



Public Safety  
Canada

Sécurité publique  
Canada

## ARCHIVED - Archiving Content

### Archived Content

Information identified as archived is provided for reference, research or recordkeeping purposes. It is not subject to the Government of Canada Web Standards and has not been altered or updated since it was archived. Please contact us to request a format other than those available.

## ARCHIVÉE - Contenu archivé

### Contenu archivé

L'information dont il est indiqué qu'elle est archivée est fournie à des fins de référence, de recherche ou de tenue de documents. Elle n'est pas assujettie aux normes Web du gouvernement du Canada et elle n'a pas été modifiée ou mise à jour depuis son archivage. Pour obtenir cette information dans un autre format, veuillez communiquer avec nous.

This document is archival in nature and is intended for those who wish to consult archival documents made available from the collection of Public Safety Canada.

Some of these documents are available in only one official language. Translation, to be provided by Public Safety Canada, is available upon request.

Le présent document a une valeur archivistique et fait partie des documents d'archives rendus disponibles par Sécurité publique Canada à ceux qui souhaitent consulter ces documents issus de sa collection.

Certains de ces documents ne sont disponibles que dans une langue officielle. Sécurité publique Canada fournira une traduction sur demande.

HV  
9510  
.K5  
R6  
1914  
C.2

LIBRARY  
MINISTRY OF THE SOLICITOR  
GENERAL OF CANADA

OCT 24 1988

BIBLIOTHÈQUE  
MINISTÈRE DU SOLICITEUR  
GÉNÉRAL DU CANADA  
OTTAWA, ONTARIO  
CANADA K1A 0P8

Copyright of this document does not belong to the Crown.  
Proper authorization must be obtained from the author for  
any intended use.

Les droits d'auteur du présent document n'appartiennent  
pas à l'Etat. Toute utilisation du contenu du présent  
document doit être approuvée préalablement par l'auteur.

*e-6*  
4 GEORGE V.

SESSIONAL PAPER No. 252

A. 1914

HV  
9510  
·K5  
R6  
1914  
C.2

*Canada, Royal Commission on Penitentiaries,*

/ REPORT

OF

THE ROYAL COMMISSION

ON

PENITENTIARIES

PRINTED BY ORDER OF PARLIAMENT.



OTTAWA

PRINTED BY J. DE L. TACHÉ, PRINTER TO THE KING'S MOST  
EXCELLENT MAJESTY

1914

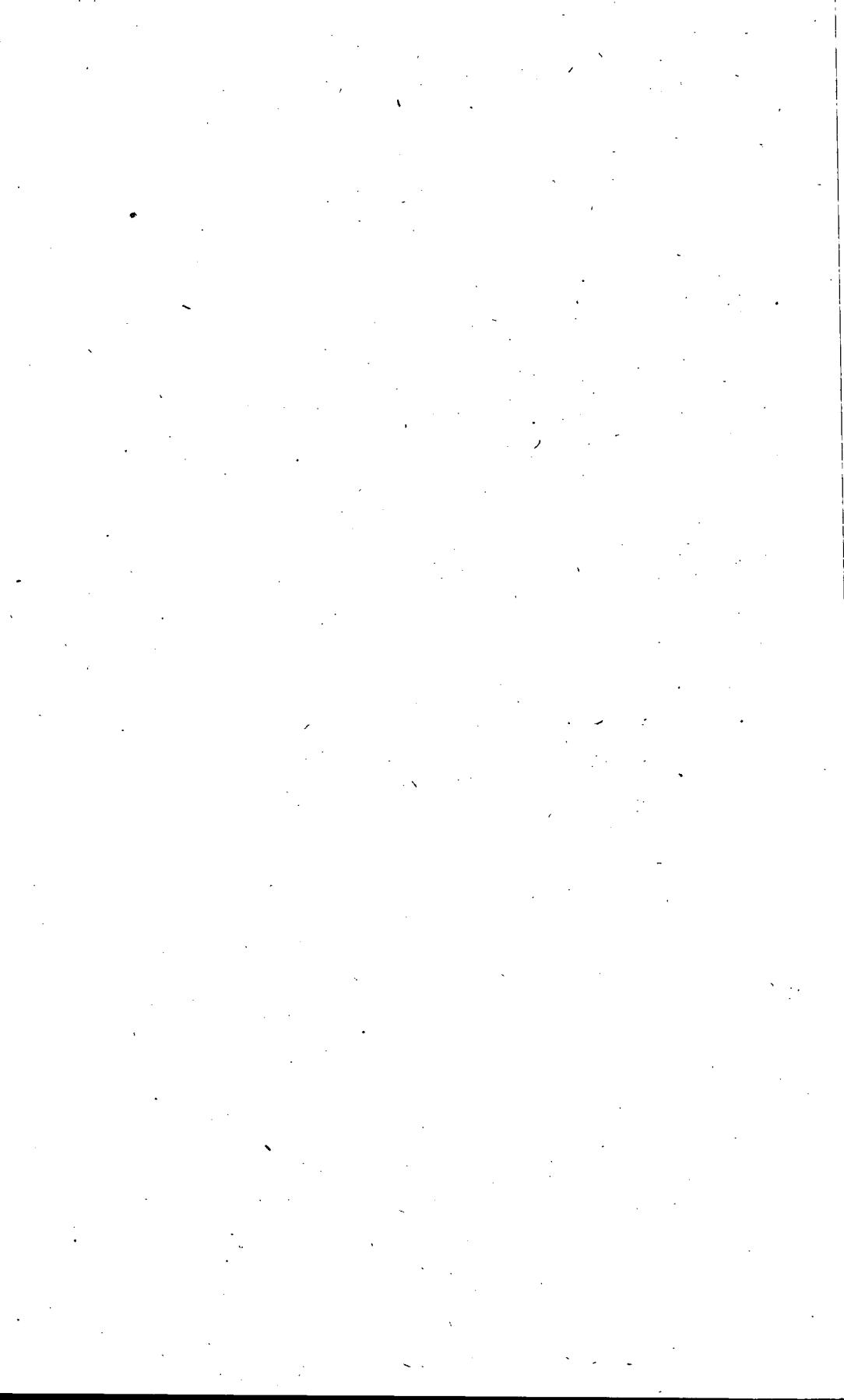


**CONTENTS.****I—Introduction.**

- Terms of Commission, etc.
- Purpose of Penitentiary.
- Buildings.
- Convict's Experience.
- Women's Department.
- School.
- Hospital and Insane Ward.
- Punitive Features.
- Punishments.

**II—Conduct of Officers and Employees.****III—Punishment or Reform.**

- Origin of Prison Reform.
- Classification.
- First Offenders.
- Industries.
- State Use System.
- Payment of Prisoners.
- Indeterminate Sentence.
- Parole.
- Management of Penitentiaries.
- Recommendations.



# REPORT OF ROYAL COMMISSION ON PENITENTIARIES.

HONOURABLE C. J. DOHERTY,  
Minister of Justice,  
Ottawa, Ont.

Sir,—Your Commissioners, appointed by Order in Council, August 25, 1913, to investigate the state and management of the Kingston Penitentiary, &c., have the honour to present their report.

The terms of the commission, as set forth in the report of the Committee of the Privy Council, are as follows:—

The Committee of the Privy Council, on the recommendation of the Minister of Justice, advise that GEORGE MILNES MACDONNELL, K.C., of Kingston; FREDERICK ETHERINGTON, M.D., of Kingston, and JOSEPH PATRICK DOWNEY, of Orillia, be appointed Commissioners under the provisions of Part II of the Inquiries Act, to investigate and report upon the following matter:—

- (a) The state and management of the Kingston Penitentiary;
- (b) The conduct of the officers and employees of said penitentiary, so far as the same relates to their official duties, and

(c) Generally, the subject of the conduct and administration of penitentiaries, including such methods as may conduce to the permanent reformation of the convicts, and, without prejudice to the punishment which convicts should properly undergo and without undue burden upon the public funds, tend to mitigate as far as may be found possible the sufferings entailed by their confinement upon those dependent upon them.

Provided that the inquiries under paragraphs (a) and (b) shall not extend back over a longer period than five years, except insofar as the commissioners may deem it desirable, in the public interest, to inquire into any particular matter or matters antecedent to such period.

Pursuant to the foregoing instructions, we began our sittings at Kingston on September 19, 1913, and continued them at intervals until March 27, 1914. The witnesses examined included the Inspectors of Penitentiaries, officers and guards and ex-employees of the Kingston Penitentiary and several inmates of the prison. Sessions were also held at Toronto, where evidence on the general question of prison management was adduced.

To acquaint themselves with the methods employed in other prisons, your Commissioners visited some of the leading penal institutions of the United States. These included the State Prison at Stillwater, Minnesota; Farm Colony, Cleveland, Ohio; State Reformatory, Mansfield, Ohio; House of Correction, Detroit, Michigan; State Reformatory, Concord, Mass.; State Prison, Charlestown, Mass.; Women's Reformatory, Framingham, Mass.; State Prison, Auburn, N.Y.; and State Reformatory, Elmira, N.Y. We also had the privilege of inspecting the Provincial Reformatory at Guelph. At all these institutions, your Commissioners were treated by the wardens and other officials with the greatest kindness and courtesy and every facility was cheerfully afforded them for prosecuting their investigation. Profitable interviews were also had with leading authorities not actually engaged in prison administration. Among these, we may mention Dr. Charles R. Henderson, Esq., American

4 GEORGE V., A. 1914

Representative at the International Prison Congress; Dr. Healy of the Juvenile Psychiatric Clinic, Chicago; Hon. Harris B. Cooley, Commissioner of Public Welfare, Cleveland; Frank M. Randall, Chairman of Prison Commission, T. M. Osborne, Chairman of New York Prison Commission, Dr. E. Stagg Whitin, Secretary New York Prison Commission; Hon. W. J. Hanna, Provincial Secretary, Ontario; S. A. Armstrong, Esq., Assistant Provincial Secretary; Dr. Bruce Smith, Inspector of Prisons and Hospitals; Dr. C. K. Clarke, Superintendent, Toronto General Hospital; Major Fraser of the Prisoners' Aid Department of the Salvation Army, and Colonel Irvine, Warden of the Kingston Penitentiary.

The views of organized labour on the industrial phase of the question were ably presented by J. C. Watters, Esq., President of the Dominion Trades and Labour Congress; James Watt, Esq., President, and R. J. Stephenson, Esq., delegate of the Trades and Labour Council of Toronto. To all these gentlemen, your Commissioners desire to return sincere thanks for their valued information and assistance.

#### THE PURPOSE OF KINGSTON PENITENTIARY.

On the 6th of March, 1834, the Parliament of Upper Canada passed an Act "for the maintenance and government of the Provincial Penitentiary opened near Kingston." An extract from the preamble of this Act reads as follows:—

"Whereas, if many offenders convicted of crimes were ordered to solitary imprisonment, accompanied by well-regulated labour and religious instruction, it might be a means, under Providence, not only of deterring others from the commission of like crimes but also of reforming the individual and inuring them to habits of industry, etc., etc."

The institution remained under the control of the old Provincial Parliament until Confederation, when it was assumed by the Federal Government and became a prison for long-term offenders. From the date of its establishment down to the present time, the terms of the Act, as far as the treatment of the inmates is concerned, appear to have been fairly well carried out. Solitary imprisonment, labour and religious instructions have been the only agencies employed for the reclamation of the unfortunates. The first of these three has always been a prominent feature of the discipline. Probably in no prison on the continent do the working population spend as many hours alone in their cells as they do in our Dominion penitentiaries. They leave their cells to work and they return to them to eat and meditate and sleep. On Sundays the single break in the monotony of life in the cell is the hour of Divine service, and when a holiday falls on Monday that hour is the only relief enjoyed for two whole days and two nights. We feel, therefore, we are justified in saying that the theory of "solitary imprisonment" as a deterrent and a reformative agency has been given a thorough trial in our penitentiaries.

Labour, the second corrective influence stipulated in the Act, has also been rigidly insisted upon. Years ago, when there was a system of productive industries in the penitentiaries, the intention of the Act to provide "well-regulated labour" was, no doubt, fairly carried out. The abandonment of these industries has made it physically impossible to employ the population at "well-regulated labour." The only excuse for the stone pile, for the product of which there is no pressing need, is that there is no other way of keeping the men at work. The idea that the prisoners must work at hard labour all the time they are outside their cells, even if the product of their labour is of no value, has been carried to the extreme. It was urged by one of the inspectors, as an excuse for not giving a reasonable period to the education of the illiterate during the day time, that the school would interfere with the labour of the prison. If an hour

## SESSIONAL PAPER No. 252

or two every day were given up to school for some and exercise in the yard for others, less stones would be broken, 'tis true. But some men, whose spirits are being crushed, and whose manhood is being debased, might be saved to future good citizenship if a civilizing help in the way of a school or a breath of the open air each day could be introduced to brighten their lives.

The religious instruction contemplated by the Act has been faithfully given by a Protestant and a Roman Catholic chaplain. Worthy and devoted men have been and now are in charge of this work, and insofar as spiritual ministrations can have a good effect amid conditions calculated largely to develop moroseness and resentment, they are doing good work.

## THE BUILDINGS.

The buildings of the Kingston Penitentiary are of limestone, taken from the institutional quarries. The main building, which is situated in the centre of the plot, has three cell blocks—east, west, and south wings—completed. The north wing, now occupied as officers' quarters, is to be reconstructed for a cell block. The east and west blocks have 152 cells each; the south, 144. Attached to the east wing is an hospital with 36 cells. On the extremity of the west wing are the kitchen and bake-room, and above the latter the Protestant and Roman Catholic chapels. The female prison is in an enclosure west of the main entrance, and is well isolated from the other buildings. South of the main building are the workshops, built in the form of a cross. These comprise, in the west wing, a stone-cutting shop on ground floor, tailorshop and shoe shop above. In the east wing is the blacksmith shop with the carpenters, tinsmiths and painters on the second floor. The boiler-house and dynamo rooms occupy the north wing; and the laundry and change rooms the south. On the west of the rectangle separating the cell houses from the shops is the hospital of the insane, with 46 cells; while the prison of isolation, with a capacity of 114, is on the opposite side of the yard. Behind the prison of isolation the stone-breaking shed is situated.

In the interior construction, what is known as the Auburn system has been closely followed. The cell blocks are in the centre, with the corridors on the outside. The chief argument in favour of the inside cell is the added security which two walls, or sets of bars, afford. From the hygienic standpoint, outside cells are to be preferred, as they are more easily ventilated and have direct sunlight instead of being lighted from the corridor. The only example of the outside cell construction that your Commissioners were privileged to observe was at the Provincial Reformatory at Guelph, which promises to become the model prison of this continent.

The cells throughout the institution have, under the direction of Inspector Stewart, been enlarged, proper sanitary equipment installed, and the lighting and ventilation improved. With the exception of the hospital and asylum divisions, which are dealt with elsewhere, the cell blocks are as good as the structural character of the building will permit. All the cells were clean and the bedding properly looked after. The cells in the prison of isolation are superior to those in the central cell house.

The conditions in the workshops were found to be fairly satisfactory. Like the rest of the buildings they are old style structure and their lighting and ventilation could be improved. The ceilings are high and there was no evidence of congestion of workers in any particular shop. To this statement, exception must be made in the case of the stone-breaking shop. Every feature of that department was bad. The atmosphere was charged with stone dust and there was apparently no adequate provision for carrying it away. The closets, situated at one end of the buildings, were poorly constructed and foul-smelling. Over seventy prisoners, some of them mere boys, were at work in this department when the Commissioners made their visits. They were arranged in rows, facing each other, and the stone to be broken was piled in a long heap between them. As the raw material was reduced to the required size, fresh supplies were wheeled in by tenders from the yard. There was perfect order

4 GEORGE V., A. 1914

among the men. Not a word was spoken. But the monotonous raps of the hammers, the sullen, whitened faces of the forms, half crouching over their unhealthy, unprofitable, degrading tasks, were a mute but powerful denunciation of the system that permitted, or rendered necessary, such an outrage. Nothing has been said, nothing can be said, in defence of this twentieth century reproduction of the unceasing moil of the galley-slave.

#### A CONVICT'S EXPERIENCE.

To give an idea of the regulations of a Canadian penitentiary, it might be well to follow a convict through some phases of his experience. When he arrives at the prison, he is taken before the warden for an interview and then handed over to the chief keeper. That officer records his measurements and other physical characteristics in a book kept for the purpose. The personal belongings, jewelery, money, etc., of the prisoner are inventoried. Then he is put in charge of the chief keeper's officer for a bath, hair crop and shave. Finally he is dressed in the prison garb with his number on the back of his coat.

Assigned his cell, the convict takes his place in the routine of the prison. He rises at six-thirty in the morning, washes himself, makes his bed, and at seven marches out for breakfast. This he receives in a tin vessel as he moves with the line past the serving boards in the kitchen. Returning to the cell, he eats his meal with a spoon. Knives and forks are not allowed. As he goes out to work, he deposits his dish and spoon in the kitchen. At noon he takes up his dinner as he passes to his cell. There he pulls the meat apart with his fingers, eats it, and carries back the empty vessel to the kitchen as he goes to work. When he quits his labours at night, the performance is repeated. He snatches his supper on his way to the cell and there remains until the following morning. Silence is the rule throughout the day. He must not speak to an officer or fellow convict while at work "except from necessity or with respect to the work." He must not speak nor look around while in line and of course he has no one to speak to in his cell. Thus the man's life in prison is divided between the cell and work shop or stone pile, with not even a break in the monotony at meal time. In his cell he is not allowed pictures or photographs of his relatives; he is not allowed to have or read a newspaper, but he is furnished books from the prison library. If he is unable to read, he must put in fourteen hours of each day alone, sleeping or meditating. On Sunday, the whole day—with the exception of one hour for Divine service—is spent in the cell, and when a holiday falls on Monday, he celebrates it with an additional twenty-four hours of solitary confinement.

A convict whose conduct is satisfactory may receive visits from members of his family once in three months and may write to members of his family once in two months. He may "receive letters from relatives or friends, but such letters must be short and devoted exclusively to family or business matters." No enclosure such as newspaper clippings, pictures, cards, stamps, etc., are delivered. Christmas boxes, hampers or packages of fruit, food, or confectionery are not permitted to be sent to the prison."

Thus it will be seen the daily round of the penitentiary offers little to stimulate or encourage the well-disposed convict. On the contrary, its silence and solitude must breed moroseness and resentfulness. One convict said to us (page ) : "If a man is battered down until he feels that he is nothing much more above the beast, how can you expect him to go out feeling better? It requires a very strong will to keep you from feeling that you are finished."

The remission of sentence for good conduct offers some encouragement. This is determined by the warden, and is not allowed until after the expiry of the first six months of imprisonment. A report for any infringement of the regulations may lose the prisoner his remission.

#### THE DEPARTMENT FOR WOMEN.

The dozen women prisoners are housed in a new and suitable building, separate and distinct from all other buildings. It appears that this department is conducted

## SESSIONAL PAPER No. 252

in a satisfactory manner. Yet it should be stated that the interests of all concerned would be best served if these few inmates were transferred to an institution for women. It may be possible that, as has been suggested elsewhere in this report, in connection with certain other classes, arrangements might be made with the provincial authorities for the custody of all female offenders.

## THE SCHOOL.

The indifferent attempt to improve the illiterate at Kingston Penitentiary can scarcely be dignified by the name of school. On four days in the week, the convicts who are disposed to attend class are lined up, when they have finished their dinner at 12.15, and marched to the school. They have to be back in their cells at one o'clock, so that half an hour, or at most not more than forty minutes, is available for their instruction each day. The reasons given why the time for school is taken from the noon rest hour are: (1) That the judge who commits a man to the penitentiary 'condemns him to hard labour and sentences him not to go to school,' and (2) that it would be discrimination to send some convicts to school during working hours and leave the others at their regular labour (Inspector Stewart, page 1). This view is supported on the theory that it is not the duty of the State to give education to the illiterate who find their way into prison; they are sent to prison to labour and they must put in the regular hours of work, whether there is any value in the product of their labour or not. From this view your Commissioners emphatically dissent. The lack of elementary education may have been a contributing factor to the downfall of many prisoners. At any rate, it is a serious handicap in life and must be felt with particular severity by the man who, quitting prison and weighted with the burden that incarceration has left upon him, is anxious to make an honest living. What we have said elsewhere must be repeated here: The State's duty to the prisoner does not end with his punishment; it should employ all reasonable means to reform him and make him an honest contributor to the wealth of the nation, instead of continuing a charge upon its financial resources. On no higher ground than the material interests of the State, the education of illiterate young prisoners is, therefore, desirable. But the humanitarian side of the question cannot be ignored. If we are to maintain our penitentiaries as schools of crime, all education—intellectual and industrial—should be barred. Ignorance and inefficiency and a penitentiary experience must broaden the way that leads to a confirmed criminal career. On the other hand, the school in prison has opened the door of hope to many a convict. When he learns to read and write he is laying the foundation of a self dependence that, strengthened by honest resolves, will be a strong inspiration to him to live a better life. Fail he may, and fail many of them do, but it is our duty to give him a fair chance in the hard struggle for rehabilitation.

There does not appear to be much force in the objection that a school during working hours means discrimination against those who do not require education. The prejudice against special treatment for any prisoner or class of prisoners has existed since the days of the treadmill. Then all went through the same monotonous daily grind. The inauguration of diversified prison industries began the era of discrimination, for it became necessary that some men should do disagreeable work while others were engaged at attractive occupations. There is discrimination in every one of our penitentiaries to-day, and this discrimination becomes more pronounced if we are to offer any encouragement to the man who is anxious to improve himself and adjust his future life to the requirements of law and order.

A school during the afternoon, taking two classes each day, would meet the situation. The teacher's time might be occupied with other duties during the morning. These are details, however, that can be easily worked out, once it is decided to establish a proper school in each penitentiary.

4 GEORGE V., A. 1914

## THE DEPARTMENT FOR THE INSANE.

On the occasion of their first visit to the Insane Ward, your Commissioners were surprised to find, on a beautiful September afternoon, some forty patients congregated in one room. When the guards were asked why these men were not taken out for exercise, no satisfactory reply was forthcoming. This and subsequent evidence seemed to indicate that in relation to the care of the insane, the course followed was the one which gave the least amount of trouble to those in charge. Indeed, a cursory inspection and inquiry were sufficient to show that in regard to accommodation, medical oversight and general care and treatment, a thorough investigation was needed. In order to obtain an expert opinion upon these matters, Dr. E. H. Young, Assistant Superintendent of Rockwood Hospital for the Insane, was engaged to make a special report. From this report, we quote:

*"Condition of Insane Ward.*

"The building in which the insane are at present housed is, in my opinion, entirely unsuited to the purpose for which it is used. It is defective in structural arrangement, lacking in nursing and medical facilities and devoid of means of providing occupation. The physical condition of the patients shows the effect of improper diet, insufficient exercise and fresh air. Each patient is locked in his cell, without proper sanitary conveniences from 4 p.m. to 7 a.m.; the door of each cell is simply a grating, and there is no provision for the isolation and care of noisy and filthy patients. There is no provision for the proper classification of patients, all of whom are gathered together in a large day room, the acute with the chronic, the old and helpless with the impulsive and violent, the lucid with the demented."

As long ago as 1886, a British alienist, Dr. Hack Tuke, made the observation that "for criminals of the worst class this building is no doubt admirably suited, but it is astonishing that it should have been constructed for lunatics in recent times."

The Warden, in his annual report for 1908, described the conditions in these words: "To this miserable abode, the most antiquated of our prison structures, are consigned the irresponsible unfortunates whose crimes led to insanity or whose insanity led to crime. The cells remain as they were originally constructed, while every other cell-block has been demolished and rebuilt with compartments twice the size of the old one and equipped according to modern ideas of sanitation and comfort. This ward for the insane runs parallel with the prison wall between which and the buildings runs the exercise yard allotted to the inmates. Stone wall to the right of them, stone wall to the left of them, stone wall in any direction they may look unless they look upward to the sky. In winter and during inclement weather, the few hours they are released from their cells they spend in one large, dingy, unsanitary room where they mingle promiscuously, with no entertainment except reading and playing checkers. They have no hospital oversight, no trained attendants, nothing in fact but prison police who lock and unlock the doors and follow them into the yard and back again to their cells in endless, monotonous routine. The medical superintendent, who is prison surgeon, makes a hurried call once a day (Sundays excepted), this constituting the whole care and treatment of the criminal insane."

There was no attempt made in any quarter to question the truth of these statements.

From Dr. Phelan's examination *re* Dr. Young's report. Page :

"Q. To the substance of this report you have no objection?—A. To the main substance I have no objection."

## SESSIONAL PAPER No. 252

And in a communication to the Commission the surgeon states:—

"I also agree with the remarks in reference to the unsuitable character of the present building and its surroundings and the impossibility it presents to the proper housing, segregation and treatment of the insane convicts."

Further, he says:—

"It must be admitted that the system and conditions at present existing in the Kingston Penitentiary generally are in a great measure behind the times, and that such reformation must necessarily be made as will be in consonance with improved methods."

Inspector Stewart tacitly admits the correctness of these views:—

"Q. The building in which the insane are housed is entirely unsuited for the purpose for which it is used?—A. I did not think it was suitable and I believe suitable provision cannot be made within the walls of the penitentiary.

"Q. Don't you think you should have urged more strongly the improvement of these conditions?—A. I do not think insane men should be kept in there." And again he says:—

"I admit they (i.e., the conditions) are not right, but I do not believe the men (i.e., insane) should be here at all."

There is admittedly a close relationship between mental deficiency and insanity and crime. The proportion of defectives shown by an investigation reported by the Russell Sage Foundation in the Reformatories of New York, New Jersey and Illinois, is thirty per cent. In the Bedford Reformatory for women, the Industrial Schools of Lancaster, etc., and Baltimore, one-half the number of inmates is found to be defective. In our country, this aspect of the question of crime has received no consideration. No care is taken to ensure the detection of defectives and no provision is made for their custody or training. They are not understood by the court or prison officers. They are sentenced, discharged and resentenced, at great expense to the country. When free they reproduce their kind, often in large numbers—in prison they prove a source of constant worry and render the maintenance of prison discipline difficult or impossible.

As a result of the findings of a Royal Commission, the British Parliament has enacted legislation which provides for the custody of this class. See Mental Deficiency Act, 1913, sections 8 and 9, which provide:—

"that in the case a convicted criminal is found, on medical evidence, to be a defective within the meaning of the Act, the Court may order him to be detained in an institution for defectives, and in the case of criminals undergoing penal servitude, who are found on medical evidence to be defective, they may be placed in an institution for defectives."

These questions press for consideration and the first step should be the employment of a physician trained in psychiatry, who could advise the Government in regard to these and associated questions.

Your Commissioners unreservedly condemn the provisions made for the care and treatment of the insane at this institution, the only one in the country which is supposed to be especially equipped for such a class. The conditions are primitive, indeed. "It is defective in structural arrangements, lacking in nursing and medical facilities, and devoid of any means of providing occupation." This is a bald statement of fact, and many an unfortunate must have been deprived of a fair chance of recovery by reason of the State's unpardonable neglect.

Further, we find that the insane inmates have not received the attention which their state demanded, and, in some instances, they have been subjected to unjustifiable punishments.

Proof of the first particular is given by the warden in his report of 1908, quoted above, and in the evidence of the surgeon (page ) :—

4 GEORGE V, A. 1914.

"Q. What special treatment are the insane convicts in the prison receiving?—A. They are not receiving any special treatment.

"Q. Are they receiving any different treatment from other convicts?—A. They are receiving just about the same treatment.

"Q. And any different treatment they receive would be from a disciplinary, rather than from a medical standpoint?—A. Yes."

Page :—

"Q. Do you only see those who report for the sick parade?—A. I ask for the others, and ask about their symptoms and anything to inform me.

"Q. What is the average number a day that you see?—A. I could not tell you.

"Q. We could tell from the book?—A. Yes.

"Q. Two or three a day seems to be the average?—A. Yes.

"Q. How often do you see every man?—A. I do not see them very often.

"Q. How do you keep in touch with the progress of the disease?—A. I inquire regarding their symptoms.

"Q. From whom?—A. The keeper.

"Q. What does he know?—A. He knows their conduct and it is by conduct that we judge the insane condition of any man, and only by conduct."

From this evidence, it is obvious that the forty odd insane patients have not been receiving the care and attention which their condition demanded. In this connection it must be noted that for the added duty of treating the insane the surgeon receives the sum of \$1,000 yearly. On the other hand, it may be said in extenuation that this system has been in operation many years, and throughout the whole period had been accepted, with apparent approval, by the Department of Justice and its inspectors.

There was evidence to show that insane patients had been punished by tubbing. "Tubbing" consists of forcibly placing a convict in a bath filled with cold water, and holding him there at the discretion of the operators. An attempt was made to explain away the tubbing as a necessity, where the victims were in a filthy condition and refused to bathe; also as a substitute for the continuous bath used in hospitals for the insane to quiet excited cases. It was made abundantly clear to your Commissioners that the tubbing at Kingston was resorted to neither for sanitary nor therapeutic reasons, but as a punishment. There was no evidence to show that the tubbing had official sanction. The guards said they acted without instruction and on their own responsibility. The only official act pertaining to the practice appears to have been a notice from the surgeon, prohibiting it. Explaining this, the surgeon stated that he had heard rumours of tubbing and had thought well to issue the warning.

Apart from the inhumanity of the punishment, this tubbing performance reveals the management of the department for the insane in an unenviable light. Poor creatures, bereft of their reason, are surely entitled, even if they are criminals, to be left to the guardianship of men with some instincts of humanity.

It being generally agreed that the condition of the insane is and has been for years altogether unsatisfactory, the question "Who are responsible?" demands an answer. The responsibility falls primarily upon two men, the surgeon and the inspector. The former, in his annual reports, should have given expression to views such as he presented in his evidence before the commission. This was clearly his duty and would have relieved him of responsibility, but unfortunately a perusal of his reports leaves one with the impression that the state of the insane left nothing to be desired.

Year after year, Inspector Stewart accepted, without adverse comment, the existing conditions. When questioned upon this matter his answer is unsatisfactory.  
(Page ) :—

"If it were in my report it would not receive any attention. If you show me any report they paid attention to, then I will take the blame."

## SESSIONAL PAPER No. 252

It may be fairly said that the manner of dealing with the insane is a striking criticism, not only of the individuals concerned, but also of the system of administration which has permitted such abuses to go unchallenged all these years.

The Government should employ forthwith a competent alienist, in order that he may undertake the immediate amelioration of the conditions at Kingston Penitentiary and that he may advise the Government in regard to these technical matters.

Steps should be taken to make suitable and permanent arrangements for the care and treatment of the insane, according to modern practice.

Two plans are available: It is possible that arrangements may be made with the Provincial Governments for the care of the criminal insane. This is already done in Western Canada. The practicability of such a plan does not come within the scope of our investigation. In favour of this scheme, it may be pointed out that the provinces have the entire equipment necessary for the care of the insane. Transportation difficulties would be eliminated if this plan were adopted. On the other hand, the heads of the provincial institutions would probably oppose this suggestion. In recent years, the public has come to regard the institutions for the insane as hospitals and there would be a decided sentimental objection to the admittance of those who had been convicted of crime. In reality there is no valid objection. In practice the mentally unbalanced citizen, who commits a crime, is sent to the provincial hospital if his derangement happens to be detected before he is sentenced—and to the insane ward at Kingston if his disease be not recognized until he has been for a time incarcerated.

The alternative plan which has been followed in other countries and which we think must be adopted here, is for the Dominion to build, equip, and man an institution exclusively for the criminal insane, separate from a general prison both in site and administration. It may be thought that there is not a sufficient number of criminal insane, coming under the purview of the Federal authorities, to warrant such an undertaking, but there is not the least doubt that scattered through the prison population, is a large number whose mental state warrants their removal to an institution such as is proposed. That this is the case at Kingston, we have ample proof.

#### THE HOSPITAL AND MEDICAL MATTERS GENERALLY.

The examination of the newcomer, both on the mental and physical sides, is conducted in a most superficial manner. There are practically no records. An individual who is to be incarcerated for a term of years should receive a thorough examination, the details of which must be carefully recorded if the labour is not to be lost. This is necessary for two reasons: First, in order that the present or subsequent illness may be treated intelligently; and, second, that the general prison population be protected against communicable disease.

For many reasons, the examination of the prisoners mentally, should be a searching one. If this had been the practice, a deal of trouble would have been avoided. As an example of what is meant, the following case may be cited:—

Convict No. P. 108. Age, 30 years.

First sentence in 1906 for rape—4 years and 25 lashes.

Discharged in 1910 and was recommitted for a similar offence within three months, with a sentence of 20 years and lashes.

Between November, 1910, and September, 1913, there were made against this man no less than sixty-seven reports for breaches of regulations. Many of these offences were visited with severe punishment, even to hosing with cold water at 60 pounds pressure. A good deal of his time has been spent in the punishment cells and in the prison of isolation.

An examination by one competent would have disclosed the fact that this was an unfortunate imbecile (page ) and as such not responsible for his actions, and that any endeavour to make him conform to ordinary prison discipline by the inflic-

4 GEORGE V., A. 1914

tion of punishment was futile—and much worse. It may be added that this is by no means an isolated case.

Further, we find that the medical service has not been sufficient. If the health of 500 inmates is to receive adequate consideration more than one or two hours' daily attendance is necessary.

#### HOSPITAL.

It is difficult to conceive what characteristics of the building set apart for the care of the sick at the Kingston Penitentiary warrant it being designated "hospital." There is nothing in the building or equipment which justifies the name. Some 36 inside cells, inferior in their arrangements to the cells occupied by the healthy prisoners, house those whose illness is serious enough to make necessary their admission. In these cells there is not effective ventilation, and save for an obsolete bucket for the excreta, sanitary appliances are absent. The two baths and water-closets are hopelessly out of date. Under no conditions are the patients permitted to have exercise in the fresh air, nor indeed to leave their cells for any purpose.

The operating room (so-called), where serious cases have been, and must be dealt with as they arise, has an old wooden table but no other equipment. When your Commissioners visited this room, many old books lay about the floor and the place was not clean. In all, there was a condition of affairs which should not have been tolerated. Again, there is to be noted an all but complete absence of satisfactory records. Inspector Stewart's commendation of the existing conditions can only mean that he is not competent to express an opinion upon this aspect of prison management. Although his annual reports give a different impression, the surgeon in his evidence before the Commission stated that many changes were necessary to make the hospital what it should be.

The personnel of the hospital staff does not meet with approval. There are two dispensers (called hospital overseers) who are responsible to the surgeon for the management of this department. These men do little or no nursing, this very important work being left to the convict orderlies, a practice to be entirely condemned.

We have no hesitation in reaching the following conclusions:—

The hospital, in building, equipment, and sanitation is inadequate and out of date, and the personnel is not adapted to proper hospital administration.

There should be provided a new hospital, modern in plan and equipment, and the hospital staff should be reorganized, the members to consist of: A visiting surgeon, a resident physician, two trained male nurses, and convict orderlies.

There are many reasons for such changes. It is manifestly impossible to obtain the services of a competent physician on full time, at the salary fixed by the regulations. It is taken for granted that the insane will be otherwise provided for, so that the present salary would be considerably reduced. Further, a physician in active practice will the more likely be abreast of modern methods and will be disposed to treat the prisoner inside and the patient outside with the same care and consideration. The enervating effects of a purely institutional practice are well known. The visiting surgeon would be responsible for the sick. He should visit the prison daily and attend the members of the staff at their homes.

For the office of resident physician, there should be employed a recent graduate who has a psychiatric training. His duties may be outlined thus: He should carry out the directions of the visiting surgeon; conduct and keep records of thorough mental and physical examinations of all prisoners; do laboratory work and deal with emergencies and minor ailments.

## SESSIONAL PAPER No. 252

'There is absolutely no need of two qualified dispensers, as at present, but there is real need of men to do the actual nursing. The nurses under the direction of the resident surgeon could do all the necessary compounding of medicines. The convict orderlies should have no part in the actual treatment of the sick. Their duties should be confined to the performance of menial work.

## PUNITIVE FEATURES OF PENITENTIARY REGULATIONS.

Reference has already been made to some of the regulations of Canadian penitentiaries that stamp them as purely punitive. A more detailed analysis of this feature of the system may be in order. The cellular system of feeding is defended on two grounds: (1) To remove the danger of organized revolt; and (2) it is preferred by the majority of the prisoners.

Of all the prisons that your Commissioners visited, in only one did they find the cellular system of feeding in operation. That was the old State prison at Charlestown, Mass. In no prison where the congregate system is in vogue, was the danger of mutiny considered a serious possibility. And this too in face of the fact that in some of those prisons the proportion of guards to population was one to ten, while at Kingston it is about one to six. The fact is, that the more closely the treatment of the prisoner approximates the treatment of the free man, the less likelihood is there of individual or organized outbreaks of violence. When men are allowed to sit down to a table and eat with knife and fork like civilized beings, they are in a more equitable frame of mind than if they are made to carry their food to their cells and tear it to pieces with their fingers.

The second argument in favour of the cellular system would seem to have more justification. One or two convicts, testifying before the Commission, said they preferred eating in their cells to sitting down with the others at a table. The reason they gave was the possibly disgusting conduct of a prisoner seated beside them. Here again comes the question of classification. It has not been urged that in a dining room the prisoners should be arranged without regard to their conduct. The privilege of a dining room should be denied men who are under the ban for bad conduct or who will not comport themselves with reasonable propriety at the table. In other words, a place in the dining room should be made a reward for good behaviour.

A weak feature of the cellular system of feeding is its wastefulness. The portions of food allotted are too generous for some men and possibly not sufficient for others. We saw a great deal of food brought back in the pans from the cells after dinner. A convict who had worked in the kitchen said that it looked to him "as though about half of everything came back on certain days." He placed the average waste at from 25 to 30 per cent. This view was concurred in by Dr. Platt, though he did not offer any estimate as to the proportion of waste.

The close cropping of prisoners' hair is a regulation as old as the oldest prison. Originally, it was designed as a mark of disgrace. Now it is defended for sanitary reasons. Undeniably, in some cases, it is necessary to crop prisoners' hair on admission and keep it cropped probably during the whole period of confinement. Such cases, we are inclined to believe, form a small minority of any of our prison populations. The cleanly, well-ordered prisoner should surely not be subjected to the indignity of hair-cropping, just because there are some fellows in prison who must be so treated for sanitary reasons. In prisons where close cropping of the hair as a regulation has been abandoned, the personal cleanliness of the prisoners is as efficiently maintained as it is in our penitentiaries. One convict was asked (Page ) what was the greatest humiliation that he suffered since he entered the prison and his reply was: "I think cropping my hair was the worst."

4 GEORGE V., A. 1914

The prison garb is made of a red checked material as distinctive and almost as conspicuous as the stripes formerly worn. Though it has been represented to us that women had "expressed the wish on the street that they could get a golf suit made like it" (page ) and that it is "no more degrading than the costume of any huntsman or football player or oarsman (page ), your Commissioners are of the opinion that the present uniform is unnecessarily conspicuous. The colours in it may be as pronounced as in a football uniform, but the humiliation lies in the fact that these colours are not the insignia of membership in an athletic organization, but are the brand of the convict's shame. The one costume represents honour; the other, dishonour. "I think the uniform is terrible" said one of the convicts to your Commissioners. Any prison uniform must be terrible to the man who appreciate his position, but the question is: Is it necessary to lay it on in flaring colours? A one tone material, grey or blue, such as is being used in all the prisons we visited in the United States and at the Provincial Reformatory at Guelph, should meet the disciplinary requirements of our penitentiaries. Stripes or checks are not considered necessary there to aid in identification and recapture. Why should they be necessary in our Federal prisons?

The regulation that no newspaper shall be allowed within the prison walls has been adopted, we are told, to prevent convicts getting information about the movements of their pals outside. This rule is in harmony with the avowed policy of the administration that the regulations of the penitentiaries are designed solely for the confirmed criminal. Because there are some men in prison who are determined to resume a life of lawlessness, and because these men might obtain from a newspaper information that would aid them in their evil designs, the entire population is debarred from reading any news of the doings of the outside world. That this deprivation heavily handicaps a man when he tries to resume the ordinary activities of life, is beyond question. The world into which he is thrown has been a sealed book to him for years. He knows nothing of its political changes, of the progress that has been made in social, industrial, or scientific development. He has been "as a deaf man who heard not, as a dumb man not opening his mouth." His very ignorance must intensify his fear of exposure and the ostracism that inevitably follows. Had he been allowed, while in prison, an occasional glance at a weekly newspaper, he would not now be such an utter stranger to world events. He could move among and converse with his fellows, with some confidence and intelligence.

The danger of allowing a weekly newspaper into the penitentiary appears to have been greatly exaggerated in the official mind. It should be possible, without much trouble, to censor the criminal news which occupies a very insignificant space in the family newspaper. But if there is danger of valuable news to the professional criminal leaking in, there is a more than compensating benefit to the man who is longing for another chance to make good in the world. What a comfort the newspaper would be to many an unfortunate fellow in the solitude of his cell, can scarcely be comprehended. It would break the gloom of his isolation, keep him in healthful relations with the life, that through his weakness or wilfulness he has forfeited, and, no doubt, strengthen his desire to restore to good standing in society.

The prohibition of tobacco is, to many prisoners, a severe punishment. Those who have been life-long users of the weed would, it is said, preferably undergo almost any other privation. Certainly the absolute prohibition of tobacco is likely to make them morose and resentful, and more difficult to manage than they otherwise would be. Apart from the effects of a moderate issue of tobacco in producing a better spirit among the prisoners who use it, your Commissioners are convinced the illicit traffic is a greater evil than the one it displaced. One convict testified that he had received from friends, through a guard, \$160 in tobacco money in two years; that the guard had retained for his own use half the money and had charged 20 per cent commission for purchasing tobacco with the balance. In only two instances were your Commissioners

## SESSIONAL PAPER No. 252

enabled to bring home to the dishonest guards proof of their guilt. These cases were reported to the warden to deal with. That other guards have been extensively engaging in the tobacco graft, is beyond question, but it was impossible to get direct evidence of their guilt. Much may be said in support of the prohibition of tobacco to prisoners, but your Commissioners believe a moderate allowance to those who are already addicted to the habit and who observe the regulations, would result in conditions more wholesome than exist at present.

## PUNISHMENTS.

According to rule 179 the following punishments may be inflicted upon male convicts:—

- (a) Diet of bread and water not exceeding twenty-one consecutive meals.
- (b) Hard bed with blankets according to the season, not exceeding one month.
- (c) Ball and chain, Oregon boot.
- (d) Confinement in the isolated cells with such diet as the surgeon shall pronounce sufficient.
- (e) Flogging with a leather paddle, under the restrictions set forth in the Penitentiary Act regarding corporal punishment.
- (f) Shackled to the cell gate during working hours.
- (g) The application of water from the hose, in the presence of Warden.
- (h) Forfeiture of remission of sentence.

In addition to the foregoing, flogging, imposed as part of the court sentence, has to be inflicted. Usually the flogging is ordered to be given a short time after the prisoner is admitted and again before his release. With much reason, ex-Warden Platt urged that the flogging of a prisoner near the expiry of his term was calculated to nullify the good effects of any reformative treatment by the officials, and send the fellow out vengeful and embittered. The flogging, if it must be administered, should be given at the place of sentence and the prison authorities would then have some chance of consistently dealing with the criminal. To try to reform a man and then, whether he responds or not, lash his bare back before he leaves the prison, would appear to be an unscientific course of treatment.

The dark cell or dungeon is not mentioned in rule 179. It is used in some, if not all of our penitentiaries. At St. Vincent de Paul your Commissioners found a man in a dark cell shackled by a chain. There was little ventilation in the place, and the food, drink, and bucket of the unfortunate were all placed in the circle of his tether. The dark cell is a cruel means of punishment. The most degraded human being, if he is to be allowed to live, is entitled to light and air.

The Oregon boot and flogging with a leather paddle are no longer used as punishment. Evidence tended to show that the leather paddle was more humiliating than severe. There are on record several cases of application of water from the hose. One was nine years ago when Dr. Platt was Warden. In his evidence the doctor said he did not like the hosing and he never ordered it again. Mr. Douglas Stewart, when he was acting Warden in 1912, used the hose pretty freely. The convicts who were hosed described the punishment as terrible. The officials and guards seemed to consider it effective and not cruel. Inspector Douglas Stewart expressed himself strongly in favour of the hosing. His evidence on the point, page        is as follows:—

“Q. Do I understand that you are responsible for recommending this method of punishment, the hosing?—A. I am responsible for the regulations. I introduced it after consultation with Sir Oliver Mowat, who was not a cruel man, as a substitute for the cat.

“Q. You described it nicely to Sir Oliver?—A. Yes, as it really is.

“Q. And you think it is a good thing?—A. As a substitute for the cat it is a remarkable improvement, both in effectiveness—

4 GEORGE V., A. 1914

"Q. The cat is the triangle?—A. Yes, the lashes; that is the previous one; the one was substituted for the other.

"Q. You find this more efficient?—A. More effective.

"Q. What is it that makes it so effective with these convicts?—A. It takes the defiance out of them.

"Q. How?—A. If you got the hose you would know.

"Q. What is it?—A. I suppose it is the impact of the hose against the body, knocks the wind out of them.

"Q. And it seems to succeed where nothing else will?—A. Yes, it never failed yet.

"Q. To beat an incorrigible convict into submission?—A. Yes.

"Q. And therefore you rush for it in all cases?—A. Not in all cases.

"Q. How many times did you administer it yourself?—A. My recollection is seven times on six convicts.

"Q. How long was the longest?—A. Three minutes. It made a record. It is usually thirty seconds to a minute. Very few men who will not give in in that time. They can give up whenever they like; they can make it ten seconds if they like.

"Q. Men will surrender under this who will not under any other punishment?—A. Yes.

"Q. Is that the most severe punishment?—A. No, I think shooting is more severe.

"Q. You mean killing a man outright?—A. Yes.

"Q. That is the only thing more severe?—A. No, I think the cat is more severe and dangerous.

"Q. Why do you not use it?—A. Because I think it is not effective. This is the quickest and most effective method."

Your Commissioners had a practical demonstration of the hosing in the cell assigned for that purpose. The front corners of the cell have been rounded out to prevent the prisoner from getting out of range of the stream. A circular opening in the bars permits of the entrance and ready manipulation of the nozzle. When the water was fully turned on, the stream through the three-quarter inch nozzle struck the opposite wall almost unbroken. From what your Commissioners have seen and heard they readily agree that hosing as a punishment is effective. The victim must cry out for mercy or suffer physical collapse. But as a disciplinary agency, it should be ranked with the rack and the thumb-screw, cruel and inhuman.

#### IMMORALITY AMONG PRISONERS.

The charge has been made that the crime of sodomy is prevalent in Kingston Penitentiary. Three convicts gave sensational and disgusting evidence in support of the charge. In two or three instances the circumstances were described in detail. Other evidence was given of a more or less circumstantial character, and some of it was based on hearsay or conversations overheard on the stone pile. The officials and guards, without exception, either denied the existence of the practice or declared they knew nothing about it.

Your Commissioners believe that while some of the statements made by convicts were greatly exaggerated the evidence indicated the occasional commission of the offence. It is scarcely necessary to urge greater vigilance on the part of officials and guards wherever it is possible for such offences to occur.

#### THE CONDUCT OF OFFICERS AND EMPLOYEES.

*The Five Year Limit.*—The terms of our commission called for the investigation of:—

"(a) The state and management of the Kingston Penitentiary;

## SESSIONAL PAPER No. 252

"(b) The conduct of the officers and employees of the said penitentiary so far as the same relates to their official duties—

"Provided that the inquiries should not extend back for a longer period than five years except in so far as the commission may deem it desirable in the public interest to inquire into any particular matter or matters antecedent to such period."

The construction to be placed upon this limitation of the inquiry came up for discussion at the beginning of our investigations and is dealt with by the Commissioners at page      in the report of the evidence, in the following terms:—

"The intention of the Commission is to have an investigation of present conditions in the prison. The charges that were made refer to the present state and management of the penitentiary, and that, primarily, is the subject to be investigated. That goes without saying. The Commission is not charged with investigating what was a past condition of things, five or ten or twenty years ago; we are to investigate the condition of things to-day, it may be necessary to go beyond the time limit of five years, and that the Commission has power to do. The terms of the Commission express that quite clearly, and I do not think it could be better expressed, that where, in any particular matter, the Commission deem it in the public interest to pursue the inquiry beyond the five year limit they are to do so."

The matter came up several times in the course of our proceedings, see pages      A charge was made against the Deputy Warden of "testifying falsely at investigations held at the prison;" the matter referred to occurred in the year 1898. Objection was taken by counsel for the Deputy Warden, page      : "How could we answer a charge fifteen years old with witnesses dead and hard to find? Surely the provisions of the Commission were intended to protect us from that." The Commission considered that if they proceeded to investigate this matter it would be in substance a trial upon a charge of perjury alleged to have been committed fifteen years ago and necessarily depending on the present recollection of the surviving witnesses as to statements made so long ago. The matter had been the subject of investigation at the time it occurred and we did not deem it desirable in the public interest to inquire into it again. For similar reasons we declined to entertain charge (d) "With consorting with ex-convicts." This matter is dealt with by rule 142:—

"No officer shall without authority recognize any convict after his discharge or make him known to others, to his injury."

The matter is discussed at page      :—

The five-year limit came up again in connection with a charge against Dr. Phelan of:—

"Conniving at the absence of a guard at an election trial where said guard was wanted as a material witness."

The occurrence involved took place in the year 1898. Saunders, the guard in question, got a certificate of sick leave from the doctor, it is said improperly. The certificate bears date September 2, 1898. Saunders, the principal witness, is long since dead. At this date, and considering that the matter was not one bearing upon or affecting the present condition of things, we declined to entertain this charge.

A number of matters were dealt with, extending back much beyond five years when it was deemed desirable in the public interest to do so, and the only instances in which evidence was excluded have been referred to above. The matter was fully discussed at the final sitting of the Commission, see pages      .

4 GEORGE V., A. 1914

## THE EDWARDS CHARGES.

The charges made by Dr. Edwards against Deputy Warden O'Leary, are as follows:—

I charge Deputy Warden O'Leary:

- (a) With petty and persistent persecution of guards and keepers;
- (b) With political partisanship;
- (c) With testifying falsely at investigation held at the prison;
- (d) With consorting with ex-convicts;
- (e) With gross neglect of his duty resulting in attempts at escape.

The charges, as Dr. Edwards himself says, were based mainly upon information furnished him by Major Hughes (page ) : "I took the action I did in regard to this matter principally because of what was said to me by Major Hughes himself in regard to every one of the charges which I have placed on the paper, that the information came primarily from him, and it was added to by complaints made from time to time in writing and verbally by different guards and ex-guards of the institution." Mr. Stewart, Government counsel, at page , also mentions Major Hughes, as the chief witness.

Major Hughes himself (page ) : "In my day as Chief Keeper I did not think the men had an awful lot to complain of in that kind of thing, but latterly there has been a great deal of gossip. I cannot give you that, but the rosters will show."

Of the guards and ex-guards referred to by Major Hughes in his evidence, the following were called, and a summary of their evidence on the charge of petty and persistent persecution of guards is given below:—

Name.	Pages.	Summary of Evidence.
Clyde .....	323-4	Not asked <i>re</i> treatment of guards.
Curtis .....	921	" " "
Crier .....	417-18	" " "
Redden .....	419-424	" " "
Rutherford .....	431-2	" " "
Godkin .....	591-611	" " "
James Doyle .....	899	" " "
Derry .....	868-872	" " "
Holland .....	927	" " "
Powell .....	1002-4	" " "
Robert Aikins .....	898	" " "
Paynter .....	1140-1	" " "
Madden .....	1192-1202	" " "
Marsh .....	658	There was no favouritism.
Fegg .....	889-892	" " "
Wilson .....	1121-2	There are really no favourite posts.
McCuade .....	434-456	" I have nothing against him," meaning the Deputy Warden.
Montgomery .....	313-4	Complains his post was not changed as often as others.
Smith .....	324-364	Complains he was improperly dismissed but Deputy Warden not responsible.
George Aikins .....	385-416	Complains of Deputy Warden "spying" on him and reprimanding him before convicts.
Bannister .....	425-430	Complained of being reprimanded before guards and convicts.
Bryant .....	786-791	Evidence <i>re</i> complaints of no value.
Mills .....	792-796	" " "
Caughey .....	1112-5	" " "
Davis .....	893-7	Complaints childish.
Johnston .....	289-299	" " "
Ingleedew .....	300-11; 570-80	Kept note-book—willing witness against Deputy Warden—not asked <i>re</i> favouritism.
Cook .....	901	Nothing.
Patterson .....	978-1002	Blames Deputy Warden for his dismissal but can't establish it.

## SESSIONAL PAPER No. 252

We are referred by counsel quite properly on this charge to the evidence of Major Hughes, page , to the rosters prepared by the Deputy, as "the best evidence in support of this charge"; also to the evidence of Dr. Platt.

The evidence of Major Hughes, thus cited, deals almost entirely with what was called "favouritism." To quote the argument of the Government counsel, "the Deputy either consciously or unconsciously has preferred guards of the same religious persuasion as himself—in giving the preference to Roman Catholics over Protestants, in assigning officers to the different posts in the prison."

After a careful examination of the roster, we cannot find that this charge is sustained.

The evidence is conflicting as to whether there are any favourite posts and what they are—Guard Fegg is the first witness named by Major Hughes, who would testify as to "favouritism." Fegg's evidence is at page and is read to Major Hughes at page :—

"Q. You do not know that he showed any favouritism to any particular guard?—A. I could not say that any man was persecuted or that any man was shown favouritism. I cannot say that he is really shown favours."

Major Hughes says, referring to Fegg, "this man thought he was the most imposed upon man in the world."

Other guards, whom Major Hughes expected to testify to favouritism, gave evidence similar to Fegg's. For some reason, they had talked to Major Hughes in a way they could not support on the witness stand.

The evidence of Dr. Platt on this subject should have more weight than that of any other witness, as he was in a position to know the facts. His evidence shows that he himself was determined to know nothing about a guard's religion in the assignment of duties, and that he believed that his deputy was equally conscientious in the conduct of his office.

Dr. Platt was warden from 1899 to 1913. (He had ample experience to speak with authority upon this charge.) It is scarcely conceivable that he should not have discovered it, if any favouritism had been practised.

We make the following extracts from his evidence bearing upon this charge:—

"For the assignment of positions" he says (page ), "the deputy is responsible, under the Warden."

"Q. And if complaints were made it would come up to you and you would deal with matters?—A. If we thought it was advisable we asked the Deputy to reconsider."

Page 538:—

"Whenever the Deputy thought a change could be made to advantage he would mention it to me during the month previous, or if I noticed where I thought a man would be better in some position I would mention it to the Deputy.

"Q. So that both you and he were trying to do what you thought best in the interests of the Institution?—A. I was and I thought he was.

"Q. Then when the roster was made out towards the end of the month it was submitted for your consideration?—A. Yes, I may say invariably my signature is on every roster."

Page :—

"Q. Were there complaints of this character?—A. I do not think I could dignify it by the name of complaints.

"Q. How many times?—A. I don't know, if it occurred three or four times in my thirteen years it would be all."

Page :—

"If I heard a complaint of that kind, even heard it casually, I would speak to the Deputy about it and advise him whenever it was practicable to avoid even

4 GEORGE V., A. 1914

the appearance of anything of that kind, and I do not think he ever made any change. I do not think a change was ever suggested. He would simply reply by saying: 'Well, what am I to do?—Place a man according as I think he ought to be on the roll.' I said: 'Your duty is to the prison and not to the church, pay no attention to it.'

The rule governing this matter is in these words:—

"42. Subject to the Warden's concurrence, he (the Deputy Warden) shall assign to every police officer the duty to be performed by him during the day, a record of which shall be kept in the roster."

Dr. Platt says there were three of four complaints on this subject in his thirteen years of office, and he refused to interfere. The Warden considered these complaints unfounded, and there is nothing in the evidence heard by us to warrant us in saying that his judgment was erroneous.

The unfriendly relations existing between Major Hughes and the Deputy Warden were a matter of common knowledge in the prison, and some officials appear to have used this knowledge mischievously.

Major Hughes seems to have been misled by the gossip of the guards—he was recalled at the close of the investigation, and at page     he says:—

"I have read in the papers, I do not know whether it is true or not, the evidence of officers that they had no complaints to make; and there is only one expression to describe it, and that is for months here they simply pawed the air with regard to complaints of the indignities that were heaped upon them and the discrimination in favour of others to their detriment, and they came up, according to the newspapers I have read in the west, and said there was no discrimination."

The charges made seem in great part the outcome of the unhappy spirit of distrust and suspicion which seems to pervade the institution, resulting apparently from the system of administration, especially in regard to appointments, political influence, religious antagonisms, and political jealousies.

Some guards have alleged grievances, imagining that they are not dealt justly with in the distribution of posts, whilst other guards say that there are no good posts, that men differ as to what posts are to be preferred. One guard complains of the Deputy "spying" upon him, when the Deputy was watching him to see if he was doing his duty. A guard, who was discharged, makes a charge of perjury arising out of a dispute in the year 1898. The evidence adduced to sustain this charge was this witness's uncorroborated recollection of a verbal statement made by the Deputy in the course of a prison investigation conducted by the Warden fifteen years ago.

#### *Charge (b) Political Partisanship.*

In support of this charge, the only contention of the counsel for the Crown was that Guard Aikins testified that "the Deputy spoke disrespectfully of Dr. Edwards, a candidate at the last Dominion election." The Deputy emphatically states that he never interfered in politics and we find that he has not been guilty of political partisanship.

Charges (c) and (d) were excluded under the five-year limit, as we have elsewhere explained.

#### *Charge (e): That the Deputy was guilty of gross neglect of duty resulting in attempts to escape.*

The particular case cited was that of Chartrand, a convict, who cut through the bars of his cell and got into the yard of the prison, and the charge is that an inex-

## SESSIONAL PAPER No. 252

perienced guard and inefficient guard had been placed in supervision of this convict. This case was fully investigated at the time by the Minister, and Guards Smith and McConville were suspended for their conduct in the matter. There is nothing in the record of that investigation to indicate that the Deputy Warden was to blame and nothing was adduced before us to warrant our arriving at a different conclusion.

On April 10, 1912, Dr. Platt says, in referring to this escape, after the matter had been investigated: "A convict designated as dangerous and marked for special care escaped under circumstances which force one to the conclusion that well-known, important and imperative duties were either neglected or performed in a culpably perfunctory manner." Dr. Platt also reports the suspension of McConville and Smith in this connection, but throughout his report there is not any hint or reflection touching the conduct of the Deputy Warden in the affair.

The record of the case contains thirty pages of reports and testimony on this escape, of the warden, deputy warden, guards and keepers, etc.

The inspector's report, dated April 12, 1912, does not mention the Deputy Warden or reflect on him personally.

The Minister's judgment reflects on "the insufficiency of the right surveillance provided" and "concerns in the suggestion" that the Warden and Deputy Warden be censured for neglect to profit by the attempted escape from an adjoining cell last year," etc., etc. There is no suggestion of such censure in the inspector's report, it does not appear in the record, so that we are unable to attach to it the correct significance, but considering that this whole matter was fully dealt with and adjudicated on by the Minister at the time of this occurrence, it should not again be made the subject of a charge before this Commission. In any case, the whole record is on file and can be referred to, if, in the opinion of the Minister, the matter should be reopened.

*The Grier Charge.*

Comment is made by the Crown counsel on an incident mentioned in the evidence of Ex-Guard Grier, (page ) who says he was on duty in the Asylum in 1906 and found Convict Bishop "trying to hang himself" and cut him down. He was then asked by the Deputy Warden why he was late in winding his clock. He explained, he says, and the Deputy Warden told him: "If I came across a convict hanging, to let him hang and attend to my clock first." Ex-Guard Marsh testifies, (page ) to a similar expression from the Deputy Warden in reference to the attempted hanging of the same convict, Bishop; he (the Deputy Warden) said: "I did right to wind my clock first, it would clear me." Marsh gives no date for this occurrence, but the records show that he cut down Bishop on March 22, 1899.

These statements might indicate a callous disregard of human life on the part of the Deputy Warden—that he set discipline on high and subordinated the instincts of humanity. The statements, however, stand alone; they are not consistent with the conduct of the charged official, as shown by the evidence before us. In support of the charges against the Deputy Warden, with which we have already dealt, twenty or more guards and ex-guards gave evidence and no instance was disclosed of cruelty or inhumanity towards prisoners. The evidence of Grier is not corroborated by the prison records. The records show that Bishop attempted to hang himself on two occasions; on July 9, 1898, and March 22, 1899. On the former occasion he was cut down by Guard Davis; on the latter, by Guard Marsh. Grier does not appear in either case. There is no record of any other attempt at suicide by Bishop. If any occurred it should be in the record. Grier says he "cut down" Bishop in 1906. The records show that Bishop died of tuberculosis in 1904. Whatever the actual incident was, it must have occurred fifteen years ago, and the memory of witnesses as to the date or the actual words used is liable to be at fault. What we ourselves have seen and heard must guide us as to the value that should be attached to the alleged state-

4 GEORGE V., A. 1914.

ment of the Deputy Warden; he was for three months in this inquiry subjected to the closest scrutiny and in the light of that scrutiny, no act of his revealed that indicated he was either cruel or inhuman.

#### *Other Charges.*

The charges made by Dr. Edwards against Overseer Wilson, are as follows:—

“ I hereby charge R. W. Wilson, druggist at Portsmouth Penitentiary, with wilful and repeated neglect of duty. In connection with the aforesaid charge, I ask that the following persons be called to give evidence, viz.:—

“ H. S. Begg, Assistant Hospital Overseer.

“ D. Godkin, Night Watchman.

“ F. Ingledew.”

The charges against Overseer Wilson are of the same indefinite character as the others, and have to be gathered from the evidence and the argument. He is, in substance, accused of not getting up at night to attend to dying patients, in several instances. Guard Ingledew testifies to this effect at pages . . . Guard Godkin at pages . . . Wilson's evidence in defence is found at pages.

Wilson was called for patients Bunyan, Lottridge, Eastlake and Huckle; Doctor Phelan says Huckle was a maligner, and Colonel Irvine says he is one of the worst men in the prison, entirely unreliable; the other patients are dead. Dr. Phelan's evidence exonerates Wilson from this charge, pages

Your Commissioners are of the opinion that these patients were practically beyond human aid and that in their cases no hardship was inflicted by Wilson's failure to get up to see them, yet we feel that the physician or his representative should be present on such occasions, and that there should be a regulation to this effect.

Charges were made by Overseer Wilson against Ingledew, page :

That he repeatedly failed to make his rounds of the ward, and that he slept or rested during long periods of the night, while the convicts' night-orderly was permitted the use of the watchman's keys and continued the periodical winding of the electric clock, so that it might show the proper marking when inspected by the Deputy Warden.

That he repeatedly brought into the hospital outside articles and special food, which were given to and used by convicts, and that he also supplied pipes and tobacco to convicts.

There is evidence to support the first charge given by Convicts Watson, Dichn and Mitchell, but it is denied by Ingledew, and we do not feel warranted in giving effect to the evidence of the convicts under the circumstances disclosed. The same remarks apply to the second charge.

Dr. Edwards' charges against Dr. Phelan are as follows:—

“ I charge the surgeon, Dr. Phelan

“(a) With gross political partisanship.

“(b) With using violent and indecent language to a guard in the presence of others.

“(c) With conniving at the absence of a guard at an election trial where said guard was wanted as a material witness.

“(d) With grafting, by asking for and receiving money from guards, to which he had no just or honest claim.”

The counsel for the Government properly says: “ I do not propose to argue that the evidence adduced supports the charge of political partisanship.” *Vide* discussion on five-year limit.

## SESSIONAL PAPER No. 252

*Charge (b).*—The charge of “using violent and indecent language to a guard in the presence of others” is established, but it is claimed that it was used in jest; the evidence leaves this uncertain. In any case, the surgeon entirely forgot the dignity of his position and the discipline of the prison in making use of the language in question; and the incident discloses an unhealthy state of things. *Vide* evidence pages

*Charge (c).*—The Commission did not consider this charge to be within the limits of their commission. It occurred thirteen years ago. Some of the parties are dead. It has no bearing on the present state of the prison.

*Charge (d).*—With grafting, by asking for and receiving money from guards, to which he had no just or honest claim.

Dr. Phelan admits that in four cases he asked and received a small fee from an applicant for a guard’s position as to his physical fitness, and this is a contravention of the statute, as he is not to practice his profession. He says he has not done so for several years. The amount wrongfully taken by him was \$4.

The foregoing are the only charges made against Dr. Phelan by Dr. Edwards  
See pages

Counsel for the Government commented on the evidence of convicts that the surgeon had been careless and unkind in his treatment of them. No charge of this tenor was made against Dr. Phelan and he was not called on to meet it. The evidence of the convicts was conflicting. Some testified that he had treated them well, others directly the reverse. The matter was left in an unsatisfactory position, and we are not able to come to any finding upon it.

The charges against H. S. Begg are:—

1. Gross carelessness in making and compounding preparations and more especially in connection with an ointment containing opium.
2. Neglect of duty in omitting to carry out orders and especially in failing to give special supplies to a convict named Lawrence on the night of his death; in contravening the orders on the diet sheet in the case of a convict named Laird; and in refusing and neglecting to give out supplies ordered to be kept under key.
3. Neglect of duty in failing to leave out food for patients called for by the diet sheet, and in leaving the building with the keys while the supplies were locked up and inaccessible until other keys were procured.
4. Insolence and insubordination with reference to the overseer, both in language and bearing to him, and to others with reference to him, and in refusing and neglecting to carry out his instructions.
5. Falsifying the records contained in the sick-officers’ book.

The evidence shows that from the time of Wilson’s appointment there was friction between Begg and Wilson. Begg was guilty of several minor acts of insubordination and neglect of duty.

Alterations were made in the sick-officers’ book in several places, which had the effect of lessening the record of Begg’s absences on account of illness. He denies having made them, and it was not shown that any advantage could accrue to him from making them. No experts in handwriting were called to testify to the handwriting of these alterations, (page ). Mr. Begg had been suspended by the Department once and reprimanded several times. He did not get along very well with Mr. Gunn. His attitude towards Wilson was improper and subversive of discipline.

The antagonism between Wilson and Begg is partly an expression of personal animosity and partly an expression of the general internal dissensions. The result is a state of affairs entirely prejudicial to the best interests of the Institution. The most satisfactory solution of these difficulties will be found in the reorganization of the hospital staff, which is recommended.

4 GEORGE V., A. 1914

## PUNISHMENT OR REFORM.

If the punishment of the offender is the only object society should have in view, the Penitentiaries of Canada fully meet the requirements. They are old-time prisons dominated by the idea that, not only should the offender be punished by being deprived of his liberty and confined by iron bars and stone walls, but that the avenging hand of the law he has violated should continue to bear heavily upon him in his place of incarceration. This policy is defended on the ground that the treatment of the prisoner in prison should be so ordered as to be a constant deterrent against his relapsing into crime, when he regains his liberty. It is a policy founded upon revenge, mistrust and fear.

Undeniably, the trend of prison administration the world over is away from the purely punitive and towards the reformatory. It is realized that justice to society does not involve injustice to its moral delinquents; that while society must protect itself by imprisoning misdemeanants and felons, it is not necessary to inflict humiliation and torture upon them, while they are in prison. This policy recognizes that the prisoner has certain rights which it is the duty of society to respect. He is entitled to productive work under proper sanitary conditions, to a reasonable measure of education, if he requires it, to moral training and discipline; in fine, to every rational assistance towards his restoration to good relations with society. Viewed from the economic standpoint, the reformation of the convict is a matter of prime importance to the State. The prison of punishment is the most expensive prison to maintain. It keeps the inmates in idleness or employs them at work neither helpful to them nor profitable to the State.

The population of the six penitentiaries of the Dominion at the present time is about 2,000, and the maintenance of these institutions involves a net annual cost of \$632,000. It should be possible, by the inauguration of a proper industrial system, to reduce very materially this heavy burden and ultimately make the prisons self-sustaining. But on higher grounds, it is surely the duty of society to adopt humanitarian methods within its prisons and give every possible encouragement to the man who is disposed to reform. The contrary attitude is out of harmony with the basic principles of Christianity and civilization. The church and its manifold agencies are bending all their energies to the reclamation of the moral offender who is enjoying his liberty. Why should the probably equally deserving delinquent, who has the misfortune to get into prison, be left to discover the light of the divine message to fallen man in his cropped hair and striped suit; through the solitude and darkness of his cell, in labour that demeans, discourages and brutalizes? Some justification may be found for the purely punitive system in the theory that the prisoner is a creature apart, differing from other human beings, not amenable to the same influences, hardened by kindness, discouraged and made restful by cruelty. That this theory is recognized in the present administration of our penitentiaries, there is reason to believe. The following is an extract from the evidence of Inspector Stewart: (pages )—

“Q. Getting back to the congregate dining-room, one reason was the danger of mutiny, and the other was the objection the higher class convicts had to eating with the others?—A. Yes.

“Q. Would the latter objection not be removable by a classification?—A. No, the classification would be making a distinguishing class, which would be looked upon with distrust and jealousy.

“Q. No such thing as emulation among them, to follow in the footsteps of those who are rewarded for good conduct?—A. The emulation amongst convicts—nine-tenths of those who do behave do so because it pays them.

“Q. Are they different from other men?—A. They are very different or they would not be here.

## SESSIONAL PAPER No. 252

"Q. My dear sir, I disagree with you?—A. Well, the judge must be wrong.

"Q. It is idle to say that humanity is divided into two classes and that all the bad men are in prison and all the good fellows are out of it?—A. I do not believe that. There are a great many outside who ought to be in.

"Q. I say there are men here amenable to the same influences as if they were enjoying their liberty and appreciative of fair treatment?—A. I am afraid it is because you do not understand their character that you say that."

Further on (page ) the question of occasional entertainments for the convicts was being discussed with Inspector Stewart. He was asked:—

"Q. What is the objection to the entertainment?—A. In the first place, it causes quarreling and jealousy as to who shall be the chief men and who shall be the performers.

"Q. I would not say entertainments given by themselves, but supposing you had some people in Kingston kind enough to come out and give some entertainments?—A. I think they would be more bored than they would appreciate it.

"Q. Life in this institution must have a mighty depressing effect on the human mind?—A. It may possibly. Generally they prefer their own company rather than being crowded together. If they are crowded together there is the trouble of their passing notes and complaining of irregularities.

"Q. To what do you ascribe the attitude of these men towards things the men outside enjoy?—A. The real criminal is usually the worst kind of egotist. He has a contempt for the clergyman who preaches, and the warden, and a contempt for anybody else's opinion but his own.

"Q. And your policy is designed and carried through with regard to the treatment of the real criminal and the real criminal only?—A. Yes.

"Q. And without reference to the fellow who is not a criminal and never will be?—A. That is his misfortune to be in here, but we have to adapt our rules and regulations to the possibilities of the worst criminals in here. We have to do it, because we cannot read human nature when a man comes through the gate and tell what class he is."

In the Deputy Warden's evidence (page ) it is stated that only twenty-five per cent of the five hundred prisoners have reports against them; that many of the men reported are not punished but merely admonished; and many others subjected to trivial punishment. The number of serious offenders against the regulations, "difficult men to get on with", the Deputy Warden placed at thirty-five to forty, or about eight per cent. It will be urged that there are hardened criminals, who for their own comfort conform strictly to the regulations of the prison. No doubt there are cases of that character, but the general experience of prison administrators is that the hopelessly bad man cannot act the good man in prison, and that he who obeys the prison regulations can be made obey the regulations outside the prison. Again, it must not be concluded that a prisoner who has reports against him is devoid of the elements of good citizenship and impossible of reclamation. Where any departure from a monotonous daily round may be set down as an offence, it is certain that many good fellows must occasionally fall foul of the regulations. Allowing, then, the make-believe good to balance the well-disposed convict who now and then violates the rules, we are justified in assuming that at least seventy-five per cent of the population at Portsmouth offer some hope for reformation. That being the case, is it a wise policy to maintain for all a system designed, as Inspector Stewart puts it, solely for "the worst criminals."

4 GEORGE V., A. 1914

## ORIGIN OF PRISON REFORM.

The opinion obtains in some quarters that prison reform is a fad, promoted by well meaning but impracticable people, out of mistaken sympathy for the criminal class. Also, that it is a modern innovation originated and developed in the Republic to the South, and attended there with indifferent results. A cursory glance at the history of prison administration the world over, shows that the reformatory system is very old and is the product of no particular people. Nearly every nation in western and southern Europe can lay claim to some contribution to the store of practical experience on the question. Howard, the Englishman, and Beccaria, the Italian, in the latter part of the eighteenth century, aroused public opinion to an appreciation of the cruelties of the penal system. About the same time, Vilain was giving a practical demonstration of the then new penology in the prison of Ghent. This prison, we are told, had for its avowed aim the reformation of those committed to it. It made labour the foundation of its system—not the crank or the treadmill, or picking oakum, or breaking stones, but purposeful, productive employment. Dr. F. H. Wines' description of what Vilain did in his prison at Ghent, nearly a century and a half ago, may be read with profit to-day:—

"Vilain believed in industry as the primary agency for the reformation of the criminal character. He recognized and insisted upon the importance of trade instruction with a view to putting the prisoner in condition to earn an honest living, when discharged. He appreciated the importance, in the selection of prison industries, of choosing, as far as practicable, such as would come least into competition with free labour on the outside. He sought to find trades not followed in Flanders, but which, if adopted, might prove profitable to the Flemish people. In fact, there was a great diversity of avocations followed in the prison, among which may be mentioned: Carding, spinning, weaving, shoemaking, tailoring, carpenter-work, and the manufacture of wool and cotton cords. To encourage prisoners to work, he allowed them a percentage of their earnings, and the opportunity to do overwork. Part of their earnings was their own, to spend in the prison; part was retained, to be given to them at their discharge, so that they might not be penniless and on that account relapse into crime. Every prisoner had a cell to himself at night; the workshops were in common, and meals were served at a common table. He provided a resident physician and a resident chaplain. Proper attention was paid to the classification of prisoners. Felons were separated from misdemeanants and vagabonds, there was a distinct quarter for women, and he designed to make special provision for children also."

But the prison at Ghent was not permitted to continue its works. A "few interested parties" got the ear of the Emperor, and the industries were abandoned. Howard, who visited the institution in 1783, says: "I found great alterations for the worse; the flourishing and useful manufactory destroyed and the looms and utensils all sold. That which ought to be the leading view in all such houses is now lost in this house."

So we find that the problem with which we are attempting to deal is a very old and a very practical one. The principles underlying it have not changed with the years; nor have the influences which make for its success or failure. Its advocates are still heartened by the faith in their fellowmen that Vilain had; still hampered by the belief of many that all those behind prison bars are hopeless criminals. The successors of "the few interested parties" who got the ear of the Empérator and closed the industries at Ghent are still crying out that they are willing that convicts shall work, so long as they do not make anything.

## SESSIONAL PAPER No. 252

## CLASSIFICATION.

The segregation or classification of our penitentiary population is a problem of considerable difficulty. That population is made up of all classes and conditions of offenders—the first offender and the recidivist; the accidental and the hardened criminal; boys and old men; the physically rugged and the invalid; the highly intellectual and the imbecile. The present division of responsibility between the Federal and Provincial authorities for the custody of criminals is unscientific. The province looks after all those sentenced to a term less than two years. Those committed for two years or over pass into the control of the Federal Government. Hence we have at Kingston boys from sixteen to twenty-one, who are serving their first term in prison, under conditions that cannot possibly make for their betterment, while in the Provincial Reformatory at Guelph, there are men doing life imprisonment by installments. This feature of the situation was dealt with by a Special Committee of the Ontario Legislature in 1908. The conclusions arrived at by that committee apply with still greater force to-day. It says:—

“The returns for last year show that seventy per cent of those committed to the Central Prison were first offenders, whilst fifty-seven per cent were under thirty years of age. The indiscriminate association of these first offenders and the hardened and dissolute type is a deplorable feature of our present system. To put it mildly, the State is not giving a fair chance to the erring boy when it herds him with those who have decided on pursuing a life of crime.

“At present time there are between thirty and forty young men, seventeen to twenty-two years of age, in the Kingston Penitentiary, from Ontario, who might be successfully dealt with in a modern reformatory. The officials of the penitentiary in their last report stated that the prospects for these youths being reformed were not more than one in a thousand.

“Instead of having the two-year sentence arbitrarily fixed as the boundary line between the Central Prison and the Penitentiary, it would be much better were the provincial institution devoted solely to first offenders, regardless of the length of the term for which they are committed.”

It would appear to your Commissioners that a readjustment of the present arrangement on the basis suggested would not involve a serious shifting of the burden of maintenance as between the Provincial and Federal authorities. However that may be, there can scarcely be two opinions as to the wisdom of a classified prison system. England, France, Switzerland, and Germany long since abandoned the plan of herding all criminals, great and small, in one house. The Reformatory and the State Prison represent the practical working of the more scientific system in the Republic to the south. The reformatory population is confined: (1) to men under thirty years of age; and (2) to first offenders. To the State Prison go all the older and more hardened offenders.

The necessity of providing a separate prison for young offenders was recognized by the late Sir John Thompson, who, as Minister of Justice, purchased land and had plans partially prepared for a new reformatory at Alexandria. Why that project was not carried through, no explanation is forthcoming, but your Commissioners are of the opinion that it offered substantial improvement of a situation that has gone on through the years from bad to worse.

But granted that it is impossible to have segregation through separate prisons, it should be possible to have some measure of classification within each prison. It is solely with the object of classifying prisoners that separate prisons are advocated. It has been urged that to make any attempt at classification is to discriminate and discrimination is an evil that must at all cost be barred from our penitentiaries. Why

4 GEORGE V., A. 1914

should the natural law of discrimination between the good and the bad not be operative in a prison? The scientific treatment of moral delinquents means differentiation and discrimination at every turn. Possibly some day there may be a prison in which each inmate will have his particular case analyzed by experts, with a view to special treatment, aiming at his readjustment to the proper standard of living. Such a development may seem visionary and impracticable. But surely we can, with reason and justice, move a little in advance of our present policy, which may be expressed in the words: "All is grist that comes to our punishment mill"—the old and the young, the bad and the well-disposed, the hopeless and the hopeful, all treated as so much human waste in a common heap.

There is discrimination under existing conditions. The stone pile at Kingston is, by long odds, the worst department in the institution, while the carpenter shop and blacksmith shop are probably the best. But there are some good conduct men on the stone pile, placed there, we are told, because there is no other work for them. Compared with their fellows in the carpenter shop and blacksmith shop, these men are being discriminated against; and there is no logical basis for the discrimination. If there were classification in the prison the operations of the stone pile might be confined exclusively to prisoners of the third or lowest grade. This classification would mean discrimination for cause—reward for good conduct, punishment for bad—instead of the present discrimination which sometimes assigns the decent fellow to the most brutalizing labour.

Admittedly there are obstacles in the way of scientific classification, in any of our penitentiaries. The buildings were not planned with that object in view. But even with conditions as they are, it should be possible to devise a simple grading that would be just to all and encouraging to the well disposed. In some prisons, much like our penitentiaries, the three grade system has worked well. A prisoner on arrival is placed in the second grade. On his conduct depends promotion to the first grade, his remaining in the second grade, or reduction to the third. First grade men get the best positions; third grade men are assigned to the most disagreeable labour. Remission is credited to first and second grade men only, and a prisoner must be in the first grade for a certain period before he is eligible for parole. Third grade men may earn promotion to second grade, and from second to first, by good conduct and industry. If the honour system is established, the trusties are selected solely from the first grade. On this basis a modified or elaborate system of classification may be established according to the character of the population and the success of the experiment. There may be weaknesses in such a system of classification, but its basic virtue is that it offers some encouragement to the prisoner who desires to conform to the regulations of the prison and fit himself for a decent life when his term of incarceration ends.

A true classification requires careful and scientific study of the individual. As things are, this can only be done in prison by obtaining a complete history of the prisoner. The study of the individual prisoner is also necessary to find out his aptitude for some particular trade and in the classification of prisoners regard should be had for their proper training for life outside.

A resolution was moved by the Hon. Mr. Monk in the Dominion Parliament in 1909, and unanimously carried. That resolution read as follows:

'To ascertain.....what means could be adopted in Canada to insure a judicious classification and segregation of the convicts in our penal institutions and reformatories.'

In response to this resolution the wardens and chaplains of all the penitentiaries of the Dominion sent in reports which are to be found in the annual report of 1909-10, pages 280-330. These officials with one exception urged on the Government the necessity of classification of prisoners.

The inspectors who had called for these reports, in pursuance of Mr. Monk's resolution, made no recommendation to the Minister of Justice to take any action regarding

## SESSIONAL PAPER No. 252

them. They dismissed the proposal to classify prisons and segregate first offenders in a separate prison or reformatory on the ground of expense, and they reported that the classification of prisoners should be left to the 'judicial criminologist.'

## THE FIRST OFFENDER.

From sixteen to twenty-one the man is in the making. These years are peculiarly liable to criminal temptations, "the crucial years in the formation of the character."

The virile animal propensities are asserting themselves without the self-control, balance, and mature judgment of adult years. The adolescent period is recognized by psychologists as the most critical time of human life, and the State has no adequate means of dealing with it. When this youth falls into the hands of the law for some offence, he should be placed under proper treatment of a corrective kind, with such opportunities of education and industrial training as may enable him to become a useful citizen.

The thief, the murderer, the burglar, have their own fixed standards of life, which are those of their associates; to reform such persons, you must persuade them to drop their own standards and accept yours, a difficult thing to do.

In the case of the youth, his standards are not fixed and he is much more likely to be responsive to the right influence. To say that he cannot be reformed, is to despair of human nature. If he can be reformed, a grave responsibility rests somewhere.

Placing him in association with old criminals and offering no help to reform 'is sure to hasten his downfall.' For want of proper treatment 'large numbers of these young men develop into thugs, burglars, gamblers, etc.'

It has come to be realized by penologists that to fulfil the obligations of society to this class of prisoners, personal, individual treatment is needful, the scientific study of the individual, otherwise you allow officials, well meaning but ignorant, to handle him as they please.

What to do about it is the problem. Chicago has its Juvenile Protection Society, for the purpose of grappling with this question. Dr. Healy spends his time studying defective boys and girls who have got into trouble in the Juvenile Court or otherwise, and finding out what treatment they require. It means the study of each individual case, but Dr. Healy truly says its costs less to take it up at that end than to take care of the same case when it has become a fully developed criminal. 'The public would find its reward in later years in a reduced crime rate.'

It may be that children and youth should not be sent to prison or dealt with under the forms of criminal procedure, but as delinquents, until their sense of moral responsibility has been fully developed.

'The absolute exclusion of young persons from the prisons, the Borstal system for dealing with juvenile adults, the elimination of weak-minded persons, are essential to a satisfactory reform of penal systems. They constitute a new sifting out process, whereby persons who have hitherto flocked to our prisons in thousands will in future be excluded and dealt with according to their needs.'

(Dr. Quinton, late Governor of Holloway Prison.)

## INDUSTRIES IN PRISON.

The character of a prison may be judged from its industries. If the industries are of the right kind and rightly managed, the tone and discipline of the institution are certain to be satisfactory. Busy shops, healthful, purposeful, profitable work, make abuses almost impossible. The prisoner who is engaged in interesting, improving work, is not hard to manage. He has not the time nor the inclination to conjure up "treasons, stratagems and spoils." Idle and dissolute he may have been when he enjoyed his

4 GEORGE V., A. 1914

liberty, and now for the first time in his life, probably, he is made to appreciate the blessedness of labour. Increasing efficiency brings him fresh encouragement. He finds himself moving steadily towards a position of economic independence. When he goes out, he will face the world with a new heart, for his mind has become attuned to the habit of industry and he has discovered that he can do things and that in the doing of them there is satisfaction. If, in addition to all this, a wage allowance, based upon efficiency, be given the prisoner, every incentive is present to make him work faithfully, and pave the way for a new and a better start in the outside world.

The industrial conditions in the penitentiaries of Canada are a disgrace to the Dominion. An honest attempt is made by the officials to keep all the prisoners employed at something, but it is only an attempt. As far as your Commissioners could learn, there is not a single well-equipped, well-managed, continuously busy shop in the whole circle of prisons. The reason is not far to seek: There are no goods to make and if goods were made there is no place to market them. The blacksmith shop at Kingston was running nicely when the Commission made its visits. Steel gates for a new prison in the West were being turned out. When that order is completed the management will be hard put to find employment for the men in the blacksmith shop. The tailor shop, carpenter shop, painters and tinsmith's shops are operated merely to meet the requirements of the institution.

There is unanimity of opinion as to the necessity of labour in prisons. No one has had the cruelty to suggest that the prisoners should be sentenced to enforced idleness; that, deprived of his liberty for society's protection, the prisoner should also be deprived of the right to work. Not only should the prisoner be given work but all prison administrators agree that it should be purposeful, productive work—work calculated to make him a more efficient citizen when he regains his liberty.

The agitation against the competition of convict labour with free labour has been generally successful on this continent. That agitation was justified on both economic and moral grounds. The contract system of prison labour proved not only oppressively competitive in some of the states of the Union, but was the cause of abuses that barred the way to the betterment of convicts. But in removing this evil no thought seems to have been given in some instances to the possibly greater evil that might succeed it. To abolish the system of contract labour in prisons was justifiable; to leave unfortunate prisoners to hammer out their term on a stone pile, or become mental and physical wrecks in the solitary idleness of their cells, was a crime against humanity.

The possible solution of the labour difficulty in the penitentiaries naturally groups itself under two headings:—

(a) Outside work—General farming operations, clearing land, quarrying stone, making brick, building roads, etc.

(b) Inside work—Employment in the various departments for the proper upkeep and management of the prison. Employment in the making of goods for the State.

As far as the natural resources and facilities of the prison will permit, any or all of these activities may be profitably entered into. Outside employment has come to be regarded as a powerful redemptive agency. Men who have lived their lives in narrowly circumscribed areas and have fallen into crime are likely to receive needed moral and physical stimulus from the open air and sunshine. Old mother nature is a kind nurse to the fellow who is at all disposed to get back to his better self. Hence, farming operations of any kind make ideal work for improvable prisoners. Quarrying stone and making brick, while not so attractive, as farm work, are healthful and interesting occupations. The Provincial Reformatory quarries at Guelph and the brickmaking plant of the same institution at Mimico have been remarkably successful from the productive standpoint. Better still, the men like the work and go from it to their regained freedom, rugged and hopeful.

## SESSIONAL PAPER No. 252

Roadmaking has been urged as an ideal employment for prisoners, for two reasons: (1) because there is such a crying need for good roads, and (2) because work of that character affects very slightly the interests of organized labour. Of all outside work, roadmaking is the least desirable for prisoners. In the first place, the constant exposure to the public that such work inevitably involves is scarcely fair to the prisoner. Certainly it is not an aid to his rehabilitation. The convicts in the penal settlements of Botany Bay, Tasmania and Western Australia, working in chain gangs, built long stretches of stone roads that remain good to this day. But society's attitude towards its delinquents has surely become more humane since Port Arthur furnished Marcus Clarke with the material for his gruesome story. No prison management would now be allowed to march convicts out to work on the roads in chains. The physical difficulties to successful road operations are not easily surmountable. To work within nightly reach of the prison would mean a rather narrow area of operation. For a movable camp only well-conducted, trustworthy fellows could be selected, and these trusties could probably be employed more advantageously to themselves and the State on the institutional farm.

At Kingston, the farms should afford a means for the employment in summer of a great deal more of the surplus prison labour than it now uses. From twenty to twenty-four is the maximum number engaged on the farm, even in the busy season. It is idle to say that from fifty to one hundred men could not be profitably engaged on the land. There are market gardens all around the prison farm and all kinds of vegetables, with the exception of potatoes, can be grown in abundance. It might be even possible to treat the land as to make it produce a good yield of potatoes. The difficulty on the farm appears to be not in the land but in the prison management. More men are not at work on the farm because of the officials' fear of escape and the trouble of looking after the workers. At Ohio State reformatory, where they have many long term prisoners, even lifers, twelve hundred acres are being farmed and the net profit runs as high as \$20,000 per year. In ten years, 2,600 prisoners have been trusted outside of the walls of the Ohio prison without armed guard, and only seventeen attempted to escape.

There is such a thing as emphasizing too much the necessity of keeping a loaded rifle within easy range of every prisoner. There are some men at Kingston to-day who would not run away if they had a chance. There are others who, under present conditions, would make an escape, if they saw a favourable opportunity. But repose a little confidence in these same men, put them on their honour and they might prove faithful to their trust. The success of prison management should not be measured in inverse ratio to the number of yearly escapes. It is possible to have absolute security and a horrible prison. No escapes from the prison at the further end of the Bridge of Sighs are recorded, nor did many get away from the Bastile, until that memorable day in July.

The trusty system is essential to the success of outside operations. The continual menace of an armed guard stifles the development of co-operative interest in the convict, hampers him in his labour, and makes that labour costly to the State. Nor is it necessary to run great risks of escapes in developing the system. A trusty gang can be recruited from almost any prison. It must be very carefully selected at first: (1) From men whose terms of incarceration have nearly expired and whose self interest makes it unwise to run away; (2) From those whose antecedents and conduct give strong assurance that they will not violate the confidence reposed in them. Of course, there will be occasional escapes, but if from a wisely selected trusty gang one does get away, the safety of the community is not necessarily imperiled. The chances are the defaulter will be recaptured and his added punishment will impart the wholesome lesson to his fellows that it pays to play fair with the prison management.

Let us turn now to a consideration of the other branch of prison labour—Inside industries. On these, as we have already urged, depends in a large measure the success of prison management. Where outside operations are limited in scope and where the climatic conditions make it impossible to work men in the open for a considerable

4 GEORGE V., A. 1914

period of the year, workshops within the walls are an absolute necessity. Given a free hand in the establishment and management of industries and the sale of their products, the progressive administrator can make an ideal prison. The greatest industrial prison on the continent is situated at Stillwater, Minnesota. A glance at the operations of that institution may be interesting. It has two basic industries: binder twine and agricultural implements. The prisoners are paid according to merit or efficiency, some of them receiving as high as \$20 per month. In addition, a fund is set apart from the prison earnings to relieve special cases of distress in the homes of prisoners. Last year the net revenue—over and above the maintenance of the prison and the wages of the inmates—was \$362,000. This sum was handed over to the State for the general service. Giving full credit to the unique genius of Mr. Henry Wolfer as a business man and a prison administrator, the result must still appear astounding unless the peculiar situation in Minnesota is explained. Within the borders of that state there are no binder twine factories or agricultural implement works, and it has become the settled policy of the State that the farmers purchase all their requirements in those lines from the Stillwater prison. If outside firms invade the Minnesota market the price of the prison product is lowered sufficiently to crowd them out. It is not necessary to make any comment upon the principle underlying the operation of Minnesota's penal industries. We merely state the facts. May we add that it is a far cry from the prosperous monopoly in two lines of manufacture that the Minnesota prison enjoys, to the strangled industrial conditions that one meets in a Canadian penitentiary—from the net revenue of \$362,000 at Stillwater to a net cost of \$300 per year for maintaining each convict in this Dominion.

## THE STATE-USE SYSTEM.

The State-use system has been generally accepted as the most satisfactory solution of the prison labour system. True, objection is offered to it in some quarters because of the fact that under its operation, while the element of competition is removed, the product of prison labour displaces what free labour would otherwise supply. This objection is unreasonable. Its acceptance can only mean one thing: the enforced idleness of prisoners, which, as we have already pointed out, is a crime against the prisoner and society as well. Since prisoners must be given productive employment, surely it is only just that, in as much as they must be maintained by the State, the State should receive the product of their labour. In this view, the leaders of the labour movement on this continent heartily concur. Mr. John Mitchell, Vice-president of the American Federation of Labour, in a recent article says:—

“Organized labour is the strongest and most persistent advocate of the employment of convicts in the prisons upon those commodities which are needed by the state and its subdivisions for consumption in its several institutions and departments. The charge that the labour unions are opposed to convict labour is a malicious attempt to prejudice the public against unionism by shifting upon the unions the responsibility for the evil conditions existing in the penal institutions”

Further on, Mr. Mitchell approvingly quotes an extract from the report of the proceedings of the National Committee on Prison Labour, as follows:—

“After one year of study the National Committee on Prison Labour found the preponderance of evidence to be in favour of the State-use system; after a second year of study and further investigation, the Committee is in a position to declare as prejudicial to the welfare of the prisoner, the prisoner's family and the public, the contract system of prison labour. The Committee therefore declares itself opposed to the contract system of prison labour and to every other system which exploits his labour to the detriment of the prisoner.”

## SESSIONAL PAPER No. 252

In a contribution to the Annals of the American Academy, Mr. John P. Frey, editor of the *International Moulders' Journal*, defines the position of organized labour on the question in these words:—

"It is not the work of the convicts as producers which meets with trade union opposition, nor is it that by working they may keep some free men idle. It is, instead, the methods by which prison labour, when performed for the benefit of private contractors, places the product of the convicts' labour on the market and thereby forces reductions in wages upon large numbers of free workmen, thereby lowering their standard of living."

Proceeding, Mr. Frey gives an illustration of the attitude of labour. If the State decide to "build an addition to one of its prisons or erect a new public building" by convict labour" there could be no objection. But if the State "allowed building contractors the privileges of contracting for convict labour and these convicts were placed to work erecting buildings for private individuals in competition with contractors employing free labour—to this form of competition the trade unions object." Further on, Mr. Frey advocates the doing in prison of all work necessary for the maintenance of State and eleemosynary institutions, building highways, raising farm produce, etc., "and the convict can work on all of these with a minimum of competition with free labour and with no injury to the farmer." More emphatic still is the pronouncement of Mr. Collis Lovely, General Vice-president of the Boot and Shoe Workers' Union, Boston, in favour of the State-use system. He says:—

"The system has proved an unqualified success and merits extension to all penal institutions in the state and country. No institution supported wholly or partially by the State should be allowed to purchase a single article in the open market that can be supplied in prisons. This would give employment to diversified prison industries and occupations and fit the prisoners to procure and perform lucrative labour at the expiration of their prison terms. Hence the value of diversified prison industries and occupations conducted under the most improved methods and with up-to-date machinery."

Your Commissioners had the privilege of hearing statements from representatives of organized labour in Canada. With the views already quoted from United States Labour leaders these statements generally agree. Mr. James Watt, president of the Toronto Trades and Labour Council, did not see any serious objection to prisoners being employed on work for the State, but urged strongly that the State should pay them wages. The president of the Dominion Trades and Labour Congress, Mr. J. C. Watters, said it did not matter what class of work prisoners are engaged in, there is competition to a greater or less degree. But the State-use system offers least competition to outside labour, and he was most emphatically in favour of it.

It is needless to quote the opinion of prison administrators on the State-use system. They all favour it. Wherever it has been adopted it has settled the perplexing question of productive employment in prisons. Let it be remembered, however, that the field for the operation of such a system in any of the States of the Union is much wider than it is in Canada. "State Institution" there covers nearly every institution within the borders of the State, educational, charitable, and corrective. In other respects, what with us is a strictly municipal service is with them under State control. Dr. E. Stagg Whitin, secretary of the New York Prison Board, told your Commissioners that the entire population of the penal institutions of the State could not possibly manufacture all the goods required for its various institutions. A similar situation is said to exist in Ohio, Massachusetts, and other states.

Wherever the State-use system has been successfully inaugurated it has been found necessary to pass an Act making it compulsory for the State's institutions and services to purchase their supplies from the penal institutions. If the purchase of

4 GEORGE V., A. 1914

goods from prison industries is left optional, it is found that private interests exercise a sufficiently powerful influence to hold the trade or the major portion of it. There does not appear to be any doubt that a full application of the State-use system in Canada would mean a welcome revival of the industries of the penitentiaries. More, it would mean the development of industries admirably adapted to the needs of the prisoners. On this point, there is a hearty agreement among the penitentiary officials who have been before us. Ex-Warden Platt tells us on pages \_\_\_\_\_ of the abandonment of the one-time thriving industries at Kingston; how the conditions that followed have "seriously operated against the reformation of the convicts;" the efforts that have been put forth to fill orders for supplies for the Post Office and Military services of the Government, and his own conviction that the public use plan would give the penitentiaries "all the work they would require." Equally confident is Inspector Douglas Stewart that the Government has within its own hands the means of reviving on a sound basis the penal industries. On page \_\_\_\_\_ he says:—

Speaking about the better employment of prisoners in penitentiaries, Inspector William Hughes (page \_\_\_\_\_) declared that:—

"What I have recommended, and what I think is absolutely suited, from every point of view, is that the Government should utilize the labour of its wards to meet its own requirements as far as possible. I think it (the State-use system) would give employment to every man in the prisons of Canada."

"Those men (those on the stone pile), not only those men, but all the men in the institution that we cannot employ on the farm and works, which are necessary for ourselves and the maintenance of the place, should be employed on State work. We are at the present time prosecuting operations here that will enable us to obtain possession of two shops in addition to the binder twine shops. With these shops at our disposal the prosecution of some industry for the manufacture of State goods could be taken up immediately. Let the Government give us an idea of what they want done and we can make it for them immediately."

From what your Commissioners have seen and heard during their investigations, they are forced to the conclusion that the State has been grossly negligent in not providing proper work for its prisoners in the penitentiaries. Public opinion forced the abandonment of the contract system and the closing down of the shops operated under it; but public opinion did not bar the way to the employment of prisoners in work for the State. The lack of proper employment at Kingston has been the cause, we believe, of the institution's chief troubles.

Under the State-use system many lines of industry might be profitably entered into. One of the most suitable for the prisoners and the most profitable to the State would be a furniture factory, for the making of all kinds of office furniture, filing cabinets, desks, tables, chairs, etc. The efficiency that can be developed, even among short term prisoners, in this line of work is remarkable. In one reformatory in the United States, your Commissioners were shown a magnificent line of furniture for the Governor's residence, made entirely by the inmates.

Other industries will naturally suggest themselves; clothing, boots and shoes, blankets, tents, etc., for the Mounted Police; tents, blankets, uniforms and harness for the Militia; tinware utensils for all services requiring them; mail-bags and repairing same, rural mail boxes, etc., hospital beds and tables.

As the industries grow, it will be found that other lines of manufacture for the Government can be successfully carried out. The system should be given not a stinted but a generous application. Private interests have made it impossible for the Government to allow its prisoners to labour for the open market. Private interest should not be allowed to interfere with the Government setting apart for prison industries

## SESSIONAL PAPER No. 252

every dollar's worth of those lines of goods that it requires and that prison shops can turn out.

That course marks the only sure way to the reform of the penitentiary system in Canada. Once a diversified circle of industries is established, abuses will disappear. A kindlier attitude and a better spirit will develop amongst the prisoners; officials and guards will realize more fully that their duty is to help as well as to hold the convict; and that to make men better is one of the prime purposes of the Prison System.

## PAYMENT OF PRISONERS.

It has been strongly urged upon your Commissioners that prisoners should be paid wages or that a portion of their earnings be devoted to the maintenance of their families. At the present time, the prison population of Canada, far from earning anything for the State, costs the Government for maintenance over \$300 per head per year. Even if a well-selected circle of State-use industries were established and successfully operated, it is not likely they will ever make our prisons self-sustaining. They should, however, very materially reduce the annual burden on the country and at the same time provide a fund for the remuneration of prisoners or assistance to prisoners' families.

Any wages' system must include all prisoners in its operations. If married men, or men with relatives dependent upon them, alone were paid, other prisoners, equally skilled and equally industrious, would justly complain. Even the fact that the earnings were given, not to the prisoner, but to his family, would not lessen the discrimination. The only prisoners who can fairly be left off the wages or reward sheet, are those under the ban for bad conduct.

The system of rewards or payments to prisoners, according to their efficiency and industry, has been adopted in many of the Institutions of the United States and in a few houses in Europe. As an incentive to labour and good conduct, it is invaluable. Men work with much more heart when they know they will be sharers, even to a small degree, in the product of their labour. In fact, their increased output under such a stimulus, it has been shown, goes a long way towards covering the wages fund. An idea of the outlay which the wages or reward system involves, may be gleaned from a survey of the pay sheet at Stillwater, Minn. Stillwater, as we have already seen, returned to the State, \$362,000 profit on its industries last year. The money paid the prisoners at Stillwater is termed 'over-work allowance.' In the month of October, 1913, 24 hands working full time, 27 days, received an 'over-work allowance' of \$282.57, or an average of \$11.77. There was quite a disparity in the amounts received by the men. One bench hand got \$22.89 for his month's work. The earnings of four others were between \$15 and \$20, and seven were under \$10.

The payment of prisoners, under the industrial conditions that at present obtain in our penitentiaries, would be a question of charity rather than administration. The question is: Should the distress that exists in the homes of many of these men and the sufferings entailed upon their innocent families, be left as at present to the care of local charities, or should their relief be made an additional charge upon the penitentiary appropriation?

The family, as a rule, is not to blame for the offence of its bread-winner, yet wife and children, crushed under the disgrace of the crime, have physical privation added to their mental tortures. The prisoner must bear the burden of his crime, but he is not responsible for the fact that he does not earn anything in prison. He would, no doubt, welcome the opportunity to engage in profitable labour, especially if he knew that part of his earnings would be devoted to the sustenance of his dependent ones. But the State will not let him earn anything. He is a non-producer and society has to support him as well as his family. The Government is to blame for this condition of affairs, and we believe until it places its prison population in the way of engaging

4 GEORGE V., A. 1914

in productive labour, it should set aside a fund for the relief of distress in prisoners' homes.

## THE INDETERMINATE SENTENCE.

The indeterminate sentencee is regarded by penologists as essential to the effectiue operation of any reformative system. It is at once a scientific and a common-sense proposal. It presupposes the necessity of the cure or reclamation of the man as well as his punishment. The definite sentencee, on the other hand, is punitive in its purpose. The prisoner must remain in prison for a stated number of years, no matter how well fitted he may be, before the expiry of his sentencee, to take his place in the outside world. And he must be discharged when his time is up even if he is still an unrepentant criminal and determined to resume his war upon society.

The chief objections to the indeterminate sentencee are: (1) the judge who tries a man is in the best position to fix justly his sentencee; (2) the trained criminal may so conduct himself in prison as to deceive the officials and thus earn good reports and early liberty.

To the first of these objections there is only one answer: If the sole object of the judge's sentencee is to punish, and make the punishment fit the crime, the judge is certainly the best qualified to measure out the law's revenge. But, if the other side of the question is to receive consideration; if society desires to reform as well as punish the convicted felon, then the judge is no more in a position to fix definitely the period of incarceration than the doctor is to say beforehand how long a patient should remain under treatment.

The second objection, based upon the fear that clever, designing criminals, by good conduct, may work a short course through prison, has not revealed itself in the practical operations of the system. Under the indeterminate sentencee law, the average term of detention in prison is invariably longer than it was under the fixed sentencee.

After years of experience with the operations of the system in the Commonwealth of Massachusetts, Mr. Fred. G. Pettigrove, of Boston, gives this as his matured opinion:

"The indeterminate form of sentencee is an indispensable adjunct to every reformatory scheme, because it is the only one that affords an opportunity to adjust the term of detention to the varying needs and capacities of the prisoner. When a prisoner is under the necessity of making a constant effort at self-improvement in order to secure release, he must in some cases be deriving a benefit from the discipline. The deterrent effect of penalties depends upon certainty more than upon severity; and the certainty of a commitment on an indeterminate sentencee is quite as useful as if the court should fix the term."

The view that in corresponding to the efforts for his rehabilitation within the prison, even if his sole object is early freedom, a prisoner is developing the good that is in him, is also well expressed by another experienced penologist:—

"The prisoner's government resolves itself into a mutual or co-operative relation between himself and keeper or guard. Both are anxious to win—the prisoner for his earlier freedom—his keeper because it is easier to manage him under the stimulating influence or reward. The general character of the prisoner is improved by his own discipline of self control, and I say it advisedly, the prison officer is also improved by the response in his ward. The rigours of prison commands are softened, infractions are adjusted with better spirit and penalties are imposed more thoughtfully. They feel the heart beats of each other more easily and readily, and I firmly believe that by this form of sentencee we are more likely to recognize that which is too often unrecognized, that whether we wear official robe or prison garb, both are children of one living God."

The late Chief Justice McMahon was a strong advocate of the indefinite sentencee. As indicating the position of an eminent Canadian Jurist on the question, a quarter of

## SESSIONAL PAPER No. 252

a century ago, we may quote from Justice McMahon's charge to the Grand Jury at Toronto Assizes in June, 1889:—

"Were the law changed and the judge's duty made simply to commit the prisoner to a named prison, the prisoner's duration therein would depend on himself, from the evidence afforded by his daily life and conduct as evincing his fitness for a return to liberty.

"A convict is imprisoned because it is not safe for the community that he should be at large. His imprisonment is demanded for the same reasons that require that a lunatic should be detained in an asylum. It follows that the imprisonment should continue as long as the danger lasts. A lunatic is not discharged from an asylum until in the opinion of those intrusted with his keeping he has recovered his mental balance. So it is urged to discharge a convict while he remains unchanged in character and purpose is to precipitate upon the public a terror which it is the duty of the state to hold in leash.

"As it is the aim of the indeterminate sentence to retain the convict in prison until he is fitted for freedom, making such fitness the condition precedent to his release, the sentence therefore presupposes a system of prison discipline that shall tend to fit the convict for freedom. Mere imprisonment does not have such effect; on the contrary the punitive system has the opposite tendency."

Dr. Bruce Smith, Inspector of Prisons for Ontario, has made an exhaustive study of the indeterminate sentence as an essential feature of any system of prison reform. Doctor Smith speaks not only from many years practical experience, but also from a wide knowledge gained through a personal investigation and study of the prison systems of the United States and European countries. He puts the case very concisely when he says:—

"The indeterminate sentence embodies as one of its basic principles that the individual offender, and not the crime, shall finally determine the length of confinement or detention that is necessary to reform him, and to secure the greatest protection to society. This means a careful analysis of his physical, mental and moral status in order to determine how long it is necessary for him to remain in prison, rather than the measuring out so much punishment for a given amount of crime. The indeterminate sentence seeks to regenerate the criminal and readjust him to the requirements of society's laws and customs, so that he may be safely released on probation. It affirms that the crime shall not be considered except for the purpose of determining the culprit's natural depravity. Emphasis is placed upon the saving qualities of the individual—the man, or what is left of him. The scientific application of the principles of the indeterminate sentence means or implies that the offender shall some day be released on probation or parole, and that such tentative release shall come to him gradually, and only after he has given reasonable evidence of his desire and purpose to live honestly and obey the law. It means that his treatment in prison shall tend to break down and eradicate the vicious and criminal traits of his character and build up and strengthen the best elements of his nature. The principles involved in the indeterminate sentence and the probation or parole system are one and the same, and are inseparable."

Carried to its logical development, the indeterminate sentence should have neither minimum or maximum limits. It should mean liberty for the reformed prisoner to take his place in society and bear his share of its burdens, but it also should secure the continued incarceration of the incurable criminal. Any system that shortens the term of imprisonment of the man who becomes an honest contributor to the wealth of the community, and holds in leash for a longer period the habitual criminal, is in the economic interest of the State. Society is the gainer by the earlier freedom of the one and the longer confinement of the other. This principle is recognized in the

4 GEORGE V., A. 1914

Borstal system in England where a separate institution has been established for cases that offer little or no hope of reform. New South Wales has a law that places a criminal, three times convicted, on what is known as the "habitual list." The habitual is kept in custody until he has given substantial evidence of a desire to live an honest and orderly life. Then he is allowed out on probation on condition that he report regularly to the probation officer and if he again violates the law he is returned to prison for an indefinite period. Switzerland has a special institution for the recidivist called the House of Seclusion. The minimum term is ten years; the maximum twenty.

The indeterminate sentence is now in operation in the province of Ontario. The Ontario Reformatory Act provides that every person sentenced directly to the Reformatory shall be sentenced to imprisonment there for a period of not less than three months and for an indeterminate period thereafter of not more than two years, less one day. An application of the same principle to the treatment of inebriates is to be found in the Ontario Municipal Act, 1912, a section of which reads as follows:—

"Where a person is convicted of being found drunk or disorderly in a public place, contrary to a municipal by-law, within three months after a prior conviction for a like offence, he may be committed by the Police Magistrate or Justice of the Peace, before whom he is convicted, to an Industrial Farm, of the locality, in which the order for committal is made for an indeterminate period, not exceeding two years."

Not the least of the merits of the indeterminate sentence is that it would place all prisoners on an equal footing. The disparity in judges' sentences is very pronounced. One judge appears to have a particular aversion for a certain class of offence. Another judge is notoriously lenient in some cases. Hence we have men meeting in prison, found guilty of a similar offence, with one undergoing a penalty much more severe than the other. The long termer, already smarting under a feeling of resentfulness, is likely to grow more morose and vindictive when he meets other prisoners who are getting off much lighter than he. If a minimum and maximum period of imprisonment were fixed in each case and each convict allowed to work out his own salvation between those limits, there would be an end to all feeling of judicial wrong and a friendlier attitude by the prisoner, from the beginning, towards the agencies that are working for his rehabilitation.

#### PAROLE.

A natural corollary of the indeterminate sentence is a properly organized and efficiently administered system of parole. To one officer is assigned the duty with the assistance of the police of looking after the men during their probation. The physical impossibility of any one man—no matter how efficient and zealous he may be—discharging these duties for the whole Dominion, is obvious. True, invaluable service is voluntarily rendered the Department by the Prison Gate Branch of the Salvation Army, and many a paroled prisoner owes his thanks to this worthy organization, for the assistance and encouragement that gave him a new start in life. If the administration of a parole system is one of the duties of the State, then the proper working out of that system should not be dependent upon the efforts of any church or charitable society. It should be organized and officered to promote and protect adequately the interests of every paroled convict. That would still leave a large field for the independent exercise of Christian sympathy and helpfulness.

According to the present regulations, the paroled men report to a police officer in the district. This is a very bad feature of the system. The average policeman is neither temperamentally nor by training fitted to be the guide and guardian of an ex-convict. Not infrequently, police persecution has driven the honestly working convict away from his employment and back again to a life of crime. The parole system should

## SESSIONAL PAPER No. 252.

be absolutely independent of the police. It should be administered by strict but sympathetic men, who will see to it that the paroled convict gets a fair chance. Employment is the first requisite to a new start in life. It is not fair to the prisoner to set him at liberty in a world which has been a closed book to him for a number of years, without anything to do. If the man is weak at all, he will surely go down under the continuous pressure of enforced idleness. It is not desirable in the vast majority of cases to send the man back to his former home. The prospects of his success are generally much better if a position is secured for him in a strange place. Only his employer and the local parole officer need know of his prison experience. This secret between employer and employee often develops a feeling of fellowship and gives the paroled man a surer grip of himself.

Your Commissioners have been impressed with the idea that a parole system can best be administered with the assistance of a small board appointed at each institution. That board could meet monthly and consider the application for parole, see and interrogate the applicants, hear the reports from the warden and other officials, and advise the Minister of Justice on each case. Membership on the board would be of a purely honorary character, as public spirited men may be found at every prison willing to give their time to the work.

## MANAGEMENT OF PENITENTIARIES.

The unsatisfactory conditions at Kingston Penitentiary are the outcome of the system of administration. The place is pervaded by a spirit of distrust and suspicion amongst the subordinate officers. Political jealousies and religious animosities prevail to such an extent that they have seriously affected the welfare of the inmates. It is difficult to see how any reformatory work can be carried on where such a spirit prevails. When officers are quarreling, nursing personal grievances and imaginary wrongs, and making them the subject of prison gossip from day to day, their influence on the prisoners cannot be good.

Many of the guards are not qualified by education or character for the positions they fill. Guards who obtain their appointments by misrepresenting their age and other sinister means, are not men whose influence will tend to uplift those in their charge. When they carry on illicit traffic in tobacco and rob the convicts in doing so, they cannot help to make the prisoners honest men. Their influence must have an evil effect which nothing can overcome. The possible effects of the petty tyranny over prisoners of ignorant and brutal guards are painful to think of. The moral standards pervading the prison are to be estimated from these facts.

These conditions result in great measure from: (1) The present mode of appointing guards through political influence; and (2) from the Warden's hands being tied, so that he is practically impotent to control or dismiss an official who has political influence, no matter what his offence may be. Formerly, it appears the Warden was invested with full authority to employ and dismiss guards. Some fifteen years ago, this power was taken from him, and the result has been the lessening of his influence as an administrator; the employment of men utterly unsuitable for the work, and the consequent demoralization of the penitentiary service. As to the conditions we are dealing with and the causes that produce them, there is a concurrence of opinion among prison officials. Warden Platt was questioned on this point (page ):

"Q. How does the present system affect discipline in so far as the authority of the warden is concerned?—A. Inimically; that is the whole tendency—to lessen the authority of the warden and lead the officials to think that the warden has less to do with them than he used to have—and that they are dependent on their friends in the city or friends in Ottawa more than they are on the warden.

"Q. That must undermine discipline?—A. It undermines the authority of the warden."

4 GEORGE V., A. 1914

Inspector Hughes (page ) condemned the system of placing a man who is inferior in every way to the convict who is under him, in charge of that convict. Where you get men shut in from the outer world and the only person from the outer world they are meeting is the man who instructs and controls them practically, body and soul, that man's example before them is much more than you can appreciate, unless you have been there to see it.

Equally emphatic was Inspector Stewart in his denunciation of the method of appointing guards. Speaking of a convict who had been using dope, he was asked, (page ): "Where would he get the dope?" and the answer was: "From officers appointed by political parties outside, without an examination." Further on, (page ) Mr. Stewart deals more fully with the question. He says:—

"The mode of selection is such that the Warden is absolutely relieved of the responsibility or the influence a man so selected has over the convicts. The process of selection is and has been for the last fifteen or twenty years, fifteen years at least, that when a vacancy occurs a man is taken from those recommended by prominent politicians and members of Parliament, and the Warden is notified to employ him. The Warden, it is true, has then three months before the appointment is made permanent, if he sees fit to report against that man's permanent appointment, but it is very, very rarely that the Warden has backbone enough to do it, because he antagonizes the politician who recommends him."

Your Commissioners believe that no lasting improvement in the condition of our penitentiaries can be looked for, so long as the present system of management is adhered to. It is impossible, apparently, to fix the responsibility for many of the evils complained of. The Warden disclaims responsibility and the Inspectors say that they are not responsible, in many cases. What is needed is a management, unhampered by political influence, vested with full power to reorganize the system and held strictly responsible for the conduct of all our penitentiaries. The importance of the work can scarcely be overestimated. At the very outset a line of industries must be established. To place each of these industries in the most suitable institution and fully equip and officer them are important undertakings. More important still is the better adjustment of the routine and discipline of the prisons to the moral and intellectual improvement of the prisoners. Responsibility there must be and in the final analysis that responsibility must rest on the Department and the Government. But in the working out of a reorganization and the subsequent management of each prison those charged with the duty should be given a free hand. To no other department of the public service is the Commission system so well adapted. Wherever it has been tried the results have been gratifying. A penitentiary Commission of three members would meet every requirement of the situation. To that Commission should be given full power to reorganize the prisons, industrially and otherwise, make regulations for their management, select men for the administrative officers and then hold these men responsible for results. As a body, the Commission would control the whole circle of penitentiaries. Individually, they would perform the duties of an inspectorate. The Department of Justice, while exercising supreme authority over the Commission, would be relieved of the details of management and the pressure for political appointments.

#### RECOMMENDATIONS.

Your Commissioners beg to make the following recommendations:—

##### *Management.*

- (1) That the control of the penitentiaries be placed in the hands of a permanent Commission of three members, with power to appoint staff officers and heads of depart-

## SESSIONAL PAPER No. 252

ments, make regulations for the government of the institutions and generally direct their management.

(2) That under such commission the Warden of each prison be given full authority to employ and dismiss keepers, guards, etc., in addition to the powers he now enjoys.

(3) That a Parole Board of not less than three members be appointed for each penitentiary, to sit once a month and to hear and consider applications for parole, and make recommendations on the same to the Minister of Justice.

(4) That the field staff of the parole organization be increased to three officers to be directly under the charge of the Department of Justice and work in conjunction with the local parole boards.

*Classification.*

(5) That an arrangement be entered into with the provinces of the Dominion to take over the custody of first offenders and prisoners under twenty-five years of age.

(6) That should it be found impracticable to carry out recommendation No. 5, two reformatories for young prisoners and first offenders be established—one in the East and the other in the West.

(7) That within the present penitentiaries a system of classification be inaugurated, based upon the conduct of the prisoners, and operated with a view to encourage them to habits of order, industry, and a better appreciation of the duties of citizenship.

*Industrial Employment.*

(8) That what is known as the State-use or Public-use system of prison labour be adopted throughout the penitentiaries and that industries be established to supply the requirements of the Government, its institutions and services, with all goods that can be made in prison.

(9) That outside labour be developed to the fullest possible extent at each prison, in farming operations and, where raw material can be conveniently obtained, in quarrying stone, making brick, etc.

*Treatment of Prisoners.*

(10) That a through physical and mental examination be made of each prisoner on his admission, and as far as possible his antecedents and family history be obtained and put on record; and

That a proper filing system be installed at each penitentiary, so that the history, physical and mental condition of the prisoner on admission and his record in prison may be kept in one envelope.

(11) That the close cropping of prisoners' hair be abolished, except in cases where it is necessary to preserve cleanliness.

(12) That in place of the present prison uniform a suit and cap of one tone material, blue or grey, be adopted.

(13) That a few copies of a carefully censored weekly newspaper be provided in each prison for the use of good-conduct prisoners.

(14) That a moderate issue of tobacco be made to good conduct prisoners who had contracted the habit before entering prison.

(15) That as soon as space can be provided a dining-room equipped with proper service be established at each prison for all good conduct prisoners, and that meanwhile the tinware utensils in use be discarded and enamel-ware substituted.

(16) That flogging of convicts and confining them in a dark cell or dungeon and shackling with ball and chain be abolished.

*The Hospital and Insane Ward.*

(17) That a hospital, modern in plan and equipment, be provided.

(18) That the hospital staff be reorganized so that it comprise a visiting surgeon, a resident physician, and two trained male nurses.

907067

4 GEORGE V., A. 1914

- (19) That a separate institution for the criminal insane be established or that arrangements be made with the provincial Governments for taking over this class.

*The School.*

- (20) That a school of letters be established at each prison, and for three hours at least each day instruction be given by a head teacher and inmate monitors.

- (21) That drill exercises be held every Saturday afternoon when the weather is suitable, and on the afternoon of every holiday; and that an occasional entertainment be given.

*Disciplinary Officers.*

- (22) That in the employment of guards more regard be had to the character and education of the applicant, with a view that the official should exercise the best possible influence over the prisoner.

*Indeterminate Sentence.*

- (23) That the criminal code be so amended as to empower judges to impose a maximum and minimum term of sentence on all persons committed to a penitentiary, the period of detention to be fixed by the Parole Board.

G. M. MACDONNELL.  
FREDERICK ETHERINGTON.  
J. P. DOWNEY.



0000002159

LIBRARY  
MINISTRY OF THE SOLICITOR  
GENERAL OF CANADA

OCT 24 1988

BIBLIOTHÈQUE  
MINISTÈRE DU SOLICITEUR  
GÉNÉRAL DU CANADA  
OTTAWA, ONTARIO  
CANADA K1A 0P6

HV Canada. Royal Commission on  
9510 Penitentiaries.  
.K5 Report.  
R6  
1914  
C.2

