

than anything else on earth, are at stake, he should have a right at least to go from the first court of trial to another court, in order that the ground for the decision against him may be carefully examined and that if a mistake has been made it may be rectified.

Hon. Mr. DAVID: I wish to call the attention of the honourable leader of the House to an omission which appears to me to be a serious one. The Bill says that the judge may—

- (a) refuse to alter that sentence: or
- (b) diminish or increase the punishment imposed thereby, but always so that the diminution or increase be within the limits of the punishment prescribed by law.

The appeal judge may increase or diminish the punishment, but if he comes to the conclusion that the accused was not guilty and that the sentence was unjust what will he do? Under the English law the judgment may be reversed by the court of sessions; but there is no such provision in this Bill. What will be the position of the Court of Appeal if it comes to the conclusion that the man was not guilty, since it can do only one of two things—either diminish or increase the sentence?

Hon. Sir JAMES LOUGHEED: My honourable friend's comment is, I think, correct. The court that reviews the sentence would not have authority to render a verdict of not guilty; it must assume that the verdict of guilty shall stand, and it can only review the sentence. I am not discussing the propriety of leaving the Bill as it is, but that is the effect of it.

Hon. Mr. TESSIER: May I be allowed to add just a few words with reference to what has been said by my honourable friend from Antigonish (Hon. Mr. Girroir), who has spoken so well. He mentioned the English authorities, which seem to apply to convictions. If a conviction is wrong, there is always a way to appeal; the habeas corpus can always be invoked by a man who has been wrongly convicted.

Hon. Mr. GIRROIR: Not on a question of fact.

Hon. Mr. TESSIER: But the various decisions which have been quoted by the honourable gentleman do not seem to apply to sentences, but only to convictions. There is a distinction to be drawn between a conviction and a sentence. A conviction may be wrong in law or in fact, but the sentence is something that has always been left to

Hon. Mr. GIRROIR.

the discretion of the trial judge. The trial judge has the offender before him, he hears the witnesses, and knows all about the case, and he is really in a better position than anybody else to give a just sentence. But I am not speaking of convictions; I am speaking of sentences; and this Bill, as I understand it, provides that sentences may be made either shorter or longer. Well, if a sentence is unjust, there is a remedy. If the judge has been too severe, there is always an opportunity to appeal for clemency to the Department of Justice, and clemency has generally been exercised. According to the present practice, the judge is called upon to make a report, upon which the Minister of Justice makes a recommendation to the Governor General. If it is shown that the sentence has been too severe, clemency is exercised and the prisoner may be liberated.

Another point to be taken into consideration is the litigation which will take place if this Bill becomes law. It seems that in nearly all cases, or at least in a great many cases, in which sentence has been given the judgment will be brought before the appeal court. You can understand quite well what a cost that will involve. It will also necessitate a great deal of time being given by our judges, who will be obliged to read over again all the evidence that has been taken before the inferior courts, and I may say, so far as the province of Quebec is concerned, that our Court of Appeal is already overburdened with work. If the Government wishes to appoint four or five more judges, it may do so, but even if that is done it will be sanctioning a very unjust principle. I do not think that the Bill should pass.

Hon. Mr. POWER: Honourable gentlemen, I should like to ask the honourable gentleman from Antigonish to tell us whether the authority which he read from the English statutes really covers the whole ground or whether there is further statutory authority, because I notice that the statutes from which the honourable gentleman quoted all dealt with summary convictions. A man has been tried before a magistrate and there is an appeal, and if the appeal is upheld, then the case goes back, not to a judge of the high court, but to the court of quarter sessions. Giving an appeal from a magistrate's court to the high court is very different from giving an appeal from a judge of the high court to the whole court sitting in banc. I do not think, then, that these English authorities are really very much to the purpose.