

Sir GEORGE PERLEY: Did any other members of the committee object to the section?

Mr. ADSHEAD: I took exception; so did the hon. member for Muskoka (Mr. McGibbon).

Mr. LAPOINTE: And the hon. member for St. Ann (Mr. Guerin).

Section agreed to.

On section 6—Unlawful for physician, etc., to prescribe a drug except for medicinal purposes.

Mr. KING (Kootenay): I have an amendment to move to section 6.

Mr. MANION: That is the section on which we had so much discussion when the bill was before the house on another occasion?

Mr. KING (Kootenay): Yes. I beg to propose the following amendment as subsection 2 to section 6:

Notwithstanding the provisions of the criminal code, or of any other statute or law, the court shall have no power to impose less than the minimum penalties herein prescribed.

Until recently we have had very little trouble under this section, as we were fortified by a judgment of the appeal court of Ontario that upon trial by indictment and conviction the minimum sentence was three months' imprisonment, and that the judge had no discretion but to impose this sentence. However, in the last week or two, since the bill was reported by the special committee, the appeal court of another province has decided differently, and ruled that under section 1,035 of the criminal code it is within the competence of the magistrate or judge to impose a fine and refrain from imposing imprisonment. Our officer makes this note:

Proceedings by indictment are not taken against a professional man except under the most serious circumstances. As we are thus faced with two conflicting judgments, and as the intent of parliament is obviously that in such serious cases a minimum of three months' imprisonment should be awarded, the matter was discussed with the Department of Justice, who agreed that it would be advisable to place the matter beyond any doubt, and this can best be effected by adding a new subsection.

This is the subsection that I have just moved by way of amendment.

Sir GEORGE PERLEY: I think as the other members of the committee that considered this bill are not present, and this is a decided change in the section, it had better stand.

Mr. KING (Kootenay): Then we will go on with the other sections.

Section stands.

Mr. ROSS (Kingston): Has the minister taken into consideration such a case as I brought to his attention on a former occasion? A practising physician administered a narcotic drug—I do not know under what circumstances—and a charge was made against him. If some person had not taken up his case that physician might have been whipped.

Mr. KING (Kootenay): In such a case the judge would use his discretion. If the accused was found to be a regular trafficker, committing a crime worse than murder, and the judge decided that whipping was proper punishment, I do not think anyone would object. But ordinarily professional men are not proceeded against on indictment unless they are found to be really engaged in the drug traffic. The case referred to would not come under this section.

Mr. ROSS (Kingston): The evidence of the special officer engaged in the case would have been sufficient to render the accused liable to such a punishment, would it not?

Mr. KING (Kootenay): No.

Mr. ROSS (Kingston): Why not? I ask for information.

Mr. KING (Kootenay): The judge, exercising his discretion, would see that this did not happen. Some of these matters must be left to the judge; we cannot possibly prescribe for every case.

Mr. ROSS (Kingston): I think the officers employed in the enforcement of this law should be specially qualified. In the case I have referred to they should not have entered such a charge against the doctor. If they are to have full control of these cases as in the past we may have some very unfortunate results.

Mr. KING (Kootenay): We have special officers in the department known as enforcement officers under the narcotic acts. Their agents throughout the country are the Royal Canadian Mounted Police and the municipal and provincial police.

Mr. ROSS (Kingston): I am quite sure that if they had consulted the municipal or provincial officers they would never have laid such a charge.

Mr. SPENCER: Are the provincial police throughout the Dominion cooperating fully with the mounted police in enforcing this act?