fallen into this routine to escape responsibility, till people have come to consider a reference to the judge in such cases constitutionally orthodox, the proper course for the sovereign, or the holder of the sovereign's prerogative, to take. No position can be more illogical, unless on the assumption that the scheme of British justice is terribly faulty. If a judge is bound hand and foot to follow a routine so rigid that he is liable to give sentences that he himself feels to be unjust, there would be some sense in the idea of the executive officer asking him, "in the case of A or B did you give a just or an unjust decision?" But if it may be reckoned, that as a rule, a judge, at all events, thinks that the sentence he records is just, how can he do otherwise, when the executive power refers the pardon question to him, than say that he thinks his decision ought to stand? Nor can it be alleged, there are *nuances* of guilt that a judge may feel but cannot recognize in court. The theory of criminal law is, that statutes define punishments so broadly, leaving so wide a range of discretion to the court, that the judge is enabled to consider these *nuances* in passing sentence. True, the statutes, though they profess to be thus elastic, are often still a great deal too rigid; but then surely orthodox practice should bind a judge, constrained by a clumsy law to give a sentence he felt to be unjust, to take the initiative in seeking the executive pardon for the victim. The true character of the executive pardon emerges from these considerations clearly enough; it does not constitute the executive power a Court of Criminal Appeal, but it is safe to go further than this, and venture on something more satisfactory than a negative. The Royal pardon, of course, is first of all, an attribute of sovereignty, which, while sovereignty exists, needs no excuse for its arbitrary exercise, nor for its arbitrary denial. If its denial ever leaves an innocent man to suffer punishment, so much the worse for law, but that is another branch of the subject. In modern times, when political refinements aim at leaving sovereigns as little sovereignty as possible, the pardon becomes a means of letting off offenders whom the consensus of opinion—taking the place of the sovereign's personal fancy—is in favor of letting off. The difficulty of getting at that consensus is the torment of home secretaries. Of course memorials are false guides—newspapers are almost equally so—faithfully representing public opinion only in respect to tendencies that can be estimated in reference to long periods of time, never in respect to individual incidents. All that the home secretary or Provincial Governor can do is to try and find out what the consensus of opinion ought to be and work on those lines."

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, Sept. 13, 1878.

JOHNSON, J.

MACDONALD v. Hon. J. G. JOLY et al., and CHAUVEAU and PETERSON, *mis en cause.*

Injunction—Contempt—Railway.

Where an injunction, which *primâ facie* appears to be legal and valid, has been issued by a judge of the Superior Court, and the parties to whom the writ was addressed have disregarded it, the Court will not consider an application to revise the order for injunction while the parties remain in contempt.

The Government of the Province of Quebec having adopted proceedings to take possession of the Montreal, Ottawa & Occidental Railway, Mr. Macdonald, the contractor for building the railway, who claimed a large balance due to him, obtained an injunction from a judge in chambers to stop the proceedings. This writ was disregarded by Mr. Peterson, the government engineer, whereupon a motion was made on behalf of the contractor that he be committed for contempt.

JOHNSON, J. In this case a motion to commit Peterson, one of the defendants, and also Mr. Chauveau, the Sheriff, for contempt in disregarding an injunction, was made and answered on Friday the 6th, and part of the answer then made by both of these gentlemen depended upon a question which they raised by a motion to revise the order of Mr. Justice Rainville upon which the injunction was issued; and the grounds urged for revising it were substantially that it had been improvidently issued, because the proceedings complained of in the petition for injunction were taken under an order of the Executive Council of the Province, made in pursuance of the authority given by the Provincial Act, 32 Vic., Chap. 15, having reference to the resumption, under certain circumstances,