

*Criminal Code*

an offence to create a disturbance in any place other than in a public place. I submit that this section is not very well drafted. It provides for the definition of a dwelling house by reference to section 335 of the criminal code, which is in part VII, which states in the headnote:

Offences against rights of property and rights arising out of contracts, and offences connected with trade.

Actually what is taking place is that a section is being used as a definition section that is in another part of the code altogether, although that part is in no way applicable to the part in which section 222 is to be found. The new section reads:

Any one who causes a disturbance in any place other than a dwelling-house as defined in paragraph (g) of section three hundred and thirty-five, by screaming, shouting, swearing or singing or by being drunk or by impeding or incommoding other persons shall be guilty of an offence...

If a person happens to be on his own land and screams and if anybody happens to hear it who is not located on a public highway or in any other public place, this section makes it an offence.

Mr. KNOWLES: Can he scream in the House of Commons?

Mr. DIEFENBAKER: As a matter of fact this section could apply to the House of Commons. If a member of the House of Commons becomes noisy and disturbs the sensibilities of other hon. members—and on occasion all of us do that—he would be guilty of an offence under this section. That shows the danger of drafting a section designed to prevent one wrong and thereby substituting an offence in a different situation which was never contemplated by the amendment. My hon. friend has pointed this out. There can be no question whatever that any hon. member who today does anything that disturbs any other hon. member could be brought before a court of this country and charged under this section.

I shall tell the committee the reason for the section. Some eighteen or nineteen years ago one Benson was charged with disorderly conduct in a public place, to wit, a restaurant. He was found not guilty because a restaurant is not a public place. Public places are places where all of us as citizens have an inherent right to enter. In order to make a person liable for creating a disturbance in places like that, the law officers of the crown have so constructed this section that incongruous results will follow therefrom. The more I look at the section, the more impossible it becomes. On consideration, I can understand why it is that in the United Kingdom,

[Mr. Diefenbaker.]

with their centuries of experience, have been very careful to maintain that no disturbance can be created in other than a public place. I suggest to the minister that if this amendment is passed in its present form, no matter whether a person is noisy in his own place or in some other place—

Mr. FRASER: At a ball game.

Mr. DIEFENBAKER: Yes, at a ball game; that is how it is drafted here—an offence is committed. It was never intended that an offence should be created under those circumstances. I should like to hear the minister discuss this important matter. It is not a simple amendment as is indicated by the explanation. "Public place" is removed. The doing of these things in a public place has always been the essence of the offence. I think it is a case of indifferent draftsmanship designed to get around one difficulty and, having got around that difficulty, created another more serious than that it was intended to cure.

Mr. GRAYDON: Out of the frying pan into the fire.

Mr. DIEFENBAKER: Yes. That is possibly the best description of it. I know something of the situation as it is today under that section, "public place" being defined as it is in the Benson case. But I would point out that at some time a situation will arise and a charge laid under this section which will render this house subject to considerable ridicule. I would suggest to the minister that the matter be re-submitted to the law officers, so that we do not under this section create a new type of offence, because certainly we are not intending to create these anomalous conditions by this section. When, however, the matter comes up for interpretation before the courts in the future, our ideas and intentions will not be taken into consideration. The words themselves will determine what we intended to convey in drafting this new section.

Mr. MICHAUD: I should like to add a word to what the hon. member has said. I, too, find it difficult to determine what the purpose is in amending the law in this way. I am under the impression that these vagrancy clauses are severe enough. I happen to have had a little experience under section 238 in little country places where I come from. We have had a great many such cases. Many trivial cases have come before the courts under section 238, a great many cases that are much too trivial to come before the courts. I have always found section 238 (f) as it stands broad enough to include anything of a criminal nature which may constitute a nuisance. I do