is retained in clauses 138 and 145? It was previously in the code with respect to the offence of seduction, that is to say, the clause we were just discussing, subsection 3 of 138. Why was it dropped from this clause?

Mr. Garson: Well, I have already indicated that what would correspond to subsection 3 of section 138 was dropped as being inconsistent with the offence of seduction, since the essence of seduction is persuasion. In clause 143 the age is 18 years. I think in modern philosophy girls of that age are supposed to be able to take care of themselves.

Mr. Fulton: This applies to girls between 16 and 18. Previously, as the minister knows, even although the girl may have to some extent consented, there may still be seduction. It was for that reason the equality of blame provision was inserted. If the jury felt that the conduct of this girl was such that she was equally blameworthy, then they might render a verdict of not guilty. It was felt proper to put that in the original code for the same offence of seduction that is now covered by clause 143. It was there up until now. I can see no change that has taken place in the offence of seduction between the time that clause was put in and now that would clearly justify its removal.

Mr. Garson: Is this not the way in which a case of this sort would work out in real life? In clause 138 the female in the case is of a tender age; in clause 145 the female may be a stepdaughter, foster daughter, female ward or woman in his employment. All these people could be influenced by the relationship of the accused to them. You make the accused liable; then you give him this protection, that the jury could find him not guilty, even if the girl's consent was obtained and intercourse took place, if it appeared from the evidence that he was not wholly or chiefly to blame.

But where you are dealing with the case of a female of 18 years and it appears from the evidence that the accused is not wholly or chiefly to blame, it is hard to see how a court these days would find beyond all reasonable doubt that there had been that persuasion on the part of the accused which constitutes seduction. In such a case there would be just a general verdict of not guilty. The saving clause is inserted in those cases in which the court would normally bear down rather heavily on the accused because of either the tender years of the female or the fact she is an employee or some person under his control.

Mr. Fulton: I agree with the minister that there is some slight difference between the two cases. Still, without going into a long argument on seduction—and I have Tremeear in front of me—I think it can fairly be said that there is a fine borderline between what is seduction and what is not. It was probably a realization of that which induced the draftsman of the original code to put in the protection of this saving clause. There might be a case in which, although the accused had gone through all the motions which would, in the case of a completely innocent girl, amount to seduction, and although technically the girl had been seduced, the jury might come to the inescapable conclusion that her own conduct, while not being such as to involve full consent, had nevertheless led on the accused to the point where he seduced her. It was for that reason the saving clause was inserted.

I cannot get over the fact that this provision has been in the code ever since 1892 in connection with the same offence of seduction as here defined in clause 143, yet the equality of blame provision is now dropped. I do not see any compelling reason for doing so.

Mr. Diefenbaker: As a matter of fact, this creates a strange result. If the female is between 16 and 18 the court may find the accused not guilty if she were wholly or chiefly to blame, whereas if she is between 14 and 16, no matter whether she was wholly or mainly to blame, if she is seduced there is an offence created.

Mr. Garson: Would not the hon. member agree that where the circumstances indicate the accused was not chiefly or wholly to blame, and the lady in question was 18 years of age, no court is ever going to find there was seduction. Is this saving clause not inserted in the other clauses because the court has a strong predisposition in the case of a girl of tender years to take a dark view of the fact that intercourse was had at all? This is an indication to the courts that in a case of that sort, if it can be established that the girl was chiefly to blame, then they should let the accused off.

Although I must say I have not had anything like the experience in the practice of criminal law that the hon. member for Prince Albert has had, it does seem to me extremely unlikely, if the accused were in a position to bring himself within a saving clause like this, that the court would find him guilty of seduction in the first place in relation to a girl of 18.

Mr. Diefenbaker: Why was this provision deleted? It has been in effect, as the hon. member for Kamloops says, for 60 years. When it was brought into effect originally it represented the viewpoint of the courts at the time, and the common law, and had been followed from about the year 1866. During the last