

Hon. Mr. Roebuck: No, it is not. Perhaps the municipalities might provide for that. I should not like to live in the area that was selected.

Hon. Mr. Lambert: The racetrack is the place to do it.

Hon. Mr. Roebuck: That may be so; but after all, the learning-to-drive period is something that lasts more than a few days. One could be told in five minutes how to drive, but experience and practice take many months.

I should like, gentlemen, to make reference to section 14 of the bill. This is new law, and therefore should be very carefully drawn. Clause (4d) of subsection 2 of section 14 has to do with the introduction into evidence of the results of a certain analysis. That subsection reads as follows:

In any proceedings under subsection four or four (a) the result of a chemical analysis of a sample of the blood, urine, breath or other bodily substance of a person may be admitted in evidence on the issue whether that person was intoxicated or under the influence of a narcotic drug or whether his ability to drive was impaired by alcohol or a drug—

The words to which I draw attention are these:

notwithstanding that he was not, before he gave the sample, warned that he need not give the sample or that the results of the analysis of the sample might be used in evidence.

The technique of analysis of blood samples and other substances is now past the experimental stage; it is approved by judges and not infrequently accepted by juries. But in legalizing the use of evidence derived in this way, I think exemption should be afforded both to the person who refuses to submit to the test—and this we have done—and to the one who, being in a muddled condition, does not object. If we are going to allow a person who has the intelligence to do so to withhold his consent, we ought to see to it that the person who is taken into custody in a condition in which he is unable to defend himself should have similar protection. But this amendment permits the police to get such a man in their custody, to take a sample without the presence of his medical adviser or his lawyer, and then, whether he has been warned or not, to use that sample and the analysis in evidence against him.

Hon. Mr. Beaubien: Is not that done for the protection of the man himself?

Hon. Mr. Howard: Why, certainly.

Hon. Mr. Roebuck: I said, it could be used without his consent. I grant you that it may be used by way of protection as well as for prosecution; but because it can be used in Case A for protection is no reason why it should be used in the opposite way

in case B. We have gone just a little too far.

Honourable senators will realize, of course, that for many years I have been a defence counsel. Many a time I have seen a prisoner in the box, and I have been impressed with his position, with everything against him—with a steam-roller, so to speak, about to go over him—and I am jealous for his protection in every British right. Not that the criminal should enjoy exemption from the law; I am anxious that he should be brought to justice.

Hon. Mr. Beaubien: May I ask my honourable friend whether he could not make as good a speech if he had been a prosecuting instead of a defending attorney?

Hon. Mr. Roebuck: Well, it is very seldom that I have prosecuted. I have not had very much practice that way. My thoughts and impulses have more often been directed to the defence.

Hon. Mr. Beaubien: But you prosecuted when you were Attorney-General.

Hon. Mr. Roebuck: Well, during that time I directed many prosecutions. I did not personally prosecute a single case, but for three years I was head of the prosecution force of my province. But I guided it. I saw to it, too, that the prosecutors were polite, that they did not bulldoze anybody: I stopped the unseemly joking that went on in our police courts: yes, and I made the magistrates wear proper clothes and maintain decorum in their courts. There were a good many other reforms which I could mention that were made during the comparatively short time I was in control. As far as I know I never invaded the rights of any individual. I have protected the man who was being attacked as zealously as I have enforced the duties of the prosecution. In this amendment we have gone too far. We should provide that evidence obtained under this provision cannot be used without the consent of the accused person, and that if he consents to a test he must be in a condition to intelligently give consent. That would be a reasonable safeguard to surround the use of this new evidence in our courts.

A word or two about the post office sections. I do not know why it is that people in control of departments want to acquire arbitrary power, or powers which may be used oppressively, or—to repeat an expression I have already used—to make their operations sacrosanct. On page 12, in section 16 we find:

364. Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than six months, who steals,

(a) a post letter bag; or