a verdict of guilty, to find in addition extenuating circumstances which would mean that the death sentence would not be imposed but that a sentence of imprisonment would automatically follow.

For our purposes I think it might be suggested that it is important for us to consider only the last two recommendations. The subject of insanity is going to be referred to a royal commission and the rule regarding provocation is already the same in Canada as it has been recommended that it be in the United Kingdom. It does not seem to me therefore that the first two recommendations need concern us very much, and even the third recommendation respecting the abolishing of the rule regarding constructive malice does not seem to me to be of much importance to us because the application of the rule of constructive malice in Canada is not by virtue of its being a rule of law, but is restricted to those cases laid down in the Criminal Code. The fact that it is confined to certain offences gives it a more restricted application than it has as a general rule of law in the United Kingdom.

It would seem to me that the most important of their recommendations from our point of view is the one which I have listed as the fourth, namely, that juries be given discretion, after having found a verdict of guilty of murder, to find in addition extenuating circumstances. However, Mr. Speaker, I think it should be pointed out that the British royal commission were concerned with what does concern every one of us here and every person in Canada, that is, cases where there are extenuating circumstances in the environment or background of the accused or where it is felt that the accused did not actually intend to kill, but where, in law, what the accused did was murder. Certainly, I do not suppose there would be a person in this house or in the country who would not agree that in cases of that kind there is room for modification of our law. It is a horrible thing that a person should be hanged merely because, although he does not intend to kill, in law what he has done is murder. That is the situation that concerned the British royal commission. It is a situation that each and every one of us will have in mind when we consider this subject.

It is felt that it is contrary to the principles of our law that a person should pay this penalty for something he did not intend to do. But one has to realize also that the law has been carefully framed so as to make it impossible for people to embark recklessly upon acts which result in the taking of a life. After all, that is the most serious thing a person can do. It is to discourage embarking lightly upon courses of action of that kind that the law has, heretofore at any rate, been careful to lay it down that such a course of action is, technically, murder.

The question is whether that kind of murder, if I might call it that, as distinct from deliberate, cold-blooded, intended murder, should carry with it automatically the death penalty. It was this point that the British commission considered, and which they had in mind when they made their recommendation regarding the discretion given to the jury to bring in this finding of extenuating circumstances. While realizing fully the difficulty that lies in this problem, and the desirability of exploring every method which might result in tempering justice with mercy, I want to reiterate my belief that the greatest safeguard we have may be found, not so much in amendments to the law as in the fact that we follow the jury system. It seems to me it is the greatest safeguard we have in Canada against the possibility of cases, in which there are extenuating circumstances, resulting in the death sentence. As I have said my conclusion, as a result of experience and reading, is that with remarkably few exceptions juries will not convict of murder when there are extenuating circumstances.

In dealing with this problem the British royal commission considered and rejected an idea which however I think should be explored here in spite of what I have said about the safeguard of the jury system. That is the suggestion that there should be a statutory definition of two types of murder, first degree and second degree murder. First degree murder would be the only one to be followed automatically by the imposition of the death sentence. The British royal commission considered that and rejected it. They came up with this recommendation of giving juries a discretion.

It is interesting to note that that recommendation has already been very strongly, and I may say very effectively, criticized in the House of Lords. Members who are interested will find the debate on that point recorded in the House of Lords official report for Wednesday, December 16, 1953. Viscount Simon—unfortunately, Mr. Speaker, one has now to say the late Viscount Simon because according to newspaper reports he died yesterday, one of the most eminent lawyers ever produced in the United Kingdom—introduced into the House of Lords a motion criticizing the particular recommendation of the British royal commission to which I have referred.