cribed to the act of murder."[1944] Whether the "fair warning" standard is to have any prominent place in *ex post facto* jurisprudence may be an interesting question, but it is problematical whether the fact situation will occur often enough to make the principle applicable in many cases.

Changes in Procedure.—An accused person does not have a right to be tried in all respects in accordance with the law in force when the crime charged was committed.[1945] Laws shifting the place of trial from one county to another,[1946] increasing the number of appellate judges and dividing the appellate court into divisions,[1947] granting a right of appeal to the state,[1948] changing the method of selecting and summoning jurors,[1949] making separate trials for persons jointly indicted a matter of discretion for the trial court rather than a matter of right,[1950] and allowing a comparison of handwriting experts,[1951] have been sustained over the objection that they were *ex post facto*. It was suggested in a number of these cases, and two decisions were rendered precisely on the basis, that the mode of procedure might be changed only so long as the "substantial" rights of the accused were not curtailed.[1952] The Court has now disavowed this position.[1953] All that the language of most of these cases meant was that a legislature might not evade the *ex post facto* clause by labeling changes as alteration of "procedure." If a change labeled "procedural" effects a substantive change in the definition of a crime or increases punishment or denies a defense, the clause is invoked; however, if a law changes the procedures by which a

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[1944] 432 U.S. at 297.

[1945] Gibson v. Mississippi, 162 U.S. 565, 590 (1896).

[1946] Gut v. Minnesota, 76 U.S. (9 Wall.) 35, 37 (1870).

[1947] Duncan v. Missouri, 152 U.S. 377 (1894).

[1948] Mallett v. North Carolina, 181 U.S. 589, 593 (1901).

[1949] Gibson v. Mississippi, 162 U.S. 565, 588 (1896).

[1950] Beazell v. Ohio, 269 U.S. 167 (1925).

[1951] Thompson v. Missouri, 171 U.S. 380, 381 (1898).

[1952] *E.g.*, Duncan v. Missouri, 152 U.S. 377, 382 (1894); Malloy v. South Carolina, 237 U.S. 180, 183 (1915); Beazell v. Ohio, 269 U.S. 167, 171 (1925). The two cases decided on the basis of the distinction were Thompson v. Utah, 170 U.S. 343 (1898) (application to felony trial for offense committed before enactment of change from twelve-person jury to an eight-person jury void under clause), and Kring v. Missouri, 107 U.S. 221 (1883) (as applied to a case arising before change, a law abolishing a rule under which a guilty plea functioned as a acquittal of a more serious offense, so that defendant could be tried on the more serious charge, a violation of the clause).

[1953] Collins v. Youngblood, 497 U.S. 37, 44–52 (1990). In so doing, the Court overruled *Kring* and Thompson v. Utah.