

upon the right person, because it is very hard to prove that the party accused had such knowledge in a great many cases.

Mr. MIDDLEBRO: I would think that before any party is held to be guilty the proof of guilt must be forthcoming.

Mr. McMASTER: I am quite in sympathy with the amendment proposed by the member for Grey, but I do not think it is necessary. In order that a person be convicted under this section, the guilty knowledge would have to be established; there would have to be *mens rea*, and that being so, although I am absolutely in sympathy with the object of protecting an innocent party to these irregular alliances, I cannot see the necessity for the amendment.

Mr. MIDDLEBRO: I will submit this illustration to my hon. friend: An innocent woman accompanies a man to the hotel and the clerk asks: "Are you married?" and she replies, "Yes, I am married to this man here." In giving that statement she fully believes that she is married to him, yet under the section she would be guilty of an offence.

Mr. McMASTER: I do not think she would be liable, because she acted in good faith.

Mr. MIDDLEBRO: But the clause does not say that.

Mr. McMASTER: I submit wrongful intention would have to be established before the woman could be properly convicted under this section.

Mr. MIDDLEBRO: I would not want to take a chance on it.

Mr. MEIGHEN: If I might present my own opinion, in a most humble way, it would be that the hon. member for Grey is right in his contention that that knowledge would not require to be brought home unless the Act specifically called for such to be done. All that needs to be done to constitute an offence under the clause as it stands now is—we will take a single case—that a man by registering, or otherwise, represents that a woman to whom he is not married is his wife.

Now, all that has to be done is to so represent that a woman to whom he is not married is his wife; that itself the statute declares to be an offence. Consequently in my judgment—which I do not put forward as final by any means—unless we add "knowing the same to be untrue," this knowledge does not require to be brought home to the accused person.

So far as the point raised by the hon. member for Qu'Appelle is concerned, I would certainly be of the opinion without reserve, that if the law were to be amended merely as asked for by the hon. member for Grey, then the guilty knowledge would require to be brought home to the accused by the prosecution. It occurs to me—although I would like more time over these matters before discussing them—that it would be better to state that the onus of proof of lack of knowledge should be on the accused. And if the hon. member (Mr. Middlebro) would so amend his amendment, then, subject to further discussion, I would be disposed to accept it.

Mr. JACOBS: What is the law in England with respect to these offences, particularly the offence under review?

Mr. MEIGHEN: So far as I know this does not constitute an offence in England.

Mr. JACOBS: Then why should we want to make it an offence in this country?

Mr. MEIGHEN: We establish our own standard of morality—

Mr. McMASTER: Hear, hear.

Mr. MEIGHEN:—on the footing of our own conscience, instead of on the standard set by Great Britain.

Mr. JACOBS: The sources of our law are from Great Britain; we follow her closely in the enactment of criminal law.

Mr. McMASTER: Not necessarily.

Mr. MEIGHEN: The principles of our law, particularly of our constitutional law, we derive from Great Britain; but our standard of morality we derive from our own conscience.

Mr. JACOBS: I am of the view that this clause is liable to produce blackmail on an unprecedented scale. This legislation is hysterical. I think the Criminal Code already sufficiently safeguards morality without the introduction of legislation of this kind.

Mr. MIDDLEBRO: I will withdraw my amendment and substitute therefor the following:

The onus of proof of the absence of knowledge shall be upon the person asserting the same.

Mr. DEVLIN: While you are perfecting the section, would it not be well to insert something in reference to cohabitation? The simple fact of a man passing off a lady as his wife in a hotel is not in itself a crime.