

see no reason at all why the same provision should not be extended to cases of felony. I see no reason why a person accused of felony should not be allowed to testify in his own behalf, as well as a person accused of simple misdemeanor. It has been proposed to make it a principle of our law—to give all parties accused of misdemeanor the option of testifying in their own behalf, and of giving their version of the facts. Not only is clause eight a good one, not only is the principle a good one, but I think it is within the knowledge of almost every one, that our courts of justice, on many occasions, will, to some extent, connive at what is not in the law of the present day, and allow the prisoner to testify in his own behalf. We have all heard of a case tried recently in Ottawa where the Judge, to some extent, allowed the prisoner to testify in his own favor. It was a case of murder. The hon. member for Simcoe (Mr. McCarthy) was defending the prisoner—I am sorry he is not now in his seat, so that if I misrepresent the case he could correct me—and according to the report of the case which I read, that gentleman, while addressing the jury, was allowed to read a letter or statement in writing, wherein the prisoner gave his version of the facts, and the Judge said it was for the jury to believe those facts, or not to believe them. If this be true, that was, in my opinion, admitting the prisoner to testify in his own favor, and to admit the prisoner to testify in the very worst sense, because the Crown had no opportunity to cross-examine the prisoner on his own statement. If the proviso embodied in this Bill had been law the prisoner might have taken his choice of walking into the box and giving his own version of the facts, and the Crown would have had the privilege of cross-examining him, with a view to eliciting the truth, as the Crown believed it to be. So I do not agree with the hon. member for Quebec Centre, who urges that this section should be struck out of the Bill. If it be defective in some manner it is because it does not go far enough. Of course, this is a new feature, and as a new feature it is liable to be misconstrued; but the hon. gentleman will remember—and I am sure the hon. Premier will remember—the storm of opposition raised, in the Province of Quebec, when Sir George Cartier, twenty years ago, introduced a new principle in our Civil Law, that a party could be compelled, by the adverse party, to enter the box and be examined as a witness. I remember distinctly at that time some of the most eminent Judges on the Bench said it was an invitation to parties to commit perjury. Our experience, however, has been such, that at this moment scarcely a case has been tried in that Province where both parties are not examined by the adverse parties. A case always commences with the examination of the party who is put in the box by the adverse party. The law has worked well, and that the same provision applied generally will work well, is clear. The only point in which I take objection is the last proviso in the first section, which runs as follows:—

“ Provided, that so far as the cross-examination relates to the credit of the accused, the Justice or Justices of the court may limit such cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.”

I do not see any reason why more favors should be extended to the accused than to another witness. If a witness is placed in the box, not of his own motion, but by process of court and against his will, he can be examined and forced to answer any questions put to him, however objectionable they may be. The operation of the law may be a hard one, and perhaps it is; but, if the principle is too hard in its operation, it must be struck out of the general law as it now is. On the other hand, if it is reasonable that, under the law of the land, witnesses can be cross-examined on any subject, I see no reason why the same rule should not apply to an accused. There is a further reason. In this case the

accused is a voluntary witness and enters the box of his own motion, and there is no reason that I can see, why more favors should be shown to him than to any witness compelled by process of court to enter the box. As to the other clauses of which the hon. member for Quebec Centre has spoken, I have nothing to say. If they are objectionable, they can be eliminated in Committee of the Whole; but the Bill is a good one, and the principle should be affirmed.

Mr. TUPPER. I do not agree with the hon. member for Quebec East (Mr. Laurier) in his reply to the hon. member for Quebec Centre (Mr. Bossé) when he states that the very able argument made by the latter hon. member against the first two or three clauses of this Bill, simply goes to show that the Bill does not go far enough. The point in which this Bill differs from the legislation of a similar nature attempted in England, is that the Bill which was criticised there as being a compromise of the original question involved, applied to all indictable offences. This original has for some years occupied much attention in Great Britain and other countries; it has been discussed at great length, and the arguments, pro and con, have been fully placed before the people. But when the question first came before the people of England, it was in a totally different shape to that which it has assumed here. At first it was proposed that the prisoner should be permitted to make his statement, and, finally, the Committee which was appointed by the House of Commons to consider the Criminal Code Bill, reported to the effect that the prisoner should have the option of testifying in his own favor on oath. That was regarded as an unsatisfactory compromise of the question there. The Right Hon. John McLaren, Lord Advocate, in a very able address, delivered in Scotland on the work of that Committee, so criticised that part of the report; and I think, when we find in Canada a Bill introduced in this shape, differing from the Bill discussed in England which applies to all indictable offences, that instead of weakening the argument of the hon. member for Quebec Centre, it goes to prove that the principle taken all-in-all is a dangerous one. Feeling, as I do, that the principle of the first three clauses of the Bill is a dangerous one, and as it concerns a most important question connected with the Government of the country, the administration of the Criminal Law, I consider it necessary to point out what I have ascertained as regards this Bill, and the history of the advocacy which a short time ago prevailed in England on this subject. A very eminent man, whose name is quite familiar to hon. members of this House, now a Judge of one of the English Courts, Sir Fitzjames Stephens, when he began the work of codifying the Criminal Laws of England, introduced, in 1879, in the House of Commons, a Bill for that purpose. That Bill was then referred to a Committee of the House of Commons, and finally a Commission, towards the end of the Session, I think, was appointed, consisting of very eminent men, Sir Fitzjames Stephens was one of them, and the others Judges, who went over an immense amount of material, and over this question from beginning to end. A draft Bill was submitted by that Committee, containing no less than 500 different sections, though the Bill originally consisted of a much less number. Now, it has been stated, and I think very fairly, in connection with this Bill, that it was proved to the country at large, from the researches of these gentlemen, that the last part of this Bill, relating to procedure in criminal cases, had been hurried through and ill considered. The Lord Chief Justice of England, in June, 1879, in criticising the measure, began, and continued in subsequent letters, remarks in this connection, stating that the immense amount of the duties of the gentlemen engaged on the work, and the short time bestowed upon it, was apparent from defects in many parts of the Bill, and more particularly in the latter part of it, relating to procedure. The Commission itself was divided.