defendant was guilty of the particular offence, and he advances to meet this issue with a presumption of general good character, which nothing but his own election can defeat. No matter what independent crimes he may have been guilty of, or what infamy he may have incurred, unless he invite the investigation himself neither crime nor infamy can be advanced against him. But under the civil law, the issue is not whether the accused com-

mitted the particular offence, but whether his general guilt is such as to make his removal from society a general benefit. To this inquiry, the particular accusation is used merely as an avenue. Thus, by the common law, as has just been seen, the court will check any attempt whatever to show that the defendant's character and antecedents were such as to exhibit a tendency to the particular crime charged; while on these points, by the civil law, the public prosecutor is encouraged to collect as great a mass of details as possible, and to spread it before the court at the outset. Of this distinction, a curious illustration is found in a case which has excited both popular and physiological speculation in Germany. A young woman, in the streets of Leipsic, one night was assaulted by a man in a cloak, who darting from behind a dark corner, struck into her arm, above the elbow, the blade of a small lancet, and having inflicted a slight wound, retreated. He was arrested, and in this country would have been tried for an assault and battery, unless he provoked a widening of the issue. But it had been rumored about a short time previously, that a very remarkable species of monomaniacs had lately made their appearance in Leipsic, called Mædchenschneiders, who were influenced by an uncontrollable propensity to plunge, skin-deep, into the arms of any young maidens whom they could meet, a small lancet. This was brought into the issue; and three questions were presented for investigation, on which a vast amount of physiological refinement, forensic skill, and judicial exposition were spent: 1st, did such a propensity exist; 2d, had it been generally executed; and 3d, was the defendant's moral tone and past history such as to make it probable that it would exert over him a control inconsistent with the convenience and the comities of society? These points, after protracted investigations, were determined against him, and he was convicted and sentenced accordingly.

"A precise counterpart to this, so far as the principle is concerned, occurs in the trial, in London, in 1789, of a man named Williams, who was possessed with a passion the same as that which beset the 'Mædchen Schneider.' When he was last arrested, he was met with a series of indictments which charged him with

assaulting, in the year 1789, a variety of spinsters; it being averred, by way of description, in each case, that he did 'cut, tear and deface her silk gown,' and 'did cut, strike and wound her.' His manner of inflicting the wound was the same as that described in the text; but so artful and cautious were his movements that it was not until the public were enlisted in unferreting him by permanent advertisements, that he was at last detected. On the first trial he escaped on account of misdescription in the details; but he was remanded to wait his trial for the common assault, upon a number of which he was severally convicted. The narrow issue and brief evidence each case presented, forms a vivid contrast to the elaborate and metaphysical investigation of the civil law. The prosecutrix was called, proved the assault, was followed by medical evidence of the wound, and such testimony as belonged to the *res gestæ*, and then in the second and subsequent trials, the chairman said to the jury, 'you will endeavor, if possible, to forget every thing that passed even yesterday, and to treat this as a new offence; and to treat the prisoner, in your judgment upon him, as if you had never heard of him, but that he was now brought before you, charged with an assault, *proved only by one witness*, but with certain corroborating circumstances.' On the first trial, Buller, J., who never forgot the great guarantees of the common law, was equally emphatic. 'You will totally lay aside every thing you may have heard before you came into this court, and consider the case coolly and dispassionately *on the evidence given*.' "

Of the mode in which technical matters are discussed we present the following as a good example, upon a point of some nicety. After stating the proposition, "that an acquittal on an indictment for the minor offence is generally no bar to a subsequent indictment for the greater," he proceeds:

"It has been frequently held in this country, that where, on an indictment for an assault, attempt, or conspiracy, with intent to commit a felony, it appeared that the felony was actually consummated, it was the duty of the court to charge the jury that the misdemeanor had merged, and that the defendant must be acquitted.

"It used to be supposed, from the casual remarks of old text writers, that the common law rule was, that whenever a lesser offence met a greater, the former sank into the latter; and hence, in a large class of prosecutions, the defendant would succeed in altogether escaping conviction, by a subtle fiction having no origin either in common sense or necessity. Conceiving, however, the principle to be too deeply settled to be overruled, the courts of Maine, Massachusetts, New York and Pennsylvania, as has been seen, have held, that where a felony was proved, the defendant was to be acquitted of the constituent misdemeanor, and though the notion was sturdily resisted elsewhere, it has taken deep and general root. The result has been the accumulation of pleas of *autrefois acquit*, in which, through the labyrinth of subtleties thus opened, the defendant has frequently escaped. But lately, on two solemn occasions, all the judges of England have agreed that the doctrine, that a misdemeanor, when a constituent part of a felony merges, has no footing at common law: that the statutory misdemeanor of violating a young child did not merge in rape; nor a common law conspiracy to commit a larceny, in the consummated felony. The bearing of these cases on the question of *autrefois acquit* is thus stated by Lord Denman, C. J. 'The same act may be part of several offences: the same blow may be the subject of inquiry in consecutive charges of murder and robbery. The acquittal on the first charge is no bar to a second inquiry, where both are charges of felony; neither ought it to be when the one charge is of felony and the other of misdemeanor. If a prosecution for a larceny should occur after a conviction for a conspiracy, it would be the duty of the court to apportion the sentence for the felony with reference to such former conviction.'

"Cases frequently arise where two offences are committed by the same act, and where an acquittal on the one is interposed on the prosecution of the other. Where the act is indivisible, as where a man is at the same time guilty of a riot and of the breaking up of a religious meeting, or of uttering and of selling forged notes, under the statute, the acquittal, in one case, is a bar to the other; but where the act is separable into two distinct branches, as where a

man at the same time assaults two persons, or steals a horse and a saddle together, he may be convicted on separate indictments for each offence. Thus, in Massachusetts, where, to an indictment for receiving stolen goods which were the property of A., the defendant pleads in a bar, a former indictment, conviction and judgment for receiving stolen goods, the property of B., and then alleges that the two parcels were received by him of the same person, at the same time, and in the same package, and that the act of receiving them was one and the same, the plea was held insufficient. But in cases of felony, where one of the offences is a necessary ingredient or accompaniment of the other, and where the State has selected and prosecuted it to conviction, it is said there can be no further prosecution on the other."

The most marked distinction between the criminal law of the United States and England, is undoubtedly the division which has been made in most of the States, of the crime of murder into various degrees. The Pennsylvania Act of 1794, creating these grades, necessarily led into an accurate examination of the whole law of homicide, and rendered it incumbent on those charged with the administration of justice, whilst bound by the humane sentiments which dictated its enactment, on the one hand, not so to narrow its meaning within such limits as should render its provisions practically abortive, on the other hand, not to widen its interpretation so as to peril the security which each one reposes in the law, as the guardian and protector of his person from violence. The task was one of no ordinary difficulty, but it was well performed, and the decisions which have been made, as well in our own State as in others of the Union who have imitated our example in this particular, have built up a system, which is so well arranged, accurately defined, encumbered with so few technicalities, and so thoroughly digested that the skillful practitioner finds but little difficulty, after hearing the statement of facts, in determining in which degree the offence is to be classed. A summary of the distinctions between these grades of crime is thus given:

"In fine, wherever the deliberate intention is to take life, and death ensues, it is murder in the first degree; wherever it is to do

bodily harm or other mischief, and death ensues, it is murder in the second degree; while the common law definition of manslaughter remains unaltered.

"But however clear may be the distinction between the two degrees, juries not unfrequently make use of murder in the second degree as a compromise, when they think murder has been committed, but are unwilling, in consequence of circumstances of mitigation, to expose the defendant to its full penalties. In such cases, courts are not disposed to disturb verdicts, but permit them to stand, though technically incorrect. Thus, where S. having conceived and declared a design to kill P., the parties met afterwards in front of S.'s own house, and a quarrel ensued, in which S. gave the first offence; P. proposed a fight; upon which S. retired for a very brief time into his own house, armed himself with a loaded pistol, which he concealed in his pocket, and instantly returned so armed to the scene of quarrel; then P. threw a brick at S., which did not hit him, but falling short of him, broke, and a small fragment struck S.'s child, standing within his own door, who cried out, and S. hearing his child cry out, but without looking to see whether he was hurt or not, exclaimed, 'He has killed my child and I will kill him,' advanced towards P., deliberately aimed and fired the pistol at him, then retreating with his face towards S., and the shot took effect and killed P. A verdict of murder in the second degree being rendered, the court refused to set it aside.

"There are, however, certain features which, in cases of deliberate homicide, draw forth, generally from the court's instructions to the jury, that by them a deliberate intent to take life is shown. Where a man makes use of a weapon likely to take life; where he declares his intentions to be deadly; where he makes preparations for the concealing of the body; where, before the death, he lays a train of circumstances which may be calculated to break the surprise, or baffle the curiosity which would probably be occasioned by it; where, in any way, evidence arises which shows a harbored design against the life of another;—such evidence goes a great way to fix the grade of homicide at murder in the first degree. Thus, where the defendant struck the deceased violently on the head with

a sharp and heavy axe, it was held murder in the first degree, deliberation being shown; and it was said by M'Kean, C. J., 'Let it be supposed that a man, without uttering a word, should strike another on the head with an axe, it must, on every principle by which we can judge human actions, be deemed a premeditated violence.' Where a man loaded a pistol, took aim at, and shot another, it was held murder in the first degree. If one man shoot another through the head with a musket or pistol ball,—if he stab him in a vital part with a sword or dagger,—if he cleave his scull with an axe, or the like,—it is almost impossible for a reflecting and intelligent mind to come to any other conclusion than that the perpetrator of such acts of deadly violence intended to kill. Where the defendant deliberately procured a butcher's knife, and sharpened it for the avowed purpose of killing the deceased; where he concealed a dirk in his breast, stating, shortly before the attack, that he knew where the seat of life was; where he thrust a handspike deeply into the forehead of the deceased; the presumption was held to exist, that the killing was willful. But it is not necessary, to warrant a conviction of murder in the first degree, that the instrument should be such as would necessarily produce death. Thus, where the weapon of death was a club not so thick as an axe-handle, the jury, under the charge of the court, rendered a verdict of murder in the first degree, it appearing that the blow was induced by a deliberate intention to take life. The same presumption of intention is drawn with still greater strength from the declared purpose of the defendant. Thus, where the prisoner, a negro, said he intended 'to lay for the deceased, if he froze, the next Saturday night,' and where the homicide took place that night; where it was said, 'I am determined to kill the man who injured me;' where the prisoner had declared, the day before the murder, that he certainly would shoot the deceased; where, in another case, the language was, 'I will split down any fellow that is saucy;' where the prisoner rushed rapidly to the deceased, and aimed at a vital part; where a grave had been prepared a short time before the homicide, though the deceased was not ultimately placed in it, the whole plan of action being changed; in each of these cases

it was held murder in the first degree. It must be noticed that premeditation, in the eye of the law, has no defined limits; and if a design be but the conception of a moment, it is as deliberate, so far as judicial examination is concerned, as if it were the plan of years. If the party killing had time to think, and did intend to kill, for a minute, as well as an hour or a day, it is a deliberate, willful, and premeditated killing, constituting murder in the first degree. The evidence by which intent can be proved or inferred has already been fully considered."

Our author has not failed to treat skillfully another question, which has been greatly mooted, and in which the respective rights of the court and jury, instead of being made to harmonize, have frequently been suffered to clash. A looseness of practice has to a certain extent prevailed, in ascertaining whether the jury are, in criminal cases, judges of the law as well as of the facts, and it has often been confidently asserted, that both trusts are committed to their final decision. This impression has gradually been effaced, and the modern tendency which it is hoped may prevail, has been, as well in criminal as in civil offences, to limit the rights of the jury to a decision of the facts of the case, under the direction of the court as to the law. Says our author:

"Whenever, and as often as the finding of a jury is in point of law against the charge of the court, a due regard to public justice requires that the verdict should be set aside. On this principle, it is true, the doctrine of *autrefois acquit* grafts an important exception; but this exception arises, not from the doctrine sometimes that the jury are the judges of law in criminal cases, but from the fundamental policy of the common law, which forbids a man, when once acquitted, to be put on a second trial for the same offence. When a case is on trial, the great weight of authority now is, that the jury are to receive, as binding on their consciences, the law laid down by the court; and after a conviction it is hardly doubted in any quarter that if the verdict be against the law it will be set aside.

"For some time after the adoption of the federal constitution, a contrary doctrine, it is true, was generally received. In many of

the States, the arbitrary temper of the colonial judges, holding office directly from the crown, had made the independence of the jury in law as well as in fact of much popular importance. Thus John Adams, in his diary for February 12, 1771, in a passage which is probably either an extract from or memorandum of a speech before the colonial legislature, urges that in the then state of things, public policy demanded that not only in criminal but in civil cases juries should be at liberty to take the law in their own hands. It is not to be wondered at, therefore, that the early judges both of the federal and state courts should have continued for some time to assert a doctrine which, before the Revolution, they had found so necessary for protection against oppression and persecution. To this may be added what in another place has been noticed more fully, that the Federal Supreme Court in particular, which was for some years so deeply immersed in politics, as to withdraw from its judicial duties most of its interest and a large part of its attention, was unwilling to assert any prerogative which might draw odium on itself, or expose the new constitution to any additional shock. Hence it was that Judge Chase not only broadly denied that the courts had any power to pronounce on the unconstitutionality of statutes, but over and over again declared that the Supreme Court was to be treated as possessed only of such powers as the legislature might from time to time impart to it. At the very time that this eminent butarbitrary judge,—(whose arbitrariness, however, was much more of the temper than of the understanding, always impetuous in asserting authority, always backward in assuming jurisdiction,) was keeping the bar in an uproar by his assaults on counsel and witnesses, he was prompt in conceding to the jury as good a right to judge of the law as he had himself. Thus in Fries' case he said, 'The jury are to decide on the present and in all criminal cases, both the law and the facts, on their consideration of the whole case.' 'If, on consideration of the whole matter, *law as well as fact*, you are convinced that the prisoner is guilty, &c., you will find him guilty.' No better illustration of Judge Chase's character can be found than in the fact, that in the very case where he thus recognized the power of the jury over the law, he suc-

ceeded, by stopping counsel when they undertook to dispute the law he laid down, in raising a turmoil, which ended in his own impeachment.

"That Judge Chase was not peculiar in his view, appears from the testimony taken during Judge Chase's trial, of Mr. Edward Tilghman, a lawyer not only of great eminence, but of political sympathies which would have kept him from any ultra democratic tendencies. 'The court generally hear the counsel at large, on the law, and they are permitted to address the jury on the law and on the fact; after which the counsel for the State concludes; the court then states the evidence to the jury, and their opinion of the law, but leaves the decision of both law and fact to the jury.' To the same effect, also, is Mr. Hays' evidence as to the state of practice at the time, in Virginia.

"But it was not long before it was found necessary, if not entirely to abandon the rule, at least practically to ignore it. If juries have any moral right to construe the law, it became essential to know what was the construction they would adopt; and the most strenuous advocates for the abstract doctrine soon confessed that the notions of juries even on fundamental questions, varied so much that it was difficult to report, much more to systematize them. And yet, if it were really settled that a jury's view of the law of a case was authoritative, it was vital to the community to know what such view was. Take, for instance, the statutory cheats growing out of the laws abolishing imprisonment for debt. The tendency of legislation in late years, has been to relieve a debtor from imprisonment in all cases except where a willful false pretence is the consideration for the debt, or where there has been a subsequent fraudulent disposal of the acquired property. The tendency of judicial decision is to construe these exceptions strictly, and to hold that to entitle a creditor to avail himself of them, he must show that he had not the opportunity of detecting the false pretences at the time,—that it related to an alleged existing fact,—or that the property secreted was actually and fraudulently detached from an honest and vigilant execution. These views are well known to the community; they enter into every contract, and are binding with

the courts. But what would a jury say? At one time a false promise would be held within the statute, and thus the whole non-imprisonment for debt laws repealed, for the chance of such a thing happening would be even more fatal to a systematic business dealing, than its certainty. At another time, nothing under a most flagrant act would be held a false pretence at all. Or take, for instance, malicious mischief at common law, about which even among the courts there is already sufficient diversity of opinion. Certainly with jurors, no settled rule could be had as to what the offence is, or if there was, no one could undertake to report it, and its reasons. Or again, when the question whether the uncorroborated evidence of an accomplice is enough to convict in a particular case,—a question in which the judiciary of almost each State holds a distinct shade of opinion,—where would be the chances of uniformity of adjudication, if juries, acting on the particular circumstances at hand, were to be the arbiters?"

We cannot make further extracts from the volumes under consideration, without extending our article to an unusual length. The practitioner who confines himself principally to the civil courts, will find treated in the book on criminal law, with great care, those subjects where both tribunals afford remedies, and where, for the immediate redress of a wrong, or the assertion of a right, a prosecution may be a more efficacious and speedy remedy than the tedious process of an action. We instance the questions growing out of the statutes relative to false pretences, and the various decisions relative to forcible entry and detainer, and malicious mischief, some knowledge of which is indispensable in the daily routine of business.

We can safely commend both these works into the hands of the student and practitioner. To the former they will prove text books of great value, and serve to impress upon the mind a branch of jurisprudence which is of great utility in the formation of professional character. To the latter they are invaluable as works of reference, and there are few whose practice is so limited as not from time to time to render a standard work on criminal practice an indispensable portion of a library.