

## THE SENATE

Thursday, September 22, 1949

The Senate met at 3 p.m., the Speaker in the Chair.

Prayers and routine proceedings.

### CRIMINAL CODE BILL

#### SUSPENSION OF RULES

On the Orders of the Day:

**Hon. Mr. Robertson:** Honourable senators, before the Orders of the Day are proceeded with, may I draw attention to the fact that since yesterday, when I moved that the Criminal Code bill be set down for second reading on Tuesday next, I have been advised that the bill is urgent, as it has a bearing on Newfoundland's entry into confederation, and it is desirable that it receive Royal Assent by October 1. Under the circumstances I am going to ask, with leave of the Senate, that we proceed with second reading today, so as to expedite its passage. I have arranged for a thorough explanation of the bill this afternoon, and our Parliamentary Counsel advises me that the matters with which it deals are not likely to be controversial. Therefore I move, with leave of the Senate:

That Rule 25 (b) be suspended; that the motion passed by the Senate yesterday, "That Bill D, entitled an Act to amend the Criminal Code be placed upon the Orders of the Day for second reading on Tuesday next" be rescinded.

**Hon. John T. Haig:** Honourable senators, I am in entire agreement with this proposal, but I should like to make one suggestion to the honourable leader of the house. It is that when the bill receives second reading it be referred to Committee of the Whole instead of to a standing committee. A good many of us who formerly served in provincial legislatures like to have bills dealt with in Committee of the Whole, because that procedure gives every member a chance to ask questions and enter into the discussion. I do not think there is anything in the bill itself that would require a reference to a standing committee.

**Hon. Mr. Robertson:** I am quite agreeable to the suggestion of my honourable friend. I might add that it would expedite passage of the bill, because at present our standing committees have not yet been set up.

The motion was agreed to.

#### SECOND READING

**Hon. Mr. Robertson** with leave of the Senate moved the second reading of the bill.

He said: Honourable senators, I have asked the honourable gentleman from Toronto (Hon. Mr. Hayden) to explain the bill.

**Hon. Salter A. Hayden:** Honourable senators, though this is an important bill it is a simple one, containing only eight sections. Seven of them deal with the relationship of the Criminal Code as it now stands to Newfoundland, and the last section purports to postpone the coming into force of new Part XVI, as enacted in the Statutes of 1948. I shall have something to say about that later.

I would point out first that sections 1 to 6 of the bill are for the purpose of relating to Newfoundland the Criminal Code provisions with respect to courts and magistrates, in preparation for the day, which will be reasonably soon, when the Code is proclaimed as part of the criminal law applicable to the new province.

It will be recalled that last session we passed an Act, which is Chapter 1 of the Statutes of 1949, approving of the terms of the agreement for union with Newfoundland. Section 18 of the Terms of Union of Newfoundland with Canada provides for the continuation of laws in force in Newfoundland, until they are repealed, abolished or altered by the Parliament of Canada or by the legislature of the province of Newfoundland, according to the authority of such bodies. Subsection 2 of that section reads as follows:

Statutes of the Parliament of Canada in force at the date of Union, or any part thereof, shall come into force in the Province of Newfoundland on a day or days to be fixed by Act of the Parliament of Canada or by proclamation of the Governor General in Council issued from time to time, and any such proclamation may provide for the repeal of any of the laws of Newfoundland that

- (a) are of general application;
- (b) relate to the same subject-matter as the statute or part thereof so proclaimed; and
- (c) could be repealed by the Parliament of Canada under paragraph one of this Term.

I think we can safely say that the Parliament of Canada contemplates proclaiming within a reasonably short time that the Criminal Code is the law of the Province of Newfoundland. In preparation for that, we must amend our definition sections and various portions of the Code, to make them apply to that province. For instance, Part XVI of the Code deals with the functions of a magistrate to summarily try an accused person with or without his consent. One may ask what magistrate in the Province of Newfoundland has that power. Subsections 2 and 3 of section 1 of the bill define "Court of Appeal", so far as it may apply to Newfoundland under the Criminal Code. Section 2 specifies the court to which an appeal may be taken from a summary conviction, as and when Newfoundland becomes subject to the criminal law of Canada. By sections 3, 4, 5 and 6 of the bill it is proposed to amend the Code relating to the powers of magistrates, under certain circumstances, in the