to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part V, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person—

And so on. Before you could obtain your order from the court it would be necessary to prove to the court—this is a criminal court—that a person has done an act or thing constituting or directed toward the commission of an offence. I am here dealing with the words to which my hon. friend objected, the words "has done". You are going to have to prove to the court that a person has done something directed toward the commission of an offence. You must, in order to prove that, discharge the same onus of proof as you would have to discharge if you had simply prosecuted him in an attempt to get a conviction because this court is going to say, I am asked to make an order prohibiting something; I am asked to make this order on an information alleging that something has been done which is an offence under the act; I am not, therefore, going to make the order unless the attorney general who lays the information proves that the facts alleged in this information are correct. He will have to prove that an offence has been committed.

There is, therefore, no lesser onus of proof. It is not as though we could go to the court, if this subsection passes, and simply make a vague allegation that an offence had been committed and have the courts accept our application without our proving it. This, fortunately, and I say that very sincerely, is not the way the courts of criminal jurisdiction would act on our application. They would say, you have laid an information; you have alleged that certain things exist or have been done, and you have applied to us for an order. As a result, they would say, very well, prove your case and we will see about making an order.

Mr. Pickersgill: I should like to put a question to the minister about this. If the minister will look at subsection 1 under section 31, he will see there, in addition to any penalty imposed—this is after a person has been convicted—the court may prohibit the continuation or repetition of the offence or the doing of any act or thing. It would appear to me, if the minister is right and I hope he is—of course, as I say my ignorance of criminal procedure is profound and complete—that the words "has done" and "or continuation" are completely redundant because everything that can be done in the case of an offence that has been committed and which can be done under subsection 2 can be done under subsection 1.

Therefore, on the principle on which the minister opposed "is being" a while ago, but I think on stronger ground, I say why create an impression in the lay mind, in the mind that has no criminal intent and no criminal experience, that there is an escape hatch here. There is the impression left with the lay reader that, in some way or other, all you need to do is get the court to say that these people have done something and to ask for no other penalty than to tell them to stop doing it. I do feel that would be discriminatory and undesirable if that could happen under this section, since everything that otherwise could happen under this section could, because somebody has done something, apparently be done under subsection 1, so it would not appear to be necessary anyway. Perhaps the minister could answer that.

Mr. Fulton: Yes. This arises out of the fact we did desire to create two alternative methods of procedure. It has been made quite clear we desired to create a method of procedure under which we could apply for an order, a restraining or dissolution order, without having to obtain a conviction because if you obtain a conviction then the court must impose a penalty under subsection 1, you see. We felt, particularly in a case where you were concerned with an offence or a situation that might have been completed a number of years ago—I think the figure used in committee for this illustration was as long ago as seven years—and which you have only discovered now, that it was not desirable to put the crown in a position where its only remedy, if it wanted to undo what had been done, would be to ask for a conviction which would require the imposition of a penalty. Then you seem to be resurrecting something that happened long ago and penalizing somebody for it.

We felt it might well be better for the crown to be able to go to the court and say that this was done a long time ago; we have only now discovered it; its effects have only now become apparent, and we want to be able to get an order dissolving the effect of what was done; we want to be able to get that order without the necessity of a conviction which, automatically, would result in penalties being imposed. We can only get an order under subsection 2 upon the same proof as we could have obtained a conviction under subsection 1.

Mr. Pickersgill: In other words, if I may put it quite simply in words I can understand, if you find a fresh corpse, you get a conviction, but if the corpse is seven years old you do not bother with a conviction and you tell the murderer not to do it any more.