

strong opposition before accepting the amendment now being considered.

Of course, there is a matter of faith in all that. For those who practised criminal law for several years, it could be said that in 90 per cent of all cases the jury served society well; the jury often helped the courts to clarify very complex facts; it also helped the court to bring about, in so far as facts are concerned, a consensus of twelve people who are there to listen, examine and decide on the facts.

● (2050)

It was said during the debate that the jury had no right to take any position on legal issues. It has long been recognized as a sound principle. The jury is master of the facts and the facts only. Even if it happens that the judge, after both parties have presented their case, gives instructions to the jury, he always adds this: "You cannot take my comments into account, but I have to inform you on the legal debate which took place between the Crown and counsel for the defence." He tells them: "You are the only masters of the facts". The judge has the right to give his own appreciation of the facts. He can tell them: "That witness swore such a thing before you but I do not believe him. But you can believe him if you decide that his credibility is sound." And I say again that the judge can give the jury his own appreciation of the facts. But the jury is definitely not required to accept the analysis of the facts made by the judge in his address to the jury. In short, again I repeat that the jury is the sole master of the facts. The debate in this place becomes very interesting because the Opposition leader raised a new law issue. I wonder whether we should not, in the light of his speech, consider more carefully the cases he sustained before the Senate. Here is his thesis in a few words. The Opposition leader did not deny, nor will other senators do so either, that the jury is master of the facts. But what he wanted to demonstrate was that in this particular case, the *Morgentaler* case, the evidence concerning abortion has been recognized by the accused. It was maintained that as the facts had been recognized, the jury had ruled on a legal issue, that is on section 45 of the Criminal Code, which in certain circumstances allows abortion.

Now, to my mind, section 45 of the Criminal Code deals precisely not only with a matter of law but also with the interpretation of the facts. In such circumstances, section 45 stipulates that an abortion can be performed by a medical doctor and can be considered legal. I feel that this important matter, which the Leader of the Opposition brought up, should be studied by the competent committee where experts in criminal law could tell us whether, in fact, when the accused has recognized the facts as true, the jury being master of the facts, is not obliged to give a verdict of guilty.

Does a jury have the right to interpret the facts in terms of the law, under section 45 of the Criminal Code, with regard to abortion? If so, can the court of appeal substitute itself to the jury and say: "You were wrong; your decision must be overruled."

First of all, I would think that all honourable senators who are lawyers are aware that only on extremely rare occasion has a court of appeal overthrown the decision of a jury on the facts, since all superior courts, courts of appeal, have always recognized, as I said, that the jury is master of

[Senator Asselin.]

the facts. Although we cannot deal here in depth with the thesis submitted by the Leader of the Opposition, I trust we can do so in committee. Though we may not be ready to move an amendment to meet the concerns of the Leader of the Opposition as well as recognize the seriousness of his documents when he made his speech last week, it might be well for us to accept the amendment as it now stands.

I do not see that a court of appeal should intervene again and again against the decision of a jury. If the court of appeal has any doubt about the decision of the jury, it should at least, as provided in the amendment, order a new trial. It should not say the jury was wrong and we acquit or condemn the defendant who has lodged an appeal. I think it would be wise to accept the amendment, but I repeat that it is extremely important to listen to experts in committee, so that they would justify and describe how to evaluate a case such as the Leader of the Opposition has submitted to us. For instance, if the accused himself admits the charges against him before the jury, should the court of appeal intervene when the jury took the decision on both legal and factual issues? Having said that, I suggest it would be extremely important to refer Bill C-71 to the committee, at least to examine this question.

I also have in mind the provision of this bill dealing with impaired driving and the breathalyzer.

● (2100)

It is ever more obvious that we have deplorable fatal accidents in this country. From experience of cases I had before the courts, fatal accidents rarely occur where fewer than at least 75 per cent of the people were under the influence. That it is a well-known fact admitted by all those who plead before the courts and also by criminologists who have studied the subject. The law is made more severe. At the present time, for a first offence the judge usually imposes a \$100 or \$150 fine. I am talking about my district. When someone needs a driver's licence to earn his living, it is not suspended. But in the province of Quebec, for a first offence, if you plead guilty or if you are convicted, you lose 9 points automatically out of a maximum of 12. And if you lose your 12 points, your licence is automatically suspended by the Quebec Transport Department for a three-month period. I think it is an excellent system and it has produced results in our province. At the present time, under the new legislation, for a first offence the maximum fine is \$2,000 and the minimum fine \$50, and also a jail sentence, or both.

Obviously, this is more severe than the former legislation, under which, for a second offence provided it has not been committed in the same year, or over a two or three-year period, the judges are still quite lenient in Quebec, but not in the other provinces. In Quebec, a fine will still be imposed but the accused person's licence will not be suspended if he can prove that he needs it to earn a living. The new provision is excessively severe. For a second offence, no fine is provided but imprisonment for 14 days. Fourteen days' imprisonment strikes me as extremely severe. And it is so, to my mind, because the government does collect fabulous amounts from the sale of liquor. If you look at the public accounts you will note how considerable those amounts are.

But, on the other hand, the government does not provide any organizations for detecting alcoholism. Our rehabilita-