

WHEN SCALES OF JUSTICE WAGGLE

PENALTIES VARY FOR SAME OFFENSE.

Depends on Which Magistrate Offender Faces Whether He Gets Fine, Imprisonment or Freedom.

"I can't keep my scales straight," said Justice Barlow, as she adjusted her eye bandage and felt her way out of a New York magistrate's court.

"What is the trouble?" asked a sympathetic friend. "The different penalties imposed by sixteen magistrates for the same offense," replied the goddess.

"My scales are so unbalanced that I can't get them fixed at the bureau of weights and measures, but there they told me that no weighing machine would keep level under the unequal loads thrown into the pan by the magistrates."

"Don't feel bad about it; your scales have always wobbled some," said the friend, reassuringly. "I go from court to court and find that I am expected to equate the same crime with a \$1 fine or suspended sentence, or \$5 or five days, or probation or six months in jail. It may be higher mathematics to harmonize these various sentences and call them equal. My old-fashioned balances won't stand for it."

"You won't resign your job?" said Justice's cory with some anxiety. "No, but I'm thinking of getting rid of the scales and investing in a roulette outfit. Then I may be able to whirl off penalties that will match the crime and the mood of the magistrate. I know, the victims of the wheel will know that they have a fairing chance."

A magistrate to whom the plaintiff of the bandaged goddess was referred intimated that Justice was talking through her fillet. She could not see the faces of the accused nor understand the infinite variety of circumstances which differentiated apparently the same. Educated in the narrow tenets of the Criminal Code, she was misled by her passion for abstract equality. The desire for a mathematical and procrustean administration of the law was a mistake. An ironbound uniformity would sacrifice the spirit in favor of the letter, would eliminate the quality of mercy and would far more injure than good. The severity of a judge has its legal limits, while any leniency that he may show is, from the humanitarian and progressive point of view, so much pure gain. Do not ask whether leniency flows through accident or good digestion; it is a profit, he declared.

Nevertheless, the administration of justice in a New York magistrate's court is almost as varied and picturesque as that which obtained in the caliph's court at Bagdad—barring such items as "Take off his head immediately" and "Let the prisoner be rewarded with a purse of gold and the accuser beaten on the soles of his feet." It is a raw spectacle to the uninitiated. In some cases the unsupported testimony of policemen contains a prisoner to the workhouse; in others the ability of a policeman to know the taste of beer is discredited. A line of "drunks" passes over the bridge and the magistrate snaps out fines ranging from \$1 to \$10. The penalty for a workman who calls another a "scab" may be six months in jail, while a wife beater may be dismissed with a reprimand. On the prostitute goes to the island, another gains her liberty on probation.

"CIRCUMSTANCES ALTER CASES." A faint glimmer of method underlying diversity of judicial treatment may appear to the spectator if viewed in economic and else. In the magistrate's fresh from his two weeks' vacation? Is he tired at the end of the afternoon's work and in a mood to chastise offenders with speed and severity? The magistrate himself says he has a system which guides his apparently erratic and chaotic decisions. For example, a "drunk" arrested in the morning is harshly dealt, while in the afternoon a decent citizen will be excused and receive only a small fine. The neighborhood in which an offense is committed counts for something. Street walking in a respectable avenue is apparently considered worse than when practiced in a "sporty" locality. A brand of beer is held to be comparatively a par with a gaudy quarrel uptown. There is also the question of punishment already received by the prisoner at the hands of the clubs of the police and the time he has spent in a cell previous to arraignment. The experienced judge is said to size up prisoners by many tokens, visible and invisible, which aid in determining the penalty. The faculties of intuition and mind reading come into play. Every magistrate is his own Münsterberg, and he has the power of translating his mental deductions into terms of punishment.

That there is some sort of consistency in judicial treatment is alleged to be shown by the fact that about half of the magistrates are known and named by the offenders as "hard judges" and the other as "easy judges." Among the alleged "hard" ones are accounted Magistrates Barlow, Corrigan, Ker-nochan, Cornell and House, while the "easy" list includes Magistrates Breen, Finn, Harris, Steiner, Butts, Walsh, Herrman and Moss. Magistrate Crane is said to be in a separate "half and half" class. If there is a profound basis for the hard and easy categories, it would seem to be a radical difference of opinion between the social and individual view of the malefactor. The average malefactor may not understand the philosophic grounds for divergence in magisterial treatment, but he knows the concrete fact, and he sometimes takes pains when captured to be arraigned before what he considers a "light" judge. It was suggested in the recent Page legislative inquiry that the police blackmail of street women must languish when easy magistrates are on the bench and must flourish during the dispensation of severe judges. In the former case an arrest means a fine, less than the amount of extrajudicial tribute in the latter case. It is worth considerable tribute to avoid being taken to court. Right here the conscientiously severe magistrate must have qualms as he reflects that one effect of his policy is to enrich the bluecoated vampire.

When judges act as committing magistrates in minor and felony cases, their decisions are said to be generally lenient. In these cases, when there is enough proof, the defendants are held for Special Sessions or for the grand jury. The District Attorney's office, which is interested only in the prosecution of such offenses, has no complaint against the magistrates' action. It is in summary judgments that widely divergent testimony is found. The tenor of the charges, such as intoxication, vagrancy, violations of corporation ordinances and the Bottle Act, and transgression of some sections of the sanitary code. Intoxication is punishable with a fine up to \$10 or five days in the workhouse, with a cumulative sentence for repetitions of the offense, until the sixth "flag" entails a mandatory commitment of six months. Disorderly conduct has three penalties—a fine not exceeding \$10, a commitment to the workhouse under the cumulative act or a bonding for good behavior, which last is an acknowledged farce. Vagrancy has a fixed penalty of six months in jail, but the magistrates frequently discharge defendants on the application of friends and have served twenty days' imprisonment. Any summary jurisdiction cases may be appealed to the Court of General Sessions, which may sustain or reverse the decision of the magistrate or order a new trial. Previous to 1886 it was held to be the constitutional right of any defendant in a police court to demand a jury trial. To-day the magistrates' courts and the Court of Special Sessions operate without jury, but the right of appeal is preserved.

SAMPLE VARIETY OF PUNISHMENT. Some striking figures showing "the variety of treatment accorded to delinquents" were given in the last report of the Board of Magistrates. The cases concerned were of women charged with disorderly conduct, keeping disorderly houses and violations of the tenement house law. Records were made of four courts within a period of eight months. The average of fines imposed varied from \$1.50 to \$5.42. The magistrates variously held for trial or convicted anywhere from 49 to 89 per cent of the defendants arraigned. There were groups of magistrates having similar percentages, the majority held or convicted being between 50 and 60 per cent. On convictions one magistrate sent 29 per cent to the workhouse and another 2 per cent,

One magistrate fined all defendants, while another fined only 22 per cent of them. Probation was meted to 24 per cent by one judge and to 1 per cent by another. Good behavior bonds were required in 2 1/2 per cent of the cases by one callip and in 36 per cent by another. A total of 7,361 cases were handled in this varying fashion. "All tribunals vary," testified Magistrate Barlow before the Page legislative commission. "There is no uniform method of treating the women who are brought before the magistrate of the night court," was asked. "No compulsory way."

"So there may be fifty-seven varieties?" asked Commissioner Francis. "If there were as many punishments."

"It amounts to each magistrate treating the matter in the way that—"

"Seems best to him," replied the witness, who further admitted that no attempt had been made to arrive at a uniform system.

Magistrate Corrigan agreed that absolute injustice was the result when, under the cumulative sentence law and the fancy of the magistrate, one woman, convicted ten times, but never sent to the workhouse, could be imprisoned only five days on the eleventh conviction, while a woman convicted and sent to the workhouse for five days on the first offense might be imprisoned for twenty days on the second offense.

"When certain judges are on the bench the streets are clear, and when they are not they are not clear?" was asked. "There is no question of that; yes, sir," was the reply.

"Isn't it fairly to be inferred that when a judge known to be severe is on the bench, perhaps it is best in some directions not to make arrests?" "I think that is probably true."

"And when lenient judges are on the bench that who comes out of a Fifth Avenue club intoxicated is bundled into a cab by his friends and sent home. In the poorer districts the drunken man is liable to five days on the island. I let many drunks go because they have already been locked up for a day or night, and the officers simply took them in for safekeeping. It is a hard problem how to deal with pushcart men, who are a nuisance but who are trying to live, and with husbands who deserve imprisonment but who cannot support their families if they are sent away. I don't believe in the severity of the cumulative sentence law. The larger discretion allowed the magistrates the better, despite the natural divergence in judgment. Fictitious arrests are made and no proper evidence is presented in many cases. The need of discretion by magistrates was shown in the case of two men who were brought into court for fighting alone in a room; next day seven alleged eyewitnesses turned up. The Court of Special Sessions complains now that we send too many cases to it for trial. I agree with Magistrate Butts that violators of corporation ordinances should not be arrested like regular criminals, but should be merely served with a paper by the policeman requiring them to appear in court at a certain time. I do not share, however, Magistrate Butts's view that the summons is an illegal atrocity and instrument of oppression. No doubt it may be abused, the same as a warrant. I have sent out one hundred and fifty summonses in a day, but perhaps do not issue three warrants out of the lot. The summons is useful in settling neighborhood quarrels and domestic skirmishes by a paternal admonition from the bench."

In the Court of Special Sessions the extremely irregular results in exiles cases are due less to judicial temperament than to the device of transfer and the congestion of the calendar. The drastic penalty for conviction is forfeiture of the

licor license, which means the loss of \$100 a month for the unexpired period of the annual license. When a conviction impedes, the liquor dealer has his case transferred to General Sessions, hoping that the grand jury will fail to indict or the trial jury fail to convict. In any event, \$90 a month will be saved by delay, and perhaps the entire period of the license will run out before an adverse verdict is made. Forfeiture only affects that particular license; another may be taken out in the name of wife, bootblack or bartender. There were 218 transfers out of 1,332 exiles cases last year. More beneficent still to the exiles violator was the congestion of the calendar, which caused two-thirds of the annual certificates to die a natural death in the pigeonhole of the clerk's office and the rest to have their lives shortened to a few months. Besides forfeiture of the certificate, there is a regular misdemeanor penalty of a fine up to \$50 and imprisonment up to six months. But no exiles violator has ever been imprisoned and the ordinary fine imposed is \$10. The calendar of the court is eight thousand cases behind.

FOR EPICURUS. The flesh of the camel, which was some time ago introduced into Paris, has not, to use a vulgarism, "taken on," as it was found to be somewhat tough and the importation has come to a sudden standstill. Now the Parisians are promised another novelty in the form of kangaroo imported from New Zealand in a preserved state. Another delicacy is the hump of the zebu. These meats, we learn from a Paris contemporary, are prepared with salt, pepper, spice and capsaicin, and are said to be especially pleasing to the palate, but are easy of digestion.

It is also a question, we learn, of introducing into the Paris restaurants grasshoppers in dried form and in paste. Do not exclaim (says our contemporary) be found to prepare those pretty "dumplings," which live on insects and by destroying crops. Moreover, great care is taken to some forelegs, which, proves, after all, food is only a matter of convention and habit.—London Globe.

NO ONE TO RUN IT. The agent had dived eloquently and at some length upon the superior merits of the heater he was trying to introduce into the homes of Saymouth, but the woman at the door had looked thoughtfully into the distance, away from his compelling eyes, as she listened.

"Why," said the agent, at last, "no child could run that heater."

"We have no children," said the woman, conclusively, as she shut the door and locked it.—Youth's Companion.

SHOT WIFE WHO HAD FALLEN 1,800 FEET

PROSPECTOR ACQUITTED BY CORONER'S JURY.

Prevented Suffering of Bride, Who Had Crashed Into Canyon, by Killing Her.

Utica, N. Y., June 5.—James McDowell, a gold prospector, a member of Apollo Lodge, 13, of Troy, N. Y., and of several higher organizations of Free Masons, and now at the Masonic Home at Utica, has led a life full of adventure and privation in prospecting in Alberta province, formerly known as the Northwest Territory of Canada, and in California and the Klondike regions.

The most tragic of his adventures occurred in the province of Alberta, where, owing to a terrible accident which befell his young wife, who was spending her honeymoon prospecting with her husband, he was impelled to end her suffering by shooting her through the heart.

The following is McDowell's story of the horrible affair: "In 1896 I staked three claims in the Peace River

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When it is recalled that the industry has been rather extensive in this country. In several of the Western States a business is made of catching the sturgeon, extracting the roe and shipping it to Russia, where it is treated and imported to the United States ready for the table. For many years this industry thrived at Sandusky, Ohio, the Lake Erie sturgeon having been supplied in thousands for the purpose. Up to 1880 the Delaware River furnished large quantities of the sturgeon roe for exportation. But the fishermen virtually exterminated this species of fish in their greed, and a Delaware sturgeon sight or catch in length is now said to be worth from \$100 to \$200. However, a means has been found to restock that river, and the industry will probably be revived. The question arises why the American people should be imposed on by a so-called imported article of diet at double cost. American skill and enterprise ought to be equal to purveying caviare from a shock of the trophy and I removed the caviare and brush from my wife's body, and he made a note of her injuries and described the revolver shot through her heart, and then we dug a grave and buried poor Fannie, placing a rude wooden slab at her head for want of a better grave-stone. Twelve days later we got back to Calgary, and both the officer and I testified before the coroner, whose jury not only held me blameless for shooting my insensible wife but extended their sympathy to me at my loss.

"To this day the trail is known as Calamity Trail. After the tragedy I could not bear the memory of it or to continue to live in that country, so I sold my claims and went to California."

AMERICAN CAVIARE. Persons with epicurean tastes will be interested to know that the production of real "Russian" caviare is likely to be resumed at Philadelphia and other points along the Delaware River. It may come as a shock to them to learn that the caviare sandwiches for which they have paid swollen prices in American restaurants originated as their central ingredient in streams and lakes in this country, where sturgeon do most abound. The fact is not unknown, however, Nor could it



ROAST SUCKING PIG AND WHISKEY FOR THE DEAD. Strange rites in the East London Cemetery: Provident food, drink and paper "money" for dead Chinese. The Chinaman pays great reverence to his dead, and continues to pay that reverence even when he is in an alien land. On the occasion illustrated some sixty Chinamen took part in the ceremonies in honor of deceased compatriots. A roast sucking pig, roast fowls, much fruit, cakes, rice and paper "money" were brought for the dead. Whiskey was poured on the graves and joss sticks were burned. On the back of the roast pig three crosses were cut.

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country, 112 miles north of Banff Hot Springs, National Park, Alberta, Canada. My claims were on the face of Castle Mountain, and the approaches were so rugged and precipitous as to be almost inaccessible. There was a very narrow, perilous trail which I spent a month in widening and making more secure, during which time I left my bride of a few months at Calgary, in the province of Alberta, about a five days' journey from my claims. My bride was lonely among strangers in Calgary, and frequently begged me to take her out to the claims and let her rough it with me, but I insisted that she was better among strangers for a while than she would be in the desolation of Castle Mountain, which was infested with wolves and other wild beasts, besides being dangerous of access. No horse, cayuse, bronco or mustang could travel that narrow, perilous trail. Mules and burros were the only pack animals that could keep their feet. Burros, however, could not stand the journey for the necessary length of time. Although sure-footed, patient and enduring, they were small and frail, and with a one hundred pound pack could not travel for two consecutive days. Should they travel one day they would have to rest two before proceeding. Mules were scarce and dear, but I managed to secure three, and these I packed with tools, provisions and materials for building a log cabin. "This but I built in a clearing I made some two and a half miles from my claims—as near to them as I could find suitable ground. Then, having built my cabin, I returned to Calgary and loaded my mules with household effects, provisions, tools and a medicine chest. Meanwhile, my young wife was becoming more and more impatient and eager to join me.

RODE ALONG EDGE OF CANYON. "When I had my cabin furnished and had bolstered up the trail by which it was reached, I again returned to Calgary and found my wife prepared to start. Having purchased a few more supplies, we started for our destination on July 4, 1888. My wife was delighted with the cabin, and more than ever anxious and determined to visit the claims, which, as I have said, were two and a half miles by an almost inaccessible trail further up the mountain side. One day she was so persistent that I promised to take her, and we started on our mules soon after daybreak on July 17, making our way slowly and with extreme caution. We made poor progress, as we had to ride on the extreme edge of Albert Canyon.

"My wife was picking her way some ten yards ahead of me at a point where the abyss of the canyon is eighteen hundred feet below the narrow trail. It was about 8 a. m., and the sun was beating down fiercely upon us. I do not know what caused the tragedy which followed, but I think the mule was stung by either a hornet or a yellow jacket. "At any rate, I was startled by an agonized roar from the mule and a terrified scream from my wife, and as I looked up from the trail and glanced ahead I was horrified to see the mule rearing and plunging and entirely beyond my wife's control. "I leaped from my mule and ran forward to her assistance, but before I had covered half the distance mule and rider had plunged down into the abyss and bounded from rock to boulder, and were finally lost to view in the tangled underbrush nearly two thousand feet below. "I flung myself headlong at the extreme edge of the precipice and started as I witnessed the awful descent of my wife, and once in my intense excitement I came near pitching head first down the canyon myself. So narrow was the trail that my own mule could not turn around, and therefore we could not retrace our steps. I abandoned my animal. "The only way I could get to the bottom of Albert Canyon from where I lay on my breast, sagging wildly into its depths, was to ascend still higher toward its mouth and then work my way cautiously downward. I searched for twenty-eight hours, and then came across the carcass of the mule, smashed and crushed into a shapeless mass. Above it hovered—carrion birds, and about it I thought I saw the track of a wolf. "I walked in a circle around the body of the mule, gradually increasing the radius. I had eaten nothing in over thirty hours, and was feverishly thirsty and feeble from climbing and searching.