

Canada Evidence Act

not help the Crown? I am only asking these questions and not prejudging the issue.

Mr. Turner (Ottawa-Carleton): The amendment will help both sides.

Mr. Woolliams: Well, I shall discuss that in a moment. As I say, we ought to look carefully at the amendment since in my view it will make the Crown, which already is powerful, more powerful at the expense of the accused. It is well known that in some criminal cases before the courts the accused tenders no evidence. The onus is on the Crown. The defence counsel cross-examines the Crown witnesses and if the Crown has not discharged the onus and established a prima facie case, out goes the charge. Who is really concerned and worried about this? Has the minister had submissions from the local Attorneys General of the various provinces? Has somebody in his department become concerned about prosecutions they will not be able to win because of some weakness?

● (4:00 p.m.)

Mr. Baldwin: Maybe there are some pending now.

Mr. Woolliams: Maybe there are some pending now, as the hon. member for Peace River (Mr. Baldwin) has said, and I would not be a bit surprised.

Mr. Turner (Ottawa-Carleton): The Canadian Bar Association.

Mr. Woolliams: I know the Canadian Bar Association went a long way. I am not criticizing it, but wait until we come to some of the other amendments. If one happens to be a corporate lawyer one looks at it differently from a Crown counsel. I am not saying that either attitude, in the field of philosophy or of jurisprudence, is right. It is all right for the minister to refer to the Canadian Bar Association, but I am not always complimentary to the associations to which I belong. I do not know if my friends to the left would agree with me but sometimes that association gets a little close to being a closed shop.

I am a little concerned about what will be done after the preliminary hearing of a criminal indictable offence. The police have a very good memory. But in the heat of a trial in the high court, when emotions get a little high, the truth comes out and it is discovered that the Crown has not got as good a case as originally wallpapered. As a result what they want to do is ask whether the witness did not

make such and such a statement, and then probably depend on the definition of a hostile witness.

A case may involve prosecution by a layman. We have seen laymen with great imaginations. I remember one case where a lady had been charged with causing a disturbance because she and a boy friend had been a little noisy after taking some liquor in a tent along the Assiniboia river. The question came up whether or not it was a disturbance and in giving his judgment the judge said, "I do not think the complainant was so worried about what she heard and saw as she was about what she did not hear and did not see." It may be that changing this section in this regard is not all that altruistic and commendable. Once again it is building an all-powerful state, an all-powerful Crown against a bankrupt accused. Most of the people who are charged with indictable offences do not belong to the affluent or just society.

The next question I am concerned about is the giving of evidence by affidavit in cases of banking and other financial institutions. I hope the committee will take a sincere look at this amendment. The clause reads:

Where a cheque has been drawn on any financial institution or branch thereof by any person, an affidavit of the manager or accountant of the financial institution or branch, sworn before any commissioner... shall be received as prima facie evidence—

I am always a little concerned about affidavit evidence. I always like to see the right to test the truth retained. The art of cross-examination is testing the truth.

We have all seen affidavits in civil matters. A client goes to a lawyer and completes an affidavit. Then another lawyer draws up an affidavit on the other side of the issue, and one wonders whether the two situations described are identical. The only way to get the right information is to examine carefully the terms of the affidavits, and to do that you might as well examine the persons who have sworn the affidavits. I want to make certain that when changes like this are brought in the right to test the truth will remain so that we can have conformity with the truth and fully verify the indisputable facts. We want honesty, integrity and truthfulness based on recorded information.

The minister may say that banks do not make mistakes. I wish to give an illustration. Two people with identical names were living in the same district. One had \$12,000 in a certain bank. I am not going to name the