not wholly convinced that the Crown should have an appeal in any case. I have been impressed by the argument put forward by Senator Roebuck tonight, and by other conversations with him, so I do think this is a reasonable compromise between those who feel there should be no appeal and those who feel otherwise.

The CHAIRMAN: It is a compromise as far as I am concerned, senator, because I was basically opposed to giving the Crown any right of appeal.

Senator MACDONALD (*Cape Breton*): So was I.

Senator CHOQUETTE: I would like the sponsor of the amendment to tell me where *subjiciendum* comes from, because we have *subjudicie* and we might also have *subjudiciendum*. Where does *"subjiciendum"* come from?

Senator ROEBUCK: It is not French, it is Latin. While I cannot give you a derivation of the word at all, it is a thoroughly established, very old terminology, and it is used in the Supreme Court of Canada.

The CHAIRMAN: Yes, it is in the Supreme Court of Canada Act.

Senator ROEBUCK: In ancient law there was no appeal.

The CHAIRMAN: Senator, could I say something on the question of where that word *subjiciendum* comes from? In the Administration of Justice Act, 1960, in England, is a definition, at page 1081 of the volume I have before me. Section 17, subsection 2 says:

> In this act "application for *habeas corpus* means an application for a writ of *habeas corpus ad subjiciendum*. . . ."

Senator ROEBUCK: I was going to point that out.

The CHAIRMAN: And also in the Supreme Court Act, section 57.

Senator ROEBUCK: There are no fewer than five ancient writs of *habeas corpus*. There was a writ which brought a prisoner from the jail to give testimony; or to be charged anew there was a writ very much like our subpoena. There were two or three others—five in all.

The only way to be sure that you are attacking the right writ beyond all question is to give it its full right, as is done here in this case of the House of Lords, *Secretary of State for Home Affairs v. O'Brien,* and in which Lord Birkenhead said:

> We are dealing with a writ antecedent to statute, and throwing its root deep into the genius of our common law. The writ with which we are concerned today was more fully known as *habeas corpus ad subjiciendum.*

Then he goes on to say:

> In the course of time certain rules and principles have been evolved; and many of these have been declared so frequently and by such high authority as to become elementary. Perhaps the most important for our present purpose is that which lays it down that if the writ is once directed to issue and discharge is ordered by a competent Court, no appeal lies to any superior Court.

I was very much impressed with that statement. However, as I said in my address of July last to the Senate, I could imagine circumstances where the release of an individual by act of a single judge might be followed by very undesirable circumstances, and it is for that reason I now include in this amendment an appeal to the Crown, but to nobody else, which, as I have said, is a compromise.

The CHAIRMAN: Are you ready to hear Mr. MacDonald?