

January 8, 1885, and acquitted the same day. Six weeks after the tragedy a verdict of justifiable homicide was rendered by the jury in the Court of Assizes. The two men charged with cannibalism in the famous Mignonette case were indicted November 3, 1884, soon after they landed in England. Three days later they were tried. The question whether their offence was murder went to the Court of Appeal. That tribunal gave its decision December 4, and the prisoners were sentenced to death on the 9th. This sentence was commuted to one of imprisonment a few days afterward. In less than six weeks after their indictment they were paying the penalty of the law. In contrast with these cases several United States cases are mentioned in which the delay is usually from one to two years, confirming the observation of Gov. Hill in a recent message to the legislature:—"The long delay which in almost every instance elapses between the original sentence of death and the execution of the criminal has for many years been a scandal upon our system of criminal law."

SUPERIOR COURT.

SWEETSBURG (D. Bedford), Nov. 5, 1885.

Before BUCHANAN, J.

NICK V. ARPIN.

Act inflicting Penalty—48 Vic. (Q.) ch. 22, s. 9
—*Matter of Procedure.*

HELD:—That the Act 48 Vic. (Q.) ch. 22, s. 9, *inflicting a penalty for not producing statement, &c., is not mere matter of procedure, and has not a retroactive effect. Hence it does not apply to a debtor whose bail bond and the judgment declaring the capias valid were in force previous to the passing of the Act in question.*

BUCHANAN, J.:—

The defendant was arrested under *capias* and gave bail, and by the final judgment rendered on 2nd May 1885, such arrest was declared valid.

The plaintiff now petitions that inasmuch as the defendant has not filed a statement of his property within 30 days from the date of the judgment as required by art. 766 of the C. C. P., that he be imprisoned in the Common

Gaol of this District for a period not exceeding one year.

Under the articles of that Code two forms of Bail Bond were allowed—the condition of that under Art. 824 being that the Bond should be exigible in case the defendant left the Province without paying the judgment. This is what was generally known as special bail, and was made under the provisions of 25 Geo. III and to be found on page 135 of the Revised Statutes.

Under Art. 825 the condition of the Bond was that he should surrender himself to the sheriff when required by an order of the Court or judge within one month from the service of such order, and that is the form of so called special Bail adopted here and given by the defendant.

This question as to the nature of Bail has been discussed in two cases which I have found reported in connexion with applications of the nature of the present one.

The case of *Poulet v. Lounière*, 6 Q. L. R., p. 314, decided by Ch. J. Meredith, was one where the Bail was given under Art. 824, and in that case he says: "But if the sections of 12 and 18 of ch. 87 of the C. S. L. C., which our Art. 766 purports to reproduce, be looked at, it will be found that they refer to the case of a debtor who has given security to surrender in default of an abandonment of his property, and not to the case of a defendant who has given special Bail."

In the case of *Cossit et al. & Lemieux*, 2 Q.B. R. 19, C. J. Dorion says: "S'il donnait le cautionnement de se remettre entre les mains du shérif lorsque requis, il pouvait être emprisonné si dans les trente jours après signification de l'ordre de la Cour ou d'un juge, à cet effet, il ne fournissait pas un état sous serment de ses biens. Mais s'il fournissait, dans les huit jours après le retour du bref de *capias*, le cautionnement qu'il ne laisserait pas la Province, dans ce cas, ni lui, ni ses cautions ne pouvaient être inquiétés à moins qu'il ne laissât la Province. Il est certain que la première partie de l'art. 766 ne s'applique qu'au défendeur qui a fourni des cautions qu'il se rendrait au shérif sur l'ordre de la Cour, et non à celui qui a fourni un cautionnement spécial qu'il ne laisserait la Province."

It would then appear settled from these