

Criminal Code

120, which was being considered when we last met. Clauses 120 and 121 were called and I think in the general confusion were passed. We are now at clause 122 unless there are some observations to be made with regard to clauses 120 and 121.

Mr. Knowles: Has the minister anything further to say with regard to the suggestion we were making with regard to clause 120 when the committee rose last time?

Mr. Garson: There was some discussion by the hon. member for Winnipeg North Centre and myself with regard to clause 120. If I understood him correctly he was afraid that a man innocent of any real criminal intent might perhaps be convicted under clause 120. I took the position that the use of the word "wilfully" indicated, as indeed the cases upon this offence show, that the crown in a prosecution must establish that the incorrect statement which the accused made was false to the knowledge of the accused and that he had made it deliberately or, as the section says, wilfully in order to mislead the police officers.

I indicated in my remarks when we were last discussing this matter that we do not think that there is any necessity to amend the wording of clause 120. All that we could do would be to spell it out and we think it is quite clear as it is. If the hon. member for Winnipeg North Centre is willing to accept it we are quite content to leave it.

Mr. Diefenbaker: How frequently have there been prosecutions under this section?

Mr. Garson: As is indicated on the opposite page, this is a new section.

Mr. Diefenbaker: Previously it was under the common law.

Mr. Garson: Yes. When we consulted the law officers of the provinces to find out what common law offences had been dealt with during the past sixty years we were told that sometimes they charged the offence of public mischief but in almost every case it was of the nature that we are discussing, that is, it was a case where false information had been given to the police of the commission of a non-existent crime which had caused them to go off on a wild goose chase. I would not say that there were frequent charges, but there have been a considerable number of them in most provinces.

Mr. Diefenbaker: I know of one or two. In one case the man who gave the statement was himself the murderer and as a result the law officers of the crown were going back and forth across the country for weeks on end. He made the statement in an apparent

desire to assist them in locating and apprehending the murderer. This case happened in Saskatchewan. There was another case in Ontario some years ago, either in the county of Grey or in the county of Bruce. A similar state of affairs prevailed.

I am wondering whether the penalty is heavy enough. Five years is given as the maximum penalty. When an individual is endeavouring to saddle someone else with a murder, I do not think the penalty is heavy enough.

Mr. Garson: Especially if it is his own crime.

Mr. Diefenbaker: Yes. I feel that the penalty is rather too low. As I recall the case in the province of Ontario, the penalty that was imposed there under the common law was seven years. In the case to which I have referred in the province of Saskatchewan, which occurred about 20 or 25 years ago, the actual murderer assisted the crown for a considerable time in their search for the murderer as designated by the person who in fact had committed the homicide. It is interesting to note that after this man was convicted and sentenced to a term in the Prince Albert penitentiary the crown was unable to obtain sufficient evidence to convict him of the murder even though he confessed, his confession being ruled out. On leaving Canada he went to Great Britain and there committed another murder for which he was executed three or four years ago.

I would suggest to the minister that five years' imprisonment is not a very heavy penalty to impose on one who, in order to mislead the police, and to remove the cloud of suspicion that may rest upon him, takes it upon himself to give information of a totally false nature against another, and innocent, person. I do not very often suggest that penalties under the code should be increased, but I do believe this is one penalty the minister should bring under consideration.

Mr. Knowles: I do not wish to comment on the suggestion made by the hon. member for Prince Albert as far as increasing the penalty is concerned, but it seems to me that his suggestion underlines the objection I have taken to the wording of clause 120. Even as the clause now stands the five year penalty is rather severe if the person who is guilty of an infraction according to the clause is in the position of not knowing whether an offence has been committed.

Mr. Diefenbaker: Does not the word "wilfully" cover that?

Mr. Knowles: That is a point that lawyers and non-lawyers can argue about, but my understanding of the wording makes me feel