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HODGE v. THE QUEEN.

The following is the conclusion of Dr. Wharton's note upon this case (pp. 169-170):—

The rulings of the courts in the United States sustaining the positions taken above, are numerous. Many are the reported cases in which sentences to hard labor have been sustained, but not one can be found in which the power to impose hard labor was not given by statute. It is true that where labor is part of the discipline of a particular prison, then parties committed to such prison are obliged to submit to such discipline, though it is not part of the specific sentence. But this is a matter of discipline, shifting with the prison, some prisons (aside from statutory requisitions) requiring only that each prisoner should keep his own cell in order, others requiring that prisoners shall take part, according to direction, in the general work of the institution. But, be this as it may, no court can impose hard labor as a condition of punishment unless this power be specified by statute. See *Exp. Karstendick*, 93 U. S. (3 Otto) 396; *Exp. Pearson*, 59 Ala. 654; *Exp. Simmons*, 62 Ala. 416; *Hannah v. State*, 7 Tex. App. 664; *Boone v. State*, 8 Lea (Tenn.) 774; *State v. Barnes*, 37 Ark. 448; *Re Ryan*, 45 Mich. 173. In 1847 the question arose almost in this shape in *Daniels v. Commonwealth*, 7 Pa. St. 393, in which case we have the following opinion from Rogers, J. : "The twenty-first section of the Act of July 12th, 1842, directs that every person convicted of fraud as therein prescribed shall be imprisoned in the penitentiary or in the county jail, at the discretion of the court, not exceeding one year, or by fine not exceeding three times the value of the money or property or other thing so obtained; or by both fine and imprisonment. To the punishment awarded by the Act there is superadded in the sentence, 'hard labor,' which, as the defendant contends, is not warranted by the statute. That there may be imprisonment without labor is a proposition which need

only be stated; and whether it be a less punishment, as is contended, or a greater punishment, would seem to be immaterial. In the *King v. Bourne*, 7 Ad. & El. 58, a judgment was reversed because the court sentenced the offender to transportation for seven years, in a case punishable only with death. The courts proceed on the safe principle that the punishment only which the statute awards can be inflicted, the court having no power to alter or vary it, and, consequently, it would be a usurpation of an authority not delegated, which cannot be tolerated in a government of laws. Is, then, the sentence illegal? This is a question which we think is virtually decided in *Commonwealth v. Kraemer*, 3 Binn. (Pa.) 584. In that case the judgment was reversed. The crime of which the defendant was convicted was perjury, punishable by fine and imprisonment at hard labor; yet, as the Act prescribed no particular kind of treatment as to diet or discipline, a sentence which adjudged that the convict shall be confined, fed, clothed and treated as the law directs, was reversed as erroneous. In the argument an exception was taken that the defendant was sentenced to 'hard labor,' the word 'hard' going beyond the letter of the Act. On inquiry, it was found that the exception was not well taken, as these words appeared in the original roll. But had it been as was assumed, we are warranted in saying the judgment would have been reversed on that ground alone. The reasoning of the judges, who delivered their opinions *seriatim*, applies with full force to the present case. But as repetition adds no additional force to an argument, I shall content myself with referring generally to the cases cited. But it is denied that the case of *Commonwealth v. Kraemer* applies; because, as is said, it was ruled on the construction of the Act of 1792, and that the question now raised depends on various Acts subsequently passed, constituting one entire system. That it is a rule of construction that statutes are not to be taken according to their very words, but their provisions may be extended beyond, or restrained within the words, according to the sense and meaning of the legislature, apparent from the whole statute, or from other statutes