

Administration of Justice

We say that the accused is innocent until proven guilty, and that the onus of proof lies upon the Crown and that it must be discharged beyond any reasonable doubt. These are fine sounding phrases, but to give force to them we must provide the means whereby an accused person can obtain the needed assistance.

We have had a lot of discussion and publicity recently in this country about a man charged in the United States and apprehended in Canada in respect of an offence involving narcotics. I cannot go into the details of that case, of course, but it strikes me rather strange that people under these circumstances can spend thousands of dollars in an effort to escape or avoid justice, in contrast to the relatively small sums which may be made available to other people charged with other breaches of the Criminal Code. In my opinion this does not constitute equity, but is inequitable and unjust.

For that reason I am more than pleased to lend my support to this motion and I hope it will have the result of initiating at the federal-provincial level some discussion about this very serious problem which, until relieved, in my humble opinion does constitute a blot on our administration of criminal justice.

Mr. D. S. Macdonald (Parliamentary Secretary to Minister of Justice): Mr. Speaker, the hon. Member has put the House in his debt by introducing this resolution, and introducing into the deliberations of this Chamber what has become an increasingly important question not only in this country, but in a great many other common law jurisdictions.

We in the common law system, and for this purpose I refer to the criminal jurisdiction of the Province of Quebec as well, have proceeded in the trial of matters upon the adversary system; founded upon the assumption that that most elusive object, the truth, is best arrived at in connection with legal matters by conflicting arguments of parties themselves in court, and in the case of criminal questions by a contest in open court between the state and the accused. In so saying, that is not to say that no other system of law, such as the civil law system which follows the inquisitorial method in criminal matters have not an equally effective means of arriving at the truth.

We can say, however, with some pride, that we have achieved, so far as it is possible within human fallibility, some success in our common law system. But it is very curious

[Mr. Baldwin.]

that an anomaly exists in this type of an adversary system that, until very recently, had not been observed or provided against in the various jurisdictions in which the common law is in force. I am referring, of course, to the fact that in an adversary system, the manner in which the system is supposed to act, assumes a conflict of two parties equal in every way and, more particularly, two parties equal from the standpoint of representation by counsel and economic means. Generally speaking, this works out effectively in our system, but until very recently there had been little or no public recognition of the fact that in the case of an indigent against the state there is no equity at all in that contest which is supposed to produce the truth, but rather it is no contest at all.

I have already made reference to other jurisdictions in which the question has arisen. Perhaps the United Kingdom may take the credit for having taken the lead in providing legal assistance for people without means, particularly in criminal cases. The first English legislation arose out of voluntary activities in the early part of the century, and is dated 1907. In Britain they have continued to extend this, particularly by the Acts of 1933, 1949 and even as recently as 1960.

What is even more surprising to us, however, is that under the United States constitution, in which its citizens take just pride, and which has been the subject of extensive deliberation by the Supreme Court of the United States, there have been many eminent cases by many eminent authorities; yet until comparatively recently—in fact, the year of my birth—there had been no definitive statement of the right to counsel of indigents before the court. The case of that year was *Powell v. Alabama*, and down through the years there have been the cases of *Betts v. Brady* and *Gideon v. Wainwright*, which stimulated the hon. Member to bring this motion before the House. I should point out to him that the great man there was Mr. Gideon, and not Mr. Gideon Wainwright as he said.

The United States Supreme Court case has declared the principle under the United States constitution under which an indigent is afforded the means of protection in criminal cases. Contemporaneous with the decision of the Supreme Court in *Gideon v. Wainwright*, there was great concern about the question of an indigent before the federal courts, and at the insistence of the then Attorney General for the United States, now Senator Robert