

*Criminal Code*

What happens to the poor boy or girl who has no counsel? I recall an occasion when four lawyers worked on an argument that asked the judge for a sentence of one day in jail and a \$500 fine. Can the average man afford this kind of counselling today? Of course there is one law for the rich and another for the poor.

Let me deal with some other anomalies. That same section of the Code provides for the giving of time to pay. But who goes before judges on theft and false pretence charges? Mostly people without money and without jobs, with little education and with few prospects. Some of them will scrape up the fine but others, after asking for a number of extensions, find that they are unable to raise the money. What happens? They go to jail.

I thought that in this great "just society" the day had ended when a person went to jail for debt. Take the case of a boy accused of an offence whose father can afford to pay the fine. The fine is paid. But take the case of a boy whose father cannot find the money to pay the fine or who has no father: he goes to jail for debt.

● (4:30 p.m.)

The present Code provides that a magistrate has, with the consent of the accused, jurisdiction to try any offence except a handful like rape, murder, treason, etc. This means that between 85 per cent and 90 per cent of all criminal cases are tried by magistrates who are overworked. Thus, if a youngster who has no record does not plead guilty he frequently elects trial by magistrate. The old hand almost invariably chooses the high court. He knows the ropes and knows he stands a better chance, especially with a good counsel. The old hand then has the benefit of a lengthy preliminary inquiry and, if committed for trial, has the right to change his election to a district court or other high court. That right stems from a decision of the Supreme Court. He can even, during a preliminary, re-elect to be tried by the magistrate. Authority for that statement is *Cooper v. The Queen*, a Nova Scotia case which was affirmed in the Supreme Court. Thus the magistrate's time is taken up with lengthy preliminaries and the district court judge or the court of Queen's Bench hears all the evidence again. If all magistrates were lawyers one might not object if their jurisdiction were absolute. But in some parts of the country, in Alberta especially, magistrates are not necessarily trained in the law. It is dangerous,

therefore, for an accused to appear before an untrained magistrate.

Many years ago a magistrate in southern Alberta, after hearing evidence for a couple of days, said, "I will now deliver my judgment." The judgment he delivered was: "I have seen you grow up, sonny. You never were any good to start with and you are still no good, so I am going to send you to penitentiary." Some hon. members may laugh, but I took the matter seriously. I took it to the court of appeal and the judges there concluded that the magistrate had not considered the evidence. What would have happened to that boy if no lawyer had taken the case to appeal?

**Mr. McIlraith:** Was the magistrate referring to the accused or the lawyer?

**Mr. Woolliams:** I don't know, George. I will not get into an argument because I took the case very seriously. You go back to your mortgage practice.

**Some hon. Members:** Oh, oh.

**Mr. Woolliams:** I was only joking with the Solicitor General. I have recognized over the years that he is an able lawyer. I was only trying to be humorous, not facetious.

We must review the question of jury trials. In some instances the legal process, where a man elects trial by jury, is extremely slow. On the other hand, in Alberta one can elect to be tried on almost any kind of charge by a judge alone without a jury. That stems from old legislation passed in the days when the Northwest Territories were sparsely settled. There were not enough people to make up juries and judges had to try cases alone. Alberta is the only province where such legislation is in effect. Personally I believe that the jury system provides substantial justice for the average man. He is tried by his peers who intuitively do the right thing. In this respect the whole question of the administration of criminal justice cries out for attention and reform. Not only should the appeal system be modernized but the entire pre-trial process of preliminary hearings, grand jury hearings, etc., ought to be examined.

Part of this examination or reorganization might include the following suggestions with respect to preliminary inquiries. At present, if the accused does not elect to be tried by a magistrate there must be a preliminary hearing. As hon. members who are lawyers know, even where accused wish to go to a high