

*Narcotic Drugs Act*

cate and a man could bring a perfectly good analyst to prove that he was wrong, but according to this section that evidence would not be admissible. I think provision should be made whereby it would be admissible. It says now that the certificate "shall be accepted as evidence." I do not see how you could get around that.

Section agreed to.

On section 18—Power of peace officer to search for drugs:

Mr. BELAND: There is no change here but I would like to move to add the word "vehicle" in the forty-first line after the word "vessel." The word "vehicle" has inadvertently been omitted.

Mr. MANION: Has there always to be a warrant before a search?

Mr. BELAND: Only in the case of a private residence.

Mr. MANION: There must always be in that case?

Mr. BELAND: In that case, but not otherwise.

Section agreed to.

On section 24—Except in cases tried before two justices, no appeals in cases taken under section 4, (a), (d) and (e):

Mr. BAXTER: Why, may I ask, is that provision here? I do not want to throw any safeguards around people engaged in this illegal traffic. On the other hand, I do not want to throw any unnecessary protection around ignorant and prejudiced justices of the peace who sometimes try cases in the courts. No matter what offence a man is charged with, I can scarcely see why an appeal should be allowed to one class of offence and refused to the same man if charged with something different. If he has been wrongly convicted he ought to have some way under the law of getting rid of that erroneous conviction, and if rightly convicted I would not mind if you put a heavier penalty on him through the agency of the court of appeal, whatever it may be. But I do stand for giving a man the right to be heard in a British court of justice against what appears to be error or sometimes intentional wrong-doing, and these small tribunals are not always fit to be trusted with a man's property or a man's liberty. In what I am advocating I do not wish to throw the slightest protection around the drug fiends who are debauching communities, but what I want is to have a little safety for the man convicted in the teeth of the law

[Mr. Ladner.]

by ignorant people, by people who seek a victim and believe they have one. Now let us be fair.

Mr. BELAND: Last year there was some debate in this House upon this very clause, but ultimately it passed this House without any division. Unhappily, in my estimation at least, the clause was rejected by the Senate. As I tried to explain last year the presence of this clause in the act is most important. In many, many cases an appeal is taken for the only purpose of extending to some of the most important witnesses a chance to get away out of reach, and it is to meet that very thing that the appeal is denied except on a question of law. An appeal is not permitted on the question of facts if the facts are established before a regular magistrate—

Mr. BAXTER: But this does not make any distinction between matters of law and matters of fact. It does make a distinction between cases tried before two justices and cases tried by a magistrate on the other hand.

Mr. BELAND: My hon. friend will admit that a question of law can always be discussed without witnesses being present should an appeal be taken, but as to a question of fact, if the principal witnesses are not at the disposal of the Crown prosecutor my hon. friend will realize that he would be at a great disadvantage in case of an appeal.

Mr. BAXTER: I would suggest this: Leave this clause as you have it, but take out the clause taking away certiorari. Certiorari does not depend upon witnesses, but I do not like that quite as well myself, because I do not want a man to escape by a legal technicality. But I do want him to have some better chance than a magistrate who may err in his decision on the facts.

Mr. BELAND: I hardly think it would be possible to do away with this. I might say that a similar provision exists in the Criminal Code with regard to disorderly houses.

Mr. BAXTER: It exists in too many cases. It exists in every prohibitory act in the country.

Mr. BELAND: I suppose I should not say, thank God I am not a lawyer, but I am not versed very much in the science of the law. However, I know that a provision of this kind is to be found in the legislation of many of the provinces. I think it is to be found in the Ontario Temperance Act; it is to be found in the Quebec law regarding disorderly houses, and in the Criminal Code also. My impression is that if we do not afford to those in