

the Government ought to try this question which he says was the real question. The Governor in Council is not to try such questions; the Governor in Council has no such functions; the Governor in Council simply considers whether it is a proper case for clemency to be extended to the prisoner, and in a case of this kind, where it all depended upon the statement of the prisoner which had not been put before the jury at all, which had not been sworn to before the jury, where the prisoner making that statement had not been sworn and had not been cross-examined; the Governor in Council should not have undertaken to decide the issue of fact. I say that the criticisms which I have made have not been met by the right hon. gentleman. My point is that if there was a case for clemency, it was a case for a new trial and that is what section 748 of the Criminal Code is for. I do not find fault with anything the right hon. gentleman has said. All I say is: That these grounds on which the Minister of Justice has relied were considerations for the jury; these were not considerations which would in any way justify the Governor in Council in taking the steps they did take. My right hon. friend also says that it is impossible to state that there was any motive. I repeat again that it is not necessary there should have been any motive. The people who live near this boy and who know him very well have not much doubt about the manner in which this shooting took place. The jury of the county are the best judges of that. And suppose the boy were reckless or careless, does the right hon. gentleman say that he should go out free as an innocent person, as he has gone out without any further investigation. The right hon. gentleman takes up my illustration with respect to a civil case, but he must remember that if you are dealing with greater interests on one side you are also dealing with greater interests on the other side. You are dealing with the question of this boy's life, but you are also dealing with the question of the Armenian's life, and therefore while you may, because the boy's life is in question, grant a new trial which you would not do in a civil case; nevertheless you shall not say that where a human life has been sacrificed, that the case shall be taken away from the jury of the country who are the proper persons under the law and the constitution to deal with it. I venture to suggest these conclusions to the right hon. gentleman, because it seems to me, with every possible deference to his remarks and giving them all the force which his great experience as a lawyer would entitle them to, he has not met the case which I ventured to put before the House in regard to this matter.

leader of the Government, that the question raised in this case by the hon. member for Halifax (Mr. Borden) is not as to whether it was a case for the exercise of the clemency of the Crown—whether the youth of the boy and the evidence as a whole should have been considered by the Government when dealing with the sentence of death; but the question raised by the hon. member for Halifax is one of the most important in connection with the administration of the criminal law that has ever come up in this Parliament or in the English Parliament. I can recollect when the Criminal Code was before the House of Commons, and this novel principle, involving the right of the Minister of Justice to order a new trial, was under consideration, there was in the minds of some a great fear lest the new departure might be so radical as really to endanger the safety of the public, and make crime more common in the country. The Minister of Justice at that time, Sir John Thompson, as hon. gentlemen will recollect, recognized the delicacy of introducing that novel feature into our criminal laws. I recollect very well his expression, either in or out of this House, that it would be hard to conceive of the circumstances under which that power would be exercised; it would have to be exercised in the most careful manner. Yet, this and other cases are now being discussed; and not only are leading men at the bar in Canada hearing of them with surprise, but the public interest is largely aroused in regard to what is becoming somewhat a frequent, some think too frequent, exercise of this extraordinary power, which was given to the Minister of Justice to be exercised in extreme and extraordinary cases. In order to show what was felt on the subject, let me refer to one or two things which were stated when this very machinery for granting a new trial was under consideration; and the committee will see how foreign it was to the framers of the Act, or to any member of the House who took part in discussing the changes being made in the law, to suppose that a Minister of Justice, in dealing with fresh testimony, or in reviewing the circumstances of a case, would have thought for a moment of ordering the prisoner to go scot free. The circumstances under which it was suggested that a Minister of Justice might be warranted in ordering a new trial were of an extreme character. For instance, I remember that the present Postmaster General (Mr. Mulock) asked in committee whether it ought to be open to a prisoner to show that there had been an improper interference with the jury, even after the verdict. He was informed that that would be dealt with later on. Mark you, this was not a power to re-try cases in the Privy Council, sitting as a court of appeal. A provision was made for that. The courts of the land are to deal with questions of law, and the Privy Council sitting as a court of appeal could review such ques-

Sir CHARLES HIBBERT TUPPER. Mr. Chairman, some members of the committee perhaps may not understand, from the observations made by the right hon.