

province of Newfoundland. These sections define the term "magistrate", and fix the jurisdiction of magistrates who have particular power under Part XVI of the Code to try a variety of offences with the consent of an accused, magistrates with additional jurisdiction to try certain classes of offences of a general nature, and magistrates who have absolute power to try an accused person without his consent.

Section 7 differs somewhat from the other sections of the bill. Honourable senators will recall that under the Statute Law Amendment Bill, passed at the last session of parliament, the penitentiary at St. John's is to serve both as a penitentiary and a prison. In order to clarify the matter under our Penitentiary Act, by section 37 of chapter 6 of the Statutes of 1949 we provided as follows:

Notwithstanding anything in the Penitentiary Act, 1939, chapter six of the statutes of 1939, every person who is sentenced by any court in Newfoundland to imprisonment for life, or for a term of years, not less than two, shall be sentenced to imprisonment in the penitentiary operated by the province of Newfoundland at the city of St. John's for the confinement of prisoners . . .

Section 1056 of the Criminal Code provides that a person who is sentenced to less than two years may not be sent to a penitentiary. Because Newfoundland desired, for the present in any event, that prisoners, whether sentenced for more than two years, or less, be sent to this one institution, it became necessary to amend section 1056 of the Criminal Code, under which a "penitentiary" is defined as a place to which prisoners may be sent for confinement for two years or more, but not for less than two years. Therefore, section 7 was inserted in the present bill. It provides that the word "penitentiary" as used in section 1056 of the Code does not include the penitentiary mentioned in section 37 of The Statute Law Amendment (Newfoundland) Act, to which I have just made reference. As I have said, the obvious purpose is to harmonize our section 1056 of the Code with section 37 of The Statute Law Amendment Act passed last session, so that for the present, and until such time as Newfoundland may see fit to make some change in its provision for confinement of prisoners, the courts will be able to send convicted persons, no matter what may be the length of their sentences, to this institution at St. John's, Newfoundland.

**Hon. Mr. Leger:** Is it a penitentiary?

**Hon. Mr. Hayden:** It has been used both as a penitentiary and a jail; but under the amendment which we made last year, coupled with section 1056 of the Criminal Code, it would not be possible for this institution to be used for both purposes.

**Hon. Mr. Leger:** When a person is sentenced to imprisonment for less than two years, is it stated in the sentence that he is to go to a penitentiary or to a prison?

**Hon. Mr. Hayden:** If this amendment should pass, it will not matter what the place of detention is called; but if the amendment is not passed, no matter what a judge may say in passing sentence, a prisoner sentenced to less than two years could not, having regard to the provisions of section 1056 of the Code, be sent to a penitentiary.

**Hon. Mr. Leger:** It is not the same thing to be sentenced to a prison and to a penitentiary.

**Hon. Mr. Hayden:** Oh, no; it is entirely different.

**Hon. Mr. Leger:** Well, then, it seems to me that the Act should prescribe that a prisoner is to be sent to a prison, if the term is for less than two years, instead of to a penitentiary.

**Hon. Mr. Hayden:** You mean it should be stated in—?

**Hon. Mr. Leger:** In the sentence.

**Hon. Mr. Hayden:** I think the implications of section 1056 of the Code are sufficient for the purpose. Let me read it.

1056. Every one who is sentenced to imprisonment for a term less than two years shall, if no other place is expressly mentioned, be sentenced to imprisonment in the common jail of the district, county or place in which the sentence is pronounced, or if there is no common jail there, then in that common jail which is nearest to such locality, or in some lawful prison or place of confinement, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed.

**Hon. Mr. Leger:** Yes. Well, the words there are "other than a penitentiary".

**Hon. Mr. Hayden:** Yes, that is so; otherwise it would not be necessary to seek this amendment. You cannot send to a penitentiary a man who is sentenced to less than two years' imprisonment, so that it becomes necessary, as I have said, to vary the terms of the section to the extent that this one place of confinement, this institution at St. John's, Newfoundland, can be used for both purposes.

**Hon. Mr. David:** What will it be called?

**Hon. Mr. Hayden:** I do not think it is called a penitentiary; I think the word used is "institution".

**Hon. Mr. David:** I think we should know.

**Hon. Mr. Baird:** I think it is called a penitentiary.

**Hon. Mr. Kinley:** Would it become a federal institution?