

Crown Liability

Mr. Dickey: By whom?

Mr. Diefenbaker: —will not be incarcerated without having a right of compensation and action. I am not arguing that we should place the responsibility on the provinces. We cannot do that.

Mr. Garson: No, we certainly cannot.

Mr. Diefenbaker: But if the provinces are not accepting the responsibility then I say that the Minister of Justice (Mr. Garson) is the keeper of the queen's conscience and I suggest that provision should be made, with the Criminal Code being the responsibility of the federal parliament and with administration resting on the provinces, so that individuals who have been wrongly convicted without justification will not be put aside simply with the excuse that it is somebody else's responsibility.

Mr. Lesage: That has to be an obligation of the provinces.

Mr. Diefenbaker: It may not appeal to my hon. friend that an innocent man has suffered but it does appeal to the sensibilities of the Canadian people that it is most unfair and unjust.

Mr. Lesage: It would be imposing on the provinces.

Mr. Diefenbaker: We are not imposing on the provinces. The provinces have nothing to do with this discussion.

Mr. Lesage: Who would do it then?

Mr. Diefenbaker: After all, this House of Commons is the place where we have authority, and there is nothing whatever to prevent parliament making provision for compensation under those circumstances.

Mr. Lesage: Who will pay?

Mr. Garson: May I ask this question? Is it my hon. friend's suggestion that this parliament through the federal government should underwrite the liability of all the provinces of Canada in respect of any improprieties which arise in the discharge of their responsibilities for the administration of justice? Does he mean that we should do that?

Mr. Diefenbaker: That is a very ambiguous question. What I do feel is that—

Mr. Dickey: A very logical question.

Mr. Diefenbaker: —justice deserves to be underwritten. Where right of action is going to be given as against the crown, there should be provision for compensation under this legislation in an action based on the fiction that the crown is indeed responsible in the person of the Minister of Justice wherever wrongdoing occurs.

[Mr. Diefenbaker.]

Mr. Lesage: The crown in the right of whom?

Mr. Diefenbaker: I listen to my hon. friend at all times.

Mr. Ferguson: You do not hear much.

Mr. Diefenbaker: Well, I listen, and petty interruptions like that have no place in a serious discussion.

Mr. Lesage: Mr. Speaker—

Mr. Diefenbaker: I have the floor.

Mr. Lesage: Would the hon. member permit a question?

Mr. Ferguson: We all know he graduated at the bar.

Mr. Diefenbaker: I cannot understand why there should be any antagonism.

Mr. Lesage: No. We want to be enlightened.

Mr. Diefenbaker: I am simply advancing a proposition that most hon. members, other than the interrupter, can understand, namely, that justice is not a matter of dominion or provincial legislation when Canadian citizens can lose their liberty wrongly in courts, the judges of which are appointed by the Minister of Justice. I am not speaking about the division of responsibility between the dominion and the provinces in the administration of justice. I am saying that surely in 1953 the Minister of Justice—and when I speak of him in that capacity I speak of him as custodian of justice for all Canadians—will not rely on any fictions to deny compensation under this act to Canadians who are wrongly convicted and incarcerated. Somebody was negligent. Somebody was wrong. When a man is sentenced to death and escapes the gallows by a matter of only a few days, surely we are not going to argue that that person's rights are to be based upon some constitutional division of power when the judges who preside over these courts are the chosen of the Minister of Justice and the cabinet of Canada. I realize that, as the law now is, there is no right of action—

Mr. Dickey: Would the hon. member permit a question?

Mr. Diefenbaker: You would not have it in the Japanese trials, but I am speaking about justice in this country. In this country surely parliament is not the place where we are going to say to these people: You were in the shadow of the gallows, Her Majesty's courts have said you are innocent—

Mr. Lesage: That is the most phony thing I have ever heard.