

victims for what then bore the distinguishing titles of Grand and Petit larceny. Later, by 16 Geo. III, c. 6, when transportation beyond the seas was decreed for certain felonies, condemnation to hard labor might be superimposed. After the passage of 19 Geo. III, c. 74, explorers were driven back, for the law on the subject, until 3 Geo. IV., c. 114, upon the statute of Ann, before mentioned. The provisions of 7 & 8 Geo. IV., c. 28, extended the infliction of hard labor to all offences within the category of felonies. It will be seen, therefore, that when, in 1791, the common law, as then existing, was transplanted to this country, hard labor was sanctioned as an auxiliary punishment in larceny only. We are not concerned in these accusations with anything prescribed by 7 & 8 Geo. IV., c. 28, because conspiracy was never counted a felony. Moreover, 14 & 15 Vict. c. 100, s. 29, demonstrates that conspiracies did not come within the prior legislation appointing hard labor, by enacting that "any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert or defeat the course of justice," was to carry with it this aggravation of the sentence.

*Hodge v. The Queen*, 9 App. Cas. 117, determined of course that the term "imprisonment" in sec. 92 of B.N.A. Act (conferring power on a legislative body) must be construed as including hard labor; still, the view expressed by the Court in *Reg. v. Frawley*, 46 Q.B. 153, has a bearing on this discussion. Hagarty, C. J., in delivering judgment, says, "We are satisfied that if the law merely directs imprisonment as the punishment of an offence, no Court of Justice, can, in the absence of any general discretionary power to that effect, award hard labor in addition. We are of opinion that it is an additional substantive punishment, varying only in degree from the infliction of whipping, the treadmill, solitary confinement, etc."

The Encyclopædia of English Law (tit Conspiracy) points out that other conspiracies laid in our time, as misdemeanors at common law, would not justify the imposition of the greater burden. The advent of hard labor in England—synchronous with the formation of Houses of Correction—as part of a felon's expiation was delayed for the time it was by reason of the vogue which hanging so long enjoyed.

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