

Hon. Mr. Hackett: I am speaking of capital cases only. If the appeal can be heard only by the full bench, the case is bound to be argued twice before a bench of the same number, and as I say, it would seem to me that that is undue duplication.

Hon. Mr. Croll: Louder, please.

Hon. Mr. Hackett: The simple question of whether the issue presented is one of law or of fact should be susceptible of determination by any one of the learned judges. If there be a dissent on that question, there may be a recurrence of some of the difficulties which have recently not added much to the stature of the final court of appeal. One judge should be capable of determining, as he has in the past, whether the issue is one which can properly be heard by the Supreme Court.

Hon. David A. Croll: Honourable senators, I regret that I could not hear the honourable gentleman who has just sat down. It sounds rude to shout "louder", but I wanted to follow his reasoning.

I am not at all satisfied with the bill. There is not much I can do at this time to correct it, but I regret that in this day and age there is not an automatic appeal in every case involving a charge of a capital offence. I think that in these cases there should be an appeal as of right: not only that, but the state should supply copies of the transcript of evidence, pay the costs, and provide counsel. We are dealing with a very serious matter when we deal with a capital charge.

Hon. Mr. Hackett: We are dealing with murder.

Hon. Mr. Croll: Quite right; and the accused may not be guilty; and until such time as he is proven guilty beyond a shadow of a doubt he has the right to ask and to receive the protection of the Government, representing his fellow-citizens. So he ought to have an appeal as of right. It should not be dependent upon whether he is capable of hiring a lawyer, or whether there is a question of fact or a question of law. That is another matter entirely. I am not addressing myself to civil matters; I am addressing myself to a criminal appeal involving a capital offence. I say that I regret very much that at this stage these appeals do not come as a matter of right. There are states in the American Union that are far advanced beyond us in this. They not only provide counsel but they pay the fee for transcribing the evidence and all other costs that are assessable. In such circumstances a man who is finally convicted

probably has no one to blame but himself. He has been given the full benefit of the law. I hope that the next time we improve the act—and it needs considerable improving yet—more will be said in favour of providing for an appeal as of right to everyone convicted of a capital offence.

Hon. Salter A. Hayden: Honourable senators, I am very glad to hear my friend the honourable gentleman from Toronto-Spadina (Hon. Mr. Croll) express these views. Recently there was tabled in the Senate a report from a joint committee of both Houses of Parliament dealing with the subject of capital punishment. The report contained the recommendation that after a conviction for murder there should be an automatic right of appeal, whether the convicted person raises his hand or not; that the transcript of evidence and the record, and so on, should be forwarded to the court of appeal in the province concerned, and that proper and adequate counsel should be provided.

The committee made the further recommendation that an appeal to the Supreme Court of Canada should be an appeal as of right; that is to say, a convicted person may not choose to exercise his right, but he should have a right of appeal without having in the first instance to make an application for leave.

I agree in part with what the honourable senator from Victoria (Hon. Mr. Hackett) said, that if you are going to argue the matter of leave to appeal before five judges in the Supreme Court of Canada, it will be difficult not to have a full-dress rehearsal of all the facts and points involved. It does seem to be fanning the air a bit to come back before a court of five or seven judges, as the case may be, and then hear the case on the merits. I think it would be more expeditious to have an appeal as of right. It would be fairer from the public point of view, because the issue involved is one of the life or death of an individual.

Hon. W. Ross Macdonald: Honourable senators—

The Hon. the Acting Speaker: Honourable senators, I would point out that if the honourable Leader of the Government (Hon. Mr. Macdonald) speaks now he will close the debate.

Hon. Mr. Macdonald: Honourable senators, I agree to a large extent with what has been said as to appeals in capital cases. My recollection is that the report of the joint committee of Parliament on capital punishment recommended that after a man has been found guilty of murder, the record, including the transcript of evidence, should be