

Mr. POWELL. Will the hon. gentleman pardon me. In the latter clause of the report of Mr. Ritchie, he says :

I thought the verdict should have been one of manslaughter only, as I suppose the death was caused by the careless use of a gun fired near the public highway.

I thought under criminal law that constituted manslaughter.

The MINISTER OF MARINE AND FISHERIES. My hon. friend (Mr. Powell) is perfectly entitled to his opinion, but if he will point out one scintilla in the evidence which would justify a verdict of manslaughter, I will surrender the case. There was not before the jury the suspicion of a hint of negligence.

Mr. BORDEN (Halifax). Does the hon. gentleman (Sir Louis Davies) understand that the Criminal Code in giving that definition of manslaughter, altered the law from what it was before ?

The MINISTER OF MARINE AND FISHERIES. I do not know whether the intention of the codifier was to alter the law as it was before, but the code in my opinion lays down the correct definition of what was murder and what will reduce it to manslaughter, and if I recollect aright this code is copied word for word from the English code in that respect. I have never found any lawyer nor any one else find fault with the definitions I have read. The hon. gentleman (Mr. Britten) has stated that the carrying out of that verdict would have been judicial murder ; nobody has any doubt about that. But they suggest that manslaughter might have been found, and I say with very great deference to my hon. friend (Mr. Borden) that there is just as much cause to find a verdict of murder on the evidence as there is to find a verdict of manslaughter on the evidence. I lay it down as a cardinal law which nobody dare challenge : That where the facts as proved are as consistent with the innocence of a man as with his guilt, that man is entitled to be discharged. I never heard that principle questioned in a court of law, and if it is questioned here I will produce the highest authorities from the text books of the writers of Great Britain and of America to justify my statement. It is on that crucial point the judge says that the facts were as consistent with the accidental firing of the gun as with it having been fired premeditatedly. That being so, the judge was bound to charge the jury in the words he reported to the Minister of Justice, and the jury were bound to find in accordance with that charge "not guilty."

Mr. POWELL. At the risk of delaying the passing of the Estimates, although I recognize the great desire on the part of all the members of the House to get home as quickly as possible, I shall direct the atten-

tion of the House to this question for a very few moments. No one will question the fundamental principle of the criminal law as announced by the Minister of Marine. He has stated it very well, and were I called upon to state it I would simply say that the rule of criminal law is this : That where there is a parity of reasonable probability between the prisoner's guilt and innocence, there should be no conviction. We all, I think, agree on that, and I accede to the statement of the Minister of Marine, as I presume that is about the statement of the principle he meant to make to the House.

Where the Minister of Marine and Fisheries is wrong is in the application of the rule that where there is a parity of reasonable probability there should be no conviction. What the hon. gentleman adduces are matters in respect of which there is a presumption of evidence—not an irrefutable presumption, but a *prima facie* presumption of evidence—that they exist. These are matters such as the connection between cause and effect, which is presumed. There is a *prima facie* presumption of fact that an act is an intelligent act, that a man means what he does. It is necessarily so, otherwise you could not try any cases at all. How could you possibly enter into a man's motive ? As was said by Chief Justice O'Brien long ago, in homely but rather vigorous language, "the devil himself cannot tell what the motive of a man was." We will take this case : A man is found dead in a field who has been killed through violence without doubt ; an individual is last seen with him ; there is proof that cannot be gainsaid that no other individual was near him. It is nonsense to assert that the law of this country is so lame that the individual last seen with the man cannot be convicted of either murder or manslaughter, unless there is positive evidence that the killing was intentional. The jury can draw the inference of intention as well as of commission of the act. The Minister of Marine and Fisheries will have to revolutionize the whole theory and administration of English criminal law if he wishes to set up such a contention. There is no doubt that as a matter of law the individual under such circumstances could be convicted. Whether or not his conviction is just, whether or not there were grave doubts as to the prisoner's guilt under the evidence, whether or not it would be indiscreet to inflict the death penalty—these are questions not of law, but considerations which may or may not call for executive clemency. The hon. gentleman says there is nothing to establish a motive. I am not going to argue that point at length ; but I will merely mention two or three facts which clearly show intention or are evidence of intention. In the first place, before this deed is committed, this boy is heard using harsh language concerning the victim of the crime ; after the crime is committed, he does what ? He