

general terms, 'the imposition of punishment by imprisonment for enforcing any law,' it seems to their lordships that there is imported an authority to add to the confinement or restraint in prison that which is generally incident to it—'hard labour'; in other words, that 'imprisonment' there means restraint by confinement in a prison, with or without its usual accompaniment, 'hard labour.'

It will scarcely be questioned by any jurist that the power conferred by the Imperial Act, on a local legislature, to enact laws, decreeing a particular kind of punishment, cannot be extended more than an Act directly decreeing a similar punishment. It is elementary to say that the power to punish is always interpreted in the strictest manner. Their Lordships try to escape from this rule by saying that "the imposition of punishment by imprisonment for enforcing any law" are "very general terms," and that "hard labour" is generally incident to it; i.e., to imprisonment. It is not unimportant to observe that the terms of the Act are—"by fine, penalty, or imprisonment." There is a double answer to this—first, these terms are not "very general." They are very particular terms; and they have a technical meaning. They constitute the common law punishment for every misdemeanour, to which no other punishment is attached. To say that "hard labour" is an incident of imprisonment, is a novelty in English law. The learned judges might as well include solitary confinement and whipping as incidents of imprisonment, because they sometimes go together.

The following authorities put this beyond all question:

The ordinary punishment, at common law, for misdemeanour, is fine or imprisonment, or both, and in some aggravated cases, by infamous corporal pain. *The Earl of Northampton's case*, 12 Co. 134; 2 East, 838; 1 Deacon, vo. Hard Labour; 2 Deacon, vo. Punishment. To this may be added Mr. Justice Stephen's Art. 22, in "A Digest of the Criminal Law," which, although not conclusive as to what he believes the law actually is, nevertheless seems to lay down a principle which can hardly be questioned. Russell treats hard labour, as a separate form of punishment similar to solitary con-

finement or whipping; 1 Russell, 78, 5th Ed. Hard labour is not incident to imprisonment, and it can only be inflicted when specially authorized by the special act. Greenwood & Martin's Magistrate and Police Guide, p. 52, note Y.

The only ground that remains, is the use of the word "penalty." It may be said that every punishment is a penalty. If that be the interpretation, it is idle to talk of an incident to imprisonment, and the local legislatures can add "death" as the punishment for the breach of their laws. The absurdity of such a pretention would be the best answer if it were put forward, which, probably, it will never be. To adopt such a rule would be to defeat the provision that the criminal law was reserved to the Dominion Parliament. The meaning of penalty in Section 92, S. Sect. 15, is probably that pointed out by Mr. Justice Stephen in his "Criminal Law of England," p. 5.

We think, therefore, that we have shown not only that the power to decree "hard labor" has not been given to the local legislatures, but that it has been purposely withheld, in order that no infamous punishment should be awarded, by a local legislature, for the infraction of a local act. R.

## NOTES OF CASES.

### SUPERIOR COURT.

MONTREAL, January 30, 1884.

Before TORRANCE, J.

**THE BELMONT MANUFACTURING CO. v. ARLEES.**  
*Contract—Subscription for shares—Company to be incorporated.*

*The defendant subscribed for one share in the capital of a company about to be incorporated. The name of the proposed company was changed in the Act of incorporation from the "Lauvor" Manufacturing Company to the "Belmont" Manufacturing Company, and the list of shareholders filed in the office of the Provincial Secretary did not contain the name of the defendant. Held, that the change of name, and the omission to insert the defendant's name in the list of shareholders were immaterial, and that the subscription was binding.*