

No. 137 Office Docket  
No. 6. Sp. S. Ct. J. 1865

Wm Isaacs }  
vs. }  
State of Maryland }

23 sides

Full Bench -

Opinion by  
Weisell, J.

To be reported.

Filed July 12<sup>th</sup> 1865.

not a be

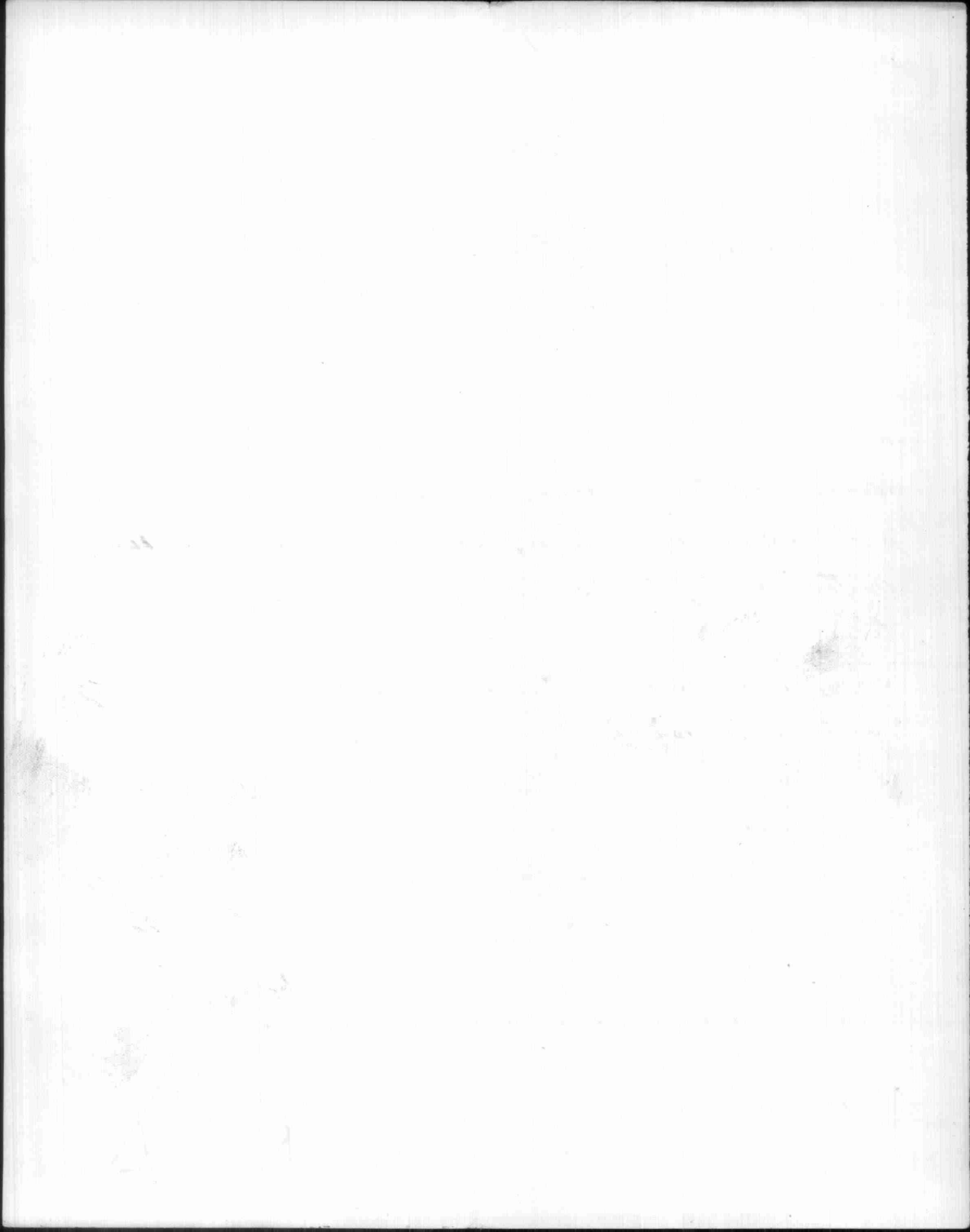
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William Isaacs }  
vs. }  
State of Maryland. } In the Court of Appeals of Maryland,  
No. 6, Special Sack.  
April Term 1865.

The plaintiff in error, convicted of larceny in the Criminal Court of Baltimore City, complains of the sentence or judgment of that Court pronounced upon him, as erroneous and unauthorized by the law of Maryland, in two particulars, and seeks its reversal and his discharge from the Penitentiary. He was convicted and sentenced in October 1863.

The sentence of the Court was, "that the said William Isaacs do undergo a confinement in the Penitentiary for the period of twelve years, and that he serve and labor for the said period according to the act of Assembly in such case made and provided."

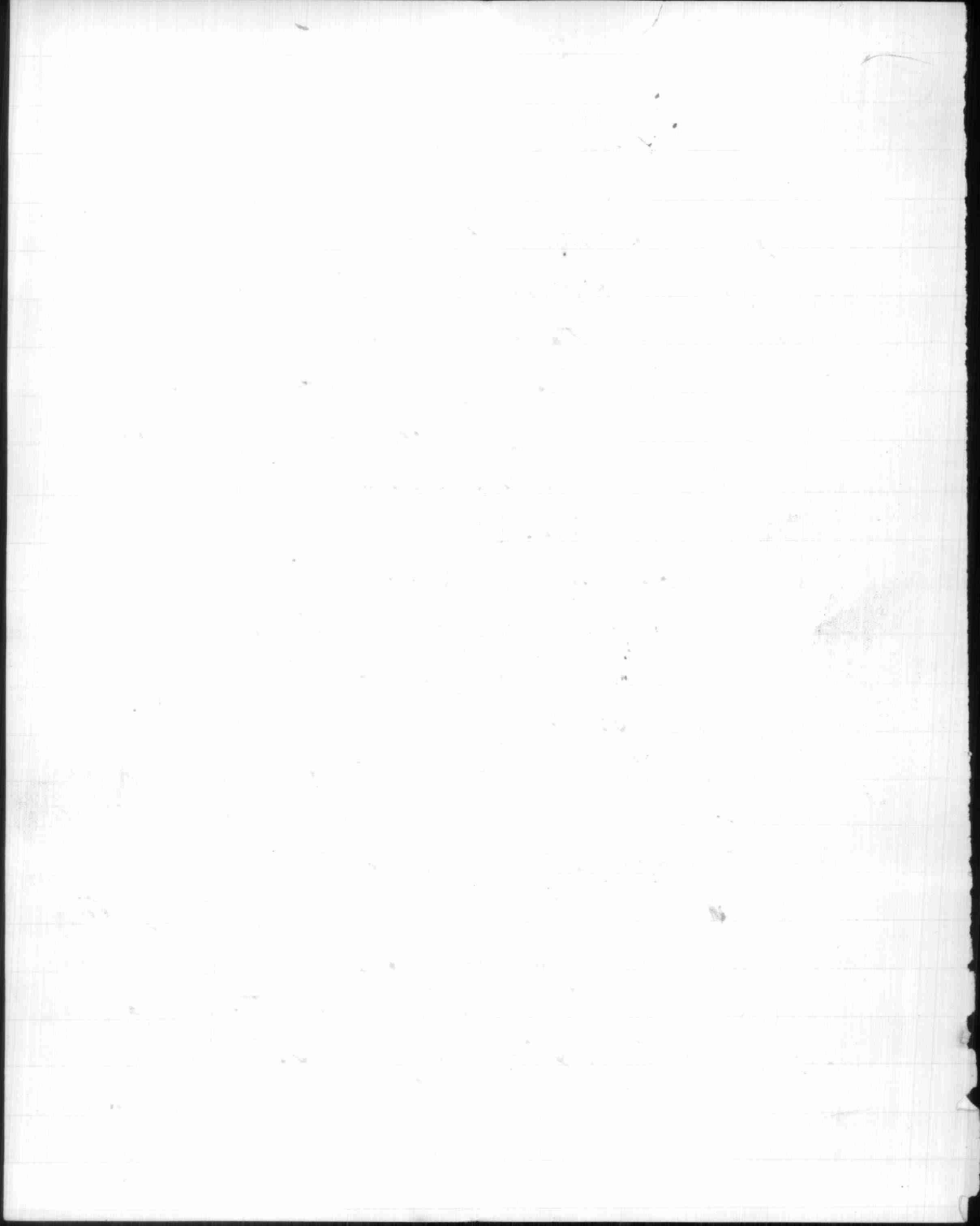
The two grounds of error assigned are, first, that the sentence is that the prisoner "serve and labor in the Penitentiary for twelve years."



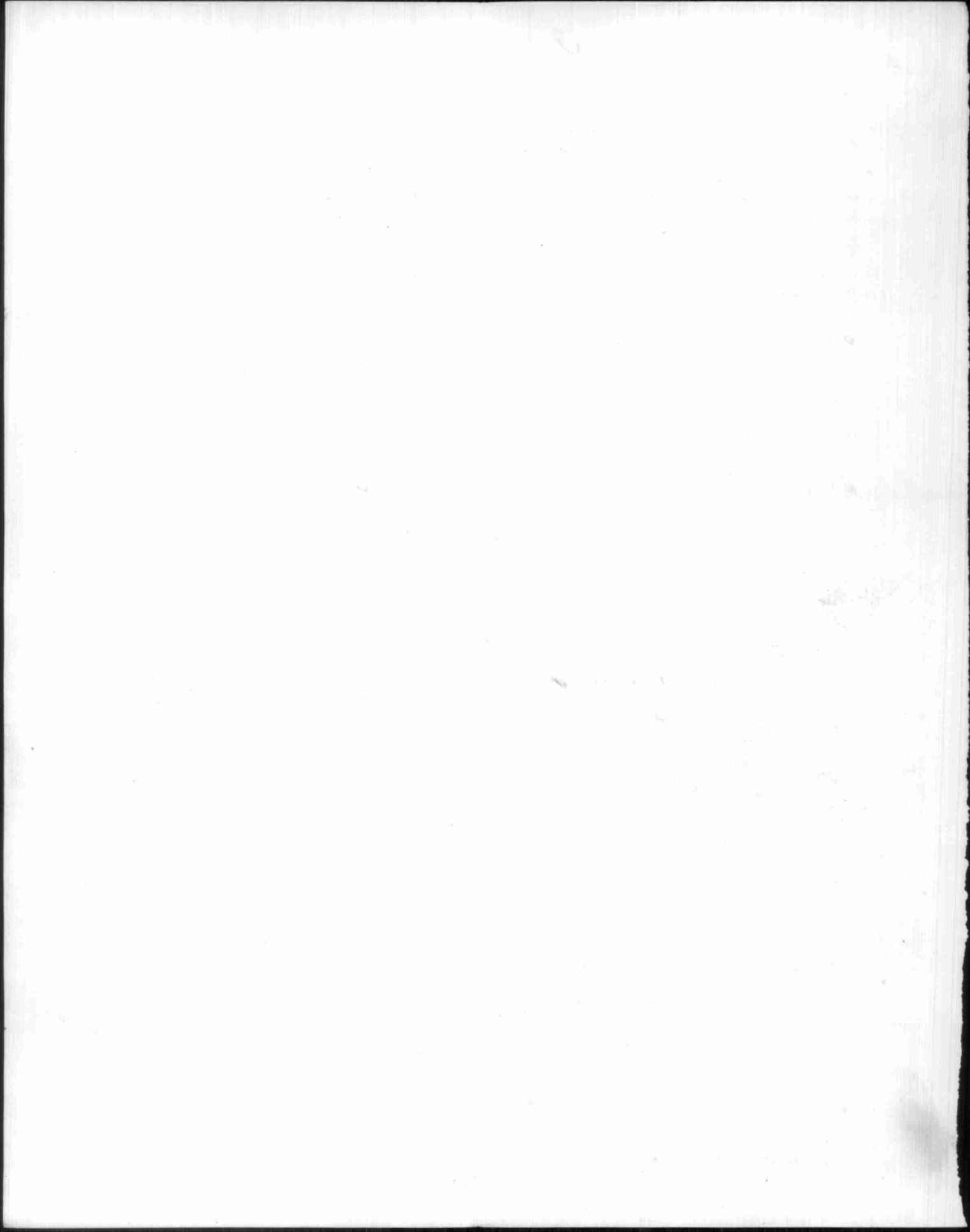
We will examine these two grounds of error assigned.

The first is, that the sentence is that he serve and labor in the Penitentiary for 12 years; whereas the only authorized sentence is that he be "confined to the Penitentiary," and that the award of service and labor there for that period was illegal, and that it renders the sentence void.

The Code in Article 30, on Crimes and Punishments, sec. 98, prescribes no form of sentence in larceny. It simply declares in these words: "Every person convicted of the crime of simple larceny, to the value of five dollars and upwards, or as accessory thereto before the fact, shall restore the money, goods, or things taken, to the owner, or shall pay to him the full value thereof, and be sentenced to the penitentiary for not less than one year nor more than fifteen years." This is very general language, not even the word confine-  
ment, used in this and probably every sen-

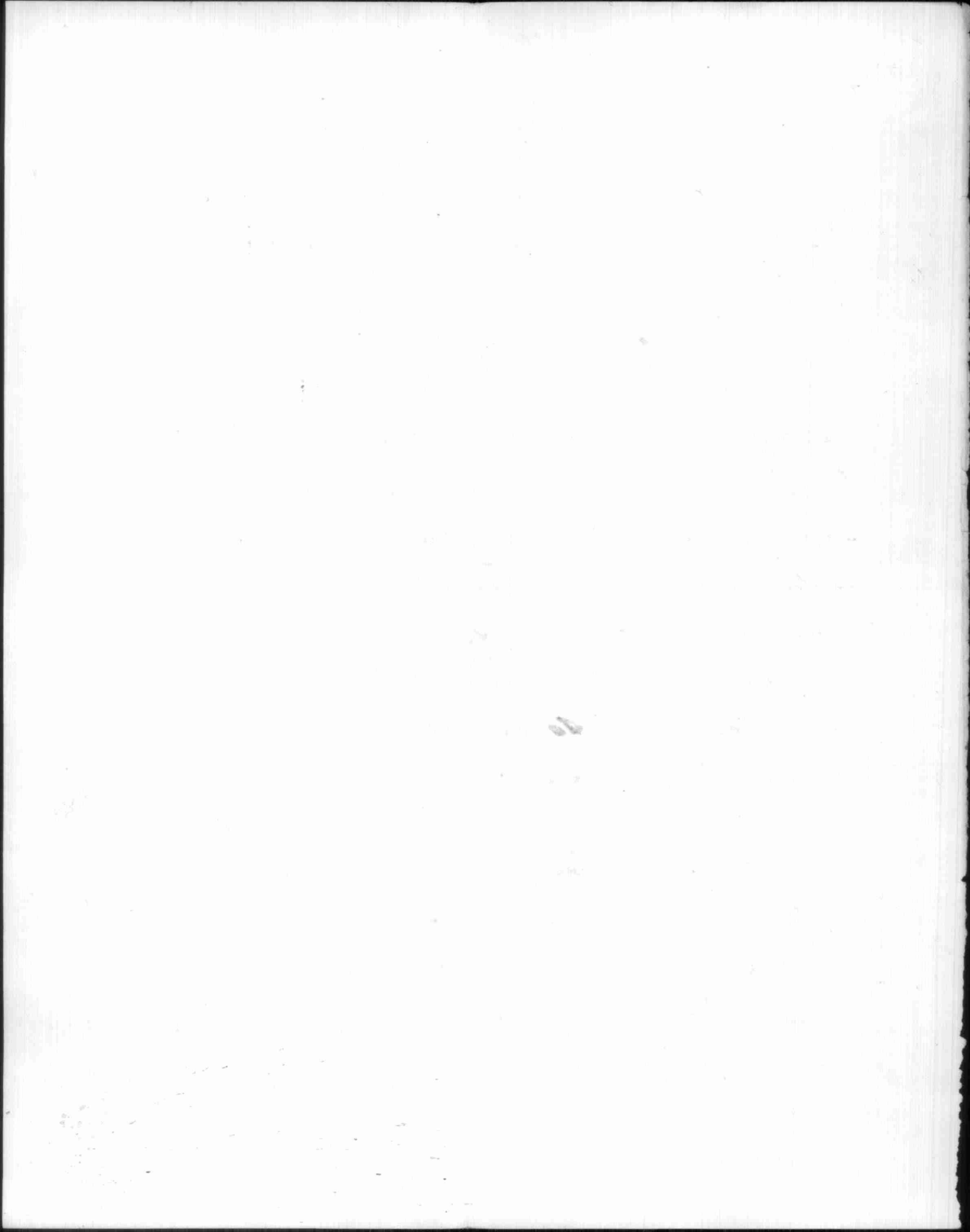


tence of the kind, being found in it; and yet used in this sentence and all others of the kind without objection. The Code elsewhere provides for the mode of enforcing obedience to the sentence, or inflicting the punishment, and the objection here taken rests on the simple ground that this can legally form no part of the judgment of the Court. It is certainly not a necessary part of it, and we unite in commending the example of the late venerated Chief Justice of Pennsylvania, when pronouncing sentences upon convicts, ~~always~~ of always having the act inflicting the punishment before him, and framing the sentence, as near as could be, in the words of the act. This, observes a learned Judge, is worthy of imitation, and, if strictly observed, would save the Court some trouble, besides contributing to a more satisfactory administration of justice. 7 Barr, 374. But we agree with most of the reasoning of Chief Justice Green in the case of Dodge v. the State, 4 Zab. (N. J.) Rep. 464-467, on this subject. Where



The statute prescribes the mode of punishment and the sentence conforms with the provisions of the law and the penalty is in no wise varied by the phraseology of the sentence, the introduction of that mode into it is no ground of error. Our Code in its article 73, on the Penitentiary, provides for the admission of convicts into the penitentiary, and at sec. 37, enacts that "they shall be put to hard labor every day in the year, except Sunday and Christmas day, and when Christmas day falls on Sunday, then the next Monday is excepted and their time ~~to~~ employed as will be most advantageous." The following sections provide other modes of treatment conducive to their discipline and conduct. The sentence in this case, by the words objected to, cannot, unless by a most forced construction, be <sup>considered</sup> ~~considered~~ as varying the mode of punishment which the law prescribes in cases of larceny. The convict was adjudged to undergo confinement in the penitentiary for

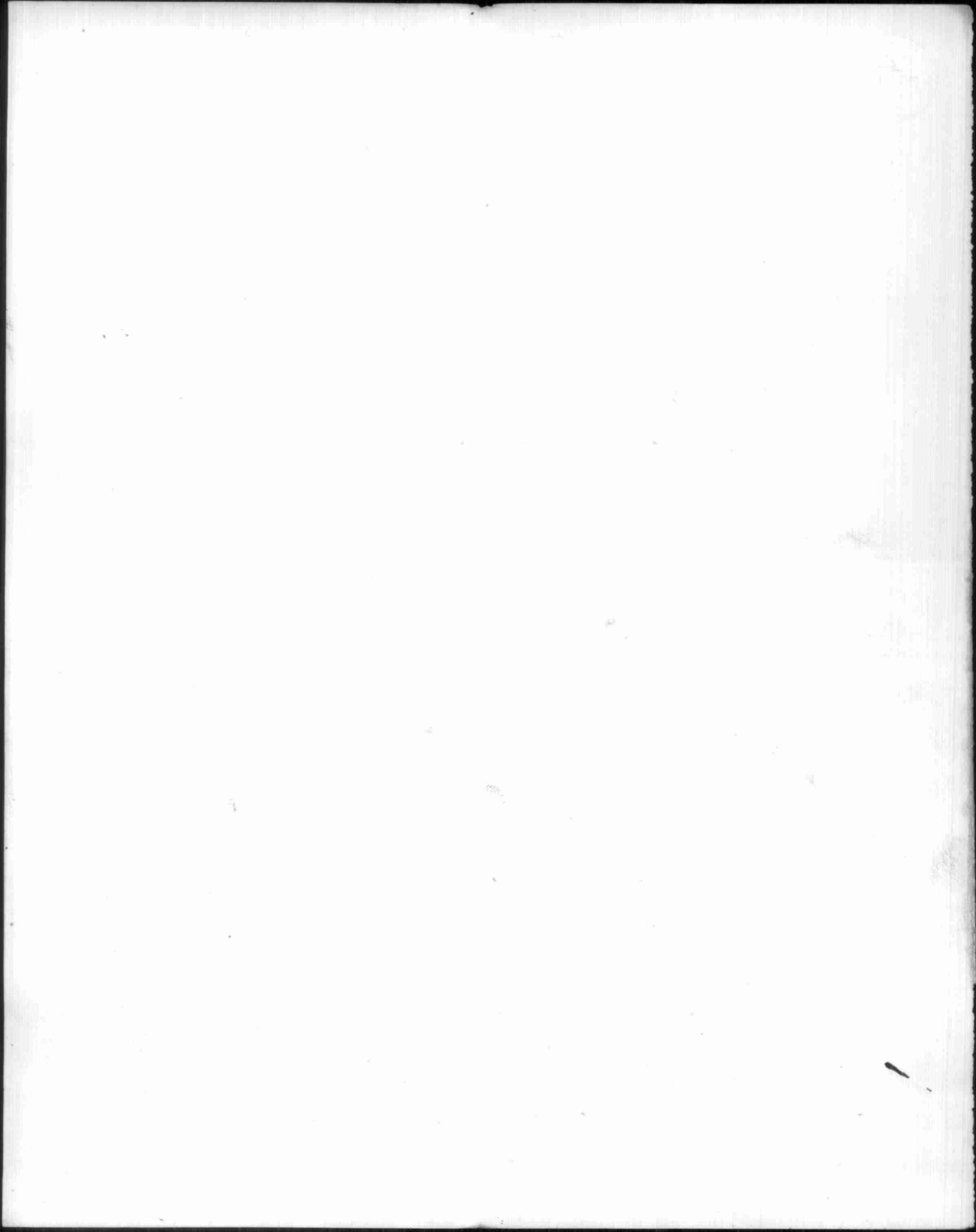




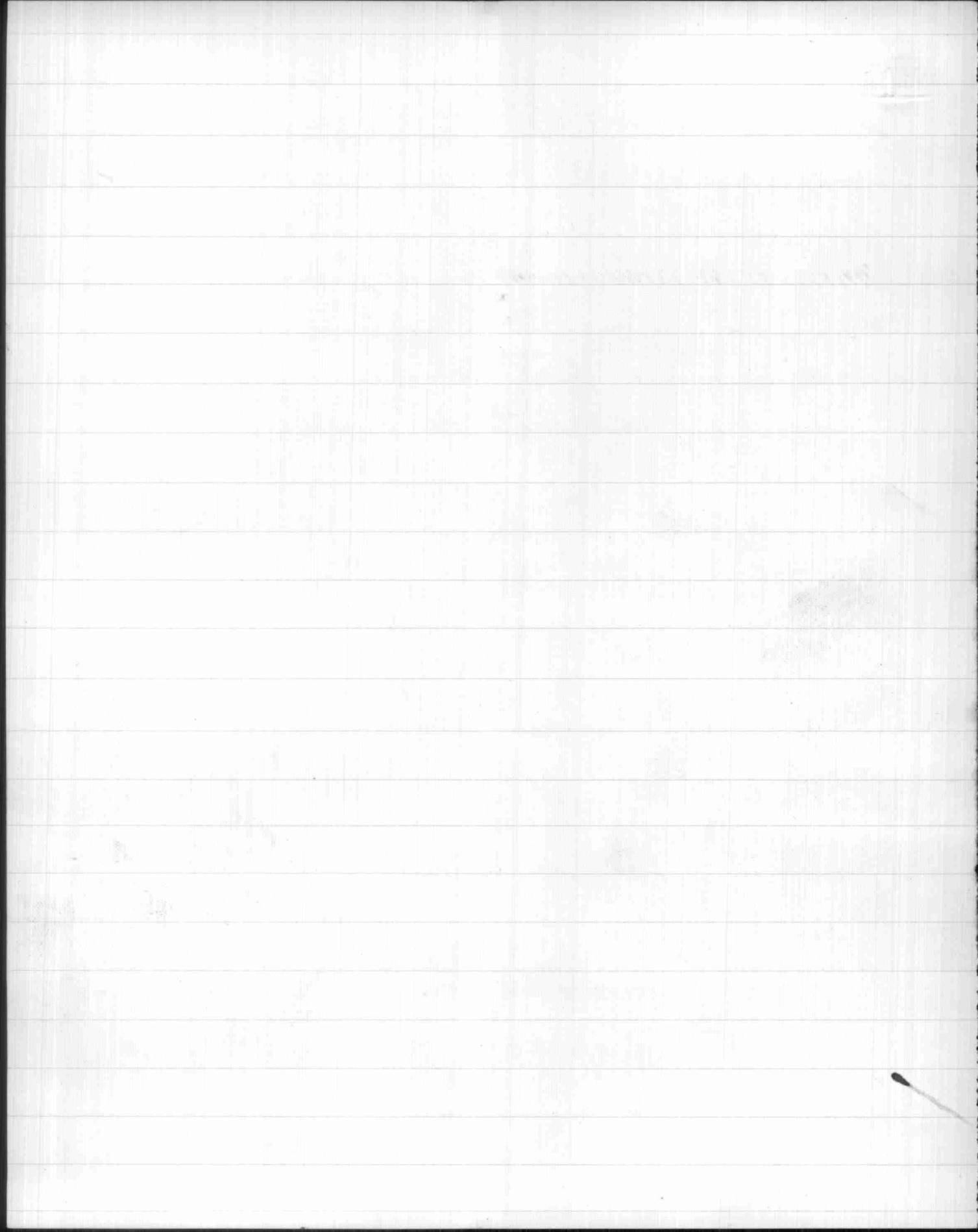
twelve years, there to serve and labor for that period according to the act of Assembly in such case made and provided; in other words, there to undergo the labor and treatment which the law provides. This does not add any thing to the punishment inflicted by law or in any wise affect the rights of the convict. It is simply declaratory of what will be done with him when admitted within the walls of the penitentiary, as inserted in §. 5. of \* (No. 6. Spec. S. A. P. S. 1855.)

\* For we do not understand it so construed the language used in this sentence as restrictive upon the legislative power, or as so fixing the punishment as not to conform it to any future law modifying it or mitigating the disciplinary regulations of the penitentiary.

the sentence. But the statute also provided that every convict sent to the state prison should be confined in one of its cells separate and alone, and that he should be safely

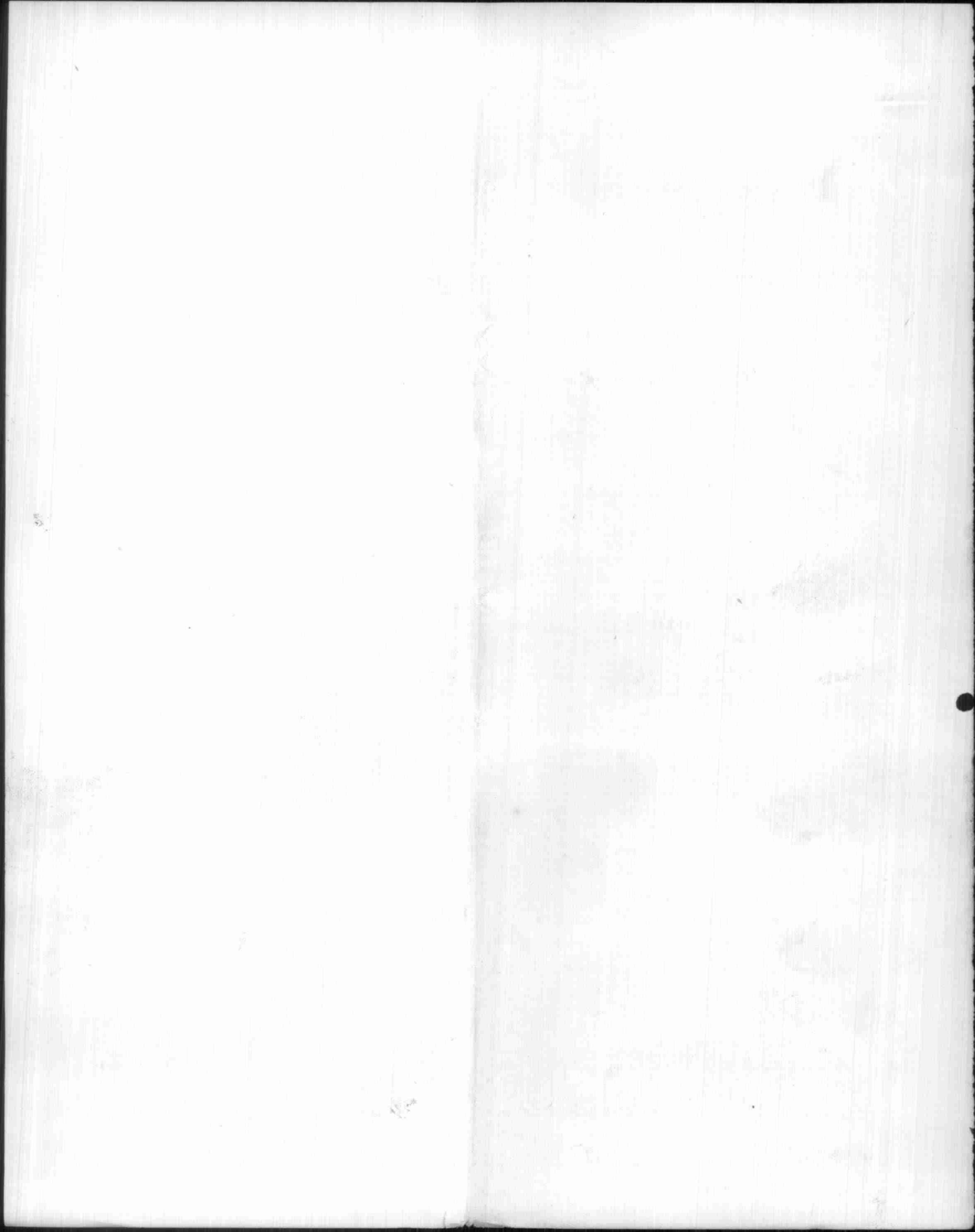


kept there until the term of his confinement shall have expired and the fine and costs of prosecution be paid or remitted. ~~By the judgment of the Court~~ By the judgment of the Court the convict was sentenced to solitary confinement in the State prison, and to stand committed until the costs of prosecution were paid. This the Court adjudged was in both respects in conformity with the provision of the law, and it was affirmed. So in the case before us, the phraseology employed, in addition to the confinement in the penitentiary, does not mean any more than <sup>that</sup> he shall be employed in the penitentiary for the period he shall serve in such mode as the law provides. The sentence is, not that he shall work at a particular trade, or in a particular mode, otherwise than the law prescribes; that would be erroneous and void. In interpreting the language employed by a Court in a case like this, <sup>the rule is,</sup> that any word which might be bent from its natural meaning should



be taken in connection with the subject matter and with the well known practice in such cases.

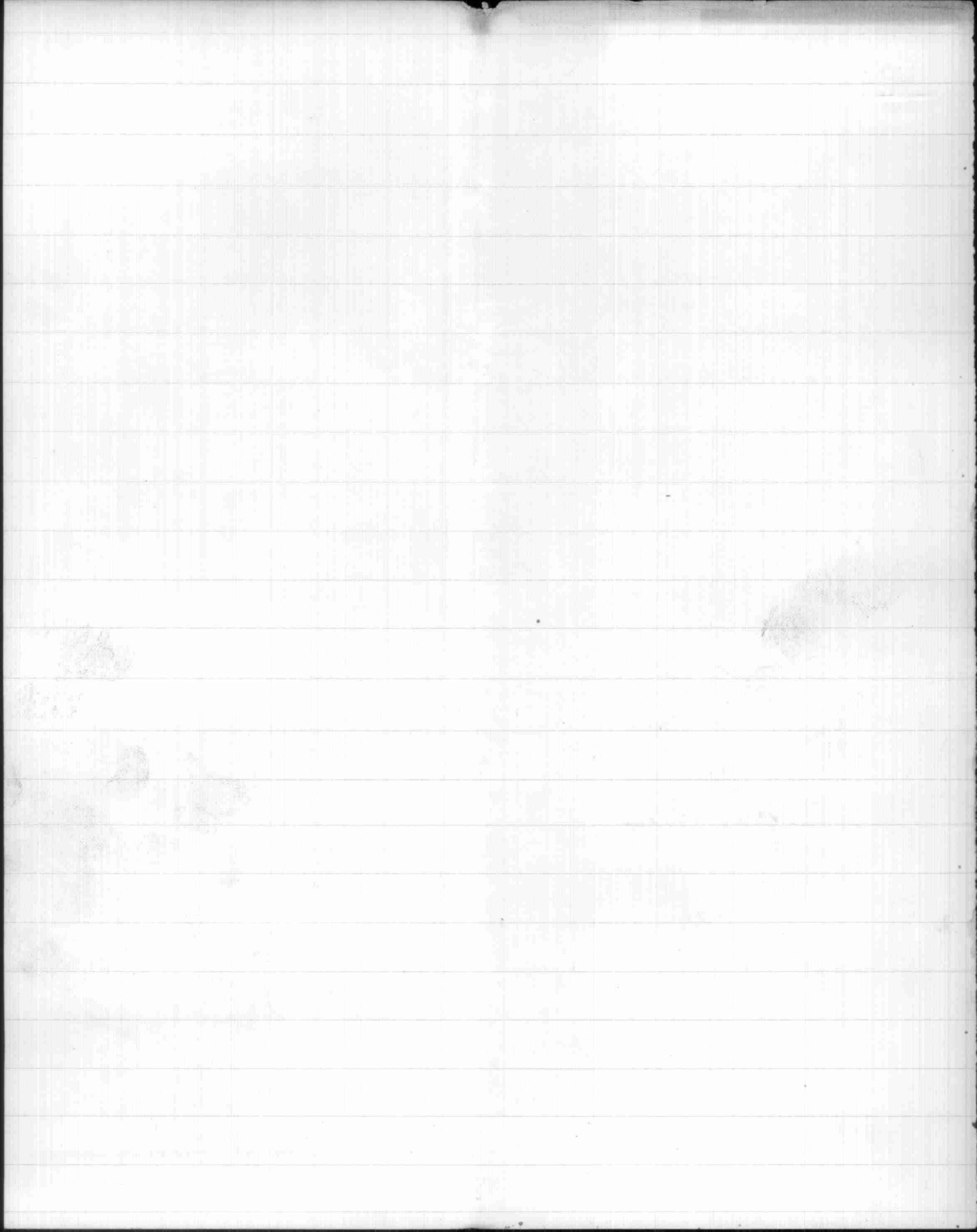
The Supreme Court of Massachusetts in the well known case of Dr. Webster, who was under sentence of death, and who complained of the sentence in his case as appointing a place of execution different from that provided by law, observed this rule of construction. Such sentence was to be executed within the walls, or within the enclosed yard, of the prison of the county in which the conviction is had. The <sup>terms of the</sup> sentence in his case were that he be "taken to the jail from whence, &c." and thence to the place of execution", and it was contended that by this language an execution within the walls of the jail was excluded. But that learned Court did not so understand it, but regarded the expression as equivalent to the common order accompanying any sentence, viz: "to be taken into or kept in custody, till sentence is to be executed, and thence" (that is, from the custody, in which he is to be kept till the time of execution) "to the place of execution." 5 Cash. 407. We think that by



a close examination of the numerous cases referred to in the argument, these principles which guide us in the disposal of this question are acknowledged and adopted. The case in *J. Birney, 577*, (*Kramer vs. the Commonwealth*) does not militate against these views, for a law had been passed repealing so much of a former law, as would have sustained the judgment. The objectionable addition therefore was at the time illegal, and had been introduced in conformity with former precedents under a law that had been changed.

We are therefore of the opinion that there was no error in the sentence pronounced by the ~~Circuit Court~~ Criminal Court of Baltimore City against the plaintiff in error, in awarding to him service and labor in the penitentiary. At the same time we say that the sentence would have been complete without it, and the better mode would be to avoid any additional phraseology, except where the act of Assembly obviously

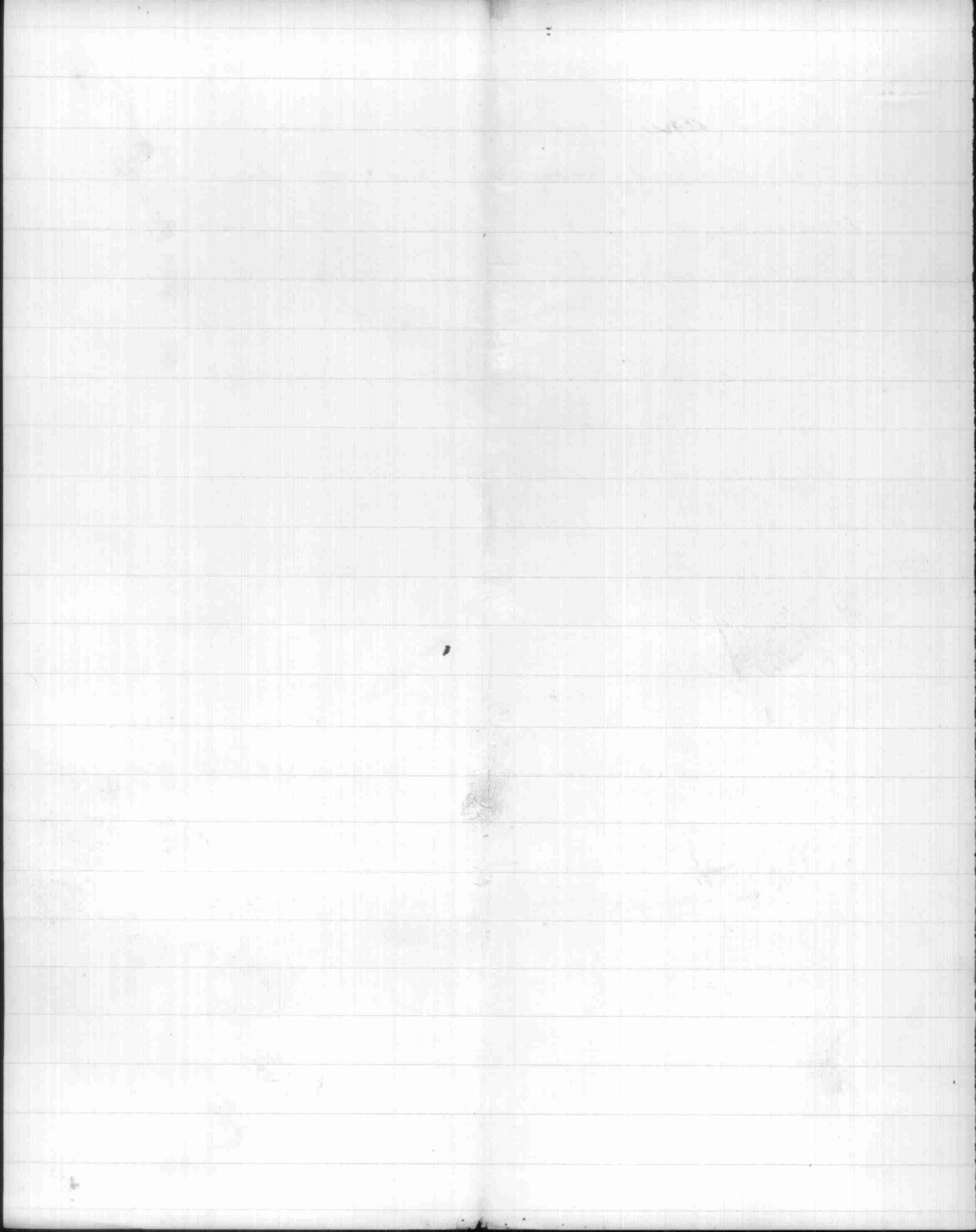




requires any additional terms.

The second ground of error is that the sentence omitted to declare that the prisoner should restore the things taken to the owner or pay him the full value thereof, and that because of this omission the sentence is incomplete, illegal and void.

We do not regard the omitted terms as any part of the sentence or punishment of the Criminal. By referring again to the 98th Sec. of the 30th article of the Code it will be readily perceived that this part or clause of the section is merely <sup>declaratory</sup> of the rights of the owner to the things stolen, and of the duty of restoration or payment by the prisoner. It forms no part of the sentence proper: for after this declaration the section proceeds to say, "and he is sentenced to the penitentiary, &c. It is therefore unnecessary for us to express any opinion upon the effect of a clear omission of any part of a sentence or penalty prescribed by law.



If a lighter burden is imposed by the sentence on a convict than the law authorises, it would seem that the prisoner ought not to have the privilege of a reversal and discharge on that account. Indeed the better mode in all cases where doubts as to the judicial power exist, would be, by legislative enactment, to empower the appellate tribunal to correct errors, both of omission & addition, and to pronounce the correct judgment wherever it can be done consistently with the verdict.

~~the conviction of the prisoner in the circumstances mentioned herein~~ This would be more promotive of the ends of justice and the safety of society.

Judgment affirmed.