

*Criminal Code*

a quotation from the "Criminal Law Quarterly". I don't mind saying that although the government added another eight clauses, I was not allowed to add one word, the word "unlawfully", to section 237. My amendment was ruled out of order. This is beyond my comprehension, and not only beyond my comprehension but the comprehension of many professors teaching criminal law in universities in Canada.

I should like to refer the house to page 385 of the Criminal Law Quarterly, volume 10, for 1967-68:

Under section 209 of the Code (with the proposed amendment) 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.

Surely, those words refer to miscarriages and abortions.

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.

Then, Professor Mewett goes on to deal with section 209, the section that my good friend the Minister of Justice and the law officers of the crown say has nothing to do with a miscarriage or an abortion. We are dealing here with doing away with the foetus prior to its becoming a human being. If that is not a miscarriage, then there never was a miscarriage. He says:

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 subsection (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 section 209 but also to section 237.

In other words, Mr. Speaker, to understand what the Criminal Code means by an abortion and by a miscarriage, sections 209 and 237

must be read together. Then, Professor Mewett goes on to say this:

It will leave entirely untouched the problem of an unmarried pregnant woman, the victim of rape, or the respectable married woman who just doesn't want a child. If that is all that it really does, a pregnant woman would be advised to wait until the onset of labour and have the child disposed of under section 209 without the rigmarole provided for by section 237.

What is the Professor talking about, Mr. Speaker? Very simply this. He says that section 209 makes an exception. When in their great wisdom the minister and his officers added the words "in the act of birth", it enabled a doctor in good faith to cause the miscarriage of an unborn child only after the onset of labour pains. I want to be fair to the law officers and say the amendment to section 237 was made in light of the fact that the abortion committee would have to give a certificate for the performing of an abortion. The committee would recommend that a doctor in an accredited hospital perform a miscarriage after the onset of labour pains.

What would be the position if doctors were really ruthless about this? My good friend—and others apparently agree with him—says that the section does not apply to a miscarriage or an abortion. But what would happen in fact? If a woman wanted an abortion she would forget about the abortion committee, the accredited hospital and the committee's certificate. She would wait until she experienced labour pains, then the unborn child could be destroyed and that would be a miscarriage. This was the very reason section 209 was amended. I had suggested removal of the words "in the act of birth" from section 209 and the insertion of the word "unlawfully" in section 237. In that way, the public and the doctors would have been protected.

This party was elected, so it says, in order to bring in this legislation. Hon. members opposite say they have a mandate to introduce amendments concerning homosexuality and abortion, and that no one will stop them from doing so.

• (9:50 p.m.)

Section 209 is applicable only to the death of a child in the act of birth. Where would you be left if you take out the words, "in the act of birth", from section 209 and add the word "unlawfully" to section 237? Perhaps I should put it this way. If you added the word "unlawfully" to section 237, you might then have some protection under our law. When amending the Criminal Code in 1953 another