these were by no means infrequent. In his short experience he had already had two or three signal instances in which evidence of the most unbounded importance had been kept back, either from want of means on the part of the prisoner to have his case properly investigated, or from want of interest on the part of those by whom the evidence could be given."

Then on the remission of capital punishment Mr. Bruce said :

"It is well that the House and country should understand how in these cases, which so often offend the honest opinion of the public, there is apparent discrepancy between the opinion of judge and jury on the one hand and that of the Home Secretary on the other. It arises from this—that the jury is obliged to find, from the direction of the judge, a verdict of wilful murder, and that the judge is constantly required to pass a sentence of death, when it is quite certain it will not, cannot, ought not, to be executed. * * * Such is the state of the law, and so long as it is the state of the law it is absolutely impossible but that the decision of the Secretary of State must occasionally be in disaccord with the finding of the jury and the sentence of the judge."

On another occasion, he said:

"I may here mention another case which was brought under my notice more recently. A prisoner was entirely undefended, not a palliative circumstance was adduced on his trial for murder, and he was consequently convicted and sentenced to death; but other evidence was afterwards brought forward which, in the opinion of the judge, would, if laid before the jury, have turned the scale in favor of the prisoner and shown that he was guilty of manslaughter instead of murder."

Mr. Bruce says again :

"While the law respecting murder remains as it is, and while the spectacle is so often seen of judges and juries dissenting—the one from the verdict and the other from the sentence which, in accordance with law, they are obliged to pass—there must be lodged somewhere the power of administering the prerogative of mercy."

Lord Penzance says :

"Now, independently of the cases in which the punishment of death has been commuted, it has, I believe, been the practice for many years of the Home Office to mitigate severe sentences."

Mr. Trevelyan, Irish Secretary, said :

"I am glad to have an opportunity of saying a word about the Kilmartin case. If His Excellency erred at all in that case, he erred on the right side. In the last paragraph of his letter it is stated :

"His Excellency has determined to release Kilmartin. He does so without impeaching the correctness of the original conviction, or the *bona fides* of Hernon; but, subsequent information having created some doubt as to the identification of Kilmartin, His Excellency feels himself enabled to exercise the prerogative of mercy on Kilmartin's behalf."

So late as 1884, Mr. Gladstone, in a great debate to which I shall have occasion subsequently to allude, said this :

"The constitution of this country knows nothing of criminal appeal, properly so called, nothing of the retrial of cases, as was explained by the Home Secretary last night. It knows of the reference to the responsible Minister, who, surrounded by the very best advisers, and acting under the deepest sense of responsibility, is entitled to exercise the prerogative of mercy. That mode of operation you begin by excluding, because what you are asking for is not a further investigation of the question by the responsible officer of the Queen, but it is a full and public enquiry, a description to which his operation could not correspond."

I think I have sufficiently established the accuracy of my statement, and enlarged even my own statement by these proofs of the extensive powers and consequential duties of the Executive in exercising this branch of the administration of criminal justice, particularly in capital cases, but before I pass to the question of what should be done in cases of insanity and the specialties of those cases, I wish to make an allusion, at this point, to the effect of the recommendation to mercy. The hon. member from Ottawa, quoted a portion of a passage, which I deem it my duty to read, from Sir James Stephens' book :

"There is one other point on which the English and French systems are strongly contrasted. This is the French system of *circonstances atténuantes* and the English system of recommendations to mercy. The finding of *circonstances atténuantes* by a French jury ties the hands of the court and compels them to pass a lighter sentence than they otherwise would be entitled to pass. It gives a permanent legal effect to the first impressions of seven out of twelve altogether irresponsible persons upon the most delicate of all questions connected with the administration of justice—the amount of punishment which, having regard to its moral enormity and also to its political and social danger, ought to be awarded to a given offence. These are I think matters which require mature and deliberate considerations by the persons best qualified by their position and their previous training to decide upon them. In all cases not capital the discretion is by our law vested in the judges. In capital cases it is practically vested in the Secretary for the Home Department advised by the judge, and inasmuch as such questions always attract great public interest and attention and are often widely discussed by the press, there is little fear that full justice will not be done. To put such a power into the hands of seven jurymen to be exercised irrevocably upon a first impression is not only to place a most important power in most improper hands, but is also to deprive the public of any opportunity to influence a decision in which it is deeply interested.

"Jurymen having given their decision disappear from public notice, their very names being unknown. A Secretary of State or a judge is known to every one, and may be made the mark of the most searching criticism, to say nothing of the political consequences which in the case of a Secretary of State may arise from mistakes in the discharge of his duty. On the other hand one English system allows the jury to exercise at least as much influence on the degree of punishment to be inflicted on those whom they may convict as they ought to have. It is true that the recommendation to mercy of an English jury has no legal effect and is no part of their verdict, but it is invariably considered with attention and is generally effective.

"In cases where the judge has a discretion as to the sentence, he always makes it lighter when the jury recommend the prisoner to mercy. In capital cases, where he has no discretion, he invariably in practice informs the Home Secretary at once of the recommendation, and it is frequently, perhaps generally, followed by a commutation of the sentence. This seems to me infinitely preferable to the system of *circonstances atténuantes*. Though the impression of a jury ought always to be respectfully considered, it is often founded on mistaken grounds, and is sometimes a compromise. It is usual to ask the reason of the recommendation, and I have known at least one case in which this was followed first by silence and then by withdrawal of there commendation. I have also known cases in which the judge has said: 'Gentlemen, you would hardly have recommended this man to mercy if you had known as I do that he has been repeatedly convicted of similar offences.' There are also cases in which the recommendation is obviously founded on a doubt of the prisoner's guilt, and in such cases I have known the judge tell the jury that they ought to reconsider the matter, and either acquit or convict simply, the prisoner being entitled to an acquittal if the doubt seems to the jury reasonable. This will often lead to an acquittal."

Then I refer to two cases in which Home Secretaries have expressed their views on the subject. In the case of the convict Wager, Mr. Walpole said :

"His first impression was that it was a case of such barbarity and cruelty that it was proper that the law should take its course. On the other hand, he found that the jury recommended the criminal to mercy. Moreover, he felt that in this, as in all similar cases, it was his duty to appeal to the judge who tried the criminal, and he did so without intimating any opinion one way or the other. The learned judge had twice favored him with his opinion, and he would read a portion of the report. It was as follows :—

"'The murder was not premeditated, and I do not think that when he commenced the pursuit after his wife he intended that act of violence which he afterwards made use of. I am, therefore, of opinion that the case is not an unfit one for the exercise of the prerogative of mercy.'

"After the recommendation of the jury, expressed not only at the time when the verdict was given, but since conveyed to him in stronger language than the original recommendation was couched in; and after the deliberate opinion of the judge that the case was, in his opinion, not unfit for the exercise of the prerogative of mercy, he did not think that he could have taken any other course than the one he adopted, and the sentence was commuted to penal servitude for life."

In another case, the case of John Toomer, the same Home Secretary said :

"Perhaps, upon this point, I shall not transgress my duty by saying that from the very beginning I thought the punishment to which Toomer was sentenced was so severe that it ought not to stand. I never had the slightest hesitation upon that point, but that question has never been brought before me. The reason why I thought the punishment ought not to stand was, because I felt that the jury's recommendation to mercy, founded probably upon some indiscretion of the prosecutrix, should have been attended to."

Now, I ventured to observe, on the only occasion on which I have spoken in public on this case until to-day, that it was a matter of regret that the jury were not asked to state what their reason was for the recommendation—I do not mean by the Executive, of course, but by the judge at the trial, as it was fitting that he should have done. We had some public information given to us from a source which I suppose hon. gentleman will not challenge as distinctly unfriendly to them or as being biassed in any way against them. At the time of the trial, the *Mail* correspondent at that trial telegraphed to the *Mail* newspaper as follows :—

"REGINA, N.W.T., 3rd August.—Three of the jurors in Riel's case tell me that the meaning of that recommendation to mercy is that in their