

than with the life imprisonment suggested in the amendment moved by the hon. member.

For these two reasons, I feel I must recommend to the committee that the amendment be rejected.

Mr. Laprise: Not being a lawyer, I find it difficult to follow the hon. minister. He suggests that when it comes to convicting those who are found guilty under clause 4—if I understood him correctly—it will be possible to use either Bill C-181 or some other existing provisions in the Criminal Code.

● (5:10 p.m.)

I wonder who will decide whether the five or the 14 year penalty will be imposed. I imagine that the Crown Attorney will call for a penalty of 14 years in certain cases, and that the defence attorney would rather be in favour of the five year penalty. You would certainly see, as we have seen before, unending battles between equally qualified lawyers.

This is why, in my opinion, the bill under study should be as specific as possible in order to avoid any controversy. This act should be strict enough and clear enough that those who would have to enforce it, or those who would intend to break it, know what to expect.

The Deputy Chairman: Is the House ready for the question? Hon. members have heard the text of the amendment put forward by the hon. member for Abitibi. Will those in favour please rise. Will those opposed please rise.

[English]

Amendment (Mr. Laprise) negatived: Yeas, 3; Nays, 45.

The Deputy Chairman: I declare the amendment lost.

[Translation]

Mr. De Bané: Mr. Speaker, one of my colleagues was asking me why I voted in favour of the amendment. I did so because I feel that subclause (g) of Clause 4—

The Deputy Chairman: Order. I must point out to the hon. member for Matane (Mr. De Bané) that no comment is permitted on a vote taken in the House.

Mr. De Bané: Mr. Chairman, I wish to make a statement which is one of the most important I will make during the debate. I submit that it is absolutely essential to add on line 14 the words "without justification or legitimate excuse for which the burden of proof is on him."

It will be replied that the adjunction of these words is not essential to prevent such offenses from being, in legal terms, offenses of strict responsibility. For my part, I submit that this argument is false legally, and I will explain.

First of all I wish to refer to page 454 of the first addendum to the treatise written by one of our most prominent authorities on criminal law, Mr. Justice Lagarde, and published in 1967. In this particular instance, I find an explanation of the concept of strict

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responsibility, or the *actus reus* without the *mens rea*. I quote:

Strict responsibility or absolute responsibility obtains whenever the legislation makes an offence of the mere occurrence of an action or omission, i.e. the mere occurrence of an "actus reus" irrespective of the "mens rea".

The most common example is this: When you go through a red light, whether intentionally or inadvertently so as not to miss the train or the plane, you still commit an offence.

What is important is not the intention.

And I continue to quote Mr. Justice Irénée Lagarde:

1. We can say that there is strict liability when
 - (a) the statute which creates the offence indicates that there is absolute liability in express and formal terms, OR
 - (b) after consideration of the object and the subject of the legislation concerned, one reaches the conclusion that there is a necessary implication.

2. Necessary implication:

The word "implication" means that a notion gives rise to another, either under the guise of a necessary effect, or by experimental liaison.

Generally, there is a strict liability offence by way of necessary implication in case of minor offences, punishable under summary conviction and which are classified under the general title of public welfare offences. These offences are related mainly, but not exhaustively

- (i) to provincial laws on alcoholic beverages, hunting and fishing, traffic regulations and stocks and shares;
- (ii) to federal laws on food and drugs, weights and measures, temperance in Canada and regulations under the War Measures Act.

One might wonder whether the opinion of Mr. Justice Lagarde when he says that offences to regulations under the War Measures Act are strict liability offences, is the personal opinion of a magistrate or whether it is based on judgments previously delivered.

In view of the authority of Mr. Justice Lagarde who, in Quebec, is the highest authority at the moment in criminal law and who, incidentally, is the only French-speaking authority, it would be ridiculous to suppose that his opinion is not based on judgments previously delivered by the Courts.

Doubtless this is the reason why at page 466 of the first supplement of his "Droit pénal canadien" published in 1967, Mr. Justice Lagarde refers to two rather recent rulings. He deals first with the case *Rex vs Duquette* (76 C.C.C. 304, Quebec) when one of Duquette's employees sold codeine without prescription. According to the judge, "such sale was made by the employee in the discharge of his duties but against instructions received. This is a strict liability offence which makes the employer responsible for his employee's action".

Mr. Justice Lagarde summarizes the judgment in the case of *Rex vs Rhyno*, (1945,83 C.C.C., 186) in the following way:

The sale of gasoline without coupons constitutes a strict liability offence. The service station operator is guilty by proxy of the offence perpetrated by his employee in the discharge of his duties.