

suggestions of their opinion the Government may, on full deliberation, think proper to make.

The making of these suggestions, however, is a matter of extreme delicacy, and one which, as a precedent, may involve much difficulty and many grave consequences.

In any event, a Judge cannot but be entrusted with a wide discretion in the administration of the Criminal Law. With this discretion "the Secretary of State, in England, never pretends to interfere," while there, as here, there is great inequality in the sentences pronounced by Judges and Chairmen of Quarter Sessions for the same offence.

To the inequality of the sentences I think it would be well to draw the attention of the Judges of the various Courts, and invite them to meet and confer together, with a view of reconciling the diversity of practice and opinion in this respect.

Comparing, however, the practice which prevails in this Colony, with that in the British Islands, the excessive severity of the punishments awarded is apt to cause doubt, even more than the inequality already alluded to. The imprisonment of a young person of from eighteen to twenty-five years, for five, seven or even more years, for the offence of stealing a horse or a cow of the value of from £1 to £5, seems cruel and oppressive; and under all the circumstances of the country, beyond all measure of justice or reason. Instances of this severity are frequently brought before me, while persons in Sydney, stealing property of greater value from a shop or dwelling house, usually get sentences of only two years or less. Indeed, a case of recent occurrence in Victoria may be referred to as in point. An officer in a bank, in a confidential situation, entrusted with the custody of money, embezzled £2,000, was convicted of the offence, and sentenced to two years' imprisonment. There is no proportion between the guilt in this case, and in that of most of the persons convicted of cattle or horse stealing. The former—the guilt of an educated man betraying a trust—is clearly more heinous than that of a peasant boy who steals a half-wild cow or horse, an offence scarcely worse than poaching—than stealing a hare or a pheasant in England. No doubt there is lawlessness and wrong in the act, and it is usually the first step to worse. I do not desire to extenuate it in any degree, but surely it ought not to be visited with a heavier penalty—with twice or thrice a longer term of imprisonment—than a robbery to a much higher value, aggravated by a breach of trust, and committed under circumstances of far less temptation.

In the Evidence on Prison Discipline, taken before a Committee of the House of Lords, in 1863, witnesses of great experience give opinions in favour of short sentences under the separate system, in preference to longer sentences and association. A few months' sentence with strict discipline and distasteful penal labour may not perhaps work a moral reformation, but they are found sufficient to deter beginners from a course of crime.

This sort of deterrent influence seems to be what is wanted in New South Wales. The great majority of the young men convicted in the country parts of the Colony are not criminals by profession, but persons who have rather been led to commit robbery for the want of something just at the moment, and not concerted robberies—they are seldom associated with others, at least seldom in their first offences. As great improvements have been effected in the gaols, and the power to apply penal discipline is augmented, recourse might be had, with advantage in many respects, to shorter sentences. I speak under correction; but in my view, a sentence of imprisonment for eighteen months, or, at the most, for two years, would be ample to meet the requirements of justice, and afford protection to such property as cattle or horses, in the case of a first offence without aggravating circumstances, such as breach of trust, previous bad character, &c.; for a second offence, three to five years; for a third—which might be considered as showing the convict to be a confirmed criminal—a prolonged term of punishment.

It may be said that there exists great difficulty in the identification of previously convicted persons, so as to enable the Courts to impose the graduated punishments; but this difficulty may be reduced to a minimum by the use of photography, and by