to assist exports of farm machinery, he can in fact indicate the amounts, and whether they are significant in the operation of our farm machinery companies.

Mr. Howe (Port Arthur): On the occasion of the visit of agricultural workers I was able to point out that in that week we had guaranteed loans on agricultural implements up to $10 million. I think over the years it would easily be perhaps ten times that amount.

Clause agreed to.

Clauses 2 to 5 inclusive agreed to.

Mr. Dickey: Mr. Chairman, as I informed the house, at this stage I should like to ask the Minister of Citizenship and Immigration to move an amendment which is a consequential amendment on the increase in capital. As the committee will observe, in section 10 of the present act which is quoted in the explanation of clause 4 of the bill, the original capital was all to be subscribed and paid up, and in fact the present capital is all paid up. One of the main purposes of this amendment is to increase the limitation on the maximum business that the corporation can underwrite in terms of ten times the aggregate of the amount of the capital plus the surplus.

Section 14 of the act sets out this limitation, and in the act the term "paid up capital" is used. That was perfectly satisfactory and applicable when all the subscribed capital was paid up, as was the case of the original capitalization.

The proposal in this new bill is to create new capital, which will be subscribed, but not paid up. Therefore there is a consequential amendment required to section 14, substituting the words, "subscribed capital" for the word "paid-up".

Mr. Harris: I move that Bill No. 295 be amended by adding thereto the following clause:

6. Section 14 of the said act is repealed and the following substituted therefor:

"14. The liability of the corporation under the contracts of insurance issued and outstanding shall not at any time exceed a total of ten times the aggregate of the amount of the subscribed capital and the surplus of the corporation."

Amendment agreed to.

Clause as amended agreed to.

Bill reported.

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

Mr. Knowles: Next sitting.

Some hon. Members: No.

Mr. Fraser (St. John's East): Yes.

Mr. Deputy Speaker: Next sitting.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Friday, February 19, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Applewhaite in the chair.

The Deputy Chairman: When the committee reported progress last time we were considering clause No. 164. Shall the clause carry?

Mr. Knowles: No.

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

Mr. Knowles: I wonder whether the minister has done some good hard thinking on this matter since it was last before the committee.

Mr. Garson: I am going to suggest to the committee that we let this clause stand in the fond hope that it will be possible for representatives of the opposition parties and myself to work out a wording which will meet the point which they have raised without in any way damaging the enforceability of this clause against vagrancy.

Perhaps I was personally at fault in that during the last debate, when it became apparent that there was a deep-rooted difference of opinion concerning certain aspects of this clause, I did not suggest earlier that it should stand. In line with the policy which I indicated when we were on second reading in relation to the disposition of these clauses in committee of the whole, I should like, where it appears when we come to similar clauses that there is a deep-seated difference of opinion, to stand them over at an early stage of the debate. Then we can come back to them later on at a specified time, when I think we can do a greater amount of justice to them in a shorter period of time than we can with the more extemporaneous debate that we had the other day. On that basis I would like to suggest that 164 stand, and that at the request of the hon. member for Prince Albert 165 should also stand.

Mr. Campbell: Before clause 165 is allowed to stand I should like to make a suggestion with regard to it if you are through with 164.

Mr. Knowles: With respect to 164, I am sure that all of us are glad to have the suggestion that this clause stand for the time being and

I dare to hope that in the meantime something can be worked out that will be satisfactory to all concerned. However, I would not want the minister to assume that we will necessarily get together, as he indicated just now. The feelings indicated last time we were dealing with this matter were pretty sharply divided. Our main concern is that there not be any law that baldly says that a person who is without money and without a job is automatically to be declared a vagrant. Perhaps I should not have said even this much if I am going to agree with the idea that the matter stand. At any rate, that is our position. We are glad to allow 164 to stand.

The Deputy Chairman: Does the committee agree to the arrangement outlined by the Minister of Justice, which I understand is that where a clause is called, upon which hon. members wish to speak extensively or provoke a debate, it shall be allowed to stand and that we consider at this first run through the code those clauses upon which there is no major disagreement? May I take it that that is agreed to by the committee?

Some hon. Members: Agreed.

Clause stands.

On clause 165—*Common nuisance.*

Mr. Campbell: I should like to ask the Minister of Justice if he is considering bringing in an amendment to this clause that would prevent the pollution of interprovincial rivers.

Mr. Garson: I thought that I had made it clear on previous occasions—I certainly tried to—that we are prepared to consider whether, in the light of such facts as may be apparent from the investigation now going on into the North Saskatchewan river, this clause 165 should continue in its present form or whether those facts would make it appear that 165 is not adequate and that some amendment should be made to it in order to make it adequate. Until we get those facts I do not think anyone, no matter what his attitude may be toward amending clause 165, could really reach a proper opinion as to whether an amendment should be made or not.

Mr. Campbell: I am receiving many wires and so many letters asking me to try to get the government to bring in legislation which would protect the people in one province when pollution is taking place in another province. The minister well knows, and the house should know by this time, what the situation is in Saskatchewan. I am going to run over it briefly. Pollution of the North Saskatchewan river is taking place in Alberta.

The Deputy Chairman: I think the committee will agree with me that in a discussion of the wording of clauses of the Criminal Code, to discuss a situation existing between two provinces, and the pollution of a river, which so far as I know is not specifically referred to in the sections of the code, is not in order. I think the committee will sympathize with the Chair, as I try to sympathize with the hon. members concerned. The subject which the hon. member now proposes to discuss has been discussed in this house on the orders of the day and at other times. I ask him to agree with me that a discussion of the situation now existing on the North Saskatchewan river is not in order when we are discussing the wording of sections of the Criminal Code.

If it were in order, perhaps the hon. member would then agree with me and, if he has extensive remarks to make, abide by the agreement of the committee that the sections which are going to be the subject of long discussion should stand and not be taken up at this first reading of the code. Therefore I would ask the hon. member to confine his remarks at this time to clause 165, which I understand was to be permitted to stand, and bring his remarks clearly within the purview of the code.

Mr. Harris: On a point of order, it was my understanding that the clause was to stand and the purpose of asking that it stand was to avoid discussion at this time which probably would be pointless in view of possible amendments which might be made or further explanations that might be given. While I completely sympathize with the hon. member for The Battlefords in his desire to bring to the attention of the committee conditions which have been discussed on many occasions, I feel his purpose would be much better served if we allowed the Minister of Justice to give to this section that consideration that has been promised by having the clause stand.

Mr. Campbell: If I was quite certain that the minister would bring in legislation within the next two or three weeks that would provide protection for people, I would be satisfied; but I am not sure. That assurance has not been given. To bring myself in order, I am going to move that clause 165, which comes under the heading of "nuisances"—

The Deputy Chairman: Before the hon. member reads his amendment, which I am not ruling out of order in advance, may I say that it is my understanding that there is a rule in Beauchesne that where an amendment is moved to a clause, the clause cannot stand. I draw the hon. member's attention to it without looking it up so that he will realize the position in which he is going to put himself.

Mr. Knowles: I wonder if I might make a suggestion. The hon. member for The Battlefords has an amendment which he would like to propose and he understands that the minister wishes the clause to stand for further consideration. I am sure that my colleague has no objection to that. Would it not be helpful if he were permitted to read his amendment and place it on the record so that it would be there for the minister to consider along with the other points in connection with this clause that are to be considered?

The Deputy Chairman: I am in the hands of the committee. Is there unanimous consent?

Some hon. Members: Agreed.

Mr. Campbell: I shall not move the amendment but I will place it on the record so that the minister may see what the idea is behind it. I have had legal advice and I believe that if the amendment were put in the Criminal Code it would answer the purpose. My suggestion is:

That subclause (2) be renumbered as "(3)" and that the following be inserted as subclause (2):

"(2) Every one who, by himself, his agent or employee, places or discharges, or causes to be placed or discharged, or suffers to be placed or discharged, in, upon or near, springs, lakes, streams, or rivers, any industrial waste or any other polluting material of any kind whatsoever, which either by itself or in connection with other matter may corrupt or impair the quality of the water thereof in another province or render such water in such other province unfit for accustomed or ordinary use is guilty of an indictable offence and liable to imprisonment for two years."

An amendment of this kind would not interfere with provincial rights in connection with any river wholly within a province. I believe it would give protection where pollution, taking place in one province, does no harm to people in that province but, when it reaches the next province, creates harm to the people there. As I said, I will not try to impose my views on the committee if the minister will consider this. If the situation is not cleared up by the Alberta government in the very near future—and I think they could deal with it if they so desired—we could turn that water the other way—

Mr. Martin: Mr. Chairman, on a point of order, this does show the danger of relenting. The committee was good enough to allow the hon. member to put forward the amendment which is now before us, but he is now going on and accusing people and stating that he is not satisfied the Alberta government is doing everything it can. I am precluded by the rules of debate from even answering that point, and I would suggest that this is a matter for discussion. I do not believe it is fair to suggest that one hon. member more than another is anxious to see this matter corrected. I would urge you, Mr. Chairman, to see that the hon. member is held strictly to account.

The Deputy Chairman: A point of order has been raised by the Minister of National Health and Welfare. I think he must be right, because his point is along the same lines as the point I raised myself. I would suggest to the hon. member for The Battlefords that since he has placed an amendment before the minister for consideration, and if it is the intention of the committee, as suggested by the minister, that clause 165 be allowed to stand, it should now stand, and when the clause is recalled for full discussion, as it must be, that will be the moment to enter into a full discussion, at which time the then chairman will have to decide whether the remarks being made are strictly in order.

Mr. Campbell: Mr. Chairman, I did not quite complete what I was saying. If we could reverse the flow of the river running through Edmonton for 24 hours so as to make it—

Some hon. Members: Order.

The Deputy Chairman: I am sure the hon. member will agree with me that you cannot reverse the flow of a river under the Criminal Code. Does clause 165 stand?

Some hon. Members: Yes.

The Deputy Chairman: Clause 165 stands.

Mr. Barnett: Mr. Chairman, I hesitate to intrude into the proceedings, at this time, the particular matter I have in mind, but I did unsuccessfully attempt to catch your eye a number of days ago on this point. I am referring to a certain matter in clause 160, subsection (c), and we seem to have moved on so quickly with other clauses that I was not able to make my point. With your permission I would like to raise it now.

The Deputy Chairman: It is not within the purview of the chairman to grant permission to revert to clause 160, which has been carried, unless the hon. member has the unanimous consent of the committee, in whose hands I am.

Mr. Garson: There is really no objection to a single instance of this kind, but if we do it for one we will have to extend the same privilege to every hon. member. We have a long, heavy, and very extensive task before us. Unless we have some order in our procedure we are not going to make very

satisfactory progress. I do not think any great hardship would be caused the hon. member if he would raise this matter again when we are going back through some of the more difficult clauses, because I believe it would be better if we proceeded at the present time according to the agreed order.

Mr. Coldwell: Mr. Chairman, I happened to be in the house when my hon. friend tried to catch the chairman's eye. I believe he was on his feet on three or four different occasions and failed to obtain a hearing. However, I do not know if there will be another opportunity.

Mr. Barnett: In order to avoid any discussion on this matter at this time, might I ask whether it would be possible to allow clause 160 to be considered as having been permitted to stand instead of carried in order that it might be brought up later on with, shall I say, the more contentious clauses. The matter I have in mind is related to questions which are covered in certain other general sections of the code which will be up for discussion at a later stage.

Mr. Garson: Might I suggest to the hon. member that if the matter he was proposing to raise, in addition to being related to clause 160, to which he has already made reference, also relates to some other clauses we have not yet come to, then he should raise it when we come to such clauses. I think he would find me very receptive if he brought the matter to me personally so that at this time we would not need to detain the whole committee to cover the point he has in mind.

Mr. Barnett: I would be agreeable to that.

On clause 166—*Spreading false news.*

Mr. Knowles: I wish the minister would comment on this clause. In the first place, I believe the penalty has been raised. It used to be one year, as set out in the former section 136, and the penalty is now two years. Secondly, what does the minister understand by the phrase "spreading false news?" The clause reads:

> Every one who wilfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and is liable to imprisonment for two years.

Hardly a week goes by—in fact we had a point of this nature raised today by the Secretary of State for External Affairs—when someone does not raise in this house a claim that our friends of the press have misinterpreted something that was said. Does that sort of thing come under the ban of clause 166, or is there a line drawn somewhere?

[Mr. Garson.]

Mr. Garson: In all these cases there is a line to be drawn. This line clearly is indicated in the clause before us. The accused must wilfully publish a tale or news that he knows is false. The crown must prove such knowledge. In the case my hon. friend refers to I imagine that those who were responsible for publishing the news would certainly deny that they knew it was false. The crown must also prove that the publication is of matter which in the language of clause 166 is "likely to cause injury or mischief to a public interest".

Mr. Knowles: What is "a public interest" in that context?

Mr. Garson: I think probably as good a way to answer that question is to cite—

Mr. Knowles: Tremeear.

Mr. Garson: —yes, Tremeear in reference to an actual case which arose, because the best test of how a section operates is to examine the way in which it has been invoked and in which it operated in a given case. The facts of this case set out in Tremeear at page 142 were these. A merchant in Alberta announced a "closing out" sale by using these words:

> I have decided to leave Canada. Americans not wanted in Canada. Investigate before buying land and taking homesteads in this country.

It was held that the accused was guilty of an offence under this clause. The news was false and wilfully published and was against the public interest, which at that time was to attract settlers to Alberta. That is a case in point.

I admit that the problem arises every time a matter of this kind comes up, the prosecuting authorities have to make up their mind whether the facts appear to disclose an offence. If they think it does then they lay a charge. They then have to prove their charge. If they cannot prove it the case under this clause fails.

Mr. Knowles: Might I revert to the first question I asked. Why has the penalty been increased from one to two years?

Mr. Garson: Because, as I have explained on several occasions previously, it was thought desirable by the commission that we should not have an assortment of offences under the code but that they should be all included under some five separate groupings. The lowest of these is two years, then five years and so on. This particular case fell into the lowest grouping, but that had the effect of increasing the penalty from one to two years. My hon. friend himself, I think, during the previous debate on this bill raised the point

that these are all maximum sentences. In a proper case the judge might impose a penalty of one day's imprisonment, if he wished to do so. There is no minimum penalty under the new code.

Mr. Hansell: I should like to say a word on this clause. I am not now particularly asking the minister to comment. I cannot see that there is any great difference between this clause and the Alberta press act that was passed some few years ago. That act, of course, was sent to the courts and was declared to be unconstitutional. It can therefore perhaps be regarded as a dead issue today. Nevertheless there are a good many people in the country who will not permit it to be a dead issue and who are bringing it up continually as a means of attack upon our own Social Credit position by saying that if ever we got into power we would attempt to control the press.

Mr. Chairman, I do not think this clause attempts to control the press any more than did the press act passed some years ago by the Alberta government. In fact, on comparing the press act of a few years ago with this section, I think that act was quite a modification of this particular section. All that press act did was provide that when there was a news release by the government, should that news release be printed falsely or give a false impression or include false statements, the same periodical or paper would be compelled to print the correct release in a place just as prominent as that in which the false one was printed.

A great deal of comment on that act in recent years, in fact in the last election campaign, would leave the impression that a newspaper or periodical would not be permitted to criticize the actions of the government. There was nothing of that kind at all in that press act. Editorial comment could be made. They could criticize the government. They could call the government anything for which they could find appropriate phraseology. There was nothing at all wrong with that course. It was simply a press act that insisted that when false statements were made with respect to news, they had to be corrected the next day. I rose to point that out, because I fancy those who are our opponents will continue to mislead the people with regard to the matter. It is a dead issue today. We have no desire to control the press.

I am not talking against this section. I think it should be there. I do not know whether this is the section that necessarily covers libel, but it appears to me that it does. I want to have that statement on the record. False news should not be reported. What we want is the truth. Just so long as the truth is published, no one is going to complain. We believe in the freedom of the press, but we believe that the press is free to print that which is right.

Clause agreed to.

On clause 167—*Not burying dead.*

Mr. Coldwell: I want to ask a question about this clause, as the result of reading it over. How does this clause affect cremation and the remains of those who have been cremated? It would seem to compel burial. What is the interpretation?

Mr. Garson: Again I think the answer can be found in the wording of the section which reads as follows:

> Every one who
> (a) neglects, without lawful excuse, to perform any duty that is imposed upon him by law or that he undertakes with reference to the burial of a dead human body or human remains, . . .

I take that to refer to the proper carrying out of burial, if that be the method which he chooses to dispose of the human body or human remains.

Mr. Rowe: Would they be human remains?

Mr. Coldwell: After cremation, are they human remains? That is the point.

Mr. Garson: In any event, it is only where he fails to perform a duty that is imposed upon him by law or that he undertakes. I think it has to do more with the manner in which he carries out that duty than with the question of burial or cremation; that is, as to whether it is burial of the body in the ground or burial of its ashes in an urn. In other words, the gravamen of the offence is in the carrying out of the burial in a manner, for example, which is disrespectful to the dead body, in a careless and indifferent manner and so on, and not whether they bury the human body or cremate it.

Mr. Coldwell: The point I had in mind was as to burial of the remains. In cremation the remains may not be buried. That is the point. In cremation the remains may not be buried for a considerable time or may not be buried at all. What is the interpretation of the word "burial"? That is the point I had in mind.

Mr. Garson: I still come back to my point that the gravamen of the offence is neglect to perform a duty that is imposed by law or that a person undertakes to carry out, as my hon. friend will see, with reference to the burial of a dead body or human remains. That is

all it says. It does not necessarily make any reference at all to cremation. If cremation is lawful under relevant statutes, then it is just as lawful as burial.

Mr. Coldwell: That would constitute burial?

Mr. Garson: In such case it would be lawful.

Mr. Coldwell: The fact that the body was cremated would be burial, under this clause. Is that right?

Mr. Garson: Oh, no.

Mr. Coldwell: That is the point I am making. Suppose the remains after cremation are not buried.

Mr. Garson: There is no offence unless there is a breach of duty.

Mr. Coldwell: There is no offence if the remains are not buried?

Mr. Garson: This is an offence in respect of the manner in which burial is carried out.

Mr. Coldwell: It is an interpretation of the word "burial" that I am after.

Mr. Trainor: I should like to ask the minister whether this clause is supplementary to or was designed to reinforce provincial laws. Are there provincial laws existing with regard to burial which this clause is designed to reinforce?

Mr. Garson: Yes; because it says:

Every one who
(a) neglects, without lawful excuse, to perform any duty that is imposed upon him by law . . .

Mr. Trainor: That is provincial law?

Mr. Garson: Yes. The law may vary from one province to another, but it is his duty as a citizen to carry out that direction of the law. If he fails to do that in respect of burial, then he brings himself under this provision of the Criminal Code.

Clause agreed to.

On clause 168—*Bet.*

Mr. Hahn: We find here that a new subsection 3 has been added, which places the onus on the accused. We had the same thing with respect to clause 162, trespassing at night, in which the onus was placed upon the accused. I wonder if we are not setting a dangerous precedent and losing a fundamental and basic principle of British freedom when the onus is placed entirely on the accused rather than the state having to prove that the accused is guilty.

Mr. Garson: If my hon. friend will examine the preceding subsection I think he will see a provision there to the effect that a place is not a common gaming house within the meaning of the various subparagraphs there listed when it is occupied or used by an incorporated bona fide social club or branch thereof, when certain conditions which are prescribed prevail. If an accused in a case of this sort is actually innocent the facts in proof of that innocence are entirely in his possession, and it would be a matter of no difficulty at all for him to show that the place which had been raided was actually not a common gaming house.

The necessity for subsection 3 arises from the fact that as a rule when these raids are made, especially if it is a gaming house run by an experienced operator, the police may have some difficulty in securing entry in the first place. When they do get in they often find that the proprietor has made provision for doing away with great rapidity with all of the indications of gaming and the like. The people who are found there are all just innocent people taking part in a friendly game without any professional element in it at all. In order to give protection to society in a case of this kind, it does not seem unreasonable to say that the onus of proving that it is not a gaming house can be fairly placed upon the accused when, if that be the fact, it is so easy for him to establish.

Mr. MacInnis: I am suspicious of any section of the Criminal Code that puts the onus of proof of innocence upon the accused. I think it is a departure from the British practice that we have followed for so long, and if we begin by putting such a provision in one section we may wind up by having it in all sections, with the result that no matter what the charge against an accused may be he will have to prove that he is innocent.

The minister says it will be an easy matter for an accused to prove that it is not a common gaming house. If it is an easy matter for him to prove that it is not, then it should be an equally easy matter for the crown to prove that it is. The crown is only going to assume the onus of proof when it is easy for the crown to do so, but when it is hard the crown will shift the burden to the accused. As a principle in our Criminal Code I dislike it very much.

Mr. Garson: I am in complete agreement with my hon. friend in disliking just as much as he does this principle in any criminal law of shifting the onus of proof upon the accused. But in those cases in which the means of proof are peculiarly in the possession of the accused; where it is almost impossible for the crown to offer the necessary proof, if the

proprietor and found-ins stand mute then I think this is not the first occasion by any means when an accused has been called by statute to adduce evidence peculiarly in his possession to disprove the charge against him. With great deference to my hon. friend I would not agree that because this provision is put into a section respecting an offence of this sort, it would be proper to put it into other sections dealing with other offences. My hon. friend can see, as we go through the code, that there are very few sections in which it has been put, and that such provisions are confined to a very few sections which are of the same general character as this one.

Mr. MacInnis: My understanding is that this part of the clause is new and was not in the old law. We carried on for quite a long time with the law as it was, and I do not think anything very serious happened. Surely if a place is kept as a common gaming house the necessary paraphernalia will be visible, and surely every time the police care to raid a place the occupants or owners should not have to bring forward proof that it is not a common gaming house. The minister said a few minutes ago that this is the first time this provision has been introduced. That is my point. It will be such an easy thing to make a practice of introducing such a provision here and there. We are all looking for easy ways to perform our various duties, and it will be an easy way for the police or the crown, whichever term one uses, to make an accused prove that he is not guilty. I think we should be very careful about it.

Mr. Fulton: I do not think I am qualified nor do I desire to defend the Minister of Justice or, indeed, the new Criminal Code in matters of this sort. But if I were to let the comments of the hon. member for Vancouver-Kingsway, for whom I have high regard, particularly with respect to his interest in persons who may be accused and who require every assistance to defend themselves, go without reply it might be taken as meaning that we do not share the concern he has expressed that as a general principle a man is innocent until he is proved guilty and that the onus of proof of his guilt should be on the crown. No one could subscribe more strongly to that conviction than I or my colleagues sitting around me and those who are members of this party generally.

Therefore, while I do not agree with the hon. member for Vancouver-Kingsway, I felt that if I kept silent and simply let the matter go without any comment it might be taken that we were not as concerned about these things as he is. But there is a reply to him in this particular case which can and should be made. Taking clause 168 and comparing it with the old sections 226 and 227, one sees that the new clause proceeds on a rather different basis. The old sections 226 and 227 defined a common gaming house and made no exceptions. Under the new clause 168 an exception is created by subsection 2. In other words, it is continued as an offence to keep or to be in a common gaming house, but there is now an exception. Subsection 2 says:

> A place is not a common gaming house within the meaning of paragraph (i) or clause (B) or (C) . . .

—if it conforms to certain standards which are then laid down.

What is now said is that we continue the offence of a common gaming house but we create an exception to that offence. We create an exception if the place falls within the category described, and it is then not a common gaming house; but we put upon the accused the onus of proving that the place falls within the exception. When you are in effect creating a specific defence to a charge, which defence is that the accused's place falls within the description of the exception to a common gaming house, it is fair to place the onus of proving that defence, by proving that the place falls within that exception, upon the accused. The crown still has to establish its case by proving that the place is a common gaming house, and it is up to the accused to prove that the place falls within the exception. This exception is now defined by the statute in a form in which it did not exist before.

Mr. Hansell: I just wonder, if we should not let this item stand, particularly when we realize that lotteries come into this section and I notice that the committee on capital and corporal punishment and lotteries is meeting now. In any event, what I have in mind is that a good many of the members of the house who were members of the criminal code committee a year ago and are familiar with the code are also members of the present committee on capital and corporal punishment and lotteries. I am just wondering as a general practice whether we are not stealing a march on those men who are in another place and would like to be here.

My attention has been drawn to the fact that this section does not cover lotteries, so perhaps I am barking up the wrong tree. I know that our representative on the present committee on lotteries spent a tremendous amount of time and was a conscientious member of this criminal code committee a

year ago. I know he would like to be here while the Criminal Code is being discussed. Perhaps at future sittings we might bring up the Criminal Code with that in mind, to avoid conflicting with the other committee.

Mr. Barnett: I should like to raise a point in connection with subclause 2(b), which I understand from a remark that has been made is a new provision. I am wondering what interpretation can be placed upon the words "charitable organization"? To illustrate my point, I would ask the minister whether under this clause a trade union organization, as part of its social activities, might arrange an evening when games of this sort would be played, possibly for some social or charitable purpose, and be covered by this saving clause? I realize that in the ordinary sense of the word a trade union is not a charitable organization, but could they be covered by this saving clause? If not, would the minister consider inserting some such words as "or other non-commercial organization" or something of that kind?

Mr. Garson: Perhaps I might comment upon the remarks of the last two speakers because they are really related to one another. On two or three previous occasions I have explained that the setting up of the joint committee of the Senate and House of Commons to consider capital punishment, corporal punishment and lotteries was upon the understanding that the house would pass these sections dealing with gambling, lotteries and so forth, subject to any amendments that might occur to us as we considered them in the form in which they are.

This was to be done so that when the new code comes into effect we will have this subject matter covered by legislation. If we repeal the old code and in the meantime do not provide these new sections dealing with lotteries, corporal punishment and capital punishment, then we are going to have a gap in our law pending the report of the joint committee. The understanding was that we would pass these sections now. Then when the committee's report came in the government would move amendments, or if the government did not feel it was appropriate to do so, members of the opposition would move them. In that event, the government would expedite consideration of any amending legislation which might be brought forward to implement the report of the committee. For that reason I am asking hon. members to pass this legislation as we go along.

Now, that does not mean we cannot examine it on its own merits in the course of passing it.

[Mr. Hansell.]

In connection with the question raised by the hon. member for Comox-Alberni as to what constitutes a charitable or religious organization, if I understood his question he wanted to know whether, even although the organizations were not charitable or religious but were doing this thing for religious or charitable purposes, would that constitute a defence? Offhand I would not think it would, but that would be my own very casual opinion. The hon. member asked a hypothetical question, and with some hesitation I give that hypothetical answer.

This question has come up for interpretation by the courts; the case is Rex *v.* McGee. It arose in my own province of Manitoba and is reported in 50, Man. R. at page 152. There is a reference to the second exception under paragraph (b) (ii), as re-enacted in 1938. This was the former wording:

> . . . while occasionally being used by charitable or religious organizations for playing games therein for which a direct fee is charged to the players if the proceeds are to be used for the benefit of any charitable or religious object.

Now I quote from the judgment:

> This provision is intended to protect such people as trustees of club houses, or parish halls, who permit the occasional use of their premises for charitable or religious objects without gain or profit to themselves.

Whether that would apply to a trade union would depend upon the view the court took of the facts of the particular case. I should think a trade union might have some difficulty in proving that it was a charitable or religious organization within the meaning of the section.

Mr. Barnett: I did make one other suggestion upon which the minister has not commented, as to whether in this particular clause it might not be advisable to insert some words which would cover such a situation. If an organization to which I belong, such as a trade union, decides to do something of that sort even though they might not be organized mainly for that particular purpose, why should they not have the protection of this saving clause?

Mr. Garson: In that connection might I suggest that while my hon.. friend can examine those clauses as they go through now, we should take some cognizance in this committee of the whole of the fact that a joint committee of the House of Commons and the Senate has been set up which I should think will certainly consider this very point to which he is now referring. I really think we shall be in a better informed and more intelligent position to consider this point after the joint committee shall have gone into it in somewhat more detail than

we can in this committee of the whole. I would therefore urge that amendments of the nature suggested by the hon. member might be left over until we get the report from the committee.

Mr. Dupuis: Until a few years ago some churches organized what they called bingoes. I understand that even those bingo games for charitable purposes were outlawed. It was said that the code did not permit the playing of such games even for charitable purposes. Do I understand that subclause 2 (b) now makes bingoes lawful? Perhaps I do not make myself plain; I am not talking in my own language. I want it made clear whether bingoes can now be played legally if they are played for charitable purposes.

Mr. Garson: The answer to my hon. friend is that in this particular subclause there is no change from the existing law. It may be that when we get the report of the joint committee we shall consider some change, but that is for the future. This present bill introduces no change in the law as it is in the existing code.

Mr. Patterson: I should like to have some assurance that this clause will definitely be brought up at a future date under lotteries; otherwise it ought to be given consideration right now, or we should let it stand. Personally I feel that if a thing is wrong it is hardly right for a church or a religious organization to do it. I believe that the principle involved is altogether wrong; therefore I cannot see why a religious organization should have any preference over any other group. Unless this matter is definitely going to be brought up at a future date under lotteries I should like to say something further on it at the present time.

Mr. Garson: On that point, Mr. Chairman, I should like to reiterate once more that this subject matter is definitely being considered by the Senate and the House of Commons committee. I have undertaken, with the approval of my colleagues in the government, that when its report comes in the government will bring in legislation to implement that report; or that if to do so does not commend itself to our judgment, we shall expedite the consideration by the house of amending legislation brought in by any member of the opposition, including my hon. friend.

Mr. Knowles: Has the minister forgotten the proviso that there has to be some recommendation in the report?

Mr. Garson: Yes; "to implement the report" was the language I used, which means that we will be carrying out what the report indicates.

Mr. Hansell: I should like the minister's opinion with respect to paragraph (f) of this clause which reads:

> "game" means a game of chance or mixed chance and skill.

Where does the common slot machine come in, in this connection? I am not an expert on the constitutional angle of these things, but I do believe that several of the provinces have taken up this matter of slot machines. I see the minister has his finger up, which means he must have something that he wants to say.

Mr. Garson: Would my hon. friend look at clause 170, which we have not reached, but which deals with slot machines?

Clause agreed to.

Clause 169 agreed to.

On clause 170—*Conclusive presumption from slot machine.*

Mr. Knowles: We have now reached the clause that has to do with slot machines. I do not wish to take the floor from the hon. member for Macleod, but I would like to say this, after having read this clause. To use legal phraseology, I think I can say I have not knowingly gone into a common gaming house, but having read this clause I begin to wonder whether millions of people do not go into common gaming houses every day of their lives. Almost every time you go into a corner store you go into a place where there is a slot machine. Look at the wording of this:

> For the purpose of proceedings under this part, a place that is found to be equipped with a slot machine shall be conclusively presumed to be a common gaming house.

Then we are told that a slot machine means any automatic machine or slot machine:

> (a) that is used or intended to be used for any purpose other than vending merchandise or services; or
>
> (b) that is used or intended to be used for the purpose of vending merchandise or services if
>
> (i) the result of one of any number of operations of the machine is a matter of chance or uncertainty to the operator.

Every time you use a pay telephone you do that. There is a matter of uncertainty. Sometimes you will get your nickel back and sometimes you will get your number.

Mr. Rowe: And sometimes you get neither.

Mr. Knowles: Hon. members are laughing, and I do not blame them. But what about these little slot machines that children put pennies in. Sometimes they get a bit of bubble gum and sometimes they get trinkets of some sort.

Mr. Rowe: They are buying something.

Mr. Knowles: Someone says that is not a matter of chance. That is the reason the kiddies keep putting in their pennies or nickels; they hope to get something better than they got the last time.

Mr. Garson: Would my hon. friend look at 170 (2) (a) and (b)? If he does that he will see that they cover the point that he has just made.

Mr. Knowles: Yes, but my point is that what is set out in (a) is altered by what is set out in (b):

> that is used or intended to be used for the purpose of vending merchandise or services . . .

Some of these machines are there for the purpose of vending merchandise or services, but there is also an element of chance as to what item of merchandise you get.

Mr. Garson: Is the difference not this? In a vending machine you put the coin in the slot and you get back merchandise presumably at least of the value of the coin.

Mr. McIvor: Your weight.

Mr. Garson: Yes, or your weight, if you are interested in being weighed. You get value; but in a slot machine you put your money in and you may not get it back at all, or you may get back much more money than you put in. Therefore it is a gambling machine. I may say, Mr. Chairman, there is nothing new about this section. If my hon. friend is worried about having been in a gambling hell because he was in a drug store with a slot machine, he already has been doing that, perhaps unconsciously, for many years.

Mr. Hahn: I should like to ask the Minister of Justice this question. Are the machines in which you put ten cents and get nine cents worth of stamps slot machines or not?

Mr. Garson: No, certainly not.

Mr. Hansell: The position as I see it is this. I do not know a great deal about the slot machines, never having played them, but I do know that those who operate the machines can get away with having the customer put in a nickel or a dime and get back one chiclet. That by-passes the law, because it can be considered to be a merchandising machine. Of course they do not put in the nickel or dime to get a chiclet, they put in the nickel or dime or whatever it is in the hope that they are going to hit the jackpot and get a dollar's worth of nickels or pennies or whatever it is that comes out. That is the thing I think is dangerous. I had an experience with one of my boys when he was just knee-high to a grasshopper. The hon. member for Red Deer says, "Like his daddy". He did not grow to be much bigger than I am.

That boy went into one of these places without knowing anything about these machines, and a youngster told him to put in a penny. He put in a penny, he hit the jackpot and he came running out of that place with his hands together holding a fistful of pennies. He must have had 60 or 70 pennies. He wanted me to see what he had done. I took him aside and I said, "Son, I am going to tell you something. You may be able to put all those pennies in there and come away without a penny in your pocket, having lost your original penny; but if you never again play one of these slot machines you will be the one man in a million who will be able to say that in his lifetime he has been able to beat the slot machines."

I am sure the minister will agree that the slot machine is made to skin the public. It could not be otherwise. No slot machine has ever been made from which in the long run the public could win. That is what I was going to say when I rose several minutes ago. I cannot quite understand why the provinces have started an investigation of slot machines if they are covered by the Criminal Code. Why would they have to do that? I realize that the provinces administer the criminal law which comes under the department of the attorney general, but if there is any question as to the right or wrong of slot machines it seems to me it should be the minister who should carry on the investigation instead of an attorney general.

Mr. Garson: The last point raised by the hon. member for Macleod is extremely important. We have the power and the responsibility in this parliament of enacting the criminal law. Under subsection 14 of section 92 of the British North America Act the responsibility for the administration of justice, which includes the enforcement of law, is exclusively that of the provincial authorities.

The investigation to which my hon. friend refers has to do with administration. If my hon. friend will examine the evidence he will see that the allegations upon which the investigations are usually based is that in this, that or the other part of a given province, or in the province as a whole, the enforcement of the law in respect to slot machines has been inadequate.

But I would not admit for a moment that the law we are now considering is inadequate, because in substance it is a re-enactment of an existing section which has been in the code for a great many years. If it had been inadequate I should think that long since

we would have had representations from the provinces to that effect. If my hon. friend is worried about the point with which he opened his remarks, that a defence could perhaps be made by the person accused of operating a slot machine that the purpose of the machine was to vend merchandise, although still importing an element of gambling, I think his mind will be cleared up if he reads subsection 2 of clause 170 which reads:

In this section "slot machine" means any automatic machine or slot machine

(a) that is used or intended to be used for any purpose other than vending merchandise or services; or

(b) that is used or intended to be used for the purpose of vending merchandise or services if

(i) the result of one of any number of operations of the machine is a matter of chance or uncertainty to the operator,

(ii) as a result of a given number of successive operations by the operator the machine produces different results, or—

Such as were produced for my hon. friend's son when he hit the jackpot. He got in at the proper sequence and that great gain was poured into his hands.

(iii) on any operation of the machine it discharges or emits a slug or token.

Sometimes the accused argues that if it does not put out money, that lets him out. I think there has been a successful attempt in this legislation to cover all of these possible defences to which my hon. friend referred.

Mr. Hansell: I have one other question for the purpose of enlightening myself only. Are slot machines declared to be legal in any one province while they are still considered illegal in other provinces?

Mr. Garson: As I said a few moments ago, the responsibility for and the power of enacting criminal law, saying that which is a crime, is upon this parliament and upon no other legislative body in Canada. If we say by the Criminal Code that a slot machine is illegal and that its employment by a proprietor is a crime, as I understand the Canadian constitution it is not within the power of any province to make it legal.

Mr. McIvor: I was asking the question, how can a slot machine that just tells your weight be a machine of chance?

Mr. Brown (Brantford): Would the minister indicate whether there has been a change in the existing law. Clause 170 defines a slot machine, but in the old section there was no definition. It referred simply to certain automatic machines which were assumed to be contrivances for playing games of chance. In this clause it seems to be defined.

Mr. Garson: Has my hon. friend read section 986 (4) of the Criminal Code?

Mr. Brown (Brantford): Yes.

Mr. Garson: If he will go down to about the centre he will see that it says:

—any automatic machine intended to be used for vending merchandise or for any other purpose, the result of one or any number of operations of which is as regards the operator a matter of chance or uncertainty, or which as a consequence of any given number of successive operations yields different results to the operator—

I think if my hon. friend will examine that he will find that the substance is substantially the same as that of the present clause. I think it is put in a more intelligible form and in somewhat shorter compass.

Mr. Fulton: It seems to me there are two matters of unfinished business before us. I am quite sure the minister will agree that my curiosity is pardonable if I ask him whether he will enlighten us on two matters. First, was the hon. member for Macleod or his son in a common gaming house under the circumstances which he defined and, second, what happened to the shower of pennies which was emitted from the slot machine? I do not think we should proceed until we have an answer to those two questions.

Mr. Jones: I understand that a lot of these slot machines are imported from the United States. Why does the Department of National Revenue allow the importation of illegal machines and collect duty on them?

Mr. Garson: I think that question should be put on the order paper.

Mr. Jones: I think the question should be dealt with now. If it is illegal to operate these machines, why does the government allow them to be manufactured in Canada. I understand that most of them do come in from the United States. Why are no steps taken to stop their manufacture or importation before they become a temptation to children?

Mr. Knowles: If that question is not going to be answered I think the first of the two questions asked by the hon. member for Kamloops should be taken seriously. It is in effect the question I tried to put some time ago as to whether the wording of clause 170 is not a little too broad. If I may deal with this matter for half a moment, I take it from the description given by the hon. member for Macleod that the machine from which his son got a handful of pennies was by the definition set out in this clause a slot

machine, and it must have been found in a place. According to the initial part of clause 170—

> . . . a place that is found to be equipped with a slot machine shall be conclusively presumed to be a common gaming house.

I am not attempting to hang any stigma on the particular corner store to which my hon. friend and his son went. I am more concerned with whether the wording of this clause is sensible. If that was a slot machine in the place which my friend and his son visited, then that place must be a common gaming house under the interpretation of the law.

Mr. Garson: Yes, Mr. Chairman, it was. I am sorry if I gave the impression that I was trying to avoid the question. That was not my intention. The method by which this clause operates, as I apprehend it, is that instead of charging a person with a number of different offences such as operating a slot machine, these various things are defined as being included in the offence of keeping a common gaming house. If my hon. friend will look at clause 176, to which we have not yet come, he will find that every one who keeps a common gaming house is guilty of an indictable offence, and so on. When these illegal slot machines are found the charge which is laid against the owner of the establishment in which it is being operated is one of keeping a common gaming house, and in that way the charge laid will cover one of a number of offences which are included in the definition of "keeping common gaming house", rather than the particular offence of operating a slot machine.

Mr. Knowles: I certainly do not want it to be thought that I would condone a practice of this kind, but it does seem to me we should be practical about this matter. What the minister said a moment ago in direct answer to my question in effect describes half the corner stores in Canada as common gaming houses. I do not presume on that basis that the police in all the provinces of Canada are going to swoop down on all these corner stores. But is not that what the wording of this clause means? Otherwise the language conveys something which it does not mean. Should not there be either stricter enforcement of slot machines to the extent suggested by the hon. member for Okanagan Boundary, or some kind of wording which will make it clear that a corner store or drug store, which has many other purposes, is not described by the Criminal Code of Canada as a common gaming house by virtue of the fact there is a gum slot machine to which there is attached some element of chance.

Some hon. Members: Why not?

Mr. Knowles: Some hon. members ask, "Why not?". If that is going to be the meaning of this description, then let us call upon the police in all the provinces to swoop down upon all these places. Otherwise let us use words that mean what we have in mind.

Mr. Garson: My hon. friend is a godly and righteous man, but he is probably not too well acquainted with the possibilities of profit in these slot machines. A year or so before I came to Ottawa I visited a town in a western state in the United States where their country club was entirely financed by slot machines which were kept there and were "played" by the members. If there are a sufficient number of players who are prepared to put their money into slot machines the profits are not inconsiderable. I suppose my hon. friend was perhaps making a moral argument, but I do not know what moral difference there would be between a man who is getting a rake-off on a poker game from which he makes a lot of money, or in operating a slot machine to do the same thing.

Mr. Fulton: I think the minister misapprehends the point made by the hon. member for Winnipeg North Centre. The point made by the hon. member was to the effect that under the present definition a large number of corner stores, though not I believe as many as has been suggested, have slot machines within the scope of that definition and are therefore common gaming houses. The point made by the hon. member for Winnipeg North Centre is that we should either narrow our definition or change it in some way so that these corner stores, which do not exist for the sole purpose of operating slot machines, would not be included within the definition of a common gaming house. The alternative is that if we decide they should be brought within the definition of a common gaming house because of these slot machines, then let us enforce the law as it now stands.

I might add that I believe my hon. friend goes much too far in saying that half the corner stores in this country keep slot machines. I believe they have vending machines for the purpose of vending merchandise or affording services of some kind, but I do not believe there are very many corner stores such as one would include in the general description of being decent

places run by law-abiding citizens which keep slot machines of the type referred to by another hon. member in this debate. The one referred to was to my mind a slot machine as defined in this clause and the store, probably unwittingly, was a common gaming house. That type of store is very much in the minority, though I would not mind seeing that particular owner prosecuted. However, I do not think we have very many examples of that type of corner store.

Mr. Garson: I entirely agree with what the hon. member for Kamloops has said. There are a great number of vending machines in corner stores and there may be a number of slot machines, in the proper sense, in these corner stores. The situation depends in large measure upon the policy of law enforcement being pursued by the provincial or municipal authorities in the area under which these slot machines are operated. My hon. friend suggests we should enforce the law, but I am sure he would be the first to agree that we unfortunately do not have the task of enforcing this law. That is entirely within the jurisdiction of the provinces. However, where this law, which has been on the statute books for some time, is enforced with reasonable strictness by the provincial authorities we agree with the hon. member for Kamloops that you would not find many slot machines in corner stores, although there may be a great many vending machines.

Mr. Rowe: Surely no one is discussing the type of machine which is there for the purpose of selling gum or Coca-Cola. The T.C.A. offices have such machines, and surely the T.C.A. offices could not be described as common gaming houses. I believe the act clearly sets out the matter; and with all due deference to the hon. member for Winnipeg North Centre, it seems to me no one would suggest for a moment that the growing tendency to vend merchandise through so-called slot machines would come within the definition of slot machines used for the purpose of gambling. There is a clear-cut definition. As the minister has stated, there are many places in the United States and in Canada where all sorts of things are sold by this type of slot machine.

Mr. Garson: You can get a hot meal in New York through one of these machines.

Mr. Rowe: Yes, and you can get Coca-Cola, gum, ladies' hosiery, cigarettes, and all sorts of things. In many cases this machine is used to take the place of a clerk. I believe there is a clear-cut distinction. I think we have wasted a lot of time.

The Chairman: Shall the clause carry?

Mr. Knowles: Mr. Chairman, there are two types of slot machines about which I wish to question the minister even yet. One type I referred to a moment ago, but apparently it was missed. There are these slot machines into which children put coppers—I do not know whether they go as high as a nickel or not—and out of which they get something every time. Sometimes it is a chiclet, sometimes it is a ball of bubble gum, and sometimes it is a trinket. The value varies. An hon. member near me says sometimes there is a jackpot, when there is the handful of coppers to which the hon. member referred. But there is a difference in value each time. I have seen children play these things not because of the particular article obtained but because they enjoy the chance connected with it. They are hoping to get something better next time. Is that kind of machine a slot machine?

Mr. Garson: Yes.

Mr. Knowles: It was that kind of machine I had in mind when I suggested that they are to be found in a large number of corner stores in this country. I want to call the minister's attention to another kind of slot machine. I forget what the price of soft drinks is now but a while ago, at any rate, it was seven cents. I have seen these machines that were not equipped to take coppers, so there was a sign which said to put in five cents. But every sixth or seventh nickel, whichever it is—I have not figured out the arithmetic of it for the moment—that is put in draws a blank. A moment ago the minister mentioned being in the right sequence. On some occasions you put a nickel in and you get a bottle of Coca-Cola. Once in a while you put in a nickel and you are not in the right sequence so you get nothing. Is that a slot machine?

Mr. Garson: My hon. friend is very ingenious at asking these hypothetical questions.

Mr. Knowles: That is not a hypothetical question.

Mr. Garson: I do not blame him for it.

Mr. Knowles: This is a real machine.

Mr. Garson: I would suggest that one of the criteria is this. With any genuine slot machine you will find that, as the result of a number of operations, the machine does not make a profit upon the sale of merchandise but makes a profit by taking money from its patrons by gambling. In the case cited by my hon. friend, the machine which is placed there is for the convenience of the

patrons who may not have a nickel and two coppers, so they put in nickels. At the end of a week's operation that machine will not have produced for its proprietor one penny of gambling profit. It will have provided Coca-Cola for all its patrons equal in value to the amount of money that was put into it. Therefore I would not think it would be regarded as a slot machine within this provision; nor do I think it should be so regarded, becauses that arrangement is solely for the convenience of the public.

Clause agreed to.

Clauses 171 to 176 inclusive agreed to.

On clause 177—*Betting, pool selling, bookmaking, etc.*

Mr. Hahn: I was just wondering how many convictions under section 177 (d) of the old act may have been registered in this country. During the baseball series or the hockey series I do not think there is any little town in the country that does not have a pool of some kind on it. I was just wondering if there were any convictions under the act.

Mr. Garson: With all the good will in the world I am afraid I could not answer that question because, as I have indicated two or three times already this afternoon, the enforcement of these provisions is in the hands of the provinces. I doubt very much whether they keep any record of these convictions that is available to us. I would, however, draw this distinction. If two or three people make a pool amongst themselves, I think they are in a much different position from that of the bookmaker who accepts bets in contravention of the law.

Clause agreed to.

Clause 178 agreed to.

On clause 179—*Lotteries.*

Mr. Shaw: Probably the minister can enlighten me on this point. I notice one exception that is made under subsection 8 is this. It refers to raffles for prizes of small value. Earlier we learned that it was not an offence if it were done occasionally. What is the thinking behind this? Can the minister tell me that? What justification can there be for saying that it is either morally or legally right to have prizes of small value, yet to have prizes of medium value is wrong; or that it is all right if you do a thing occasionally, but if you go beyond that it is an offence? I should like to know what the thinking is on the part of those who support this type of thing. That has always been a conundrum to me.

Mr. Garson: My friend the hon. member for Red Deer, with his usual discernment and some gentle irony, has put his finger upon the main reason why the subject of lotteries is now being investigated by a joint committee of the House of Commons and the Senate. I would suggest that he await the report of that committee for an answer to his question.

Mr. Shaw: May I just point out to the minister, Mr. Chairman, that I will not have to wait that long. I am a member of that committee.

Clause agreed to.

Clauses 180 to 190 inclusive agreed to.

On clause 191—*Criminal negligence.*

Mr. Fulton: This is a new section, Mr. Chairman. I have here a note from a person who is learned in the law, far more learned than I, to the effect that this section does not really accomplish anything.

Mr. Knowles: Somebody very learned in the law must have drafted it.

Mr. Fulton: The point of the criticism which I shall try to reproduce is that at the present time, under the present code, it is true that there is a distinction between criminal negligence and ordinary negligence such as that which will found an action at common law. This is apparently an attempt to carry that distinction into statutory language.

I know the section is new. The meat of the note which I have received is that when you define or attempt to define criminal negligence, it is by that very fact suggested that you are trying to define in statutory form a type of negligence which differs in some respects from negligence at common law but that this statutory definition fails to do so, and that it is going to confront courts and juries with considerable difficulty in interpreting this section to leave it in this form.

I wonder whether the minister could make any comment. I realize it is really a theoretical matter, but inasmuch as my informant says that, in his considered opinion, it will confront the courts with great difficulty, I think perhaps we should have a word about it.

Mr. Garson: Clause 191 represents an attempt, and I think a successful one, by the commission to derive a statutory provision from the case law, which holds that before there can be criminal responsibility for a breach of duty it must amount to such conduct as shows a wanton and reckless disregard for the lives or safety of others. Perhaps my hon. friend's correspondent means, when he says that this does not make any change in the law, that it merely restates that law which

has already been established by the cases. If that be a correct interpretation of my hon. friend's correspondent's attitude I think clause 191 at least has the merit of being put in a lucid and condensed form that the ordinary person can read and understand. He then will not have to go to the case books to read the judgments and abstract from them the principles that are stated here.

Clause agreed to.

On clause 192—*Causing death by criminal negligence.*

Mr. Shaw: My question may not apply specifically to this clause; I am merely seeking information. Under what clause of the code is a charge usually laid when parents leave a tiny child alone in the home and a fire breaks out, or something happens that results in the death of the child? Those things seem to be cropping up with grim frequency lately, and I am wondering what charge is usually laid in such cases.

Mr. Garson: My hon. friend asks what charge is usually laid. I have not had occasion to check the total number of charges that have been laid in these cases of which he speaks to see whether the charge usually laid is under this clause. But I can say that a charge that could be laid and in many cases is laid on a set of facts of that sort, depending upon their gravity, would be under this section which, as my hon. friend can see, can carry a penalty of imprisonment for life.

Mr. Knight: I should like to ask the minister whether under this clause there is a way of dealing with people who refuse certain medical treatment for their children which in the opinion of medical men is necessary to save the lives of those children. I have noticed many cases lately where people of certain so-called religious faiths have refused to have a child treated in the case of diphtheria, for instance, by serum or something else which under ordinary circumstances would save the life of the child. They refuse the treatment and the child is allowed to die. I am merely a layman and do not understand these matters, but I am wondering if the code contains any provision to deal with such a situation or if it is dealt with under clause 192.

Mr. Garson: My hon. friend will realize that these charges of neglecting to provide proper medical attention will vary a good deal in their seriousness from one case to another. Some will be very serious indeed, perhaps resulting in the death of the child, and others not so serious either in the offence or in its consequences. Where gross criminal negligence had been shown I would think that a charge could be laid under section 192, but there is also a clause in the code which makes it a crime to fail to provide the necessities of life for those for whom one as a parent, for example, is responsible.

Mr. Fulton: I wonder if I might have your permission, Mr. Chairman, and that of the committee to consider clauses 191 and 192 together. You will observe that clause 192 states:

> Every one who by criminal negligence causes death to another person is guilty of an indictable offence and is liable to imprisonment for life.

That is a new section. Criminal negligence is defined in clause 191 which reads as follows:

> (1) Every one is criminally negligent who
> (a) in doing anything, or
> (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

As section 191 reads now, it seems to me it could be that a person who in doing something shows wanton or reckless disregard for the lives or safety of other persons is guilty of criminal negligence, and is then liable by clause 192 to imprisonment for life. Certainly a person who takes a gun and shoots another person, even although he does it deliberately, could be said to be doing something and in doing that something showing a wanton or reckless disregard for the lives or safety of other persons. It is certainly a wanton disregard for the life of the other person.

Therefore it might be alleged that such a man is guilty of criminal negligence in that he has taken a life, and is therefore guilty of an indictable offence and liable to imprisonment for life, whereas in fact he is guilty of murder. I am quite sure it is obvious that the intention was that this particular offence should not come under clause 192, but I suggest it does by virtue of the fact that the words "that it is his duty to do" in 191(b) are not inserted in such a position that they also qualify "in doing anything" in 191(a).

It is not a man's duty to shoot somebody else. Therefore I suggest the clause might be put this way:

> 191. (1) Every one is criminally negligent who
> (a) in doing anything that it is his duty to do, or
> (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

Then you will avoid the possibility that a deliberate crime of murder might be alleged to come under clause 192, and also the possibilities of confusion. If you would insert the words "that it is his duty to do" after the word "anything" in paragraph 1 (a) of 191 I should think you would better reflect the intention of the drafters.

Mr. Garson: I am not entirely sure that I got my hon. friend's point, but if I indicate in my comments that I do not apprehend it correctly I hope he will clear up the point for me. I cannot agree with him for this reason. Clause 191 (1) states that everyone is criminally negligent who in doing anything shows wanton or reckless disregard for the lives or safety of other persons. The gravamen of that offence is not whether he is doing something that it is his duty to do. If it is not his duty to do it, then that is all the more reason why he should not show wanton negligence in doing it. But the gravamen of the offence is that in doing anything, whether it is his duty to do it or whether it is not his duty to do it, he shows wanton and reckless disregard for the lives and safety of others.

Mr. Rowe: That could include an automobile case.

Mr. Garson: Oh, yes. If he is doing something that it is not his duty to do, if he is doing something that he should not be doing, and he does it with wanton and reckless disregard, then the fact that it is not his duty to do it makes his offence all the more culpable.

Mr. Fulton: He can be found guilty of killing a man by criminal negligence under clause 192 and be liable to imprisonment for life. But that is not the case. He murdered him. He did something that it was not his duty to do, and he did it with such wanton disregard for the life of another that he murdered him. Yet he is also covered by clause 192. Take the case of the driver of a motor car. To follow the minister's answer, the person who is driving a car does not have to do so. Therefore the minister says that in doing so he should be more careful and if he does so with wanton carelessness he should be punished. Well, he will be under the words of (b), even if it is entirely independent of (a), because if in driving that car he does so in a wanton or reckless manner he is omitting to take care, which it is his duty to do. It is the duty of everybody to take reasonable care; that is a duty imposed by law at the present time. In omitting to take reasonable care he is omitting to do something it is his duty to do.

I suggest that everybody is, in fact, covered in that regard. In driving a car without regard for the safety of a person he is omitting to do something it is his duty to do. I think those words should be qualified in (a) by "in doing anything", for the reasons I have put forward. If that is not done, you are going to get some measure of conflict between homicide caused by criminal negligence and homicide meaning murder, because at the present time murder would also be covered by section 191 read in conjunction with section 192. A person would be doing something, and showing wanton disregard for the lives of other persons, if he shot a man deliberately. There could not be any more wanton disregard for the life of another person.

As a result, according to this definition, he has committed nothing more than criminal negligence. Actually, he has. He is guilty of murder, and could be hanged. I do not want to have any confusion between the two. Therefore I suggest that would be taken care of entirely if (a) read, "in doing anything it is his duty to do", and (b) read, "in omitting to do anything it is his duty to do". If a man is careless in driving a car or in operating anything else, whether or not it is his duty to do it, he is omitting to do something he should do. It is his duty to take reasonable care, and that is a duty imposed upon him by law. You are not, therefore, weakening (b) but you are strengthening (a).

Mr. Garson: I am afraid I cannot agree with my learned friend, either as to his conclusion or the reasoning by which he reaches it. It seems to me that clause 191 describes two forms of criminal negligence. The first one reads this way:

> Every one is criminally negligent who
> (a) in doing anything,
> (b) . . . shows wanton or reckless disregard for the lives or safety of other persons.

Now, that seems to me to be as clear as anything could be. If he does anything, and in the doing of it shows wanton disregard, then that is criminal negligence. For example, if he is out shooting with a friend and shoots in such a way that he shows wanton and reckless disregard for the lives or safety of others and thereby shoots his friend's head off, he is obviously doing something, and in doing it he may be showing a wanton and reckless disregard for the lives and safety of others. In such case his conduct clearly falls within that section.

When my hon. friend suggests there is danger of confusion with a charge of murder, if he will look down the page a bit he will see that clause 194, subclause 5, states that a person commits culpable homicide when he causes the death of a human being by criminal negligence. In a given case the crown prosecutor has the choice of bringing in an indictment either for culpable homicide or for criminal negligence. I think my hon. friend would agree that in some cases, if my memory serves me rightly, on a charge of

culpable homicide the jury will bring in a verdict of criminal negligence and the sentence is imposed accordingly. Each of those cases is disposed of on the facts before the crown prosecutor in deciding what charge he should lay, and on the facts before the jury in deciding of what crime the accused is guilty.

Clause agreed to.

Clause 193 agreed to.

On clause 194—*Homicide.*

Mr. Knight: Again I should like to raise with the minister this matter of innocent children suffering from being under the control of ignorant or fanatical parents. According to clause 194, subclause 5, a person commits culpable homicide when he causes the death of a human being by criminal negligence. I do not know the minister's interpretation of this clause in regard to homicide, whether that is the crime committed by these people of whom I have spoken, but there have been several instances of little children being left by people in rickety old wooden houses in which there was danger of fire. The parents go off for an evening's entertainment. They come back to find the children as well as the house in ashes. That is one thing.

There are even more serious cases, and I am thinking of diphtheria. In these days medical science can do wonders to save lives. There are also instances of children needing blood transfusions, and the parents simply refuse to permit it. Surely we have got past the stage when we believe that because a child has the misfortune to be born to certain types of parents, the parents then have that child as a possession and can do anything they like. So far as I am concerned the child is a new being by virtue of birth, and has certain rights. Surely society has some obligation in that matter. I am wondering if anything is done or if it is proposed to do anything in these particular cases.

The minister will tell me, of course, that the law is here and anyone can prosecute. It is a matter for the provinces, and this is the law by which they can prosecute. We have had some rather drastic cases in the past and, so far as I am concerned, if anything is homicide, that is it. Would the minister care to comment on what I have said?

Mr. Garson: The only comment I would offer, Mr. Chairman—I am sorry I cannot recall the names of the cases now—is that there have been cases where the parents have been prosecuted by reason of their failure, sometimes for the most conscientious of reasons, to provide medical attention. There have been convictions registered against those parents. I am thinking of a couple of cases in my own province, and perhaps my hon. friend can recall cases in his. It is not as if we had a gap in our law under this heading. It is just a case of the prosecuting authorities applying the existing law to the facts in those cases as they arise, as has been done on several occasions in the past.

Mr. Zaplitny: I wonder if the minister would throw some light on subclause 6 of clause 194, which makes an exception in the case of a person procuring, by false evidence, the conviction and death of a human being by sentence of the law. There must be some reason for making that exception. I can foresee that a person might procure evidence in good faith, and which they believe is true, but which might turn out to be false. Whether that is the reason, or whether there are other reasons, I should like to know why that exception is made because on its face it appears to be an equally vile offence when compared with the preceding one.

Mr. Garson: I do not know in what way I can answer my hon. friend better than by quoting from Stephen, "History of the Criminal Law", where he refers to the trial for perjury of Titus Oates and says in volume III at page 9:

> Oates directly and distinctly caused the death of several innocent persons by perjury, but the fact that the judges and juries who tried the cases acted upon their own responsibility and because they chose to believe Oates's testimony, so disconnected his perjury from the death which he caused that even in 1685—

They had a very strict view of the criminal law in 1685.

> —it was not thought possible to convict him of murder.

Mr. Zaplitny: That is partly what I had in mind, but the minister will notice that this does not refer particularly to a person giving false evidence; it refers to procuring by false evidence. That could go beyond the witness himself, beyond the person who is giving the false evidence. It could also include the officials. For example, the prosecutor may procure false evidence knowing that it is false. It would appear that in a case of that kind he is doing something which is culpable, and on the face of it I see no reason for the exception. What I am trying to get at is this. This exception is made by virtue of the fact that it refers to evidence which the prosecutor believes to be true but which turns out later to be false. Would we

have this blanket exception under certain circumstances? Whether he knew the evidence was false or not, he is set free of a culpable charge.

Mr. Garson: Well, I think one of the main reasons why the subclause is retained in the law is that if there were not some saving clause of this kind one can understand that no one would regard with a great deal of enthusiasm appearing as a witness in a capital case. They would fear that if the accused were found guilty and it later turned out that the evidence which the witness gave in good faith was wrong, the witness might then be open to be charged with the murder of the accused by reason of the fact that his evidence was wrong. As a result there might not be too many people come forward as volunteers to be witnesses in capital cases.

In addition to that, there is this principle that I have already enunciated; that is, that while our courts are made up of human and therefore fallible judges, and human and therefore fallible juries, they have an unavoidable responsibility of appraising the evidence which is given by all of the witnesses and forming their opinions concerning it. Therefore it is very difficult later on to say that there is a direct nexus or connection between the false evidence given by a particular witness and the incorrect verdict.

Mr. Zaplitny: I appreciate that, particularly the last part of the explanation. It makes good sense. But I was wondering whether or not it would be wise to make a distinction there in the connective "by procuring by false evidence". I am wondering whether it should not include the words "in good faith". It does make a difference.

Mr. Garson: It is procuring a conviction by false evidence. There is a comma there. If there were any doubt, there is a comma after procuring.

Mr. Nowlan: I was wondering about the definition of "homicide". In subclause 5 (a) it says "by means of an unlawful act." Then we go back to clause 191 which gives the definition of criminal negligence. It says:

> Every one is criminally negligent who
> (a) in doing anything, or
> (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

Without having a chance to check the authorities—and frankly the committee has made more progress in the last 20 minutes than I thought we were going to make, for which it should be commended—my impression is that at one time it was "owing a duty". You have that in 191 (b):

> In omitting to do anything that it is his duty to do,

Then you go back to (a) and you find:

> in doing anything—

—whether one owes a duty or not. Then you come down to clause 194 and you find that a man is guilty of culpable homicide when he causes the death of a human being by means of certain acts.

I think we are going the wrong way about this matter, Mr. Chairman. I am not asking the Minister of Justice, as some have been doing, to give his opinion on something which obviously will have to be interpreted by the courts later on, but you are opening up a whole new field in this matter when you refer to an unlawful act. Take the motor vehicles acts of the various provinces. If you drive over 20 miles an hour, or perhaps it is 10 miles an hour, you are committing an unlawful act. Now, are you going to be guilty of homicide because you happen to be guilty of not stopping at a stop sign in my town of Wolfville? You are guilty of an unlawful act. Possibly, and apparently probably under this code, you are going to be guilty of culpable homicide for so doing.

Of course the Minister of Justice will appreciate that heretofore we have had the common law and the statute law. Now, as I understand it, the whole law is included in this new code. I think we are going on very dangerous ground. Under the common law you had to owe a duty to somebody.

I go into the woods on a hunting trip and engage in some reckless target practice, we will say, in the morning after we have had a successful trip. I do not know that my friend, the hon. member for Kamloops, is anywhere within a thousand miles. I try to hit the target, and as a result he is struck and killed. I do not owe him any duty. I do not know he is there. I knew the Minister of Justice was hunting, and therefore I would owe him a duty, but I do not owe the member for Kamloops any duty; yet he is struck and killed. I was not doing anything that showed wanton or reckless disregard for the lives or safety of other persons.

I know we have passed clause 191 and that we are now dealing with clause 194. I say we should not have this definition—I will not say we should not have; it is not for me to say—but the committee should give very careful thought to this proposition, because undoubtedly we are enlarging the scope of the criminal law to an extent which I do not think

many of us have appreciated, and which I think the minister himself will have to admit is going to open the question to various interpretations in the courts.

Mr. Garson: I am afraid I cannot agree with what my hon. friend has said. If he will look at clause 194, which he has before him, he will see that it replaces portions of sections 250, 252 (1), 252 (4), 252 (3) and 252 (2). The substance of this has been carried into the new clause 194. If the hon. member will look at section 252 of the existing code he will find this in subsection 2:

Homicide is culpable when it consists in the killing of any person, either by an unlawful act—

—which is exactly the language being used in subsection 5 (a) of clause 194 of Bill No. 7.

—or by an omission, without lawful excuse, to perform or observe any legal duty—

—which is the substance of criminal negligence in clause 191 of this bill. Then if the hon. member will turn to clause 194 (5) he will see this:

A person commits culpable homicide when he causes the death of a human being,
(a) by means of an unlawful act,
(b) by criminal negligence.

What has been done is this. The provisions in 252 (2) of the existing Criminal Code have been carried forward into clause 194 of Bill 7, using the words "by means of an unlawful act" as a straight repetition of language from the existing section, and then referring to the phrase which appears in section 252 of the existing Criminal Code:

—or by an omission, without lawful excuse, to perform or observe any legal duty—

—by referring to that as criminal negligence, as it is made to be by clause 191 of Bill 7. Does my hon. friend follow that?

In just a moment I shall deal with this question of an unlawful act. My hon. friend is worried that a man should be brought up on a charge of homicide based upon an unlawful act. The language to which he is referring, as it appears in the existing code, has been before the courts on a number of occasions and has been interpreted by the judges. I am now referring to Tremeear, fifth edition, page 284, which states:

It has been held that the unlawful act which results in death must, to render homicide culpable, be not merely *malum prohibitum*,—

That is a wrong which is prohibited by law.

—but *malum in se*: R. *v.* Oxley (1914), 23 C.C.C. 262; R. *v.* Lawson (1938) 70 C.C.C. 384. In both these cases deceased was accidentally shot by accused while hunting in violation of provincial game laws: compare R. *v.* Forseille (1920) 35 C.C.C. 171.

But in R. *v.* Nickle (1920) 34 C.C.C. 15,—Stuart, J. with whom Harvey, C. J., concurred, said:

"In my opinion there can be no question, where we find a statute passed obviously to protect the members of the public from danger, from the danger of bodily injury, and where that statute for that purpose forbids the doing of a certain act, that the act if done contrary to the statute is such an unlawful act as is contemplated by sec. 252 . . . The circumstance that the statute is provincial can, if it is intra vires, make no difference."

This decision has not escaped criticism, but has not been definitely overruled; see R. *v.* Constable (1936) 66 C.C.C. 206; R. *v.* Wilmot (1940) 74 C.C.C. 1;

A view which might harmonize these decisions was expressed by Ferguson, J.A., in R. *v.* D'Angelo, 1927, 48 C.C.C. 127, where, after referring to the authorities, he said:

"—the weight of authority and the proper view of the law is that where without intent to do injury to the person or property of another death results from the doing of an act which is not *malum in se* but is merely *malum prohibitum*, the wrongful act is not the kind of an act that the criminal law requires as a foundation for a charge of manslaughter unless the statute or prohibition violated is one designed and intended to prevent injury to the person, or the prohibited act is accompanied by negligence."

My hon. friend can see therefore that this is not new law as he is suggesting; it is law which has been interpreted in a number of decisions and in the form of case law which has been clearly settled.

Mr. Nowlan: I quite agree with the minister in so far as this definition of homicide and the particular section with which we are dealing at the moment is concerned. Of course what he has stated is correct and in accordance with the law as he and I both understand it. The point which I raised, and which takes us back of necessity to clause 191, is that the present clause 194 says:

A person commits culpable homicide when he causes the death of a human being,
(b) by criminal negligence.

I am saying that the definition of criminal negligence in clause 191 has changed the law as I understand it. I do not think there is any conflict between the minister and myself as to the words, but there is a conflict in the conclusions at which we arrive. If I am right in saying that by omitting the duty part of clause 191 you are enlarging the basis of criminal negligence, then you certainly are widening the matter as set forth in clause 194 (5) (b). I say again that, as I have understood criminal negligence in the past, it consisted of doing something to someone to whom you owed a duty, or to whom you should have known you owed a duty. Clause 191 reads:

Every one is criminally negligent who
(a) in doing anything, or
(b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

I am suggesting that as I understand the law, you have a duty under (b) and you have not a duty under (a). I could refer the minister to section 284 of the code, with which I know he is familiar, or to the reckless driving and other sections which deal with this matter and which judges have to read at great length to juries when they are charging them as to murder and so on. Section 284 reads:

> Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any unlawful act, or by doing negligently or omitting to do any act which it is his duty to do, causes grievous bodily injury to any other person.

Under clause 191 as we have it now that has been struck out. I would not think it so serious if it were not for the fact, as the minister pointed out the other day, that we are doing away with the common law. We are codifying the whole matter within the pages of this statute. I am not going to take time to argue what is obviously a legal question and in connection with which frankly I am not prepared to deliver a Jovian judgment.

Despite what the minister has said, I do feel that this is enlarging to a substantial degree the scope of the criminal law as heretofore dealt with in our courts. We are removing the common law entirely from this, and are creating a situation which certainly is going to be determined not in this building but in one not too far away from here, in the very near future.

Clause agreed to.

Clauses 195 to 205 inclusive agreed to.

On clause 206—*Punishment for murder.*

Mr. Knowles: Mr. Chairman, I wish to say a few words with respect to clause 206, which provides for capital punishment. I realize this clause deals with a matter which has been referred to a special committee. I think, too, it can be said that we are now quite familiar with the position taken by the Minister of Justice in regard to matters which have been referred to that committee. Nevertheless, even though I fully understand the minister's view that a gap cannot be left in the law, the fact of the matter is that we are now being called upon to enact this clause so far as the Criminal Code of Canada is concerned.

If the suggestion I am going to make in a moment cannot be acceded to, then those of us who are opposed to the continuation of capital punishment will have no alternative but to vote against this clause. The suggestion I offer to the minister is that clause 206 be permitted to stand. My reason is that I do not believe any one of us knows how long that committee will take in its deliberations, nor have we any idea when it will make its final report on capital punishment and the other subjects assigned to it. Neither does anyone here know how long this committee of the whole is going to take in dealing with the Criminal Code. It is possible that the special committee might make its report before we have finished with all the clauses of the code here in the committee of the whole.

Bearing that in mind, I wonder if the minister would be willing to let clause 206 stand.

Mr. Garson: Mr. Chairman, might I just emphasize what we will become involved in by allowing this clause to stand. I have not the slightest objection to allowing clause 206 to stand in the same manner in which we have allowed other clauses to stand, and if this is all my hon. friend refers to then I shall raise no objection. However, if he means that by allowing it to stand we should not pass it when we pass Bill No. 7 and repeal the existing code, and that we thereby leave out of the new code for an interval of time any prohibition of the crime of murder—but I do not think he means that, does he?

Mr. Knowles: I am sure the minister would not suggest that is what I meant. In fact when I made my request I admitted that a gap could not be left in the code. Something has to be put in the code dealing with the crime of murder. My point was that conceivably the special committee might make its report before we have finished with all the clauses in committee of the whole, and conceivably it might recommend against capital punishment. If that were the result of the committee's deliberation we could, if my suggestion were accepted, then consider the report of that committee.

Mr. Garson: In the meantime it would save my hon. friend and his colleagues from giving even a small measure of support to something to which they might be opposed in principle. If that is the purpose I would be quite in sympathy with the suggestion put forward by my hon. friend.

Mr. Knowles: That is a correct statement of the purpose of my request.

The Deputy Chairman: Clause 206 stands.

Mr. Nowlan: Might I ask one question, Mr. Chairman. We have passed through a number of very important sections in an extremely rapid manner. The minister knows that the courts very often say that parliament has

done so and so, and just for the record I would like to say that if the courts look at what parliament has done in dealing with these clauses they must wonder.

I would like to refer to clause 203, which I have cause to remember, and the clause thereof dealing with provocation. Can the minister tell us whether that clause makes any change in the law as that law is interpreted by the courts today, or is it merely a matter of changing the drafting of the subclause? I would like to have an explanation of that on the record.

Mr. Garson: It is a change in form only. This concerns the existing section 261, and if my hon. friend will look at that and compare it with the proposed clause he will see there has been no change in substance.

On clause 207—*Punishment for manslaughter.*

Mr. Lusby: I wonder whether I may ask the minister whether section 207 is really necessary in view of the provisions of clause 192? It seems to me this is merely a duplication. Surely manslaughter comes within the provisions of clause 192.

Mr. Garson: Yes, I think it is necessary. While my hon. friend is no doubt referring to the fact that punishment in each case is imprisonment for life, the clause is still necessary because while the maximum punishment may happen to be the same, the set of facts you have in one case might enable you to prove criminal negligence and no more than that, and in another case you might be able to establish a charge of manslaughter. It is therefore necessary to preserve the two clauses.

The Deputy Chairman: Shall clause 207 carry?

Some hon. Members: Yes.

Clause agreed to.

Progress reported.

BUSINESS OF THE HOUSE

Mr. Harris: Tomorrow we shall take third reading of the amendment to the Export Credits Insurance Act; second reading of the Bank of Canada Act; second reading of the War Service Grants Act amendment, and then the Criminal Code.

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