

Criminal Code

Suppose you start submitting such a direction to a jury whose members already are having a hard time to decide on the main issue as to whether the accused is guilty beyond a reasonable doubt. Then while they are weighing this evidence you come along and say, "In addition to this problem of having to decide whether he is guilty beyond a reasonable doubt, there is another clause which you must take into account. In the main case you have to decide whether he is guilty beyond a reasonable doubt, but under this clause you must decide whether or not the evidence shows that the accused is chiefly or wholly to blame."

In a case in which adult people are participants in this sexual intercourse, it seems to me that the addition of a clause of that kind does not clarify the issue at all. It obscures it. That was the view of the commission, and this is the clause which came from the commission. None of the committees and legislative bodies that have considered it up to the present time have seen fit to change it. For my part, I do not think it should be changed, notwithstanding the strong pleas that have been made by the hon. member for Kamloops and the hon. member for Prince Albert.

Mr. Fulton: I will have one more go at it and that is all. What would the minister say with respect to the propriety of a judge saying this to a jury: "Seduction has been established. The age of the accused has been established as over 18. The age of the seduced person, a female of between 16 and 18, has been established. Gentlemen, it is no part of your responsibility to consider whether or not the conduct of the female person was in any way blameworthy, because parliament has taken that clause out of that section. Therefore do not direct your attention at all to what her conduct was. That is no longer relevant to the question of whether or not the offence has been committed?"

Mr. Garson: On the point that has been raised, may I say this. If my hon. friend has the volume with the Criminal Code there he will find in it the Interpretation Act, chapter 1, section 21, subsections 2 and 3:

2. The amendment of any act shall not be deemed to be or to involve a declaration that the law under such act was, or was considered by parliament to have been, different from the law as it has become under such act as so amended.

3. The repeal or amendment of any act shall not be deemed to be or to involve any declaration whatsoever as to the previous state of the law.

Mr. Diefenbaker: That does not apply there, I submit with due respect.

Mr. Garson: I suggest that it does apply.

[Mr. Garson.]

Mr. Diefenbaker: With due respect, I submit that it does not apply.

Mr. Garson: The only difficulty that might arise is not with regard to what was done to the law as it previously was. My hon. friend, in relation to the law as established by Bill No. 7, might perhaps be able to emphasize that because there was a saving clause of this sort in clause 138 and in clause 145 but not in clause 143, there was no saving clause in clause 143. But what of it? The crown still has to prove the accused guilty. Moreover, I do not think the hypothetical case which he has posed has any reality. My hon. friend says that if seduction has been proven the judge will say so-and-so. My hon. friend knows that when the judge charges the jury in a case of this sort, he does not wait until they have brought in a verdict of guilty of seduction as charged. The judge charges the jury on the evidence which has been adduced and which is before the jury, and he charges them before they retire to consider their verdict.

Mr. Fulton: All right; I will change my words and say, "In considering whether or not there has been seduction, do not address your minds to whether or not the conduct of the female party was blameworthy".

Mr. Garson: I do not see how he could possibly take that attitude. As I said a moment ago, apart from this section altogether it is the responsibility of the crown—and this is the A, B, C of criminal law—to bring home to the accused his guilt as charged beyond a reasonable doubt. If there is any substantial amount of joint guilt upon the part of the lady in question, then the judge has to charge the jury in respect of that evidence.

In any case where the accused was not wholly or chiefly to blame, within the language of this clause my hon. friend is advocating, there is in my view a very small probability indeed that in these modern times the jury would ever hold the accused guilty; because they would say, "This young lady got exactly what she was looking for and we are not going to hold that, beyond a reasonable doubt, the accused is guilty of the offence of seduction".

Mr. Fulton: I think the minister is resting his case upon a hope rather than anything else.

Mr. MacInnis: Mr. Chairman, I wonder whether a lay person might express his opinion on this matter. It seems to me that, under this section, the previous character of the female is taken into consideration. The section says "of previously chaste character".