

PUBLIC HANGINGS, WHIPPING-POSTS, BRANDING OF CRIMINALS IN CANADA'S BARBAROUS AGE OF JUSTICE ONLY 100 YEARS AGO

People Flocked to See Executions—Gallows Painted to Present an Attractive Appearance—Dead Left Dangling as Fearful Examples—Death for No Less Than 120 Different Crimes

The following article is taken from a forthcoming book on "Pioneer Justice," by Magistrate J. Edmund Jones, of Toronto. In the interests of his office, Magistrate Jones has been making a study of the growth of humanitarian principles in the administration of criminal law, with rather astounding results as far as the development of the past hundred years is concerned. His research has brought to light a large amount of wholly new and original matter from the records of Toronto.

By J. EDMUND JONES.

THE past few years may be known to history as the humanitarian age.

It is hard to realize that there are, right in our midst, the relics of the pillory and stocks, the whipping post and the public gallows.

It is even more difficult to believe what the records of Toronto show to have been the case in the time of our own grandfathers—floggings, merciless application of the death penalty, banishment, the treadmill and slavery.

In the vault of the clerk of the peace at the city hall, Toronto, are volumes of official records which contain a mine of information of intense historical interest.

Justice was not unduly tempered with mercy in the early part of the past century. Indeed, our ancestors of that time were so firmly impressed with the idea that the efficacy of punishment depended on its severity that the penalty of death was prescribed for not less than 120 different crimes. In Upper Canada it was not, in fact, until 1865, four years after the English act, that the death penalty was abolished in all cases except murder, treason and rape, but it is doubtful whether it has been inflicted since 1865 for the last-named crime. In the consolidated statutes of Canada (1859) the death penalty was provided for murder, treason, rape, administering poison or wounding with intent to commit murder, unlawfully abusing a girl under ten, robbery with wounding, burglary with assault, arson, setting fire to or casting away a ship, exhibiting a false signal endangering a ship. It was not a felony, but merely a misdemeanor punishable by fine, to abuse a girl between ten and twelve years of age. It was no offense at all under the act of 1859 to abuse a girl over twelve. While exhibiting a false signal causing danger to a ship was an offense punishable by death, endangering a railway train carried with it only a prison term of three to seven years. On the other hand, for stealing chattels or money from a church the penalty was not less than seven years. The punishment for stealing cattle might be more severe than this, the possible term being fourteen years with a minimum of two.

Naturally the hangman was a very busy person a century ago, since, in addition to inflicting the capital penalty, he was called upon to administer the lash, mostly in public, and to perform the duty of branding of criminals on tongue and hand. The penal laws, at least in their administration, were even more severe in England than in Canada. In this province, save for the crime of manslaughter, branding was abolished by statute in 1802, but in or before 1798 the chief justice of Upper Canada had caused convicted criminals to be branded in open court. In the early days of the province hangings were in public, and thousands journeyed from remote parts to witness them, many of the spectators arriving hours beforehand in order to get a complete view of the proceedings. The gallows were rather costly affairs, and were painted so as to present an attractive appearance. In fact, so great was the expense incurred that one might even speak of the high cost of dying when the mortal coil was shuffled off at the end of a rope. In the very first entry of the minute book, commenced in 1828, we have a record of the bill presented by Sheriff W. B. Jarvis for preparing the place for an execution. This bill reads as follows:

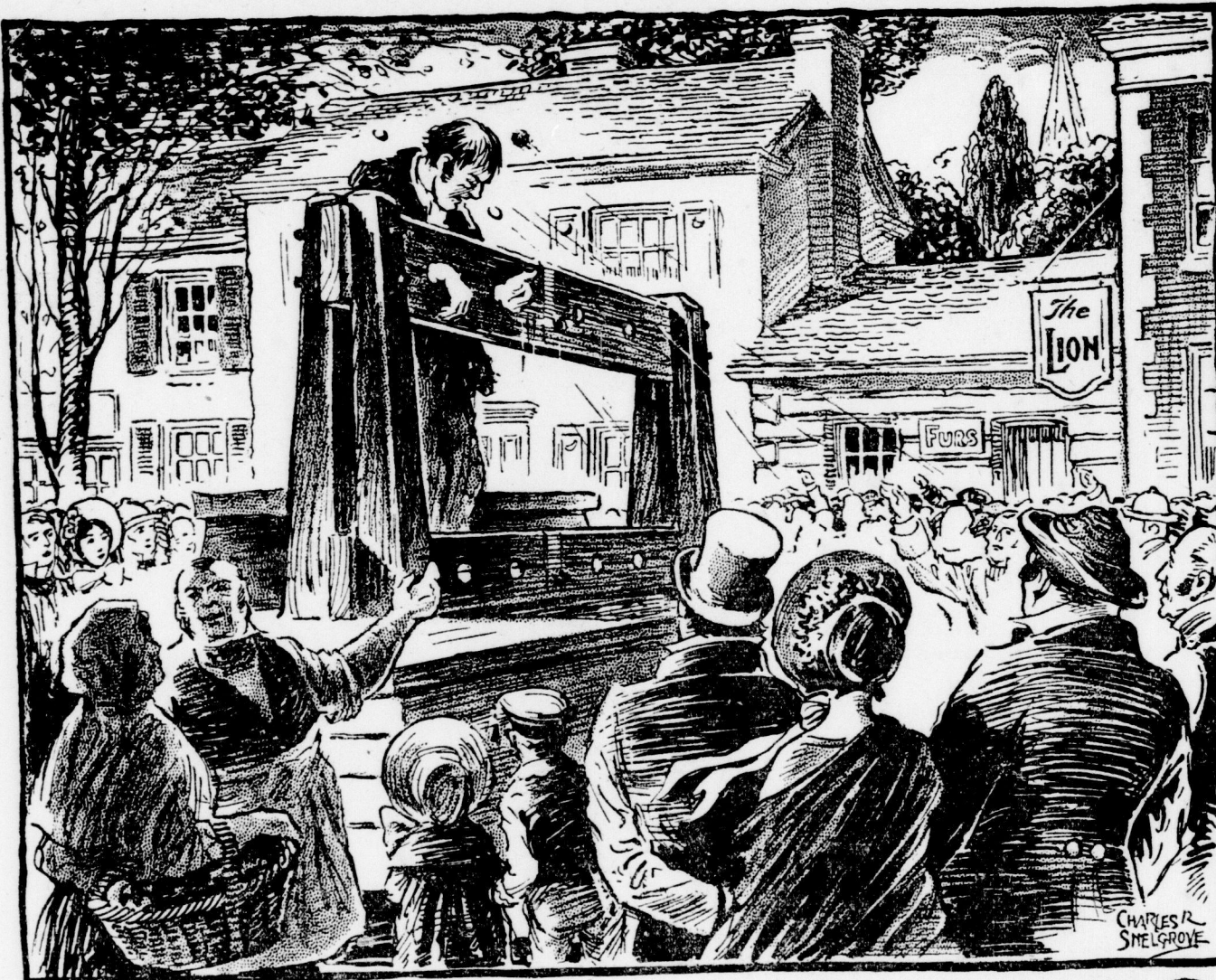
John Ford, his account for materials, framing, erecting and removing the gallows.....	£ s. d.
Mr. Clinger's account for iron-work.....	8 13 6
John Craig's account for painting.....	7 17 4
Two coffins.....	2
	62 10 10
Sundry expenses to execution and sheriff's assistants; also for a rope, cord, dress, and to certain persons aiding sheriff in erecting platform and removing the body of the criminal.....	15
do, for second criminal.....	15
	30
Total.....	93 10 10

This bill might be compared with the cost of erecting in 1905 the last gallows put in the present jail yard at Toronto, \$58.91; undertaker, \$10; sheriff's fee, \$20.

In addition to the above there was the amount paid the executioner, death watch and some costables.

Dangling Bodies From a Gibbet

PUBLIC hanging in chains from a gibbet (the bodies being saturated in tar that they might last longer) does not appear to have been adopted in Upper Canada. This was, however, the practice in England as late as 1832. The gibbet in a case occurring in 1818 was not taken down until 1826, when what remained exposed, as a supposed ghastly deterrent, was buried on the spot.



Mayor MacKenzie directed the convicted prisoner "to stand one hour to-morrow and one hour to-morrow week in the common stocks."

I found in the vault of Osgoode Hall, Toronto, the papers relating to the trial of two men, charged at London, Upper Canada, with wounding with intent to kill. The evidence showed that a number of men had gathered in a hut outside the town at night. High words passed, and one of the men threatened if he got a chance he would kill another who had offended him. As the party was breaking up, this man and a companion climbed into a loft where the man who had been threatened was preparing for bed. A scuffle ensued, whereupon those who had started for home returned and threw the two assailants down through a hatchway to the floor beneath. The assailants made their way out of the crowd, showing a flesh wound from which blood was flowing, but the injury was not sufficient to call for the services of a doctor. The injured man said the wound was caused by a knife he afterwards found in the room upstairs which he said must have belonged to one of the two men who had assaulted him. One of the assailants wisely kept out of the way, but the other returned, was put on trial, found guilty and—hanged. And this was as late as 1863.

In 1869 public hangings were abolished in Canada, and since 1905 the scaffold in Toronto has always been erected within the prison itself. At present there is strong public sentiment and official opinion in favor of abolishing the practice of having executions in every county as in Ontario, and adopting the system in vogue in British Columbia, Alberta and Saskatchewan, of having one or more central places where experienced officers will be in charge, and escapes, bungling and other scandals are not so likely to occur.

Public hangings and the brandings of criminals were not the only forms of barbarism, by which the early history of Toronto was marred.

In March, 1811, when Thomas Ridout, Hon. Duncan Cameron and John Small were sitting, there is an entry in the magistrate's minutes relating to the great-grandfather of the present generation of the Jarvis family. "William Jarvis, of the town of York, Esq., informed the court," the ancient record reads, "that a negro boy and girl, his slaves, had the evening before been committed to prison for having stolen gold and silver out of his desk in his dwelling-house, and escaped from their said master, and prayed that the court would order that the said prisoners, with one Coachley, a free negro, also committed to prison on suspicion of having advised and aided the said boy and girl in eloping with their master's property, they were accordingly ordered to be brought before said court for examination." The record does not show what form the "examination" took, whether the slaves were cross-examined in the French fashion, or merely put upon their trial in the English fashion. The use of the word "examination" was no doubt correct, as it is likely that the accused were interrogated, though not under oath.

Slaves in Early Toronto

IN 1816 there are three references to negroes in "a free man of color." Evidently surnames for negroes were not in favor, since in 1819, "Catharine, a woman of color," was charged with assault, and she is afterwards referred to as "Catharine, calling herself Catharine Myers." Perhaps the Myers family did not approve of her taking the name. Descendants of slaves in Toronto are still known to the present generation. One a descendant of a slave of the Denison family, became a prominent and successful citizen and holder of high municipal office, and his name is carved on the walls of the present City Hall.

In order to understand how it was possible that there could be slaves in the Town of York in 1811, one must look at the statutes on the subject. In England, in 1790, an act was passed "for encouraging new settlers in His Majesty's colonies and plantations in America." This act recites that it is expedient that persons should be encouraged to settle, and enacts that if persons from the United States come to "Bahama,



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Bermuda or Somers Islands, or to any part of Quebec or Nova Scotia, or any of His Majesty's territories in North America to settle, it shall be lawful to import, in British ships, any negroes, household furniture, etc., free of duty," the household furniture, clothing, etc., for every white person, not exceeding £50, "and the value of forty shillings for every negro." Obviously it was considered that a negro did not, even in our northern climate, require as much clothing as a white man. It was further provided that "all sales of any negro, household furniture, clothing, etc., so imported, made within 12 months after importation, shall be null and void." Slaves might, therefore, be sold after 12

months' residence. All white settlers over 14 years of age had to take the oath of allegiance, but negroes were not under such compulsion.

Three years later, however, at Niagara, when John Graves Simcoe was lieutenant-governor of Upper Canada, the second session of the first parliament declared it unjust that a people who enjoy freedom by law should encourage the introduction of slaves, and that it was highly expedient to abolish slavery in this province, "so far as the same may gradually be done without violating private property." It was accordingly enacted that the imperial act authorizing slavery be repealed, and that no negro or other person shall be subject to the condition of a slave. As



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there were persons who had contracted themselves to "bounden involuntary service for life," it was provided that such a contract was good only for nine years. This act did, however, confirm owners of slaves in any property acquired before the passing of the same, and did not release anyone who before it had contracted himself out of his freedom. It was further provided that the children of female slaves should remain in the service of the owner of their mother until 25 years of age. The births of these children of slave mothers were to be recorded and the onus of proving the child to be under 25 was to rest on the owner. Moreover, the children of such children were to be considered free-born. If an owner should liberate a slave, he had to give security that the slave so released should not become a charge on the parish. In this connection I recall the late Judge Joseph McDougall in the '80s refusing to give effect to the assignment by one man to another of all his wages in payment of a debt, and his remarking that the assignor by such an act enslaved himself to the assignee.

Punishment of Banishment

THE punishment of banishment existed from the founding of Upper Canada. In modern times we deport criminals in proper cases, but only when they are aliens and then under reciprocal arrangements with foreign countries. In the early days of the province, however, our own people were punished by being ordered to depart, at their own expense and peril, to some foreign land where they had no friends, no employment, no money and no reputation. The act which authorized this cruelty was passed in 1802, and recited that the English system of deportation overseas was not available owing to our having no colonies. It provided the punishment of banishment for life, and gave a maximum period of eight days in which to leave the country. Failure to comply might mean death, just as in England a return to England from overseas meant death in most cases.

In an entry of July 1, 1829, it was recorded that John J. I. pleaded guilty of larceny, and was sentenced to be banished from the province for seven years, and "to be allowed eight days, this day included, to leave the province." In an entry dated November 23, 1831, it was stated that L. W. pleaded guilty to larceny and was sentenced to be banished from the province for life, and to be allowed seven days to leave the province.

Later the practice grew up of more limited banishment. In 1834 Mayor William Lyon MacKenzie and Aldermen Thomas David Morrison

and Cawthra condemned a woman who kept a disorderly house to leave the neighborhood within a week. Another woman, found guilty by a jury and recommended for mercy, was sentenced to "one week's imprisonment and to be banished five miles beyond the limits of the district." Another woman for larceny was "banished from the district for 12 months." In 1810 three men, found guilty of keeping a disorderly house (maximum punishment now \$50 fine), were directed to be imprisoned 14 days, "and to remove out of the house called the Yellow House with their things and never to return." Evidently a case of "Yellow Peril."

Physical punishment had a great fascination for early penologists, and even starvation, cold and discomfort of every kind were thought to be salutary for persons who had offended. In olden times whipping was done by the hangman, in public, the unfortunate victim being tied to the cart's tail and "lashed on the bare back till the blood comes." The publicity was justified on the same grounds as public hanging and the leaving of the dead bodies hanging in chains at the cross-roads or in other public places, to strike terror in the hearts of the populace. In 1816, for petty larceny (the distinction between grand and petty larceny was abolished in 1841), the prisoner was given "one month in gaol and once publicly whipped." In the same year for petty larceny another was sentenced to "one month's imprisonment and at the expiration of term to be publicly whipped, to receive 39 lashes."

In 1817, for a common assault for which the term of imprisonment was two months in the house of correction, the prisoner was in addition directed "to be publicly whipped and to receive 39 lashes." In the same year for petty larceny (under \$10) the prisoner was condemned to "one week and then to be publicly whipped." In 1818, for petty larceny four men were sentenced to one month each, another two were each to be twice publicly whipped with 39 lashes. In 1819, for petty larceny the sentence was "one month and to be whipped, to receive 20 lashes," and for receiving stolen goods three months and once publicly whipped. Again, in 1821, for mere petty larceny, 36 lashes were given in the market place and on Saturday, so that a goodly attendance of sightseers might be on hand. The last record of public flogging is in 1830, when one month and 39 lashes was the penalty for an assault.

The Stocks and the Pillory

THE stocks were a wooden contraption that usually stood in the market place, and consisted of heavy timbers, with holes in which the arms and legs were confined. There the offender who was condemned to them was not merely exposed to public scorn and contempt, but to the more substantial expression of popular opinion in the shape of rotten eggs, brickbats and other additions to the sentence of the court. In 1811 it was "ordered that a carpenter be employed to make moveable stocks that will confine two persons at once, and when completed that they be erected where a majority of the magistrates may think most proper." When the carpenter (Joshua Leach) was paid for this and other work, his account, £11 New York currency, was stated to be equal to £5 17s. 6d. provincial currency.

The only reference in the minutes to the actual use of stocks in Toronto is in 1834. This reference is to one of the early decisions of William Lyon MacKenzie, first mayor of Toronto, in the days when the mayor was also chief magistrate, in the sense that he presided over the mayor's court assisted by aldermen and grand and petty juries. For larceny Mayor MacKenzie directed the convicted prisoner to be imprisoned two months in the house of correction and employed in breaking stones; also "to stand one hour to-morrow, and one hour to-morrow week, in the common stocks; and to be banished from the home district for twelve months." Many persons in Toronto profess to know the spot on the old market place where the stocks used to stand.

In 1827 J. G. Howard, the architect of the new jail, who afterwards gave High Park to Toronto, writes: "A treadmill, though not recommended as punishment, could be applied to advantage pumping water to cleanse drains and cesspools, security against fire, etc., and would save the expense of wells." The record does not state whether the suggestion was adopted. In 1856 a force-pump was installed to force water into the closets in the upper story of the then jail.

Will Radio Unite the Whole World Into Dreamed Brotherhood of Man?

WHEN Alexander Graham Bell sent the human voices over a wire that was history. When Edison learned to "can" and reproduce the voice, that, too, was wonderful.

When the Wright brothers sent a bird-like thing across the sandy stretches at Kitty Hawk, proving at last that man could fly, that was acclaimed as little short of miraculous.

And yet, in their effect on the peoples of the earth and in their possibilities, none of these achievements is comparable to radio. When Marconi, back in 1899, found that he could send a wireless impression jumping through the air he started that long trail of development which has given us radio, and which is still leading on to a goal which scientists can define only in their dreams.

The range of broadcasting is increasing every month. The most astonishing prediction of the radio experts may be summed up as follows:

The time will come when there will be no foot of ground on the face of the earth, or under the earth, where the human voice cannot be heard, and heard with perfect distinctness. A man at the south pole will speak into a broadcasting device and a moment later a man at the north pole can hear him perfectly. The ultimate goal is for any man to be entirely "present" to any other man.

It was Dr. Lee De Forest, the inventor of

the three electrode vacuum tube, otherwise known as the audion, who has furnished the principal agent for broadcasting and wireless voice since the time when Marconi first propelled his wave through the air. In fact, the audion, invented in 1905, is the basis of all the later progress in radio.

Dr. De Forest is the inventor of the phonofilm, or talking motion picture. He was asked the other day to make a prediction as to the future of radio.

"To look very far ahead is impossible," he said. "It would be pure guesswork. Eventually radio will make us all one people—the final achievement of the dream of the brotherhood of man. It is easier to predict what is going to happen within the next few years—the next twenty-five years, anyhow."

"Broadcasting in its present stage is only a very dim forecast of what is coming later. To say that radio is in its infancy is to put it mildly. What we have now is just as a small beginning—a suggestion."

"Soon we will get all local broadcasting through the electric wiring and the air will be left free for long distance sending. It is easy enough to point out to these things, but to look much further into the future you have only to dream."

The advances made in 1923 alone serve to suggest what may be possible soon. Two years ago these things would have sounded like idle speculation.

With radio an arctic explorer no longer becomes lost from the world when he pushes beyond civilization to the northward. Donald MacMillan, commander of the ship Bowdoin, is frozen in the ice this winter off the coast of Greenland, eleven degrees from the north pole. Her exact position on Christmas Day was 78 north latitude and 72.30 west longitude.

MacMillan took out his receiving set and tuned in for Chicago. In that city his sister,

Mrs. Lillian Fogg, talked at a broadcasting station and sent him greetings. He sent a wireless code message a few minutes later that he had heard her.

On last December 31 people down in Middleburg, South Africa, tuned in with the Pittsburgh program, as relayed from London, and heard it distinctly. When the new year came in people in England, Scotland, Ireland and Wales danced to their own programs, but those around Manchester were able to dance to American music.

At Manchester Mrs. Sarah J. Nightingale heard the voice of her son, S. J. Nightingale of the Westinghouse Electric Company, Pittsburgh, across 3,500 miles of space as he sang.

England also has picked up voices from India, Mesopotamia, New Zealand and South Africa.

Amateurs in England had been heard in Chicago.

Persons who never heard a sound in all their lives have been able to hear over radio, and in several instances by exercising long dormant faculties hearing has been partially restored—although, of course, it can't be restored when the nerve is dead.

Scientists are now able to listen to the voices of insects, which to them is fully as important as examining through a microscope. For insects have languages of their own, and they are being found out.

"And we are all comparatively young men," pointed out Dr. De Forest. "Marconi and I are not more than 50. The others are younger. What they will do in the next twenty-five years is a matter for conjecture—for wild imaginings. And the most extravagant statement of to-day soon may sound commonplace."

Here is a conservative prediction from Gen. James G. Harbord president of the Radio Corporation of America:

"Radio is preeminently the instrument of mass appeal, and it will prove the most powerful

unifying influence in Asia since the days of Tamerlane. Its social effect will parallel the change wrought in the western world by the printing press, steam transport and electricity. The east has few of what we call modern utilities to be thrown into the scrap heap, and Asia will readily adapt itself to radio broadcasting, the most modern methods being transmitting intelligence to millions, without a preliminary tutelage to telephones and similar convenient but disturbing instruments of our civilization.

"The leadership in radio and its practical appliance is in the hands of the English speaking people. Europe has practically reduced itself to three major tongues—English, French and German. The minor nations must learn a major European tongue to effect an escape from the linguistic prison."

What will this common language be? Few believe it will be Esperanto or any of the other "synthetic" tongues which have been put forward. Dr. De Forest insists that eventually the common language will be "English," enriched by some phrases from other tongues. He does not doubt for a moment that there will in time be a common language.

Prof. A. M. Low, an English authority, says: "Very soon now it should be possible for a man in London to speak with ease from his own mission by wireless, foresees all sorts of terrible things. He believes, in common with many others, that the time will come when wireless can make an airplane stand still in the air. Battleships already have been controlled by radio from long distances."

There are people in France who say that the Germans are experimenting with airplanes that are driven and controlled entirely by radio—that can be sent over enemy lines and manipulated at will.

Radio is changing the whole social and economic regime.



Lee De Forest