Criminal Law—Use of Evidence of Prior Offenses in Fixing Discretionary Penalties—[Illinois].—Defendant was found guilty by a judge sitting without a jury. As provided by an Illinois statute, the judge in fixing the sentence examined "witnesses as to the aggravation and mitigation of the offense," and heard oral testimony as to the defendant's conviction of a similar crime fourteen years before. [Ill. Smith-Hurd Rev. Stat. (1933), c. 38, § 732.] On appeal the judgment was reversed on other grounds; but in a separate opinion by three of the seven justices it was stated that a judge, in examining witnesses as to the aggravation and mitigation of the offense, was restricted by the "rules of evidence of any other inquiry." *People v. Serrielle*, 354 Ill. 182, 188 N.E. 375 (1933).

It is a general rule that evidence of previous offenses by the defendant is inadmissible at a trial, since it becomes a basis for an argument from defendant's general character to the specific crime of which he is now accused, and is of relatively low probative value. I Wigmore, Evidence (1904), §§ 215–216. An exception exists where the previous offenses are related to the subject matter of the present trial in such a way as to show a unified plan or scheme; i.e., where the evidence is valuable for other than the character argument. I Wigmore, Evidence (1904), § 192. Once a verdict of guilty is reached, however, the objection to the introduction of such evidence would seem to disappear, since it is no longer being used in establishing defendant's conduct on a specific occasion.

The great majority of jurisdictions permit the judge to consider evidence of prior offenses in fixing a discretionary punishment. *Peterson v. U.S.*, 246 Fed. 118 (C.C.A. 4th 1917), certiorari denied 246 U.S. 661, 38 Sup. Ct. 332, 62 L.Ed. 927 (1918); *Sharp v. U.S.*, 55 F. (2d) 227 (C.C.A. 4th 1932); *State v. Walter*, 178 Iowa 1108, 160 N.W. 821 (1917); *People v. Williams*, 225 Mich. 133, 195 N.W. 181 (1923); *Booth v. State*, 122 Neb. 544, 240 N.W. 753 (1932); *Fink v. State*, 40 Ohio App. 431, 178 N.E. 700 (1931); *State v. Wise*, 32 Ore. 280, 50 Pac. 800 (1897). In *People v. Mansi*, 129 App. Div. 386, 133 N.Y.S. 866 (1908) unsworn testimony that the prisoner's portrait was in the rogue's gallery was admitted on the ground that the ordinary rules of evidence do not apply in such inquiries after a verdict.

The present case and three other very recent decisions indicate that the Illinois law as to the use of such evidence is quite unsettled. The majority view, permitting the consideration of previous crimes, was adopted in *People v. Popescue*, 345 Ill. 142, 177 N.E. 739 (1931). In April, 1932 the Illinois court again followed the majority view: *People v. McWilliams*, 348 Ill. 333, 180 N.E. 832. Two months later, ignoring both the *McWilliams* and *Popescue* cases, the Illinois Supreme Court adopted the contrary rule that evidence of previous offenses was not admissible in fixing the sentence. *State v. Corry*, 349 Ill. 122, 181 N.E. 603 (June 1932). The court may have been in part swayed by the fact that the defendant was but fifteen years of age. The *dictum* of the principal case follows the *Corry* case, without citing it.

Statistics support the general supposition that a habitual criminal is more likely to commit crimes in the future than the person who is a first offender, the likelihood of future offenses increasing with the number of past crimes. Glueck and Glueck, Five Hundred Criminal Cases (1933), 250–251; Bruce, Harno, Burgess, Landesco, Parole and Indeterminate Sentence (1928), 224–225. In fixing the extent of the punishment the court might well make a distinction between those who are, and those who are not, likely to repeat the offense upon release. To do this the judge must have evidence

of past offenses. Though the crime in the present case, committed fourteen years before, should perhaps be given little weight, to deny the judge the privilege of considering it altogether would be unnecessarily depriving him of valuable information in exercising his discretion in the fixing of the penalty.

FLORENCE BROADY

Equity—Suit upon Foreign Decree for Alimony—Enforcement by Contempt Proceedings—[Minnesota].—The plaintiff, having been awarded alimony in a divorce action in South Dakota, sought to recover the accrued alimony in an equitable suit in Minnesota, and asked, that the decree make provision for enforcement by contempt. The trial court, having found that the plaintiff's legal remedy was inadequate because the defendant persisted in making salary assignments to his wife, rendered a decree for payment of the accrued alimony, and provided for enforcement of the decree by contempt proceedings. *Held*, decree affirmed. *Ostrander v. Ostrander*, 252 N.W. 449 (Minn. 1934).

If the amount of accrued alimony may not be affected by the court awarding the decree, action upon it is usually permitted in a foreign court. *Mayer v. Mayer*, 154 Mich. 386, 117 N.W. 890 (1908); *Williamson v. Williamson*, 169 App. Div. 597, 155 N.Y.S. 423 (1915). Where the legal remedy is inadequate, and there is no affirmative objection, such action should be permitted in a court of equity. Pomeroy, Equity Jurisprudence (4th ed. 1918), § 220. The court in the principal case, having concluded that the plaintiff's legal remedies were inadequate [see McClintock, Adequacy of Ineffective Remedy at Law, 16 Minn. L. Rev. 233 (1932)], provided for enforcement of the decree by contempt proceedings on the ground that the case came within the terms of a statute permitting the use of such proceedings "in all cases where alimony or other allowance is ordered or decreed to the wife or child." Mason's Minn. Stat. (1927), § 8604. Under a similar statute a Michigan court came to the opposite and perhaps justifiable conclusion that the statute did not refer to decrees of foreign courts. *Mayer v. Mayer*, 154 Mich. 386, 117 N.W. 890 (1908).

It is believed, however, that the same result as in the principal case could have been reached independently of the statute. One of the inherent powers of a court of equity is to enforce its decrees by the process of contempt. 4 Pomeroy, Equity Jurisprudence (4th ed. 1918), § 1433. A state, however, may place certain limitation upon this power. It has been held that statutes making available common law execution for the enforcement of equity decrees restrict the equity court's attaching power to those cases where the remedy by execution has been exhausted, or where it would be futile to pursue it. *Klimek v. Borkowski*, 259 Mich. 383, 243 N.W. 313 (1932), note, 31 Mich. L. Rev. 731 (1933); *Harris v. Elliott*, 163 N.Y. 269, 57 N.E. 406 (1900). The majority of jurisdictions, however, hold that such a statute merely creates an additional method of enforcing an equitable decree. *Wightman v. Wightman*, 45 Ill. 167 (1867); *White v. White*, 233 Mass. 39, 123 N.E. 389 (1919). The Minnesota divorce statute provided for sequestration, but such process would have been futile in the principal case. Cf. *People v. Wagner*, 117 Misc. 526, 191 N.Y.S. 697 (1921).

It is generally held that the usual constitutional guarantee against imprisonment for debt restricts the power of a court of equity to enforce its money decrees. *Coughlin v. Ehbert*, 39 Mo. 285 (1866); *People v. Pape*, 230 App. Div. 649, 246 N.Y.S. 414 (1930); *Brierhurst Realty Co. v. Lambrecht*, 299 Pa. 9, 149 Atl. 863 (1930). A minority of courts,