

Criminal Code

because she is a stepdaughter or a foster daughter, or a female ward, or an employee, and so on.

In the other case, where the female person is not in a position to be influenced by the accused and she is of the age 16 to 18 years, and her case cannot be proven unless her evidence is corroborated, and if it appears that on evidence she is chiefly to blame for having given her consent to the intercourse which took place, why then the court would hold and should hold that it had not been proven that the accused seduced her at all, and it would acquit him. I would think that the application to such a case of clause 143 is pretty nearly self-evident.

Mr. Fulton: On the basis of the minister's argument the gentlemen who drafted the code in 1892 were pretty stupid, because they put in a saving clause for exactly the same purpose. As far as the minister's argument is concerned, section 131 is completely inapplicable. While the evidence of one witness must be corroborated in some material particular, that material particular need not relate to the question of whether or not the informant was to blame. The material particular might relate to the fact that the accused actually committed a sexual act. That is corroboration in a material particular, but that type of corroboration does not go in any sense to the question of the blame or otherwise of the informant. And it is that question that we are concerned with here.

Every argument used in justification of keeping it in sections 138 and 145 applies, it seems to me, equally strongly with respect to section 143, because the very nature of seduction, as I have already pointed out on the authority of Tremear, requires consent. If there is no consent, then it is rape; yet even though the girl consented there still may be seduction.

Mr. Garson: May I ask my hon. friend a question. We all know that the woman's consent has to be secured or the intercourse is rape, and that where consent has been secured to the intercourse by reason of the blandishments of the accused, then the case is seduction; but surely, where the female person involved is of the age of 16 to 18 years in this present day and she does give consent, and it appears that the female person is sufficiently to blame that the court would apply subclause 3 of clause 138 or subclause 3 of clause 145, if the case were being tried under those clauses, the court in these circumstances is not going to find the accused guilty of seduction at all.

Mr. Fulton: The minister is misapplying the clause. The clause does not say the

court has to be satisfied that the informant is chiefly to blame. The clause only says that if they feel the accused is not wholly or partly to blame—

Mr. Garson: No, wholly or chiefly to blame.

Mr. Fulton: If they feel that the accused is not wholly or chiefly to blame; that does not mean they have to be satisfied that the informant was wholly or chiefly to blame. What the court is asked to consider or what the jury is asked to consider is whether the whole or part of the blame lies exclusively upon the accused.

Mr. Garson: Not part of the blame. The statute says whether the accused is wholly or chiefly to blame. As a matter of ordinary common sense, I suggest to my hon. friend that where in these present days the lady in the case is from 16 to 18 years of age, if it appears from the evidence that the accused was not wholly or chiefly to blame, the court will find that the case has not been proven beyond all reasonable doubt and will acquit the accused without having to apply such a subsection at all.

But those same considerations do not apply where the female is of more tender years, nor do they apply where the female is employed by the accused or is a stepdaughter or foster daughter and therefore in a position to be influenced by him. In those cases they require this saving clause.

With all due respect to my hon. friend I cannot imagine any court which was of the opinion on the evidence that the accused was not wholly or chiefly to blame not acquitting him, whether this clause was in or not.

Mr. Fulton: That is all very well. We are each entitled to our thoughts as to what the jury would be willing to do. But we are dealing here not with the probability or possibility of what a jury might do under any given circumstances; we are trying to see under what circumstances a man will not be found guilty of seduction.

Mr. Garson: My hon. friend has not stated that correctly. It is not a case of what the court will find. The section reads, "the court may find the accused not guilty." I suggest to my hon. friend that in relation to a female person of the age 16 to 18 years they probably would find him not guilty if the accused was not chiefly or wholly to blame.

Mr. Fulton: That is what they may probably do, but the fact that there was a direction by the judge to the jury that if they considered the accused was not wholly or chiefly to blame they might find a verdict of not guilty would be a most powerful influence on the jury. It would indicate to