

a conviction for murder or for manslaughter—because it is just as inconsistent for manslaughter as for murder if the shooting was accidental—was wrong, and a conviction made under such circumstances should be set aside and the man set at liberty. The only other question was as to this man's subsequent confession after the trial. How often does it happen, especially with young men, when they are brought face to face with the killing of a fellow-being that they think no one saw them, they will deny everything, accidental or otherwise, in connection with the shooting; and having made the first mistake, this young man persistently followed it down to the trial and it was not until after the trial that the prisoner told the truth. But in making that confession it was not done with the intention of basing upon it an application for a new trial, and it was consistent with the theory that the shooting was accidental. Under these circumstances and the report of the judge made, and the only report the Government could act on, showing these two points, first, that the judge was not satisfied with the verdict, and second, that this view was not inconsistent with accidental killing, I submit that no other course could have been fairly followed by the Government then to have left the young man go perfectly free. It is well known as a principle in the administration of criminal justice, that where there are two theories equally consistent with all the facts of the case, one consistent with a man's innocence and the other consistent with a man's guilt, we are obliged to give the benefit of the doubt to the prisoner. Nothing more than that was done in this case, and it would have been a monstrous wrong on the part of the Government to have dealt with this case in any other way than they did deal with it.

The **MINISTER OF MARINE AND FISHERIES** (Sir Louis Davies). The importance of the point raised by the hon. gentleman (Mr. Borden) justifies me in saying just one word. I stated to him the ground on which His Excellency's advisers advised that the clemency of the Crown should be extended towards this young lad. I challenged my hon. friend (Mr. Borden) to question the law, apart altogether from the question of mercy. Those who watched the hon. gentleman in his reply to me must have noticed that he entirely evaded touching that point. My learned friend from Kingston (Mr. Britton) has put the point so clearly that not only every lawyer but every layman must thoroughly understand it. My hon. friend from Colchester (Mr. McClure) has quoted the words of the judge: that the evidence was consistent with this shooting having been purely accidental, and I put it to my learned friend (Mr. Borden) and he did not grapple with that point as I humbly believe he was bound to, that if that was the evidence as the judge reported it, the

Mr. BRITTON.

judge was bound to submit it to the jury and the jury were bound to acquit. One word more. When I scouted the idea that this boy on the evidence could be found guilty of manslaughter, and challenged the hon. gentleman (Mr. Borden) to put his reputation to the statement in this House that he thought that evidence justified manslaughter, the hon. gentleman (Mr. Borden) was silent and did not dare to commit himself to such a statement. The hon. gentleman (Mr. Borden) said there was a statement made by the judge, and behind that he sheltered himself, but the hon. gentleman who took the responsibility of bringing the Government to the Bar of this House for having been guilty of the miscarriage of justice; the hon. gentleman did not dare to take the responsibility of saying that he believed the evidence justified a verdict of manslaughter. Let me present the hon. gentleman (Mr. Borden) the Criminal Code. No one knows better than he does, for he is a lawyer of great experience and I recognize his ability and experience; no one knows better than he the definition of murder in the Criminal Code, and he knows what reduces that crime of murder to manslaughter. I ask the attention of the House for a moment while I read the section which defines the reduction of murder to manslaughter, and then I will ask, is there a man in this House who will say that the ingredients which reduce the crime of murder to manslaughter were present in this case or could possibly be found in the evidence.

Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

Is there a suspicion of that here? Could it be sustained if such a verdict was found; I trow not.

Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

Was there a suspicion that any of these facts were present in this case. Let my hon. friend (Mr. Borden) now take the responsibility of raising in his place.

Mr. POWELL. I will ask the hon. gentleman (Sir Louis Davies) if he has ever heard of the indictment of a person, or of a corporation, or negligence resulting in death.

The **MINISTER OF MARINE AND FISHERIES**. I am not talking about negligence resulting in death.

Mr. POWELL. But that constitutes manslaughter.

The **MINISTER OF MARINE AND FISHERIES**. I am talking about the code which defines what murder is, and defines the circumstances which reduce murder to manslaughter.