

Mr. McMASTER: I should like the minister to tell us in what way he thinks he is strengthening the section, or in what way it is better than the original one. It states:

(4) Everyone who, while intoxicated or under the influence of any narcotic, drives any motor vehicle or automobile, or has the care or control of a motor vehicle or automobile, whether it is in motion or not, shall be guilty of an offence.

Surely that section is as clear as it can be. If the accused person has the care or control he is guilty, whether it is in motion or not. I know a court has decided that if it was not in motion and the man was drunk there was nothing to show that he had it under his control.

Mr. ILSLEY: Right.

Mr. McMASTER: But I cannot see how we have made it any stronger by this amendment. The way it is now, the only difference it makes is that the onus is thrown upon a man, and it must have been on him before.

Mr. ILSLEY: No.

Mr. McMASTER: He was guilty if he was sitting in the car.

Mr. ILSLEY: No.

Mr. McMASTER: In the amendment the only difference is that he can get up and say that he did not enter the vehicle to set it in motion. He may have had it in motion, and may have stopped a moment. He may have been under the influence, but if he says he did not mount it for the purpose of starting it he is free. It should be stronger than that, if we are ever to get a court to make a conviction.

Mr. ILSLEY: The only way to make it stronger is to leave out the concluding words, "unless the said person establishes that he did not enter or mount the said vehicle for the purpose of setting it in motion." If we leave off those words we expose a person who accidentally, in a drunken stupor, gets into a car to go to sleep, or something of that kind. He is left open to a conviction. That person never did have the control of the car, and he should be given an opportunity of showing that he did not enter the car or get on the motorcycle, if a motorcycle is involved, for the purpose of setting it in motion, and that he was not in the car for that purpose at all. That should be a defence to such a person.

But if those words are left off everyone would be subject to conviction.

Mr. McMASTER: Those words were not in the old act. If he was in it, whether it was in motion or not, he was supposed to be guilty of the offence.

[Mr. Church.]

Mr. ILSLEY: No, with deference, I think the hon. member is wrong. Before this amendment, if his state of intoxication were sufficiently advanced the courts in many of the provinces held he did not have control of the motor vehicle. It is no longer open to an accused person to defend himself on those grounds. The early words in this proviso take that defence away from him. But they leave a defence to a person who, having got into the car for the purpose of setting it in motion, goes to sleep.

Mr. McMASTER: It takes away a defence that was not very strong and gives him a defence that is strong.

Mr. ILSLEY: No.

Mr. MILLER: I return to the point I tried to make a moment ago. It seems to me that a man who is drunk and stops his car on the side of the road for the same purpose, namely to sleep it off, should be in just as strong a position as the drunken man who got into the car, not intending to start off with it. The other man got into the car with the intention of driving it. He does drive it for a distance and finds he is incapable of doing so. Therefore he wisely drives off to the side of the road. I say he should be protected just as much as the drunken man who gets in but does not start the car at all.

Mr. ILSLEY: The hon. member's argument leads to this conclusion, that we should not change the section at all. Perhaps we should not. But certainly we have been severely criticized by the courts for not changing it. There is a recent judgment of a judge in the supreme court of New Brunswick which is most caustic in its reference to the law-makers. The reason is obvious.

If persons accused of driving a car while intoxicated can go into a court and say, "I was too drunk to be guilty," it shocks the public; indeed it shocks us all, I believe.

Mr. MILLER: I hold no brief for the drunken driver; I hate him. I do not like defending them, either in court or in parliament. But I believe that if we are giving a break to the man who gets in and does not start the car, the man who uses his head and, when he finds he is drunk, is wise enough to stop, should be protected possibly more than the other chap.

Mr. HACKETT: I am going to suggest that the words which have been used to indicate that the man entered the automobile be changed. It does not seem to me that it makes much difference what his purpose was on entering the automobile, so long as he