

Canada Evidence Act

play in the reinforcement by judicial decision in this country of these two particular rules.

One is that a witness cannot be declared to be hostile unless the judge is satisfied in his own mind that the witness is in fact hostile and adverse, following which he may then be cross-examined. Very sound and practical rules for protecting the rights of the subject have surrounded this principle, which is not a statutory principle but one which has come to us over a great many years of practical application in the courts.

In the second place, I can understand why in our society today people may make declarations in writing, and this may even be extended to cover tape recordings at some time. I do not know whether the interpretation of the word "writing" is wide enough to cover this. I know that it does not have to be a writing signed by the person in question as long as it is something which has been reduced to writing. I throw this out as something that the committee may take up. Would this mean, for example, if a witness made a statement and a police constable or any other person with authority examined the witness and took the statement down in writing, that this would be considered to satisfy the wording in the proposed new clause, "a statement reduced to writing"?

Then there is a statement with regard to oral evidence in respect of a matter received in a legal proceeding involving a record made in the usual and ordinary course of business. If I remember correctly, there was always an additional safeguard inserted in the rules of practice in relation to such evidence that it must be made by a person required in the proper course of his duty to make the entry and reduce it to writing as the record. In other words, this requirement was made so as to safeguard against the possibility of self-serving statements being made by people who are not authorized to make them and to put them in writing. Thus it became part of the record of a business or an institution, as the case may be.

What I say is not to be taken as a reason for these clauses not being passed, but I do point out the very grave dangers which come about when we interfere by statutory amendment with rules of evidence which have proven effective safeguards and which we have used to surround our system of criminal justice over a great many years. I think we should look at it with the greatest care. It

[Mr. Baldwin.]

may well be that because of present jurisprudence these are essential. I am not really uttering it in the form of a caveat.

My final suggestion would be that the minister might take a look at standing order 62 (1) or (2), as the case may be, which provides that a committee may be instructed to consider a bill rather than the bill being introduced and read the first time. This is the sort of practice which could be very useful in relation to matters of this kind.

I recognize that in the past few years there have been problems facing the government in bringing forward various amendments which have been very much required and which we have omitted in the past. But I would suggest that the minister might wish to consider even allowing a draft statute to be sent to the committee under standing order 62, with authorization to the committee to proceed to bring in a bill based on the draft as well as, of course, the government's own recommendations. The committee would then be authorized to call not only for the evidence of department officials but for that of Crown counsel, people from the Attorney General's department, and distinguished counsel whose duty it is to appear for accused people and to maintain the proper perspective between the Crown and the accused. It might well be that, before the minister gets around to bringing in new changes, something of this kind could be done so as to have the benefit of the thinking and knowledge not only of the Crown and the Department of Justice but of people outside who are concerned for professional and sociological reasons to see that our system of justice continues to be what it has been in the past, the best in the world.

• (4:50 p.m.)

The Acting Speaker (Mr. Béchard): I must inform the house that if the minister speaks at this point he will close the debate.

Mr. Turner (Ottawa-Carleton): I rose on that assumption, Mr. Speaker.

[*Translation*]

My thanks go to those who have taken part in the debate this afternoon. I suggest that it would be more appropriate for me to answer questions before the committee which will be sitting soon, and I hope that the chairman of that committee will be able to convene its members in order to deal with this bill immediately.

[*English*]

I want to say that I appreciate the remarks made by all who have spoken this afternoon.