

was in it without the intention of setting it in motion. The words now are:

Provided that any person who while intoxicated or under the influence of any narcotic occupies the seat ordinarily occupied by a person driving a motor vehicle shall be deemed to have the care or control of the said motor vehicle unless the said person establishes that he did not enter or mount the said vehicle.

If the words "enter or mount" were changed to the words, "unless he establish that he was not in the said vehicle" he would then be in the position in which I think the minister wants him to be. It would enable a person to show that, having entered an automobile with the intention of setting it in motion, he had not done so, or, having done so, had ceased to keep it in motion. I would think that change would enable the person to set up a defence which might exculpate him in circumstances where he would necessarily be condemned if he had entered the car with the intention of setting it in motion, whether he did or not.

Mr. ILSLEY: It may logically be so, but would it not really mean that the section would become unenforceable. An accused person could step up and swear, "It is true I was in the car; it is true I was behind the wheel; it is true I was driving the car, or I entered it with the intention of driving it, but there came a time when I did not intend to drive it any more. I was drunk behind the wheel of the car; I had been driving it, but I stopped driving it and I did not intend to start the car again." I do not think he should get off under those circumstances.

Mr. HACKETT: Nor do I. If he said that he would be guilty.

Mr. ILSLEY: Not under the amendment suggested by the hon. gentleman. His suggestion is that the section be amended so that it will read, "unless the said person establishes that he is not in the said vehicle for the purpose of setting it in motion." That would enable him to say, "True, I got in for that purpose and I drove it; I was drunk at the time and drunk before I got in, but there came a time when I decided not to drive it any more. I am testifying to that; nobody can deny that was my state of mind and, therefore, I am not guilty." That man ought to be held to be guilty.

Mr. HACKETT: I am not going to carry the argument much farther, but I do not think my suggestion lends itself to that interpretation. If a man were driving a car I do not think it would be open to him to say that it was not his intention to do so. What I am endeavouring to do is to protect the person

who, having entered a car with the intention of driving it, was not driving it, in that it was still at the moment of the collision or whatever happened.

Mr. ILSLEY: Is the hon. gentleman suggesting that he never drove it, that he entered the car and did not drive it at any time?

Mr. HACKETT: He may have driven it, but he had ceased to drive it. As I interpret this amendment, it merely means that the man having entered the vehicle for the purpose of setting it in motion, a situation is created from which he cannot escape. My suggestion is that, having entered it with the intention of setting it in motion, if he ceases to keep it in motion, then he may escape.

Mr. ILSLEY: I think that is a bit fine spun to incorporate into legislation. If a man is drunk and gets in a car, while he is behind the wheel of that car I think he comes within the spirit of the original section which was that he should be convicted if he had the care and control of the car while intoxicated. It should not be open to him to say, "I was too drunk to be said to have the car under my control even though I was sitting behind the wheel." It should not be open to him to be able to say that.

Mr. HACKETT: My suggestion was not that he be able to avail himself of the suggestion set forth by the minister.

Mr. MILLER: Is there any other section in the criminal code under which a man may be convicted of an offence when, under the statute, he is guilty only of the intention to commit an offence? That is what this amendment does. If a man gets in a car and intends to drive it and does not drive it, under this amendment he is guilty of an offence although he is guilty actually of only the intention to commit an offence.

Mr. ILSLEY: He is not to be convicted of intent only; he is being convicted of intent plus the act. The act is taking custody of a car, being in the car, having the car under his care and control while he is drunk, plus the intent of setting the car in motion after he got into it.

Mr. CHURCH: The explanatory note to this section states that the amendment is made following recent court decisions to the effect that a driver may be too drunk to have the care or control of a motor vehicle. There is a great need for a drastic revision of this particular section which is amending subsection 4 of section 285, as enacted by section