

of himself giving that authorization on the pretence of an emergency.

On that point I would like to recall that at the time of the so-called emergency during the October crisis, never in this House did any party actually prove there was a state of emergency. We were told that the country was in great danger, but, Mr. Speaker, the government has played at politics as if it were a ping pong game, when under the cover of urgency, a minister or attorney general will grant a permit to use such devices, what powers will Parliament, which has the power to pass this act, have to ask the minister to explain this urgency? That is another weakness of this amendment, Mr. Speaker, and this is why I shall use all my strength to fight against it so that the judicial power instead of the political power be respected in the administration of justice.

[English]

Mr. Knowles (Winnipeg North Centre): Mr. Speaker, further to the remarks of my colleague from New Westminster (Mr. Leggatt), may I simply point out that if motion No. 3 in the name of the right hon. member for Prince Albert (Mr. Diefenbaker) is carried, then of course amending motion No. 11 will be functus. But in the meantime we are opposed to it.

The Acting Speaker (Mr. Boulanger): Is the House ready for the question?

Some hon. Members: Question.

Mr. Atkey: On a point of order, Mr. Speaker, and further to the matter raised by the hon. member for Winnipeg North Centre (Mr. Knowles), I think it should be made perfectly clear that this in effect is simply a housekeeping amendment. As the minister well knows, many of us in this party are opposed to the clause and in fact are in favour of the amendment proposed by the right hon. gentleman from Prince Albert (Mr. Diefenbaker). However, if that amendment fails we would prefer to be stuck with the draft now proposed by the minister, which is correcting a clerical error made in reporting back from the committee.

The Acting Speaker (Mr. Boulanger): All those in favour of the said motion will please say yea.

Some hon. Members: Yea.

The Acting Speaker (Mr. Boulanger): All those opposed will please say nay.

Some hon. Members: Nay.

The Acting Speaker (Mr. Boulanger): In my opinion the yeas have it.

And more than five members having risen:

The Acting Speaker (Mr. Boulanger): Pursuant to Standing Order 75(11), the recorded division on the proposed motion stands deferred. We will now deal with No. 13.

Hon. Otto E. Lang (Minister of Justice) moved:

Protection of Privacy

No. 13. That Bill C-176, an act to amend the Criminal Code, the Crown Liability Act and the Official Secrets Act, be amended by

(a) adding immediately after line 29 at page 9 the following:

"Judge may rule evidence admissible (2) Where in any proceedings the judge is of the opinion that any private communication or any other evidence that is inadmissible pursuant to subsection (1) is relevant and that to exclude it as evidence may result in justice not being done in the matter to which the proceedings relate, he may notwithstanding subsection (1), admit such private communication or evidence as evidence in such proceedings."

(b) by striking out line 30 at page 9 and substituting the following:

"Application (3) Subsection (1) applies to all"—
to Sub-
section (1)

He said: Mr. Speaker, this amendment which I propose is designed to assure that if credible and relevant evidence is available in the case of a crime being tried in the courts, it can be brought before the courts and weighed by the courts in the determination of the result in that situation. In the course of deliberating upon the question of privacy, a committee of the House of Commons some years ago began examining the question of whether or not in any circumstances evidence ought to be excluded when it is associated with an invasion of privacy, which is being made illegal, essentially, in a criminal way for the first time by this bill. The question was therefore discussed in the committee at the initial stages when the subject matter was before it, in the committee of the last session and again in this session.

• (2030)

The government, in examining the report of the committee in 1969, agreed to go so far as to include the provision in the bill that the actual private communication itself, if intercepted, should not be used later as evidence in a proceeding if it had been intercepted in an unlawful manner. We did that with the view that we could in that way add emphasis to the impact to the importance of privacy, to the value we put upon protecting it. The committee in its deliberations most recently, and in the report which we have before us now, chose to consider and adopt an amendment which would go well beyond that and would exclude indirect evidence which might be obtained as a result of such unlawful interception.

There is no doubt about the good motives of the people involved in that type of proposition, just as there is not in the United States about the rule to exclude evidence obtained in an illegal manner, and generally where in the British tradition it does not exist. The origin of the rule is to add some additional sanction against illegal activity in regard to the evidence being adduced. Even in that regard the rules are unfortunate, because they raise the basic proposition that somehow the police are being rewarded or are profiting from the result of their activity, when it is illegal, if they can bring valid and important evidence before a court in a case which involves something quite different, a serious crime perhaps and someone who stands before the dock of justice accused of that crime. I do not take the view that we should consider it a reward to the