

Criminal Code

Mr. Garson: No, it is something more than mere loitering. A very slow window-shopping expedition is in itself just loitering, but the offence under 160 (a) is loitering and obstructing at the same time, and I would judge a more continuous offence than impeding or molesting, which could be just a single act of impeding or molesting.

Mr. Nesbitt: It is a continuing offence.

Clause agreed to.

On clause 161—*Obstructing officiating clergyman.*

Mr. Knowles: Some of the wording of this clause is rather wide. I refer particularly to 161 (2) which reads:

Every one who wilfully disturbs or interrupts an assemblage of persons met for religious worship or for a moral, social or benevolent purpose is guilty of an offence punishable on summary conviction.

I read that in association with some of the other parts of the clause, and to me it leaves it rather wide open as to what disturbs such an assemblage. The reference is not merely to a religious gathering where one may expect a certain amount of solemnity, quiet and so on. What about a political meeting or a session of the House of Commons, and so on? Does it not go rather far?

Mr. Garson: I would not say so. There is no change in this law. This clause is a combination of sections 199, 200 and 201 of the present code, and there is no change in the law. It has been on the statute books for many years, and as a matter of fact I think it is seldom invoked.

Mr. Knowles: The fact that it has been on the statute books for many years does not necessarily make it good. The minister says that it is seldom invoked. Should we retain legislation which does not seem to have any usefulness?

Mr. Garson: I would not agree that a clause that may not be invoked very often but which would be needed badly when it did have to be invoked should be done away with. We are fortunate that we do not have to invoke it, but I would think any person who disturbs or obstructs a religious meeting should be considered as doing an improper act.

Mr. Knowles: I think there is a distinction that can be drawn between religious and other meetings. This clause goes far beyond religious meetings. Subsection 3 refers to everyone who, at or near a meeting referred to in subsection 2, wilfully does anything that disturbs the order or solemnity of the meeting. It might be a political meeting held in the constituency of Marquette at which the Minister of Justice was speaking.

Mr. Garson: I thank my hon. friend for the compliment in regarding that as a moral or benevolent meeting.

Mr. Knowles: I cannot quite determine whether it would be moral, social or benevolent. In any case I hope it would not be immoral, anti-social or malevolent. If anyone at Shoal Lake or somewhere up in that part of Manitoba wilfully did anything that disturbed the order or solemnity of a meeting being addressed by the minister, he would be guilty of an offence punishable on summary conviction. I confess that if I happened to be at a meeting at Shoal Lake at which the minister was speaking it would be very hard for me not to do something which would disturb the order or solemnity of the meeting, and I am sure the minister would not want to crack down on me. He would probably be glad I was there to brighten up the meeting for him.

Mr. Abbott: I am not sure that that would do it.

Clause agreed to.

On clause 162—*Trespassing at night.*

Mr. Fulton: I do not propose to be an expert in this particular matter, but it has been represented to me that this section, whether deliberately or by accident, does embody to some extent the old common law offence committed by peeping Toms. I have a note here to the effect that up to 1949 the offence of peeping was generally considered to be a common law offence; but then in the case of *Frey v. Frederuk*—I am sorry I do not have the reference—its status as a common law offence was denied.

I am told that the commission's draft, amended by the special committee of the house last year and now incorporated in this bill, just covers the common law offence of trespassing. Clause 162 created an offence very similar to trespass. It reads:

Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction.

The point which my informant makes is that we should no longer just try to codify the old common law offence of peeping on the basis of trespassing, when it has been decided that peeping is not actually a common law offence and does not have any status under our Criminal Code. In other words, if I read this note correctly what is suggested is that if the offence of peeping is intended to be covered, it must be covered far more specifically than is done by this section.