

*Criminal Code*

administrative work that otherwise is entirely removed by the simple expedient of saying that the fine is so much and the alternative is so many days, weeks or months in jail and unless payment is made forthwith a warrant of commitment is issued and the person is immediately incarcerated in jail.

To send people to jail because of their poverty is not only detrimental to the citizenship of the individual so stigmatized but it also adds immeasurably to the cost of keeping prisoners in jail which by the adoption of an amendment such as I suggest would be almost completely removed. It can be done with justice because the discretion still remains with the magistrate, after making an investigation, to decide that because of the seriousness of the offence a prison sentence is justified or because in his opinion the person, while pretending poverty, would be able to pay the fine if he chose to do so. The magistrate may then simply endorse a warrant of commitment indicating his reason why the individual in question is not permitted to pay the fine by instalments.

The amendment I suggest is supported by Chief Justice McRuer of the Supreme Court of Ontario, who on more than one occasion has pointed out the injustice that is being done today.

I maintain, sir, that the maintenance of this section of the criminal code in its present form is a denial of the advances that have been made in criminology in the last 40 years. It is a denial of simple justice. It makes justice a matter of the possession of dollars and cents. It makes imprisonment the alternative for failure to pay to the individual who is poor. It denies equality because the person who is able to pay escapes imprisonment but the person who is unable to pay is branded for the rest of his life as one unworthy to be considered a good citizen because of the imprisonment he has suffered.

One of the things that above everything else we endeavour to maintain today in our system of democracy is equality as between citizens. Democracy cannot live when a shameless sham is made of rules of conduct or when the law ceases to deal equally as between individuals. Above everything else the essence of democracy depends on the equality of the individual, whatever his station in life and whatever his financial condition may be. It depends as well on the equality of the individual's rights whether that individual belongs to a majority or a minority. It cannot survive when minorities are coerced by perversions or distortions or deliberate evasions of the principle of equality of all under the law.

Generally speaking, this amendment has received the support of the press in all parts of Canada. In almost every case the attitude has been that this is a reform which is long overdue. The general summary of views is expressed in an editorial in the *Edmonton Journal* of April 24. I shall read only the portions that deal with the situation in question. After a very generous reference to myself in regard to my zeal for legal reform and the protection of civil liberties, it goes on to say:

He showed this again last week by introducing an amendment to the Criminal Code to eliminate, or at least largely reduce, imprisonment for non-payment of fines.

This is certainly one of the outstanding abuses of the present administration of justice. In all too many police courts across Canada, the conviction of a defendant on a minor charge is automatically followed by the imposition of a fine with imprisonment as an alternative—the traditional “thirty dollars or thirty days”. If the accused has the money to pay the fine immediately, he walks out a free man. If he hasn't the money he goes to jail—which involves not only loss of liberty for a month or more, but social disgrace and often loss of employment. This system is thoroughly bad and indefensible. It not only works great hardship on individuals who have been guilty only of petty offences; it also sets up a different scale of punishments for those who have money and those who have not—a thing wholly contrary to sound ideas of justice.

And again:

As far as it goes, however, Mr. Diefenbaker's amendment is a marked improvement on current practice. It should remove a serious source of injustice and inequality from our criminal laws, and also greatly reduce the number of men and women imprisoned for trivial breaches of law. It is to be hoped that the government will not obstruct its passage.

This is a reform which has been asked for by bar associations across Canada over the years. It has been asked for by John Howard societies. It represents an advance which Great Britain has found during the past 42 years to work successfully. In submitting this amendment to the house I ask the government to remove the whip and allow this matter to be considered, on the basis of a reform, by each individual personally. It represents a serious endeavour to assure and maintain equality of justice within our country and to remove one of the most serious anomalies in the criminal law as it is now administered.

It will pay dividends in good citizenship for it will assure that in the years ahead those who otherwise would be penalized because of imprisonment and who later on in life might desire to secure positions requiring bonds and the like would not find themselves denied those desires by the fact that some petty offence had been committed at some time in their lives for which a fine under the law was sufficient and for which