

he made a run for the men, whereupon one of them pulled a gun and shot the accountant. Under the new section those robbers, would be charged with murder.

Hon. Mr. ROEBUCK: It would be murder under the act as it now stands.

Hon. Mr. HAIG: No, it was held to be manslaughter.

Hon. Mr. HORNER: Had the jury done its duty it would have been murder.

Hon. Mr. HAIG: The use of the gun was not premeditated. The court sentenced those young fellows to ten years each.

Hon. Mr. NICOL: That is a wrong verdict.

Hon. Mr. HAIG: Why should a scalawag be allowed to go around with a gun in his pocket? He would not carry it unless he intended to make use of it. Nothing could be plainer than that. It is his intention to use the gun if an emergency arises. In those circumstances we say that the offence is no longer manslaughter but murder. There are a lot of old people running small stores, and even in my city, where the people are very well behaved, there are hold-ups every day or so. The situation must be bad in the rest of Canada when Winnipeg is so afflicted.

Hon. Mr. NICOL: The honourable senator should move from there.

Hon. Mr. HAIG: The committee had very fine cooperation from members of the House of Commons: they appreciated our point of view; and one of them, whose name I will not mention, supported our amendments even more strongly than we did.

Hon. ARTHUR W. ROEBUCK: In drawing amendments to the Criminal Code it is sometimes dangerous to take advice from law enforcement officers. It is the tendency of these officials not to take any risks of a criminal escaping, and they may lose sight of the need of protecting the innocent; their attitude is that he must take his chances.

In matters of law enforcement the real object to be aimed at is certainty of detection rather than severity of punishment. There are three conditions in this clause: first, that the accused has upon his person a weapon during or at the time of the commission or attempted commission by him of any of the offences mentioned in this section, or the flight of the offender; the second is, that at the time he is captured he has in his possession—probably in his pocket—a weapon, and somebody has lost his life; and the third is, that the loss of life is the consequence of the use of that

weapon. This possibility occurs to me: three men—I do not like to name the same ones that my honourable friend did—

Hon. Mr. HAIG: At least, I joined them.

Hon. Mr. ROEBUCK: Oh, yes. The position in which the honourable senator put himself seemed to me a little incongruous. Three men undertake a hold-up; one of them has a revolver in his pocket; a man is shot and killed; a flight takes place, and the man who originally had the revolver in his pocket and who used it slips it into the pocket of one of the other men. That other man would be presumed guilty of murder.

Hon. Mr. HAIG: All of them are guilty.

Hon. Mr. ROEBUCK: That was the old law—if that is what you are relying on—that when men undertake to commit an offence, and death ensues, it is murder. That is my understanding of the Criminal Code as it stands. I notice that two of my lawyer friends nod their heads. If that be the case, if that is the principle relied on, this amendment is not necessary. But if reliance is to be put on the principle set forth in the clause, there is possibility of danger in its application, because it is provided that if at any time during the commission or attempted commission of a crime, or the flight, the weapon by which a death was caused is found in the possession of a person, he is to be held guilty of murder. That is going a little far.

Hon. SALTER A. HAYDEN: May I add a word, since it was I who gave the explanation of this bill in the first place? Let us get back to the basic principle of this section. As the law stands—without giving effect to the amendment—if a number of people embark on armed robbery, and as a result a person is killed, the Code defines that killing as murder. That is, a person may be charged with murder. But there is a perfectly good defence which any person in that band of armed robbers may raise. He may say: "When I set out with that group to commit that robbery I did not intend to inflict grievous bodily harm upon the victim who was killed." If he raises that as a defence, the trial judge must, as a matter of law, put that theory to the jury; and time after time, though the circumstances were such as deprived the plea of any merit, the judge has put that contention of the defence to the jury and the jury has found the accused not guilty of murder but guilty of manslaughter.

My personal views on this matter were expressed here when I was explaining the bill on second reading. I said that so far as I