

Criminal Code

grounds for that division were, in the opinion of the speaker, two mutually exclusive clauses.

Surely there is no mutual exclusiveness in the clauses of a bill put together by the government, presented as one bill to the House of Commons and which stands together on the general reform of the penal and criminal law.

I submit to you that, relying on May's 17th edition, page 544, this type of motion to instruct a committee is not merely in the nature of an amendment but is rather a substantive motion, and being a substantive motion notice would be required according to the rules of the house.

I have one final word to say, sir, as to your own prerogative, if you would allow me to direct my attention briefly to that. It is my submission that since this is not a motion to divide but is an amendment directed to the committee, Your Honour's discretion is limited to admissibility, only, that is whether the amendment as an amendment can be admitted to the house for a vote by the House of Commons. Your Honour's discretion does not go to the substantive decision as to whether the amendment should be tagged on to the bill. In other words, even if Your Honour were to decide—

Mr. Woolliams: May I ask the minister a question?

Mr. Turner (Ottawa-Carleton): In a moment. I should like to continue now if I may. Even if Your Honour were, in your good judgment, to decide that the amendment were admissible—and I have been arguing as strongly as I can against that point of view—your discretion is limited to the question of admissibility only and not to the substantive question as to whether the amendment should be attached to the bill. In other words, it would be up to the house to vote upon it, even if it were admissible.

Mr. Erik Nielsen (Yukon): Mr. Speaker, after listening to the argument of the Minister of Justice (Mr. Turner) it seems quite obvious that members on the other side do not want to see a vote taken on the basis of each individual question that is raised in this bill. No one for a moment denies the desirability—which seemed to be the implication the Minister of Justice directed toward this side—of the bill going to the committee to be discussed there in the fullest possible sense clause by clause, and for the committee to advance amendments that it sees fit. What the

amendment seeks to accomplish is to give to every member of this house the right to voice his opinion on matters that affect the individual conscience just as deeply as did the question of a flag and as did other debates in those days which the minister can well recollect. The minister tried to distinguish between this amendment and the flag question, but that is a precedent which Your Honour is going to find extremely difficult to circumvent. I would submit to the Chair that on that occasion Mr. Speaker Macnaughton split a resolution right down the middle and caused the house to vote on two aspects of it. At that time, this was certainly not the desire of the government nor the intention of the bill which was introduced by the government.

The amendment of the hon. member for Calgary North (Mr. Woolliams) seeks to do one thing on an occasion which will not arise again in the proceedings on this bill, namely to give directions to a committee which, under the new rules, must consider the bill before it comes back to the house. The directions which the amendment of my friend seeks to give to the committee is that the committee, instead of bringing back an omnibus report on an omnibus bill, is to bring back to the house a report which will permit hon. members the freedom to vote on a portion of the bill. They would have freedom to vote on whether or not they wish to accept the government's views on homosexuality or on the other amendments contained in the bill. This is a freedom which I would like to exercise and which, I daresay, a good number of hon. members on the opposite side and in the rump on this side as well would like to exercise.

This is the only time at which we can make such an amendment. It is an extremely important decision which Your Honour has to make because if the amendment of my colleague is refused, then, in my view, an unduly restrictive interpretation of the new rules will be imposed upon us.

The Minister of Justice (Mr. Turner) has attempted to make a case to Your Honour based on the fact that the precedents established under old rule 77 apply here. But I do not see how we can extend these precedents particularly in view of standing order 74 (1) which reads as follows:

Every public bill shall be read twice and referred to a committee before any amendment may be made thereto.