

descended on the new ; and it is now, by the Consolidated Statutes,* in the power of a judge in Canada to use a boundless discretion as to "hard labor," or no. Thus the judicial error, the "Bill of Rights," directed a clause against referring to "unusual punishments," has been perpetuated in England as well as here, and in Canada a Statute has confirmed it. In the substitution of "*hard labor*" for "*corporal pain*," &c., many offences were improperly and through inadvertence (arising from the desire to get rid of sights grown odious, rather than to legislate on principle) omitted. They should be returned to their legitimate place. I would, therefore, with submission, put them rather amongst the smaller punishments, though meriting the greater, than give them their deserts, for fear of too great and sudden a change in justice. But "hard labor" was not the only great change of punishment in the English system. Transportation was substituted for death.

These great changes mark corresponding changes in society. Of old, the dread of slavery would have made them impossible ; but the long abolition of feudalism in all its sterner features had removed this danger to liberty. It was no longer feared that men would be unjustly condemned that they might be sold as slaves, without sentence, or slain out of the realm contrary to law ; neither was "hard labor" the object of abhorrence it was in old times, when a Statute of that sort had to be repealed in two years,—a fact worthy of note in the event of argument on that just system so peculiarly proper for Canada, the *utilization of convict labor*.

14th.—The category of misdemeanors (not to be prefixed by the word "heinous") being thus reduced, the punishment of misdemeanors should be in all cases FINE, except where the judge, &c., presiding, should certify that, from "the circumstances of aggravation accompanying the case," he was of opinion that a fine would not be a sufficient punishment, in which case FINE AND IMPRISONMENT, or rather the reverse, "the defendant to be imprisoned and fined" should be the sentence, without prejudice in any

* Page 133, 4 and 5 Vic., chap. 24, sec. 28 ; 4 and 5 Vic., chap. 25, sec. 4 ; 4 and 5 Vic., chap. 26, sec. 27 ; 4 and 5 Vic., chap. 27, sec. 36 ; 10 and 11 Vic., chap. 4, sec. 11,