

Criminal Code

federal offence, and apparently the province of Ontario can deal with drunkenness in a person's own home?

Mr. Garson: The hon. member has asked a rather difficult question, not in connection with criminal law but constitutional law. I hope he will forgive me if my reply is not too comprehensive.

In our federal system the powers of government are divided between the federal government at Ottawa and the provincial governments. The British North America Act, in section 91, sets out those subject matters of legislation which are assigned to the jurisdiction of the federal parliament. In section 92, and in other sections with regard to agriculture and education, those powers which are assigned to the provincial legislatures are set forth. One of the powers assigned to the federal parliament is that of passing laws in relation to crime, and it is pursuant to that power that the federal Criminal Code, which we are now considering, is passed.

Amongst the other powers which provincial legislatures have is that of passing laws in relation to property and civil rights. Since the liquor traffic of a province has to do with property and civil rights, especially when it is under government control, the provincial legislatures have exercised that power to pass laws relating to the sale by provincial governments of spirituous liquors. The rule is that where, as sometimes happens, a conflict develops between a law passed by the federal parliament clearly pursuant to its powers on the one hand, and a law passed by a provincial legislature clearly pursuant to its powers on the other, the federal law takes precedence.

If the hon. member will examine the section he has been quoting, where the provincial liquor law says that a man shall not consume certain liquor in his own dwelling, he will see that it is liquor sold by that provincial government—

Mr. Winch: The section does not say he shall not consume liquor, but that he shall not be drunk in his own home.

Mr. Garson: I was going to deal with that. The hon. member said that he should not consume liquor under certain circumstances; and the only kind of liquor that most provincial liquor systems are interested in a man not consuming, because their business is selling liquor, is liquor which they do not sell. That would be home brew, or liquor imported from another province.

These provisions creating crimes or quasi-crimes are passed lawfully by the provincial legislatures as being ancillary to the administration of the liquor laws of the province.

Where a conflict does develop of a nature which has not previously come before the courts, no person is really sure—although lawyers may have opinions—as to which of the two conflicting laws will take precedence until that particular question has been decided by the courts.

In this clause to which the hon. member is referring we have prohibited drunkenness in a public place or outside of the home. We have not prohibited drunkenness in the home, not I think because we have no power to say that drunkenness in the home would be a crime but because we have not thought it appropriate to say that a man may not be drunk in his own home. The fact that we have not so legislated is not an indication that we have not the power. It is an indication of the way in which we have exercised the power we have.

Mr. Winch: That is the very point I wanted to raise. I believe the minister has explained it, because provinces do legislate with regard to liquor and drunkenness. In view of the fact that under clause 160 of this bill we are also legislating on this subject, I was interested in knowing where the precedence lies. Under which legislation, provincial or federal, would any charges be laid?

As the minister noted, I was interested in the Ontario act. Section 88 is not particularly related to the consumption of liquor, but says that no person shall permit drunkenness to take place. There are three subsections to it. I know there is a great deal of interest in royal commissions and investigations of changes in the liquor acts of the various provinces. As we are now amending the Criminal Code I was interested in knowing just where the jurisdiction lies; and when both federal and provincial laws relate to the same thing, under which act are the charges laid.

Mr. Garson: The laws we pass in this parliament in relation to crime—that is, the Criminal Code—are all administered by the provincial authorities, because one of the subject matters of legislation which falls within their jurisdiction is that of the administration of justice, which includes the enforcement of law.

Now, while I am not very well acquainted with criminal law enforcement I would assume that when a given set of facts comes before the crown prosecutor for prosecution he would examine these points and reach an opinion as to whether it would be more appropriate to charge the accused under the Criminal Code or under some provincial statute. If he is charged under a provincial statute which is beyond the powers of, or as we say in law, is ultra vires of the provincial legislature to pass, then the accused