

There is no authority given by the Bill to any court to declare a man innocent who has been found guilty in a court of law. It only empowers the court to which the appeal is given to increase the sentence or to decrease the sentence. If the accused is a felon when he leaves the trial court, a felon he remains for all his life, only the court of appeal may put a greater or a lesser punishment upon him. My particular objection to the Bill is that I do not think it is right that any court that has not been present at the trial should have the power to increase a man's sentence.

Hon. Mr. TESSIER: That is the point.

Hon. Mr. LYNCH-STANTON: Why should a court of appeal, which has simply a stenographic report of the trial—

Hon. Mr. TESSIER: I may remind the honourable gentleman that sometimes the evidence is not taken in writing.

Hon. Mr. LYNCH-STANTON: That is so. Now, I think it is contrary to fairness and justice for the Crown to be entitled, on a fragmentary report of the trial, to go to the court of appeal and ask it to increase a man's sentence. I can quite understand a tender-hearted person being in sympathy with a Bill which gave an unfortunate man who had been convicted a chance to go to a court of appeal with an application to have his sentence reduced; but how anybody can want to make him undergo another trial in a court of appeal I do not understand, and I think it is unfair to subject any person to any such re-hearing. If the work "increase" were struck out wherever it appears in the Bill, it seems to me that no real harm could be done. But if you give authority to the court of appeal to increase the sentence, you will certainly violate all the rules which the practice of the criminal courts has devised to protect an accused man, and which require that he shall be sentenced only by a judge who was present at the trial and knows all the facts. If this Bill does not give either the Crown or the prisoner the right of appeal to have the sentence reversed, it should not be passed. In my humble judgment the Crown should not be given a greater right than it has now to have another sentence passed on the accused.

Hon. Mr. McHUGH: Did I understand the honourable member from Antigonish, (Hon. Mr. Girroir) to say that the Justice Department would not lessen a sentence unless one-third of the term had elapsed?

Hon. Mr. GIRROIR: That is the practice.

Hon. Mr. McHUGH: Well, I have known the department to vary from that. I am speaking only from what I have observed in my own dealings with the department, but I understand that they can take up the case of a man the very day he is sentenced. A man may be sentenced to five years in the penitentiary, and the next day the Justice Department may consider an application for clemency. Of course the department may say: "He has not been in prison long enough yet; when he has been there for a few months, he will be let off." If I am wrong, I would like to be put right.

Hon. Mr. GIRROIR: The Justice Department, of course, has the absolute right so to deal with the case; but the practice of the department, as related to me within the past fortnight by the Solicitor-General, in a case which I brought before him on appeal, is that unless the accused has served one-third of his term, the question will not be considered by him with a view to releasing the accused on ticket-of-leave.

I agree with my honourable friend (Hon. Mr. Lynch-Staunton) that the Bill as drafted does not meet the case. I think it should be amended in such a way as to make it follow the provisions of the English Act.

The motion of Hon. Mr. Tessier was negatived on division: yeas, 18; nays, 29.

On section 1, new section 1055A, subsection 1—revision of sentences for indictable offences:

Hon. Mr. DAVID: It seems to me that it is necessary to fix a time within which the appeal may be made—a month, six months, or a year. I think the time should be specified in this clause.

Hon. Mr. BOSTOCK: I understood, from the remarks of the honourable gentleman from Antigonish, that he was going to move an amendment to this clause. I think that there is a good deal of objection to the provision that the consent of the Attorney General shall be obtained. I think it would be very much better, as the honourable gentleman from Antigonish said, that, if there is to be an appeal, it should be allowed by the judge who tries the case, or else by the appeal court on application for leave to appeal. I understood that the honourable gentleman from Antigonish was going to move an amendment along those lines.