

ment was not taken advantage of, but it was open to the parties to use it. Another view of the case is this. The hon. member for Halifax (Mr. Borden) thinks there should be a new trial. That would be a very dangerous course to see followed in a case of this kind. What is the argument? Here is a man tried and found guilty, he presented a certain theory to the court in his defence and a certain line of evidence; the court convicted him and he was condemned. Afterwards it is stated on behalf of the prisoner that he did not state the truth to the court, and that if another chance is afforded him he will present the truth and prove his innocence. That would be a somewhat dangerous precedent to establish—to say, give a man a new trial because at the time he was convicted he did not tell the truth, and if he now gets a new trial he will tell the truth and be acquitted. There is difficulty in pursuing that line; yet the hon. gentleman undertakes to argue in that way and declares that the young man should have had a new trial and not a commutation of sentence. I am not pleading the question, but I am bound to say, that the action taken struck me with some surprise, and yet the hon. member for Halifax has not made that successful attack which I expected he would do when he rose to present the case, because I say that to-day there is but one theory and one set of facts put forward which will explain satisfactorily why and how the boy did the shooting, and that is the theory of accident. Is there a jury, a counsel or a Governor General, who would assume that a boy sixteen years of age, without the slightest provocation and without any inducement known would go out in broad daylight and shoot a man on the road, leave him there and not return?

Mr. BORDEN (Halifax). Is that a question for a jury or for the Governor General in Council?

Mr. McCLURE. I submit it was a question for the jury. I say further that under the Criminal Code as it stands to-day, the hon. gentleman cannot deny that it is also a question for the Minister of Justice. The section is a somewhat peculiar one, and the code is to blame more than the Department of Justice. It reads as follows:

If upon any application for mercy of the Crown on behalf of any person convicted of any indictable offence, the Minister of Justice entertains a doubt whether such person ought to have been convicted, he may instead of advising Her Majesty to remit or commute the sentence after such inquiry as he thinks proper by an order in writing direct a new trial at such time and before such court as he may think proper.

If the Minister of Justice entertains any doubt as to whether the boy was proved guilty or not, leaving out the confession and everything but the bald evidence, what has he the option of doing? He may, instead of remitting the sentence, order a new trial. If

he does not entertain any doubt he may remit the sentence. If the Minister and the Government are of the opinion that without doubt the boy is innocent, and viewing all the circumstances, if it is plain and clear that the only explanation is that the boy did the shooting accidentally, is it not a duty incumbent upon them to remit the sentence and discharge the boy, which, while it may have surprised the public and the hon. gentleman, as it certainly did surprise me, is yet a course consistent with the theory of the law and the duty imposed on the Government under the law.

Mr. BRITTON. On hearing this case so ably presented by the hon. member for Halifax (Mr. Borden), it seems to me it would have been a judicial murder if this sentence had been carried out. I cannot think for one moment that on the facts presented to the House any other than the exercise of the Executive clemency should have been carried out in a case of this kind. The hon. gentleman must know, as all of us do who have had to do with the administration of the criminal law that if there are two theories as regards the killing, one consistent with innocence and the other with guilt, there must then be doubt in the mind of the jury or the court which tried the case. It is not a question of mercy or privilege, it is not correct to say that the prisoner was entitled to the privilege, for it is a right that must be exercised in his favour. If there are two theories there cannot be a conviction. So, is not the whole case ended when the judge reports—I do not care whether he made one report or two reports to the Government—and in that report says, first, he is not satisfied with the verdict, and, second, that the facts established on the trial were consistent with accident. If they are consistent with accident, they are consistent with the innocence of the defendant, and if so, then it was not a mercy extended, it was a right that had to be extended, and the statement had to be admitted that if those were the facts this man was not guilty and should not have been found guilty. I submit further that in dealing with this question we are not dealing with that much-discussed section No. 748 of the Criminal Code, which gives the Minister of Justice power to order a new trial. There is great difference of opinion in regard to that section, and whether we have the right in Canada to have that privilege or duty placed on the Minister of Justice. This is not a case of the kind, but such a case as came before the Government long before the Criminal Code was passed, a case in which the Government were called on to decide on the application of a prisoner for executive clemency, whether the sentence should or not be carried out. It was dealt with on the facts that came before the Government, and they were, first, that the shooting was consistent with accident, and then