

for those of a less atrocious sort, it is evident that justice is not well armed against malefaction.

In a former article on "French Assizes" we alluded to the vagaries of juries in finding "extenuating circumstances" for prisoners on merely sentimental grounds; and also to the unequal apportionment of penalties by reason of the arbitrary rules which commit certain offenders to be tried before juries, whilst others are sent before the judges of the correctional courts, who sit without juries and scarcely ever acquit because they judge according to the strict letter of the law. We pointed out that a husband who gave an unfaithful wife a severe beating would almost certainly be imprisoned by correctional judges, whereas if he killed his wife outright he would assuredly be acquitted by an Assize jury. Such anomalies may be witnessed in a multitude of other cases. The French Code divides offences against the Common Law into *crimes* (felonies) and *délits* (misdemeanors); but this distinction, which was found inconvenient in England, and which has been practically obliterated there since misdemeanants (e. g. the Tichborne claimant) can be sentenced to fourteen years' penal servitude as well as felons—this distinction remains an important one in France, where a misdemeanant can only be tried in a Correctional Court, whose maximum sentence is five years' imprisonment. And the French legal definitions of *felonies* and *misdemeanors* are often most unsatisfactory from the moral point of view.

A man wishing to steal fowls clammers over a garden wall at night, and breaks into a fowl-house. He has a bludgeon or crowbar in his hands, but makes no use of it to inflict bodily hurt on those who capture him. Nevertheless, this man is a felon who has committed a burglary with the *quatre circonstances aggravantes*, i. e., in the night, with *escalade* (climbing over walls), with *effraction* (breaking open a door), and *à main armée* (with a weapon in his hand). He can only be tried at the Assizes, and, if convicted on the four counts, must get eight years' *reclusion*, or twenty years' transportation. On the other hand, take a man who by false pretences obtains admission to a house or shop, intending to commit a robbery there. He lays hands on some valuables, and, being surprised in the act, catches up a poker and knocks his

detector down, inflicting a serious wound. This man's crime is evidently worse than that of the other who went after the fowls. He is only a misdemeanant, however, for he gained admittance to the house *without violence*, and was unarmed; his catching up the poker, although it may have been a premeditated act, inasmuch as he intended from the first to defend himself somehow if caught, was, generally speaking, only an act of *impulse* committed on the spur of the moment and without *malice prepense*. Therefore this man can only be tried by a Correctional Court, and cannot get more than five years' imprisonment. Again, if a man, wishing to inflict on an enemy some grievous bodily harm, walks into a café, says a few angry words to him, and disfigures him by smashing a decanter upon his face, it is a misdemeanor, extenuated by the apparent absence of premeditation. The man walked into the café unarmed, and in the heat of quarrel picked up the first weapon that came to his hand. It might fairly be alleged that the man knew he should find a decanter in the café, and that his quarrel was purposely entered into; but the law will not take account of this. If, on the contrary, the man entered his enemy's house with a loaded stick in his hand and assaulted his enemy with that stick, he would be a felon who must go to the Assizes on a charge of attempted murder. It might be that the man had taken the stick without reflecting that it had a leaden knot; but the *onus* of proving that his intentions were not murderous, and that in fact when he entered the room he did not even purpose to commit a common assault, would rest upon himself. A jury would probably judge his case according to his antecedents, and if it were shown that his past life was not blameless, he might fail to get *extenuating circumstances*, and might receive twenty years' transportation.

These oddities in criminology render it impossible for people to determine what precise degree of infamy attaches to this or that sentence. In a general way the public thinks more badly of a man who is sentenced to *travaux forcés* (transportation) than of one who is merely sent to prison; but there is very little faith current as to the scales of justice being evenly balanced, and Frenchmen, as a rule, feel very indulgently towards all criminals except those whose offences are characterized by savage cruelty. What is