

Criminal Code

Mr. Diefenbaker: For that reason I wish to proceed. A member supporting the government has already spoken on the subject. I would like to conclude this matter at this time.

Mr. Speaker: Well, if no other hon. member wishes to speak, the hon. member for Prince Albert will now close the debate.

Mr. J. G. Diefenbaker (Prince Albert): Mr. Speaker, this matter was before the house on April 20, at which time I discussed the situation at some length. I was followed by the hon. member for Yorkton (Mr. Castleden) and the hon. member for York-Scarborough (Mr. Enfield).

This bill has to do with the removal of one of those anomalous things that through the years have been on the statute books of our country and to a very large degree have made their contribution to our jail population. The amendment, if I might just refer to it in general terms, sir, suggested by myself, provides that where a fine or a pecuniary penalty or a sum of money is adjudged to be paid, before a warrant committing any person for failure to pay the fine is made, the court which passed the sentence must be satisfied that the individual in question is possessed of sufficient means to enable him to pay the fine forthwith; or, unless no request for time is granted; or, finally, unless the court for any other reason expressly desires that no time shall be allowed.

In other words, it does not in any way encourage the commission of crime on the part of those who because of their financial position would be unable to pay a fine should they be convicted of an offence. It is no encouragement to anyone to commit a crime because there is a section under the amendment that I bring before this house whereby a magistrate may in proper cases deny to the individual convicted an opportunity of paying his fine or an extension of the time in which to pay the fine.

Over and over again in my own experience in the courts, and I am sure in the experience of hon. members of this house who are not members of the legal profession, I have seen men and women whose only offence was one that should have been subject to a fine and because of their inability to pay the fine they were placed under the stigma of imprisonment.

The amendment I suggest is nothing new under the British system of the administration of justice. I drafted the amendment I have placed before the house in almost identical terms with that which was introduced in Britain in 1914 in the month of

[Mr. Harris.]

August. It was supported at that time, as many members know, by such outstanding members of the British House of Commons as Sir William Anson, one of the most renowned names in the history of British jurisprudence; Samuel Hoare, afterwards one of the ministers of the cabinet; Joynson-Hicks, who later became a cabinet minister; Robert Harcourt; Hamer Greenwood, that great Canadian whose birthplace was Whitby, Ontario; Sir John Simon, afterwards a Lord High Chancellor; Sir Stanley Buckmaster, afterwards a Lord High Chancellor; Augustine Birrell, later a prime minister; H. H. Asquith, also a prime minister; Stanley Baldwin and Ramsay MacDonald, both of whom in subsequent years became prime ministers of Great Britain. In other words, the amendment I suggest was introduced and passed in the British parliament more than 43 years ago and it had the result of reducing the jail population of Britain by approximately 80,000 a year. I am sure there is no one today who suggests that because a person is unable to pay a fine there can be any justice in imprisoning that person without giving him an opportunity of paying that fine by an extension of time or by instalment payments and thereby discharging his debt to society. There is gross unfairness, when a fine is a suitable and proper punishment, that a person who through no fault of his own finds himself unable to pay the fine should be stigmatized while on the other hand a person with adequate resources and an income sufficient to meet the immediate fine that is imposed is thereby protected from imprisonment.

I was unable to secure statistics from the various provinces in Canada in order to place them definitely before the house; but, as I stated in introducing this measure, with the exception of the provinces of Quebec and Ontario no provinces have kept any records. The best estimate I can make on the basis of the statistics I have is that each year in Canada 35,000 or 40,000 Canadians are in prison not because the offences they committed deserve jail but simply because they have been fined and have been unable to pay the fine.

As the law is at the present time, magistrates have the right if they so choose to grant an extension of time for payment. Because this is not obligatory it means that those magistrates who by reason of their own humanity desire to assure a larger measure of justice than some who have not that same degree of humanity find themselves subject to criticism when they do grant time in the jurisdiction under which they operate. In granting time they increase the degree of