

*Criminal Code*

were left in the bill without the other the law would be bad.

I ask why the words "in the act of birth" were inserted in section 209. Under clause 18 of the bill, in the normal course of events a committee of doctors would have to be called and an accredited hospital used, but when a woman is on the delivery table it is too late to call a committee of doctors to make a decision to preserve her life or health. A doctor must make his decision immediately and perform the operation without consulting the committee. Under the law as it is proposed in the bill, the doctor would have to make his decision without the advice of a committee and without an accredited hospital to save the life and preserve the health of the mother; otherwise, as my good friend says, the mother may bleed to death. The doctor would have to make a decision at that moment and would not be able to call a committee.

Section 209 (2) reads as follows:

This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child, causes the death of such child.

Crankshaw's Criminal Code at page 333 says the following:

The words "preserving the life of the mother" are to be construed in a reasonable sense. They are not limited to the case of saving the mother from violent death; they include the case where continuance of the pregnancy would make her a physical or mental wreck.

In other words, it is illegal today to perform certain abortions under certain circumstances except, as stated in section 209, when a doctor decides in good faith to do this operation for two reasons: (a) to preserve the life of the mother or (b), to preserve her health so that she does not become a physical or mental wreck.

Taking out the words "in the act of birth" will permit a doctor to perform such an abortion under these circumstances regardless of whether or not the mother is in labour pains. If she comes to see the doctor in his office and, after he has examined her, he comes to the conclusion that she will either likely lose her life or that her health will be endangered, he can, in good faith, send her to a hospital and perform the operation. This is what my amendment seeks to achieve when I propose the addition of the word "unlawfully" in section 237. Clause 18 of the bill reads:

Section 237 of the said Act is amended by adding thereto the following subsections:—

[Mr. Woolliams.]

In my amendment I propose to repeal subsection (1), and to add the word "unlawfully" to section 237, so that it would not be unlawful for a doctor to perform an abortion in good faith to preserve the life and health of the mother, provided it is done in good faith, and the onus is on the Crown to prove that this is not so. The doctor does not have to wait for the act of birth.

I hope that this amendment will be accepted by the house because if it is not there would be serious consequences. I should like to quote from the Criminal Law Quarterly where the following is stated at page 385 by Professor Mewett:

Under s. 209 of the code (with the proposed amendment)—

Meaning the bill itself.

—causing the death of a child that has not become a human being in the act of birth is not illegal if the person causing the death considers it necessary in good faith to preserve the life of the mother. The Bourne principle clearly applies, allowing the medical practitioner to exercise his own judgment in the act of birth. If, however, the pregnancy is to be terminated prior to the act of birth, apparently totally different, incredibly complex and dubiously constitutional provisions apply.

Procuring a miscarriage (or, to be precise, using any means with that intent) will be lawful if a therapeutic abortion committee, by a majority, certifies that in its opinion the continuation of the pregnancy would be likely to endanger the mother's life or health. Apparently the miscarriage is lawful with or without the consent of the mother, though sub-s.(8) states "Nothing in subsection (4) shall be construed as making unnecessary the obtaining of any . . . consent that . . . may be required otherwise than under this Act . . ." I assume that that means, if it means anything at all, which I doubt, that the doctor is guilty of assault but not of procuring a miscarriage. This hardly scratches the surface of the abortion problem, and probably makes no difference to the present situation (apart from complicating it) in which most doctors will already perform therapeutic abortions, on the understanding that the Bourne principle applies not only to s.209 but also to s.237.

The Bourne principle stretches it not only to the preservation of life but to the preservation of the mother's health. With respect to the provision concerning abortion in the act of birth, he did not like the bill. He said: Take section 209, and take out the words "in the act of birth", which give the doctor the right to do what this bill prescribes, and put the word "unlawful" in section 237 to make sure a doctor cannot do it illegally. Then, he says, you arrive at the intention of the bill.

● (12:40 p.m.)

I agree I am speaking at some length on this subject but it is an extremely technical