

## CRIMINAL CODE BILL

## SECOND READING

Hon. **RAOUL DANDURAND** moved the second reading of Bill 96, an Act to amend the Criminal Code.

He said: Honourable senators, the first clause of this Bill repeals section 98 of the Criminal Code. A measure for the repeal of this section has been passed by the House of Commons on a number of occasions and rejected by the Senate. In the last election campaign the section was attacked from various angles, and its repeal was one of the planks of the Liberal party.

From a memorandum that I have here I will attempt to give a brief history of the section.

During the War, in Canada as well as in other countries engaged in the struggle, there were, under War Measures Acts here and elsewhere, special rules, special regulations and special orders which were in themselves infringements of the liberty of the citizen. In times of war such measures have to be resorted to. But it must be done in such a way as to safeguard the liberties and the rights of private citizens. At all events, after the War was over, these enactments disappeared from the administration of other countries, but they were replaced in Canada in 1919 by section 98 of the Criminal Code. Honourable members will recall an agitation in Britain about that famous war-time Act called *Dora—Defence of the Realm Act*—which was finally repealed. The same thing happened everywhere. I call attention to some of the provisions of Order in Council P.C. 2384 of the Dominion of Canada, enacted under the War Measures Act. In this Order in Council, dated September 25, 1918, the provisions of section 98 are recited almost word for word, but always with this qualification at the end of every section of the order, "while Canada is engaged in war." You find that in section (b) of the Order in Council, which speaks of associations or organizations the purpose of which is to bring about any governmental, political, industrial or economic change—a most identical with the phraseology of section 98, but with these additional words: "while Canada is engaged in war."

In 1919, after the War, and after the troubles that occurred in Winnipeg, the Government of the day appointed a parliamentary committee to consider amendments to the Criminal Code, and that parliamentary committee brought in the report upon which section 98 was based. Since then continuous attempts have been made for the repeal of this section.

Hon. Mr. **GORDON**: By whom have continuous attempts been made?

Right Hon. Mr. **GRAHAM**.

Hon. Mr. **DANDURAND**: Organized labour in Canada. The Trades and Labour Congress of Canada at every annual meeting has passed a resolution asking for the repeal of this section. No one was more persevering in that demand or more eloquent in presenting it than Mr. Tom Moore, who was then president of the Trades and Labour Congress of Canada. Mr. Moore has, I believe, the confidence of everybody in Canada.

What are the reasons for the repeal of section 98? First, we believe it is dangerous to perpetuate in peace-time enactments which are war-time measures and designed to meet special emergencies due to some extent to the natural panic which exists in time of war. The danger is mainly because of the precedent which is created. If we can put aside the ordinary rules of law on a matter of this kind, why not put them aside on other matters as well? And this creates a precedent that might be harmful under other circumstances. There are things in this section which are not susceptible of defence. To say that the police may authorize any private citizen to search my home, or the home of anyone in Canada, on the mere suspicion that they may find literature which is objectionable, is contrary to all principles of law the world over. I think everyone will agree that the separation of powers is a necessary guarantee in the administration of justice. It is not right that the police, who are entrusted with the duty of carrying into execution the orders of the court, should become the court itself. The police are clothed with some judicial powers when they are permitted to authorize any private citizen to search premises for the purpose of finding literature. This cannot be defended.

This has given rise to many incidents which certainly cannot be considered as fair. In Western Canada during the War, under the provisions of a similar Order in Council, people of foreign language saw their bibles confiscated because they were printed in a language which the police could not understand. A man was arrested because he had in his possession a copy of Plato's Republic.

Right Hon. Mr. **MEIGHEN**: That was not under this clause.

Hon. Mr. **DANDURAND**: It was under an Order in Council.

Right Hon. Mr. **MEIGHEN**: No. That was under something entirely different.

Hon. Mr. **DANDURAND**: In the United States, under a similar provision—

Hon. Mr. **GORDON**: But Americans are not under section 98.