

discharge under the law of the land a duty which is part of the administration of criminal justice, and which in all other cases is, under the law of the land, discharged by the judge who tries the case and awards the sentence. They have combined and commingled also the prerogative of mercy strictly so called, as distinguished from this part of the administration of justice, the prerogative which they exercise with reference to all cases. If they think the judge's sentence is too severe, they may—though I am glad to say the power is rarely exercised—commute a severe sentence by the judge. That is a distinct exercise of the prerogative of mercy, and in the capital cases they have, as a matter of course, to consider the two positions, and they are commonly and properly considered together; the whole case and the circumstances are considered together. Now, I think I have shown you perfectly plainly and perfectly clearly that there is the most marked distinction that can be conceived between the capital sentence and its execution and all other sentences and their execution. I might put it to you in another point of view, in this way: the case would be the same in kind, though not in degree, if your law, for all other crimes than the capital crimes, obliged the judge to award the maximum sentence which the law now awards for the particular crime. Then you would immediately have the Executive necessarily invaded with applications, as a branch of the administration of criminal justice. They would say: Your law has made no distinction at all, yet the moral guilt and the degree of responsibility varies, and in this case it is very light, and yet there is a twenty years' sentence; you must mitigate. You accomplish this result by another operation in all cases of capital sentence. You do it by the operation of the Executive in the case of a capital sentence. Thus the capital sentence is not in the sense which has been applied to it, the sentence of the law with reference to the capital crime. It is the extreme sentence of the law. It is not the rule to execute that sentence. In Ontario and Quebec, as many sentences are commuted as are executed, and in England and Wales, more. There it is the exception to execute, and why? Because it is not fitting there any more than in other cases to apply as a rule the extreme, the maximum penalty of the law to this class of crimes. Now, Sir, I have spoken up to this point of the capital offence of murder, because it is in practice—or was in practice until the 16th of November, in modern times—the only capital offence. The old law as to high treason, of course, remains, but milder views have long prevailed with reference to political offences. Since June, 1848, in England, and since a later period here, the same offences precisely, the same character of offences may be, and since that time, as far as I know, have always been in England, tried under the milder Act as treason-felony in respect of which the maximum sentence is imprisonment for life. I do not mean that this observation applies to isolated acts of murder which are generally excluded from amnesties and are tried as such. If, therefore, there be any distinction with reference to the application of the general principles of the administration of criminal justice to which I have adverted and which I have established, if there be any distinction between murder and treason, it is not what has been intimated from the other side. It is not that your law is more severe in the case of treason; it is that your law is milder in the case of treason. It is that while you continue in the case of murder to provide only the machinery under which the sentence must be capital, yet you have provided in the case of treason, and you have used in every case in the North-West except one, a milder procedure, another law in respect to which the maximum penalty is imprisonment for life for the same offence. There is the distinction as it is enshrined in the Statute-book in England and in Canada, and you cannot from that make out this con-

Mr. BLAKE,

clusion which hon. gentlemen opposite have made of treason as the highest crime. I know there is a sense in which it may be so regarded. You may talk about the life of the State, the body politic, the corporation, and so on; but I think I shall show before I sit down how much there is in all that. The distinction, then, is that. Now, Sir, I ask what more is to be said, after this statement, of its being a duty on the part of the Executive to carry out the sentence of the law? I maintain that there is no duty on the part of the Executive, to leave the law to take its course, when, in this particular case, it is the maximum punishment which the law obliges the judge to award, and when as I have shown, as often as not, that maximum punishment is not inflicted. In truth and in fact, disguise it how you will, in England, in France, in Canada, it is the Executive that awards the real sentence of the law in capital cases; and in this particular case the duty of the Executive was emphasised and enlarged by the special provision in the North-West Territories Act, which having a due regard, or some regard, to the comparative weakness of the tribunal and the circumstances of the case, made a special provision under which the sentence was not to be executed until the pleasure of the Executive was known; which the learned Chief Justice of Manitoba described as providing, in fact, three trials: First, before the judge and jury; secondly, before the court in Manitoba; and thirdly, before the court in Ottawa—the Executive of the country. Now, Sir, I propose to reinforce the position which I have taken as flowing inevitably from the statistics and the reasoning which I have given you, as to the principles and the practice of the exercise of what is called the prerogative of mercy; and first of all, let me deal with it in capital cases generally. I quote from the same learned authority to which I before referred, Sir James Stephen's work:

"The subject of the discretion exercised by the judges in common cases, and by the Executive Government (practically the Home Secretary) in capital cases appears to me to be little understood. As to this it must be remembered that it is practically impossible to lay down an inflexible rule by which the same punishment must in every case be inflicted in respect of every crime falling within a given definition, because the degrees of moral guilt and public danger involved in offences which bear the same name and fall under the same definition must of necessity vary. There must therefore be a discretion in all cases as to the punishment to be inflicted. This discretion must from the nature of the case be vested either in the judge who tries the case or in the Executive Government or in the two acting together.

"From the earliest period of our history to the present day the discretion in misdemeanor at common law has been vested in the judge. The cases which still continue to be capital—practically murder and treason—supply the only instances worth noticing in which the judge has no discretion. The discretion in such cases is vested in the Secretary of State.

"It was never intended that capital punishment should be inflicted whenever sentence of death was passed. Even when the criminal law was most severe the power of pardon was always regarded as supplementary to it, and as supplying that power of mitigating sentences of death which the words of the law refused.

"The power of pardon, in the exercise of which Her Majesty, advised by the Home Secretary, still remains unaltered, and in respect of capital sentences, it answers the purpose fulfilled in other cases by the discretionary power entrusted to the judges. The fact that the punishment or death is not inflicted in every case in which sentence of death is inflicted, proves nothing more than that murder, as well as other crimes, has its degrees, and that the extreme punishment which the law awards ought not to be carried out in all cases."

He says further:

"I am strongly of opinion that capital punishments should be retained and that they should be extended to some cases in which offenders are at present liable to them; but I am also of opinion that no definition which can ever be formed, will include all murders, for which the offender ought to be put to death and exclude all those for which secondary punishment would be sufficient.

"The most careful definition will cover crimes involving many different degrees, both of moral guilt and of public danger; moreover, those murders which involve the greatest public danger, may involve far less moral guilt than those which involve little public danger."

"The question of the necessary disproportion between gradations of crime and gradations of punishment is brought to the most perplexing issue in the case of the punishment of death. This punishment has the following characteristics as distinguished from all others: It admits in itself of no gradation; it is irrevocable; and it is more different in