will be studied carefully by our committee, while trying to observe this long-standing rule of not debating in Parliament a matter which is *sub judice*.

This afternoon I shall confine my remarks to brief references to the notes of the learned judges of the Supreme Court, without commenting on same. First, I refer honourable senators to page 4 of the notes of Mr. Justice Pigeon. I should mention that I am referring to the original text of the judgment, and not to the printed report, because the page numbers might differ. At page 4 he said:

> Dealing first with the defences of necessity and of section 45, it must be noted that while the five judges who heard the case in appeal—

Meaning the Court of Appeal of Quebec.

> —were all of the view that these were not available to the accused, their reasons for so deciding were not identical, especially with respect to section 45.

Concerning the defence of necessity, Mr. Justice Pigeon, after having quoted Kenny's opinion on which Mr. Justice Casey relied, added the following remarks at page 5:

> The views expressed by the other judges were not significantly different on this question. As I read them they were all of the view that there was no evidence of the urgent necessity which, as the Crown conceded may, in very exceptional circumstances, justify a violation of the criminal law, this being a common law defence preserved by section 7.3 of the Criminal Code.

Then on page 6 he added:

> Concerning section 45, three of the judges who sat on the case in appeal were of the view that this provision was not available as a defence to a charge under section 251.1, while the other two, namely, Casey and Rinfret JJ.A., appear to hold only that it was not available in the circumstance of the present case.

Also on page 6:

> I am therefore of the opinion that the court of appeal was correct in holding that the trial judge erred in putting the defence of necessity before the jury as there was no evidence to support it.

On page 9 the same learned judge said:

> Because the order of the Court of Appeal in this case appears to be without precedent, a review of the relevant legislative history is desirable.

Finally, referring to the power of the court of appeal to enter a verdict of guilty, at page 19 Mr. Justice Pigeon wrote:

> Needless to say that this is obviously a power to be used with great circumspection.

This same view was expressed later on in the dissenting opinion of the Chief Justice.

I now pass to the notes of the Honourable the Chief Justice of Canada. At page 1 of his notes, he said:

> This appeal, which is before this court as of right under section 618(2) of the Criminal Code, presents the highly unusual, if not the singularly exceptional, situation of an appellate court itself entering a conviction after setting aside a jury verdict of acquittal.

Later on the same page:

> That verdict was set aside and a conviction was entered by the Quebec Court of Appeal which found it unnecessary to send the case back for a new trial.

The learned Chief Justice continued:

> The five judges who constituted the court—

Referring again to the Quebec Court of Appeal.

> —unanimous in result but not in their reasons, concentrated on the two defences that the trial judge had left to the jury, a defence under section 45 of the Criminal Code and the common law defence of necessity preserved by section 7(3) of the Criminal Code.

I could go on citing similar comments and reservations expressed by the honourable judges of the Supreme Court, but I feel that those I have cited so far are sufficient to justify the amendment which is being proposed by the Minister of Justice in the present bill.

This amendment purports to clarify the situation, setting out in the clearest terms possible the power of our courts of appeal to deal with an acquittal verdict in similar circumstances. As an additional reason in support of the proposed amendment, I believe it can be said that the jury, having been misdirected by the trial judge and the verdict having been rendered as a result of this erroneous direction, there was in this particular case no proper judicial decision rendered. This position is enhanced by the fact that the court of appeal found that the jury was directed to give consideration to the defence of necessity, and the defence under section 45 of the Criminal Code, when the evidence was clearly insufficient to support such defences. In these circumstances it would seem to me that ordering a new trial with directions to the trial judge would have been more appropriate in this case.

● (1420)

Finally, I am of the opinion, and I assume that my honourable colleagues agree with me, that if any modification is to be made to the application of our jury system, the only place where such a modification can be brought about is in this Parliament, and in this Parliament alone. All this is said, as I observed, with due deference to the opinions expressed by the Leader of the Opposition, expressing again the hope that his views will be thoroughly considered, as I am sure they will, by the Standing Senate Committee on Legal and Constitutional Affairs.

Before I pass to the remarks of Senator Asselin, I should like to add another comment on the speech of the Leader of the Opposition in this debate, where he quoted the remarks of Mr. M. L. N. Somerville, the Immediate Past President of the Canadian Bar Association. At page 1743 of *Debates of the Senate* for February 11, Senator Flynn quoted Mr. Somerville as follows:

> It is a perfectly tenable position that the only remedy available to the Crown from an improper acquittal by a jury should be a new trial.

To my mind, this is Mr. Somerville's basic thought. He went on to criticize those of the opposing view who took advantage of this case, which has some public appeal, I grant you, to mount what he called "a furious propaganda war" against our court system. I agree with this fully. But, the basic thought expressed by Mr. Somerville is, I repeat: