If it is being tried by a judge alone, then the judge will discharge or acquit the accused. Any other system would mean that an accused, as a compellable witness, must come forward and give evidence. A lot of people say, "Well, what's wrong with that?" What is wrong with that, Mr. Speaker, is this. Remember that when the Crown lays a charge against a person, it brings to bear on that person all its resources of money, police forces and bureaucrats against the little person of Canada who has to rely, if he or she stands alone, upon his own ability to answer the charge. Thank goodness we have gone a long way in the last few years to provide legal aid so he can have a counsel.

It is shocking to me, just as it is shocking to my hon. friend who spoke about orders in council, that a person would have to prove his innocence. That is the Napoleonic code. It is certainly not the system of jurisprudence recognized by this nation and appreciated by all ten provinces, including the province of Quebec just as much as the provinces of Ontario and Alberta. That is important. I have many French Canadian friends among the top lawyers in Montreal, and the House can ask them how important that principle of law is. All lawyers and judges in what we in Alberta refer to as our sister province of Quebec will agree that that is a sound principle. I ask the lawyers in this House who sit there in their seats to think about the kind of law which the minister is bringing forward.

I moved motion No. 14 in committee and it did not surprise the minister. I turn to page 24 of the bill, line 31, which provides:

(4) In proceedings under subsection (3), evidence that a person has in his possession a firearm the serial number of which has been wholly or partially obliterated is, in the absence of any evidence to the contrary, proof that such person has the firearm in his possession knowing that the serial number thereon has been altered, defaced or removed.

In other words, the onus would be on that person to prove that was not the case. I was rather surprised to hear the Minister of Justice (Mr. Basford) say this in the House on June 15 last, as reported at page 6716 of *Hansard:*

As I have said a number of times in committee and in this chamber, parliament has a duty to deal with this matter without rhetoric, without emotion and without politics.

Well, Mr. Speaker, I have news for him. I am going to deal with this matter with a little emotion and I am going to deal with it, I hope, with a little politics—or I should not be here. It is a very serious move indeed which the minister is proposing. As Charles Dickens wrote in "Oliver Twist", when referring to how the law reacted to poor little boys in the poorhouse, "the law is an ass".

The answer given by the minister is that this move is necessary. The minister puts me in mind of a story which perhaps I can put in its proper perspective. A few weeks ago an American came to Calgary to buy farmland. He was taken out by a real estate agent and shown a beautiful piece of land. The American said, "This is a lovely piece of land, but it is full of rocks". So the salesman said there was nothing wrong with that. He said that when the sun shines in Calgary, the rocks heat up and this nurtures the wheat. He said, "When it rains, the rocks disintegrate and add fertilizer to the grain, and that is how we get our great crops." Then the American asked, "Why have you got rocks piled up at every fence corner?" The salesman replied, "It is very simple. We have not had time to spread those yet".

This is exactly what the minister has been doing, spreading something across-the-board so far as jurisprudence is concerned.

Mr. Schumacher: He takes off with the rocks, though.

Mr. Woolliams: That could be. I hold in my hand "Cross, on Evidence", fourth edition, and I want to read a few lines from the text at page 88 which deals with the burden of proof:

The most recent English judgment on this subject—

I know our courts will agree with it.

—could be treated as authority for the view that the principle under consideration places the legal burden on an accused with "peculiar knowledge". This is a very drastic consequence where there are no statutory words pointing expressly to such a result and, as the court did not refer to the distinction between the legal and evidential burdens, it may be wise to adhere to the following statement by a New Zealand judge:

"If no evidence is given to prove the affirmative in respect of a negative averment which is peculiarly within the knowledge of the accused, then the finding ought to be against the accused on that fact. However, when the accused has produced evidence the question of the nature of the burden may require further consideration. Whether it is the same burden as that laid down for proof of insanity, or whether it is merely a burden of producing some evidence and thus throwing the burden back on the prosecution—

Then he refers to the famous case with which every lawyer in Canada is familiar, Woolmington v. Director of Public Prosecutions, an old case which says that the burden of proof shall always be upon the Crown and not upon the accused. This is the point I am making. The minister is adopting what I call a sort of slippery way of doing things. I know the farmers will be upset about this legislation. They will have the burden of proof put on them as law-abiding citizens. As the hon. member for Vegreville (Mr. Mazankowski) stated, we are sorry the hon. member for Crowfoot (Mr. Horner) is not here. With regard to Bill C-83 he came to see me all the time, throwing up his hands and saying it was terrible legislation. Now he has left us and everything he said has been reversed and changed because he has joined the group on the other side in more ways than one.

● (1700)

Mr. Paproski: He does not even show up in the House.

Mr. Woolliams: I don't blame him. I wouldn't show up, either. I should like to quote from page 91, which reads as follows:

There is, however, an overwhelming objection to placing the legal burden on the accused in these cases, even after allowance has been made for the fact that the standard of proof would be that appropriate to civil proceedings; it means that the tribunal of fact may be obliged to convict a person of whose guilt they are so far from being sure as to regard the probabilities of the existence of a lawful excuse as equally balanced. The danger of unmeritorious submissions of no case can be met by placing an evidential burden with regard to lawful excuse, etc. on the accused. This is the recommendation of the eleventh report of the Criminal Law Revision Committee, and it would apply to the common law burden of proving insanity placed upon the accused as well as to existing statutory burdens.