

Criminal Code

In other words, parliament has decided it will not be relevant for a jury to consider, in arriving at their verdict, whether there is any element of blame or co-operation on the part of the informing person whose seduction is alleged. I believe a judge might very properly say that to the jury, and therefore the jury would not be allowed to consider whether there was any element of responsibility attaching to the girl between the ages of 16 and 18 who was said to have been seduced, by the very fact that we removed this equality of blame provision from this section while leaving it in two other sections. We are in effect enacting a law which will make it incumbent upon judges to tell juries they do not have to consider that aspect of the matter in deciding whether an accused is innocent or guilty.

Mr. Garson: Mr. Chairman, I have tried hard to see the point of view which has been expressed by the hon. member for Kamloops, but what I cannot understand is this. Where the charge is seduction, in that the accused by blandishments has secured the consent of the lady to intercourse; where the lady is between 16 and 18 years of age, and the crown is unable to prove by the evidence that the accused is wholly or chiefly to blame it cannot prove the charge of seduction and the insertion of a saving clause of this kind would therefore be of little use to the accused in such a case.

Mr. Fulton: They are not going to have to prove that in the absence of a saving clause. All they have to prove is that seduction has taken place.

Mr. Garson: One thing my hon. friend must remember is that quite apart from this saving clause he is discussing, whether a charge of seduction or any other criminal charge is laid against the accused, it is an elementary point that the crown has to prove the guilt of the accused beyond all reasonable doubt. The hon. member knows that. That is the A,B,C of criminal law.

If the crown is able to prove the accused's guilt in seducing a girl 16 to 18 years of age, then I, for my own part, cannot see of what use it would be to the accused to have in the clause of the code relating to him a subsection which provides that where the accused is charged with an offence under this heading the court may find the accused not guilty if it is of the opinion that the evidence does not show, as between the accused and the female person, that the accused is wholly or chiefly to blame.

I would point out to the hon. member that this clause is of no help to him, because if the crown cannot show that he is wholly or chiefly

to blame they will not get a conviction in the first place; they will not be able to prove an offence of seduction against him beyond all reasonable doubt.

I am sorry, Mr. Chairman, to belabour this point at such great length and I would be more than glad to agree with my hon. friend if I conscientiously could, but it seems to me the commission is drawing a distinction between a case on the one hand such as we have been discussing, of a man who is charged with seducing a girl between the ages of 16 and 18, and on the other hand the case of a man charged with seducing a girl from 14 to 16 years of age, that is of more tender years, or seducing an employee, a foster child, or a ward who is under his influence. In the second case, where the accused is in a position to influence the girl because of her tender years, or because she is dependent upon him in some fashion, then the natural disposition of the court, I believe, and the natural reaction of any of us, were we on the jury, would be to deal pretty severely with an accused person. We would say, "You had no business having to do with this young girl," and we would be inclined to be unduly severe with him unless there was some saving clause in the law such as clause 138 (3) or 145 (2).

For my own part, if I were on a jury my attitude would be very different in relation to a girl between 16 and 18 years of age, if it appeared from the evidence that to use the language of these subclauses 138 (3) and 145 (2), "the accused was not wholly or chiefly to blame" and, as there are only two parties to this intercourse, if he is not chiefly or wholly to blame, then she is the one who is chiefly or wholly to blame. In that case I, for one jurymen, would not convict him in the first place. My hon. friend says that he wants this clause put in to protect the accused.

Mr. Fulton: Not to protect an accused, but to protect an accused who is not wholly to blame.

Mr. Garson: All right; to protect an accused who is not wholly to blame. Let us suppose that the accused comes into court, and that it is a very doubtful case in which there is a grave question as to whether it can be proven. If I were acting for him I would rather battle it out upon the ground that the crown had not proven his guilt beyond a reasonable doubt, apart altogether from this clause. But if this clause or this section is in, and if this is what my hon. friend is going to rely upon to protect the accused, then in order to bring himself within this clause, since it is in the law, he must show the court that the evidence before the court does not indicate that the accused is wholly to blame or chiefly to blame.