

SESS. II.—1884.
NEW ZEALAND.

CONFEDERATION AND ANNEXATION.

THE FOREIGN CRIMINALS BILL,
AS PROPOSED BY THE GOVERNMENT OF QUEENSLAND.

THE RECIDIVIST BILL:

PRÉCIS OF THE REPORT OF THE SENATE COMMITTEE, AND OF THE AMENDED BILL.

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

The PREMIER, Victoria, to the PREMIER, New Zealand.

SIR,—

Premier's Office, Melbourne, 24th July, 1884.

At the instance of the Hon. the Premier of Queensland, I beg to submit for your consideration the accompanying Bill to prevent the introduction of Foreign Criminals into Queensland.

The Hon Mr. Griffith has had this Bill prepared with the object of bringing about identical legislation in all the colonies.

I enclose also a copy of Mr. Griffith's explanatory letter, and shall be glad if you will let me know your views with regard to the matter at your earliest convenience.

I have, &c.

The Hon. the Premier of New Zealand,
Wellington.

JAMES SERVICE,
Chairman of Convention Committee.

Enclosure.

SIR,—

Colonial Secretary's Office, Brisbane, 2nd July, 1884.

As promised in my letter of the 26th ultimo, I now enclose for your consideration twelve copies of a draft Bill to prevent the introduction of Foreign Criminals into Queensland.

You will observe that the provisions of the Bill, which are extremely stringent, deal with the two possible modes of introduction of criminals—by ships and by boats. The latter mode is the one which we in Queensland have most to fear. It appears to us that the only effectual mode of preventing men from escaping to Australia (with, I fear too frequently, the connivance of their gaolers) is by letting them know that on their arrival they will find their condition rather worse than better.

As to their introduction by ships, the most effectual way will be the best. The scheme suggested is analogous to that under the Chinese Immigration Regulation Acts, by which the assistance of the captain and owners of the ship, in the enforcement of the law, is secured by means of heavy penalties.

I hope that the other colonies will not be alarmed at the severity of the proposed provisions. For myself, I have little doubt that Her Majesty's assent to such a Bill would not be refused.

The Hon. James Service, M.P.

I am, &c.

Premier of Victoria, Melbourne.

S. W. GRIFFITH.

Sub-Enclosure.

A BILL TO PREVENT THE INTRODUCTION OF FOREIGN CRIMINALS INTO QUEENSLAND.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. In this Act the following terms have the meanings set against them respectively, that is to say,—

“Foreign criminal”—Any person who has been transported or deported under the authority of a foreign State to any place, whether a possession of that State or not, or

who has been sentenced by the authority of a foreign State or possession to punishment of any kind for any offence for which that State might demand the extradition of an offender :

“Principal Officer of Customs” or “Principal Officer”—The Principal Officer of Customs at the port in question :

“Minister”—The Colonial Treasurer or other Minister administering the Department of the Treasury :

“Justice”—A Justice of the Peace :

“Police officer”—A constable or officer of police.

2. The Governor in Council may, by Proclamation, declare any possession of a foreign State, or any other place named in the Proclamation, to be a place from which foreign criminals are likely to come to Queensland.

3. The master of every ship arriving in Queensland from beyond the seas, which has sailed from or touched at any place declared by any such Proclamation to be a place from which foreign criminals are likely to come to Queensland, shall, immediately on arrival of the ship in any port of the colony, and before making any entry at the Customs, deliver to the Principal Officer of Customs a list of every person on board the ship, specifying the name, the place of birth, the apparent age, the last place of residence, the place and date of shipment, and the calling and last occupation, of every such person.

For every default in compliance with the provisions of this section with respect to any person, the master shall be liable to a penalty of one hundred pounds.

4. If it appears to the Principal Officer, upon inspection of such list, or upon inspection of the persons on board of the ship, or otherwise, that there is reason to suspect that any person on board the ship is a foreign criminal, the ship shall not be permitted to enter at the Customs, or to make any communication with the shore without the permission of the Minister first obtained. Such permission shall not be given until such precautions have been taken to prevent the landing of any such foreign criminal as the Minister may direct, nor until security has been given to his satisfaction that no such criminal shall land.

5. If the master of any ship shall permit any foreign criminal to land therefrom, the ship, with her tackle, apparel, and furniture, shall be forfeited, and the master shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding five years, with or without hard labour.

Proof of the fact that a foreign criminal has landed from a ship shall be sufficient proof that he so landed with the permission of the master.

6. Any foreign criminal who shall be at large in Queensland shall be guilty of felony, and shall be liable to be kept in penal servitude in irons during the pleasure of the Governor.

7. Any Justice or officer of police, having reasonable cause to suspect that any person is a foreign criminal at large, may forthwith and without any warrant apprehend such person, or cause him to be apprehended, and take him, or cause him to be taken, before any two Justices, to be dealt with as hereinafter provided.

A Justice may, if he think fit, instead of causing a suspected person to be apprehended in the first instance, issue a summons under his hand, requiring such person to appear before two Justices, to be dealt with as hereinafter provided.

A Justice may take bail for the appearance of any person charged with being a foreign criminal at large to answer the charge before two Justices, in such sum, and with or without such sureties, as such Justice may deem expedient.

8. Any two Justices before whom any person is brought, accused of being a foreign criminal at large, may, at their discretion, upon *prima facie* proof that he is a foreign criminal, either—

- (1.) Take bail that such person leaves the colony within seven days ; or
- (2.) Cause him to be delivered up to any person duly authorized by the Government of the country or possession from whence he came, so as to be conveyed in custody to such country ; or
- (3.) Cause him to be put on board a ship of war belonging to such country ; or
- (4.) Commit him for trial ;

and in either of the first three cases cause him to be detained until he so leaves or is so delivered up or put on board a ship of war.

9. Any person accused of being a foreign criminal at large shall be tried before a Judge of the Supreme Court without a jury, and any such Judge shall have full power to try such accused person and pass sentence upon him.

Any such accused person may at his trial be interrogated by or under the direction of the Judge.

10. In any proceeding under this Act, whether civil or criminal, the following rules shall be observed as to evidence, that is to say—

- (1.) Any letter or other document purporting to be signed by any Governor, Magistrate, or officer of a penal establishment, of a foreign possession, or by any British Consul or Consular Officer resident in any foreign State or possession, and describing, naming, or referring to any person named therein as a criminal, shall be sufficient evidence of the facts stated in such letter or document with respect to such person, until the contrary is proved :
- (2.) Identity of the name of an accused person with the name of a person mentioned in any such letter or document shall be sufficient evidence of his identity with the person so mentioned, until the contrary is proved :
- (3.) Proof that any person apparently of foreign race has arrived in Queensland, by sea or otherwise, under such circumstances as to induce suspicion that he has escaped

from a foreign possession, shall be sufficient evidence that he is a foreign criminal, until the contrary is proved.

11. If any person who has been convicted under this Act of being a foreign criminal at large is discharged by order of the Governor, upon condition of leaving the colony, and does not leave the colony within the time prescribed in the order for his discharge, he shall be liable to be again apprehended, tried, and sentenced.

12. Any person who harbours or conceals any other person whom he knows or believes to be a foreign criminal, shall be liable to a penalty not exceeding one hundred pounds, or to be imprisoned for any period not exceeding twelve months with or without hard labour.

13. The master of any ship who brings a foreign criminal in such ship to any port or place in Queensland, shall be liable to a penalty not exceeding one hundred pounds, with or without imprisonment for any time not exceeding six months.

14. Any Justice, upon information on oath that a foreign criminal is harboured in any house or other place, may grant to any police officer a general search-warrant for such criminal; and a police officer, in virtue of such warrant, may break, enter, and search, by day or by night, any dwelling-house, tenement, or other place wherein such criminal is suspected to be concealed, and may apprehend any person whom he has reasonable cause to suspect to be a foreign criminal, and may also apprehend all persons found in or about such dwelling-house, tenement, or other place whom such officer has reasonable cause to suspect to have knowingly harboured or concealed such suspected person, and all persons found and apprehended as aforesaid shall be forthwith taken before two Justices, to be dealt with as herein provided.

15. Any Justice or police officer, having reasonable cause to suspect that a foreign criminal is on board any ship, may go on board such ship and search any and every part thereof, and cause to be apprehended any such criminal found therein.

16. Except as herein otherwise provided, all offences against this Act shall be heard and determined by any two Justices in a summary manner, and no complaint, conviction, order, or other proceeding before or by any any Justices under this Act shall be quashed or set aside, or deemed void or insufficient, for want of form only, or be removed or removable by *certiorari* or any other writ or process whatsoever into the Supreme Court.

17. Any person who feels himself aggrieved by the judgment of any Justices adjudicating under this Act may appeal from their order or adjudication to the next District Court which is held nearest to the place where such order or adjudication has been given or made, and the execution of every such order or adjudication so appealed from may, at the discretion of such Justices, be suspended.

18. Any person desiring to appeal under the last preceding section shall be detained in custody until the matter of such appeal is finally heard and determined, unless such person intending to appeal, with one or more sufficient surety or sureties, enters into a recognizance to Her Majesty before the Justices hearing the case, in such sum as the Justices may direct (which recognizance the Justices are hereby authorized to take), conditioned to prosecute such appeal with effect, and to appear to abide the determination of the District Court, and pay such costs as that Court may award; and such Court is hereby authorized finally to hear and determine the matter of such appeal.

19. Any person accused of being a foreign criminal, or of any offence against the provisions of this Act, and the husband or wife of any such persons, shall be competent, but not compellable (except as hereinbefore provided), to give evidence on behalf of such accused person.

20. Nothing in this Act shall be taken or construed to take away or interfere with any powers vested in the Governor under any Extradition Act or Extradition Treaty.

21. This Act may be cited as "The Foreign Criminals Act of 1884."

No. 2.

The COLONIAL SECRETARY, New Zealand, to the PREMIER, Victoria.

SIR,— Colonial Secretary's Office, Wellington, 17th September, 1884.

I have the honour, in reference to your circular letter of the 24th July, to inform you that this Government, having had under its consideration the question of legislation to prevent the introduction of foreign criminals into New Zealand, has come to the conclusion that it will be better to defer the bringing in of a Bill similar to the one prepared by the Hon. the Premier of Queensland, of which copies were enclosed in your communication, until the subject of the Confederation of the Australasian Colonies has been settled.

I have, &c.

The Hon. the Premier of Victoria, Melbourne.

P. A. BUCKLEY.

No. 3.

The PREMIER, Victoria, to the PREMIER, New Zealand.

SIR,— Premier's Office, Melbourne, 13th September, 1884.

Permit me to inquire whether you have yet been able to give consideration to the Foreign Criminals Bill, drafted by the Hon. S. W. Griffith, Premier of Queensland, and submitted to you by my letter of the 24th of July.

2. Recent events indicate the pressing necessity of some practical measures to provide against an influx of foreign criminals. Not long ago, no less than nine persons of this class arrived in Sydney from New Caledonia, by one steamer of the Messageries Maritimes line; and within the last eight weeks, seven French criminals have been arrested and convicted in Melbourne, besides

one still at large, who is charged on warrant with store-breaking. The police have information that these men came originally, if not directly, from New Caledonia.

3. It seems probable that the number of New Caledonian convicts, free by expiry of sentence, must now be rapidly on the increase, and their arrival on our shores must either be provided for by an increased police and penal expenditure, or prevented by timely legislation.

4. May I ask that you will favour me, as early as convenient, with your views on the subject?

5. I would mention that I am strongly disposed to add to any Bill dealing with this matter, a clause imposing differential tonnage dues of a heavy amount on all vessels (of whatever nationality) trading with a convict settlement.

I have, &c.

JAMES SERVICE,

Chairman of Convention Committee.

The Hon. the Premier, Wellington.

No. 4.

The AGENT-GENERAL to the PREMIER.

SIR,—

16th August, 1884.

M. de Verninac's Report on the Recidivist Bill, with several Appendices, was distributed in the French Senate yesterday.

I transmit herewith a copy of the same, together with a *précis* translation I have made of—

(a.) The Report itself;

(b.) The Bill as amended by the Senate Committee; and

(c.) The estimate of proposed cost for three years.

Immediately upon the Report being distributed, the President of the Finance Committee of the Senate, M. Calmon, observed that, as the new proposals involved a large annual expenditure, the Finance Committee desired the Report to be referred to them, so that they might advise upon it from a financial point of view. The new proposals, in fact, contemplate an expenditure of nearly 26,400,000 francs (about £1,060,000) in the first three years. The Report was thereupon referred to the Finance Committee without debate.

You will perceive, from the *précis* I am sending you, that the Bill has been extensively amended. I do not find it easy, therefore, to understand the statement made in the Report to the effect that it hardly differs from the Bill as it came up from the Chamber of Deputies. I have omitted, in the *précis*, much of the general argument contained in the Report, retaining only what seemed of special interest to the colonies. One of the Appendices consists of a despatch from the Governor of New Caledonia, condemning the scheme in the strongest terms. He declares that the colony cannot find work for the freed criminals already there, and that there are no means whatever of finding any for the recidivists. He declares that on the main island it is impossible to find land for a single recidivist without breaking faith with the convicts who are honestly willing to labour, and that it is altogether impossible to find any on the Loyalty Group at all. The French Government ought, therefore, he says, clearly to understand that it is absolutely impossible to receive recidivists in Caledonia under the conditions of the Bill as passed by the Deputies; and that to persist in the scheme must ruin the colony. How, in the face of such a despatch, the Senate Committee could go on with the scheme at all is not clear.

The Report, and the amended Bill, contain so many points of great importance that I may, perhaps, ask permission to direct your attention to them by and by. In the meanwhile, the session of the French Parliament having been now prorogued, the recidivist scheme is, of course, shelved for some time.

I have, &c.

The Hon. the Premier, Wellington.

F. D. BELL.

Enclosures.

No. 1.

Précis of the Report of the Senate Committee (M. de Verninac).

1. Utility of the Bill.

THE report begins by referring to the ever-increasing number of relapsed and habitual criminals, to the fear and indignation thereby excited among all classes, and to the remedy sought in transportation; which has led to several schemes being submitted to the Legislature, and at last to the Bill passed by the Chamber of Deputies on the 30th June, 1883. Although crimes of a grave character had largely diminished since 1854, those of a lesser degree had been constantly increasing; and each year, with alarming regularity and intensity, the proportion was growing of relapse into habitual crime. The proportion of recidivists to the whole body of criminals, which in 1850 was only 20 per cent., reached in 1882 44 per cent., the total number being 78,998; and now there was seen to exist in the lower strata of society a class becoming every day more numerous, which reduced crime to a profession. This class, attacking property by preference, resorted chiefly to theft (in all its forms), breach of trust, and swindling; murder or assassination being mostly a means for committing other crimes or escaping from punishment. Offences against the person were almost exclusively those affecting morals, including public outrages against modesty, excitation of the young to debauchery, and procuring of prostitution. The progress of this social sore had proved alike the impotence of the existing systems of repression and the necessity for a prompt and energetic remedy.

The perversity indicated by the reiteration of crimes which in themselves were, relatively speaking, hardly grave, had not been sufficiently taken into account by juriconsults. It would not suffice to amend the Penal Code in the direction proposed by M. Béranger. Neither prisons nor penitentiaries could really avail against habitual criminals, two-fifths of the prisoners discharged

from penitentiaries in 1880 having been again sentenced for fresh crimes up to the end of 1882. The unavoidable conclusion is, that the only remedy, or at least the only means of self-preservation, must be sought in transportation; and an exhaustive study of the problem only points to the same solution which public opinion had already instinctively reached.

2. Transportation as a Punishment.

Transportation has always had its advocates and its passionate adversaries. These allege that it is only an empirical device for removing the presence of the evil, without suppressing its causes; that, hurtful as the criminal classes are in the mother-country, they will not be less so in the colony which has the misfortune to receive them, while the further they are sent the greater will be their cost; and that, fatal in itself to a colony as introducing an element of disorder and ruin, transportation is also useless as a means of repression of crime. Nevertheless, the Chamber of Deputies passed the Bill by a majority of 344 to 87, and the majority of the Senate Committee has also now adopted its principle. It is true that, in older and more prosperous colonies, possessing a high civilization and an adequate population, transportation would not only be a calamity but be devoid of common sense; nor could it ever enter into the mind of any one to choose, for instance, as places of transportation such colonies as the Antilles or Réunion: it would be as reasonable to intern criminals from Gironde in the Department of the Rhone. But it is not so with a virgin country, hardly inhabited. Again, it had been objected that it is chimerical to believe in any future for convict colonies. But, without going any further into the past, the contemporary example of Australia seems to prove what results can be attained by penal colonization. It is said that although Australia submitted for eighty years to transportation, she would have broken her ties to England rather than let it be continued. But what conclusion ought to be drawn from this? Only that the limit of a colony to absorb and utilize the scum of the mother-country is not indefinite. Every one knows how persistently the Australians deny having ever received any benefit from transportation. Nor need any one be surprised at those new and marvellously prosperous countries repudiating their origin. A time will doubtless come when in Sydney Governor Phillip and his comrades in exile will be spoken of as fabulous and legendary beings. But that anywhere outside of Australia even the greatest adversaries of transportation would be found to argue that it cannot be and has never been anything but a source of ruin to a colony, is what the Committee cannot admit. It is true that penal colonization cannot suffice by itself, and must be associated with and enclosed (*encadrer*) within a free colonization; and it had been the glory and greatness of England, as well as her profit, that she had known how to solve this problem. Of course, any accumulation of large numbers of convicts at one point must bring about excesses and disorders; but has there not been violence at every beginning of colonization? and can it be supposed that even free colonists are recruited from the healthier parts of old societies? Did the morals of the Far West or California resemble, even only thirty years ago, not to say those of Paris or London, but those of New York, or Boston, or Philadelphia? It only needs to mention lynch law to show how great was the difference. What was Australia in 1787, when Phillip landed at Botany Bay? A desert. What is she now? One of the richest and most prosperous countries in the world. And who is there that will believe that the 180,000 convicts who in those eighty years were sent to Australia left no traces, when it is remembered that in 1854, only thirty years ago, they formed in New South Wales and Tasmania three-fifths of the population? Nor must it be forgotten that, when transportation was given up on the persistent protests of the other Australias, Queensland, the latest founded, still desired convicts to be sent to her, and her demands were only silenced by the threats of her more powerful neighbours. After such examples, to deny the possibility of a penal colonization, to deny its being the best if not the only means of utilizing that impure element in the mother-country which is a cause of so many dangers, is, in the Committee's opinion, to deny the evidence of facts. The Committee firmly believe that France can, if she only chooses, attain results analogous, if not equal, to those attained by England. At any rate, no one can say, without being contradicted by undeniable facts, that transportation in a colony almost uninhabited to-day can ever be a serious obstacle to her development.

If the utility, or at least the possibility, of transportation be once admitted, then, looking at it from the point of view of the security of France, the expulsion of habitual criminals seems the only way to check the rising tide of habitual crime. Take, for instance, the effect of the law of 1854. [Here follow a number of criminal statistics.] Can any one deny the efficacy of a law which has produced such results? and is there not hope for analogous effects from this Bill? But, it is objected, penal legislation will be completely upset. Transportation, which has hitherto been deemed the gravest penalty next to death, would no longer be reserved for great criminals condemned to the galleys, but would be applied to mere minor criminals. The gravity of this objection has not escaped the Committee; but it can be answered. It is not proposed to apply the law of 1854 to recidivists. The purpose of that law was to remove far from French soil the galleys (*bagnes*) which were for every one an object of scandal and horror: and it subjected even those *libérés* who had served their time, to a perpetual (or at any rate prolonged) sojourn in a distant colony. It is to these *libérés*, and not to the *forçats*, that the recidivists now being dealt with may be likened. The Bill certainly removes them from the mother-country, and interns them in a colony with the condition of not leaving it; but, subject to that condition, they are and will remain free, under the single reservation of such measures of order and police as the Government must have the right and the power to adopt, in order to prevent this liberty from degenerating into license, becoming a danger to the free colonists, and troubling the security of all. It is not the *bagne* that is meant, it is only exile; and in order the better to differentiate the position, even in its terms, the Committee have not hesitated to adopt, as the Chamber of Deputies did, the new name of "relegation," as one that expresses more completely the novelty it introduces into penal jurisprudence. [Here follows an elaborate argument in favour of the scheme of relegation.] Last

October [1883] the Government directed an inquiry to be made in all the penitentiaries of France and Algeria as to the probable effect of the Bill. Out of fifty-four reports, forty-seven recommended the adoption of the scheme, and most of them deemed it to be a necessary preliminary to any prison reform: while all, or nearly all, spoke of the great impression produced by it upon the prisoners, though this impression had unfortunately been effaced by the belief that the Bill would not be carried into effect.

3. *Ought Relegation to be Perpetual and Compulsory?*

Relegation ought to be perpetual, for this alone will make it feared, and experience has shown that it is only when a return to France is forbidden for ever, that transported convicts will seek to make for themselves a new life by honest labour. But, differing in this respect from the Chamber of Deputies, the Committee wish to give the *relégués* a hope, however distant, of seeing their country once more, by good conduct and by a resort to work. Then, as to relegation being compulsory instead of being left to the sentence of a Judge, it is only after long hesitation that the Committee have adopted the views of the Chamber. Against many admittedly strong arguments in favour of relegation being only imposed in each case by a Judge, a number of cogent reasons have made the Committee resolve—though by a majority of 6 to 3—to make it compulsory. Out of 78,998 recidivists who were tried in 1882, 11,690 (15 per cent.) had merely been fined, 63,150 (80 per cent.) had been sentenced to less than a year's imprisonment, and only 4,158 (3 per cent.) to more than a year; while nearly two-thirds (65 per cent.) of the "legal" recidivists who were condemned anew in 1882 were sentenced for vagabondage, mendicancy, breach of conditions of ticket-of-leave, and theft. But a decision in favour of compulsory relegation must entail, as a matter of course, a limitation of the crimes to be subjected to it; and these are accordingly comprised under the general formula of "crimes against property and morals," namely, theft, swindling, breach of trust, public outrage against modesty, and habitual excitation of minors to debauchery. In fact, these are the crimes which by their nature and frequency may be called "professional," and in 1882 they were in the proportion of 56,456 out of 153,655.

4, 5. *Vagabondage and Mendicancy, Breach of Ticket-of-leave (rupture de ban).*

The Committee here explain their views on these subjects at great length.

6. *How to carry out the Bill.*

The Committee have not thought it sufficient merely to accept and justify the principle of the Bill; they had also to examine into its application. In October, 1883, a Government inquiry showed that about five thousand prisoners would then have been subjected to the Bill. Were they to throw this mass upon a far distant shore, without organization or previous precautions? To have done so would have been a culpable imprudence. Relegation ought only to be resorted to after expiry of the principal sentence. While this sentence is being undergone, and while the recidivists are waiting for the vessel that is to convey them, they must be classified, and their aptitudes and chances of moral reintegration carefully studied. The best of them, artisans for the most part, and of course the least numerous, must be sent to those colonies where their presence may be utilized. The Colonial Administration must indicate the places where they can find work, and facilitate their obtaining it. Allotments must be set apart for them in those centres of colonization where there is likely to be a deficiency of artisans. This will be "individual relegation." Then, as to the bulk of the criminals, they must be dealt with by "collective transportation" to a colony where they will be interned. The Committee do not conceal from themselves that difficulties will then begin, which can only be overcome by patience, firmness, steadfast purpose, and a profound study of penitentiary science. What, in fact, is to be done with all these men landed in an unknown country? The first care of the Administration must be to get them work; but, as it cannot be hoped that the free colonists can or will employ them all, the State must supply their wants. And as no one would think of the State giving them food and lodging without exacting something in return, it will be necessary to open workshops of various kinds for them, where they must submit to whatever rules are imposed.

But this, it will be said, is the galleys (*bagne*). Not so. At the galleys the convicts must work wherever they are told, whereas here the *relégués* cannot be detained if they have resources of their own, or can honestly get their own living. If they come to the State for help, as will probably be the case with the most part, there is nothing in right or equity to prevent the State from attaching such conditions to that help as it thinks fit. Free labourers who work in manufactories and arsenals often submit themselves to severe regulations; and why not the *relégués*? To those who exhibit any willingness or aptitude for agriculture, allotments of land must be granted, and every facility given to their wives and families to join them. To those who are unmarried, the Government must facilitate marriage, as the best way of preventing such vices as once disgraced Botany Bay. As for those who refuse to work, and would renew their life of rapine, rigour must be resorted to. To govern this lazy and insubordinate class will undoubtedly be a heavy task: it must be at once benevolent and severe; benevolent to those who show any desire of amendment, inexorable for all refractories.

When Governor Phillip landed at Botany Bay with his convicts and a handful of soldiers, he had only a few tools, seeds, and provisions. England seemed to forget them. Three years after, when a new batch of convicts arrived, many of the first had succumbed to disease and privation: the rest had taken to work, and had begun to receive its fruits. Hunger, that unanswerable argument, had subdued the most rebellious. It is not a hundred years since this happened, and now-a-days it would not be possible to deal so harshly: it should be said, indeed, in honour of France, that such things would be absolutely foreign to her national character. Yet there must be no sentimentalism, nor idea of doing for criminals what would not be done for free emigrants. The régime to which the *relégués* are to be subjected must be one to awaken in them a sense of duty and

a taste for labour. By labour alone is their moral improvement possible, by it alone can they cease to be a sterile burden for the mother-country, and a danger for the colony that receives them. Let every good endeavour be encouraged and rewarded, but let any attempt to continue a life of idleness and rapine be repressed without false sentiment. Relegation must not be to the colonies a source of peril and ruin. The Bill, as passed by the Chamber of Deputies, gave ample powers to the Executive, and the Committee would not diminish these. The law will be difficult enough to work, and the responsibility of it heavy enough, without trammelling it with legislative provisions which the delays of parliamentary procedure may prevent being modified as required.

Following even farther upon the same line, the Committee have thought it not only useless but dangerous to designate any particular places for the relegation. The Bill, as it came up from the Chamber, named four colonies or possessions, namely, New Caledonia, the Marquesas, the island of Phu-Quoc, and French Guiana. But every one then believed, the Government equally with the Committee which drew up the Bill, and even the Chamber of Deputies, that it was New Caledonia which would receive the greater part of the *relégués*. This was clearly shown, indeed, by M. Gerville-Réache's report. But a number of reports from the various colonies had not then been received. These are far from confirming the forecasts of either the Government or the Chamber at that time.

As regards Phu-Quoc, it offers none of the conditions necessary for a penal colony.

As to the Marquesas, it may almost be said that there is no land there at all; hardly could the islands receive 700 or 800 *relégués*, and even then only at a great cost.

With regard to New Caledonia, Admiral Courbet's report to the Minister of Marine, when he left the government of that colony to assume his command at Tonkin, gave some ground for hoping that there, at any rate, the relegation would find a large enough field, and one already prepared. But this is not the opinion of his successor, Governor Pallu de Labarrière. In a special report, he shows that New Caledonia already contains 12,000 persons who are either convicts undergoing sentence or *libérés* constrained to residence; that the cultivable land in the island does not exceed 160,000 hectares, including the areas already occupied by the aboriginal natives or appropriated to the free colonists; that the State domain, already imprudently lessened by immense concessions long ago, would soon be exhausted; and that, unless it is meant to inflict a mortal blow on the development of the colony, room ought to be left for the free colonists to enclose (*encadrer*) the penal population.

In French Guiana, on the contrary, Governor Chessé, in a special report, declares himself ready to receive the relegation, from which he hopes the best results. [Here follow various details about Guiana.]

The Committee have carefully examined the documents laid before them by the Government; but, in the absence of precise data about the several colonies, and seeing that the statements before them are, if not contradictory, hardly consistent with each other, they have found it difficult to arrive at a distinct conclusion. They conferred with the Under-Secretary of State, and sought the advice and experience of the Minister himself. Admiral Peyron, confirming to some extent the statements of Governor Pallu, tells us that, although "collective relegation" to New Caledonia is not possible, she could receive a certain number of recidivists, skilled artisans especially being likely to be of real service. As to Guiana, the Minister, who knows that colony well, thinks it the most fitted of all for a penal settlement. France gave up transportation to Guiana in 1864, not because it was impossible, but because she had just acquired a possession (New Caledonia) with a climate better and more suited to cultivation, and, by its analogy to Australia, seeming to promise for penitentiary colonization a success equal to that obtained by England. But whatever place is fixed upon for the relegation, the Minister added, ample time for preparation ought to be given, say from ten months to a year. Upon full consideration, the Committee have thought that, always supposing the execution of the measure to be possible, the responsibility of fixing upon any particular colony is one which neither they nor the Senate ought to assume, but should properly be relegated to the Executive; and it is proposed accordingly to leave altogether to the Government the determination of the places of transportation. There are many advantages in this course. In those possessions where the population is not dense, and where skilled artisans are scarce, there will arise needs which the Government can satisfy without the delays always entailed by legislation: and who knows that territories, which cannot be indicated to-day as places of relegation, may not to-morrow become available for penal settlement?

Lastly, the financial side of the question must be considered. Here also the Committee can only accept the figures given to them by the Minister of Marine; and these, upon an estimate for three years, allowing for a relegation of four-fifths of the recidivists to Guiana and one-fifth to New Caledonia, give in round numbers a sum of 9,000,000 to 10,000,000 francs (£360,000 to £400,000) per annum as the cost. This is, no doubt, a heavy addition to the budget: but it would not be paying too dear for the safety of the mother-country; besides, the cost of the criminals in France has to be considered, as well as the evils they would inflict; and in the case of a law for a social preservation like this, it ought not to be impeded by a budget question.

7. Explanation of the Amendments.

Here follows an exhaustive explanation of every amendment proposed by the Senate Committee.

8. Conclusion.

Such, then, is the measure which the Committee recommend for the adoption of the Senate. It hardly differs, except in construction and points of detail, from the Bill as it came up from the Chamber. After a long and conscientious study extended over numerous sittings, and after having several times examined the Ministers of Justice, the Interior, and Marine, the Under-Secretary of State for the Colonies, the Director of Penitentiary Administration, and the Prefect of Police, the

Committee are convinced that, even allowing the measure is not perfect, it certainly is a necessity. It will not immediately produce all the results hoped from it. It is no panacea which will to-day, or even in a few years, suppress habitual crime. But it will cause minor crimes, and the relapse from one crime to another, to diminish, just as the crimes of a higher degree have diminished, down to a normal number, below which, in our present social condition, it would be chimerical to expect they should ever fall.

15th August, 1884.

True *précis*.

F. D. BELL.

No. 2.

COMPARISON between the Recidivist Bill as it came up from the Chamber of Deputies, and the Bill as amended by the Senate Committee.

Chamber of Deputies.

Section.

1. Relegation consists in the perpetual internment of criminals to be removed from France; and applies to the recidivists specified in sections 4, 5, 6, and 7.

2. Relegation may only be inflicted after sentence by the ordinary tribunals, and not by special and exceptional jurisdictions.

3. Sentences for political crimes or offences may not be counted for relegation.

4, 5, 6, 7, and 8. The following criminals shall be relegated for life :—
(Offences specified.)

12. (*This section is taken out of its place, presumably for comparison with the Senate section opposite.*) Sentences which have been remitted or commuted shall be counted for relegation, but not any which have been effaced by rehabilitation of the criminals.

9. Relegation may not be applied to criminals over sixty or under twenty-one except in certain cases.

10. Sentences incurred prior to the promulgation of this Act shall be counted for relegation subject to certain exceptions.

11. Legal provisions as to inflicting relegation.

12. [See *ante*.]

13. Relegation may only be inflicted after the expiry of the last penalty to be undergone by a criminal (subject to certain powers to the Executive, and to certain exceptions).

14. Relegation may take effect in New Caledonia, Marquesas, Phu-Quoc, or Guiana.

15. The Administration may permit (in exceptional cases) a *relégué* to leave the place of relegation for a period of six months; but such permit may only be renewed by Ministerial authority, and a Ministerial decision alone may authorize the return of a *relégué* to France, and then for not more than six months.

16. A *relégué* escaping or attempting to escape out of the territory of the relegation shall be brought before the tribunal of the place where he was arrested, and sentenced to imprisonment for a term not exceeding two years, within the territory; and on a second offence may be imprisoned for not exceeding five years.

Senate.

Section.

1. Recidivists specified in section 4 shall, at the expiry of their sentence, be relegated in perpetuity to such colonies or possessions as shall be determined by the Government.

2. Relegation may only be inflicted by the ordinary tribunals as a consequence of sentences already incurred, and not by special and exceptional jurisdictions. The tribunals may take into account sentences by military courts, for offences outside of war, or of a state of siege.

3. Verbally amended.

4. The following criminals shall be relegated :—
(Offences specified : Theft, swindling, breach of trust, public outrage against modesty, habitual excitation of minors to debauchery, and vagabondage or mendicancy.)

5. Relegation shall be incurred by any criminal who has been sentenced for the offences specified in the preceding section.

6. Section 12 of the Chamber Bill is incorporated here with slight verbal amendment.

7. Same as Chamber section 9.

8. Further provisions as to criminals over 60 and under 21.

9. Same as Chamber section 10.

10, 11. Chamber section 11 amended verbally, and divided into two sections.

12. Same as Chamber section 13, but amended in several points.

Struck out.

13. A *relégué* may leave the colony for a short time (*momentanément*), upon a special permit by the superior local authority; but the Minister alone can give a permit for longer than six months, or renew it, and the Minister alone may authorize a return to France, in exceptional cases, and for not more than six months.

14. A *relégué* who after the expiry of his sentence is guilty of escaping or attempting to escape, or who returns to France or leaves the colony without a permit, or who exceeds the time to which his permit extends, shall be brought before the tribunal either of the place where he was arrested or of the colony, and upon identification shall be imprisoned, within the territory, for a term not exceeding two years, and on a second offence may be imprisoned for five years.

17. A criminal sentenced to relegation may only have his sentence remitted upon terms specially defined.

18. A *relégué* may obtain, within the territory of the relegation, the rights of which he was deprived by his sentence.

19. Within six months a decree shall be issued for making regulations to give effect to this Act. (Numerous provisions follow.)

20. Repeal of certain previous Acts, and other legal provisions.

21. The Act to take effect in Algeria and the colonies, subject to certain provisos.

22. Repeal of all Acts contrary to the present one.

15. Same as Chamber section 18, verbally amended.

16. A *relégué* may, after six years, petition to be relieved from his relegation, for good conduct or services rendered to colonization.

17. The Government may grant to *relégués*, within the colony, all or any of the rights of which they were deprived by their sentences.

18. Sections 13 to 17 are made applicable to criminals who are already *libérés* under the law of 1854.

19. Decrees shall be issued for determining the places where relegation shall take place, the conditions on which work and means of subsistence shall be given to any *relégués*, the engagements to be thereupon entered into by them, the *régime* of the penal establishments, workshops, &c., destined for them, and generally for measures of order and police necessary to ensure their existence and the common safety. Within six months, &c. (same as Chamber section 19, with amendments).

20. The same, slightly amended.

21. The same, slightly amended.

22. The same.

15th August, 1884.

True *précis*.

F. D. BELL.

No. 3.

ESTIMATE of the Cost of carrying out the Bill as amended by the Senate.
Committee.

“Collective relegation” to Guiana, four-fifths of the recidivists.

“Individual relegation” to New Caledonia, one-fifth.

Total to be sent first year	...	...	5,000
„ second year	...	...	4,000
„ third year	...	...	3,000
Total	...	...	<u>12,000</u>

	Francs.		Francs.
<i>First year:</i>			
Guiana, 4,000 recidivists	6,681,530	New Caledonia, 1,000 recidivists	1,961,200
<i>Second year:</i>			
Guiana, 4,000 + 3,200 = 7,200	7,012,290	New Caledonia, 1,000 + 800 = 1,800	1,796,900
<i>Third year:</i>			
Guiana, 4,000 + 3,200 + 2,400 = 9,600	7,259,845	New Caledonia, 1,000 + 800 + 600 = 2,400	1,684,955
Total cost for three years	<u>20,953,665</u>	Total cost for three years	<u>5,443,055</u>

Summary for the Three Years.

Guiana	...	20,953,665
New Caledonia	...	5,443,055
Total...	...	<u>26,396,720 francs (£1,055,868)</u>

15th August, 1884.

True *précis*.

F. D. BELL.

By Authority: GEORGE DIDSBURY, Government Printer Wellington.—1884.

