

tions; but the provision in question had reference to the powers of the Crown to pardon or remit sentences or to order a new trial. The section was founded upon the examination made by the eminent commission in England which reported on the subject of a Criminal Code for Great Britain; and this was the paragraph on which we framed the provision giving this extraordinary power to the Minister of Justice:

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 debating 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 given. If this is the view of the Secretary of State, he ought, we think, to have the right of asking a new trial on his own undivided responsibility.

Not under the circumstances detailed to-night by the Prime Minister—not the right to let the man go scot free; but the right of asking a new trial. Then, such members as the hon. member for West Lambton (Mr. Lister) spoke in the discussion on the clause in question. That hon. gentleman said:

If the court should refuse to grant a new trial, on the ground that the verdict was contrary to the weight of evidence, then application could be made to the Minister of Justice, and if there was any doubt he would direct a new trial.

Sir John Thompson said in regard to this:

If the Minister of Justice saw that the case was cognizable by the court of appeal, he would decline to exercise his power;—

That is, in other words, he should decline.

—but after the decision something may arise to throw doubts upon the conviction.

That was the case, as it seemed to the members of the Government, when this prisoner made his confession so contrary to the former line of his defence. It was sufficient to make a case of doubt, and it would have been arguable whether with that document and nothing else, the Crown would have been warranted in exercising the power under this clause in the code. Later on Mr. Lister said:

It is much better for the Minister of Justice, in case he thinks justice has not been done, to be in a position to direct that a new trial shall take place, than to decide that the verdict of the court was wrong.

Hon. members will, therefore, see that that was the idea that prevailed when this statute was passed—that if it was supposed that the jury was wrong, the advisers of the Crown should not review the decision of the jury, or sit as another jury and decide finally and for ever that the jury was wrong; but if they thought the jury was wrong, they could exercise the right of directing a new trial; and that is all that was intended. I feel confident, therefore, that this action on the part of the Government has startled

Sir CHARLES HIBBERT TUPPER.

a great many people in the country. The hon. gentleman who has brought this subject to the notice of the committee has not suggested that this was a case for the exercise of clemency. No one has suggested that. But the point which seems to be extraordinary, and which has not to my mind been satisfactorily explained by any one as yet, is how, under the circumstances, that man, who was regularly found guilty of a crime, the judge who tried him declining to suggest in his report that it was a case where justice had so miscarried that the sentence should be remitted—how in such a case this man could have been thrown back into the community as a free man.

The danger is, in all those cases, that if an impression prevails among the criminal classes that there are such chances as occurred in that case of producing further evidence without cross-examination, that will increase instead of repress criminal tendencies in the community. It is notorious that all those acting on behalf of the prisoner never expected a pardon. What they hoped was that, taking into consideration the facts which are not in dispute and were commented on by the judge in his report, and the youth of the prisoner, there would be a sentence of something like 10 or 12 years imposed instead of the extreme penalty of the law being carried out. It was no surprise to me to be told that after this pedlar under the circumstances detailed, had been killed, and the man who shot him pardoned, all the remaining Armenian pedlars doing business in Colchester County, N.S., immediately took the train and left the country.

The MINISTER OF MARINE AND FISHERIES (Sir Louis Davies). I am sure it must be a matter of very deep regret that these pedlars should have departed from the province of Nova Scotia, but I may say that I regret very much the tone of the remarks made by the hon. member for Halifax (Mr. Borden) and the hon. member for Pictou (Sir Charles Hibbert Tupper). This was not a question of extending clemency. It was a question of application to this man's case of certain well known principles of criminal law. He was either guilty of murder or innocent. There was no middle course to take. To talk about sentencing a man, who is innocent, to imprisonment for ten years, is worse than insult. He was either guilty and should have suffered the penalty of the law or he was innocent. There was no suggestion of manslaughter in the evidence. There was no room for a verdict of manslaughter. There had been no trouble between the parties, no ill-feeling, no motive ascribed to the prisoner. The victim lay there, with all his money upon him and his chattels untouched. The absence of motive was clear. There was not a shred of evidence on which a motive could have been founded. That boy was guilty of murder or he was innocent. Let me tell my hon. friend that this case engaged the grave