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The Criminal Code of Virginia

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THE CRIMINAL CODE OF VIRGINIA.

The new Criminal Code, framed by the last Legislature, is now published—occupying just 72 pages. We discover still some obscurities, and some adherences to old verbosity ; but taking it all in all, Virginia never before saw such a sample of terse, clear, sensible and well arranged legislation. It makes punishable, we believe, a considerably greater number of offences than former laws did ; yet fills not a fifth, perhaps not a tenth, of the space which those laws filled. And it contains hardly a hundredth part of the matter for doubt, for utter

perplexity to the reader or judge, that they contained.

There is a great improvement, in the more rational graduation of punishments to offences. We are glad to see that offenders may now again be confined in the penitentiary for one year only, when the transgression is light enough to justify so short a term: annulling a rule established by the mistaken wisdom of a former law, which made three years the shortest time.

It is a pity that solitary confinement for part of the term is not also restored. Despite the sentimental whining of Mr. Dickens in his "American Notes," over the sorrows of a solitary convict in the Philadelphia Penitentiary, we believe that feature in the system to be worth all the rest together, for reforming offenders, and inspiring a salutary horror of crime. Against Mr. Dickens, and against the sickly sensibility of our own legislature, backed even by the opinions of our Penitentiary physician,—we place, triumphantly, the statistics of the penitentiaries in Pennsylvania, and divers other states, shewing a vast superiority to our own in health, reformation, and all the other ends of punishment. Whatever failure there was in our former experiment, must have resulted from some defect in carrying out the plan. Were the solitary cells properly aired, lighted and cleansed? Were they furnished with plenty of clean water, for washing? Was the convict made to wash himself all over, every day? Was plenty of clean clothing regularly brought to him, and did frequent inspections prove that he put it on? Was work allowed him, to exercise his limbs and relieve the dreariness of solitude? Was there a small court open to the sky, near his cell, where he might walk twice or thrice a day, attended by a keeper? If all these precautions for health were taken, and others which might be mentioned, then it might be doubted whether solitary confinement is compatible with health. If the solar light, the light of day, was at all excluded, this alone was cause enough for disease.

The Code has definitions prefixed, declaring the senses in which certain words shall be taken; and calculated to prevent the many tiresome and ungraceful repetitions that puff out ordinary statutes. There are not enough of such definitions, however: and their application is unhappily restricted to *this code of 72 pages*. They ought to have been made applicable to all enactments of the Virginia Legislature, criminal and civil; to all indictments, declarations and pleadings; nay, and rules of construction like them should be declared lawful in all deeds, wills, and other instruments of writing whatsoever. To show the need of such a condenser and simplifier as those definitions would be, let any one read an act of the late session to provide for draining lands, when adjoining proprietors will not let their lands be entered for that purpose. We

quote a small part of it, *italicizing* the redundant words; and only remarking, that the phraseology not thus pointed out is often far more circuitous than is necessary:

"*Be it enacted by the General Assembly, That where any person or persons within this Commonwealth shall be desirous of draining his, her or their lands, and it shall be necessary for such purpose to conduct the water through the lands of another person or persons adjoining, by means of a canal, ditch or drain, to be cut or made for that purpose, and cannot obtain permission from such adjoining proprietor or proprietors by consent or agreement, it shall be lawful for such person or persons so desiring,*" &c., &c., &c.

This intolerable rigmarole certainly was penned by some *sub-clerk* of a committee—not by the clerk proper, to whom it is said that the drafting of bills is often left, far less by any member, unless he were a pettifogger. The members who so ably second Messrs. Patton and Robinson in their work of shortening the penal code, should not have let such stuff proceed from the body to which they belonged. To keep such quackery out of our laws, surely the Revisors will prefix to the **WHOLE** Code a set of definitions, by which the language of all our legislation may be squared. One of these definitions should say that the singular shall be held to include the plural; and the masculine, the feminine. Another, that a general term shall include all things fairly embraced within it. And so on.*

To specify a few of the new provisions in the Criminal Code—

Called Courts, for the examination or trial of criminals, are abolished; and the regular terms of the county court substituted for them.

The jury-law in criminal cases, which was passed two sessions ago, and was remarkable for its clumsy complication, is modified into more rational shape; retaining all its best features—*e. g.* the summoning of jurors remote from the scene of the crime,—calling them from an adjoining county when competent ones cannot be gotten from the proper county,—paying those so summoned,—reducing the number of challenges, though not sufficiently,—&c.

The venue may be changed, on motion of the commonwealth's attorney, as well as of the prisoner.

Robbery, by one armed with a dangerous weapon, is punished by five or ten years in the State prison; if not so armed, by *three* or ten years. The former law punished only robbery *in or near a highway*. All reference to a highway is now omitted.

The *attempt* to commit any crime is punished, with a severity apportioned to the crime attempted. Till now, (strange to say,) no mere attempt

* See the article on "Wordiness in Legislation," in the March No. of the Messenger.

at crime by a white person was punishable at all !

To take away or secrete another's child, *from any person having lawful charge of its person*, is punished by confinement in the penitentiary. [We question if the words in italics are wisely put in.]

A stage-driver, or rail-way conductor, boat-captain, or other public carrier, willingly or negligently *injuring any person*, is punished as for a misdemeanor—i. e. by fine and imprisonment.

“Benefit of clergy” is entirely abolished.

A felony is declared not to merge or stay the civil remedy of any person injured.

Bail in a criminal case is allowed to surrender his principal, as in civil cases.

We would gladly extend this mention of changes in the law; but time and space fail us. The newspapers would do the public a great service, and interest their readers more than any ordinary speech could do, by publishing copious selections from this new code. Constantly, through more than twenty years of close attendance upon courts, and of frequent converse with all sorts of people, we have been freshly surprised by their ignorance of the laws that bind them. Did we edit a newspaper, this is one point on which we would make the light of the Press shine. There are few points about which light is more important.

Indeed the Legislature ought to adopt some means for effectually diffusing a knowledge of the laws among the people. But how can that body be relied upon for any such thing? Even more than half the magistrates are not furnished with a Revised Code, or a Justice's Guide-Book.