

to think that this poor man would be forced to travel all the way from Vancouver Island so that the prosecutor could earn \$50. After paying the amount, I persuaded them to leave him alone. I maintain that these representatives should be paid a salary.

Hon. Mr. Fogo: It is not my intention to delay the house, but in the light of the question which arose a few minutes ago regarding the criminal law of our new province, I asked to have sent to my desk the Consolidated Statutes of Newfoundland. Even a most cursory examination would indicate that there may be some difficulties in applying the Canadian magisterial system to conditions on the island. I am sure honourable senators would be interested in a brief statement as to the criminal law there. It is set out in a general Act entitled "Of the Application of the Criminal Law of England and of Pardons", being Chapter 95 of the Consolidated Statutes of Newfoundland, 1916, Vol. II. Section 1 reads:

In all cases not provided for by local enactment the law of England, as to crimes and offences, shall be the law of this Colony, so far as the same can be applied; subject to such amendments, alterations, and further enactments of the Imperial Parliament as may hereafter be made . . .

That is the general application of the common law and statute law with reference to criminal offences in Newfoundland. I find in the index of the Consolidated Statutes that there are a number of local Acts dealing with special cases, such as perjury, public processions, lotteries, slander, and the protection of animals. There is also an Act relating to the jurisdiction, power and procedure of stipendiary magistrates and justices of the peace in dealing with certain offences. There would appear to be special provisions designed to meet the circumstances in a country having twelve or thirteen hundred small settlements scattered over a long coastline, in which there would not be available qualified stipendiary magistrates in the sense that we know them. The island's statutes provide that a justice of the peace may try persons charged with petty offences, which include such things as the stealing of codfish, the causing of damage to minor property, the injuring of animals, and so on, where the amount involved does not exceed \$20 or some other small specified sum.

I have brought this to the attention of the committee because I thought it might answer a question in the minds of some senators. Newfoundland is not to be classed as a backward province at all, and there may be good reason for its delay in adopting the provisions of Part XVI of the Code.

Hon. Mr. Roebuck: The honourable gentleman from Blaine Lake (Hon. Mr. Horner) expressed the hope, though not in these words,

that the time would come when, for the prosecution of criminal cases, Crown Attorneys would be paid salaries rather than fees based upon the success or failure of the prosecution. This suggests another thought to me. Our criminal law has come down to us from very rough times. Over the years we have now and then endeavoured to humanize it, both as to its penalties and its application. I hope the day will come within the lifetime of most of us, when the State will compensate counsel for the defence as well as counsel for the prosecution, particularly in major cases. As things are now a great injustice may be done by placing a person under the heavy financial strain of defending himself against a charge of which he is entirely innocent. Unless he is a pauper, an accused person has to pay not only his lawyer's fees, but the fees of witnesses and various other costs involved in building up a defence, including the cost of providing necessary exhibits, and not a few men have been financially ruined in this way.

I do not know just how present conditions in this respect should be modified. If someone asked me what I would do about it, I could not answer off-hand, but I do say that we should be thinking about this feature of our criminal procedure. Whether an accused person is innocent or guilty, the adequacy of his defence should not be dependent upon his financial position. Today if he has means he can make certain that every possible defence will be brought before the courts on his behalf, but if he is poor he may sometimes get short shrift, and perhaps be convicted without having the charge against him fully investigated. As I say, I hope the time will come when we shall pay public defenders on the same basis as public prosecutors.

The Hon. the Chairman: Honourable members, we are considering section 8, which refers to the date when the Act shall come into force, but the discussion has been wide of this. I would ask honourable members to confine themselves to the section under consideration.

Hon. Mr. Roebuck: Section 8 provides for the time of application of the Act, which deals with the very things we have been discussing, so I would respectfully suggest that our discussion has been entirely in order.

Hon. Mr. Burchill: Honourable members, I would like some member of the legal fraternity to clear up for me a point in connection with section 8. The section says that the Act shall come into force on the 1st of November, 1948, but the explanatory note on the opposite page states that the new part of the Act was to come into force on the 1st of October 1949.