

Criminal Code

CRIMINAL CODE

ADDITION OF PART DEALING WITH HABITUAL
CRIMINALS—VARIOUS AMENDMENTS

The house resumed consideration in committee of Bill No. 364, to amend the criminal code—Mr. Ilesley—Mr. Macdonald (Brantford City) in the chair.

The CHAIRMAN: When the committee rose at six o'clock it was considering section 3 of the bill.

Mr. DIEFENBAKER: Is the minister in a position now to answer the question regarding this section, as to whether or not an amendment should be made to make this section applicable to an offence being committed in a place to which the public has or is permitted to have access, whether by licence or otherwise?

Mr. ILSLEY: The motion I propose is that section 3 be amended by striking out the words "any place other than a dwelling-house as defined in paragraph (g) of section three hundred and thirty-five" in lines 24, 25 and 26 on page 1, and substituting the following:

in or near any street, road or highway, or in any restaurant, railway station, public library, tavern, billiard hall, theatre, shop or other place to which the members of the public are admitted whether as a matter of right or otherwise . . .

Do hon. gentlemen think that is too broad, or what? Perhaps we could let this section stand while I have the amendment copied for the benefit of my hon. friend.

Section stands.

Sections 4 and 5 agreed to.

On section 6—Culpable homicide murder in certain cases.

Mr. REID: Has the minister given any consideration, or will he give consideration, to the number of indecent assaults occurring in the various provinces? The suggestion is made that a crime of this kind is committed by a person who is mentally ill, and it is complained that when these men are sent to penitentiaries or reformatories the practices still continue in spite of the surveillance to which they are subject. My request to the minister is that the entire situation be reviewed with a view to segregating these offenders instead of having them mix with other prisoners.

Mr. ILSLEY: The matter to which the hon. gentleman has referred is being studied at the present time. I have taken note of the articles in the press, the resolutions that have been passed on this subject, and the scientific arguments that have been advanced. We are in communication with the Department of

[Mr. Speaker.]

National Health and Welfare on the matter, and I can promise the hon. gentleman that the matter will continue to receive most careful and intensive consideration.

Section agreed to.

Sections 7 to 9 inclusive agreed to.

On section 10—Proviso.

Mr. DIEFENBAKER: I quite realize the circumstances under which this amendment is being introduced, but I question whether it is not going too far in placing the onus upon the accused. The principle of common law is, of course, that the onus must always rest upon the crown. The amendment reads as follows: . . . any person who while intoxicated or under the influence of any narcotic occupies the seat ordinarily occupied by a person driving a motor vehicle shall be deemed to have the care and control of the said motor vehicle unless the said person establishes that he did not enter or mount the said vehicle for the purpose of setting it in motion.

I can appreciate the reason for the amendment, because certain judges have held that a person sitting behind the wheel of a car that is not in motion is not driving that car, nor has he any control over it. I rise only for the purpose of pointing out that in accepting this departure from the major principle of criminal law, namely that the onus rests upon the crown, I hope the minister does not take it as a precedent to remove that safeguard, which is of the essence of British criminal law, as far as other sections are concerned.

Mr. ILSLEY: When I have more time I want to give the house the long list of sections in the criminal code where the onus is shifted in circumstances something like these, and to point out that if this were not the case, law enforcement would be impossible. I realize the validity of the underlying general principle, and that it should not be interfered with except in the case of necessity, and, generally speaking, where the means of proof are peculiarly with the defendant.

Mr. DIEFENBAKER: In the knowledge of the defendant.

Mr. ILSLEY: Yes; that is the general principle. Perhaps it does not apply in every case; but in this instance, as I think the hon. member appreciates, no injustice can be done.

Mr. MILLER: Does the minister not think perhaps this amendment will encourage a drunken driver to keep on driving in an endeavour to get home? It seems to me that if a man is driving a car and realizes that he is drunk the proper thing for him to do is to pull over to the side of the road and sleep it off instead of trying to get home. It seems