

CAPITAL PUNISHMENT.

bill, the publication of which would clearly be a contempt.

Much, however, depends on the intention, which is necessarily inferred from the facts of the case. In *Baker v. Hart*, 2 Atk. 488, the parties interested in an order for a receiver had published it with a statement of the facts upon which the order was obtained, and circulated copies of it among the tenants of the estate. This they did under the master's advice, and it was held not to be a contempt, though the Court disapproved of what had been done. *Brook v. Evans*, 8 W. R. 688, may be referred to on this point.

The subject is a well-worn one, yet it is singular how often a risk of contempt is incurred, most commonly at the present day by journalists in the exercise of what are called their public duties. With every desire to see the press retain its present position and continue to exercise its functions as well as it does at the present day, it must be admitted that the interests of justice require some reticence as to the proceedings before the Courts, and that the parties to these proceedings, and the witnesses and persons engaged in the conduct of these proceedings, should be protected from comment or remark, either of an *ex parte* character, or of an adverse or depreciatory tendency. The safest way to avoid the risk is to omit indulging the public with such comments or remarks altogether until the verdict is given or the decree made.

The order to commit will rarely be executed, as an apology will, in most cases be made. *Felkin v. Herbert*, however, shows that it is not enough to come to the Court and say, "If I have technically committed a contempt, I apologise," but the apology must be unqualified. Hence, when the order that the party do stand committed is made, the practice is to direct that such order be not enforced for a limited period, in order to give room for a proper apology to be offered.—*Solicitor's Journal*.

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The advocates of capital punishment abolition sustained on Wednesday last their customary defeat, and as long as these reformers aim at abolishing capital punishment *in toto* it may be anticipated, and must certainly be desired, that their measure will always meet a similar fate. Last year the defeat took place on a motion made by Mr. Gilpin (the introducer of this year's measure), during the passage of the Capital Punishment within Prisons Bill. On that occasion, Mr. John Stuart Mill argued very forcibly against the abolition, founding his argument on the deterrent effect of capital punishment upon the criminal classes.

The arguments adduced last week did not comprise any addition to those which have been adduced on previous occasions. A large portion of the argument employed usually consists in the recapitulation of particular in-

stances of hardship, real or assumed; here, of course, the instances selected vary from year to year; but, with this exception, there is no novelty.

The position of the abolitionists consists partly in a sort of assumed rule of progress. Capital punishment, they say, has been abolished from time to time for the minor offences, and the result has justified the abolition; hanging for murder now remains the sole remnant of a bygone system; in obedience to the irresistible march of improvement it is time that this too were swept away. If it were an established law that alterations must always proceed in the same direction, that there is no resting place at which reformers can say, "hold, enough," politicians and political economists of the obstructive and antediluvian school would have a very heavy weight thrown in their favor. We should fear to redress even the grossest abuses from dread of committing ourselves to a ceaseless progress which might end by landing us at an extreme ten times more grievous than its opposite. That we abolished hanging for sheep stealing, and, as we believe, with good effect, is no reason why we should do away with hanging for murder. The position starts with a *petitio principii*, that it is expedient to abolish—which is precisely what has never yet been shown.

The question is purely one of expediency, but before discussing what is the real gist of it, the question of deterrent effect, we may notice an argument generally urged, and which was urged last week by Mr. Gilpin, that capital punishment is irrevocable. If you condemn a man to imprisonment for life, and it is afterwards proved that he was innocent, you can release him; but you cannot restore him to life if you have had him executed. This is a drawback, a disadvantage attendant on the infliction of death as a punishment. But it is far from being so weighty as the abolitionists seem to fancy. In the first place, it is a drawback which, in a greater or less degree, according to the severity of the punishment, coupled with the sensitiveness of the recipient, applies to all penalties. In no case can you do more than remit the infliction to come; you cannot recall the past. If you have sentenced the convict to ten years' penal servitude, you can remit the nine years to come, but you cannot recall the one year which he has endured, any more than you can compensate him for the shame and the pain of the exposure, the trial, and the unjust conviction. We have never heard it advanced as an argument against flogging garotters, that if a conviction for garotting proves unjust, you cannot unflog the innocent convict. The number of innocent convicts for capital offence is so infinitesimally small that there can be no ground for altering the system on their account.

There is also urged another argument proceeding somewhat in the opposite direction to this. It is said that in consequence of death