Then there is a writ known as *habeas corpus—recipias corpus*. That has been used in one case, which was the only case I could find in the time at my disposal, indicating the use of it. I found that case, because I remembered it from my practice in Nova Scotia. The writ was used back in the 1930s to bring back for re-election to summary trial a number of persons who had gone for jury trial. I think that covers them.

Senator ROEBUCK: We certainly do not want to give appeals into all those matters.

The CHAIRMAN: So, in your view, it is in order and does not confuse, to give this particular description of *habeas corpus* that this amendment is intended to deal with.

Mr. MACDONALD: "*Ad subjiciendum*"?

The CHAIRMAN: Yes?

Mr. MACDONALD: No. My viewpoint is that this is strictly the correct wording. My only question is whether the other things that have been swept in, inadvertently if you like, are of great significance. I point out that the Criminal Code throughout merely refers to "*habeas corpus*".

The CHAIRMAN: That is your answer, Senator Croll. Are there any other matters you want to speak on?

Mr. MACDONALD: I would like to make one or two further comments, if I may, on the draft amendment. I am not sure that I have made my point in connection with subsection (3), so if you will bear with me I will make it again.

Subsection (3) provides, in short, that you cannot shop around where the application for the writ is refused. My suggestion is that the intention is that you cannot shop around either, where the writ is issued but the discharge is refused upon the return of the writ.

The CHAIRMAN: Is that not covered in paragraph 5?

Mr. MACDONALD: No, with respect, Mr. Chairman, subsection (5) merely deals with the right of appeal, and not with the question of shopping around.

The CHAIRMAN: Then what you are saying in effect is that if on return of the writ, and there is a trial on the merits, and the judge rules against the prisoner, there is a decision of a court ruling that the prisoner is properly detained—in the face of that, are you suggesting there is the possibility in this draft that counsel for such a person at that time could go back to another judge and shop around at the stage of a hearing on the merits? I do not think it is possible under this wording.

Mr. MACDONALD: I may be under a misapprehension there, Mr. Chairman, but I thought that that was the very issue, because it is my impression that shopping around is not restricted merely to the case where you do not get the writ, but also applies to the case where you get the writ and have the prisoner up before the court, and the court hears the case on the merits and says, "We refuse to discharge the prisoner."

Senator ROEBUCK: I do not think that was the English practice. Where a judgment is rendered granting a man discharge—this judgment that I have said—that is final, and has been for centuries in England.

Mr. MACDONALD: Yes, but the "decision" in question, Senator Roebuck, with respect, is where this discharge is not ordered. My suggestion is that you apply for your writ, your writ is refused, and under subsection (3) you cannot shop around. Whatever that right was, and it is a bit uncertain at the time, is taken away.

Senator ROEBUCK: But this takes it away.

Mr. MACDONALD: But if you get your writ and you get the man and his jailor before the court, and the court hears the case on the merits, and then