

restriction of that expansiveness which the common law possessed—an expansiveness which has often proved of vast assistance to those entrusted with the administration of the criminal law.

The fact that in some countries not only a definite criminal code like that we now possess obtained, but also that a definite punishment for each particular offence was laid down, was to some extent no doubt, the *raison d'être* of our Code. In the public, that is the ordinary lay mind, it was often decided that a system which appeared to give each particular judge *carte blanche* as to the punishment to be inflicted for a certain class of offence, was the occasion of much scandal.

While however, in order to some extent to do away with this, every particular offence was defined in the Code, and also the sentence to be passed in such case; yet, though the limits of the punishment “not less than” “not more than” were also prescribed, it will be seen that the power to pass a sentence proportioned to the moral gravity of the offence remains in the hands of those entrusted with the administration of the criminal law. To that extent then the Code fails to satisfy those who do not make themselves acquainted with the facts connected with each particular case. In one case a heavy sentence is passed for an offence, while in another, a similar—or as far as the general public knows—an apparently similar case is visited with a very light sentence. In the one case, the offender may be hardened in crime, and often before convicted—in the other it may be a case of first offence, Where, say, both offenders plead guilty, an examination of the facts as appearing from the depositions will shew a great disparity in the moral gravity of the offence in the two cases, and thus the mind of the judge being enlightened by that which is not known to the public generally, he is enabled to discriminate in the punishment awarded—though to the general public he appears to be erratic and uncertain in his awards. That wise statesman, who was the author of the Code, refrained then from imposing any cast iron rule in dealing with the question of the punishment to be allotted.

The Code, as it first appears on the statute book, was found to contain many defects, which, likely enough, it was almost impossible to anticipate, and which only appeared when its measures came to be practically worked out. Each year, however, shews an effort on the part of our legislators to remedy these defects and to introduce necessary improvements. It would be an idle task, and one