of the rules in M'Naghten's case. In the first place, he asked his listeners clearly to distinguish considerations of punishment and sentence in the evaluation of this rule respecting liability. One of the matters which is in our minds with respect to the Mc'Naghten rule is that this is the rule which on certain occasions would convict a man to death who perhaps, if modern psychiatric standards were applied, should be deemed insane. Lord Devlin asked us, first of all, to bear in mind that everything which is sought to be accomplished in the hon. member for Greenwood's bill would be better accomplished by amending the Criminal Code respecting penalty. That is to say, with respect to capital murder there would be no compulsory sentence of death; the maximum penalty would be death or such other penalty as the trial judge in his discretion deemed proper. For my own part I should like to see capital punishment eventually abolished, and I think we are moving in this direction. With regard to non-capital murder there would be no longer a compulsory life sentence, but a maximum penalty of a life sentence or such other lesser penalty as the trial judge in his discretion might deem proper.

Supposing it were possible, Mr. Speaker, by amendment to the code, for a judge to be free with regard to applying an appropriate penalty. This is the general direction which is being taken in all our criminal legislation under the new concept that punishment is now giving place to treatment, that many criminals are better rehabilitated by treatment than by punishment. Suppose a judge were free in any particular case to determine, perhaps even by way of appeal or with the assistance of the parole board, whether or not the appropriate sentence for a crime should be treatment or punishment. If it were possible to distinguish and to separate punishment for a person suffering from mental disability of some kind from the fact of his conviction, then what is the real fault with the M'Naghten rule?

It is true that in the early days the rules in M'Naghten's case were stringent. In the case of The King *v.* Jessamine, which is reported in 1912 Ontario Court of Appeal Reports, the court was considering section 19 of the code, which reads as follows:

> No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowledge that such an act or omission was wrong.

This case was authority for the proposition that the burden of proof of insanity is upon the defence. That proposition was not actually spelled out in the comments of the learned proponent of the bill, but I think it was inferred. Without evidence to go to the jury the prisoner cannot be acquitted on the plea of insanity.

Since this case of the King *v.* Jessamine criminal jurisprudence has shown progress and development. On October 25, 1956 the McRuer royal commission brought down its report. They considered the case of Rex *v.* Cracknell, reported in 1931 Ontario reports at page 634, which dealt with section 16 of the Criminal Code. That section says:

> (1) No person shall be convicted of an offence in respect of an act or omission on his part while he was insane.
>
> (2) For the purposes of this section a person is insane when he is in a state of natural imbecility or has disease of the mind to an extent that renders him incapable of appreciating the nature and quality of an act or omission or of knowing that an act or omission is wrong.

The insertion of the word "or" is of considerable importance. Because if the accused did not know that in killing his wife he was doing what was wrong he had no guilty intention and therefore was not guilty of murder, even though he might have appreciated the physical, not the moral, nature and quality of his act.

So really in layman's language it boils down to this, that the true meaning of the M'Naghten rule according to modern jurisprudence is to ensure that without proof of *mens rea*—that is, without proof that a man is capable of knowing, and in fact knows, that what he is doing is wrong—he shall not be convicted, whether he is sane or insane.

Mr. Justice Holmes has said that laws exist not for the scientific satisfaction of the legal mind but for the convenience of the lay people. One of the real problems—and surely this is spelled out very clearly in the report of the McRuer royal commission to which I have referred—is the problem of what we can provide by way of substitution for the test set out in the M'Naghten rules. Proposed in this bill is a new text—that a person is insane if the act or omission is the product of mental disease or defect. But what does that mean?

It is conceivable that such words could produce great difficulty, Mr. Speaker. Certainly this language "the product of mental disease or defect" is fraught with all kinds of difficulties. We could then have a most learned argument among psychiatrists. What the M'Naghten rules have assuredly done, both in English jurisprudence and Canadian jurisprudence, is to provide some standard of certainty. Lord Devlin suggested that there really is not much of a problem any more about the test of knowing the nature or quality of the act because obviously if a man does not know the nature or quality of the