

A convict is not in the custody of the warden until the latter has given a formal receipt to the sheriff. The section is intended to authorize the wardens in case of doubt to withhold the receipt until the prison surgeon shall have examined the convict: If the surgeon reports adversely the warden will refuse the receipt, and the convict still will remain in the custody of the sheriff. As the latter is a provincial officer, we have no power to direct him as to the subsequent disposal of the prisoner.

That is the practice observed, and a recent case arose in Ottawa.

Hon. Mr. LOUGHEED—It seems to me that immediately the prisoner is sentenced to the penitentiary, he is in the custody of the federal authorities, and the sheriff is simply an officer of the federal authorities to deliver him to the warden. True, he is a provincial officer, but he is carrying out the functions of a federal officer in so doing. After a prisoner is sentenced to imprisonment in a penitentiary, he cannot be said to be in the custody of the province.

Hon. Mr. SCOTT—Oh, yes, that is the law.

Hon. Mr. LOUGHEED—I question that very much.

Hon. Mr. FERGUSON—It has certainly been settled long ago that long time prisoners are subject to be taken charge of by the federal government. I remember a case of that kind in Prince Edward Island, in which we pressed it against the federal government and obtained a settlement of it because they would not take charge of long time prisoners for a number of years, and the province was put to the expense of keeping them. Finally a settlement was made, the federal government admitting our contention and paying the amount to the province; therefore, I hold that after a prisoner has been sentenced by a court of competent jurisdiction for a long term of imprisonment, sufficiently long to entitle him to be sent to a penitentiary, then the provincial authorities have a right to forward him. He may be under the charge of their officers—of course he will be during the court and at the time of the sentence and for the purposes of the trial he is incarcerated in the jail of the province, but as soon after his conviction as possible he is sent to the penitentiary, I should say it was the duty of the federal authorities to

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take charge of him if he is afflicted with any disease, and they should transfer him to the hospital.

The clause was allowed to stand.

On clause 51,

51. The minister may, at any time, in his discretion, by warrant under his hand, cause any convict in a penitentiary, and who appears to the inspector to be under sixteen years of age, and susceptible of reformation, to be transferred, for the remainder of his term of imprisonment, to the reformatory prison, if there is one, of the province where such convict was sentenced.

Hon. Mr. SCOTT—The only change in this clause is that the minister is substituted for the Governor in Council. I happen to know something about the working of this arrangement. The Governor in Council, of course knows nothing about these matters.

Hon. Sir MACKENZIE BOWELL—But, of course, they have to take the responsibility.

Hon. Mr. SCOTT—They cannot possibly.

Hon. Sir MACKENZIE BOWELL—I should like to know what kind of government we are governed by? If the minister does anything the government are responsible for it.

Hon. Mr. SCOTT—Yes, but in a matter of that kind it would be most idle to bring it before the Governor in Council.

The clause was adopted.

On clause 55,

55. When a surgeon of a penitentiary reports in writing to the warden that any convict confined in such penitentiary is insane, and ought to be removed to an asylum for the insane, the warden shall report the facts to the inspector.

2. The minister may thereupon, if an arrangement exists with the lieutenant governor of any province for the maintenance of such convict in an asylum for the insane of the province, by warrant under his hand, direct the removal of such insane convict to the custody of the official in charge of such asylum, for the unexpired portion of his sentence; and the warden of the penitentiary, when required so to do, shall deliver up to the constable or other officer or person who produces such warrant, the insane convict, together with a copy, attested by the warden, of the sentence and date of his conviction, as given to the warden on reception of the convict into his custody; and the constable or other officer or person shall give a receipt therefor, and shall thereupon, with all convenient despatch, convey and deliver up such convict, with such attested copy, into the custody of the official in charge of such asylum, who shall give a receipt therefor; and the con-