

Now, the whole basis of our criminal jurisprudence is historical, and in its history alone can its "reason" be found; and where the ancient *principle* was good and its expression alone was barbarous, why not preserve or restore the first, while avoiding the last? Consequently I do not think there is any gross departure from principle in the following suggestions: 1st.—That the preliminary examination now taken in non-capital felonies be converted in "heinous crimes" into a *trial*, subject to the following conditions.* The complaint and incidents, including tariff of costs, in all respects to follow "the summary" trial of the 4th and 5th Vic.† as had at Quebec, except that, on *conviction*, the Court shall inquire of defendant, "What have you to say why the sentence of the law should not be passed upon you?" If no sufficient legal answer were offered, the Court should sentence the prisoner. If, however, the prisoner chose, he should answer, "I traverse." The rejoinder should be, "Traverser, how will you be tried?" To which the response should be either by "the quorum of the justices of this county," or "by my country." If the latter, then the question should be, "Who are your country?" and on the enquiry thus opened all facts relevant to the query should be *ascertained* or *confirmed*; and, immediately after the manner of trial has been determined, the question should be put, "Traverser, when will you be ready for your trial?" In answer, cause of delay (if any) is to be shewn, and the time of trial is then to be peremptorily fixed. If the traverser elect the "*quorum*" for his tribunal, the three justices thereof whose then term of duty it shall be, shall assemble at the earliest moment, and determine the case by vote of majority; if not, then, if he be a foreigner, the Sheriff shall be ordered to summon for the earliest moment a jury *de medietate lingue*. If the traverser be a non-resident subject, or any non-resident is the party immediately aggrieved by the offence, or is an indispensable witness in the case, or an indispensable witness proves grievous wrong will accrue to him by prolonged detention, the Court shall assemble a jury as the Coroner now does, at the earliest possible day—that, if possible, of the trial just had; and another magistrate presiding, the traverse will be then determined. Whether the jury shall be of English and French tongue, or wholly of one

* Excluding misprision of Treason.

† see page 27.