

Criminal Code

Mr. Garson: I believe if the hon. member will read the wording of the provision he will see the answer to his question. Clause 126 reads:

Every one who

(a) Permits a person whom he has in lawful custody to escape, by failing to perform a legal duty,

In order to make the accused liable under that clause, the crown has to prove, not only that the prisoner was permitted to escape but that the escape was the result of the accused police officer, or whoever he might be, failing to perform a legal duty.

Mr. Ellis: Then, I gather it would be possible to prove negligence on the part of the policeman?

Mr. Garson: I should like to stick to the terms of the clause. It would be by his failure to perform his legal duty, and that would be the one point which the crown would have to prove before it could get a conviction.

Clause agreed to.

Clauses 127 to 129 inclusive agreed to.

On clause 130—*Public place*.

Mr. Cameron (Nanaimo): I should like to call to the minister's attention the definition of a "public place". It seems to me to be an extremely wide definition, and may very well affect the application of other sections of the act. I have been trying to think of some place that is not a public place within the terms of this definition, and I cannot think of one. I thought I had found it in this chamber, itself, but then I recalled that the public is occasionally invited in here. Perhaps I am reading it in a wrong manner, but it seems to me that any place to which the public has access as of right or of invitation, expressed or implied, is almost everywhere.

Mr. Garson: The purpose of this definition is, quite frankly, to overcome difficulties which have arisen as to whether stores, shops and other public places to which the public are invited by the owners, so that they can do business with them, are public places. I have argued myself, I must confess unsuccessfully, before the court of appeal of my own province, that an accused who was intoxicated in a country general store in the evening, although it was open at the time, was not intoxicated in a public place. This man worked on the railroad and was going to lose his seniority and his pension. There was not any question about his intoxication, and the only point upon which we could hope to have his conviction quashed was that this store was not a public place. The purpose of this clause is to put beyond any

[Mr. Ellis.]

peradventure or argument what constitutes a public place for the purpose of part IV of the code. I believe it is a fair definition because it says:

"Public place" includes any place to which the public have access as of right or by invitation, express or implied;

Is it not true that such a place is, in fact, a public place? It is defined so there will not be any doubt about it.

Mr. Cameron (Nanaimo): The point is, if I had the temerity, I might invite you into my house. Would it then become a public place?

Mr. Garson: No; though I am a member of the public, I am not the public.

Mr. Diefenbaker: As the minister has said, this definition was to cover a case that took place in Saskatchewan, and which for years was the authority on the question of what was, in fact, a public place. As I recall, the case was *Rex v. Benson*, in 1928. I was counsel for the appellant in that case. The accused was charged with disorderly conduct in a public place, namely in a restaurant. He was convicted and we launched an appeal, and on appeal it was held that a restaurant was not a public place, in that the public did not have the inherent right of access to that place. This case was followed for many years, and resulted in many guilty persons being acquitted. Some years ago, I think around 1946, the difficulties of the prosecution for some 18 years were dissolved by an amendment that was introduced to cover the situation.

It actually means, as the minister has stated, that where a person goes into a place that is open to the public, that is now a public place. Prior to the amendment in 1946, a public place was a place where the public had an inherent right of access. I would be loath to see any change in the definition, if disorderly conduct is to be punished in this country.

Mr. Dupuis: Would the minister tell me if a private garage where I store my car and for which I pay rent would be considered as a public place?

Mr. Garson: I would not think so, because it is not a place to which the public have access as of right. They can go in, but they have no right to be there. Moreover, it is not a place to which you can give the public an invitation, express or implied. You would not be inviting the public to your private garage in the same way in which you would if you opened up a shop to which you impliedly invite the public to go in order that you might do business with them, or to which you would invite them expressly if you write them a circular letter saying, "Come down to our 50-cent sale".