

Criminal Code

Speaker, pose as any authority in this matter although I have had occasion to defend people charged with capital murder and have argued this subject matter in the court of appeal with divided success. But I respectfully submit that no matter what it is you put to a jury, whether it be the M'Naghten rules or the watered down and broader rules suggested in Bill No. C-14, invariably the jury will ask themselves this question, "Did the man know that what he was doing was wrong?" In this connection I would bring to the attention of the house that even under Bill No. C-14 psychiatrists would concede that a man, even by their standards, could be insane and would yet know that what he was doing was wrong. I do not propose to weary the house with a long list of legal citations; suffice it to say that several cover my point. In the leading case in Australia, *Sodeman v. The King*, the defence were able to bring forth three medical experts who all testified, without reservation, that the accused man did not know the nature and quality of his act and did not know that it was wrong. The prosecution brought forth no evidence in rebuttal. The jury convicted, and subsequent appeals failed.

I have had occasion to make a study of five cases reported in the British Notable Trials series, all involving a defence on the grounds of insanity. On each occasion medical evidence was brought forth to show that the accused man did not know the nature and quality of his act, and on each occasion a verdict of guilty was recorded. That brings me back to my original proposition, that while in theory the M'Naghten rules are open to great criticism, in practice they have worked and any other rule that might be substituted would also be subjected by the jury to the searching question, "Did the man know it was wrong when he committed the act?"

Mr. Brewin: Mr. Speaker, would the hon. member permit a question? Does he think that because a man like Markle knew that what he was doing was wrong, but nevertheless acted as a result of mental illness, it is appropriate that he should be treated as a criminal and should not receive treatment as a sane person?

Mr. Pennell: Mr. Speaker, may I say to the hon. member that if this man knew it was wrong, he could be held criminally responsible, bearing in mind that the law is merciful and takes into consideration these mitigating factors and will give such a man treatment. So we have to weigh the one danger against the other—whether he should be set free into society or be kept incarcerated for a definite period receiving the treatment.

I come back to the proposition I was making earlier. I believe the M'Naghten rules have, generally speaking, worked well.

In conclusion, may I say that I hope the government will not close the door to the bill proposed by the hon. member. I will be the first to acknowledge that some of the submissions that I have put forth are subject to objection, and many may be easily rebutted. My purpose in asking the government to keep the bill alive and later on to send it to a special committee is twofold. In the first place I believe discussion of this bill during private members hour is not sufficient for an important measure of this nature. Second, I would ask the government to consider that "no man's land" where a person falls between one who is clearly sane and one who is clearly insane. At the present time there is not sufficient legislation, in my humble opinion, to assist such a person.

The principle of diminished responsibility, which is in existence in India, Pakistan and Scotland, has worked in practice. It would provide some mitigation for those who, while they are not insane within the meaning of the rule, yet because of some mental infirmity or illness are not fully accountable for their actions. Therefore, in closing I would again commend the hon. member, though I may differ with him on many points, and I urge the government to give earnest consideration at a later date to convening a committee to consider this very important problem.

Mr. John R. Matheson (Leeds): Mr. Speaker, I am sure we all commend the hon. member for bringing to the attention of the house this important matter, which is one which has been discussed at bar meetings and by medical groups for a good many years. I am sure that nearly every lawyer remembers discussions which started off with the words: "When will we get rid of the M'Naghten rules?" I confess that personally my own sympathies would have been very much in the direction of Bill No. C-14 were it not for the fact that on Friday, November 22, 1962 I happened to have the privilege of sitting down in Toronto with the distinguished and learned member who brought this bill to the attention of the house to hear Lord Devlin, a privy councillor and a Lord of Appeal in Ordinary of London, speak on mental abnormality and the criminal law in a series which was published under the style "Changing legal objectives". I might add that my hon. friend's bill in present form had actually been introduced to the house prior to that lecture.

Lord Devlin, who spoke from a very wide and deep knowledge of criminal jurisprudence in the United Kingdom, certainly gave new insight to the implications and significance