APPEALS IN HOMICIDE CASES IN PENNSYLVANIA, 1905-1910.

There has been of recent years a great deal of criticism of courts and trials in court in this country; and a feeling of dissatisfaction with the law, and especially the criminal law, and the administration thereof seems to have become quite prevalent. It has been asserted that the administration of criminal law in certain foreign countries and particularly in England is more efficient than in the United States. It has often been alleged that both our criminal laws themselves and their administration in this country are radically defective and inefficient. These criticisms, however, have been made in broad general terms, not purporting to have been based on investigation but on general impressions merely; or a sweeping criticism has been based on some one and perhaps very exceptional instance. The lack of any adequate criminal statistics in this country makes it difficult to judge whether such criticisms are well founded, or, if they are, whether the causes of the conditions complained of are what they would seem, on first impression, to be. It is a matter of some importance, therefore, to determine by careful and accurate investigation just what is the state of the administration of our criminal law and what are the causes of the conditions which are found to exist so that remedies may be sought for such defects as there really are and, even more important still, so that radical changes may not be made which will be productive of additional evils while not correcting such as we already have. This can only be accomplished by detailed investigations of various subjects within the field of criminal law in the different states and jurisdictions of the country. Such studies are laborious and difficult to make with even an approach to thoroughness and accuracy but the need for them would seem to be apparent. It is as a slight contribution toward such studies that this examination of the appeals in homicide cases in Pennsylvania from 1905 to 1910 has been undertaken.

The five year period from January 1, 1905, to January 1, 1910, was selected as affording a sufficient number of cases on which to base conclusions and still not too large a number for convenient study and as reflecting present conditions. In Pennsylvania all appeals in homicide cases are to the Supreme Court; appeals in all other criminal cases are to the Superior Court. The cases studied, therefore, embrace all the criminal cases in the Supreme Court for the period selected, except on appeals from the Superior Court. The cases include all homicide cases decided by the court within this period. The information obtained is tabulated for convenient examination in Table I[a]. The title of the case, county, and the book and page of the Pennsylvania Reports where the case is reported are given for reference. The next column gives the briefest indication of the question involved in the appeal. The next shows whether the case was affirmed or reversed. The following columns show, in order, the date the act charged was committed, the date of the arrest, the date of the trial, the date of the appeal, the date the case was argued in the Supreme Court and the date the opinion was handed down. Thus we have a chronological history of each case, so far as the information could be obtained, from the commission of the offense to the decision on the appeal. The remaining columns give the length of time consumed by the trial and the time which elapsed from the arrest to trial, from trial to appeal, from appeal to the argument and from the argument to the decision, calculated from the dates in the preceding columns. The date of the argument and of the opinion was obtained from the Reports; the other dates from the records, in most instances through the clerks of the Courts of Quarter Sessions in the various counties. In the greater number of cases the clerks very obligingly furnished the information asked for. In a few instances in which no response to letters of inquiry could be obtained from the clerks I am indebted to brother members of the Bar for looking up the information for me and particularly to Mr. W. W. Smithers, who furnished me the data in the Philadelphia cases. The information is complete so far as obtainable. In some cases the desired

[a] See *infra*, p. 626.

information could not be obtained because the docket did not show it and the original papers were mislaid or lost.

Altogether there were fifty-three appeals within the period. Of these forty-three were affirmed and ten reversed, the reversals being less than one in five or nineteen per cent. of the cases. Three of the reversed cases, those of Johnson (213 Pa., 607), Curcio and Deitrick were again appealed after the second trial. The Johnson and Curcio cases were affirmed on the second appeal and the Deitrick case again reversed.

The most difficult information to get in connection with these cases was the length of time consumed by the trial. Sometimes the minute dockets would show it clearly and sometimes they would not. However it was ascertained for thirty-seven of the cases. In only one of these cases did the trial exceed eight days. This was the case of Danz in Philadelphia which took nineteen days to try. This however was an unusual case. It was the trial of a wife on a charge of murdering her husband by arsenical poisoning. The decedent died in 1901 and the arrest was not made until two years later. There was much expert testimony and numerous questions of evidence. The case comes within this period by reason of a re-argument being had, after which the judgment was affirmed by a divided court. The case is so exceptional I have thought best not to include it for any statistical purpose. There remain then thirty-six cases in which we have the time taken by the trial. These are shown in Table II[b]. No account was taken of fractions of a day. As the table shows, the average length of these trials was less than four days. A case more frequently took four days to try than any other number as is shown in Figure I, in which the upper line represents the number of days laid off in a series and the lower line the number of cases which were tried in each number of the days' series. This is also shown graphically in Figure 2, in which the number of days is laid off on the base line, the perpendiculars representing the number of cases. The curve representing the length of the trials rises quite uniformly to four days and then falls very abrubtly to six days. Only eleven cases took more than four days to try and only five more than five days. Over half the

[b] See *infra*, p. 640.

TABLE I

Comw. v.	County	Pa. Rep. No. p.	Question on Appeal	Aff. or Rev.	Date Act Charged	Date Arrest	Date Trial	Date Appeal	Date Argued	Date Opinion	No. Days of Trial	No. Days Arrest To Trial	No. Days Trial to Appeal	No. Days Appeal to Argument	No. Days Argument to Decision	
Dillen	Cent.	210-579	Intent	Aff.	Jul. 29, '04	Aug. 1, '04	Aug. 25, '04	Oct. 31, '04	Jan. 3, '05	Jan. 23, '05	3	24	67	64	20	
Razmus	Luzer.	210-609	Charge	Aff.			Sep. 12, '04	Dec. 15, '04	Jan. 30, '05	Feb. 13, '05			94	46	14	
Danz	Phila.	211-507	Appl. Evidence	Aff.	Jun. 27, '01	Mch. 11, '03	Mch. 28, '04	Jul. 14, '04	Oct. 27, '04	Apr. 17, '05	19	382	108	105	172	1
Spahr	Cumb.	211-542	Op. of Jurors, Dying dec.	Aff.	May 31, '04	Jun. 2, '04	Sep. 19, '04	Dec. 30, '04	Feb. 27, '05	Apr. 17, '05	6	109	102	59	49	
Gibson	Phila.	211-546	Degree, Chrg.	Aff.	Jun. 18, '04			Nov. 16, '04	Jan. 5, '05	Feb. 27, '05	Apr. 17, '05	2		50	53	49	
Furman	Lanc.	211-549	Comp. of witness	Aff.	Jul. 1, '04	Jul. 15, '04	Nov. 21, '04	Jan. 14, '05	Mch. 6, '05	Apr. 17, '05	4	129	54	51	42	
Johnson	Brad.	211-640	Degree	Aff.	Sep. 18, '04	Nov. 12, '04	Feb. 7, '05	Mch. 10, '05	Apr. 17, '05	May 1, '05		87	31	38	14	
Ezell	Fayet.	212-293	Evidence, Argt's of Counsel	Aff.	Sep. 10, .04	Sep. 12, '04	Dec. 12, '04	Mch. 13, '05	May 8, '05	May 24, '05	5	91	91	56	16	
Fellows	Camb.	212-297	Charge	Rev.	Sep. 15, '04	Sep. 26, '04	Dec. 15, '04	Apr. 12, '05	May 8, '05	May 24, '05		80	118	26	16	
Hine	Phila.	213-97	Afterdisc. Evidence	Aff.	Aug. 3, '03	Aug. 4, '03	Feb. 2, '05	Jul. 7, '05	Oct. 9, '05	Oct. 30, '05	2	547	155	94	21	
Johnson	Brad.	213-607	Evidence	Rev.	Sep. 18, '04	Nov. 12, '04	Dec. 6, '04	Jul. 29, '05	Oct. 30, '05	Jan. 2, '06		24	235	93	64	
Johnson	Lawr.	213-432	Sum. Jurors, Self Defense	Aff.	Jan. 14, '05	Jan. 14, '05	Mch. 15, '05	Sep. 29, '05	Oct. 30, '05	Jan. 2, '06	5	60	198	31	64	
Mallini	Fayet.	214-50	Indictment, Sum. Jurors	Aff.	Aug. 23, '05	Aug. 30, '05	Sep. 22, '05	Dec. 22, '05	Jan. 29, '06	Feb. 12, '06	3	23	91	38	14	
Combs	Alleg.	216-81	Degree, Evidence	Aff.	Feb. 8, '05	Feb. 9, '05	Sep. 27, '05	Apr. 18, '06	May 21, '06	Jun. 27, '06	3	230	203	33	37	
Frucci	Warr.	216-84	Degree, Charge	Rev.	Feb. 11, '06	Feb. 11, '06	Mch. 7, '06	May 3, '06	May 21, '06	Jun. 27, '06	2	24	57	18	37	
Ieradi	Warr.	216-87	Witness	Rev.	Feb. 11, '06	Feb. 11, '06	Mch. 9, '06	May 3, '06	May 21, '06	Jun. 27, '06	5	26	55	18	37	
Renzo	Ind.	216-147	Continuance Insanity	Aff.	Jul. 7, '05	Jul. 7, '05	Sep. 19, '05	Jun. 19, '06	Oct. 15, '06	Nov. 2, '06	2	74	273	118	18	
Minney	Fayet.	216-149	Challenge, Charge	Aff.	Oct. 18, '05	Oct. 20, '05	Jun. 12, '06	Sep. 12, '06	Oct. 15, '06	Nov. 2, '06	4	51	92	33	18	2
Curcio	Lacka.	216-380	Degree	Rev.	Dec. 25, '05	Dec. 28, '05	Jun. 11, '06	Jul. 13, '06	Oct. 22, '06	Jan. 7, '07		165	32	101	77	
Johnson	Brad.	217-77	Confession	Aff.	Sep. 18, '04	Nov. 12, '04	May 7, '06	Sep. 25, '06	Jan. 7, '07	Feb. 25, '07			141	104	49	3
Beingo	Luzer.	217-60	Accessory Charge	Aff.	Jun. 28, '06	Jun. 29, '06	Sep. 9, '06	Oct. 19, '06	Jan. 8, '07	Feb. 4, '07		72	40	81	27	
Eyler	Adams	217-512	Degree, Intox.	Aff.	May 30, '06	May 30, '06	Nov. '06		Mch. 18, '07	Apr. 15, '07					28	
Deitrick	Mont.	218-36	Burden of Proof	Rev.	Feb. 13, '06	Feb. 13, '06	May 31, '06	Dec. 26, '06	Mch. 4, '07	Apr. 29, '07		107	209	68	56	
Curcio	Lacka.	218-327	Charge	Aff.	Dec. 25, '05	Dec. 28, '05	Feb. 11, '07	Mch. 28, '07	Apr. 29, '07	May 20, '07			45	32	21	4
Loughead	Clear.	218-429	Challenge Evidence Shooting Escaping Prisoner	Aff.	Oct. 22, '06	Oct. 23, '06	Dec. 14, '06	Jan. 24, '07	May 13, '07	May 27, '07	4	52	41	109	14	
Karamarkovic	Camb.	218-405	Evidence	Aff.	Nov. 19, '05	Dec. 1, '05	Mch. 14, '06	Feb. 16, '07	May 6, '07	May 20, '07		103	339	79	14	
Delero	Lanc.	218-487	Continuance	Aff.	Aug. 30, '06	Aug. 31, '06	Sep. 13, '06	Mch. 15, '07	Apr. 15, '07	Jun. 3, '07	4	13	183	31	49	

1. Re-argued Feb. 13, 1905. 2. Date of first trial Dec. 11, 1905. Time, 2 days. 3. Second trial. 4. Second trial,

TABLE I.—Continued.

Comw. v.	County	Pa. Rep. No. p.	Question on Appeal	Aff. or Rev.	Date Act Charged	Date Arrest	Date Trial	Date Appeal	Date Argued	Date Opinion	No. Days of Trial	No. Days Arrest To Trial	No. Days Trial to Appeal	No. Days Appeal to Argument	No. Days Argument to Decision	
Sheffer	York	218-437	Circumstan. Evidence	Aff.	Feb. 17, '06	Feb. 21, '06	Sep. 3, '06	Oct. 22, '06	May 21, '07	May 27, '07	3	194	49	211	6	
Ferruchi	Phila.	219-155	Evidence. Degree.	Aff.	Nov. 28, '06	Nov. 28, '06	May 16, '07	Jul. 6, '07	Oct. 15, '07	Nov. 4, '07	1	169	51	101	20	
Jung Jow	Phila.	219-173	New Trial	Aff.	Jul. 4, '06	Jul. 4, '06	Jan. 30, '07	May 29, '07	Oct. 28, '07	Nov. 4, '07	8	210	119	152	7	
Johnson	Phila.	219-174	Degree	Aff.	Oct. 20, '06	Oct. 20, '06	Mch. 26, '07	Sep. 20, '07	Oct. 21, '07	Nov. 4, '07	1	157	178	31	14	
Rammuno	Jeffer.	219-204	Former Convict.	Aff.	Jan 27, '06	Jan. 7, '07	Apr. 10, '07	Jun. 4, '07	Oct. 15, '07	Nov. 14, '07	4	93	55	133	30	
Cate	Fayet.	220-138	Good Character	Rev.	May 16, '07	May 17, '07	Jun. 15, '07	Aug. 21, '07	Jan. 6, '08	Jan. 22, '08	5	29	87	138	16	
Paese	Dauph.	220-371	Degree	Aff.	Aug. 13, 06	Aug. 13, '06	Dec. 5, '06	May 6, '07	Jan. 6, '08	Mch. 2, '08	8	114	152	245	55	
Strail	Venan.	220-483	Degree	Aff.	Sep. 10, '07	Sep. 10, '07	Dec. 2, '07	Jan. 15, '08	Feb. 17, '08	Mch. 23, '08	2	83	44	33	34	
Deitrick	Monto.	221-7	Burden of Proof. Chrg. former Acq.	Rev.	Feb. 13, '06	Feb. 13, '06	May 29, '07		Mch. 2, '08	Apr. 20, '08					49	5
Lombardi	Merc.	221-31	Segregation of Jury.	Aff.	Sep. 13, '06	Sep. 15, '06	Nov. 12, '06		Mch. 30, '08	Apr. 20, '08	4	58			21	
McKwayne	York	221-449	Charge	Aff.	Sep. '07	Sep. '07	Jan. 9, '08	Mch. 19, '08	May 4, '08	May 18, '08	3		69	46	14	
Shults	Phila.	221-466	Insanity	Aff.	May 13, '07	May 13, '07	Sep. 30, '07	Feb. 19, '08	Mch. 23, '08	May 25, '08	1	140	142	32	63	
Fisher	North.	221-538	Husbands Letters as Evi.	Rev.	Nov. 21, '06	Nov. 22, '06	Sep. 23, '07	Feb. 19, '08	Apr. 27, '08	May 25, '08	4	305	149	87	28	
Smith	Phila.	221-552	Instructions	Rev.	Jan. 15, '07	Jan. 15, '07	Dec. 3, '07	Apr. 8, '08	May 11, '08	May 25, '08	1	322	126	33	14	
Caraffa	Camb.	222-297	Charge	Aff.	Apr. 17, '07	May 18, '07	Sep. 13, '07	Jul. 1, '08	Oct. 5, '08	Oct. 12, '08		118	291	96	7	
Palmer	Berks	222-299	Burden of Proof.	Aff.	Sep. 12, '07	Sep. 12, '07	Jan. 14, '08	Sep. 7, '08	Oct. 5, '08	Oct. 12, '08	4	124	236	28	7	
Lewis	Chest.	222-302	Insanity	Aff.	Jun. 16, '07	Jun. 22, '07	Jan. 27, '08	Jun. 1, '08	Oct. 5, '08	Oct. 12, '08	5	219	125	126	7	
Garrito	Berks	222-304	Challenge. Rev. by Sup. Ct.	Aff.	Sep. 14, '07	Sep. 21, '07	Jan. 14, '08	Sep. 7, '08	Oct. 5, '08	Oct. 12, '08	4	115	236	28	7	
Hallowell	Phila.	223-494	Insanity	Aff.	Oct. 14, '07	Oct. 14, '07	Mch. 9, '08	Nov. 11, '08	Jan. 4, '09	Mch. 1, '09	3	146	247	54	56	
De Marzo	Lacka.	223-573	Insanity	Aff.	Jul. 7, '08	Jul. 7, '08	Oct. 19, '08	Dec. 9, '08	Jan. 11, '09	Mch. 1, '09		104	51	33	49	
Willis	Luze.	223-576	Confession Insanity.	Aff.	Dec. 26, '07	Mar. 7, '08	Apr. 20, '08	Nov. 18, '08	Jan. 11, '09	Mch. 1, '09		44	212	54	49	
Nazarko	Luze.	224-204	Intoxication Insanity.	Aff.	Aug. 20, '08	Aug. 21, '08	Nov. 9, '08	Feb. 15, '09	Mch. 8, '09	Mch. 22, '09		80	98	21	14	
Snyder	York	224-526	Intox. Conf.	Aff.	Nov. 16, '07	Nov. 17, '07	Apr. 21, '08	Feb. 2, '09	Mch. 1, '09	Apr. 26, '09	7	135	286	26	56	
Racco	Lawr.	225-113	Cross-ex. of prisoner.	Aff.	Mch. 2, '06	May 27, '08	Sep. 14, '08	Mch. 24, '09	Apr. 26, '09	May 24, '09	5	110	191	33	28	
Leskoski	Carb.	225-382	Evidence	Aff.	Jul. 20, '03	Jul. 25, '03	Jan. 13, '04	Apr. 16, '09	May 17, '09	Jun. 22, '09	3	178	1919	31	36	
Latampa	Clint.	226-23	Dying Dec.	Aff.	Nov. 22, '08	Nov. 26, '08	Apr. 29, '09	May 10, '09	Oct. 4, '09	Oct. 25, '09	6	144	91	147	21	

5. Second Trial.

cases were tried in three days or less and two-thirds in four days or less.

One column of Table I contains a calculation of the number of days from arrest to trial and this is also tabulated for convenient reference in Table III[c]. We have this data for forty-four cases. The Danz case has been omitted from this table as previously noted and also the Hine case as that also seems exceptional, the delay in bringing that case to trial being due apparently to an absconding witness. The average time from arrest to trial is 112 days or sixteen weeks One-fourth of the cases were tried within two months after the arrest one-half within three months and a half and two-thirds within four months. Of the remaining third, three cases are from Philadelphia and one from Pittsburgh. The longest time that elapsed was 46 weeks.

Table IV[d] summarizes the time from trial to appeal. The case of Leskoski has been omitted from this table as exceptional. The defendant was tried January 13, 1904. On March 29, 1904, he broke jail and was at large until February 22, 1909, when he was returned from Butte, Montana. We have the data under this head for forty-eight cases. The average length of time that elapsed was 129 days or something over four months. One-third of the cases were appealed within two months from the trial, one-half within three months and a half and two-thirds within five months. This period in the main indicates the length of time consumed in the consideration of a motion for a new trial because the appeal in order to be a supersedeas even in a capital case, must be taken within three weeks from the entry of the sentence.[1] The Act of March 31, 1860, usually referred to as the penal code, by sec. 33, gave all persons indicted in the Quarter Sessions or any county court of Oyer and Terminer the right to remove the indictment and all proceedings thereon into the Supreme Court by *certiorari* or writ of error but only on special allowance by the Supreme Court or a justice thereof. Sec. 57 of the same act gave the defendant in an indictment for murder or voluntary manslaughter the right to a bill of exceptions to the decision of the trial court on any point of evidence or law and a writ of error thereon after conviction and sentence; but by section 59 such writ could only issue on special allowance made upon

[1] Com. v. Hill, 185 Pa. 385.
[c] See *infra*, p. 641.
[d] See *infra*, p. 641.

application within thirty days after sentence. By Act of Feb. 15, 1870, however, a writ of error was made of right in cases of murder and voluntary manslaughter and as to all cases of felonious homicide a review by the Supreme Court is made a constitutional right by sec. 24 of article 5 of the Constitution of 1874. At that time the statutory limitation for writs of error was two years but by Act of March 24, 1877, it was provided that no writ should issue in such cases after twenty days from sentence unless specially allowed by the Supreme Court or a judge thereof. The Act of May 19, 1897, provided a complete system of appeals to the Supreme and Superior Courts and placed appeals in criminal cases on the same footing as those in civil cases with respect to the period of limitation so that under that act appeals in criminal cases, including capital cases, are allowed as of right within six months from the entry of sentence but do not operate as a supersedeas unless taken out within three weeks from sentence.[2]

It may be assumed that a motion for a new trial will always be made in a murder case because that is the only method of reexamining questions relating to sufficiency and weight of evidence, etc. All modes of reviewing cases in our appellate courts are now called appeals, as was provided by Act of May 9, 1889; but it was held that under that act the same modes of writ of error, *certiorari* and appeal still remain applicable in the same kinds of cases, within the same limits and the same effect as before, the only difference being that now they are called by the same name.[3] In addition to the provision of the Act of 1860, above quoted, in relation to exceptions to any decision of the trial court upon any point of evidence or law and writs of error thereon, the Act of May 19, 1874, provided for an exception by the defendant to any decision of the court "in the same manner as is provided and practiced in civil cases." Under these acts, however, the Supreme Court is limited to a review of such rulings on points of law or evidence as were excepted to at the time and made part of the record and it is incumbent on the appellant to

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[2] Comw. v. Hill, *supra.*

[3] Rand v. King, 134 Pa. 641.

show that errors were in fact committed.[4] The Supreme Court cannot review matters which, prior to these acts, had rested solely in the discretion of the trial court, as, for example, the granting or refusing of a new trial.[5] It is true the Act of Feb. 15, 1870, provides that in all cases of murder in the first degree removed into the Supreme Court, "it shall be the duty of the judges thereof to review both the law and the evidence, and to determine whether the ingredients necessary to constitute murder in the first degree shall have been proved to exist; and if not so proved, then to reverse the judgment and send the same back for a new trial, or to enter such judgment as the laws of this Commonwealth require." But it has been held that this does not empower the court to review the question of the guilt or innocense of the defendant; the appellate court can only determine whether competent evidence was given in the case, which, if believed by the jury, would furnish the elements, or "ingredients," as the act says, of murder in the first degree.[6] "It is only when, from undisputed evidence, but one finding can follow and a jury reaches a different one, that a court must interfere and avert injustice by setting the verdict aside."[7] The appeal to the Supreme Court therefore is a review only of legal questions and as to whether there was produced competent evidence of the elements of murder in the first degree. As to many matters, therefore, the decision of the trial court on a motion for a new trial is final and the full responsibility remains with the trial court. This may account for the length of time apparently taken in disposing of motions for a new trial in capital cases, as shown by our table.

The rules of the Supreme Court provide as follows: "The first Monday of each month shall be a special return-day in each district for all appeals in cases of conviction and sentence of death for murder of the first degree. The fifth Monday after issuing the writ shall be assigned for the argument thereof; Provided,

[4] Fife v. Comw., 29 Pa. 429; Taylor v. Comw., 44 Pa. 131; Cathcart v. Comw., 37 Pa. 108; Johnson v. Comw., 115 Pa. 369.

[5] Alexander v. Comw., 105 Pa. 1.

[6] Grant v. Comw., 71 Pa. 495; Comw. v. Morrison, 193 Pa. 613; Comw. v. Bubnis, 197 Pa. 542.

[7] Comw v. Danz, 211 Pa. 507.

The court shall then be in session in any district. If then in session in a district other than that in which the writ issued, the prothonotary issuing such writ shall certify the record to the district in which the court shall be sitting. If the court shall not be in session at that time, the case shall be certified to the district in which the next term shall be held. Capital cases shall be placed at the head of the list for argument." We would, therefore, expect the larger number of cases to be urged within six weeks of the taking of the appeal although in a good many cases the time might be expected to be four and even five months on account of the fact that the Supreme Court does not sit to hear arguments after May until October. Appeals taken in May or June therefore would not be argued before the next October. The data, which we have for forty-nine of the cases is summarized in Table V[e]. In only two cases does the time run over five months. The average time is about nine weeks; and two-thirds of the cases were argued within this time. In one-half of the cases the time was less than approximately seven weeks.

Table VI[f] summarizes the time from the argument to the decision by the Supreme Court. Omitting only the Danz case, we have this data for fifty-two cases. The average time was thirty days. One-half the cases were decided within three weeks and two-thirds within five weeks. The longest time that elapsed before the decision was eleven weeks.

From the figures given it appears that the average time that elapses from the arrest of the defendant to the decision of his appeal by the Supreme Court in capital cases is a little over eleven months. A little over three months of this time is consumed by the appeal, eight months being the average time elapsing from the arrest to the appeal. No calculation of the time from the date of the act charged to the arrest was made as in the great majority of cases the arrest was either on the same day or but a few days later. While eleven months is the average time elapsed it should be noted that approximately two-thirds of the cases do not run to this length; the smaller number of protracted cases have made the average time so long.

The object of this paper is to set forth the facts and data in regard to these appeals rather than to draw conclusions from

[e] See *infra*, p. 642.
[f] See *infra*, p. 642.

them. A few comments, however, may be made. It would seem that the average murder case is tried in three or four days. Probably considerable time is consumed in every murder case in getting a jury and in all of these cases there was enough of a legal question involved on which to base an appeal. The average time from arrest to trial seems somewhat long from the standpoint of speedy justice as a desideratum. Outside of the cities of Philadelphia and Pittsburgh the grand juries are in session only once in three months and considerable time might frequently elapse after an arrest before an indictment could be sent before a grand jury. In many cases, of course, there might be good reasons for some delay of the trial subsequent to the indictment. From the figures which we have, however, it would seem that trial is more apt to be delayed in the large cities than in the country districts. The length of time elapsing from trial to appeal seems excessive. It was suggested that the length of time is due to the consideration of motions for new trial and the care taken in their consideration, the decision on such motion being the final decision on practically all except purely legal questions. Nevertheless an average of over four months seems unnecessarily long. In practice the argument of the appeal does not seem to take place as speedily as is contemplated by the rules of the Supreme Court; presumably, however, this must be due to sufficient reasons in each case. In view of the fact that it is the duty of the Supreme Court to examine the evidence, the disposition of appeals by that court may be fairly characterized as prompt, the average being thirty days. Here too it should be noted that two-thirds of the cases are decided practically within the average period.

In this connection something may be said of the legal questions on which these appeals were based. We may look first at the reversed cases. In the Fellows case the trial judge instructed the jury that he did not deem it necessary to define murder of the second degree for the reason that under the testimony the verdict should be murder of the first degree or not guilty. This was held to be error on the ground that the Act of Assembly provides that "the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict whether it be murder of the first or second de-

gree." In the case of Johnson, 213 Pa., 607, the reversal was for the admission in evidence of the statement of a third party, made in the defendant's presence but denied by him; and of testimony of the finding of bloody clothing a mile from the scene of the murder with no evidence to connect the clothing with the prisoner or the crime. The case of Frucci was reversed because of the inadvertent statement in the charge to the jury that "you will have to do in this case with that kind of murder stated in the statute as wilful, deliberate and premeditated murder" and which might have been misunderstood by the jury on the question of degree and the case of Ieradi because of a too strict application in the charge of the maxim *"falsus in uno, falsus in omnibus."* In the case of Curcio the trial judge instructed that there was no evidence in the case on which they could convict of manslaughter. This was held error. In the Deitrick case the defense was accidental killing. On the first appeal the case was reversed because the trial judge had instructed the jury "that the burden is upon the defendant to convince you beyond a reasonable doubt that the killing of the deceased was purely accidental." On the second trial the court below instructed the jury that they should determine by the preponderance of the evidence the question of whether the killing was accidental. The case was again reversed because this instruction also deprived the defendant of the benefit of any reasonable doubt on the question, to which he was entitled. The ground of reversal in the case of Cate was erroneous instruction as to the effect of evidence of good character. In the case of Fisher certain letters from the defendant to his wife were received in evidence and this was held to contravene the prohibition against the wife testifying against the husband. In the Smith case the jury, after discussing the case for four hours and a half, came into court and asked for additional instructions on the question of premeditation. Four questions were asked the trial judge, three of which he declined to answer, observing that he had "already referred to that matter at great length in my charge." This was held to be reversible error, the court saying, "the purpose of instructions given by the court is to explain fully and clearly to the jury the law applicable to the facts of the case under consideration and when the trial judge has not succeeded

in delivering instructions on the law in such way that they will be understood by the jury, his charge is inadequate and justly open to objection by the defendant. * * * Until the jury had been fully advised and understood the law upon the question of premeditation as applicable to the case, the instructions were inadequate and it was the duty of the court, upon the request of the jury, to give additional instructions."

In five of these cases, those of Johnson, Deitrick, Fisher and Smith, the error complained of would seem to be clear. In the other and especially the Cate and Curcio cases the ground of reversal would seem to be rather narrow. It is evident that the reversed cases were carefully considered. Six of them are among the one-third in which the time from argument to decision was longer than the average; in the Curcio case it was the longest of all.

The largest number of assignments of error seem to be to the admission or rejection of evidence, as is perhaps natural. Almost as many are criticisms of portions of the judge's charge or of his answers to requests to charge. In many, especially of the latter class, the criticisms are captious and the errors alleged trivial. In one case the Supreme Court said: "A sense of professional duty, always commendable, but in the present case scarcely warranted by the facts, has impelled the learned counsel for appellant to bring to the consideration of this court nineteen assignments of error." And in another case it is said that "not a single one of the twelve assignments of error has any merit at all, substantial or even technical, and it is to be regretted that counsel feel themselves at liberty to impede and delay the cause of justice on such trifling grounds." In a third case the court said: "No assignment of error has any merit or excuses bringing this case here." The doctrine of "harmless error" seems well established in Pennsylvania. The prisoner must show that a substantial error was committed on the trial by which he has been injured; it is not sufficient that an abstract or technical error has taken place.[8] In the Fisher case it is said: "It has been said in several of our cases that courts will not be astute to sustain

[8] Fife v. Comw., 29 Pa. 429.

technical assignments of error in homicide cases where from a consideration of the whole record it appears no substantial injustice was done the defendant and that a fair trial on the merits had been accorded him. This must not be understood to mean, however, that courts are at liberty to disregard established rules of procedure, or settled rules of evidence, or the constitutional and statutory rights of parties, in the trial of such cases."

Quite a number of the errors alleged relate to the degree of the crime under the facts proved and three of the cases involve evidence of intoxication as affecting the degree. Insanity as a defense figures in six of our cases. In the Hallowell case it was said that in order to make out a defense on this ground it must be shown that the mind of the defendant, at the time he committed the act, was so affected by disease that he did not know the nature and consequence of it, that he did not know that it was wrong and would be punished by law, or that he was so impelled by an impulse that he had no power whatever of resisting; and in the Lewis case that the law is that whether the insanity be general or partial the degree of it must be so great as to have controlled the will of its subject and to have taken from him the freedom of moral action. In the Renzo case it was said that the law of Pennsylvania has never tolerated nor is likely to tolerate a doctrine of "transitory frenzy" as a defense to murder. In the eye of the law it is nothing but vindictive and reckless temper. In each of the six cases there was a conviction of murder in the first degree which was affirmed on appeal.

There are few questions of procedure. In only one case was any question raised as to the indictment. This was the Mallini case in which a motion was made at the trial to quash the indictment for insufficiency of the information made before the Justice of the Peace on which the warrant was issued and the refusal of the trial court to quash was assigned as error. The Supreme Court held that the objection to the information was too late and that the indictment being regularly found after a hearing before a justice could not be invalidated for any such reason. The Act of March 31, 1860, provided: "Every indictment shall be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of the Assembly

prohibiting the crime and prescribing the puinshment, if any such there be, or, if at common law, so plainly that the nature of the offence charged may be easily understood by the jury. Every objection to any indictment for any formal defect apparent on the face thereof, shall be taken by demurrer, or on motion to quash such indictment before the jury shall be sworn, and not afterward; and every court before whom any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by the clerk or other officer of the court, and thereupon the trial shall proceed as if no such defect appeared." Provision was also made in the same act, which is commonly referred to as the Penal Code, in case of variance between the indictment and the evidence, for amending the indictment on the trial in regard to the name or description of any person, matter or thing whatsoever if the court shall consider such variance not material to the merits of the case; and it was further provided as follows: "In any indictment for murder or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused, but it shall be sufficient, in every indictment for murder to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased." In the Report on the Penal Code it was said with reference to these provisions, "Sections 11 to 22 are all new and are, certainly, not the least improvement in the proposed amendments of our penal system. The history of criminal administration abounds with instances in which the guilty have escaped, by reason of the apparently unreasonable nicety required in indictments. Lord Hale, one of the best, and most humane of English judges, long since remarked, that such niceties were "grown to be a blemish and an inconvenience in the law, and the administration thereof; that more offenders escaped by the easy ear given to exceptions to indictments than by the manifestations of their innocence and that the grossest crimes had gone unpunished by reason of these unseemly niceties." The 11th section of this Act proposes what the commissioners believe

will be an effective remedy to this reproach of the common law, without depriving the accused of any proper privilege; it leaves him, at the outset of his trial to determine whether he will question the relevancy of his accusation or take issue on the merits of the charge; if he elects the latter and is condemned there seems neither moral nor legal fitness in permitting him to urge formal exceptions, which, if suggested at an early period, would have been promptly corrected. The 12th and 13th sections are intended to meet cases of frequent occurrence, in which, although an indictment is strictly formal, yet, owing to some accidental slip in its preparation, it is found on the trial, that the proofs do not entirely tally with the description of the instrument set forth in the indictment, or in the names of persons or places described therein. In the case of Commonwealth v. Gillespie, 7 S. & R., 469, a mistake in spelling the name of 'Burrall' which in the indictment was spelled Burrill was adjudged fatal after verdict. So a variance between the names of the persons aggrieved and the places described in the indictment and the proofs thereof on the trial will entitle the defendant to an acquittal, on the ground of the want of agreement between the *allegata* and the *probata*. The proposed sections authorize the courts to amend such verbal errors, if objected to; and thus terminate a class of technical niceties which are a reproach to the rational administration of justice." These statutory provisions have been construed in numerous cases and their meaning well settled and it is believed few cases now arise on these questions. They are practically identical with similar provisions of the English statute of 14 & 15 Victoria.[9] Exceptions of course lie, under the acts before quoted, to the ruling of the court in refusing to quash or in overruling a demurrer to an indictment and such action of the court may be reviewed by the defendant on appeal after verdict. The defendant cannot, however, have it reviewed before verdict. The Supreme Court possesses all the supervisory powers of the King's Bench in criminal proceedings, and when it is made to appear that a fair trial cannot be had, a pending indictment may be removed into the Supreme Court by *certiorari* and that court

[9] See Lawson and Keedy, "Criminal Procedure in England," 1 Jour. Crim. Law and Criminology, 604.

may either delegate one of its own judges to try it or may send it to another county for trial.[10] But such powers do not extend to reviewing the action of the court in overruling demurrers or refusing to quash indictments.[11] For quashing an indictment, however, or other errors apparent on the record such as arresting judgment after verdict and the like, the Commonwealth may remove the record for review and without special allowance.[12]

In only two cases was any question raised as to the drawing of the juries and in both instances the objection was regarded as having no merit. In four cases errors were alleged in regard to challenges of jurors, none of which allegations were sustained. In the Spahr case several jurors were challenged for cause because of opinions formed and expressed by them and the challenges were overruled. The Supreme Court held that even if the court had erred in this regard, as the prisoner did not exhaust his peremptory challenges the acceptance of the jurors did him no injury. It was said that the established test as to whether a juror should be rejected for an opinion formed is whether or not he can throw aside his impression or opinion and render an impartial verdict on the evidence alone; and in the Minney case it was said that even if the juror had a "fixed opinion" he was not disqualified if he was able to disregard it.

In the Ezell case complaint was made of improper remarks of the district attorney in summing up to the jury. The Supreme Court said: "The arguments of counsel to the jury are not assignable as error. They are under the supervision and control of the judge, who is not bound to give attention to them unless called upon to do so. If the district attorney's remarks can be made the subject of exception, then so must be those of the defendant's counsel, and the appellate court would be asked to review the trial, not on the evidence but on the talk. When counsel misstate facts or material evidence, or resort to comment unfair or unduly prejudicial to the other side, it is the duty of the op-

[10] Comw. v. Balph, 111 Pa. 365; Comw. v. Smith, 185 Pa. 553; Comw. v. Fletcher, 208 Pa. 137.

[11] Quay's Petition, 189 Pa. 517.

[12] Heikes v. Comw., 26 Pa. 513; Comw. v. Wallace, 114 Pa. 405; Comw. v. Sober, 15 Pa. Sup. Ct. 520.

posing counsel at once to call the attention of the court to the matter, and the action of the court may then become the subject of exception. In general it is matter of discretion and reviewable only for abuse." The trial judge frequently takes part in the examination of witnesses and especially in the preliminary examination of jurors. The case of Curcio, 218 Pa., 327, is an instance of this; and in the Shults case the Supreme Court refused to reverse for a very decided expression of opinion by the judge as to the value of certain testimony.

As before noted, the appeal is not a review on the facts but only of questions of law; as to the facts, the verdict of the jury is final, subject only to the power of the trial court to grant a new trial in proper cases.

The foregoing comments are intended only to call attention to a few points suggested by the data and cases herewith collected. It is hoped that this data may be found useful in the study of many questions relating to the administration of the criminal law.

Edward Lindsey.

Warren, Pa.

TABLE II.

Time of Trial.

No. Cases.	Days.
4	1
5	2
7	3
9	4
6	5
2	6
1	7
2	8
36	Total days.....136

FIG. 1.

Days—	1	2	3	4	5	6	7	8
Cases—	4	5	7	9	6	2	1	2

FIG. 2.

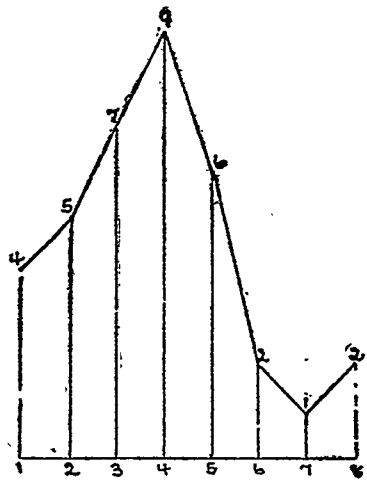

TABLE III.

Arrest to Trial.

No. Cases.	Time.
1	13 days.
1	23 "
3	24 "
1	26 "
1	29 "
1	44 "
1	51 "
1	52 "
1	58 "
1	60 "
1	72 "
1	74 "
2	80 "
1	83 "
1	87 "
1	91 "
1	93 "
1	103 "
1	104 "
1	107 "
1	109 "
1	110 "
1	114 "
1	115 "
1	118 "
1	124 "
1	129 "
1	140 "
1	144 "
1	146 "
1	155 "
1	157 "
1	165 "
1	169 "
1	172 "
1	194 "
1	210 "
1	219 "
1	230 "
1	305 "
1	322 "
44	Total days.....4949

TABLE IV.

From Trial to Appeal.

No. Cases.	Time.
1	21 days.
1	31 "
1	32 "
1	40 "
1	41 "
1	44 "
1	45 "
1	49 "
1	50 "
2	51 "
1	54 "
2	55 "
1	57 "
2	67 "
1	69 "
2	91 "
1	92 "
1	94 "
1	98 "
1	102 "
1	118 "
1	119 "
1	125 "
1	126 "
1	141 "
1	142 "
1	149 "
1	152 "
1	155 "
1	178 "
1	183 "
1	191 "
1	198 "
1	203 "
1	209 "
1	212 "
1	235 "
2	236 "
1	247 "
1	278 "
1	286 "
1	291 "
1	339 "
48	Total days.....6196

TABLE V.

From Appeal to Argument

No. Cases.	Time.
2	18 days.
1	21 "
1	26 "
3	28 "
4	31 "
2	32 "
6	33 "
2	38 "
2	46 "
1	51 "
1	53 "
2	54 "
1	56 "
1	59 "
1	64 "
1	67 "
1	68 "
1	79 "
1	81 "
1	93 "
1	94 "
1	96 "
2	101 "
1	104 "
1	109 "
1	118 "
1	126 "
1	133 "
1	138 "
1	147 "
1	152 "
1	211 "
1	245 "
49	Total days.....3375

TABLE VI.

From Argument to Decision.

No. Cases.	Time.
1	6 days.
5	7 "
9	14 "
3	16 "
2	18 "
2	20 "
4	21 "
1	27 "
3	28 "
1	30 "
1	34 "
1	36 "
3	37 "
1	42 "
7	49 "
1	55 "
3	56 "
1	63 "
2	64 "
1	77 "
52	Total days.....1573