

Criminal Code

bill last spring, despite the fact that the bill had been in the hands of a royal commission and the other place we did make alterations in penalties. If that committee reflected any wisdom whatsoever in doing that, certainly the same wisdom would be reflected by this committee in doing the same thing.

Second, while I agree with my hon. friend that a person guilty of an offence of this kind would not likely give heed to the law prior to committing the offence, and it is also true that such a person may be suffering from a mental condition, yet this would be the best possible guarantee we could have of taking that person out of circulation for an extended period of time. I think we would thus be protecting the public from a recurrence of this kind of thing. I intend to bring this up later, but I want to say now that I am not too happy or satisfied with the facilities we have today for taking care of persons who have pronounced mental conditions and who indulge in crimes such as are referred to in these sections.

Mr. Winch: I think there should be some clarification as to what the minister intends by way of procedure. If the minister is going to take under consideration perhaps recommending that either the special committee or the royal commission make a study of this entire matter, then I do not think we should go ahead with any amendment because it may be changed after the report is received.

Mr. Garson: This is an important point which has been raised by the hon. member for Vancouver East. I do not think a matter of this kind would go to the royal commission. It is not the insanity of the accused that is involved, it is the insanity of the woman with whom he has had this sexual intercourse. He may be quite a prudent offender who feels that it is much easier to gain the consent of an imbecile than it is to take a chance by committing rape. He may do this as a matter of worldly wisdom, if that term in its worse sense may be applied. But any disposition we make of this clause will not be in any way affected by the deliberations of the royal commission, since it will be concerned with the insanity of the female victim whereas the commission will be considering the insanity of the accused.

Mr. Nowlan: I want to say that I agree entirely with what the hon. member for Vancouver-Kingsway has said. There are certain punishments outlined here, and I referred to some of them the other evening. Later on I hope to express my own opinion that they have been increased too severely.

Under those circumstances I do not think I can vote for an increase in the penalty here.

I realize that when you read the section it sounds like a heinous offence, but these things do happen in rural communities and throughout Canada as a whole. I know this is not a new section, but who is going to determine whether there is feeble-mindedness, insanity or imbecility? I dare say there are some people who think that some of us here are feeble-minded, but we would hate to have that question determined by a stipendiary magistrate. In the older rural sections of this country there are communities where perhaps you might go in and look at the people and think possibly they were not too bright, but they probably think they are intellectual giants. Certainly there would be some who might be convicted under this section.

I think this is a pretty dangerous thing to apply. As the hon. member for Oxford has said, the usual sentence is apparently eighteen months to two years. After all, there are certain types of people who may be a little off mentally but who otherwise are physically normal. As I say, while this sounds like a very heinous offence I still think that five years is heavy enough as a maximum.

Mr. Ellis: How would you define feeble-minded, insane, idiot or imbecile? From a psychological standpoint we can measure the I.Q. of an individual and describe him as feeble-minded, insane, an idiot or an imbecile. Such designations are based on I.Q. tests. What is the legal standard? What is the measuring stick that is to be used to determine whether a person is feeble-minded, is insane, is an idiot or is an imbecile? What protection would an accused have with respect to being charged with this crime?

Mr. Garson: The hon. member for Oxford has had experience as a prosecutor and he might be able to answer that question better than I. I think he will agree with me that the accused does not need to worry too much about the points raised by the hon. member for Regina City, because in order to succeed on this charge the crown not only must prove that the accused has had sexual intercourse but that also the female was not his wife and was either feeble-minded, insane, an idiot or an imbecile. The court must be completely satisfied on this last point.

Not only must the court be satisfied, but if a conviction is registered against the accused and his counsel takes the case to the court of appeal the crown must satisfy the court of appeal that there was evidence before the