

because the mother, having a right to bring up her child, has a right to decide what religious teaching she shall receive, and the opinions of a girl at the age of twelve are not sufficiently formed to justify a judge in interfering with the natural order in the matter of guardianship. At a more advanced age this would be different.

Petition granted.

McGoun for Petitioner.

Davidson, Q.C., and *S. Cross*, for the Crown.

COURT OF QUEEN'S BENCH.

[In Chambers.]

MONTREAL, April 2, 1883.

Before RAMSAY, J.

Ex parte CLARA GERVAIS, Petitioner for Writ of Habeas Corpus.

Procedure in criminal cases—Term of imprisonment—32 & 33 Vic., c. 29, s. 91.

The general rule, that the period of imprisonment in pursuance of any sentence commences on and from the day of passing such sentence, does not suffer exception where the defendant is allowed to go at large after sentence without bail; and therefore where a defendant was allowed to go at large until the term of the sentence had expired, her commitment subsequently was held to be illegal.

RAMSAY, J. An application for a writ of habeas corpus was made before me on behalf of one Clara Gervais, convicted before the Recorder for having kept a house of ill-fame within the police limits of the city of Montreal. The conviction took place on the 29th of August, 1882, and the petitioner was condemned to pay \$100 including costs, and furthermore the said petitioner was condemned for her said offence, to be imprisoned in the common gaol of the District for six months. It seems the petitioner paid the fine and was allowed to go at large till the 27th of March last, when the Recorder issued his warrant for her arrest, and ordered her to be committed to gaol for six months.

The principal objection taken to the commitment was that it was issued after the time of imprisonment had expired. After hearing counsel representing the Attorney General, I ordered the writ to issue, and the prisoner being now before me, I think she must be discharged.

The term of the sentence had expired when the prisoner was arrested, for unless its opera-

tion be suspended, owing to some particular reason, as for instance the party convicted being on bail, the punishment dates from the sentence. Our Statute says so distinctly, 32 & 33 Vic., cap. 29, sec. 91.

There was an application in another case, Ex parte *Henault*, but it differs from the case I have just dealt with in this, that the time of the sentence has not expired. This point was not argued, and as the counsel for the Attorney General is not present, I think the case had better be heard to-morrow. The writ can be returned before another judge in Chambers, as I shall not be in town.* I have no hesitation, however, in saying that the suspension of the execution of the sentence, is a great irregularity, and I am disposed to think the commitment for six months from a date subsequent to the sentence is illegal.†

St. Pierre for Petitioner.

S. Cross for the Crown.

COURT OF REVIEW.

MONTREAL, April 7, 1883.

TORRANCE, DOHERTY, JETTÉ, JJ.

WRIGHT V. WRIGHT.

Ownership—Possession in bad faith—Improvements—C.C. 417.

The possessor in bad faith is entitled to set off the cost of necessary improvements against the claim for rents, issues and profits received by him during his possession. As to improvements not necessary, the proprietor has the option of keeping them upon paying the value or of permitting the possessor to remove them, which, however, he may do only where they can be removed without injury to the land.

This was a petitory action to recover two pieces of land. The only question submitted by the parties was as to the rents, issues and profits due the proprietor, and as to the improvements claimed by the defendant in possession. He claimed \$5,000 as their value. It

* The *Henault* case was subsequently heard before Mr. Justice Cross, who held the commitment to be good, at any rate until the term of imprisonment had expired. We shall give a note of the case next week.

† "If a Statute assigns this mode of punishment (imprisonment) in the first instance, it follows immediately upon, and is the legal consequence of the judgment." Paley on Convictions. Of commitment for punishment, etc., Section 4.