

Criminal Code

that the word "wilfully" does not fully cover the situation. Perhaps the best way to get my point across is to read the clause as it now stands, and for my purpose I will read subparagraph (c) of clause 120, and then I will read it as I think it should be worded.

Subparagraph (c) of clause 120 reads as follows:

Every one who causes a peace officer to enter upon an investigation by wilfully

(c) reporting that an offence has been committed when it has not been committed, is guilty of an indictable offence and is liable to imprisonment for five years.

It seems to me that even with the five year penalty, let alone the higher penalty suggested by the hon. member for Prince Albert, it would be better if the clause read as follows:

Every one who causes a peace officer to enter upon an investigation by wilfully

(c) reporting that an offence has been committed when he knows that it has not been committed, is guilty of an indictable offence and liable to imprisonment . . .

—for whatever period the law might suggest. Perhaps it all turns on the different interpretation we place upon the meaning of the word "wilfully". The minister seems to feel that what I am suggesting comes under the term "wilfully", but when such cases go to court it will not be the minister's definition of the word, or my own definition, but rather the definition which the court places upon it which will be the important one.

In explaining my suggestion with regard to clause 120, I chose subparagraph (c) because that was the one I thought would better enable me to spell out the idea I had in mind; but the same wording could be incorporated into subparagraph (b), although it might perhaps require more extensive wording.

The Chairman: Shall the clause carry?

Some hon. Members: Carried.

Mr. Diefenbaker: Would the minister not care to comment on the question of penalty?

Mr. Garson: The difficulty with regard to the penalty is this, that under the new code we are now considering we have adopted a certain number of penalties, five years, 10 years and so on, and in order to follow that general plan as applied to this particular case, and if we did not adhere to the penalty of five years, we would have to increase it to 10 years. I believe my hon. friend will agree that the cases in which the police are misled by a false statement to the effect that a crime has been committed when it has not been committed, as a rule do not have associated with them the almost unique circumstances of the case which he mentioned, when the person who was misleading the police was

[Mr. Knowles.]

trying to do so with the distinct ulterior motive in mind of leading them on a false trail away from his own guilt. In the great majority of cases that element is not present, and I would think that when that element is not present five years is adequate in the case of a man who has misled the police. Five years in the penitentiary is quite some time out of a man's life, and for the majority of offences of this kind I would think that such a penalty would be quite adequate.

Mr. Diefenbaker: I realize the trend today is in favour of lower maximum sentences.

Mr. Garson: Yes, that is correct. We can give consideration to the hon. member's suggestion but I would be inclined to think we would probably come to the conclusion that five years is adequate under this section in relation to the people who are likely to be convicted under it.

The Chairman: Shall the clause carry?

Mr. MacInnis: Mr. Chairman, I would like to say something on this clause along the lines taken by the hon. member for Winnipeg North Centre. The clause reads:

Every one who causes a peace officer to enter upon an investigation by wilfully . . .

But surely anyone who goes to a police officer and asks him to make an investigation does so wilfully, unless he does it under duress, which is hardly possible. As the hon. member for Winnipeg North Centre has pointed out, a person might do such a thing wilfully and yet not do it with any evil intent. If the Minister of Justice thought something had been done and he went to a police officer and said, "I believe something has been done and I think you should investigate it," and he had no evil intention in requesting such an investigation, he is still doing it wilfully, but I do not believe he should be punished for what he has done. I believe the hon. member for Winnipeg North Centre has an important point here. Like him, I am not conversant with legal terminology—

Mr. Knowles: That is to our advantage.

Mr. MacInnis: Well, it may be, but if you are in the clutches of the law it is better if you have a knowledge of the law. I believe an amendment to subparagraph (c) of clause 120, along the lines suggested by the hon. member for Winnipeg North Centre, should be considered.

Mr. Garson: Mr. Chairman, as I have already stated, it has been the law, as established by decisions in the courts, that in cases of this kind on a charge for a common law offence, the crown has to prove two ingredients, first, it has to prove that the statements which the accused made to the police officer