

CRIMINAL CODE APPLIES TO CHARGES

Opinions of Counsel Given on Culpability of Principals

VIOLATIONS OF THE LAW

Sir, Allen Aylesworth, Mr. Geo. H. Watson, K.C., and Mr. H. H. Dewart, K.C., Advise Mr. Proudfoot Regarding the Matter.

A new aspect of the Proudfoot charges was developed in the Legislature during the debate on the report of the Committee on Privileges and Elections yesterday, when the member for Centre Huron produced opinions of eminent counsel as to the application of the criminal code to the charges.

Mr. Proudfoot read from a letter by Mr. H. H. Dewart, showing the position which the Provincial Secretary occupies in the eyes of the law, but for the limitation of section 1,140 of the code in respect to time. The letter reads in part:

Mr. Dewart's Opinion.

"You understand quite as well as I do the effect of section 158 (1) of the criminal code, which makes any contractor having or expecting to have any claim or demand against the Government liable to prosecution if he subscribes to a campaign fund. If you read this in connection with section 69 of the code, then the person who counsels or procures any person to commit an offence is equally liable. Reading these two sections together I have no reasonable doubt in advising you that Mr. Hanna was guilty of a criminal offence in receiving the \$500 Taylor subscription. He cannot, however, be prosecuted now, because under section 1,140 of the code this offence cannot be prosecuted after the expiration of two years from its commencing.

"I regret exceedingly that I was not able to go into certain questions which might have put the case upon its proper footing. Under section 156 of the code a member of the Legislature who 'corruptly accepts or obtains, or agrees to accept or attempts to obtain for himself or any other person any money or valuable consideration, office, place or employment on account of anything already done or omitted, or to be afterwards done or omitted, by him in his judicial capacity as such member' is guilty of an offence. There is no limitation as to the time for prosecution under this section. If we had been able to get out the facts I am satisfied the case would stand upon an entirely different footing.

"If the committee had desired to know the truth, the record of Mr. Thorne, made when the transaction was fresh in his mind, would have supplied the evidence. The investigation of all the contemporaneous facts would have materially assisted in discovering the truth that the people wanted to know. I venture the suggestion that the people who are anxious to get at the truth will not approve of the strict application of the rules of evidence that were never intended to be invoked in this class of investigation."

An Indictable Offence.

Mr. George H. Watson, K. C., also contributes.

I have been asked whether assuming the statement and charge by you with reference to the payment and receipt of the \$500 to be established in evidence an offence could properly be said to have been committed under the provisions of section 158 of the Criminal Code. I am of the opinion that in such case the provisions of section 158, subsection 1, would be applicable, and in answer to your further question bearing thereon, I am of opinion that under section 69 of the Criminal Code anyone else who participated therein would be guilty of the same offence.

In answer to your further question I am of the opinion that if it should be established that a member of the Legislature corruptly accepted or obtained, or agreed to accept or attempted to obtain for himself or for his political party by way of contribution any money or valuable consideration on account of anything already done or omitted, or to be afterwards done or omitted, by the member in his capacity as such member, would he be guilty of an indictable offence under section 156 of the Criminal Code.

Sir Allen Aylesworth.

Sir Allen Aylesworth on May 5 wrote Mr. Dewart:

I have been concerned in a good many controverted election trials. It would be an astonishing thing to me to have it suggested that counsel for the sitting member, by admitting that some payment had in fact been made, could shut out all evidence of the accompanying conversation, or of all the surrounding circumstances and details. Such evidence is necessarily the very gist of the whole matter if any determination is to be made of the question whether or not such payment was corrupt.

Or, if you had under trial an action to set aside some transaction as fraudulent where the question would be the intention with which the transaction had been entered into, an admission by counsel that the transaction impeached had in fact taken place would not in the least degree conclude the inquiry. The whole question in issue, viz., whether the transaction was fraudulent or honest would remain to be determined, and the only means of determining it would be by evidence of all the circumstances leading up and attending the transaction, as it would be only by consideration of such circumstances that a judgment could be arrived at in regard to the motives and intention of the parties.