

Criminal Code

Mr. Garson: May I ask my hon. friend this question? How can a court in a jury trial find an accused guilty except by the verdict of the jury?

Mr. Fulton: The answer is obvious. If there is a jury the court has no right to make any such finding except by the verdict of the jury.

Mr. Garson: Then may I ask a second question?

Mr. Fulton: If the minister will excuse me—

Mr. Garson: Where under the terms of this clause “a court may find the accused not guilty” how can a court find an accused not guilty without a jury’s verdict to that effect?

Mr. Fulton: My point is that the court cannot find the accused not guilty. It is the jury that finds him not guilty. That is why, as the hon. member for Prince Albert said, this section is going to cause great difficulty in its application and interpretation.

Mr. Garson: I am quite willing to consider the suggestion. I think the clause is quite good the way it is, but if my hon. friend will accept my undertaking I will have our experts give the matter very careful consideration.

The Deputy Chairman: Does clause 138 stand?

Mr. Garson: No; it is carried subject to my undertaking.

Clause agreed to.

Mr. Garson: I believe that clauses 139, 140, 141 and 142 were passed, and we are at 143.

The Deputy Chairman: The record shows that clause 139 was passed.

Clause 140 agreed to.

On clause 141—*Indecent assault on female*.

Mr. Diefenbaker: This is another of those sections where the question arises as to whether the elimination of the requirement that the jury should be instructed that it is not safe to find the accused guilty in the absence of corroboration does not in fact remove the need for corroboration. Indecent assault is one of the easiest charges to lay and one of the most difficult to defend. If my recollection is correct, Lord Coke pointed out a long time ago that this type of charge is often laid through motives of malice, revenge, jealousy and so on. Therefore the process of British judicial wisdom through the ages has been to warn the jury that it should not convict on the uncorroborated evidence of the prosecutrix.

[Mr. Fulton.]

The common law has been eliminated under the Criminal Code as it is now constituted. The fact that under section 134 it is provided that this rule of evidence shall specifically apply to sections 136, 137 and 138 would appear to lead one to the conclusion that it is no longer to apply in the case of indecent assault. I am going to press this, because I believe that if it is not made necessary from now on anyone accused of this offence will be in dire jeopardy. No one wants to open the door to the extension of such offences, but on the other hand we in parliament must be very careful that we do not make the laying of such charges an easy way in which to punish one against whom the prosecutrix has feelings of revenge or has other motives for laying ill-founded charges.

I would ask the minister to give the most serious consideration to the question I now raise, for I believe that unless we state that the rule applies in such cases we will in fact be removing from the trial judge a formula and warning which through the years trial judges have found necessary to say in order to protect the innocent from the probable blackmailing activities of those who through the ages have invariably chosen this means to secure their revenge for wrongs done to them, imagined or actual.

Mr. Garson: The point raised by my hon. friend is an important one, and out of the abundance of caution I think we should hold this section in order that what he has said may be checked. I am inclined to think that the law as it is stated here is not changed in any respect from the present law, but as I understand it he is arguing—and I think his argument carries a good deal of force—that when we provide in clause 134 for a certain course of procedure relating to certain sections we impliedly exclude other sections from that course of procedure.

Mr. Diefenbaker: Yes, that is a summary of it.

Clause stands.

On clause 142—*Incest*.

Mr. Nowlan: I take it that this clause will stand on the same basis, because I raised the same argument earlier this afternoon with respect to it.

Mr. Garson: Right.

Clause stands.

On clause 143—*Seduction of female between sixteen and eighteen*.

Mr. Fulton: Why was the equality of blame provision dropped from this clause, when it