

senators will recall that in 1948 a considerable number of amendments to the Criminal Code were passed. On October 1, 1948, all the amendments were to go into effect, with the exception of section 35, which introduced to the Criminal Code a new Part XVI. The present sections of Part XVI were not merely revised, they were rewritten. The position of magistrates and their jurisdiction was completely changed. The new Part XVI will not become law until October 1, 1949, and this amendment is to prevent it from becoming law until a day to be fixed by proclamation of the Governor in Council. There have been requests from various provinces to this effect. Under Part XVI, as passed in 1948, the jurisdiction and the functions of magistrates were changed. The original provisions of Part XVI provided for various kinds of magistrates with varying powers, and set out certain offences which any magistrate could try with the consent of the accused. It also set out other types of offences which certain other magistrates, as defined in the Code, could try with the consent of the accused. Then, too, there were some offences which only certain magistrates had absolute power to try without the consent of the accused. The purpose of the amendments of 1948 was to do away with these distinctions and different types of magistrates, and to define the jurisdiction of a magistrate. It was also desired to abolish the absolute power that certain magistrates had to try certain offences without the consent of the accused. It was felt that this step would help simplify the somewhat complicated procedure.

However, a number of provinces, particularly Nova Scotia, New Brunswick, Ontario and British Columbia, have made representations that the institution of Part XVI should be further delayed. Having regard to the fact that all magistrates are not equally qualified, it is felt that the consent provision contemplated by Part XVI—which is very wide—should not be conferred indiscriminately upon all magistrates. Under the new Part XVI there is no distinction or difference of grade; it simply provides that if you are a magistrate and have the consent of the accused you are empowered to deal with a wide variety of offences. Some of the provinces felt that their magistrates are not sufficiently qualified to try all types of offenders. Another objection is that abolition of the absolute jurisdiction now enjoyed by certain magistrates would have the effect of crowding the higher courts with many cases which should be dealt with by magistrates. Under the new Part XVI the accused, no matter how trivial his alleged offence, could refuse his consent, and if he did that he

would have to go for trial before a higher court, such as, perhaps, a County court. Were this to happen in many cases the higher courts might become bogged down, with the result that serious delays would occur in the bringing of accused persons to trial. So the request from certain Attorneys General is, not that Part XVI be repealed, but that the bringing of it into force be delayed for a further indefinite period. In conformity with this request, section 8 of the bill provides that Part XVI of the Code shall come into force, not on the 1st of October, 1949, but on a day to be fixed by proclamation of the Governor in Council.

Hon. Mr. Roebuck: What is expected to be gained by delay?

Hon. Mr. Hayden: The provinces which have requested the delay claim they still have to do some tuning up—if I may put it that way—of their magisterial system. That is easily understood, because not all magistrates are lawyers, and not all of them are as yet qualified by training or experience to try persons accused of some of the charges that could, with the consent of the accused, be dealt with by a magistrate under the new system. In some provinces the qualification of magistrates is a matter that would need careful consideration before the new system is adopted.

Hon. Mr. Farris: Honourable senators, after listening to my honourable friend's explanation, and the discussion, it occurs to me that a little thought might be given to the principle involved here. Under this provision a Newfoundland convicted of a relatively trivial offence, such as common assault or violation of a traffic law, might find himself incarcerated with persons convicted of armed burglary and heinous crimes.

Hon. Mr. Euler: Apparently that has been happening right along.

Hon. Mr. Farris: Perhaps that is so, and it may be that the present practice should be continued; but I think we should have an appreciation of what this provision means.

The motion was agreed to, and the bill was read the second time.

CONSIDERED IN COMMITTEE

On motion of Hon. Mr. Robertson, the Senate went into committee on the bill.

Hon. Mr. Sinclair in the Chair.

Sections 1 and 2 were agreed to.

On section 3—"magistrate":

Hon. Mr. Kinley: Honourable members, Newfoundland is now usually referred to as one of the Maritime provinces. At Dorchester,