

*Supply—Justice*

asking him to do a thing which will mean the application of no unnecessary force to his person, will give him an opportunity to establish his innocence if he is innocent, and on the other hand will not allow the parade one sees today in the courts of this country of those who, stumbling and staggering after an accident has taken place, find that there is no part of the Criminal Code more honoured in the breach than in the observance in so far as conviction is concerned.

**Mr. Smith (Calgary West):** I want to say a word on this subject largely in support of what has just been said by the hon. member for Lake Centre. One only has to go a few years back to a time when the question whether or not a man was intoxicated was settled rather simply. We took the word of the police officer, the neighbours or witnesses to the accident. Then a development took place. Respect for the oath lessened in this country so that—and I speak from experience—a situation developed where witnesses were prepared to say that they were in the motorcar, had spent the afternoon with the individual charged, and the number of beers was always two. Later on, as the party broke up and they went home, he had a sip from some other fellow's glass. I heard that until I was sick and tired of hearing it.

As we progressed in these smart defences, we found that there was always a doctor friend around the corner who made an examination and found that the man was suffering from shock. So a doubt was cast on the condition of the accused person, and our courts quite properly gave the benefit of the doubt, as it belonged, to the accused. We are making many changes, if not advances. For example there is psychiatry. I know of a drunken driving case where the defence was advanced that just at the time of the accident the driver had a psychosis. It had not recurred for forty years, but it occurred at that moment.

I like the definition given in one case by a judge who was at one time chief justice of the Supreme Court of Alberta. Psychiatrists from all over this continent were in attendance, and I mean the top fellows. We did not bother with the chaps who had just come out of university. Of course we had no difficulty getting psychiatrists on one side, and the other people had no difficulty getting them on the other side. This man, who I think was a great judge, said, "What do his neighbours think? They are the people who know whether or not the man is crazy." That is the way matters involving insanity were decided, certainly within the memory of myself and the hon. member opposite who spoke a moment ago. So in these drunken

[Mr. Diefenbaker.]

driving charges we come to this, that we have got into a matter of science to ascertain whether or not a man is drunk. The neighbours know, but they will not tell us.

Then, there is the necessity of distinguishing between shock and drunkenness. I do not care who the doctor is; he has a nose the same as the rest of us and when he smells liquor one would think the first thing that would occur to him would be: perhaps this fellow is drunk. No, that is not it. They say that has not anything to do with it. He is suffering from shock. They say, would you not suffer from shock if you saw someone lying on the road with his legs broken and his head bashed in? Of course you would. I have been watching these scientific analyses for some considerable time. I have always thought what a wonderful thing it would be if those things really worked. I think the developments of the last few years as explained by the member for Lake Centre, particularly the experience of the city of Detroit, have established the fact that they are scientific and they are correct. I believe the blood test is perhaps the more sure of the two I have in mind.

There is some talk about the liberty of the subject. All you are asking a man to do is to breathe into a balloon. I would not worry much about that, even if he refuses. We might start there, and if necessary interfere with his liberty later. If a man is asked to breathe into a balloon and says, "no, I will not do that because that is interfering with my liberty; I breathe where I please," all right; in the police court I say to him: "You would not breathe into that balloon?" "No, my liberty was at stake." "The accident victim has not got any liberty; he is dead. If you are as innocent as you say you are, why did you not establish it by breathing into the balloon?" My point is that I think we should perhaps begin in that way, and if that proves to be unsatisfactory I agree with the member for Lake Centre that talk of that type, that it interferes with personal liberty, is nonsense. Advantage is taken of it to absolve people from the consequences of their drunken acts.

**Mr. Garson:** Mr. Chairman, the member for Lake Centre has raised here today, as he raised on the discussion of the Criminal Code amendment, a matter of the greatest importance. I think it is quite in order for us to discuss this subject on this occasion whereas on the former occasion I thought then, as I still think, it was not proper to do so. I am happy he has mentioned it again today, because it enables me to reply to some of the points he made that I must regard as being erroneous.