

CHAPTER IX.

CRIMINAL LAW.

DIFFICULTY OF THE SUBJECT.—TENDENCY OF RECENT REFORMS OF THE LAW.—INTEREST OF EVERY GOOD CITIZEN IN THE LAW.—THE QUEEN VERSUS THE ACCUSED.—BAIL.

It is impossible in a little primer like this to give a complete account of such large subjects as these, which have been written about in many hundreds of books, and on which many thousands of cases have been reported for the guidance of lawyers and judges. The best endeavors of the best lawyers, as well of the wisest men in the world, are now turned to make legal proceedings shorter, and to collect into a few simple books the important necessary points out of all this mass of information. Within the last fifty years great reforms have been made in English law, which is the basis or groundwork of our Australian law. In the **criminal law** punishments have been made less severe, but more certain to follow the offence; and the punishment is intended, if possible, to reform the criminal. In **civil law** disputes are decided more according to justice and common sense, and less according to old decisions than they used to be; and in **insolvency law** the reform is that there is a greater difference made between the **unfortunate** man who cannot pay his creditors, and the **dishonest** man who does not want to pay them. But in all these great branches there is still room for more improvement. Every citizen who may be accused of a crime, or have to serve on a jury, or who may have to bring forward

or defend an action at law, has an interest in **understanding**, in **obeying**, and in **improving** the laws he lives under.

In criminal law the offender is regarded as injuring the community, and the **action** or **prosecution** is brought on in the name of the Queen. You will see in the newspapers "*Regina versus John Doe*"—that means the Queen against John Doe. John Doe may have assaulted William Brown, or stolen money from Robert Scott; but it is not Brown or Scott who bring him up for trial, though they give information as to the offence. It is the Queen, as representing the laws of the land, who demands a trial to find out whether the man is guilty and should be punished, or innocent and acquitted. No one can be arrested without being told the nature of the offence that he is accused of, and he must be brought to trial at the next criminal sittings. Until accused persons are tried and found guilty, they are reckoned as innocent; but they may be kept in prison until the trial comes on. The policeman in arresting or taking them up ought to warn accused persons to be careful what they say, so as to give them every chance of proving their innocence. For some crimes and offences, if the prisoner can get some trustworthy persons to answer for his appearance when the trial comes on, and to forfeit a considerable sum of money if he does not, he is **let out on bail**—that is, on these people's guarantee. But this is not done in the case of serious crimes.

PRISONER'S COUNSEL.—JURY.—WITNESSES.—CASE FOR THE PROSECUTION.—CASE FOR THE DEFENCE.—CROSS-EXAMINATION.—SOME EVIDENCE NOT ADMITTED.—LAW PUNISHES CRIMINAL ACTION OR ATTEMPT, NOT CRIMINAL INTENTION.

While the accused person is in prison, or out on bail, he can engage a lawyer to defend him at his

own cost, and the Crown solicitor (a government officer) prepares to bring forward all the evidence against him. If a man tried for his life is too poor and too ignorant to get a lawyer for himself, the judge appoints some one to defend him at the cost of the government. On the day of trial there is a **jury of twelve men** called together to hear all that can be said against and all that can be said in favor of the prisoner. If the prisoner thinks any one of these twelve men are unfriendly to him, he can object to his being on the jury at all. He **challenges him** when his name is called out, and another man must be taken in his place. He can challenge as many as twenty if he pleases. These twelve jurymen sit in a place partitioned off by itself, called the jury-box. The accused person stands in a place called the dock. The judge presides over the court.

The Crown solicitor or the counsel for the prosecution first brings forward the reasons why he believes that John Doe committed the crime. Supposing the crime to be murder. He brings forward **witnesses** to prove that John Doe was at the place at the time when the man was killed; that the marks of violence were such as might be made with a weapon John Doe had, or might have had; that John Doe had a spite against the murdered man, or an interest in his death; that John Doe had a violent temper, and might have killed him in a sudden passion. John Doe's lawyer **defends his client** by bringing witnesses (if he can) to prove that John Doe was not at the place at the time of the murder; that the marks did not look like those of blows from any weapon John Doe could have; that John Doe had no dislike to the murdered man, and no interest in his death; and that he was a quiet, well-behaved man, who would not do such a thing even in a rage. Some of these points, if not all, are brought forward at every trial.

The prisoner's counsel may cross-examine any witness against him—that is, he may question him more

minutely to throw some doubt as to his speaking the truth. If one of his statements contradicts another of his own, or of any other of the witnesses on the same side, then the jury are not disposed to believe in him. The Crown solicitor can also cross-examine in the same way the witnesses for the defence of the prisoner. The judge can prevent any question which is unfair or illegal from being put at all, and he rejects any evidence which has no bearing on the case. For instance, when John Doe is tried for murder, the judge will not receive as evidence that he stole apples when he was a boy. Nor will he receive the statement of a witness that he had heard another man say that John Doe went out with a gun about the time of the murder. The man who saw him with the gun must be summoned, and asked when and where it was ; but **hearsay evidence**, from one man to another, is not admitted. Suppose a man proved that he had gone out with the gun, and that he said he would do for William Brown, if the bullet that killed the man was too large for the gun John Doe had, even the proof of the evil intention would not convict him of the murder. The law does not punish the intentions, but the **criminal act**, or the **attempt** to commit it.

CIRCUMSTANTIAL EVIDENCE.—PROVING AN ALIBI, OR JUSTIFICATION, OR MISTAKE.—VERDICT.—GUILTY OR NOT GUILTY.—CRIMINAL TRIAL CONCLUSIVE.—FREE PARDON MAY BE GIVEN.—RECOMMENDATION TO MERCY.

In many cases there is no direct evidence to prove guilt, for people do not generally kill or steal when there are witnesses looking on, and the case depends upon what is called **circumstantial evidence**. The prisoner will get off if he can prove that he was at another place at the time, or, as it is called, **proves an alibi**—a latin word, meaning **elsewhere**. If he can prove that he had no motive for the crime, and that he had previously a good character, he may be

acquitted even when there is a good deal of circumstantial evidence against him. If he shows that even if he killed the man he did so in self defence, to prevent being killed himself, it is called, not murder, but **justifiable homicide**. If he can prove that he meant to hurt the man, but not to kill him, it is called homicide or **manslaughter**, and not murder, and meets with a milder punishment. The jury of twelve men have to decide whether he is guilty or not guilty; they must all agree in their verdict. **Guilty** means that they believe the prisoner committed the crime he is charged with. **Not guilty** does not always mean that they believe him innocent, for sometimes, though they are convinced that he is guilty, the evidence is insufficient, and by the principles of the English law the prisoner gets the benefit of the doubt. In Scottish law there is a verdict **not proven**, which expresses the opinion of the jury that he is not innocent, though he has not been proved guilty.

If a man is pronounced **not guilty** he cannot be tried again for the same offence. If he has been found guilty, even though it was by mistake, or through **perjury**, *i.e.*, false swearing against him, and it is afterwards found out that he is quite innocent, he can apply to the Queen, or in the colonies to the governor, for a free pardon; but he cannot demand another trial to prove his innocence.

Sometimes the jury find a verdict of guilty, with a **recommendation to mercy**. This often leads the judge to make the sentence as light as possible, on account of great provocation or strong temptation, or of previous good character. Previous good character ought to be considered if a person has been suddenly carried away by great temptation, but if the good character has been the means by which confiding people have been cheated for years, and the criminal trusted with more money, and enabled to do more wrong, justice and common sense demand a more severe punishment rather than a milder one.

OATH OF WITNESSES.—PERJURY OR FALSE SWEARING.—JUDGE'S DISCRETIONARY POWERS. — CAPITAL PUNISHMENT. — IMPRISONMENT.—HARD LABOR.—DISGRACE.—PUNISHMENT BY FINES.—FINES AND LICENCE FEES PART OF THE GENERAL REVENUE.

Anyone who has seen a crime committed is bound to give information of it to the police, and all witnesses summoned to appear at the trial take a solemn oath to speak the truth, the whole truth, and nothing but the truth, in answer to the questions put to them. If witnesses are proved to have committed **perjury**—that is to say, to have given false evidence on oath—they may be punished by imprisonment and hard labor for a term not exceeding four years.

The judge has a good deal of discretion or liberty given to him as to apportioning punishment for an offence. Death, which was once a very common punishment, is very rarely inflicted nowadays—only in case of murder, highway robbery carried on with deadly weapons (such as that of the Kelly gang), and piracy or robbery at sea. Wilful fire-raising, which endangers life, and scuttling ships—boring holes, so as to make them sink—are also sometimes punished with death. For the great variety of lesser crimes the punishment is imprisonment for weeks, months, or years, and in most cases this is accompanied with hard labor. The male prisoners in South Australia are sent to the labor prison (or, as it is often called, the Stockade) at the Dry Creek to break stones, and the female prisoners pick oakum in jail. **All convicts have their hair cut short and wear a peculiar dress,** partly to disgrace them, but still more to make it difficult for them to escape, and thus to allow them to be treated more mildly, and to save the expense of a great number of extra guards to watch them.

All criminals during their time of sentence must be kept either by their own labor or by that of the honest

industrious people who are at large. It is, therefore, very sensible to make them work for their food and clothing at quarrying and breaking stones for the roads, for such work must be done by somebody. They work under strict inspection, and if they try to escape they may be shot by the guards. It is really a harder sentence for a gentleman than for a rough ignorant man to be set to break stones with a gang of criminals, and very hard for one who has been a lady to have her hair cut and be set to pick oakum with the other criminal women in the jail. But if the education which was given to them to make good use of has been turned to a bad one, they must endure the greater bitterness of their punishment. Anyone, too, who has been well taught and carefully trained, feels the disgrace far more than the ignorant can do, and the family of the convict often feel as if they had a share in the shame of the position. Perhaps this feeling is too strong amongst respectable people, for though we must grieve when anyone belonging to us breaks the law and is punished, nothing can really disgrace us but our own evil deeds. Convicts can shorten their time of sentence by good conduct; even when the sentence is imprisonment for life, it can be reduced by good behaviour. This is a very important point, for some motive which leads bad people to reform may make their punishment very useful to themselves.

The court for trying criminal offences is called the Supreme Court, and is in Victoria-square. There are three judges in the colony, but there is only one judge at a time for criminal cases. Many small offences are tried before the police magistrate in town, who sits without a jury, and who can sentence to a fine or a short imprisonment at his discretion. In the country there are small courts of justices of the peace, presided over by a paid **special magistrate**, for trying such offences in the same way. Even serious crimes are brought first before the magistrates' court, which, on inquiry, remits the case for trial at the next sittings of the

Supreme Court. The justices of the peace are unpaid magistrates, who consider it an honor to assist at the local courts. Some of these justices are appointed by government to settle about the number of public-houses that ought to be open in the country and the towns, and this, which is called the licensing bench, can refuse to give a licence to a house which they do not think required, and to a man whom they think unfit, either from bad character or bad management. So many crimes proceed directly or indirectly from the influence of drink that it is thought necessary that public-houses should be under the careful control of the law. Public-house regulation is one of the things that every good citizen should try to improve, so as to lessen the great evil of drunkenness.

Many small offences are **punished by fines**—that is, by making the offender pay some money, and imprisoning him till the fine is paid. This is a convenient punishment in one way, but it is very unequal, for a rich man does not mind a fine, while a poor man, who has not got the money, pays double by losing his time in prison. These fines all go into the Treasury, and are a part of the **general revenue**. The licences for publicans and auctioneers, and a few other businesses, also form part of the revenue.

