

Criminal Code

Mr. Fulton: I should like to be clear on the question of whether or not there is a change in the definition of public place. I have the present code and the supplement before me, and it seems to me the new definition goes beyond the present one in that there is now included the possibility of an implied invitation. I am much less concerned about the express invitation, but the implied invitation does extend that definition of a public place rather beyond what it is now. I should like the minister to comment on that.

Mr. Garson: I doubt whether I have any comments in addition to the ones I have already expressed. I thought we might save time if I indicated right away that the new definition was inserted for the purpose I indicated. That is the answer, that it is considered, as the hon. member for Prince Albert has stated in a very useful contribution to the debate today, in the part of the code which deals with public morals and disorderly conduct, to be desirable not to have an unduly narrow definition of a public place.

Mr. Fulton: So, it does go beyond the present one?

Mr. Garson: Yes, it does. The hon. member has the present code there, and he can see it is changed.

Mr. Johnston (Bow River): The minister was pointing out that a public place is a place where the public is ordinarily invited, such as a clothing store, we will say. That is a public place, but does it cease to become a public place at six o'clock, the usual closing time, when the door is locked, or is it still considered a public place?

Mr. Garson: At six o'clock when the door is closed I would say that the invitation had been withdrawn. My difficulty in the case to which I referred was that this was a country general store, and they always stayed open in the evening. My task, which was an extremely difficult one, was to persuade the court that although it actually stayed open, in fact it was closed in law, but I did not succeed in persuading the court on this point.

Mr. Johnston (Bow River): In the minister's case it was supposed to be closed but was not. I am wondering—

Mr. Garson: No, it was not supposed to be closed; it always stayed open.

Mr. Johnston (Bow River): What I have in mind is a store such as a clothing store, or a grocery store, if you like. At six o'clock

they lock the door, and then an offence is committed in that place. Is it then defined as a public place?

Mr. Garson: I would not think so, Mr. Chairman, because in most of these cases—this is not always so, but in most orderly communities there are municipal bylaws or other laws which say at what times a shop of that kind can remain open. Or, in the absence of such laws there may be a settled practice on the part of the proprietor to close his shop at six o'clock. The crown by the evidence that is available cannot establish that the place in question is a public place within the language of the section if it cannot prove that it is a place to which the public had access at that time. Well, if the public did not have access, because the door was closed, and the public were not there by invitation, because the door was locked and they had been excluded, and the public were not there by any implied invitation because the shop was actually closed—

Mr. Johnston (Bow River): It ceases to become a public place when the door is locked?

Mr. Garson: Yes, I would think so.

Mr. Power (St. John's West): Would the minister care to widen the definition of public place? "Place", to my mind, indicates some fixed portion of the surface of the globe, and I doubt whether this definition would include a moving vehicle.

Mr. Garson: Well, as we go on through the other clauses of this part of the code my hon. friend will see that in the case of which he speaks, the moving vehicle, if a person were disorderly there or committed an offence there, it might not be desirable to have them open to prosecution under this part of the code. In other words, if he will observe carefully as we go through this part IV of the code to see whether there is any other clause in which a reference is made to a public place which in his opinion should include a moving vehicle as being a public place in that clause, we might discuss then the point which he now raises.

Mr. Johnston (Bow River): Is this section the same as it was before, or is there a new interpretation?

Mr. Garson: No; as I indicated when I began my remarks in response to questions asked by the hon. member for Nanaimo and again in response to the hon. member for