

Criminal Code

occur to either the hon. member for Prince Albert or the hon. member for Digby-Annapolis-Kings, and they will be good enough to pass them on to me, I shall be glad to have them. I believe if incest is taken care of in clause 134, that clause will then be adequate.

The Chairman: Shall clause 134 stand?

Some hon. Members: Stand.

Clause stands.

On clause 135—*Rape*.

Mr. Nesbitt: Mr. Chairman, the remarks I am about to make regarding this clause also apply to clauses 136 to 149 inclusive. The minister is planning to set up a royal commission to study the question of insanity, and my suggestion, which I have discussed with many other hon. members in this house, is that this same royal commission might very well make a study of the various sexual offences covered in clauses 135 to 149. My reason for making this suggestion is that when persons accused of such sexual offences come up before either the police court, the county court, or the Supreme Court of Canada, they invariably present a great problem to law enforcement officers and judges in regard to sentence.

I have had some little experience in this matter, having been connected with them in the past as a crown attorney, and repeatedly, every time anyone is charged with any of these unpleasant sexual offences, the defence has been submitted that they cannot help what they are doing; that they are really nice people who have this aberration and they cannot control themselves. I know quite well that many judges and magistrates are loath to use extreme penalties when they feel the person before them may be sick in some way. On the other hand, many other judges will, to use the vernacular, go to town on them and mete out a very heavy sentence.

I do not believe there are many hon. members in this house who know anything about this subject. It is a matter which only doctors and psychiatrists know anything about, if they do, and I believe all these clauses should be referred to this royal commission.

The royal commission would of necessity be composed of the same people, but if they are looking into the matter of insanity I believe they should at the same time look into these sexual offences which concern people who are mostly emotionally unbalanced or emotionally unstable.

I believe it would be of considerable assistance to us if we knew more about these

offences. These clauses as they now stand were taken mostly from the old code which derived originally from the old ecclesiastic code of the Middle Ages.

According to reports we read in newspapers and periodicals, these sexual offences are being given a great deal of study, and it seems to me that this whole matter ought to be considered by this royal commission because we would then have more knowledge of the facts than any hon. member now possesses. These offences, which we sometimes read about in newspapers and periodicals, occur much more frequently than many hon. members are aware, and anyone who has ever been connected with law enforcement at one stage or another will agree that a great many of these offences are hushed up, or something of that nature, and do not even appear in the press. For that reason, and because of the rather offensive nature of most of these offences, I think that we ought to have a little bit clearer knowledge of what should be done about the matter. Should these people have more severe penalties in order to put them out of circulation? I fully realize that at the end of the code there is a new section which calls for preventive detention for people of this nature. But on the other hand, if these people can receive some type of medical treatment which might prevent them from committing offences like this in the future, should such treatment be prescribed by law? If they can be cured—it may not be possible; I do not know—should that course not be followed? I think the matter ought to be looked into by this royal commission. I was wondering whether the minister would take it under consideration?

Mr. Garson: I think my hon. friend's remarks might be more pertinent when we get to the section towards the latter part of the code—if I remember rightly it is section 661—which deals with criminal sexual psychopaths. From his experience I think he will agree with me that many of the cases of rape do not present any evidence at all of insanity. The accused are not criminal sexual psychopaths. They are just rapists or criminals in the ordinary sense. When we set up a royal commission to consider insanity as a defence to a charge for criminal responsibility, I would take it that we are not confining it to charges involving criminal responsibility for any specific crime but that it is criminal responsibility generally, and would include particularly charges of the nature of the one he has described. They are sexual in nature but of such a character that there is indication of more than normal sexual excess. It is excess to the point of insanity. While I think the commission would