

tries to conceal his act, he lies about it; and the fact that a man who is charged with a crime does not tell the truth about it, but falsifies facts concerning it, is an evidence of a motive. The party threw himself on the court on a certain line of defence, that he did not do the act. That line of defence was false and unsuccessful. After he fails in that, he wishes to go before the court on another line of defence that he did do the act, but not intentionally. Give his confession and claim all the force we can, and what does it mean? It means that this matter has not been submitted to a jury, and should be submitted to a jury to decide whether the act was intentional or accidental. That is a matter, not for a judge, but for a jury alone. Now for the principles of law that should guide the Minister of Justice in such a case as this. The provision that is incorporated in our code is from the report that was made by the commission for the revision of the English criminal law. The British Parliament never adopted it, but it has been adopted in this country. Look for one moment at the opinion of those very eminent men who drafted the English code. It can be best gathered from the parts of commissioner's report, which I shall read:

It must also be remembered that a court of justice in deciding upon such applications would, in order to avoid great abuses, be obliged to bind itself by strict rules, similar to those which are enforced in applications for civil cases on the ground of newly-discovered evidence. Such applications cannot be made at all after the lapse of a very short interval of time, and are not granted if the applicant has been guilty of any negligence; and this stringency is essential to the due administration of justice and to the termination of controversies. It would be unsatisfactory to apply such rules to applications for new trials in criminal cases.

The law is there discussed by the commissioners very ably. On an application to quash a conviction, no matter what the ground is, if that ground was not taken, but could have been taken at the trial, and the fact that it was not taken was due to the negligence of the party, then it is not a ground for quashing the conviction. The greatest effect that could be given to it would be a ground for a new trial through clemency. With regard to the power proposed to be given to the Secretary of State in England, which has been given here to the Minister of Justice, the commissioners say:

Experience has shown that the Secretary of State is a better judge of the existence of such circumstances than a court of justice can be. He has every facility for inquiring into special circumstances; he can and does, if necessary, avail himself of the assistance of the judge who tried the case and of the law officers. The position which he occupies is a guarantee of his own fitness to form an opinion.

The report winds up by saying:

Mr. POWELL.

The result of the inquiries of the Secretary of State may be to show not that the convict is clearly innocent, but that the propriety of the conviction is doubtful; that matters were left out of account which ought to have been considered, or that too little importance was attached to a view of the case, the bearing of which was not sufficiently apprehended at the trial; in short, the inquiry may show that the case is one on which the opinion of a second jury ought to be taken.

After mentioning a series of cases, they say: "In short, it may be a case which the opinion of a second jury should be taken." That is what this case is, and there can be no reason at all why the Minister of Justice acted in this case as he did. While I agree to the proposition of law stated by the Minister of Marine and Fisheries, it has no application whatever to this case. It is preposterous to say that because it was possible that the act might have been done innocently, therefore the man should be discharged. If that principle were applied in such cases as this, you would not have a man convicted once in a thousand years, because, as Chief Justice O'Brien says, it is impossible to know a man's motive. But back of that there is this fact, as stated by Mr. Justice Ritchie, that there was or may have been negligence in the handling of the gun. The fact that a man does a thing and damage results is evidence of negligence without anything further. Again, pointing a loaded gun at another being prohibited, if a man simply points a gun at another without intending to shoot at all, and the gun goes off, he is guilty of manslaughter. The whole matter resolves itself into this—that the case should have been left to a second jury, and if the administration of justice in this country is going to be so poorly guarded that a man who meets another in a byway, where no one sees him, and murders him, and is pardoned because there is no evidence of any motive, beyond the commission of the offence, I can assure this House that the crime of murder will be much more frequent in this country in the future than it has been in the past.

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Mr. CALVERT. In connection with the Estimates for the Department of Justice, I desire, even at this late date, to call the attention of the committee for a few moments to an expenditure in connection with that department. I refer particularly to the expenditure in connection with the late London election trial, and I may say that I regret very much that my hon. friend for London (Mr. Beattie) is not present, because I am sure he would agree with me in what I have to say in reference to this question. I asked the House for an order, which was granted some time ago, for copies of the account of Mr. H. H. Robertson, registrar of the election court trial held in London in the fall of 1897, determining the right of Thomas