

SENTENCE ON COLONEL BAKER.

SELECTIONS.

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THERE are persons in the world with minds so constituted that it is a satisfaction to differ in opinion from them. The discovery that they take a view of any subject exactly opposite to one's own lends assurance to the belief that one is in the right. The member for Stoke is an instance in point, and his latest exploit in this line is his theory that the sentence passed on Colonel Baker was not severe enough. Perhaps his notion is not unique. There are others besides him who are luckily neither judges nor jurymen, and in whose hands the fate neither of men nor things rests, bound to arrive at a perverse decision on any given case. Generally they manage to be as inaccurate in their facts as they are crooked in their judgments. For example, the member for Stokes deliberately averred that Sir Thomas Steele was in the dock on the trial of Colonel Baker, whereas the gallant General sat among the audience at a great distance from judge, jury, and prisoner.

Some of the errors which have arisen concerning the sentence on Colonel Baker are due to that confusion of immorality with illegality, wherewith weak men are much beset. Of course there are people who think that an aristocrat ought to be annihilated, if possible; but these are beyond argument. The former cause of mistake is apt to sway men of admirable nature, whose love of virtue and sympathy with the weak overmaster their cooler reason. From the evil consequences of such confusion juries are saved by such charges as that delivered by Mr. Justice Brett at the trial of Colonel Baker. Powerful as was that charge in its exposition of law, in its sharply defined line between vice and criminality, in its exhortation, even command, to the jury to obey their oaths and not their impulses, yet not one atom of its force could safely have been spared. When a man of the eloquence and authority of the learned counsel for the prosecution had instituted a comparison between rape and seduction, and declared his inability to distinguish

between their relative enormity, it became the duty of the learned judge to exert his unrivalled powers to restore the balance of reason, and to eliminate passion from the counsels of the jury.

In criticising sentences malcontents owe something to the repute of the judge. We may fairly start with the presumption that Mr. Justice Brett, aided by the advice of the Lord Chief Baron, is more likely to interpret the law of punishments correctly than any man taken hap-hazard out of a crowd, even of educated persons. That consideration is not only lost sight of, but the critics rather assume their own probable superiority in judging of these matters.

When we analyse the complaint of undue leniency, what does it come to? Really this: that Colonel Baker was not sentenced to hard labour, and that for that reason he has been treated as if there were one law for the rich and another for the poor. An indulgence in the *tu quoque* argument would suggest that there is some ground for the second assertion, seeing that Colonel Baker will have to pay a fine of £500 and the costs of the prosecution, which penalty would assuredly not have been inflicted on a poor man. It is, however, absurd to say that equal justice is meted out by indiscriminate infliction of prison degradation and hard labour. Prison clothes, prison fare, and prison discipline, constitute a far more dreadful infliction on a man of luxurious habits, and of a profession which delights in appearances, than they do on the outcast, the vagabond, or even the labourer who lives by the sweat of his brow. Again, it is assumed that one year's detention of a man as a first-class misdemeanant is no punishment. When Monsignor Dupanloup was threatened with a prosecution under the Empire, the bishop treated the menace with contempt. A fine had for him no terror, because he had neither money, nor goods, nor land. Imprisonment offered charms to his imagination; "for," said he, "I have had no time these last ten years to read a book, and six months of uninterrupted study would be to me the rarest treat." But that confinement, which to the lover of books is hardly irksome, may be very painful to a man whose life has been one of incessant bodily activity, and who has spent his leisure either in exploring dis