

SELECTIONS.

existed down to the time of the American Revolution, when a new plan of punishment by imprisonment and transportation to a penal settlement took the place of the former barbarous methods (applicable to the laity), while unmeaning privileges were swept away, and the same rules of punishment were applied to all, without distinction of clergy and laity. When the case now in hand was tried, the distinction between the two classes was a real one; before it was abolished it was merely a line drawn between those who could read and those who could not. The case seems to show that a clergyman then could be married, except to a widow, but whether this was canon law or only Tynterel's law may be open to discussion.

Sir Hugh, baffled in his plea of being a clergyman, tries another plan. He objects to the jury, who are ready in Court to try the case. He makes two points: one is that he is *accused* by them, and that accordingly he will not consent to be *tried* by them. The meaning of this would seem to be that the *same men* are assuming to act both as a grand jury and a petty jury. Then, observing that they are men of inferior rank, perhaps yeomen or farmers, he says: "Your honour, I am a knight, and will not be judged except by my peers" (*parès*). To this Tynterel replies: "Since you are a knight, I direct that you be tried by your peers." So knights are summoned to try the case. Then Tynterel says further to Sir Hugh: "Do you desire to propose any challenges in respect to them?" Sir Hugh replies: "I do not agree to them; you may take whatever inquisition you desire *ex officio*, but I will not agree to them." To this Tynterel responds: "If you will consent to them, with the help of God they will act in your case; but if you will not, and refuse to follow the rules of the common law, you will suffer the regularly ordained punishment—viz., one day you will be allowed to eat, and the next day to drink, but the day that you eat you shall not drink, and *vice versa*. When you eat you shall have barley bread without salt, and the day you drink water," etc. Mr. Worry pauses at this point, and remarks that the judge said "many other things," showing why it would not be a good thing for him to adhere to his refusal, and why it would be better to consent. Sir Hugh

took the hint, and said: "I will consent to be tried by my peers, but not by these twelve by whom I am accused. Be kind enough to have my challenges read." To this the judge said: "Gladly; let them be read, or, if you can state any ground why the twelve should be removed, proceed orally." Then Sir Hugh: "I *desire counsel*, for I cannot read." Tynterel responds: "No; for this affects our lord, the king." To this, Sir Hugh: "Then you may take the challenges and read them." Tynterel: "No; for they must come from your own mouth." Sir Hugh: "I cannot read." Tynterel then wakes up and says: "How is this, Sir Hugh? It is but a few minutes ago that you were claiming the 'benefit of clergy,' and you were even rector of a church, and now you say you cannot read! Oh, fie!"

At this point the good reporter, Worry, interjects a remark to the effect that Sir Hugh stood silent, abashed and confused. Tynterel now tries to cheer him up by saying: "Be not abashed: now, if ever, is the time to speak." Then the justice turns to Sir Hugh's friend, Leyr, saying: "Would you not like to read the challenges of Sir Hugh?" To which Leyr answers: "Yes, your honour: if I only had the book which he holds in his hands." This was allowed. Then Leyr said: "Here are challenges against many of the jury. Do you wish that I should read them publicly?" Tynterel replies: "No; read them to the prisoner secretly, because they must be uttered by his mouth." And so it was done, and the challenges turning out to be true, all the disqualified jurymen were removed and others substituted. The jury being obtained, Tynterel said to them: "Sir Hugh is charged with the crime of rape. He pleads not guilty, and he is asked how he desires to be tried, and he says by the 'country' (*per bonam patriam*), so he places himself upon your decision for better or for worse. So we enjoin you to declare upon your oath whether Sir Hugh committed the offence with which he is charged or not." The twelve men say: "We declare that the woman was ravished by the 'men' of Sir Hugh." Then Tynterel: "Was Sir Hugh consenting to the crime?" The twelve: "No." Some other questions being asked and answered, which brought out the fact that there was no ravishment, the judge