

*Criminal Code*

**Mr. Garson:** My hon. friend's question is a very good and penetrating one, if I may say so, because it does seem on the face of it that there is no particular reason for incorporating in the code what has been a well-settled practice which judges have followed. My hon. friend will recall that in the case of rape, the judge was required to warn the jury that it was not safe to convict on the uncorroborated evidence of the female victim unless they were satisfied beyond a reasonable doubt that her evidence was true. Corroboration was not required in the case of rape but it was required in the case of carnal knowledge. We thought that there was no way in which we could justify the requirement of corroboration in the case of carnal knowledge when it was not required in the case of rape.

If my hon. friend will follow this as we go on he will see that what we have done here is to apply this section 134 to both rape and carnal knowledge and also remove the necessity for corroboration in the case of carnal knowledge. I think that with his experience in this branch of the law he will agree that that is proper, that if corroboration is not required in the case of rape it should not be required in the case of carnal knowledge.

**Mr. Nowlan:** The minister is quite right in saying that it was not required in the case of rape and it was in the case of carnal knowledge, but the courts generally had that in mind and I think they dealt with the situation on a fair basis. I am thinking of clause 142 covering incest, which involves an element of carnal knowledge. I am sure that if this had not been made statutory many judges would have drawn to the attention of the jury that it was dangerous to convict on the evidence.

I had a case last fall where it developed afterward that the girl had been threatened by her mother and made to give evidence against her father so he would be sent to the penitentiary and she could take on somebody else. The girl committed perjury and it was not too easy to break her down actually. The judge warned the jury that they should not convict on the evidence of that girl.

If you make it statutory, will we not find ourselves in a situation where the judge will look at section so and so and will say that under that section he has to give a warning? He will decide that this applies only to sections X, Y and Z, it does not apply to incest or to this particular case, and that the parliament of Canada must have decided that a warning should not be given in that particular case.

Although I follow the reasoning of the minister I think that unless it is provided for in other ways we may be creating an injustice

by freezing it by statute instead of leaving it to the jurisdiction of the court as it has been heretofore.

**Mr. Diefenbaker:** The hon. gentleman has raised a very pertinent point there and perhaps the minister would be able to explain.

**Mr. Garson:** I do not think I can give any further explanation than what I have given already.

**Mr. Nowlan:** What would happen under clause 142, the incest section, if that is not included in the statutory provision?

**Mr. Garson:** If my hon. friend is of the opinion that 142 should be included, it would be a simple matter to add the figures "142" to clause 134. Will my hon. friend not agree that in all cases of the character of those we have been discussing, where the nature of the offence indicates an absence of witnesses as a rule and where therefore the accused is in a very awkward position indeed if the lady in the case has any reason to try to point to him untruthfully as the guilty person, in such a case it is her evidence against his evidence? The royal commission, the Department of Justice, the other place and the committee of this house which examined this provision during the last term of parliament all felt that by their approval of this clause 134 in all these cases, rape and carnal knowledge alike, the practice as indicated in 134 should be uniform, and that there should not be one practice for carnal knowledge and another one for rape.

If my hon. friend thinks that this provision should apply also to incest, perhaps when we come to clause 142 dealing with incest we could revert to 134 and consider including incest among the offences covered by clause 134. In my opinion, however, incest is in a somewhat different category because those who are concerned are bound together by familial connections and it would seem less likely that the accused would be falsely charged.

**Mr. Nowlan:** That is the very reason why I brought up this point. My experience may have been unfortunate, but I happen to be mixed up in three defences of that charge. One does not want to even suggest that there might be extenuating circumstances; but, as the minister said a moment ago, there are opportunities for pressure to be exerted in a family. As I say, I have seen a case where through intimidation a little girl went on the stand and gave evidence which was absolute perjury. Of course, this sort of thing happens in families of a rather poor type and where other elements enter into