

Criminal Code

Mr. Robinson: To sum up, Mr. Speaker, in my view there is unquestionably a relationship between traffic accidents and the consumption of alcohol. I feel the present law is good law and places the onus rightfully where it belongs. Although I sympathize with the hon. member who has presented this bill, I cannot support him at this time.

Mr. C. Terrence Murphy (Sault Ste. Marie): Mr. Speaker, at the outset I would like to return to the point of order raised by the hon. member who moved this bill. As I read the bill, it purports to amend sections 222 and 223 of the Criminal Code. As I read those sections, section 222 does deal with impaired driving, or care and control of a vehicle, and section 223 provides as follows:

Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, an offence under section 222, he may, by demand made to that person forthwith or as soon as practicable, require him to provide then or as soon thereafter as is practicable a sample of his breath suitable to enable an analysis to be made in order to determine the proportion if any of alcohol in his blood, and to accompany the peace officer for the purpose of enabling such a sample to be taken.

Then subsection 2 provides a penalty for anyone who refuses to take the test. So I submit that the proposed bill in purporting to deal with section 223 is wrong and does not make sense. There are other observations which I would like to make. The law as it now is under section 224A(1) of the Criminal Code provides as follows:

—where it is proved that the accused occupied the seat ordinarily occupied by the driver of a motor vehicle, he shall be deemed to have had the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion;

This section, while it raises a presumption, raises nothing more than a rebuttable presumption, a presumption which the accused can rebut by adducing evidence to indicate that he did not in fact intend to set his motor vehicle in motion. This is evidence which is peculiarly within the knowledge of the accused himself. There is nothing to prevent him taking the stand in this type of prosecution and giving evidence or adducing evidence which would satisfy a magistrate that he did not in fact intend to put the motor vehicle in motion, no matter where he was sitting in the car. There is a presumption that if he is sitting in the driver's seat with the key in the ignition or with the motor running that he is in care and control of the vehicle. But it is open to him, as the law now stands, to show that he did not intend to put the motor vehicle in motion, and if his evidence is accepted this is a complete defence to the charge.

I submit that under the proposed bill the accused will have in one way to go much further than that. If we read the bill closely we see he has to establish three things. First, he has to establish, strangely enough, that he was intoxicated or impaired. It seems strange to me that in a situation like this an accused should be placed in the position of establishing to the satisfaction of a court that he was intoxicated or impaired. When he has established this fact in court—and I do not know how he can go on to the next step if he has established that he was intox-

[The Acting Speaker (Mr. Richard).]

icated—he must establish that he realized he was intoxicated or impaired and for that reason alone he refrained from putting his car in motion, or brought it to a stop. Then he has to establish that he had no intention of driving or of continuing to drive.

• (5:50 p.m.)

I do not know in what way a man who establishes to the satisfaction of a court that he was drunk can then establish to the satisfaction of the same court that he was wise enough to carefully park his car and that he intended to stay there. Surely, no man who is drunk will be able to satisfy anybody on this score. I submit that he would not have the mental capacity to make those decisions.

Mr. Nesbitt: That is stretching it pretty far, isn't it?

Mr. Murphy: I hope to practise law again some day and I can see where this clause could be used in some rather doubtful defences. Let us say an impaired or drunken driver is weaving down the road when suddenly a police car comes along with lights flashing and siren sounding; when the driver sees this he realizes he is drunk or impaired and so pulls his car over to the side of the road, parks it and turns off the ignition. There is no doubt that he does not intend to drive again, possibly because the policeman is by the door of the car.

Under the wording of this clause it is open to ingenious defence counsel to argue this type of defence, and it may satisfy the requirements. The man realized that he was intoxicated or impaired; there was no other reason for his stopping the car. If he had been sober he would not have stopped. He refrained from putting the car in motion again and so could satisfy the court that he did not intend to drive, particularly if he had asked the policeman to drive him home. I submit that this could be a defence under the provisions of this bill as it is presented to us. In that respect, and for purely selfish reasons, it might be wise to amend the Criminal Code in such a way so that defence counsel could have fun in arguing the matter.

I have illustrated one way in which this bill might be used to thwart the provisions of the Criminal Code which pertain to driving and drinking, but there must be many others. I do not think we should change the Criminal Code in a way which would lessen the effectiveness of the present law as it pertains to drinking and driving.

There are some interesting statistics pertaining to the increase in accidents between 1958 and 1967. One set of figures issued by the Dominion Bureau of Statistics shows that in those nine years the number of persons killed on our highways rose by over 66 per cent and the number of persons injured rose by more than 100 per cent. The statistics read into the record by the hon. member for Toronto-Lakeshore (Mr. Robinson) show that there are many more cars on the road now than there were in those nine years. I submit that we should only consider lessening the criminal law pertaining to drinking and driving when we have statistics which show that the recent amendments to the Criminal Code concerning