THE COURTS.

REMISSION OF SENTENCES.

CARE IN THE SUPREME COURT

ARGUMENTS OF MESSRS. BREWSTER AND MEREDITH.

Hon. Wm. M. Meredith addressed the Court as follows:

May it please your Honors: This case is one of more public importance than any that have been presented to you for some time, because the question involved in it is one which touches every the dearest and most valuable rights of the people, the rights of defendants in criminal cases, the rights of the Commonwealth and of the conscientious judges upon whom is devolved the duty of exercising their discretion. That it is connected in any way or shape with the question of the pardoning power I venture to deny. The question here, so far as it can possibly be, has nothing to do with the question whether any more than it would have to do with it if it were contended that the judges should never give a judgment for the maximum sentence in the law, and it was only the exercise of a power which could remit or relax any part of that. The question here is (and it is an important one—I will not say an entirely clear one) whether the reconsideration of a sentence in the manner in which it has been done in this case is, or is not within the judicial power of the court, or is not within the power of any other tribunal. If it is not, why, you cannot alter the law; if it is, then you are not interfering with the prerogative of pardoning power at all by sustaining the law of the land.

After referring to the origin of the principle, if it might be called one, that after the end of the term the judgment of the court was beyond the reach of the court itself, the speaker continued: What is the meaning of the judgment which is entered every day in civil courts where the records are kept? It means just what it means here, just what it means here? This rule to show cause, being argued on the same day, is nothing but a judgment *nisi*, a judgment of a particular kind unless cause be shown. Is that the everyday practice wherever the records are kept in accordance with the forms of law? And then if a motion for a new trial was made, why other record is there at the same time? Nobody to decide that at the same time? Nobody ever heard a lawyer talk in this way in civil courts, from which this rule came. Where do your honors find the principle of this difficulty about law? I will tell you: there is not any. What it. Look at recognizances in criminal courts. That is a recognizance of the Commonwealth; it is a debt of record; it is an acknowledgment of debt to the sovereign and under the control of the court) of a debt of record. It may be enforced by a *scire facias* and execution. Does do not want any further judgment about it? It has all the elements of a final judgment of record. The court have a discretion as to requiring security for the appearance of criminal, to take their trial, and they may direct a criminal to enter into a recognizance. That is done. They, at the next term, if he does not appear, what is the consequence? That his sureties have to pay the debt. Why, by no manner of means. If, on application to the court, the court are satisfied that his non-appearance has arisen from some excusable circumstance, and that his sureties ought not to be compelled to pay, what do they do? They decline to forfeit the recognizance. Take, for instance, a case in which the court has forfeited the recognizance under such circumstances, and he comes then to them and shows a good excuse for his absence, what do they do? They remit the debt, and they do it by the exercise of their power. That is not an interference with the prerogative power of the Governor; one is the everything more than the common law has authorized. At the end of the term, it is a principle that courts of justice are formed for the administration of justice, and that they shall do what is given to them they are at liberty to exercise it in the free manner.

In England, formerly, every felony had its appropriate sentence; there was no discretion in the courts, as it had merely to give the sentence, or not give it, and if that sentence was wrongly given, it became a matter of error. In one instance, a man was entitled to a very large estate in Ireland, but was prevented from acquiring it in the highest court of jurisdiction, because he had joined with a plot against the government, and was tried for treason, condemned and executed. But after the revolution, this gentleman brought a writ of error in the House of Lords, insisting for error that the judgment in passing sentence had not expressly provided that the forfeiture of his land should be taken off while he was yet living. They had ordered the heart to be taken out, but had omitted to mention anything further in express terms. And this judgment was reversed, and his estate came back—showing, I suppose, that the House of Lords had been well or ill-advised. [Laughter.]

The speaker argued further, that in our own Commonwealth, especially in this county the criminal court had been charged with the responsibility of a constant exercise of discretion in the punishment of every crime known to the law, with the single exception of murder in the first degree. That was one thing which had been done. Another thing was that, under our statutes heretofore there had been a minimum of punishment as well as a maximum imposed in one direction or other of the judge, which was limited in one direction. Now, by the revised penal code, the minimum was taken off, and the whole direction was left upon the conscience of the judge to say what ought to be the punishment in a particular case.

Offenders had no right to complain of that act, because, as it repealed absolutely all former acts on the subject of crimes, all offenders who at the time of its passage had not been tried for the crimes of which they were charged could not be fully be tried at all. The criminal bar did not discover the fact, however, but went on convicting criminals, some of whom, for aught the speaker knew to the contrary, were yet serving out an unlawful imprisonment. [Laughter.] Therefore, the sentences—three-quarters of the court had been abolished, and terms of a single month substituted therefor. Discarding the technical question of the difference between Saturday night and Monday morning, and looking at the right of the master involved, the fact was apparent that he had every crime excepted that of murder (to try which required two judges, public notice, and the presence of a single judge, and that that discretion was not restricted by law.

Then there was also apparent the further fact that in this county there was an average, at the speaker understood, of from two hundred criminals a month to be tried and sentenced within, say, twenty-six sitting days. It is well known that we had a court composed of judges of integrity and conscientiousness, that fact was universally lodged, and none would acknowledge it more ready than would the learned gentlemen on the other side. Now, in every case where the punishment is dependent upon the discretion of the judge, the convict has a right to present himself with his sentence in mitigation of punishment. This was as truly a right which he possessed as it was a right of the crown to prosecute him: it was a common law right, and one of which he could not be deprived without being made to suffer the grossest practical injustice. What, then, was to become of the right which belonged to the Judge, and how was he to exercise the discretion lodged and gifted upon him until he was almost smothered under it, if he had not sufficient time and opportunity allowed him? He needed to have time in order to act with propriety, with conscientiousness, and with a regard for the rights of the prisoner. Therefore, shall it be said that after the term of the Court has expired he cannot meddle with a judgment or sentence which was passed during the term? These technicalities the common law swept away wherever they interfered with the real rights of parties. Had not a man who had been convicted of the most heinous offence the common law right to have the sentence, with affidavits in mitigation of damages? This would not be denied.

The speaker then instanced the case of a man who, having been convicted of an offence on the last day of a term, desires to present to the judge that which will satisfy his mind that he is not an old offender, but has been drawn into the present condition by means which he was unable to resist, and thus obtain, as is perhaps his due, a mitigation of the severity of his sentence. But their honors were here asked to deny this opportunity to the man, and also to deny the judge, to some extent, the means of projecting his own conscience by preventing him from receiving that information which would induce him to impose a less severe punishment than he would otherwise impose. In the very case in question, the charge was for lug that he had stolen a straw hat, and the sentence imposed was twelve months' imprisonment. The judge, in passing sentence, doubtless acted upon the supposition that the prisoner was a professional thief, for otherwise the punishment would seem to be disproportionate to the character and nature of the offence. But it is represented to the judge that he acted under a false state, and he enters a rule with the intention of subsequently considering the case. He does consider it, and finds every reason for reducing or changing the sentence. The entry is made. He could reduce the sentence, could he not also increase it? But the justification of the alteration was the application by the party in mitigation of his sentence. There is no exception to the Commonwealth in aggravation after sentence is once pronounced; therefore, the whole object of the proceeding is diminution.

The speaker then asked, why should not this privilege be allowed—who is injured by it? The prisoner was not injured because the judge thing to be done on his application. He was not injured, but benefited, because he is thereby better enabled to discharge his duty. If the opinion of the court was averse to the right of the judges in this matter, the probable result would be that hereafter the judge would sentence an offender to a more nominal term of imprisonment, or would defer the sentence altogether until he had had time to examine all the circumstances, which would be to effect the same thing as a relation of a sentence, the only difference being that it would be attended with more inconvenience to the court, and greater hardship to the party sentenced.

The custom of the judges in this respect had been founded upon a practice of many years, the present judges being the same judges that the preceding judge before they came upon the bench.

Attorney-General Brewster, on behalf of the Commonwealth, said that if he consulted the feelings of his own mind he would feel constrained to leave the case where it now stood, in the confidence to the gentlemen who had pressed him, and to the general expectation on the part of the profession to hear the question discussed, he felt prompted to say a few words. The law, he had understood, was very fully stated by him on this subject, had been fully stated in his paper book, which was before the court. He referred to the subject of the investigation, which he had received at his hands, and remarked that the impression upon his mind was that the question was agitated originally, and before it was fully present considered, it was, perhaps, naturally occurred to the mind of every lawyer, the power conferred on the judge was a very important one, and that it was a power which should be some mistake about the matter, the common law power claimed by the judges was so enormous that it was very fitting that it should be the duty of a lawyer to respect the judge's discretion.

He then treated the progress of the question through its various stages, stating the necessity which appeared to exist for its final adjudication by a decision of the last resort.

If the Judge of the Quarter Sessions possessed this power by virtue of common or statutory law, or even by custom or usage, and this court so decided, the profession would be in a position of this court with all due respect, and the Legislature would limit such a power, and impose reasonable restrictions, and would do this not only for the sake of the judges, but especially for the sake of the community. The learned gentleman had heard of the Mr. Mc[illegible] and acknowledged at the outset that the question was not clear; and it was agitated in the community, and was experienced and able, coupled with the importance of the case, would warrant the court in pausing long and carefully before venturing to assert that an authority which had stood for half a generation in established law.

The pardoning power was one of mercy, and was to be exercised impropriety and one which was open to abuse, and which had been properly sanctioned by the exercise of authority.

Serious doubts had long been entertained as to whether the judgment of a court should not be final, *pro bono publico*, and whether the discretionary power even should be exercised in the matter of abrogating punishment—in a word, whether the criminal should not be made to know and feel that the sentence of the law, once passed upon him, was the sentence of the law, and the sentence of the law. If the propriety of vesting this power in the highest constitutional authority of the State was questionable, how much more questionable was the propriety of vesting it in a subordinate tribunal in Dauphin?

In answer to the assumption of the other side, that the exercise of this power was authorized by precedent in the practice of the English courts, the speaker contrasted the one case where the power conferred by the judges was regarded to the very high authority of the Crown, and showed their entire dissimilarity. The Court of King's Bench was not only supposed to represent those judicial functions which were inherent in the Crown, but to represent him in all the majesty of his person and by implication and fiction of law he was always present in that court. The Judicial Tribunals of our Commonwealth were created under constitutional restrictions, which are in the nature of a covenant, binding in the people themselves and their officials within certain limits. The constitution of the State, by express or express power, conferred the pardoning power and the power of regulation, but the power was not exercised by him, the reason of any kind, perhaps, for the whole time that the country was republished. The power so given was bestowed by the people of the State, in the exercise of their sovereign constitution, gave the executive power of pardon to the Executive of the State, and made him close responsible for its use or abuse. The Supreme Court possess the power to modify sentences—but how? They were required to modify the sentence so as to make the punishment conform to law, but they had not the power to change the sentence. The power of the Courts of the Commonwealth was to punish according to law; not to modify or change the *punishment according to law*. That was the power conferred in the statute. Power was not vested in this State—or province, as it was originally—down to 1857, no judge ever dared to exercise the power that was now claimed, and no statute even was conceived a warranting the assumption of any such authority.

The speaker dwelt at length upon the practice in regard to a judgment *nisi*, and then argued further that a convict had a legal right to be heard in mitigation of his punishment. But when he had signed away his day of grace, and the judge had pronounced his sentence, which is the execution of the law, what power would stand up and say that was a judgment *nisi*?

In regard to what had been said on the subject of the necessity of this power the speaker said that he did not ask the court to decide the question either because the power was necessary or unnecessary. He intimated that there was no occasion for the judge to exercise the power immediately. There was nothing to hinder a judge who had mature deliberation to consider the character of the sentence which should be imposed in a case where the decision had not been received all the information he desired.

He (the speaker) was the author of the judges in this case, instanced a case which might occur where a party was arrested on a charge partaking of the character of a political grievance, and he is tried and convicted, and a particular judge enters a rule like that to which reference has been made, then issues a warrant for of mercy except through the door of one Governor. Such an exercise of authority would be in direct conflict with the exercise of every principle of judicial power as laid down in the constitution. The court had been told that this was an attempt to restrain the Legislature.

Speaking on this subject, Lord Camden (when Sir Norris Pratt) said—"What, is the power of the judge? The discretion of the judge is the law of tyrants. It is always unknown; it is different in different men; it is casual, and depends upon temper and passion. In Turkey it is the discretion, or, rather, the capricious caprice of a man. In the worst, it is very vile; in the best, it is very bad. It is the rule of the tyrant."

It was to retrain the temptation to abuse this discretion to confine the judge within the prescribed limits of the law, to prevent the growth of a spirit of corruption, and to prevent reproach upon the administration of justice, that this court was now asked to say that the judge could not do what he was not within the discretion of the judges of the Court of Quarter Sessions.

—The Duke de Persigny recently recommended that the imperial prosecutors should prosecute all private libels suits against newspaper editors. The Emperor said, decidedly, "Not the object of the suit. "Stop," he replied, "*je crois que j'ai mal-aise trouver des poux.*" ("Stop, I think I have unlucky will always have fleas.") The Emperor laughed, and the Duke's recommendation was rejected.

Pennsylvania Legislature.

[CLOSE OF YESTERDAY'S PROCEEDINGS.]

SENATE.—Mr. McCandless called up the act from the House exempting the Sunday School Association from taxation. Passed.

Mr. Connell called up an act prohibiting any turnpike company from placing gates or houses in the streets. Passed.

The following resolution, introduced by Mr. McConaughy, was considered:

Whereas, Pennsylvania is justly proud of the services of her sons in the late war, who displayed conspicuous devotion to the cause of the nation, and by their courage, gallantry and endurance contributed largely to the triumph of the armies of the Union; therefore

Resolved, That as a token of recognition of the meritorious and patriotic services of the soldiers and sailors from Pennsylvania who honorably served in said war, there be produced and engraved for the Commonwealth a certificate of honor, in which shall be embodied this resolution, and a copy of such certificate shall be furnished under the direction of the Governor, and presented to each honorably discharged soldier or sailor from Pennsylvania, and one to the widow, if living, and if dead to the family, or orphans of each of the sailors or soldiers who fell in battle or died of wounds or of disease contracted, who may apply for the same.

Resolved, That the Auditor General and State Treasurer, and a committee of three from the Senate and three from the House be a committee, who, in conjunction with the Governor shall select the design and contract for the execution of said certificate—the same to be paid for by warrants drawn by the Governor upon the State Treasurer.

The resolution was urged by Mr. McConaughy as giving a fitting testimonial to the soldiers.

Messrs Burnett, Wallace, Davis and General McCandless and White opposed the resolution, because it would, in their judgment cost the State nearly one hundred thousand dollars for a bauble which soldiers would not prize as much as their simple papers of discharge, and the money would be expended to relieve the families of the dead.

The subject was finally laid aside until to-morrow.

The following passed and was sent to the House:

That all mortgages, payments, recognizances, and moneys owing upon articles of agreement for the sale of real estate, made and executed after the passage of this act, be exempt from all taxation, and that from and after the 1st of December next no taxes of any description shall be assessed or collected on or from mortgages, judgments, recognizances or money owing upon articles of agreement for the sale of real estate, whether made or executed before or after the passage of this act; provided that nothing in this act shall be construed to apply to mortgages, judgments, or articles of agreement given by corporations.

Mr. Wallace called up an act making it not enabling married women to contract for the renting of dwellings and storehouses.

Mr. Shoemaker called up an act authorizing the Governor to appoint commissioners to select a farm of two hundred and fifty acres at such point in the northern counties for the construction of a new insane hospital, and erect the same at a cost not exceeding two hundred and fifty thousand dollars. The bill was laid over.

Mr. Rasoffall called up the House bill repealing the act changing the time of holding elections in Minersville. Passed.

Mr. Wallace called up the bill authorizing the judges of the Supreme Court to direct their reporter what opinions to publish, but allowing the publication of all opinions of the majority on constitutional points. Tuesday.

Mr. Burnett called up an act expediting the settlement of decedents' estates, requiring executors to be brought against executors, administrators, or heirs, within one year after their appointment. Passed.

Mr. Randall called up an act repealing the law establishing criminal judges and courts in Schuylkill, Dauphin, and Lancaster counties. He stated that the judge of this court was drawing thirty-five hundred dollars per annum, and never had a day's court per week in a single case. The Supreme Court had declared the creating of the district unconstitutional.

Mr. Coleman and Mr. McCombey understood that the Supreme Court had not particularly declared the act unconstitutional, but had merely stated that the court had no jurisdiction of order established tribunals. The Senate, by a vote of 16 to 12, agreed to consider the bill, and it was then postponed until Tuesday next.

While the bill was being discussed, Mr. Randall reported that the Supreme Court with a full bench had declared the act unconstitutional, and that Republicans and Democrats demanded its repeal. He agreed, however, to postpone until Tuesday. The bill was then taken up in the House bill incorporating the Bethesda Presbyterian church. Passed.

Mr Ridgway called up the bill incorporating the Co-operative Life Insurance Company. Adjourned.

HOUSE OF REPRESENTATIVES.—Mr. Thorn, chairman of the Philadelphia delegation, to consider the bill to give Penn Square to certain institutions, gave notice that a meeting of the committee would be held on Wednesday morning. This official announcement is made in order that all parties interested may appear at the time stated if they so desire.

Mr. Subers, of Philadelphia, called up a supplement to an act to vacate part of Rock road, in the Twenty-sixth Ward.

The act giving pensions to the soldiers of the war of 1812 was considered.

During the debate Mr. Nicholson stated, as illustrative of the old abuses of the system, that he knew of a case in which a man who was one of the wealthiest bankers in Dauphin county had drawn a pension.

An act authorizing to include soldiers of the late war was lost by a vote of 77 to 15. The bill then passed.

An act giving Complainter's descendant two hundred and fifty dollars was passed.

An act repealing the law allowing colored persons to ride in the passenger railway cars was indefinitely postponed by a party vote—53 Republicans to 45 Democrats.

Colonel Utley, of Racine, and the Negro Hunters.

[From the Kenosha Wis.) Telegraph.]

We mentional some weeks ago the fact that Col. Utley, now editor of the *Racine Journal*, while in Kentucky with his regiment, in 1862, received into his camp a negro who desired to remain with him. Colonel Utley was sued for the value of the negro in a Kentucky court, and a judgment was rendered against him for $1,000. A transcript of the judgment was filed in the United States District Court, at Milwaukee, and recently the United States Marshal has served Colonel Utley with a summons to appear at the term of the court now in session in Milwaukee.

Colonel Utley, in the Racine *Journal* of yesterday, after detailing the facts of the case, remarks:

"This, fellow-citizens, is a case wherein we are sued for the dwarf nigger which that human old wretch, Chief Justice George Robertson, of Kentucky, hunted into our regiment. This curse-hound old villain, who has enriched himself by dealing in flesh and blood, has no notion of letting the last chattel go without making a raid on his property. He has no more *mothers to sell* any children, so *hard out* to brutal misuse as to have been driven out to be touched his purse in freeing his slaves, as it will some day touch his soul—if hell is a useless institution. The little we have, added to his slave-earned estate, would no doubt be balm to his brutal spirit.

"We told Judge Robertson and the Sheriff of Jessamine county, Ky., that they could never find a man mean enough in Wisconsin to prosecute their judgment. If they can, but we have to beg their *pardon—we were mistaken*; for they have found, in the *lower strata* of the Milwaukee bar, man willing to do the contemptible work. The name of the firm who have undertaken this nigger catching job in Stark, McMaster and Lynde, is very suggestive of *negro-hating*.

"It is almost incredible that such infamous proceedings should be tolerated at this late day in Wisconsin.

Fathers' Gratitude.

The other day we told the story of the poor girl, Matilda Griggs, who was recently sent to the reformatory prison in London. She obtained on the payment of $200 by John Ruskin, while $150 more were contributed by a gentleman unknown. The girl's father writes to the London *Telegraph*:

"But for your kind succession she must have remained in jail for a long time. Unless you are a father you cannot imagine what my feelings are when I found my poor girl had been cast into a prison, in addition to the suffering she had already undergone. My surprise at her release was only equalled by the joy it gave me. I had not seen my child for more than a quarter. All I can offer in return is my gratitude, which will dwell in the memory of my family as a just and noble conduct as long as life remains.

The remainder of the story had been invested for the girl's benefit. Her case is a striking commentary upon the present state of the English law.

IMPORTATIONS

Reported for the Philadelphia Evening Bulletin.

PALMYRA, Feb 20—Brig Ada, Hall, from Cuba; Schooner Ellen Stewart, Stewart, from Boston.

GOVERNORS OF OLDEN STEAMERS.

SAILS	FROM	FOR	
Cuba	Liverpool	New York	Feb. 15
Cuba	Liverpool	New York	Feb. 29
Arabia	Liverpool	New York	Feb. 8
Arabia	Liverpool	New York	Feb. 22
Nestorian	Liverpool	New York	Feb. 11
Nestorian	Liverpool	New York	Feb. 25
Scotland	Liverpool	New York	Feb. 12
Scotland	Liverpool	Portland	Feb. 12
Italian	Liverpool	New York	Feb. 19
Italian	Liverpool	New York	Feb. 26
Wm Penn	New York	London	Feb. 22
Ethiopia	New York	Glasgow	Feb. 22
City of Limerick	New York	Liverpool	Feb. 22
City of Limerick	New York	Liverpool	Feb. 22
Wyoming	Philadelphia	Savannah	Feb. 22
Wyoming	Philadelphia	Savannah	Feb. 22
Nevada	New York	New Orleans	Feb. 22
Nevada	New York	New Orleans	Feb. 22
City of Washington	New York	Liverpool via Halifax	Feb. 22
City of Washington	New York	Liverpool via Halifax	Feb. 22
Manhattan	New York	New Orleans	Feb. 22
Manhattan	New York	New Orleans	Feb. 22
City of Boston	New York	Liverpool	March 10
City of Boston	New York	Liverpool	March 10

BOARD OF TRADE.

PHILADELPHIA, FEBRUARY 20, 1868.

JOHN SPARHAWK, } Committee of Monthly Statistics.
WM. H. GRAHAM, }

MARINE BULLETIN.

PORT OF PHILADELPHIA—FEBRUARY 21.

SUN RISES, 6 21 | SUN SETS, 5 23 | HIGH WATER, 1 57

ARRIVED YESTERDAY.

Ship Sarah Sewall, Hall, Calcutta Dec 28, with hides and saltpetre to Caspar Wistar. Passed up to anchorage.

Steamer Susan, Lewis, Boston, with mdse and passengers to H Winsor & Co.

Schr Ada, Hall, Cuba, 15 days, in ballast to master.

Schr Ellen Stewart, Stewart, Boston, 4 days, in ballast to Jas Barratt and Lath Kelly on Ice Dam