

cause in many cases, when the offender has done the act under strong impulse or under the influence of liquor, he did not intend to commit the act and if he had a chance to reform he could become again a good member of society. The tendency in England has been to restrict the imposition of capital punishment. In 1908 an Act was passed, called the Children Act, which expressly forbids the pronouncement or recording of the sentence of death against any person under the age of sixteen years. We have not this law yet in this country. I think that this is a good position because most of the murders committed by children are not deliberately committed and they should not be subject to capital punishment. Capital punishment is probably retained partly from ingrained habit and partly from a sense of its appropriateness for certain crimes; also that the ultimate ratio may be available in cases of sufficient gravity to the common weal. In cases of high treason, in the United Kingdom or other countries, of the murder of a king or of any member of the imperial family, capital punishment might be retained. But I think that it should be restricted only to this class of crime. It may perhaps be retained on account of the medical doctrine and that of Lombroso in respect to criminal atavism and irresponsibility. That probably tended to incline the public mind in favour of capital punishment. Sir James Stephen, another eminent jurist, has even thereby been tempted to advocate the execution of habitual criminals. It certainly seems strange that the community should feel impelled to preserve a class of dangerous lunatics and give them the finest air in the country and the right to kill two jailers a week, as seems to be the fear of the hon. member for Laval (Mr. Wilson) when he said that if a criminal was committed to pass his life in prison he might preserve his criminal instincts and might exercise them on his guards. I think that such instances would be rather the exception than the rule. I think the general rule would be that those confined in the jail will try to earn their pardon by good conduct.

The whole question of capital punishment was investigated in the United Kingdom in 1864. It was considered by a Royal Commission appointed in that year, which reported in 1866. The commission took the opinion of all the judges of the Supreme Court of the United Kingdom and of many other eminent persons, and collected the laws of other countries so far

as this was ascertainable. The commissioners differed on the question of the expediency of the abolition or retaining of capital punishment and did not report thereon, but they recommended that it should be restricted in the United Kingdom to high treason and murder. Secondly, they reported in favour of an alteration of the law of homicide so as to classify homicides according to their gravity and to confine capital punishment to murder in the first degree. We have not in this country a classification. In the United States they have homicide in the first degree and in the second degree. Here we have homicide, which is divided into two kinds, murder and manslaughter. I speak now of capital or punishable homicide, because, of course, there might also be justifiable homicide. But in some cases where the jury might be justified in reducing murder to manslaughter, they may be directed by the judge to bring in a verdict of murder or of nothing, according to the evidence presented to the court. I remember in one case I was engaged for the defence. The accused was charged with murdering his brother and I wanted the offence to be reduced to manslaughter. I could not prove that there was provocation by blows, by physical force, but I considered I had probably proven sufficient provocation by words and also by showing the precedent conduct of the person killed toward the accused, because the person killed was the elder brother of the accused and was acting in a kind of parental relationship to him. I thought that the jury would have been justified in bringing in a verdict of manslaughter instead of one of murder. The learned judge, in giving the definition of the offence and appreciating the evidence, led the minds of the jury to the offence of murder. The jury brought in a verdict of murder with a strong recommendation to mercy, and I afterwards learned from some of the jury that they thought that by bringing in this recommendation they would save the man from the scaffold. The learned judge told me afterwards that he would have preferred that the verdict had been for manslaughter. His report to the Minister of Justice led to the commutation of the sentence but, unfortunately, the man executed the sentence upon himself which the jury had rendered. After the sentence had been commuted he told me he preferred to die. I doubted his declaration at the time, but after he had been five or six months in the penitentiary he hanged