Bill No. 277, for the relief of Anita Felton Corbeil.—Mr. Hunter.

Bill No. 278, for the relief of Sonia Lippman Cohen.—Mr. Hunter.

Bill No. 279, for the relief of Margaret Stuart Peniston Rex.—Mr. Hunter.

Bill No. 280, for the relief of Phyllis Adair Parker Smith.—Mr. Hunter.

Bill No. 281, for the relief of Elizabeth Louise Emmett Lightbody.—Mr. Hunter.

Bill No. 282, for the relief of Madeleine Victoria Coussement Rolland.—Mr. Hunter.

Bill No. 283, for the relief of Julia Frances Finn Radcliffe.—Mr. Hunter.

Bill No. 284, for the relief of Eileen Theresa Burgess Cowan.—Mr. Hunter.

Bill No. 285, for the relief of Christina Emmanuel Papadakis Banks.—Mr. Hunter.

Bill No. 286, for the relief of Grace Connolly Houde.—Mr. Hunter.

Bill No. 287, for the relief of Marion Elizabeth Davis Esson.—Mr. Hunter.

Bill No. 288, for the relief of Morris Goldsmith.—Mr. Hunter.

Bill No. 289, for the relief of Edith Marie Treleaven Younkie.—Mr. Hunter.

Bill No. 290, for the relief of Irene Dorothy Hazelden Munn.—Mr. Hunter.

Bill No. 291, for the relief of Margaret Rosie Black Kirk.—Mr. Hunter.

Bill No. 292, for the relief of Irene Bertha Kirkpatrick Faubert dit Masson.—Mr. Hunter.

Bill No. 293, for the relief of Marie Charlotte Yvonne Gisele Giguere Larocque.—Mr. Hunter.

Bill No. 294, for the relief of Albert Pigeon. —Mr. Hunter.

Motion agreed to and bills read the second time.

Mr. Speaker: The business under public and private bills having been completed, the house will revert to the business under consideration at five o'clock.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Friday, February 12, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

The Chairman: I understand that we were considering clause 163 when the committee rose previously. Shall the clause carry?

Criminal Code

On clause 163—*Offensive volatile substance.*

Mr. Diefenbaker: I should like to ask the minister a question regarding a suggestion made a week ago today respecting some amendment to the section in question in order to cover the pollution of streams. I am not going to repeat the arguments advanced on the last occasion this matter was up, but generally speaking I feel that something should be done under the Criminal Code to meet a situation that will become increasingly difficult as the years go by.

We have a situation on the Ottawa river as a result of pollution that has brought representations to the governments of both the provinces of Ontario and Quebec as to the need of doing something to meet a condition which is detrimental in some cases to the health of individuals, and in other cases dangerous to fisheries.

The latest report I have from the city of Prince Albert, and other localities through which the North Saskatchewan river flows, is that the condition of the water is still such that few people dare drink any of it. The odour is beyond description. How dangerous the water will be to the individual has not been determined yet; but, Mr. Chairman, it is of interest to know that my information is that the Canadian National Railways have found that without any treatment the water of the North Saskatchewan river in its present polluted condition is a very active agent for the removal of scaling in locomotive boilers. That would seem to indicate that it would not be too congenial to the health of human beings. I think that is an understatement on my part.

However, I do rise once more to suggest to the Minister of Justice that the section in question, and the next one twice removed, be allowed to stand so that further consideration may be given by the Department of Justice to the utilization of these sections as a means whereby more control may be achieved under the law over the pollution of rivers that pass through two or more provinces. The other night the minister said the law of Manitoba was such as to meet the condition of affairs which existed on the North Saskatchewan river. We have health laws in Saskatchewan, too, but neither the province of Manitoba nor the province of Saskatchewan can do anything by the enforcement of the laws of their respective provinces to cover pollution taking place in another province.

In the United States consideration has been given to this problem under the powers contained in the statutes controlling interstate commerce or interstate transportation. The

pollution of streams is relatively new. It did not exist when the Criminal Code was codified some 62 years ago. There is no power in the legislatures of the provinces, other than the legislature of the province where the pollution takes place, to punish wrongdoing consequent upon the pollution of streams.

The North Saskatchewan river is the only source of water for human consumption in the cities of Battleford and Prince Albert and the town of The Pas. The Minister of Justice stated the other night that an amendment of the nuisance sections to cover pollution would not help. Certainly it would help, provided there was evidence sufficient to pin the guilt upon those who were responsible for the pollution.

In making the appeal that the government consider amending the nuisance sections to cover the conditions which prevail today on the North Saskatchewan river at no time did I suggest, nor do I now, that the mere amending of the law would result in a conviction. But it would put teeth in the objections now being raised by the people of the city of Prince Albert and these other urban centres, and would place them in a position when responsibility could be established so they would be able to act under the law.

During the last week thousands of people in Prince Albert have become more and more dependent upon wells throughout the country. Many are having ice hauled from the South Saskatchewan river, 30 or 35 miles away. The mayor of Prince Albert, Mr. Cuelenaere, speaking in Prince Albert the other day, in reference to a statement I had made that this was indeed a national emergency which existed along the North Saskatchewan river, said it was a national disgrace that something could not be done.

Without in any way entering into a controversy as to the respective fields of federal and provincial jurisdiction in connection with rivers that flow through two or more provinces, I think we would be taking a long step forward to meet the problem of pollution, not only of the North Saskatchewan river but in other parts of this country. No one wants to interfere with legitimate industry finding a means of disposing of its waste, but no one can justify industry using the God-given streams of this country upon which the people depend for water for human consumption as a means of disposing of their waste, with the excuse that there is no place else to dispose of it.

The waste that is being poured into the river today by one industry east of Edmonton amounts to 300 gallons a minute. Until this industry started to pour this effluent into the river, the waste poured in by other industries had no effect on the water supply in Battleford and Prince Albert. The odour of the effluent from this industry corresponds to the odour of the water in Prince Albert.

That of itself is not sufficient evidence upon which to convict. I am not asking that parliament convict anyone, as that is not the power or responsibility of parliament. But I do make an appeal to the minister to permit amendments to these sections so that not only will it be an offence, as it is today, to pour certain types of fluids into streams in this country, but it will also be an offence to pour into the God-given sources of drinking water for the people anything which has the effect of denying to the people as a whole the right to use those waters.

It has been said that it would be costly for this industry east of Edmonton, Alberta, to chemically treat this effluent so it would not have a detrimental effect upon the water of the North Saskatchewan river. Surely it is no excuse for the public interest being detrimentally affected to say that an industry would find it costly. The city of Prince Albert tried to meet the situation—

Mr. Garson: Perhaps it would help my hon. friend if I were to suggest that we would have no objection at all to having clauses 163 and 165 stand. I think indeed it would be desirable to do so until the facts in this particular case of the North Saskatchewan river shall have been established. Even if there were force in my friend's argument that an amendment to the code was desirable, I think we could draft the amendments much more intelligently when we knew what the facts were.

Mr. Diefenbaker: A matter of a few days is not going to make the situation any better or any worse, since it has been going on now for 97 days. I would appreciate it if the minister in allowing these sections to stand would take up with the law officers of the crown the question of the type of amendment that might be applicable to the conditions that have existed, as the department of health has found them. I would also ask that he secure from the law officers of the crown an opinion as to the degree to which, in consequence of a river passing through two or three provinces, the jurisdiction of the dominion is thereby brought into being.

Mr. Garson: Mr. Chairman, we would deal with all these questions as a matter of course in considering this subject. In fact some have been given consideration already. But there is another aspect to this matter which I am sure the hon. member for Prince Albert would be the first to appreciate, namely that we try,

in the exercise of our federal jurisdiction in these matters, to encroach as little as possible on provincial jurisdiction and provincial rights. The provinces concerned have their laws dealing with public health; and in a matter of this kind, seeing that we are seeking their co-operation in finding a solution to this problem, the least we could do would be to hear what they have to say as regards the measures to be followed.

Mr. Campbell: Mr. Chairman, before this clause is allowed to stand, and I think it should be allowed to stand, I want to point out that this situation has been going on, as the hon. member for Prince Albert said, for over 90 days. It is only going to be a matter of another 35 or 45 days before the river breaks up. If something is not done before the river breaks up, then the spring floods will come down from the mountains and the chances are that the effluents which are causing the trouble are going to be diluted to such an extent that it is going to be a great deal more difficult to find out what the trouble is, particularly a month or six weeks from now. It would be easier to find out what the trouble is now.

For the life of me I cannot see why that plant could not be shut down for 24 hours. We have scientists stationed at the 14-mile spot, where they are now conducting their tests, and after 24 hours with the plant shut down, a test could be made of that water. I am satisfied it would have cleared up to that point. The plant could then be started up again and other tests taken after allowing sufficient time for the effluent to get down to that point. To me that is the only practical way of doing it. At the moment we have a number of scientists, and no doubt they are the best we have, trying to decide which of the different chemicals—and there are supposed to be some 18 or more—is causing the trouble and from which particular plant they come.

On the 15th and 16th of January a delegation from Prince Albert spent two days at Edmonton, and they discovered the source of the effluent which is causing the trouble. The health officers in Edmonton know where it is coming from because they can see it. The hon. member for Prince Albert said there was a flow of 200 gallons—

Mr. Diefenbaker: 300 gallons a minute.

Mr. Campbell: —and I have been informed that it is 2,000 gallons a minute. It has been cut down to some extent, but they can see that horrible yellow substance coming down the river. To me the manner in which they are tackling this problem is just stupid when, as I suggest, they can shut down this plant for 24 hours by which time the water will have cleared itself and then take the tests.

They had the same kind of trouble with a similar plant out in Texas. What did they do? They followed the river down, found the source of trouble, and forced that plant to build an artificial lake into which the effluent was directed. That is the solution to this problem. This plant will have to pipe the effluent to some other suitable spot. Where the plant is situated at the moment there is no room to make an artificial lake. They are in a congested area. It will certainly cost them money to deal with this problem, but what is money when the health of 35,000 people is being affected? I think it is shameful. If the Minister of Justice will do what the hon. member for Prince Albert has suggested and see if the law offices of the crown can suggest a method of dealing with the matter federally, we will be satisfied.

The action taken by the Minister of National Health and Welfare on Wednesday helped quite a bit. He sent a wire. I have read it carefully, and underneath it all it seems to me that the Minister of National Health and Welfare is beginning to feel that something has to be done. Hon. members here cannot realize the extent to which the situation is being aggravated. The people in that area are talking about sending a caravan 1,000 strong to Edmonton in order to shame and shock the people of the city into clearing up the pollution. I had a letter from another person recently which suggests that the churches of Saskatchewan should hold a day of prayer, in order to pray that the heart of the premier of Alberta might be softened, so he would do what the law of Alberta will allow him to do.

I shall be quite satisfied if the minister will do that. Let Alberta know that we are beginning to be concerned down here, and that if something is not done by their people then we are going to deal with the matter ourselves. I shall be satisfied to let this clause stand.

Clause stands.

On clause 164—*No apparent means of support.*

Mr. Knowles: I wonder if the minister would say a word by way of comment on the first three lines of this clause, which read:

> (1) Every one commits a vagrancy who
> (a) not having any apparent means of support
> (i) lives without employment . . .

There may be some legal interpretation of that which makes it read all right, but it

sounds to me as though, bearing in mind the fact that vagrancy is an offence punishable on summary conviction, it is rather strong. I take it that anyone who has plenty of money and lives without employment would not be affected, but it would apply to those who are broke and live without employment and today there are quite a few people in Canada without employment.

Mr. Garson: I believe perhaps the best way I could reply to my hon. friend would be to refer him to the manner in which the courts have interpreted this language which he finds so difficult, and I would refer him to the case of Rex *v.* Bassett, where Mr. Justice Osler referred to an earlier enactment which was similar in terms to the one we are discussing here and then said this:

> In my opinion before a person can be convicted of being a vagrant of this class he must have acquired in some degree a character which brings him within it, as an idle person who having no visible means of maintaining himself, i.e., not "paying his way," or being apparently able to do so, yet lives without employment.

That is, one who presumably lives by devious methods which are not apparent on the surface. That is the best manner, I think, in which to explain the language of the clause, but I might say, as my hon. friend himself may know from his reading of the newspapers from day to day, this clause is taken from a very old section which has been in the code for many, many years; and in practice the magistrates do not seem to have difficulty, such as my hon. friend has, in applying it to the cases which come before them.

Mr. Knowles: I take it that the meaning of the word "lives" is not just what is meant by "exists". Rather it implies living without having any means of living, in such a manner as to raise a question as to what is the source of one's livelihood.

Mr. Garson: I will not comment upon that. If that is what my hon. friend takes it to be I will not argue with him, but I do not say I necessarily agree with him either.

Mr. Ellis: Is there any general rule of thumb whereby a policeman can apprehend a person under this section? Is a certain amount of money required for a person to satisfy the law that he does possess visible means of support? In other words, getting down to a practical case, when would a person be without visible means of support?

Mr. Garson: Speaking as one who, I must confess, has had no experience at all in this type of criminal work, I think the essence of the matter is pretty much as I have just stated it. Perhaps I might give my hon. friend another judicial quotation which may help to elucidate the matter more than the first quotation I gave. In Rex *v.* Riley Judge Wurtele said:

> The mere fact of living without employment is not an offence against the law, if the person living without employment is able to do so, because he has sufficient means either belonging to himself or which are provided for him in a legitimate way. The policy of the law against idlers is to protect the public against men who, while avoiding labour and employment, live by trickery and cheating and by preying upon other men. But where a person is supported either by his own means or by his parents, it cannot be presumed that he will have to resort to unlawful means to live and that he is consequently a vagrant.

In other words, it is where a man is idle, living without visible means of support and yet living. It may not be possible in a particular case to prove any illegitimate activity against him, but the mere fact that he is able to live, presumably by illegal methods which cannot be proven, will constitute vagrancy under this section.

Mr. Ellis: It seems to me this is very vague. Ordinarily under the law if a man is accused of an offence we say that he is presumed innocent until he is proven guilty. He must be proven guilty of a specific offence. This seems very vague. If my memory serves me correctly, it seems to me there were cases prior to the last war of persons being arrested for vagrancy simply because they were without employment, were going about the country looking for work, and in some cases had no particular intent to commit any crime.

I should like to clear up this point. In the event a person without money finds himself in a strange community, perhaps in the course of looking for employment, could he be accused of vagrancy? He might be without visible means of support, without money, perhaps without a permanent place of residence. Would there be any possibility of such a person being charged with vagrancy?

Mr. Garson: It is quite impossible for me to appear here as a sort of fountain of legal opinions on hypothetical cases such as that which my hon. friend has just stated. I have indicated the circumstances under which, according to the rulings of the two judges whom I have quoted, an accused may be found guilty when charged under the section in the present code. I do not think I can illuminate the matter very much more than that. I am sure my hon. friend has read in the newspapers on numbers of occasions, if he is at all interested in items of this sort, of men or women being brought before a court under this section, and in actual point of fact the magistrates' courts do not seem to have any great difficulty in hearing such

matters and in holding in proper cases that the accused is guilty and in other cases dismissing the charge.

While I do not hold myself out in any sense as an authority upon this branch of the law, I do not think a man would be brought up merely because he was looking for work. But if, for example, it is notorious in the police force that he is always being around and never working, and cannot give a satisfactory account of the means by which he carries on in that way, I suppose they would lay a charge against him. Then it would be for the magistrate to decide upon the evidence in the case that came before him whether he thought the charge had been proven.

Mr. Diefenbaker: I find it difficult to understand why so many changes were made in the vagrancy section. A reading of the marginal note would indicate that the new section 164 constitutes sections 238 and 239 of the code. I am afraid this has been widened altogether too much. First I am going to read the old section 238, which is and has been the law of vagrancy for a very long time. It reads as follows:

> Every one is a loose, idle or disorderly person or vagrant who,
>
> (a) not having any visible means of subsistence, is found wandering abroad or lodging in any barn or outhouse, or in any deserted or unoccupied building, or in any cart or wagon, or in any railway carriage or freight car, or in any railway building, and not giving a good account of himself, or who, not having any visible means of maintaining himself, lives without employment;
>
> (b) being able to work and thereby or by other means to maintain himself and family, wilfully refuses or neglects to do so.

Then paragraph (c) deals with indecent exhibitions. Paragraph (d) reads:

> (d) without a certificate signed . . . by a priest, clergyman or minister . . . wanders about and begs . . .
>
> (e) loiters on any street, road, highway or public place, and obstructs passengers . . . or by using insulting language . . .
>
> (f) causes a disturbance in or near any street, road, highway or public place . . .
>
> (g) by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace . . .
>
> (h) tears down or defaces signs, breaks windows or doors or door plates . . .
>
> (i) being a common prostitute or night walker, wanders in the fields, public streets or highways . . .
>
> (j) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution.

In the sincere desire to unify, the section now reads:

> (1) Every one commits vagrancy who
>
> (a) not having any apparent means of support
>
> (i) lives without employment . . .

I think that is widening the law of vagrancy to too great an extent. In an endeavour to unify, the law of vagrancy will now cover anyone who, not having any apparent means of support, lives without employment. I believe that goes too far. I think it could be used in its new form in a manner that would be unjust and unfair.

Mr. Garson: Would my hon. friend care to say in what way that paragraph differs from 238(a) which he quoted before?

Mr. Diefenbaker: Because the words "is a loose, idle or disorderly person or vagrant" are omitted. The authorities to which the minister referred were based on the words "loose, idle or disorderly". The omission of those words—

Mr. Garson: If my hon. friend will look he will see that the existing law reads:

> Every one is a loose, idle or disorderly person or vagrant . . .

Mr. Diefenbaker: Yes.

Mr. Garson: The vagrant is the loose, idle or disorderly person.

Mr. Diefenbaker: With due respect and, as the minister would say, after reflection, the word "vagrant" will be interpreted as it always has been in the courts, according to the *ejusdem generis* rule, and as incorporated in vagrancy, the loose, idle or disorderly qualities.

I am very much concerned about this section in its present form. I see no reason why the experience of years which required that the crown should prove that a person was indeed, by his conduct, a loose, idle or disorderly person, should not be used today. I feel that the courts will conclude that any person who does not appear to be working at the moment, and who has no apparent means of support, will thereby be guilty of vagrancy. I would suggest the addition of the words "loose, idle or disorderly person" because as you know, sir, vagrancy is one of those sections that is too often used to convict. I do not want to see, and I am sure parliament does not want to see, the offence of vagrancy extended beyond what it is today.

This brings to mind one further reference that I am going to make at this time. In the general amendments to the Criminal Code something should be done to remedy the situation which results in a jail sentence in default of the payment of a fine. Under our law many persons go to jail when a conviction is registered because the alternative is jail, and the person is unable to pay the fine. This reform was brought in some years ago in Britain, and it has resulted in tens of thousands of those who were unable to pay fines, and who would otherwise have gone

to jail, being freed from the stigma that falls upon a person who is sent to jail. I feel that in this section the door will be opened too widely to the conviction of those who have no apparent means of support, and live without employment.

One does not want to bring up personal examples, but I know I can say with authority of personal knowledge that there have been occasions when members of this house would have been in that position. They were not loose, idle and disorderly; they just could not get jobs. They were living, for the moment, without employment. They did not have money in their pockets. I believe that if we do not maintain the present provisions of the law of vagrancy we will make it, as I said once before, a passport to jail because of poverty. I would suggest that consideration should be given to adding to this section the provision that everyone who is a loose, idle or disorderly person commits vagrancy if he does those things enumerated in paragraphs (a) to (e).

I find it difficult to understand why, in the interests of comprehensiveness and unity, these words were removed. If I know anything about the authorities in the past, on each occasion the judges have stated that an isolated instance is not sufficient to make a person a loose, idle or disorderly person. That is a state of mind that must be continuing. The omission of these words makes it possible for a person who is not working at any particular time, and therefore apparently living without employment, to be brought before the courts and charged with being a vagrant. As I see it that is dangerous, and I suggest reconsideration of this section.

Mr. MacInnis: I am in complete agreement, Mr. Chairman, with the hon. member for Prince Albert. I am glad that a person who has a good knowledge of the law can explain these things, because there are those of us who, no matter how well intentioned we might be, are unable to do so. I found that when we were sitting on the parliamentary committee last year there was a member who was of great help to us because of his legal training.

I think it would be a mistake to have the offence described as not having any apparent means of support or living without employment. These days a great many people live without employment because they cannot get employment. For that reason I would be glad to have the minister give consideration to inserting the words mentioned by the hon. member for Prince Albert.

[Mr. Diefenbaker.]

I should like to know what is meant by paragraph (c) which reads:

—being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself;

What kind of account would a person in those circumstances give that would be considered good? It occurs to me such a person would find it very difficult to give a good account of herself. I am wondering just what those words may mean, and just exactly what kind of account such a person would have to give to satisfy the law enforcement authorities.

Mr. Henderson: I should like to say a few words on this section, if I may. First of all I might say that I am quite sure no one wants to place the name of vagrant on any citizen, especially in a civilized community. I do not think any police officer would like to take someone from his community and put him in jail without real cause. I feel that our police, no matter at what level in Canada today, properly administered will protect us so that no one will be picked up without good reason.

I think there is another point. Today we hear from all sides of this chamber and from various organizations that we want to protect this country from communism, which we do not want here. This might be a very good section that we could use, with discrimination, to rightfully pick up certain persons within the confines of the law.

We must give the police every opportunity to do their part in the administration of justice in our country. This is particularly true because at the present time Canada is growing very rapidly and is expanding industrially. There is considerable activity in housing and other things of that nature. Therefore we must put ourselves in the position of giving those who are going to administer the law in these communities the best opportunity to do it properly. If we read clause 164(1)(a)(i) we see that it says:

Every one commits vagrancy who, not having any apparent means of support, lives without employment.

The protective word in the subparagraph is the word "lives" because, as I understand it, it would not be the fact that for one day he did not have food; rather the reference would be to the fact that he lived over a period of time, and with the qualification as set out in the section, "not having any apparent means of support".

Therefore I do submit that we would not allow a person to go on living without employment over a period of time, such as is implied in the word "lives", without any apparent means of support. If one of our

fellow citizens is doing that it might be well to have him brought before a court so that his character and past activities could be investigated. In many instances there would be no other means of investigating such circumstances other than by bringing him before a court, because there might be certain activities he had been carrying on that could not be investigated. I feel that the clause as it stands, for the reasons I have given, would cover what we are trying to do in this revision of the Criminal Code.

Mr. Fulton: I venture into this matter with some diffidence because, like the Minister of Justice, I have not had any experience in cases under this particular clause. But I wonder if the minister would not agree with me that there is some force in the argument that what is being done now is changing the offence from one of being to one of doing. In other words, previously the offence was one of being a loose, idle or disorderly person, or vagrant. Now the offence is specifically made that of doing something. Previously, in order to establish that a person was a vagrant—that is, that he was guilty of the offence of being—it was necessary to allege and show a course of conduct. But it was still necessary to establish from that course of conduct that he was a loose, idle or disorderly person, or vagrant.

In other words, you had to establish two things; first, that he had been guilty of a certain course of action or conduct, and then, based upon such conduct and upon his general character, that he was a loose, idle or disorderly person, or vagrant. Now you do not have to establish that he is a loose, idle or disorderly person. You merely have to establish a certain set of facts with respect to conduct, one of which is that he lives without employment. You do not have to go any further than that to prove that he is a loose, idle or disorderly person, and he may stand convicted on the mere fact that he lives without employment.

I base that argument upon the authority of Tremeear, page 256, where it says:

> Sections 238 and 239 are unusual, in that the offence here dealt with consists not in doing, but in being. The doing of one or other of the things specified in section 238 makes the person a vagrant, but is not in itself the offence.

I couple with that a citation from the supplement to Tremeear, which contains the recent case of Rex *v.* Konkin (1949) 2 Western Weekly Reports, at page 1225. This is a direct quotation from the judgment in that case, as follows:

> The essence of the offence of being a loose, idle or disorderly person lies in a course of conduct. This may not be proven satisfactorily without evidence anterior to the particular date and consistent with the appellant's conduct on that date. The account must be "good" in the sense that it negatives the existence of the other ingredients (viz. wandering abroad and lacking visible means of subsistence).

So it seems to me that case establishes clearly that not only must one prove certain conduct or action, but he must also prove that this conduct, together with the accused's general character, make him a vagrant. But if an accused can establish that he is of good character, and his antecedent history negatives the assumption of vagrancy, that is a good defence to the action.

I do not think that defence will be available any more, because he no longer has to be proved to be a loose, idle or disorderly person, or a vagrant, but merely has to be proven to have indulged in a certain course of conduct as set out in the clause. So I think one of the elements of the offence has been removed by the very substantial change in the wording of the new proposed clause.

Mr. Garson: Perhaps, Mr. Chairman, we might call it six o'clock. I was going to say that I think the hon. member for Kamloops has provided the answer to the argument of the hon. member for Prince Albert.

Mr. Fulton: Oh, no, I have not.

Mr. Garson: And I shall explain why when we resume at eight o'clock.

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

On clause 164—*No apparent means of support.*

The Chairman: We were dealing with clause 164 when the committee rose at six o'clock. Shall the clause carry?

Mr. Knowles: Just a minute; we were discussing this at six o'clock.

Mr. Garson: One of the purposes in the drafting of this new consolidated code was to condense what over the course of some 60 years had become a pretty voluminous and wordy document. In the terms of reference to the commission the members were specifically instructed to bring the code into as short a compass as possible, consistent with preserving its meaning, and that is what they have endeavoured to do in this section which is now before the committee. If any hon. member wishes to compare the extent of the present section with sections 238 and 239, which it replaces, he will see, at least in my judgment, that very much the same ground has been covered with fewer words.

In this clause, concerning which so much discussion took place this afternoon, "every one is a loose, idle or disorderly person or vagrant" was apparently regarded by the commission and by the legislative bodies which have dealt with it since as being a synonym for vagrant. Hon. members will observe that in the corresponding section of the existing code, and in the case law which has been decided upon this corresponding section on every occasion on which this term has been used they include the whole phrase, "loose, idle or disorderly person or vagrant". Since one of the main purposes in redrafting the consolidated code was to get away from this voluminous and archaic language, the members of the royal commission employed just the one term "vagrancy" in this section.

While I have the greatest of respect for the views expressed by those who took part in the debate this afternoon, especially the hon. member for Prince Albert, whose experience in this branch of the law far exceeds my own or, to put it in stronger terms, that of most other hon. members of this house, I am inclined to think that perhaps Chief Justice Martin of Saskatchewan, who was the chairman of the commission, Mr. Justice Fernand Choquette of the Quebec superior appeal court, the court of Queen's Bench of Quebec, and Judge Robert Forsyth, the senior county court judge of the county of York, all of whom have had a great deal of experience in the interpretation of the code, are men whose authority in this matter would not suffer in comparison even with the great authority of the hon. member for Prince Albert.

Therefore I am rather on the horns of a dilemma. I do not want to win an argument; I want to have a good code, and if the use of the words "loose, idle or disorderly person" would be conducive to that end I would be quite willing to accept them and put them in the relevant sections of Bill 7.

I do not think the members of the commission, who are all conscientious people, men who worked very hard on this task for a long period of time, would have drafted clause 164 in its present form if they felt that in doing so they were exceeding their instructions by making any substantial change in the law. Personally I would favour adhering to the language which they have employed, but rather than spend a very long time labouring a point of this kind, I would prefer to employ this phrase "loose, idle or disorderly person", if it will make all the hon. members of the committee who have been arguing along these lines feel that we shall have a better clause if we put these magic words back into it.

If the feeling is very strong on the part of hon. members I would wish to meet them. On the other hand I must confess that I would very much prefer to adhere to the language which was approved by the commission and by all of the legislative bodies which have considered this clause. I am in the hands of the committee in that regard; but I do not think that the difference between those two choices is important enough for us to spend a great deal more time upon it.

Mr. Knowles: May I suggest to the minister that if he finds himself on the horns of a dilemma in trying to choose between the views of Chief Justice Martin of Saskatchewan and the hon. member for Prince Albert, both very eminent men in their profession, he might well consider the views that laymen have expressed. The hon. member for Vancouver-Kingsway put it very clearly this afternoon. If I remember correctly, I believe I was the one who started the discussion on this section, by asking whether its language did not seem a bit wide. It strikes me that the plain, ordinary citizen, taking the plain ordinary meaning that is in these words, would feel that this would make it possible to lay a charge of vagrancy against people on very flimsy grounds. In my view, the minister would do well to insert that phrase in the clause at the appropriate place.

Mr. Fulton: I am quite sure everyone will approve what the minister said and the attitude with which he is approaching the matter. But for the reasons given this afternoon by the hon. member for Prince Albert and, with some deference, the argument advanced by myself and by the hon. member for Winnipeg North Centre and others, I feel that it is appropriate to urge that the words "being a loose, idle or disorderly person" should continue to form part of this section so that it will be necessary, in addition to proving the allegations with respect to the condition of the person, to show that he is a loose, idle, or disorderly being.

I had drafted an amendment, but I do not want to thrust it forward if the minister has one ready which might be in better form. I was going to suggest, and I put this forward only as a suggestion, that the clause be amended by inserting in subsection 1(a) immediately before the word "not" the following words:

being a loose, idle or disorderly person or vagrant and

The section would then read:

(1) Every one commits vagrancy who
(a) being a loose, idle or disorderly person or vagrant and not having any apparent means of support

Then follow the other paragraphs. I put that forward only as a suggestion, because I think it emerged from the discussion this afternoon that it was felt, particularly with respect to paragraph (a), that the use of the words in question should be continued, that is the words "loose, idle or disorderly person." That is why I drafted my suggestion.

Mr. Garson: One of the difficulties about this matter is the multiplicity of opinions. As I understand the point made this afternoon by the hon. member for Prince Albert it was that he preferred to revert to the language of section 238 from which clause 164 was taken.

Mr. Fulton: I would agree with that. I did not think the minister would be prepared to go quite that far, but if he will I would agree entirely.

Mr. Garson: I was wondering if it might be achieved in this way:

164. (1) Every one is a loose, idle or disorderly person and commits vagrancy who—

Then follows paragraph (a) and so on.

Mr. Fulton: That is right.

Mr. Garson: I am afraid it is going to be most difficult to get a wording with which everyone will agree. If the hon. member for Winnipeg North Centre will look at section 238 from which this clause 164 was taken, what we are discussing is a change in the wording from the way it stood in that section to the way it stands in this present clause 164.

Mr. Knowles: May I draw the attention of the minister to the difference between section 238 as it formerly read and what the minister now proposes. The section reads:

Every one is a loose, idle or disorderly person or vagrant who,
(a) not having any visible means of subsistence, is found wandering abroad—

If you simply put those preliminary words of section 238 into clause 164 you produce this result: Every one is a loose, idle or disorderly person or vagrant who, not having any apparent means of support, lives without employment. That is defining as a loose, idle or disorderly person anyone who just happens to be broke and without a job.

Mr. Fulton: I could not possibly accept the minister's suggested amendment.

Mr. Garson: If I may deal with these matters one at a time, referring to the remarks just made by the hon. member for Winnipeg North Centre, if he will look at the end of paragraph (a) of the present section 238 he will see that it is a long paragraph containing a great quantity of language. It was to avoid a repetition of these great quantities of language that an attempt was made by the commission to cast the substance of that section into a more condensed form.

If my hon. friend will look at the bottom of (a) of 238 he will see, "not having any visible means of maintaining himself, lives without employment". That is the language which is carried into the new clause 164. The hon. member for Prince Albert I must confess speaks on this matter with a great deal of authority, because he has had considerable experience in this field of law. He contended that the case law which had been decided on the term "loose, idle or disorderly person or vagrant" might be undone if we were to change that phrase. I do not agree with his view in that regard, and I have cited these other gentlemen who apparently do not agree with him.

On the other hand I cannot see that any great harm can come about through retaining these words. They are only five or six more words. That was my reason for suggesting that we might use the same phrase upon which these various cases referred to by the hon. member for Prince Albert had been decided and say, as is said in the present section 238:

Every one is a loose, idle or disorderly person or vagrant who—

—and then go on with the section as it stands. Let us be clear upon one point. There is no possibility whatever of meeting all the varied views that have been expressed during this debate. We have to have one clause 164: we cannot adopt simultaneously half a dozen variations of that clause. In what I am saying now I am trying to go a considerable distance, I must confess without any great amount of conviction upon my part, to meet the views of the committee, and in particular this argument of the hon. member for Prince Albert to the effect that we would be undoing case law by using a different phrase.

Mr. Fulton: Mr. Chairman, as I said before, everyone must appreciate the effort being made by the minister to meet our views. It is therefore with some diffidence—I ask the minister to believe that those words are used in their exact literal meaning—that I advance the suggestion that his amendment does not actually meet the point of view put forward. It seems to me that the suggestion which has been made would in fact create

two offences, or a double-barrelled offence. As I understand the minister's amendment the clause would then read:

Every one is a loose, idle or disorderly person and commits vagrancy who—

Is that correct?

Mr. Garson: That is right.

Mr. Fulton: That would mean that you would be making the fact of living without apparent means of support both the offence of vagrancy and the definition of a loose, idle or disorderly person.

Mr. Garson: Will my hon. friend answer me this question?

Mr. Fulton: I will try.

Mr. Garson: The present section 238 says:

Every one is a loose, idle or disorderly person or vagrant who—

That loose, idle or disorderly person is not a vagrant, because it says "every one is a loose, idle or disorderly person or vagrant" who does this, who does that, who does so-and-so. When he does those things he becomes, in the terms of the section, a loose, idle or disorderly person or vagrant.

The commission regarded that as being slightly ridiculous, but since the offence was in a certain course of conduct which was prohibited by the section it was not necessary to cart with you as you went along all these words. "Every one is a loose, idle or disorderly person"—

Mr. Fulton: That is exactly the point.

Mr. Garson: Let me finish it.

Mr. Fulton: You asked me a question; I had the floor.

The Chairman: The Minister of Justice has the floor.

Mr. Fulton: I conceded the floor to permit the minister to ask a question.

The Chairman: The Minister of Justice has the floor.

Mr. Garson: The only point of order I raise is that I be permitted to finish the sentence.

Mr. Fulton: You were asking a question and I conceded the floor for that purpose.

Mr. Garson: In section 238, the existing section, there were listed under subsections (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) different kinds of actions which were prohibited, and at the head of all of them this statement is made in plain terms:

Every one is a loose, idle or disorderly person or vagrant who,

—does any of the acts under subsections (a) to (j). What the commission set out to do in the new clause 164 was to define this substance in a more condensed form namely that everyone commits vagrancy who does any of the acts set out in subsections (a) to (c) of clause 164. Now, according to opposition argument there is some magic merit in using six words to refer to vagrancy. I do not think personally that there is. But if there is some advantage to the accused arising out of the decisions that have been made by the courts upon this long phrase which it is desirable to retain, I am merely proposing that, in an endeavour to meet the views of those who have suggested during this debate that there is such an advantage, and in order to have everyone in the committee feel that we are trying to be fair to the accused and not taking away any possible rights which he may have—if, as I say, there is magic in this long phrase in the present section that "Every one is a loose, idle, or disorderly person or vagrant who" and so on, then let us use it. I do not know how much further than that we can go in order to meet the views of the hon. members for Prince Albert, Winnipeg North Centre, Kamloops, and half a dozen other hon. members, especially if, as it appears, they do not agree with one another.

Mr. Fulton: But we do. Mr. Chairman, that is the longest question I have ever heard even from the Minister of Justice. If you recollect, he rose to his feet and interrupted me to ask if he could put a question. I consented, and he has now gone on for some five minutes. In the course of his purported question he has laid his finger on the whole weakness of this case, because what we are objecting to is the wording in the proposed clause, which substantially changes the law and makes inapplicable case law previously decided. What the minister has said, and it is very true, is that this clause and his proposed amendment to it try to carry into force the objects of the commission.

Our point is that the decision of the commission went beyond the terms of their reference and the scope of their authority to the extent of effecting a change of substance in the law. The minister said in the course of his argument on this question, and I have taken down his words, that the commission decided, in accordance with the law based on the present code, that the offence is a certain course of conduct. Case law based on the present code is that the offence is an offence of being a vagrant, not a course of conduct. The whole point at issue here—

Mr. Garson: But—

Mr. Fulton: Is the minister going to ask another question? If he is I do not think I

can permit him, because I cannot carry on my argument with five-minute interruptions.

Mr. Garson: I was going to contradict your statement.

Mr. Fulton: The minister says he did not state the law correctly and I am prepared to agree, but—

Mr. Garson: I was going to contradict your statement.

Mr. Fulton: My statement on law is based upon the authority of Tremeear and on the cases quoted in Tremeear to which I have already referred the minister, at page 256. Sections 238 and 239 are unusual in that the offences which were dealt with consist not in doing but in being, in other words not doing certain acts which create the offence of being a vagrant. That is followed up by a multitude of cases which are cited. The minister has said the commission decided that the offence is a certain course of conduct. That is diametrically opposite to the present state of the law, so we could not have clearer proof that the proposed clause 164 changes the law as it has been in existence under section 238 for many years.

The minister's proposed amendment, I regret to say—I do not want to use strong language, but as I started to say when the minister rose to ask a question, we do appreciate that he is trying to accommodate us. I can only repeat very briefly—

An hon. Member: And make it brief.

Mr. Fulton: —that the proposed amendment by the minister is the change we are trying to eliminate, in that it changes an element in the offence, namely of having carried on a certain course of conduct and not being a vagrant.

The minister has said that he has proposed his amendment because he thinks it comes closest to meeting the views of the hon. members for Prince Albert, Winnipeg North Centre, Vancouver-Kingsway and myself. I have had the opportunity for only a very brief discussion with my colleagues on this side of the house, but I formed the impression that my proposed amendment comes much closer to being a common denominator of our views. I therefore move that clause 164 be amended by inserting in subsection (a) (i) immediately before the word "not" the following words:

Being a loose, idle or disorderly person, and

The clause would then read:

Every one commits vagrancy who
(a) being a loose, idle or disorderly person, and not having any apparent means of support
(i) lives without employment

The Chairman: Is the committee ready for the question?

Some hon. Members: Question.

Amendment (Mr. Fulton) negatived: Yeas, 20; nays, 54.

The Chairman: I declare the amendment lost. Shall the clause carry?

Mr. Fulton: On the clause as a whole I want to make one comment. I brought the matter up earlier, and it has been mentioned several times in the course of this discussion. I hope I shall not have to comment on it again. I have heard on a number of occasions suggestions that lawyers like changes in the code. What we are trying to do, have tried to do and will try to do from time to time throughout the discussion of the code is prevent changes in the substance of the law, because I know very well that changes in the substance of the law are going to result in an immense amount of litigation with great inconvenience to clients and expense to persons who would otherwise have had good defence in law as it previously existed.

Indeed, I am a little bit tired of hearing some hon. members, I suppose in an endeavour to score a point, sneer at the lawyer. Our object is to endeavour to retain the established, clearly understood, and frequently interpreted applied form of wording. The reason we do so is that these words are clearly understood by the courts. Their application is hallowed by long usage, and lawyers are able to advise clients on where they stand under the law as it exists.

What is being done too frequently throughout this bill is not a process of codification and consolidation but changes in the substance of the law which are going to cause great expense to litigants amongst whom I hope the hon. member who made the interjection will never find himself, because it will cost him a lot more after the code has been changed than it ever would have cost him before.

Mr. Cameron (Nanaimo): Whenever I hear a group of lawyers arguing about the law I understand why that character said the law is an ass, and I wonder sometimes if it is the law that is the ass.

Mr. Fulton: You are not putting yourself in a very much better light than the law.

Mr. Cameron (Nanaimo): Let us take section 164 and try to see what the first part of it means. I suggest that it means nothing whatever.

Mr. Fulton: It meant something in the old form.

Mr. Cameron (Nanaimo): I doubt whether it meant anything in the old form, and I would remind the hon. member for Kamloops that under the old form plenty of people were arrested who should not have been arrested. If he does not know that—

Mr. Fulton: There will be far more now.

Mr. Cameron (Nanaimo): All right; just a moment. You had the floor for a long time.

The Chairman: Order.

Mr. Cameron (Nanaimo): I am going to suggest this view, that the way it is worded it means that we actually consider that someone who lives without employment is committing a crime. What we really think is that somebody who lacks employment and visible means of support may commit a crime. That is what we are afraid of. The same applies to the second part. We do not really believe that someone who is found wandering abroad is *ipso facto* a criminal. We are afraid he may be wandering abroad in order to commit some crime.

All right. Let us wait until he commits a crime. Let us set out quite clearly what the crimes are. In the remainder of this section a few crimes are set out such as begging from door to door or in a public place, or being a common prostitute or night walker. I do not know if the minister can tell us what the difference is, whether it is the day shift and the night shift.

Mr. Garson: I am not an authority upon that subject.

Mr. Cameron (Nanaimo): It is a crime for a woman to be a common prostitute or night walker found in a public place and not, when required, give a good account of herself. Then it also deals with a person who supports himself in whole or in part by gaming or crime. These are the things about which we are really concerned and against which we should have protection.

I suggest that we could well wipe out the whole of paragraph (a) without in any way endangering our control over such people, and by wiping out that paragraph we shall obviate the very real possibility that in time of depression we will again have unfortunate men slapped into jail on a charge of vagrancy merely in order to dispose of them.

Mr. MacInnis: I think what we have to be careful about here is to see that we do not make the fact that a person has no visible means of support a crime. The minister shakes his head, but let me read this as it appears to a layman. It reads:

> Every one commits vagrancy who
> (a) not having any apparent means of support . . .

[Mr. Fulton.]

It seems that all the other things mentioned here as crimes are predicated upon not having any apparent means of support. That is the way it appears to me.

> Every one commits vagrancy who
> (a) not having any apparent means of support
> (i) lives without employment, or
> (ii) is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found . . .

It is obvious that if he had some apparent means of support these things would not apply to him. The only time I was ever in court was when I went bail for a man who was accused of vagrancy. I think the case was appealed from the magistrate to the county court, and I thought the man was very lucky to come before the judge he did because he would not hear any evidence except with respect to whether the man had visible or apparent means of support and whether or not he was wandering about as set out in the old sections 238 and 239. But I do insist that what makes one a vagrant under this clause is having no apparent means of support. A person is also liable to arrest for doing any of these other things. There are many people who are idle but who have the means to live, and this would not apply to them at all. At this particular time when unemployment is increasing I want to be sure we do not make unemployment and want a crime.

Mr. Johnston (Bow River): It seems to me this section certainly needs modifying. I think the minister will agree that no matter what explanation is given here by the minister or by any other member of the house, such explanations will have no effect when the clause comes before the courts. It is their duty to take it exactly as it is written. While I do not profess to be a lawyer, the words seem very clear to me. It says:

> Every one commits vagrancy who
> (a) not having any apparent means of support
> (i) lives without employment . . .

The only evidence that might be heard would be as to whether or not the man was employed and whether or not he had any visible means of support. That is certainly what it indicates, and no other crime would be involved before the court except the charge of vagrancy for having no apparent means of support. If this provision is really enforced it seems to me the courts will be overrun, because now we have the beginning of a rather large unemployment problem. Unemployment means exactly what it says here, that the man has no means of support, and he could not get any means of support no matter how he tried because a job just is not available. This seems to me to be a very vicious section. If it does not mean

that, I am sure the committee will be interested to learn what the minister's interpretation is.

Mr. Barnett: I should like to say a word on the same point before the minister replies. I am aware that some considerable time earlier in these proceedings the minister attempted to explain that these words "living without employment" did not mean what they say. At least that is my reaction to it. I also recall that earlier in the discussion on this bill he suggested that one of its purposes was to attempt to put in language which the average citizen could understand more easily the catalogue of crimes that we are prone to commit. I think the reaction of a number of those who have spoken makes it clear that, apart from some of the experts on the matter, the phrase "lives without employment" does create a very grave doubt in the minds of some of us about accepting the clause as it stands.

I think it also goes without saying, as one or two other members have mentioned, that a recollection of what occurred in the early 1930's is fixed very firmly in the minds of some of us. I know I have a recollection of people telling me their personal experiences with respect to how the clause was used, or the threat of the clause was used, to keep men moving from pillar to post across the country. Certainly when we come to a revision of the code it seems to me we should make very sure that no similar use of this clause is made in this country in the future.

With respect to the meaning of the words "living without employment", the question that has been in the back of my mind for some time is, if the meaning of that clause is as restricted as the minister suggested, why is it necessary to have subsection 3, which states that the provision shall not apply to the aged or infirm? I interpret that to mean it does not apply to those who are unemployable in the ordinary sense of the word. The fact that this subsection has been inserted would indicate to me that anyone who is in normal health and in normal working years is liable under this clause if he happens to be living without employment at any particular time.

Mr. Garson: Mr. Chairman, first of all I think I should reaffirm for the fourth or fifth time that this clause which is before the committee is the expression of the substance of the present sections 238 and 239 that have been in the code for many decades. We are not, therefore, embarking here on some new, untried law. As the hon. member for Prince Albert said this afternoon, this law has been interpreted on many occasions before the courts of nearly every province of Canada. I do not mean the magistrates' courts; I mean that a conviction which had been registered against an accused in the magistrates' court has been carried to the courts of appeal. The law has been argued, and the case reported in the case books.

The very case the hon. member for Kamloops cited, I thought inaptly to his argument, just before the dinner recess, that of Rex *v.* Konkin, decided in 1949 by Mr. Justice O'Halloran of the court of appeal of British Columbia, stated this:

> The essence of the offence of being a loose, idle or disorderly person lies in a course of conduct.

My hon. friend says it is when they do something. It is not only necessary to do something but they have to keep on in that course in order to fall within the terms of the section. The hon. member for Vancouver-Kingsway is correct when he says that one of the ingredients of the offence is being without employment. That is quite true, but merely being without employment does not constitute the offence. The offence is this course of conduct, and as Mr. Justice O'Halloran says:

> This may not be proven satisfactorily without evidence anterior to the particular date . . .

That is, if they pick up John Jones and charge him with vagrancy, then bring him in and say he was wandering around, they cannot convict him without proving a course of conduct of the same sort before that particular occasion on which he was picked up.

Mr. Fulton: That is under the present law which makes you prove him to be a loose, idle—

Mr. Garson: True that is under the present law; but I would affirm to my hon. friend that the new law does not make any change at all in that regard. Let me take another case to illustrate what I mean. Take the converse of what I have said. Here is a case where a man was brought up and was acquitted. This is the case of Rex *v.* Law, 1924, 42 Canadian Criminal Cases, 124. The judge states:

> It shocks my sense of justice to hold that a respectable citizen, and there is nothing in the evidence before me to show that accused is not a respectable citizen, should be dubbed a vagrant simply because he had blocked the sidewalk through causing a disturbance . . .

Apparently this man had been raising a little ruckus. They had arrested him and brought him along to court. His case came before the judge, and the judge said it shocked his sense of justice that he should be dubbed a vagrant simply because he had blocked a sidewalk through causing a disturbance.

> I feel that it could not have been the intention of the parliament of Canada to brand a man as a vagrant, unless there was something else to show that he was a loose, idle or disorderly person.

There is another case in my own province of Manitoba, a decision of Chief Justice Prendergast, in which he says:

> The terms, "loose, idle or disorderly person or vagrant", convey, in their ordinary meaning, if not necessarily a uniform method of living or a constant habit, at least a condition or manner of behaviour of some duration, and something more at all events than a single act, or even occasional acts spread over a somewhat considerable space of time.

So the manner in which this section of long standing in our law has been interpreted by the courts I think protects the accused against any of the results which have been described by the hon. member for Vancouver-Kingsway or the hon. member for Bow River.

Mr. Fulton: But you are taking out the words "loose, idle or disorderly person", so you do not have to prove him to be that sort of person any more.

Mr. Garson: I suggest to my hon. friend if he examines all the cases carefully he will see that in every instance they were decided by a course of conduct, and they will continue to be decided by a course of conduct when referring to the gentleman as a vagrant.

Mr. Fulton: You do not have to refer to him as a vagrant. All you have to say is that he committed vagrancy.

Mr. Garson: Put it in any language my hon. friend wants to specify, but he does not commit vagrancy except on the basis of a course of conduct.

Mr. Fulton: Not any more.

Mr. Garson: I prefer, if my hon. friend will not object to my saying so, the view of the chief justice of Saskatchewan, Mr. Justice Choquette, and Judge Forsyth, to that of my hon. friend.

Mr. Michener: May I ask the minister a question? It is quite possible that the course of conduct of which the minister speaks could be completely orderly. There is no need for the course of conduct to be disorderly in any sense. It seems to me that is the point we have in issue here. A person might have no money and no job, and even though he is a law-abiding, respectable citizen in the sense that he is not offending against any particular section of the code, just because he has no apparent means of support he might be liable to prosecution for vagrancy. It seems to me that is the difficulty under this section. I suppose this is a section which is used to hold people who are suspected of crime when there is no other means of booking them, as the policeman says, and keeping them until some investigation is made. It is conceivable that injustices might occur, as I suppose have occurred to many people in the past when they have been booked as vagrants when they were simply vagrants in the sense that they were drifters, hoboes or perhaps simply unemployed.

Mr. Garson: I would challenge my hon. friend—I say this most amiably—to cite any case decided under this section in which the condition of which he spoke was the basis for successful prosecution.

Mr. Michener: That is, where the conduct was quite orderly?

Mr. Knowles: What about a defeated M.P. the day after an election?

Mr. MacInnis: There seems to be a very keen difference of opinion here, and there must be at least some basis for it. Is this clause changed so much from sections 238 and 239 that the appeal court decisions mentioned by the Minister of Justice do not now apply?

Mr. Garson: No.

Mr. MacInnis: I understand the minister to say no and the hon. member for Kamloops to say yes. I am on the horns of a dilemma, as between two very prominent lawyers. But what I was going to suggest was that I found during the sittings of the parliamentary committee that the minister was very anxious to do the right thing. He did not take the position that he and his advisers knew all the law. Questions were referred back time and again. I suggest that this be allowed to stand and that, in view of the debate that has taken place this evening, the minister should look over it again and see if he can find an amendment which, while perhaps not satisfying everyone, would satisfy at least the thinking people in the chamber.

Mr. Low: Would the minister entertain a motion to delete clause (1) (a) so that it would read:

> Every one commits vagrancy who, not having any apparent means of support, is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found.

The chief bone of contention seems to be the question of living without employment. Well, I do not see any particular reason why a fellow should not live without employment, if he can, without being accused of committing some offence.

Mr. Garson: Mr. Chairman, let us be a little bit realistic about this. The living without employment in my view does not mean being out of work in the ordinary sense. The clause is aimed at the kind of criminal characters against whom the police may not be able to prove any offence, who are

there, moving around without employment—perhaps a man who is living on the avails of prostitution, but against whom that fact cannot be proved.

Mr. Low: But it does not say that.

Mr. Garson: That is exactly what it does say. He is round and about, to use one of Damon Runyon's terms.

Mr. Cameron (Nanaimo): If he had money in his pocket you could not convict him as a vagrant.

Mr. Garson: But in these cases, if we are to expect the police to protect society to a reasonable degree we have to leave some measure of discretion with them, and with the courts. If we were bringing into the house tonight a new section in these terms, that had not stood the test of time not for years but for decades, I would expect to meet some scepticism; for I admit there may have been cases with the judgments of the courts in which not everyone would agree.

But this is not a new provision; it has been in the law for decades, and I do not think very many instances can be shown where it has worked unsatisfactorily. I asked the hon. member for St. Paul's to cite one case in which the mere act of being respectably without employment had resulted in a man being brought before the court, and I doubt very much whether any such cases can be shown except, of course, those cases where, having been brought before the courts, they have been acquitted because the charge of vagrancy could not be proved against them.

I cited one of those myself. This was the case of a man who had created a disturbance, was brought up before the court and charged with vagrancy. The judge said, "No, so far as I know this man is perfectly respectable. The mere fact that he created a disturbance does not in my view entitle the crown to convict him of this charge."

Mr. Fulton: That is under the old law.

Mr. Garson: And I say to my hon. friend that I do not think the courts would undertake to interpret the new law differently.

Mr. Fulton: They have in a number of other cases.

Mr. Garson: We will deal with that when we come to those alleged cases. But if my hon. friend cannot establish it any better than he has established this one, it will not prove much.

Mr. Fulton: It was necessary to amend section 116, and even now it is still new law. It is absolutely necessary to go into this in detail. If the minister is disposed to have it stand, then I shall not press the point. However, I am prepared to make an argument, perhaps a detailed one, and one which will take some time. It is an argument which I think should be made.

I appreciate what the minister said, that he agrees with the view of the commission. And he is quite entitled to do so, just as I am quite entitled, with deference to the minister and the commission, to say that I do not accept that view. I feel so definite about it that I feel I must make an argument on the clause. I believe an argument can be made, and that it would be a good argument. As I say, I do not wish to make it tonight if the minister is disposed to let the clause stand. I can assure him, however, that I feel the argument must be made.

Mr. Garson: Of course I would like very much to hear my hon. friend's argument, because his arguments are always so interesting. But the amendment which my hon. friend moved was defeated. We all really want to get a good code, there is no question about it. We do not want to win arguments; we want a good code, so would my hon. friend be prepared to accept the suggestion I made a moment ago, of adding the words "loose, idle or disorderly person"?

Mr. Fulton: No.

Mr. Garson: If it would make my hon. friend any happier I would be glad to include those words.

Mr. Fulton: I am afraid they would be added in the wrong place and would have the opposite effect to what we are trying to do.

Mr. Garson: If my hon. friend will look at clause 164 he will see it is drafted so that the first five words are "every one commits vagrancy who" and then following those words we have paragraphs (a), (b), (c), (d) and (e). Now, if my hon. friend adds these other words as he proposes to do—that is, adds them only in (a)—it leaves them absent from (b), (c), (d) and (e).

Mr. Fulton: Yes, but the others are specific offences.

Mr. Garson: Probably so, but—

Mr. Fulton: Begging, or being a common prostitute; no question about those things being specific.

Mr. Garson: But what possible difference could there be? My hon. friend gets it in (a) in any event, and that is what he was seeking by his own amendment. He also gets it in the others, as well; and I think it makes for a more orderly section. I have checked this with our drafting officers and they tell

me it would be workable. I am prepared to offer that amendment to the clause, if there is agreement. But if I do not have agreement all we can do is listen to my hon. friend's argument and then have a vote on it.

Mr. Knowles: There will be more after he is through.

Mr. Garson: I hope my hon. friends are not trying to frighten me into submission by threatening to argue interminably.

Mr. Knowles: No, but we think the matter is serious.

Mr. Fulton: I hope the minister is still open to persuasion. I am sure he is, for the reasons advanced by the hon. member for Vancouver-Kingsway and in the light of his attitude in committee last year. I shall try to make my argument, but I regret that it has to be somewhat detailed.

The minister has said in effect that under the new proposed clause 164 it will still be necessary to prove a course of conduct. That phrase has been used a number of times, so I would like to look at it in some detail. As I understand it, the words "course of conduct" under the present section 238 are used in the sense of a consistent pattern of conduct extending over some considerable time. I refer there particularly to the case the minister thought I inaptly cited but which I think I aptly cited, namely Rex *v.* Konkin, where the words of Mr. Justice O'Halloran clearly prove that what is contemplated is a pattern of conduct extending over some considerable period of time, because he said:

> The essence of the offence of being a loose, idle or disorderly person lies in a course of conduct. This may not be proven satisfactorily without evidence anterior to the particular date and consistent with the appellant's conduct on that date.

So under the present section, then, you have the words:

> Every one is a loose, idle or disorderly person or vagrant—

But then in subsection (a) we have:

> not having any visible means of subsistence . . . or who, not having any visible means of maintaining himself, lives without employment.

Now, the cases, some of which have been cited previously and others to which I want to refer my hon. friend without reading them in detail, establish clearly, it seems to me, that the courts in interpreting section 238 have held that you not only have to establish a particular act, or a particular circumstance, that is, not having any visible means of maintaining himself as circumstance one, and living without employment as circumstance two, but particular circumstances which may exist at a particular moment of time.

They have held that in addition to establishing those particular circumstances you have to prove the course of conduct extending over a period of time, because you still have to prove that the accused is a loose, idle, or disorderly person or vagrant. And it is because of the inclusion of the words "Every one is a loose, idle or disorderly person or vagrant" that the courts have in effect laid down now, as the result of a long line of decisions, that not only have you to prove a particular circumstance, that is, not having any visible means of maintaining himself without employment, but you also have to prove this pattern of loose living which extends back over a sufficiently lengthy period to establish a pattern. If I am correct in my interpretation the reason that line of decisions has been established is the use of the words "Every one is a loose, idle or disorderly person".

Mr. Garson: No.

Mr. Fulton: I beg the minister's pardon? Perhaps I am not making myself clear, yet I cannot make myself clearer than by relying on the authority of Tremeear who, with great respect, I consider to be a greater authority than the commission on which the minister relies. Tremeear says that the sections:

> . . . are unusual, in that the offence here dealt with consists not in doing, but in being.

That is in being a vagrant, because you have done not just one act as alleged in the subsection, but you have done that or similar acts over a period of time, and that is what makes you a vagrant, what makes you a loose, idle or disorderly person.

Mr. Garson: May I ask my hon. friend a short question?

Mr. Fulton: Yes.

Mr. Garson: Does he think that the word "lives" means something that can be done in five minutes?

Mr. Fulton: Yes.

Mr. Garson: Or ten minutes, or a day?

Mr. Fulton: Yes, under the present section, or longer.

Mr. Garson: Lives without employment?

Mr. Fulton: Under the present clause so long as the body is warm they will say he is living, but living without employment.

Mr. Garson: In order to live without employment it has to be a continuing course of conduct.

Mr. Fulton: No.

Mr. Garson: Certainly.

Mr. Macdonnell: How long?

Mr. Fulton: Who is to say? The courts in the past have said that you have to prove this consistent pattern, because you have to prove that he is a loose, idle or disorderly person. That is the element of the offence. Now you have taken out the words, "loose, idle or disorderly person", and therefore all you have to prove is that he lives without employment. My point is that, having taken out those words, it will no longer be necessary to prove the consistent pattern, because it was owing to the inclusion of those words that the courts came to the conclusion that you had to prove a pattern in order to establish the vagrancy. What is there in the present section that shows you have to prove a pattern? Nothing.

Mr. Garson: Does the hon. member want an answer to that question?

Mr. Fulton: Yes.

Mr. Garson: The words "lives without employment". Do you mean to say that a man lives without employment if the police go to him and he does not happen to have a job or he does not happen to have a dollar in his pocket? That is not living without employment. Living extends over a period of time.

Mr. Fulton: As my hon. friend close to me says, if he dies without employment then he is not guilty, but if he lives without employment he may be guilty. How long under this clause does he have to live without employment?

Mr. Garson: The same question may be asked in relation to the old section; how long? You will not find that all judges will agree as to how long it is, but they will all agree that it must be for a period constituting a course of conduct.

Mr. Fulton: They agree it has to establish a pattern. The reason it has to establish a pattern is that you have to prove that he is a loose, idle or disorderly person. That was the element in the offence; and they held in effect that you cannot prove he is a loose, idle or disorderly person unless you establish a pattern. Under the proposed new clause you do not have to prove that he is a loose, idle or disorderly person. All you are going to have to prove is that he lives without employment, and then he is automatically a vagrant.

Mr. Michener: I should like to revert to the question I asked the minister which I do not think he answered, namely, is there in the section as it will appear, if this passes, any requirement of the element of disorderly conduct? The minister asked me if I could cite any cases. My concern is that there will be cases in the future in which people will be convicted of vagrancy. You may establish a pattern of conduct, as the minister says. That is living without employment. There is nothing necessarily disorderly in living without employment, nor is there necessarily anything disorderly in having no visible means of support. Therefore you can establish these two patterns of conduct and still not have any conduct that is in any sense disorderly or disruptive. I am asking the minister whether he differs with me in that interpretation?

Mr. Garson: Yes, I do differ with my hon. friend, but I might say that I do not wish to take up the time of the committee in pursuing any difference of that sort. I have said to all of my hon. friends who have advanced those arguments, and the argument which the hon. member for Kamloops has just developed, which turns on the words "loose, idle or disorderly person", that if there is any magic virtue in those words I am prepared not to argue any more but to put them in.

Mr. Michener: In subsection (a)?

Mr. Garson: My hon. friend is a little unreasonable. He not only must have those words, but he must have them exactly where he wants them.

Mr. Fulton: I am sorry, I think one is right or one is not, that is all.

Mr. Garson: The government is in a little different position from my hon. friends, in that we have the responsibility for the conduct of the bill.

Mr. Fulton: The minister wants them where he wants them.

Mr. Garson: Yes; and the reason I am suggesting that they be put where I have suggested—where I want them, if you wish to put it that way—is that I have conferred with my draftsmen, and they tell me that this is the proper place for them to go, and I accept their judgment on that. I do not know how much further we can go. I am quite prepared to put them in. We have been talking now for a couple of hours on this point, and without conviction I am prepared to concede it in order to bring the discussion to some sort of a conclusion. My hon. friend will not accept that. He says, "You must not only co-operate to the extent of letting me have those words, but I have to have them in a certain spot." Would he consider an amendment in these words:

Every one is a loose, idle or disorderly person and commits vagrancy who

And then would follow paragraphs (a), (b), (c), (d) and so on.

Mr. Fulton: No.

Mr. Garson: My hon. friend is quite irreconcilable. Might I suggest that I move that amendment, that we put the question and dispose of the matter in that way?

Mr. Fulton: I can only say, without being lengthy about this, that I am sorry my argument has not registered to the slightest extent with the minister. If he puts in the words in that form and in that place he is making it even more certain that you will not have to prove a course of action over a period in order to establish that a person is loose, idle or disorderly. You only have to prove that he lives without employment at a given moment in time, when you prove he has committed vagrancy. You also prove by that one single act that he is a loose, idle or disorderly person. That is the very thing that we are trying to avoid.

I am sure the minister is acting unwittingly and unintentionally and is not trying to pull a fast one, but I can only say that he is doubling the effect of the very thing the effect of which we are trying to minimize. I am sorry, but that is my view.

Mr. Garson: Let me put this to my hon. friend and his colleagues. The present section 238 which my hon. friend admires so much reads:

> Every one is a loose, idle or disorderly person or vagrant who,

Then it lists a lot of items and ends with these words:

> or who, not having any visible means of maintaining himself, lives without employment.

Does my hon. friend agree with those words, for the validity of which he has been arguing?

Mr. Fulton: The present section 238?

Mr. Garson: The present section.

Mr. Fulton: Yes.

Mr. Knowles: I think—

Mr. Garson: Just one at a time, please. This will necessitate other changes in clause 164, but perhaps the clause could be recast in this form:

> Every one is a loose, idle or disorderly person or vagrant who

Then would follow paragraphs (a), (b), (c), (d) and (e). Then we would come to subsection 2 which would read:

> Every one who contravenes subclauses (a) (b) (c) (d) or (e) of subsection one of this section is guilty of an offence punishable on summary conviction.

Mr. Fulton: Perfectly acceptable.

Mr. Garson: What about the other hon. members?

Mr. Fulton: The minister is suggesting leaving out the words "commits vagrancy". He is suggesting:

> Every one is a loose, idle or disorderly person or vagrant who

Then subsection (a) follows. It said previously:

> Every one is a loose, idle or disorderly person and commits vagrancy who

In effect the minister is suggesting leaving out the words "and commits vagrancy". I and my colleagues of the official opposition are perfectly prepared to accept that suggestion, because it goes right back to the old wording of 238 and does not add the words "and commits vagrancy".

Mr. Garson: That is fine. What do the members of the other party say?

Mr. Knowles: I regret to say that as far as I am concerned I still am not satisfied. The hon. member for Kamloops is suggesting that we may argue later, having got those preliminary words in, that the phrase "lives without employment" should be deleted. I can see that at some point we will have to do that, but it seems to me that one of the basic things wrong with this whole argument is that neither the minister nor the other lawyers have looked with questioning eyes at the wording of section 238.

The minister relies on the fact that section 238 has been there for decades. He contends that since the commissioners have reduced the verbiage in that section, therefore it is a job well done. My contention is that the thing that is wrong with the wording the minister now proposes for clause 164 was in fact wrong with section 238. I think section 238 was wrong, for it was saying that everyone was a loose, idle or disorderly person, that everyone was a vagrant who, not having any visible means of maintaining himself, lived without employment.

My view is that before the commissioners did the commendable job of compressing the verbiage in section 238 they should have put that phrase "loose, idle or disorderly person" in some other part of the clause. It should have been put in with a participle instead of with a verb. Even the words the minister is now suggesting will have the effect of doing what the hon. member for St. Paul's said they would a moment ago; they will declare that anyone who is without money and without a job, even though no disorderly conduct is alleged against him, is a loose, idle or disorderly person, and guilty of the

crime of vagrancy. It seems to me that is what was wrong with section 238 and that is what is wrong with what the minister is now proposing.

In both cases the wording starts out by saying that every one is a loose, idle or disorderly person who does such-and-such, whether he is disorderly or not. I submit that something along the lines of what the hon. member for Kamloops proposed some time ago would have been better. I realize that that has been voted down, but the minister might reconsider it. I believe the hon. member is trying to redraft it in a way that might still be in order.

I ask the minister not to rely on the assumption that because clause 164 is a nice editorial job in terms of condensing section 238, that necessarily means that it is good law. I still think it is unfair to say to any person who is without any visible means of maintaining himself and is living without employment that, *ipso facto*, he is a vagrant, he is loose, he is idle, he is disorderly, even if no charge of disorderly conduct may be laid against him. I submit that that is what would arise from the wording the minister now proposes.

I am a little surprised that the hon. member for Kamloops has agreed to it. Certainly we cannot agree that the law should say to a person who has no means of support and is without employment or, to use ordinary language, a person who is without money and without a job, that by virtue of that fact he is a loose, idle or disorderly person and therefore is guilty of the offence of vagrancy.

Mr. Hansell: Mr. Chairman, I must confess that with so much legal verbiage I am befuddled. I support the leader of this party in asking that the particular phrase "lives without employment" be deleted. I rise, as one who is very humble when it comes to legal matters, to support the tramps. I am wondering if a person has not the right to get along without working if he can. I do not know that there is so much wrong with being a tramp. It could be regarded as quite a high profession. A man has leisure; he has ease; he listens to the birds; he breathes a lot of fresh air, and as long as he does not bother anybody else, what is wrong with him? I rise in support of the tramps.

However, what I was going to say was that it occurs to me that no matter what words are used, in the end it will boil down to the administration of the law. What some of us are a little frightened of is that we might have a repetition of things that happened in the hungry thirties when, no matter how people tried to get employment they could not, and as a result young men who did not want to live on the small incomes of their families, and some of whose families did not have any incomes, were travelling from one end of the country to the other trying to eke out a living.

In those days, and I am sure the minister will agree, the law was not always administered in humanitarian fashion. I can give the minister a very choice example, though I shall not take up too much of the time of the committee to do it. I have a friend who was a clergyman, and he had no money. He was not paid very highly, because in those days even churches had quite a struggle to get through and pay their ministers. He decided he wanted to go to the old country to visit his relatives. Not having any money he decided to hitch-hike across the country, because hitch-hiking was the order of the day.

In spite of the fact that he was then in what I believe is a very respectable profession, that man learned how the other half of the world lived, and he brought a good many complaints to the attention of the department in regard to how the law was administered, and how young men were mistreated simply because they happened to be hitch-hiking across this country.

My clergyman friend arrived in a town one Sunday morning with old clothes on and a little, scrubby beard. He went to church and the people in the church, believe it or not, reported this suspicious character. Later they saw him in the town and told him to move on, that he could not stay there. He replied, "I don't know why. I am not doing anything." Indeed, he had not done anything wrong and he was just sitting on the curb talking to some other chaps. "Well, if you are here in the morning we are going to arrest you," he was told. He wondered whether they would arrest him, so he sat on and sure enough they did put him in jail.

Perhaps the minister will know the way in which that case was dealt with. He has read some judgments from judges who are learned men, but the people who try these cases are not learned judges. They are magistrates and sometimes quite ordinary men, and occasionally they have difficulty in unravelling the legal terminology used in the law.

The next day, after my friend had spent a night in jail, they rounded up the magistrate —he was away somewhere—and when my friend showed his identification and they found out who he was they would not believe him. They thought he was pulling some sort of ruse and trying to get away with something. He showed his certificate and his

authority for half-fare on the railroad, and the magistrate became a little frightened because they had put a man in jail the night before who should not have been there.

Of course that was an extreme case, though if I gave the minister his name and he looked into the matter he would find that his department has quite a file on that gentleman. As a matter of fact what I have related may have rung a bell in the minister's ear, because I believe he was attorney general of the province of Manitoba at that time.

However, the thing we are frightened of is that that sort of thing is going to happen again. I do not believe there is any crime in being without a job, and if people are going to be picked up on suspicion simply because they are unemployed I believe that is going too far. What the leader of this party has said, Mr. Chairman, seems reasonable to me. Strike out "without employment". I do not think it adds anything to the strength of the section at all, and without that phrase it would read quite logical, namely:

(a) not having any apparent means of support, or (ii) is found wandering abroad or trespassing . . .

Mr. Ellis: Mr. Chairman, I believe we should get down to the heart of the matter in this clause. We have heard arguments now for nearly an hour over legal phraseology and whether the clause should contain the words "loose, idle or disorderly". I have consulted the dictionary and checked the definition of the words "loose, idle, and disorderly", and also the dictionary definition for "vagrancy", and quite frankly I cannot see very much difference in the definitions given. They mean more or less the same thing, and I therefore believe we are completely skirting the main issue on this clause. We are simply getting into an argument as to whether certain words should be in the clause. Not being a lawyer I am not going to enter into that argument. However, I do feel that this clause should be given a great deal of consideration before it is passed.

The minister made reference to the fact that this has been the law for a long time. That is just the point. I believe that if we go back and examine conditions in England at the time the vagrancy laws were put into effect, we will find that the apprentices were bound to their employers, the reason being that an apprentice might run away from his employer. The object behind these laws was to protect the employers of that period, to bind the apprentice securely to his employer.

But after all, conditions have changed. Surely when we are going through this bill to enact a new criminal code our purpose should be to revise it and bring it up to date. We should attempt to weed out some of the more archaic features of the code, and take out language which no longer serves the purpose, particularly such phrases as "being abroad" and "loose, disorderly, idle and loitering", and so forth. These are terms which had a very definite meaning at the time the law first came into effect. But this is the twentieth century, and surely we are not going to re-enact in the year 1954 a criminal code which contains language embodying the very essence of laws which existed several hundred years ago, despite the fact that circumstances have altered.

I do not believe, Mr. Chairman, that the unfortunate individual who is taken up before a magistrate, perhaps after spending a night in jail, is going to appreciate the difference between being charged under a section which contains the word "vagrant" or charged under a section which includes the words "loose, idle or disorderly". The minister has pointed out that when a man is brought before a magistrate, that magistrate is not likely to convict under this section. But I suggest that is not the only thing to consider. We have to consider that men are going to be apprehended and lodged in jail. It is true that the charges may be dismissed when they appear before the magistrate, but a situation can develop where a good many innocent people will spend time in jail, and to most people the very thought of incarceration for even a few hours is most distasteful.

I think we have to consider this clause not only from the standpoint of how the magistrate is going to deal with the charge when the person is brought before him, but from the standpoint of how the law enforcement officers are going to interpret and use it. The suggestion is made that we have not had many cases of this kind lately. Economic conditions are slightly different from what they were prior to the outbreak of world war II, but as other hon. members have pointed out the time may very well come when we will have a repetition of such occurrences, one instance of which was mentioned by the previous speaker.

Before this clause is passed I think we should give very serious consideration to whether it is necessary. I think perhaps the real reason for having it in the code was given unwittingly by the minister a while ago when he suggested that it was a catch-all, that where you could not apprehend a man under a specific law and you were suspicious of him you could hale him into court on a vagrancy charge.

Mr. Garson: I think my hon. friend misunderstood me if he got that impression. I believe he has confused me with some other

members who have spoken in the debate. I thought I made it clear not once but several times that in order to get a conviction under this section you had to prove your case.

Mr. Ellis: I am sorry, but I seem to recall that the minister made some reference to a man being charged under the vagrancy law for having lived off the avails of prostitution. It might not have been the minister.

Mr. Garson: No, that is right; but in a case of that sort you would have to prove that he did live off the avails. Would my hon. friend disapprove of the conviction of that sort of man?

Mr. Ellis: No, I would not; but I feel that is a specific offence, that the man is guilty of a specific crime and should be charged with that specific crime. I say this section is so vague that it may be used to charge—

Mr. Garson: If my hon. friend will read the section he is discussing he will see that further down it includes living off the avails of prostitution.

Mr. Ellis: I am only dealing with subsection 1 (a).

Mr. Garson: Yes.

Mr. Ellis: That is the only subsection I have reference to now. Economic conditions may very well reach the point where any unemployed person could be a potential vagrant under the terms of this subsection. It is all very well to say that is not going to be the case, but we know from past experience that during the period we refer to as the great depression many transient unemployed spent the night in jail and were haled before a magistrate on a charge of vagrancy. The fact that there may not have been many such cases lately is a reflection of the changed economic conditions, but since we are revising the Criminal Code and it may be in effect for 20 or 50 years—no one can tell how long it will go without substantial amendments—I think we have to take these things into consideration.

To me it is not a question of arguing over legal phraseology. I want the minister to consider very seriously whether it is absolutely necessary to retain subsection 1 (a) of section 164. The other parts, subsections 1 (b), (c), (d) and (e), have reference to specific offences. Subsection 1 (b) refers to begging from door to door or in a public place. That is a specific offence. A man may be charged with a specific offence. Subsection 1 (c) is also a specific offence, but subsection 1 (a) is so vague that, speaking as a layman, I do not think it makes good law. I want to make a plea to the minister that he give serious consideration to removing this very questionable feature from the section before it is passed by the committee.

Mr. Power (St. John's West): I feel the view that a man who has no job and does not have a dollar is guilty of this offence is a grave misconstruction of what the paragraph says. A person only becomes a vagrant when, first of all, he has no apparent means of support. That does not merely mean a person without money. Surely it means a person without money, without money's worth, without credit, without any lawful means of obtaining money for his support. He also has to be living without employment. If he has no money or money's worth but has a job he soon will have money. It would seem to me that anyone who can live without means of support, without a job and not beg or steal, must be a magician.

Mr. Quelch: I listened to the minister explain at some length that subsection 1(a) does not really mean what it says. Then he went on to explain to hon. members what in his opinion it really did mean, and the interpretation that had grown up over a period of years. But surely in this house we should have enough legal talent to put into plain English exactly what we do mean. I suggest to the minister that the section would be greatly improved by striking out the words "lives without employment or" and the words "wandering abroad or". The section would then read:

> Every one commits vagrancy who
> (a) not having any apparent means of support
> (i) is found trespassing and does not, when required, justify his presence in the place where he is found.

I do not think there would be any objection to that. He would have to be found trespassing. He could not be charged just because he was unemployed. If that change were made I think it would remove most of the objection.

Mr. Regier: The statement was made by the hon. member for St. John's West that "means of support" did not necessarily mean how much money you had on you. I know there are some municipalities where the police follow the standard of a definite fixed sum. They will arrest you for vagrancy unless you have so much money on you. It may be they have received that advice to guide them. However, I do know it happens.

The only reasonable argument I have ever heard for the existence of the vagrancy charge at all is that it aids to enforcement of the law in that it gives the law enforcement authorities time to secure evidence on other charges. I wonder whether that is a sound practice. I wonder whether we

should be able to arrest a man on a vagrancy charge simply because we think he is possibly guilty of something else. Should we be able to arrest a man for something that does not mean very much merely for the purpose of being able to hold him for a few days?

I am not sure that we should retain this provision. As I understand the old law, when a person was charged with vagrancy the question was whether the man was a vagrant and whether there was evidence to show that he was a loose, idle and vagrant person. According to the wording of the section—and I think the hon. member for Kamloops had a valid point—the issue is not whether or not a man is a vagrant; the issue now is whether or not he has employment. If evidence can be presented that he is without employment and without any apparent means of support, he is automatically guilty of vagrancy. Therefore I feel the whole section should be left over until another day. When we began the revision of the Criminal Code I thought we had a definite understanding that contentious sections would be left over until some other time.

Mr. Michener: I think perhaps the minister will agree that we have pretty well aired the offence under paragraph (a). I should like to make one suggestion to the minister about paragraph (c). This paragraph deals with persons who are prostitutes or night walkers in public places.

The point I wish to make is that this paragraph seems to go so far as to make it an offence for these people to be in a public place. It does not go quite that far, but I am going to suggest to the minister that it is different from the existing section. If the minister will look at the existing section 238, subsection (i), he will see that it speaks of a person as a vagrant who, being a common prostitute or night walker, wanders in the fields, public streets or highways and so on. There is an element of positive action on the part of the prostitute in that section. In the present section we apparently make it illegal for the prostitute or night walker to be in a public place about her ordinary activities as a citizen. Supposing she is going to the market to buy groceries. She is then in a public place, and she has to justify her presence there in order to not commit an offence.

I suggest to the minister that in all these clauses that deal with what we might call the submerged people, it seems to me a sound course to follow is to require some positive offence or action, something that is disorderly or abnormal in a public place before there is an excuse to arrest. I suggest to the minister that the section might very well read, so as to import that element of positive action, "being a common prostitute or night walker, solicits in a public place." That might not be the best way of expressing it, but I am sure the minister understands what I have in mind. Instead of putting such a person under the onus of justifying her existence every time she is in a public place, there should be some positive act on her part before she can be charged and brought into court.

Mr. Garson: The hon. member for Vancouver-Kingsway raised this matter before and I regret that I did not reply to him. I am afraid that I cannot at all agree with the hon. member for St. Paul's. If he will look at the present section he will see that it mentions being a common prostitute or night walker who wanders—the hon. member just mentioned the fields—the public streets or highways. Now, what is the substantial difference as between "public streets or highways" and a "public place" as in the present section? Then it goes on and mentions that if she "does not give a satisfactory account of herself", whereas the new section says "does not, when required, give an account of herself".

Mr. Knowles: It may be that the old section was not worded correctly.

Mr. Garson: The cases under the old section were to the effect that she did not need to give an account of herself unless she was properly asked by the proper people in authority. When certain individuals were brought up and charged who had not been asked, they were acquitted. If the hon. member says she cannot solicit, then what is the position of a street walker who cannot solicit? Is my hon. friend's proposal that we deprive her of her livelihood? The case law under the existing section says, and I recommend this to my hon. friend:

> The mere fact that a woman is a prostitute, however, does not make her a vagrant; nor does the further fact of her wandering abroad. A woman of one of these classes may wander as long as she likes in such public places as she chooses without simply by reason thereof bringing herself within this enactment. It is only when in the course of her wandering she fails to give a satisfactory account of herself that she converts herself into a vagrant.

Supposing a policeman comes along and finds a prostitute with a companion who is picking the pockets of a drunken man. The prostitute is standing by in a public place, and he asks her to give an account of why she is standing by while her companion is picking the pockets of this drunken man. If she cannot give a satisfactory account of that situa-

tion, then and only then does she fall afoul of this section. I think if the hon. member will examine with care the new wording and the old, he will see that the real gravamen of the offence is failure to give an account when a request has been made. In all substantial respects the two sections are identical.

Mr. Michener: I appreciate that. My concern is that the wording has been changed. The minister knows as well as I do that in interpreting the new section the courts will impute to parliament some purpose in changing the wording, and they will try to seek some difference in the wording, which in this case is "wandering in a public place". Now, every one is found in a public place who is in a public place, so there is no element of offence; yet you put that person under the onus of explaining her presence there. That is all I suggest to the minister. If he is satisfied there is ample and proper protection to even a person who is a common prostitute going about her normal activity, then all right.

I am suggesting her special activities should be prohibited, not her normal ones, by putting in the words, "soliciting in a public place". After all, the example which the minister gave of picking a man's pockets certainly is an offence, and there is the capacity to arrest. Being found in a public place, as every one is who is in a public place, seems to me to be the wrong type of wording for this kind of section.

Mr. Garson: But being found in a public place is not the gravamen of the offence either under the existing wording or under the proposed new wording. The gravamen of the offence is that when requested to do so she fails to give a satisfactory account of herself. In all these matters I admit that the degree of ability and judgment of the police forces varies a great deal from one part of the country to the other. But in drafting the laws of the country, I do not think we can do so upon the assumption that the police forces are corrupt and incompetent, or that they are going to abuse powers that are given to them; otherwise we are going to have a difficult time drafting laws to protect society.

What I suggest is that in relation to this whole clause and every subclause under it we must make the necessary assumption that the Canadian police forces have reasonable professional integrity, and that they are reasonably competent, and that no abuses will arise if we empower them to use reasonable discretion. Of course, if in certain cases the police are not honest and competent; if in certain places these abuses mentioned by the hon. member for Macleod take place, then I do not think we are entitled to pay too much attention to these exceptional cases in drafting what we think should be a law of general application.

There was one other point made by the hon. member for Regina City to which I think I should refer, when he said that we are drafting a law or considering a law that may be in effect for a long time. That could leave quite a wrong impression if I were to leave it uncorrected. It is true that the bill we are now considering has not been consolidated for 60 years; but during that interval of time I do not think there has been a single year in which amendments to certain sections have not been required.

I beg my colleagues in the committee to understand that if, by chance, this present clause is as defective as some arguments by my hon. friends opposite would seem to indicate, especially those of the hon. member for Kamloops, for example, and if his fears prove to be well founded, then it would be a very simple matter at the next session of this parliament to bring in amendments to cure the defects so disclosed.

As the minister in charge of the bill and the minister responsible for recommending the appointment of the commission which drafted the bill in the first place, I wish to say that there certainly is no reason why I should wish personally to have any of these defects in the bill, if it were possible to keep them out. The only reason I have been, as perhaps my hon. friends may think, somewhat obdurate in relation to their suggestions is that I think the commission did a good job. They have greatly condensed and improved—streamlined, if you like—the code, while at the same time retaining its substance. And I suggest that in its present form the clause now before the committee will retain the case law which was decided under the old section, and work quite satisfactorily.

Mr. Fulton: Several arguments are advanced by the minister as to why we should allow the clause to go through in its present form which, I regret, I cannot accept. The minister said that in drafting laws of this type we must assume that the police and other law enforcement officers are reasonable men and men of integrity. That is of course true.

But if we believe conscientiously that the clause is so drafted that it admits of abuses, whether intentional or unintentional, then I do not accept the principle that we can rely upon the judgment of law enforcement officers never to bring about such abuse.

On the contrary I would assume that the law enforcement officers, and particularly a crown prosecutor who would have it as his duty to enforce the law as it is drafted and exists on the statute books, would be bound to enforce the clause which would result in abuses, whether or not it did in fact result in such abuses. In the case of the crown prosecutor, that would be his duty. It is not his duty to say, "Oh, I do not like this clause. I do not like its application; therefore I will not enforce it." That would be a breach of duty on his part.

Therefore the minister's argument, when he was trying to say we were suggesting that the law enforcement might be unreasonable, is not applicable. It is not because we think they are going to give an unreasonable enforcement to this clause, but rather because we do not want law enforcement officers placed in the position where they will have to enforce unreasonable law. That is why we object.

Further, the minister has said, in referring to the argument of the hon. member for St. Paul's, that the case law in connection with this subclause referring to prostitutes is well decided and well established, and that the present wording being in substance almost the same as the previous wording, the case law will continue to apply. I believe that was the effect of his argument. That argument, it seems to me, has established the validity of our objection to the change in the earlier part of the clause, because what we are saying is that you have substantially changed the words. You eliminated the words "loose, idle or disorderly" and therefore the case law which depended upon those words will no longer be applicable. That is the very point we made, and I am glad the minister accepts it now—because, of course, he must accept it, having used the same argument in connection with the subclause on prostitution.

I see it is nearly ten o'clock. I would hope, however, that rather than merely talk it out at ten o'clock, the minister would appreciate that we have objections to this clause. Without attempting in any way to use any threat, or to threaten further argument, we have objections which we do not feel have been properly disposed of. I would hope the minister would allow the clause to stand so that, when we return to a discussion of this bill, it might be dealt with properly. I should hope there would be opportunity for further discussion before it is brought back to the floor of the house.

Mr. Garson: Do I understand my hon. friend to mean that it is to stand—as it certainly must stand, because it is ten o'clock—until the next time the Criminal Code is under discussion; or does he mean to have it stand until we finish all the other clauses in the bill, and then come back to it?

Mr. Knowles: It depends upon what the minister does in the meantime.

Mr. Fulton: That is about it. If the minister between now and the time it comes back —that is, now and the next day we have the Criminal Code before us—considers that in the light of what has been said there should be an amendment made to clause 164, and comes to tell us that he now proposes to make this, that or the other change, then I think we would be prepared to go ahead with the discussion on it. But if the minister says, "I am sorry, but I cannot accept any of your arguments. I want it to go through as it now stands", then I would ask that the clause stand to the end of the deliberations of the committee of the whole, in the same way that the other controversial clauses are being stood over.

The Deputy Chairman: Order. Is it agreed that the committee rise, report progress and ask leave to sit again?

Mr. Drew: With the consent of the Minister of Justice, might I make a short observation. It does seem to me there is something to be borne in mind to which perhaps due consideration has not been given. In the case where changes have been made in some of the clauses it has been recognized that this was done with the intention of improving the wording of existing sections, to which there has been no objection. But certainly in the minds of a number of hon. members there is a feeling that the old section in this instance was a dangerous one, because it was being used loosely to hold people when specific charges were not being laid. Many of us know that people were held under the vagrancy section when there was no thought that a vagrancy charge was going to be pressed.

It was simply a procedure for holding a person until the authorities made up their minds what kind of charge was going to be laid.

There are some of us who would like to see a clearly stated provision, if there is going to be some basis on which a prisoner can be held, rather than enlarge still further a section which had that objection, and which was used for the purpose simply of holding prisoners until the minds of the prosecuting authorities could be made up as to what specific charge would be laid.

Clause stands.

Progress reported.

Business of the House

BUSINESS OF THE HOUSE

Mr. Garson: On Monday next the first item of business will be the Salaries Act. Then we shall move to go into supply. If we succeed in getting there we shall call four departments: first, public works; second, veterans affairs; third, agriculture; fourth, mines and technical surveys.

Mr. Fulton: And stand them?

Mr. Garson: Continue in public works.

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