

*Criminal Code*

subsequent to the date of his so leaving, to make provision for her maintenance or for the maintenance of any child of his under the age of sixteen years, shall be prima facie evidence that he has omitted or neglected or refused without lawful excuse to provide necessaries.

Mr. DIEFENBAKER: Yes, I understand.

Section agreed to.

Section 6 agreed to.

On section 7—Manslaughter—infanticide defined.

Mr. DIEFENBAKER: Experience has shown, of course, the necessity for a clause such as this; for in a great number of cases in which a woman finds herself in the position of having on her hands a newborn child, loses her power of control and the child dies in consequence of some act on her part, over and over again juries have refused to convict, regardless of the evidence. I presume that the reason for the amendment is to make it easier to get a conviction for the offence of homicide short of murder or manslaughter. This gives me an opportunity to ask the minister whether or not any study has been made by any of the officials of the crown as to the deterrent value of the death sentence in the case of murder. Has there been any investigation along that line dealing with the general problem?

Recently in England when the death sentence was abrogated by a majority of the House of Commons, it was only to find that action reversed in the House of Lords; and the person holding a position equivalent to that of the Minister of Justice in Canada was left in a difficult position in consequence. Consideration is now being given in England to a compromise between the commons and the lords, whereby the death penalty for murder will be imposed only in certain cases; that is, where the murder is premeditated or is of a particularly gross nature, as, for instance, in the case of murder by poisoning, or homicide arising out of the killing of a policeman while in the execution of his duty. In view of the fact that something is being done to amend the criminal code by sections, I ask the minister if any consideration has been given to this matter. I have the feeling that taking the code in this manner, and having a kind of selective amendment of it, may cause some difficulties in the future which I think are fairly obvious. But if the decision has been made to follow this course in order to meet certain *ad hoc* matters which have arisen in the last year, and if it is thought that this is the best way of doing so short of a complete revision, naturally I support it. However

[Mr. Ilesley.]

I feel that a statement by the minister in regard to the matter I have raised would be of some interest.

Mr. ILSLEY: Naturally the Department of Justice took some interest in the recent legislation in Great Britain, but I must frankly say that no investigation has been instituted as to the value of capital punishment as a deterrent. The issue of capital punishment has been debated a great deal. It is always a favourite topic of debating societies. College debates, inter-class debates and inter-collegiate debates have taken place on the subject, and there is an immense amount of literature on it. From statistics I do not think it is possible to come to any conclusion about the matter. Conditions vary from place to place; and I felt that there being, so far as one could ascertain, little demand in Canada for any alteration of the present system, it was clearly not incumbent upon the government to institute a statistical investigation. I felt, as I say, that it would not be possible to arrive at any conclusive results if such an investigation were instituted. So I am not proposing any change in the system of capital punishment in Canada.

Mr. DIEFENBAKER: Where the death penalty is imposed, to what degree is there any investigation subsequently by officers of the crown relative to the rightness of the conclusion of the jury, and as to the advisability or inadvisability of granting a commutation of sentence?

Mr. ILSLEY: One of the most careful—one might say exhaustive—investigations is instituted after a person is sentenced to be hanged, because the governor in council has to pass on every single case, as the hon. member knows. Officials of the Department of Justice read all the evidence and communicate with various sources to find out whether there are any circumstances which would justify clemency. Then the matter is taken to council, with the recommendation one way or the other of the Minister of Justice; and it is then dealt with by council.

Mr. DIEFENBAKER: On any occasion where a trial judge in his personal report recommends that the sentence of death be carried out, does the Minister of Justice ever recommend commutation to the governor in council?

Mr. ILSLEY: I do not believe any general statement can be made on that point. More often the trial judge makes no recommendation one way or the other. Sometimes he makes a recommendation for mercy. I am not prepared to say that in every case that