therefor the words "Northern Affairs and National Resources". And that the remaining clauses of part II of the bill be renumbered accordingly.

Amendment agreed to.

The Chairman: Would hon. members mind if I kept to the numbers which appear in the bill as printed before us?

Mr. Lesage: No. Before we get to that point I have another amendment that I should like to ask one of my colleagues to move. It is an amendment corresponding to the one which was made in the first part of the bill, following the suggestion of the Leader of the Opposition, which was accepted, to increase the number of elected representatives. I would ask my colleague, the Minister of Citizenship and Immigration, to move accordingly.

Mr. Harris: I move:

That clause 8, as renumbered, of Bill No. 77, an act to amend the acts respecting the Northwest Territories, be deleted and the following be substituted therefor:

8. (1) Subsection (1) of section 8 of the said act is repealed and the following substituted therefor:

"8. (1) There shall be a council of the territories consisting of nine members, four of whom shall be elected to represent such electoral districts in the territories as are named and described by the commissioner in council, and five of whom shall be appointed by the governor in council."

(2) Subsection (5) of section 8 of the said act is repealed and the following substituted therefor:

"(5) Where an elected member resigns or dies while in office, the governor in council may appoint a member in his stead for the balance of his term of office."

Amendment agreed to.

Section as amended agreed to.

The Chairman: Clause 7 now becomes clause 9. Shall it carry?

Section agreed to.

The Chairman: Clause 8 now becomes clause 10; shall the clause carry?

Section agreed to.

The Chairman: Clause 9 now becomes clause 11; shall the clause carry?

Section agreed to.

The Chairman: Clause 10 now becomes clause 12; shall it carry?

Mr. Lesage: I have another amendment to move, because this new disposition providing that there shall be four elected representatives cannot come into force before the present council meets next June. This new provision for four elected representatives instead of three on the council should come into force when the present council is dissolved and writs are issued for a general election which will be held next September. That is why we have to provide that this part of the present amendment shall come into force on proclamation, which proclamation will be on the day the governor in council dissolves the present Northwest Territories council in order to hold an election next September. I would ask my colleague to move this amendment.

Mr. Harris: I move:

That Bill No. 77 be further amended by adding thereto immediately after clause 12 thereof, as renumbered, the following clause:

13. Section 48 of the said act is repealed and the following substituted therefor:

"48. This act or any provision thereof shall come into force on a day or days to be fixed by proclamation of the governor in council."

Mr. Knowles: This is new clause 13.

Mr. Lesage: New clause 13. It is consequential to the other amendments.

Mr. Adamson: That means that this act will come into force in two sections?

Mr. Knowles: A dozen sections.

Mr. Adamson: In a number of sections.

Mr. Lesage: That is right.

Mr. Adamson: The reason for this is the same as in redistribution legislation, that the redistribution act comes into force on the day parliament is dissolved.

Mr. Lesage: That is right.

Mr. Adamson: But the other sections can come into force at once?

Mr. Lesage: At the moment the Criminal Code comes into force. We are waiting for that to have chapter 331 come into force.

Mr. Adamson: Apparently the period of gestation and the coming into effect of that act will be as long as the period of gestation of the musk-ox.

Mr. Lesage: Well, it might be.

Amendment agreed to.

Title agreed to.

Bill reported.

Mr. Speaker: When shall the bill be read the third time?

Mr. Knowles: Next sitting.

Mr. Speaker: Next sitting.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Tuesday, December 15, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

Criminal Code

On section 1—*Short title.*

Mr. Garson: During the discussion of the last order of business a remark was made about a certain developmental period in relation to that piece of legislation. Bill No. 7 has had an even longer period of development. A royal commission was set up to inquire into it, on February 3, 1949.

That commission reported in January, 1952, and the first bill consolidating the Criminal Code was introduced in the other place in May, 1952. At the end of that session it died on the order paper in the other place. It was then redrafted in the light of discussions in the other place and its committee and reintroduced in the other place in the fall session of 1952. It was reported from the other place on December 16 of that year with no less than 116 amendments.

That bill then came to the House of Commons in the early part of 1953 and was sent to a special committee of this house where it received detailed consideration, section by section, from beginning to end; and it was reported, as those members of the present house who were in the last parliament will recall, with some 70-odd amendments in addition to those which had been made by the other place.

The bill therefore which we are about to consider in committee has already received a very great deal of consideration indeed; first by the royal commission for a period of some three years, then by the drafting officers of the Department of Justice, then by the other place in two separate legislative sessions and by its committees, and finally at the last session of parliament by a special committee of the House of Commons.

Hence it should not be surprising if it would be possible for us in considering the sections of the bill in committee of the whole perhaps to be able to approve of them in an expeditious manner. To that end I would suggest there is no better method than to follow the procedure that was followed with great success in the committees of the other place and in the special committee of the House of Commons, namely that the sections should be called one by one.

Our experience in these other committees was that the great majority of sections, being merely a re-enactment of sections of the present Criminal Code which have been the law for a long period of time, are passed without comment. When we came to some particular section or group of sections of a more serious character, such as, for example, those relating to sedition, treason, criminal liability and the like, if any of the opposition parties or for that matter the government members wish to examine such sections more carefully, we set them aside for this purpose. In the same way now, with a view perhaps to reconsidering the conclusion in relation to such clause which has been recommended by the special committee of the House of Commons, we might set aside such sections and come back and consider them after we had gone through the whole bill. In that way we can proceed with some expedition through the whole bill, and then come back and give regard to the difficult sections separately at the end.

I am sure I do not need to emphasize that the Criminal Code as we have it deals with a large group of subject matters that in the United Kingdom, which does not possess a criminal code, are covered by some 150-odd separate statutes. Each of these subject matters to which I have referred, such for example as treason and sedition, is most important. If therefore we feel that we should not accept the conclusions to which the committees of the other place and the special committee of the House of Commons have come, then I think we owe it to ourselves and the people who sent us here to give very serious consideration and subject to carefully considered debate every matter that is reserved in that way.

With that in view I would suggest that we might start consideration of the bill section by section. If there is any question in relation to any one of them which can be disposed of by brief discussion, then we might deal with those now and pass it. If we come to any question that promises to develop into a more serious debate, perhaps it would be better to set it aside and come back to it later on.

Mr. Fulton: Mr. Chairman, I can say at once on behalf of the official opposition that the procedure outlined by the minister is acceptable and conforms to the preliminary and informal discussions we have had outside the chamber as to the best and most efficient method of dealing with this very lengthy bill. I am grateful to the minister for making this statement because it will explain to the house and to the committee itself, and to others who may be watching our proceedings or be interested in them, what perhaps would otherwise be open to misunderstanding and subject to the interpretation that the members of the committee are not considering this serious and important legislation with the care it deserves.

What the minister has said makes it clear that what we are going through here is in

fact the last stage of a process of consideration which has occupied some four or five years—

Mr. Garson: Five years.

Mr. Fulton: —and consideration by other bodies including this house and its own special committee. I would imagine that a large number of the sections will carry almost automatically, but that does not mean they have not already received the serious consideration which they deserve.

Mr. MacInnis: I think the method outlined by the minister will be entirely satisfactory to us. The minister was good enough to talk the matter over with me before the Christmas recess, and I indicated at that time that I thought it was the most satisfactory way of dealing with this very important bill.

May I say, as an incentive to the minister to do the best he can here, that if he will be as fair on this committee and as anxious to get every point of view as he was in the parliamentary committee last year, then we will get along very well indeed.

I would make only one further observation to the committee, and it is one that I found it necessary to make to the minister on several occasions during the sitting of the committee last year, namely that this is no mere consolidation. There is an enormous volume of new material in the new Criminal Code, and we should be very careful that in so far as this is a change from the old code it is a change for the better. I will say again that I have no doubt we can deal with this last phase of this very exhaustive examination of the matter satisfactorily.

Mr. Thomas: I just want to say that we have no objection whatsoever to examining this bill in committee as suggested by the minister. We feel there is no reason to hold up the non-contentious items. There is no reason why we cannot get through with them and hold up the others for further consideration. I will not say any more at the present time, but undoubtedly on some of the individual items I will have more to say.

Mr. Knowles: May I just make one point so it will be clear. My colleague the hon. member for Vancouver-Kingsway has already indicated that we are in agreement with the procedure suggested by the Minister of Justice. The one point I had in mind is this. Obviously there will be many sections, in view of the exhaustive consideration that has been given to them, which we will agree to without asking that they stand or without asking questions. However, it may develop that after some section has gone by, something that develops later will have a bearing on an earlier section or that a member will wish to say something about a section about which nothing was said in the earlier discussion. I am sure the minister is agreed—I know it from something he said to me privately—that so long as there is good faith on both sides we can go back to such a clause. I thought that point should be made clear now.

Mr. Garson: I am glad that my hon. friend has raised this point, because it was one that I did not cover in my own remarks and I think perhaps I should have done so. In the special committee at the last session, as the hon. member for Vancouver-Kingsway who was then the hon. member for Vancouver East has just said, we found that we were able to achieve a great deal of harmony in the committee by addressing ourselves to the task of getting as good a code as possible and not showing any interest whatsoever in scoring procedural victories over one another. I think I am correct in saying that at any time a member wished, for substantial reasons—and he never asked to do so for any other reasons—to reopen a section, there was never any hesitancy in so doing. We found that by opening up a section, instead of arguing whether it should be reopened, very often we could get the whole matter disposed of and get on to the next section in the time which would have been taken in arguing whether or not it should be reopened.

Section agreed to.

On section 2—*Definitions.*

The Chairman: Shall the section carry? Carried.

Mr. Fulton: Not too fast, Mr. Chairman. There are a great many pages.

The Chairman: Shall the section carry?

Section agreed to.

On section 3—*General.*

Mr. Knowles: May I ask a question about paragraph 1 of section 3? This is not anything that is important enough—

The Chairman: Order. May I make this observation at this time. It will perhaps put the chairman in a difficult position to decide how long a debate is going to take place on any particular section. I was wondering whether it would not be a more satisfactory procedure simply to allow to stand a section on which any questions were to be asked.

The chairman cannot possibly anticipate in advance how long debate or questioning will take.

Mr. Knowles: With respect, Mr. Chairman, I think the minister's suggestion on that point should be considered. I think this section is a good example. The question I wish to ask about this section is just a question for the purposes of information so that I, as a layman, might understand the wording. I do not think it is worth letting it stand over. I believe hon. members themselves will know whether the questions or the points they are raising are likely to be contentious and prolong the debate, or whether they are really just something in passing.

Mr. Garson: Yes, Mr. Chairman; I think probably our experience in the other committee last year indicated that it was not hard to determine almost at once whether a certain topic could be concluded fairly quickly or was going to develop a long discussion. Our practice in the latter event was for the government to throw in the sponge at once by agreeing to set it to one side, and not waste time in carrying on an argument as to whether or not we should adjourn it. I think we might follow that practice in the present case. I think perhaps we can dispose of my hon. friend's question right away, if he will ask it.

Mr. Knowles: Yes. I am sure this is a question that will not make it necessary for the government to throw in the sponge; not yet, at any rate. That will come later.

Mr. Sinclair: Not in your time.

Mr. Knowles: Will the minister tell us in simple language what section 3, paragraph 1, means? I wonder whether it would not have been possible to word the clause in a way that would have been clearer to some of us ordinary people?

Mr. Garson: At the risk of being thought facetious, Mr. Chairman, I think it means what it says.

Mr. Knowles: But does it say what it means?

Mr. Garson: Yes; it says what it means. Any difficulty that my hon. friend experiences in interpreting it arises from the fact that one of the functions which a legal draftsman has to perform carefully is to make sure that it does say what it means even though, in some cases, in doing so it may not be, on the surface, too intelligible. The paragraph reads as follows:

For the purposes of this act a person shall be deemed to have been of a given age when the anniversary of his birthday, the number of which corresponds to that age, is fully completed, and until then to have been under that age.

When the anniversary of his birthday, the number of which—we will say the tenth anniversary of his birthday—corresponds to that age, then until that tenth birthday is reached, he is nine.

Mr. Knowles: Just a minute. I thought I understood it; but in view of the minister's explanation I am now not so sure. The minister said that until that person's tenth anniversary is reached or until his tenth birthday is reached, he is still nine.

Mr. Garson: Yes.

Mr. Knowles: What is the meaning of the words in the paragraph to suggest that it is until that anniversary is fully completed? When is the person ten years old in relation to his tenth birthday? Let us say a child's tenth birthday is on July 1. When is he ten years old?

Mr. Garson: At midnight of that day.

Mr. Knowles: Midnight of the 1st of July?

Mr. Garson: Yes.

Mr. Knowles: Midnight between July 1 and July 2?

Mr. Garson: Yes.

Section agreed to.

Section 4 agreed to.

On section 5—*Punishment only after conviction.*

Mr. Fulton: I have a question which I think is a relatively simple one to answer. I am not raising it as a point of substance, although I would ask the minister just to give it something more than cursory consideration. I refer to subsection 2 which, according to the explanatory note, is new and which provides as follows:

Subject to this act or any other act of the parliament of Canada, no person shall be convicted in Canada for an offence committed outside of Canada.

It may be—and I should be glad to know whether this is the case—that this merely puts into statutory form what is already followed in practice or perhaps is a rule of law. But if it is new legislation, I just wish the minister would tell us what was the reason for it. I think it could be urged, on superficial grounds at any rate, that there are cases in which it would be desirable to convict a person in Canada for an offence committed outside of Canada.

Mr. Garson: This provision puts into statutory form the practice which has always

been followed; and in that sense, while the wording is new and the fact that there is a statutory provision is new, there is no change in the practice. If my hon. friend reads the provision he will see that it says:

Subject to this act or any other act of the parliament of Canada . . .

So if in any other given act it was desired to exercise our extraterritorial jurisdiction in relation to a certain offence, we could do so under that other act and it would not affect the operation of this section.

Mr. Fulton: Perhaps this will dispose of it. Would it be the case that a person who contracts a bigamous marriage outside of Canada could on his return be convicted of bigamy? Let us say that he has married a girl in Canada, has gone away to some other country and contracted another marriage there and has now come back to Canada. Could we convict him of bigamy under the Criminal Code?

Mr. Garson: In a case of that sort my hon. friend would have to look at the provisions relating to bigamy in this act or any other act of the parliament of Canada. If the provisions relating to bigamy cover an extraterritorial crime then he could be convicted, but not otherwise. The nub of the matter is found in these words:

Subject to this act or any other act of the parliament of Canada, no person shall be convicted—

Mr. Brooks: What would be the situation with reference to a crime committed on a Canadian ship on the high seas?

Mr. Garson: Speaking offhand, I would think the Criminal Code of Canada would apply to offences committed upon a ship of Canadian registry on the high seas, because a ship of Canadian registry is a part of the Canadian realm.

Mr. Winch: On that very point I should like to get a clearer explanation as to what is meant by an offence on a ship of Canadian registry and what is meant by "on the high seas." I draw to the attention of the minister the case of Mr. Harold E. Graham, who was on board a tug operating outside of the harbour of Vancouver. The tug was tied up at the dock in Bellingham, Washington. As it was to be there for several hours the crew did a little imbibing, and while the tug was actually tied up at the dock in Bellingham two of the seamen got into a brawl. One man was knocked out. He was checked by the officers of the tug and there was no question that he had had a beating.

Several hours later the tug sailed from the port of Bellingham. One hour later the

injured seaman was checked and the chief engineer reported to the captain of the tug that he thought the man was dead. The tug proceeded on its way until it reached Vancouver. A coroner's inquest was held at Vancouver, and according to the report of the doctor who did the autopsy the man had actually died before the tug had left the port of Bellingham. The man who committed the assault was charged in Canada and is now serving a term in the British Columbia penitentiary.

I should like to have that situation clarified. The man was on a tug which was tied up in a United States port. The brawl which resulted in the death of the man occurred in the United States. How does what the minister has said with respect to the interpretation of subsection 2 of section 5 apply to the situation I have described? The brawl and the homicide occurred in the United States but the man was tried, convicted and jailed in Canada.

Mr. Garson: It would be very difficult if not impossible for one to express an opinion—and that is really what my hon. friend is asking me to do—upon the facts of the case he has just recited without checking the facts very carefully as they were established in the legal proceedings which subsequently took place in Canada. If my hon. friend is right in the latter part of his statement, when I understood him to say that the man was killed not on the Canadian tug but on United States soil—

Mr. Winch: On the tug but at the dock.

Mr. Garson: Right; but if he is on the tug it is one thing and if he is on United States soil it is another. In any event, with respect, I do not think this matter has any particular relevance to section 5, subsection 2, because all it says is that subject to the provisions of this act or any other act of parliament, like the Canada Shipping Act, which may create extraterritorial jurisdiction over offences committed outside of Canada, no person shall be convicted in Canada for an offence committed outside of Canada. But I am sure my hon. friend will find, if he examines the proceedings in Vancouver with care, that they were taken under some act of this parliament.

For another reason, my hon. friend will see that the case he cites has no relevancy to this particular section. As he can see from the opposite page, this is a new provision, and as the bill has not yet been passed this new clause has not gone into effect and it is not yet law.

Mr. Winch: I know that, but I had reference to the minister's statement that what was being put into the statute now was what had been the custom in the past.

Mr. Garson: What had been the custom, subject to the various acts. In other words in the past it has not been the custom to charge people with such offences committed outside of Canada; and the reason an offence was charged in the case to which my hon. friend has referred is presumably because it was covered by some existing statute law which he has not cited to us.

Section agreed to.

Section 6 agreed to.

On section 7—*Application of criminal law of England.*

Mr. Diefenbaker: Section 7, subsection 1, reads as follows:

The criminal law of England that was in force in a province immediately before the coming into force of this act continues in force in the province except as altered, varied, modified—

And so on. What has the minister to say with reference to this section in so far as the law of mischief in the matter of peeping Toms is concerned? Will the law against peeping Toms be in effect? The minister will remember that there was a case which came before the Supreme Court of Canada. In view of the decision in that case what change, if any, will be effected as a result of the enactment of this new section?

Mr. Garson: The law with regard to peeping Toms is covered in new section 162 of the present bill. When that section goes into effect, this offence will be defined by it and not by the law of England.

Section 7 reads:

7. (1) The criminal law of England that was in force in a province immediately before the coming into force of this act continues in force in the province except as altered, varied, modified or affected by this act or any other act of the parliament of Canada.

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this act or any other act of the parliament of Canada, except in so far as they are altered by or are inconsistent with this act or any other act of the parliament of Canada.

In other words, as I indicated on the second reading of the bill, so far as procedure law is concerned, and to use the language of the bill, any circumstances which constitute "a justification or excuse", the English law in relation to these is retained, but not as to the definition of criminal offences. By means of this present consolidation we are providing that after it has been passed there will be no offences for which a Canadian can be tried except such as have been defined by this legislation, or other acts of this parliament.

The Chairman: It being five o'clock, the house will proceed with the consideration of public bills.

BRITISH NORTH AMERICA ACT

AMENDMENT TO INCREASE QUORUM OF HOUSE OF COMMONS

The house resumed, from Tuesday, January 12, consideration of the motion of Mr. Knowles for the second reading of Bill No. 81, to amend the British North America Acts 1867 to 1952, with respect to the quorum of the House of Commons.

Mr. Knowles: Mr. Speaker—

Hon. W. E. Harris (Minister of Citizenship and Immigration): I take it, Mr. Speaker, that the hon. member is about to speak, and that would close the debate on second reading of this bill. I was hoping that earlier in the course of his remarks on the bill he might have indicated a desire to deal with it in the same manner as we did on the former occasion, namely that we should have the matter considered by the committee on rules. This committee, having had two or three years of rather extended consideration of some factors in connection with our procedure, I should think would be prepared to deal seriously and at some length with the matters that come before it. For that reason I would hope we would not make a decision on this particular point in the house now, but rather deal with it as part of the larger picture and as part of the effort to obtain a more expeditious procedure in the house.

I repeat my request, therefore, that the hon. member give consideration to following that course. If he chooses not to do so I feel that I should dispose of it in the same manner as I did on the former occasion. I leave it to him to decide at the moment which he would prefer to do.

Mr. Knowles: On a point of privilege, if I may be considered as making an interjection in the remarks of the minister, I would point out that it is not within my power to move that the subject matter of the bill be referred to the committee on procedure; that is something the minister could do. The minister said he was hoping I would express the same wish concerning the course to be followed in connection with this bill that I expressed last year. If my memory serves me correctly it was the minister who expressed the view that the subject matter

should be referred to the committee on procedure, and I went along with the idea. I can only say, Mr. Speaker, that if the same proposition is made again by the minister I would give it the consideration it merits.

Mr. Harris: On the point of order, perhaps without actually so moving and in order not to dispose of the bill—I would prefer not to do that for the hon. member's sake—would he consider merely allowing the motion to stand on the understanding that the matter would be discussed with the rules committee reasonably soon?

Mr. Knowles: If you would overlook the impropriety of this back and forth discussion, Mr. Speaker, I may say that I welcome the suggestion the minister is now making. I feel it is a better one than was made last year. So far as I am concerned, if he wishes to move the adjournment of the debate or if he wishes to let any other member speak and then move the adjournment of the debate, I would be prepared to follow that course and let the motion for second reading of the bill stand on the order paper pending a discussion of the question of the quorum in the committee on rules, in view of the undertaking the minister has given that we will study the question in that committee.

Mr. Deputy Speaker: I understand that the bill cannot stand. The debate will either have to proceed or be adjourned.

Mr. Harris: I move the adjournment of the debate, Mr. Speaker.

On motion of Mr. Harris the debate was adjourned.

Mr. Deputy Speaker: The business under private and public bills having been disposed of, the house will resume the business which was under consideration at five o'clock.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

On section 7—*Application of criminal law of England.*

The Chairman: We were considering section 7. Had the explanation been completed on section 7?

Section agreed to.

On section 8—*Criminal offences to be under law of Canada.*

Mr. Diefenbaker: I should like an explanation from the minister concerning the reason for this new section.

Mr. Garson: This is a continuation of the idea that was considered in part by the preceding section, concerning which the hon. member asked some questions. This is the section which states that from now on all of the offences for which a Canadian can be tried must be those which are covered by this bill. From now on it will not be possible, in Canada, to charge a Canadian with a common law offence. If the crime for which he is to be charged cannot be found within the limits of the Canadian Criminal Code or another act of parliament, then he cannot be charged at all.

It might be thought, perhaps, that in adopting the new rule we were leaving some gap that was formerly covered by common law offences. Before we put this section into the bill we went carefully over the records and checked with the provincial law enforcement officers to get a full list of all the common law crimes that had been charged in Canada since the code was first passed in 1892. All of those common law crimes which have been charged in the interval have now been incorporated in the present Criminal Code bill. The only possible gap there might now be would be if there were some form of common law crime which we have not had occasion to charge in past Canadian history. We think if a case of that kind were to come up—and it seems most unlikely—it might be better at that time to bring in an amendment to the Criminal Code making provision for such an offence. For we believe if we are to have a Criminal Code in Canada it is desirable that we should be in a position to say to all Canadians, "Here is an exhaustive list of Canadian crimes. Unless the offence can be found in this code it cannot be charged."

Mr. Diefenbaker: That is a very commendable purpose, but I find it difficult to understand section 7 (1) when read in conjunction with section 8. Section 7 (1) is in these words:

> The criminal law of England that was in force in a province immediately before the coming into force of this act continues in force in the province except as altered, varied, modified or affected by this act or any other act of the parliament of Canada.

And section 8 is in these words:

> Notwithstanding anything in this act or any other act no person shall be convicted
> (a) of an offence at common law,
> (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, or
> (c) of an offence under an act or ordinance in force in any province—

And so on. How does the minister make those two sections coincide with each other?

Mr. Garson: I thought I had already done so.

Mr. Diefenbaker: No, I did not follow the minister in that.

Mr. Garson: Then I shall try to repeat, perhaps more briefly, what I said before. Section 7 says that the criminal law of England is in force with regard to all matters of procedure and evidence, and those circumstances which constitute a justification or excuse. But so far as the definition of crimes is concerned, section 8 says that from and after the passage of this bill the law of England shall not be in effect in Canada as regards the definition of crimes. It is in effect for procedural matters, but not for the definition of crimes.

Mr. Diefenbaker: I can understand the purpose, but I am wondering whether the wording covers that purpose. Section 7 (1) does not say anything about procedure. It simply says that the criminal law of England that was in force in a province immediately before the coming into force of this act continues in force in the province except as altered, and so on.

Mr. Garson: Except as altered, modified or affected by this act or any other act of the parliament of Canada.

Mr. Diefenbaker: Surely that is a most roundabout wording to achieve a narrow result. I can understand the purpose of section 7 (1), and that section 7 (2) is a matter of procedure. But when we read section 7 (1) in conjunction with section 8, then it seems to go a long way around to express a very small thing, and with the use of a lot of unnecessary words. Who drafted this new section? Was it the law officers, or was it drafted by the commission?

Mr. Garson: The whole bill, including the section to which my hon. friend has referred, was first considered by the royal commission, whose names I have already placed on the record.

Mr. Diefenbaker: I know that.

Mr. Garson: These were men of great eminence in the field, as I am sure my hon. friend would be the first to admit. Then after they had drafted the bill it was gone over by the parliamentary draftsmen in the Department of Justice. Then the bill, including these sections, went to the other place, and was considered there at great length by the banking and commerce committee of the other place, and particularly by a subcommittee of that committee consisting of Senators Salter Hayden, J. W. deB. Farris and A. W. Roebuck.

Mr. Diefenbaker: That is immaterial; they are all good men.

Mr. Fulton: It is conceded that they were good counsel. The minister need not go into that.

Mr. Garson: After it was considered by this subcommittee composed of eminent counsel, as my hon. friends agree, it then came before the House of Commons special committee and was considered at great length by it. We can only take the position at the moment that the wording which my hon. friend criticizes has received the approval of these bodies to which I have referred. It would not be in the form in which it appears here if it had not.

Section agreed to.

Sections 9 to 15 inclusive agreed to.

On section 16—*Insanity.*

Mr. Diefenbaker: This is one of the sections which deserve consideration, and cannot be carried quickly. It covers the whole defence of insanity, and is one of the most important sections in the Criminal Code.

Mr. Fulton: Before the minister deals with any particular point of view, would he tell us when it is anticipated that the royal commission to which this subject will be referred will be set up. Has he in mind any of the persons who will be appointed to it?

Mr. Garson: Yes. As the hon. member for Prince Albert has said, this is an important section in that it sets out the defence of insanity. As the hon. member for Kamloops has indicated, it is a matter which we had proposed to remit to a royal commission for consideration. It is our wish to set up that commission at the earliest possible moment.

I may say that already I have been discussing the matter with a man whose eminence and abilities in our opinion entitle him to consideration as a possible chairman of the royal commission, and I have discussed with him the possibility of finding time from his other preoccupations to act for us in this capacity. I have received a tentatively favourable answer, but he has not been able to assure me formally that he can act until he takes up with his colleagues the matter of whether he can get the necessary time off. However, as soon as he, or another person of equal ability, agrees, we can proceed to collect the

other personnel. We do wish to set up the commission as soon as we possibly can.

Mr. Brooks: Is it possible that the commission might recommend amendments to this section? Perhaps it would be better if it were allowed to stand.

Mr. Garson: It is possible; but on second reading of the bill I indicated that when the present bill comes into effect it will abolish the existing code, and we cannot leave a gap in the law on this subject. Therefore I suggested to hon. members that these subject matters which are being remitted, in the one case to the royal commission and in three others to a special parliamentary joint committee, might be passed in their present form in order that we should have that part of the law covered; and then when we get the reports back from the royal commission and the parliamentary committee we would proceed to bring in amendments to carry into effect their recommendations.

Mr. Diefenbaker: In connection with the royal commission, can the minister take the committee into his confidence a little and say how many members are going to be on this commission, and whether it is intended to have on the commission at least as many who have been outstanding counsel for the defence as those who have been crown counsel; for this is the type of section that deserves the consideration of a commission on which neither crown nor defence shall be overweighted.

This is a section that more and more is affording a defence to those charged particularly with capital offences. The reason for that is simply the fact, as someone said the other day—and I am not referring to another debate, Mr. Chairman—that if juries can find reasonable grounds for believing that insanity exists to such an extent as to have dethroned the reason of the person charged with the offence, they bring in verdicts of manslaughter even when manslaughter ought not to be the verdict, but in point of fact the verdict should be not guilty by reason of insanity. Certainly the law of insanity as applied today does not meet with the advances that have been made in recent years in the matter of mental diseases.

This is a section that will deserve the serious attention not only of the committee of parliament and of the royal commission that is to be set up, but the utmost consideration on the part of penologists and those who are specialists in mental diseases, so as to bring the criminal law up to date. As the minister knows, this is one of the major means of exculpation that exist today in the criminal law.

Mr. Garson: I am in complete agreement with my hon. friend as to the importance of this subject. We are hopeful that we can get men—and we think on this commission we should have at least one lady—of real eminence in their fields. We think, although this is not a final decision by any means, that the number of the royal commission might properly be seven. We have no idea of making it up entirely of lawyers—either for the prosecution or for the defence—because we think that there should be at least one psychiatrist upon it, in view of the fact that the subject of psychiatry is involved.

In our search for proper candidates for such a commission we not only have to find men and women who are properly equipped, but in these busy days it is sometimes very difficult to find those who are properly qualified and who also have the necessary time which they can devote to work of this sort. Sometimes a first-rate potential appointee simply cannot get the necessary leisure from his other duties in order to discharge a task of this sort. We want to have legal representation on it; we want to have the fair sex represented; we want to have psychiatrists represented. But we do not think it would be appropriate to have the commission made up of psychiatrists and lawyers. And seven is the number we have in mind.

Mr. Diefenbaker: I have one other question. Without identifying the person to whom the chairmanship has been tentatively offered, would it be an improper question to ask whether or not that person is a member of the judiciary?

Mr. Garson: I mean no offence to my hon. friend, but it would be an improper question, because it might indicate some time later on that the candidate whom we finally selected was not the first choice.

Mr. Fulton: Would it be appropriate to suggest that this section stand? I do not want to press that, but I want to make certain other observations with regard to insanity, and I should like to ask some questions as to the scope of the intended reference to the royal commission and so on. I do not wish to delay the committee. While I do not want to go into technicalities and the law of insanity, because it is going to be referred to the royal commission, there are those aspects as to the scope of the

reference, whether insanity with its relationship to the defence of provocation is also going to be referred, and so on. So it might be better to have this section stand.

Mr. Garson: I have no objection. This is in accord with the spirit in which we are approaching the whole thing. I am sure my hon. friend is not urging that we should stand it over permanently.

Mr. Fulton: No, just for later discussion.

The Chairman: Section 16 stands.

On section 17—*Compulsion by threats.*

Mr. Nesbitt: There are a number of offences listed in this section which are separate. In spite of that, compulsion is no excuse for an offence. I should like to ask this question. Would there be some merit in separating the words "immediate death or grievous bodily harm"? A person may believe that the person compelling him may carry out the crime of murder, let us say, at the point of a gun, and that may well be an excuse for committing this offence; whereas the threat of grievous bodily harm could very well not be accepted. Can the minister tell us whether any consideration has been given to that? This puts the person in a position where he might commit the crime of arson, of robbery or even of murder merely in order to save his own life? Has that been considered?

Mr. Garson: Perhaps the question of my hon. friend might be put in this form. This new section 17, apart from one or two small consequential changes, is in substance identical with old section 20, which apparently through the years has stood the test of time. We thought if it had been challenged, or any difficulty had been found with it, that it would likely have had at least decided cases that would have resulted in our changing the wording somewhat. But we followed what I think is the right practice in that the sections of the old code that have been found to be workable have been retained, and it is only those in connection with which difficulty has been experienced that we have changed. We have not changed for the sake of changing.

Section agreed to.

On section 18—*Compulsion of wife.*

Mr. Winch: Should the woman not have some protection?

Mr. Garson: In section 18? You mean both ways; should the man not have the same protection?

Mr. Winch: Yes.

Mr. Garson: With ladies in the committee I feel rather shy about expressing this thought, that I think this is a reflection of the old theory that a man can compel his wife but not vice versa.

Section agreed to.

Sections 19 to 31 inclusive agreed to.

On section 32—*Use of force to suppress riot.*

Mr. Knowles: Perhaps the minister will agree to let sections 32 and 33 stand for more complete discussion.

Mr. Garson: Yes.

The Chairman: Sections 32 and 33 stand.

Sections 34 to 45 inclusive agreed to.

On section 46—*Treason.*

Mr. Diefenbaker: I submit this should stand.

Mr. Garson: I was about to suggest that sections 46, 47 and 48, being a group related one to the other, should stand if that is agreeable.

The Chairman: Agreed?

Some hon. Members: Agreed.

Section 49 agreed to.

On section 50—*Assisting alien enemy to leave Canada.*

Mr. Knowles: I think this should stand.

Mr. Garson: Yes.

Section 51 agreed to.

On section 52—*Sabotage.*

Mr. Knowles: I think this also should stand.

Mr. Garson: Yes.

Sections 53 to 56 inclusive agreed to.

On section 57—*Offences in relation to members of R.C.M. Police.*

Mr. Knowles: Section 57 stand.

Sections 58 and 59 agreed to.

Mr. Knowles: Sections 60, 61 and 62 stand.

Section 63 agreed to.

Mr. Knowles: Sections 64, 65, 66, 67 and 68 I think should stand and be considered in relation to sections 32 and 33 which were set aside earlier.

The Chairman: Sections 64 to 68 inclusive stand.

Mr. Knowles: I am sorry; I should have included section 69.

The Chairman: Section 69 stand.

Sections 70 to 76 inclusive agreed to.

On section 77—*Duty of care re explosive.*

Mr. Diefenbaker: On section 77, Mr. Chairman, I would like to ask the minister why the new section was not left to common law rule. Before the establishment of this section was this not the rule of law under the Criminal Code, and why was it necessary to make a new section?

Mr. Garson: When one started out to make the Canadian Criminal Code sufficiently exhaustive to cover all Canadian crimes it was necessary in connection with those crimes relating to dangerous substances to insert section 77, as having a necessary bearing upon the definition of crimes relating to such substances.

Section agreed to.

Sections 78 to 80 inclusive agreed to.

On section 81—*Engaging in prize fight.*

Mr. Diefenbaker: Mr. Chairman, section 81 reads as follows:

> (1) Every one who
>
> (a) engages as a principal in a prize fight,
>
> (b) advises, encourages or promotes a prize fight, or
>
> (c) is present at a prize fight as an aid, second, surgeon, umpire, backer, or reporter, is guilty of an offence . . .

"Prize fight" is defined as:

> . . . an encounter or fight with fists or hands between two persons who have met for that purpose by previous arrangement . . .

What is the difference between a prize fight and a boxing contest? I see no reason why this section should be continued at all. At the time it was actually made law it was a serious offence to hold prize fights and in 1913 or 1914, I believe it was, I remember the occasion in Calgary when Arthur Pelky was indicted for manslaughter arising out of a prize fight held with the then champion of the world, Luther McCarthy. As far as the jury were concerned they said the law was there, but they brought in an acquittal. I would ask the minister how many times this section has been used since 1914, and why it is necessary to incorporate a section in the law which to all intents and purposes has no application today.

Mr. Garson: Mr. Chairman, I think if my hon. friend had just kept on reading the section—

Mr. Diefenbaker: I know the section.

Mr. Garson: —beyond the point where he left off he would have found the answer to his question. Perhaps I had better read the whole of paragraph 2 of section 81, which reads as follows:

> In this section, "prize fight"—

—the participation in which is the offence specified in the first subsection of this section—

> —means an encounter or fight with fists or hands between two persons who have met for that purpose by previous arrangement made by or for them, but a boxing contest between amateur sportsmen,—

Mr. Diefenbaker: Yes, between amateur sportsmen.

Mr. Garson: Yes, but just let me finish.

> —but a boxing contest between amateur sportsmen, where the contestants wear boxing gloves of not less than five ounces each in weight—

Now here it is here.

> —or any boxing contest held with the permission or under the authority of an athletic board or commission or similar body established by or under the authority of the legislature of a province for the control of sport within the province, shall be deemed not to be a prize fight.

In other words, in the course of consolidating the code we have dropped the present sections 104, 107, 108, 627, and 628 because they are no longer of any use, and because most boxing contests are now staged under the authority of a provincial boxing commission. The only residual offence to which this section relates is a professional prize fight staged outside the authority and control of a provincial commission. I am sure my hon. friend would agree it is desirable, if we are going to control boxing, that we be able to prohibit all unauthorized contests.

Mr. Diefenbaker: I would like to ask the minister how many provinces have no athletic boards today. Are there not only three provinces with this type of board or commission?

Mr. Garson: Mr. Chairman, I cannot answer that question, but if my hon. friend suggests three, my view would be that there were more. There must be commissions of that sort in British Columbia, Alberta, I think Saskatchewan, certainly in Manitoba and Ontario, and they have prize fights in Quebec.

Mr. Knowles: Prize fights?

Mr. Garson: I beg your pardon; boxing contests within the meaning of the act.

Mr. Knowles: You will be in a fight if you say that.

Mr. MacInnis: I do not think the minister has made that section very clear, to me at any rate. It would appear a prize fight means an encounter where boxing gloves are not used,

and in the latter part of the section it states that in a boxing contest gloves must be used. I do not know very much about prize fights, but I understand that in all prize fights today boxing gloves are used. I do not see the difference, since all boxing contests today are fought for a prize. There is a cash prize for one person, or it is divided between the two. Under this section could a prize fight with gloves between two professional boxers be allowed if authorized by these boxing commissions?

Mr. Garson: Yes, I think so. It would mean that—

. . . any boxing contest held with the permission or under the authority of an athletic board or commission or similar body established by or under the authority of the legislature of a province for the control of sport within the province, shall be deemed not to be a prize fight.

In other words, if amateur sportsmen desire to get together at the Y.M.C.A., at an athletic club, a boys' camp or something of that sort, not for money but as amateurs and have a boxing match, and wear gloves of at least five ounces in weight, they are not covered by the section. Nor does the section cover contests which are held under the auspices of a provincial commission set up for that purpose. However, other contests are covered.

With his usual acumen my hon. friend has put his finger on the point. If money is involved, if they are not amateurs, and if they do not have the authority of the provincial commission, then they have committed an offence under the section. The purpose of the section, having regard to the point which was raised by my hon. friend the member for Prince Albert, is to cover all efforts to stage a professional prize fight which has not been authorized by a provincial boxing commission.

Section agreed to.

Sections 82 and 83 agreed to.

On section 84—*Carrying concealed weapon.*

Mr. Fulton: I have no specific amendment to suggest or anything of that nature, but I want to ask the minister whether he is able to say what consideration was given, as a matter of general policy, to making it more difficult to obtain pistols or revolvers. While I observe that section 84 continues section 117 and therefore is not any new law, it seems to me to make it easier or to lay down a certain immunity for a person who carries a pistol or revolver, whatever may be the intent with which he is carrying it. I should have thought that it might be somewhat more difficult for a person who has a nefarious intention to carry out that intention with a shotgun than with a pistol or a revolver; yet he is prohibited from carrying a shotgun, even a sawed-off shotgun. In other words if he can conceal his shotgun he might carry out his intention with immunity.

Mr. Garson: No. If my hon. friend will look at the next clause, he will see that that matter is covered.

Mr. Fulton: No.

Mr. Garson: It is covered in section 85.

Mr. Fulton: Section 85 simply makes it an offence to carry a sawed-off shotgun with a barrel less than 20 inches in length.

Mr. Garson: It is only a sawed-off shotgun that could be tucked inside one's coat.

Mr. Fulton: That is the point exactly. The other type of weapon cannot be concealed. A pistol or a revolver is easily concealed. Therefore I am wondering why section 84 was not changed. A pistol or revolver can be concealed very easily. It seems to me that the person who carries a pistol or a revolver should be under some onus to explain for what purpose he is carrying it. He is not guilty of an offence under section 84. Perhaps, to make the matter clearer, I should put it in this way. By section 84 he is absolved from committing an offence when he carries a pistol or a revolver.

Mr. Garson: No. Section 84 provides as follows:

Every one who carries concealed an offensive weapon other than a pistol or revolver is guilty of an offence punishable on summary conviction.

Mr. Fulton: Yes.

Mr. Garson: But in another part of this little code on firearms my hon. friend will see that, in order to carry a pistol or a revolver, he must get a permit from the police to do so.

Mr. Fulton: I know that. But in order to carry a shotgun you have to have a licence.

Mr. Garson: No; not a shotgun.

Mr. Fulton: Not under this section, but under most provincial statutes you do.

Mr. Garson: Oh.

Mr. Fulton: The point I am raising is the general point as to whether it would not be desirable to make it more difficult to obtain pistols and revolvers. I know there are some authorized revolver clubs. I am not suggesting that their activities should be curtailed in any way. I am really asking what consideration was given to making it more difficult to obtain pistols and revolvers in Canada.

Mr. Garson: As a member of the last parliament my hon. friend will recall that in the year 1951, if I remember aright, I brought into the house all these sections dealing with firearms that we now see in this new Bill 7 pretty much unchanged. At that time this code of law dealing with the possession and the registration of firearms had been passed upon by the mounted police in consultation with the various police forces in Canada. I think it was in view of this recent consideration of the whole subject matter that the royal commission and all the subsequent bodies who have considered this Bill No. 7 thought the law in this respect was quite up to date and hence left it pretty much in the form in which it was brought into the house in 1951.

Mr. Winch: I should like to ask a question with regard to section 84. Having regard to the reading of the section, what is the position of a man out in the woods who has a hunting knife underneath his mackinaw? Is that against the law here? I know that is the regular thing out in the woods. It might also be interesting to know what is the position of the policeman, because he has a baton underneath his coat and that is described as an offensive weapon, I know.

Mr. Garson: If my hon. friend will look at page 4 in the interpretation section at the beginning of the bill, he will see that "offensive weapon" is defined. It will be found at the bottom of page 4, paragraph 29. The definition reads as follows:

"offensive weapon" or "weapon" means
(a) anything that is designed to be used as a weapon and
(b) anything that a person uses or intends to use as a weapon, whether or not it is designed to be used as a weapon, and, without restricting the generality of the foregoing, includes a firearm, air-gun or air-pistol and ammunition for a firearm, air-gun or air-pistol;

It may be the case that, under that definition, the possession of the knife would be regarded as an offensive weapon, although I wonder. Would one consider that the knife which the person my hon. friend has in mind, out in a camp and which he has in his pack for perfectly peaceful purposes, was designed to be used as a weapon? Would he say that knife was designed to be used as a weapon? I suppose that argument could be made, but I cannot conceive of any prosecution ever being launched against such an individual unless it was under some set of circumstances in which it appeared that he intended to use it as such. I do not think there is much likelihood, for example, that if a chap out hunting has a hunting knife along with him to skin a moose he has killed, the mounted police are going to come along, pick him up and charge him with carrying an offensive weapon. It depends on the circumstances of the individual case.

Section agreed to.

Sections 85 and 86 agreed to.

On section 87—*While attending public meeting.*

Mr. Diefenbaker: I am interested in knowing the reason for the need for protection of those who are at a public meeting. Section 87 reads as follows:

Notwithstanding anything in this act, every one who has an offensive weapon in his possession while he is attending or is on his way to attend a public meeting is guilty of an offence punishable on summary conviction.

This is a new section. I was wondering whether the law previously lacked any provision designed to protect those who are at public meetings, or the reason for this new section.

Mr. Garson: Well—

Mr. Knowles: Does that include rotten tomatoes?

Mr. Garson: My answer to that would be an unhesitating no. A provision to this effect was in the law prior to 1951. It was then removed, and it has been thought desirable to restore it. As to its purpose, I think it is obvious from a perusal of the section. It is to guard against people carrying offensive weapons to public meetings.

Mr. Diefenbaker: Possibly the minister will explain what was the justification for removal in 1951 and the need for restoration in 1954. Has anything happened in the interval? Have there been any incidents at public meetings for which there was no applicable punishment for the carrying of such instruments?

Mr. Garson: The note I have on this clause is that it was felt that persons should be prohibited from attending public meetings while armed, whether or not they had permits to carry revolvers. A man having a permit to carry a revolver or pistol could, in the absence of a clause like this, rely upon his permit to carry it to a public meeting. Under section 619 justices had power to seize offensive weapons from persons attending public meetings. Sections 620 and 621 provided for the restoration of such weapons after seizure. It was felt that these weapons should not be restored but should be forfeited.

As the result of the inclusion of this section, however, sections 619, 620 and 621 have been dropped. In other words, instead of having the provision that was in the law previously, namely that a justice of the peace

could go and take these weapons away from a man, it was thought that there was more common sense in saying that he could not take them there in the first place, and that if he did it would be an offence.

Mr. Diefenbaker: Is it to protect political speakers?

Mr. Garson: The hon. member for Prince Albert raises an important point. He asks whether it is designed to protect political speakers. If that were so I would say it would be a very laudable objective.

Mr. Diefenbaker: Hear, hear.

Mr. Pouliot: I regret very much that this clause is new. It should have been in force at the time my father was in politics, when Sir Charles Tupper was prime minister of Canada and the Intercolonial Railway kept men at the Riviere du Loup shops to use crowbars and other iron bars to disturb Liberal meetings. That was the way the Tories acted at that time, and this provision should have been in force then.

Mr. Knowles: Since this question has been raised, if one were to go to a Liberal meeting armed with a copy of the Liberal platform for 1919 for the purpose of throwing it at the speaker would that be considered an offensive weapon?

Mr. Garson: If my hon. friend will examine the definition of "offensive weapon" on page 4 of the bill he will see that it does not include what he thinks is an offensive weapon.

Mr. Knowles: In other words it was not intended to use the 1919 Liberal platform.

Mr. Campbell: I should like to ask the minister how strict the regulations are with respect to the issuing of permits. It seems to me that some people are able to get hold of revolvers too easily. What are the regulations? Is it easy for me or anybody else to go and get a revolver?

Mr. Garson: If my hon. friend, having the bill before him, will look at page 31 he will see in sections 93, 94 and 95, which take up a page and a half, the procedure that has to be followed to secure a permit. I think by the time he has read those sections he will come to the conclusion that it is not an easy matter.

Section agreed to.

On section 88—*Delivering firearms to minors.*

Mr. Winch: I am not quite certain that this is the right place, but I think it is the only place I can raise a matter upon which

I should like the minister to comment. I raise it under section 88 because in answer to a previous question he was in doubt but he thought perhaps a knife would come under the definition of "offensive weapon" on page 4.

Section 88 deals with the selling, giving, lending or transferring of certain types of offensive weapons to children. Has any consideration been given under this section or otherwise to dealing on the same basis with the selling, giving, transferring and lending to children of these vicious things called spring knives or switch knives?

In recent years a serious problem has developed across Canada—I know it has in the west—in that some young punks, whether because of the type of literature and comic books they read or the type of training they receive, think they are big shots and gangsters and carry in their pockets not only on the streets but to school functions these very vicious spring knives. I know there have been incidents in Vancouver where at a school dance, school reception or during the recess period some young boy did not like the attitude of somebody else and whipped out one of these definitely dangerous and offensive weapons.

From my own personal knowledge I know that young boys have been severely slashed and required a great many stitches and other medical attention to close their wounds. I understand that at the moment there is no provision whereby the authorities can deal with such situations and stop these young people from having these dangerous weapons in their possession. I should like to know whether or not the minister or his department have had this matter brought to their attention and if they feel, although it may be a rather difficult problem, that there is any way under this or any other section by which this situation can be dealt with.

Mr. Garson: Mr. Chairman—

Mr. Fulton: Six o'clock.

Mr. Garson: Perhaps I might attempt to answer this question. I would refer my hon. friend to the definition of "offensive weapon" which means "anything that is designed to be used as a weapon". I think he would agree that a spring knife is not for manicuring. Without any question it is an offensive weapon. If he will look at page 28 he will see that section 82 reads this way:

> Every one who carries or has in his custody or possession an offensive weapon for a purpose dangerous to the public peace or for the purpose of committing an offence is guilty of an indictable offence and is liable to imprisonment for five years.

He will also see that section 84 reads this way:

Every one who carries concealed an offensive weapon other than a pistol or revolver is guilty of an offence punishable on summary conviction.

Mr. Winch: What about section 88? It is not mentioned as an offensive weapon in section 88. That is my point. It just mentions firearms.

Mr. Garson: That is quite right, but it does cover the case to which I understood my hon. friend was referring, where these young chaps come along, flash these knives at a dance or a gathering of that sort and carve up their associates with them.

They would clearly come under section 84 and possibly section 82, because the weapons which they had would be offensive weapons. Under section 84 they would be concealed weapons, and if used for a purpose dangerous to the public peace they would come under section 82.

Mr. Winch: It would not come under section 88, on the basis of sale?

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

The Chairman: When the committee rose at six o'clock section 87 had been carried. We will now proceed with the consideration of section 88.

On section 88—*Delivering firearms to minors.*

Mr. Winch: Mr. Chairman, continuing the discussion on section 88 following the intermission, I have given a great deal of thought to the statement of the minister as to how other sections of the bill cover varying aspects of the problem where a person may have in his possession a knife or, in particular, a spring knife. I am certain the minister is correct in his interpretation of the other sections, but I should like again to draw to the minister's attention the fact that the point I have in mind is not covered by section 88, because it will be seen that it is in these words:

Every one who sells, barters, gives, lends, transfers or delivers a firearm, air gun or air pistol or ammunition therefor to a person under—

—a certain age. This section does not use the expression "offensive weapon" but merely has reference to a certain type of firearm, air gun or air pistol. I am strongly of the opinion, in view of what many of us have read and know in connection with the use of the type of knife I have described, that it is an offensive weapon. I feel if it is wrong to have other types of offensive weapons sold to those under a certain age, the minister might consider some slight alteration in the wording of section 88 so as to introduce into the Criminal Code an additional deterrent to the use and sale of these spring knives.

Has the minister given any more thought to this matter, and does he not consider this would be the logical place to introduce words to take care of the situation I have described? While it might not be a major deterrent, I believe he recognizes the fact that it is a help.

Mr. Garson: Upon reflection, and after listening to what the hon. member has just said, I am of the view there is considerable merit in the point he makes. I am wondering however whether it would necessarily be limited in its application to persons under the age of 14 years. I am wondering if the hon. member would leave the matter with me, with a view to including the substance of what he has in mind either in section 88 or in some other section that might be even more appropriate.

The Chairman: Shall section 88 stand?

Mr. Nesbitt: I wonder if I might ask a question—

The Chairman: If the section is to stand, should not the question be asked when we are dealing with it later.

Mr. Garson: If the hon. member wishes to make a suggestion I would rather have it now so we could consider them at the same time.

Mr. Nesbitt: This section states clearly that everyone who sells, barters, gives, lends, and so on, to a person under the age of 14 years, who does not have a valid permit, is guilty of an offence. Has the minister considered whether the question of motive or intent of the person selling could be used as a defence? In other words, if we refer to section 150, and particularly to subsection 5 which deals with comics, we see that it says:

For the purposes of this section the motives of an accused are irrelevant.

Then subsection 6 of section 150 states that the fact that an accused was not aware of the objectionable material in the crime comics is not a defence.

Would the minister consider in this case that if an accused sold an article to a minor, the question as to whether or not he thought

the purchaser was under age should also be considered, or allowed as a defence? The burden of proof in that instance would not be on the accused, to show that the purchaser was not under 14 years.

Mr. Garson: I do not think there is any analogy between sections 88 and 150. Section 150 deals with crime comics and obscene literature, and there was a special reason connected with the contents of that section which made it necessary to include the subsection to which the hon. member has referred. But so far as section 88 is concerned I do not think there is any considerable element of *mens rea*. It says that everyone who sells, barters, gives or lends to a person under 14 years is guilty of an offence, and I think the offence would be complete if it were simply proved that this was done. Proof of age would be established in the same way it is always done in connection with sections of this nature.

Mr. Nesbitt: Once the crown had established the fact that an offence had been committed, and that it was in respect of a person under 14 years, would not the normal defence be that the accused did not know, or that he had no way of knowing? Should not the burden be placed on the person who is selling, just as it is under the liquor control act in Ontario, where a waiter selling to a person under 21 years of age has first to satisfy himself as to that person's age?

Mr. Garson: I must say I am not temperamentally enthusiastic, as a general rule, about shifting the burdens of proof to accused persons. I think in most cases magistrates would not have too much difficulty in reaching opinions on the facts, as to whether accused persons have given satisfactory explanations for having sold to other persons under the age of 14 years.

Mr. Fulton: We must keep in mind that it is the Criminal Code which is up for review. If it is felt to be an offence to sell a dangerous weapon to a person under 14 years, I wonder if it would not be well, while the minister is considering this section, as he has indicated he will, for him also to consider that there should not be left open to an accused person the defence of saying, "I did not know the boy was under 14 years." After all, if a person is accused of the offence, he is accused of selling a dangerous weapon to a minor, to a child; and it seems to me that when people undertake to sell dangerous weapons, and when they are going to make a profit out of selling them, there should be cast upon them the absolute duty of ascertaining that the person to whom they sell is a fit person to receive such an article.

Therefore we should not leave it open to them to say, "I had no *mens rea*; there was no element of intent, because I did not know and could not be presumed to have known that the boy was under 14 years." The hon. member has suggested that the minister should consider casting that burden on the accused at the same time he is considering enlarging the list of weapons with respect to which this offence would lie.

Mr. Garson: The minister is always prepared to consider reasonable requests; and in this instance I have no objection to giving further consideration. If there is some way in which we can meet my hon. friend's point without introducing the rather bad principle of casting the onus upon an accused, we will be glad to do so.

Mr. Enfield: I was wondering whether hon. members had discussed the age under section 88. Then, there would be no offence if you sold it to a person who had a valid permit. The question of age could surely be covered in the permit concerned. In other words, how could anyone get a valid permit to own a firearm if he was under the age of 14 years? Therefore if they present a valid permit to the person vending the article in question surely he should go free in so far as the age question is concerned. That was the question in my mind with respect to the permit.

One does not like to see the burden of proof thrown on the accused, to show that he did not know the person was 14 years of age. There is a very good principle there that we should try to uphold, the principle that you have to prove the intent of the person who is accused of committing a crime. If you start to make inroads on that principle I do not think generally it is a very good thing.

Before we leave the question of offensive weapons—and this applies to section 88, because the question of defining offensive weapons arose here when the hon. member for Vancouver East was speaking—may I say that in the 1927 Criminal Code offensive weapons were defined in a rather long list. In 1951 the definition was cut down and made more general in its scope. I wondered what had happened in so far as case law was concerned regarding the definition of offensive weapons to bring about a more general definition. Has it been found to be more efficient and to give a better picture of conditions since 1951? Has the problem of the definition been considered in the new amendments to the code?

Mr. Garson: On two or three different occasions during the progress of the present

bill, at various stages, I have emphasized that one of the most important instructions given to the royal commission was that they should endeavour to bring the substance of the law into as small a compass as possible, the law set out in the 1,150 odd sections of the existing code. In the existing code there are, for example, a large number of sections and a great mass of language used to describe a number of different kinds of theft. In Bill No. 7 we have been able to cover, we think quite satisfactorily, the whole field of theft by the use of perhaps not more than 25 per cent of those words. In this bill's definition of offensive weapons we are trying to cover the field with the use of a lot fewer words. The result in each case is easier for the average man to read and convey a clearer impression to him. It also produces an act which now has about 750 sections whereas the present code has 1,150.

Section agreed to.

Section 89 agreed to.

On section 90—*Unregistered firearm in dwelling house.*

Mr. Fulton: Will the minister just tell the committee, please, what are the present requirements with regard to registration? I notice that section 93 reads:

> The commissioner shall cause a registry to be maintained in which shall be kept a record of every firearms registration certificate that is issued under the authority of this act.

Then other sections provide for registrars of firearms; but I wonder whether it is generally realized, if my understanding is correct, that a person is required to register every firearm which may be in his possession, even though it is not a pistol or a revolver. I know that during the war the requirement was insisted upon, and everybody knew that you had to register a shotgun, a sporting rifle and so on. While I know that ignorance of the law is no excuse, it does occur to me that this might be the appropriate time, if it is the case, to point out for the benefit of the committee and the public generally that even though there is not a war on, people who are in possession of shotguns and other sporting firearms are under obligation to register them.

Mr. Garson: Has my hon. friend looked at section 98 on page 33 of the bill? Section 98, (b) reads:

> "Firearm" means a pistol, revolver or a firearm that is capable of firing bullets in rapid succession during one pressure of the trigger.

Mr. Fulton: That is an automatic.

Mr. Garson: Yes.

Mr. Fulton: But those firearms which are covered by this section of the code dealing with the registration of firearms—

Mr. Garson: With respect, I do not think it covers shotguns or rifles and so on.

Mr. Fulton: That is fine, if it is given appropriate publicity.

Section agreed to.

Sections 91 to 95 inclusive agreed to.

On section 96—*Search and seizure.*

Mr. Knowles: I should like the minister to make a few comments on section 96. We have already been referred a number of times to the definition of offensive weapons which is found in section 2, subsection 29, and that definition does seem to be rather wide. In the light of that, the point upon which I would like the minister to comment is the authority given to a peace officer to make a search without warrant. I should like to know whether that phrase "without warrant" is new. Even if it is not new, will the minister comment on it in relation to, as I understand it to be, the general practice that searches are not made except with warrants?

Mr. Garson: On the last point that was made by my hon. friend, it is not new; it is the present section 128. My hon. friend will perhaps recall that when in 1951 this series of sections of the code dealing with the registration of firearms, containing amongst others this provision, was before the house, there was a debate upon this point as to the propriety of permitting the peace officer to make this search. He will perhaps recall that upon balance it was thought to be in the public interest that he should have the right to do so whenever he believes on reasonable grounds that an offence is being committed or has been committed against any of the provisions of sections 82 to 91. The section goes on to say that he may search, without warrant, a person or vehicle or premises other than a dwelling house, and may seize anything by means of or in relation to which he reasonably believes the offence is being committed or has been committed. But unless there is that necessary antecedent of reasonable grounds he will not have the right to make the search or seizure. Only then can he do it.

When we take into account that if a peace officer on reasonable and probable grounds believes that certain offences have been committed by an offender he may without warrant arrest him, it would not seem that the

powers given under this section are an unreasonable addition to the other powers which he always has had.

Mr. Knowles: It was perhaps because of that discussion a few years ago that the thought has been lingering in my mind. I do not wish to appear to be saying anything that would seem to condone the concealment of any of the really offensive weapons that are referred to in the sections to which there is cross-reference in this section, but I did wonder if there was any kind of restraint on a peace officer under those conditions. What would happen if for example, despite the fact that in the opinion of a peace officer there were reasonable grounds, it turned out there were no such reasonable grounds?

Mr. Garson: The law says when a peace officer believes "on reasonable grounds", not upon grounds that he believes to be reasonable. The reasonableness of the grounds is an absolute condition. If he believes upon grounds which in fact are not reasonable then he is exceeding his jurisdiction.

Mr. Knowles: Are these "reasonable grounds" defined in any way?

Mr. Garson: No, because it would be very difficult to define them. The grounds in a case of this sort, will vary a great deal from one case to another, but under language of that sort the onus is upon the peace officer to show, if his action is challenged, that the grounds upon which he acted in a particular matter were in fact reasonable, and he has to convince not himself but other people.

Mr. Winch: He has already made the search, has he not?

Mr. Garson: Yes, he has already made a search or it may have been a trespass or an assault if he has stepped in and made a seizure like that upon grounds which are not reasonable. If the person against whom the seizure is made attacks the search or seizure, the peace officer has to defend his position by showing that he acted upon grounds which were in fact reasonable.

Mr. Winch: I am very interested in this section. I honestly admit that I am in search of information so as to completely understand it, because in my estimation it is a very important section. Anything that deals with the civil rights of the individual and a denial of these rights to the extent that a person can be searched, his offices can be searched or his place of business can be searched without a warrant, is something that should be understood in all its implications, and it should be fully interpreted before it is placed in the Criminal Code of this country.

For a long time I have been interested in knowing just what amounts to "reasonable grounds". If the Minister of Justice were not as well known as he deserves to be, and he was in front of the Canadian Bank of Commerce here in Ottawa, walking back and forth repeatedly and looking around him suspiciously—I know this would never occur—because his wife had arranged to meet him there at three o'clock and he had misunderstood and thought she had said two o'clock, would that be reasonable grounds for searching the minister without a warrant, simply because he was loitering around the bank? It may seem rather far-fetched, but I simply wanted to give that illustration.

Under no circumstances would I want to be misunderstood. The people of this country have to be protected and their property has to be protected; therefore peace officers must have certain powers. That a man's home is his castle is well recognized under this section, because the section does not apply to a person's own dwelling. As I read section 96 in that case a peace officer must be in possession of a search warrant; and if that is a recognized principle as regards a person's home just where does the principle vary to permit a search of his office or his place of business, without a search warrant?

I am particularly interested in the right to search a person without a warrant. There is a very grave matter here of civil rights and I would like to have, if at all possible, the clearest indication and interpretation of the administration of this particular section.

Just one word in regard to what the minister said a moment ago about the responsibility of the officer in having to show, if challenged, the "reasonable grounds" on which he acted. The fact remains that the act of search has already been concluded and the embarrassment that might result is already there. It is just a matter then of the pride of the individual as to whether he wants to take the matter into the court.

My hon. friend is shaking his head. Perhaps he can explain. The fact is that there can be a search without a warrant. An officer or anyone with the necessary authority can, if he so desires, search a person and go right through with the search and there is nothing you can do about it. At least that is my understanding. I do not know if I have made myself clear. I would certainly like to have from the minister the clearest possible definition of what is meant by "on reasonable grounds". I would also like to know what the position of a person would be if they objected. Suppose a search is made, and as I interpret the section it will be made

if the officer so desires; what is the right of the citizen in this matter if it is proved he was searched on unreasonable grounds.

Mr. Pouliot: I wonder if the hon. member would care to give us his interpretation of what he might consider to be "reasonable grounds" for search?

Mr. Winch: I will answer that by saying I am not a member of the legal profession. I am not bringing in this act. I am asking those responsible for bringing it in to explain it so I can use my own good judgment on their explanation. I will say this, though; that my interpretation would depend on what province I was in.

Mr. Pouliot: But that is not the answer. The hon. gentleman has been discussing law for a long time, and I am sure he knows what he speaks about. I therefore ask him to kindly clarify what he means by "reasonable grounds" himself, or if he thinks there are none.

I am very much interested in what the hon. gentleman says, for he speaks with authority in this house. I would like to enjoy a part of his knowledge. I have been listening to him for a long time, since the beginning of the session, and always with interest for he speaks with clarity and with knowledge. My only complaint is that he does not speak often enough. He should speak more. I want more enlightenment from him and I am sure he will not be stingy enough to refuse me or refuse his colleagues. It is a joy to listen to the hon. gentleman. He is a born speaker, a born philosopher, and every time he speaks it is only drops of wisdom that fall from his lips. I have been here a long time but I have never listened to an hon. gentleman who spoke with such ease and fluency.

Therefore, Mr. Chairman, surely it is not too much to ask the hon. gentleman to tell us what he means by "reasonable grounds" so his constructive suggestion may be taken note of by the minister. I am sure he knows what he speaks about. Therefore why should he be adamant in refusing to give the simple explanation that we are asking from him?

I am not asking much. He says a great deal. I do not understand the meaning of what he has expounded, and it is necessary for me to know a little bit more. Perhaps all I want is a dot over an "i", a comma or something like that, just a tiny little bit of information that will help me, the minister and the whole committee to understand something in the fine demonstration of oratory the hon. gentleman has given.

Some hon. gentlemen are smiling. I am extremely serious. I want to know what it is about. I am ready to learn. I am in the learning stage. I am not doctrinal. I am not ponderous; at least, I do not think I am, except when I am serious. This point I must insist upon. I want the committee to realize that this is a serious question. I want to know what is in the mind of the hon. gentleman because unfortunately I am not a mind reader.

Therefore, Mr. Chairman, the hon. gentleman would be very gracious if he were kind enough to make another short, didactic speech to us. My knowledge of the English language is not extensive, but I will use the adjective "didactic"; I want to learn. I am ready to listen to the view of the hon. gentleman provided that I know what he is speaking about.

The matter of "reasonable grounds" has been mentioned. May I say that I am on reasonable grounds when I am asking my question. It is a reasonable ground because this is a serious question and I am just as anxious as is the hon. gentleman that no one should suffer any injustice.

There are courses provided for the R.C.M.P. constables. They are told how to proceed when they have cases to investigate. They must be told what is a reasonable ground for searching a place or an individual. If the hon. gentleman does not find that the act is clear enough, it is unfortunate. He says he is not a legal man, but he is a man with great experience in politics and in debate in particular. He could quote examples to illustrate his view. That is the method teachers use, at blackboards with chalk in hand, in order to explain problems. This time no blackboard or chalk is necessary. The hon. gentleman has only to open his mouth and let the drops of wisdom fall from it.

That is all I want. I do not want any more than that. Then the hon. gentleman would confirm his reputation as a debater of note, and I would know what he is speaking about.

Mr. MacInnis: After having listened to these pearls of wisdom, Mr. Chairman, may I draw attention to the fact that as to this right of search in section 96, the purpose is extremely limited. It all has to do with something about firearms, the possession of them, the buying of them and so on. As I understand it, it must be in the code now. If it is not, the policemen in Vancouver are violating this code every day. Whether or not the officer would feel that he had reasonable ground would depend upon where the individual might be.

I am quite sure that in the circumstances in which the hon. member for Vancouver East found the Minister of Justice, the officer would take one look at him and conclude that there were no reasonable grounds, and that would be the end of the matter. But if, for instance, in the city of Vancouver a policeman were to find the hon. member for Vancouver East and myself walking in the lane between Cordova and Powell streets on a foggy night, he would very likely tap us on the side to see what we had on us and with a warning he would let us go. If he found us up by the Hudson's Bay Company's store at Granville and Georgia streets he would not bother us at all. In the committee I thought there was something sinister in this section; but if the hon. member for Vancouver East will read it I think he will find that it is very limited in what it allows.

Mr. McIvor: Mr. Chairman, does not the question of urgency enter into the matter? If the officer has to wait to get a warrant he may find that the crime will be committed before he gets it.

Mr. Winch: Mr. Chairman, let us not carry this matter to the farcical stage. I thought I made the point clear that, as far as I was concerned, we all fully understood that there must be certain rights and authority in the hands of the police officers of this country. There is no question about that whatsoever. My hon. friend who has just spoken knows that. On this question of what is meant by reasonable grounds, may I say that I greatly appreciate the remarks of my friend the hon. member for Temiscouata.

Mr. Knowles: He is everybody's friend.

Mr. Winch: As a matter of fact I am starting to wonder whether the minister, in holding over section 88, should not also take under consideration the banning of switch knives, not only those up the sleeves but also the linguistic ones of my hon. friend. I know he said he is very ignorant, but since I have been here I have noticed that he is one of the most politically wise men I know of the 265 members in the house.

Mr. Sinclair: How the compliments are flying.

Mr. Winch: He is not ignorant at all. He did me the great honour of asking me to explain this matter. That was a great honour. With all his wisdom and experience I think he should have explained it. But as he does not require an explanation from himself, he is asking me the very question we are asking the minister who introduced this bill. Surely it is an axiom that, before passing legislation, we should ask from the one who introduces it just what is the purpose of it, the meaning and the interpretation.

I have just one further word to say. The question of what is reasonable will have as many interpretations as there are police officers. Any clarification on that point that can be obtained will be most useful, and also with reference to the search of premises without a warrant. We must go every step of the way that is required to give police officers the means to protect property and society, but I would emphasize again that in the granting of such authority we must also not overstep the mark so far as the protection of the civil rights of the people of Canada is concerned.

Mr. Pouliot: I thank my hon. friend for his little speech. I am sorry there was no more enlightenment, but I will explain to him what I understand by this provision of the law. I wonder what his reaction will be and whether or not he will agree with me. We must take a classic case. Police constables are on duty on a street and they hear the noise of guns. They go to the corner, and they see a man running away. They cannot recognize him because they see him from the back, and looking at him from a distance they see him go into a house. They have not seen his face. They go into the house and they see some men there wearing clothes of the same colour as those of the man they are pursuing. Would my hon. friend have any objection to the searching of those men by the constables who were running after a man who went into the house?

Mr. Winch: No.

Mr. Pouliot: Well, then, that is a reasonable ground.

Mr. Jones: May I point out to the hon. member that he has not read the clause. Dwelling houses are exempt. Policemen cannot enter dwelling houses without a warrant.

Mr. Pouliot: Then the law should be amended in order to include rooming houses. I want my hon. friends, or any one of them, to mention the flaw in the law. The law must be more severe than it is now to meet emergencies, and of course most arrests are emergency arrests. I could ask the Minister of Justice whether the largest number of arrests are not made without warrants right on the spot by the constabulary, whether federal, provincial or municipal. These men are on duty to protect human life and property, and when they receive a telephone call at night they do not go to a magistrate to get a warrant. They are on the spot and they make the arrest. This is how they do

it, and I am not speaking as a lawyer. I am speaking as a man on the street. It is general knowledge. Therefore they must be empowered to act.

I will agree with the hon. member for Vancouver East that there are some constables who have no judgment. It happens in any class of society. There are men without judgment, and there may be errors. It is unfortunate, but on the other hand there must be protection of the people. This is very important, and this is the very reason we are now discussing this piece of legislation. It is all right, as my hon. friend has said, to protect liberty and freedom, but those who want to enjoy liberty and freedom must abide by the law of the land. I do not see why we should be more indulgent to thugs, bandits, housebreakers and all those who create disorder and are a plague on society.

The other day I heard one hon. member say that in the future when we are more civilized punishment will not be so harsh as it is now, and that this will be a sign of progress. What I maintain is that progress will be achieved through abiding by the law. That will be progress. When constables are on duty and risking their lives to protect the Canadian people they deserve consideration. They are not all perfect. I give some of them the benefit of the doubt. They are entitled to it because they risk their lives at every moment of the day.

My hon. friend enjoys liberty. I do also, and we all do, but we want the Canadian people to enjoy the same liberty that those who do not respect the law are supposed to have, according to some hon. members. If I spoke in a jocular or light vein in the first place, I am very serious now. There are those who contend, like the hon. gentleman, that we will have progress in Canada when the law is not respected or when those who infringe the law go scot free, but I say if that happens we will have chaos and anarchy in the country. I want order in the country. I want good government, and we have it. I want order, and I hope we will have it. That is the purpose of the Criminal Code of Canada.

Sir, there were ten commandments given by Jehovah to Moses a long time ago by which the world was ruled for centuries, and the penalty was to come from God in the other world. But now mankind has grown so wicked that there cannot be enough law to maintain order not only in this country but in all countries of the world. Therefore I hope that my hon. friend will realize that it is important to have an enactment like this which will permit constables to protect human life and property in Canada.

The Chairman: Order. The manner in which the debate on section 96 has proceeded has pointed up a difficulty which I am experiencing, and which I pointed out I would experience when the bill first came into committee. Apparently I am not bound by the ordinary rules of the house whereby I should call the bill section by section, owing to an agreement among hon. members that we will call the sections in order but that certain sections will stand and we shall then return to them in an orderly manner at a later date.

This rule would be easy of application, but unfortunately a rider was added under which certain clauses were not to be dealt with if, in the words of the minister, the debate seemed to be proceeding too far. It is impossible for me to decide when the debate is proceeding too far. The minister assured me he would throw in the sponge when he decided it had gone too far. I believe the member for Winnipeg North Centre (Mr. Knowles) said that we would know from the sense of the house when the debate had gone too far. In my opinion section 96 must stand, or the debate must be concluded, or we must go back to the regular rules of the house.

Mr. Garson: I was waiting for an opportunity to answer the very fair question which was asked by the hon. member for Vancouver East. I doubt very much whether I can improve upon the answer which was given by his own colleague, the hon. member for Vancouver-Kingsway.

The Chairman: Order. I must ask whether this agreement is to stand, whether we are going to proceed with an unlimited debate on the section at this time, or whether we must proceed to deal with the bill section by section.

Mr. Fulton: May I help the minister with a suggestion? The hon. member for Winnipeg North Centre made his suggestion earlier, and I wonder if I might make this suggestion now. While we appreciate to the full the difficult position in which this unwritten agreement places you, Mr. Chairman, we are all endeavouring, so far I think it is fair to say with considerable success, to live up to the spirit of that agreement. If on any side of the house, either the minister or his colleagues, here in the official opposition, my friends of the C.C.F. or the Social Credit, we should feel that the discussion has proceeded to a point beyond which it is not sensible to go and there is no indication the section will

be carried in a few minutes, then one of us will indicate that we think the section should stand.

I would suggest to you, sir, with the greatest respect possible, that until you receive such an indication from one or more members of the house you might allow the discussion to continue in the expectation, which I think is reasonable, that so long as no member says the time has come to stop this discussion and have the section stand, of concluding the debate on it within a time which appears reasonable to us. I can assure you that when any one of us feels that that time has come and we must put a stop to this, one of us will so indicate and then perhaps you, as chairman, could say that the section should stand.

Mr. Garson: As I was saying, Mr. Chairman, I doubt very much whether I can improve upon the excellent explanation which was given by the member for Vancouver-Kingsway. Let me take the case which was cited by the hon. member for Vancouver East, and I discuss this with some modesty. If a police officer proposed to search me without a warrant, merely because he saw me waiting for my wife, he would not be acting upon reasonable grounds, I suggest, under all the circumstances.

On the other hand, if a police officer were looking around at night in a dark alleyway at the back of a warehouse and discovered one man lifting another through a window which had just been broken open, and he proceeded to search them for weapons, I would think he would be acting upon reasonable grounds. As to whether, between those two extremes, the facts of a particular case constitute reasonable grounds, that is a matter the peace officer must establish in each case in order to justify his search. The idea that he can just do these things without reasonable grounds and shrug off responsibility is without foundation.

If the hon. member for Vancouver East will go back to section 28 and following sections in this bill he will see there set out the circumstances under which a peace officer is protected from criminal or civil liability in respect of the actions which he takes as a peace officer. In a free, democratic country, such as we have in Canada, a peace officer has little more power than the average citizen. He is strictly answerable for his conduct. He must find, under the code, legal support for whatever action he takes.

Now, it may be that in so far as his civil liability is concerned he would not have the financial resources to make a suit for damages worth while. But I am sure the hon. member has heard of cases in which a private detective operating in and for a department store detained a person suspected of shoplifting upon what he thought were reasonable grounds, and to his consternation discovered later that his employer was on the receiving end of a heavy suit for damages. That is the kind of liability which arises when a peace officer exceeds his powers under the law.

In this particular case, as has been explained by other speakers, the question with which we are faced is whether we shall ask a peace officer, when he finds men under those conditions I have cited—in the course of breaking into a warehouse—to get a police magistrate or justice of the peace out of bed in the middle of the night to obtain a warrant and then go back to search or arrest the men. The only other way in which he could make a search is upon reasonable grounds.

I must confess that when I first saw the section my reaction was somewhat along the lines of that of the hon. member for Vancouver East. When I read that a peace officer had the power to search a structure, I rather objected until I saw that a dwelling was excepted from it, and that as a result our homes were still our castles. When this section is confined to those cases in which reasonable grounds can be shown, and when it only applies to premises that are not dwellings, I really do not think it is as exceptional as the hon. member for Vancouver East has thought.

Mr. Michener: To my mind the minister's explanation leaves one point obscure which I think the house ought to appreciate. The object of this section is to give the peace officer power to search vehicles and premises only in a limited number of cases. In the cases that have been presented to the house we have had conjured up crimes of violence, forcible entry and robbery. Those cases are not covered by this section. The code does contain, and very properly, provisions which not only permit but exhort even ordinary citizens to arrest persons committing acts of violence. It is the duty of people to do that, without any such section as we have here. This section gives the peace officer the right in a limited number of cases, namely cases involving carrying firearms—am I right?

Mr. Garson: No. According to section 82—

Every one who carries or has in his custody or possession an offensive weapon for a purpose dangerous to the public peace—

In other words, if a burglar is going through a window he can be searched to see if he has a revolver on him.

Mr. Michener: I follow what the minister says, but the section is limited to searches under sections 82 to 91, and those sections involve carrying or dealing in offensive weapons or firearms. For example, section 84, which we discussed earlier, deals with concealed weapons. A peace officer may come up to a person on the street, and noting a bulge in his coat conclude that he had a concealed weapon. Then, if his grounds were reasonable, he could make a search to make sure whether it was or was not a concealed weapon. But that is not the kind of offence where anyone is immediately in danger. So I do think the committee should appreciate that this sort of leeway given to a police officer is for a different kind of case from the hot pursuit of a criminal who has just committed a crime, or when a crime of violence is imminent.

Mr. Garson: With great respect to the hon. member I suggest that he might keep in mind the very case I cited, that dealing with the two men who got through a warehouse window in the middle of the night. One of the things of which they are guilty, before they have begun to commit the robbery of the warehouse, is that under section 82, which is covered by section 96, they are carrying or they have in their custody or possession an offensive weapon for the purpose of endangering the public peace or for the purpose of committing an offence.

Mr. Michener: I appreciate what the minister has said, but I do not believe I follow his reasoning exactly. The person to whom the minister has referred, who enters a warehouse for the purpose of committing a robbery, would be committing the crime of breaking and entering.

Mr. Garson: And also the crime of having in his possession an offensive weapon.

Mr. Michener: And therefore he could be searched or arrested without the benefit of section 96 at all.

Mr. Garson: Yes.

Mr. Michener: So if section 96 were used, it would be because of some weapon being carried?

Mr. Garson: Yes.

Mr. Michener: So I suggest the distinction should be borne in mind that we are extending it to a classification where there is no imminence of a crime. It is just the fact of carrying a dangerous weapon that has to be considered.

Mr. Garson: May I cite a case to my hon. friend where two gentlemen are not going through a window. These two gentlemen are walking up and down behind a warehouse, or in the alleyway adjoining a store. A policeman comes along and, as my hon. friend has said, sees something bulging in their pockets. Would he not be under some compulsion, in the discharge of his duties, to make a search for offensive weapons?

Mr. Michener: I would answer in this way, that in my view unless there is some more serious crime involved or suspected by reason of that loitering, it is not enough to give the right to search a person without a warrant, simply because he is suspected of carrying firearms. After all, the inviolability of the person is something we should not give up lightly, unless a serious crime is involved.

Mr. Hahn: Under this section would a police officer be privileged to, let us say, pick up a youth if he thought the youth had in his possession certain things taken from a building that had been entered? Could he pick up that youth, if he saw him in that area?

Mr. Garson: I do not think I understood the hon. member's question.

Mr. Hahn: I am referring to a youth or some other individual whom a police officer might have seen near premises, and of whom he had reason to be suspicious at, let us say, four o'clock in the morning. The boy might not have a gun, or anything like that, but he might have in his possession some money or some other things he had stolen.

Mr. Garson: Under this section the officer would be confined to the power given by it, and for any other purpose he would have to find his authority in some other section of the Criminal Code.

Mr. Fulton: I suppose if a police officer arrested this person for some other motive, that is to say if he suspected this person of some crime or an attempt to commit a crime but picked him up on the grounds of having a weapon, following which it was found that he had not committed a crime and did not have a weapon, the police officer would still be liable to proceedings for unlawful arrest?

Mr. Garson: I apprehend that when a police officer takes this action he is in a position where, if the validity of what he has done is challenged, he must show that he acted upon reasonable grounds. Canada is not a police state. The police here do not have unlimited powers. They have only those powers given in the statute. A police officer acting under this section must show

in every case reasonable grounds to protect himself against both criminal and civil responsibility.

Mr. Fulton: If a police officer arrested a person on some fancied or unreasonable grounds because he thought such person was guilty of a crime, and used this section as an excuse, it would not protect him from proceedings for unlawful arrest?

Mr. Garson: No, or assault.

Section agreed to.

Sections 97 and 98 agreed to.

On section 99—*Interpretation; "evidence"*.

Mr. Adamson: I would call attention to subsection (c) (ii) which says:

—before the Senate or House of Commons of Canada or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath—

I have been a member of the house for some time and have served on committees. What committee is authorized to administer an oath?

Mr. Garson: I think the answer to my hon. friend's question will be found in the rules of the house. Then he will recall that in the setting up of committees they are usually empowered to call witnesses and administer oaths. They derive their authority in that way.

Mr. Adamson: I realize that that is so, but I do not remember any case where a witness has been examined under oath by a parliamentary committee. I think it is a retrograde step in a parliament under the British system to have the power to subpoena witnesses and administer oaths to them. I am asking the minister to explain the system, because our system has been one of voluntary witnesses appearing before parliamentary committees to give their evidence or their opinions. The committees in turn are responsible to the house. What I am really driving at is to indicate the difference between our system and that in the United States today, where people can be brought before a house committee and summoned for contempt of court. I would ask the minister to explain that one point in the Criminal Code.

Mr. Knowles: I have known of witnesses being sworn before the prices committee, and before other committees of the house. And if the hon. member for York West wishes to visit a committee where witnesses are sworn every day, let him visit the divorce committee in the other place.

[Mr. Garson.]

Mr. Garson: What the hon. member for Winnipeg North Centre has said is perfectly true. While it is true that probably there are more committees of the house before which witnesses give their evidence voluntarily, and without being sworn, there are plenty of examples where it is deemed wise by the committee to have the evidence taken under oath. This is done in those cases where it is considered that an oath is required in relation to the evidence given, such as in divorce proceedings.

Mr. Adamson: Not being a senator, I have not sat on those committees.

Section agreed to.

Sections 100 and 101 agreed to.

On section 102—*Frauds upon the government.*

Mr. Knowles: It seems to me attention should be drawn publicly to the wording of subsection 2, which is as follows:

Every one commits an offence who, being a party to a contract with the government directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration

(a) for the purpose of promoting the election of a candidate or a class or party of candidates to the parliament of Canada or a legislature, or

(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the parliament of Canada or a legislature.

Perhaps at the same time I should put subsection 3 on the record, which prescribes the punishment for the offence against the subsection I have just read. It reads:

(3) Every one who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for five years.

Mr. Chairman, I am not going to go back as far as Beauharnois, but I do recall that about 1946, I believe it was, when the question of the increase in the price of steel was under investigation by a committee of this house, Mr. Hilton, the president or the head of the Steel Company of Canada, was before that committee. If I remember correctly, one of the bits of evidence he gave was that that company had made contributions to both the Liberal and Progressive Conservative parties. He was asked whether he had gone any further than that, and it was clear that he had not. It was the company's own statement that contributions were made to these parties. Well, surely contributions of that kind come within the definition spelled out in subsection 2 of this section.

I confess that I have not any evidence at the moment on this further point, but it does occur to me that it is very likely that

the Steel Company of Canada, being the large company that it is in the field of steel, in view of the defence requirements of this country, undoubtedly has contracts with the government of Canada. I should like to know what the application of this section is to the Steel Company of Canada or to any other company that has any kind of government contract and makes contributions to the funds of the Liberal party or of any other party in this house.

Some of my Conservative friends around me are drawing my attention to the point that the Steel Company of Canada is not a person. I am prepared to hear comments on that point. It does seem to me that a corporation surely cannot get out from under the law. Surely if this means anything it should be brought to bear on the kind of case to which I have just referred. I should like to hear from the minister as to what he thinks is a proper interpretation of this subsection. I should like him to tell us whether there have been any persons or firms charged under this section. I should like him to tell us whether the government is serious in having this section continued on the statute books of the country.

Mr. Fulton: Before the minister does that he might also like to take into account this possibility. I mention it as a possibility, because I am sure the state of affairs my hon. friend has in mind would not be referred to by him otherwise than as a possibility, either. My hon. friend believes that unions should be free to make contracts with the government. I believe that my hon. friend's party also believes that unions should be free to contribute to the political funds of the party of which he is a member. Therefore I wonder whether the minister would take that possibility into consideration when he comments.

Mr. Michener: Will the minister also take this possibility into consideration? There are a great many farmers on the prairie provinces who have contracts for the sale of their wheat. It is true that they are not directly with the government, but with an agency of the government. I am sure they would like to be free to make contributions to any party.

Mr. Ellis: I should like to know from the hon. member for Kamloops what unions have ever had contracts with the government or have been doing business with the government in the manner in which the Steel Company of Canada might be said to be doing business with the government.

Mr. Fulton: I have just said it is a possibility. The hon. member and his party have always advocated the right of unions to make contracts.

Some hon. Members: Carried.

Mr. Knowles: We are waiting for the minister; we are all ears.

Mr. Garson: I am afraid I did not get my hon. friend's question. Would he please repeat it. Is he opposed to the section?

Mr. Knowles: By no means. I could make the speech again, if the minister did not hear it when I made it before.

Mr. Garson: Just the question, that is all.

Mr. Knowles: My question is, has anything ever been done to a company like the Steel Company of Canada which admitted through its president in 1946 that it made contributions to the Liberals and the Conservatives and which has, I would assume, because of the field in which it is working, contracts with the government; or has any person or any company been charged under this section? My last question was, is the government serious in having this section on the statute books? Does it intend that it shall be enforced?

Mr. Garson: The government is certainly serious in having it on the statute books, and it has been on the statute books, as my hon. friend is aware, for many decades.

Now, as regards my hon. friend's allegations with regard to the Steel Company, or any other company, it is very easy to make them. But if my hon. friend is under the apprehension that the Steel Company or any other company has committed an offence under this section, then if the prosecuting officers whose responsibility it is to lay charges in these matters do not do so, there is nothing in the world to prevent my hon. friend, in the discharge of the same virtue which he displays here on so many occasions, himself going down to the police court and laying a charge against the Steel Company, which would then be prosecuted.

Mr. Nicholson: I happen to have the evidence that was placed before the committee in 1946.

Mr. Fulton: I think my hon. friend should be informed that the statute of limitations takes effect after about six years. The right has now expired.

The Chairman: Order.

Mr. Garson: That did not prevent my hon. friend from laying the charge before the expiration of the time limit.

Mr. Knowles: There have been two elections since then.

The Chairman: Order.

Mr. Sinclair: How did you do?

The Chairman: Might I now take this opportunity of saying to the committee that I am afraid we shall make very little progress if hon. members choose on particular sections to bring up matters of certain particularity. I would like to see hon. members confine their questions to interpretation, to meaning or to matters pertaining directly to the section, and not to some particular case which has come to their knowledge.

Mr. MacInnis: I do not think you should be too impatient. We are making excellent progress. You must remember that the Criminal Code has not been revised since 1892. That is a long time for people to accumulate grievances. We are doing excellently; do not try to limit us too much.

Mr. Nicholson: The fact that we are dealing with section 102 indicates that we have really made excellent progress, but it appears that immediately we reach an interesting point we are told we should close the discussion.

At this particular time perhaps hon. members would be interested to learn that on July 23, 1946, the question the hon. member for Winnipeg North Centre was discussing was before the special committee on industrial relations. Mr. Case, a Conservative member, had made a good deal of the fact that the unions had made contributions for political purposes, and apparently no member of the committee took any exception to the questioning. The following day my hon. friend the member for Vancouver-Kingsway asked a perfectly logical question of Mr. Hilton, president of the Steel Company of Canada. The question was this. "Do you or your company make contributions to political parties?"

That appeared to be a somewhat embarrassing question and it was not answered immediately, but the hon. member for Vancouver-Kingsway, then as now, was a very persistent person, and he was able to convince them that this question was very reasonable. Finally, after a good deal of bickering, Mr. Hilton said, as reported at page 179 of the proceedings of the standing committee on industrial relations, dated July 23, 1946:

> If the committee feels that the question should be answered, yes; we make contributions to political parties.

Then it was the hon. member for Trinity, I think, who followed up with some more—

The Chairman: Order. I hope the hon. member will be able to conclude his remarks by relating them to the section under consideration and by asking the minister a question which will have pertinency to the section under consideration.

Mr. Nicholson: Mr. Chairman, let me call the attention of the committee to section 102, which states:

> (2) Every one commits an offence who, being a party to a contract with the government directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration
>
> (a) for the purpose of promoting the election of a candidate or a class or party of candidates to the parliament of Canada or the legislature, or
>
> (b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the parliament of Canada or the legislature.
>
> (3) Every one who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for five years.

The hon. member for Winnipeg North Centre asked a pertinent question, as to whether the government has been serious about this section and if there have been prosecutions. I was on the point of asking if anything had been done about the questioning by Mr. Skey. He asked Mr. Hilton whether Mr. Hilton had come to Ottawa to make representations to the wartime prices and trade board with a view to increasing their income by $2,500,000, and Mr. Hilton had. I submit, Mr. Chairman—

Mr. Hunter: On a point of order, Mr. Chairman, surely the purpose of this committee is to study these sections and see whether they are desirable or whether they should be amended. If the wording is agreeable they should be passed. We are not here to examine some specific act that may or may not have occurred or to examine some alleged offence against the section. We are here simply to determine whether a section is good or bad law and whether it should be adopted, and if it is not good law how it should be changed. We are not here to try any alleged offence but simply to look at the wording and to see if it is desirable law for the people of Canada.

Mr. Nicholson: Mr. Chairman, I am about to conclude my remarks—

Some hon. Members: Hear, hear.

Mr. Nicholson: —but I submit that if we are going to keep this section on the statute books we should know whether the government has taken action—

The Chairman: Order. I assure the hon. member for Mackenzie that I would not interrupt him if he were merely using a

specific instance for the purpose of clarifying this section in some way. He will notice, however, that this section sets out a great many elements in the offence and I think, on his responsibility as a member of the house, he would be loath to mention any particular name unless he wishes to make an allegation that the offence embraces all these elements.

Mr. Nicholson: I am not taking any risks whatsoever when I read from a record placed before the house some years ago. If I had not been interrupted so many times I would have been through a long time ago. I think the minister should make some statement as to whether any action has been taken by the government when instances such as the one I have mentioned in connection with the Steel Company of Canada have been brought to the attention of the government.

Mr. Garson: Mr. Chairman, I can certainly disabuse my hon. friend's mind so far as I am concerned, because I was not here in 1946. I did not come here until January, 1949, and I must say that the remarks of my hon. friend and his colleagues of the C.C.F. party this evening are the first I have heard of this matter. If, therefore, my hon. friend is looking to me to elucidate it for him he is not going to get much comfort.

Mr. Barnett: Mr. Chairman, in rising on this point I do so believing there should be some reasonable method in this country by which a private person or a corporate body can back their political beliefs and faiths with their dollars. But there are one or two things in this section which give me pause for thought. Section 102 says:

(2) Every one commits an offence who . . . directly or indirectly subscribes, gives, or agrees to subscribe or give, . . .

As in section (b) where it states:

(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the parliament of Canada . . .

The illustration which comes to my mind and which gives me pause for thought arises out of my recollection that in British Columbia we have an organization known as the British Columbia federation of trade and industry. It is a rather all-inclusive organization as far as some of the corporate interests in that province are concerned. Now, can this section as it now reads be interpreted to mean that a certain corporation, being a member and contributor to that federation of trade and industry, which publishes large advertisements and so on at election time, is thereby committing an offence if it happens to have a contract with the government of the day?

I wonder whether this section should not be considered for some possible rewording in that direction. If it is going to be out of line with what in many ways is becoming the accepted practice with regard to supporting and influencing an election then I think perhaps we should reconsider the section from that point of view; or are we going to agree that the method whereby certain interests in the province of British Columbia are continuing to influence elections is not right and proper and should not be continued? I feel this section should certainly have some further study before being passed in its present form. The use of the words "directly or indirectly" is subject to a very wide interpretation and it may very well be that charges could be laid.

An hon. Member: What political party do they support?

Mr. Barnett: They do not advertise in specific detail which of the political parties they wish to help. They seem to be helping a multiplicity of parties.

Mr. Nesbitt: Mr. Chairman, in this regard the wording of that section states:

(2) Every one commits an offence who, being a party to a contract with the government directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration

(a) for the purpose of promoting the election of a candidate . . .

And so on. Has the minister in this case envisaged a situation where a firm had a contract with this or any other government which might be completed in a matter of a week, and in a case of that kind would a person be committing an offence if he contributed to a campaign fund after the contract technically had expired? Would he be committing an offence just if he gave funds at the time, or does the time when the election is going to come up have a material bearing in this case? There is a time factor here that is extremely important.

Mr. Philpott: It seems to me that a strict interpretation of this section, as it stands now, would make a great many corporations in Canada liable to court process. It would also be embarrassing for a good many governments in Canada, including the present federal government, the Social Credit government of British Columbia, the Social Credit government of Alberta and also, I might say, the C.C.F. government of Saskatchewan. I believe a strict interpretation of this section would make liable to some kind

of process of law not only any corporation that ever subscribed to campaign funds but also I think certain trade unions that have political levies and also have contracts, for instance, in connection with transportation in some of the provinces.

I am wondering whether the minister would care to let this clause stand over and perhaps reword it in order to give it the meaning that everyone commits an offence who, in order to obtain a contract with the government, directly or indirectly, and so on. It seems to me that would better carry out the meaning of the section.

Mr. Adamson: Mr. Chairman, there is one suggestion that I wish to make. I am going to move an amendment at line 22, with regard to the words in subsection (a) "for the purpose of promoting the election of a candidate or a class". I am going to move that "or a class" be deleted. We in Canada pride ourselves that we are a classless democracy. We have no class in Canada. There is no upper class, no lower class, or no labouring class; we are all Canadians. I think that to have in the Criminal Code these words "or a class" is an archaic thing and denotes that horrid word "colonialism". I believe the words "or a class" should be deleted from the Criminal Code. We have done away with titles. Regularly we pass in this chamber bills about discrimination. To have the words "or a class" in the Criminal Code is to me archaic and wrong. If I am in order, I move that the words "or a class" be deleted from this section. I will write out the amendment, Mr. Chairman, if I must.

Mr. Fulton: The word is used in schools, so why not in the Criminal Code?

The Chairman: Shall the section stand?

Mr. Garson: Yes, I think we had better allow the section and my hon. friend's amendment to stand. I doubt whether the word "class" in this context has the meaning which my hon. friend describes.

Mr. Adamson: I am glad to hear the Minister of Justice say it does not, but it certainly seems to me something which is perhaps undemocratic.

Section stands.

Sections 103 to 113 inclusive agreed to.

On section 114—*False statements in extra-judicial proceedings.*

Mr. Nowlan: This section deals with the ordinary formal statutory declaration which can be made at any time or at any place. I notice that the punishment provided for that offence is 14 years—that is, of course, the maximum—which is the same as that provided for perjury of the very worst kind. Although the notes refer to sections of the code, yet in the code that exists today there is not such a severe sentence provided.

It seems to me that you are bringing into disrepute one or the other if you classify somebody making a false declaration on matters that cover everything under the sun in the same way that you classify somebody who goes into a courtroom and deliberately commits perjury. It seems to me that there is a matter of undue emphasis here, and that the sentence is altogether too severe. I think you are bringing the matter into disrepute by doing that.

Mr. Garson: As my hon. friend is aware, the penalties which are provided in the code, such as this one, are all maximum penalties. Under this section, if the circumstances and facts are of a particularly heinous character the magistrate or judge may impose a penalty of as much as 14 years. On the other hand if they are not serious he may impose a penalty of one day in order to meet the ends of justice as he sees them.

In this connection I think I should say that one of the main objectives of the draftsmen of the new consolidation bill has been to widen the scope which is given to the courts in fitting the punishment to the crime, by giving them a broad discretion from the maximum down to the minimum. I have sufficient confidence in our courts to feel that they will exercise this discretion properly.

I agree with my hon. friend that it is rather difficult to imagine a case of a false oath being taken in, say, a statutory declaration, which would be of a sufficiently serious character to warrant the imposition of a penalty of 14 years. But it is conceivable that such might be the case. I can recall one instance in my own province where it was on the basis of a declaration of this sort that determination was made of the validity of a will which diverted an extremely large estate to other people than those who would otherwise have been the heirs. In a case of that sort, if it could be shown that it was deliberate, and if it was in relation to a large sum of money like that, I do not know any reason in the world why the penalty for an offence of that character should be any less severe because the oath was taken in the form of a statutory declaration rather than by a witness in court.

Mr. Nowlan: Of course, with due respect to the minister I think he will agree it is no

answer to say that the section is only providing the maximum and therefore you do not have to impose that. If that were logical, then I would suggest to him that we could shorten the code a great deal by putting in one section and saying that the maximum punishment for any offence will be imprisonment for life; then you would not have to deal with these matters at all. But that is not the practice we have adopted in this code, and we do try to differentiate.

As the minister knows, it is always possible to reach into experience or history and find some isolated example or something which you can say justifies a certain act, such as the statutory declaration to which he refers. Yet I think he will agree that ordinarily the class of crimes contemplated by that section falls far short of perjury.

The code provides two years in one section and seven years in the other; I refer to the existing code. Now we are jumping the penalty to 14 years. You are either cheapening perjury or you are exaggerating the taking of a statutory declaration, one or the other. Can this offence be punishable on summary conviction? Can this offence be tried by a stipendiary magistrate and, on speedy trial, are we giving to the magistrate power to impose a punishment of 14 years? I am not clear on that matter right now. I should like the minister to cover it.

The Deputy Chairman: Shall the section carry?

Mr. Nowlan: No.

Mr. Garson: Just speaking from memory, I think the only magistrate who can try an offence of this character is a magistrate in a larger city, as the summary trial of an indictable offence. He is usually a man whose experience will compare favourably with that of a superior court judge.

Mr. Nowlan: He would be limited to two years under that section.

Mr. Garson: Surely the proper measure of a maximum penalty for an offence is the maximum culpability which can occur in association with that offence. In that connection I would remind my hon. friend that even in court proceedings there are some whose religious beliefs prevent them from taking an oath in the ordinary sense, and they would have to take a statutory declaration.

Mr. Nowlan: This section refers to "every one who, not being a witness". I draw that to the attention of the minister. This section does not deal with a witness in judicial proceedings, so it does not include that particular case.

Mr. Garson: That is right, but I think my hon. friend will agree from his experience as a lawyer that there are cases in which a statutory declaration of this sort can have, and in some cases has had, consequences just as great and just as deliberate as in any court proceedings.

Section agreed to.

Section 115 agreed to.

On section 116—*Witness giving contradictory evidence.*

Mr. Fulton: I have certain very deep-rooted objections to this section.

Mr. Knowles: Me too.

The Deputy Chairman: Shall the section stand?

Mr. Fulton: I thought we could perhaps dispose of it on an adverse vote tonight.

Mr. Garson: I think the arguments for and against with respect to this section are sufficiently strong that it might be better to present them on another occasion.

Mr. Fulton: All right.

Section stands.

Sections 117 and 118 agreed to.

On section 119—*Obstructing justice.*

Mr. Winch: Subsection 1 of section 119 reads as follows:

> Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and is liable to imprisonment for two years.

I would be very happy if I could obtain a definition of what is meant by "the course of justice". Is it used in the sense that it is used in legal circles and in the act, or does it mean obstructing, perverting or defeating the application or course of statutory authority? Basically is that the meaning of "the course of justice"?

I know that on the basis of justice a person can take action which may be in opposition to statutory authority. Back in the hungry thirties—and I hope such times will never return to Canada again—I can remember that under statutory law the mayor of Vancouver determined that he was going to go ahead and read the riot act when there were 5,000 hungry men gathered in Victoria square in Vancouver. That might have been all that was required to bring about a serious situation. A number of people, including members of the legislature, took the

position in the interests of justice that the riot act should not be read and endeavoured to persuade the mayor, in the interests of justice, not to take this action, although he would have been doing so in the course of statutory law.

I do not want to go into too much detail, but perhaps I have said enough to have my hon. friend realize what I have in mind and why it is of the utmost importance as far as I am concerned to know what is meant by "the course of justice", and whether it means the course of statutory law.

Mr. Garson: In reply to my hon. friend's question I would ask him to permit me to refer first of all to subsection 2 of section 119, which reads as follows:

Without restricting the generality of subsection (1), every one shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

(a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence,

(b) influences or attempts to influence by threats, bribes or other corrupt means, a person in his conduct as a juror,

(c) accepts a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror,

(d) before or after being released from custody under recognizance, indemnifies or agrees to indemnify in any way, in whole or in part, his bondsman, or

(e) being a bondsman, accepts or agrees to accept indemnity, in whole or in part, from a person who is released or is to be released from custody under a recognizance.

It is noted that subsection 2 covers a judicial proceeding existing or proposed, and I can cite my hon. friend the case of St. Jean *v.* The King, 69 Canadian Criminal Cases, at page 240. I think that probably covers my hon. friend's question. The phrase "attempts to obstruct, pervert or defeat the course of justice" is spelled out in this section itself.

Mr. Winch: That is my very point. It is my understanding that when you first have a subsection which sets forth very clearly the intent of the subsection and you then have a subsection which says "without restricting the generality" of the first subsection, you leave in full power and effect the wording of the first subsection. If we are not concerned with all the details of subsection 2 and the clauses thereunder we can consider subsection 1, and there is no control over subsection 1 except its own wording which says very specifically that every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for two years.

There is no restriction of that power in subsection 2, absolutely none. Therefore I am asking what is the interpretation of the words "the course of justice" in subsection 1.

Mr. Garson: I am just as convinced as I was before my hon. friend began his argument that subsection 1 also refers to a judicial proceeding, but just to make sure that I convince my hon. friend more effectively I suggest that we let this matter stand and I will bring forward additional material which I hope will convince him.

Mr. Winch: Thank you.

Mr. Garson: I do not see how it could be given any other meaning, and the language used in subsection 2, "without restricting the generality of the foregoing", really is illustrative of what would happen under subsection 1.

Section stands.

On section 120—*Public mischief*.

Mr. Knowles: I should like to ask the minister a question or two regarding section 120. I note from the reference on the opposite page that this is a new clause, and I may say quite frankly that the comments I am making arise out of certain remarks made to me by a friend who is a lawyer. It does look to me as though the section in its present wording makes it possible for a person to be charged with an offence for doing something that really was not wilful or intentional on his part. For example, I think the point I have in mind could be made if I could simply refer to subsection (c), which reads:

Every one who causes a peace officer to enter upon an investigation by wilfully

(c) reporting that an offence has been committed when it has not been committed, is guilty of an indictable offence and is liable to imprisonment for five years.

In my view the quality of knowledge ought to be put into that section. The reference ought to be to a person reporting that an offence has been committed when he knows or ought to have known that it has not been committed. The same idea occurs to me with regard to paragraph (b), but I shall not spell it out for the moment because I am interested in what may be the meaning of the gestures the minister is making toward me at the moment.

Mr. Garson: My gestures meant that if the hon. member had finished his remarks I would be glad to try to answer him. Earlier I indicated that one of the purposes of the present consolidation of the code was to make the definition of Canadian crimes set out in this new consolidation bill inclusive of all the

crimes that could be charged in Canada. To that end I stated that we went back to 1892 and took a record of all the common law offences which had been charged, and one of those is the common law offence of public mischief. The reason this section is new is that this is a codification of the common law offence of public mischief.

The hon. member says he objects to paragraph (c) of the section because he thinks that under it a man who had innocently reported that an offence had been committed, when in fact it had not been committed, might be charged and perhaps convicted under this section.

Mr. Knowles: And sent down for five years.

Mr. Garson: I would ask the hon. member to read the whole of the section carefully. He would see that it reads this way:

Every one who causes a peace officer to enter upon an investigation by wilfully—

I emphasize that word.

—reporting that an offence has been committed when it has not been committed—

In other words, in order to establish that the accused is guilty of an offence under this section it is necessary for the crown to prove a guilty mind or *mens rea*. If the accused could say truthfully and convincingly "I am sorry that I passed on to you a report of this thing that I thought was true but which has proven to be untrue" I believe that would clearly establish a defence for him. The crown has to prove its case beyond reasonable doubt when the word "wilfully" is used. The accused can meet the prima facie case which has been so proven by establishing that, although he did report an offence had been committed when it had not been committed, he did not so report wilfully.

Mr. Knowles: I enjoy these free lectures in law that one gets along with being a member of parliament, but it seems to me that the word "wilfully" does not cover the question of knowledge. It seems to me that a person could wilfully and, shall I say, intentionally make a report to a peace officer because he believed such and such had taken place, but it just so happened that it had not taken place. It seems to me it could be established that the accused had done this wilfully. He meant to do it, but because he did not know the facts of the case he was in error. It seems to me that to write something into the Criminal Code that provides a five year penalty for that is a little bit stiff.

Mr. Fulton: I am sure we should not get into a technical discussion of the law, but does the minister not consider he is giving a meaning to the word "wilfully" which, if it were in fact to be written into the section, would require the use of the words "with malice aforethought", or some reference to maliciously or fraudulently? I do not think the word "wilfully" goes to the question of motive. The minister is quite right when he says the crown has to prove it was done deliberately, but as the hon. member for Winnipeg North Centre says that does not go to the question of motive. Before taking his seat, he said that words ought to be inserted in paragraph (c) concerning the reporting of an offence which he knows or ought to have known had not been committed. Otherwise you might get a man who made an innocent statement that an offence had been committed convicted and sent up for five years, when he acted in good faith.

Mr. Garson: As in the special committee of the House of Commons, I am quite prepared when we meet again to convince hon. members that what I have just said is right, or accept their wording.

Section stands.

Progress reported.

BUSINESS OF THE HOUSE

Mr. Harris: I intimated on Friday evening that on Thursday we would start the housing bill.

Mr. Fleming: The first thing on the order paper?

Mr. Harris: Yes.

At ten o'clock the house adjourned, without question put, pursuant to standing order.