Hon. Mr. Choquette: But he is not senile. He is smart enough to see through this.

Hon. Mr. Power: I hope he did not intimate that Duplessis was a Communist.

Hon. Mr. Choquette: No. I am going to deal with Duplessis' padlock law. We have one similar to it now 25 or 30 years later. I shall deal with that in a few minutes.

Now, honourable senators, the first of the committee's recommendations—that is the committee appointed more than a year ago by the Minister of Justice and headed by Professor Maxwell Cohen, Dean of Law at McGill—would appear to be the simplest of definition, determination and enforcement: that relating to genocide. But the two other categories would be far more difficult to define and prove: far more susceptible to variable interpretation with the guilt factor shaded from hatred to contempt. There is a vast difference between the two, and indeed it is difficult to conceive how a conviction for group defamation could be obtained under the latter, so general is the terminology, so broad its possible application. Further, it trespasses dangerously upon the vital concern of free speech.

Let us deal now with section 267B of the bill.

> Every one who, by communicating statements in any public place, incites hatred or contempt against any identifiable group where such incitement is likely to lead to a breach of the peace, is guilty of—

All honourable senators know the punishment and the penalty, but subclause (3) says:

> No person shall be convicted of an offence under subsection (2) where he establishes—

And this is a defence.

> (a) that the statements communicated were true; or
>
> (b) that they were relevant to any subject of public interest, the public discussion of which was for the public benefit, and that on reasonable grounds he believed them to be true.

The first part of that puts teeth into the law, but the second part removes them immediately, and I will tell you why. As it reads, no person shall be convicted of an offence under subsection (2) where he establishes, (a) "that the statements communicated were true", or that they were "relevant to any subject of public interest, the public discussion of which was for the public benefit, and that on reasonable grounds he believed them to be true."

These provisos, honourable senators, invite an individual or several individuals to make what is called a test case.

Before I deal with these provisos, let me say this—and Senator Lang has already pointed this out in his able speech of last week—that this throws the proposed legislation into conflict with a root principle of Canadian justice: that the accused is not required to prove his innocence, but the Crown to prove his guilt.

With regard to truth of the statement being a valid defence in such cases, the committee, and in fact this proposed legislation, departs from the recent British precedent. The British Race Relations Act of 1965 proscribes public discussion on all matters involving colour, race or ethnic and national origin if it occurs in a form which is threatening, abusive or insulting, and likely to stir up hatred, regardless of the merits of its contents—that is, irrespective of its truth or falsity.

As I have already pointed out, a person accused under the proposed law can escape conviction by proving that the statements he made about any identifiable group—Communists, separatists, Jews, Negroes, Jehovah's Witnesses, et cetera—are true. This opens up the possibility of court hearings in which hatemongers produce "scientific evidence" —which all hate groups have—to prove the inferiority of a given group. Today, with statistics on nearly every subject being available to the public, it is very easy to ascertain the truth of statements before making them in public, either verbally or in print.

Ladies and gentlemen, in 1937, when I had just been practising law some five years, we had in the Town of Eastview, a sensational case called *Rex v. Palmer*. It looked very innocent from the beginning. Miss Palmer, who was not even connected with a welfare or social agency, was going from door to door selling contraceptives. She did not choose the Anglo-Saxon parts either of the City of Ottawa or of Eastview. She went into the French-Canadian parts where the people were 99.9 per cent French Canadian.

She knew that she was going to provoke a discussion, and she was probably hoping that there would be a test case. There was, and this case lasted about one month in the magistrate's court in Eastview, in the County of Carleton, and it merely provoked a lengthy and bitter debate between medical doctors.