

of crime under circumstances which, in the case of sober persons, would reduce the offence of murder to manslaughter.

"3. In the case of minor assaults and acts of violence, it never can form any legal answer to the charge preferred, but it may further aggravate or mitigate the character of the act committed—probably the former.

"4. As to the effect that should be given to drunkenness when determining the amount of punishment to be inflicted, no general rule can be laid down. Its existence may be considered, and may tend either in the direction of increasing or diminishing the punishment imposed."

And so, Sir Henry leaves his enquirer just where he found him. He omits, however, to notice the introductory part of Sir Lyon Playfair's letter, where he speaks of "apparently contradictory judgments given by eminent judges in regard to crimes committed under the influence of drunkenness." In the nature of the case this must be so. There will be, and there have been, instances where two different judges will pass almost similar sentence in the case of offences fairly similar in their nature, but one judge will animadvert very strongly in his judgment upon the iniquity of the prisoner in having committed *two* offences instead of one, while the other judge will intimate that, but for the excuse of drunkenness, as implying a partial absence of accountability, a heavier sentence would have been imposed: both of them thus appearing to give expression to contradictory judgments while their sentences are tolerably similar.

But what shall be said if the two offences are not similar—that is to say, where their surroundings, and the moving cause in each, are different, though the acts themselves are similar? The public cannot always be as familiar with these as the court and jury who try the offences, and even when the whole evidence is given verbatim, they do not examine it critically before expressing the opinions referred to by Sir Lyon, nor have they had the opportunity of hearing the evidence given.

It is a very common thing to see, in some of our newspapers, a comparison drawn between the light sentence passed for a serious offence (it is charged) and the much heavier sentence for a lighter offence. But in the one case, the offence may be the first, and its commission show no special moral perversity on the part of the offender; while in the other, the offence charged may, though apparently trivial, be the act of an oft-sentenced offender, whom lighter punishments have failed to reform.

It would be possible to suggest contrasted cases, where, on the surface, there might be some ground—though not a valid one—for the charge of "contradictory judgments," but *cui bono*? Is it not better to leave the apportionment of the punishment to the judge who has had all the circumstances and surroundings of the offence given before him on oath, and who can have no motive for being either unnecessarily severe or improperly lenient, than to make a cast-iron rule by which a fixed punishment is attached to a certain offence, without regard being had to the obvious justice of some distinction being drawn.

Even if the circumstances under which two offences of the same character were committed are identical, it cannot be expected, in the nature of things, that