is a member of that committee he will no doubt signify his intention to hold a meeting and I will be glad to oblige him.

Mr. Ferguson: Mr. Speaker, apropos of the subject of cashing cheques, I have heard that—

Mr. Speaker: Order. I do not think we ought to debate this matter here. If the hon. member wishes to have a meeting of the committee he could bring the matter before the committee. I would ask him to wait until the committee meets.

POST OFFICE

RED DEER AND PORTAGE LA PRAIRIE—IMPLEMENTATION OF FIVE-DAY WEEK

On the orders of the day:

Mr. F. D. Shaw (Red Deer): Mr. Speaker, I should like to direct a question to the Postmaster General and perhaps he will take this as notice. Will the Postmaster General review the position of the postal employees in the city of Red Deer relative to their not being included in the proposed five-day week plan according to the legislation?

Hon. Alcide Cote (Postmaster General): Mr. Speaker, I shall be glad to look into this matter but I must remind my hon. friend that the civil service commission is constantly reviewing the situation as regards the implementation of the five-day week in different parts of the country.

Mr. W. G. Weir (Portage-Neepawa): Mr. Speaker, will the minister at the same time look into the situation as it affects the city of Portage la Prairie?

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Thursday, March 11, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Applewhaite in the chair.

The Deputy Chairman: Before the house proceeds to the consideration of Bill No. 7 there is a word of explanation which, I believe, might well be said from the chair. As hon. members of the committee know, a large number of clauses were permitted to stand with the consent of the committee as a whole for subsequent consideration. We have now reached the stage where they come up for consideration. They have been divided into five groups, but not necessarily in numerical order. Might I have order in the committee please?

I have the list concerning these five groups before me now but I believe the committee would not wish to have me read it entirely,

as it is rather long. I would point out, however, that these groups are as follows: Group 1, clauses not considered of primary importance. Group 2 concerns drunken driving, defamatory libel, nuisances, etc. Group 3 concerns certain sections in connection with sexual offences. Group 4 concerns treason and sedition; and group 5, riots, sabotage, and criminal breach of contract. It is my understanding that, by agreement, these groups will be taken in the following order: We will take group 1, then 3, 2, 4, and finally 5. Therefore, we have now before us this afternoon clauses not of primary importance and the first clause in this group is clause 16 concerning insanity.

On clause 16—*Insanity*.

Mr. Fulton: Mr. Chairman, the committee was kind enough to stand this clause over at my request. The reason I asked that it be allowed to stand was for the purpose of placing on record some considerations which I believe should come before the royal commission which has now been appointed to consider the criminal law with respect to the defence of insanity.

Clause 16 is the clause in the new code which will carry the law for the future into the statute books and cover the defence of insanity. In this connection I wanted to suggest that there should be before the royal commission for its particular consideration and recommendation that particular phase of the law concerning the defence of insanity, the only legal basis for which appears to be found at the present time in a citation in Tremeear's criminal code.

The Deputy Chairman: Order. Perhaps this might be the last time it will be necessary to remind the committee that, in the interests of those who are following the discussion of the Criminal Code, there should be sufficient silence to enable any hon. member who is speaking to be heard.

Mr. Fulton: Thank you, Mr. Chairman. I appreciate your remarks. I have a fairly loud voice and I will try to be heard over any such interruptions as may in future be made.

The passage to which I had reference is found in Tremeear's criminal code, fifth edition, at page 297. It was referred to in a recent case of murder in British Columbia in which there were two defences, one being that of provocation and the other that of insanity. It so happened that the jury brought in a verdict of manslaughter, which verdict could only have been based upon the defence of provocation. But there was no question of drunkenness in that case. The only defence

in connection with which a verdict of manslaughter could have been brought in was that of provocation. It was, however, related to the defence of insanity because the accused was suggested by his counsel to have been suffering from mental defect or instability. In other words, the defence of insanity was twofold: first, that the accused was suffering from mental defect or instability, and second, that in any event he was insane and therefore was not criminally responsible for his act. In order that I may bring the point specifically before this committee for the purpose of having it referred to the royal commission for its consideration and recommendation, I could perhaps just read from pages 296 and 297 of Tremeear. In dealing with the point that the jury should not be allowed to take into account the question whether or not the accused was drunk in establishing whether or not there was provocation, the text comments as follows:

> For similar reasons, the fact that accused was drunk at the time cannot enter into the consideration of the sufficiency of the provocation.

Then there are given a number of citations which I do not need to place on the record. Then the comment continues:

> But, when sufficient provocation is established, the jury must also find that accused acted "in the heat of passion caused" by it, and here the question of drunkenness may become important, and the judge should tell the jury that they may take into account the fact that a man in a condition of intoxication is more susceptible to passion than a sober man would be. In other words, though accused's drunkenness cannot be considered in determining whether or not provocation existed, it may and should be a factor in determining, once the existence of provocation is established, whether or not accused was put into a passion by it.

The authorities cited are R. *v.* Harms and R. *v.* Thomas.

Then the text continues—and there is no case cited in support of the proposition—as follows:

> There would seem to be no reason why the same rule should not apply in the case of mental defect or instability.

In the case in British Columbia to which I have referred—and perhaps I should cite it; it was Reg. *v.* Masuda—the defence went to some length to establish that the accused was of an alien race—he was of the Japanese race—and that with regard to marriage they had different views from those of Christians; that all the circumstances surrounding the commission of the crime had been such that the accused had been subjected to a form of mental pressure which amounted to provocation; and that not only had there been the provocation of certain incidents which were relied upon but that owing to the peculiar mental state of the accused with respect to the matter of the marriage of his daughter, he was suffering from a degree of mental instability even though it might not be found that he was actually insane.

Counsel for the defence submitted to the judge that he should instruct the jury along the lines of the citation I have just read, namely that "there would seem to be no reason why the same rule should not apply in the case of mental defect or instability". The trial judge—to which no objection could be taken—read the passage to the jury and it seems to me that the verdict of the jury must have been founded upon that passage. The point that I think it is important to establish is whether or not, in connection with the defence of provocation, that passage contained in Tremeear at page 297 should form part of our law.

I want to make it quite clear that in so far as those connected with the case were concerned—that is, the particular case that I have mentioned—there was no objection to the jury's verdict. There was no appeal by the crown. It might have been thought that perhaps a better verdict would have been not guilty by reason of insanity rather than a verdict of manslaughter, but the fact is that that was the verdict found by the jury. Yet that verdict was found on the basis of a statement in the text of Tremeear which is quite unsupported by any established case. It seems to me that perhaps it should not be left on that rather uncertain basis and that the royal commission might well take into consideration the question of whether or not, with respect to a defence of provocation, the condition of the accused, with respect to whether he is suffering from mental defect or instability, should be taken into account or whether in fact the defence of provocation should be left as it is now, officially, according to the statute, on the basis that it must be such provocation as would provoke a reasonable man—not a man suffering from mental defect or instability—to such an extent that he would commit the crime in the heat of passion. In the case of this crime, the crime was not committed until some eight hours after the last incident which could possibly have been relied upon as actual provocation. In normal circumstances, the lapse of that eight hours would preclude the defence of provocation. Yet the jury here, owing to the mental condition of the accused, obviously felt that they were entitled to render a verdict of manslaughter by virtue of the defence of provocation.

My whole point is this. It seems to me that the law should not be left in that rather vague and indefinite state. While the whole matter of insanity is before the royal commission I believe they should direct their

minds to the question of the defence of provocation in relation to the mental condition of the accused, even although he may not be actually found to be suffering from insanity in the legal sense.

Mr. Diefenbaker: I listened with a great deal of interest to my hon. friend as he reviewed the situation respecting the law of provocation and referred to the case of R. *v.* Harms. In that case I was counsel for the appellant. A new trial was ordered by the court of appeal of Saskatchewan. That case made new law in that it decided that when the defence of provocation is raised, the crown must first establish that the acts or the words spoken were such as would cause a reasonable man to lose his sense of proportion or to dethrone his reason and that if the jury concluded that words or acts would in fact cause that condition to a reasonable man, then they were entitled to consider the state of his drunkenness with a view to determining how much greater would be the probability of his reason being dethroned in the event that he was intoxicated. I think my hon. friend has made out a very good argument in asking that a provision to a like effect should apply in the case of those who are insane within the meaning of the law.

I should like to go one step further. In recent years there have been a number of cases before the courts in which the accused, unable to establish insanity within the legal concept, has called witnesses to testify to the effect that the accused's mental age, by reason of birth or otherwise, was lower than his chronological age. In other words, there are many people in our country whose mental age, under tests such as the Stanford Binet test and the like, is 7 to 14 years of age, and under the law, based as it is on English common law, between 7 and 14 years there is a responsibility criminally provided the person is in a position to form an intent.

That, in general, is the law, and I should like the commission to give consideration to the advances that have been made in psychology in recent years, particularly in the making of tests to determine mental age, in order to bring the law in line with these scientific advances. The law today provides that a person between 7 and 14 years of age is responsible for his criminal acts only where the crown is able to establish that he in fact had the capacity to form an intent and did form an intent. Those rules were made when physical and mental age were believed to be coincidental. We know differently today. We know there are many persons of adult age with a mental age of from 7 to 14. I should

like the commission to give consideration to making provision for responsibility dependent not on physical or chronological age alone, as is the case today, but also on the mental age of the individual based on present and recent psychological investigation.

The principles of our general law respecting insanity were enunciated 110 years ago and I feel that they are in very considerable measure out of line with modern research. When I say that, I realize that the committee in Great Britain that looked into the matter determined, after giving full consideration to this question, not to change the rules in M'Naghten's case. However, there is no reason why the commission here should in any way be bound by what the committee did in the United Kingdom. In my opinion it is very important that when the commission meets every opportunity be given, even to the extent of invitations being sent to leading psychologists across the country—

Mr. Garson: Psychiatrists.

Mr. Diefenbaker: And psychiatrists too—for the presentation of evidence so that when recommendations are made they will not only represent the experience of the courts and the judiciary but also will be somewhat in keeping with modern research.

Mr. Garson: If these are all the observations on clause 16 I might make a brief reply. I think my hon. friends will agree that although their discussions have been conducted under clause 16 of the bill they have actually been discussing section 261 of the present Criminal Code, being the section involved in the case cited by the hon. member for Kamloops. Clause 203 of the present Bill No. 7—

Mr. Diefenbaker: What was the section; not 261?

Mr. Garson: Section 261 is the one that was involved in the case of Rex *v.* Harms which was cited.

Mr. Diefenbaker: In the old code.

Mr. Garson: Yes, that is what I said, in the present code that is now in force. The analogue of section 261 of the present code which appears in Bill No. 7 is clause 203. The two are identical in substance. There is no change in the law.

I wish to thank my hon. friends for having raised these matters. I think their suggestions are very helpful, but for our present purposes would they not agree that the question with which this committee is concerned is whether the terms of reference to the royal commission are wide enough to cover an inquiry upon the point which they have

raised? On that score I would point out that the following are the recommendations of last year's special committee of the House of Commons, considering this Criminal Code consolidation bill:

The committee shall consider further and report upon the substance and principles of these provisions of the law aforesaid—

That is the then existing provisions of the Criminal Code.

—and shall recommend whether any of those provisions should be amended—

In any respect.

—and, if so, shall recommend the nature of the amendments to be made.

That was the report of the special committee of the House of Commons and the report upon the strength of which the royal commission now is being set up. The terms of reference of this royal commission are as follows:

. . . to inquire into and report upon the question whether the criminal law of Canada relating to the defence of insanity should be amended in any respect and, if so, in what manner and to what extent.

Mr. Diefenbaker: In the minister's opinion is that not wide enough to cover the points raised?

Mr. Garson: Oh, yes, I think so. It is a brief term of reference, but it is very wide.

Mr. Diefenbaker: Very comprehensive.

Mr. Garson: Once we have remitted a subject of this sort to a royal commission then, as I think my hon. friend will certainly agree, we are bound to await their report. In the meantime I think the debate that has taken place is very helpful indeed, and I will see to it that it is brought to the attention of the commission.

Mr. Fulton: That of course was the whole point. Nothing much more need be said. The point of embarking upon a debate of even this brief duration was that the case to which I have referred and certain of the facts brought to the attention of this committee by the hon. member for Prince Albert do not form part of the substantive law, the Criminal Code of Canada, with respect to the defence of insanity. That is the very reason why I referred to it. If it should be felt that the case to which I have referred was properly decided—and I am making no comment on that one way or the other—then that should be written into the criminal law as an element of a defence rather than being left on the tenuous basis of a case decided upon the strength of a textbook citation which in itself is not founded on any decided case.

It seems to me if that is to be our law—and I am expressing no opinion upon that at the moment—then it should rest upon some surer foundation than it appears to rest on at the present time. That was why I brought it before the committee, so that attention might be directed to it and so that it might be put before the royal commission in concrete form in their deliberations.

Mr. Diefenbaker: I rise on a question of privilege, Mr. Chairman. A few days ago, speaking in the house during consideration of the Criminal Code amendments, I referred to the Balcombe case, and to the question of a change of venue. It has now been brought to my attention by Mr. J. M. P. Kelly, who was counsel for the accused, that there are some who might interpret my words as criticism of him for his failure to ask for a change of venue. That was not in my mind. There was no criticism implied or expressed, and I realized, as he informed me, that it would have been impossible to have succeeded in getting any better trial had he asked for a change of venue because of the widespread distribution of the magazines in question, which would have had an equally harmful effect anywhere else in Ontario.

I rise, sir, merely for the purpose of saying there was no implied criticism of Mr. Kelly. If he feels or anyone feels that there was, I want to make it clear that there was no such criticism or intention to make any unfair reference to him or his conduct of the case.

Clause agreed to.

On clause 88—*Delivering firearms to minors.*

Mr. Garson: I have an amendment to this clause to take care of a point raised by the hon. member for Vancouver East, who stated he thought there should be an express prohibition of the sale of spring or switch knives. I would suggest, therefore, that my colleague the Minister of Public Works might move:

That clause 88 be amended by adding thereto the following subsection (3):

Every one who without lawful excuse, the proof of which lies upon him, has in his possession or sells, barters, gives, lends, transfers or delivers a spring knife or switch knife is guilty of an offence punishable on summary conviction.

Mr. Winters: I so move.

Mr. Winch: I want to express to the minister my appreciation of the introduction of this amendment. In the intervening weeks since I drew this matter to the attention of the house, I have read in the press reports concerning a number of cases where these spring knives or switch knives have been used by irresponsible youths with injury to those attacked. I fully realize it might be a little difficult in enforcement, but I do think that if the amendment on the statute books is properly publicized it will definitely act as

a deterrent to the use and possession of these knives. I want to thank the minister for having accepted the proposal I made some weeks ago.

Mr. Shaw: The minister may recall that during the deliberations of our committee I brought up a matter under this section which was of some concern to me. I take it that, under section 88, even if a parent were to permit a minor to be in possession of a firearm, that would be an offence and the parent could be accused.

The thing that does bother me is the matter of a minor being in possession of a firearm while in company with his parents. It is not uncommon at all for a parent to take a lad of 13 hunting with him, perhaps hunting rabbits. The parent may have a gun in his possession and the boy may have a gun in his possession. A good many people believe that is quite within the law. I should like to know whether or not it is within the law, and just what is involved. If they are within the law in doing that, just when is it deemed that a minor is under the control of the parent?

From time to time I have noticed cases where action has been taken, and there seems to be a good deal of variance in the enforcement of the law in relation to this matter. I do not know whether the minister can pin this down to the point where he can indicate when a minor may be in the control of his parents.

Mr. Garson: I wonder if it would not be a better practice for the parent, whose minor child is in possession of a firearm, to bring himself within subsection 1:

> Every one who sells, barters, gives, lends, transfers or delivers a firearm, air-gun or air-pistol or ammunition therefor to a person under the age of fourteen years who does not have a valid permit in form 45 is guilty of an offence punishable on summary conviction.

If he gets the permit, that takes him out of that section. Then, subclause 2 reads:

> Notwithstanding section 96, a peace officer who finds a person under the age of fourteen years in possession of a firearm, air-gun, air-pistol or ammunition therefor without a valid permit in form 45 relating to that firearm, air-gun, air-pistol or ammunition may seize it . . .

If they have a permit to have it in their possession, that protects them.

Amendment agreed to.

Clause as amended agreed to.

On clause 102—*Frauds upon the government.*

Mr. Philpott: When this clause was before this committee a few weeks ago, Mr. Chairman, a good many of the hon. members, including the hon. member for Winnipeg North Centre, suggested that, shall we say, this clause was very largely obsolete, to state it mildly. At that time I tried to point out, in asking the minister to allow this clause to stand, that if this clause were literally enforced in Canada the prisons would not be one-tenth large enough to hold all the people who would be there under the penalty imposed by subclause 3, which makes him liable to imprisonment for five years.

Subclause 2 plainly reads:

> Every one commits an offence who, being a party to a contract with the government—

I point out it does not say which government.

> —directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration (a) for the purpose of promoting the election of a candidate or a class or party of candidates . . .

Then it goes on to make it very clear that it does not make any difference to which party he subscribes. In other words, under a literal interpretation of this clause as it now stands, a person who had a contract with the dominion government, the government of British Columbia, the government of Alberta or the government of Saskatchewan, and who subscribed even to a party that was not supporting that government in question, according to my reading of it, is liable to five years' imprisonment.

It seems to me, Mr. Chairman, that whatever else we do or do not do we should not have in this code anything that overlaps or contradicts any other legislation which deals more especially with any matter. We all know quite well that the problem with which we are striving to deal is dealt with in the Canada Elections Act in great detail. The act deals with everything connected with elections and the subscription of election funds. Therefore, Mr. Chairman, I move, seconded by the hon. member for Kootenay West:

> That section 102, subsection (2) be amended by deleting the words after the words "every one commits an offence who," and substituting therefor "in order to obtain."

The amended clause would read as follows:

> Every one commits an offence who, in order to obtain a contract with the government directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration . . .

It seems to me that is the plain intent of the framers of this original clause. Certainly the time has come in this country when we can see the whole question of subscriptions to campaign funds of different parties on an honest, open and aboveboard basis. Apart altogether from the fact that people certainly subscribe to the party to which I have the

honour to belong, I would point out that I belong to a labour organization in Canada which subscribes to the party which happens to sit opposite. I would point out that a strict interpretation of the clause as it now stands on the statute books would have the absurd effect, for instance, that if, shall we say, the bus drivers of the provincially-owned bus system of Saskatchewan which has a contract with the government of that province, presumably, wished to make a political contribution, as a good many other unions have done, they would be liable to five years in jail. That is the kind of statute which should never have got onto the statute books of this country at all. It has got on, and it is time we should make it say exactly what we think it should mean.

The Deputy Chairman: Is the committee ready for the amendment?

Mr. Knight: I wish to ask the minister for a definition of the word "contract" in clause 102 on page 37. In asking that question I should like to follow up the remarks of the hon. member for Vancouver South. He made some reference to the province of Saskatchewan, and that is the reason I ask this question. What is the position of a civil servant? Is a civil servant who is working for the government one who has contracted with the government and therefore comes under this clause? If that is so, I object, as I think my hon. friend means to do, most violently, to this particular clause. In the province of Saskatchewan we—and when I saw "we" I mean the people—and certainly the party to which I belong, believe that no limitation should be placed on the freedom of the civil servants either to think, act or work for a political party provided they do their work day by day in their jobs. At night they can make speeches for the Liberal party, the Conservative party or anybody they like. We maintain that is their right and privilege. Furthermore, we encourage them to do so because while I cannot quote the definite act in the province of Saskatchewan I believe there is such an act which allows the civil servants to do so under certain circumstances. The circumstances are that a civil servant may be standing for an office or for a seat in the legislature. The legislature of Saskatchewan actually allows the civil servant two weeks from his work in order that he may go out to promote the interests of his party. Why in the world should he not—because he happens to work for the government instead of working for a hardware store—have the same right to express his opinion in regard to the things which regulate his everyday life in the form of government? That is why I am particularly opposed to this.

I am not thinking politically now. My hon. friend on the other side belongs to the Liberal party; I belong to the C.C.F. party. I think any civil servant working anywhere for any government should not be restricted by any tie so long as he is an efficient civil servant in the department in which he is working. What he does with his spare time and what he thinks and how he thinks are precisely his own business and no one else's.

Mr. Green: May I ask the hon. member for Vancouver South who moved the amendment whether it is his intention to make it illegal for a person to subscribe to campaign funds in order to obtain a contract, but not illegal for a person who already has a contract with the government to subscribe to those campaign funds? As I read his amendment, that will be the result. A person who subscribes to a campaign fund in order to obtain a contract would be committing a crime, but the person who already has a contract with the government can subscribe as much as he wishes and will not be committing any crime.

Mr. Philpott: Yes, that is exactly what I had in mind, because it seems to me the probable intent of this original clause was to make it a crime to try to bribe anybody in the government in order to get some benefit out of it. Certainly there is nothing in the common-sense intention of the law of this country to stop any individual or any organization from making legitimate political contributions.

Since we have expenditures running to the extent of $4½ billion a year for the federal authority alone, not to mention the provincial authority, just about everybody in this country has some kind of a contract with some kind of a government. If we had a literal interpretation of this particular clause and we actually carried it out the whole thing would be just a farce and nonsense. Therefore my intention was to try to make it a crime for anybody deliberately to make a contribution to try to bribe the government.

Mr. Knight: Will the minister give an answer to my question?

Mr. Garson: I shall endeavour to give my hon. friend as good an answer as I can. To begin with, I think the word "contract" as it is used in this clause, not having been defined in any interpretation section of this Bill No. 7, means a contract in the ordinary sense in which that word is used. I think that in that ordinary sense the word "contract" would have a very broad application. Whether it would apply to every single civil servant of any government whatever is another

question. It might be that under the legislation under which a given civil servant was acting for a given government he was appointed during pleasure, or that there was some similar provision in legislation under which he was acting which made the relationship of master and servant between himself and the government for which he worked a legal arrangement other than a contract. But I do think that once that broad meaning, the ordinary dictionary meaning, or ordinary meaning that we usually associate with the word "contract", is given to the word "contract" in this subsection, it does—and in this regard I am quite in agreement with the mover of the amendment—produce a result which is quite absurd. Because it seems to me to be a most extraordinary proposition that anyone who had a contract with the government should be deprived from, shall we say, making a contribution to the campaign funds of a party or a candidate, even one that was opposed to the government.

The theory of this clause, I suppose, is that if the holder of a contract with the government makes a contribution to the government party's campaign funds, the existence of the contract plus the contribution is an impropriety or indicates an improper relationship. But this clause goes much further than that. A strict application of this law would mean that those who had relationships with the government, whether as civil servants or otherwise, which would fall within the term "contract", would be thereby debarred from making any contribution to any political party or candidate whatsoever in Canada.

I think I should make an explanation to members of the house for this clause now before them. This clause or its substantial equivalent has been in the Criminal Code since Sir John Thompson introduced it originally in 1892. So far as I have been able to find out, this section has never been interpreted by the courts between 1892 and now.

The commission engaged in consolidating the code acted wholly within its terms of reference in dealing with this clause. It felt that it was not its duty to change the law, so it simplified its form and left the substance unchanged.

When the clause came to us from the commission it seemed to me that this was the kind of clause which neither the Minister of Justice nor the Department of Justice nor the government should undertake to change. We decided that we should bring it to parliament and let parliament decide whether it wished to approve of it. That is the reason it appears before the members in its present form. It does not carry any endorsement from us, I may say, because in some respects it is rather absurd.

For my part, and I may say that in this regard I am speaking for the government, we would have no objection to accepting the amendment moved by the hon. member for Vancouver South. We think it will result in an enactment which will be more sensible than was this clause in the form in which we received it from the commission, and that the enactment resulting from such an amendment will stand examination.

Mr. MacInnis: I remember referring to this section during the sittings last year of the parliamentary committee. When I questioned the Minister of Justice he indicated an unusual readiness to accept the amendment and it made me a little suspicious. I did not offer the amendment; I let it drop. When I found that such an astute person as the minister was ready to amend a section of the Criminal Code it appeared better for me, who knew so little about it, to let things stand as they were.

I imagine that this section has never been used and I am not so sure that it will be very much more effective with the amendment. I am always leery of what my hon. friends opposite do in matters of this kind because they are the chief beneficiaries of contributions by and large. I brought this up at a meeting where we had the president of the Steel Company of Canada on the witness stand. He reluctantly admitted that they made contributions to political parties and when I asked which parties, he refused to answer. As far as I was concerned, it was not necessary for him to answer because I knew that none of their contributions came to the C.C.F. It was quite easy to know who the other parties were, merely by elimination.

Referring to what the hon. member for Saskatoon has said in regard to civil servants, personally I do not agree with him as to their being given freedom to engage in political activity. I think it would depend on whether the civil servant was in a minor position or whether he had access to confidential information. A deputy minister or an important secretary should not be allowed full freedom during an election and then be able to go back to his office when he had had access to all kinds of confidential information. I do not think that that should be allowed. It is one of the penalties that a person has to pay, I imagine, for having the honour of filling a high position in the civil service of Canada.

Mr. Knowles: I think the question asked by the hon. member for Vancouver-Quadra

should be pursued a little further, particularly in view of the fact that the hon. member for Vancouver South accepts the interpretation placed upon his amendment by the hon. member for Vancouver-Quadra. It seems to me that if the amendment is accepted the position will be that a firm which already has a contract with the government can make all the contributions it wishes and have no fear of this section of the Criminal Code being applied, whereas the firm which has not a contract cannot make such contributions without fear that that act will be suspect. I have no objection to the latter interpretation being the result, but I am concerned about the former, namely, those contractors who already have contracts with the government being in the clear so far as this section is concerned.

There is one other point I have in mind which I shall state briefly. I do not think this is of as much concern as the question I just raised about the amendment. I notice that in its very laudable objective of cutting down verbiage the wording in the code as it now stands has been reduced considerably at this point. We now have just the word "contract", whereas in the old section it read:

...having any contract with the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials, and having or expecting to have any claim or demand against the government by reason of such contract, directly or indirectly . . .

While that wording may have been excessive in terms of the number of words, I think it made it a little more clear as to what was meant by a contract. That would appear to mean a contract between a person or firm for the supplying of certain goods or the doing of certain work for the government. I wonder if reducing it to the one word "contract" has not made it so broad that it will be difficult for the courts to interpret.

Mr. Philpott: I want to make it quite clear that in answering the hon. member for Vancouver-Quadra I was trying to put it on a broader basis. What I was trying to do was to word it in such a way that no one could obtain any kind of benefit by political contributions, either to obtain a contract or, for that matter, to retain a contract. If it would make it any clearer, with the permission of my seconder I would have no objection to adding the words "in order to obtain, or retain a contract". Would that clarify the sense of it?

Mr. Green: What I had in mind was that it does not seem right to prohibit one action and not the other. I think that if you are going to prohibit a man from trying to get a contract, you should also prohibit a man who has already a contract trying to retain favour with the government by donating campaign funds. I do not see why one man should be made the goat and the other a sheep.

Mr. Fulton: I had an amendment which I had drafted which I think would deal with the point raised by the hon. member for Vancouver-Quadra. Perhaps it should be moved at a later stage if and when the amendment moved by the hon. member for Vancouver South is accepted. It would be to amend the clause by adding after the words "with the government" in the eighteenth line the words "or as a term of any such contract, whether expressed or implied". The clause then reads:

Every one commits an offence who, in order to obtain a contract with the government or as a term of any such contract whether expressed or implied, directly or indirectly—

—etc. It seems to me that the purpose of the clause is sufficiently clear. It was designed to prevent a person getting a contract by promising that if he got a contract he would make a contribution to party funds. My hon. friend from Vancouver South has tried to confine it more specifically to the attempt to obtain a contract by making such a promise. I believe, though, that the words he uses leave it open to the person who has a contract to say, "Well, if you give me another contract I will give you a kickback out of the one I have already obtained." I believe both possibilities should be covered and I think the second possibility might well be covered by the use of the words I have suggested.

Mr. Philpott: For my part I am quite willing to accept the suggestion made by the hon. member for Kamloops if the words suggested appear all right to the Minister of Justice.

Mr. Mang: Mr. Chairman, the expression "kickback" rings a bell with me, coming as I do from Saskatchewan. I would like to know how this would affect the Saskatchewan C.C.F. government as regards oil deals and contracts.

Mr. Garson: First, I would like to answer the question put by the hon. member for Winnipeg North Centre with reference to this clause. In my view the fewer adequate words used in a statute, the better drawn the statute will generally be, and the clause in

Bill No. 7 covers no less ground than does section 158 (i) of the present code, which reads as follows:

(i) having any contract with the government for the performance of any work, the doing of any thing, or the furnishing of any goods, effects, food or materials—

—and so on. I believe the single word "contract" covers all that is covered by the larger number of words in this subsection. One point which I believe deserves consideration, especially by members of the committee, is that we do not necessarily cover a wider area of application by using a lot of words. We can cover a wider area by using fewer words, if they are the right ones. For example, if you wanted a charter of very broad application and applied to the Secretary of State, the widest kind of charter you could get would be one permitting you to carry on trade or to do business—if they ever gave it to you. The kind of charter which is not so good is one specifying exactly what you can or cannot do. The word "contract" as it is used in this bill is of very wide application, so wide indeed that it is a little difficult to say without knowing the facts whether it will apply to the arrangement that civil servant A has with the employing government, and to a quite different arrangement that civil servant B may have with his government, or to a union having a labour agreement. It would be covered in one case but not necessarily in the others. It is of quite wide application.

Mr. Knowles: But, Mr. Chairman, is that not just the point? That one word does cover a much wider territory than the longer wording will, but it is so wide that the court will not know what it means. The court will say, "Surely parliament did not mean that someone drawing a family allowance cheque has a contract with the government". Yet that may be the effect.

Mr. Garson: But surely no one can argue that a person drawing a family allowance cheque has a contract with the government. A person might draw a family allowance cheque but he is doing nothing in consideration of the payment he receives. He simply receives it. A contract between two parties contemplates that the parties agree that each will do certain things in relation to one another for certain payments or considerations passing between them. The only difference between these two references in the present code on the one hand, and in Bill No. 7 on the other, is that one specifies a contract covering goods, effects, food or materials, and the other simply specifies a contract. But it is no less a contract, and in order to cover all of the things a contract could cover you would require a much longer section than is contained in the present code.

While I am on my feet I would like to say with reference to the suggestion made by the hon. member for Kamloops that, like the hon. member for Vancouver South, I have no objection to it whatsoever and I believe it would strengthen the clause.

Mr. Philpott: In that event, Mr. Chairman, I would like to move my amendment concerning the words "in order to obtain or retain".

Mr. Fulton: As I understand it, Mr. Chairman, the hon. member for Vancouver South wishes to add the words "in order to obtain or retain" so that the clause will read:

(2) Every one commits an offence who, in order to obtain or retain a contract with the government directly or indirectly subscribes,

etc. I understand we are generally agreed that his wording be accepted, and if so I will thereupon move my amendment.

Mr. Gillis: Mr. Chairman, I wonder if the minister would explain how one can make a contract with the government indirectly.

Mr. Garson: I believe the words "directly or indirectly" modify "subscribes, gives or agrees". The clause without amendment reads as follows:

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

There should be a comma after "government".

Mr. Knowles: Mr. Chairman, I move that a comma be put in.

The Chairman: Do I understand the hon. member for Vancouver South is now moving an amendment in these terms, that the words "being a party to" be deleted from clause 102, subsection 2, and that the following words be substituted therefor: "in order to obtain or retain"?

Mr. Philpott: That is correct, Mr. Chairman.

Mr. Mang: I would like to know whether there is a way of getting at under-the-table deals. I am not making any accusation but some of us in Saskatchewan suspect that there are under-the-table deals with kickbacks and so forth. Will this amendment take care of that?

Amendment agreed to.

Mr. Fulton: Mr. Chairman, might I then move that the clause as amended be amended by adding thereto after the words "with the

government" in line 18 the words "or as a term of any such contract whether expressed or implied".

The Chairman: Is it the pleasure of the committee to adopt this amendment?

Mr. Knowles: May I ask whether somewhere in this process we have got a comma in after "government"?

Mr. Garson: Yes. It was put in in the hon. member's motion.

Mr. Knowles: In this amendment which is now before us?

Mr. Garson: Yes.

Mr. Knowles: It started with a comma.

Mr. Garson: It started with a comma and I believe it ended with a comma. I apprehend that the clause will read in this way:

> Every one commits an offence who in order to obtain or retain a contract with the government or as a term of any such contract whether expressed or implied, directly or indirectly subscribes, gives, or agrees to subscribe or give to any person any valuable consideration . . .

—et cetera.

The Chairman: Shall this amendment carry?

Amendment agreed to.

Clause as amended agreed to.

On clause 116—*Witness giving contradictory evidence.*

Mr. Fulton: I do not wish to debate the point at any length, but I must say that I am unable to agree to the clause as it now stands. I accept the fact that the house committee last year, after lengthy discussion, added what amounts to saving words when they inserted the words:

> . . . but no person shall be convicted under this section unless the court, judge or magistrate, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

Nevertheless, the effect of the section it seems to me will inevitably be to discourage a witness who made an error in his evidence on, let us say, the preliminary hearing. That error having been an error made in good faith, the section will discourage him from changing his evidence to what, on sober reflection, he decides is more in accordance with the facts so that the truth may come out and justice may be done at the trial if the accused has been committed for trial as a result of that preliminary hearing.

I have no cause with the man who deliberately gives wrong evidence or false evidence at one judicial proceeding, whether it be a preliminary hearing or whatever it may be, and who then, for some real or fancied personal advantage, changes his evidence at some subsequent proceeding. I have no sympathy with him whatsoever. But, as we all know, there are cases where, perhaps as a result of pressure or perhaps as a result of mistaken zeal to assist in the prosecution, a statement is made on the one occasion or in the one judicial proceeding. I am quite sure we all know of cases where people make statements and tend to stick to them. Perhaps even some of us here might be guilty. There is a certain stubbornness about people, who, once having made a statement, are going to stick by it. Hon. gentlemen opposite taunt us with lack of consistency if we change our statements. That is, of course, what would happen here. We are now referring to judicial proceedings. It is a well known fact that, once having made a statement, a person is inclined to stick by it; but occasionally he can be persuaded to change it if it is clearly proved to him that it was wrong in the first instance and if it is clearly proved to him that the cause of justice demands that he change his statement.

What is his position now? Having once made a statement at the first judicial proceeding, the mere fact of changing it at a subsequent proceeding exposes him to a charge of perjury. The crown does not have to prove which statement was right or which one was wrong. I should perhaps say that the crown has to prove that one of them was made with intent to mislead. Perhaps I should have read the whole thing to start with. The section contains these words. It states that the man who does this . . .

> . . . is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true, . . .

The crown does not have to prove that either of them is true or that either of them is false. All it has to prove is that there has been a change.

Mr. Garson: It has to prove a great deal more than that.

Mr. Fulton: It has to prove that one of them was made with intent to mislead. The crown no longer has to decide which is the true one and which is the false one and lay the charge accordingly. All that has to happen is for the man to change his story or—perhaps I will put it this way and I think it is correct—to correct his story or to correct his statement—

Mr. Diefenbaker: That is the point.

Mr. Fulton: —between one judicial proceeding and the other, and he exposes himself to the liability of prosecution for perjury. Then we couple with that what I have already referred to as the innate desire of a

person to appear consistent, the reluctance to change a statement. Suppose your counsel comes to him and says, "In the interests of justice, in order that this man may not be unfairly convicted, you must reconsider this matter and correct your statement." He says, "What is my position?" A conscientious counsel has to tell him, "I am sorry, but under section 116, the new section of the code, you are liable to a charge of perjury; but notwithstanding that, I beg of you to change your statement." What is he going to say? He is going to say, "You will have to find somebody else. I am sticking by my former statement." It seems to me, Mr. Chairman, that the interests of justice will be anything but furthered by enacting this new clause. I am sorry, but I must oppose it and my colleagues here feel the same way as I do about it.

Mr. MacInnis: Mr. Chairman, the note with regard to this clause says that it is new; that is, that it had not been in the old Criminal Code. We got along very well from 1892 until 1954, without any great harm coming to the country. We seem to have prospered. We are thought highly of by our neighbours and we think highly of ourselves; yet we have not had this section in the Criminal Code all these years. In the committee we had a long discussion on this matter. Those of us who are not lawyers saw clearly that here is a case where a person would not be punished for giving false evidence provided he insisted on giving false evidence. But if he gave false evidence and then, on consideration, feeling that it was false, decided to give true evidence, he would be punished; and he would also be punished if he did it in the reverse order. He would not be punished for lying, something which might have its effect on the freedom or the punishment that some other individual would get. He was punished for changing his evidence from true to false or false to true. We hammered away on that, and it is just as ridiculous as it sounds. The section was amended to the form in which it now appears. It reads:

> Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true, but no person shall be convicted under this section unless the court, judge or magistrate, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

Does a judge not have that power as the law stands at the present time? He can say that a man's evidence is false. I have heard judges make that kind of statement and subsequently the person has been prosecuted for perjury. Could we not get along without this clause at all? Lawyers know much better than a layman like myself whether it is necessary to have this clause in the code. There are other sections dealing with perjury. Why have this section at all?

Mr. Shaw: We feel that we understand and fully appreciate what the minister is trying to cover in clause 116, but we are a bit afraid of it as it is now worded. It has a saving provision, but personally I am motivated in my thinking by an experience I had about sixteen years ago. The incident took place in a magistrate's court. An individual was charged under about four sections of the Criminal Code. I was not the accused and I was not a witness but I was an interested spectator because it so happened that I knew practically all the facts relative to the case. The accused came before the court. An R.C.M.P. constable prosecuted and I must confess, as I told the constable later, that I regretted very much that I was not the accused under those circumstances. The accused was browbeaten from the time the trial started until it finished. The accused was frightened to death. He had never been in court in his life before and he was frightened almost to the point where he could not talk. Words were put in his mouth.

I may say that the man had already pleaded guilty at the outset, but in an endeavour to have the heaviest penalty imposed, I believe, the R.C.M.P. constable put words in his mouth and actually browbeat the man until he was saying things and admitting things that I knew were absolutely false because I knew all the circumstances of the case. It so happened that the case was disposed of in that court and the chap was given the maximum penalty. I can well imagine that accused being a witness under similar circumstances. This may be an isolated case but I am a bit fearful of what could happen under clause 116.

Of course there is also the danger referred to by the hon. member who preceded me. Once a person has, for some reason or other, given false evidence, there is only one safe thing for him to do and that is to stick by it. I realize from what the minister said in the committee that an attempt must be made to do away with outright perjury but I wonder whether we are accomplishing the purpose safely under clause 116. I do not know how it could be worded to remove the possibilities of danger. Maybe there is no other way of doing it, but I cannot help thinking of the case to which I have referred

and which, as I say, was an isolated case. If that man had been a witness in a preliminary hearing in a magistrate's court and the case had been sent to another court the authorities would have got him for perjury and yet there would have been no intent whatsoever in that man's mind to commit perjury. Possibly he would have calmed down by the time he appeared in the higher court. He might have been advised to tell the truth.

Of course, I realize too that it must be clearly established beyond doubt that the person did not intend to mislead. While that may sound all right, it is often a very hard thing to prove. As I say, we appreciate the purpose of trying to have some such provision in the code, but I and my colleagues shiver a wee bit when we think of what may happen.

Mr. Garson: I respect the views of those who have spoken against this provision, for I happen to know that they are the sincere views which have been expressed on previous occasions in the House of Commons committee. But I think the views which inspired the insertion of this clause in the bill are equally sincere and conscientious, and equally well informed.

Surely we are all agreed that one of the most indispensable ingredients of the rendering of justice is that witnesses who go into the witness box should tell the truth. If the majority of the witnesses do not tell the truth, the direct result is going to be grave injustices inflicted upon individual parties to prosecutions and lawsuits.

If the hon. member for Vancouver-Kingsway were on trial for his life, I am sure he would have a very profound interest in the witnesses who were testifying in that trial telling the truth, the whole truth and nothing but the truth.

Mr. MacInnis: Would he not have an equally profound interest in the witnesses correcting an untruth if they told it?

Mr. Garson: I shall deal with that in due course. First of all I want to emphasize the seriousness of the subject matter with which we are dealing. There is hardly any clause in the whole code the principle of which is more important to the administration of justice than this one. There is hardly any crime which has a worse effect upon the administration of justice and upon the question whether citizens are to receive justice than perjury, for if we have more than a certain amount of perjured testimony in the courts the administration of justice becomes impossible.

Against that sort of background, let me add this. The hon. member for Vancouver-Kingsway has said that this is a new clause. He has said that our employment has been maintained, that our production is high, that our prosperity has been great in the interval, and that we have got along very well without having this clause. I suggest that the economic phenomena to which he has referred have nothing to do with the administration of justice, and that even with more production and great prosperity we could still have people going to jail falsely accused and falsely proven to have been guilty.

The reason for this clause being inserted in the new Criminal Code was the growing practice of irresponsible witnesses making statements at different stages of a given trial which were quite inconsistent with one another and when it was quite obviously the fact that certainly one of these statements was false, and perhaps both.

Mr. Diefenbaker: Would the minister say whether there have been many miscarriages of justice arising out of such a practice?

Mr. Garson: No, I could not say, for my hon. friend knows that in order for anyone to make that statement, he would have to be able to trace the injustice back to the evidence which produced it; and he would have to know what I think only the Deity would know, what portions of the evidence produced the conviction, which portions of the evidence were correct, and which portions were incorrect.

In these cases the crown has been faced with an almost insuperable difficulty. I suppose the average layman would say, "If the witness swore to a statement on a certain occasion and swore to an entirely different statement on another occasion, ascertain which of those two is incorrect and lay a charge of perjury against him in respect of that incorrect statement". In some of these cases, however, I am informed it is impossible to know which of these two statements is false. In some cases both of them may be false, yet they are given under oath. I should like to know whether it is just, that one man makes a statement under oath, he makes it deliberately intending to commit perjury and he is prosecuted; whereas another man who, intending to commit perjury, makes two statements which are completely inconsistent with one another is not prosecuted. Why? Because the crown cannot prove which of the two is untrue.

Surely, therefore, there is a good moral foundation for this section. But I agree that the further question which arises is as to

whether the means which we are proposing to provide in this section are practical, and whether they are likely to result in a just trial of an accused charged under this clause. I am free to confess, Mr. Chairman, and I have never disguised the fact when this clause has been under discussion, that in its original form it was open to serious objection.

Last year in the proceedings in the special committee of the House of Commons appointed to consider this bill, the hon. member for Vancouver-Kingsway made an excellent contribution to the debate and to clearing up the point to which I shall now refer. He and other committee members took objection to the form in which the clause was at that time. It then read this way:

Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true—

Now, this is the way the remainder of the clause read at that time.

—unless he establishes that none of the evidence was given with intent to mislead.

As the clause was drawn at that time, all the crown needed to do was lay a charge under this clause, and prove that the accused on such and such a date testified upon oath that so and so was the case, and at a later date he testified upon oath that something very different was the case. The crown did not have to prove that either of those statements was true. At this point the crown will rest its case, and the effect of the original draft was to throw upon the accused the onus, which under the British law should always be upon the crown, to prove the case against the accused beyond all reasonable doubt. The accused thereupon would have to go into the box and establish that none of the false evidence proven against him had been sworn to by him with intent to mislead.

At that stage, all of the criticisms which have been offered by those who have taken part in this debate this afternoon would have been justified. It was for the purpose of meeting such criticisms as we have heard this afternoon that a very great change was effected in this clause in the committee. The change was effected in this way. We struck out the words:

. . . unless he establishes that none of the evidence was given with intent to mislead.

And we substituted for those words the following:

. . . but no person shall be convicted under this section unless the court, judge or magistrate, as

[Mr. Garson.]

the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

So that the crown not only has to prove those ingredients which I have mentioned already but has to go on, before the accused has any onus placed upon him whatever, and prove beyond a reasonable doubt that in giving evidence in either one of those proceedings, the accused deliberately intended to mislead the court. Sir, if they prove that, then they prove no more than the crown has to prove in any prosecution for perjury.

Mr. Diefenbaker: No.

Mr. Garson: My hon. friend can make his remarks later on.

Mr. Diefenbaker: There is something more. Previously the crown had to prove that one or the other statement was false.

Mr. Garson: My hon. friend is quite right but I have already covered that in my previous remarks. But the crown has to prove here that the accused intended to mislead.

In the case cited by the hon. member for Red Deer, I presume that the accused was not represented by counsel; is that not right? My hon. friend from Red Deer nods that is the case. If the accused had given different evidence on a subsequent occasion and was then prosecuted under this section, I presume his counsel would be able to show from the report of the proceedings, the nature of the cross-examination under which he had gone; the fact he had no counsel, and that here was a poor chap who had been bulldozed into confusion, so obviously he had not made these statements with intent to mislead. By the new wording this onus of proving intent to mislead is left entirely upon the crown, as it should be.

One of the results of the efforts of the hon. member for Vancouver-Kingsway, the hon. member for Red Deer and other members of the committee is that we have here a clause that is much better, I admit, than the one which came from the royal commission. But that is not the only protection which the committee provided for the accused. It was charged there was a possibility that this clause might be used improperly and irresponsibly for the purpose of bringing pressure to bear upon the accused and that unfair prosecution would be launched under this clause.

The committee accordingly provided in subclause 3:

No proceedings shall be instituted under this section without the consent of the attorney general.

If a trivial case of this kind arose, under this clause, I am very sure no crown prosecutor would bother a busy attorney general to go through such a case before authorizing prosecution. He would not get too much consideration if he encroached on the time of the attorney general in that way. I would think that only serious cases would go before the attorney general, and in a serious case my personal opinion is that the crown should go on with it and stamp out this practice of giving irresponsible statements under oath, which may be the means of sending innocent people to prison.

Mr. Diefenbaker: With what my learned friend says, that everything that can be done should be done to stamp out perjury, which is rampant in our courts, I am in agreement. But I am somewhat concerned over this section, even in its revised form. I think the hon. member for Vancouver-Kingsway caused a tremendous light to be thrown on this clause by the few words he uttered in this house today. He said he was only a layman. Well, after all, laymen are the individuals who created the common law of our country and the common law of Great Britain. His views clarified the situation, as no one but a layman could have done.

Every one of us wants to see perjury outlawed from our courts and punished where it takes place; but what impresses me about this section is that, if my understanding is correct, the Canadian Bar Association discussed it on several occasions and refused to recommend it. The Canadian Bar Association is composed of the best counsel and solicitors in our country. They meet year after year. On the committee on criminal law there are outstanding representatives of crown and defence counsel. As I remember it, this question was discussed at great length at the bar meeting at Vancouver some two or three years ago. The tremendous danger inherent in it was referred to counsel not only for the defence but for the crown.

Mr. Garson: May I ask a question? Was the view of the Canadian Bar Association not reached in relation to the clause in its original form?

Mr. Diefenbaker: That was one of the strong objections; and this section, sir, is another of those that seem to indicate that the recommendations were made by crown prosecutors generally, or those who in the past have been members of prosecution staffs. There were some defence counsel, representative of the best in our country, on that commission. This is a clause which in its desire to punish perjury has put a premium on its continuance.

I mention one example; it is a case that was before the courts. After all, it is in practice that one sees the application of matters such as this. How often does the outcome of a case depend on identification? You, sir, as a member of the bar know how often identification is based on error; how often we return to our homes and say that we have seen a certain person on a certain day. We have known that person, and a few days later we find that the individual was not around.

Identification is easily made. An arrest takes place. A parade may take place, or often a parade does not take place, but the individual has seen a picture of the accused in the press. That individual goes on the stand at the preliminary hearing and says, "I identify this accused as the man." Later on, as he considers the matter and events are brought to his attention he begins to realize that he is not quite so certain. Finally at the trial, in the course of cross-examination, or in examination in chief, he says, "I have come to the conclusion that I cannot identify this person." Suppose he does that in cross-examination? As the law now is he stands in no jeopardy. As the law will be, if it is changed—

Mr. Garson: No.

Mr. Diefenbaker: My hon. friend says "no". As the law will be if it is changed there will be a fear in his mind. He will say, "If I dare to admit the probability or the possibility of error in my earlier evidence I stand in jeopardy. I will be in a position where I can be prosecuted." The Minister of Justice says, "It must be established that he intended to mislead." Fine points such as these are not in the minds of witnesses.

Mr. Garson: May I ask another question? Is my hon. friend arguing that solely because a witness's evidence in chief does not stand up under cross-examination he thereby becomes liable under this clause? Because if he is I certainly would not agree with him.

Mr. Diefenbaker: Yes; it is a fact, if the man gives evidence on preliminary hearing and then changes it. Suppose there is no counsel. The matter comes to trial. The witness gives the same evidence in his examination in chief. In cross-examination he changes that, he waters it down, he decides that he may have been in error. Then his evidence at the trial will be in conflict with the evidence at the preliminary hearing, because all the evidence has to be considered and he has placed himself in jeopardy.

Mr. Garson: Does my hon. friend suggest that it would be possible to prove an intent to mislead under those circumstances?

Mr. Diefenbaker: Oh, those fine distinctions are not in the mind of the witnesses.

Mr. Garson: But there has to be that distinction; it is an onus the crown must discharge before it can prove a case under this clause.

Mr. Diefenbaker: Witnesses know they are liable to be prosecuted if they alter their evidence in any particular. What this does, I repeat, Mr. Chairman, is to place the witness in a desperate position. He is in the position often described as between the devil and the deep blue sea. If he admits at the trial that he was in error at the preliminary hearing, then he is subject to prosecution. Whether there would be a conviction is another thing, because of the question of intent to which my hon. friend makes reference, but there is nothing to prevent him from being prosecuted and tried.

Mr. Garson: May I ask another question? Can my hon. friend imagine any provincial attorney general in Canada ever authorizing a prosecution under those circumstances? I certainly cannot.

Mr. Diefenbaker: Well, I am not going to enter into an argument about what attorneys general would do, but I say this. Police officers would be awfully annoyed at the change of front on the part of the witness if it resulted in a verdict of acquittal. The police officers are under the direction of the attorney general. I have heard my hon. friend on many occasions endeavour to exculpate himself for failure to act in reference to criminal law on the ground that it is the responsibility of the attorney general of the province. The police officers are under the direction of the attorney general. The attorney general will have placed before him the evidence of the police officers. There is no discretion there, as I see it. Naturally the police officers will feel that they have been deprived of an advantage by the change of front.

Many of them, human beings as they are, would certainly feel disposed to recommend prosecution. Personally I cannot see why a section that is and has been for many years the law of Britain, and has been our law, should be changed. My hon. friend fairly admitted that he is not in a position to say there have been many miscarriages of justice by reason of the law being what it has been for the last hundred years. I can see no reason for a change which has the effect of placing an accused in jeopardy. It is not that we want to see the guilty escape, but we do not want an innocent man convicted because some witness of the crown, having given evidence, dared not change it.

This section, as I see it, after listening to my hon. friend—and I listened to his explanation with profound interest—has in it tremendous dangers to the administration of justice. In assuring that justice be done to the individual it places the crown in a position where it will be able to say, "We have a witness who gave certain evidence at the preliminary hearing."

Then they are in position to say, "Don't change that story, because there is a section that provides that under those circumstances you may be prosecuted." Whether or not he will be, the fact is that he will be in jeopardy. No one wants to see the administration of justice such that if the truth could be told an accused would be found innocent, but where those who would tell the truth are placed in the position of being awarded a premium for continuing to tell what is false.

Mr. Gillis: If a layman may butt in for a few minutes, the hon. member for Dauphin has just reminded me that the question we are discussing now is perjury, and that perjury is when you are lying and get caught at it. I think that is a pretty good definition. The hon. member for Prince Albert said the hon. member for Vancouver-Kingsway did not do a bad job as a layman. It is generally laymen who are tried under the Criminal Code. You do not generally find very many lawyers on the wrong side of the judge and that is why laymen should be interested.

Mr. Diefenbaker: I was not implying or suggesting that laymen should not speak. I was simply commending my hon. friend on the clarity with which he placed the matter before the committee.

Mr. Gillis: I understood that perfectly well. I am just reminding my hon. friend that more laymen should be interested in the law. As far as I am concerned I do not see very much wrong with this clause. One good thing about this revision of the Criminal Code is that a lot of people are going to find out something about it. I have never had anyone who has written me when in jail or who has come to see me when about to go to jail who was not innocent. I have never yet met anyone who admitted he committed a crime. They always claim they are innocent, that they were framed. They contend that false evidence was given against them. I think that is an indication that there is some need for this kind of thing.

I believe the safeguards are pretty tight. A judge must be convinced that the evidence is intended to mislead. If he makes an error it may be corrected by the attorney general. In discussing this particular clause it is

always assumed that some poor innocent person who is not in any position to defend himself is the culprit who is going to put in evidence that is intended to mislead. But I think this section works both ways, or I hope it will.

I sat in court listening to a trial in which I was interested for the same reason as the hon. member for Red Deer, because I was acquainted with the people concerned. The accused had counsel, and the case was tried before the local magistrate. The accused brought four or five reliable witnesses to give evidence, but then a member of the R.C.M.P. walked in to give evidence. That magistrate had a look in his eye like that of a bad horse, and I am convinced that the accused was convicted before it started. I had listened to several cases, and it seemed to me that the magistrate had a stock way of listening. There was no comment, just the same fine for everybody. I heard the mountie give evidence, and I heard the accused give evidence. By the way, it was a medical doctor who was concerned. I heard the four or five witnesses give evidence. The evidence given by those six people indicated that the mountie was lying all over the place. It was false evidence right along the line. Nevertheless, when the magistrate had to decide he simply said, "Guilty; $50. Next case."

I am assuming that an accused could appeal a case like that under this section and charge the mounted policeman with having given false evidence before that court to mislead the magistrate. I think it would work under this section of the Criminal Code. There is protection there. It is not unusual today in many sections of this world for a lawyer who practises criminal law to have in his locality or close by witnesses who can be hired—they make a living out of it—to swear to anything. After there has been a session of the court, if it is necessary to change the evidence they have given, they say they had a lapse of memory and they swing it around to suit the case the following day. That may not be done so much in the smaller sections, but it is definitely done in the larger sections of Canada and the United States.

We got along without this type of thing for a good many years, and none of us can say how many people have gone to jail because of false evidence. As I said before, everyone I have talked to claimed that he was framed, that the evidence was wrong. It might have been so in many cases. This is a big improvement over what was first proposed. As far as I am concerned I think there are many safeguards in it.

I am interested in this not only from the angle of having witnesses tell the truth, though I agree with the Minister of Justice that if people do not want to see justice administered fairly, if they are not prepared to go into court and tell the truth, then it will not be easy to administer justice. We must remember that prosecutors do not all sprout wings. They are the people who bring you into court and many of them are interested in getting convictions and will use any means at their disposal. If a man has money with which to hire counsel, and his counsel is not satisfied that the evidence put in by the prosecution is proper and was intended to mislead in order to get a conviction, he has redress in my opinion under this section. He can appeal and accuse the people who put in the false evidence. I would be prepared to take a chance on it.

Mr. Fulton: In view of what has been said by the hon. member who has just resumed his seat, I think we should bear in mind that the possibility of prosecution for perjury under this section would apply not only to those who give evidence in criminal cases but to those who give evidence in civil cases.

Mr. Gillis: Fair enough.

Mr. Fulton: What my hon. friend has said would perhaps be applicable if we accepted as a principle that a person could never be mistaken. If he is prepared to say that a person should never make a mistake, that if he does make a mistake he should be prosecuted, then I think his case would be logical.

Mr. Gillis: The section provides for that.

Mr. Fulton: When we assume the possibility of mistake, when we assume that the result of a mistake may be to mislead, then I think we will see the danger of the section. I think the minister will agree with me that an examination for discovery is a judicial procedure. An examination for discovery is the first step in a civil case. A person who comes in for examination for discovery probably has not had a chance to talk over the matter with others who are concerned in the accident, if we assume it is a case for damages arising out of an accident. He may well make a statement on examination for discovery which is made purely as the result of a mistake. He repeats that statement before a jury, if there is a jury, or before a judge, if it happens to be a judge.

What is the effect of that statement? The effect of a statement as to the distance between the two automobiles will certainly be to mislead, that is if the statement is given credence. He has made a statement which is wrong or mistaken, and when he is cross-examined he begins to recall the

facts. Now, what is he to do? Is he to stick by his statement knowing that if he changes it he may be prosecuted under section 116, or is he to admit, as my hon. friend from Vancouver-Kingsway suggests, what he now realizes to be the truth, knowing all the time he may be prosecuted under this statute, and that if he does not do so he will be free from prosecution? Would not justice be better served if he were free to correct his first erroneous statement? But if he does correct it he is liable to prosecution, and I suggest there will be many miscarriages of justice if such a situation is allowed to continue. I would urge hon. members to vote against this clause.

Mr. Garson: If the problem my hon. friend has just stated is the only thing which bothers him then I can—

Mr. Fulton: It is only one example.

Mr. Garson: I feel the answer to this is very simple and while my hon. friend may not be prepared to accept my answer I would point out that if a person makes a statement during the examination for discovery when he is under oath, and he makes it in good faith, it is not perjury. He does not intend to mislead anyone. If, afterwards, he finds he was in error all he has to do when the case comes up for trial is to say, "Your lordship, I am very sorry but on my examination for discovery I made a mistake. I made this mistake in perfect good faith. The distance between the two automobiles was not, as I stated, 75 feet. On checking up on the matter I now find that the proper distance was 50 feet." Not having made the statement in the first place with the intent to mislead, and having corrected it on the first occasion on which he could do so then no one could possibly say that he was guilty under this section.

My hon. friend from Cape Breton South, who is not a lawyer, appears to understand this, but my lawyer friends apparently do not understand it. Before there can be an offence under this clause these conflicting statements have to be made for the purpose of misleading. If they are not made to mislead, and if the person who makes them believed he made them truthfully at the time that he made them and then corrects them as soon as possible, then he could not be guilty under this clause. He might have made that statement truthfully, as he thought, and then he might discover he was wrong when he comes under cross-examination by a skilful cross-examiner with an analytical mind. But that still does not make him guilty of perjury. He only has to say on the first possible occasion, "Well, my lord, I am very sorry but certain questions which the learned counsel has asked me have made me clear now in my own mind that the evidence I gave before is incorrect".

Mr. Diefenbaker: What would happen to his credibility?

Mr. Garson: His credibility for the purpose of that case would be zero, as it should be. I believe my hon. friend has the bias of a defence counsel on these matters, but what is the alternative? This man's credibility would be zero because it is by that means that injustices are avoided in court proceedings.

When my hon. friend said in his remarks that I had not been able to point to any injustices having arisen because of the passing of this section, I believe he was incorrect. *Hansard* will show what I did say. I said there are an increasing number of cases—and I think he agreed with me in this regard when he said that perjury was rampant in the courts—in which people come into the witness box and impudently state on one occasion that so and so was the case, and on another occasion in the same case state something entirely different. There cannot be a more aggravated form of perjury.

I know of one case in my own province where a man was up on a charge of murder. His life was at stake, and the case hinged largely upon the evidence of a woman who had told a certain story to the police.

Mr. Diefenbaker: Is that the Deacon case?

Mr. Garson: Yes. Perhaps my hon. friend knows the case.

Mr. Diefenbaker: It is reported.

Mr. Garson: Yes; it went to trial two or three times. But this one case hinged largely on the evidence of a woman and because it changed the taxpayers were put to all that expense, and the man was tried, I believe, three times before finally being acquitted. Now, is it not proper—

Mr. Diefenbaker: Is the minister referring to the Deacon case?

Mr. Garson: Yes.

Mr. Diefenbaker: He was executed.

Mr. Knowles: There is quite a difference there.

Mr. Garson: I stand corrected. My hon. friend is right, he was acquitted on two occasions and on the third trial there was a verdict of guilty and he was finally executed.

Mr. Diefenbaker: No; there was one disagreement and then a conviction, and then the case went through to the Supreme Court of Canada.

Mr. Garson: That is right. I hope *Hansard* has that correctly.

Mr. Knowles: Or you will be up for perjury.

Mr. Garson: That is the very point my hon. friend made in this case. No man or woman can be charged with perjury under this section unless the crown is able to prove that he or she made a statement with intent to mislead, and this myth about a man not having an opportunity to change his evidence is nothing but a myth. If a man, being convinced when he first gave it that evidence was true and having given it then in good faith, later finds he was in error concerning it there is nothing in the world to prevent him coming along and saying, "I am sorry. I was wrong in the first evidence I gave, and I find upon checking the matter that the real facts are as follows". If he states these real facts, then no question of criminal responsibility will arise.

With regard to the additional protection which is given by the fact that no proceedings can be instituted under this clause except by the attorney general, I must say I do not share the opinion which my hon. friend from Prince Albert has concerning the relationship between peace officers and attorneys general. I know all the provincial attorneys general of Canada, and I do not know of a single one who in a case of this kind would not go into the matter with great care before he gave permission for a prosecution to be launched. With this precaution, and with the safeguards which have been put into the clause as a result of the efforts of the special committee of the House of Commons last year, I believe this is a clause which deserves the full support of the committee.

Mr. MacInnis: I am quite willing to agree with the minister that the clause as it now stands is a great improvement on the clause of a similar nature which appeared in the bill we discussed last year. I mentioned this before, but I believe there has been a greater willingness on the part of the parliamentary committee and the minister not to take it for granted that the experts in the law who drafted various clauses have said the last word. That attitude was carried right through the whole deliberations of the committee. As a matter of fact, because of the minister's willingness to discuss, to accept and to agree, I think we obtained a much better bill, of which this section forms a part.

My main objection to this section was that a person is not prosecuted for telling the truth or an untruth, as is set out quite clearly in the act; he is prosecuted for saying one thing on one occasion and then saying the opposite thing on another. That provision is still here, although it is modified by the opinion of the judge or the presiding magistrate in the case and also by subclause 3 which was added by the committee. As I said before, I do not know enough about technical legal matters of this kind to express an opinion as to whether or not this section should stand, but I think it is a great improvement over the way in which it appeared when it came before the committee.

The Deputy Chairman: Shall the clause carry?

Mr. Fulton: No, Mr. Chairman. Will you put the question, please?

Clause agreed to: Yeas, 52; nays, 19.

On section 119—*Obstructing justice.*

Mr. Winch: The minister held clause 119 over. When it was up for consideration before I asked whether he could give the basis of interpretation or the definition of the term "the course of justice". As you will recall, Mr. Chairman, I asked that question because it may not be something opposed to the course of justice; it may be opposed to the course of statutory law. I have known several instances of that kind. The definition is therefore important.

Mr. Garson: If my hon. friend will go back to part III which deals with offences relating to the administration of law and justice, and in which is included this clause 119, he will see that it is quite a different part from the preceding part which has to do with offences against public order. If he looks at clause 69 (a) he will see that the act he was afraid might come under this clause now under discussion is an act which really is one against public order. So far as this clause is concerned, if he compared it with the section in the present code, he will see that the present code reads:

> Every one is guilty of an indictable offence and liable to two years' imprisonment who . . .

Then (a) is a duplicate of the present (a); (b) is a duplicate of the present (b); (c) is a duplicate of the present (c); and then (d) of existing code is:

> wilfully attempts in any other way to obstruct, pervert or defeat the course of justice.

He will see that that is the equivalent of subclause 1 of the present clause 119. In other words, the language is the same in both cases. In all the decided cases in the courts which are recorded in Tremeear, all have to do with court proceedings either existing or proposed. I think that is really the answer to my hon. friend's question. He said he was apprehensive lest a person who

remonstrated with an officer about to read the riot act would be interfering with the administration of justice. I think he clearly would not be.

Mr. Herridge: I do not want to question the clause, Mr. Chairman. I am just raising this matter under this clause because it deals with jurors. I have in my hand a pamphlet published by Robert H. Sloan, sheriff of the county of Carleton. Apparently this pamphlet is given to each person who is to act on a jury in this county. It deals with the functions of the jury, the grand jury, the petit jury, women jurors and hints to jurors. I think it is an excellent thing. I have never before seen anything like this pamphlet. I was wondering whether anything could be done to make this practice more general. Often people are chosen as jurors when they have little knowledge of their duties, functions and so on.

Mr. Garson: I am in complete agreement with my hon. friend. I think it is a wise move to get out pamphlets of this kind. It is with some embarrassment that I again raise the point that this pamphlet has to do with a provincial function, issued as it is by a provincial body. In a federal set-up such as that which we have in Canada, I have found that it is better not to interfere with the exercise of provincial jurisdiction. Most of the provincial authorities think they have the situation fairly well in hand without any suggestions from us.

Clause agreed to.

On clause 120—*Public mischief.*

Mr. Knowles: When we were discussing clause 120 some time ago, as the minister will recall, I said I felt there was a deficiency in it. As recorded in *Hansard* of February 12, page 2030, I suggested that an amendment might be made. For example, I suggested that subclause (c) might be made to read as follows:

> Every one who causes a peace officer to enter upon an investigation by wilfully
> (c) reporting that an offence has been committed when he knows that it has not been committed, is guilty of an indictable offence and liable to imprisonment . . .

I pointed out to the minister that in my view a similar change was necessary in subclause (b) as well. The minister agreed to look at the matter. I wonder what his view is now?

Mr. Garson: I think my hon. friend will recall that a considerable part of our previous discussion hinged around the question whether or not the use of the adverb "wilfully" would meet the various points my hon. friend raised with regard to this subclause.

[Mr. Garson.]

Mr. Knowles: That is right.

Mr. Garson: With a view to meeting that point I would propose that we might amend the clause to read as follows:

> Every one who, with intent to mislead, causes a peace officer to enter upon an investigation by
> (a) making a false statement . . .
> (b) doing anything . . .

And so on. The gravamen of the offence would then be what I think is obviously intended in the clause, that is, the intent to mislead a peace officer by doing these things. If that would meet my hon. friend's point I would be glad to have one of my colleagues move the amendment.

Mr. Winters: I move that clause 120 be amended as follows:

> Delete lines 36 and 37 on page 41 of Bill 7 and substitute therefor the following:
> "120. Every one who, with intent to mislead, causes a peace officer to enter upon an investigation by"

Mr. Knowles: I think that meets my point, Mr. Chairman.

Amendment agreed to.

Clause as amended agreed to.

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

Mr. Fulton: When we were discussing this clause the last time there was considerable discussion regarding the question whether or not the words "of a loose, idle or disorderly character" should be carried over from the present code into the proposed new clause. Their application was argued, particularly with respect to subclause 1 (a) (i). We have had some discussion with the minister about it since, and I understand that he has an amendment. Perhaps he might care to indicate what it is.

Mr. Garson: The subcommittee consisting of the hon. member for Kamloops, the hon. member for Winnipeg North Centre, the hon. member for Red Deer and myself got together to see if a wording could be agreed upon in this connection that would meet the views of the four members of that committee, who would then recommend it to the members of the house. The suggestion is that paragraph (a) of clause 164 be deleted and the following substituted therefor:

> "(a) not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found."

The whole of that part of the clause would then read:

> (1) Every one commits vagrancy who (a) not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found.

Mr. Knowles: The amendment the minister is proposing meets the objection we raised when this clause was considered before. As I pointed out, what we objected to was a clause which seemed to say very baldly, "No money and no job; *ipso facto* you are a vagrant." The amendment which the minister now suggests—and I mention this so that *Hansard* will show its effect—would delete the words "lives without employment". The clause was offensive to us before, and I think offensive to a great many people, because a person who was without apparent means of support and without employment, or in other words unemployed, was declared by the clause to be a vagrant.

I want to express my thanks to the minister for having allowed this matter to stand so we could have this further consideration of it. I think he is probably aware of the fact that the publicity given to the discussions here resulted in a fair amount of editorial comment on the point, and I think this is one instance where the public good was served by letting the clause stand. If the minister is prepared to have one of his colleagues move the amendment he now suggests, we will be quite happy to accept it.

Mr. Prudham: I move that clause 164 be amended as follows:

Delete paragraph (a) of subclause (1) of clause 164 and substitute therefor the following:

"(a) not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found."

Amendment agreed to.

Clause as amended agreed to.

On clause 206—*Punishment for murder.*

Mr. Knowles: I wonder whether the request I made previously might be acceded to again. My suggestion is that until such time as we have concluded this discussion clause 206 and also clauses 642 to 653 be allowed to stand.

Mr. Garson: I agree.

The Deputy Chairman: Clause 206 and clauses 642 to 653 inclusive are to stand again.

Mr. Garson: Clause 641?

Mr. Knowles: I was going to mention 641 when we got to clause 289.

Clause 206 stands.

Clauses 642 to 653 inclusive stand.

On clause 221—*Criminal negligence in operation of motor vehicle.*

Mr. Fulton: When this clause was discussed earlier I had some objections, as in the case of clause 164, to the deletion of words from this clause which appeared to me to change the effect. At a subsequent meeting with the minister he indicated that he was prepared to meet the points raised in this case, as he did in connection with clause 164. I understand that the minister has an amendment and I would appreciate it if he would announce it and explain its purport.

Mr. Garson: My hon. friend is quite right. The amendment reads as follows:

Delete lines 1, 2 and 3 on page 75 of Bill 7 and substitute therefor the following:

"(2) Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, vehicle or horse in charge of a person, with intent to escape civil or criminal liability . . .

Mr. McCann: I so move.

Mr. Fulton: Far be it from me to look a gift horse in the mouth, and I do not wish to embarrass the minister, but am I not correct in my understanding that when we discussed this clause earlier the suggestion was that the clause should read "or cattle in charge of a person" on the ground that "cattle" includes horse? I think it was the hon. member for Red Deer who suggested that a person who runs into some cows in charge of a person should also be under some liability. I have no particular objection to the present form, but I think I should be fair to my colleagues who took part in the same discussion.

Mr. Shaw: It was my understanding, although I have no written evidence to support my view, that I did raise the point that "horse" meant horse and that "cattle" meant horses and other animals. I understand it was agreed that the word "cattle" would be used.

Mr. Garson: I have no preference one way or the other. It is most unlikely that this question will ever arise anyhow, but I think one factor we will have to keep in mind is that "cattle" is defined in clause 2, subclause 5 as follows:

"cattle" means neat cattle or an animal of the bovine species by whatever technical or familiar name it is known, and includes a horse, mule, ass, pig, sheep or goat;

Now, if my hon. friend would like to give it that wide definition by having the word "cattle" put in there, that is all right.

Mr. Shaw: When I suggested "cattle" I had that definition in mind, and my argument was that so far as I am concerned, if cattle means cows, in those cases where they were not in charge of an individual and were struck and left to suffer that would be just as serious as though they were horses.

Mr. Fulton: Perhaps my hon. friend had in mind ox-drawn vehicles.

The Deputy Chairman: Is it the unanimous agreement of the committee that the word "horse" be struck out and the word "cattle" substituted?

Mr. Cardiff: Do we not need the word "horse" left in there?

Mr. Garson: No; cattle includes horses.

Mr. Lusby: I did not just catch the amendment, Mr. Chairman. Would you mind repeating it?

The Deputy Chairman: The amended clause reads:

> Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, vehicle or cattle in charge of a person, with intent to escape civil or criminal liability . . .

Amendment agreed to.

Clause as amended agreed to.

On clause 289—*Punishment for robbery.*

Mr. Knowles: May I suggest that clauses 289 and 641 be allowed to stand.

The Deputy Chairman: Is it agreed that clause 289 shall stand?

Clause stands.

On clause 374—*Arson.*

Mr. Knowles: With respect to clause 374, Mr. Chairman, I asked the minister and the committee to let it stand the last time it was before us. Perhaps I might say a few words now to indicate why I made that request. As I pointed out to the minister, this was a matter which I had raised in the house on a number of occasions under another heading. The present Minister of Public Works will recall that when he was minister of resources and development he had some inquiries made in his department as to whether there had been any research into the extent to which tailor-made cigarettes are a fire hazard with respect to our forests. I have before me a memorandum which he had prepared in 1953 in connection with this question. I have quite a bit of other material as well.

The point I raise is whether it is not time something was done to cut down the number of fires that are caused by burning cigarettes. As the minister will recall, when I raised this the other day we both had in mind the incident in Winnipeg two or three days before, when a prominent citizen of our city lost his life in this manner. We all regard life as much more important than property, but it does come to my mind that over the week end there has been a statement from London to the effect that the fire which resulted in the loss of the Canadian Pacific liner *Empress of Canada*, which burned at her dock in the United Kingdom some time ago, may have been caused by a burning cigarette. We all agree that these tragic fires that cost a great deal in terms of property, and what is more significant take many lives in the course of a year, are something about which we should try to take preventive action.

The minister indicated the other day that perhaps this is a matter that calls for greater care on the part of the people who use cigarettes, and I fully agree. I suggested to him then that, just as in connection with driving a vehicle on the highway and its dangers we have to take steps to try to protect the public, even though it might hurt some people, so it is in this instance. I believe there is something that should be done by law. I was quite interested in certain views on this question in an editorial which appeared in the Ottawa *Citizen* of June 7, 1952, after one of the debates we had on this matter. If I may read just a bit, I should like to point out that it arrives at the very point that is my reason for raising this question under the heading of "arson".

This editorial says:

> The proposition that cigarettes can be made less inflammable is generally accepted. Tests made several years ago in the California fire marshals' laboratory showed that paper in each of 55 different kinds of American cigarettes was treated with precipitate chalk to make it more porous, hence quicker-burning. Applying sodium-silicate bands of only one-eighth inch at intervals inside the paper, the researchers in the California lab produced a cigarette that would go out almost as soon as it was discarded. The United States bureau of standards also used sodium-silicate to coat the butt end of cigarettes and so seal the pores of the paper. The bureau discovered, too, that cigarettes tipped at the butt end with cardboard, cork or a filter to the length of at least an inch, seldom started a fire.
>
> The likelihood of cigarette manufacturers making use of these discoveries is slight. After all, the faster cigarettes burn, the more are sold. And the public has never protested against the quick-burning product.
>
> If cigarettes are to be made safer, clearly parliament must take the first step, as it did in the case of matches.

I recognize the point the minister made the other day, namely that manufacturers of cigarettes are interested in producing the kind of product that is most wanted by the public, and they would not regard it as a saleable product if it went out too easily when it was being smoked. I confess that I happen to be a non-user of these things, and I would not want to be regarded as advocating something in the nature of a blue law. But I may say that some of those who have supported me in raising this matter from time to time in the house are themselves users of cigarettes, and other members of the house who are users of them have backed me in this effort.

As I say, the paragraph I have just read from the editorial which appeared in the Ottawa *Citizen* in 1952 does indicate my view that it is possible to manufacture the kind of cigarette that would burn as long as it was being smoked just as readily as those now on the market, but which would go out if laid down for any length of time at all. It is still true it would cost the cigarette manufacturers a great deal more to manufacture that kind of cigarette, speaking of the tailor-made variety, than the kind of cigarette manufactured now. My submission is that in view of the tremendous loss of life and property that does arise from fires caused by burning cigarettes, a reform of this kind is long overdue.

I want to say that I think truer words were never written than those in the *Citizen* editorial when this suggestion was made:

> If cigarettes are to me made safer, clearly parliament must take the first step, as it did in the case of matches.

I should like to point out also that, without commenting too much on many of the items I have before me, the fire marshals in Canada have been quite concerned about this matter. I have before me the resolution which was passed at the annual conference of the dominion association of fire chiefs in 1950. It is a lengthy resolution, and I shall not read it all. This is the paragraph that bears on this question:

> That we urge the dominion government to prohibit the manufacture of tailor-made or manufactured cigarettes which contain in the paper or tobacco, saltpetre or other ingredients which increase the burning.

That, by the way, is in a resolution over the signature of Allan H. Clark, secretary-treasurer of the dominion association of fire chiefs.

I must say that because I have raised this matter in the house on a number of times I have been the recipient of letters from the tobacco people. They always have an answer. For example, they point out to me that some of these chemicals which it is alleged are in the paper with which cigarettes are made are not there so far as their cigarettes are concerned. I submit that the dominion association of fire chiefs might have attacked the problem not knowing just what would be the best way to deal with it; but in my view it is no answer to their resolution for tobacco companies to say there is no saltpetre in the cigarettes that they manufacture. After it has been demonstrated by research in the California fire marshals' laboratory and in other places that there are things that can be done, such as including those bands every so often in the cigarette paper, I suggest that the sooner we come to something like that the better.

The possibility that the tobacco people will do anything of this nature on their own, let us admit, is very slim. They are in the business to make what they can out of it, although they do spend some money in the kind of advertising that encourages people to be careful with their cigarettes. They urge people to put out fires and so on. In my view we should take action to prevent fires, and there has not been a great deal of interest shown by them in this phase of the matter. As a matter of fact, an official of the federal government to whom I wrote about this question some years ago replied to my letter in such a way as to indicate that he thought I had something, but he felt obliged to tell me this:

> The national board of fire underwriters of New York, and similar organizations have, to my knowledge, been making representations along these lines in the United States for upwards of 25 years. To date they have accomplished exactly nothing.

That should not dissuade one from continuing the effort if the need is there. I submit with all the strength I can that in view of the tremendous number of fires which take place from this cause, with the loss of human life and property, common sense and a sense of responsibility demand that we do something about this matter.

As I say, I was able to enlist the interest of the Minister of Public Works in the days when he was minister of resources and development. Perhaps I did not get further than obtaining his interest. In any event, he gave me a very interesting memorandum, but I feel that this is something on which there should be a law. That was my reason for asking the matter to stand over. I appreciate the fact that the Minister of Justice agreed not only to let it stand but expressed considerable sympathy with my point of view. I wonder whether in the meantime he has had a chance to give any thought to it, and whether he sees the possibility of enacting a law that might take care of the situation.

Before I take my seat I might point out that another issue has been before the public recently in regard to cigarettes, namely the question of lung cancer. The Minister of National Health and Welfare was able to announce a few days ago that the tobacco industry of Canada has agreed to make a contribution of $100,000 toward research into that question. I have no doubt that this contribution will be allowed as a deductible

item in relation to income tax, so a great deal of it will in effect be paid by the public treasury.

The Deputy Chairman: Order. I am not ruling anybody out of order at the moment; I am just drawing to the attention of the hon. member who has the floor the fact that the clause we are discussing deals with arson, that is, the wilful setting of fires. I know the heading of the section is, "Arson and other fires". Having that in view I have not interrupted the hon. gentleman while speaking of cigarettes in so far as they do cause fires. I think it was understood when the section was allowed to stand that this subject might be discussed, but I ask the hon. member not to take the cigarette discussion too far afield, because other hon. members may also have other aspects of cigarette smoking in mind, and if they discussed them all we would never get back to the Criminal Code.

Mr. Knowles: Your point, Mr. Chairman, in my view is well taken. I think you will recall that when this question came up the last time I suggested that all the clauses under the heading of arson might stand, but I agreed that one would be enough for the purpose of this discussion. Also, my reference to this other matter was merely for the purpose of suggesting that if the cigarette people have been persuaded to put up some money for research into that other question, which I shall not mention again at this time, I would hope that if necessary they could be persuaded to put up some money for research into this question of some really effective way in which to minimize the loss of life and property from fires started by cigarettes. Perhaps the minister will tell us the result of his thinking on this important question.

Mr. Garson: The point my hon. friend now raises is one not without embarrassment for me, because I understood when the section was stood over that my hon. friend was going to send me a memorandum. The following is credited to my hon. friend, at page 2514 of *Hansard:*

I wonder if the minister would be willing to allow one of his clauses—any one under the heading of arson or fires—to stand, and I will submit to him for his own perusal some memoranda and other material I have on this question.

I have been rather busy lately. In the debate on this bill there were a number of other undertakings I gave where it was I who had to do something. In this particular one I was waiting for my hon. friend to send me his memoranda. I would be glad, as I said before, to give his memoranda careful consideration. But I suggest that it would hardly be necessary to have this clause or any of the other clauses dealing with arson or fires stand. I believe that if any amendments were required they would not take the form of amendments to these clauses we have been discussing. In fact I question very much whether they would come under the Criminal Code at all.

My suggestion to my hon. friend would be that he send me the memoranda he mentioned, and that we go on from there and consider it perhaps in another annual amendment.

Mr. Knowles: I am quite agreeable. I apologize to the minister for not having got that memorandum to him yet. Like the minister, some of the rest of us are rather busy, too. May I also make it clear that I am not against this clause. I am quite prepared to let this clause pass on the understanding that this matter can be pursued. As a matter of fact, having sent the memorandum to the minister, which I shall do in the next few days, I may raise the matter when we get to the minister's estimates. My hope is that in the meantime he will give this serious question the serious thought that I am sure he agrees it deserves.

Clause agreed to.

Clause 389 agreed to.

On clause 413—*Superior court of criminal jurisdiction.*

Mr. Garson: I think this is a case where there was a typographical error. The clause is self-explanatory once that typographical error is cured. I would therefore suggest that the word "officer" in line five be deleted and the word "offence" substituted therefor.

Mr. Sinclair: I move accordingly.

Amendment agreed to.

Clause as amended agreed to.

On clause 417—*Trial without jury in Alberta.*

Mr. Fulton: I asked that this clause stand, as I thought it might be appropriate to draw attention to the fact that notwithstanding the efforts made to bring about complete uniformity as among the provinces in respect to the administration of criminal law, in Alberta it is provided by clause 417 that an accused charged with an indictable offence may with his consent be tried by a judge of the superior court without a jury. There is a further difference provided by a later section that in Alberta juries are still composed of six men.

The minister has explained that it is the desire of Alberta to continue in those two respects in which they are different from the other provinces. I suppose that if the law officers of Alberta wish that difference to be

continued we cannot very well say that we know better than they what is good for their province.

I would hope that before too long it will be possible for them to give further consideration to accepting a change. I would point out that at the present time if I were driving through Alberta and was alleged to have committed an offence under the code, I would be tried by a jury of six men rather than a jury of twelve. I would prefer to be tried by a jury of twelve men. I suppose it might be said that would be my fault for having gotten into trouble in Alberta. I make that comment in order to bring this matter to the attention of the committee for what it is worth, and would hope that eventually we may achieve uniformity as among all the provinces in this country.

Clause agreed to.

On clause 432—*Detention of things seized.*

Mr. Garson: When this clause was being debated before certain observations were made, to meet which we have redrafted the clause. I suggest the following change:

That paragraphs (a) and (b) of subclause (3) of clause 432 be deleted and the following substituted therefor:

"(a) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or

(b) if possession of it by the person from whom it was seized is unlawful,

(i) order it to be returned to the lawful owner or to the peron who is entitled to possession of it, or

(ii) order it to be forfeited or otherwise dealt with in accordance with law, where the lawful owner or the person who is entitled to possession of it is not known."

And also:

That clause 432 be amended by adding thereto, immediately after subclause (6), the following subclause:

"(7) A person who considers himself aggrieved by an order made under subsection (3) may appeal from the order to the appeal court, as defined in section 719, and for the purposes of the appeal the provisions of sections 721 to 732 apply, *mutatis mutandis.*"

Mr. Fulton: I thank the minister for going as far as he has gone, although this amendment does not go as far as I should have liked in that it still does not indicate by what process justice is to be satisfied as to the ownership of the article in question. I would have preferred an amendment which made it clear that the process of satisfaction was to be carried out, but since it is provided by the second amendment that a person aggrieved by an order made has the right of appeal I shall be content with the amendment as it stands.

Amendments agreed to.

Clause as amended agreed to.

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

Clause 446 agreed to.

On clause 467—*Absolute jurisdiction.*

Mr. Knowles: Mr. Chairman, I believe I asked that this clause be allowed to stand. We did not have very much discussion on it when it was last before the committee, but I believe the effect of the change is that from now on a person cannot claim a jury trial in connection with a theft unless the value of the article alleged to have been stolen is in excess of $50. Previously a person could claim a jury trial if the value of the article was in excess of $25.

I realize this change is being made because of the inflation we have had under the present government, but I would ask the minister whether this matter was discussed at any length before the committee. As a layman it seems to me that even though there has been inflation the purpose of that cut-off point was to prevent the summoning of a jury on a trivial case. I wonder if these cases are trivial in all instances where the value of the article is in excess of $25 but not up to the value of $50?

Mr. Garson: Mr. Chairman, for a great many years now the limit has been $25. The limit in 1892 was $10, and I suppose the best test of the fixing of a limit of this sort is in relation to the purchasing value of the dollar. If all the statements we have heard from time to time from members of the opposition are to be taken seriously I am surprised it was not proposed to raise this limit beyond $50—

Mr. Fleming: I am glad to see the government is taking them seriously.

Mr. Garson: —because the article which would be worth $25 when the previous limit was applicable would certainly be worth $50 now. I went into that at great length when the clause dealing with the jurisdiction of magistrates to try indictable offences was before the committee last week.

Clause agreed to.

Clauses 468 and 499 agreed to.

On clause 557—*Accused to be present.*

Mr. Knowles: Mr. Chairman, has the minister given any further thought to the point raised in connection with clause 557 when it was last before the committee? I believe the point was put to the minister in the form of a question. If an accused individual is required to be in court during the whole of his trial, why should not an accused corporation, through its agent or counsel, be required to be present throughout the whole of the corporation's trial?

Mr. Garson: If my hon. friend will look at clauses 528 to 531, which spell out in considerable detail the manner in which the accused corporation is brought before the court for trial, I believe he will see a full answer to his question.

Mr. Knowles: Is an accused corporation under these other sections required to be present throughout its trial in the same way an individual is required to be present under clause 557?

Mr. Garson: Actually they cannot be present in the same sense because an accused corporation, not being an individual human being, cannot be present by itself. It can only be present through its counsel or agent. If my hon. friend will look at sections 528 to 531 he will see that they spell out the manner in which the accused corporation will appear and plead through its agent or counsel.

Clause agreed to.

On clause 637—*Binding over person convicted.*

Mr. Knowles: Mr. Chairman, before we go on to the next clause I would like to ask the minister whether he took another look at clause 637. It was allowed to pass the last time it was before the committee but the minister agreed he would take another look at it, having in mind the point which I raised at that time.

Mr. Garson: I believe my hon. friend is referring to clause 637 (3), and as I recall his argument he stated that in these cases where a citizen had been ordered to enter into a recognizance to keep the peace and was in default, and because of such default had been committed to prison, the former provision required the jailer or sheriff to advise the judge that the citizen was there. My hon. friend thought that was a better method of protecting a man who was in custody than the method which is now suggested.

We have looked at that since my hon. friend raised the point, and we think the method outlined in clause 637 (3) is a much better method because this clause specifically spells out that the man in custody has the right to appear before the judge. The clause states:

(3) Where a person who has been ordered to enter into a recognizance under subsection (1) has remained in prison for two weeks because of his default, he may apply to a judge for review of the order of committal.

Under the old provision the jailer or the sheriff made this return to the judge, but whether the judge acted on it was another question. Under this present clause a man in custody can himself initiate and carry on the proceedings, and his right to do so is clearly stated.

Mr. Knowles: I realize that a prisoner's right is spelled out more clearly in this clause than it was in section 1059 of the original code, but I would like the minister to address himself to this question. What happens if a man does not know he has that right, and is allowed to remain in a cell for a period beyond the two weeks specified?

Mr. Garson: I covered that in my remarks on a previous occasion by stating it was incredible to me that with the type of prison wardens we have nowadays, this fact would not be brought to the attention of the accused. But in any case, whether it is brought to the attention of the accused is, I suggest, a matter for the management of the provincial jail in which he is lodged, for he would not be sent to a penitentiary. I do not think it is at all proper that the Criminal Code should spell out every last item of administration and procedure in a provincial jail. If there were any question about this matter it is one we could raise with the provincial attorneys general. We have certainly never received any complaints from them concerning these sections of the code.

Mr. Winch: Why should a man stay in jail for two weeks before he can make application to a judge?

Mr. Garson: Because in the first place—and if my hon. friend has read the section he will see this—the man is there because he has been ordered by the court to enter into a recognizance and has defaulted in so doing. He is only in prison in the first place because he has defaulted. He continues to stay in prison only because he continues to default. It is only where there are some special circumstances which excuse his continued default that he has any hope in making this application. If he wants to remedy the default he can get out in 24 hours. It is not like being in prison for an offence. He is in prison because he has defaulted in entering into a recognizance.

The Chairman: Clause 637 was carried previously. We now turn to clause 641.

Mr. Fulton: Provided that no one feels very strongly against it, Mr. Chairman, I am going to ask that the committee permit a reversion to clauses 467 and 468. The elevators in this building are not always quite as prompt as they might be. Neither I nor my colleague the hon. member for London was able to get down here before those two sections were carried.

Mr. Knowles: Does the hon. member mean that I did not talk long enough?

Mr. Fulton: I do not wish to press the matter, but those sections were allowed to stand at our request, and I should like permission to revert to them.

Mr. Garson: That is quite all right, Mr. Chairman. If there is any wisdom floating around we want to have the benefit of it.

The Chairman: Has the hon. gentleman leave to revert to clauses 467 and 468?

Some hon. Members: Agreed.

Mr. Fulton: I appreciate the generosity of the committee, and I shall not detain it long. My friend the hon. member for London has been making a study of those particulars in which the absolute jurisdiction of magistrates under those two sections exceeds the jurisdiction of magistrates under the old code. To the extent that the absolute jurisdiction of magistrates has been enlarged, it is a whittling down of the rights of an accused. It is that point—and I think that point alone —to which we take objection.

We start with the fact that under clause 467 the jurisdiction of a magistrate to try an accused is absolute and does not depend upon the consent of the accused where the accused is charged with theft and where the property is alleged to be of less than $50 in value. Previously the magistrate had no absolute jurisdiction to try—

Mr. Garson: I rise on a question of privilege. I wonder whether I might interrupt the hon. gentleman long enough to say that in his absence this same argument he is now presenting was presented very effectively by the hon. member for Winnipeg North Centre.

Mr. Knowles: But not effectively enough to persuade the minister.

Mr. Fulton: I shall pass over that matter fairly rapidly, then, and will do no more than to point out that it is a doubling of the jurisdiction on grounds that do not seem to be thoroughly explained or established. Having abolished the former restriction whereby magistrates did not have absolute jurisdiction unless they were properly qualified and serving in cities of 25,000 and over, the act has, it is true, provided now in the definition section, namely section 466—or has attempted to do so—that the province will appoint only qualified magistrates.

I can see the desire of the minister and the government to ensure that all magistrates shall be properly qualified so they will be qualified to exercise their jurisdiction. But the fact is that the mere passage of this new Criminal Code will not ensure that all magistrates are properly qualified lawyers. Particularly in cities of less than 25,000 where they are now serving, where magistrates have been appointed who are not lawyers their appointments are not going to be changed just because this bill passes. Yet under the bill the absolute jurisdiction of the magistrates is automatically enlarged in the particulars which will be developed in a moment by my friend the hon. member for London. Hence you are going to have a number of complicated and technical cases which were formerly triable by the magistrate only with the consent of the accused but in which the accused now has no election as to whether he shall be tried by a magistrate or by a judge with a jury.

The situation represents a definite abridgement of the rights of an accused. I should think it would have been possible to put in the bill some provision that when the magistrate who would otherwise have jurisdiction to try the case is qualified as a barrister, then his jurisdiction shall be absolute but that in the absence of a magistrate who is qualified as a lawyer the election of the accused might remain.

Mr. Garson: While I share with my friend the hon. member for Kamloops the distinction of being a member of the legal profession, I am afraid I differ from his view that it is only magistrates who are members of the legal profession who are good magistrates.

Mr. Fulton: I never said that.

Mr. Garson: I happen to know some very good magistrates indeed who obtained their training in a practical way. But be that as it may, one of the difficulties in a divided jurisdiction such as that which we have in this country, and one which we simply cannot get over by any provisions in the Criminal Code, is that we cannot in the Criminal Code tell the provincial authorities whom they should appoint as magistrates. In the Criminal Code we can specify that the magistrates are to be specially qualified to deal with cases which arise under this part

of the code. But beyond that, the person a provincial government appoints as a magistrate is the province's own business.

In approaching our responsibilities in this parliament I do not think we have the right to assume that the provincial governments are going to do these things badly. We must assume and do assume that they will use reasonable judgment. My experience has been—and I am sure my friend the hon. member for Kamloops will agree with this statement—that the appointment of magistrates has improved greatly indeed over the last 15 or 20 years. As to the magistrates in my province who exercise this jurisdiction, I would have the utmost confidence in them without exception. They are highly capable and competent people.

I do not know of any province in Canada where it could be said that there are incompetent magistrates exercising jurisdiction under this part. There may be the odd police magistrate in outlying sections of the province who does not have authority to deal with cases under this part, but I would not want to take, or even to share with my hon. friend from Kamloops the responsibility of alleging that there are magistrates exercising jurisdiction under this part who are unqualified and incompetent.

Mr. Fulton: I am not going to deal at any length with what the minister has said. As I indicated earlier, my colleague the hon. member for London has some remarks to make.

I want to take issue at once with what the minister said when he suggested it was implicit in my remarks that I felt that no magistrate who was not a qualified lawyer was a good magistrate. That was far from my suggestion. But I did suggest that until magistrates become qualified in the law as a matter of course, there is no justification for increasing their jurisdiction without the consent of the accused. After all, even a very good, conscientious and commonsensical man can become completely at sea when charged with the responsibility of administering the criminal law. Common sense does not always qualify a man in this respect, and it can work adversely the other way.

I think I can illustrate that point best, if I may, by telling a story of a magistrate —this was the application of common sense— who was appointed in one of the remote areas of British Columbia. One of the first cases he had before him was an infraction of the game act. The accused was represented by counsel.

Mr. Garson: I wanted to ask my hon. friend if the magistrate he is talking about is one who was appointed as being specially authorized within the meaning of this section, because if he was not his story will not prove anything.

Mr. Fulton: He was the magistrate who exercised all jurisdiction in the particular area where he had been appointed.

Mr. Garson: But was it under this part of the code?

Mr. Fulton: This is a new part of the code. Of course the definition section, subsection (b), provides the definition of "magistrate", but that is a new definition and provinces, where they do not have available persons with legal qualification, are obviously going to continue in office, with the jurisdiction conferred under part XVI, persons who are exercising the functions of magistrates in these districts at the present time, whether or not they happen to be qualified lawyers. As I say, the application of common sense does not always produce a result consonant with the interests of justice, whether that interest be from the point of view of the prosecution or the defence. That is illustrated in the case of this magistrate.

After the police officer, who was conducting the prosecution, had concluded the crown's case, defence counsel moved for dismissal on the grounds of lack of evidence, lack of a prima facie case. The magistrate said, "Well, this is a democracy. I have a motion before me. The motion is that the charge be dismissed. I am bound to put the motion. Those in favour will please vote yea." The poor unfortunate police officer had his mouth open rather wide. Counsel for the accused of course voted in favour of dismissal. The magistrate said: "Those opposed will vote nay." The police officer said "Nay". The magistrate said, "This is a democracy and we have to give the benefit of the doubt to the accused. Therefore I vote with the yeas and the case is dismissed."

That was the exercise of common sense, but it did not produce a result necessarily consonant with the justice of the case. That is why I say, without in any sense attacking those magistrates who are conscientiously trying to do their best in spite of their lack of qualifications, that it seems to me that before enlarging their automatic jurisdiction we should take greater care to ensure that properly qualified magistrates are going to be exercising that jurisdiction.

Mr. Knowles: Call in the members.

Mr. Winch: I have tried to follow very closely the arguments and presentations of learned counsel in the discussion of Bill No. 7, but as a layman I find myself up against a problem in understanding certain clauses.

I think I can raise what I have in mind under the clause now under discussion which when passed, amended or otherwise, will become the criminal law of Canada.

The sentencing of accused people is divided between various types of judges, one of which is magistrates, who are dealt with in the part of the code now under discussion. I know one is not supposed to get advice from the crown, but I also know it would help me, and I think it might help others if, through you, Mr. Chairman, I might ask the Minister of Justice this question. As Bill No. 7 will become the Criminal Code, and as sentencing will be done by magistrates and judges all the way up to the highest courts, does it follow automatically or by law that anyone charged under the Criminal Code has the right from the very beginning to ask for trial by jury?

Mr. Garson: In order to answer my hon. friend's question he would have to say first of all whether the offence with which the accused was charged was a summary conviction offence or an indictable offence. Summary conviction offences are the less serious ones. I understand that my hon. friend is not talking about them.

Mr. Winch: No.

Mr. Garson: I understand he is talking about indictable offences.

Mr. Winch: With which magistrates can deal under this section.

Mr. Garson: Yes; that is right. If the hon. member will look at clause 413 I think he will see the answer to his question in subclauses 1 and 2. Subclause 1 reads:

Every superior court of criminal jurisdiction has jurisdiction to try any indictable offence.

The superior court of criminal jurisdiction named there is a judge of a superior court sitting with a jury. Therefore with regard to all indictable offences the accused has the right to be tried by a jury. That is the first point. There is one exception to this to which I shall refer later. With respect to a court of criminal jurisdiction, clause 413 (2) states:

Every court of criminal jurisdiction has jurisdiction to try an indictable offence other than . . .

Then my hon. friend will see that a number of offences are cited. The easiest way to find out what they are is to look at the sidenotes—treason, murder, and so on. What does that mean? It means that with regard to these indictable offences that are named in the second subclause 413 (2), the accused not only has to be tried by a judge and jury, that is, a superior court of criminal jurisdiction, but he cannot be tried without a jury. Even if he or his counsel would prefer trial by a court without a jury, he has no right to elect that. With regard to all indictable offences other than those stated in clause 413 (2) and those over which magistrates have absolute jurisdiction, he can elect to be tried by a judge and jury on the one hand, or by a judge or magistrate alone on the other.

When we come to the trial by magistrates of certain offences which are otherwise indictable, we find a very limited number of cases in which the magistrate has absolute jurisdiction over the accused. That is covered on page 161 of the bill, under the heading "Absolute jurisdiction". It is covered in clause 467.

With regard to the remainder of the indictable offences, the accused can elect to be tried by the magistrate before whom he comes in the first place, or he can elect a preliminary investigation and later on elect to be tried by a jury or elect to take a speedy trial before a court of criminal jurisdiction. I think that covers the whole field fairly well.

Mr. Mitchell (London): May I make one further remark about clause 467. Our objection to this clause is that while we have been having a great deal of difficulty in this house, both lay and so-called legally trained persons, in trying to understand the code, and we admit that untrained magistrates are going to face that same problem, at the same time we are extending the jurisdiction which those, if I may use the word, untrained magistrates are going to have in one respect. I refer to lotteries. This offence may be dealt with by the magistrate without consent, and the same provision is made for cheating under clause 181.

I suggest that before we extend that jurisdiction we must satisfy ourselves that it is being properly handled by the lay magistrates. I suggest to the minister that an examination of cases appealed will indicate that the great majority come from those who are doing the best that they can, and have done a miraculous job in many parts of the dominion, but who have not the training necessary.

Mr. Garson: With all deference to the hon. member for London, Mr. Chairman, and the hon. member for Kamloops, I cannot help

but think they have a complete misapprehension as to the meaning of clause 466 (b), which says:

"magistrate"—

That is a magistrate under this part.

—means
(i) a person—

Now I ask the hon. member to watch this language carefully.

—appointed under the law of a province, by whatever title he may be designated, who is specially authorized by the terms of his appointment to exercise the jurisdiction conferred upon a magistrate by this part, but does not include two or more justices of the peace sitting together . . .

In other words, what is contemplated by "magistrate" under this part is not the type of chap in a district such as my hon. friend spoke about, who calls for the yeas and nays. I cannot think of any magistrate who would do that. I cannot help but think it is nothing but an example picked up from some book of jokes.

Mr. Fulton: No, it is not.

Mr. Garson: I do not know what province my hon. friend is speaking about. I must say that if that is the way things are handled, they must be at least 25 years behind Manitoba, because since that far back we have had competent magistrates exercising this type of jurisdiction. It is the same type of jurisdiction that is exercised by magistrates in the cities of Ottawa, Winnipeg, Brandon, and so on. They are trained men with long years of experience, and they will not experience one-quarter of the difficulty in understanding this that some of my hon. friends across the way seem to experience.

Mr. Fulton: They will not have had the benefit of the minister's explanation, so they might be able to appreciate it a little more easily.

Mr. Winch: I wanted to ask one more question. If it is an indictable offence that can be handled by the magistrate, is the accused automatically informed that he can elect to be tried by a jury?

Mr. Garson: In those cases set out in clause 467 over which the magistrate's jurisdiction is absolute, he is not so advised. In those cases where the magistrate can only try him by consent, he is so advised. My hon. friend will find the formula at the bottom of page 162, in these terms. We tried, in this construction, to use language that was plain and simple and that anyone could understand.

This is what the magistrate says to the accused:

You have the option to elect to be tried by a magistrate without a jury; or you may elect to be tried by a judge without a jury; or you may elect to be tried by a court composed of a judge and jury. How do you elect to be tried?

I do not think the issue could be put more clearly to the accused.

Mr. Winch: That is the very point that had me a little mixed up. In subclause 3 of clause 468, it says:

Where an accused does not elect to be tried by a magistrate, the magistrate shall hold a preliminary inquiry in accordance with part XV, and if the accused is committed for trial or, in the case of a corporation is ordered to stand trial, the magistrate shall—

That was rather confusing to me. As I read it, and if I am wrong I know the minister will correct me, the accused has to decide that he wants to be tried by a jury before the magistrate decides whether or not he shall go on for trial to a higher court.

Mr. Garson: I wonder if I could put it in these terms? Let us assume the accused is arraigned upon a charge which the magistrate would have jurisdiction to try provided the accused consented to be tried by him. Before the case could go on any further the first point that would have to be cleared up would be whether the accused wanted to be tried by the magistrate right then. The magistrate puts these questions to him: "How do you want to be tried? Do you want to be tried by me or by a judge without a jury or by a judge with a jury?"

Mr. Knowles: Supposing he moves an amendment?

Mr. Garson: The accused makes up his mind then, or usually his counsel has advised him and makes up his mind for him. If he wants to be tried by a magistrate he says, "Well, I will be tried now." The trial before the magistrate then takes place. The crown puts in its case, the accused puts in his defence, and they finish the case then and there.

But if the accused, when he is asked a question like that, does not happen to be represented by counsel he may be puzzled and not know what to answer, and may think the best thing is to say nothing. In that case, as the section indicates, the magistrate then proceeds to hold a preliminary hearing. Later the accused can be tried either by a judge without a jury or by a judge with a jury. When that time comes the accused not only has the right to make his choice between those two alternatives, but in this new code we have provided that after he has made one of these choices he may change his mind again and still choose the other one. It cannot be said that the accused is in any way lacking in choice as to the manner in which he wishes to be tried.

Mr. Fulton: Am I not right in suggesting to the minister that the absolute jurisdiction of the magistrate to try a charge of conducting a lottery is an extension of the jurisdiction over that contained in the present code?

Mr. Garson: Yes. I dealt with that at some length last week. I pointed out that Bill No. 7 does give the magistrate jurisdiction in lottery cases. It was considered that was warranted because the magistrates already have jurisdiction over gaming and betting houses, bookmaking and pool-selling; and if they had jurisdiction over those it was not much of an extension to apply it to lotteries.

The Chairman: Shall we now proceed with clause 641?

Mr. Knowles: I believe when we were on clause 239 this afternoon it was agreed to let clause 641 stand along with clause 289.

Mr. Garson: Yes.

Mr. Winch: Otherwise I want to speak on it.

Mr. Garson: No, it stands.

The Chairman: Clause 641 stands. We shall now call clauses 642 to 653.

Mr. Knowles: These stood this afternoon as well.

The Chairman: Clauses 642 to 653 inclusive are to stand.

On clause 661—*Evidence*.

Mr. Fulton: I believe there was some discussion on this last Thursday. Did the minister indicate at that time that this subject matter would also be included in the reference to the royal commission on the law with respect to insanity?

Mr. Garson: I am sorry I did not hear my hon. friend's question.

Mr. Fulton: It was my impression last Thursday when clause 661 was under discussion that the minister agreed he would refer the subject matter of criminal sexual psychopaths to the royal commission.

Mr. Garson: Yes, that is quite right. I believe my hon. friend was absent when I stated that I had discussed this subject with Chief Justice McRuer, who is chairman of the royal commission investigating the subject matter of insanity as a defence to a charge of criminal liability. The chief justice was of the view, with which we agreed, that it would be unwise to intermix consideration of criminal sexual psychopaths with that other subject matter. He agreed however to become the chairman of a smaller commission which would deal with the subject of criminal sexual psychopaths and bring in a report upon it.

Mr. Fulton: Was this clause not allowed to stand for the purpose of getting a report from the minister on the terms of the reference to that smaller commission, or is it considered not necessary to define those terms?

Mr. Garson: Yes, probably it could be said that was the reason. I took objection to having it stand. As a matter of fact I should have had the terms of reference settled before, but I have not found the time to consider them. I have no objection to standing this clause, and the next time we come to it I hope to have the terms of reference settled.

The Chairman: Clause stands.

On clause 694—*General penalty*.

Mr. Knowles: This is the clause on which we had considerable discussion last Thursday. It is also the clause with respect to which the hon. member for Oxford moved an amendment to subclause 3. Generally speaking, this is the clause under which we had the discussion about the way in which persons are, in some cases, as we see it, made to go to jail for debt, namely a debt to the crown with respect to a fine. I have looked very closely at the amendment moved by the hon. member for Oxford, which appears at pages 2908 and 2909 of *Hansard* of March 11, and I am reminded of something my colleague the hon. member for Vancouver-Kingsway said this afternoon. The Minister of Justice was prepared to accept the amendment moved by the hon. member for Oxford without a moment's hesitation.

The Chairman: Order. In order that there may be no misunderstanding, the Chair has no record of any amendment having been sent in.

Mr. Garson: It was a suggestion which the hon. member for Oxford put on *Hansard* of an amendment that he favoured.

Mr. Knowles: Perhaps I might make the point clear, Mr. Chairman, by reading a few lines from *Hansard* at pages 2908 and 2909. The hon. member for Oxford said:

> I was wondering if the minister would care to comment on the suggestion I should like to make with regard to subclause 3. The whole discussion might be obviated if subclause 3 were amended somewhat along the following lines:
>
> "A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or if the accused

is unable to pay forthwith, at such time and on such terms as may be fixed by the summary conviction court."

Obviously, by referring to the terms of subclause 3 of the bill that is before us, the amendment suggested by the hon. member for Oxford involves writing in the words, "or if the accused is unable to pay forthwith, at such time and on such terms", and so on. As I was saying, Mr. Chairman—and you are perfectly correct that the amendment was not moved; it was merely put forward as an idea—the Minister of Justice without a moment's hesitation said, "I would be quite willing to accept that suggestion." That does not mean there is necessarily anything wrong with the suggestion; but I have come to the view myself that the suggestion does not amount to very much, and that is probably the reason the minister was prepared to accept it. I am prepared to vote for it, but I do not think it accomplishes the purpose that was being pressed from this side of the house in the debate last Thursday.

The minister says it would make very little difference to the practice that is now in vogue, as it is already possible for a court to fix a later day for the payment of a fine. All this suggested amendment does is provide for an instalment basis. The real nub of clause 694, as I see it, is in the first two subclauses, particularly in subclause 2 which almost makes it mandatory for a convicted person, not being able to pay the fine, to be sent to jail for a period of not more than six months.

I realize that there was quite a bit of discussion on this matter on Thursday; I realize that from this side of the house we did not make too much of an impression upon the mind of the Minister of Justice. But it does seem to me that the matter calls for further consideration, and that the proposal of the hon. member for Oxford, to which I take no exception, does not meet the point.

Has the minister given any further consideration to the larger point in the meantime?

Mr. Garson: Yes, I have, and this is not the first time I have given it consideration. I tried to be as clear as I could the other day in saying that we in this parliament are confined to the enactment of the criminal law. We can empower, as we did many years ago, magistrates to give time for the payment of fines; but we have no authority over the enforcement of the criminal law. Whether the magistrates in Canada will exercise the powers we confer on them by this particular clause we are discussing is a question over which we have no authority.

I was most frank with the members of the committee the other day in explaining what

seemed to me to be the reason clauses of this sort were invoked to a much greater extent in Great Britain than they are in Canada. To me it is perfectly clear that one of the main reasons for this is that the United Kingdom has a very extensive and thorough-going system of probation, with probation officers in the large numbers that are necessary to supervise the granting of time for the payment of fines. Until such a system of probation is provided in the provinces of Canada, all we can do is provide in this clause that the magistrate shall have power to give time for the payment of fines, and hope that with his present facilities he will do this as frequently as possible. But so far as the power to do so is concerned, he has that power, and he has had it for a long time.

When the hon. member for Oxford made the suggestion that we should spell out this power and amplify it a little, I accepted this suggestion with alacrity, as my hon. friend from Winnipeg North Centre pointed out. Of course we have no objection to spelling out what is part of the law now. But I do not want any person to think or say that our willingness to spell it out is an admission on our part that our present law is defective. I think what could be done under the amendment suggested by the hon. member for Oxford could be done under our present law. Having given consideration to his language, perhaps it would make it a little clearer if we adopted it. I have the necessary amendment here, and I shall ask one of my colleagues to move it in these terms:

That subclause (3) of clause 694 be deleted and the following substituted therefor:

"(3) A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or, if the accused is unable to pay forthwith, at such time and on such terms as the summary conviction court may fix."

With regard to the use of the word "time" in the singular, perhaps I should say that by the Interpretation Act a reference like that in the singular includes a reference in the plural. Therefore it would be at such time or times and on such terms as the summary conviction court may fix. I do not see how within the limits of the English language we can go any further than that in conveying power to the magistrate. The mere fact of our conveying it is no assurance that the magistrate is going to exercise this power. All we can do is to convey it. If it meets with the approval of hon. members I would be glad to suggest that the Minister of Mines and Technical Surveys move this amendment.

Mr. Prudham: I move accordingly.

Mr. MacInnis: I think what we are trying to do here is eliminate the impression that a person is being imprisoned not for the crime of which he was accused but because he could not pay the fine levied for that crime. I did not like to hear the hon. member for Winnipeg North Centre say the minister was accepting this because it did not amount to much. I have been associated with him for some considerable time in the committee and I do not think—

Mr. Knowles: The hon. member said worse this afternoon.

Mr. MacInnis: No. Certainly the words were not very appropriate. I agree that if a time can be set to pay a fine fixed by a summary conviction court it means that a time or times may be fixed. I do not think the long amendment proposed need be considered. All we need to say is "at a time or times." I think that meets the case by adding just two words and making it read, "at a time or times to be fixed by the summary conviction court."

Mr. Garson: That was the very suggestion I made. As I say, under the Interpretation Act "time" means "times", so from the draftsman's point of view it would be almost a summary conviction offence to put in "time or times". However, I have no objection. So far as having people understand it is concerned, I think if we put "or times" in the present subsection it might be more effective for at least the lay members of society. Whichever the committee prefer is quite agreeable to me.

Mr. Ellis: Do I understand that if this amendment carries in all cases the magistrate will give sufficient time to pay the fine?

Mr. Garson: It will be up to the magistrate. I suggest to my hon. friend that with all the good will in the world, if you are going to set up magistrates and judges whose job it is to exercise judgment on the facts, you cannot tell them what to do. We have to leave it to the judge or magistrate to decide on the facts of the case whether to give time or not. If the magistrate or judge is satisfied that an accused cannot pay forthwith, he may give time, but he has the right to decide in every one of these cases. He has to decide whether he will do it or not.

Amendment agreed to.

Mr. Fraser (Peterborough): The accused has to ask for that?

Mr. Garson: I would not say that; if the magistrate is satisfied.

Mr. Knowles: Before the clause as amended carries there is one other point on which I would like to say a few words. About an hour ago the minister relied on inflation as an argument in connection with another clause where the amount of $25 was being raised to $50. What he does here is raise $50 to $500. Is it the same inflation that is responsible for this? The code as it now stands under the analogous clause—

Mr. Garson: To what section is my hon. friend referring?

Mr. Knowles: To clause 691 (1). The cross-reference is to section 1052 (2) in the code as it now stands. The minister will note that in the section of the present code it is $50 while in the clause now before us it is $500.

Mr. Garson: The offences are quite different. If my hon. friend will look at section 1052 (2) he will see that it reads:

> Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both.

Mr. Knowles: Clause 694 (1) reads:

> Except where otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

What is the difference? Not only does it say the same thing in a slightly different order of words, but the note on the right-hand page tells us that clause 694 (1) is an analogue of section 1052 (2). Unless I do not understand the English language it seems to me they are saying the same thing. It is on that basis that I still press the point as to why inflation results in $25 being raised to $50 in one case and in $50 being raised to $500 in another case.

May I point out that in this same revision of the code we made a change in the opposite direction in respect to penalties imposed upon corporations for summary conviction offences. As the old code stood, the penalty on a corporation for a summary conviction offence was in the discretion of the court; there was no ceiling, there was no limit. Under the new code a limit or ceiling of $1,000 has been fixed. In the case of the corporation it has been brought down from infinity to $1,000. In the case of the individual it has been raised from $50 to $500.

I would like to put two questions to the minister. First, why has the $50 been raised to $500 when in the other case the increase was from $25 to $50? Second, how does the minister justify this different treatment of individuals and corporations? In the case of the corporation the maximum penalty upon summary conviction has been reduced,

but in the case of the individual the maximum penalty upon summary conviction has been increased.

Mr. Garson: Mr. Chairman, the answer to my hon. friend's question is this. If he will go through the present code he will see that with regard to a large number of offences punishable upon summary conviction it is provided in each case that everyone found guilty upon summary conviction shall be fined X dollars. The cases we are discussing here in Bill No. 7, however, correspond to the n.o.p. items in the tariff, namely, those not otherwise provided for; and in this bill there are few if any penalties specifically provided. My hon. friend might say, "suppose that is so; why should these cases go up from $50 to $500?" He will find other sections in the code which state that a certain offence is punishable upon summary conviction or by indictment; and in that case, dependent upon how heinous the circumstances are, the crown prosecutor has to decide whether to lay a summary conviction charge or a charge as an indictable offence.

I have no specific instructions upon this point because I do not recall any specific reference to it in the report of the commission. However, I believe a possible reason for this maximum penalty being increased to $500 in summary conviction cases which are not otherwise provided for is that it may give a greater discretion to the prosecuting officer in deciding upon the facts of a certain offence whether it will be a summary conviction charge or an indictable offence if there is a reasonably heavy penalty which can be imposed if tried summarily before a magistrate. In relation to these penalties in Bill 7, my hon. friend should keep in mind that they apply to a large number of offences that have no penalties of their own; that they are maximums, and that the magistrate can impose not more than that maximum but anything less than that if he so wishes.

So far as the limitation upon the penalty chargeable against a corporation convicted on a summary conviction offence is concerned, I believe the last time this matter was before the committee my hon. friend and I debated it at considerable length. I do not know if I convinced him on that occasion, but my thesis then was that for the limited number of summary conviction offences in the code that a corporation can commit, $1,000 was a reasonable figure as a maximum penalty; and that it was quite unreasonable, as it is under the present code, to say they could be fined an unlimited

amount, because no magistrate would ever impose that sort of penalty, and a provision of that nature would simply be inoperative.

Mr. Knowles: But why does not the argument which the minister puts forward in respect of the individuals apply to corporations? He states that in respect of an individual the decision of the prosecutor as to whether to charge the individual with a summary conviction offence or an indictable offence may be influenced by the amount of the fine which can be levied under a summary conviction charge. Should not that same reasoning apply in respect of a corporation? I would remind the minister that a $500 fine may be pretty serious when applied to an individual, but a $1,000 fine might just be peanuts for a corporation. On the basis on which the minister is arguing you may by the same token make it necessary for the prosecution to charge a corporation with an indictable offence rather than a summary conviction offence because the fine upon summary conviction is too low.

Mr. Garson: On that score, Mr. Chairman, I would have thought that in most cases where we have a liability in excess of $1,000 the prosecutor would be inclined to charge it as an indictable offence against the corporation.

Mr. Ellis: Mr. Chairman, I believe there is an assumption that the fine levied on the individual would always be a low fine and not approach the maximum, whereas a fine levied on a corporation would be at the maximum. On March 10 I asked the minister whether he thought the maximum fine on an individual of $500 was quite fair when one considered that the maximum fine for a corporation was $1,000. The minister replied, as reported at page 2870 of *Hansard*:

> Yes, Mr. Chairman. I certainly think that is a fair basis in respect of summary conviction offences; and it applies only to summary conviction offences.

The amount of money is not important. What is important is this ratio of two to one. If the minister points out that a court might levy a fine of only $100 on an individual, then by the same token the court can levy a fine of one-fifth of the maximum on a corporation, namely $200. The minister's comparison between $500 and $1,000 misses the point altogether, and I fail to see how he can suggest that a $500 maximum for the individual is fair when we consider the maximum fine for a corporation is only $1,000.

Mr. Garson: I wonder if the hon. member is not basing his thinking upon the assumption that all corporations are wealthy and

all individuals are poor. If a man were a millionaire and the magistrate wished to impose a fine upon him which would be somewhat painful I would think $500 would not be at all out of the way. I do not believe it is correct, however, to assume that because it is an individual on the one hand, and a corporation on the other, you may not have an exceptional group of individuals on whom you would have to impose a very stiff fine before they felt it at all. In cases of that sort I am sure my hon. friend, if he were a magistrate, would be glad to have that sort of discretion which the $500 limit would give him.

I do not believe if you were to examine the average of the penalties imposed under a clause of this kind they would go anywhere near the $500 mark, because most people are not too wealthy. Where the magistrate, on the other hand, feels he has to impose a penalty on an accused which the accused will really regard as a penalty he is provided under this clause with the proper authority to do so if he feels the facts are sufficiently serious.

Mr. Ellis: I should like to draw the minister's attention to the wording of the section we have just been discussing. Section 694, paragraph 1, reads as follows:

> Except where otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

I raised this point a day or two ago and the minister pointed out that in the event of a wealthy individual being brought before the court, the magistrate could not only fine him the maximum of $500 but could also impose a jail sentence.

Mr. Garson: That is right.

Mr. Ellis: This evening the minister is saying that the maximum fine is $500. In other words it is suggested that a millionaire could be brought before a court, and the maximum fine provided under this code would be $500 on summary conviction. But as the minister will note, this section enables a magistrate to impose a jail sentence in addition to a fine. I do not think the comparison the minister has made is valid at all. A corporation cannot be sent to jail on summary conviction. A fine is all that can be levied against it. I think the minister should bear in mind the fact that in the event of a wealthy individual being convicted, on summary conviction, the magistrate can impose both a fine and a jail term up to a maximum of six months.

Mr. MacInnis: I think perhaps we are using wrong comparisons here when we are comparing the fine that can be levied on a corporation on summary conviction and the one that can be levied on an individual on summary conviction. I think we are also confusing the issue when we talk about millionaires being subject to this fine as well as ordinary individuals. For every millionaire who will be brought into court on a summary conviction charge there will be hundreds of thousands or a million brought in who are people with little means at all. It is really for these people that we are making the law. We are not necessarily going to punish the millionaire to a greater extent just because he happens to be a millionaire. We are punishing him for the offence, and not for what he possesses.

As I mentioned this afternoon in connection with another section with which we were then dealing, I do not know how long section 1052 (2) has been in the code, but I imagine it has been there for quite a long time. If we have got along all these years with a fine of $50 for a summary conviction offence I should like to hear what arguments were given by those who were revising the code for increasing it to $500 and, as has already been pointed out, six months' imprisonment. The maximum in both cases can be imposed.

I am sure the minister would be meeting the wishes of members in all sections of the House of Commons if he were to reduce this fine. We have had considerable inflation in the last few years. Let us say there should be a 100 per cent increase and make the fine $100. I wish the minister would give that matter some thought before we pass this clause.

Mr. Garson: My friend the hon. member for Vancouver-Kingsway wanted me to give an example of a penalty of $500 for a summary conviction offence. If he has the existing code in front of him I would refer him to section 537, which reads as follows:

> Every one is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five hundred dollars over and above the amount of injury done, or to three months' imprisonment with or without hard labour, who wilfully kills, maims, wounds, poisons or injures any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or kept for any lawful purpose.

That is a summary conviction offence. If I had the time tonight I could present other instances of summary conviction offences which under the existing code are punishable in the amount of a maximum of $500. This limit in Bill No. 7 that is being provided in

those summary conviction cases in which no specific amount is stated is not providing any greater penalty now than that which is provided in a number of individual cases in the present existing code such as the one I have just named.

There is a point which I thought I might deal with while I am on my feet, which was raised by my friend the hon. member for Regina City, I think it was, as to the corporation only having to pay a fine and, since you could not imprison it, it was let off without any further penalty. If he will look at clause 623 he will see that it says:

Notwithstanding subsection (2) of section 621, a corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence,

(a) to be fined in an amount that is in the discretion of the court, where the offence is an indictable offence, or

(b) to be fined in an amount not exceeding one thousand dollars, where the offence is a summary conviction offence.

Actually, if the court wished to do so it could impose a fine of $500 and then a further $1,000 in lieu of imprisonment, which would be $1,500. I only mention that matter in order to clear up the point. I am not saying it has any particular bearing on the argument we have been carrying on.

Mr. MacInnis: Section 537 spells out a crime that is punishable on summary conviction. I submit that section 537 is covered in the new code, the one that we are discussing now, in clause 386 which reads as follows:

Every one who wilfully and without lawful excuse

(a) kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose, or

(b) places poison in such a position that it may easily be consumed by dogs, birds or animals that are not cattle and are kept for a lawful purpose, is guilty of an offence punishable on summary conviction.

What the minister is suggesting here is that we may bring a great many much lesser crimes under this, shall I say, same umbrella of summary convictions punishable by a fine not exceeding $500 and six months' imprisonment or both.

Mr. Garson: My hon. friend uses the words "what we are doing here". One of the things we are doing here is taking section 537, which carries a penalty of $500 under the existing code, bringing it into the new Bill No. 7 and saying that every person who does that is guilty of an offence punishable on summary conviction. Then, not naming the penalty, we provide the general penalty clause for summary conviction generally, that the maximum fine shall be $500. We have not disturbed the $500 maximum penalty for this offence at all.

One of the purposes of this revision was to avoid the great, long sections with penalties in each. My hon. friend can see that this clause in Bill 7 is infinitely shorter and that it does not specify any penalty at all. But one of the consequences of doing that is that you must have a general penalty for all summary conviction offences which is sufficiently heavy that it can be applicable to all summary conviction offences including this one of maiming dogs, birds, beasts and so on. I think my hon. friend will agree that if the offence prescribed in section 537 of the existing code were brought into clause 386 of Bill No. 7 and the penalty for a summary conviction offence was $50, the effect would be that we would have reduced the penalty now attracted by that offence from $500 to $50.

Mr. Winch: That is the old section 537?

Mr. Garson: Yes, section 537 of the existing code.

Mr. Coldwell: The thing that strikes most of us is that you set a maximum penalty for all summary conviction offences of $500 or six months in jail, or both. Take a summary conviction offence under the new code such as vagrancy. There is a maximum penalty of $500 or six months in jail. Is it not out of line to have the same limit—I know it is a limit—for an offence such as the maiming of animals, the placing of poison for animals and so on?

The point we are making is that summary conviction offences that are relatively light are treated in exactly the same way, so far as maximum penalty is concerned, as offences that cannot be regarded as being at all light. I think that is a point which has to be made. It seems to me there should be some distinction. I am not a lawyer, and I hesitate to say this because I have never appeared in court and do not know anything about it—

Mr. Small: There is hope for you.

Mr. Coldwell: I hope I never shall appear in court. I do know that magistrates sometimes vary in their appraisal of an offence. You may find one magistrate who imposes a pretty stiff penalty for quite a minor offence. I think we are permitting a maximum penalty for summary conviction offences that is quite severe if the magistrate cares to impose such a penalty.

Mr. Garson: The whole plan of the present bill so far as summary conviction offences are concerned is to set one maximum limit on penalties for all summary conviction offences. No minimum penalties are set with the exception of one or two cases like drunken

driving and impaired driving and theft from the mail. Apart from that there are no minimum penalties at all. It is left to the magistrate to use his own discretion. With respect to the charges the hon. member has cited, in the case of vagrancy the traditional fine for that is long established.

I therefore do not share my hon. friend's fears at all. I think the provisions will work out very well indeed. As my hon. friend can see, Bill No. 7 is a much simpler and more understandable piece of legislation. It does away with the necessity of spelling out for each individual section what the penalty shall be, which actually does not mean a great deal because the circumstances of cases can vary so enormously with respect to the same offence. The magistrate is the one who determines the penalty, and I do not think that in 2 per cent of cases he will have any difficulty in respect of the points my hon. friends have made.

Mr. MacInnis: Not only may the circumstances in each case differ, but the state of the magistrate's liver may differ from day to day and have quite an effect on what the punishment may be. We cannot get away from the fact that clause 694 sets out to do what subsection 2 of section 1052 does at the present time, namely provide a maximum punishment for summary conviction offences. Subsection 2 of section 1052 reads:

> Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both.

We have taken the $50 and raised it to $500 and have maintained the term of imprisonment. The words "with or without hard labour" have been omitted, and I was interested to hear the other evening that they no longer mean anything. I thought we were getting more and not less law-abiding, and were beginning to feel that the imposition of harsh penalties was not the way to secure observance of the law. I just cannot understand it.

Mr. Fulton: I should like to make the point that we in this group have not agreed with the minister in the principle he has just stated, that there should be a broad general discretion left, that you prescribe a number of offences and then leave the penalty to be imposed as provided by clause 694. It has been our contention throughout that the practice followed in the present code, which has been the principle observed for the last 50 years, of spelling out a particular offence and prescribing the particular penalty to be imposed for the particular offence, is the proper principle to be followed in drafting a criminal code for Canada. You carry out that principle in so far as is possible in respect of each offence you create.

It is true that under the old code you did have section 1052, but it will be seen that the application of that section was very much more limited than will be the application of clause 694. Under the old code the principle was that particular offences were spelled out for which specific penalties were provided. Then there was the catch-all for those cases where you did not provide a particular penalty, namely that the maximum would be $50 or six months. The principle is reversed in the new code. By and large summary conviction offences are left without specific penalties provided, and then there is the catch-all of clause 694.

However, the fact is that it is too late now. In some cases we have tried to amend particular sections but it has not been possible. We are now brought up against the practical application of this principle, and it has been pointed out by my hon. friends that an offence obviously of a less serious nature than another may carry the same penalty simply because they are all left to be covered under clause 694. The question of enlarged jurisdiction does not apply here because these are summary conviction offences, but it is a part of the pattern to which we object, the lessening of the particularity of the Criminal Code of Canada.

We have maintained throughout that in drafting a criminal law you should be as particular as possible and not as general as possible, so it will still be proper to observe that other maxim of the law that ignorance of the law is no excuse. Under this clause a person does not know what penalty may be imposed as a result of the offence with which he is charged, because the whole thing is left to the discretion of the magistrate. I do not think it is a sound principle.

Mr. Barnett: I have listened to this discussion for some time, and finally decided I should more or less repeat the arguments I advanced the other day in connection with this clause. I know that we are living in a machine age, but listening to the hon. member for Kamloops I wondered whether we were going to try to create a situation whereby the administration of justice would be a sort of push-button affair. I think we have to recognize that the matter of human judgment is still going to be involved in the effective administration of the law. It is important to build up a group of magistrates across this country who have some degree of common sense. Possibly there may be times when a certain amount of legal knowledge would be an added advantage. I shall

not go into that at the moment. I have to repeat, as I did the other day, that I do not altogether share the concern of a number of my colleagues in respect to the increase in this maximum. I feel that, in so far as they have expressed themselves, they have been missing the important point in connection with the working of this increase. I have discussed this point with a magistrate whom I consider to have considerable practical experience. He has told me it is one of the problems with which he is confronted from day to day. He felt that the old limitation of a $50 fine meant nothing to a great many of the people with whom he had to deal. He felt that in order to effectively deter them from committing that sort of crime again he was forced to impose a jail sentence.

His argument was that sending a man to jail did two things, with both of which he disagreed. In many cases it rendered the man open to association with more hardened criminals, which might start him on a life of crime. The other thing to which he objected was the fact that the taxpayers of the country were forced to support that man while he was serving his jail sentence. Time and time again he suggested that if he were free to impose a fine which would hurt a little bit it would be much more satisfactory. If the magistrate is a reasonable man with common sense judgment in respect to the gravity of the offence, in respect to the circumstances of the culprit's income and so on, in many cases the $500 maximum fine would not be at all unreasonable. In fact I can think of a number of people whom I know that it would take $500 to hurt. Certainly I would much rather see them pay a $500 fine than go to jail for six months.

In my opinion that is the practical effect of raising this ceiling. For this reason I feel that some of my colleagues are perhaps a little bit too concerned over the question of raising this ceiling. Personally I believe that if punishment is going to be effective it has to be something the individual concerned is going to remember. I am all for trying to keep people out of our jails. I think it is to the advantage of a person convicted of an offence, and it is also to the advantage of the country, that we should not have any larger criminal population in our jails than is essential.

Mr. Knowles: There is obvious merit in the point my colleague has made, but I am one of his colleagues who is still concerned about the increase in this amount. The hon. member for Comox-Alberni has pointed out that under the law as it now stands there have been magistrates who

wished they could levy greater fines. The Minister of Justice has pointed out that $50 has not been the maximum penalty for all summary conviction cases. He cited one case in which the possible fine upon summary conviction was $500. In the past this $50 ceiling has been there only in respect of summary conviction cases not otherwise expressly covered.

I should like to ask the minister whether there are any precise fines associated with summary conviction offences in other clauses in Bill No. 7. Clause 694 is written in the same general language as section 1052 (2) of the former code in that it says:

Except where otherwise expressly provided by law—

Then it goes on to provide that in such cases the maximum is $500. Under the old code the ceiling on cases not otherwise provided for was $50. Other cases were provided for throughout the code. What is the situation with respect to Bill No. 7?

Mr. Garson: I do not think there is any case, Mr. Chairman, in Bill No. 7 for which there is specific provision. I may be wrong. There may be the exceptional case, but I cannot recall it. With regard to all the summary conviction offences that are tried before magistrates the thought was that we would have just one clause in the bill providing the penalty, and that is the one in clause 694.

Of course that arrangement would be impossible if the idea of my hon. friend were to be put into effect, because if he looks at the existing code he will find that a good many of the sections dealing with summary conviction offences give a long statement of the offence and then end up by stating that upon summary conviction the fine shall be $50 or $100 or $500 or whatever the case may be. This seemed to the commission, to the government and up until the present time, in connection with this bill, to everyone who has examined it—

Mr. Knowles: Were there representations on this point from the provincial attorneys general?

Mr. Garson: They have agreed to it. It was felt this provided a much simpler bill. My hon. friend must realize, and he will know this is a fact if he stops to reflect about it, that the huge majority of penalties imposed by magistrates or by courts at the present time are very much less than the maximum penalty. In all these fines there is just about as much relationship between these maximum penalties that are provided in the code as there is between the maximum authorized railway rates and the competitive

rates that are actually imposed. The magistrates cannot go above a certain figure, but in practice they do not come anywhere near this maximum.

A lot of these arguments which have been skilfully presented tonight, and in an abstract way carry some weight, have no application to what actually happens in the court because in imposing penalties magistrates never come anywhere near the maximum in most cases. It is not as if we were creating a new country as of tomorrow and we were providing a criminal code having had no past experience. The magistrates who are administering the present code and who will be administering the new code have a long tradition behind them as to the range of the fines that should be charged for vagrancy, for disorderly conduct, for driving to the common danger, and so on. Moreover there is not such a tremendous spread between the minimum and the maximum. It is true that $500 is a good deal of money, but I do not think myself that the magistrates in Canada will have any difficulty whatsoever in carrying out the provisions of Bill No. 7. The provincial authorities, who are much closer to it than we are, do not think so either.

Mr. MacInnis: I suggest to the Minister of Justice that the Criminal Code is a very real thing and is being enacted for a very real purpose. To say that the maximum fines are rarely if ever applied is all the proof necessary for me to show that the maximum should be less. Why put a fine in the code as a target for a magistrate to see if he can hit? It just makes nonsense of the code, particularly at a time when not only we but the world are beginning to realize that we are not going to make people good and law-observing by the size of the penalty we impose.

In order to terminate this discussion I am going to move an amendment, as follows:

That subclause (i) of 694 be amended by deleting the word "$500", and substituting therefor the word "$100".

The Deputy Chairman: Shall the amendment carry?

Mr. Garson: I think I should say very briefly that one of the obvious effects of this amendment, if it were carried, would be that a large number of summary conviction offences, which under the present code carry penalties in excess of $100, would be reduced from the amount they carry at the present time down to $100. If this amendment were put into effect we should have to change our whole approach to this question. We would have to go back to the individual summary conviction offences and provide a separate penalty for each. This would be a huge task. I mention these facts so we shall understand that we are not just voting upon the question of whether the penalty in a few cases will be reduced from $500 to $100. This will apply to all the summary conviction offences in Bill No. 7. As I say, there may be one or two exceptions, but I cannot recall what they are, and I do not think there are any.

Mr. Knowles: Surely the minister does not seriously advance the argument that it would be a huge task to make all these changes. Surely he should meet the point on its merits. If it is unfair to have the bill the way it now reads, and if it would be fairer to make that change even though it might be a huge task to go through the bill and make the amendments, I am sure he would be the first to agree that it should be done. Obviously he has admitted that it could be done. If the amendment of my colleague the hon. member for Vancouver-Kingsway carries and the minister feels that the summary conviction offences such as the one he cited a moment ago should carry a fine of a sum more than $100, he could go back to those clauses and have the necessary amendments made.

I would be interested in knowing, because I see the minister is going to get to his feet again, how many summary conviction offences there are at the present time that carry a penalty greater than $100.

Mr. Garson: I agree with my hon. friend that if it were considered desirable the mere fact that it would be a large task is not in itself any reason why we should reject the amendment. My purpose in making the remarks I did was simply to make it clear to hon. members just what the amendment moved by the hon. member for Vancouver-Kingsway involved. To be specific, it would involve going back over all the clauses in Bill No. 7 defining summary conviction offences which we have already passed, and amending them one by one to provide what the penalty for each of these separate summary conviction offences should be.

Mr. Knowles: Only where you wanted them to be more than $100.

Mr. Garson: Oh, yes; only where we wanted them to be more than $100. But take the very case the hon. member for Vancouver-Kingsway cited just a few moments ago, that of wounding or maiming dogs, birds and so on. That carries a penalty of $500. Unless the committee thought the present code was wrong—and I gathered from the remarks of the hon. member for Vancouver-Kingsway that he thought it was right—we would have to go back and open up that section and open up all the other sections and provide specific

penalties for them; whereas in the bill we have provided one penalty for all the summary conviction offences. That penalty is of general application, with no minimum, leaving to the magistrates discretion to exercise their own judgment within those limits.

Mr. Ellis: Can the minister tell us—

The Deputy Chairman: Order. Clause 694 of Bill No. 7 has already been amended in committee of the whole this evening by adoption of a new subclause 3, as moved by the Minister of Mines and Technical Surveys. I find in citation 669 of Beauchesne's third edition, at page 231, dealing with the committee stages of a bill, the following. I need not read all the long paragraph, but it says in part:

> Amendments must be made in the order of the lines of a clause. If the latter part of a clause is amended, it is not competent for a member to move to amend an earlier or antecedent part of the same clause.

I have no alternative but to rule the amendment out of order under the circumstances, and I so rule. Shall the clause as amended carry?

Clause as amended agreed to.

On clause 717—*Where injury or damage feared.*

Mr. Nesbitt: When we considered this clause at an earlier date I outlined to the minister certain views I had on the subject and did so, as I recall it, by means of an example which illustrates a situation that frequently occurs and which I do not feel is covered by the clause as it is set out at the present time. Has the minister *Hansard* of that date?

Mr. Garson: Yes.

Mr. Nesbitt: Then I need not take the time of the committee to repeat the example. What I had in mind was that the minister might consider an amendment to subclause 3(a), substituting something of this nature: "or commit the defendant to prison for a time not exceeding fourteen days if he considers under the circumstances that the defendant is likely to commit an indictable offence."

If the magistrate feels that having the defendant enter into a recognizance to keep the peace would not be sufficient to prevent him from committing an indictable offence, he may consider that a short cooling-off period in jail might do it. He would be able to put the man in jail for a period up to 14 days to prevent the commission of some serious offence.

As I said, in Ontario under the Ontario mental hospitals act a magistrate can order that an individual be sent down for 60 days for observation. However, from a practical point of view it sometimes does not work out. This is no reflection upon the province of Ontario, but sometimes the mental hospitals are full and there is no room. You cannot keep a man in jail under circumstances as they are at the present time, and it leaves the magistrate in an awkward position.

I gave an example the other day, and I referred also to these line-fence disputes where people sometimes get quite acrimonious and something unpleasant is likely to happen. I feel that the magistrate should have it in his power to place a person in a position where he would be unable to commit an offence. I have discussed this with a number of law enforcement officers and others and they are of the same opinion. I would be glad to hear the opinion of other hon. members on this matter.

Mr. Garson: I wonder if I get the facts correctly as they have been cited by my hon. friend. In a matter of this kind a great deal depends upon getting the facts straight. On March 11, as reported on page 2912 of *Hansard*, my hon. friend said:

> On one occasion the children's aid society in the city in which I live received a telephone call around midnight from a man who told them they had better come to get his children as he was going to shoot his wife and then commit suicide. There were several young children who had to be looked after.

As I understand my hon. friend, he feels that the difficulty arose because this information had been given to the children's aid society and they had no status to appear before the magistrate to swear out the information required under clause 717, which reads:

> Any person who fears that another person will cause personal injury to him or his wife or child or will damage his property may lay an information before a justice.

My hon. friend suggests that as a solution we empower the magistrate to put the individual in jail for a week or ten days, as he says, to cool off. That would mean, would it not, that upon the information, not of the person threatened but of some person else, to the effect that there was danger of the man complained against shooting some person or doing violence to him, the court on the strength of that representation should make an order sending that other man to jail.

I should think that sort of thing would be an outrageous invasion of a man's civil liberty. I should think the way for my hon. friend to get around the difficulty of which he speaks would be for the wife who had been threatened to be approached by the children's aid society and asked to go to the magistrate and lay an information within the terms of clause 717, that her spouse was

threatening to kill her and her children. That would be squarely within the clause, and the magistrate could order a recognizance.

As I understand my hon. friend's other point he says that the man complained against either would not enter into a recognizance or would not carry out its conditions. I suggest to my hon. friend that if under those circumstances the person complained against is so far gone in his aberration that he will not enter into a recognizance or obey it, the chances are that he would be certifiable.

Mr. Nesbitt: As the minister has stated, I certainly would be of the opinion that a person who would not enter into a recognizance would be certifiable, but I am not a psychiatrist. It may be that after an opinion has been received from the royal commission which is looking into the matter of insanity as a defence a little more light will be cast upon the question of what exactly constitutes insanity, whether it may be a temporary affair. At the present time I think the minister will agree that we do not consider a person temporarily emotionally disturbed as being not responsible for the nature and the quality of his acts. It may be advisable to wait and see what kind of recommendation is brought in by the royal commission, and stand this clause further.

There is one other thing I should like to bring to the attention of the minister. In Ontario we have a provision under the Ontario mental hospitals act to send a man to hospital for 60 days, but it may be that in the other provinces they cannot do that. As I say, from a practical point of view you occasionally run into the circumstance where there is no room in the hospital, and the person would have to stay in jail. I do not think that would be proper at all.

It would only be in extreme or unusual circumstances that a magistrate would have to invoke this provision, but there would be the unusual case where the magistrate might be afraid to let a man out for fear he would commit a dangerous offence, and he might want to keep tab on him, to use the vernacular. Possibly the minister would prefer to have it seven days instead of fourteen. You could keep your finger on the man during the cooling-off period. Perhaps it would be agreeable to wait and see what the report of the royal commission has to say.

Clause agreed to.

Progress reported.

BUSINESS OF THE HOUSE

Mr. Harris: Mr. Speaker, tomorrow we shall begin with the resolution with respect to assistance to the gold mining industry; then second reading of Bill No. 326, to amend the Vocational Training Co-ordination Act; then the resolution having to do with the setting up of an account in the consolidated revenue fund with respect to losses in connection with government property. We shall then call the Export and Import Permits Act to hear a statement on behalf of the government, and then the debate will be adjourned. Should all that be completed before closing time we shall continue with the Criminal Code.

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