

Criminal Code

• (3:50 p.m.)

The crime was committed on a certain date after four in the afternoon when the youngster was returning from school. I saw the accused and he said, "You will not get me involved like this". He said, "You are going to get me in trouble". Do you know what he was afraid of? When he was picked up in Portage la Prairie, Manitoba, he had admitted to this crime because he had stolen \$10 from his employer when he left. He said, "If I get into this business I am going to go to jail for theft". I said, "If you don't, you are going elsewhere". The Crown immediately withdrew the charge. He had been committed for trial. He did not stand any chance of acquittal because there was a complete confession. I mention this because so many say there is certainty in confessions. We have an example of this in the United Kingdom. I refer to the Evans case which has been mentioned by one of my hon. friends in the New Democratic Party. I am not going into that case because it is now before a judge for consideration.

From my experience at the bar I say that anyone who says an innocent man cannot go to the gallows is wrong, because I know differently. It is a frightful thing when a man you believe to be innocent and whose attitude is, Don't worry about me, God will not allow it, walks to the gallows and months later the truth comes out. These are the things that exercise the mind and heart of those who from time to time without remuneration act for the defence.

Sir, it is said that the punishment must be in keeping with the offence. Let me go back over the years. Ordinarily I would not take advantage of the consideration of the house in allowing me extra time but I hope on this occasion I may be permitted to deal with these matters. They say we must follow the course of an eye for an eye, a tooth for a tooth, a life for a life. Do they read the rest of Exodus, which made a variety of offences punishable by death? Read Exodus and you will find out. In my opinion horrible punishments do not deter. In Anglo-Saxon England the punishment was boiling in oil. They changed that because oil was costly. Under Alfred the Great they brought in hanging. Women were drowned because it was felt that hanging was indecent in exposing the feet and lower limbs.

The first great abolitionist was William the Conqueror. He was opposed to the death sentence. He said he did not believe in the death sentence and substituted maiming, the removal of arms, legs, eyes and ears. His

reasoning was that the trunk must remain alive as a witness of its crimes. We think of Henry VIII and his multiplicity of conjugal murders but do not recall that 72,000 were hanged for stealing during his reign. This did not reduce the number of thefts. Elizabeth, in the name of humanity, said, "I have to bring about a change in the death sentence". There were two varieties of the death sentence in those days. You were either executed on the gibbet by being put in chains and hung up and left until your soul went to its Maker or you went to the scaffold. There you suffocated. Elizabeth said that in the name of humanity a change had to be made and people could not be hung in chains unless strangled beforehand. They said this was necessary. They quoted Scripture.

Sir, these are things that must be looked at in the light of events. They burned people at the stake for the commonest offences. Until the first ten years of the 19th century this was the penalty for treason and in 1812 seven people were sentenced in the following way:

That you and each of you, be taken to the place from whence you came, and from thence be drawn on a hurdle to the place of execution, where you shall be hanged by the neck, not till you are dead; that you be severally taken down, while yet alive, and your bowels be taken out and burnt before your faces—that your heads be then cut off, and your bodies cut into four quarters, to be at the King's disposal. And God have mercy on your souls.

Did that stop criminal offences? Were those who opposed this type of sentence and brought about a change soft-headed? The trend in history has been more and more to emphasize the punitive and retributive nature of punishment, aside from the question of reform. Now we think of reform. I am trying to cover what has not been dealt with specifically during this debate. How many of us realize that from 1838 to 1858 in Upper and Lower Canada the death penalty was not exacted? For 20 years there was no death penalty. The reason for that was Laurnt and Mathews were hanged in Upper Canada and many more were hanged in Lower Canada following the rebellion and what took place so shocked the public conscience that Queen Victoria refused for 20 years to allow any executions to take place.

Everything was done to get around the difficulty of harsh punishment. In earlier times there was the benefit of clergy. Anyone in holy orders or a clerk did not have to pay the ultimate penalty. It was surprising the number who said they were in holy orders or were clerks. They could not sort them out.