

NEW YORK PENAL CODE.

NEW YORK PENAL CODE.

(From the Solicitor's Journal.)

The New York Penal Code comprises every branch of the criminal law of that State, together with elaborate prison regulations, but does not include criminal procedure or the law of evidence. These subjects are contained in other codes. The Penal Code consists of one thickish large octavo volume. In common with its fellow codes, it is elaborately divided and subdivided into titles, chapters, and sections, with notes appended. The sections are never more than a few lines in length, and great care has been taken to employ throughout that brief, sententious language which seems to be regarded as the necessary characteristic of a code.

We subjoin a single section (section 241) as an example: "Homicide is murder in the following cases: 1. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed, or of any other human being. 2. When perpetrated by any act criminally dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual. 3. When perpetrated, without any design to effect death, by a person engaged in the commission of a felony."

To frame a penal code is, of course, a comparatively easy task. The most determined opponents of innovation would probably admit that codification is so far practicable. Our formidable difficulties begin when we approach the question of a *civil* code. Still, even a penal code is no easy matter, and presents abundant obstacles to success. These obstacles Mr. Dudley Field and his colleagues have skillfully overcome. They have constructed a very fair penal code, not unworthy of the great State under whose auspices it has been produced; though hardly equal to such a masterpiece as our own Indian Code promises to be, if we may judge of it from those portions which are already complete.

The Penal Code of New York has been laid before the Legislature in a complete form, but has not yet become law. Inasmuch, however, as its provisions, with a few exceptions, are mere embodiments of the substance of the existing law, the code presents us with a very fair exposition of the *existing* criminal law of the State of New York. In fact, though not yet in force as a code, it already serves the purpose of a digest. This criminal law of New York is primarily derived from our own, and is in most respects identical with it. In some points, however, changes have been introduced. Some of these are important; others curious—at least, to English eyes. A glance at the Penal Code may, therefore, be both instructive and interesting. We premise that in all the points hereafter mentioned, except where it is otherwise stated, the Penal Code only embodies existing provisions of the

law of New York. We are not in the habit of considering the Americans a very strait-laced people, yet it is remarkable how often offences against morality, to which our criminal law does not extend, are prohibited by theirs. Thus, sections 38–51 of the Penal Code forbid Sabbath-breaking; under which head almost every kind of Sunday travelling is included. Contrast this with our Sunday excursion trains! Again, seduction for the purpose of prostitution is punishable by imprisonment for five years; as also is seduction under promise of marriage, unless the parties have subsequently married. Incest is similarly punishable (section 34). Betting or gaming to the amount of twenty-five dollars or upwards is a criminal offence, punishable by fine: though enactments of this kind seem not to be very rigidly enforced. The laws against drunkenness seem to be much the same as our own, with one or two curious additions. Mr. Abel Smith's bill has been anticipated in New York. All publicans selling strong drinks on Sunday are guilty of a misdemeanor (section 728); and the same penalty attaches to persons selling or giving away spirituous liquors on an election day. Moreover, it is a criminal offence to sell drinks at any time to an habitual drunkard (section 726). What would the great publican interest in this country say to such proposals? Another provision of a similar nature is still more curious. It is competent to a wife to request any publican or other person not to sell drink to her husband; and on that mere request being made without more, the publican is prohibited from selling drink to the husband, on pain of a fine and of becoming for ever incapable of holding a license (section 726).

It is proposed by the Code Commission that the exemption of a wife from punishment on account of acts done in her husband's presence should be considerably limited. According to the code as now drawn, such presence is no excuse in the cases, not only of treason and murder, but of abortion, keeping a bawdy-house, obscene exhibitions of books or prints, and other offences.

It is instructive at the present time to observe that, according to New York law, the administering, though not the receiving, of bribes at elections is a misdemeanor (sections 61 *et. seq.*). So, also, is treating, intimidation of any kind, and even the carriage of voters to the poll.

A peculiar feature of the New York law is the introduction of what we may call *minimum* terms of imprisonment, for serious offences. Thus a person found guilty of rape may be sentenced to any term of imprisonment *exceeding* five years; but he cannot be sentenced for a *less* term. And the same in certain other cases. This is an innovation which we do not admire. However serious the offence may be, it may occasionally happen that circumstances mitigate the crime to a very large extent. And in such cases a *minimum* term of imprison-