been wholly free from that common talk, that there should be no interference with the verdict or sentence in capital cases—talk which, if it were acted on, would render it impossible to maintain capital punishment on the Statute-book for twelve months in any civilised country. Now, I shall prove the errors of this view by statistics. By the statistics of the administration of justice in England and Wales, during ten years before 1863, the proportion of convictions to committals for all classes of crimes taken together, was 70 to 71 per cent.; and I may say that there is a curious run of similarity in many years in both England and Canada in that regard. But for murder during those ten years the proportion of convictions to committals was only 23½ per cent., or one-third of the number of convictions and committals for all cases. While thus you find, in the first place, that a much smaller proportion of persons in proportion to those charged were convicted of murder than in the general run, you find the proportion of executions to the convictions for murder was but 60 per cen.t, and that 40 per cent. were commuted. In the 20 years from 1861 to 1880 there were 512 capital sentences for murder. Out of those there were only 279 executions, or 54½ per cent., and 233 not executed, or 45½ per cent. In the 5 years from 1880 to 1884 there were 168 capital sentences. Out of these only 80 executions took place, or 48 per cent., 88 were not executed, or 52 per cent. Thus there are now fewer executions in proportion to sentences than there were. In the first period I gave you there were something more than half, during the second period there were fewer but still a little more than half, but for the last available period less than half those sentenced were executed. Let me give you the individual cases which came before Mr. Justice Stephen in three years He sentenced ten persons to death; four were executed, six commuted, four because the means by which they caused death were neither intended nor in themselves likely to cause death. In these cases, under an improved definition, the prisoners would have been found guilty of manslaughter; one, because after the conviction it appeared probable that he had received provocation, and to reduce the offence to manslaughter; one because the convict was subject to epileptic fits, which rendered her frequently unconscious and had permanently impaired her powers, though she was probably not insane at the moment. Judge Stephen had not the least doubt when he passed sentence as to the cases in which there would be commutation and execution. In France, by the evidence taken in 1864, the persons found guilty of murder in four years, from 1859 to 1862 were 1,368; of these 1,228, or nine-tenths, were found guilty with extenuating circumstances, leaving only 140 or one-tenth guilty, and liable to death These were the very worst cases, yet of these about one-half only were executed and the rest were commuted. The English Commission on Capital Punishment state the custom in France as follows:—

"Whether the convict has or has not sued for pardon or commutation of penalty, the case is always examined by a commission at the Ministry of Justice, and by the advice of this commission the execution either takes place or the penalty is commuted, unless the Emperor should take the initiative; his right of pardon has no limit."

Now take Ontario and Quebec, in the four years, 1880 to 1883, according to the criminal statistics brought down by the hon. gentleman opposite, there were ninety-six persons charged with murder; twenty-six only were convicted or twenty-seven per cent., thirteen only were left for execution; every second sentence was commuted. During the same four years seventy per cent. of those charged with all crimes were convicted; and the commutations (including murder and second commutations in capital cases) were only one in 350, and of these many were due to ill-health. The result is that of 500 charged with all crimes 350 are convicted, and of these 349 or more suffer the sentence of the law, so that practically the sentence is executed in all these cases. But of the 500 charged with murder only 135 are convicted instead of 350, the general average; of the 135 only 67 or 68 suffer the sentence of the law, or one out of two, instead of 349 out of 350 the general average. Of the 500 charged with murder only sixty-seven are convicted and suffer the sentence of the law, or less than twelve per cent. of the committals; while out of 500 charged with all crimes 349 or more are convicted and suffer the sentence of the law, or seventy per cent. of the committals—nearly six times as many as in capital cases. What is the general result? The general result of these statistics is that in England, in France, in Ontario and Quebec there is a more careful sifting in the preliminary process before verdict in the capital cases than there is in the general average of crime. There is a greater reluctance to convict, there is a greater tendency to acquit, and so there is a very much smaller proportion of persons charged with that particular offence, the capital offence, who are convicted, than of those who are charged with other offences. What follows? It is that it is in the residuum, the worst cases, the plainest cases, the most obvious cases alone that conviction takes place, and after that preliminary sifting which results in the most obvious and plainest cases only, leading to conviction in cases of charges of murder, yet, while only one in 350 of all classes of sentences is commuted, in capital cases in Ontario and Quebec one out of every two is commuted or 175 out of 350. Why is it that we do not interfere with other sentences, and yet we interfere to such an enormous extent with these particular sentences, capital sentences? The reason is perfectly obvious. It is because there are various classes and degrees of moral guilt in the same legal offence having the same legal definition, and because in all other cases than cases of capital sentence the judge has a discretion to apportion the punishment to the particular circumstances of the case. He does so. He tempers justice with mercy himself; he considers the palliating circumstances; he considers among other things the state of mind and degree of responsibility; he exercises a wide discretion, he may have a right to commit a man for life or for one hour, for a long term of years or a month. The law gives it to him because the law feels that in all these classes of cases, of larceny, of intent to commit murder, of assault, or of what crime you will, it is impossible to predicate the same degree of moral guilt, and therefore that it is essential to provide some machinery by which, to some extent, the punishment awarded shall be proportionate to the degree of guilt in the specific case. But in capital cases there are not less—there are even more—shades of guilt than there are in other cases. No one will dispute that; no one who has read the interesting but harrowing accounts of murder trials but must agree that there are all sorts and shades of guilt in the commission of that which, according to the law of the land, is yet always murder. And yet, in that particular case, the judge has not any discretion at all. He must pronounce the only sentence, the ultimate sentence, the maximum sentence, the sentence which is the worst and severest sentence now applied, not to all murderers, but to the worst murderers. But there is a discretion notwithstanding. There is no reason why, in this particular case, there should not be somewhere that discretion which exists in other cases—not as the part of mercy, not as a part of the prerogative of mercy, but as part of the administration of criminal justice which in other cases is vested in the judge. It is impossible to say that you should not find in the case of murder the discretion to apportion the punishment to the moral guilt, when you give it by your Statute books in all the other cases in the land. For reasons which I need not discuss, the discretion is not in capital cases vested in the judge. The reasons may be satisfactory or unsatisfactory, it is no matter; but, in fact, that discretion rests in capital cases, not with the judge, but with the Executive, and in this case the Ministers