

# Convicting the Innocent (Book Note)

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causes and also those by a referee are the subject of respective chapters of equal merit with the subjects already mentioned. Seventy-nine pages alone are devoted to motions for new trials, dealing with those before the trial judge, at Special Term and in the Appellate Court. As in the preceding volumes of this set, each subject is illustrated by an appropriate form of pleading where such be possible. This volume contains the same admirable footnotes and citations of authority as did its predecessors. Like them it is couched in language that is easily read and as readily to be understood by the law student as the more experienced legalistic mind. It constitutes a contribution of real worth to the subject of which it treats.

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New York City.

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## BOOK NOTES

CONVICTING THE INNOCENT. By Edwin M. Borchard, with the collaboration of E. Russell Lutz. New Haven: Yale University Press, 1932, pp. XXIX, 421.

In view of the agitation created by Harriet Beecher Stowe's "Uncle Tom's Cabin," which some historians credit with the Emancipation Proclamation, and Charles Dickens' novels dealing with the English debtors' prisons and the subsequent abolition of such prisons, it is more than probable that the proposals outlined by Professor Borchard in this book will be eagerly used as a tocsin by political office-seekers throughout the country within the next few years. There is undoubtedly a powerful move of liberal influence sweeping the legislative leaders before it, and when as in this instance such renowned liberals as Felix Frankfurter and John H. Wigmore lend their support, the probabilities of its eventual adoption as a legal recourse are greatly increased.

Professor Borchard presents this proposition: "The state must necessarily prosecute persons legitimately suspected of crime; but when it is discovered after conviction that the wrong man was condemned, the least the state can do to right this essentially irreparable injury is to reimburse the innocent victim, by an appropriate indemnity, for the loss and damage suffered. European countries have long recognized that such indemnity is a public obligation. Federal and state governments in the United States ought to adopt the same policy, instead of merely releasing the innocent prisoner from custody by pardoning him for a crime he never committed and without any admission of error or public vindication of his character." Some states do have such laws, but the majority do not. Whether one approves of such indemnification depends on one's philosophy of the relation of law to society, and on such a subject libraries can be written; it will suffice this reviewer to say that he is entirely in accord with Professor Borchard's proposal, but not because of the evidence presented in the sixty-five cases collated in this book.

Three of these sixty-five cases (two English and one Scotch) are taken from the Reports of foreign countries, and severely weaken the authors' evi-

dence by causing them to appear hard pressed for material, whereas, in reality, these three cases were introduced to show that the weakness of our judicial system also exists in the countries from which we adopted it. An analysis of these sixty-five cases reveals the following interesting data:

(1) In twenty-nine cases the convictions were obtained mainly on the basis of the testimony of witnesses who later were proven to have been mistaken in their identification of the defendants, although it must be admitted that the defendants' reputations contributed somewhat to their convictions.

(2) In one case of mistaken identification the witness recanted before trial and the accused was discharged.

(3) In thirteen cases the convictions were due to perjury by witnesses. Here, again, the defendants' reputations contributed to their convictions in two cases.

(4) In six cases the convictions were due to circumstantial evidence, but in two of these cases the defendants' reputations contributed to their convictions.

(5) In five cases no crime had been committed, but due to public sentiment had to be held, and due to perjury by witnesses in three cases and the defendants' reputations in the other two cases, convictions were obtained.

(6) In four cases public sentiment again caused the convictions of innocent defendants, but in these instances a crime had been committed.

(7) In four cases the convictions were obtained mainly by "expert" testimony. In one case the only witness was an "expert"; in the other three cases the "expert" was assisted by either circumstance, perjury, or mistaken identity.

(8) In only three cases were the convictions due mainly to the efforts of corrupt public officials. In one case, the *Icie Sands* case, solely by the testimony of a corrupt police official; in the other two cases the officials suppressed evidence and allowed the defendants to be mistakenly identified by the witnesses for the state.

Fortunately, for the consciences of the members of the juries convicting these persons, none of them were executed, although in one case the defendant owes his life to the mechanical ignorance of the hangman and an aroused populace.

The reviewer feels that the cases outlined in this book form the nucleus of a better argument against the present-day jury system of trying cases, than an argument for the indemnification of unjustly convicted innocent persons.

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JIMMY WALKER, THE STORY OF A PERSONALITY. By Louis J. Gribetz and Joseph Kaye. New York: Lincoln MacVeagh, The Dial Press, 1932, pp. 351.

In the annals of legislative inquiries, it is doubtful if there ever was one more widely discussed or more celebrated than the recent hearings concerning former Mayor Walker. The interest aroused, and the bitter partisanship engen-