

see fit to support the legislation at the present time might be persuaded to change their minds.

[*Translation*]

Mr. Yves Forest (Brome-Missisquoi): Mr. Speaker, I certainly cannot support the hon. member's bill, even though I agree that in some extreme and exceptional cases presumption could create embarrassment. But the bill in its present form could certainly not be sent to the Justice and Legal Affairs Committee for study because it would have to be amended. In fact, as I mentioned before, it refers to Criminal Code sections 222 and 223 as they were before the amendment of section 222, which covered the crime of driving while intoxicated or under the influence of drugs, and section 223 which involved driving a vehicle while impaired by alcohol or drugs. It is therefore a slightly less serious crime than under section 222.

Well since the bill was amended section 222 was deleted and moreover the minimum imprisonment of seven days on summary conviction was cancelled. The new section 222 pertains to driving a motor vehicle while the driver's ability is impaired owing to intoxication or the influence of a narcotic and retains the word "imprisonment" but only for the second or subsequent offences.

A new section 223 was added which covers the refusal without legitimate reason to give breath samples when a police officer requests them for valid and logical reasons.

Then a new offence was created under section 224, that of driving with a blood alcohol content of over .08.

I find it difficult to understand the wording of the bill as it contains a new clause, clause 223A, which states as follows:

"Sections 222 and 223 shall not apply where the motor vehicle is not in motion and the driver, having realized that he was intoxicated or that his ability to drive was impaired, has, for that reason alone, refrained from putting his motor vehicle in motion or stopped the same, and is also in a position to establish that he had no intention of driving or continuing to drive, while intoxicated or while his ability to drive was impaired."

The accused still has to prove that he did not intend to drive or to continue driving.

So, there is not much difference with the old section 224 (2) which contained the following assumption: where a person occupies the seat ordinarily occupied by the driver of a motor vehicle he shall be deemed to have the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

Now, the clause proposed by the hon. member for Oxford (Mr. Nesbitt) does not amend much the present provision, since the former provisions of the act allowed for this presumption. And if I am not mistaken, this presumption was introduced into the Criminal Code in 1947. This was certainly logical because previously a driver could easily establish that he did not intend to drive his vehicle.

Obviously, when Parliament passed that legislation, it was thinking of all the dangers involved when a driver, willfully or nor, drives a vehicle while under the influ-

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ence of drugs. Usually the person himself knows what was his intention when he decided to drive his car.

In the explanatory notes it is said that the purpose of this bill is to amend the Criminal Code so as not to penalize drivers who are wise enough not to drive or to stop their car immediately.

Perhaps it was mentioned that some drivers are smart enough to stop their car in certain cases and say they did not intend to drive it. So it might be too easy perhaps to establish their non-responsibility.

I agree with the hon. member that, in some cases, it is not easy to prove it, as far as care and control of the vehicle is concerned and, in the past, various decisions have been rendered as shown by our jurisprudence. Even in certain cases when it was utterly impossible to drive a vehicle because it had come to a dead stop due to outside circumstances, the accused was found guilty. Let me say to the hon. member that there are many extreme cases.

I remember one from days of private practice. An individual walking out of a hotel and who felt intoxicated asked one of his friends to drive his car. He had asked his friend to drive him home and while driving through a narrow street a slight accident happened. Of course, the car stopped and the owner was later asked by the police to take his car out of the way, then he was given a ticket for driving while his ability to drive was impaired. Although these facts had been recognized, the judge decided that this was the law and even though the car had been driven only about 100 feet the driver was responsible and the charge stood.

I admit that there are extreme cases where it is difficult to establish the presumption provided for in the law. But are we going to ignore this presumption, considering that in all the other cases where the drivers have stopped their car or are asleep at the wheel they have the care or control of it and have little chance of driving their car?

We all admit that with the number of car accidents and the daily parade before the courts of people charged with driving while their ability to drive was impaired, there is no need to restrict the prescriptions of the act; I think that they are not too severe to cover general cases. All those acquainted with the courts and those who read newspapers see that every day a growing number of people, notwithstanding increasingly stern penalties, are charged with driving a motor vehicle while drunk or while their ability was impaired by alcohol.

There is even less need to amend the legislation since section 224 was enacted and use of breathalyzer established positively determine the proportion of alcohol in the blood of a motorist. The rate of .08 per cent recognized by all experts, as was outlined in the Committee on Justice and Legal Affairs during the study of this matter, had been suggested and was approved, I believe, by the Canadian Bar Association and several other bodies whose opinion was that a higher rate would make driving a motor vehicle extremely dangerous. I could quote statistics before the House in that respect. Everybody knows that such cases occur in large numbers.