

Criminal Code

It has been established by experts that alcohol is an important factor in most fatal accidents. Now is not the time to restrict the application of the act in such cases.

Even if one does not take into account the changes that were made, this would not change much in the act as the presumption remains. As to the general principle of suppressing the presumption in some cases, I do not think, in view of the danger caused by the presence of intoxicated drivers on the roads, that the time is appropriate for suppressing or reducing the effect of the presumption created by the act.

For these reasons, I cannot support the bill introduced by the hon. member and I hope that we shall have an opportunity to hear other members concerning the changes proposed by Bill C-33.

• (5:30 p.m.)

[*English*]

Mr. Nesbitt: Mr. Speaker, I rise on a question of privilege. My friend who has just spoken made some technical objections to the bill; he said that Bill C-33 is not relevant to the old sections 222 and 223 of the Criminal Code and therefore the amendment could not be passed. In the last few moments I have had the opportunity to check this matter, and may I say as a point of clarification that I find that the bill is quite relevant to the new sections 222 and 223, although there is slightly different wording. I thought I would bring that point to my hon. friend's attention.

Mr. Kenneth Robinson (Toronto-Lakeshore): Mr. Speaker, I am pleased to have the opportunity of taking part in this debate because the subject is one which interests me greatly. I have listened to the hon. member who is proposing the bill and I must say that I am impressed with his reasoning. Personally, I would have no objection to the bill being referred to the Standing Committee on Justice and Legal Affairs, where all the lawyers in the House, including the hon. member who has spoken and myself, would have an opportunity to consider it further. However, I have some reservations and this is why I am making some remarks on the bill that we have before us.

The bill proposes an addition to the Criminal Code in the form of a section 223A which purports to prevent the penalization of drivers of motor vehicles who are wise enough to stop driving when they realize that their ability to drive is impaired or that they are intoxicated. Although the Criminal Code was amended by the Criminal Law Amendment Act, 1968-69, and the relevant provisions with regard to drinking and driving were proclaimed in force as of December 1, 1969, reference is made in the explanatory note and the suggested amendment to the sections of the Criminal Code prior to the amendment.

The Criminal Code presently contains section 224A (1)(a) which provides as follows:

224A (1) In any proceedings under section 222 or 224, (a) where it is proved that the accused occupied the seat ordinarily occupied by the driver of a motor vehicle, he shall be deemed to have had the care or control of the vehicle unless

[Mr. Forest.]

he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion;

In other words, the onus is on the accused. A provision to this effect was first enacted as part of the criminal law of Canada in 1947, and the reference to this enactment in Snow's Criminal Code expresses the reasoning behind the enactment. Snow writes the following:

This amendment is made following recent court decisions to the effect that a driver may be too drunk to have the care or control of a motor vehicle. The purpose of subsection 4 of section 285 is to protect people on the highway. When the driver of a motor vehicle is in such a state of intoxication that his driving is a menace to the public safety he must be considered as "intoxicated within subsection 4 of section 285 of the Criminal Code: see *Rex v. Cox*, 7 C.R. 39"—

It is to be noted that the care or control provisions of the Code are to be found in both present sections, that is, section 222 which relates to impairment and section 224 which relates to persons whose blood alcohol level exceeds .08 per cent. Care or control of a motor vehicle is possible without one being the driver. One might be acting under the direct supervision and instruction of another, so that the care or control would be in that other person. There are any number of decided cases dealing with the question of when a person has care or control, but in each case it is a question of fact which must be decided on the evidence adduced at the trial.

I think it is clear that in enacting the legislation Parliament had in mind the potential dangers of an intoxicated or impaired person who might at any moment voluntarily or otherwise put a motor vehicle in motion. Because of this real danger, and because the accused would be a person who would be best able to give evidence as to what he was doing in the car, provision was made for the presumption section. This section raises the presumption of the care or control, which the accused may rebut by evidence of his intention. The proposed amendment would not change this provision because it recognizes the obligation on an accused "to establish that he had no intention of driving or continuing to drive while intoxicated or while his ability to drive was impaired". I merely point out to the hon. member that it seems to me he is not accomplishing what he wants to accomplish by the bill that he is proposing.

• (5:40 p.m.)

In order to appreciate the extent of the onus on the accused and the effect of the care or control sections, reference could be made to the cases which are referred to in Tremear's or Martin's Criminal Code. As has been pointed out by many lawyers and bar associations across the country, the law is clear about care or control. If drivers, in the words of the explanatory note, "are wise enough not to drive or to stop their cars immediately and refrain from continuing their journey in their present state" they should also be wise enough to remove the key from the ignition, step out of the car and re-enter it either on the passenger side or in the back seat. These steps would be clear evidence from which the court could properly infer that the accused "did not enter or mount the vehicle for the purpose of setting it in motion."