Canada. Parl. Senate. Standing Comm.on Banking and Commerce, 1952/53.

1952-53

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (O), intituled:
An Act respecting the Criminal Law.

The Honourable SALTER A. HAYDEN, Chairman

MONDAY, DECEMBER 15, 1952

TUESDAY, DECEMBER 16, 1952

WITNESSES

Honourable Stuart S. Garson, P.C., Minister of Justice and Attorney General of Canada.

Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Counsel, Department of Justice.

APPENDICES

"A" Report of the Sub-Committee to the Standing Committee on Banking and Commerce.

"B" Report of the Banking and Commerce Committee as adopted by the Senate.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1952

BANKING AND COMMERCE

THE HONOURABLE SALTER ADRIAN HAYDEN, CHAIRMAN

The Honourable Senators

Aseltine	*Haig	McIntyre
Baird	Hardy	McKeen
Beaubien	Hawkins	McLean
Bouffard	Hayden	Nicol
Buchanan	Horner	Paterson
Burchill	Howard	Pirie
Campbell	Howden	Pratt
Crerar	Hugessen	Quinn
Davies	King	*Robertson
Dessureault	Kinley	Roebuck
Emmerson	Lambert	Taylor
Euler	MacKinnon	Vaillancourt
Fallis	MacLennan	Vien
Farris	McDonald	Wilson
Gershaw	McGuire	Wood
Gouin		

* *ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Tuesday, 25th November, 1952.

"Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (O), intituled: "An Act respecting the Criminal Law", be now read the second time.

After debate, and—

The question being put on the said motion, it was—

Resolved in the affirmative.

The said Bill was then read the second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.30 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Baird, Buchanan, Burchill, Crerar, Davies, Gouin, Hawkins, Horner, Howden, Hugessen, Kinley, Lambert, McIntyre, Paterson, Pratt, Quinn, Robertson, Roebuck, Taylor, Vien, Wilson and Wood. 24.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate.

Messrs. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Counsel, Department of Justice.

The Official Reporters of the Senate.

Bill O, intituled: "An Act respecting the Criminal Law," was considered.

The Honourable Stuart S. Garson, P.C., Minister of Justice and Attorney General of Canada, was heard with respect to the Bill with Particularity as to clauses 46, 474 and 727.

At 10.30 p.m. the Committee adjourned.

At 10.30 a.m., Tuesday, December 16, 1952, the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Baird, Bouffard, Buchanan, Burchill, Campbell, Crerar, Davies, Emmerson, Euler, Gouin, Hawkins, Horner, Hugessen, Kinley, Lambert, MacLennan, McIntyre, Paterson, Pratt, Robertson, Roebuck, Taylor, Wilson and Wood. 26.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate.

Messrs. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Counsel, Department of Justice.

The Official Reporters of the Senate.

The Committee proceeded to the consideration of the report of the Sub-Committee and to the consideration of the Bill, clause by clause.

At 1 p.m. the Committee adjourned.

At 4.10 p.m. the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Bouffard, Buchanan, Burchill, Campbell, Crerar, Davies, Emmerson, Gouin, Hawkins, Hugessen, Kinley, Lambert, MacKinnon, McIntyre, Paterson, Pratt, Robertson, Roebuck, Taylor, Vien, Wilson and Wood. 24.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate.

Messrs. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Counsel, Department of Justice.

The Official Reporters of the Senate.

The consideration of the report of the Sub-Committee and the Bill, clause by clause, was resumed.

After discussion it was Resolved to report the Bill with several amendments. (See appendix "B" to these proceedings.)

At 6 p.m. the Committee adjourned.

Attest.

James D. MacDonald,
Clerk of the Committee.

68169—1½

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, MONDAY, December 15, 1952.

The Standing Committee on Banking and Commerce, to whom was referred Bill O, an Act respecting the Criminal Law, met this day at 8.30 p.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Honourable senators, you all have received a copy of the sub-committee's report on the Criminal Code Bill. I am filing the original report, which I have signed, for purposes of having it incorporated into the report of the main committee. I am given to understand that it will appear as an appendix to the report.

The purpose in calling this meeting tonight was to get the sub-committee's report before you as quickly as possible, so that we may be able to deal with it when the Banking and Commerce Committee meets tomorrow morning. The Minister of Justice, Mr. Garson, has been given a copy of the report, and he has some views to express in connection with certain of our recommendations. We expect him to be here within a few minutes to speak to the various points in the report about which he is concerned. I thought that after that we might adjourn consideration of the report until tomorrow morning, when we could go into it and see how much of it we want to accept.

We should have a motion at this stage, I think, recommending the printing of the proceedings of this committee. The motion, which follows the usual form, should read this way:

> Your committee recommend that they be authorized to print 600 copies in English and 200 copies in French of its proceedings on Bill O.

Hon. Mr. HAWKINS: I move that motion.

The motion was seconded and agreed to.

Hon. Mr. CRERAR: Are there many sections left to be considered here?

The CHAIRMAN: There are about ten sections which we have left for consideration of the main committee. But included in those ten, if I am not mistaken, are some sections in respect of which we did indicate how we thought they should be amended. Some of the other amendments become consequential amendments if our recommendations on those sections are accepted; they are mainly the sections relating to treason and associated offences.

Hon. Mr. ROBERTSON: They are in addition to what is in the sub-committee's report, are they?

The CHAIRMAN: No. In our report that is before you we have referred to every section of the bill. Where we have approved of a section without amendment we have indicated that, and where we have felt an amendment was necessary we have, with certain exceptions, made the amendment, which has been incorporated. In some cases where we thought it was important to do so we have stated the reason for our recommendation. Then there are certain sections, like those dealing with treason, to which we felt the main committee might want to give its own consideration, notwithstanding the views that we have expressed. So notwithstanding the fact that we have expressed certain views, it is still open to the main committee to deal as it pleases with those. Of course, that is true of all the sections. There are more than one hundred amendments in all, I think.

The Minister of Justice has just come in, and we shall be glad if he will give us his views.

Hon. Mr. PATERSON: Mr. Chairman, is it just the amendments to the bill that you wish authority to have printed?

The CHAIRMAN: No; we want authority to print the proceedings before this committee.

Hon. Mr. PATERSON: All the evidence?

The CHAIRMAN: Yes.

The Hon. STUART S. GARSON, Minister of Justice: Mr. Chairman, speaking on behalf of the other members of the Cabinet and myself, the first thing I wish to do is to express our very great appreciation of the really magnificent job which the Senate has done on this Code. My experience with the Senate all through the years has been a very good one, even before I came down here as a member of the House of Commons. Before that I was aware of the kind of work which the Senate committees do on legislation of this kind, but I do not think it would be possible to find a better example of the proper way to deal with a piece of legislation like this than the way in which your chamber and your Banking and Commerce Committee—and if I may be so invidious as to particularize your sub-committee—have dealt with the Code.

This, I think, is by general consent the biggest piece of important legislation which has been before parliament for a great many years. Considering the extent of the various subject-matters with which it deals, I wonder if parliament has ever had before it a piece of legislation as large as this since the original Criminal Code was passed, in 1892. Certainly I do not think that parliament has ever before been faced with the task of consolidating and integrating the amendments made over a period of sixty years to a statute which was exceedingly complicated to begin with.

I may say that in the Department of Justice we are more than gratified with our own wisdom in selecting the Senate rather than the House of Commons as the appropriate chamber in which to introduce this legislation. We have had the benefit of the very large amount of work which your sub-committee did upon the bill last session. We also have had the benefit of the advice of the commissioners on the Uniformity of Legislation Criminal Section, from both the British Columbia and the Nova Scotia bar, from a number of eminent lawyers from some of the other provinces, as well as the provincial attorneys general.

Having taken advantage of the suggestions this committee made last year, and the suggestions we received in a most democratic manner from these other sources, we redrafted the code, and introduced it again in the Senate this session. Now, before the House of Commons has completed the debate on the Address in Reply to the Speech from the Throne, you have before you a report which I believe may in a day or so enable you to report this large and important bill.

In the face of the facts I am almost embarrassed in differing in any way from the suggestions you have made; however, there are here six matters upon which I venture to disagree. When one thinks of all the suggestions which came from this committee last year which were accepted and incorporated into the new draft of the code, and the further suggestions which are contained in this voluminous report now before us, it becomes obvious that the points upon which we differ are fractional compared with those on which we agree.

The CHAIRMAN: That is, numerically?

Hon. Mr. GARSON: Yes, that is correct. I am sure you, Mr. Chairman, along with your fellow senators, have given much in the preparation of this document. Incidentally, as a Scotsman, I am most grateful for the work that

is done, for I realize that had some person—probably the government—had to pay a fee for the advice of such able lawyers as yourself, Senator Roebuck and Senator Farris, it would have been exceedingly expensive.

Hon. Mr. ASELTINE: They will be rewarded in the next world.

Hon. Mr. GARSON: Yes; we will arrange that with St. Peter.

Hon. Mr. ROEBUCK: We may not be up there.

Hon. Mr. GARSON: The first provision to which I would direct your attention is clause 46 of the bill, dealing with treason. Your committee has suggested at page 19, line 2, of the bill, that an amendment should be introduced making paragraph (*a*) of subsection 1 of clause 46 read as follows:

> Every one commits treason who, in Canada,
>
> (*a*) kills or attempts to kill Her Majesty, or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;

We feel that the first half of your additional wording, namely, "or does her any bodily harm tending to death or destruction", is included in the phrase "attempts to kill Her Majesty". That is to say, that doing any bodily harm tending to death, is an attempt to kill, and therefore we think the additional words would be surplusage. We do, however, agree that the words "maims or wounds her, or imprisons or restrains her" should be added.

If our proposed amendment to your amendment were accepted, subsection (1) of section 46 would then read:

> Every one commits treason who, in Canada,
>
> (*a*) kills or attempts to kill Her Majesty, or maims or wounds her, or imprisons or restrains her;

The CHAIRMAN: Perhaps I should point out that all the committee did was to restore the language that presently exists in that subsection of the code. You prefer, I understand, to take your language and add to it the balance of the wording in the subsection existing in the code, omitting the words which might be repetitious.

Hon. Mr. GARSON: That is right, with no significant difference in the meaning.

Hon. Mr. CRERAR: May I ask what is the meaning of the word "restrains"?

Hon. Mr. GARSON: "Restraint" would mean physical restraint; to go into her palace and restrain her.

The CHAIRMAN: To restrain her in any of her functions.

Hon. Mr. ROEBUCK: To kidnap.

Hon. Mr. KINLEY: Suppose Her Majesty were run into by a car, and were hurt in a collision?

The CHAIRMAN: That would be "maims".

Hon. Mr. ROEBUCK: If the collision was accidental, it would not be criminal.

Hon. Mr. GARSON: Would you not say, Mr. Chairman, that in all of these cases of treason, they import *mens rea* to commit treason. If it were a mere accident, and she were hit by a car, it would not be treason. It would be necessary to prove intent.

The CHAIRMAN: Yes; one cannot be treasonable unintentionally.

Hon. Mr. GARSON: That is correct. I now come to the second suggestion.

Hon. Mr. CRERAR: May I ask whether that section would have any application to Her Majesty's representative in Canada?

The CHAIRMAN: No, this is as to the King or Queen.

Hon. Mr. GARSON: This applies to Her Majesty's person. The original treason section, 1351, was drafted at a time when the King was a personal King who was the actual leader for example in war; and if any person attacked his person that was treason.

I now come to the next suggestion, at page 19, line 5 of the new draft code, where you suggest the insertion of the word "knowingly". The suggested amendment appears on page 2 of your report. "Knowingly assists an enemy at war with Canada, or any armed forces", and so on.

We respectfully suggest that the word should not be included, for the reason that was mentioned a moment ago, that in all offences of treason it is necessary to establish a *mens rea*, or guilty mind, and that involves the proof of intention, the intention to commit treason.

As an example of the application of that principle, in the case of Rex vs. Ahlers, 51 K.B., 616, the accused was charged with adhering to the King's enemies by aiding and comforting them. The accused, who was a naturalized British subject, acted as a consul for the German government in the first world war. He assisted German subjects to return to Germany in August 1914, after a state of war existed between Great Britain and Germany. His defence was that he believed that under international law nationals of the belligerent countries were allowed a certain time to return to their own countries if they so desired, and that he had no evil intent in assisting Germans to return to Germany. It was held that the jury should have been told in the Judge's charge that they must consider whether the acts of the appellant were done by him with the intention of assisting the King's enemies, or whether on the other hand he acted without any such evil intention. The Crown must prove intention.

In the case of William Joyce the learned judge gave the following instructions to the jury:

> I think that is the whole of the very short material upon which you have to come to a conclusion as to whether it has been proven to your satisfaction beyond all reasonable doubt that during the period in question this man adhered to the King's enemies, comforted and aided them with the intent to assist them, and that he did so voluntarily.

Then, as another example, Tremeear cites, at page 108, on a charge of treason, of levying war on the Queen in her dominions, Chief Justice Tyndall held it must be established that there had been an insurrection, that it had been accompanied by force, and that its object had been of a general nature. It was not incumbent upon the prisoner to show an innocent object of his activities and an innocent meaning for his acts, but it was for the prosecution to make out a case against him.

Now, that being so, seeing that treason as an offence requires proof of intention, we are afraid that as the law now stands on the decided cases, that the addition of the word "knowingly" will not do any good, and it may do harm.

Hon. Mr. VIEN: What kind of harm can it do?

Hon. Mr. GARSON: That is the very point I was coming to, Senator. The word "knowingly" is generally construed as importing an evil design, and therefore it could be in that sense construed as indicating bad faith or wrong doing. On the other hand the word "knowingly" can also be interpreted as not necessarily in the context indicating bad faith or wrong doing, but merely knowledge. It is put this way in "Corpus Juris", volume 51, page 403:

> In its ordinary acceptation the word "knowingly", as applying to an act or thing done, imports knowledge of the act or thing so done as well as an evil intent or a bad purpose in doing such thing. On the other hand, the word may be employed without any indication of bad faith or wrong doing.

Hon. Mr. VIEN: But could he have a bad intent if he did not know the purpose or the purport of the act that he is accused of having committed? *Mens rea* is necessary in every case. How could he have a *mens rea* if he thinks that he is doing something which does not constitute treason, the criminal act of treason?

Hon. Mr. GARSON: That is my point, sir. My point is that in all cases of treason it is necessary to prove *mens rea,* and *mens rea* includes knowledge plus intent. A man has to know that he is committing treason, to know what he is doing, and he has to intend to commit treason. In other words it is very difficult to prove that a man intends to do a certain thing if you cannot first prove that he knows that he is doing it.

Hon. Mr. VIEN: That is right.

Hon. Mr. GARSON: Now, then, if that is presently the law, to insert the word "knowingly" into this section adds an ambiguity which contributes nothing whatever to the clearness of the section and may cause difficulty, because some defence lawyers may come into court and say, "Now, my Lords, we know that treason involves the proof of intent. We know that intent includes knowledge. But parliament in its wisdom came along and inserted the word 'knowingly', so therefore what meaning are we going to attribute to the inclusion of the word 'knowingly' unless it was that parliament intended that they did not have to prove intent, and if they proved knowledge that would be sufficient to establish a case?"

So I cannot see how the insertion of the word "knowingly" would improve matters at all, and the more likely result is to at least create an ambiguity and perhaps, if a poor judgment were given on the act so amended, the Judges might say that the intention of parliament was to simply prove mere knowledge, and that is all. Now, I cannot see that there is any necessity, when through all the ages since the Treason Act was passed in 1381 we have got along with the idea of proving *mens rea* and intent, we should now attempt to gild the lily by inserting the word "knowingly".

The CHAIRMAN: Except that the sort of thing in relation to which "knowingly" is used is broader now than it was in the early history of treason.

Hon. Mr. GARSON: Yes, that is true, Mr. Chairman. But would you not say that, upon a charge laid under this section 46, subsection 1 (c), of assisting an enemy at war with Canada, it would be necessary, as the law now stands, to prove *mens rea,* and that to establish *mens rea,* that he intended to commit a statutory equivalent of treason, you would have to bring home to him, as in the case of Rex vs. Joyce, that he did the acts complained of knowing that he was assisting the armed forces against whom Canadian forces were engaged in hostilities, whether or not a state of war existed.

Hon. Mr. LAMBERT: Would it be conceivable, Mr. Chairman, that a human instrument in committing treason could have the intent of doing it but might be the tool of a master mind behind him, and not "knowingly" do it? The person who commits the act of violence or whatever it is might not have the same knowledge of the law that is involved as the master mind.

Hon. Mr. GARSON: There are two headings consisting of an enemy at war with Canada. There is the ordinary case of treason or this new wording "or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are". Now, you would have to prove that he knew that these forces that he was assisting were engaged in hostilities with Canadian forces.

The CHAIRMAN: Is that what you have to prove?

Hon. Mr. GARSON: More than that. You have to prove the knowledge and you would also have to prove intent. So that, as the law now stands, in all these cases of treason you have to prove *mens rea* and intent, which includes knowledge. There is no purpose, it seems to me, in adding "knowledge" to that.

The CHAIRMAN: No, *mens rea* means with a guilty mind.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: Now, if a person assists forces that are engaged in hostilities against Canada, even though a state of war does not exist, what he does he may very well intend to do, and therefore there is that guilty intent, but he may or may not know that in doing what he is doing he is committing treason.

Hon. Mr. GARSON: Yes. With great respect I think that would have to be established because you would have to show that not only did he know what he was doing—whatever physical act that might be—but in relation to what he did do he intended to assist the enemy. It is like the case of this German consul. These Germans were going back, trying to get back home right after war was declared, and he said, "I helped them but I was under the impression that according to international law, if they got back home within so many days they had a perfect right to go there, and that is what I was doing".

Hon. Mr. HUGESSEN: Your answer, Mr. Garson, is that if you insert the word "knowingly" here, this man would be convicted under this language whereas he would not be convicted if you were to leave it out?

Hon. Mr. GARSON: That is right. Exactly. That is to say, assuming that when it came before the court the judges of the court in an endeavour to give some meaning to the insertion of the word "knowingly" held—as I would think myself in error—that the intention of parliament was to change the law as it has stood for the last several centuries and required only proof of knowledge and not proof of intent or *mens rea.*

Hon. Mr. HUGESSEN: Yes.

Hon. Mr. VIEN: I doubt very much that we could do away with *mens rea.*

Hon. Mr. GARSON: Oh, not on something you hang a man for.

Hon. Mr. VIEN: Yes, but even if we applied the word "knowingly" it would hardly be possible that any court of the land could say "Well, as long as he knows we have not to prove the guilty mind". I do not believe that could be done.

Hon. Mr. GARSON: I agree with you. I think that if this did come before the court the court would say, "We don't know why parliament put the word 'knowingly' there, but whatever the reason was we are not going to dispense with the necessity of proving *mens rea*".

Hon. Mr. VIEN: Would it not be obvious that parliament intended to convey the idea that the person committing the crime must have not only a guilty mind but the full knowledge of the act that was being committed?

Hon. Mr. GARSON: Well, sir, I suggest that it would be very difficult to establish a guilty mind unless it could be brought home to the accused that he didn't know the facts.

The CHAIRMAN: Well, then, what is wrong? If we proceed on your basis of argument, then, in order to get at a guilty mind you prove knowledge.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Then, what is wrong with saying "knowingly" because treason implies a guilty mind. It is part of the offence of treason, is it not?

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Well, then, you get at that through the road of knowledge.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Well, then, it does not complicate things at all?

Hon. Mr. GARSON: Well, at best it would be mere surplusage. At worst, the court in endeavouring to give some meaning to the amendment of adding the word "knowingly" might say, "Well, there must have been some intent and the intention was to do away with the necessity of proving a guilty mind" and all you do under it is prove that they knowingly did it.

The CHAIRMAN: I suppose you could resolve the problem by taking the word "knowingly" out and by putting in the word "wilfully"?

Hon. Mr. GARSON: I do not think it needs that. I think it could be left as it stands. I think it is part of the section of treason to prove *mens rea.*

Hon. Mr. LAMBERT: There may be more than one person involved in an act of treason.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Yes.

Hon. Mr. LAMBERT: Supposing it is a matter of giving information to the enemy which could be termed to be very adverse to Her Majesty's Forces. Take a scientist working in a laboratory. The master mind of intrigue knows that that person is conveying certain information to the enemy and he knows that he is doing so without knowledge of what is involved. He knows that the person swore under oath not to give out information, but the person really does not realize what the effect of it will be. Anyhow, that person is arrested and the real responsible person is not. Would not "knowingly" be an added protection in that case?

Hon. Mr. GARSON: That would come under paragraph (*e*). But, even in that case I do not think it would be a protection because the knowledge that is required here is not a scientific knowledge of the secrets that are being imparted, but it is whether he knows that he is imparting secrets that he should not be imparting. For example, let us say a bank messenger in the ordinary course of his duties was instructed by a traitorous bank manager to take a parcel from one place to another. He has no way of knowing what the contents of the parcel are, and it turns out that they are military secrets that he has conveyed. In this case I do not think that *mens rea* could be proved against this messenger.

Hon. Mr. LAMBERT: No.

Hon. Mr. GARSON: But, on the other hand, if he had had several meetings with the bank manager and knew very well that he was trying to harm his own country "in"—whether or not he had any idea that the contents were atom bomb secrets or something else—then he would have knowledge and intent and *mens rea.*

Hon. Mr. LAMBERT: It is quite conceivable that a scientist could be used by spies and would not realize it.

Hon. Mr. GARSON: I think it would certainly be possible for a set of circumstances to exist under which a man would actually be innocent, although in most of the cases which have occurred in real life the parties have been pretty guilty.

Hon. Mr. LAMBERT: He just as well might be guilty, so far as the effect goes, but I am speaking of the intent.

Hon. Mr. GARSON: That is right.

The third suggestion deals with paragraph (*e*), which reads:

> (*e*) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada;

The suggestion is that this paragraph be deleted from the present bill—you will correct me, Mr. Chairman, if I am wrong on this—that it be deleted from the present bill and left where it is in the Official Secrets Act.

The CHAIRMAN: No.

Hon. Mr. GARSON: Oh, I beg your pardon; the suggestion is that it be transferred to section 50, where it would attract a penalty of fourteen years rather than the penalty of life imprisonment.

Hon. Mr. ROEBUCK: A penalty of death, is it not?

Hon. Mr. GARSON: A penalty of death or imprisonment for life.

The CHAIRMAN: The report recommends that paragraph (*e*) be transferred out of the present section 46 to section 50, which deals with assisting alien enemies.

Hon. Mr. GARSON: The death sentence is not mandatory, and the penalty of imprisonment need not be for life but may be such lesser period as the Judge in his discretion may impose. So it is only in cases where the facts were particularly heinous that the court, in the exercise of that discretion, presumably would impose a sentence of imprisonment greater than fourteen years.

But the main reason why I suggest that the paragraph should be left in section 46 is that it seems to me that the conveying of, let us say, the secret of the atomic bomb, is fully as serious to the country against which that kind of treason is committed as almost any other conceivable act of treason. It has to do not with the safety of the person of the sovereign, but probably with the life of the sovereign herself and the lives of millions of her subjects.

The CHAIRMAN: Is your point there, Mr. Minister, that by transferring the paragraph we have reduced the possible punishment or penalty? Is that the objection, or is it that you wish to have the label and title of treason on the offence?

Hon. Mr. GARSON: It is both.

The CHAIRMAN: The first objection can easily be resolved by the providing the penalty. And as to the second one, treason has a well-known meaning which it has had throughout the ages. I am using your own argument with regard to another matter, about there being imported into this law the *mens rea*. Throughout the ages treason has been known as an offence against the sovereign in relation to the person of the sovereign.

Hon. Mr. GARSON: Well, no, I submit not. I submit that you are entirely right in this, that the original Treason Act of 1351 applied to a personal sovereign and therefore to the person of that personal sovereign. But even apart from any amendments to the statutory law, the interpretations which the judges have from time to time put upon the Treason Act of 1351 have introduced what the textbook writers refer to as constructive treason to accommodate the law to the change in the character of the sovereign from a personal sovereign to a constitutional sovereign. That is my rather feeble way of putting it, so I will quote from Stephen's Commentaries on Criminal Law, published in 1950, which states the same principle in more apt language. The learned author says:

> The present law of treason rests almost entirely upon the Treason Act of 1351, as interpreted by the judges through the succeeding centuries. This interpretation has of necessity been so generous as substantially to alter the conception of treason as determined by the statute. It is clear that a political offence of this gravity could not remain constant in character while the relations of the individual to the state suffered a complete revolution. The original wording of the statute was directed to the protection of a personal King. The present construction is designed to effect the security of the state, of which the Crown is the legal and political embodiment. The creation by the judges of the so-called "constructive treasons," while often the subject of ill-formed criticism, has thus filled an essential need.

Carrying that idea a short step farther, into the atomic age, what I say is that the traitorous disclosure to the enemy of secrets of the atomic bomb is the most colossal act of treason that can possibly be imagined. And there is

the difference between what the judges did and what we are proposing to do; the judges had to interpret the old Treason Act of 1351, whereas we are legislating with regard to the same subject-matter in order to accommodate the old conception of treason to modern conditions.

The CHAIRMAN: You used the word "enemy". I do not see anything in (*e*) that imports "enemy" or a "state of war". The Acts referred to in (*e*) could occur at any time.

Hon. Mr. ROEBUCK: And the kind of state referred to there includes the United Kingdom.

The CHAIRMAN: Yes. It says that everyone commits treason who, in Canada, conspires with an agent of a state other than Canada to communicate information, and so on. Is the United Kingdom a state other than Canada?

Hon. Mr. GARSON: Yes.

The CHAIRMAN: And is Australia a state other than Canada?

Hon. Mr. GARSON: Yes.

The CHAIRMAN: The offence is conspiring with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada. Now, "interests" is a pretty broad term.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: It might be a purely economic concept, in that sense.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: And the act might occur at any time in the course of the existence of the state, without regard to the conditions at the time. The essential elements under this paragraph are that there is a conspiracy with an agent of a state other than Canada—which might, for instance, be Australia—to communicate information or to do an act that is likely to be prejudicial—it does not even have to be in fact prejudicial, but only likely to be prejudicial—to the safety or interests of Canada. Now, I can understand why it is important to have "safety" in there, but this word "interests" might apply to something that was likely to be prejudicial to the interests of Canada's trade with Australia, for instance.

Hon. Mr. GARSON: The fact that this paragraph is in a section dealing with treason would in itself be the clearest indication to a court that the information or act referred to was not something that had to do merely with economic interests.

The CHAIRMAN: Why not? You have said that the interpretations by the courts have introduced constructive treason into the law. Well, constructive treason is exactly what you make it in the statute, and is as broad as you make it in the statute.

Hon. Mr. GARSON: Is this not so, that the conveying of information as an act of treason might be—to take an extreme case, the disclosure of the secret of the atomic bomb. Or, on the other hand, it may merely be the disclosure of information with respect to the arms program of the country concerned. In modern warfare, which requires for its success factories, fields and workshops behind the front lines—in other words, an economic base—it is difficult in the abstract, without having before one the facts of a particular case, to say just how serious is the disclosure of the information in question.

The CHAIRMAN: Mr. Minister, you keep using the word "warfare". The section does not say anything about warfare.

Hon. Mr. GARSON: I know it does not say anything about warfare, and I also know it does not necessarily say anything about communicating information to an enemy state; but it could very well be, for instance, the disclosure of information to a country like Czechoslovakia with whom we are not at war

but which country could in turn see to it that the information got to an enemy state. If this section is left in the form in which it is at the present time, it is up to the court to decide upon the facts of the case before it, whether the accused is guilty of any offence at all—and of course the Crown must prove *mens rea*—and if so, how serious the offence is. If there is an offence of a less serious character, in spite of the fact that it might come under this subsection, and if the jury finds the accused guilty, the judge may impose a sentence of imprisonment for life, but he can also impose a sentence of imprisonment for such lesser term as he thinks fits the crime.

The CHAIRMAN: But, Mr. Minister, haven't we got to the stage where an offence is complained of under paragraph (*e*), when you have established communication to an agent of a state other than Canada—that is as far as the communication is concerned?

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Your other suggestion, namely that the information goes to the agent of a state not at war with Canada, and be communicated by that state to another state which is at war with Canada or engaged in hostilities with Canada.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: If you are in a position to prove that the information got to that state which was at war with Canada or engaged in hostilities with Canada, the offence would not likely be under paragraph (*e*), but would be under paragraph (*c*)? Paragraph (*c*) reads: "assist an enemy at war with Canada or any armed forces against whom Canadian forces are engaged in hostilities. . . ."

Hon. Mr. GARSON: No, I would not think it necessarily would be that paragraph.

Hon. Mr. ROEBUCK: Charge him with conspiracy.

Hon. Mr. GARSON: With conspiracy?

Hon. Mr. ROEBUCK: Conspiracy to convey information to an enemy.

Hon. Mr. GARSON: That is right.

Hon. Mr. ROEBUCK: That point is completely covered.

The CHAIRMAN: You can do all that without paragraph (*e*).

Hon. Mr. GARSON: Under what section?

The CHAIRMAN: Under paragraph (*c*).

Hon. Mr. ROEBUCK: Under the conspiracy section of the code; it is right in the treason section.

The CHAIRMAN: Paragraph (*f*) reads "conspires with any person to do anything mentioned in paragraphs (*a*) to (*d*)"

Hon. Mr. GARSON: No; I would suggest with great deference, that (*e*) covers the point which is not covered by (*c*). Under (*c*) you would have to prove that an accused assisted the enemy; whereas, under (*e*) that is complete whereby you can prove in the circumstances *mens rea*. If it was shown to be prejudicial to the safety or interest of Canada, you do not have to show that the information assisted the enemy.

The CHAIRMAN: Conspiracy to assist means that parties agree illegally to assist the enemy or an armed force that is engaged in hostilities with Canada, whether at a state of war or not. You do not have to prove *fait accompli* to prove conspiracy.

Hon. Mr. ROEBUCK: And in treason you do not have to prove an overt act. The fact of a conspiracy itself is an overt act. If you look at paragraph (*f*) just below the paragraph we are now considering you will see it reads "conspires with any person to do anything mentioned in paragraphs (*a*) to (*d*)".

The CHAIRMAN: You prove the agreement, and that is it.

Hon. Mr. GARSON: Well, you prove the agreement, but the agreement may not assist the enemy; in which event you do not get a conviction under (c); however, it may nevertheless be prejudicial to the interests of Canada. If you do not have paragraph (e) you would not get a conviction under those circumstances.

Hon. Mr. ROEBUCK: If it is prejudicial to the interests of Canada, it must be to assist the enemy.

Hon. Mr. GARSON: No, no.

Hon. Mr. ROEBUCK: You are not going to widen it still farther, are you?

Hon. Mr. GARSON: Mr. Senator, with great deference, I would point out that (e) says—and the Chairman pointed this out a few minutes ago . . .

The CHAIRMAN: I said I could understand "prejudicial to the safety" but that "prejudicial to the interests of Canada" is very broad.

Hon. Mr. GARSON: The point I would refer to is, as the paragraph reads, "conspires with an agent of a state other than Canada—" it does not say to the enemy. I say there are two concepts in (e) which are not in these other paragraphs to which we have referred. First, it is not assisting the enemy but it is prejudicial to Canada.

The CHAIRMAN: Then it is broader; it is more inclusive than "enemy".

Hon. Mr. GARSON: Yes. The second one is, it is not to the enemy—it is the communication of information under a conspiracy with an agent of a state other than Canada.

Hon. Mr. VIEN: Should an offence under (e) be in the same category as that under (c)?

Hon. Mr. GARSON: That is the whole question.

The CHAIRMAN: That is the question. We did not think so. We thought it should be an offence, for we are moving along in our concepts, and criminal law is progressive the same as science and everything else.

Hon. Mr. ROEBUCK: That is new law.

Hon. Mr. VIEN: When one assists an enemy, he does a much more serious thing than when he conspires to communicate information which might likely be prejudicial to the safety or interest of Canada. "Prejudicial" is a very wide word.

The CHAIRMAN: Yes.

Hon. Mr. VIEN: And "interest" is also very wide.

The CHAIRMAN: Yes.

Hon. Mr. KINLEY: So is "likely".

Hon. Mr. VIEN: I would suggest that it should include the words "vitally prejudicial to the safety, etc.", because any prejudice suffered by Canada or any injury affecting the interests of Canada seems to be far different from assisting an enemy at war.

Hon. Mr. GARSON: Perhaps it might clear the matter if I were to quote from the judgment in the case of Rex vs. Rose, a comment concerning this provision —or substantially the same provision—when it was part of the Official Secrets Act. The judge said "The purpose is to prevent any foreign power from obtaining in whole or in part any information whatever as to military secrets of the country, and more particularly as to our scientific methods and material of production". In other words, under modern conditions, when all of these items of information are so important to our welfare, and, maybe, to our security, the purpose of legislation of this sort is to prohibit a subject of Canada from conveying that information to any other foreign state, whether enemy or not.

Hon. Mr. ROEBUCK: I suppose Massey-Harris would be guilty of treason if they showed the people of South America how to compete with us in the growing of wheat.

Hon. Mr. GARSON: No, I would not suggest that for a moment.

Hon. Mr. ROEBUCK: That is certainly contrary to our interests.

Hon. Mr. GARSON: I would say this, Mr. Senator, that a section of this sort would be applied to the facts of the cases which might arise, and if the Crown were unable to show that the disclosure of the information was something more than the act you speak of, or the mere carrying on of commercial activities, there would not be any offence, and no jury would think of holding a man guilty.

The CHAIRMAN: Where does it say that?

Hon. Mr. ROEBUCK: It certainly does not say that.

The CHAIRMAN: The offence is complete if you establish that the information communicated is likely to be prejudicial (1) to the safety, or (2) to the interests of Canada in peace or at war, at any time—any information that a judge and jury could conclude was likely to be prejudicial to not only the safety but the interests of Canada.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: "Interests" is a very, very broad term.

Hon. Mr. ROEBUCK: Given to any government other than Canada—the United Kingdom or Australia, or New Zealand, or the United States, any agent, and "any agent" is any employee of the country, and there are thousands of civil servants now.

The CHAIRMAN: Don't you wonder we did not strike it out entirely, rather than just transfer it?

Hon. Mr. GARSON: No, I would not want that. It served a very good purpose. As a matter of fact, if it was not for this section Mr. Rose could not have been convicted.

The CHAIRMAN: That section was in the Official Secrets Act. That is a good place for it.

Hon. Mr. GARSON: It may be. That is for you to decide.

The CHAIRMAN: We left it in. We just thought it should not come under the tag of "treason", because treason as such has a well known connotation, and to call anything that might be classed as being likely to prejudice the interests of Canada in peacetime—to call that treason is going pretty far.

Hon. Mr. VIEN: I think that the words might be "vital interests" of Canada. It should be a vital interest, not a mere interest.

The CHAIRMAN: We took out the word "interests" in transposing that paragraph to section 50.

Hon. Mr. GARSON: I would submit that "treason", using the word not in a legal sense now but in the broad sense of any one of those traitors that conveyed these atom secrets and the like to the enemy, is not matched by any other kind of treason.

The CHAIRMAN: I agree. If you can establish that they are guilty of conveying secrets to the enemy, there is no person who would say more strongly and quickly than myself that is treasonable, and you have an offence. But this section goes at least a million miles further than that.

Hon. Mr. GARSON: I think you will probably find that at a time when, not being at war, we have not any enemy to convey them to, you would have a lot of difficulty without this sub-section in proving in a court of law that the conveying of these bomb secrets to even Russia today—which is not an enemy,

we have not declared war on Russia—you could not make another section stick in those cases in which it was vital to the country that the law should be made to stick.

The CHAIRMAN: No, now you are taking the section out entirely. I am leaving the section in, but I am just transposing it. Certainly, if some scientist in Canada, or some civil servant, or any person else who was in possession of some of the atomic secrets, conveyed that information to an agent of Russia, or Czechoslovakia, or any one of those countries, today, there is not any court in the land but would hold him guilty under paragraph (*e*) of conspiring to communicate information that is likely to be prejudicial to the safety of Canada.

Hon. Mr. GARSON: That is precisely my point.

The CHAIRMAN: That is precisely what we have left in.

Hon. Mr. GARSON: Your argument is that it is a question where it should be placed.

The CHAIRMAN: That is apparently what we are arguing about, not whether it should be in or not, but where it should be.

Hon. Mr. KINLEY: And the penalty, of course.

The CHAIRMAN: And the penalty, yes.

Hon. Mr. BURCHILL: You are also taking the word "interests" out.

The CHAIRMAN: Because all the illustrations we have had and all the illustrations you have given are illustrations that have come under the heading of "prejudicial to the public safety of Canada". I think the word "interests" there is a meaningless and dangerous sort of word to use. If you cannot get them under the "safety" of Canada, "prejudicial to the safety of Canada", then I do not know how it can be an offence, because criminal law is concerned with the public safety.

Hon. Mr. GARSON: Now, I have not directed my remarks to this question of the use of the word "interest", but on that subject I would suggest that this phrase "safety or interests of Canada" is not a new one. It is an expression that is commonly used in legislation relating to the security of the state. It appears in the Official Secrets Act of Great Britain, and in our own Official Secrets Act, and it is used not only in relation to the security of the state in a military sense, but involves other considerations as well; and what is most important of all, this expression has been judicially interpreted; and therefore I think—

Hon. Mr. ROEBUCK: Ah, yes, but in connection with secrets. That is another matter. Here you have got an official informed of certain secrets, and he goes and gives these secrets away. You might well say he is guilty, if they are contrary to the interests of Canada. Make it as broad as you like. You can even strike that out and say, if he gives them away he is guilty.

Hon. Mr. GARSON: In that very Rose case, Judge Bissonnette—

Hon. Mr. ROEBUCK: He was giving secrets to the enemy.

The CHAIRMAN: We were in a state of war at the time.

Hon. Mr. GARSON: Whether or not he was giving it to the enemy, it was not necessary, in the terms of your own argument a few moments ago, to prove it was the enemy, merely that we prove it was another state, within the terms of the section. And in dealing with this section which prohibits the doing of acts which are prejudicial to the safety or interests of the state Judge Bissonnette pointed out it was not limited to the military secrets of the country, but involved also scientific methods and materials for production. That was the intention of that expression; and where we have had the advantage of that expression having been interpreted, I submit that there is really no good purpose to be served by interfering with the expression because we know that the

judges have said what it means. We can count on that meaning. If we take away the word "interests" we cannot be sure of the meaning judges or courts would give to it if the same expression, so changed, came before them.

Hon. Mr. ROEBUCK: The word "safety" is well known. It has been thoroughly interpreted and understood. It is an old English word, the word "safety". There is no question about what it means.

The CHAIRMAN: "Against the public welfare and security".

Hon. Mr. GARSON: We have used these same phrases in other statutes, and these statutes have been interpreted by the courts and we know what they mean. They mean what the courts say they mean.

The CHAIRMAN: I am not sure about that.

Hon. Mr. GARSON: Is there any purpose in changing them now?

The CHAIRMAN: We know what the courts have said they mean in certain cases, but we are thinking of the broader application. We are not complaining about the meaning in this particular case because when they were dealing with this they were dealing with secrets passed on to another state. I am talking about the broader application of the word. When you use the words "prejudice to the interests of Canada" you have the broadest possible scope.

Hon. Mr. HAWKINS: What is the argument about anyway? It is not that you eliminate these words but put them in another section. What is the objection of the Minister?

The CHAIRMAN: He still wants to call it treason.

Hon. Mr. HAWKINS: Well, to get it down to two points, why do you not want to call it treason?

Hon. Mr. VIEN: One is death and the other is fourteen years.

Hon. Mr. ROEBUCK: And because treason is an ancient connotation. It goes away back to the dawn of history, and you can find it in the ancient writings of the first men who describe treason. There are three elements in treason. An attack upon the King's person is the first. There is the levying of war against the King, which today is the levying of war against the state. The third is adhering to the King's enemies. That has come down to us through the centuries. Some changes have been made from time to time but always they have come back to these three factors. These are very serious factors. They are so serious that special provisions for trial have been made, and there is the special penalty of death. We do not want to include in that definition of treason things which have not in the past been considered. If in giving information we adhere to the King's enemies, it is treason now. If it is levying war against us it is treason now. If it is an attack on the new Queen, it is treason now. For the sake of clarity and the acceptance of this code we should not clutter up the definition of treason with a lot of offences which we may deprecate and wish to suppress.

Hon. Mr. VIEN: Mr. Chairman, I am very much impressed by the statement made by the Minister in explaining why this old definition of treason, which was made centuries ago, should now be modified so as to apply to our present-day living conditions. I must confess that I have not very much sympathy with those who conspire to communicate information which may be prejudicial to the safety of Canada.

The CHAIRMAN: Neither have I.

Hon. Mr. ROEBUCK: None of us have.

Hon. Mr. VIEN: It is a question of degree in punishment, and I have not very much to say against punishment by death of a man who would be found to have conspired to communicate information or to do an act which is likely to be prejudicial to the safety of Canada, whether in time of peace or in time

of war. These are undesirable individuals and I do not believe that we should be over-concerned about the degree of punishment being attached to an Act which revolts the public conscience. There is only one point in my mind and that is the degree in respect of the interest of Canada, as regards the safety of Canada. If the safety of Canada is vitally involved and somebody has conspired, an agent of another state, to communicate information likely to be prejudicial to the safety of Canada, I am not opposed to a death penalty in such case. There may be a slight difference with respect to minor interests, but I do not believe that any court in the land today would impose a death penalty on a matter affecting trade interests or economical interests.

Hon. Mr. KINLEY: How about the craft knowledge of an engineer, for instance? Would he come under this if in his enthusiasm he said something about his work that proved prejudicial?

Hon. Mr. GARSON: In all these cases it is necessary to prove against the accused that he conveyed this information with the intention of doing his country harm. The information that might be very prejudicial indeed to Canada or to any other country under modern conditions might be by itself under certain circumstances fairly innocent information. Supposing, for example, that we have here a spy ring trying to get information as to our economic and military potential just before a war or during a war, and the spies have lined up from one source or another a pretty nearly complete picture. They want certain information which, though it may be lacking in significance by itself, may nevertheless be the final part of the jig saw puzzle which the spies require to fit into their whole mass of information in order that the whole pattern may make sense. This information may not be military information at all. It may have to do with economic matters entirely. If some man like Rose, for example, comes along and supplies that key information—which is innocent enough in itself but fits into the general pattern—it may sew up the entire espionage plan of the enemy and put us in a far worse position than some other traitor could put them by indulging in violence. This information may not be conveyed directly to the enemy at all; it may be conveyed through a whole series of agents until it finally gets to the master spies who can attach some meaning to it. So that it seems to me that we are not protecting our own interests properly if we surround this section with too many conditions that we have to apply to its application.

The CHAIRMAN: We have not surrounded it with any.

Hon. Mr. GARSON: And you do not wish to do so?

The CHAIRMAN: We have not put any conditions there. All we have done is put it in the section of "dealing with the enemy".

Hon. Mr. GARSON: If under the circumstances I have just outlined any Canadian who supplies this information to the enemy is not a traitor in the common garden variety sense of a traitor, then I do not know what a traitor is. If that is not treason, what is treason? Such a traitor may do far more damage than one who may shoot at Her Majesty the Queen.

The CHAIRMAN: You have used the word "enemy" again, and once you use the word "enemy" you get yourself into the other paragraph on treason.

Hon. Mr. GARSON: With respect, I suggest we do not.

The CHAIRMAN: Yes, because it is assisting the enemy.

Hon. Mr. GARSON: The pith and substance of this particular section is that we prejudice the interests of Canada by communicating information not to the enemy, to any other state. That is the essence of that.

The CHAIRMAN: All right, we have left that in as an offence.

Hon. Mr. GARSON: In many cases it is information on the way to the enemy but it does not have to go to the enemy directly, and we do not have to prove that it goes to him directly. Now, you say it should not come under this section, and I think you gave two reasons why. One was that it should not be considered as treason. I do not wish to labour the point any more, for if you do not consider it as treason I do not think I can throw any further light on that point. The second point was as to the penalty. It is quite true that the maximum penalty under the Official Secrets Act, from which this wording was taken, is fourteen years or any lesser term that the judge sees fit to impose.

Hon. Mr. ROEBUCK: That is still in the Official Secrets Act, is it not?

Hon. Mr. GARSON: Yes, and will be until this bill is passed.

Hon. Mr. ROEBUCK: Then you may repeal it in that Act?

Hon. Mr. GARSON: Yes, it would have to be repealed in that Act. The purpose of the present code is to bring into one statute all the criminal law of Canada, so that people will not have to hunt for it in different places.

Hon. Mr. ROEBUCK: Of course, you widen it greatly by putting it in here, because the Official Secrets Act refers only to official secrets.

Hon. Mr. GARSON: Mr. Moffat points out that the Official Secrets Act, as it stands at the present time, contains an absolute outright prohibition of the disclosure of information in substantially the same language as we have it here. You don't have to prove *mens rea* at all.

Hon. Mr. ROEBUCK: Is there not a good deal of misunderstanding as to what *mens rea* is? *Mens rea* is meaning to do the thing that you do. For instance, if a man hits another man over the head you do not have to prove that the offender knew it was going to hurt the other man, nor do you have to prove that he knew it was against the law; you only have to prove that he intended to hit him.

Hon. Mr. GARSON: That is right. But to draw the parallel with what we are discussing here, if you prohibit an act of that kind and one man hits another by accident, he is for it.

Hon. Mr. ROEBUCK: In these sections here, *mens rea* goes only this far, that the person actually intended to give the information, not that he knew the information to be prejudicial to Canada, nor that he knew it would go to an enemy. The Act says that he shall not give information that is, as a fact, prejudicial to the safety of Canada. Now, if he gives such information and intended to give it, that satisfies the requirements of *mens rea*.

Hon. Mr. GARSON: I do not know that I would agree entirely with that, senator; I think you would have to prove something more than you have stated.

Hon. Mr. ROEBUCK: You might have to prove something more than that in order to get a verdict, because a jury might not go all the way with you, but I think I have correctly stated the principle of law.

Hon. Mr. GARSON: In all these cases you have to get your verdict from the jury, and it is what the jury will convict on that is the real essence of the matter. As I was saying a moment ago, the penalty is for the judge to determine, but under this new law the penalty for an offence that is serious enough, can be death.

Hon. Mr. KINLEY: If the judge thinks the offence is that serious.

Hon. Mr. GARSON: Yes.

Hon. Mr. KINLEY: Should a judge have the discretion to sentence a man to death if the law does not specifically direct him to give such a sentence? Of course, when a man is convicted of murder, the law says that the judge must sentence him to be hanged.

Hon. Mr. GARSON: But for the offence we are discussing the death penalty is not mandatory. The judge does not have to give a death sentence; he may do that, but he does not have to. And he can impose life imprisonment or such lesser term as he thinks fit in the circumstances. So if the circumstances of a given prosecution are not serious, the mere fact that the section has been transferred from the Official Secrets Act into this section does not make it any more difficult for the judge to fit the punishment to the crime.

The CHAIRMAN: You talk about transferring this section from the Official Secrets Act to the bill. I am not sure in my own mind that you are ever going to repeal the section in the Official Secrets Act. It is a different kind of offence dealt with in the Official Secrets Act. There is an absolute prohibition against giving information in certain instances, and *mens rea* is not a factor. But here you are creating an offence of conspiring with an agent of another state to give information which is likely to be prejudicial to the safety or interests of Canada. That is an entirely different kind of offence, an offence of conspiring to do something which is likely to be prejudicial. So the two kinds of offences in the two acts can exist at the same time; they are not repetitive.

I think the committee understands your point. You feel that the kind of offence dealt with in this section should be properly described as treason, and, secondly, that the penalty for it should be death or life imprisonment or such lesser time of imprisonment as the judge sees fit to impose in his discretion.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Sections 47 and 49 are only consequential on any changes that we make in section 46, so we do not need to waste any time in discussing them.

Hon. Mr. GARSON: No. The next one has to do with election and re-election in indictable offences.

The CHAIRMAN: Perhaps I might make a brief explanation to the committee. The bill gives an accused person the right when he is before the magistrate to elect for summary trial before the judge which is going to try the case. All that we have done here is to add the extra provision that if before the date fixed for his trial before a judge without a jury the accused person changes his mind and feels that he would be better off with a judge and jury than with a judge alone, and that he made a mistake in electing trial by judge alone, he shall have the right to elect the trial by judge and jury. We felt that he should be given that second chance. But we did not make it subject to certain provisions, as you will notice by page 21, where we say "Where an accused has elected under section 450 or 468 to be tried by a judge without a jury he may, at any time before a time has been fixed for his trial or thereafter with the consent in writing of the Attorney General or counsel acting on his behalf." So as to prevent an accused from playing ducks and drakes with the prosecution of the law, he has only the right to re-elect up until a date has been fixed for his trial. Up until that time he can say: "I want to be tried by a judge and jury, notwithstanding the fact that I have elected to be tried by a judge without a jury." But, as I say, the moment the date of his trial is fixed he cannot change his mind and re-elect without the approval of the Attorney General or counsel acting on his behalf.

Hon. Mr. HAWKINS: It gives him a chance to change his mind.

Hon. Mr. DAVIES: What is meant by the "Attorney General or counsel acting on his behalf"?

The CHAIRMAN: Usually the Attorney General acts through counsel.

Hon. Mr. ROEBUCK: That is the Crown Attorney.

Hon. Mr. KINLEY: The Crown has to agree.

The CHAIRMAN: After the date for trial has been fixed, the Crown has to agree to a re-election.

Hon. Mr. ROEBUCK: You see, under the old practice an accused in police court is asked whether he wishes to be tried summarily by the magistrate or by the next court of competent jurisdiction. If he chooses the next court of competent jurisdiction, that is a jury trial. Then he may—although there are some hedges about this—he can change and elect to be tried by a judge without a jury. Under this new code an accused man may elect before the magistrate to be tried by a judge and jury, by the magistrate or by a judge alone. The election at that time may be of a snap nature and he may know little about it.

Hon. Mr. KINLEY: Or he may change his counsel.

Hon. Mr. ROEBUCK: Perhaps so, but the likelihood is that he has had no opportunity for consultation. While some chance was given him to change, the code as we now amend it will give him this privilege: he may elect to be tried by jury up until the time that his trial is fixed; and then he can say to the sheriff "I want to be tried by a judge." Or he may have elected to be tried by a judge, and he can then say to the sheriff "I want to be tried by a judge and jury". But as soon as the date for trial is set and he goes to the sheriff and asks for a change, he must then get the consent of the Crown, because certain witnesses may have already been called in preparedness for the trial. If nothing like that has taken place, I would think that the Crown would consent to a change.

Hon. Mr. ASELTINE: Have you any objection to that, Mr. Garson?

Hon. Mr. GARSON: Yes I do object to it. Under the law at the present time an accused when he is before the magistrate has the right to elect trial by judge alone or by judge and jury; if he elects trial by judge and jury, he can then re-elect a speedy trial before a county judge.

The CHAIRMAN: At the present time, under the code, he is asked by the magistrate if he would like to be tried summarily by the magistrate or to be tried by the next court of competent jurisdiction—that is to be tried by jury.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: Under the present law if he wants to change that election from a jury trial he can go before the county judge and elect a speedy trial.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: This proposed amendment streamlines all that and is much better, because he does all his electing in the magistrate's court. We thought that because he perhaps did not have advice he should have a chance to change his mind later.

Hon. Mr. GARSON: Mr. Chairman, is this not what you propose to do: The accused now has the right to elect trial by jury, and if he has elected trial by jury he has a right to change his mind and take a speedy trial before a judge alone? That is the law as it is at the present time.

Hon. Mr. ROEBUCK: Yes.

Hon. Mr. GARSON: That is the way in which it was intended to be carried into this bill. But you say that in addition to that he should have the right to change back from a trial by single judge to a trial by judge and jury.

The CHAIRMAN: No. When he is before the magistrate he may elect to be tried by a judge without a jury or by a judge with a jury.

Hon. Mr. GARSON: But the point we are discussing is whether he can change his mind later on.

The CHAIRMAN: Yes.

Hon. Mr. GARSON: The law as it stands before this goes into effect, and as it will stand if you do not amend it, is that an accused can change his mind from an election of trial by jury back to trial by a single judge, but he cannot change his mind from a trial by a single judge to a trial by jury. The Crown has to provide the jurymen to try an accused person. If he has the right before the magistrate to elect trial with or without a jury, and he has the privilege of switching to trial by a single judge, why is it necessary to give him a further option so that he may change from trial by a single judge back to trial by jury?

The CHAIRMAN: What is wrong with that option?

Hon. Mr. ASELTINE: It is just carrying the principle in the other direction.

Hon. Mr. GARSON: True, but the information that we get from persons in charge of law enforcement in the provinces is that they are afraid that with this further choice they will not know until the last minute how many jurymen will have to be empanelled for any assize. It may be that they have a number of accused persons who have elected trial by a single judge, and at the last moment decide they would like to be tried by a jury, with the result that there will be the confusion of empanelling more jurors.

It comes to the question of whether you think the practice which has prevailed through the years, without any great amount of complaint, namely, that when an accused is before a magistrate he can choose to be tried by a judge and jury or by a single judge, or by the person before whom he makes that choice, that he is to have the further election after having elected to be tried by a judge alone, to be tried by a judge and jury.

The CHAIRMAN: You have asked a question. Now may I answer it?

Hon. Mr. GARSON: Yes.

The CHAIRMAN: There is this fundamental difference, in my view: Under the present law when an accused decides to be tried by the next court of competent jurisdiction, that is where he makes a snap judgment under the pressure of things in the magistrate's court, and he elects a jury trial; thereafter, he can re-elect before a county judge and take a speedy trial.

Hon. Mr. GARSON: That is correct.

Hon. Mr. ROEBUCK: Mr. Chairman, after he has made his election and until the date of trial is set, he still has the right to re-elect.

The CHAIRMAN: And now you are giving him something less: You are saying if in the magistrate's court or the court of first instance, under the law as it now stands, he elects to be tried by judge alone, he is stuck with it. His position is not as good there as it is under the present law. Under the present law he has two choices which persist right down to the time he elects to be tried by a judge at a speedy trial.

Hon. Mr. KINLEY: Does not the sheriff, in balloting for a jury, call enough jurymen to serve on a number of trials? He does not call the jury for one trial. There is nobody hurt, because when the court meets the sheriff has, some time before, balloted for a jury and sent his notices out.

The CHAIRMAN: They provide a number that will take care of a number of cases at the same time.

Hon. Mr. KINLEY: Or if people are sitting around, the sheriff puts his finger on some of them and says "Come up and serve on a jury". I do not think that anybody is hurt.

Hon. Mr. ROEBUCK: They go on hearing cases in the Police Court and sending them on to the Supreme Court while the jury trials are going on.

The CHAIRMAN: While the session and county courts are sitting at that very time, Police Courts are sending people up for trial, and the sheriff does not know they are coming up, but he has a jury to take care of them.

Hon. Mr. ASELTINE: It would improve things a little. We are now remodelling the whole criminal law. Why not let us do it the way we think it should be done?

Hon. Mr. ROEBUCK: Supposing the jury court was over-loaded and there were some people that had elected to be tried by a judge, and they might change their election, and jam up the works in the jury court, all you have to do is to set a date.

The CHAIRMAN: Set a date, and that ends it. You have cut out all that possibility.

Hon. Mr. GARSON: By setting a date you force them into an early election.

The CHAIRMAN: You not only force them, but thereafter the accused can only re-elect with the consent of the Attorney-General.

Hon. Mr. GARSON: That is what I mean.

The CHAIRMAN: So you can make the thing as expeditious as you want by saying, "Notify him as soon as he is committed, the date of trial is such-and-such a date", and the thing is right in the control of the Attorney-General.

Hon. Mr. GARSON: I will leave it to you gentlemen. The only other thing is the matter of trial *de novo,* section 727. The suggestion I would like to propose for your consideration is—

The CHAIRMAN: Some of the members who are not lawyers may not understand the expression "trial *de novo*".

Hon. Mr. GARSON: At the present time, when an accused is tried on a summary conviction offence, that is a lesser offence, in the Police Court, and if found guilty, he has the right to an appeal from the Police Court to the appeal court that is named. In most provinces it is the County Court. When the appeal comes on before the County Court it takes the form of a trial *de novo,* that is a trial all over again, a new trial. *"Novo"* is the Latin word for "new". On the other hand—and I mention this other one to explain the first principle, by distinguishing it, if a man is tried by a magistrate in a summary trial of an indictable offence, some serious offence for which a heavy penalty may be imposed, and the magistrate convicts him, and he appeals, then the appeal takes the form of the accused showing the appeal Court—and the onus of this is upon him—that the judgment of the magistrate is wrong.

The CHAIRMAN: It may be by way of an appeal, or a stated case. At any rate the point is this, that where it is a serious offence, when the appeal comes on before the appeal court the conviction sticks unless the accused can show that appellate court—and the onus is upon him of so showing—that the conviction is an improper one. Now, on the other hand, in a trial *de novo* the fact of the appeal having been taken makes it necessary for the trial to be started all over again, and the prosecutor, who has already had to prove his case in the lower court, starts all over again and has to prove it all over again in the appeal court. The onus is upon him. The proposal that I am urging as a compromise in this matter is, not that the trial *de novo* on summary conviction appeals be abolished entirely, but that we are meeting the viewpoint of your committee, which I want to say, in all fairness, I think in some provinces has a good deal to recommend it.

Hon. Mr. ASELTINE: In Saskatchewan I have talked it over with many magistrates, and they want the old provisions left.

Hon. Mr. GARSON: Yes. I would agree with that.

Hon. Mr. ASELTINE: They are far away from counsel; they have no opportunity of consulting anyone; and the trial is probably not a fair trial at all. Therefore they should have a trial *de novo.*

Hon. Mr. GARSON: Right. As I say, to be fair with your committee, I think there is a good deal of force in their argument where conditions obtain under which it appears that the trial before a magistrate, for some reason or

another, is not an entirely satisfactory one. What we are suggesting is this, that in order to meet their viewpoint we put a provision in here leaving it to the provincial authorities by order in council to determine whether there shall be a trial *de novo* or an appeal without a trial *de novo*; and I think you will find that in most of these cases where the conditions are not favourable the provincial authorities, from what they have told us—they themselves say "We think that we should continue to have the trial *de novo* in our province". That is true of Saskatchewan.

Hon. Mr. DAVIES: Would they both be before the same judge?

Hon. Mr. GARSON: Yes, both before the same appellant judge.

The CHAIRMAN: But, Mr. Minister, under the present law in a proper case, if the parties consent—that is the appellant and respondent both consent—the record in the magistrate's court may be used as the basis for appeal; but if they do not consent for any reason, then the trial proceeds again. I know this applies in some large cities, and it may apply in smaller places as well, but where there is a rush of work in the magistrate's court, there is not the same attention given to any particular case.

Hon. Mr. ASELTINE: The evidence is not always taken down either.

The CHAIRMAN: No, in some places it is not. In Ontario it is taken down in shorthand, but it is not what is taken down that I am complaining about; it is the rush with which the thing is done, and very often when a person goes into the magistrate's court he does not realize the seriousness of the charge, and only when he is convicted does he realize he is in a mess. Then he gets himself a lawyer and if at this stage he is stuck without a record he has no proof of what is evidence and what is not, and there is just the Crown's case without any effective cross-examination and he may as well forget about appealing and pay his fine or take his sentence, yet he may have a perfectly good defence to the charge. Now, the Code has had that provision in it for a trial *de novo* in all these years in order to take care of the cases where the parties felt that they had a good enough record of the evidence of the trial. There was a provision put in the Code some years ago, during the last five or six years, that where the parties felt they had a proper record they could go ahead and argue on the record; but it is to cover the other cases, and there are a lot of them because they just cannot get the evidence in there for a variety of reasons where there is more work than the court can reasonably handle. That is the situation in Toronto.

Hon. Mr. ROEBUCK: That is the situation that exists all over Canada.

Hon. Mr. HAWKINS: This has no effect on treason?

The CHAIRMAN: Oh, no.

Hon. Mr. GARSON: No, it is for minor offences. Mr. Chairman, I think in fairness to the provincial Attorneys-General I should read into the record the views of some of them who favour changing it. They say we have already provided in an offence under provincial statutes for the abolition of the trial *de novo*. The fact of the matter is that when the accused goes before the same magistrate on a very serious offence, an indictable offence, and is tried by him there is no trial *de novo*.

Hon. Mr. ROEBUCK: No, but the degree of care in which these trials are conducted is very different indeed from the summary trials.

Hon. Mr. GARSON: Well, they argue by that analogy that the trials *de novo* should be abolished. We here in Ottawa do not enforce the criminal law. We just enact it in this parliament, but there is a sufficiently good case, it seems to me, that the provincial Attorneys-General have, that I should put one or two of their letters on the record so that the committee may know what their viewpoint is, and then whatever you in your wisdom decide to do will be up to you.

The first is a letter from the Honourable Dana Porter of Ontario. It reads as follows:

Toronto 2
June 18, 1952

The Honourable Stuart Garson, Q.C.,
Minister of Justice,
OTTAWA

Re: Criminal Code—Abolition of Trial De Novo in Appeals from Summary Convictions

Dear Mr. Garson:

I have your letter of June 11. I anticipated of course, that there would be a good deal of opposition to the abolition of trials *de novo* in summary conviction appeals, particularly by lawyers who appear as defence counsel.

The practice has been in a number of cases to treat the trial before the Magistrate as an examination for discovery and if there is a conviction, to enter a notice of appeal and have the real trial with additional witnesses (who were known and could have been called at the first trial) before the County Court Judge.

I of course, can only speak for the Province of Ontario. Here, with the exception of four or five cases, our Magistrates are lawyers. All Magistrates' Courts are served by a stenographic reporter. The same Magistrate who presides in summary trials of indictable offences, presides in summary conviction cases. As you know, the appeal in indictable cases is on the record and in my opinion there is no logical reason why the appeal in summary conviction cases should not be on the record. We have so provided in appeals under The Liquor Control Act of Ontario.

The CHAIRMAN: Right on that point, could I make this distinction. In the summary trial of an indictable offence I only get before the magistrate because I choose to be before him, and therefore I have the opportunity to be satisfied. But on the summary convictions of the smaller offences I am there willy-nilly and I have to go on.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: I have a matter of choice in the other, and the Attorney-General may very well have gone on to point that out. If I do not take advantage of my choice it is another thing.

Hon. Mr. DAVIES: Are you now speaking as a lawyer or an accused?

The CHAIRMAN: I am speaking as one of the general public.

Hon. Mr. GARSON: He is speaking as an accused lawyer.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. GARSON: Not as an accused lawyer but as an accused's lawyer.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. GARSON: The next letter is from the Attorney-General of Manitoba. It reads:

July 8, 1952.

The Honourable S. S. Garson, Q.C.,
Minister of Justice,
OTTAWA, Canada.

Re: The Criminal Code—Abolition of the Trial De Novo in Appeals from Summary Convictions.

Dear Mr. Garson:

Your letter of June 11 was duly received. While one or two members of the profession have indicated to me their desire that the trial *de novo* should not be abolished, our own views in the department are clearly in favour of such abolition.

Since receipt of your letter I have had some further enquiries made but our conclusions are as follows, dealing with the two main grounds of objection suggested in your letter.

The two main grounds of objection to the proposed change as set out in your letter are scarcely applicable to this province because of the manner in which summary conviction trials are conducted here.

The magistrates in this province are all qualified lawyers of experience and although it is true that the greater percentage of the justices are ordinary laymen, they are not permitted to hear any contested cases. The justices' work is largely confined to the taking of informations and the disposition of pleas of guilty. I might also point out that the facilities for accommodation for Magistrates' Courts in this province are such that there could be no criticism of magistrates' hearings on that ground.

The second ground of objection is not at all applicable in Manitoba, since a duly qualified court reporter is in attendance at all Magistrates' Courts, and there would be a record of proceedings available for the Appeal Court equally as comprehensive as that which is available at a speedy trial or assize case.

We in this Province, that is, in this department of the Government, are strongly in favour of the abolition of the trial *de novo* in appeals from summary convictions.

Hon. Mr. ASELTINE: Mr. Minister, are you willing to put a clause in this Code to the effect that all magistrates must be qualified lawyers?

The CHAIRMAN: I do not think we can.

Hon. Mr. GARSON: No.

Hon. Mr. ASELTINE: We have not the advantage of trying these cases before magistrates who are lawyers in every case.

Hon. Mr. GARSON: Mr. Aseltine, the Attorney-General of the province of Saskatchewan says that he thinks the abolition of the trials *de novo* would work a hardship there, and so they would not change it. Our thought is that these law enforcement officers who have the responsibility of enforcing the law are in close contact with the legal profession in their province and they are not going to do anything to which the profession will object. Our thought was

that we would place a provision in the Code enabling the provincial authorities to adopt the one method or the other as they choose. I should not say this, perhaps, but I have always known Mr. Porter to be a very reasonable gentleman and I think if some of the powerful arguments we have heard here from Ontario were made to him he would agree that they should not do it until these conditions you speak of, Mr. Chairman, are changed. But if the Attorney-General of Manitoba has convinced the Bar of Manitoba that the trial *de novo* should be abolished, well, why should they not have it that way, if they have enough qualified magistrates and stenographic reporters and so forth? Why should they drag these witnesses in for a second time to try these smaller cases?

The CHAIRMAN: Of course, that argument would apply also to abolition of grand juries, would it not?

Hon. Mr. GARSON: Well, they have been abolished in most provinces.

The CHAIRMAN: They are still operating in some provinces.

Hon. Mr. GARSON: I think Ontario is the only one, is it not?

The CHAIRMAN: Oh, no.

Hon. Mr. ROEBUCK: May I attempt to answer the question that has been asked? I think we should try to answer any questions. One of the great virtues of our criminal law—and it differentiates us to a certain extent from the United States—is that we have one criminal law for the whole of Canada. Fortunately we did not allow the provinces to enact the criminal law, and I am opposed to their doing it now. And I am particularly opposed to allowing an executive by Order in Council to change or draft our criminal law. And it seems to me that if it is necessary to have this trial *de novo* in the province of Ontario, which is older and better settled than the other provinces, except perhaps Quebec, it is equally necessary to have it in some of the outlying provinces. I am more interested in the accused than I am in the Attorneys General anywhere. I would be very much opposed to giving Attorneys General or executives the right to decide our criminal law. We are the ones who should determine it.

The CHAIRMAN: Yes, it is our responsibility.

Hon. Mr. ROEBUCK: I have had a great deal of experience with trials *de novo* over many years. I do not wish to be taken as casting any slurs on magistrates, for I know they do the very best they can in the circumstances. I do not know how many of you gentlemen here go into our police courts at all, but those of you who do will have seen that they have large dockets, sometimes perhaps twenty-five cases. The magistrate himself in those circumstances will do the best he can, but he knows that some cases must go by without an adequate investigation. I was in a police court in one of our cities the other day. The magistrate served under me when I was Attorney General of Ontario, and I had a great deal of confidence in him and appointed him to his present position. He took occasion to come across to me, where I was concerned in some proceedings, and to say "For heaven's sake do not let them change this trial *de novo*." He said "Cases come before us that we cannot adequately investigate and we have to deal with them as best we can." But they always feel that the accused is protected, if the investigation has not been sufficient and a mistake is made, because he can go to a county court judge and have the case heard over again. We have had this provision in the law for a long time and we know that the number of cases that come up for trial *de novo* are not very large.

We have given the parties the right to have an appeal on the record, when they feel the record is sufficient. I have had one of those appeals recently myself. Within a year, at all events, I argued a case in court on the record. And we can still go on doing that if you allow us to amend the code as we have suggested.

Hon. Mr. GARSON: That is, you take the case to court on the record by consent?

Hon. Mr. ROEBUCK: The Crown's representative and I agreed that the record was sufficient and we went before the judge and argued.

The CHAIRMAN: And remember, when you are not able to argue an appeal on the record in many cases it is because the Crown wants another chance to call witnesses.

Hon. Mr. GARSON: I do not want to labour that point, but is that fair, to suggest that the Crown try to convict a chap and afterwards feel they have not made a good case and so want to start all over again?

The CHAIRMAN: I do not say that they deliberately do not put in a good case, but sometimes the Crown figure they have enough to get by and afterwards they realize they did not put in the best case they could and they apply for permission to put in another one.

Hon. Mr. ROEBUCK: Or they might feel they made a mistake.

Hon. Mr. GARSON: With all deference, Mr. Chairman, I do not think that is a good argument.

The CHAIRMAN: We have left the Crown with all the rights they have now.

Hon. Mr. GARSON: That is all I have to say, Mr. Chairman, and I thank you very much for your attention.

Hon. Mr. ROEBUCK: I would like to say something about the Minister and his attitude. It was very nice of him to come over here and talk about these matters with us. Last session I was having a discussion with him—I may repeat this story in the house, because I think it is good—and he said something about government policy. I replied "I don't care a hoot for government policy; I want a good Code." And the Minister's answer was "A good Code is the government's policy." Now, nobody has got an axe to grind in this case. The effort that we have put forth in the Senate so far has been purely objective, with the idea of getting the best Code we can, and I myself am much concerned that in the new Code we preserve as far as is reasonable all the protections for the accused in the interests of good justice, so that guilty men will be convicted and innocent men will not be convicted.

Hon. Mr. KINLEY: It is better that two guilty men go free than that one innocent man be convicted. That has been said many times.

Hon. Mr. ROEBUCK: Yes. I wish to express my sincere thanks to the Minister.

The CHAIRMAN: And I am sure we all do.

The committee thereupon adjourned until tomorrow at 10.30 a.m.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, December 16, 1952.

The Standing Committee on Banking and Commerce, to whom was referred Bill O, an Act respecting the Criminal Law, met this day at 10.30 a.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, we now have a quorum, and we propose to continue consideration of the Criminal Code and the report of the committee which we started last night. Before giving an explanation of the amendments which are proposed, Senator Roebuck would like to say a few words. Perhaps this is as good a time as any to hear Senator Roebuck.

Hon. Mr. ROEBUCK: Mr. Chairman, I would like to speak first about treason. Members of the main committee should realize that in the consideration of treason by the sub-committee it was decided that it should be left for the main committee and therefore there was not the thorough discussion of the whole subject which applied to some other sections. There was, however, agreement between Senator Farris, the Chairman and myself with regard to the changes we propose in the treason section.

As I said last evening, treason is as old as the monarchy; it goes back to the dawn of history. It was not until the time of Edward III that an act of treason was passed; however, we have the old writers on the common law of treason even back before that time. It was described as imagining the death of the King—that is Granville's language. The definition codified into the law in the reign of Edward III, the year 1352, was "levying war against the King or adhering to the King's enemies." That amounted to: forming and displaying by any overt act an intention to kill the King.

That definition, honourable senators, has remained all through the stress of England's history. True, at times they have become excited and expanded the law, made it more severe, and all that sort of thing. For instance, in the time of Henry VIII when many revolutionary reforms both civil and ecclesiastical were carried out by that dominating king, there were amendments made which were repealed on his death. Then when Mary—whom we know as Bloody Mary—came to the throne there were further amendments of a drastic character made. That trend persisted through Elizabeth's reign, chiefly because of the Spanish situation, and they too were repealed on her death.

Then there was the time of the Stuarts after the restoration of Charles II when some more bad law was passed and repealed on the death of Charles II.

So, as I say, the old definition of treason has come down to us through the ages, and has survived the stress of England's history. When we codified our law of treason in, I believe, 1892, we took the English law as it existed in England at that time. There has been little or no change from that time down to the present.

We are now proposing to make some excellent changes. We have left out of the codification a good deal of immaterial matter which may be regarded as archaic and not applying to Canada. This small section now before us is rather an excellent codification of what is required.

I wish to compliment the commissioners for what they have done, because it must be understood that when we pick out some points in their work for further consideration, we are not denouncing them. They have done a good job, but we have our work to do too. There are some matters here which are difficult to explain. For instance, the commissioners reduced all the material in the present code with regard to Her Majesty to this one line "kills or attempts to kill Her Majesty". Then among the offences we find "every one who lawfully in the presence of Her Majesty does an act with intent to alarm Her Majesty, or breaks the public peace, or does an act that is intended or is likely to cause bodily harm to Her Majesty is guilty of an indictable offence and liable to imprisonment for fourteen years."

That is a prohibited act; that is not treason at all. The whole matter boils down to one phrase; and in that respect, I do not see how we can justify the leaving out of the section the words as they now stand in the code, "or does her any bodily harm intending to death or destruction, maims or wounds her, or imprisons or restrains her".

One of the things we have to guard against so far as the person of the monarch is concerned, would be kidnapping, or attempting to control her actions by threats and force, and that kind of thing. I can see no earthly reason why we should not make the section broad enough to cover what it has covered in the past, namely, "kills or attempts to kill Her Majesty, or does her any bodily harm intending to death or destruction, maims or wounds her, or imprisons or restrains her."

Hon. Mr. DAVIES: Is there any protection to the heir to the throne?

Hon. Mr. ROEBUCK: No, that is in the present code but is not in the new revision. Indeed, there is a good deal of matter left out of the revision. For instance, violating the consort, and such things. The question was asked last evening whether the provision extended to the Governor General. Well, it does not, and we do not want it to. It has been suggested that we leave out "does her any bodily harm tending to death or destruction." It was argued that that was covered in the words "attempts to kill". In my opinion it is obviously not covered. One might make an attempt to kill without doing bodily harm. I am in favour of letting that stand as it now is in the code.

The next paragraph, (c) of clause 46 was considered, and is now, I think, giving us some concern. It reads: "assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities..." There is nobody around this table who is not ready to make it a crime to assist an enemy at war with Canada. The ancient definition of treason, "levying war against the King..." The paragraph continues: "...whether or not a state of war exists between Canada and the country whose forces they are;"

What concerned us there was not the legislating against existing forces that are at war with Canada but simply the indefiniteness of this new law. Now you will observe that at the present time our forces are engaged in hostilities with the Chinese forces—I think they are engaged also with the Russian forces—and we have no declaration of war against either of these countries; and we have not got very good control of our own forces. We had an example of it the other day, when our men were sent down to Koje Island without our knowledge and without our consent and, I think, with a good deal of hesitation on our part to leave them there. Under those circumstances it is most necessary that the government take some responsibility of the matter of saying whose forces you can aid; and we thought it would help just a little, at least, if we put in " 'knowingly' assists an enemy at war with Canada, or any armed forces . . .", because then it would be necessary to show that the person who is assisting armed forces in conflict with our forces knew that they were in conflict, not that he just gave assistance.

Last night there was some talk about *mens rea,* the principle of law which would import that; but it is easy to misunderstand what *mens rea* means. *Mens rea* means a guilty mind, which again means that you mean to do the thing that you do do, not that you know that it is contrary to law. Everyone is expected to know the law. Not that you know the consequences or all the consequences of your act. But if you hit a man, it is *mens rea* if you intend to hit him although you may not know it is contrary to law or you may not know that it will have certain consequences that were not, perhaps, readily observable. The intention to do the thing that you do is *mens rea,* and that is all it is.

Now, we thought that it would help a bit if we put "knowingly" there, so that an accused person who, perhaps, trades with China, which is not even banned—I understand, although I do not know, that you have to get a permit to trade with China or Russia—but any person who does something that may be of assistance to the armed forces must know that they are in conflict with Canadian forces and that he therefore must not do it. None of us are very much "het up" about that word "knowingly". The Minister of Justice seems to think that it might dispense with the common law offence of *mens rea.* We use "knowingly" numbers of times through the Code, and it does not have that effect, so I am for letting it stand.

The other change that we made in the Code with regard to treason reads like this:

> Conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada.

Now, that is new law. What does it mean? It does not say what kind of information, except that it is prejudicial to the interests of Canada. What "the interests of Canada" are, I do not know. It may be the interests of the land of Canada, the people of Canada, or some group in Canada. It is so indefinite, and so imports the economic into this thing that we did two things. That is not in keeping with the ancient definition of treason, the idea of treason, the dictionary definition of treason. It is not levying war against Canada, adhering to the King's enemies, or killing the King, or something of that kind; it is an ordinary offence. And so we removed it from the treason sections and put it immediately following the treason sections in what are known as prohibited acts, and we struck out the word "interests" so that it leaves some idea of what the information is—information that is prejudicial to the safety of the state. That is all the change that we made.

Hon. Mr. EULER: What is the penalty? Fourteen years?

Hon. Mr. ROEBUCK: Yes.

Hon. Mr. EULER: Is there any particular reason why an arbitrary figure like "fourteen" was taken?

The CHAIRMAN: It is up to fourteen.

Hon. Mr. ROEBUCK: In the old Code there were all kinds of penalties. In this new Code they have regularized it,—I think, wisely. They have said: death; then life; then fourteen years; then ten years; then seven years. Those are the figures. Those are maximum figures only; they are round figures, and very much better. Fourteen is outside of twenty; twenty is practically life, you know, because most men in prison for life get out of prison in twenty years unless they are still dangerous. We, if you like, can change this to "twenty years" but do not leave it where it is called what it is not, that is treason.

Then there are some consequential changes as a result of that. "(*g*)", for instance, goes out of section 47. Now, I am going to suggest, because it is not in this material before you, that we divide the treason section from the

other ones. Here is: "Everyone who does a prohibited act for a purpose prejudicial to the safety or interests" and so on "of Canada"—that is ten years, I think. Now, over that, I think it would improve it if you put "prohibited acts", to separate these prohibited acts from treason.

The CHAIRMAN: It is a heading you are suggesting?

Hon. Mr. ROEBUCK: Yes. Just put in a heading over section 49. We did not do it, but I have already explained that we did not go over all these in the same detail that we did some others. This is purely off my own bat; I am not speaking as a representative of the three who did all this work on it. But I am not satisfied; I am a little bit disturbed about it. There is nothing about this in the report. This is what it says:

> 49. (1) Every one who does a prohibited act for a purpose prejudicial to
>
> (*a*) the safety or interests of Canada, or
>
> (*b*) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada,
>
> is guilty of an indictable offence and is liable to imprisonment for ten years.
>
> (2) In this section, "prohibited act" means an act or omission that
>
> (*a*) impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or
>
> (*b*) causes property, by whomsoever it may be owned, to be lost, damaged or destroyed.

There are other sections that are along that same line—we can hold the motion on this until we get to the others—which would prohibit a strike that might interfere with a vessel, vehicle, aircraft, machinery, apparatus or other thing. In the Code in conspiracy and restraint of trade there is a clause which says that a combination in restraint of trade shall not be understood to mean a combination of workmen, a union, for its own purpose. It acts for the furtherance of the purpose of a union. I am ready to move that we do the same with regard to section 49: "but does not include lawful acts done in furtherance of the purpose of a trade union".

Hon. Mr. DAVIES: What would be the position in time of war? Would strikes be prohibited under some Act?

The CHAIRMAN: Under the War Measures Act, yes.

Hon. Mr. ROEBUCK: Yes, but that does not come into effect until a war comes on.

Hon. Mr. DAVIES: You are speaking now of time of peace?

Hon. Mr. ROEBUCK: Yes. May I leave that at the moment and come back to it because there is another section which is similar. In the meantime just bear this in mind. I want to deal next with section 52.

Hon. Mr. REID: May I be permitted one question at this time. I should have brought this up when we were dealing with section 46. Are you proposing to change paragraph (*e*)? It is proposed to strike out paragraph (*e*) and reletter paragraphs (*f*) and (*g*) as paragraphs (*e*) and (*f*). I understand that paragraph (*e*) at the present time comes under the category of death or sentence for life?

Hon. Mr. ROEBUCK: That is right.

Hon. Mr. REID: It says, "Conspires with an agent of a state . . ." Would that take care of the doctor in Great Britain who gave away certain information to Russia and was sentenced to ten years in prison? If that happened here, then under this proposed amendment as recommended by you, he could only get fourteen years?

Hon. Mr. ROEBUCK: That is right.

Hon. Mr. REID: Well, I think this should be given life.

Hon. Mr. ROEBUCK: I have no objection to making that an offence punishable for life, if you like. That is what I have already said. I have said that you can increase the penalty if you care to do so, but do not leave it as it stands at present. You see, you are taking there the most extreme act you can imagine under that section. I am thinking of the least extreme. "Information prejudicial to the interests of Canada" might mean, well, almost anything. I can imagine—

The CHAIRMAN: It is not information prejudicial; it is information even likely to be prejudicial.

Hon. Mr. ROEBUCK: Yes, and it is giving that information to any state other than Canada. That would include the United Kingdom, the United States, and all members of our commonwealth. It is an extraordinary law. What is required, Senator Reid, is a proper dealing with this subject. They did it during the war in the Official Secrets Act, which is still on the statute books, and there is a place for it. If you are going to say giving away atomic energy or that kind of information, then describe it, but do not leave it as any information which you might pick up in the newspaper or give to a representative such as a British ambassador in Ottawa. I know the attitude of a prosecuting attorney when he is drawing an Act of this kind. He says, "Oh, but we would never do anything like that". Well, perhaps he would not, but our job, gentlemen, is to carry our own responsibility and not hope that a prosecuting attorney will have more sense than we would have. Our job is to make law that will stand on its own feet without being misinterpreted by some administrative official, and to the best of our ability it is our intention to do so.

I am going to suggest now a rather inconsequential change. Section 52 reads:

> Every one who wilfully, in the presence of Her Majesty,
>
> (*a*) does an act with intent to alarm Her Majesty or to break the public peace, or
>
> (*b*) does an act that is intended or is likely to cause bodily harm to Her Majesty,

That is a prohibited act. It is not treason. I should like to move that to the head of prohibited acts. Why it gets off there into section 52 I do not know. I think it should be put in at the first.

Hon. Mr. KINLEY: You recommend that in your report.

Hon. Mr. ROEBUCK: No. Remember that these sections we are now at were referred to the general committee, and while we have made some recommendations we did not withdraw the general recommendation to refer it to the whole committee. As to this particular point, I think it would improve the thing to put the Queen at the head of the list of prohibited acts rather than just mix it in somewhere down below.

Hon. Mr. GOUIN: Would it replace section 49?

Hon. Mr. ROEBUCK: It would replace 49 and it would mean a renumbering of 49, 50 and 51 accordingly. That could easily be done. I so move.

Hon. Mr. CRERAR: That is, that section 52 be incorporated in section 49?

The CHAIRMAN: No, it would mean to renumber 52 as section 49.

Hon. Mr. ROEBUCK: And sections 49, 50 and 51 would be renumbered accordingly.

Hon. Mr. GOUIN: We considered the very interesting report of the subcommittee of which Senator Roebuck was a member, and now we are considering amendments which Senator Roebuck suggests. I want to know where we stand because I want to speak but I want to do so at the proper time.

Hon. Mr. ROEBUCK: No, I am not suggesting amendments to the report. The report provides that these sections I am now discussing stand for the consideration of the whole committee, and on top of that I—

The CHAIRMAN: No, Senator Roebuck. Section 52 was approved by the committee.

Hon. Mr. LAMBERT: Sections 51 to 54 were approved.

Hon. Mr. ROEBUCK: Then, notwithstanding the fact that we approved the substance, I suggest the change in numbering would be a slight improvement.

Hon. Mr. LAMBERT: Section 49 is the one you object to mostly, is it?

The CHAIRMAN: No, the senator wants a clarification of section 49.

Hon. Mr. ROEBUCK: I want it made clear that section 49 does not refer to lawful acts done in furtherance of a trade union.

Hon. Mr. LAMBERT: I noted what you said at the beginning when comparing that with the restraint of trade clause in the Criminal Code. Surely there is no analogy.

Hon. Mr. ROEBUCK: Let me go on until I come to another section. I would like to go ahead and finish what I have to say.

My next subject is section 57, which is marked "Stands for the main committee". Section 57 says this:

> Every one who
>
> (*a*) procures, persuades or counsels a member of the Royal Canadian Mounted Police to desert or absent himself without leave.
>
> (*b*) aids, assists, harbours or conceals a member of the Royal Canadian Mounted Police who he knows is a deserter or absentee without leave, or
>
> (*c*) aids or assists a member of the Royal Canadian Mounted Police to desert or absent himself without leave, knowing that the member is about to desert or absent himself without leave, is guilty of an offence punishable on summary conviction.

My objection to that is that the Royal Canadian Mounted Police is a civilian, not a military, force.

The CHAIRMAN: I think you should have said "our objection".

Hon. Mr. ROEBUCK: I thank you, Mr. Chairman. I am very glad to be able to say that. I do not know whether Senator Farris agrees with me on that; I am not sure that I discussed it with him. I expect he would agree with me, but I do not know. Anyway, as the Chairman says, our objection is that the Royal Canadian Mounted Police, which is a civilian force, should not be treated as though it were a military force. The greatest protection of our liberties from some captious control at some central point is found in our municipal and provincial police forces, and the R.C.M.P., if properly controlled. The R.C.M.P. which I regard as a civilian force, has taken over the policing of all provinces in Canada—that is the local policing—with the exception only of Ontario and Quebec. And this section makes the force a military force, because it says that it is a crime to assist some person who is away without leave from the R.C.M.P.

Observe what that means. You centralize power in the hands of some group of men—excellent men now, it may be—with an enlisted crew under them who are held there, no matter what happens, with the strictest of discipline and so on, and you have got the old-time Roman Praetorium Guard,

or the nucleus of it, or an SS Force, in all municipalities where the R.C.M.P. operates. I tell you that would be one of the most dangerous things that could happen in this country. Just remember what happened in Russia when the police of Leningrad handed over arms to the revolutionists and went on their side. The whole of Russia was captured by Lenin and his men when they got the centralized police of Moscow and of Leningrad with them. It is not beyond the imagination of anyone to look forward and see perhaps some enterprise of that kind in Canada if we have a militarized police force centralized in Ottawa.

Hon. Mr. MACLENNAN: This section does not refer to the police at all, it refers to those who help them desert.

Hon. Mr. ROEBUCK: It makes it a crime to even aid someone who is away from the R.C.M.P. without leave or has deserted this force. In other words, it puts it on the same basis as a military force.

Hon. Mr. KINLEY: Do you not think you are overstating it?

Hon. Mr. ROEBUCK: Wait till I come to the other section. Maybe I am overstating it a little, but it is just as well to imagine the extremes of the possibilities under this thing. Can you imagine the shout of laughter that would go up if you proposed to apply a provision of this kind to, say, our Toronto police force or to our Ontario Provincial police force? You would be laughed out of court. There was a time in English law when deserted wives could be returned to their husbands, but we have given up that practice. I remember the last case of the kind in English law. It happened in the little town of Clitheroe, in England. An order of the court was got authorizing the return of a wife to her husband, and I remember that it required the coachman, the footman, the sheriff's man and the stable boy to get the wife into the coach, and she kicked out both windows before she got home to her "loving husband". That was the last case, because the judges there that it never was the law of England that wives might be returned to their husbands.

Hon. Mr. ASELTINE: We would have a lot fewer divorce cases if we had that law now.

Hon. Mr. ROEBUCK: Yes, it might be of help in that way. Then about a hundred and fifty years ago we gave up what is known as indentured labour, and you can no longer get specific performance of a contract of employment because it does not work. But here it is proposed to go back to that kind of thing and make it impossible for a member of the R.C.M.P. to leave his employment during his period of enlistment—I think the first term is three years, and later on it is longer than that. The section unnecessarily makes it a criminal offence to assist anyone who leaves the force within his enlisted term. Now, there is another section—

Hon. Mr. CRERAR: You would delete section 57, would you?

Hon. Mr. ROEBUCK: I certainly would. Let the R.C.M.P. boss their own men, and not require everybody to assist them—to assist them, as it were to return "loving wives" to their husbands.

The other section bearing on this is section 63.

The CHAIRMAN: Senator Roebuck, section 63 was the one I had in mind when I referred to "our objection", not section 57.

Hon. Mr. ROEBUCK: Section 63 reads:

> Every one who
>
> (*a*) interferes with, impairs or influences the loyalty or discipline of a member of a force,
>
> (*b*) publishes, edits, issues, circulates or distributes a writing that advises, counsels or urges insubordination, disloyalty, mutiny or refusal of duty by a member of a force, or

(c) advises, counsels, urges or in any manner causes insubordination, disloyalty, mutiny or refusal of duty by a member of a force,

is guilty of an indictable offence and is liable to imprisonment for five years.

(2) In this section, 'member of a force' means a member of

(a) the Canadian Forces,

That is all right.

(b) the naval, army or air forces of a state other than Canada that are lawfully present in Canada,

Well, that is more open to question, but I do not question it now.

(c) the Royal Canadian Mounted Police.

You have it there grouped with the military, and insubordination of that force is the same thing as insubordination in our navy or any other part of the armed forces. I do not like that; I don't believe in it. I think it was Senator Kinley who asked me whether I was not overstating the matter. I do not believe I was, but if I did overstate it, it is in a mighty good cause. We do not want this force to become another "S.S." force.

Hon. Mr. EULER: Was that the feeling of the subcommittee?

Hon. Mr. ROEBUCK: I cannot answer that. It was the feeling of the Chairman and myself.

The CHAIRMAN: When a few minutes ago I mentioned Section 57, I was really thinking of section 63. I do not have any particular objection to section 57 but 63, which would group the R.C.M.P. with members of the forces, was I thought carrying their position a little too far in the criminal code.

Hon. Mr. KINLEY: Is not the relations of the R.C.M.P. changing with the progress of needs and events? For instance, the intelligence service of the R.C.M.P. is in possession of most vital secrets; and if a man who is in possession of those secrets deserts, it might be a very serious matter.

The CHAIRMAN: You have taken one angle of it; now let us take another angle where, for instance, the R.C.M.P. are being used extensively in the civil administration policing in various parts of Canada.

Hon. Mr. KINLEY: What is the objection to saying that knowingly one cannot assist a Mounted Police to desert?

The CHAIRMAN: I am talking now about this section 63, not 57.

Hon. Mr. KINLEY: That is "interferes with, impairs or influences the loyalty of . . ." Why should I publish in my newspaper something that would influence these people to be insubordinate or disloyal in case of a riot, or to take side with the rioters, or something like that? Would that not be a criminal act?

The CHAIRMAN: The serious objection I have is that it is intended to group the R.C.M.P. as a force with the Canadian armed forces. I do not think they should be put in that category.

Hon. Mr. CRERAR: Hear, hear.

Hon. Mr. KINLEY: They are really a service for the internal defence of Canada; they are the forefront of the internal defence of Canada.

The CHAIRMAN: I don't think they are. They are an arm of the federal service connected with the administration. It is ridiculous to say that the man walking up and down in front of the Parliament Buildings is part of the armed forces of Canada, and to give him such status; or to suggest that any of the members of the R.C.M.P. policing the provinces and carrying out duties which if the provinces chose would be done by civil police, that they too have the status of members of the armed forces. That is putting it too high.

Hon. Mr. KINLEY: Has the subcommittee heard the Commissioner of the Mounted Police?

The CHAIRMAN: No.

Hon. Mr. KINLEY: Well, this is new legislation.

The CHAIRMAN: No.

Hon. Mr. ROEBUCK: It was passed in 1951.

Hon. Mr. KINLEY: It seems to me that you should have heard what reasons were being put forth for this legislation.

The CHAIRMAN: No; that is up to the main committee, because all we have done is call your attention to the section and say that it was up to the main committee to decide whether the R.C.M.P. should be part of the armed forces of Canada and be given that status.

Hon. Mr. KINLEY: If provision does not make them part of the armed forces; it only makes certain features of their discipline applicable.

Hon. Mr. DAVIES: Under what minister do the R.C.M.P. come?

The CHAIRMAN: Minister of Justice. He was here last night.

Hon. Mr. KINLEY: This was not brought up last evening.

The CHAIRMAN: He read the report.

Hon. Mr. KINLEY: He agreed with that part of it?

The CHAIRMAN: I assume so.

Hon. Mr. KINLEY: There were three objections, and I thought the subcommittee scored on all three.

The CHAIRMAN: I can only assume when he raised certain objections, that he was not objecting to anything else in the report.

Hon. Mr. KINLEY: Do you think this is a section that we should not delete, and then let the bill go to the Commons.

Hon. Mr. ROEBUCK: They can put it back if they want to. Let me go on. We have been studying this question in a hole in a corner downstairs at great length, and then we bring it up here and refer it to you—

The CHAIRMAN: May I call Senator Kinley's attention to the report which the Minister had when he came here last night and stated his objections? In relation to clause 63 we called attention to the section and said that we were adding the word "wilfully"; and then we added the note: "The amended clause stands for consideration of the main committee. The question to be determined is whether offences in relation to members of the R.C.M.P. are to be treated the same as offences in relation to members of the armed forces." Now, the Minister had that report before him last evening, and he said nothing about it. I took it that he was satisfied.

Hon. Mr. ROEBUCK: And Senator Farris agreed to that.

The CHAIRMAN: Yes.

Hon. Mr. KINLEY: But the insertion of the word "wilfully" was an indication of what the sub-committee thought should be done.

The CHAIRMAN: Our view was that the R.C.M.P. should not be included in that section, but we call the attention of the main committee to that, and it is up to that committee to decide.

Hon. Mr. KINLEY: Was that unanimous or was there a difference of opinion?

The CHAIRMAN: No difference of opinion.

Hon. Mr. ROBERTSON: I was not in for the whole meeting last evening, but may I say that while the report was presented to the Minister yesterday afternoon, I do not think that because he made no comment on certain sections, it can be concluded that he is in entire agreement.

In my position in the Senate I am bound to reflect the government's viewpoint; but it is a little awkward for me to go back and forth to the Minister on every specific question that comes up. I therefore made up my mind that as far as this committee was concerned. I would add nothing to what the minister said last night, but reserve the right, if the government should wish me to take a stand on their behalf in regard to any individual item before the House, to do so. But after consulting with the officers, I do not think it can be concluded that because the Minister failed to comment on a particular section, that he is in agreement with the proposals.

Hon. Mr. HUGESSEN: After all, Mr. Chairman, I do not see that you can take anything from the fact that the Minister failed to mention this section. All he was doing yesterday evening was giving us his objection to specific recommendations of the subcommittee. We have no specific recommendations of the subcommittee in this case. All it says is that the matter will be considered by the main committee.

Hon. Mr. GOUIN: On that point, it was referred to the whole committee and we must take the responsibility. We will discuss that in due time.

Hon. Mr. ROEBUCK: Mr. Chairman, I do not want to take all of the morning, but I should like to get off a few of the things I have in mind.

The CHAIRMAN: Very well.

Hon. Mr. ROEBUCK: My position is, we are referring this matter to the main committee; some of the sections come from all three of us, and some from myself.

When I have said my say, then I am through and you gentlemen can take over; it then becomes your responsibility. I am not very far from through.

I was talking about the labour union section, section 49, and I would ask you to turn to section 372 on page 125 of the Code. This is my suggestion, referring to page 125, section 372;

372 (1) Every one commits mischief who wilfully

(*a*) destroys or damages property.

(*b*) renders property dangerous, useless, inoperative or ineffective.

(*c*) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or

(*d*) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

(2) Every one who commits mischief that causes actual damage to life is guilty of an indictable offence and is liable to imprisonment for life.

(3) Every one who commits mischief in relation to public property is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Hon. Mr. HAWKINS: This proposal was not approved by the subcommittee?

Hon. Mr. ROEBUCK: No. This is my own idiosyncrasy, if you like.

The CHAIRMAN: The subcommittee has approved.

Hon. Mr. ROEBUCK: But I have the right to bring it before the general committee. Every one of you has the right to bring forward any section, whether we approved it or not. We are only a subcommittee and subservient to this main body. I want to point out to you that I suppose no strike can take place in Canada in the face of that section: "Obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property". Every strike that I know of interferes with the operation of a property, whether

it is conducted by lawful acts or any other kind of acts; and I would like to introduce into that section what I suggested in the previous section which was referred to, section 49, the thought that you will find in the combination in restraint of trade sections. I would insert, as subsection (2):

> A lawful act done in furtherance of the purposes of a trade union is not mischief.

I emphasize the word "lawful".

Hon. Mr. EULER: How can that be treated as a right which interferes with the lawful rights of somebody else?

Hon. Mr. ROEBUCK: Picketing interferes, no doubt, with the "rights" of somebody else.

Hon. Mr. EULER: With the "lawful rights".

Hon. Mr. ROEBUCK: With the "lawful rights", yes. It is done in every strike that takes place, and that is aimed right at union activities of that kind.

Hon. Mr. DAVIES: Peaceful picketing is not prohibited by law.

Hon. Mr. ROEBUCK: There is a good deal of doubt as to what the law is in regard to it. You will find some place in the Code a provision against "watching and besetting", which is not legal, but peaceful picketing by common consent is legal in this country. But peaceful picketing that interfered with the enjoyment of somebody's property, according to this, would be "mischief".

The CHAIRMAN: If you look at subparagraph (c), it is "obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property". Why should not any interference with the "lawful use, enjoyment or operation of property" be a form of mischief and be an offence under the Code?

Hon. Mr. ROEBUCK: Because you cannot conduct the combined action of a strike without doing so.

The CHAIRMAN: Well, I mean, strikes should not be above the law.

Hon. Mr. ROEBUCK: They are not, nor would I make them; and I say a "lawful" act shall not be considered mischief.

The CHAIRMAN: You have got "lawful use" in here. The thing is redundant, then, is it not?

Hon. Mr. EULER: Can it be lawful if it interferes with the lawful rights of someone else?

The CHAIRMAN: No, it cannot be lawful.

Hon. Mr. KINLEY: Can a lawful act be mischievous?

Hon. Mr. ROEBUCK: A lawful act that obstructs the operation of property according to this, is illegal, and "mischief", the point being that it interferes with the operation of property: "Obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property". I say every strike does that.

The CHAIRMAN: Let us get down to cases on that. After all, if there is a strike, and the strike is properly called in regard to what our law is in Canada, the effect of that is that the employers have no workmen to operate the plant, and the plant does not operate. You cannot call that an interference with the lawful use and operation of the property, if nothing else happens, if the workmen just say "We are not going to work any more."

Hon. Mr. ROEBUCK: And picketing?

The CHAIRMAN: If the picketing reaches the stage where they prevent other people coming in, you are right smack into this section.

Hon. Mr. KINLEY: There is no such thing as peaceful picketing. It never happened.

Hon. Mr. ROEBUCK: Well, this is my view of it. Let us come to section 194.

The CHAIRMAN: Is this on the same point?

Hon. Mr. ROEBUCK: I am through with this. I am going to leave it to the committee.

Hon. Mr. EULER: Mr. Chairman, instead of the amendment which Senator Roebuck suggests, would it meet his views and would it serve the proper purposes if there were an amendment to this effect, that nothing in this shall interfere with the rights of lawful picketing.

The CHAIRMAN: Then you would have to define what is "lawful picketing".

Hon. Mr. EULER: Well, "lawful picketing" certainly would not include the right to keep people from entering a plant—which I think is a right they should not have.

Hon. Mr. ROEBUCK: I think that would satisfy me.

Section 194 defines homicide: I read subsection (6):

> Notwithstanding anything in this section, a person does not commit homicide within the meaning of this act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of law.

We passed that with a very great deal of doubt; and I am bringing that back because I am not satisfied with it. The argument was that if a man may be charged with murder because he has given false evidence and in that way taken the life of a fellow-citizen, a witness would be less ready to come forward and give testimony. Well, I do not think that is very much of an argument, for this reason, that if a man now in a murder trial gives false evidence he is guilty of perjury and may be sentenced to, I think, twenty years—fourteen, anyway. Now, I do not like the provision that a man may give false evidence and cause the death of a fellow being and yet it is not homicide. I do not think it is necessary in the Code, and I would like to see it struck out. Now, I want to come back to section 8, which if I remember rightly, was also reserved for the consideration of this committee. This section is to be found on page 9:

> Notwithstanding anything in this Act or any other Act no person shall be convicted
>
> (*a*) of an offence at common law,

I like that. We have at last gathered into the Code all the offences of common law. All the criminal offences are right in that book. That is good, and it is time we did that.

> (*b*) of an offence under an Act of the Parliament of England, or of Great Britain, or of the United Kingdom of Great Britain and Ireland . . .

It makes it perfectly clear that United Kingdom criminal law does not apply in this country.

> (*c*) of an offence under an Act or ordinance in force in any province, territory or place before that province, territory or place became a province of Canada,

All that is for the purpose of making this book contain all the criminal law there is, and that I highly approve. But it goes on to say:

> but nothing in this section affects the power, jurisdiction or authority that a court, judge, justice or magistrate had, immediately before the coming into force of this Act, to impose punishment for contempt of court.

That brings up the question of punishment for contempt of court. I submit that it is time we gave an appeal against an arbitrary decision made by a judge under the heading of contempt of court. I appreciate that a judge must have control of his court while he is sitting there, and so I would not give appeals against convictions for contempt of court when the offence is committed in court in the presence of the judge, but I would give an appeal against his sentence and I would give an appeal against the conviction that he may register when the offence is not committed in his presence; for instance, a newspaper article that he claims is contempt of court. The judge at the present moment hails the offender before him and tells him he has convicted him and tells him what he is going to do with him, and that is the end of it. There is no appeal. Now, there should be. It would be salutary so far as the judge is concerned, and certainly it is salutary from the standpoint of the public when they are considering the acts of judges. I should like to amend that, then, in this way: To give an appeal to the proper court of appeal in cases of conviction when the offence is not committed in court, and to give an appeal against sentence when the offence is committed in court or, otherwise, all offences.

Hon. Mr. GOUIN: Do you move that amendment?

Hon. Mr. ROEBUCK: I move that amendment, and if it is passed we will ask our own counsel to draw it. It is clear enough. By the way, may I say something that I am going to mention in the house when the matter comes up. I want to say how much indeed this committee is indebted for the advice, skill, industry, attention and assistance given to us by our own counsel.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. ROEBUCK: We are acknowledging that in our report so far as Mr. Moffat and Mr. MacLeod are concerned, the men of the Department, but it was thought not good precedence to mention our own counsel's help in the report. I am going to mention that in the house, and I am also going to refer to the extensive time our Clerk, Mr. MacDonald, has given to the work of the subcommittee. These gentlemen have done their jobs well and we are indebted to them.

Hon. Mr. BURCHILL: Senator Roebuck, the last amendment you referred to, was that discussed by the subcommittee and were they in agreement with you on that?

Hon. Mr. ROEBUCK: I do not think it was discussed. I brought it up and someone said that as it was a controversial matter it should be referred to the general committee.

Hon. Mr. DAVIES: It is your suggestion that when a judge gives a sentence of contempt and that contempt is not in the court room, there should be a right of appeal?

Hon. Mr. ROEBUCK: Yes, and when it is in the court room he should have a right of appeal against the sentence.

Hon. Mr. LAMBERT: I think there is a good deal of sense in this.

Hon. Mr. ROEBUCK: I think that is all, gentlemen, and I thank you for having given me this length of time. The points I have brought up are before you for discussion.

The CHAIRMAN: Honourable senators, we have the report before us. Is it the desire of the committee that we deal with the amendments raised in the report, and also with the sections that are brought to the attention of the main committee for its decision, and that as we come to a point in which a senator is interested he can address himself to that particular point? Would that meet the approval of the committee?

Hon. Mr. DAVIES: I think if we are going to discuss the report we should have it before us.

The CHAIRMAN: The reports were distributed last night.

Hon. Mr. DAVIES: I do not mean the report; I mean the bill.

The CHAIRMAN: Copies of the bill were distributed last night, and there are a few extra copies available. Shall we take up the report remembering that where we have approved a section of the bill without any comment, you may accept it or say, "No, we want to talk about it". If you will turn to the first page of the report you will see that clause 1 was approved. It can be seen that that is simply the title of the bill. As to clause 2, in the hearing last spring we made a considerable number of changes in the definitions. These definitions have been incorporated into this bill, and the only additional change we have made is as follows: "Page 3, line 9—delete the words 'recorder or' and substitute therefor 'municipal judge of the city, as the case may be, or a ' ".

This change in wording of the definition is made to conform to a recent Quebec statute.

Hon. Mr. KINLEY: Mr. Chairman, in the third paragraph of the report it is stated: "Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, officials of the Department of Justice, have assisted the sub-committee in its deliberations and have been present at all sittings. The sub-committee wishes to record its appreciation of the services given by these officials".

Why could we not include our counsel in that? I think he gives more assistance than anybody.

The CHAIRMAN: I think he felt that he was part of the Senate and the sub-committee too, and certainly he was a powerful arm. For those reasons, we felt the committee should make its own statement in the light of what Senator Roebuck has said, and in which I concur, but the services of our Law Clerks were invaluable.

Hon. Mr. KINLEY: Do you not think that an amendment here would be appropriate?

The CHAIRMAN: No; we did not think it should go in the sub-committee report. In fact, Mr. MacNeill concurs in that. We are dealing with a person other than our own—

Hon. Mr. KINLEY: He was too modest.

The CHAIRMAN: Does clause 2 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: We come now to clauses 3 to 7. If any person has any questions, now is the time to raise them, or forever hold your peace.

Hon. Mr. GOUIN: I think Senator Roebuck should move the exact text of his amendment.

The CHAIRMAN: We are coming to that now. Clauses 3-7, shall they carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clause 8 deals with the question of contempt and preserves the right to convict on contempt. This brings us directly to the amendment which Senator Roebuck has suggested, that is, that the right of appeal should be provided. This committee has to decide whether, first of all, there should be any appeal, and secondly, if there should be appeal should it be an appeal for a contempt in the face of the court as well as for contempt outside the court, or whether it should be in relation to any contempt outside the court. There are arguments both ways for the granting of an appeal for contempt in the face of the court. Whether it would take away from the power and influence of a judge in the conduct of the proceedings of his court, or make everybody behave, is a question for the committee to consider. So far as I am concerned, I can certainly see the justice and equity in providing for an appeal on conviction for contempt, where the offence has taken place outside the court room.

Hon. Mr. KINLEY: How is the jail sentence on a person accused of contempt terminated? How does he get out?

The CHAIRMAN: When he services the sentence that has been imposed upon him, against which there is no appeal.

Hon. Mr. KINLEY: Can he be remanded to jail again, even after sentence if he still does not answer?

The CHAIRMAN: Oh, yes.

Hon. Mr. KINLEY: There is the point: it is a continuous thing.

The CHAIRMAN: But that is just one kind of contempt. That is contempt in the face of the court, when a witness refuses to answer, and can be sentenced to jail. But that is not peculiar to our law—it is so in the United States.

Hon. Mr. EULER: What is the extent of the penalty which a judge can impose, without right of appeal?

The CHAIRMAN: That is in his discretion.

Hon. Mr. EULER: There is no limit? Can he send him down for five years?

The CHAIRMAN: Yes.

Hon. Mr. EULER: Without an appeal?

The CHAIRMAN: Yes.

Hon. Mr. EULER: That seems rather absurd.

Hon. Mr. ROEBUCK: The Executive would step in and pardon a man, no doubt, if it was too strong.

The CHAIRMAN: We have an amendment suggested as to what Senator Roebuck has in mind, and not as to the exact draft.

Hon. Mr. ROEBUCK: No, I could not undertake the preparation of such a draft.

Hon. Mr. MACLENNAN: It is not drafted?

Hon. Mr. ROEBUCK: No, but it is perfectly clear. It would be risky to draft it offhand.

The CHAIRMAN: It is something that is difficult to draft.

Mr. MACNEILL: It is most difficult to draft.

The CHAIRMAN: We have a motion before the committee from Senator Roebuck, seconded by Senator Gouin, that a subclause be added to section 8 in the appropriate wording providing for the right of appeal against sentence where the conviction is for contempt in the face of the court, and, secondly that there be a right of appeal against the conviction and against the sentence, where the conviction for contempt is otherwise than in the face of the court. What is the view of the committee on that?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Then it is up to our Law Clerk to draft it.

Hon. Mr. LAMBERT: Have you a definition now qualifying "contempt" under the two classes you mentioned?

The CHAIRMAN: "Contempt" is well known.

Hon. Mr. LAMBERT: But if we provide for an appeal against contempt of court without qualifying it in some way—is that what the amendment means?

The CHAIRMAN: No; I just spelled it out: on the charge of contempt in the face of court there would be a right of appeal from sentence only, and on contempt otherwise than in the face of the court—which would mean, for instance, an article in a newspaper during the progress of a trial—there would be the right of appeal from the conviction and also from the sentence.

Hon. Mr. GOUIN: In the first case they might reduce the sentence, and in the second one they might say the accused is not guilty.

The CHAIRMAN: Yes.

Hon. Mr. DAVIES: Is refusal to obey a summons, contempt?

The CHAIRMAN: The court can issue a bench warrant in that case.

Hon. Mr. DAVIES: That is provided for.

Hon. Mr. LAMBERT: If the intent of this amendment is to protect a person accused of contempt outside the court, it surely could be stated that way, and leave the offences committed inside the court out of the scope of this amendment.

The CHAIRMAN: But the motion made by Senator Roebuck and seconded by Senator Gouin is that there be provision for an appeal in any case where there has been a conviction for contempt: first, on conviction for contempt in the face of the court, there shall be the right of appeal against sentence; and secondly, where the contempt takes place outside the court there shall be a right of appeal against both conviction and sentence.

Hon. Mr. LAMBERT: Very well.

Hon. Mr. CRERAR: If it is left that way, Mr. Chairman, does that mean that an appeal can be taken from the lower court to the next higher court, and ultimately to the Supreme Court of Canada? I think that should be made impossible; that there should be an appeal only to the one court above.

Hon. Mr. ROEBUCK: There would be only the two courts, the provincial supreme court and the Supreme Court of Canada.

Hon. Mr. CRERAR: But let it be settled if it can in the supreme court in the province, and not go any farther.

Hon. Mr. MACLENNAN: Why not let it go farther?

The CHAIRMAN: I would ask why you would grant the right of an appeal and then interfere with the right of the process of appeal!

Some Hon. SENATORS: Carried.

The CHAIRMAN: We now come to clauses 9 to 41, both inclusive, which were approved by the committee. Does anyone wish to say anything about these clauses?

Some Hon. SENATORS: Carried.

The CHAIRMAN: We come now to clause 42, in which there was a minor correction. We struck out a word that seemed to have no place in that section. Shall clause 42 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 43 to 45 both inclusive, were approved by your subcommittee. What is the wish of this committee?

Some Hon. SENATORS: Carried.

The CHAIRMAN: We come now to clause 46, which the Minister spoke last evening and in respect of which Senator Roebuck made his submission today. Concerning (*a*) of that section, there is no real difference between what your committee has suggested and what the Minister suggested last night. The committee was of the opinion that the language in the present section should be incorporated, so that there be no change in that section. The Minister was agreeable to that, except that he wanted to keep his words "kills or attempts to kill Her Majesty", and adds all the other words that do not duplicate those words. It is really a matter of language; there is no difference in the principle. I suppose the argument could be advanced that the section as it presently stands in the code has been there a long time and its meaning is well known, and why make a change in it?

Hon. Mr. KINLEY: Why would you add those words, if the Minister says that they are redundant?

The CHAIRMAN: The Minister says they are redundant but I am not saying they are.

Hon. Mr. ROEBUCK: There surely is a difference between attempting to kill the King and doing him bodily harm.

The CHAIRMAN: Oh, yes. I might fire a shot at the King, and hit the carriage above his head; that is attempting to kill him, but doing him no bodily harm.

Hon. Mr. ROEBUCK: And you might do bodily harm without intention to kill.

Hon. Mr. GOUIN: I am in favour of the amendment, Mr. Chairman, because it contains the words "imprisons or restrains her". I am in favour of that.

The CHAIRMAN: Does the main committtee approve of the change recommended in sub-paragraph (*a*).

Some Hon. SENATORS: Carried.

The CHAIRMAN: The next objection the Minister took was to sub-paragraph (1) (c) of 46. Your subcommittee suggested adding the word "knowingly" before the word "assists", and as I understood it, the position of the Minister last night was that he felt that, because there was involved as a necessary element the *mens rea,* that is the guilty mind, that gathered in and imported all the knowledge that was necessary, and that "knowingly" either did not add anything, that is in that sense it was redundant, or if it did, it confused the interpretation of the section.

Hon. Mr. CRERAR: What would be the position, Mr. Chairman,—I ask as one who is not a lawyer—of a person who quite innocently assisted someone to do an illegal act, under this section?

Hon. Mr. ROEBUCK: If he intended to do that he will be guilty.

Hon. Mr. CRERAR: I rather favoured the word "knowingly", to make that clear. Is it made clear some other way?

The CHAIRMAN: There are different views among the different lawyers, at the moment, on the word "knowingly". Putting it in does not disturb me. I do not get alarmed that there is likely to be any confusion. Senator Roebuck, on the other hand, has an affirmative viewpoint, that is that it is necessary. Well, I can see his point of view, and it may be necessary if you say that *mens rea* simply means you intend to do the thing that you do.

Hon. Mr. EULER: What harm can it do if it is in there?

Hon. Mr. ASELTINE: He might intend to do it but it might not be knowingly done.

The CHAIRMAN: That is, knowing the purpose and effect.

Hon. Mr. CRERAR: What I had in mind was this, as an illustration. We are at war. There is a very important railway bridge which the enemy seeks to destroy. I am travelling along the road and I overtake the fellow with a bag, and he thumbs me for a ride, and I pick him up and give him a ride, and drop him off where he wants to get off. Now I have assisted him, as I understand it, within the meaning of this section, to commit an illegal act. Could I be hauled before a court and penalized under this section?

Hon. Mr. ROEBUCK: With the word "knowingly" I would say yes.

Hon. Mr. CRERAR: If I could, without the word "knowingly" I think the section is too drastic.

Hon. Mr. MACLENNAN: No court would convict you of that.

The CHAIRMAN: All I can say, Senator Crerar, is that in these circumstances certainly you could be charged, and you might be convicted.

Hon. Mr. MACLENNAN: "Might be convicted"? What are the courts for?

Hon. Mr. CRERAR: Of course it would be a case for appeal, I suppose.

Hon. Mr. ROEBUCK: You cannot tell what a jury might do, but thinking of it in terms of a court of appeal, if you were convicted, what would the court of appeal say? I think, in face of that section, without the word "knowingly", that the jury's decision would stand.

Hon. Mr. BURCHILL: Mr. Chairman, it is almost presumptuous for a layman to enter this discussion—

The CHAIRMAN: No, it is not.

Hon. Mr. BURCHILL: —but I listened with great interest last night to the Minister belabouring that point. He evidently thought it was very important that that word "knowingly" should not be inserted, because his argument was that it would weaken rather than strengthen, as I take it. That was his argument. He approved of nearly everything the subcommittee did, and as a layman I was impressed with his argument last night, and if he feels that way so strongly, why not give him his way?

The CHAIRMAN: Why not ask the Law Clerk what he thinks?

Hon. Mr. GOUIN: Mr. Chairman, I also was impressed with the arguments of the Minister. It may be that my legal training was somewhat different, but generally speaking, in my province we would not insert a word like that in one paragraph. If you start speaking of "knowingly" you have to add it to every subparagraph. Personally, I remain convinced that a man would not be condemned under the circumstances which were described by Senator Crerar. However, there is no use for me to go into all the details of the argument. The question before us was, generally speaking, if we object to enlarge the definition of the word "treason"? Personally I am in favour of enlarging it.

The CHAIRMAN: Will we hear what our Law Clerk has to say about the point?

Mr. MACNEILL: I heard this argument of the Minister last night, and I also tried one of my own, which is really Senator Gouin's argument, on some of the senators last night, and evidently they do not agree with me. What I don't like about it is this, that if you put "knowingly" in (*c*) does that mean that you do not need to know what you are doing in (*a*) and (*b*)?

Hon. Mr. CRERAR: Oh, no.

MR. MACNEILL: I am afraid it does, Senator. I tried this on Senator Farris before he left, and he said there is something in it. I tried it on some other people, including, I think, Senator Roebuck, and they said that there is not. But I am afraid that if you put it in (*c*) you should have it in (*a*) and (*b*) as well. My opinion is that it is included in them all now.

Hon. Mr. EULER: One does not want to convict any person unless he does these things knowingly. If that is the case, why not put it in and make it perfectly clear? What harm would it do?

Hon. Mr. ROEBUCK: The distinction, if I may reply to what Mr. MacNeill has said, between these other paragraphs and this particular one is that it applies when there is no state of war existing. Levying war is another matter; everybody knows that, but here, whether or not a state of war exists, you assist the enemy whose forces are engaged with our forces; and therefore we thought it necessary, and it helps, to say "knowingly". They must know that our forces are engaged. Who knew, for instance, that our forces were engaged in Koje? Who knows who our enemies are in North Korea? We think they are China; but there may be others. I don't know, but I rather suspect the Russians of being there. But here it is a case of where our forces are engaged and there is no declaration of war or any statement on our government's part. That is why it is necessary to have "knowingly",—that he knows there is a conflict of that kind going on when he assists them.

The CHAIRMAN: What is the view of the committee?

Hon. Mr. EULER: Take a vote.

Hon. Mr. HUGESSEN: May I say a word before we take a vote?

The CHAIRMAN: Yes.

Hon. Mr. HUGESSEN: I must say that I was impressed with the argument of the Minister, for this reason. We were told yesterday that in every offence of treason the Crown has to prove two things; first of all, knowledge; and secondly, the intent; and the argument was that if we insert the word "knowingly" here we might reach the position where a man would be convicted because he had done something knowingly, although he did not have the intent to do it; and the case the Minister gave us was the case of a German consul at the beginning of the first war, in Great Britain, who helped some German nationals to get back to Germany to enlist in the armed forces of that country. His defence was that he knew what he was doing but he had no intention to commit treason because he thought, under the rules of international law, it was the right of nationals to get back to their own country. The argument of the Minister, as I gather it, was this. If it was "knowingly" you might make some people subject to prosecution under this section if they knew what they were doing, even though they had no intent to commit treason. I must say that that impressed me.

The CHAIRMAN: While you are addressing yourself to that, Senator Hugessen, would you consider paragraph (*g*) in relation to those other paragraphs? In (*g*) they create a separate offence of forming an intention to do anything mentioned in paragraphs (*a*) to (*e*) and manifesting that intention by an overt act. Now if that is made a separate offence I am suggesting it might indicate that the offence under (*c*) was something less than knowingly doing something.

Hon. Mr. CAMPBELL: Mr. Chairman, I think if you take into consideration the type of offence that is to be charged under the section, the language in paragraph (*c*) is sufficient to protect a person who is innocent of any wrongdoing. I am impressed by the submissions made by Mr. MacNeill on the matter. I do not think that "knowingly" is necessary at all to protect a person charged under that paragraph, if he is innocent of the offence.

The CHAIRMAN: The committee recommends adding the word "knowingly". Are you in favour of that? We will take a vote on it now.

The committee's amendment was negatived: contents, 10; non-contents, 11.

The CHAIRMAN: The next question is on paragraph (*e*). Your committee recommends that it be taken out of section 46 and included in section 50, and also that the words "or interests" be stricken out, so that the wording would be ". . . likely to be prejudicial to the safety of Canada", not "to the safety or interests of Canada".

We heard the Minister on that last night. He was arguing (1) that he wanted to keep the paragraph where it is, with its label of treason, for that kind of offence, and (2) that he wanted to preserve the penalty, which is death or imprisonment for life. As to the second point, whether the paragraph remains in section 46 or is transferred to any other section you can still preserve the penalty. So no problem is presented there, and the only problem is whether that kind of offence should be given the label of treason. Your subcommittee felt that having regard to the historic process by which the word "treason" has developed a meaning, this paragraph (*e*) is too broad for section 46. That is, it creates an offence whether the country is at war or at peace; and there is also an offence if information is communicated—it might be information of any kind, the only test being whether it is likely to be prejudicial to the safety or interests of Canada. The words "or interests

of Canada" are so broad that they would cover economic interests. I should point out also that the section exists at present in the Official Secrets Act in broad terms and provides a prohibition. At present if you wanted to prefer a charge for something that was done in violation of the Official Secrets Act and you did not want to lay the charge under that Act, you could proceed under the present Code by charging a conspiracy to commit an indictable offence; and under the provisions of this bill the maximum punishment would be the same as might have been awarded if the accused person had committed a substantive offence instead of just a conspiracy. The only effect of transferring this paragraph out of section 46 would be to remove the label of treason from it. The question is whether it should have that label. The only thought I had on it was that if you are going to put a label of treason on that kind of offence the scope of the language should be narrowed. The words "information . . . likely to be prejudicial to the safety or interests of Canada" are very broad to use in a section dealing with treason, which is one of the worst crimes in the whole category covered by the Code or that one could possibly imagine. I am prepared to go pretty far in these things, because I recognize that the criminal law is a progressive thing; we create new offences because our society is developing. There was a time when we did not regard combines in restraint of trade as criminal offences.

Hon. Mr. BURCHILL: Mr. Chairman, I move that the committee's recommendation be adopted.

Hon. Mr. GOUIN: Mr. Chairman, I think that under present conditions it is essential to take additional steps for the safety of Canada. I am convinced that the penalties as they stand now are not sufficient. The Chairman was referring to what I would call the evolution of the law. Well, the main purpose of this part of the Criminal Code is to secure the safety of our country by deterring people from committing certain offences such as have been committed here and in other countries. In what is now the common acceptation of the word "treason", a man who without proper authority discloses a secret concerning atomic bombs or concerning certain economic matters of vital strategic importance is surely committing what is, morally speaking, treason. I believe it should be considered as such, and that in certain of these cases the death penalty should be imposed, and that in every such case the penalty should be life imprisonment or imprisonment of a lesser term. And evidently here the sentence would depend on the seriousness of the offence.

Hon. Mr. REID: While I am not a member of the committee, perhaps I may be allowed to say that I think this is a very serious matter that is being considered now, in view of the fact that in Canada there are men who are working for Soviet Russia. I would remind honourable senators of the doctor in Great Britain who was given ten years for giving away top secrets to the Russians, and we had men in this country working right along with him. My point is this: Are we just going to put these people in prison for ten years and then let them off for good behaviour after they have served a few years?

The CHAIRMAN: The answer is simply that we have laws at the present time that provide for dealing with cases of the kind you are talking about. What we are pointing out is that if the broad language in this subsection is to be continued, then it should not carry the label of treason. If you want to establish the penalty of death or imprisonment for life in connection with it, I would be prepared to go along with you, but I find something inherently objectionable to using that broad language. It would have too many applications. You are taking the extreme one and you are saying there should be a law against that. Everyone agrees with you, but let us take the whole range of possibilities that might come under it. If you want to make the

penalty that of death or life imprisonment for this particular kind of offence, that is fine, but to call it treason in the broad language of that section is going too far.

Hon. Mr. LAMBERT: Does the Official Secrets Act cover this sort of thing?

The CHAIRMAN: The Official Secrets Act is very broad in the kind of offences that it covers. This Act is still in force so that if somebody employed by our Atomic Energy Commission, for instance, betrays any secrets he may be prosecuted under the Official Secrets Act.

Hon. Mr. KINLEY: What is the penalty under that Act?

The CHAIRMAN: To give you some concept of what the Crown thinks this punishment should be, it is fourteen years.

Hon. Mr. EULER: But it is not designated as treason?

The CHAIRMAN: No, and this is importing some of the offences of the Official Secrets Act into this Act in relation only to conspiring, but actually you could charge them now under the present Code by charging them with conspiring to commit an indictable offence.

Hon. Mr. EULER: Mr. Chairman, do you need a seconder to Mr. Burchill's motion?

The CHAIRMAN: Yes.

Hon. Mr. EULER: I will second it.

The CHAIRMAN: Those in favour of adopting the report of the subcommittee in relation to paragraph (*e*) please signify by raising their right hand. Opposed?

The amendment was agreed to.

Contents: 15; Non-contents: 1.

The CHAIRMAN: Then there are some consequential changes which Mr. MacNeil will have to make in sections 47 to 49. There is a consequential change in paragraph (*g*) of section 46. We will make these changes. Before section 49 can be carried I must raise the motion which Senator Roebuck made earlier this morning in relation to it. The senator wanted to put a qualification in the definition of a prohibited act in that section; that is, he wanted to make it non-applicable to any lawful act of a trade union.

Hon. Mr. KINLEY: What does that mean?

The CHAIRMAN: This is something that the subcommittee did not deal with at all. The subcommittee simply referred the section to the main committee for its consideration. Senator Roebuck has suggested this qualification, and you have heard his representations with regard to it. Those who are in favour of making the qualification suggested by Senator Roebuck please raise their right hands.

Hon. Mr. DAVIES: Just exactly what is it that Senator Roebuck wants to do?

The CHAIRMAN: He wants to qualify the definition of prohibited act so that it does not include any lawful act done in the furtherance of the purpose of a trade union.

Hon. Mr. DAVIES: I should like to get some information on this point. I understand that trade unions are not incorporated.

Hon. Mr. ROEBUCK: They may be but most of them are not.

Hon. Mr. DAVIES: Therefore no trade union can be prosecuted as a trade union?

The CHAIRMAN: They could be prosecuted as individuals.

Hon. Mr. HUGESSEN: Before voting on this amendment of Senator Roebuck's, I should like to have the opinion of our Law Clerk as to whether that amendment is really necessary, because the first two lines of section 49 read: "Everyone who does a prohibited act for a purpose prejudicial to . . ." and then the prohibited acts are defined later on. Somebody may be acting for a union and do various things but can he be said to be doing them for a purpose prejudicial to the safety or interests of Canada? He is doing it for his own union. I do not think the amendment is necessary, and I should like to have our Law Clerk's view on that.

Mr. MACNEILL: As an off-hand opinion I do not know whether it would be worth very much, but certainly to be guilty of an offence under section 49 the prohibited act would have to be for a purpose prejudicial to the safety or interests of Canada, whatever that means, or prejudicial to the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada.

Hon. Mr. HUGESSEN: It would have to be a purpose.

Hon. Mr. ROEBUCK: Take a railway strike, for instance.

Mr. MACNEILL: The strike would have to be for a purpose prejudicial to the safety of Canada or the security of the naval, army or air forces of any other state that are lawfully present in Canada. I would think that you would have to prove that was done for that purpose.

The CHAIRMAN: Yes. Take, for instance, the railway strike we had several years ago. The men were striking in accordance with their legal rights, and that was the purpose. There had been certain bargaining negotiations carried on and they had failed to reach an agreement. All the processes required had been exhausted so they went on strike. Parliament convened and enacted special legislation to take care of the situation, putting the public safety and the right of the public as a whole above those so-called quasi-private rights of the railway employees to strike. But there was no suggestion at that time that in their act of striking and tying up the railway facilities these employees were doing that for a purpose prejudicial to the interests or safety of Canada. They were doing it for the purpose of advancing the rights and position they enjoyed under the law.

Hon. Mr. EULER: What is the situation if, incidentally, the interests of Canada are prejudiced?

The CHAIRMAN: Then you might be called on again to do the same sort of thing as before; that is, parliament would have to come in and say, "Well, public safety and public rights are higher than those rights of the railway employees". But this section would not make the conduct of people striking in this situation a criminal offence.

Hon. Mr. LAMBERT: You referred to a railway strike which involved the complete transport rail system across Canada. Supposing you have an industrial plant which is engaged in the manufacture of certain munitions of war of a vital character. Let us say the strike takes place at this plant. It is of a more isolated character than the railway strike, and so it would be a matter of the degree to which the interests of Canada would be affected by that strike. There might be other plants manufacturing the same munitions elsewhere that are not affected. We have in mind very striking examples in the last couple of years of strikes in industrial plants where the manufacture of equipment for use overseas.

The CHAIRMAN: There is power in the Department of Defence Production Act to take over the plant.

Hon. Mr. REID: May I ask if there is power in this section to prevent what happened in the Windsor strike a few years ago, when pickets were able to prevent the management or anyone else from entering the plant?

Hon. Mr. EULER: Not only that, but they interfered with other people who were going about their own business.

Hon. Mr. DAVIES: Mr. Chairman, I would like an answer to my question. I understand that trade unions are not incorporated, and therefore I am wondering whether Senator Roebuck's amendment is necessary. A trade union would not be charged as a union, anyway. If you use the words "trade union" will there not be a redundancy? Can they be charged in a court?

Hon. Mr. BOUFFARD: Some of them are incorporated.

The CHAIRMAN: Will those who are in favour of the amendment proposed by Senator Roebuck please raise their right hand? There appears to be only one in favour. The clause carries.

Then there was a suggestion by Senator Roebuck that above section 49 we insert the heading "Prohibited Acts", covering this section and subsequent sections, so as to distinguish them from the heading of "treason" on the preceding sections. Does the committee agree with that? Carried.

On section 50: You have already agreed in principle with the transposition of paragraph (*e*) from section 46 to section 50, so the amendment suggested by the committee carries.

As to sections 51 to 54, what is the wish of the main committee? Your sub-committee approved of them.

Hon. Mr. ROEBUCK: I suggested that section 52 be renumbered 49, and that sections 49, 50 and 51 be renumbered accordingly. Section 52 deals with acts intended to alarm or injure Her Majesty, and I thought it would look better to have this first in these series of sections.

The CHAIRMAN: That was so as to pay due respect to Her Majesty. Is there any objection to renumbering section 52 as 49 and renumbering the other three sections accordingly? Carried.

We should note that this change in numbering will involve a consequential change in section 413.

Now we come to section 55, which stood for consideration of the main committee. That section stood while we were dressing up and making amendments to those earlier sections, 46 to 50.

Hon. Mr. ROEBUCK: Did we not change the numbering of 47 and 46?

The CHAIRMAN: 46 is the definition; 47 creates an offence.

Hon. Mr. ROEBUCK: I thought that 47 became 46.

The CHAIRMAN: No. As I say, 47 provides for an offence and 46 is simply the definition of the various kinds of treason. I think 47 is properly stated as the section.

Hon. Mr. ROEBUCK: All right, if that is so.

The CHAIRMAN: Shall section 55 pass?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 56 was approved by your sub-committee.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 57 stands for the consideration of the main committee. There were two recommendations: if the section were to remain, the word "wilfully" should qualify it in its whole sense; and secondly, Senator Roebuck has raised for the consideration of the main committee whether the section should be in the code at all, because it creates certain offences in relation to the R.C.M.P.: "Every one who (*a*) procures, persuades or counsels a member of the Royal Canadian Mounted Police to desert or absent himself without leave. . . ."

Hon. Mr. ASELTINE: It puts him in the same class as the armed forces.

Hon. Mr. KINLEY: For that purpose.

The CHAIRMAN: No; that point applies more particularly, in my view, to section 63, not section 57. Section 57 is something that deals with people who may counsel or assist any R.C.M.P. officer to desert.

Hon. Mr. ASELTINE: I understand.

The CHAIRMAN: It is a different type of offence. What is the wish of the committee? Senator Roebuck's motion is to strike out section 57.

Hon. Mr. KINLEY: Your committee let the section stand.

The CHAIRMAN: All the committee did was insert the word "wilfully" and with that word in the section stood for consideration by the main committee. Senator Roebuck has now moved that the section be struck out, and I think we should put it to a vote.

Hon. Mr. LAMBERT: If the Mounted Police be regarded as of a civilian character and not military, why does this section need to apply at all?

The CHAIRMAN: Because by section 3 they are put in the definition of members of the forces.

Hon. Mr. LAMBERT: Is it to be an offence for anybody to try to persuade a member of the R.C.M.P. to retire at any time, any more than it is an offence to persuade a city policeman to retire?

The CHAIRMAN: That is the point Senator Roebuck has raised, and that is why we want the comment of the committee on it.

Hon. Mr. LAMBERT: The point really is in section 63 and not here.

Hon. Mr. KINLEY: Can a Mounted Policeman not buy his discharge?

The CHAIRMAN: He can buy himself out.

Hon. Mr. ROEBUCK: The two sections run together, in my view.

Hon. Mr. LAMBERT: They are related all right, but I fail to see any offence there. I am trying to visualize what would be an offence, and I find it rather difficult to do so.

Hon. Mr. BURCHILL: Did the sub-committee not cover the question by inserting the word "wilfully"?

The CHAIRMAN: We have inserted the word "wilfully" in the section and left it up to the main committee to decide what should be done. Senator Roebuck has moved an amendment that the section be struck out. What is the wish of the main committee on that? All those in favour of striking out section 57 please raise your hand? (8)

Now those opposed to striking out the section, raise your right hand. (9)

I declare the motion defeated.

Your committee approves sections 58 to 61, both inclusive. What is the wish of this committee?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 62 was allowed to stand for consideration by the main committee, and I would call your attention to the fact that it is an offence under the code and is being continued an offence under the code to publish a libel that tends to degrade, revile or expose to hatred and contempt in the estimation of the people of a foreign state any person who exercises authority over that state.

Hon. Mr. ROEBUCK: Did I not address myself to that section?

The CHAIRMAN: Section 62?

Hon. Mr. ROEBUCK: I intended to.

The CHAIRMAN: On the basis of striking it out?

Hon. Mr. ROEBUCK: Yes, on the basis of striking it out. The section reads:

> Every one who, without lawful justification, publishes a libel that tends to degrade, revile or expose to hatred and contempt in the estimation of the people of a foreign state any person who exercises sovereign authority over that state is guilty of an indictable offence and is liable to imprisonment for two years.

That is to say, if during the war you had expressed some contempt for Mr. Mussolini which might have lowered the estimation in which the Italian people held him, you would be guilty under this section.

The CHAIRMAN: Unless there was lawful justification; and I might suggest that a state of war would be lawful justification.

Hon. Mr. ROEBUCK: Yes, but there was some time before a war took place. The same could apply to Hitler.

The CHAIRMAN: What you say about Hitler may be more appropriate than about Mussolini, who was under a King who would be the sovereign.

Hon. Mr. ROEBUCK: He was the head.

The CHAIRMAN: Whether he assumed sovereign authority or not, is another question.

Hon. Mr. ROEBUCK: We can talk as we like about King Farouk at the present time, but prior to his getting out with his wife, we could not do so. I do not know why we should be interfering with free speech and discussion about these "blokes" who head some foreign country and whom we hold in utter contempt. Why should we not say what we want to say about them?

Hon. Mr. LAMBERT: What does "lawful justification" mean?

Hon. Mr. EULER: That it must be true?

Hon. Mr. ROEBUCK: I don't know what "lawful justification" means. There would be no lawful justification for bringing the head of a foreign country into contempt, if the Kingston *Whig*, for instance, told the truth about him. Of course it always tells the truth about him. Of course it always tells the truth, but I think care would have to be taken. Why should we jump into this thing?

Hon. Mr. MACLENNAN: Is this new?

Hon. Mr. KINLEY: No, it is not new.

The CHAIRMAN: It goes away back to the inception of our code, 1892, when we had separate acts. I do not know whether this section was in the separate act before that, but under the common law it was always an offence.

Hon. Mr. EULER: I move the clause be struck out.

Hon. Mr. ROEBUCK: You are seconding my motion to strike it out. I have already so moved.

The CHAIRMAN: There is a motion to strike out section 62. What is the pleasure of the committee? Will those in favour please raise their right hand? (15)

The CHAIRMAN: I declare the motion carried.

Hon. Mr. MACLENNAN: Why should it be here if it is the law now?

Hon. Mr. ROEBUCK: It is the common law.

The CHAIRMAN: We are codifying these laws; this is a new code and we are incorporating in it offences that are in the present code. This is one provision contained in the present code. We have just decided that it should not be there.

We now come to section 63.

Section 63 is the section on which Senator Roebuck made the motion, that the definition paragraph, subsection (2) (c), which includes the Royal Canadian Mounted Police within the meaning of "member of a force," should be struck out. What is the wish of the committee in that regard?

Hon. Mr. CRERAR: I may say I am wholly in favour of that. We should, I think, very carefully distinguish between military forces and the Royal Canadian Mounted Police, which is not a military force, and should be kept a civilian force.

The CHAIRMAN: Those who are in favour of striking out sub-paragraph (c) of subsection (2) please raise their hands.

The CLERK OF THE COMMITTEE: For striking out, 13.

The CHAIRMAN: Those opposed?

The CLERK OF THE COMMITTEE: Three opposed.

Amendment agreed to.

The CHAIRMAN: Your committee has recommended that the word "wilfully" be added at the beginning of subsection (1), section 3, that is, "Every one who wilfully" does any of these things. Does that recommendation of the committee carry?

Hon. SENATORS: Carried.

The amendment was agreed to.

The CHAIRMAN: Then we get on to clauses 64 to 71, which your subcommittee has approved.

Hon. SENATORS: Carried.

The CHAIRMAN: We have to do a re-numbering job.

Mr. MACNEILL: When we strike out these clauses it means that we have to re-number. Of course that is a very important and rather long job. If we can find a section somewhere that we can divide into two, we can save numbering.

The CHAIRMAN: Why not, under section 63, put the definition in a separate section?

Hon. Mr. ROEBUCK: Why not leave it to Mr. MacNeill to do it?

Mr. MACNEILL: It is not very good drafting, but it is better than going through this whole thing and re-numbering it all.

Hon. Mr. ROEBUCK: Leave it to Mr. MacNeill.

Mr. MACNEILL: With Mr. Moffat and Mr. MacLeod.

The CHAIRMAN: The only reason we call your attention to section 72 was that in the report we made last spring we pointed out that this challenging a person to fight a duel is an archaic offence, and our view then was why should it be there? But when we considered it again this fall we finally said, "Well, it is there, and maybe somebody might attempt to provoke somebody else to a challenge, and at least, if you are going to leave it in there, even though it is archaic, the person who accepts the challenge should be just as guilty as the person who makes it." We therefore recommend the addition of sub-paragraph (c), to make the person who accepts the challenge equally guilty of an offence.

Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved sections 73 to 78.

Hon. SENATORS: Carried.

The CHAIRMAN: On clause 79, you will notice that it has been re-drafted in accordance with the recommendations made by your subcommittee in the spring. The only other suggested change we wanted was on page 27, line 27, where the word "other" occurs "to take or receive an explosive substance or other substance or thing." Since we are talking about explosives, we think they should have the quality of being dangerous before we attempted to create an offence.

Hon. SENATORS: Carried.

The CHAIRMAN: We have deleted from clause 80, page 28, paragraph (*a*) substituted a new paragraph, still dealing with the question of explosives: that is

> "Every one who without lawful excuse, the proof of which lies upon him,
>
> (*a*) makes or has in his possession or under his care or control an explosive substance that he does not make or does not have in his possession or under his care or control for a lawful purpose, or".

The language of the section in the bill was "in circumstances that give rise to a reasonable suspicion". We do not like that generalization in language, so we have made it very definite. Is that carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 81 to 98 were approved by your subcommittee. Does this committee approve of that?

Hon. SENATORS: Carried.

The CHAIRMAN: Then, in part III, we have approved sections 99 to 103.

Hon. SENATORS: Carried.

The CHAIRMAN: The only change in clause 104 is a correction deleting the word "or" and substituting the word "to".

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 105 to 116 were approved by the subcommittee.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 117: if you look at page 40, line 37, you will see it is in connection with fabricating evidence. The language of 117 says "with intent to mislead, fabricates evidence for the purpose of a judicial proceeding". We thought that the preferred language should be "anything with intent that it shall be used as evidence in" a judicial proceeding. We thought that was a better description of the offence.

Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved clause 118. Is that carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 119 is amended only by striking out the word "or" where it occurs.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 120 to 129 were approved by your subcommittee.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 130 to 133 are approved by the subcommittee.

Hon. SENATORS: Carried.

The CHAIRMAN: We get down to clause 134. Your subcommittee has recommended a re-draft of that clause, which has to do with the instruction to the jury in certain types of offences,—rape and attempted rape and carnally knowing a female person under the age of fourteen. The way the provision read in the bill was:

> "134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed, instruct the jury that it is not safe to find the accused guilty in the absence of evidence that corroborates the evidence of that female person, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.

We thought additional words should be there, that if there is not evidence which corroborates in a material particular, and therefore in the re-draft you will see that we have used that language. We have said that—

> the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed, and that evidence is not corroborated in a material particular,

instruct the jury in the manner provided.

Hon. SENATORS: Carried.

Hon. Mr. DAVIES: Just a minute. It is pretty difficult in cases of rape and that sort of thing to have corroboration evidence, is it not?

The CHAIRMAN: Well, a lot of people are not above deciding after the offence has occurred and after they have had time to reflect on it that that was, after all, rape, and that if they did sort of consent or indicate some co-operation at the time it was purely unintentional. So you have to look at both sides of these things.

Hon. Mr. DAVIES: I do not like anything that would make it easier for a person who commits rape to get off. This is a pretty serious matter.

Hon. Mr. ASELTINE: Yes, but you have not practised law.

Hon. Mr. DAVIES: In all the cases I have heard the accused has got off because there was not satisfactory corroborative evidence.

Hon. Mr. ROEBUCK: Let me point out that previously in these charges of assault on girls under fourteen years of age you could not convict at all. The judge took it away from the jury, unless there was corroborative evidence of a particular material. Now, we have changed that.

Hon. Mr. DAVIES: He took it away from the jury and what happened?

Hon. Mr. ROEBUCK: He dismissed it and did not let it go to the jury at all. We are letting it go to the jury in this—with some doubt in my mind—but with the warning given by the judge as to the necessity of corroboration before it is safe to convict; but they now can convict if they are perfectly sure that the girl's story is right.

The CHAIRMAN: Shall clauses 135 to 145, both inclusive, carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is clause 146, which is to be found at page 47 of the bill. This has to do with the seduction of female passengers on vessels. We have suggested qualifying the word "vessels" by inserting the words "engaged in the carriage of passengers for hire,". It was the obvious intention of the

section to prevent female passengers from being seduced. Every male person who, being the owner or master of, or employed on board a vessel, seduces, or by threats or by the exercise of his authority, has illicit sexual intercourse on board a vessel with a female passenger is guilty of an indictable offence and is liable to imprisonment for two years. We have added the words, "engaged in the carriage of passengers for hire". Does that carry?

Some Hon. SENATORS: Carried.

Hon. Mr. KINLEY: Suppose the vessel was a freighter and the master had three or four lady guests on board.

The CHAIRMAN: Well, if they qualified as passengers it would be an offence.

Hon. Mr. KINLEY: They may not be passengers who have "hired the vessel" to use the words here.

The CHAIRMAN: If the master of a ship had guests, then it would not be a special offence under section 146. It would have to come under whatever the rest of the law provides.

Hon. Mr. KINLEY: The idea, I suppose, is that the captain has a lot of influence and the passengers should be protected.

The CHAIRMAN: Yes. If they are his guests then perhaps the classification of the influence is something entirely different. If you pay for the privilege of travelling on a vessel, then you should have certain rights and there should be an offence provided.

Hon. Mr. KINLEY: If they do not pay should they not have the right of protection anyway?

The CHAIRMAN: Well, they have the general law.

Clause 146, as amended, was agreed to.

The CHAIRMAN: Clauses 147 to 152 were approved by your subcommittee.

Some Hon. SENATORS: Carried.

The CHAIRMAN: As to clause 153 your subcommittee has recommended the following amendments:

"page 50, line 15—after the word 'scurrilous' insert the following; 'but this section does not apply to a person who makes use of the mails for the purpose of transmitting or delivering anything mentioned in subsection (4) of section 151'."

Hon. Mr. ROEBUCK: Subsection (4) of section 151 reads:

(4) This section does not apply to a person who

(*a*) prints or publishes any matter for use in connection with any judicial proceedings or communicates it to persons who are concerned in the proceedings;

(*b*) prints or publishes a notice or report pursuant to directions of a court; or

(*c*) prints or publishes any matter

(i) in a volume or part of a *bona fide* series of law reports that does not form part of any other publication and consists solely of reports of proceedings in courts of law, or

(ii) in a publication of a technical character that is *bona fide* intended for circulation among members of the legal or medical professions.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 154 to 156 inclusive were approved by your subcommittee.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee has amended clause 157 as follows:

1. Page 51, line 4—strike out the words 'or is likely to endanger'
2. Page 51, line 5—strike out the words 'or is likely to render'
3. Page 51, lines 8 to 12—delete subclause (2) and substitute the following:

'(2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed'.

That limitation is now in the present Code and we thought that it should be continued. We feel that if such a proceeding is going to be taken it should be taken within a year after the offence.

Hon. Mr. KINLEY: And with the consent of the Attorney-General, is it not?

The CHAIRMAN: Yes, that is as to taking the proceeding in any event, and then we think there should be a limitation of one year put on it.

Some Hon. SENATORS: Carried.

Hon. Mr. ROEBUCK: There is just one small point there. It says: "No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed". I think it should be "when the offence was committed".

The CHAIRMAN: Yes, I think that is right: "the time when the offence was committed". Is that agreed to?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved of clause 158.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clause 159 deals with nudity. We had a lot of discussion on this last spring and we dealt with it extensively in the report which we made to this committee. All that we have suggested is that the present provision in the Code as it now stands, which requires the consent of the Attorney-General of the province to begin such a proceeding, should be carried into the section, and we have so recommended in the report. In other words, we recommend that no proceedings shall be commenced under this section without the consent of the Attorney-General. Does that carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved of clauses 168 to 173 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We have suggested certain amendments to clause 174, which will be found on page 58. We are dealing with the examination of persons arrested in disorderly houses. I would refer you to the concluding four lines of that section. Remember that under this procedure a person who is arrested is haled before the magistrate or justice and he is questioned. You will notice the wording is:

A person to whom this section applies who

(a) refuses to be sworn, or,

(b) refuses to answer a question, may be dealt with in the same manner as a witness appearing before a superior court of criminal jurisdiction pursuant to a subpoena, and section 5 of the Canada Evidence Act applies in respect of a person to whom this section applies.

Under the Canada Evidence Act, if a person claims protection of that Act in refusing to answer a question, on the ground that it might incriminate him, he cannot be charged with contempt for his refusal, but with the permission of the court he may go on and answer and be protected, so that his evidence could not be used in any criminal proceedings against him, except in proceedings for perjury in the giving of that evidence. We felt that if a person was picked up and haled before a justice, and was not represented by a lawyer, it was not fair to say to him, in effect, "If you are smart enough to know what protection you may claim under the Canada Evidence Act and you assert your claim, you will be protected, but otherwise you will not be protected". So instead of leaving the protection in that form we took the language of section 5 of the Canada Evidence Act and inserted it in subsection (3) of section 174.

The subsection would read:

> No evidence that is given by a person under this section may be used or received in evidence in any criminal proceedings against him, except proceedings for perjury in giving that evidence.

In other words, we have given him the protection whether he knows what the Canada Evidence Act says or not. Carried.

Clauses 175 to 184 were approved by your sub-committee. Carried.

Clause 185 was approved by the sub-committee. Carried.

In clause 186, on page 67 of the bill, your sub-committee has recommended some change. This is the section which has to do with the duty of persons who provide necessaries of life. Under the Code as it is now there had to be a need for the necessaries before a charge could be laid. That is, a man could not be charged for failure to provide necessaries of life for his wife and children unless she or they or all of them were in destitute and necessitous circumstances. But the section as drawn in the bill makes it the duty of a husband to provide the necessaries of life for his wife and children, no matter what the condition of his wife and children may be. They might have considerably more than he has; they might have all the means and he might have none. We thought that what the Code was trying to get at was failure of a man to provide necessaries for his wife and children if they were in necessitous circumstances, and we recast the section so as to make that the essence of the offence.

Hon. Mr. ROEBUCK: Which it is now, in the present Code.

The CHAIRMAN: Yes. We are simply restoring the present law.

Hon. Mr. MACLENNAN: Under subsection (2) the proof that a person has a lawful excuse for failing to conform with the duty of providing necessaries of life is a proof which lies upon him. Do you like that phrase, "the proof of which lies upon him"? A burden of that kind rests upon people under various provincial laws—the Forest and Game Act, the Liquor Licence Act, and so on. My experience is that some officers who are appointed to enforce these laws have not very sound judgment. Suppose a man is deer hunting in the woods, and at sundown he takes his gun to his car and starts off for home. He may be met on the road by an officer and stopped. And this officer may say "You have a gun and you are going through territory where deer are supposed to be, so I am going to lay a charge against you". It sometimes does not matter how strongly a man swears that he was not hunting at the time but was on his way home.

The CHAIRMAN: All that we are doing in this particular section is saying that if a person is charged with failing to provide the necessaries of life it is a good defence if he can prove that the persons to whom he failed to provide the necessaries were not in destitute or necessitous circumstances at the time. We are not endorsing generally the application of the burden of proof under all those provincial statutes to which you have reference.

The amendment was carried.

The CHAIRMAN: Your committee approved of sections 187 to 190, inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: In clause 191 we redrafted the definition of criminal negligence. There is no change in this from the redraft that we recommended this Spring, in the report we made at that time.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your committee also approved of clauses 192 to 194.

Some Hon. SENATORS: Carried.

Hon. Mr. ROEBUCK: 194?

The CHAIRMAN: Subsection 6 of section 194 is the one that Senator Roebuck has raised a question about. We just discussed the subsection in the subcommittee, and we all had strong views on it. It has to do with the bearing of false witness against another person upon which he is convicted of murder and hanged. While it seems like one of the worst offences of which one could be guilty, with the assistance we got from Mr. Moffat and Mr. MacLeod, we found the historical basis for it. Chitty's Blackstone supports it in this way:

> Such a distinction in perjury would be more dangerous to society, and more repugnant to principles of sound policy, than in this instance the apparent want of severity in the law. Few honest witnesses would venture to give evidence against a prisoner tried for his life, if thereby they made themselves liable to be prosecuted as murderers.

That is the basis for it. While finally it shocked me a bit, upon getting the historical basis for it I was prepared to approve of it. Senator Roebuck, as I understand, would like to see subsection 6 struck out.

Hon. Mr. ROEBUCK: That is quite right. I feel that we should not make an actual exception and put it in the code, that a man may commit murder that way and get away with it.

Hon. Mr. KINLEY: Do I understand that if a man gives evidence in a murder case, and his evidence is found to be false, he is said to be guilty of murder?

The CHAIRMAN: No, he is not. Under subsection 6 of section 194 he does not commit homicide.

Hon. Mr. KINLEY: What do you want us to do? Do you want it made that he does commit homicide?

The CHAIRMAN: To strike out this section in favour of such a bare-faced liar. But we have reasons for it: They are historical, and seem to give it some foundation.

Hon. Mr. ROEBUCK: I wonder if everybody clearly understands what we are talking about. Here if a man gives false evidence and in that way takes the life of another human being, if the subsection stays in, that is not homicide. He can be charged with perjury but not with homicide.

Hon. Mr. DAVIES: You want it to be homicide?

Hon. Mr. ROEBUCK: Yes. I know of no more despicable way of taking a man's life than by swearing it away.

Hon. Mr. LAMBERT: And you have Blackstone to support you.

Hon. Mr. ROEBUCK: No. It was Chitty, who was the reverse of that.

The CHAIRMAN: I think Senator Roebuck should point out that the penalty upon conviction in these circumstances carries with it the maximum punishment of life imprisonment.

Hon. Mr. MACLENNAN: And he might get out in five years.

The CHAIRMAN: You have the historical reason for it; that is why I went along with the section: It might prevent witnesses from coming forward, if they felt they were subject to—

Hon. Mr. DAVIES: What did the subcommittee do about it?

Hon. Mr. ROEBUCK: The subcommittee kept it.

The CHAIRMAN: I thought Senator Roebuck was with us when we passed on it.

Hon. Mr. ROEBUCK: I don't think I said very much when somebody said "Passed".

The CHAIRMAN: What is the view of the committee as to striking out this section?

Hon. Mr. CRERAR: As I understand it, it gives protection against a witness being hanged, but it does not give him protection against imprisonment for life.

The CHAIRMAN: That is correct. Will those who are in favour of this section being struck out, please raise their right hand? The section is retained.

Your subcommittee approved of sections 195 to 213.

Some Hon. SENATORS: Carried.

The CHAIRMAN: As it is now one o'clock, this might be a convenient place to adjourn and reconvene after the Senate rises this afternoon.

Whereupon the committee adjourned.

The committee resumed at 4 p.m.

The CHAIRMAN: Honourable senators, before we adjourned at noon we had reached clause 214 which is at page 10 of the report. This clause deals with neglect to obtain assistance in childbirth. We have made a change here by inserting the words "as a result thereof" after the word "birth".

Clause 214 was agreed to.

The CHAIRMAN: The subcommittee approved of clauses 215 to 220 inclusive.

Clauses 215 to 220 inclusive were agreed to.

The CHAIRMAN: The next is clause 221—criminal negligence in operation of motor vehicle. We have recommended that this heading be inserted: "Automobiles, dangerous places and unseaworthy ships". That is what this section deals with. Does the main committee approve of the insertion of this heading?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clause 221 on page 75 deals with the requirements of remaining at the scene of an accident. If you will look at the section you will see that after the word "assistance" we insert the words "where any person has been injured". That is, a person must stop his vehicle or offer assistance if any person has been injured and give his name and address. We have made a further amendment as follows:

> Page 75, line 10—after the word "assistance" insert the words "where any person has been injured"

We have added that clarification in each place. We did not feel it was necessary to stay there very long if no person was hurt in the accident.

Hon. Mr. DAVIES: Would it not be difficult to determine if a person was injured? A person could be suffering from shock and that would not be injury?

The CHAIRMAN: That is injury. This subsection 2 deals with everyone who, having the care, charge or control of a vehicle that is involved in an accident with a person, horse or vehicle, and so on which is involved in an accident—what he must do. That is, if with intent to escape civil or criminal liability he fails to stop his vehicle, offer assistance and give his name and address he is guilty of an offence. After the word "assistance" we add the words "where any person has been injured". He still must stop and give his name and address in any event.

Hon. Mr. ROEBUCK: You see, if you do not put that in, in the case of an accident with a horse it would mean that you would have to give your name to the horse.

Some Hon. SENATORS: Oh, oh.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved of the clauses 222 to 225 inclusive.

Hon. Mrs. WILSON: Does attempted suicide come in there?

The CHAIRMAN: No. We fixed that up.

Hon. Mr. ROEBUCK: Yes, I think we fixed that to your satisfaction, Senator Wilson.

Clauses 222 to 225 inclusive were agreed to.

The CHAIRMAN: We amended clause 226 as follows:

Page 77, line 11—after the word "who" insert, "without lawful excuse"

Hon. Mr. ROEBUCK: It deals with making a smoke screen.

The CHAIRMAN: This is a person who has his automobile equipped with an apparatus for making a smoke screen. That is an offence under the present Code, but since there may be a military vehicle so equipped we added the words "without lawful excuse".

The clause was agreed to.

The CHAIRMAN: Your subcommittee approved of clause 227 as it stands.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We come now to clause 228. We have amended this as follows:

1. Page 77, line 26—delete the word "or" and substitute therefor the word "and"

2. Page 77, line 31—delete the word "or" and substitute therefor the word "and"

That is just a mechanical amendment.

Clause 228 as amended was agreed to.

The CHAIRMAN: Your subcommittee approved clauses 229 to 267 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Then we come to VII—Offences Against Rights of Property. Your subcommittee approved of clauses 268 to 297 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is clause 298, which will be found on page 98. After the word "office" we have inserted the word "or."

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved of clauses 299 and 300 without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is clause 301. This is a section which we thought was too broad in its application as drawn, that is where an accused is charged with an offence under section 296. That is receiving stolen goods or having in his possession. You can see that any other property that was found in his possession other than the property in respect of which the particular charge was laid, under the section as it is drawn in the bill evidence could be offered to show the circumstances under which that property was acquired either in Canada or out of Canada with a view to establishing proof of the offence with which he was charged. We thought that was too broad. We limited it to any other property in his possession which "was stolen within twelve months before the proceedings were commenced." That is correct, is it not?

Hon. Mr. ROEBUCK: Yes. Under the present Code, if a man is charged with receiving you can show that he had other stolen goods in his possession to negative the defence that he did not know these goods were stolen. We preserved that, although it is an extraordinary proceeding. Usually you do not prove that a man is guilty of another charge until he is at least convicted of the one on which he is being tried. But the new Code would allow in all kinds of things, almost put a man on trial for his life, so we have gone back to the Code as it now stands.

Carried.

The CHAIRMAN: Clauses 302 to 315 were approved by the subcommittee without any change.

Hon. Mr. KINLEY: Mr. Chairman, is there still in effect a provision against the practice of witchcraft? Section 308 of the bill seems to deal with that.

The CHAIRMAN: Oh, yes, that provision is in the present Code.

Hon. Mr. KINLEY: It seems to me that it is outmoded.

The CHAIRMAN: We did not feel that we should disturb it.

Hon. Mr. ROEBUCK: It is only punishable on summary conviction.

Hon. Mr. KINLEY: Can anyone lay a charge under that section, or may a charge be laid only by the Attorney General?

The CHAIRMAN: Anybody may lay a charge.

Hon. Mr. KINLEY: Fortune telling is done at every circus.

The CHAIRMAN: Are clauses 302 to 315 approved? Carried.

You will notice that we amended clause 316, on page 104. Paragraph (*a*) says that everyone commits an offence who sends, delivers, and so on, a letter or writing that he knows contains a threat to cause death of any person. We thought that should be broadened to cover a letter or writing that he knows contains a threat to cause death or injury. Carried.

We approved of clauses 317 to 321. Carried.

Now we come to Part VIII, fraudulent transactions relating to contracts and trade. Clauses 322 to 343, both inclusive, were approved without any amendment. It is fair to say that generally they involve no change in the substantive law.

In clause 344, page 115, we struck out some words. In line 37 we struck out the words "or by any other means". The clause reads:

> Every one who, by means of a false or misleading representation or by any other means, knowingly obtains. . .

We thought the words "or by any other means" were unnecessary in this section, which deals with obtaining carriage by false billing. Carried.

Clause 345 was approved without any change. Carried.

In clause 346, on page 116, line 31, we struck out the word "undue". The section says:

> "Every one who fraudulently personates any person, living or dead,
> (*a*) with intent to gain undue advantage for himself or another person," etc.

We could not see the value of the word "undue" there, so we struck it out. Carried.

We approved clauses 347 to 364, both inclusive, in the form in which they appear in the bill, which is substantially the form in which they appear in the present Code. Carried.

We made an amendment to clause 365, by adding after the word "railway" at the end of paragraph (*e*) the words "that is a common carrier".

Hon. Mr. KINLEY: Is not every railway a common carrier?

The CHAIRMAN: No.

Hon. Mr. KINLEY: What constitutes a common carrier?

Hon. Mr. ROEBUCK: A privately owned railway is not a common carrier.

Hon. Mr. LAMBERT: A railway operating under the Board of Transport Commissioners would be a common carrier.

Hon. Mr. HAWKINS: A logging railway is generally not a common carrier.

Hon. Mr. PRATT: Nor are railways that are owned outright by paper companies.

The amendment was carried.

The CHAIRMAN: Clauses 366 to 369, both inclusive, were approved without any change. Carried.

Now we come to Part IX. Clauses 370 to 390 also were approved without any change. They substantially embody the present law. Carried.

Hon. Mr. ROEBUCK: Section 372 was one that I referred to this morning.

The CHAIRMAN: Your suggestion was that you wanted to qualify section 372 by adding the provision that any lawful act done in furtherance of the purposes of a trade union would not be subject to this section?

Hon. Mr. ROEBUCK: That is right.

The CHAIRMAN: We voted on section 62, and I think Senator Roebuck was in "splendid isolation" on that.

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN: Now shall we have a vote on section 372, as to whether we shall add that qualification? This section reads:

> "Every one commits mischief who wilfully
> (*a*) destroys or damages property,
> (*b*) renders property dangerous, useless, inoperative or ineffective,
> (*c*) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, . . ."

Hon. Mr. ROEBUCK: That is what I said occurs every time in a strike.

Hon. Mr. KINLEY: This is not new?

The CHAIRMAN: No, it is in the present Code.

Hon. Mr. CRERAR: The section in the form in which it appears in the bill does not alter the provision in the present Code?

The CHAIRMAN: That is right, but Senator Roebuck's suggestion would alter the Code. Would you restate your amendment, Senator Roebuck?

Hon. Mr. ROEBUCK: My argument was that obstructing, interrupting or interfering with the lawful use, enjoyment or operation of property is done in every strike. A strike could not be carried on without doing that, and so I propose that we insert these words as subsection (2):

> A lawful act done in furtherance of the purposes of a trade union is not mischief.

Hon. Mr. KINLEY: Mr. Chairman, I submit that does not add anything to or take anything away from the section.

The CHAIRMAN: Then it should be easy for you to vote on it, Senator Kinley. I will ask those who are in favour of Senator Roebuck's amendment to please raise their hands. I see only one hand raised, so the section stands.

Hon. Mr. ROEBUCK: I am in "splendid isolation" again.

The CHAIRMAN: We come now to Part X, which deals with offences relating to currency. We considered that part last Spring when we were dealing with the code, and no change has been made in the interval. We have therefore approved of clauses 391 to 405.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Part XI has to do with attempts—conspiracies—accessories. We have approved sections 406 to 412, both inclusive, without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Then we come to Part XII, starting with the procedural sections. We have attempted to give in summary form the principal changes affected by the bill, with respect to procedure. I assume the members of the committee have read the summary; if so, we can start in with the sections. . .

Hon. Mr. KINLEY: There is nothing in this which interferes with trials by jury? It is not an attempt to restrain the use of juries, is it?

The CHAIRMAN: I don't think you can say that.

Hon. Mr. ROEBUCK: The answer is "no". We have allowed election to a judge by consent in more cases than was allowed before.

The CHAIRMAN: There is a consequential amendment in section 413 to which I referred this morning when we were renumbering sections 49 to 52. We will have to renumber the first three sections mentioned in 413.

Hon. Mr. ROEBUCK: "Alarming Her Majesty" will become 49.

The CHAIRMAN: Yes; that will be 49 instead of 52.

Mr. MACNEILL: And 51 will become (iii).

The CHAIRMAN: It just reverses the order in which they appear. Subject to that change we recommended the approval of the sections 413 to 416. Then in dealing with clause 417, we approved of that because it provides for trial without a jury in Alberta. We were told that that province desires the provisions to be retained in the new code.

The section reads:

> Nothwithstanding anything in this Act, an accused who is charged with an indictable offence in the Province of Alberta may, with his consent, be tried by a judge of the superior court of criminal jurisdiction of Alberta without a jury.

It gives him the right to be tried on an indictable offence without a jury, by consent. Apparently Alberta wants the section continued.

Some Hon. SENATORS: Carried.

Hon. Mr. ROEBUCK: That section probably includes murder, treason and everything.

The CHAIRMAN: Yes, with the consent of the accused. Next, we approved 418 to 424, both inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: On part XIII, clauses 425 to 428 both inclusive were approved.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clause 429 corresponds to present sections 629 and 662. It has to do with information for a search warrant. The section as drawn in the bill covers the matter of an application for search warrant not only in relation to the criminal code, but to other acts of the parliament of Canada. Paragraph (*a*) reads:

> anything upon or in respect of which any offence against this Act or any other Act of the Parliament of Canada has been or is suspected to have been committed,

A lot of other federal acts have their own procedural sections, providing for the obtaining of a search warrant. We thought that so far as the criminal code was concerned we were prepared to give this power which at present lay in the code, but if we are going to extend this authority to every federal statute, we want to know to what statute this authority would be extended. As that presents a practical difficulty, we decided to strike out the words "or any other act of parliament of Canada" where they occur.

Hon. Mr. ROEBUCK: Otherwise it would include acts not yet passed by parliament.

The CHAIRMAN: Yes, it would gather them up as they were passed.

Hon. Mr. ROEBUCK: It was altogether too broad.

The CHAIRMAN: Is it the committee's wish to approve of sections 430 and 431?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Certain changes were made in sections 432, which provides that once a search warrant has been executed and certain goods have been seized under the search warrant, it becomes a matter for providing for their detention; and while they are detained, there should be a procedure under which there is access to the records which are under the protection of the Crown. You will see by page 17 of the report that we have provided the conditions under which the access may be had; and we have also provided for time limits within which, if a search warrant has been executed and certain things seized by the police no proceedings have been taken, the seized goods

must be returned. That is dealt with on pages 16 and 17 of our report. You will note at the bottom of page 16, a marginal note, "detention of things seized". You will note on page 17 these words:

> Where anything is detained under subsection (1), a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction may, on summary application on behalf of a person who has an interest in what is detained, after three clear days' notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained.

Then we provide for the condition under which examination may take place. If it were a forged document, for instance, we want to make sure that there would be a proper safeguard, so that somebody on behalf of the accused would not get in and destroy it, either accidentally or deliberately, whereupon your case would blow up.

Hon. Mr. ROEBUCK: On the other hand, we know of cases where books and valuable documents in current use have been seized to the great inconvenience of some people, not only the accused. In that respect it must be remembered that under this provision the records and books of a certain party may be seized—they can take everything but the kitchen stove.

Hon. Mr. KINLEY: Has this anything to do with merchandise?

The CHAIRMAN: It may be merchandise, and it may be books or records.

Hon. Mr. KINLEY: Is there any obligation about their preservation?

The CHAIRMAN: Yes.

Hon. Mr. GOUIN: It is a very wide amendment, Mr. Chairman.

The CHAIRMAN: But it is in the interest of fair dealings in respect of the owner of things seized, who may not be the party charged or to be charged. There should be access while such documents are in the custody of the courts and they should be returned within a certain length of time, if no charges are proceeded with.

Hon. Mr. GOUIN: That is your recommendation?

The CHAIRMAN: Yes.

Hon. Mr. GOUIN: I will accept that.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We approved of clause 433 without any change. Clauses 434 to 446 both inclusive, were approved without change.

Clause 447 at page 152 of the bill has to do with the execution of a warrant in one jurisdiction and the sending of it to another jurisdiction because it is expected that the person in question is there; it is just a matter of approving the signature of the justice of peace who has endorsed the warrant.

Hon. Mr. ROEBUCK: We retained the present arrangement.

The CHAIRMAN: Yes, we retained the present requirements of the law, that the signature must be verified by affidavit.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clause 448 was approved without change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Part XV has to do with procedure on preliminary inquiry. We deleted clause 449, as it stands. Also there is an enumeration in 449 which we thought was unnecessary, and we re-drew it, just omitting the enumeration.

Hon. SENATORS: Carried.

The CHAIRMAN: Then 450. We have made a change in the technical language used in lines 33 and 34 about "stood mute". We thought we would give that the ordinary English translation, that is "did not elect". So, where the words "stood mute" occurred we changed them to "did not elect".

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 451, page 154: in line 15, after the word "directs" we insert the words "without any deposit". That is to cover one of the cases where the man is released on his recognizance. We wanted to make sure that—

Hon. Mr. ROEBUCK: —the magistrate had the authority to allow the man to go on his own recognizance.

The CHAIRMAN: Without requiring any deposit.

Hon. Mr. ROEBUCK: We probably did not change the meaning of the action by putting it in, but we made it perfectly clear.

Hon. SENATORS: Carried.

The CHAIRMAN: In line 24 we deleted the word "informant" and substituted the word "prosecutor".

Hon. SENATORS: Carried.

The CHAIRMAN: In line 44, on the same page, in the various steps which may be taken, one of the powers of the Justice acting under this part is that he may resume the inquiry if there has been a remand, and if he wants to resume it before the date to which the remand has been made, we provide that he may resume the inquiry before expiration of the period for which it has been adjourned, but we add, "with the consent of the prosecutor and the accused or his counsel." In other words, if it is to be shortened for any reason there should be the consent of all parties.

Hon. SENATORS: Carried.

The CHAIRMAN: Then, on page 155, lines 11 to 13, subparagraph (*i*), this change was also for the purpose of clarification. What we have stated in our amendment was the intent in (*i*), but we did not think it was sufficiently clear about receiving evidence on behalf of the prosecutor after hearing any evidence given on the part of the accused. We wanted it to be clear that the orderly presentation was that the Crown has to make out its case, then the defence offers evidence, then there is the right of reply. The way it was drawn in (*i*) we thought it was not sufficiently clear, and therefore we set it out as you see in our amendment:

> (*i*) receive evidence on the part of the prosecutor or the accused, as the case may be, after hearing any evidence that has been given on behalf of either of them.

Hon. Mr. ASELTINE: This is all on preliminary inquiry?

The CHAIRMAN: That is right.

Hon. SENATORS: Carried.

The CHAIRMAN: There is also the word "answered" in paragraph (*j*) on page 155. We have changed this to "served":

> "Where it appears to him that the ends of justice will be best served by so doing."

We thought that that is the proper English.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 452 was approved without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 453, page 155, we struck out paragraph (*a*) of sub-clause (1) and substituted a new paragraph:

> (*a*) Take the evidence under oath, in the presence of the accused, of the witnesses called on the part of the prosecution, and allow the accused or his counsel to cross-examine them.

This, again, was for the purpose of clarification.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 454, page 156:

> When the evidence of the witnesses called on the part of the prosecution has been taken down . . . the Justice shall address the accused as follows: . . .

We have restored the original language which is required under the present Code, in addition to the language that you will find in the bill. We feel that the accused should beyond all doubt understand what his position is at that time, so that we use more words. But by the time he hears them all, if he doesn't understand what his position is, nothing can be done for him.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 455 to 463, inclusive: we made no changes.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 464, we struck out the word "who", which somehow or other had crept in there, but did not add anything to the sense.

Hon. SENATORS: Carried.

The CHAIRMAN: 465 we approved without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: Part XVI, which deals with indictable offences, trial without jury: we have approved of clauses 466 and 467.

Hon. SENATORS: Carried.

The CHAIRMAN: In clause 468 we again run into these words "stood mute," and where they occur we changed them to what we think is the modern English equivalent—"did not elect."

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 469 and 470 were approved without change.

Hon. SENATORS: Approved.

The CHAIRMAN: Clause 471 we amended in the form in which it appears on page 163. This deals with the case where there is not a stenographic report of the evidence that is given, but where the evidence is given and is taken down by the magistrate and then read over to the witness, there is a provision that it is not necessary for the witnesses to sign their despositions. We struck that out. We thought that the general requirement that, where a witness' evidence is not taken down in shorthand, his deposition should be signed, should be retained. In other words, you want to make sure that that is what he has said as part of the record.

Hon. Mr. BURCHILL: Is that something new?

The CHAIRMAN: No. That is the present law, and not requiring it was the change, but we struck it out.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 472 and 473 were approved by us without change.

Hon. SENATORS: Carried.

The CHAIRMAN: With clause 474 we come to the section that the Minister discussed with us last night, and I think it is fair to say that he left it with us to do with it what we will. It deals with "further election". We had quite a discussion on it last night. Under this bill, before the magistrate you can elect to be tried by a judge without a jury, or you can elect to be tried by the magistrate summarily, or you can elect to be tried by a judge and jury. We decided that if the man elected to be tried by a judge without a jury he should have a chance to re-elect, following maybe a snap judgment in the magistrate's court. It is surrounded with sufficient protection so that he cannot waste the time of the court because his right of election is absolute only until such time as his trial has been fixed. At that time he can only make his election with the consent of the Attorney-General, or the counsel acting on his behalf. So if you want to shorten the time he can elect, fix the date of trial earlier.

Some Hon. SENATORS: Carried.

The CHAIRMAN: The subcommittee approved of clauses 475 to 476 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We amended clause 477 by deleting the words "stood mute" in line 39 and substituting therefor the words "did not elect".

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved clauses 478 to 484 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: That brings us to Part XVII, which deals with procedure by indictment. Your subcommittee approved of clauses 485 to 487 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We amended clause 488 by striking out the words "in Canada" in line 31.

Hon. Mr. ROEBUCK: We did so because it was unnecessary to have these words.

Hon. Mr. DAVIES: What difference does it make by leaving in the words "in Canada"?

Hon. Mr. ROEBUCK: You might put the words "in Canada" all the way through the Code.

Hon. Mr. GOUIN: Yes, if you put it there you should put it everywhere else.

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN: We are dealing with a bill of indictment which is provided for under our Code, and our procedure for referring them and everything else is in relation to Canada. We thought it was unnecessary to have these words in there.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved without change clauses 489 to 496 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is clause 497. This deals with furnishing particulars. We have amended as follows:

"Page 172, line 27—after the word 'particulars' insert the words 'and, without restricting the generality of the foregoing, may order the prosecutor to furnish particulars' ".

Hon. Mr. ROEBUCK: We did not want to have a list of what particulars can be ordered to be furnished, but rather a broad general statement that the particulars may be ordered. By having a broad general statement of the particulars that may be ordered it does away with having a list. It is difficult to know in a list whether you have covered everything or not.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved without change clauses 498 to 539 inclusive.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Then we come to clause 540 which deals with empanelling a jury. Those familiar with selecting a petit jury and so on know the practice of putting cards in a little tin box. The names of the prospective jurors are, of course, written on these cards. Sometimes when the cards come out of the box they have not been shaken enough and they may come out in the same order they were put in. This would show that the person who shook the box did it too gingerly. We thought that if there is any virtue to putting the names in the box, the box should be well shaken.

Hon. Mr. ASELTINE: I believe in shuffling the cards properly at all times.

Some Hon. SENATORS: Oh, oh.

The CHAIRMAN: We merely added the word "thoroughly" before the word "shaken".

Hon. Mr. ROEBUCK: It calls the attention of the court to the fact that the box should be properly shaken.

The CHAIRMAN: Yes, and that it is not a perfunctory job.

Mr. MACNEILL: There is a consequential change at page 178. I refer to subclause (9). It should read: "sections 49, 50, 51 and 53".

Hon. Mr. ASELTINE: Where is that?

The CHAIRMAN: Line 10 on page 178.

Hon. Mr. ASELTINE: Oh, yes.

The CHAIRMAN: That is a consequential change as to renumbering. Is that approved?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Well, then, with that approval we have approved in subcommittee of clauses 498 to 539 inclusive, and we have now approved of clause 540 at page 187.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Then there are clauses 541 to 553 inclusive which were approved by your subcommittee without change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We amended clause 554 as follows: "page 191, line 7—after the word 'judge' insert the words, 'in any case tried without a jury,' ".

Otherwise we did not know how a judge was going to reserve his decision and give it later in a jury trial, and in the meantime the jury had brought in its verdict and it has been recorded.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We approved clause 555 without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is clause 556—Separation of jurors except in capital cases. This deals with keeping jurors together during the conduct of a trial. We wanted to make it clear that this limitation on conversation or communicating did not apply to the officer in charge or among themselves. Therefore we added the word "anyone" after the words "other than himself or another member of the jury". It would now read:

> (2) Where permission to separate cannot be given or is not given the jury shall be kept under the charge of an officer of the court as the judge directs, and that officer shall prevent the jurors from communicating with anyone other than himself or another member of the jury without leave of the judge.

Hon. Mr. GOUIN: It clarifies the situation.

The CHAIRMAN: That is right.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Your subcommittee approved of clause 557 without change. You may find something amusing in some of these changes, but it does indicate that we examined the phraseology of each section very carefully. Where we thought it was out of line or not sufficiently clear we felt it was our job to make it so, and we did so.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We amended clause 558 by deleting the word "prosecutor" and substituting therefor the words "Attorney General or counsel acting on his behalf". This is to be found at line 25 on page 192.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next are clauses 559 and 560. These were approved by your subcommittee without change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is clause 561, which reads: "The taking of the verdict of a jury is not invalid by reason only that it is done on Sunday or on a holiday."

That presented a practical problem. When the jury comes in and you receive their verdict, what can you do? Under this section that is all you can do, just receive it. If the verdict is a verdict of acquittal, the judge should be able to do the things that are incidental, and that is to discharge the jury and the prisoner. We have amended the clause in line 9 by inserting after the word "jury" the words "and any proceeding incidental thereto".

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 562 to 568 inclusive were approved by your subcommittee without change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We approved clause 569 but we call your attention to the change in the present law as affected by subsection (1): "An accused charged with an indictable offence may be convicted of an offence punishable on summary conviction."

We are drawing your attention to that, but we have approved that clause.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Now, as to page 195, we struck out section 570 of the bill and then, of course, we had to do some renumbering. We renumbered by making subclause (4) of clause 569 a new clause 570. Does that carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: The committee recommends that clause 570, be struck out. This clause was taken from the English larceny law and was the law in Manitoba so far as subclause (1) is concerned. The subcommittee recommends that it be struck out as unnecessary.

Hon. Mr. DAVIES: It will not affect the Manitoba law in any way?

The CHAIRMAN: No, and it will not affect the Criminal Code in any way. I think that is a safe statement, Senator Roebuck?

Hon. Mr. ROEBUCK: I think so.

Clauses 571 to 573, both inclusive, were approved without any change.

Hon. Mr. ROEBUCK: Did we not change the side heading there?

Mr. MACNEILL: Yes, sir, but we do not need a committee amendment for that. That is just an editorial change.

The CHAIRMAN: In clause 574, page 196, line 12, after the word "conviction" we inserted "in Canada". The purpose of this section is to make a certificate of previous conviction acceptable as evidence.

Hon. Mr. ROEBUCK: If it is a certificate purporting to be signed by the person who made the conviction or by the clerk of the court, provided the conviction was made in Canada, it would be acceptable, but we did not want to extend that to cover certificates from courts in the United States or elsewhere.

The CHAIRMAN: We thought we would simplify the matter so far as Canadian courts are concerned, but we would require stricter proof of convictions elsewhere.

The amendment was carried.

The CHAIRMAN: Clauses 575 to 580, both inclusive, were approved by the committee. Carried.

Now we come to Part XVIII, Appeals—Indictable Offences. Clauses 581 to 588 were approved without any change. Carried.

In clause 589 we made certain changes. On page 200, at lines 36 and 37, we struck out the words "necessary or expedient." We thought it was sufficient to say that the court of appeal may order these various things set out here where it considers it in the interests of justice, and that it was not necessary to say "where it considers it necessary or expedient in the interests of justice". And on page 201 we inserted a new subclause (2). On that page you will see there is provision for hearing of witnesses in certain circumstances on the appeal. We thought the procedure and the rights of the parties, particularly of the accused person or the convicted person, as the case may be, should be absolutely clear. If any witnesses are being called he should have the right of either examination or cross-examination. And where an inquiry is directed by the court of appeal because the matter is too technical or too involved for them to spend the necessary time upon it, and they appoint a commission, we thought that all the rights of the litigants should be made perfectly clear, namely, that they have the right to examine and cross-examine. That is what we have done here. Carried.

Clauses 590 and 591 were approved by the committee without any change. Carried.

In clause 592, on page 202, we made some change. Under the present law there are three grounds of appeal. If I misstate anything Senator Roebuck will check me.

Hon. Mr. ROEBUCK: If I can catch you I will.

The CHAIRMAN: One of these grounds of appeal is that the verdict is unreasonable and cannot be supported in evidence. Another ground is that there was some wrong decision on a point of law by the court of first instance; and the third ground is that there has been a miscarriage of justice. Now this bill went on to provide that nothwithstanding these grounds of appeal, if on consideration of all the facts in evidence the court concluded that there was no substantial miscarriage of justice it might still dismiss the appeal. That did not appear to be logical. In the first place, if a verdict is unreasonable and cannot be supported in evidence, the appeal should be allowed. Otherwise you are saying in the same breath that the verdict is unreasonable and cannot be supported in evidence, but there has been no substantial wrong or miscarriage of justice. And how can you say that? And if you say there has been a miscarriage of justice, how can a court find that there has been no substantial wrong and that therefore the appeal should be dismissed? So we think the authority to dismiss an appeal on the ground that there has been no substantial wrong or miscarriage of justice should be limited to where it is found that the court of first instance has made a mistake on a question of law. We think that the effect of a mistake on a question of law can be weighed by the court of appeal. It may be felt that the decision on the question of law did not affect the way the evidence went in or the jury's determination of the case and in these circumstances the court of appeal can decide that there was no substantial wrong.

Hon. Mr. ROEBUCK: That clause has been the *bête noir* of every appeal. It has been the cause of very loose work by appeal courts. The amendment was carried.

The CHAIRMAN: Clauses 593 to 601, both inclusive, were approved without change. Carried.

Now we come to Part XIX, which is purely procedural. We approved clauses 602 to 619, both inclusive.

Hon. Mr. ROEBUCK: I call Mr. MacNeill's attention to the fact that at the bottom of page 205, after the very last word, there is a period, but it ought to be a comma. That is purely editorial.

The CHAIRMAN: That is right. We have got that marked.

Hon. Mr. DAVIES: Is there much change from the present Code in this chapter?

The CHAIRMAN: Yes. The procedural sections have certainly been streamlined, condensed, made workable and easy to follow. I think an excellent job has been done. When I say that I am referring to what was done by those who were charged with the job of drafting this bill—that is, what was done before the bill came to us. Carried.

Now we are on Part XX, which deals with punishments, fines, forfeitures, costs and restitution of property. Clauses 620 to 629 were approved without any change. Carried.

In clause 630 we have made some changes. The first two amendments that you see there are simply to strike out the word "or" in line 37, on page 217, and to add the word "or" in line 42 on the same page. The third amendment is the insertion of a new paragraph in subclause (3), as follows:

> (*d*) property in respect of which there is a dispute as to ownership or right of possession by claimants other than the accused.

That subclause (3) deals with cases where an order shall not be made in respect of property which has been involved in the proceedings, whatever they are. Carried.

Clauses 631 to 637, both inclusive, were approved without any change. Carried.

Clause 638 was amended by striking out paragraph (*a*) which requires that a court which suspends the passing of sentence may prescribe conditions of recognizance: "the accused shall pay the costs of prosecution or some portion thereof within such period and by such instalments as it may direct." We thought that if a person merited suspended sentence, he should not be required to pay something for the privilege of getting his sentence suspended; therefore, we struck out paragraph (*a*) of subsection 2 of section 638.

Hon. Mr. BURCHILL: Is that new, Mr. Chairman?

The CHAIRMAN: I am not clear on that.

Mr. MOFFAT: Your amendment changes the law.

The CHAIRMAN: Paragraph (*a*) already exists in the law. The striking out of it changes the law, and seems logical to us.

Some Hon. SENATORS: Carried.

The CHAIRMAN: That involves relettering of paragraph (*b*) and (*c*) to read (*a*) and (*b*).

Then come clauses 639 to 653, both inclusive, which your committee approved without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We passed clause 654, but we call attention to the fact that the present provision of section 1034 (1) of the code has been changed by dropping the provision that pension payments cease where a person is convicted. If you will look at section 654 you will note that it deals with a person holding public office convicted of treason or an indictable offence for which he is sentenced to death or imprisonment for a term exceeding five years, that the office forthwith becomes vacant. The section, as I understand it, provides that the pension payments cease.

Hon. Mr. DAVIES: The pension continues.

The CHAIRMAN: It is not forfeited.

Hon. Mr. DAVIES: Does this mean that if a man is sent to the penitentiary for five years he might still get the old age pension at that time?

The CHAIRMAN: No; we are dealing with the pension that accrues from his position or employment, and to which he contributed. Why should we take that away from him? This section as drafted made that change, and we approved of it, and we call your attention to it.

Then as to sections 655 to 658, both inclusive, we approved of those without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Next is part XXI, preventive detention. We approved of clauses 659 to 667 without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Part XXII, effect and enforcement of recognizances. We approved of clauses 668-669 without any changes.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We amended clause 670 by inserting subclause (4):

> the provisions of section 669 and subsections (1), (2) and (3) of this section shall be endorsed on any recognizance entered into pursuant to this Act:

That is to make the surety fully realize what his position is; we thought these conditions should be endorsed on the recognizance.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Then as to sections 671 to 678 we approved of those without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: In clause 679 we made some changes In this instance we were dealing with the circumstances of default, after a recognizance had been entered into. The present code contains provision for the committal of the surety when the security which was put up does not realize the full amount of the recognizance.

Hon. Mr. ROEBUCK: I hope honourable gentlemen will all read this and be familiar with it when they are next called upon to be bailsmen for somebody.

The CHAIRMAN: That would be an excellent idea. We have made this change in the procedure, which was an *ex parte* procedure under which the Crown would get a committal order, and after a man was in jail, procedure was provided for in the bill under which he might then make application to the Crown to get out of jail or to establish some condition under which he might be released. We felt that all that should be dealt with at the time he was committed. There might well be circumstances which did not warrant his being committed to jail. Why should he be put in jail, and then try to get out. Instead of an *ex parte* order for committal of the surety, we felt he should have the right to argue the question as to whether or not in all the circumstances he should be committed. It is an ameliorating section, and under the circumstances we think it is fair. I can conceive of a case where a man might put up shares which had a definite market value, and by the time the person for whom he had entered into a recognizance had disappeared and his security was forfeited, the market value had dropped. That person had nothing to do with the dropping in value of the shares; he put them up in good faith, and he may have had no other assets. In those circumstances to commit him to jail and then provide the procedure by which he might get out is, we felt, a little unfair. We thought that the matter should all be settled at one time.

Hon. Mr. ROEBUCK: It might even happen that he was not the right man.

Some Hon. SENATORS: Carried.

The CHAIRMAN: We come now to part XXIII, extraordinary remedies. We approved of clauses 680 to 688, without any change.

Some Hon. SENATORS: Carried.

The CHAIRMAN: To clause 689, we made certain changes there. At line 5 we struck out the words "make it a condition of". I will read the section: "where an application is made to quash a conviction, order or other proceeding made or held by a magistrate acting under Part XVI or a justice on the ground that he exceeded his jurisdiction, the court to which or the judge to whom the application is made may in quashing the conviction, order or other proceeding, order that no civil proceedings shall be taken against the justice or magistrate or against any officer who acted under the conviction, order or other proceeding or under any warrant issued to enforce it."

Some Hon. SENATORS: Carried.

Hon. Mr. ROEBUCK: I don't like conditions attached to justice.

The CHAIRMAN: Clauses 690 and 691 we approved without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: We come now to Part XXIV, dealing with summary convictions.

Clauses 692 to 701 we approved of without any change, in subcommittee.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 702, on page 241, we amended line 14 by adding, after—

> The burden of proving that an exception, exemption, proviso, excuse or qualification prescrbied by law operates in favour of the defendant is on the defendant, and the prosecutor is not required—

the words:

> except by way of rebuttal.

Because in the first instance the accused person might offer enough evidence to satisfy and meet the presumption, and then we did not want to shut out the prosecutor; the prosecutor would be free then to adduce evidence by rebuttal.

Hon. SENATORS: Carried.

The CHAIRMAN: In clause 703 the subcommittee made no change.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 704, page 242, line 9, we inserted an "or" after the word "negatived." That is a technical change.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 705 to 707 we approved of in subcommittee without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 708, we made the same kind of an amendment as we made earlier; that is, striking out the words "but it is not necessary for the witnesses to sign their depositions." We think it is wholesome that they should be required to sign them.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 709 to 723 we approved without any change.

Hon. Mr. DAVIES: On section 709, "The prosecutor is entitled personally to conduct his case." Is that permissible in any court?

The CHAIRMAN: This deals with summary convictions.

Hon. Mr. ROEBUCK: He is pushed aside when the Crown attorney is there. He may be entitled to a whole lot, but he does not get a whole lot.

Hon. SENATORS: Agreed.

The CHAIRMAN: Clause 724, on page 250, line 6, we have added the words "in such amount as the judge or justice directs." This is the security to be given by an appellant in appealing a summary conviction, and after the words "may be required to be entered into with one or more sureties," we add, "in such amount as the judge or justice directs," so as to make it clear that the judge can settle the amount.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 725 and 726 were approved by us without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 727, pages 251 and 252, we deleted clause 727. This is the section which the Minister was discussing last night,—"trial *de novo,*" and we have preserved the right to the trial *de novo,* and we have maintained the provision in the present law under which, with the consent of the parties, the appeal may be heard on the record, but at the same time we preserve the right to an appellant, the Crown as well as the accused, to have the trial proceed afresh.

Hon. Mr. ASELTINE: That is fair enough.

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 728 to 735 we approved of without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 736, on page 255, line 32: we struck out the word "or" immediately before the word "quits"—this has to do with the procedure when the justice dies or quits office—and we have added after the word "office," "or is unable to act". We thought we should cover that case as well.

Hon. Mr. ROEBUCK: Did we not strike out "quits office"?

The CHAIRMAN: No, we struck out the "or" before "quits office," and then we put the word "or" after the word "office" so as to provide for another recital,—"or is unable to act."

Hon. SENATORS: Carried.

The CHAIRMAN: Clauses 737 to 748 were approved without any change.

Hon. SENATORS: Carried.

The CHAIRMAN: On two of the forms, form 24 on page 280, and form 28, on page 283, we require the insertion of provisions which give a warning to the surety entering into the recognizance as to just what his responsibilities and duties are, by requiring that the sections of the bill which impose those duties on him shall be set forth in the recognizance, in the form.

Hon. SENATORS: Carried.

Hon. Mr. ROEBUCK: What happened with regard to page 260? We let that form stand for a report by the Minister.

The CHAIRMAN: No; our last decision was to pass that, and, if the Minister had anything to say, he would come along and say it. He has not asked for any change. That is the part that deals with the transitional stage from the old Code to the new Code.

We have an amendment now dealing with the question of an appeal from a conviction for contempt.

Hon. Mr. ROEBUCK: Section 8.

The CHAIRMAN: Section 8, which would be added as a sub-clause. May I read this and see if it complies with what we laid down this morning. We have added, as subsections (2), (3) and (4):

> "(2) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court, and imposes punishment in respect thereof, that person may appeal against the punishment imposed.

(3) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court, and punishment is imposed in respect thereof, that person may appeal

(*a*) from the conviction, or

(*b*) against the sentence imposed.

(4) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and for the purposes of this section the provisions of Part XVIII apply *mutatis mutandis*."

Hon. Mr. ASELTINE: It sounds all right to me.

The CHAIRMAN: I am wondering where you have an appeal in respect of a conviction for contempt not committed in the face of the court, the person may appeal from the conviction or against the punishment imposed. Well, can't he appeal against both?

Hon. Mr. BOUFFARD: Not on them both.

Hon. Mr. MACNEILL: If he says that he is not guilty and he appeals the conviction, then he can appeal against both. He may say "I am only appealing the sentence".

The CHAIRMAN: That is right. Is that satisfactory?

Hon. Mr. ROEBUCK: That seems all right to me.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Honourable senators, I think this committee should give a general instruction to the Law Clerk and those who are working with him to make the consequential changes that we may not have got as the result of some amendments we have made here during the consideration of this bill. When they are putting the whole thing together for reprinting they may find a reference that has gone askew or something like that. I think we should give them the authority to make the consequential changes where they appear to be necessary in the revision of this bill for reprinting.

Hon. Mr. ASELTINE: Agreed.

Some Hon. SENATORS: Carried.

The CHAIRMAN: Is there anything else?

Hon. Mr. ROEBUCK: The motion is that the report of the subcommittee be adopted. I so move.

Hon. Mr. GOUIN: As amended.

Hon. Mr. ROEBUCK: I think that is a proper motion for a member of the committee to make.

The CHAIRMAN: As amended.

Hon. Mr. ROEBUCK: Yes, as we have adopted it now.

Hon. Mr. CRERAR: I second the motion.

The CHAIRMAN: First of all we have a motion that the report of the subcommittee as amended by this committee be adopted.

The motion was agreed to.

The CHAIRMAN: We have been considering the bill in this main committee. Shall I report the bill with all the amendments which have been made by this committee?

Some Hon. SENATORS: Carried.

Hon. Mr. ROEBUCK: Well, then, that presents a problem.

Hon. Mr. ASELTINE: How are you going to do it?

Hon. Mr. ROEBUCK: It means that the Law Clerk and the Secretary must take out these amendments. You must take out of this report all the amendments that are required to make the Code come into line with our report, and that is what goes forward. I would point out to you that that is quite a job.

The CHAIRMAN: We want to do it in such a way that the matter can get before the Senate possibly this evening.

Hon. Mr. VIEN: The report of the committee would contain the amendments that have been made. They may be contained either in the wording of the report of the committee to the Senate or annexed to the report.

The CHAIRMAN: Yes. If this committee adopts the report of the subcommittee as amended as part of its report, then that report can go on to the Senate.

Hon. Mr. VIEN: Yes, we report the bill with the following amendments and the following amendments are contained in the report we have amended.

The CHAIRMAN: Let us put it this way. Let us just make the motion that the bill be reported with the amendments which have been adopted here by the committee, and then whatever the mechanics are for getting the thing into the Senate, we will just have to work them out and get them in as quickly as we can. I would hope that the members here will not go technical on us tonight if the report is presented tonight. I hope they will not say, "Why isn't this in a certain kind of shape"? We have done the substance of the job so let us not balk and hold the thing up because of some technical procedure which can be remedied by our Law Clerk if we give him the necessary time.

Hon. Mr. VIEN: I surmise we can take that for granted, Mr. Chairman.

The CHAIRMAN: Well, I always like to state what is on my mind.

Hon. Mr. VIEN: Is the committee branch ready to prepare the report for tonight?

The CHAIRMAN: I think so.

Mr. MacNEILL: Mr. Chairman, the bulk of this report is ready now. We shall try to get it ready for tonight.

Hon. Mr. BURCHILL: Mr. Chairman, before we adjourn I think as a member of this general committee I should point out what a great debt we owe to the subcommittee for the job they have done on this Code.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. BURCHILL: I feel like expressing my own personal gratitude to each one of them, especially to the Chairman for the work he has done in the last two sittings in clarifying these amendments. I want to say to the Chairman and to the other members of the subcommittee how greatly indebted we are to them for the work they have done.

Hon. Mr. GOUIN: Senator Burchill has expressed the feeling of all the members of the main committee.

The sitting thereupon adjourned.

APPENDIX "A"

REPORT OF THE SUB-COMMITTEE OF THE STANDING COMMITTEE ON BANKING AND COMMERCE CONSIDERING BILL O, AN ACT RESPECTING THE CRIMINAL LAW

1. Your sub-committee has held 15 meetings and has considered the Bill clause by clause.

2. Your sub-committee recommends a number of changes in the the text of the Bill. This is not a criticism of the work of the Commissioners who prepared the draft Bill.

Your sub-committee is of the opinion that our new Criminal Code will be a better Code than the one it will replace and a large measure of the credit for it must be given to the Commissioners.

Your sub-committee wishes further to record its appreciation of the great public service given by the Commissioners in the performance of a laborious and difficult task. The condensation, rearrangement and clarification of many of the sections of the present Code will effect a marked improvement in the criminal law of Canada.

3. Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, officials of the Department of Justice, have assisted the sub-committee in its deliberations and have been present at all sittings. The sub-committee wishes to record its appreciation of the services given by these officials.

4. Your sub-committee recommends that the Bill be dealt with as follows:—

Clause 1—Approved.

Clause 2—Amended as follows:

Page 3, line 9—delete the words "recorder or" and substitute therefor "municipal judge of the city, as the case may be, or a"

NOTE: Change in wording of the definition made to conform to a recent Quebec statute.

PART I.

GENERAL

Clause 3 to 7, both inclusive—Approved.

Clause 8—Stands for consideration of the main committee.

NOTE: This clause is new, and the sub-committee is of the opinion that the main committee should discuss the question as to whether or not there should be an appeal from a decision of a judge imposing punishment for contempt of court.

Clauses 9 to 41, both inclusive—Approved.

Clause 42—Amended as follows:

Page 17, line 33—strike out the word "other"

Clauses 43 to 45, both inclusive—Approved.

PART II.

OFFENCES AGAINST PUBLIC ORDER TREASON AND OTHER OFFENCES AGAINST THE QUEEN'S AUTHORITY AND PERSON

Clause 46: Amended as follows:

1. Page 19, line 2—after the words "Her Majesty" insert ", or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;"

2. Page 19, line 5—before the word "assists" insert the word "knowingly"

3. Page 19, lines 11 to 14—strike out paragraph (*e*) and reletter paragraphs (*f*) and (*g*) as paragraphs (*e* and (*f*)

Clauses 47 to 49, both inclusive—Stand for the consideration of the main committee.

Clause 50—Amended as follows:

1. Page 20, line 37—strike out the word "or"

2. Page 20, line 42—delete the period and insert therefor, "or"

3. Page 20—insert the following as paragraph (*c*) to subclause (1): "(*c*) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada."

NOTE: Notwithstanding the recommendations with respect to clauses 46 and 50, the sub-committee is of the opinion that clauses 46 to 50, both inclusive, should stand for further consideration of the main committee.

Clauses 51 to 54, both inclusive—Approved.

Clause 55—Stands for consideration of the main committee.

Clause 56—Approved.

Clause 57—Stands for consideration of the main committee.

NOTE: The sub-committee recommends the following amendment: Page 21, line 34—insert the word "wilfully" after the word "who"

Clauses 58 to 61, both inclusive—Approved.

Clause 62—Stands for consideration of the main committee.

NOTE: The clause deals with the publication of a libel that tends to degrade, revile or expose to hatred and contempt in the estimation of the people of a foreign state any person who exercises sovereign authority over that state. Libel on a foreign sovereign is punishable at common law as tending to interrupt the peaceful relations between Her Majesty and the foreign sovereign.

Clause 63—Amended as follows:

Page 23, line 29—insert the word "wilfully" after the word "who"

NOTE: The amended clause stands for consideration of the main committee. The question to be determined is whether offences in relation to members of the R.C.M.P. are to be treated the same as offences in relation to members of the Armed Forces.

Clauses 64 to 71, both inclusive—Approved.

Clause 72—Amended as follows:

Delete the present clause and substitute therefor the following:

"72. Every one who

(*a*) challenges or attempts by any means to provoke another person to fight a duel,

(*b*) attempts to provoke a person to challenge another person to fight a duel, or

(c) accepts a challenge to fight a duel,

is guilty of an indictable offence and is liable to imprisonment for two years."

NOTE: The subcommittee recommended last year that this clause be struck out as being archaic. As the clause stands in the Bill, to accept a challenge to fight a duel is not an offence. Upon reconsideration of the clause this year, it is recommended that it be retained but that it be made an offence to accept a challenge to fight a duel, and that is accomplished by the insertion of paragraph (c) in the amended clause.

Clauses 73 to 78, both inclusive—Approved.

Clause 79—Amended as follows:

Page 27, line 27—delete the word "other" and substitute therefor "any other dangerous"

NOTE: This clause has been redrafted, since it appeared in Bill H[8] of last session, as the result of representations made to the Justice Department by persons and organizations who use explosives in their business operations.

Clause 80—Amended as follows:

Page 28, lines 3 to 7—delete paragraph (*a*) and substitute therefor the following:

"(*a*) makes or has in his possession or under his care or control an explosive substance that he does not make or does not have in his possession or under his care or control for a lawful purpose, or"

Clauses 81 to 98, both inclusive—Approved.

PART III.

OFFENCES AGAINST THE ADMINISTRATION OF LAW AND JUSTICE.

Clauses 99 to 103, both inclusive—Approved.

Clause 104—Amended as follows:

Page 38, line 10—delete the word "or" and substitute therefor "to"

Clauses 105 to 116, both inclusive—Approved.

Clause 117—Amended as follows:

Page 40, line 37—delete the words "evidence for the purpose of" and substitute therefor "anything with intent that it shall be used as evidence in"

NOTE: The insertion of the words quoted in the clause was recommended by the subcommittee last session.

Clause 118—Approved.

Clause 119—Amended as follows:

Page 41, line 28—strike out the word "or"

Clauses 120 to 129, both inclusive—Approved.

PART IV.

SEXUAL OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT

Clauses 130 to 133, both inclusive—Approved.

Clause 134—Amended as follows:

Delete the present clause 134 and substitute therefor the following:

"134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular, instruct the jury that it is not safe to find the accused guilty in the absence of evidence that corroborates, in a material particular, the evidence of that female person, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true."

NOTE: This clause was redrafted to provide that where an accused is charged with an offence mentioned in the section, the evidence of the female complainant must be corroborated in a *material* particular, and that the judge must instruct the jury that it is not safe to convict in the absence of such evidence.

Clauses 135 to 145, both inclusive—Approved.

Clause 146—Amended as follows:

Page 47, line 40—after the word "vessel" insert the words "engaged in the carriage of passengers for hire,"

Clauses 147 to 152, both inclusive—Approved.

Clause 153—Amended as follows:

Page 50, line 15—after the word "scurrilous" insert the following: "but this section does not apply to a person who makes use of the mails for the purpose of transmitting or delivering anything mentioned in subsection (4) of section 151."

Clauses 154 to 156, both inclusive—Approved.

Clause 157—Amended as follows:

1. Page 51, line 4—strike out the words "or is likely to endanger"

2. Page 51, line 5—strike out the words "or is likely to render"

3. Page 51, lines 8 to 12—delete subclause (2) and substitute the following:

"(2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence is alleged to have been committed."

NOTE: The new subclause (2) restores the limitation that is now in effect under subsection (7) of section 215 of the Code.

Clause 158—Approved.

Clause 159—Amended as follows:

Add the following as subclause (3):

"(3) No proceedings shall be commenced under this section without the consent of the Attorney General."

NOTE: The subcommittee is of the opinion that no prosecution should be commenced under this section without the leave of the Attorney General.

Clauses 160 to 167, both inclusive—Approved.

PART V.

DISORDERLY HOUSES, GAMING AND BETTING

Clauses 168 to 173, both inclusive—Approved.

Clause 174—Amended as follows:

1. Page 58, lines 26 and 27—strike out the words "and section 5 of the Canada Evidence Act applies in respect of a person to whom this section applies"

2. Page 58—insert the following as subclause (3): "(3) No evidence that is given by a person under this section may be used or received in evidence in any criminal proceedings against him, except proceedings for perjury in giving that evidence."

Clauses 175 to 184, both inclusive—Approved.

PART VI.

OFFENCES AGAINST THE PERSON AND REPUTATION

Clause 185—Approved.

Clause 186—Amended as follows:

1. Page 67, lines 32 to 38—delete subclause (2) and substitute the following:

Offence.

"(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies upon him, to perform that duty, if

(*a*) with respect to a duty imposed by paragraph (*a*) or (*b*) of subsection (1),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(*b*) with respect to a duty imposed by paragraph (*c*) of subsection (1), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

Punishment.

(3) Every one who commits an offence under subsection (2) is guilty of

(*a*) an indictable offence and is liable to imprisonment for two years; or

(*b*) an offence punishable on summary conviction."

NOTE: This clause was considered last session and it was pointed out that destitution or necessity of the person injured was a prime element in the offence. The purpose of the amendment is to make this clear.

2. Page 68, line 1—Renumber subclause (3) as (4).

Clauses 187 to 190, both inclusive—Approved.

Clause 191—Amended as follows:

Page 69, lines 1 to 9—delete clause 191 and substitute the following:

"Criminal negligence."

"191. (1) Every one is criminally negligent who

(*a*) in doing anything, or

(*b*) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

"Duty."

(2) For the purposes of this section, "duty" means a duty imposed by law."

Clauses 192 to 194, both inclusive—Approved.

NOTE: *re* Clause 194 (6)—This provision was section 221 in the Code of 1892 and clause 168 in the English Draft Code. The Report of the Imperial Commissioners, at p. 21, says:

> Perjury may be made the means of committing what amounts morally to murder or robbery of the worst kind, and it appears to us that in such cases the present maximum punishment (seven years' penal servitude) is not sufficiently severe.

Therefore, they provide in clause 120 that perjury committed to procure the conviction of any person for an offence punishable with death or penal servitude should be punishable with penal servitude for life. The Code of 1892 (section 146) adapted this to "any crime punishable by death or imprisonment for seven years or more" and this is the present provision (section 174). The Bill (clause 113 (1)) makes perjury punishable with imprisonment for life if it is committed to secure conviction of a capital offence, otherwise the penalty of fourteen years applies.

Blackstone (4 Comm. 196) says:

> There was also by the ancient common law, one species of killing held to be murder, which may be dubious at this day; as it hath not been an instance wherein it has been held to be murder for many ages past; I mean by bearing false witness against another with an express premeditated design to take away his life, so as the innocent person be condemned and executed. The Gothic laws punished in this case, both the judge, the witnesses and the prosecutor . . . . And among the Romans, the *lex Cornelia, de sicariis,* punished the false witness with death, as being guilty of a species of assassination. And there is no doubt that this is equally murder *in foro conscientiae* as killing with a sword; though the modern law (to avoid the danger of deterring witnesses from giving evidence upon capital

prosecutions, if it must be at the peril of their own lives) has not yet punished it as such.

Chitty's Blackstone, in a note to the above quotations says:

Such a distinction in perjury would be more dangerous to society, and more repugnant to principles of sound policy, than in this instance the apparent want of severity in the law. Few honest witnesses would venture to give evidence against a prisoner tried for his life, if thereby they made themselves liable to be prosecuted as murderers."

Clauses 195 to 213, both inclusive—Approved.

Clause 214—Amended as follows:

Page 73, line 19—after the word "birth" insert the words "as a result thereof,"

Clauses 215 to 220, both inclusive—Approved.

Immediately before clause 221—Insert the heading "Automobiles", "Dangerous Places and Unseaworthy Ships"

Clause 221—Amended as follows:

1. Page 75, line 4—after the word "assistance" insert the words "where any person has been injured"

2. Page 75, line 10—after the word "assistance" insert the words "where any person has been injured".

Clauses 222 to 225, both inclusive—Approved.

Clause 226—Amended as follows:

Page 77, line 11—after the word "who" insert ", without lawful excuse"

Clause 227—Approved.

Clause 228—Amended as follows:

1. Page 77, line 26—delete the word "or" and substitute therefor the word "and"

2. Page 77, line 31—delete the word "or" and substitute therefor the word "and"

Clauses 229 to 267—Approved.

PART VII.

OFFENCES AGAINST RIGHTS OF PROPERTY

Clauses 268 to 297, both inclusive—Approved.

Clause 298—Amended as follows:

Page 98, line 9—after the word "office" insert the word "or"

Clauses 299 and 300—Approved.

Clause 301—Amended as follows:

1. Page 99, lines 1 to 13 are deleted and the following substituted therefor:

(b) was stolen within twelve months before the proceedings were commenced,

and that evidence may be considered for the purpose of proving that the accused knew that the property forming the subject-matter of the proceedings was stolen property."

2. Page 99, line 22—delete the word "obtained" and substitute therefor the word "stolen"

Clauses 302 to 315, both inclusive—Approved.

Clause 316—Amended as follows:

Page 104, lines 20 and 21—delete paragraph (*a*) and substitute therefor the following:

"(*a*) a letter or writing that he knows contains a threat to cause death or injury to any person; or"

Clauses 317 to 321, both inclusive—Approved.

PART VIII.

FRAUDULENT TRANSACTIONS RELATING TO CONTRACTS AND TRADE

Clauses 322 to 343, both inclusive—Approved.

Clause 344—Amended as follows:

Page 115, line 37—strike out the words "or by any other means"

Clause 345—Approved.

Clause 346—Amended as follows:

Page 116, line 31—strike out the word "undue"

Clauses 347 to 364, both inclusive—Approved.

Clause 365—Amended as follows:

Page 122, line 18—after the word "railway" insert the words "that is a common carrier,"

Clauses 366 to 369, both inclusive—Approved.

PART IX.

WILFUL AND FORBIDDEN ACTS IN RESPECT OF CERTAIN PROPERTY

Clauses 370 to 390, both inclusive—Approved.

PART X.

OFFENCES RELATING TO CURRENCY

Clauses 391 to 405, both inclusive—Approved.

NOTE: This Part was considered and approved by the subcommittee last session. No change has been made in the Part since that approval was given.

PART XI.

ATTEMPTS-CONSPIRACIES-ACCESSORIES.

Clauses 406 to 412, both inclusive—Approved.

PART XII.

JURISDICTION.

Summary of principal changes effected by the Bill in respect of procedure.

The parts relating to procedure have been to a great extent rearranged and consolidated. The procedure has been set out in clear and concise terms, and technical terms more properly applicable to the old complicated English procedure on indictment, have been eliminated wherever possible. Many provisions dealing with specific offences have been placed with the clauses creating the offences thus confining the procedural Parts to provisions which are of general application.

Space does not permit a review in detail of all that has been done, but it is felt that the following matters may usefully be mentioned:

(*a*) The provisions relating to the attendance of witnesses, now scattered throughout the Code, have been gathered into Part XIX which is new.

(*b*) the number of offences, which under section 583 of the present code must be tried by a judge and jury in the Superior Court, has been reduced to some extent. We have thought it best to restore to this category the offence of judicial corruption, of which we are advised there has been no reported case, but the accused will under the Bill have the right to elect non-jury trial in cases of corruption of enforcement officers, frauds on government, breach of trust by public officer, municipal corruption, selling offices, rape, attempted rape, defamatory libel and certain other offences relating to attempts, accessories after the fact and conspiracy.

(*c*) Clause 421 (3) incorporates a change to permit a court, at the request of the accused, to take into account offences which he admits other than those charged, including offences committed in another province. This adopts a practice common in England.

(*d*) Provision is made whereby an accused who is before a justice empowered only to hold a preliminary inquiry and commit the accused for trial may, if the evidence warrants committal, make an election immediately. Means are provided for fixing an early date for the trial. Towards the same end, it is provided that the justice shall remand the accused to a magistrate at once, if the case is one in which a magistrate has absolute jurisdiction. The right of the accused to re-elect has been preserved.

(*e*) Provisions for the non-jury trial of indictable offences now existing in Part XVI (Summary Trials) and Part XVIII (Speedy Trials) of the Code have been combined in Part XVI of the Bill.

(*f*) The number of offences which may be tried under Part XVI of the Bill is increased. Those which must be tried in the Superior Court with a jury are treason, piracy, homicide, trade combinations and certain related offences.

(*g*) The absolute jurisdiction of magistrates under Part XVI of the Bill has been increased to include offences in respect of lotteries and attempts to obtain property by false pretences where the value of the property does not exceed $50.00.

(*h*) Certain special pleas (such as autrefois convict and autrefois acquit) which now are decided by the jury will, under the Bill, be decided by the judge. The reason for this is that the test is not the identity of facts but the identity of offences in law.

(*i*) Under the Bill the trial of an issue of insanity may take place on a non-jury trial as well as on a trial in the Superior Court.

(*j*) The provision requiring the consent of the prosecuting counsel before sentence can be suspended is not continued.

(*k*) Section 1065 of the Code relating to the execution of sentence of death has been changed to permit the establishment of a central place of execution in the province.

(*l*) As preventive detention is essentially a matter of punishment, the Bill provides that it is to be decided by the judge, or if it arises on a non-jury trial, by the judge or magistrate. It will no longer be permitted to allege in a charge that the accused is an habitual criminal and the application for imposition of preventive detention may not be made without notice to the accused.

(*m*) Part XXII of the Bill is a complete redraft of the provisions relating to the forfeiture of recognizances. It is designed to provide a uniform procedure in respect of the forfeiture of a recognizance. Provision is made to ensure that upon foreiture of a recognizance, the sureties shall have an opportunity to be heard before a warrant of committal is issued in respect of them.

(*n*) The practice now existing of going from judge to judge in habeas corpus proceedings will not, under the Bill, be possible. Provision for an appeal is substituted therefor.

(*o*) In summary conviction proceedings informations may contain more than one charge, but a separate trial of each charge may be ordered by the court if that is considered to be necessary in the interests of justice.

(*p*) The provisions regarding the setting down for hearing of appeals in summary conviction matters have been simplified and the appellant's right of appeal is not to be prejudiced by default other than his own.

It should be mentioned that the Bill continues in our law the fundamental principles embodied in the common and statute law that are necessary to ensure the fair trial of persons who are charged with criminal offences.

Clauses 413 to 416, both inclusive—Approved.

Clause 417—Approved.

NOTE: The sub-committee was informed that the province of Alberta desires that this provision be retained in the new Code.

Clauses 418 to 424, both inclusive—Approved.

PART XIII.

SPECIAL PROCEDURE AND POWERS

Clauses 425 to 428, both inclusive—Approved.

Clause 429—Amended as follows:

1. Page 145, lines 27 and 28—strike out the words "or any other Act of the Parliament of Canada"

2. Page 145, lines 32 and 33—strike out the words "or any other Act of the Parliament of Canada,"

Clauses 430 and 431—Approved.

Clause 432—Amended as follows:

1. Page 146, lines 33 to 39—delete subclause (1) and substitute the following:

Detention of things seized.

"(1) Where anything that has been seized under section 431 or under a warrant issued pursuant to section 429 is brought before a justice, he

shall, unless the prosecutor otherwise agrees, retain it or order that it be detained, taking reasonable care to ensure that it is preserved until the conclusion of any investigation or until it is required to be produced for the purposes of a preliminary inquiry or trial, but nothing shall be detained under the authority of this section for a period of more than three months after the time of seizure unless, before the expiration of that period, proceedings are instituted in which the subject-matter of detention may be required."

2. Page 147—add the following as subclause (5):

Access to anything seized.

"(5) Where anything is detained under subsection (1), a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction may, on summary application on behalf of a person who has an interest in what is detained, after three clear days' notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained."

3. Page 147—add the following as subclause (6):

Conditions.

"(6) An order that is made under subsection (5) shall be made on such terms as appear to the judge to be necessary or desirable to ensure that anything in respect of which the order is made is safeguarded and preserved for any purpose for which it may subsequently be required."

NOTE: The clause has been amended to permit the right of access to anything seized under a search warrant under such conditions as may be determined by a judge or magistrate. It also permits a judge or magistrate to order the return of anything seized, if a prosecution is not proceeded with within three months of the seizure.

Clause 433—Approved.

PART XIV.

COMPELLIG APPEARANCE OF ACCUSED BEFORE A JUSTICE.

Clauses 434 to 446, both inclusive—Approved.

Clause 447—Amended as follows:

Page 152, lines 21 to 26—delete subclause (1) and substitute the following:

"(1) Where a warrant for the arrest of an accused cannot be executed in accordance with section 445, a justice within whose jurisdiction the accused is or is believed to be shall, upon application and upon proof on oath or by affidavit of the signature of the justice who executed the warrant, authorize the execution of the warrant within his jurisdiction by making an endorsement, which may be in Form 25, upon the warrant."

NOTE: The amendment requires proof of the signature of the justice who issued the warrant. The clause as drawn does not require this formality. The amendment restores the law as set out in the Criminal Code.

Clause 448—Approved

PART XV.

PROCEDURE OF PRELIMINARY INQUIRY.

Clause 449—Amended as follows:

Page 153, lines 1 to 7—delete the present clause 449 and substitute therefore the following:

"449. Where an accused who is charged with an indictable offence is before a justice, the justice shall, in accordance with this Part, inquire into that charge and any other charge against that person."

NOTE: The subcommittee is of the opinion that paragraphs (*a*), (*b*), (c) and (*d*) are unnecessary and that the whole matter is covered by the clause as redrafted.

Clause 450—Amended as follows:

1. Page 153, lines 33 and 34—delete the words "stood mute" and substitute therefor the words "did not elect,"

2. Page 153, line 40—delete the words "stood mute" and substitute therefor the words "did not elect."

NOTE: The words "stood mute" are archaic. The subcommittee feels they should be eliminated from the new law.

Clause 451—Amended as follows:

1. Page 154, line 15—after the word "directs" insert the words "without any deposit;"

2. Page 154, line 24—delete the word "informant" and substitute therefor the word "prosecutor;"

3. Page 154, line 44—after the word "adjourned" insert the words "with the consent of the prosecutor and the accused or his counsel;"

4. Page 155, lines 11 to 13—delete paragraph (*i*) and substitute therefor the following:

(*i*) receive evidence on the part of the prosecutor or the accused, as the case may be, after hearing any evidence that has been given on behalf of either of them;"

5. Page 155, line 18—delete the word "answered" and substitute therefor the word "served"

Clause 452—Approved.

Clause 453—Amended as follows:

Page 155, lines 26 to 29—delete paragraph (*a*) of subclause (1) and substitute therefor the following:

"(*a*) take the evidence under oath, in the presence of the accused, of the witnesses called

On the part of the prosecution and allow the accused or his counsel to cross-examine them; and"

Clause 454—Amended as follows:

Page 156, line 22—immediately after "trial," insert the following:

"You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you at your trial notwithstanding the promise or threat."

Clauses 455 to 463, both inclusive—Approved.

Clause 464—Amended as follows:

Page 160, line 19—strike out the word "who".

Clause 465—Approved.

PART XVI.

INDICTABLE OFFENCES—TRIAL WITHOUT JURY.

Clauses 466 and 467—Approved.

Clause 468—Amended as follows:

1. Page 162, line 38—strike out the words "or stands mute".

2. Page 163, line 2—delete the words "stood mute" and substitute therefor the words "did not elect",

3. Page 163, line 9—delete the words "stood mute" and substitute therefor the words "did not elect."

Clauses 469 and 470—Approved.

Clause 471—Amended as follows:

Page 163, lines 43 and 44—strike out the words "but it is not necessary for witnesses to sign their depositions"

Clauses 472 and 473—Approved.

Clause 474—Amended as follows:

Page 164—immediately after subclause (4) add the following as subclause (5):

Further election.

"(5) Where an accused has elected under section 450 or 468 to be tried by a judge without a jury he may, at any time before a time has been fixed for his trial or thereafter with the consent in writing of the Attorney General or counsel acting on his behalf, re-elect to be tried by a judge and jury by filing with the clerk of the court an election in writing and the consent, if consent is required, and where an election is filed in accordance with this subsection the accused shall be tried before a court of competent jurisdiction with a jury and not otherwise."

NOTE: The amendment is to provide that an accused may re-elect under the section to be tried by a judge and jury.

Clauses 475 and 476—Approved.

Clause 477—Amended as follows:

Page 165, line 39—delete the words "stood mute" and substitute therefor the words "did not elect"

Clauses 478 to 484, both inclusive—Approved.

PART XVII.

PROCEDURE BY INDICTMENT.

Clauses 485 to 487, both inclusive—Approved.

Clause 488—Amended as follows:

Page 169, line 31—strike out the words "in Canada".

Clauses 489 to 496, both inclusive—Approved.

Clause 497—Amended as follows:

Page 172, line 27—after the word "particulars" insert the words "and, without restricting the generality of the foregoing, may order the prosecutor to furnish particulars"

Clauses 498 to 539, both inclusive—Approved.

Clause 540—Amended as follows:

Page 187, line 8—immediately before the word "shaken" insert the word "thoroughly"

Clauses 541 to 553, both inclusive—Approved.

Clause 554—Amended as follows:

Page 191, line 7—after the word "judge" insert the words ", in any case tried without a jury,"

Clause 555—Approved.

Clause 556—Amended as follows:

Page 191, line 23—after the word "anyone" insert the words "other than himself or another member of the jury"

Clause 557—Approved.

Clause 558—Amended as follows:

Page 192, line 25—delete the word "prosecutor" and substitute therefor the words "Attorney General or counsel acting on his behalf"

Clauses 559 and 560—Approved.

Clause 561—Amended as follows:

Page 193, line 9—after the word "jury" insert the words "and any proceeding incidental thereto"

Clause 562 to 568, both inclusive—Approved.

Clause 569—Approved.

NOTE: A change in the present law is effected by subclause (1). An accused charged with an indictable offence may be convicted of an offence punishable on summary conviction.

Page 195, line 1—re-number subclause (4) of clause 569 as clause 570.

Clause 570—Strike out this clause.

NOTE: This clause was taken from the English larceny law and was the law in Manitoba so far as subclause (1) is concerned. The subcommittee recommends that it be struck out as unnecessary.

Clauses 571 to 573, both inclusive—Approved.

Clause 574—Amended as follows:

1. Page 196, line 12—after the word "conviction" insert the words "in Canada"

2. Page 196, line 15—after the word "conviction" insert the words "in Canada"

Clauses 575 to 580, both inclusive—Approved.

PART XVIII.

APPEALS—INDICTABLE OFFENCES

Clauses 581 to 588, both inclusive—Approved.

Clause 589—Amended as follows:

1. Page 200, lines 36 and 37—strike out the words "necessary or expedient"

2. Page 201—insert the following as a new subclause (2);

Rights of parties

"(2) In proceedings under this section the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under paragraph (*e*) of subsection (1), are entitled to be present during the inquiry and to adduce evidence and to be heard."

3. Page 201—re-number present subclauses (2) and (3) as subclauses (3) and (4)

Clauses 590 and 591—Approved.

Clause 592—Amended as follows:

1. Page 202, lines 17 to 22—strike out subparagraphs (ii) and re-number the subsequent subparagraphs as (ii) and (iii)

2. Page 202, line 27—after the word "in" insert the words "subparagraph (ii) of"

3. Page 203, line 8—after the words "subparagraph (i)" strike out the words "or (ii)"

Clauses 593 to 601, both inclusive—Approved.

PART XIX.

PROCURING ATTENDANCE OF WITNESSES.

Clauses 602 to 619, both inclusive—Approved.

PART XX.

PUNISHMENTS, FINES, FORFEITURES, COSTS AND RESTITUTION OF PROPERTY.

Clauses 620 to 629, both inclusive—Approved.

Clause 630—Amended as follows:

1. Page 217, line 37—strike out the word "or"

2. Page 217, line 42—after the word "committed" add, "or"

3. Page 217—insert a new paragraph in subclause (3) as follows:

"(*d*) property in respect of which there is a dispute as to ownership or right of possession by claimants other than the accused."

Clauses 631 to 637, both inclusive—Approved.

Clause 638—Amended as follows:

1. Page 220, lines 40 to 42—strike out paragraph (*a*)

2. Page 220, line 43—re-letter paragraphs (*b*) and (*c*) as (*a*) and (*b*), respectively

Clauses 639 to 653, both inclusive—Approved.

Clause 654—NOTE: The present provision of section 1034(1) of the Code has been changed by dropping the provision that pension payments cease where a person is convicted.

Clauses 655 to 658, both inclusive—Approved.

PART XXI.

PREVENTIVE DETENTION.

Clauses 659 to 667, both inclusive—Approved.

PART XXII.

EFFECT AND ENFORCEMENT OF RECOGNIZANCES.

Clauses 668 and 669—Approved.

Clause 670—Amended as follows:

Page 229—insert the following as subclause (4):

"(4) The provisions of section 669 and subsections (1), (2) and (3) of this section shall be endorsed on any recognizance entered into pursuant to this Act."

NOTE: The requirement that these sections be endorsed on a recognizance is for the purpose of giving the sureties notice of their responsibilities.

Clauses 671 to 678, both inclusive—Approved.

Clause 679—Amended as follows:

Page 232, lines 14 to 46—delete clause 679 and substitute therefor the following:

Committal when writ not satisfied.

"679. (1) Where a writ of *fieri facias* has been issued under this Part and it appears from a certificate in a return made by the sheriff that sufficient goods and chattels, lands and tenements cannot be found to satisfy the writ, or that the proceeds of the execution of the writ are not sufficient to satisfy it, a judge of the court may, upon the application of the Attorney General or counsel acting on his behalf, fix a time and place for the sureties to show cause why a warrant of committal should not be issued in respect of them.

Notice.

(2) Seven clear days' notice of the time and place fixed for the hearing pursuant to subsection (1) shall be given to the sureties.

Hearing.

(3) The judge shall, at the hearing referred to in subsection (1), inquire into the circumstances of the case and may in his discretion

(*a*) order the discharge of the amount for which the surety is liable, or

(b) make any order with respect to the surety and to his imprisonment that he considers proper in the circumstances and issue a warrant of committal in Form 24.

Warrant of committal.

(4) A warrant of committal issued pursuant to this section authorizes the sheriff to take into custody the person in respect of whom the warrant was issued and to confine him in a prison in the territorial division in which the writ was issued or in the prison nearest to the court, until satisfaction is made or until the period of imprisonment fixed by the judge has expired.

"Attorney General."

(5) In this section and in section 677, "Attorney General" means, where subsection (2) of section 626 applies, the Attorney General of Canada."

NOTE: This is a redraft of the clause. The purpose of the redraft of the clause is to provide that where steps are being taken to commit a surety he must have notice of the application and an opportunity to be heard before a warrant of committal is issued.

PART XXIII.

EXTRAORDINARY REMEDIES.

Clauses 680 to 688, both inclusive—Approved.

Clause 689—Amended as follows:

1. Page 237, line 5—strike out the words "make it a condition of"

2. Page 237, line 6—immediately before the word "quashing" insert the word "in"

3. Page 237, line 6—after the word "proceeding" insert, "order"

Clauses 690 and 691—Approved.

PART XXIV.

SUMMARY CONVICTIONS.

Clauses 692 to 701, both inclusive—Approved.

Clause 702—Amended as follows:

Page 241, line 14—after the word "required" insert, "except by way of rebuttal,"

Clause 703—Approved.

Clause 704—Amended as follows:

Page 242, line 9—insert the word "or" after the word "negatived",

Clauses 705 to 707, both inclusive—Approved.

Clause 708—Amended as follows:

Page 243, lines 37 and 38—strike out the words "but it is not necessary for the witnesses to sign their depositions"

Clauses 709 to 723, both inclusive—Approved.

Clause 724—Amended as follows:

Page 250, line 6—after the word "made" insert the words "in such amount as the judge or justice directs,"

Clauses 725 and 726—Approved.

Clause 727—Amended as follows:

Pages 251 and 252—delete clause 727 and substitute therefor the following:

Appeal.

"727. (1) Where an appeal has been lodged in accordance with this Part from a conviction or order made against a defendant, or from an order dismissing an information, the appeal court shall hear and determine the appeal by holding a trial *de novo*, and for this purpose the provisions of sections 701 to 716, insofar as they are not inconsistent with sections 720 to 732, apply, *mutatis mutandis*.

Former evidence.

(2) The appeal court may, for the purpose of hearing and determining an appeal, permit the evidence of any witness taken before the summary conviction court to be read if that evidence has been authenticated in accordance with section 453, and if

(*a*) the appellant and respondent consent,

(*b*) the appeal court is satisfied that the attendance of the witness cannot reasonably be obtained, or

(*c*) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the appeal court.

Appeal against sentence.

(3) Where an appeal is taken against sentence, the appeal court shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may upon such evidence, if any, as it thinks fit to require or receive, by order,

(*a*) dismiss the appeal, or

(*b*) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted.

General provisions re appeals.

(4) The following provisions apply in respect of appeals, namely,

(*a*) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant,

(i) for any alleged defect therein in substance of in form, or

(ii) for any variance between the information or process and the evidence adduced at the trial,

unless it is shown

(iii) that the objection was taken at the trial, and

(iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and

(b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect."

NOTE: The effect of the amendment is to provide that an appeal in accordance with this Part shall be by way of trial *de novo.*

Clauses 728 to 735, both inclusive—Approved.

Clause 736—Amended as follows:

1. Page 255, line 32—strike out the word "or" immediately before the word "quits"

2. Page 255, line 32—after the word "office" insert the words "or is unable to act,"

Clauses 737 to 748, both inclusive—Approved.

Form 24—Page 280: Amended as follows:

1. After the word "them" in the third paragraph insert the words "for a period of————————————or"

2. Strike out the words "or until————————is discharged in due course of law" in the third paragraph

3. Strike out the fourth paragraph.

Form 28—Page 283: Amended as follows:

1. Insert "669, 670," after "638," in the first line of said form.
2. Add the following immediately after the first line of said form:

"(N.B. The provisions of sections 669 and 670 (1), (2) and (3) must be endorsed on a recognizance. See section 670 (4))."

Respectfully submitted.

SALTER A. HAYDEN,
Chairman.

APPENDIX "B"

REPORT OF COMMITTEE ON BANKING AND COMMERCE ON BILL O, AN ACT RESPECTING THE CRIMINAL LAW

TUESDAY, December 16, 1952.

The Standing Committee on Banking and Commerce to whom was referred the Bill "O", intituled: "An Act respecting the Criminal Law", have in obedience to the order of reference of 25th November, 1952, examined the said Bill and now beg leave to report the same with the following amendments:—

1. Page 3, line 9: delete the words "recorder or" and substitute therefor the words "municipal judge of the city, as the case may be, or a".

2. Page 3, line 35: insert after "8" the figure and bracket (1).

3. Page 9: insert after subclause (1) of clause 8 the following subclauses:—

"(2) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed.

(3) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal

(*a*) from the conviction, or

(*b*) against the punishment imposed.

(4) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and, for the purposes of this section, the provisions of Part XVIII apply, *mutatis mutandis*".

4. Page 17, line 33: strike out the word "other".

5. Page 19, line 2: after the words "Her Majesty" insert ", or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her".

6. Page 19, lines 11 to 14: strike out paragraph (*e*), and reletter paragraphs (*f*) and (*g*) as (*e*) and (*f*).

7. Page 19, line 33: delete "*f* or *g*" and substitute the following "or *f*".

8. Page 20: immediately after clause 48 insert the heading "PROHIBITED ACTS."

8A. Pages 20 and 21: transpose clauses 49 and 52 and renumber accordingly.

8B. Page 23, lines 23 to 28; strike out clause 62.

9. Page 20, line 37: strike out the word "or".

10. Page 20, line 42: delete the period and insert therefor ", or".

1. Page 20: insert the following as paragraph (c) to subclause (1) of clause 50:—

"(c) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada."

12. Page 21, line 34: after the word "who" insert the word "wilfully".

13. Page 23, line 1: renumber subclause 5 of clause 60 as clause "61".

14. Page 23, line 1: delete "notwithstanding subsection (4) no person shall be" and substitute "notwithstanding subsection (4) of section 60 no person shall be".

15. Page 23, line 17: Renumber clause "61" as clause "62".

16. Page 23, lines 23 to 28: strike out clause 62.

17. Page 23, line 29: after the word "who" insert the word "wilfully".

18. Page 24, line 3: after the words "Canadian Forces," add the word "or".

19. Page 24, line 5: delete ", or" and insert a period.

20. Page 24, line 6: strike out paragraph (*c*).

21. Page 26, lines 2 to 5: delete paragraphs (*a*) and (*b*) and substitute therefor the following:—

"(*a*) challenges or attempts by any means to provoke another person to fight a duel,

(*b*) attempts to provoke a person to challenge another person to fight a duel, or

(*c*) accepts a challenge to fight a duel,"

22. Page 27, line 27: delete the word "other" and substitute therefor the words "any other dangerous".

23. Page 28, lines 3 to 7: delete paragraph (*a*) and substitute therefor the following:—

"(*a*) makes or has in his possession or under his care or control an explosive substance that he does not make or does not have in his possession or under his care or control for a lawful purpose, or".

24. Page 38, line 10: delete the word "or" and substitute the word "to".

25. Page 40, line 37: delete the words "evidence for the purpose of" and substitute therefor the words "anything with intent that it shall be used as evidence in".

26. Page 41, line 28: strike out the word "or".

27. Page 45, lines 9 to 20: delete clause 134 and substitute therefor the following:—

"134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular, instruct the jury that it is not safe to find the accused guilty in the absence of evidence that corroborates, in a material particular, the evidence of that female person, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true."

28. Page 47, line 40: after the word "vessel" insert the words "engaged in the carriage of passengers for hire,".

29. Page 50, line 15: after the word "scurrilous" add the following words: "but this section does not apply to a person who makes use of the mails for the purpose of transmitting or delivering anything mentioned in subsection (4) of section 151".

30. Page 51, line 4: strike out the words "or is likely to endanger".

31. Page 51, line 5: strike out the words "or is likely to render".

32. Page 51, lines 8 to 12: delete subclause (2) and substitute therefor the following:—

"(2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed."

33. Page 51: add the following subclause (3) to clause 159:

"(3) No proceedings shall be commenced under this section without the consent of the Attorney General."

34. Page 58, lines 26 and 27: delete lines 26 and 27 and substitute therefor the words "a subpoena".

35. Page 58: add the following as subclause (3) to clause 174:

"(3) No evidence that is given by a person under this section may be used or received in evidence in any criminal proceedings against him, except proceedings for perjury in giving that evidence."

36. Page 67, lines 32 to 38: delete subclause (2) and substitute therefor the following:—

"(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies upon him, to perform that duty, if

(*a*) with respect to a duty imposed by paragraph (*a*) or (*b*) of subsection (1),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(*b*) with respect to a duty imposed by paragraph (*c*) of subsection (1), the failure to perform the duty endangers the life of the person to whom the duty owed or causes or is likely to cause the health of that person to be injured permanently.

(3) Every one who commits an offence under subsection (2) is guilty of

(*a*) an indictable offence and is liable to imprisonment for two years; or

(*b*) an offence punishable on summary conviction."

37. Page 68, line 1: renumber subclause (3) as (4).

38. Page 69, lines 1 to 9: delete clause 191, and substitute therefor the following:—

"191. (1) Every one is criminally negligent who

(*a*) is doing anything, or

(*b*) is omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, "duty" means a duty imposed by law."

39. Page 73, line 19: after the word "birth" insert the words "as a result thereof".

40. Page 74: immediately before clause 221, insert the heading

"AUTOMOBILES, DANGEROUS PLACES AND UNSEAWORTHY SHIPS"

41. Page 75, line 4: after the word "assistance" insert the words "where any person has been injured".

42. Page 75, line 10: after the word "assistance" insert the words "where any person has been injured".

43. Page 77, line 11: after the word "who" insert the words ", without lawful excuse".

44. Page 77, line 26: delete the word "or" and substitute the word "and".

45. Page 77, line 31: delete the word "or" and substitute the word "and".

46. Page 98, line 9: after the words "Canada Post Office," add the word "or".

47. Page 99, lines 1 to 13: delete paragraph (*b*) and substitute therefor the following:—

"(*b*) was stolen within twelve months before the proceedings were commenced,

and that evidence may be considered for the purpose of proving that the accused knew that the property forming the subject-matter of the proceedings was stolen property."

48. Page 99, line 22: delete the word "obtained" and substitute therefor the word "stolen".

49. Page 104, lines 20 and 21: delete paragraph (*a*) and substitute therefor the following:—

"(*a*) a letter or writing that he knows contains a threat to cause death or injury to any person; or".

50. Page 115, line 37: strike out the words "or by any other means".

51. Page 116, line 31: strike out the word "undue".

52. Page 122, line 18: after the word "railway" add the words "that is a common carrier,".

53. Page 140, line 8: delete line 8 and substitute "(ii) section 49",

54. Page 140, line 9: delete line 9 and substitute "(iii) section 51",

55. Page 145, lines 27 and 28: strike out the words "or any other Act of the Parliament of Canada".

56. Page 145, lines 32 and 33: strike out the words "or any other Act of the Parliament of Canada".

57. Page 146, lines 33 to 39: Delete subclause (1) of Clause 432 and substitute the following:

"432. (1) Where anything that has been seized under section 431 or under a warrant issued pursuant to section 429 is brought before a justice, he shall, unless the prosecutor otherwise agrees, detain it or order that it be detained, taking reasonable care to ensure that it is preserved until the conclusion of any investigation or until it is required to be produced for the purposes of a preliminary inquiry or trial, but nothing shall be detained under the authority of this section for a period of more than three months after the time of seizure unless, before the expiration of that period, proceedings are instituted in which the subject-matter of detention may be required".

58. Page 147: Immediately after subclause 4 of clause 432, add the following new subclause:

"(5) Where anything is detained under subsection (1), a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction may, on summary application on behalf of a person who has an interest in what is detained, after three clear days' notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained."

59. Page 147: Immediately after the new subclause (5) of clause 432 add the following new subclause:

"(6) An order that is made under subsection (5) shall be made on such terms as appear to the judge to be necessary or desirable to ensure that anything in respect of which the order is made is safeguarded and preserved for any purpose for which it may subsequently be required".

60. Page 152, lines 21 to 26: Delete subclause (1) and substitute the following:

"447. (1) Where a warrant for the arrest of an accused cannot be executed in accordance with section 445, a justice within whose jurisdiction the accused is or is believed to be shall, upon application and upon proof on oath or by affidavit of the signature of the justice who executed the warrant, authorize the execution of the warrant within his jurisdiction by making an endorsement, which may be in Form 25, upon the warrant."

61. Page 153, lines 1 to 7: Delete clause 449 and substitute the following:

"449. Where an accused who is charged with an indictable offence is before a justice, the justice shall, in accordance with this Part, inquire into that charge and any other charge against that person."

62. Page 153, lines 33 and 34: Delete the words "stood mute" and substitute the words "did not elect,"

63. Page 153, line 40: Delete the words "stood mute" and substitute the words "did not elect.".

64. Page 154, line 15: After the word "directs" insert the words "without any deposit;".

65. Page 154, line 24: Delete the word "informant" and substitute therefor the word "prosecutor".

66. Page 154, line 44: After the word "adjourned" insert the words "with the consent of the prosecutor and the accused or his counsel;".

67. Page 155, lines 11 to 13: Delete paragraph (i) and substitute therefor the following:—

"(i) receive evidence on the part of the prosecutor or the accused, as the case may be after hearing any evidence that has been given on behalf of either of them;".

68. Page 155, line 18: Delete the word "answered" and substitute therefor the word "served".

69. Page 155, lines 26 to 29: Delete paragraph (*a*) of subclause (1) and substitute the following:

"(*a*) take the evidence under oath, in the presence of the accused, of the witnesses called on the part of the prosecution and allow the accused or his counsel to cross-examine them; and".

70. Page 156, line 22: Immediately after the word "trial." insert the following:—

"You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you at your trial notwithstanding the promise or threat".

71. Page 160, line 19: Strike out the word "who".

72. Page 162, line 38: Delete the words "or stands mute".

73. Page 163, line 2: Delete the words "stood mute" and substitute therefor the words "did not elect".

74. Page 163, line 9: Delete the words "stood mute" and substitute therefor the words "did not elect".

75. Page 163, lines 43 and 44: Strike out the words "but it is not necessary for witnesses to sign their depositions".

76. Page 164: Immediately after subclause (4) of clause 474 add the following as subclause (5):—

"(5) Where an accused has elected under section 450 or 468 to be tried by a judge without a jury he may, at any time before a time has been fixed for his trial or thereafter with the consent in writing of the Attorney General or counsel acting on his behalf, re-elect to be tried by a judge and jury by filing with the clerk of the court an election in writing and the consent, if consent is required, and where an election is filed in accordance with this subsection the accused shall be tried before a court of competent jurisdiction with a jury and not otherwise."

77. Page 165, line 39: delete the words "stood mute" and substitute therefor the words "did not elect".

78. Page 169, line 31: strike out the words "in Canada".

79. Page 172, line 27: after the word "particulars" insert the words "and, without restricting the generality of the foregoing, may order the prosecutor to furnish particulars",

80. Page 178, line 11: delete the words "in sections 50 to 53" and substitute "in sections 49, 50, 51 and 53."

81. Page 187, line 8: immediately before the word "shaken" insert the word "thoroughly".

82. Page 191, line 7: after the word "judge" insert the words ", in any case tried without a jury,"

83. Page 191, line 23: after the word "anyone" insert the words "other than himself or another member of the jury,"

84. Page 192, line 25: delete the word "prosecutor" and substitute therefor the words "Attorney General or counsel acting on his behalf".

85. Page 193, line 9: after the word "jury" insert the words "and any proceeding incidental thereto".

86. Page 195, lines 1 to 13: renumber subclause (4) of clause 569 as new clause 570.

87. Page 195, lines 14 to 20: strike out clause 570.

88. Page 196, line 12: after the word "conviction" insert the words "in Canada".

89. Page 196, line 15: after the word "conviction" insert the words "in Canada".

90. Page 200, lines 36 and 37: strike out the words "necessary or expedient".

91. Page 201; Insert a new subclause (2) of clause 589 as follows:—

"(2) In proceedings under this section the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under paragraph (*e*) of subsection (1), are entitled to be present during the inquiry and to adduce evidence and to be heard.".

92. Page 201: Re-number present subclauses (2) and (3) as subclauses (3) and (4).

93. Page 202, lines 17 to 22: Strike out sub-paragraph (ii), and re-number the subsequent subparagraphs as (ii) and (iii).

94. Page 202, line 27: After the word "in" insert the words "subparagraph (ii) of".

95. Page 203, line 8: After the words "subparagraph (i)" strike out the words "or (ii)".

96. Page 217, line 37: Strike out the word "or".

97. Page 217, line 42: After the word "committed" add "or".

98. Page 217: Insert a new paragraph in subclause (3) as follows:—

"(*d*) property in respect of which there is a dispute as to ownership or right of possession by claimants other than the accused.".

99. Page 220, lines 40 to 42: Strike out paragraph (*a*).

100. Page 220, line 43: Re-letter paragraphs (*b*) and (*c*) as (*a*) and (*b*) respectively.

101. Page 229: insert the following as subclause (4):—

"(4) The provisions of section 669 and subsections (1), (2) and (3) of this section shall be endorsed on any recognizance entered into pursuant to this Act."

102. Page 232, lines 14 to 46: delete clause 679 and substitute therefor the following:—

"679. (1) Where a writ of *fieri facias* has been issued under this Part and it appears from a certificate in a return made by the sheriff that sufficient goods and chattels, land and tenements cannot be found to satisfy the writ, or that the proceeds of the execution of the writ are not sufficient to satisfy it, a judge of the court may, upon the application of the Attorney General or counsel acting on his behalf, fix a time and place for the sureties to show cause why a warrant of committal should not be issued in respect of them.

(2) Seven clear days' notice of the time and place fixed for the hearing pursuant to subsection (1) shall be given to the sureties.

(3) The judge shall, at the hearing referred to in subsection (1), inquire into the circumstances of the case and may in his discretion

(*a*) order the discharge of the amount for which the surety is liable, or

(*b*) make any order with respect to the surety and to his imprisonment that he considers proper in the circumstances and issue a warrant of committal in Form 24.

(4) A warrant of committal issued pursuant to this section authorizes the sheriff to take into custody the person in respect of whom the warrant was issued and to confine him in a prison in the territorial division in which the writ was issued or in the prison nearest to the court, until satisfaction is made or until the period of imprisonment fixed by the judge has expired.

(5) In this section and in section 677, "Attorney General" means, where subsection (2) of section 626 applies, the Attorney General of Canada."

103. Page 237, line 5: strike out the words "make it a condition of".

104. Page 237, line 6: before the word "quashing" insert the word "in".

105. Page 237, line 6: after the word "proceeding" insert ", order".

106. Page 241, line 14: after the word "required" insert the words ", except by way of rebuttal,".

107. Page 242, line 9: insert the word "or" after the word "negatived,"

108. Page 243, lines 37 and 38: strike out the words ", but it is not necessary for the witnesses to sign their depositions".

109. Page 250, line 6: after the word "made" insert the words "in such amount as the judge or justice directs,"

110. Pages 251 and 252: delete clause 727 and substitute therefor the following:

"727. (1) Where an appeal has been lodged in accordance with this Part from a conviction or order made against a defendant, or from an order dismissing an information, the appeal court shall hear and determine the appeal by holding a trial *de novo*, and for this purpose the provisions of sections 701 to 716, insofar as they are not inconsistent with sections 720 to 732, apply, *mutatis mutandis*.

(2) The appeal court may, for the purpose of hearing and determining an appeal, permit the evidence of any witness taken before the summary conviction court to be read if that evidence has been authenticated in accordance with section 453, and if

(*a*) the appellant and respondent consent,

(*b*) the appeal court is satisfied that the attendance of the witness cannot reasonably be obtained, or

(*c*) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the appeal court.

(3) Where an appeal is taken against sentence, the appeal court shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may upon such evidence, if any, as it thinks fit to require or receive, by order

(*a*) dismiss the appeal, or

(*b*) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted.

(4) The following provisions apply in respect of appeals, namely,

(*a*) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant,

(i) for any alleged defect therein in substance or in form, or

(ii) for any variance between the information or process and the evidence adduced at the trial, unless it is shown

(iii) that the objection was taken at the trial, and

(iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and

(b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect".

111. Page 255, line 32: delete line 32 and substitute: "conviction court dies, quits office, or is unable to act, the appellant may,".

112. Page 280, Form 24: after the word "them" in the third paragraph insert the words "for a period of————————or".

113. Page 280, Form 24: strike out the words "or until ———————— is discharged in due course of law" in the third paragraph.

114. Page 280, Form 24: strike out the fourth paragraph.

115. Page 283, Form 28: insert "669, 670", after "638", in the first line of said form.

116. Page 283, Form 28: add the following immediately after the first line of said form:

(N.B. The provisions of section 669 and 670 (1), (2) and (3) must be endorsed on a recognizance. See section 670 (4))".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.