

would have been defunct. Surely this represents a vulgar misconception. Sentence of death works a forfeiture of civil rights, of which an instance was given in the case of Birchall, the swearing of an affidavit by whom was not permitted. A murderer then becomes practically dead to the outside world. There could be no change wrought between sentence and execution. It might be more appropriately said that his body from the time spoken of was in a condition of insensibility, and could be galvanized into life by nothing less than a pardon.

Reference to pardons brings us to a discussion of that aspect of the Crown's position. The gratuity belongs to the Crown as a prerogative, and is incommunicable except to offshoots of the parent state. Either conditional or a free pardon may be extended, though it is difficult to comprehend what shape or direction, in the case of capital punishment, the first named would assume. Ticket-of-leave is representative of the class. Mossback interpreters allude to the substitution of a milder and pleasanter for a severer and grosser method of execution, as beheading, in lieu of hanging; and a dispensation with such paltry incidents as mutilation, or hanging in chains, as conditional pardons. Sec. 966 of the Code prescribes that "Whenever the Crown is pleased to extend the royal mercy to any offender convicted of an indictable offence punishable with death or otherwise, and grants to such offender either a free or a conditional pardon, by warrant under the royal sign-manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal-at-arms of the Governor-General, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon of such offender under the great seal as to the offence for which such pardon has been granted."

Is there not a serious difficulty obtruded, if we have to look upon the change of date for consummation of the sentence as giving it the character of a new judgment, and thus requiring the presence of the criminal to hear it? One of the "orders and directions" promulgated by the King's Justices in 1708 (Kelyng, J.) was that "no prisoner convicted for any felony for which he cannot have clergy be reprieved but in open session." It has been likewise averred that "respite is matter of record, and