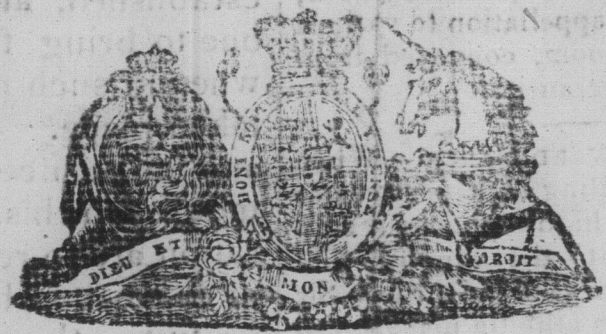


THE



STAR,

AND CONCEPTION BAY JOURNAL.

Vol. IV.

WEDNESDAY, DECEMBER 19, 1833.

No. 233

HARBOUR GRACE, Conception Bay, Newfoundland:—Printed and Published by JOHN THOMAS BURTON, at his Office, opposite Mr. W. Dixon's.

ST. JOHN'S.

SUPREME COURT, 10th Dec. 1833.

The fall term of the Supreme Court commenced this day agreeable to Proclamation.—On the Grand Jury being sworn His Honor Chief Justice Bourne delivered the following charge:—
Mr Foreman and Gentlemen of the Grand Jury:

The Attorney General is about to present for your consideration, three cases of the most serious and painful description.

One is that of a female, who stands committed on the Coroner's Inquest for the concealment of the birth of her illegitimate child. The law on this subject formerly depended on an act of Parliament called Lord Ellenborough's Act; but this was altered about ten years ago, and by the 9th Geo. IV. cap. 31, s. 14. it was enacted: "That if any woman shall be delivered of a child, and shall by secret burying, or otherwise disposing of the dead body of the said child, endeavor to conceal the birth thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned with or without hard labor in the common gaol or house of correction for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: Provided always, that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence that she was delivered of a child, and that she did, by secret burying, or otherwise disposing of the dead body of such child, endeavor to conceal the birth thereof, and thereupon the Court may pass such sentence as it shall think fit, not exceeding upon an indictment for the concealment of the birth."

The other two cases are on charges of Arson,—a crime of enormous magnitude in any country, and of most peculiarly dangerous tendency in this country, where the buildings are almost universally constructed of wood. The Law on the subject of Arson has lately been revised in England. By an act which received the Royal assent on 17th July, 1837, certain former acts were in part repealed, and it was enacted:—"that whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of felony, and being convicted thereof, shall suffer death." By sec. 3, a severe, but not capital, punishment is assigned for the setting fire to any House, Stable, Coach-house, Out-house, Warehouse, Barn, and certain other buildings therein described. The fourth section relates to the firing, or in any way destroying, Ships or Vessels, for which crime, if the life of any one be thereby endangered, the life of the Offender is forfeited. The following section imposes capital punishment for hanging out false lights to vessels; and the remaining sections impose less severe punishment of crimes of less magnitude,—such as the setting fire to agricultural produce, and to straw, wood, &c. And in all cases this act provides that accessories before the fact shall be liable to the same punishment as the principal offender, whether it be death, or transportation, or imprisonment.

The alterations which this Act has made in the law of Arson, are amongst those which have been imported into this Island by an Act passed here in November, 1837, by which it is enacted:—"that the Criminal Laws in force in England, on the 20th June, 1837, are to be the law in this Island; and that all Statutes of the Imperial Parliament of Great Britain in further amendment or alteration of the criminal law of England, passed, or which may be passed subsequently to the 20th June, aforesaid, shall, in twelve months after the passing of the same, respectively, extend to, and be the law of,

this Colony, so far as the same can be applied."

It is to be observed that some English acts come into operation immediately on their being passed while others have a day named in them whereon they are to be taken effect; for instance, this very act amending the law of arson, did not come into force in England until the 30th September,—being between two and three months after it had passed.

To attempt to give an outline, however general, of the Criminal Law of England as it stood on the 20th June, 1837, would be a trespass upon your attention, and quite beyond the limits of a Judge's charge; but to have pointed out the amendments which have been made since the day which our Colonial Legislature has named, may not be uninteresting to some of you, and may be useful to those of the public who are now in Court, many of whom want the facilities which gentlemen in your station possess, for acquiring by other means, a knowledge of changes made in those laws under which they live, which they are bound to obey, and for disobedience to which, the law itself says, that ignorance of the law is, no excuse.

An act had passed in the first year of Wm. 4. amending the Laws relative to Forgery. By an act passed on the 17th July, 1837, the capital punishment is further taken away, and transportation, or imprisonment, substituted.

1 Victoria, cap. 85, amends the laws relating to offences against the Person. By this act, one administering poison, or stabbing, wounding, or causing any bodily injury dangerous to life, with a malicious intent, is to suffer death. Any person administering poison, or causing another or in certain other ways attempting to murder, shall, although no deadly

the same punishment as principals; and in all cases the Court may add to the imprisonment, hard labour, and solitary confinement. This act contains one very salutary provision: by sec. 11. it is enacted:—"that when the crime charged against any person under this act or on his trial for any felony whatever, shall include an assault, the Jury may acquit of the felony, and find verdict of guilty of the assault, if the evidence will warrant such finding; and the Court may imprison, &c." Formerly, it was too often the case that prisoners were acquitted entirely, because some defect in proving the full technical description of the offence, whilst there was no doubt that an assault had been committed. This is now guarded against.

The 86th cap. of 1 Victoria relates to Burglary and Stealing in Dwelling-houses. All those who commit the crime of Burglary are liable to transportation for life or not less than ten years, or to imprisonment. But if they add to this crime violence to the inmates, they are to suffer Death. Burglary is house breaking in the night; formerly there was some uncertainty as to when the night might be considered to commence and end; by this act its period is distinctly defined. House breaking in the day time has severe, though not equally severe, penalties assigned to it; and there is, in this act also power given to award hard labour and solitary confinement.

Cap. 87 relates to Robbery, and Stealing from the Person. Any robbery accompanied with stabbing or wounding is to be punished with Death; if with personal violence of a less aggravated character, with transportation or imprisonment; and even attempts to rob have their punishment assigned. This act, too, contains provisions as to accessories being punished like principals, and as to solitary confinement, &c.

By cap. 88, the crime of Piracy is punished with Death in cases where there is intent to murder, or violence dangerous to life is used; and with transportation or imprisonment in other cases. There is also the like provision as to accessories—solitary confinement, &c., as in the preceding chapter.

Cap. 90 alters the amount of punishment in certain cases, where it had been allowed to imprison previous to transportation, and also where public or private whipping was added to other punishments. By this act the period for which solitary confinement can be imposed is limited.

By cap. 91, the punishment of transportation, or imprisonment with hard labour and solitary confinement is substituted for that of death, in certain cases, which were capital under 1 Geo. I. cap. 5,—21 Geo. III, cap. 17,—37 Geo. III, cap. 49. The other provisions of this act are local, and confined to England, except one relating to the Slave Trade, whereby the capital part of 5 Geo. IV, cap. 113, is repealed.

On the whole these acts evince a merciful spirit in the British Parliament, and a great tenderness for the lives even of offenders. In some instances where mercy to a culprit might be considered no mercy by the community, they have retained the fearful punishment of death, which in many others they have removed from the Statute Book. Even when they have imposed the punishment of solitary confinement, a punishment designed to afford opportunity for reflection for contrition for resolution to lead a new life, they have used precaution to prevent his punishment being carried to excess.—It is to be hoped that experience will shew the soundness of their views, and that punishments by becoming less severe, will become more certain. Even had men have a new motive given them to check the commission of greater crimes, when they find that the law has drawn a fixed scale whereby a less offence has a less punishment: even the highwayman may hesitate for adding violence, when he remembers that the blow which he might inflict upon his victim would strike amongst his own life. To mitigate punishment, and to make them not so light as to be disregarded, but proportionate to offences, is so far from granting impunity that it tends to take from witnesses all reluctance, and from prosecutors all excuse from smoking from their duty to society, while it prevents the public from merging the outrage it has received in sympathy for the offender.

By the arrival of the *Lady Turner*, from the Clyde, Greenock papers to the 2d Nov. have been received. It is stated in the *Advertiser* of the 30th Oct. that the Merchants of Poble, interested in the trade of Newfoundland, had recently memorialized the Colonial Secretary on the state of that Colony, and prayed for an alteration of the Elective Franchise there; and that in reply, Lord Glenelg informed the memorialists that measures had already been taken for maintaining the public peace in the Island, which it was hoped would be found sufficient for the purpose. In reference to the franchise qualification Lord Glenelg stated that this could only be effected by the Imperial Parliament.—*Gaz.*, Dec. 11.

The Liverpool merchants connected with the Newfoundland trade, have addressed a second memorial to the Right Hon. the Secretary for the Colonies, upon the subject of Newfoundland affairs, of which the following is a copy:—*Ledger*, Dec. 11.

"To the Right Hon. Lord Glenelg, principal Secretary of State for Her Majesty's Colonies, &c. &c. The Memorial of the undersigned Merchants, resident in Liverpool, connected with the trade of Newfoundland, Humbly sheweth:—

"That the Memorialists have had the honour to receive through Mr. Brooking and Mr. Christophers, the communica-

tion made to three gentlemen by Sir George Grey, in reply to a memorial addressed by the undersigned to your lordship, relative to the prevailing excitement and dissension in the Island of Newfoundland, in connexion with certain proceedings of the House of Assembly there. That the Memorialists feel bound, gratefully to acknowledge the consideration which your lordship has given to the statement and prayer of the said memorial, and the promptitude with which instructions have been transmitted to his Excellency Governor Prescott, such as your lordship conceives will prove effectual for the maintenance of the public tranquillity. That with these feelings, the memorialists nevertheless remain impressed with the apprehension of impending danger. They are aware that for a considerable period during the winter season, the great body of the men in the colony are unemployed, and that strong political excitement amongst them cannot fail to be perilous to the peace and safety of the community; and they know moreover, that the additional troops which have been solicited, and would be invaluable in the event of any disturbances, could scarcely be expected to reach the colony this season, unless sent out immediately. That the memorialists forbear advertising again to the recent proceedings of the House of Assembly, further than to express their confidence that Her Majesty's Government will not fail to have them fully investigated, and to conjoin whether the House, as at present constituted, be consistent with the well being, or even with the safety of the colony."

That the Memorialists trust your Lordship will forgive the anxiety and earnestness which urge them again to address your Lordship and to pray.

That Her Majesty's Government, in addition to the instructions transmitted by your lordship to his Excellency Governor Prescott, may be pleased before the season be too far advanced to send out some additional armed force for the support of the Executive, and the more effectual protection of the colony of Newfoundland and the Memorialists, &c. &c.

Signed as by former Petition."

No arrangements has yet been consented to on the subject of the slave trade. The Portuguese seem anxious to brand their country with the indelible infamy of being the last among the nations of the earth to renounce this horrid traffic in human flesh. The Government, it is to be feared, are but too generally supported by popular opinion, in the resistance thus offered to the cause of civilization and humanity.

The Lisbon Papers continue their attacks on the absent Duchess of Braganza, for not yet having taken the oath to the new constitution. The object is to constrain her Majesty to take the required oath, by suspending, in the mean time, the payment of her pension.

Prince George of Cambridge arrived at Lisbon on the 24th ult., by the Braganza, and was to proceed to Gibraltar on the ensuing Saturday. His Royal Highness, who traveled under the name of Lord Callodeu, dined with their Majesties on the day after his arrival.

Some outrages in the provinces are again spoken of, as have been committed by Miguelite guerillas.