

of Canada, which is the end of the road. That envisages a fair lapse of time. All our troubles rose, as you know, from the *Drybones* case in the Supreme Court of Canada which ruled that in respect of intoxication the fine should not be greater for an Indian as such a provision was in violation of the Bill of Rights. The purpose of this section I think is to provide a greater penalty, depending upon the gravity of the offence, and method is encompassed in the right of election to the Crown to proceed by way of indictment. I think that is the hard core of the problem. It seems to me—and this is what I would like you to give some thought to—that if, instead of drawing this distinction between summary procedure and proceeding by indictment, you provided in the regular way for prosecution of an offender and the accused person would go into court and he could elect to be tried summarily or he could elect for trial by judge and jury, which he could afterwards change to a speedy trial before a county judge, you could accomplish all this if you just had the offence stated with your penalties reading a little differently, that is, that if the fine, in these circumstances that I have related, were made up to \$5,000, instead of dividing it between \$1,000 on summary conviction and \$5,000 when there is a conviction when the election is to proceed by way of indictment and there is a conviction. The term of imprisonment could be made up to two years or both. Then you are putting the question of what is the proper penalty in the discretion of the judge and avoiding any question of conflict with the Bill of Rights.

I had intended to speak to you about this beforehand, but I did not have an opportunity. It is bothering me. All legislation that involves this sort of procedure is going to raise the same issue, until the question is finally decided. Whether we should go along, if we can do something that is just as good, from your point of view, is the question.

Hon. Mr. Basford: We are getting into something that is really out of my hands and in the hands of the Department of Justice. My advice is, of course, that we should continue. This is the advice we get from the Department of Justice, to continue writing legislation in this way. Should the case that you refer to, in which the Crown has taken further proceedings, not turn out the way that the Crown is arguing, then presumably some general corrective measure would have to be taken, relative to all legislation that has this in it—and this is a very common provision. I do not think the advice from the Department of Justice is that, half way, while this other matter is still before the courts, we start adjusting one specific piece of legislation.

The Chairman: No, but the point is, do we go ahead in the face of a legal decision which is the law at present time, until it is reversed and we enact something that has been declared invalid. Would you look at it from that point of view.

Hon. Mr. Basford: I wish, Mr. Chairman, you had spoken to me, because of course this is a matter on which I have to take the advice of the law officers. I do not have that advice at the present time, specifically.

The Chairman: I think we would have time today. I do not think we are going to be sitting very long in the

Senate this afternoon. If we do not finish here with this bill this morning, we would simply adjourn until later in the day. As I understand it, our idea is to move this bill along as quickly as we can. It is that kind of legislation, that should be moved. I would like to get some expression of opinion from the Department of Justice. I do not want them to commit themselves on pending cases which they may be intending to appeal. But we have to look at it from our point of view, if we are asked to go ahead and enact something that, in the present state of the law, is invalid.

Hon. Mr. Basford: I would be happy to try to arrange for a representative of the Department of Justice to appear before the committee. I could not appear myself this afternoon.

The Chairman: It is only twenty minutes to eleven now. I wonder if it would be possible to get in touch with somebody there to see if he is available to come over at this time.

Hon. Mr. Basford: Yes. Mr. MacLean, would you ask if Mr. Thorson or someone near him can come over.

The Chairman: Shall we let that matter stand for the moment, until we get a viewpoint from the Justice Department? This is a thing that bothers me. I am not arguing the merits.

Hon. Mr. Basford: I appreciate that.

The Chairman: I am concerned because if we approved of this we would be approving something that has been declared by the court at the present time to be invalid.

I have another question I would like to ask you. It is in relation to the bottom of page 3, clause 6, about amending certain schedules. As you will note, Mr. Minister, I still say "schedules" (using sk-), although I may be part of the minority.

Hon. Mr. Basford: I do not know which is correct.

The Chairman: Here you have provided for the Governor in Council by order to amend Schedule 1 by adding to or deleting from Part I, Part II, Part III, Part IV or Part V thereof, as the case may be, any basic, supplementary, derived or customary unit of measurement. Exactly how would that be interpreted? Let us see—a derived or customary unit of measure, is that defined?

Hon. Mr. Basford: If one looks at the schedules, you will see that the courts...

The Chairman: Page 25.

Hon. Mr. Basford: Yes. Dr. Douglas may want to expand on what I say, but as you can see, this is a very technical matter. First, there is Part I, the basic units of measurement—six basic measurements. Then there are two supplementary ones. Then there are 13 derived ones. As I understand the state of physics, the quality or the state of definition of measurement and the kinds of measurement can change and advances can be made. This would allow the Governor in Council to take account of those advances. Can you add something to that, Dr. Douglas?