

The Legal News.

VOL. IV. SEPTEMBER 10, 1881. No. 37.

CONFINEMENT AFTER EXPIRATION OF SENTENCE.

The *Criminal Law Magazine*, for September, contains a case of some interest, *Gross v. Rice*, in which a question arose as to the constitutionality of a statute of Maine, providing that no convict shall be discharged from the State prison until he has remained the full term for which he was sentenced, *excluding the time he may have been in solitary confinement for violation of the rules and regulations of the prison*. The prisoner who had been sentenced for four years, was in solitary confinement at various times for 144 days, for a number of reasons; and he was not discharged until he had served his sentence and 68 days' imprisonment additional. This extension of the term of imprisonment for which he had been sentenced by the Court, was held to be in derogation of a provision of the national constitution, that no State shall deprive any person of life, liberty or property, without due process of law. Although, therefore, a convict may by good conduct earn remission of a portion of his sentence, he cannot prolong it by any measure of misconduct. This view, which seems reasonable enough, was held by four judges of the Supreme Court of Maine. Two differed, and the seventh, being a relative of the defendant, did not sit.

JUDICIAL INCREASE.

New York State is proposing to add at one stroke twelve additional justices to its Supreme Court, and an amendment to that effect, of the judiciary article of the State Constitution, is pending, to be voted on at the election next fall. Even this enormous increase, it is said, will be only an alleviation, not a cure, of existing ills. In Massachusetts, the Bench also seems to be hard pressed, for Judge Colt recently committed suicide in a fit of melancholy and distraction brought on, it is said, by overwork.

LORD SHERBROOKE ON BANKRUPTCY LEGISLATION.

"A great deal of time, of trouble, of expense, and of misery, would have been saved to mankind if legislators could have been induced to consider more narrowly not only what they are legislating about, but for whom they are legislating, and what good society is likely to derive from their work."

Thus writes Lord Sherbrooke with reference to the subject of bankruptcy legislation; and in this, the opening sentence of an able article on "What shall we do with our Bankrupts?" which appears in the current number of the *Nineteenth Century*, his Lordship propounds a theory which, as regards the particular subject he has taken in hand, is especially true and appropriate. The fact is that in bankruptcy legislation we have never properly considered for whom we are legislating. The main object which our legislators seem to have had in view has been the comfort and convenience of those unable or unwilling to pay their just debts, rather than the protection of those whom one would think were most deserving of consideration—innocent and gullible creditors. Had it been otherwise, and had we thought more of the interest of the honest trader, rather than of the dishonest, or, at any rate, careless debtor, our commercial morality would probably be far higher than it is. This is the line of argument which is suggested by a perusal of Lord Sherbrooke's article. It bristles with interesting historical and classical references; it is a short but clear and concise history of bankruptcy legislation from the earliest times downwards to the present day, and in it the author shows what a great mistake we made in protecting the debtor in the way we do.

Before embarking on the contemplated revision and reconstruction of our present bankruptcy code, Lord Sherbrooke retraces the history of the bankruptcy laws from their earliest date, and points out the steps by which a code which has existed in one shape or another for so long a period now comes, in the fulness of time and the exhaustion of every conceivable remedy, to be re-created, or at any rate, re-dressed. He first treats of the legendary origin of bankruptcy as mixed up with the fabulous period of Roman history, and he next opens up the great question of English bankruptcy law,