

*Criminal Code*

Mr. FRASER: The section says "wilfully damages or interferes".

Mr. ILSLEY: Suppose they did some damage to it mischievously but so as not to affect the working of it at all?

Mr. FRASER: If they do it mischievously it is not wilful.

Some hon. MEMBERS: Yes.

Mr. FRASER: In a case like that, no. There should be the full penalty on this, because I know one case where a person did not interfere with the apparatus so that it would not work; but he disconnected the end of the hose so that when the fire hose was pulled out the other end was not connected; it took four or five minutes to connect it, and a lot of damage was done in the meantime. This person would not be guilty under this section, because the apparatus was still operative although they disconnected it. There should be a period after the word "device".

Mr. LESAGE: There is something in what has been said. If the offence is small justice will be satisfied with a small fine.

Mr. HARTT: I respectfully submit to the hon. gentleman who proposes that the sentence should stop at the word "device" and leave out the words "inoperative or ineffective", that it would mean the person who caused the mischief had not caused any damage; because, unless the instrument is made inoperative or unless the act complained of interferes with the working of the apparatus, no person can be held responsible and liable for something that he has not damaged.

Mr. FRASER: He has damaged it.

Mr. HARTT: If a man just touches a machine and a malevolent complainant wishes to take him before the courts and says that this man has tampered with a fire apparatus the judge has no alternative and no discretion but must condemn him to one year's imprisonment or a fine of \$500.

Mr. LESAGE: No; that is the maximum.

Mr. HARTT: I am not bargaining with the committee. What I say is that the judge has no option if it is proved that the mischievous person has committed an offence. If he has not made the machine inoperative; if the machine is still working he has caused no damage and has not interfered with the working of the fire apparatus. I submit that the only time a person can be held liable for an offence is when the offence is committed. As a matter of fact, when no injury is caused no offence is committed.

[Mr. Ilsley.]

Mr. FRASER: The hon. gentleman has tried to put up a case, but I still say that a fire apparatus, no matter where it is, is sacred.

Some hon. MEMBERS: Oh, oh.

Mr. FRASER: It really is. It is protection of life and should not be touched.

The CHAIRMAN: Shall the section carry?

Some hon. MEMBERS: No.

Mr. FRASER: The minister has not given his decision.

Mr. ILSLEY: I would be a little worried about taking these words out, on the ground that we ought to be careful when we create a crime that we are dealing with something that should be made a crime. "Wilful" means "intentional"; that is all. Technically, wilfully interfering with fire protection or fire safety equipment or devices would include the moving of some apparatus, and might technically come within the wording of the section even though the person did not intend to render it inoperative or ineffective. In other words, if these words come out it would include slight damage which did not render the apparatus inoperative or ineffective, and it might mean just moving it around or something of that kind.

Mr. FRASER: There is some fire apparatus that you can put out of operation by just moving it around.

Mr. HARTT: Then it is inoperative.

Mr. FRASER: All right; I should like to see these words taken out.

Mr. ILSLEY: Some fire marshals' association suggested this wording. I do not like to create crimes unless the act is in its nature criminal. Before we pass this section, I wish to say to the committee a word about the explanatory note opposite the preceding section. I have been informed that the explanatory note is incorrect. The note says that the court of appeal of Ontario quashed a conviction on certain grounds. The conviction was not quashed on the grounds set out in the explanatory note. That is immaterial from the point of view of the section. In my judgment the amendment is still a meritorious one. I have been informed, one might say officially, that that explanatory note is incorrect; that the grounds set out were not the grounds on which the conviction was quashed. I do not believe that written reasons were given.

Mr. CHURCH: With reference to section 16, the amendment is not necessary for this reason. The criminal code provides for the