

That definition covers, as we say, the four corners of the offence. If death ensued as a consequence of the use of a weapon, the Crown would have to prove that the accused used the weapon or had it upon his person during or at the time of the commission or attempted commission by him of an offence under the section.

I may say that this amendment conforms to a suggestion by the Attorney General of Ontario. It appears that in that province some accused person or persons escaped conviction, upon a charge of murder, because the Crown was not able to prove that the weapon—in that case it was a revolver—had been used by the accused. The house can understand how difficult it might be in some cases to prove the use of a weapon by an accused person when only two persons were present at the time of its use and the death of one of them ensued as a consequence of its use.

Hon. JACOB NICOL: Honourable senators, I was present at the committee when this clause was discussed and we were told what the chairman of the committee (Hon. Mr. Beauregard) has just stated, that the amendment was intended to prevent the recurrence of a situation that arose in the criminal courts of Ontario. It seems to me that the amendment is therefore an attempt to make a general law to provide for a particular case.

Hon. Mr. HAIG: No, no.

Hon. Mr. NICOL: That is a dangerous thing to do. What improvement will there be in the law if this proposed change is made? The new clause makes it a crime for anyone to have upon his person any weapon at the time he committed or attempted to commit an offence, but the idea is not followed up. The words of the clause are:

—if he uses or has upon his person any weapon during or at the time of the commission or attempted commission by him of any of the offences in this section mentioned or the flight of the offender upon the commission or attempted commission thereof, and death ensues as a consequence of its use.

Hon. Mr. HAIG: You have to look at the other part of the section; the amendment has to be considered with the section as it originally stood.

Hon. Mr. NICOL: I do not think an offence can be created that way, even if it is considered with the section of the code. My understanding of the amendment is that if a weapon is used and death ensues the accused person would be tried for murder and could be given the death penalty. Am I to understand that if a man takes part in a hold up or robbery in which no weapon is used but in which the victim is killed, that man is to be tried for murder?

Hon. Mr. HAIG: The amendment does not say that.

Hon. Mr. NICOL: If it does not mean that why is it put in?

Hon. Mr. HAIG: Honourable senators, may I explain the purpose of the amendment in this way: Let us suppose that I, having a gun in my pocket, go into a corner grocery store along with the honourable senator from Rougemont (Hon. Mr. Beauregard) and the honourable senator from Shelburne (Hon. Mr. Robertson), and the proprietor resists; and that when we go out the proprietor is dead—

Hon. Mr. NICOL: Then you must have used the gun.

Hon. Mr. HAIG: One of the three of us must have used it, and under this amendment we may all be charged with murder.

May I say that when the Managers on behalf of the Senate met in conference with members of the other house, it was quite readily agreed that the amendments as suggested by the Senate were along the right lines. It is true that the wording of amendment No. 2—which provides that if one causes a row in his own house one shall not be charged with causing a disturbance—was improved, and that amendment No. 2 was redrafted by the Minister of Justice, the Deputy Minister of Justice and the Law Clerk of the Senate in the presence of the Managers. We explained what we were trying to accomplish. We said that if two, three or six men went in to rob a grocery store—one of them having a gun in his pocket—and the proprietor was dead when they left, that would constitute the offence of murder. That is the meaning of this amendment.

Hon. Mr. NICOL: But the gun had been used.

Hon. Mr. HAIG: Quite true. The grocer would not have been killed if it had not been used. The Crown does not have to prove that the accused made use of the gun.

Hon. Mr. BISHOP: It may have been a case of suicide.

Hon. Mr. HAIG: How can the Crown prove that an accused man used a gun when the victim is dead? We have to do something to stop the epidemic of robberies in small stores. Let me give an illustration of an incident that occurred in the city of Winnipeg. About two and a half years ago three young men entered the North End Branch of the Canadian Bank of Commerce. One of them had a gun in his pocket. They said: "This is a hold-up! We want the money." The accountant replied: "Oh, no, there will be no hold-up here," and