

Criminal Code

When performed at the time of natural birth, it is not an abortion.

[Translation]

Mr. André Fortin (Lotbinière): Mr. Speaker, I would just like to put a question to the minister on a particular point before delivering my speech, if the rouse agrees. The minister referred earlier to the famous Bourne case. As far as section 209 is concerned, I would like to ask him, in connection with what the hon. member for Calgary North (Mr. Woolliams) stated, whether it would be fair to say, to clear up the matter, that for several years, Canadian and British courts have been constructing in a broad way this qualification stated in section 209 (2) of the Criminal Code—the minister is speaking of—so that it would be generally accepted that, to save the mother's life, it would not be necessary to wait until the mother runs an immediate risk of death. In the famous Bourne case, the ruling of the judge was—if I remember well—that the doctor had a right to procure a miscarriage for his patient, if it was his conviction that the pregnancy could probably result in ruining her physical and mental health. Does the minister take into account the proposed amendment to the bill? Is it in keeping with that precedent? Would the Bourne case constitute a legal precedent?

• (3:20 p.m.)

Mr. Turner (Ottawa-Carleton): Mr. Speaker, my simple answer is no.

The Bourne case was a case of rape, following which the woman had become pregnant and the doctor had agreed to perform an abortion. The actual facts must be considered in that Bourne case. The rape was committed on April 27, 1938, and the abortion performed on June 14, 1938, which leaves an in-between period of about seven weeks. That is a typical case of abortion.

Section 209 rather applies to an operation; or to actual facts in the natural act of birth of a child. Therefore, the Bourne precedent does not apply to the circumstances as defined in section 209.

Mr. Fortin: Mr. Speaker, may I ask a supplementary question my earlier interpretation which to my mind, constitutes a precedent, was corroborated by the famous *Newton vs. Stongo* case, which is found at page 469 of the *Criminal Law Review*. In that famous case, it was specified that protection of a woman—

Mr. Speaker: Order. I must remind hon. members that we are not in committee. If the

[Mr. Turner (Ottawa-Carleton).]

hon. member for Lotbinière wishes to deliver a speech, he has the right to do so, but at this stage, he can only ask a question.

Mr. Fortin: Thank you, Mr. Speaker.

My argument is borne out by the famous *Newton vs. Stongo*, case, when it was specified that the word "health" meant the physical health as well as the mental health of a woman. Can the minister tell me whether my interpretation of that precedent is correct?

Mr. Turner (Ottawa-Carleton): Mr. Speaker, I do not believe I am in a position at this stage to analyse the entire British jurisprudence. I did my best in an attempt to explain the difference between section 209 and section 237 and I cannot add anything more to the evidence I gave a few weeks ago before the committee on justice and legal affairs.

Now, if the hon. member wants to know my innermost thoughts about this, he will find them there.

[English]

Mr. P. B. Rynard (Simcoe North): The semantics of legal affairs leave me somewhat mixed up, Mr. Speaker, and I think it would be as well to look at the medical side for a moment. After all, this is a medical problem and we are dealing with people.

I did not understand the minister clearly, if he was clear, when he spoke about what would be done in the case of an alleged rape reported a month or six weeks after the event when the woman found she was faced with a pregnancy. It is my opinion, and I believe it is the opinion of the medical profession generally, that after five days, once the foetus attaches itself to the uterus, a human life is begun. In the hospitals today doctors are engaged in saving every human life in utero they can, and I can see very little difference between the abandonment of a life in utero and ex utero. We are now able to treat babies in the uterus itself when necessary. We are treating them for the Rh. factor and other conditions, and recently we have discovered a vaccine for the treatment of rubella which, when administered to the mother, will prevent deformation of the new-born infant. We are working to preserve life. Regardless of what the hon. gentleman's opinions are, life starts once the foetus attaches itself to the wall of the uterus.

Mr. Turner (Ottawa-Carleton): On a point of order, Mr. Speaker, I did not get into the question of when life starts or does not start.