

Criminal Code

The Chairman: Shall clauses 2 and 3 carry?

(Translation):

Mr. Eudes: Mr. Chairman, just a word about section 3 of Bill C-58 which adds to the Criminal Code a new section, i.e. 5a, dealing with offences committed on aircraft while in flight, and with the matter of jurisdiction regarding such an offence.

Now section 419 of the Criminal Code already deals, in the chapter on "special jurisdiction", with the jurisdiction applying in respect of an offence committed on "water between jurisdictions", or during a journey on a ship or in an aircraft while in flight.

It would seem to me more logical that the new section 5a be nearer to section 419, as both deal with closely interconnected matters. I find it hard to understand why the new section 5a is placed between sections 5 and 6.

Section 5 of the Criminal Code deals mainly with the presumed innocence of the accused and with the punishment that can be imposed on those convicted of an offence.

Section 6 of the Criminal Code, chapter 51 of the Statutes of Canada, decrees that the provisions of this legislation apply throughout Canada, with two exceptions.

It therefore seems to me that section 5a would be better placed near section 419. To my mind, this could only improve the sequence of the numerous sections of the Criminal Code, which are surely not too clear already.

(Text):

Mr. Fulton: The reasons the proposed new section is placed where we suggest, namely following the present section 5, are two in number. In the first place my hon. friend will see that the present section 5, subsection 2 of the Criminal Code states as follows:

(2) Subject to this act or any other act of the parliament of Canada, no person shall be convicted in Canada for an offence committed outside of Canada.

We thought it was logical for us to place in the code immediately following that section this new section which shall create jurisdiction to try persons for an offence committed outside of Canada. That seemed to be the logical place to put it.

The second reason is this. If my hon. friend will consider the matter I think he will realize that section 419 deals exclusively with offences committed within Canada, and it is only a question of jurisdiction in effect as between the provinces of Canada in that regard. That is with respect to offences committed within Canada itself. However, the clause we are now discussing deals with

offences committed outside of Canada. For both these reasons it seemed that the logical place to put this section would be immediately following section 5 of the code, particularly because of the provision of section 5 (2).

Mr. Aiken: There is one point that troubles me about this definition of "in flight". Perhaps the minister can clear it up for me. In relation to the high seas, the commander or the master of a ship has always had jurisdiction to act. I understand that this is a somewhat parallel situation. What bothers me is this. What jurisdiction will the parliament of Canada have to enact criminal legislation with respect to persons who may be in flight but are still within the confines of a foreign country?

Take the example of an aircraft setting off from Paris on a non-stop flight to Canada. An offence takes place while the aircraft is still within the confines of France. Normally international space between two countries is a void which legislation must cover, and I think it can be covered; but I wonder if there has been any international treaty or understanding as a result of which jurisdiction may be conferred between one point and another even though one of those points may be within the physical confines of another country. It follows that if we attempt to enact criminal legislation applying to aircraft within a foreign country, such other country may attempt to enact similar legislation applying to Canada. This troubles me, and I should like to have the situation clarified.

Mr. Fulton: The difficulty is that there is no international agreement, treaty or convention covering offences or crimes committed on aircraft while aircraft are in flight. That is why we are here taking what is admittedly unilateral action; it is because we realize that there is a gap in our law with the results I described in my statement made the first thing this morning. In order to cover the whole area, we wish to correct this omission. We say that Canada shall have jurisdiction to try a person for an offence committed on an aircraft whose flight terminates in Canada if that offence was committed while the aircraft was in flight, and by the words "in flight" are meant the point when the plane began to move under its own power for the purpose of take-off until it comes to rest.

I agree that if a person committed an offence while the aircraft was still running along the runway for the take-off, say in France, that would be an offence for which the person could be committed for trial in Canada if that aircraft landed in Canada with that person still aboard, even though the

[Mr. Fulton.]