

Criminal Code

So far as I possibly could I have had occasion to examine a great many of the cases which have been tried since the introduction by the government of the new legislation, which was passed by parliament at the last session. As has been remarked, it is only since September that the amendment has been in operation and consequently it has not been possible to examine the citations in the law reports of decided appeals. I have not yet run across one although there may be some. So, we are pretty well limited to examining newspaper accounts of the crime committed and of the proceedings in court. Therefore my views may not be entirely correct because I followed that course; but I must say from what I have read and seen—and I have listened to one or two cases—I am convinced the legislation that was passed has been effective and good. It has had the result of removing that awful doubt which must persist in the minds of many people, when because of the variety of individual approaches, because of the variety of opinions which must operate on these particular crimes, we frequently find what might have been murder in one case is manslaughter in another. In one instance we find an acquittal but with almost the same set of facts in another circumstance it will result in a conviction.

I have read with interest some of the books on this subject, such as Marjoribank's autobiography of Sir Edward Marshal Hall, who is one of the most notable of English defence counsel and, on the other side of the coin, the biography of Sir Richard Muir, a tremendous advocate for the crown in England. From reading these books and closely examining the cases I am completely convinced that in some instances where a man with Marshal Hall's ability was defending, acquittals have been secured, or cases which involved elements of murder were reduced to manslaughter simply because of ability of counsel for the defence.

This has been my experience and for that reason the value of the legislation which was enacted and which is now in operation has been excellent and I believe it will continue to be most beneficial.

Under those circumstances I believe that if we can be permitted to have a continuance of this legislation for some years the people will come to realize that the half-way step which has been taken has not resulted in releasing a flood or deluge of crimes of this nature. Then I believe we shall ultimately come to the objective which the hon. member for York-Scarborough is seeking.

[Mr. Baldwin.]

Mr. R. D. C. Stewart (Charlotte): I had no intention of taking part in this debate but, as I have spoken on similar bills in the past and expressed my opinion regarding the retention of capital punishment, I feel I should enter this debate for the purpose of reiterating my previous position. On several occasions I pointed out that under our criminal code, previous to the amendment made last year, certain protections were given to an accused person. Last year we divided murder into capital and non-capital categories. In other words, in effect we said that so many degrees of premeditation made a murder capital, and so many degrees less made it non-capital. I am very interested to see how this distinction will be handled by a jury when defence counsel points out that his client had only 14 ounces of premeditation and therefore it was not capital murder. We cannot have degrees of murder. We will probably end up with no verdict at all.

The house was probably interested to see the criticism made by a group of law professors from all across Canada in which they dealt with this point. They said that if you are going to reduce murder to various degrees it is going to be very difficult for a jury to determine just how many degrees of premeditation constitute capital murder and how many degrees constitute non-capital murder.

The bill now before the house is a very simple one. It attempts to remove the distinction that was introduced last year. In other words, it abolishes, except in a very isolated case, capital punishment for murder. In my previous remarks I indicated that no doubt there would come a time in the history of this nation when we could safely abolish capital punishment. I am not speaking of capital punishment now as a matter of deterrence. I do not think that under British law anyone has ever been hanged for revenge or for punishment. The instances are very rare when anyone has been hanged except after a fair trial and after due process of law. It is conceivable that there might have been errors. Nobody has a greater sanctity for human life than I, but I think other lives should be considered apart from the life of the man who will go out and shoot and kill an innocent victim. We had an instance of this the other day, as reported in the newspapers. A man was stopped on the street and asked to show his operator's licence. With that, he pulled a gun and shot a police officer. Happenings of that nature indicate that we still need some deterrent, some overriding power, in this respect. There is ample provision in the Criminal Code even as amended which provides