Gillis
Herridge
Johnson (Kindersley)
Jones
Knight
Knowles
McCullough (Moose Mountain)
Nicholson
Noseworthy
Regier
Stewart (Winnipeg North)
Winch
Zaplitny—21.

NAYS

Messrs:

Abbott
Adamson
Anderson
Applewhaite
Arsenault
Ashbourne
Balcer
Balcom
Batten
Bell
Benidickson
Bennett (Grey North)
Blackmore
Blair
Blanchette
Boisvert
Bonnier
Bourget
Bourque
Breton
Brisson
Brooks
Brown (Essex West)
Buchanan
Byrne
Cameron (High Park)
Campney
Cannon
Cardiff
Cardin
Carter
Cauchon
Cavers
Charlton
Churchill
Cloutier
Conacher
Cote
Crestohl
Croll
Demers
Deschatelets
Desrieres
Dickey
Dinsdale
Drew
Dumas
Dupuis
Enfield
Eyre
Fairey
Fleming
Follwell
Fraser (St. John's East)
Fulton
Gagnon
Garson
Gauthier (Nickel Belt)
Gauthier (Portneuf)
Gingras
Gingues
Girard
Goode
Gour (Russell)
Green
Gregg
Habel
Hahn
Hamilton
Hanna
Hansell
Hardie
Harkness
Harris
Harrison
Hees
Hellyer
Henderson
Henry
Hodgson
Holowach
Hosking
Houck
Howe (Port Arthur)
Howe (Wellington-Huron)
Huffman
Hunter
James
Johnston (Bow River)
Jutras
Kickham
Kirk (Antigonish-Guysborough)
Kirk (Shelburne-Yarmouth-Clare)
LaCroix
Lafontaine
Langlois (Gaspe)
Lapointe
Leduc
Lefrançois
Legare
Lennard
Low
Lusby
Macdonnell
MacDougall
MacKenzie
MacLean
Macnaughton
McCann
McCulloch (Pictou)
McGregor
McIvor
McLeod
McMillan
Maltais
Mang
Masse
Matheson
Meunier
Mitchell (London)
Mitchell (Sudbury)
Monette
Monteith
Murphy (Westmorland)
Nesbitt
Nickle
Nixon
Nowlan
Pearkes
Perron
Philpott
Picard
Pickersgill
Pinard
Pommer
Poulin
Pouliot
Power (Quebec South)
Proudfoot
Prudham
Purdy
Quelch
Ratelle
Reinke
Richard (St. Maurice-Lafleche)
Robertson
Robichaud
Robinson (Bruce)
Robinson (Simcoe East)
Rowe
Schneider
Shaw
Shipley, Mrs.
Simmons
Small
Stanton
Starr
Stick
Stuart (Charlotte)
Trainor
Tucker
Tustin
Valois
Weaver
Weselak
White (Hastings-Frontenac)
White (Middlesex East)
White (Waterloo South)
Wood
Wylie
Yuill—171.

Mr. Speaker: I declare the amendment lost. Is it the pleasure of the house to adopt the motion?

Motion agreed to, bill read the second time and referred to the standing committee on banking and commerce.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Friday, February 26, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

The Chairman: When the committee rose previously we were discussing clause 431. Shall the clause carry?

On clause 431—*Seizure of things not specified.*

Mr. Knowles: Mr. Chairman, I am sure the minister recalls the discussion we were having in respect of clause 431 the last time the committee dealt with the Criminal Code. Is the minister awaiting his assistants?

Mr. Garson: No; go right ahead.

Mr. Knowles: As he may recall, some of us were concerned as to this clause. It is a new one and it seemed to me on the previous occasion we discussed it, and still seems to me, that its provisions grant rather wide authority. It makes it possible for one who is armed with a warrant for the seizure of certain things to seize other articles in addition to those set out in the warrant if, in the opinion of the peace officer who has the warrant, there are grounds for so doing.

I listened with interest to what the minister had to say on this matter on February 26, but I must say I was more impressed by what the hon. member for Digby-Annapolis-Kings had to say, particularly when he pointed out that the wording of a warrant can usually be made wide enough to embrace any of the articles involved in a particular offence. As the minister knows, it has been my concern and the concern of some other hon. members in

this house in going through the code that we do not go too far in the direction of providing peace officers with too much authority without a warrant being properly drawn.

Mr. Nowlan: Mr. Chairman, may I amplify what I said in committee the other night when we were dealing with this clause. I feel it is necessary because my hon. friend has merely summarized the discussion, and frankly I believe the minister will have some difficulty in providing justification for this clause. It will be observed that clause 431 contains within it reference to clause 429. Clause 431 reads:

> Every person who executes a warrant issued under section 429 may seize, in addition to the things mentioned in the warrant, anything that on reasonable grounds he believes has been obtained by or has been used in the commission of an offence, . . .

—and so on. But, Mr. Chairman, if you go back to clause 429 you will find provisions (a), (b) and (c) are so wide that they include almost everything under the sun. To use a colloquial expression, they include everything but the kitchen sink. Paragraph (a) of clause 429 reads:

> (a) anything upon or in respect of which any offence against this act has been or is suspected to have been committed.

And then paragraphs (b) and (c) read:

> (b) anything that there is reasonable ground to believe will afford evidence with respect to the commission of an offence against this act, or
>
> (c) anything that there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant.

It must be remembered that the information will be preferred by a skilled officer, perhaps of the R.C.M.P. or other branch of the police, and that this is not a warrant for the arrest of an individual where the charge is limited specifically. In such cases a peace officer cannot go beyond that charge; otherwise he would be guilty of complicity and the warrant or the indictment would become void. This is information upon which a search warrant will be taken out and within which the officer responsible, I suggest with all due deference, can include everything which any reasonable person could anticipate.

Having done that, it is not necessary to use the provisions of clause 431, unless by any chance the officer has been lax or careless, in which case I frankly do not believe we should require in the Criminal Code a clause which is quite so wide as this. Under this provision, if the officer has forgotten or fails to include within the information everything from Dan to Beersheba, he can in addition to the one thing mentioned in the warrant seize anything be believes on reasonable grounds has been used in that offence.

For example, Mr. Chairman, I can imagine a husband or wife buying a washing machine and stating that they can pay $10 per month, when actually their earning power is considerably exaggerated. It would then be perfectly conceivable under this clause for the vendor to seize that washing machine, because he could claim that the buyers obtained it by falsely representing their income, and that in fact they lacked the purchasing power.

I certainly do not want a situation of that kind created, and I know the Minister of Justice would be the first to oppose such a development. But I am saying to him with all the force I can command that if this clause is permitted to stand as it now is, then it will be open to a great many abuses, and we will find the Criminal Code being used for the seizure of goods which should actually be recovered under civil procedure, if they are seized at all.

I would be the first to admit that we should not handicap an officer of the law, and that we should provide him with all necessary powers; but I do not like umbrella clauses, or general catch-alls such as we have here. I know the minister will give an explanation which will undoubtedly appeal to reason, but I would also suggest with all due deference that if he were sitting on this side of the house, I would hate to think how much time he would take in opposing the enactment of the clause we have before us now.

Mr. Garson: I think I should address myself to the last point made by my hon. friend, but first let me deny as emphatically as I can that in the improbable event of my sitting on the other side of the house I would oppose this clause. I am not supporting it merely because I am sitting on this side of the house. I am supporting it because I think it is a necessary provision to have in the bill.

I went to some considerable length in outlining the justification for this clause on the last occasion on which it was before the committee, and I do not believe it is necessary for me to cover the same ground tonight. However, I should deal with the points raised by the hon. member for Digby-Annapolis-Kings. He claims that if this clause is passed it will enable a creditor to seize, say, a washing machine.

Mr. Nowlan: It is possible.

Mr. Garson: Yes, but I would suggest that he look carefully at clause 429, under which the warrant has to be issued. When my hon. friend talks about subsection (a), covering

anything upon or in respect of which any offence against this act has been or is suspected to have been committed—and the same sort of provision is in (b) and (c)—I think he will agree from his own experience that in order to get a search warrant under section 429 at all the informant has to satisfy the justice that he believes, upon reasonable grounds, that an offence has been committed.

When he establishes that by his information, then the information is issued only in respect of things which have to do with that offence. The warrant only applies to things under (a), (b) or (c) in relation to that offence. It does not make any difference how broad (a), (b) and (c) are. The restriction does not arise under these subsections. It arises from the fact that when the warrant is issued it is in respect of a certain offence which is disclosed in the information sworn before the justice. I see that my hon. friend from Digby-Annapolis-Kings is nodding his head in assent to that statement, and I am glad he agrees with what certainly is the case.

When the peace officer has this warrant, he goes to the place where he thinks he is going to find the property which was involved in that offence which was referred to in the information and in the warrant that is in his possession. When he gets there, he discovers that this particular thief has been active in more spheres than anyone had suspected, and that he not only has all of the swag from this particular offence but a lot of material from perhaps several other offences as well. This is not an imaginary situation. Time after time we see in the newspapers reports to the effect that when the police went to seize under a search warrant of this sort they found goods that had been stolen in a series of robberies in that community over a previous period of time.

What my hon. friends of the opposition are arguing is that under a set of circumstances such as that, the peace officer should solemnly seize the articles covered by the warrant he has, as being those that were connected with the offence in respect of which the warrant was issued; and then, so far as all the other ones are concerned, he says, "Well, I have not any authority to do that. I shall go back to the magistrate and see if I can get some more warrants to cover these other matters". Is that common sense?

I had perhaps better not ask my friend the hon. member for Digby-Annapolis-Kings the rhetorical question, "Is that common sense"; I shall merely say that it does not seem to me to be common sense. It is only after the peace officer has been armed with the warrant in respect of a particular offence disclosed in a sworn information before the justice, and he goes and finds other goods which upon reasonable grounds he believes to have been the subject matter of other offences, that he has any right to take them. To my mind this section is an improvement in this part of the code.

Mr. Nowlan: With all deference, may I say this. We are not going to involve the minister in rhetorical questions or otherwise. He was suggesting that perhaps I was not talking common sense. Perhaps I am not prepared to offer an opinion because I might be slightly prejudiced.

Nevertheless I suggest, with all deference, that the minister has not met the point I raised. In other words, he says that section 429 deals with a specific offence. It is certainly possible for any embryonic lawyer or any embryonic police officer to draw up an information under section 429 which would be wide enough to cover any possible eventuality that might occur.

I am not going to waste the time of the committee by stressing this point again, having done it once. My complaint is not that anything might be done under section 429; but having laid the information, we come back and find that it is any person who can do this. Mind you, it need not be a police officer; this can be anybody. You are not limited to a peace officer. You are not limited to a constable. And even some of these people, I am rather afraid, have fearful ways of dealing with matters. I am just thinking of a peace officer who was on traffic duty in a city not too far away from here when a horse dropped dead in what was known as Confederation square. It was not Confederation square in Ottawa, I may say. He could not spell "confederation" so he unharnessed the horse and dragged it till he came to Prince street, which was his own name and he could spell it. Then he filled in the traffic report saying that he found the horse on Prince street. That sort of thing sometimes happens with peace officers.

You are going beyond even that class now. You are saying that any person who executes a warrant may seize things in addition to the things mentioned in the warrant. I say again with all emphasis—and I am not stressing it further—that everything should be mentioned in the warrant that could possibly be included within the scope of any particular crime with which you were concerned. If you are going on a fishing expedition I think you should at least fish within the ambit of the law, and not under a general umbrella. You add that to the fact that any person can do that, that he can seize anything. It might be a bootlegging offence. As I say, it might be something resulting from credit.

The minister says this is an improvement in the law. Possibly it is, Mr. Chairman. But I simply point out that the criminal law of this country has been fairly well administered since confederation, and the Criminal Code has been a fairly effective instrument of legislation. There are hon. gentlemen in this house who have been connected with its enforcement. For instance, there is the hon. member for Cumberland sitting on my right, who for years has been a crown prosecutor in his own constituency, and there are many others in this house who have had similar experience. It seems to me rather strange that we now find this new section being drafted which in my opinion, at any rate, goes farther than the code went previously.

I always object to the law being stretched to the limit. I think we must, as far as possible, maintain the old concept of specific offences, specific crimes and specific informations. I am not going to urge the matter further but I do say that I think this is not an improvement. I say that with all respect to the minister. He can refer to section 429 as much as he likes, but I am sure that any officer who is retained by the Department of Justice and lays an information which does not bring the matters which the minister wants investigated within the scope of that section, will not be retained a second time, unless there is a great deal of pressure brought to bear upon the minister. It is only when they fail to do that that you are back within the provision of this section. I say it is unnecessary and I say it is unwise; and I at least want to register my own objection.

The Chairman: Shall the clause carry?

Mr. Fulton: No. I think there is another objection to this clause, Mr. Chairman, on the ground that in none of these sections so far as I can see is any time limit laid down within which a warrant must be executed. That may be a non-essential. When you act under clause 431 and seize anything else in addition, that is one thing. When you read that in conjunction with clause 432 (3) (a), under which the magistrate or the justice is now to be the judge of whether or not the thing was lawfully in possession of the person from whom it was seized, you have three things. It is not included in the warrant. It is seized on the suspicion of some peace officer that it was obtained unlawfully. Yes; my friend the hon. member for London corrects me and says it may not be a peace officer, but may be seized by any person who fancies that it was obtained by the commission of an offence. Then after it has been seized and is before the justice, that justice, without any sort of trial, if he thinks it was obtained unlawfully orders it to be forfeited. Then added to all these considerations is the fact that no time limit is specified within which this extraordinary power may be exercised. I think it is going much too far, and I would certainly propose to vote against the section.

Mr. Garson: I wonder if, while we are on this section, I might bring to the attention of the members of the committee a representation which I have received from Mr. N. A. Munnoch, general counsel of the Bell Telephone Company. He had made representations before the special committee of the House of Commons last year in connection with this same question. Mr. Munnoch refers to section 171, subsection 6 of the bill, which hon. members will find on page 57. That is the section authorizing a search warrant in connection with gaming houses.

Mr. Knowles: We are back to the corner stores again.

Mr. Garson: No, not to the corner stores. This is a different kind of gaming house. This is a gaming house where a lot of telephone lines have been installed in order that those in charge may receive and place bets on race tracks. The complaint of the telephone companies, on the strength of which this subsection was placed in the code previously, was that when the police came in they took the telephones in the course of seizing exhibits and ripped them from the walls, and in doing so frequently damaged them severely. To meet that situation it was provided by subsection 6 of section 171 that—

> Nothing in this section authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

Before the House of Commons committee Mr. Munnoch represented that clause 431, which we are now discussing, might have this effect of permitting and I think I had better use his words rather than paraphrase them—

> . . . "a person, armed with a search warrant pursuant to section 429, to seize telephone, telegraph and other communication facilities and equipment if, on reasonable grounds, he believed they had been used in the commission of an offence, despite the fact that they are exempt from seizure under section 171. This would seem to conflict with and nullify, or to a large extent impair, the protection given to communication companies by section 171.
>
> In order to remedy this situation and give such companies the protection to which they are, in my submission, entitled, I respectfully suggest that

either section 431 be amended by adding a provision substantially similar to that contained in subsection 6 of section 171 or that subsection 6 of section 171 be amended by adding after the word "section" in the first line thereof, the words "or in section 431", so that the said subsection would read as follows:

"(6) Nothing in this section or in section 431 authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person."

The House of Commons committee rejected that argument, and when we were considering introducing the code last fall I advised Mr. Munnoch that we were going to introduce it—with the few minor exceptions I have called to the attention of hon. members, typographical errors and the like—in substantially the same form as that in which it had emerged from the House of Commons committee of last year. He then asked me if, when we came to clause 431, I would be good enough to present to this committee and myself endorse these representations of his which I have just finished quoting. I said I could not endorse them, because my view was that we should adhere to the decision that had been made by the House of Commons committee, but that I would bring the matter to the attention of hon. members of this committee as I have now done.

The Chairman: Shall the clause carry?

Mr. Fulton: On division.

Clause agreed to on division.

On clause 432—*Detention of things seized.*

Mr. Nowlan: What about the three months' provision in clause 432? I wonder whether the minister would comment on that. The note says that subsections 1 and 2 are the old section 631, but all section 631 says is that the thing shall be detained until the conclusion of the investigation or trial, and otherwise shall be returned. It seems to me that the period of three months during which the thing can be held while the investigation is being conducted, as provided in clause 432, is rather long. I wonder if the minister would comment on that briefly or comment —period.

Mr. Garson: I should bring to my hon. friend's attention that the entire clause in which the three months appears, that is, starting with the words "but nothing shall be detained", was added by the Senate to the section in its original form as a saving clause to limit the period during which things could be detained. In that form it passed the House of Commons committee, and I would think we might well approve of it here.

Mr. Fulton: What about subclause 3 (a) of clause 432? Is that the one the minister is saying is a saving clause?

Mr. Garson: No. I suggested that the last five lines of 432 (1) were added as a saving clause.

Mr. Fulton: I think there are strong grounds for objection to subclause 3 (a), which I notice is new, and so that the grounds of objection may appear on the record I had better read it. It reads as follows:

(3) Where a justice is satisfied that anything that has been seized under section 431 or under a warrant issued pursuant to section 429 will not be required for any purpose mentioned in subsection 1 or 2, he may

(a) if possession of it by the person from whom it was seized is unlawful, order it to be forfeited unless he is authorized or required by law to dispose of it in some other way, or

(b) order that it be returned to the person from whom it was seized.

There can be no objection to (b) because that is restoring it to the place whence it came, but under (a) nothing is laid down to indicate in any way what steps a justice has to take to satisfy himself whether or not it was unlawfully obtained by the person from whom it was seized. If there is any other provision in the code which applies here and makes it incumbent upon a justice to at least go through some form of judicial inquiry to come to a conclusion, I would be glad if the minister would direct our attention to it. As I see the section as it stands the thing can be disposed of on the merest whim of the justice.

Mr. Garson: If my hon. friend will look at the following subsection 4 he will see that it indicates—

Mr. Fulton: That merely provides a time limit. It merely reads:

(4) Nothing shall be disposed of under subsection 3 pending any proceeding in which the right of seizure is questioned, or within 30 days after an order is made under that subsection.

The introductory words of subsection 3 emphasize the fact that this thing may have been seized although not named in the search warrant. The introductory words are:

Where a justice is satisfied that anything that has been seized under section 431 or under a warrant issued pursuant to section 429 . . .

This thing may have been seized although it was not included in the warrant. There has been no information laid with respect to it. A person enters to execute a warrant and he sees something else which in his belief—and he may believe it sincerely—has been acquired unlawfully by the person in

out a writ of replevin in the common law provinces to recover it. But I am also certain that under those circumstances the justice or the peace officer who was holding the article would never seek to retain it, so I do not entirely share my hon. friend's apprehension about the difficulties which he alleges.

Mr. Fulton: It would be rather difficult for him to bring an action for replevin if he were languishing in a jail 150 miles away. He has only 30 days to oppose the forfeiture.

Mr. Garson: I am taking the case my hon. friend seems to be exercised about, where the article has been improperly seized from Mr. John Doe. It really belongs to him and they should not have seized it in the first place. They exercised an unwise discretion. Supposing it is a refrigerator they have seized. They cannot do anything with it within that period of 30 days, and during that time the man from whom it was unwisely seized can assert his claim in relation to it and if necessary have a civil process issued to take it back.

On the other hand, if his possession is unlawful, if it was a stolen article, it could be returned to the owner. If the owner was not known it would be forfeited to the crown.

Mr. Knowles: I wonder if I could get in for just a moment to make a suggestion that it seems to me might meet the point or at least might help to get across the point that the hon. members for Kamloops and Digby-Annapolis-Kings have been trying to make. What about putting in line 6 after the first "is" the words "to the satisfaction of the justice." This part of the clause would then read, "if possession of it by the person from whom it was seized is, to the satisfaction of the justice, unlawful . . ." The hon. member for Kamloops says that is already in there, but he now agrees that the words "is satisfied" are only in line 1. It is from that that I gathered this idea. The justice does have to be satisfied that something that has been seized will not be required for any purpose mentioned in subsection 1 or 2; that does impose upon the justice the obligation of being satisfied. Why not do the same in line 6?

Mr. Garson: The obligation is there anyhow.

Mr. Knowles: Why is it stated in one case and not stated in the other? I go along with the view being expressed by my friends to the right that it would be wise to state the obligation again and thus make it necessary for the justice to be satisfied, and have some way of showing it, that the article was seized unlawfully.

Mr. Garson: I think the reason the words "is satisfied" are used in one instance and not in the other is that in the first case the justice has to be satisfied these articles will not be required for any purpose mentioned in subsection 1 or 2, whereas in the second case it is really a point of law he is deciding—if possession of it by the person from whom it was seized was unlawful. But they have to prove that it was unlawful. He will not act unless it is proven to him that it is unlawful. So it seems to me that without inserting the words "to his satisfaction", or words to that effect, the clause indicates clearly that they have to establish, first of all, that the possession is unlawful before the justice has any jurisdiction to make an order under the clause.

Mr. Knowles: Where is that obligation set out?

Mr. Garson: In the words of the clause. It says that "he may"—he may do what? He may "order it to be forfeited". On what condition? If possession of it by the person from whom it was seized is unlawful. But they have to show him that it is unlawful before he can make an order for forfeiture.

Mr. Fulton: Who are "they"? Who has to show it? To what extent does it have to be shown?

Mr. Garson: Anyone who is seeking a forfeiture order. It might be a representative of the crown who wanted a forfeiture order. It might be a peace officer. But whoever it is he must show the justice that it is unlawful before the justice can make a forfeiture order.

Mr. Knowles: Does he have to do this only on a request for a forfeiture order, or could he do it on his own initiative?

Mr. Garson: It has to be established to his satisfaction, notwithstanding the fact that such satisfaction is not mentioned here.

Mr. Knowles: The minister is coming around to my point.

Mr. Garson: Oh, no; I have always agreed with my hon. friend that the justice must be convinced that the possession of the person from whom it was seized was unlawful. What I disagreed with was that it needed some particular words like "to his satisfaction" here to make this point clear. The justice may, if possession of it by the person from whom it was seized is unlawful, order it to be forfeited. The question he has to decide is

this. Is the possession unlawful? And when he has decided that, but not before, he may order it to be forfeited.

Mr. Fulton: And then, when the question is raised, to what extent and by what process does he have to be satisfied that it is unlawful? A crown officer comes before him. Is it sufficient that he make a statutory declaration as to the circumstances under which it was obtained and his belief that the possession of it by the person from whom it was seized is unlawful, or is it necessary to have judicial or semi-judicial proceedings? What kind of process is necessary to satisfy the justice? Let us look at subsection 4, because the minister has said that is the saving clause. It reads:

> Nothing shall be disposed of under subsection 3 pending any proceeding in which the right of seizure is questioned—

—and so on. Mr. Chairman, there can be no question as to the right of seizure, because under section 431 it is provided that—

> Every person who executes a warrant issued under section 429 may seize, in addition to the things mentioned in the warrant, anything that on reasonable grounds he believes has been obtained by or has been used in the commission of an offence.

He may have had reasonable belief on those reasonable grounds, but his belief may have been entirely wrong. His judgment may have been entirely wrong. The thing may have been obtained in a perfectly lawful fashion by the person in whose possession it was found. But so long as the person executing the warrant believes, on reasonable grounds, that it was not so lawfully obtained, he has a perfect right to seize it. There will not, in fact, be any subsequent proceeding unless the right to seizure is questioned.

The right to seizure is absolutely unquestioned under the terms of section 431. If a form of words were used which suggested that what was in mind was a proceeding in which the correctness or soundness of a seizure was being questioned, then I think that would cover the purpose in mind. But when the words used are, "Any proceeding in which the right of seizure is questioned", then I do not think it covers the purpose in mind, because surely it is not the right to seize which is in question. It is whether the seizure was in fact correctly and soundly made that is going to be questioned.

Mr. Garson: May I go into a few elementary principles? Would my hon. friend not agree—

Mr. Fulton: You have to have more than that to justify this section.

Mr. Garson: Would not my friend agree that, first of all, the seizing officer has to have a warrant under section 429?

Mr. Fulton: Yes, that is right.

Mr. Knowles: Or section 431?

Mr. Garson: No, no. There is no warrant under section 431. He has a warrant under section 429. Please follow it carefully. He has a warrant and then, having the warrant, he comes along to this place where he has to seize goods which are covered by the warrant. When he gets there he finds a lot of other goods, and he seizes them too. But he does so only if he can justify that seizure by a belief on reasonable grounds that these other goods fall within the condition of this clause.

Mr. Fulton: Surely.

Mr. Garson: In the case posed by my hon. friend he has gone to this place and found there some goods covered by his warrant, and also another washing machine not covered by his warrant, a washing machine lawfully belonging to the person in whose possession it was. But the officer may think that because the goods he was seeking were stolen, the washing machine, too, was stolen. In those circumstances he might regard this as a reasonable ground for taking the washing machine away. Suppose then his right of seizure is challenged.

Under those circumstances, his right of seizure would be in question and it would be a very difficult thing indeed for any magistrate or justice to say that the man had reasonable grounds for seizing something that belonged to and was in the lawful possession of the person from whom it was taken. In this event he would issue an order releasing the washing machine to the lawful owner from whom it had been seized and the matter would be closed.

Mr. Fulton: But he does not have to have reasonable grounds to seize it; he only has to have reasonable grounds to believe that he has the right to seize it. Take the case the minister has mentioned, where a man is suspected of having stolen several washing machines. Washing machines are rather large; let us suppose that he is suspected of having stolen a number of automobile tires. A warrant is taken out for the seizure of those tires, or for their detention. At the home of the person presumed to have taken the tires the officer finds a number of tires the accused is suspected of having stolen, and in addition he finds three or four more tires which he believes, upon reasonable grounds, have been stolen by this man who has been stealing tires and disposing of them.

The officer has perfectly reasonable grounds for supposing that the other tires, too, were stolen, and with that in mind he seizes them. This seizure is not covered by the warrant at all. There can be no question of the

On clause 438—*Delivery to peace officer.*

Mr. Nowlan: This clause deals with the person after he has been arrested and delivered to the peace officer to be taken before a justice. The marginal note of clause 438 says:

Section 652 (in part) and new in part.

Well, now, section 652 of the code as it now stands says that a man who has been arrested may be detained, but must be brought before a magistrate or a justice before noon of the next day, as I recall it. Of course, that naturally does not include a Sunday or a holiday, but ordinarily he must be brought before a justice before noon of the next day. When you read clause 438 and get down to 2 (a) you find this:

Where a justice is available within a period of 24 hours—

Where a justice is available he shall be brought before him within a period of 24 hours. I wonder just what this question of availability means. Of course the minister can refer us to some actual situation which may exist in the Northwest Territories or somewhere in Baffin Land where a justice of the peace may be several hundred miles away, though even there probably the police officer has that power. I am not worrying about that; I am concerned about this clause which has abrogated the old law which says that he must be brought before the justice before noon the next day. It now says that where a justice is available he shall be brought before him within a period of 24 hours.

I think (b) is worse. It says:

Where a justice is not available within a period of 24 hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice as soon as possible.

Who is going to determine the "as soon as possible", Mr. Chairman, and just what does that phrase mean? We are dealing now with the liberty of the subject. We are amending a law which has been definite and conclusive heretofore as to timing. You will notice, Mr. Chairman, that the part we have before us, part XIV, has a subtitle which says "Arrest without warrant". This is not a case where you have laid an information, where you have arrested a man on a warrant pursuant to that information. This is a matter of an arrest without warrant; yet you have these, I suggest, rather vague provisions of either "if he is available" or "if he is not available". I have had some experience in trying to get people out on bail and the justice was not available because he had gone fishing. I wonder whether he is entitled to a 24-hour fishing trip, a 48-hour fishing trip or a 72-hour fishing trip?

Mr. Harris: That is in Nova Scotia.

Mr. Nowlan: That is in Nova Scotia, but probably the same thing would apply in Ontario and British Columbia. I think our administration of justice will compare very favourably with any; in fact it is better than most. I am not going to take that from the minister. And the fishing is just as good as anywhere else, Mr. Chairman.

Mr. Knowles: Don't involve the chairman.

Mr. Nowlan: I am not. The thing is obvious. There is no point in labouring it. I simply raise the question with the minister. I can understand that there are technical difficulties. As I said, I have seen cases when the justice was away on a fishing trip. I can imagine a man being arrested somewhere in the woods where you could not bring him before a justice within 24 hours or by noon the next day. When you are dealing with a clause which authorizes an arrest without warrant, which in itself is quite an infringement of human liberty, one which we all realize is attended with risk and one which should be guarded very carefully, you should be very careful.

I want to ask the minister as to the necessity for these changes, and to say without prejudging the matter that unless he can submit a very substantial reason then I strongly protest against them.

Mr. Garson: First I think I should clear up one point made by my hon. friend. He said that under the code as it now stands—

Mr. Nowlan: Section 652.

Mr. Garson: —it is necessary for the person so apprehended to be brought before a justice before noon of the following day. The impression I got from my hon. friend's remarks, and if I am wrong I hope he will correct me, was that it applied to all persons who were arrested without a warrant. But that is not so. Section 652 is confined to one rather unusual offence. It states:

Any peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place during the night, and whom he has good cause to suspect of having committed or being about to commit, any indictable offence, and may detain such person until he can be brought before a justice to be dealt with according to law.

In other words he can detain such a person until he can be brought before a justice before noon of the following day. Besides the one offence under the present section 652

there are scores of other offences under the present code for which a person may be arrested without a warrant if he is found committing such offences. If a person is thus arrested he must be brought before a magistrate only within a reasonable time.

When my hon. friend makes the suggestion that the clause we are discussing here introduces a great change in law, his suggestion is quite without foundation. Section 652 is of extremely limited application.

As a matter of fact the first draft of Bill No. 7 contained the same sort of general provision with regard to bringing an accused before a magistrate within a reasonable time that was in the existing code, and without the saving clauses to which my hon. friend is now objecting.

Those hon. members who served on the House of Commons committee will remember that the particular point my hon. friend from Digby-Annapolis-Kings is now labouring was discussed at great length before that committee, with this difference; that the House of Commons committee had a genuine case to discuss because as the section was originally presented it referred to persons arrested without a warrant and there were none of the protective provisions we have here now. There was then no time specified within which the accused must be brought before a justice. It was the Commons committee which suggested this redrafting; and the principal effect of the alteration is that where a justice is available the accused must be brought before him within 24 hours. If the arrest takes place in some remote area and a justice is not available, then it would be an obvious absurdity to say that he must be brought before a justice within 24 hours, because there would be no justice to bring him before. In that case it is provided that he must be brought before a justice as soon as possible.

My hon. friend, as a lawyer, should not raise the question as to what "as soon as possible" means. It means what it says, namely that he should be brought before the nearest justice as soon as it is possible to do so, which is a question of fact. After extensive discussion in committee this provision was put in to meet the very point which my hon. friend has raised; and I believe, upon reflection, he will agree that it meets the point pretty well.

Mr. Nowlan: Mr. Chairman, apparently I made the fatal mistake of assuming that this code had been properly drafted. The minister now tells me that this matter has no reference to section 652 whatsoever, yet the explanatory section of the code opposite clause 438 states: "Section 652 (in part) and new in part." If section 652 has nothing to do with it, as the minister claims, why was this explanatory note put in? I believe there has been some very bad draftsmanship here and—

Mr. Garson: On a point of privilege, Mr. Chairman, I did not suggest that section 652 had nothing to do with this matter. What I said was that my hon. friend's claim that section 652 provided that the accused be brought before a magistrate by noon of the following day and applied to all offences was incorrect, and that actually it applied only to one exceptional offence seldom encountered.

Clause agreed to.

Clauses 439 and 440 agreed to.

On clause 441—*Summons.*

Mr. Winch: Mr. Chairman, I would like the minister to comment on paragraph 3 of this clause, as to the purpose behind the regulation under which summonses may be served not directly on a person but left at their place of abode. I know that is very convenient for the person who has to serve the summons and who cannot locate the person to whom it is addressed. But it can also be very inconvenient for the person concerned if he does not receive that summons and learns nothing about it. Although he may not know anything about it and therefore does not answer the summons, a warrant may be issued for his arrest.

I know this very often occurs. As a matter of fact I had a rather unfortunate experience myself in this regard about two years ago. I arrived home one evening, to be told by my wife that there was a summons for me on my desk. I went to look for that summons and it had disappeared. Somehow or other it had been destroyed. I had not the faintest idea why I should receive a summons or where it could possibly come from, and it took me hours to find out. It so happened that it was a summons for jury duty, but it could have been something else and if I had not answered there would have been a warrant issued for my arrest. Why are summonses handled in this fashion?

Mr. Garson: Mr. Chairman, this particular provision has been in the code for a long time and there has been no change made in the law by Bill No. 7. The words in this clause are the same as the words in the existing code. As to the point raised about serving a summons upon some irresponsible person, or as to the circumstances under which a summons can be served, it was held in the case of re Musial, 51 C.C.C., that the service on a person other than the accused is

permitted only if the accused "cannot be conveniently met with". This accordingly must be established before that type of service will be accepted. The mere proof that the accused was away from home when the constable called will not be sufficient to justify this substitutional service, as it is called, which cannot be used unless there has been a foundation established for its use.

If my hon. friend from Vancouver East were the gentleman in question, the mere fact that he did not happen to be home at that time in itself would not be sufficient foundation for serving the summons upon someone else in his household. If on the other hand it was left with some person in the household at least 16 years of age, after the peace officer had made other attempts to serve my hon. friend personally, and it could be shown that he could not conveniently be found within the meaning of clause 442 (3), then that substitutional service would be sufficient.

Mr. Ellis: Mr. Chairman, according to paragraph 3 of this clause if a person is not home when a summons is served it can be left with a person who appears to be at least 16 years of age. I would like to know whether there is an obligation upon the person with whom that summons is left to serve that summons, and if he does not do so whether he is liable under this clause?

Mr. Garson: I do not think he or she would be liable. In most cases substitutional service works quite satisfactorily. The fact that so many of those who were involved in the drafting had a great deal of experience in criminal law administration—some of them on the prosecuting side, it is true—and that they adopted the existing provision that had served for so many years, I think indicates that the existing provision must have appeared to them to have been reasonably workable or they would have made some change in it.

Clause agreed to.

Clauses 442 to 444 inclusive agreed to.

On clause 445—*Execution of warrant.*

Mr. Knowles: Whenever anyone rises with a question as to why a clause is worded in a certain way, if there has been no change the minister tells us that those who went into the matter must have been satisfied that it was all right. I would be interested in hearing what the minister has to say when a change is pointed out. I believe that a change has been made here. Formerly there was a reference to a seven-mile limit. Now that limit has been extended from coast to coast. Will the minister comment and explain?

Mr. Garson: Section 661—that is the existing section—authorizes an arrest, in the case of fresh pursuit, at any place in an adjoining territorial division that is within seven miles of the boundary of the territorial division in which the warrant was issued. This is changed in the bill.

Mr. Knowles: That is what I pointed out.

Mr. Garson: It is to permit arrest, in the case of fresh pursuit, at any place in Canada, in view of the present much speedier means of transportation as compared with what they had in the early days.

Mr. Nowlan: There is one other point I should like to have clarified. It was probably covered in the committee, but I was wondering whether the minister would explain the fact that the subsection of the existing section dealing with arrest on Sundays and on holidays has been dropped. As I understand it there are statutory provisions which the present code recognizes—it is subsection 3 of the section, as a matter of fact—by saying that any arrest may be made on a Sunday or holiday. It says:

> Every warrant authorized by this act may be issued and executed on a Sunday or statutory holiday.

That subsection is dropped from this section. I was wondering whether the dropping of it was owing to judicial decisions?

Mr. Garson: No. It is in another part of the bill. If my hon. friend will look at clause 20, in the earlier part of the bill, he will see it.

Mr. Nowlan: I understand.

Mr. Nesbitt: I have one further question on this clause. The minister mentioned that, as the result of modern transportation facilities, this provision was extended from the seven miles to anywhere in Canada, on fresh pursuit. As to this question of fresh pursuit would the minister care to comment on how far that would go? Would it mean that the constable referred to could have a rest overnight or something of that nature?

Mr. Garson: I should not like to attempt to answer a question of that sort in the abstract. I think the facts of any particular case that arose would have to be examined in order to see whether it could be maintained that these facts constituted fresh pursuit. But I have in my notes, under this subsection, reference to a recent case in which the actual fresh pursuit covered three provinces. It started out in Swan River in northern Manitoba and went to Banff, Alberta, and the pursuit was fresh all the way. I suppose it

might just as well have gone to Vancouver or, if it had started in the other direction, clean to the Atlantic ocean. Under modern conditions that is not at all impossible. If we continued to limit it to the seven miles, under modern conditions it would be quite an anachronism.

Clause agreed to.

On clause 446—*Procedure to procure attendance of a prisoner.*

Mr. Knowles: Although the notes on the righthand page do not suggest that there is anything new in this clause, I believe there is something new in subclause 2. If that is correct, will the minister explain?

Mr. Garson: I wonder if my hon. friend would allow that matter to stand.

The Deputy Chairman: Shall clause 446 stand?

Mr. Garson: Clause 446, subsection 2 stands.

Clauses 447 to 450 inclusive agreed to.

On clause 451—*Powers of justice.*

Mr. Knowles: In clause 451 is there anything that bears on the reference of the question of insanity to a commission? I believe that paragraph (b) down the page a bit is new.

Mr. Garson: Oh, yes; paragraph (b) is new. The only reference there that might possibly come under the royal commission that has been set up would be paragraph (a) which provides that a justice may remand an accused when in his opinion "the accused is mentally ill."

Clause agreed to.

On clause 452—*Corporation.*

Mr. Knowles: Clause 452 is new. It is a brief one and I might read it. It states as follows:

> Where an accused is a corporation, subsections (1) and (2) of section 470 apply, *mutatis mutandis*.

Can the minister explain the effect of this new clause?

Mr. Garson: It is legislation by reference. Section 452 refers to subsections 1 and 2 of section 470. If my hon. friend will turn to page 163 he will find that subsection 1 of section 470 reads as follows:

> An accused that is a corporation shall appear by its counsel or agent.

And subsection 2 reads as follows:

> Where an accused corporation does not appear pursuant to a summons and service of the summons upon the corporation in accordance with subsection (4) of section 441 is proved, the magistrate
>
> (a) may, if the charge is one over which he has absolute jurisdiction, proceed with the trial of the charge in the absence of the accused corporation, and
>
> (b) shall, if the charge is not one over which he has absolute jurisdiction, hold a preliminary inquiry in accordance with part XV.

All that section 452 does is make those two subsections of section 470 applicable to preliminary inquiries under this part that is under discussion.

Clause agreed to.

On clause 453—*Taking evidence of witnesses.*

Mr. Lusby: There is one little point on which I should like to ask the minister a question. Is there in the existing code or in the draft any provision whereby a witness who has given his evidence which has been taken down by way of a deposition—that is by the magistrate in writing—is required to sign it if he does not wish to do so?

Mr. Garson: As to the witness himself signing it?

Mr. Lusby: Yes; where the magistrate has taken it down in his own handwriting, not by way of stenographic transcription. It is provided here that he shall cause the deposition to be read to the witness and shall cause the deposition to be signed by the witness. Suppose the witness refuses to sign it. What happens then?

Mr. Garson: I do not think I have ever heard of a witness having refused to sign in a case of that sort.

Mr. Lusby: It seems to me that some years ago I had a case where the witness would not sign it, even though the magistrate offered to make any corrections that the witness said should be made. He just did not wish to sign it. My recollection is that there was no way by which he could be compelled to sign it.

Mr. Garson: I must say I am rather nonplussed to know what the justice would do in those circumstances, but I suppose if the witness absolutely and resolutely refused to sign, the only course open to the justice under such circumstances would be to make and sign a statement himself certifying to the fact that the witness refused to sign it.

Mr. Lusby: I think that was about what was done in the case I was thinking of.

Clause agreed to.

Clauses 454 to 456 inclusive agreed to.

On clause 457—*Witness refusing to be examined.*

Mr. Winch: Is there any protection under this clause for a witness who refuses to give evidence because by so doing he may be implicating himself?

Mr. Garson: No. That comes under another law, the Canada Evidence Act. This is just a straight case of the witness obdurately refusing to testify. There is no change here. This is the existing law.

Clause agreed to.

Clauses 458 to 464 inclusive agreed to.

On clause 465—*Judge of superior court may vary.*

Mr. Knowles: I believe subclause 2 of 465 is new. Would the minister explain the significance of this addition?

Mr. Garson: Subclause 2 reads:

No application shall be made by way of habeas corpus for the purpose of fixing, reviewing or varying bail.

The purpose of this provision to which my hon. friend refers is to provide a simple method for obtaining bail in the certain cases to which it has reference, and it does away with the necessity of applying for habeas corpus. But for this section that would be necessary. The effect of the section is to simplify the obtaining of the bail without the necessity of securing a writ of habeas corpus.

Mr. Knowles: I was confused when I read it, and I am more confused now. The minister says it does away with the necessity, but as my legal counsel to the right are pointing out it does away with the possibility of applying for this under habeas corpus.

Mr. Garson: My hon. friend must read the section as a whole. Is it not perfectly clear?

Mr. Knowles: I did, and I listened to the minister.

Mr. Garson: The hon. member asked me a question on subsection 2 and I gave him an answer to his question. The clause reads from the beginning:

(1) A judge of, or a judge presiding in a superior court of criminal jurisdiction may, upon application—

In this connection there is no writ of habeas corpus or anything like that.

—(a) before an accused is committed for trial,

(i) admit the accused to bail if a justice has no power to grant bail or if bail has been refused by a justice, or

(ii) vary the amount of bail fixed by a justice, or

(b) where an accused is committed for trial, vary an order for bail fixed under subsection 3 of section 463 by a judge of a county or district court or a magistrate.

That is what he may do. Then subsection 2 goes on to provide:

(2) No application shall be made by way of habeas corpus for the purpose of fixing, reviewing or varying bail.

In other words, an accused or his counsel no longer has to go through the form of applying for a writ of habeas corpus before a judge in order to get an order for bail.

Mr. Fulton: Is the effect of this possibly to do away with the second chance which a prisoner might otherwise have had? I do not know, but—

Mr. Garson: That comes under the habeas corpus sections in another part of the code.

Mr. Fulton: Let me put the point. Suppose a person applies for bail or an application is made on his behalf by his counsel and the judge acts without jurisdiction in refusing bail, or there is some error made. Perhaps it is a technical error in the application itself, and bail is refused. Would it then be possible for the applicant to have a second go at it by way of habeas corpus, and is that right now being taken away from him? I am asking a question to which I do not know the answer. Is it possible that a right of appeal or second chance is being taken away?

Mr. Garson: I think what my hon. friend has in mind—I hope he will correct me if I am wrong—is the practice under the existing code whereby an accused may make an application for a writ of habeas corpus to a judge of a superior court, and if turned down may go and make another application to another judge. If he is turned down by him he may make a third or fourth application until he has exhausted the whole bench of judges. Quite seriously, that is within his privilege. That is a different provision altogether from this one we are discussing. We shall come to that in due course. The provision now before us has to do with the fixing of bail without the necessity for an accompanying habeas corpus application.

Mr. Ellis: As a matter of information with respect to the whole process of granting bail, what is the general method by which the amount of bail is set? What I have in mind is that we believe in the principle of equality before the law, and I am wondering whether the minister has considered the fact that an accused in one case may have a certain bail set which to him may not seem a large amount of money, whereas in another similar case the same amount of bail would be almost prohibitive. What powers does a judge have with respect to varying the amount of bail in order to make some provision for the principle of equality before the law?

Mr. Garson: As I understand the practice of applying for and securing a bail order, it is that counsel for the accused would make an application under the clause we are now considering, of course after it is passed. The nature of the offence with which the accused is charged would be disclosed to the court, and the accused's counsel would urge the judge to admit his client to bail of so much. Perhaps crown counsel might agree with that sum. In many cases they do. But if the offence was a particularly serious one crown counsel might oppose the amount suggested by the accused's counsel, and then as between the two contending viewpoints the judge, exercising his judicial discretion in the matter, would have to make up his mind as to what he thought was a fair amount at which to set bail under all the circumstances, one of which could be the accused's financial resources.

Mr. Ellis: That was the point I had in mind.

Clause agreed to.

Progress reported.

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