The Legal News.

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THE RETIREMENT OF MR. JUSTICE MACKAY.

It is with much regret we learn that the intimation given in a recent issue of the probable retirement of Mr. Justice Mackay, has so soon been verified. The resignation of the learned Judge has been accepted, and the usual pension has been granted. The *Gazette* (Montreal) says of him: "A man of good ability, "of sterling integrity, of great independence "of character, and of ample private fortune, "he adorned the office which he filled, and "brought dignity to the Court of which he was "an honored member." This is but scant justice. The position of the judges of the Superior Court in Montreal, at no time a bed of roses, was during a considerable portion of Judge Mackay's incumbency of office, a peculiarly trying one. The judges had to face twice the former amount of work—almost twice as much work as the then existing number of judges could reasonably be expected to cope with. This inevitably produced some delays and complaints, and compelled a resort to various expedients for overcoming the difficulty, such, for instance, as the introduction of judges from the rural districts, who gave a portion of their time to the business of the city. The judicial machinery, under the unusual strain, did not work altogether smoothly; but amid all these difficulties, no Judge probably ever kept up more evenly and promptly with his work than Mr. Justice Mackay. No matter what sacrifice of needful rest it entailed, arrears were never suffered to accumulate, and to get a case heard by his honor was to insure a speedy judgment.

Mr. Justice Mackay was admitted to the bar in 1837, and appointed to the Superior Court Bench at the same time as Mr. Justice Torrance, in October, 1868. The present writer was then conducting the *Lower Canada Law Journal*, and it is with some satisfaction that he finds the anticipations hazarded in the issue of the *Law Journal* for that month (4 L. C. L. J. 81) have been abundantly justified. The appointments, it was said, "excited surprise by their very "excellence. At a time when the fair fame "of the Bench was under a cloud, the elevation of two gentlemen eminently qualified "for the office was a thing to be specially desired. The Minister of Justice, in passing by "the ranks of mere political adherents, and selecting two gentlemen of great ability, of independent position, sincerely devoted to their "profession, profoundly versed in legal science, "has entitled himself to the gratitude of the "bar. We do not fear to be hereafter called "false prophets, in forecasting a noble career "for these two judges." The bar have now the record of the learned Judge's fourteen years' service before them, and it will be universally admitted that the forecast quoted above has been amply verified. The test of appeal is not always a satisfactory one, but it is a fact that comparatively few of the learned Judge's decisions have been appealed from, and in most cases the result of the appeal has not rewarded the temerity of the pleader.

It is satisfactory to be able to add that by Judge Mackay's retirement the city will not suffer the loss of a philanthropic citizen. The greater part of the judicial labor has to be performed during the winter months, and the learned Judge's physicians, it is understood, have advised that a milder climate is desirable if not necessary during the coming winter. We may hope, therefore, now that the needful rest can be obtained, to witness a complete restoration of his honor's health, and his continued usefulness in other capacities; for our readers do not need to be told that Judge Mackay has been more than the mere lawyer. As a patron of art, as a friend of education, as a generous contributor to deserving objects, he has gained an honorable distinction among the open-handed benefactors of our public institutions.

CHANGES ON THE BENCH.

The retirement of Mr. Justice Mackay has opened the way to an arrangement long anticipated, namely the translation of Mr. Justice Doherty from Sherbrooke to the District of Montreal—the scene of his old toils and triumphs at the bar. Judge Doherty was appointed to the bench in 1873, and during several years has had considerable experience in the St. Francis District. He is an energetic and conscientious judge, and will,

we feel sure, enter upon the duties of his new position with a determination to discharge them faithfully. Mr. Brooks, Q.C., of Sherbrooke, succeeds to the vacancy created in the St. Francis District.

DEFAULTS BY ASSIGNEES.

Conflicting decisions have been rendered by judges of the Superior Court, with respect to the liability of sureties of official assignees, when appointed assignees by the creditors. In the case of *Delisle et al.* v. *Letourneux*, 3 Legal News, p. 207, Mr. Justice Johnson held that the sureties of an official assignee remain liable for his default to account for sums received by him after he has been appointed assignee to the estate by the creditors. The defendant in the case referred to pleaded that if Lecours, the assignee in default, received the money, he did so, acting not as an official assignee, but as assignee of the creditors, and therefore the bond given to the government as official assignee, did not reach the case. His Honor overruled this pretention, citing from Mr. Clarke (3 Legal News, p. 208), and remarked, that any other construction would necessitate in all cases where the creditors appoint an assignee, that new security should be given. The above decision was rendered in 1880. In the following year the same point was submitted to Mr. Justice Torrance, in the case of *McNichols* v. *Canada Guarantee Co.*, 4 Legal News, p. 78. The opinion of the learned judge seems to have been in favor of exempting the bondsman of an official assignee from liability for his defaults as creditors' assignee; but the decision of his honorable colleague in *Delisle* v. *Letourneux* was urged by counsel, and his Honor apparently waived his own view, which was in favor of applying the rule that the obligation of the surety is *strictissimi juris, et non extenditur de persona ad personam*, and followed the precedent. Both these cases have been taken to appeal. But a decision has been given in a later case, which has been acquiesced in. In the case of *Dansereau* v. *Letourneux*, which will be found in the present issue, Mr. Justice Jetté had the same point submitted to him, and his honor has decided for the exemption of the bondsman of the official assignee, notwithstanding the precedents referred to. The fact that the third decision has not been appealed from, may perhaps be quoted in support of the theory, that a judge is justified in following his own opinion notwithstanding a doubtful precedent established by a judge of co-ordinate jurisdiction. It may be added that Chief Justice Hagarty has decided in the same sense as Mr. Justice Jetté, in an Ontario case, *Miller* v. *Canada Guarantee Co.*, from which there has been no appeal.

NOISES AS NUISANCES.

Those who suffer keenly at times from noises which seem to be needlessly shrill, discordant and ear-piercing,—the steam whistles of factories, locomotives and steamboats, the clang of bells at unseasonable hours, and the like, will hear with some satisfaction of a decision pronounced during the present year by the Supreme Court of Massachusetts. In *Davis* v. *Sawyer* the plaintiffs complained of the custom of ringing a ponderous factory bell, weighing about 2,000 pounds, before half past six o'clock in the morning, within from 300 to 1000 feet of their residences, and prosecuted the factory people for nuisance. The latter brought up a greater number of persons living nearer the factory, to declare that they were not annoyed by the bell. But the Court held that noise which constitutes an annoyance to a person of ordinary sensibility to sound, such as materially to interfere with the ordinary comfort of life and impair the reasonable enjoyment of his habitation, is a nuisance as to him. The fact that some persons may have had such associations connected with the sound that it may have been to them a pleasure rather than an annoyance, or that the sensibility of others to the sound may have become so deadened that it ceased to disturb them, showed that the noise was not a nuisance to them, but, in the opinion of the Court, does not change its character as to others. "Many persons," it was observed, "can, by habit, lose to some extent their sensibility to a disturbing noise as they can, to a disagreeable taste or odor or sight, or their susceptibility to a particular poison; but it is because they become less than ordinarily susceptible to the particular impression. In this case the evidence shows that persons were awakened and disturbed by the bell, until they had lost ordinary sensibility to its sound." The Court also

held that the rights of the plaintiffs could not be affected by the custom in other places.

COMMUNICATIONS.

THE MONTREAL COURT HOUSE.

To the Editor of The Legal News:

SIR,—There is one point in connection with the selection of a site for the Canadian Pacific Railway station, which deserves some consideration. I remember how inaudible the voices of witnesses, lawyers and judges became when the martial strains of some regimental band were wafted from the Champ de Mars into the roomy halls of justice. What effect the continuous shrieking and snorting of engines and the rattling of trains, coming and going at all hours, will have upon the administration of justice, may be better imagined than described. Your judiciary may then exclaim in chorus the passage of Racine: "*Voici dix causes que je décide sans les entendre.*"

F.

Aylmer, 13th October, 1882.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, September 30, 1881.

Before JETTÉ, J.

DANSEREAU es qual. v. LETOURNEUX.

Official Assignee — Default after appointment by creditors.

The surety of an official assignee is not liable for a default committed by the latter after his appointment as assignee by the creditors of the estate.

The case is fully exposed in the judgment of the Court, which is as follows:—

"La Cour, etc.

"Attendu qu'en 1875, Olivier Lecours a été nommé syndic officiel en vertu des dispositions de la loi de faillite 38 Vict., ch. 16, et que le 26 du mois d'août de la dite année, le défendeur et Jos. Brunet se sont portés cautions du dit Lecours, envers sa Majesté, pour le bénéfice de tous intéressés, jusqu'à concurrence de $6,000, et ce, pour l'exécution fidèle par le dit Lecours des devoirs de sa dite charge de syndic officiel;

"Attendu qu'après sa dite nomination, savoir le 26 février 1876, le dit Lecours a reçu, en sa qualité de syndic officiel, la cession de messieurs Pierre Houle et Rémi Favreau, faisant affaires sous la raison sociale de Houle et Cie., et qu'il est, par suite, devenu en possession de tous les biens des dits faillis, et notamment des immeubles suivants, savoir: [Here follows the description of the property];

"Attendu qu'à une assemblée des créanciers des dits Houle et Cie., tenue le 22 mars 1876, le dit Lecours a été ensuite nommé par les créanciers syndic à la dite faillite;

"Attendu que subséquemment le dit Lecours, comme tel syndic nommé par les créanciers à la faillite des dits Houle et Cie., a vendu et adjugé à Alexis Robert, écr., dernier enchérisseur, les biens immobiliers de la dite faillite ci-dessus mentionnés, et que le 11 juillet de la même année, il a passé titre de cette vente à l'acquéreur, et a reconnu en avoir reçu le prix s'élevant à la somme de $8,355;

"Attendu que le dit Lecours n'ayant pas ensuite distribué cette somme aux créanciers des faillis, et n'en n'ayant pas rendu compte, il lui a été enjoint par cette Cour, le 29 mars 1879, à la demande de Rientord, créancier, de déposer cette dite somme dans une banque, sous peine d'emprisonnement, mais que le dit Lecours, au lieu de se conformer à cette injonction, s'est absenté du pays et s'est soustrait à la juridiction de ce tribunal;

"Attendu que le 10 avril 1879, le demandeur a été nommé syndic à la dite faillite de Houle et Cie. en remplacement du dit Lecours, et que les créanciers ayant refusé ensuite de l'autoriser à poursuivre les cautions du dit Lecours à raison des faits ci-dessus, Rientord, créancier, a le 16 septembre 1879, obtenu de justice l'autorisation de prendre cette poursuite au nom du nouveau syndic;

"Attendu que le demandeur es qualité, par sa dite action, après avoir récité les faits ci-dessus, allègue qu'en conséquence du détournement par le dit Lecours de la dite somme de $8,355, le défendeur, sa caution, est responsable et tenu envers les créanciers de la dite faillite au paiement de la somme de $6,000, montant de son cautionnement susdit;

"Attendu que le défendeur repousse cette action par une première exception alléguant en substance que lors de la vente des dits biens immeubles, Lecours n'agissait pas en sa qualité de syndic officiel, mais comme simple syndic nommé par les créanciers à la faillite de Houle et Cie., et que le cautionnement donné par le

défendeur ne couvre pas les actes faits par le dit Lecours comme simple syndic, mais uniquement ceux qu'il aurait pu faire comme syndic officiel, et qu'en conséquence l'action est mal fondée ;

"Considérant qu'en principe le cautionnement, soit limité, soit indéfini, est de droit étroit, qu'il doit s'interpréter strictement, et ne peut être étendu *de personâ ad personam, de tempore ad tempus, de re ad rem*, et que ses effets sont nécessairement restreints aux obligations qui en naissent et découlent directement ;

"Considérant que par les articles 27 et 28 de la loi de faillite il est pourvu à la nomination par l'autorité administrative de syndics provisoires sous le nom de syndics officiels, pour l'accomplissement de toutes les procédures préliminaires requises pour mettre sous la main et à la disposition des créanciers les biens des faillis, et veiller à la garde et conservation de ces biens jusqu'à ce que les dits créanciers aient pu déterminer, en assemblée régulière, qui devra être le syndic et administrateur définitif des dits biens, et que le cautionnement exigé de ces syndics officiels n'est que pour la garantie de l'administration fidèle de ces syndics pendant le temps de leur administration provisoire, et tant qu'ils agissent en leur dite qualité de syndics officiels ;

"Considérant que par l'article 29 de la dite loi de faillite, il est statué qu'à leur première assemblée, les créanciers d'un failli peuvent nommer un syndic à la place du syndic officiel, et que tel syndic nommé par les créanciers doit alors fournir un cautionnement pour la garantie de son administration des biens de la faillite, et que ce n'est qu'à défaut de telle nomination que le syndic officiel demeure syndic définitif à la faillite ;

"Considérant que dans l'espèce, les créanciers des dits Houle et Cie., agissant en vertu de cet article 29 de la loi, ont, le 22 mars 1876, nommé le dit Lecours syndic à la dite faillite, et que dès lors le dit Lecours a cessé de posséder les biens des faillis en sa qualité de syndic officiel, et ne les a possédés et administrés ensuite qu'en vertu du pouvoir et du titre nouveau à lui conférés par les créanciers, savoir, comme syndic nommé par eux ;

"Considérant que le cautionnement donné en cette cause par le défendeur, ne l'a été que pour garantir la fidèle administration par le dit Lecours des biens par lui possédés en sa qualité de syndic officiel, et ne peut être étendu aux actes qu'il a ensuite faits en sa nouvelle qualité de syndic nommé par les créanciers ;

"Considérant que la vente des biens des dits faillis Houle et Cie., et la perception du prix en provenant par le dit Lecours, n'ont été faites et n'ont eu lieu qu'après l'expiration de ses pouvoirs comme syndic officiel, et en vertu seulement de son autorité comme syndic nommé par les créanciers ; et qu'en conséquence le cautionnement du défendeur ne couvre pas et ne s'applique pas à cet acte du dit Lecours ;

"Maintient la première exception par le défendeur à l'action du demandeur, et en conséquence, renvoie la dite action du demandeur avec dépens distraits," etc.

Action dismissed.

Judah & Branchaud for plaintiff.

Lacoste, Globensky & Bisaillon for defendant.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1882.

MACKAY, JETTÉ, BUCHANAN, JJ.

[From S. C., Richelieu.

LECLAIRE v. COPELAND et al.

Malicious arrest—Reasonable and probable cause.

The judgment inscribed in Review was rendered by the Superior Court, district of Richelieu, Taschereau, J., Jan. 20, 1882.

MACKAY, J. The plaintiff resides at Contrecœur in the District of Montreal. He is a country merchant there, and sues for damages for illegal arrest and imprisonment in January, 1881, upon a criminal charge against him by Copeland. This was a charge of having fraudulently converted to his own use a lot of straw bought by him as agent of Copeland.

Two defendants were sued, Copeland and one Gundlack.

The warrant of arrest was issued at Sorel, in the District of Richelieu, and was executed by the plaintiff being seized, at Contrecœur, and carried to Sorel on a Sunday, the 31st of January, 1881.

The hearing, at Sorel, was put off till February, when the complaint was dismissed for want of jurisdiction, the offence having been in Montreal district, if anywhere.

The plaintiff claims $40 damages for money

out of pocket defending himself, besides nominal damages. He also charges defendants with going about slanderously alleging that plaintiff had been guilty of all charged against him, and that he was a thief, &c. The conclusions are for $1,000 for all damages against the defendants jointly and severally.

The defendants have pleaded separately.

Gundlack says that he was for nothing in the matter of the arrest, that he has never damaged the plaintiff, never slandered him.

Copeland pleads the general issue and that he had reasonable and probable cause for all that he did; that he was in good faith, exercising his lawful remedy, and was so advised by counsel; that the plaintiff by his own misconduct drew upon himself the prosecution; that he (Copeland) had given plaintiff an agency, to buy straw, and the plaintiff bought it, but refused to render accounts either of the straw or money, and declared intent to appropriate the straw; that plaintiff really has suffered no damage, &c.

The replication denies that Copeland had paid plaintiff for the straw referred to in the defendant's affidavit as illegally converted by plaintiff.

The judgment has dismissed plaintiff's action; it finds that Copeland had reasonable and probable cause for arresting plaintiff; that he acted in good faith, in the exercise of his rights, and upon advice of counsel; that the slander charged is not proved, and that what is proved was justifiable, seeing plaintiff's want of loyalty.

The plaintiff appeals. The record is dreadfully voluminous. The costs of the *enquête*, which properly might have been confined to about fifty dollars, amount to over several hundreds. The three Judges have had to read fifty depositions in the case. We have all come to the same conclusion, namely, that the judgment in so far as finding no cause for condemning the defendants in damages for slander, is not to be disturbed; but that it cannot be defended in so far as dismissing plaintiff's demand for damages against Copeland for illegal arrest and imprisonment. We find, unanimously, the very contrary of the judgment, upon this part of the case. The arrest was perfectly illegal, made by an incompetent officer, upon a warrant issued by a justice of the peace acting beyond his authority. A Sorel justice might as well issue warrants to his constables to arrest people in Gaspé and drag them to Sorel. The plaintiff was arrested at his home and carried away to Sorel. Of course as soon as his case was heard before a fair magistrate he was discharged.

Even had there not been such want of jurisdiction, as stated, for purposes of any such criminal charge, before any justice of the peace, all was in favor of the plaintiff. He and Copeland were disputing about their claims civil against each other. Plaintiff, the agent, took a position perfectly open and above board against his principal, as agents frequently do, and frequently have to do. Plaintiff really had *not* converted Copeland's property, and acted with color of right; upon which any justice of the peace would have had to decline action, savoring of criminal process, against him. An agent may not be arrested for embezzlement, or for fraudulently converting his principal's property, whenever he will not submit to his principal's demands, and it is law that a British subject cannot be illegally arrested (as the plaintiff was) with impunity. He must get damages; he is not to be turned out of Court, nor can his action be held barred from considerations such as of want of loyalty by him in his civil transactions with the arresting complainant. Copeland claims to go free because of his having taken advice of counsel, but we cannot allow this. We think that he did not act in good faith, and had not reasonable cause for arresting the plaintiff. So the judgment complained of will be reversed as regards Copeland, and damages of $100, and costs as of an action in the Superior Court, will be allowed against him for the illegal arrest. The other finding of the judgment will not be disturbed beyond this, that we will modify the part by which the plaintiff is condemned largely to pay all costs to Gundlack. We will allow Gundlack costs, but only limitedly, as explained in our judgment. He has not appeared here, and no costs of this court are ordered against him. We have observed the persistence with which he refused to answer almost all the questions put to him as a witness, upon a claim that his answers might criminate him. Some of the questions put to him he was, by law, bound to answer, yet got free from answering; the plaintiff has not taken proceedings upon which we can expressly overrule what has been ad-

judged at *enquête* in the Court below in this particular.

Judgment reformed.

J. B. Brousseau for plaintiff.

A. Germain for defendant.

COURT OF REVIEW.

MONTREAL, June 30, 1880.

JOHNSON, TORRANCE, RAINVILLE, J J.

[From S. C., Montreal.

R. A. McCORD v. D. R. McCORD.

Donation—Offer of donee to make a conditional reconveyance.

The case was inscribed in Review upon a judgment of the Superior Court, Montreal, Papineau, J., Nov. 30, 1881.

JOHNSON, J. This case was heard last month and presented no difficulty; but there were reasons suggested which we acted upon to the extent of postponing judgment till the present Term. There is now a motion made to discharge the *délibéré*, on the ground that the defendant is willing to transfer the property mentioned in the donation which it is sought to annul by the present action, on such terms as may be eventually agreed upon: That is, the defendant says he is willing to try and make an agreement; but if he does not succeed, where in the meanwhile are the rights of the plaintiff? If the latter were willing, it would be a matter of course to grant the motion; but as he opposes it, we have no right to postpone or delay adjudging upon his case. It was said that this motion was an admission that the case had been wrongly defended. We prefer to look at the case as it was presented to us on the merits at the final hearing. There may be other and natural and proper reasons actuating the defendant who is in the unhappy position of litigating with his own brother.

However this may be, we take the case, as we are bound to do, on its own merits. The action was to set aside a deed of donation executed under a power of attorney given in London by the plaintiff in July, 1877, to a Mr. Taylor, and not acted upon during three years—when that gentleman acted under it to execute a deed of donation from his principal to the defendant of all the principal's share in his father's estate,—and this *à titre gratuit*. In the interval between the giving of the power of attorney and the execution of the deed of gift, there was a considerable correspondence by letter between the parties, and this correspondence shows clearly that the plaintiff had rights and expectations which he was not only not prepared to relinquish, but which he was under the strongest necessity of relying upon. The lapse of all this time—three years all but a few days—would of itself appear extremely significant. Either there must have been the intention to part with all his share in the estate of his father; or there was no such intention. If there was not, there is an end of the matter; if there was any such idea, some explanation should be given, which is not forthcoming, why this intention remained unexecuted during all that time. But it is really unnecessary to go at further length into the facts of the case, for the defendant himself admits, as a witness, that it was never intended to be a gratuitous donation, but on the contrary, that he was to assume the obligation of paying the plaintiff his share of their father's succession. Therefore, we have no doubt that it is the duty of the court to set aside this donation; and our judgment will reverse the judgment which dismissed the action, and with costs. The motion made to discharge the *délibéré* is also dismissed.

The judgment is as follows:

"The Superior Court now here sitting as a Court of Review, having heard the parties by their respective counsel as well upon the defendant's motion filed on the 23rd of June instant, to have the *délibéré* discharged in consequence of the declaration made by said defendant, that he has always been and still is ready and willing to transfer the property mentioned in the donation filed as plaintiff's exhibit, to a trustee or trustees for the benefit of the plaintiff, as upon the judgment rendered in this cause on the 30th day of November last, by the Superior Court sitting in the district of Montreal, etc.;

"Considering that there is error in the said judgment of the 30th of November last, doth reverse the same, and considering that the donation which is asked to be rescinded in and by the present action, is in its terms and effect a donation *à titre gratuit*;

"Considering that it appears by the evidence of the defendant, that the intention of the parties was not that there should be such gratuitous donation, but on the contrary, that the donee should assume the payment to plaintiff

of his (the plaintiff's) share in the succession of their late father ;

" Doth for the foregoing causes and considerations cancel, annull and set aside the deed of *donation gratuite* from John Taylor, acting as agent and in the name of the plaintiff, to the defendant, passed on the 9th day of July, 1880, before Kittson, notary ; and it is ordered that the said defendant do within 15 days from this date, *rayer*, discharge and cancel the registration of said deed of donation, and on his default of so doing the present judgment shall effect the discharge and cancellation of said registration."

Judgment reversed.

N. Driscoll, for plaintiff.

T. W. Ritchie, Q.C., for defendant.

COURT OF QUEEN'S BENCH.

[In Chambers.]

MONTREAL, October, 1882.

Before RAMSAY, J.

Ex parte DELPHINE CHERRIER, Petitioner for a Writ of *Habeas Corpus*.

Recorder's Court, Jurisdiction of—Police Limits —32-33 Vic., c. 32, s. 15.

The Recorder's Court of the City of Montreal, has jurisdiction over charges of keeping houses of ill-fame within the said City.

The "police limits" of the City of Montreal, mean the territory over which the Corporation has a police jurisdiction, and are co-extensive with the Corporation.

RAMSAY, J. The prisoner was convicted "devant la Cour du Recorder de la cité de Montréal, d'avoir le 11ème jour d'août (alors) courant, en la dite cité, illégalement tenu une maison malfamée, dans la dite cité, savoir :" etc.

Two objections are taken to the commitment.

It is contended that the Recorder's Court has not jurisdiction over the said offence, and that if it has, it has only jurisdiction by consent of the accused, and that it does not appear that the consent was obtained.

The conviction is under sections 2 and 17 of the 32 & 33 Vic., cap. 32. The trial is to be had before a "competent magistrate," and a competent magistrate is defined by section 1 to be amongst others, any Recorder being a Justice of the Peace, and acting within the local limits of his jurisdiction. It is argued that this gives the power to the Recorder, but not to his Court. When the Recorder sits as Recorder, he constitutes the Recorder's Court. This would be plain from general reasoning, but it is specially recognized by section 20, C. S. L. C. cap. 102, and so also when some one enabled to act for him, holds the Court. And this is provided for by the act 32 & 33 Vic., which goes on to say : " or other functionary or tribunal invested," etc., with the powers vested in a Recorder by chap. 105, C. Sts. of Canada. When we go to chap. 105, we find this identical offence provided for.

The second objection turns on the 15th section of the 32 & 33 Vic., cap. 32. It is argued that the jurisdiction of the magistrate trying this offence is only absolute within the police limits of a city ; and that in this case no consent appears to have been given, and it does not appear that the accused was charged within the police limits with therein keeping, etc. I cannot take this view. The " police limits " of the city of Montreal evidently mean, the territory over which the Corporation has a police jurisdiction, and it is co-extensive with the Corporation.

The Petition must therefore be refused.

Petition rejected.

MOTION FOR SECURITY OF COSTS.

To the Editor of the Legal News :

DEAR SIR,—In the report of the cases of *Marcotte* v. *Descoteau* and *Giles* v. *O'Hara*, in your last number, there is an apparent contradiction in the holdings of the learned Judge on a similar point. As I was in Court and heard his Honor's remarks at the argument, I feel bound to communicate them in defence of the consistency of our judges, inasmuch as they clearly explained the apparent contradiction. His Honor said that his own private opinion, which he had previously expressed, was that the motion for security was within the delays if served before the expiration of the four days, but that the current of jurisprudence, of late especially, was against that view, and he felt bound to concur with the holding of the majority of the judges.

This decision, as tending to a uniformity of jurisprudence, seems to me more worthy of applause than censure.

20th October, 1882. A.

[The explanation is perfectly satisfactory

and we believe that many other of the alleged contradictions which get into circulation would, if sifted, prove to be equally susceptible of explanation.—ED.]

RECENT U. S. DECISIONS.

Wagering Contract.—A contract for the sale of shares of railway stock which the seller does not own, and which he does not intend to own, it being merely intended that the parties should account with each other for the difference between the purchase price and the market price at the date fixed for delivery, is a wagering contract, and invalid.—*Smith* v. *Thomas*, Sup. Ct. Pa. 5 Va. Law Jour. 617.

Corporation—Directors' duties to the Corporation.—Although a director of a corporation may become its creditor, and take and foreclose a mortgage on its property, he may not divest himself of the duties which, as director, he owes the corporation, and is bound to act in the utmost good faith throughout the transaction.—*Hallam* v. *The Indianola Hotel Co.*, (Iowa.)

GENERAL NOTES.

The Hon. Ezekiel McLeod, Attorney General of New Brunswick, and the Hon. Finnemore E. Morton, Solicitor General of New Brunswick, have been appointed Queen's Counsel (Gazetted 12th Oct, 1882.)

A la Chambre des Communes, à Ottawa, du moins au dernier parlement, une centaine de membres anglais lisaient le français et pouvaient suivre une discussion dans cette langue. A l'Assemblée de Québec, il n'y a qu'un seul membre qui ne comprenne pas le français, et encore est-ce douteux.—*La Minerve.*

The *Cornhill Magazine* presents the following nice points of "French justice": A man wishing to steal fowls clambers over a garden wall at night and breaks into a fowl-house. He has a bludgeon or crowbar in his hand, but makes no use of either to inflict bodily hurt on those who capture him. Nevertheless this man is a felon who has committed a burglary which the *quatre circonstances aggravantes*, that is, in the night, with *escalade* (climbing over walls), with *effraction* (breaking open a door), and a *main armée* (with a weapon in his hand.) He can only be tried at the assizes, and if convicted on the four counts must get eight years' seclusion or twenty years' transportation. On the other hand, take a man who by false pretenses obtains admission to a house or shop intending to commit a robbery there. He lays hands on some valuables and being surprised in the act, catches up a poker and knocks his detector down inflicting a serious wound. This man's crime is evidently worse than that of the man who went after the fowls—his is only a misdemeanor however, for he gained admittance to the house without violence and was unarmed: his catching up the poker, although it may have been a premeditated act, inasmuch as he intended from the first to defend himself somehow if caught, was equally speaking, only an act of impulse committed on the spur of the moment and without malice prepense. Therefore this man can only be tried by a correctional court, and cannot get more than five years' imprisonment. Again, if a man wishing to inflict on an enemy some grievous bodily harm, walks into a *café*, says a few angry words to him and disfigures him by smashing a decanter upon his face, it is a misdemeanor extenuated by the apparent absence of premeditation. The man walked into the *café* unarmed, and in the heat of quarrel picked up the first weapon that came to his hand. It might fairly be alleged that the man knew that he should find a decanter in the *café*, and that his quarrel was purposely entered into, but the law will not take account of this. If on the contrary the man entered his enemy's house with a loaded stick in his hand and assaulted his enemy with that stick, he would be a felon who must go to the assizes on a charge of attempted murder. It might be that the man had taken the stick without reflecting that it had a leaden knob, but the *onus* of proving that his intentions were not murderous, and that in fact when he entered the room he did not even propose to commit a common assault, would rest upon himself. A jury would probably judge his case according to his antecedents, and if it were shown that his past life was not blameless, he might fail to get extenuating circumstances, and might receive 20 years' transportation.—*Albany Law Journal.*

Mr. Lecky, in his new History of England in the Eighteenth Century, in speaking of the character of the House of Commons, says: "There are also a large number of lawyers who are authorities on technical questions of law, but whose general habits of thought and reasoning are essentially unpolitical, whose time and studies are mainly devoted to another sphere, who usually regard the House of Commons simply as a stepping stone to professional promotion, but who on account of their practice in speaking, and of that freedom from diffidence which is a characteristic of their profession, are thrown into an unfortunate prominence." There seems always to have been a marked difference between the political standing and achievements of lawyers in the United States and in England. We are inclined to agree with Mr. Lecky that the great statesmen or prime ministers of England have generally not been lawyers. Chatham, Fox, Burke, Pitt, Peel, Palmerston, Disraeli, Gladstone—none of these were lawyers, although some had legal training. On the other hand, in this country the contrary seems usually to have been the rule. The great senators usually have been and mainly now are lawyers; for example, Webster, Clay, Seward, Sumner, Trumbull, Conkling, Edmunds, and others. Whether the difference is due to our institutions or to natural aptitude is a curious question. Mr. Lecky ought to be thanked for putting it so mildly when he says, "freedom from diffidence." Whatever may be thought of our legislative bodies, it must be confessed that the average lawyer on ordinary occasions is the worst parliamentarian in the world.—*Ib.*

FRENCH PRISONS AND CONVICT ESTABLISHMENTS.

I.

Ten years ago a Commission was appointed to study the French penal system, with a view to remedying a number of abuses which had sprung up in the management of prisons and of convict establishments. The labors of the Commission were related in a very lengthy and exhaustive report, admirably written, as such works always are in France. The author was an Academician, Count d'Haussonville, who, having skilfully grouped his facts to demonstrate, in the most readable way possible, the evils of the old system, submitted a long series of suggestions which he confidently hoped would result in making France's prisons and convict establishments superior to those of all other nations. The National Assembly lost no time in adopting the suggestions of the report, and passing them into law; but the consequences by no means fulfilled the expectations of the Commissioners. The French penal system seemed all at once to have got into a tangle; and now that the new system has been in operation nearly ten years, one may say that the tangle is worse than ever.

By "tangle" we mean this, that the penalties for the most heinous kinds of offences were found to be so much more lenient than those for crimes of the second category that prisoners sentenced to *reclusion*, which was the second-class punishment, and involved solitary confinement, began to make murderous assaults on their gaolers in order to incur transportation to New Caledonia. Transportation is supposed to be the heavier punishment; but in truth it is incomparably lighter. Parliament grew alarmed at length by the epidemic of crime in the home penitentiaries; and in 1880 an act was passed decreeing that transportation should no longer be inflicted for crimes committed within prison walls. This, however, was only an acknowledgment of the fact that transportation had altogether failed as a deterrent; and now this anomaly remains, that a burglar convicted of a first offence may get a sentence of eight years' solitary confinement, which will almost kill him, whereas a thrice-convicted burglar will be treated to a sentence of ten years' transportation, which will be no hardship to him at all. If he behaves tolerably well he will in three or four years get a ticket-of-leave enabling him to establish himself as a free colonist in New Caledonia, and to marry. If he be already married, Government will send out his wife and children to him free of expense. So humanitarian a spirit presided over the framing of rules for the penal colony of New Caledonia that many a villanous murderer sent out there under a life sentence found his punishment practically reduced to one of comfortable banishment. The Governor was allowed absolute discretion as to the award of tickets-of-leave; and human nature being what it is, one may well suppose that well-connected criminals found it easy to bring such influences to bear upon him as considerably lightened their punishment. At this moment several murderers whose crimes appalled the public—but who escaped the guillotine owing to the squeamishness of juries and of M. Grévy about capital punishment—are pleasantly settled at New Caledonia as free farmers, tradesmen, or artisans. One of them keeps a café; another—a poisoner—has set up as a school master. One must not presume to say that the Governors of New Caledonia—for there have been several during ten years—were wrong to treat these men kindly if they showed themselves penitent; but it is quite certain that the prospect of living with one's wife and family on a free grant of land in a healthy climate is not likely to strike terror into the minds of the criminal classes as being an excessive punishment. The guillotine and solitary confinement have much more effectual terrors; and it is an undeniable fact that since transportation has been rendered so mild, crimes of the worst kind, both against person and property, have alarmingly increased.

They have increased so much that M. Gambetta, and a large section of the Republican party, wish to get a law passed by which all criminals convicted for the second time, and no matter what the length their sentence may be, shall, after the expiration of those sentences, spend the remainder of their lives in New Caledonia. This drastic measure would, no doubt, relieve Paris of the greater portion of its very large horde of habitual criminals; but it would not affect the question as to the leniency of transportation under the present system as compared with *reclusion*. So long as men are more lightly punished for serious crimes than

for those of a less atrocious sort, it is evident that justice is not well armed against malefaction.

In a former article on "French Assizes" we alluded to the vagaries of juries in finding "extenuating circumstances" for prisoners on merely sentimental grounds; and also to the unequal apportionment of penalties by reason of the arbitrary rules which commit certain offenders to be tried before juries, whilst others are sent before the judges of the correctional courts, who sit without juries and scarcely ever acquit because they judge according to the strict letter of the law. We pointed out that a husband who gave an unfaithful wife a severe beating would almost certainly be imprisoned by correctional judges, whereas if he killed his wife outright he would assuredly be acquitted by an Assize jury. Such anomalies may be witnessed in a multitude of other cases. The French Code divides offences against the Common Law into *crimes* (felonies) and *délits* (misdemeanors); but this distinction, which was found inconvenient in England, and which has been practically obliterated there since misdemeanants (*e. g.* the Tichborne claimant) can be sentenced to fourteen years' penal servitude as well as felons—this distinction remains an important one in France, where a misdemeanant can only be tried in a Correctional Court, whose maximum sentence is five years' imprisonment. And the French legal definitions of *felonies* and *misdemeanors* are often most unsatisfactory from the moral point of view.

A man wishing to steal fowls clambers over a garden wall at night, and breaks into a fowlhouse. He has a bludgeon or crowbar in his hands, but makes no use of it to inflict bodily hurt on those who capture him. Nevertheless, this man is a felon who has committed a burglary with the *quatre circonstances aggravantes*, *i. e.*, in the night, with *escalade* (climbing over walls), with *effraction* (breaking open a door), and *à main armée* (with a weapon in his hand). He can only be tried at the Assizes, and, if convicted on the four counts, must get eight years' *reclusion*, or twenty years' transportation. On the other hand, take a man who by false pretences obtains admission to a house or shop, intending to commit a robbery there. He lays hands on some valuables, and, being surprised in the act, catches up a poker and knocks his detector down, inflicting a serious wound. This man's crime is evidently worse than that of the other who went after the fowls. He is only a misdemeanant, however, for he gained admittance to the house *without violence*, and was unarmed; his catching up the poker, although it may have been a premeditated act, inasmuch as he intended from the first to defend himself somehow if caught, was, generally speaking, only an act of *impulse* committed on the spur of the moment and without *malice prepense*. Therefore this man can only be tried by a Correctional Court, and cannot get more than five years' imprisonment. Again, if a man, wishing to inflict on an enemy some grievous bodily harm, walks into a café, says a few angry words to him, and disfigures him by smashing a decanter upon his face, it is a misdemeanor, extenuated by the apparent absence of premeditation. The man walked into the café unarmed, and in the heat of quarrel picked up the first weapon that came to his hand. It might fairly be alleged that the man knew he should find a decanter in the café, and that his quarrel was purposely entered into; but the law will not take account of this. If, on the contrary, the man entered his enemy's house with a loaded stick in his hand and assaulted his enemy with that stick, he would be a felon who must go to the Assizes on a charge of attempted murder. It might be that the man had taken the stick without reflecting that it had a leaden knot; but the *onus* of proving that his intentions were not murderous, and that in fact when he entered the room he did not even purpose to commit a common assault, would rest upon himself. A jury would probably judge his case according to his antecedants, and if it were shown that his past life was not blameless, he might fail to get *extenuating circumstances*, and might receive twenty years' transportation.

These oddities in criminology render it impossible for people to determine what precise degree of infamy attaches to this or that sentence. In a general way the public thinks more badly of a man who is sentenced to *travaux forcés* (transportation) than of one who is merely sent to prison; but there is very little faith current as to the scales of justice being evenly balanced, and Frenchmen, as a rule, feel very indulgently towards all criminals except those whose offences are characterized by savage cruelty. What is

more, the people are so accustomed to see the government act according to its good pleasure, that public opinion exercises no control over the treatment of offenders when they have been put into prison. In England every newspaper reader knows pretty well what is the *régime* of convicts under sentence of penal servitude, and of prisoners in ordinary gaols, and it would surprise the public considerably to hear that such and such a man, owing to his having influential friends, was being treated with exceptional favor. In France such a thing would cause no surprise. Count d'Hausonville's report recommended that prisoners of rank or fortune should be treated exactly like humble culprits; but though this was agreed to in principle, it has been but little carried out in practice. Revolutions and other political changes produce so many misdemeanors in high life, cause so many fraudulent bankruptcies, bring into gaols so many men of high standing who have dabbled in bubble companies, that the stigma of imprisonment is not felt as it is in England. The courts sentence an ex-cabinet minister to imprisonment for swindling, but the very term *escroquerie* is smoothed down in his case into *abus de confiance*, and the authorities connive with prison governors in making the lot of the interesting victim as easy to bear as possible. He is not made to serve out his whole sentence. Sometimes he does not serve out any portion of it. After his sentence he is informed that the public prosecutor will send him a summons to surrender after his appeal has been made; but the public prosecutor omits to send that summons. He sends a friend instead, who advises the well-connected delinquent to leave for a few months or years, as the case may be, and the public, who know very little of what goes on in the gaols, are none the wiser. Those who know shrug their shoulders: "*C'est tout naturel*," they say, "*il est riche : il a le bras long.*"

One may therefore premise that in the treatment of prisoners within French prisons, *maisons centrales* (penitentiaries), and convict establishments, the one thing lacking is uniformity.

II.

Readers of French law reports will notice that the judges of correctional courts often inflict sentences of *thirteen* months' imprisonment. It makes all the difference to a prisoner whether he gets twelve or thirteen months, for in the former case he may serve out his time in the local house of detention and correction; whereas in the latter event he is consigned to a *maison centrale* or penitentiary. What is more, if, being sentenced to twelve months, he likes to undergo his punishment in cellular confinement, one quarter of it will be remitted; so that in many cases a sentence of twelve months means one of nine only.

Prisoners sent to the *maisons centrales* have no option as to the manner in which they shall serve their terms, as they are made to work under the associated silent system.

In Paris there are five prisons for male offenders, one for boys, the Petite Roquette, and one for women, St. Lazare. The chief of the male prisons, La Grand Roquette, is only used as a depôt for convicts under sentence of transportation or *réclusion;* and the prison in the Rue du Cherche-Midi is for soldiers. Mazas is the house of detention for prisoners awaiting trial, but it also contains about eight hundred prisoners undergoing sentences of not more than one year's duration. Ste. Pélagie and La Santé are houses of correction where the associated system mostly prevails, and the latter is at the same time, a general infirmary. All convicted prisoners who are diseased, infirm, and who require continual medical attendance, are sent to the Santé.

It rests with the public prosecutor and not with the judges to determine in what prison a delinquent sentenced by the correctional courts shall be confined. Herein favoritism comes largely into play. A prisoner of the lower orders, having no respectable connections, will not get the option of serving his time in solitary confinement and thereby earning a remittance. If he petitions for this favor, he will be told that there are no cells vacant, and he will be removed to Ste. Pélagie or the Santé, where he will sleep in a dormitory and work in an associated *atelier*. If he be a shoemaker or tailor, he will work at his own trade; if not, he will be employed in making brass chains, card-board boxes, paper bags, toys or knick-knacks for vendors of those thousand trifles which are comprised under the designation *articles de Paris*. Being paid by the piece, he will have every inducement to work hard. Of his earnings government will retain one-third towards the expenses of his keep: one-third will

be put aside and paid to him on his discharge, while the remaining third will be paid to him in money to enable him to buy little luxuries at the prison canteen. The things purchasable at the canteen are wine, at the rate of a pint and a half a day, *café au lait*, chocolate, butter, cheese, ham, sausages, eggs, salad, fruit, tinned meats, biscuits, stationery, tobacco, and snuff. Prisoners are allowed to smoke in Parisian gaols, and a very sensible provision this is, for it prevents that illicit traffic in tobacco which brings so many prisoners and warders to trouble in English prisons, and it also supplies a ready means of punishing a refractory prisoner. Frenchmen decline to admit that order cannot be kept in a gaol without corporal punishment. As a rule French prisoners behave exceedingly well, because they know that they can greatly alleviate the hardships of their position by so doing. For a first offence, a man's tobacco and wine will be cut off for a week; for a second he may be forbidden to purchase anything at the canteen for a month; if he perseveres in his folly he will be prohibited from working, that is, from earning money, and will be locked up in a cell to endure the misery of utter solitude and idleness. If this severe measure fails and the man becomes obstreperous he will be strait-waistcoated and put into a dark, padded cell, where he may scream and kick at the walls to his heart's content. To these rational methods of coercion the most stubborn natures generally yield. It must be confessed, however, that there are certain desperate characters who delight in giving trouble, and who, untamed by repeated punishments, will often commit murderous assaults upon warders, chaplain, or governor out of sheer bravado. It would really be a mercy to flog these men, for a timely infliction of the lash would frighten them into good behaviour, and often save them from the worse fate of life-long reclusion. It has not been found practicable to abolish the lash in convict establishments, and since it continues in use there no sound reason can exist for not introducing it into gaols.

There are no cranks or tread-wheels in French prisons. These barbarous methods for wasting the energies of men in unprofitable labour are condemned by the good sense of a people who hold that it is for the public interest, as well as for the good of the prisoners themselves, that men in confinement should be so employed as to make them understand the blessedness of honest labour. In their treatment of untried prisoners, too, the French are much more humane than we. What can be more cruel and foolish than to force an untried man, who may be innocent, to spend several months in complete idleness, as is done in England? A Frenchman who has a trade that can be followed in prison may work at it in his cell, pending his trial, as if he were at home.

Journeyman tailors, shoemakers, watch-makers, gilders, carvers, painters on porcelain and enamel, etc., continue working for their employers (unless, of course, they are desperate men whom it would be dangerous to trust with tools), and it is a touching sight enough on visiting days to see the prisoners send out little parcels of money for their wives, from whom they are separated by gratings. The same sight can be witnessed in the prisons for convicted offenders. Many prisoners will deny themselves every luxury procurable at the canteen in order to give the whole of their earnings to their wives.

Mazas is the favorite prison of Parisians, because the rules are less strict than in the other places, and because a sojourn there always involves a submission of at least one-fourth, and sometimes one-half of the sentence. Prisoners of respectable appearance, or of good education, and prisoners well connected, can generally induce the authorities to let them undergo their punishment at Mazas. There are no associated rooms here; each prisoner has his own cell, and is supposed to spend his time in solitary confinement. The supposition is correct in most cases, but the better sorts of prisoners are generally favored with some appointment in the prison, which allows them to ramble about the place as they like. Some are assistants in the surgery, infirmary, library; others keep the prison accounts; others act as gardeners, clerks in the store-room, interpreters, and letter-writers for illiterate prisoners. All these berths are paid at the rate of sixty centimes to a franc a day, and government levies nothing from it. The pay is given out to berth-holders in its entirety every ten days. Equally well paid are some of the berths held by skilled cooks and mechanics, locksmiths, plumbers, painters, carpenters, stokers, etc.

The convicted prisoners at Mazas have the

privilege of wearing their own linen, boots, watches, and neckties; they are not cropped, and may sport their face hair in what style they like. They may also have their own books sent in to them, and may receive money from their friends to the extent of a franc per diem. The prison dress is a dark pepper-and-salt suit, with no marks or badge of infamy about it; but the governor may at his discretion excuse a prisoner from wearing it. In fact, the governor can do anything. He may allow a prisoner to dress in his own clothes, have his meals brought in from a restaurant, and walk about the prison grounds all day on the pretext that he is employed in prison work. There are no visiting justices to trouble him. Prison inspectors come round every three months, but the time of their arrival is always known beforehand, and they discharge their duties in the most perfunctory way, scarcely occupying a couple of hours in the inspection of a building that contains twelve hundred cells.

III.

It has been said that any sentence of imprisonment exceeding a year relegates a man to a *maison centrale*. These penitentiaries are very grim places, affording none of the alleviations to be met with in houses of correction. To begin with, the manner of a man's transfer from Paris to a *maison centrale* is most grievous. He goes with a chain fastened around his left leg and right wrist; he is shaved and cropped, attired in a yellow prison suit, and he travels in a cellular railway carriage. At the penitentiary there is no respect of persons, or at least very little. The prisoners are divided into two categories—those sentenced simply to imprisonment and the *réclusionnaires*. The former are treated very much like the inmates of Parisian prisons on the associated system, except that they are not allowed to smoke. They sleep together in dormitories of fifty, and work together at making cardboard boxes, list shoes, lamp-shades, and other such things. Their earnings seldom exceed seventy-five centimes a day, and of this they get one-third to spend inside the prison. In Paris the number of letters which a prisoner may write, and the number of visits he may receive in a year from his friends, are points which depend a good deal on the pleasure of the governor. In the penitentiaries there is a hard and fast line, allowing only one letter and one visit every three months.

The *réclusionnaires* lead very miserable lives of absolute solitude. As men over sixty years of age are not transported, a sentence of penal servitude (*travaux forcés*), which would mean transportation for a man of fifty-nine, becomes *réclusion* for one of sixty. Cripples are also denied the favor of transportation; and, as already said, prisoners who have committed murderous assaults on warders, in hopes of being shipped to New Caledonia, are now kept in the *maisons centrales* under life sentences. The rest of the reclusionary contingent is made up of men whose offences are, from the legal point of view, one degree less heinous than those of transported convicts. *Reclusion* is generally inflicted for terms of five, eight, or ten years; and it is a fearful punishment, because the convict has no means of diminishing it by earning good marks to obtain a ticket-of-leave. Remissions of sentence are granted on no fixed principle. Every year the governor of the prison makes out a list of the most deserving among those of his prisoners who have served our at least half their terms, and he forwards it to the Ministry of Justice. There the *dossier* of each man recommended is carefully studied by the heads of the criminal department, and, two-thirds of the names being eliminated, the remaining third are submitted to the Minister of Justice. His Excellency makes further elimination, so that, out of a list of twenty sent up by the governor of the penitentiary, probably two convicts obtain a full pardon, while two or three others get a remission. It is obvious that there must be a good deal of haphazard in this method of proceeding, and that a convict who has no friends stands a poor chance of getting his case properly considered by government. But even were the system administered as honestly as possible, there would be a strong objection to it, in that it would make the convict's chance of remission depend more upon his conduct before his sentence than after it. This is just what ought not to be the case. The convict should be made to feel that from the day of his sentence he commences quite a new life, and will be treated for the future according to the conduct he leads under his altered circumstances.

Five years of *reclusion* are quite as much as a

man can bear without having his intellectual faculties impaired for life. Men of very excitable temperament, and who have been accustomed to work out of doors, often fall into a decline after two years' confinement, and die before completing their third year. Those who remain eight or ten years in *reclusion* sink into something like imbecility, and seldom live long after their discharge. Advocates of the cellular system point to Belgium, where there is no transportation, and where every man sentenced to penal servitude serves his time in solitary confinement; but the Belgian system is much mitigated by the system of marks. To begin with, every Belgian convict has two-fifths of his sentence struck off at once, simply because he is supposed to adopt cellular punishment from choice, though, since the old *bagnes* have been abolished, the option which convicts formerly had no longer exists. In the next place, the Belgian convict knows that by unremitting industry and good conduct he can earn marks enough to reduce the remainder of his sentence by half, and he has thus the most powerful incentive to good behaviour and hopefulness. There is no possibility of cheating the man out of the liberty he earns. On entering the prison he gets a balance-sheet, upon which he enters a regular debtor and creditor account with the government: so many marks earned represent so many days of liberty won. Thus, a man sentenced to twenty years sees his sentence at once reduced by eight years on account of the cellular system; and it then becomes his own business to reduce the remaining term of twelve years to six. At this rate it will be seen that a Belgian sentence of five years is no very terrible matter, especially when it is remembered that by a merciful provision of the code the time which a convict has spent in prison before his sentence is deducted from the term of that sentence. Therefore, supposing a five year man had been three months in gaol before sentence, and both worked and behaved extremely well after his conviction, he might be out in fifteen months.

There *is* a short cut out of French penitentiaries too; but it is such a dirty one that the authorities ought to be ashamed of themselves for encouraging men to take it. A moderately intelligent *réclusionnaire* who has served half his time, or even less sometimes, may, on his private demand, become a *mouton*, or spy-prisoner. He is subjected to certain tests, with a view to ascertaining whether he is sharp, and whether he can be depended upon; and if he successfully passes through these ordeals (to which he is put without being aware of it) he is forwarded to some house of detention, or to the Préfecture de Police in Paris, where he is employed to worm secrets out of prisoners awaiting trial. To do this he must assume all sorts of parts, and sometimes assume disguises; and he carries his life in his hands, for he occasionally has to deal with desperadoes who would show him no mercy if they suspected his true character. All this unsavory work does not give the man his full liberty; but he may range freely within the prison boundaries. He is well paid, and he is generally allowed to go out on parole for a couple of hours every week. In the end, he gets a year or two struck off his sentence; but after his discharge he generally remains an informal spy and hanger-on of the police, and it need scarcely be said that of all spies he is generally the most rascally and dangerous. It is fellows of this kind who lead men into planning burglaries so as to earn a premium for denouncing them. They are foremost in all street brawls and seditions, playing the part of *agents provocateurs*, and privately noting down the names of victims whom they will get arrested by-and-by. They are, in fact a detestable race, and it cannot be wondered at that when detected by the *pals* whom they dupe they should be killed like vermin.

IV.

French female prisoners and convicts are treated with more kindness, on the whole, than persons of their class are in England. Their matrons and warderesses are Augustine nuns, whose rule, though firm, is gentler, more merciful, and more steadfastly equitable than that of laywomen could be. The female convicts are allowed the same privileges as the men in the matter of earning money and buying things at the canteen. Those of them who are young also enjoy a privilege not granted to female convicts in other countries—that of having husbands provided for them by the State.

Only these husbands must be convicts. Every six months a notice is circulated in female penitentiaries calling on all women who feel minded

to go out to New Caledonia and be married, to make an application to that effect through the governor. Elderly women are always very prompt in making such applications; but they are not entertained. The matrimonial candidates must be young, and exempt from physical infirmities. Girls under long sentences readily catch at this method of escaping from the intolerable tedium of prison life; and the pretty ones are certain to be put on the governor's list, no matter how frightful may be the crimes for which they have been sentenced. The only moral qualification requisite is to have passed at least two years in the penitentiary.

The selected candidates have to sign engagements promising to marry convicts and to settle in New Caledonia for the remainder of their lives. On these conditions, government transports them, gives them a decent outfit, and a ticket-of-leave when they land at Noumea. Their marriages are arranged for them by the governor of the colony, who has a selection of well-behaved convicts ready for them to choose from; and each girl may consult her own fancy within certain limits, for the proportion of marriageable men to women is about three to one. Of course, if a girl declares that none of the aspirant bridegrooms submitted to her inspection have met with her approval, the governor can only shrug his shoulders in the usual French way. It has happened more than once that pretty girls have been wooed by warders, free settlers, or time-expired soldiers and sailors, instead of by convicts. In such cases, the governor can only assent to a marriage on condition that the female convict's free lover shall place himself in the position of a ticket-of-leave man, and undertake never to leave the colony. Love works wonders; and there is no instance on record of a man having refused to comply with these conditions when once he had fallen in love. There are some instances, though, of the authorities having declined to let a female convict marry a free man, when they were not convinced that the latter was a person of firm character and kindly disposition. For the women's own sakes it is necessary that they should not be married to men who would be likely, in some moment of temper, to fling their disreputable antecedents into their teeth. There is nothing of this kind to fear when a female convict gets wedded to a man whose past life has been as bad as her own.

Why the French government should have saddled itself with the responsibility of promoting marriages among convicts it is difficult to say; but the experiment has, on the whole, yielded very good results. The married couples get huts and free grants of land, and all that they can draw from it by their own labor becomes theirs. During five years they are subjected to the obligation of reporting themselves weekly at the district police office; and they are forbidden to enter public houses, and must not be found out of doors at night. This probationary period being satisfactorily passed, they get their full freedom, but subject always to the condition of remaining in the colony. To this rule the law has distinctly forbidden that any exception shall be made. On no account whatever must convicts who have accepted grants of land and contracted "administrative marriages," as they are called, ever return to France. They are at liberty, however, to send their children to France if any respectable person in that country will become answerable for them, and undertake to provide them with a good education. The sons of convicts are born French subjects, and will be required at the age of twenty to draw at the conscription, and serve their appointed terms in the army.

From what precedes it may be inferred that the lot of convicts in New Caledonia is a fairly pleasant one; but we have spoken as yet only of those convicts who have tickets-of-leave, and are more or less free to roam over the whole island. Those who have not earned tickets-of-leave are kept in the penal settlement of the Island of Nou, or are employed on public works, road-making, house-building, etc., in gangs, moving and encamping from place to place during the fine season under military escort. The lot even of these convicts cannot be called a hard one, as compared with that of convicts in other countries, and of French convicts under the old system of *bagnes*, or transportation to Cayenne. The climate of Cayenne was so deadly that all the convicts transported there either died or contracted incurable maladies. As for the old *bagnes* of Brest and Toulon, they were very hells, where the convicts were kept chained in couples, and were treated pretty much like wild beasts. The climate of New Caledonia, on the contrary, is delightful, and the soil of the different islands composing the colony is so fertile that corn, fruit, and vegetables grow there in abundance, and can be had very cheap. In 1873 an attempt to cultivate vines was commenced; but hitherto the experiment has not met with success. It is said, however, that the difficulties which have beset the vine-growers will be overcome in time.

We are aware that the accounts given of New Caledonia by political convicts like MM. Henri Rochfort and Paschal Grousset, have been unfavorable; but the statements of these gentlemen must be accepted with reserve. The National Assembly in 1872 most unwisely decided that the political convicts—thirteen thousand in number—should not be compelled to work; and the consequence was, that, living in idleness, and being anxious to give the authorities as much trouble as possible, they suffered from the disorder and general squalor which they created. On arriving in the colony they grumbled at find-

ing no huts prepared for their reception; they grumbled at having uncooked rations served out to them, alleging that the governor, in obliging them to cook, was violating the law which exempted them from work; they grumbled again because they had to find their own fuel in the woods, instead of seeing fatigue parties of soldiers told off to pick up sticks for them. All this naturally angered the governor, who, perceiving that the communists were bent on teasing him, retaliated by visiting all breaches of rules with rigor. M. Henri Rochefort was once sentenced to a week's imprisonment for being absent at the daily calling over of names; and a great hubbub was made over this affair when the news of it reached Paris; for it was asserted, erroneously, that M. Rochefort had only missed answering his name because he was ill in bed with ague. Many Radical writers took this opportunity of declaring that the climate of New Caledonia was pestilential, and that every convict caught the ague on landing. As a matter of fact, M. Rochefort never had a day's illness in the colony: and ague is quite unknown there.

Successive amnesties have relieved New Caledonia of its troublesome political population, and no difficulty is experienced in maintaining order among the ordinary convicts. For some time after their arrival they are detained in the Island of Nou, where they sleep by gangs of twenty in huts; and they wear convict garb, which is as follows: red blouse and green cap, with fustian trowsers, for those under life sentences; green blouse and red cap for those whose sentences range between ten and twenty years; green blouse and brown cap for those whose sentences amount to less than ten years. They are not chained in couples; but those who work in gangs at road-making have a chain with a four pound shot fastened to their left ankles, unless they be men who have earned a good-conduct badge; in which case they work unshackled. Ticket-of-leave convicts of both sexes must, during their probationary terms of five years, wear their pewter good-conduct badges; but they may dress as they like. It should be remarked that the rule forbidding probationers to enter public houses is an excellent one, for it keeps them out of the way of temptation at the most critical point of their careers.

The convicts get paid for all the work they do; one half their earnings being handed to them every ten days, whilst the other half is set aside to provide them a little capital when they get their tickets-of leave. By good conduct they may also earn prizes in money. A good-conduct stripe brings a franc per month; two stripes, one franc fifty centimes; and a good-conduct badge, which entitles the holder to a ticket-of-leave when he has worn it a year, brings two francs fifty centimes a month during that year. By this judicious system of pay and rewards the men are kept in good subordination, and it is seldom that the severer kinds of punishment have to be inflicted.

These punishments are deprivation of pay, confinement in cells, and for certain serious offences, such as mutiny or striking officers, the lash. Formerly convicts were flogged for attempting to escape, but this was put a stop to by the National Assembly in 1875. Flogging is administered with a rope's end on the bare back, the minimum of lashes being twelve, and the maximum fifty. It is the governor alone who has the power to order flogging. The penalty of murder would of course be death: but it is rather a significant fact, worth the attention of those who allege that capital punishment has no deterrent effect, that not a single execution has taken place in the colony. It would seem that even the most desperate criminals manage to exercise self-control when they know that murder will bring them, not before a sentimental squeamish jury, but before a court-martial which will have them guillotined within forty-eight hours.

The colony of New Caledonia is under the control of the Ministry of Marine and the Colonies, which generally has an admiral at its head. The Ministry of Justice has nothing to do with it, as the convicts all live under martial law. Tickets-of-leave, however, seem to be given at the discretion of the governor: and it would be strange indeed if out there, as in France, favoritism did not play a large part in the distribution of these rewards. Favoritism is, in fact, the great blemish of the French penal system. It smirches every part of it; it obliterates all laws; it is the occasion of the most crying acts of injustice. How it works in New Caledonia may be judged from the case of a man named Estoret, the manager of a large lunatic asylum at Clermont, who was sentenced to transportation for life in 1880 for the brutal murder of a poor idiot. Estoret happened to be a consummate agriculturist, and his fame in that respect preceded him to New Caledonia. The governor, being very anxious to develop the resources of his colony, soon found that Estoret would be just the man to help him. He accordingly appointed him chief overseer of farms, leaving him practically free to roam over the whole colony on parole. Estoret was never even put into convict dress, and he was not compelled to wear a badge, for he had no time to earn one. He was rendered perfectly free almost from the day of his landing, and appears to have done excellent work in his superintendence of the farms. His case shows, however, that the governor possesses the somewhat dangerous prerogative of reducing judicial sentences to nothing. Such a prerogative may no doubt be exercised at times to the great advantage of the colony, but occasionally it must be fraught with serious abuses.

In fairness one should conclude by saying that New Caledonia seems at present to be doing well; and that merchants who trade with it are beginning to speak hopefully of its future as a prosperous colony.—*Cornhill Magazine.*