

Criminal Code

to justify an employer in using force to prevent any person from having ingress to, regress over, or egress from a dwelling house or real property in or upon which the employer houses an employee or to remove any person therefrom.

In the first place, the pith and substance of section 41 of the Criminal Code is protection from trespassers and control of trespassers by any person who is in peaceable possession of a dwelling house or by any person lawfully assisting him or acting under his authority. In short, the code provides an extension of normal rights to those against whom a trespass is committed. It extends the law of assault to include a trespasser who resists eviction.

The bill before the house makes an unnecessary exception to this sound law which is sensibly worded and suitably phrased. The intervention of an amendment like this would confound the courts; it would bring upon them utter confusion. There is no reason to limit the rights of employers, as a class, in assisting in the ejection of trespassers. Employers, like all other citizens, are bound to obey the civil law of landlord and tenant. That law is a provincial matter under section 92 of the British North America Act.

If this bill were passed the law would prohibit an employer from assisting an employee who sought his aid in ejecting a trespasser. Surely nothing could be more absurd. I recognize the humanitarian motive of the hon. member for Winnipeg North in moving this amendment and I have some sympathy for those who have the problems he spoke of. But to translate the hon. member's desires into an amendment to the Criminal Code would, in my submission, cause much expense to be incurred and frustration to be felt. Many innocent people would suffer. The courts would dismiss charges and this part of the Criminal Code, as amended, would be considered void because of uncertainty and ruled out of order. It would give rise to endless cases. The dockets of magistrates throughout Canada would include subjects such as this which would raise difficult problems of interpretation.

● (6:20 p.m.)

For example, the words "quiet enjoyment" have various meanings attached to them, but I have checked the Criminal Code and there is no definition of "quiet enjoyment" to be found in it. "Quiet enjoyment" is a term used in English common law, especially in real estate and landlord and tenant law. It has a long history, but I submit it has no relevancy in Quebec where landlord and tenant law is

[Mr. Gibson.]

governed by the Civil Code and other statutes. A magistrate struggling with words which are not applicable to that province would be lost for a definition. They have no meaning in Quebec. The object of the Criminal Code is to standardize the law throughout the country, not the reverse.

I think the suggestion made by the hon. member for Winnipeg North is a humanitarian one and I do not quarrel with his thoughts and worth-while suggestions, but I submit the subject matter of his proposal ought properly to be placed before the legislatures of the various provinces.

At such a time in our constitutional development as the present enactment of a bill of this kind would invite the justifiable wrath of provincial legislatures. I am thinking in particular of the great province of Quebec. It would be considered an unwarranted invasion of a provincial sphere of legislation. In any event, it would probably be ruled out by any competent court as void for remoteness, or declared to be null and void for uncertainty.

Apart from the constitutional arguments against this bill, it appears to defeat its own purpose because it would prevent a helpful employer from assisting an employee to evict a trespasser. This could happen. It is not the case that employers and employees are always enemies. It is a notion which seems to be fostered by hon. members of this house who belong to the New Democratic party. But I can assure you, Mr. Speaker, that there are many happy and successful companies—I am thinking particularly of the Dominion Foundry and Steel Company in Hamilton—where relations between employees and management are extremely good and where there is no need to worry about interference with employees by employers, because they work in partnership. This is what we are striving for. We are not trying to isolate people by class groups and distinctions; nothing is further from the desire of this house, I am sure. I am also sure that the hon. member for Winnipeg North (Mr. Orlikow) did not realize the implications of his bill.

Mr. Woolliams: Oh, he is a fairly bright fellow.

Mr. Gibson: In the days when trespass is not an uncommon invasion of a citizen's rights, it is utterly unthinkable that such a garbled and incoherent amendment should be permitted to slip into the Criminal Code. The idea behind the bill is in the wrong context altogether and the bill itself is self-defeating.