CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Friday, April 2, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Applewhaite in the chair.

On clause 165—*Common nuisance.*

The Deputy Chairman: On Friday evening the committee was considering clause 165, and the amendment of the hon. member for The Battlefords. I would point out that if hon. members wish to check the wording of the amendment they will find it at page 3644 of *Hansard.*

Mr. Campbell: Mr. Chairman, in discussing the amendment to the Criminal Code which was proposed by the hon. member for Prince Albert on Friday evening, it seemed to me that the Minister of Justice showed some willingness to co-operate in the matter, and to try to find some method of handling this whole question of pollution. In his criticism of the amendment offered by the hon. member for Prince Albert, the minister said:

The Deputy Chairman: I would suggest that the hon. member for The Battlefords might perhaps wait for a moment until there is enough silence in the house for the Chair to hear what he is saying.

Mr. Campbell: Thank you, Mr. Chairman. I was saying that in the minister's criticism of the amendment moved by the hon. member for Prince Albert on Friday night the minister said, as reported at page 3631 of *Hansard:*

> . . . if my hon. friend adopts a broad enough wording to really provide a solution to this problem, and we put such broad wording into the Criminal Code, which has to have general application to the Dominion of Canada from coast to coast, then I wonder what would be the position of most of the municipalities and a large number of the industries, for example, on the Ottawa river and the St. Lawrence river system under this section which my hon. friend is proposing to move.

Later on, at page 3632, the minister had this to say:

> I am trying to confine my remarks to the western problem we are discussing. I think the hon. member for The Battlefords is quite right in this, that if the solution which we provide for the North and South Saskatchewan rivers were to take the form of an amendment to the Criminal Code it would be a solution which would automatically have to be applied to all the other rivers in Canada. And, in judging what we should do in that regard, we must keep that point in mind.

Well, Mr. Chairman, I did make the suggestion during the course of the minister's remarks that we should make the act applicable to all of Canada. I realize the difficulties we would be up against if the act were amended in the way suggested by the hon. member for Prince Albert. I fully realize that there are no doubt thousands of industries all over Canada which are now polluting the waters of our beautiful rivers, and for that reason the amendment has been worded so that the act would apply only to interprovincial rivers. To clarify that point I wish to read the amendment again. My suggestion was that the clauses be renumbered and a new clause be inserted reading as follows:

> Every one who, by himself, his agent or employee, places or discharges, or causes to be placed or discharged, or suffers to be placed or discharged, in, upon or near, springs, lakes, streams or rivers, any industrial waste or any other polluting material of any kind whatsoever, which either by itself or in connection with other matter may corrupt or impair the quality of the water thereof in another province or render such water in such other province unfit for accustomed or ordinary use is guilty of an indictable offence and liable to imprisonment for two years, or a fine of not less than $2,000.

This amendment, Mr. Chairman, would overcome the objection raised by the Minister of Justice who, later in his remarks, as reported at page 3631 of *Hansard,* had this to say:

> But what I do suggest is this, that when my hon. friend says there is no offence in Bill No. 7 which covers this act, I would refer him to clause 165 which provides:
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> "Every one who commits a common nuisance and thereby
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> (a) endangers the lives, safety or health of the public, or
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> (b) causes physical injury to any person
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> is guilty of an indictable offence and is liable to imprisonment for two years".

The minister continues:

> "For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
>
> (a) endangers the lives, safety, health, property or comfort of the public, or"

The hon. member for Prince Albert then asked:

> What is the unlawful act, or what is the legal duty?

The minister replied:

> The unlawful act, among other things, would be the breach of the statute which the hon. member for The Battlefords read a moment ago—by discharging the effluent into the river, in contravention of a statute of the province of Alberta or regulations passed thereunder. That would be an unlawful act beyond question, if we did not go on and deal with other aspects of the crime of a common nuisance and indicate that anything which was done in contravention of the public interest might, in itself, apart from being in contravention of the statute be regarded as an unlawful act.

The minister then went on the deal with another matter and it seemed to me that the committee was left up in the air as regards this. Apparently the minister was

trying to adduce the argument that section 165 did give protection and did provide that it would be an unlawful act to endanger the lives, safety, property or comfort of the public, and the implied suggestion of the minister, as I took it, was that action could be taken under this section. However, he did not clarify his statement, nor did he make a positive statement that under section 165 of the Criminal Code as it now stands it would be an unlawful act to pollute the waters of the Saskatchewan river.

Later in the debate the hon. member for Rosthern, dealing with clause 165, had this to say, as reported at page 3641 of *Hansard:*

> Obviously this matter should be dealt with under "nuisances". I say to the minister that if there is any doubt about this being covered under the "nuisance" clause that doubt should be cleared up. However, I do not think there is any doubt in my own mind that it is covered. If there is any doubt, then there should be no question about its being covered; because surely it should be a criminal offence to pollute the waters of a great river like the Saskatchewan so that the people cannot use it for drinking purposes, and so that those unfortunate people in mental hospitals or the provincial hospital at Battleford, who have no means of defending themselves, have to drink water that is practically undrinkable.
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> That is something that would certainly be a crime; and if there is any doubt about it, it should be made a crime. It is an interference with the health, safety and rights of the public who will use the water of a great river like the Saskatchewan river. I suggest with all deference that if it is not definitely a crime today, then parliament should make it a crime, because there can be no doubt of our competence under the constitution to declare it a crime.
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> However if it is fully dealt with, as the minister and the law officers of the crown are satisfied, so that action can be taken under the Criminal Code, there should be no need for an amendment. But I repeat that if there is any doubt I would strongly urge the minister to consider an amendment to section 165 to make it very clear that people do not have to go to court and get an injunction before it could be declared a crime under this section. If it is not clearly a crime or an offence under the appropriate section of the Alberta statute—as I think it is—which would bring it under section 165, then I suggest consideration should be given to making it very clear that it is an offence.

Later in the debate, as reported at page 3643, the hon. member for Rosthern said:

> Before the question is put I should like to have the minister give an opinion in regard to what I put before him.

Again, in the next column, the hon. member for Rosthern stated that he wanted an answer to his question. That question was as to whether section 165 was effective as it stood, and I do not believe the Minister of Justice answered that question.

I agree with the hon. member for Rosthern that this matter should be made crystal clear in the Criminal Code. The mere fact that the Canadian Chemical Company was willing to take a chance that this legislation could not be used against it, and the fact that the counsel for the city of Prince Albert, if my information is correct, did not consider that they could take action under the code as it is, would indicate some doubt as to its effectiveness. I should like the minister to make a statement now and give this house a positive assurance that section 165 as it now stands makes it an offence to pollute the waters of this river.

If a man robs a bank there is no question about the Criminal Code being competent to put him in jail for a long period of time, and what we want in the Criminal Code is that when any industry robs people of their drinking water the act should be made crystal clear and state that such an act is an offence.

There is one question I want to ask the minister. Have there been any prosecutions under this act and, if so, how many have been successful? Was the act written with any idea whatsoever that at any time in the future it should have the power to deal with the pollution of the rivers?

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

Mr. Garson: If there are any other members who would like to take part in the debate, I should be glad to keep my seat until they have finished so that I can cover at one time all the questions which are raised. Otherwise I can go on now.

Mr. Campbell: There is one other matter which I should like to mention, if the minister would rather answer the questions later on. The minister spoke about what was being done by the international joint commission. I think he mentioned that the solution might be to set up some kind of board that would have similar powers. Another suggestion he made was that the prairie waters control board might be given further powers and additional scientific members who would have knowledge of the particular problem. I think there is a good deal of merit in that suggestion. I do not know who the member of the government is on the board representing the Dominion of Canada but I think that the white fathers' representative here might consider seriously calling this board together or calling the representatives of the provincial governments together—perhaps the western provincial governments only—to discuss this problem and to see whether they cannot work out some suitable solution. I think this is a worth-while idea. I do not want to develop it further.

However, there was one further thing I wanted to say and it is this. The people of Prince Albert wrote to a number of the

members of the House of Commons and to the ministers asking for their support in getting this matter cleared up. One of the members to whom the letter was written was the hon. member for Meadow Lake. The town council of Battleford wrote to the hon. member for Meadow Lake and they asked him to support me in my efforts to have something done here in Ottawa. I spoke to the hon. member for Meadow Lake a few days ago, told him that I would be raising this matter and that I hoped he would give me some help.

By the way, I want to pay tribute to the hon. member for Rosthern for the contribution that he made the other evening. I know that the people back home will be glad that he made that contribution. Incidentally, I want to say this before I put this letter on the record. If the minister can satisfy me that this section 165 will do what we want it to do, namely give our people protection, then I would be satisfied to withdraw the amendment. Or if the minister will agree to make it crystal clear in the section that the section will cover the pollution of any interprovincial river, I would be quite happy. As I said the other evening, I do not want to try to change these laws in order to make them effective. That is the business of the minister and his department. As I said when I started, he showed some willingness, I thought on Friday, to co-operate in this matter. I am perfectly willing to co-operate if the government will bring in an amendment to this section or will make it crystal clear that this section will give our people protection.

Another question that I intended to ask but did not is this. Could the city of Prince Albert take out an injunction against this company if it started to pollute the river again? The minister can take that question as notice. I now want to put this letter on the record. It is written by the hon. member for Meadow Lake to Mr. L. Pleasance, town clerk, Battleford, Saskatchewan, is dated February 8, and reads as follows:

Dear Mr. Pleasance:

Thank you for your letter of February 3 received this morning. I wish to thank your council also for bringing this matter to my attention. As a matter of fact legislation is already in effect to prevent the dumping of wastes in the rivers of Canada.

I do not know where he gets that. The letter continues:

This is federal legislation to protect the fisheries of the country, but in all cases action concerning it is taken by the provincial governments concerned. This has been the case since natural resources were returned to the provinces some years ago and they have full jurisdiction over any waters or resources within their provincial boundaries. This being the case and elimination of the trouble the desired result, there is no more point in Mr. Campbell introducing a resolution or bill in this house than there would be for some private member to introduce one in Washington, London or Cape Town, except for its political value.

It is obvious from your letter that neither you nor your council were aware that the federal government had no jurisdiction in this matter and that it was the sole prerogative of the province or provinces concerned. You are in touch with government matters much more closely than the ordinary citizen who likely will know even less of such matter. It would appear that Mr. Campbell is counting very largely on this situation in bringing in his proposed resolution to convey the impression through his motion in the house, that in some way the federal government is not living up to its responsibilities, or just declines to do anything about this situation. The waters of the Saskatchewan river within that province are the sole responsibility of the government at Regina. The federal government has no more jurisdiction in this matter than your town council, and the debating of any resolution concerning its pollution in the House of Commons is of no more material help than such a debate would be in your council.

I cannot say that such a debate in the house would not be helpful to Mr. Campbell's party, especially in view of the fact that so few people are properly informed as to where responsibility lies. The provincial member for The Battlefords could well bring in a bill of this kind in the coming legislature and he should be vigorously supported by the provincial member for Prince Albert. This, of course, may not be quite so desirable from a political standpoint, but could be very helpful in a material way.

To look all the facts of this matter squarely in the face, the Saskatchewan government is not exactly in the driver's seat. The pollution is occurring in Alberta and any directives to the plants, remedying the trouble, must necessarily be issued by the government of that province. Alberta is particularly interested in attracting industries to it at this time. It does not want to put any obstacles in the way of industries locating there. The pollution in question is not affecting any sizeable communities in Alberta and when the decision has to be reached between having happy Alberta industries or unhappy critics in Saskatchewan, they choose the former and let Saskatchewan howl to high heaven. This makes it all the more a matter for negotiation and at the top level, between the governments of Saskatchewan and Alberta.

Alberta could stop this pollution in five minutes, if it so wished. All they have to do is tell the plant to close down until such time as they have proper disposal facilities. The adjacent province of British Columbia, which has fifty times the waste dumped in its rivers, has to do something about this situation within its border, because the rivers flow mostly in their province from beginning to end and affect large communities all the way down to the sea. The moment objectionable pollution occurs in that province, the offending plant is closed down forthwith, until they provide adequate settling pools or other purifying facilities before the wastes are dumped into the river. Industries know this in that province and they provide the facilities before they start operations.

In the light of these facts Mr. Campbell's political zeal in these circumstances is quite understandable.

I will be pleased to contribute my two cents' worth to the debate as you suggest, whenever it occurs,—

Some hon. Members: Oh, oh.

Mr. Knowles: Inflation.

Mr. Campbell: The letter continues:

—but I do not think your salvation lies in this direction. I will be in Saskatchewan later this week, but I do not think the debate will occur for some time yet and I will be pleased to take part in it. Certainly I can speak with some authority as to the quality, smell and taste of the water. Connected with the oil business as I was for some years, I have had many inadvertent gulps of everything from kerosene to diesel fuel. I can emphatically say that I prefer them decidedly. I have never tasted anything more horrible than what has been distributed in your area as water.

In the absence of immediate relief from your troubles, I would suggest that you move your whole community to the pure air and sparkling water of the Meadow Lake riding. There you will be in the tremendous watershed of the Churchill, whose unfathomed waters defy pollution. From our own selfish standpoint we would be pleased indeed to have our population augmented by such good people as yourselves.

With kindest personal regards to you and your town council, I am,

Yours sincerely,

John H. Harrison,
Member for Meadow Lake.

Mr. Herridge: Mr. Chairman, I think you will agree that I have been most restrained so far in this debate, but this is a question in which I have been interested for many years and I wish to say a few words on the amendment. I was rather surprised to hear the letter just read by the hon. member for The Battlefords, and having heard it I would judge that the hon. member for Meadow Lake rather imputed motives to the hon. member for The Battlefords. If there is one member in this house who can be considered as taking a non-partisan view when he is dealing with matters affecting the people of his whole constituency, regardless of their party interests, I think it is the hon. member for The Battlefords. Strangely enough, I have just been reading the Saskatoon *Star-Phœnix*, and apparently the people of The Battlefords have an entirely different opinion. In order to correct any false impression that may be created by the most unfortunate and ungentlemanly letter that has just been read, I should like to quote briefly from an issue of the Saskatoon *Star-Phœnix* of recent date. The heading of the article is "Back Efforts to Put Stop to Pollution". The article reads as follows:

Efforts of Max Campbell, M.P. for The Battlefords, to have the federal government take action to halt pollution of the North Saskatchewan river, received support from three different sources here in the last few days.

Hall Clink, president of the local Liberal executive, announced Monday that a letter had been airmailed to Hon. Paul Martin, minister of health, urging immediate government action. A. J. Bater, former Liberal M.P. for The Battlefords, has also taken up the cudgels on behalf of people of Battleford.

From his home at Baljennie, Mr. Bater informed the *Star-Phoenix* by telephone that he was also supporting the move for federal action and was writing to Ottawa to this effect. He described the situation as "deplorable" and said that a number of his neighbours, who derive their water supply from the river, were also affected.

The Battleford board of trade wired Mr. Campbell at the week end that they were supporting him in his fight for federal action and as a token of gratitude for his efforts on behalf of this town, had named him honorary president of the board.

The editorial goes on to commend Mr. Campbell, and I am quite sure that everyone will agree that the letter written by the member for Meadow Lake to the town of Battleford was entirely uncalled for and most unfair. Having got that off my chest, I want to say a few words on this subject, and I am particularly pleased to see that the Minister of National Health and Welfare is listening closely.

Mr. Martin: I was going to point out, now that the hon. gentleman has had his opportunity to commend the hon. member for The Battlefords, that I hope he will not fail to recall the ruling made by you last Friday, Mr. Chairman, namely, we are not discussing whether or not the government of Canada has done its duty in this matter but whether or not a particular amendment is to be rejected or accepted. Thus far I am sure I would have strong grounds for taking part in this debate and defending the position that we have taken, but I would hope that the hon. member, having had the opportunity to commend his colleague, will, with the rest of us, stay in order.

Mr. Herridge: I can assure the minister that my commendation is a purely spontaneous movement, you might say. I am speaking to the amendment, and as a result of my personal experience in this matter I want to advance some arguments in support of the amendment because I believe that the legislation we have on the statute books at the present time does not meet the situation. I shall be very interested in listening to the minister's reply to the question put by the hon. member for The Battlefords, and I trust that the minister will be able to assure the house that action can be taken under the Criminal Code or that something can be done to get a national approach to this question through the water resources board or something of that sort. If so, the debate will have been worth while.

I think the debate has focused attention on a very important question, one of long standing that affects not only the prairie provinces but all provinces of Canada. As I see it, the pollution of water is one of the most noxious weeds of industrial development in any community. Of the three media of pollution, land, air and water, pollution of water is the most damaging and the most dangerous to

mankind. That is why I think we are justified in taking a little time to discuss this clause and the proposed amendment.

Unfortunately there are too many people today who are not aware of the situation. They are not directly concerned with it and possibly think that pollution is not something that is going to affect them seriously in their lifetime. Strangely enough, when you read the history of the British Columbia Indians you find that the Haida Indians, the coastal Indians, hundreds of years ago made pollution of any stream a criminal offence under their code punishable by death. We are not seeking punishment by death, but that does indicate a better understanding of the problem than many people have today. That is why the hon. member for Lake Centre and the hon. member for The Battlefords have suggested amendments that would at least put some teeth in the present law.

I think one or two members have made some reference to this matter being a prairie problem, but I am quite sure that it is a national problem. It is also a considerable problem in British Columbia, and that is why I support the amendment. We have pollution of the waters of the north arm of the Fraser river making the water unfit for drinking and affecting the beaches, according to reports prepared by officials of the federal government in connection with the Fraser river—I forget the exact name of the board.

Mr. Fulton: Dominion-provincial board, Fraser river basin.

Mr. Herridge: I thank the hon. member for Kamloops for informing me. Pollution is causing contamination of shellfish so that they cannot be used and in certain areas it affects water for irrigation purposes because it causes a closing of the pores and the water will not penetrate through the soil. Vancouver and Victoria harbours are also affected by pollution.

In the interior of British Columbia we have pollution caused by the mining companies, about which a number of us have been concerned for some years. It has made the water unfit for domestic use, destroyed the fish in some of our streams, and in one case actually damaged a power plant through the erosion of the working parts by particles contained in the water. We have pollution by lumber companies caused by sawdust, shavings and slabs which affects the quality of the water for domestic purposes in some cases. It is injurious to fish and on occasion a danger to small craft so far as navigation is concerned.

What legislation have we in effect at the present time? We have the British Columbia health act and the British Columbia water act. Under this legislation the officials, in my opinion, have been doing a very good job in recent years but their scope is limited. Officials of the British Columbia provincial service have told me that we will never have effective control of the pollution of our rivers in Canada until we have some federal action and treat it as a national problem.

So far as federal legislation is concerned, certain clauses in the Fisheries Act make it possible to prevent pollution. Then there are the Migratory Birds Convention Act, the Navigable Waters Protection Act and the Canada Shipping Act, all of which contain clauses dealing with the question of pollution of rivers, lakes, streams and so on. I understand there are also certain regulations passed by the Vancouver harbour board and bodies of that kind.

But regardless of all this legislation, provincial and federal, pollution of water in Canada is increasing daily, and I think it is largely because the unrelated efforts to control are ineffective. As a result, violations are general, and I know of very few prosecutions.

In support of my argument supporting the amendment moved by the hon. member for The Battlefords, I should like to quote from a speech made by Mr. P. A. Larkin, chief fisheries biologist of the British Columbia game commission, at a recent conservation conference, that is the annual conference held in Victoria for the discussion of the conservation of natural resources. I might say that other officials have said almost the same thing to me, officials of the federal departments of transport and fisheries and the Department of National Health and Welfare. This is what Mr. Larkin has to say, and I give three quotations from his speech:

> We feel that there should come a day, if we plan properly, when it is accepted that no pollution will exist without the permission of a responsible authority and that such permission has been given in the public interest in accordance with sound principles of resource use planning . . .

Then he says:

> The existing legislation consists of a number of federal and provincial statutes which are designed to serve special interests of a particular resource. As such, while they are effective to a certain degree as preventive measures, collectively they are overburdened with overlapping provisions and they are completely inadequate as instruments of achieving our objective of planned water use. They should be replaced by broad legislation which would observe the necessary dual purpose of protecting special interests where it is desirable to do so, and at the same time, assuring the general purpose, of proper water use.

Then the last quotation from his speech is as follows:

> The panel has noted the trend in most advanced countries and states toward the creation of a single

agency to control and abate a particular type of pollution, for instance, water pollution, in a geographical area.

Now, Mr. Chairman, I think this gentleman explains the situation very well, after a lengthy experience in dealing with the question of water pollution in British Columbia. I, therefore, support the amendment moved by the hon. member for The Battlefords. I am very interested in what the minister is going to say in reply. In addition, I feel it is time to do something to make it a criminal offence to destroy these great natural resources. As the hon. member for The Battlefords has said, when a man robs a bank he gets a few years in jail. He can rob us of our use of these great natural resources, as many of these industries are doing today, and he goes scot-free.

I suggest we should have an amendment of this type in the Criminal Code, unless the minister can assure us that we are already protected and action will be taken. In my opinion, too, there should be a national conference on this subject, and this is an idea that I have expressed before, between the federal and provincial governments to work out a plan for the national conservation of our forests, land, soil and water use.

Mr. Garson: The remarks I shall make this afternoon will be, to a large extent, a repetition of what I said on Friday last. I make no particular apology for them in that respect because I believe some of the opposition arguments that have been made today are a repetition of what was said on Friday last. I was much taken with the last quotation of the last speaker. Although he said he was giving a quotation to support the amendment moved by the hon. member for The Battlefords, I could not help but feel, while listening to this excellent quotation, that I was in agreement with it; for this quotation really supports the solution to this Saskatchewan river pollution problem which I was advocating on Friday last.

Whatever value a criminal provision may have in this connection, we must all be agreed that the best way to prevent pollution is to prevent it instead of punishing for committing the offence of pollution. And the best way to prevent it, as the hon. member for Kootenay West has just said in this quotation, is to set up a single agency dealing with the question of pollution in that area. The area about which we are talking is the area of the prairie provinces tributary to Saskatchewan rivers. But in agreeing that this is the proper way to do the job I am not saying that there should be a total absence of provisions in the Criminal Code making pollution an offence. I do suggest that of the two methods, the setting up of an agency, with real authority so that no industry could put any effluent into a river without first getting a permit from the authority, is the really practical, orderly and sensible solution of this problem. I feel that both speakers this afternoon, the hon. member for The Battlefords and the hon. member for Kootenay West, agree with that view. Certainly, no other conclusion can be drawn from the remarks that they have made.

The hon. member for The Battlefords says that he is only going to deal with interprovincial rivers and thereby avoid creating the apprehension I voiced last Friday as to the probable adverse effect of the amendment which was then moved by the hon. member for Prince Albert, upon the industries and municipalities tributary to the Ottawa and St. Lawrence rivers. I should have thought that both the Ottawa and the St. Lawrence river systems were pre-eminently interprovincial rivers, and that if we applied the language of the amendment of the member for The Battlefords to them we would have the following absurd result. This amendment, says in part:

> Every one who, by himself, his agent or employee, places or discharges . . . in, upon or near . . . rivers, any industrial waste or any other polluting material of any kind whatsoever which either by itself or in connection with other matter may corrupt or impair the quality of the water thereof in another province or render such water in such province unfit for accustomed or ordinary use is guilty of an indictable offence . . .

What would happen on the Ottawa river, for example? If an industrial plant on the Ontario side up river from a municipality put effluent into the river which would have these results, then it could be prosecuted for the bad effects upon the Quebec side but it could not be prosecuted for the bad effects on the Ontario side. If the effluent were put in on the Quebec side, then the plant could be prosecuted for the effects on the Ontario side but not on the Quebec side. Now, that really is a Gilbert and Sullivan result if there ever was one.

Mr. Campbell: The provinces have the power to deal with pollution within their own borders.

Mr. Garson: Certainly they have. That is the very point I have been arguing. It is not in criticism of the hon. member for The Battlefords that I am citing this as an example of the great difficulty of providing a solution for the problem in a Saskatchewan river in western Canada without having on the statute books a provision which would be quite embarrassing to established industries, communities and the like in eastern Canada.

We must remember this provision must be of general application throughout Canada. In this regard the difference between the east and west is this. Although pollution is involved in both cases, in the one case we are dealing with the first noteworthy and extensive act of pollution that has taken place upon the Saskatchewan river whereas in the case of the St. Lawrence and the Ottawa rivers, we have a condition now in which there is a considerable measure of pollution which has extended over a considerable period of time on the part of both industries and municipalities. The literal application of an amendment such as the one we are discussing would create many complications, which I am sure the hon. member for Prince Albert and the hon. member for The Battlefords have not taken into adequate account at all.

Now as responsible parliamentarians, these are matters of which we must take note. For these reasons I think my hon. friend's amendment would be an unwise provision to put into the Criminal Code. Amongst other things it would produce really an absurd result that although an industrial plant on the Ontario side of the upper Ottawa river put an effluent into the river that polluted it, the people in Ontario could not prosecute, but the people across in Quebec could prosecute for it. For the same act, the same offender, the same river, the people affected could or could not prosecute depending upon whether they lived in Quebec or Ontario. One group in Quebec would have the right of prosecution. The other in Ontario would not. And if the offending plant were in Quebec the same sort of result would follow vice versa. Who could imagine a more absurd situation?

The hon. member for The Battlefords made himself very clear, and I think he was fair in the attitude that he took. He says that all he is concerned about is having an enforceable provision. Upon reflection I do not think that he would claim that his amendment would constitute such. He rather questioned—he did it very tactfully and was very courteous, I must say—the validity of the opinion which I had expressed on Friday last that clause 165 dealing with a common nuisance was one that could be invoked in a case of pollution of this type. If I understood him rightly—I did not hear him too well at this point, and I hope he will correct me if I am wrong—he said that some person in Prince Albert had given an opinion that clause 165 could not be invoked in connection with the recent matter which arose in western Canada.

In that connection, Mr. Chairman, I think I should draw a distinction between the giving of an opinion upon the facts of a certain case, especially a case the facts of which one does not have, and I have never even seen that opinion—perhaps my hon. friend has—on the one hand, and on the other hand the stating, as my hon. friend is now asking me to state, what the effect of a clause of this kind is. The opinion which is given on the facts of a certain case and the negative opinion at any one point of time that they cannot use clause 165 may be based not upon the fact that clause 165 is not a good workable clause. But at that given point of time the counsel who was asked may say: "I do not think you have the evidence that would support a charge under clause 165 or any other clause, in the law now, or that can be imagined, because you have not here the evidence to prove this case." During the earlier discussions of this matter it was agreed by common consent on both sides of the house that the real point of the matter was that no sufficient evidence had been established.

The scientists and engineers of my colleague, the Minister of National Health and Welfare, had been out there trying to get the evidence. At that time they did not have it. Now, the opinion given at that time would be clearly to the effect that they could not use this clause of the act and the reason was that they did not have evidence to prove a case. That is a very different thing from saying that the clause is unworkable.

I said that under clause 165, in the language of that clause:

> Every one who commits a common nuisance and thereby
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> (a) endangers the lives, safety or health of the public, or
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> (b) causes physical injury to any person,
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> is guilty of an indictable offence and is liable to imprisonment for two years.

This, as it happens, is the same penalty that my hon. friend has named in his proposed amendment, except that he goes on to say: "or a fine of $2,000." But if the accused is a corporation it can be punished under this Bill No. 7 in an amount, not of $2,000 but in a completely unlimited amount if found guilty.

Then the clause goes on to define the common nuisance:

> For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
>
> (a) endangers the lives, safety, health, property or comfort of the public, or
>
> (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

In our discussion of last Friday the question was raised by, amongst others, the hon. member for Rosthern, as to what was the unlawful act that would constitute one of the indispensable ingredients of this offence of a common nuisance, and I said then that it could be a breach of the Alberta statute, either the section which my hon. friend from Rosthern named or another one which I quoted in my remarks and which I will not read again today to the effect that in the province of Alberta, under the regulations of their health act, it is contrary to those regulations to discharge certain effluents into the river. But I also said this—I think the hon. member for The Battlefords quoted it this afternoon—as reported at page 3631 of *Hansard*:

> The unlawful act, among other things, would be the breach of the statute which the hon. member for The Battlefords read a moment ago—by discharging the effluent into the river, in contravention of a statute of the province of Alberta or regulations passed thereunder. That would be an unlawful act beyond question, if we did not go on and deal with other aspects of the crime of a common nuisance and indicate that anything which was done in contravention of the public interest—

Not of the statute—

> —might, in itself, apart from being in contravention of the statute be regarded as an unlawful act.

Now, let me give my hon. friend some examples of that. One of the best of these is the judgment of the then Mr. Justice Rinfret, now the Chief Justice of Canada, in the Supreme Court of Canada in Groat *v.* the City of Edmonton, 1928 Supreme Court Reports at page 522. Mr. Justice Rinfret, as he then was, said this at page 532, and I think this has a quite close bearing upon what we have been discussing:

> The right of a riparian proprietor to drain his land into a natural stream is an undoubted common law right, but it may not be exercised to the injury and damage of the riparian proprietor below, and it can afford no defence to an action for polluting the water in a stream.

Is not what we are discussing the discharge into the river of an effluent which pollutes the water for the downstream proprietor? Listen to this.

> Pollution is always unlawful and, in itself, constitutes a nuisance.

That is without the Alberta statute, and without the Alberta regulations and without the federal Fisheries Act. Some of my hon. friends of the C.C.F. party who have spoken have said that the discharge of the effluent into the river was contrary to the federal Fisheries Act. If it was, it is certainly an unlawful act within the meaning of clause 165(2) which we are discussing. But regardless of whether the pollution complained of is contrary to a statute, the case I have cited says that pollution is always unlawful and, in itself, constitutes a nuisance. How could language be more explicit than that?

That was a case in which a plaintiff claimed an injunction and damages against a defendant city with respect to the pollution of water flowing through a ravine which crossed the plaintiff's land.

An hon. Member: What act?

Mr. Garson: It is not an act; that is my point. It does not necessarily have to be contrary to an act or statute. The pollution itself is an unlawful act—and when I use the word "act" in this instance I am not referring to a statute but rather to an act that someone does, and which is either lawful or unlawful.

The point is that where an upper riparian owner pollutes the water of a lower riparian owner, apart altogether from any statute, it is unlawful; and it is also unlawful under the statute and the regulations.

Mr. Fulton: Could that not be because it was deemed that the pollution is a nuisance at common law?

Mr. Garson: Yes.

Mr. Fulton: Would that not be excluded by this provision in the code?

Mr. Garson: No, not at all.

Mr. Fulton: Why not?

Mr. Garson: As I have said on previous occasions, in drafting Bill No. 7 we have defined all the offences as being statutory offences, from this point on. But in so doing, we have drafted them in language which makes available all the case law that was formerly applicable to the common law offence of a nuisance.

I indicated that this was a case in which a plaintiff claimed an injunction and damages. I think the suggestion has been put forward during the course of this debate, although I cannot recall by which member, that there might have been an impression that, inasmuch as the effluent was discharged in Edmonton and the result was in Prince Albert, although in the same river, the problem was they could not get the Alberta authorities to take action against the accused person in Alberta.

I suggest however that that should not be a problem, because the present section 584 (b) of the existing code, which is carried forward into clause 419 (b) in Bill No. 7, says that where an offence is begun in one territorial division and completed in another, such offence shall be deemed to have been committed in any of the territorial divisions.

Now, what happens in a case of this kind? The effluent is discharged at Edmonton in

the territorial division of Alberta. If we accept the facts brought forward, it is the discharge at Edmonton which creates the common nuisance in the lower municipalities of Prince Albert and Battleford. It seems to me that it comes squarely within this provision, that the offence is begun in one territorial division and is completed in another. The common nuisance is in Prince Albert, so far as the people who are making the complaint there are concerned; and the common nuisance is in Battleford, so far as the people in Battleford are concerned. They are both caused by the discharge of the effluent in another territorial division.

That being so, I should think we would be much better off to leave the bill as it is, and not pass the amendment suggested.

However, I agree with the hon. member for The Battlefords, and the hon. member for Kootenay West, that it is a much more intelligent solution of a problem of this sort, just at its very beginning on the Saskatchewan river, for the governments concerned to get together and to set up an authority which would say whether or not a company or a municipality could discharge effluent into a river and, if so, with what conditions the discharge of such effluent would have to comply. If there were bacterial content I should think they would have to be a certain count, and if it were chemical effluent there would have to be a certain degree of dilution, and so on. Instead of fining corporations or putting people in jail, after criminal prosecutions, pollution could be prevented in this orderly manner.

However, there was one point raised by the hon. member for Kootenay West with which, in deference, I cannot agree; and that is his suggestion that notwithstanding the fact that the natural resources of the country belong, not to the federal, but to the provincial governments, there is, an overriding responsibility on the federal government to tell the provinces how they should administer their own natural resources, and what laws they should pass to this end.

If, as my hon. friend admitted, the people in British Columbia, who have most of their rivers, with the exception of the international streams, wholly within the confines of that province, cannot pass appropriate laws to take care of and to administer those rivers satisfactorily, then I cannot imagine that they are going to do any better with the federal government breathing down their necks.

I must say that if, as I once was, I were in the provincial field, I would greatly object to having the federal government tell me what should be done with regard to natural resources of the province in which I was acting.

Mr. Herridge: The minister would not object to co-operation, would he?

Mr. Garson: No, not at all; that is what I am advocating. I hope I am not putting words in my hon. friend's mouth when I say that I think the whole trend of his remarks this afternoon, and about 50 per cent of the remarks of the hon. member for The Battlefords, was in support of the idea I voiced on Friday, when I said that governments should get together and decide how they should administer their own natural resources. They are in a magnificent position to do that at the present time, for with the first appearance of serious pollution in these Saskatchewan rivers coincidental with the beginnings of great petrochemical and other industries in western Canada, this is the psychological moment for them to co-operate in the setting up of this authority, an interprovincial authority, to regulate the discharge of effluents into the river. Such an authority would be in a position to determine that which, even for competent people, would be a most intricate, nice and difficult question. I refer to a river the variation in flow of which between the low point and high point is very great indeed.

The determination of the seasonal discharges of effluents which would be possible without damaging the water supply, so that the waters of such rivers may be used to the greatest possible advantage of industries, individuals and municipalities would therefore be proportionately difficult. It is only by that type of administration that the optimum advantage will be secured. It certainly will not be secured by an amendment such as that offered by the hon. member for The Battlefords.

Mr. Harrison: Mr. Chairman, if I understand correctly, some reference has been made to me, and to a letter I wrote. I have been appearing before the committee on railways and shipping, and shall have to return to that committee, so I shall be brief.

If my understanding is correct, the letter to which reference has been made would be one I wrote in reply to a letter from the council of the city of Battleford in which they asked my support of a bill being brought in by the hon. member for The Battlefords to eliminate wastes in the Saskatchewan river.

I do not know whether the hon. member read my letter in its entirety or merely

quoted extracts, but if he did read it in its entirety, I am sure it will be appreciated and agreed that his bill should be brought in where the jurisdiction applies. I believe the minister has himself put that in its proper perspective, and I do not think there is much I can add to his argument in regard to the amendment now before the house.

I can quite understand the concern felt by hon. members opposite and their attempts to try to divert pressure from their own administration in the province of Saskatchewan. That is quite natural and it is an attitude which applies to other things besides rivers. If one watches the procedure of the provincial house in Saskatchewan it will be noted that 99 per cent of their time is spent in diverting the attention of the people of Saskatchewan to this place, and transferring their problems to the federal government. But there is nothing new in that, Mr. Chairman. As far as socialist governments are concerned, they usually attempt to transfer their responsibilities elsewhere instead of shouldering them themselves.

However, I was glad to hear the concluding remarks of the hon. member of The Battlefords. After he had argued that jurisdiction did apply in Saskatchewan, I heard him go on to say that the provinces had complete jurisdiction over the natural resources in their own province. I believe that answers the problem immediately, though I cannot understand why he then attempted to bring in the bill he did. I suggest that the town of Battleford would be far better off to have that matter discussed in the provincial house by the administration in Saskatchewan. We are not exactly in the driver's seat in this particular instance. We are in the position of having to consult with the province of Alberta where the actual pollution occurs, and the province of Alberta, as we all know, is quite within its legal rights in stopping this pollution any time it feels like doing so.

I do not believe anything better can be done than to take heed of the remarks uttered by the minister a few moments ago to the effect that these provinces should get together, and I believe they should get together at this propitious time when pollution is just beginning. However, as regards pollution in general, we do not know anything about it in the province of Saskatchewan, particularly when one considers the situation here in the east. We do not have to go more than two miles from this house to find more pollution than was ever the case in the province of Saskatchewan. If you walk down the Ottawa not more than a couple of miles you will find every kind of offal one can think of floating in the stream and we do not have that sort of thing in Saskatchewan.

I believe that is all I have to say at this time, Mr. Chairman. I believe the problem might better be discussed where something can be done about it and not here in this parliament.

Mr. Nesbitt: Mr. Chairman, I would like to ask the minister a question, not in relation to the amendment, but in regard to the clause generally. I raised this point on a previous occasion when the committee was discussing clause 163, and inasmuch as the minister last week mentioned that that section dealt with religious services I believe it might be better to raise my point under clause 165. I am not trying to obtain legal advice but I would like to ask the minister whether the following situation would be covered by this clause. I refer to the question of certain manufacturing plants and chemical companies who let loose into the air in a city or town, as the case may be, noxious odours, and gases from their manufacturing plants. They may arise from chemical processes in feed plants, and that sort of thing. I asked this question under clause 163 and at that time the minister indicated that it might come under this clause. However, I have carefully examined clause 165 and I am not certain whether the type of nuisance to which I have referred would come under that clause. The clause reads:

> (1) Every one who commits a common nuisance and thereby
> (a) endangers the lives, safety, health, property or comfort of the public, or
> (b) causes physical injury to any person,
> is guilty of an indictable offence and is liable to imprisonment for two years.

In the first instance, the question of noxious fumes descending on a community from a factory would certainly affect the comfort of the public and thereby constitute an unlawful act. The minister in referring to the pollution of water cited a case in which the pollution of the waters of a river was an unlawful act under the common law. But I am wondering if this same reasoning would apply to the pollution of the air, which is equally important in many ways for the people who live in the surrounding area. I mention this because not long ago there was a case dealt with by the Supreme Court of Canada, with which I am sure the minister is no doubt familiar, and it dealt with the McKinnon Industries Limited. In that case a florist brought an action against the industry because the fumes from the plant were

destroying his flowers and he was successful in obtaining a permanent injunction. I think the minister will agree that he was successful only because his greenhouse was there before the industry was established. But would it have been an unlawful act if the greenhouse was set up after the industry had been established? I do not think so. In other words, if a plant in a community starts manufacturing and allows noxious fumes into a community it may be extremely difficult to bring a prosecution under this particular section. It is all very well to say that one should obtain an injunction, but that is a long and expensive course to take and by the time the case reached the Supreme Court of Canada, particularly when the case concerned the offensive behaviour of a large company, several years might have passed. I believe such a situation should be covered by Bill No. 7. To re-state the question, I would like to ask the minister which clause would cover that situation.

Mr. Hanna: Mr. Chairman, on a point of order, during the course of this debate last week, and again today, reference has been made to chemical plants in Edmonton. I think it is only fair to put the record straight and state that the chemical plants referred to are at or near Edmonton. The expression "in Edmonton" seems to imply some criticism of the city of Edmonton and—

The Deputy Chairman: Order. I have heard the point being made by the hon. gentleman and I do not think it is a question which can be dealt with as a point of order. However, he has been permitted to put his correction on record.

Mr. Garson: Mr. Chairman, I am always reluctant to express an opinion upon a hypothetical question because sometimes it turns out later on that such an opinion is not supported by judgment in an actual concrete case, not because the opinion is wrong, but because the facts of that concrete case have some slight variation which produces a different result. For example, if you have the local situation in a municipality changed either by provincial or municipal law to the extent where it expressly tolerates the emission of not more than a certain amount of smoke, then that in itself would negative in most cases any liability upon the part of the accused. But take this case. Imagine a farming area which has enjoyed freedom from smoke. Suppose a factory comes along and pours a great quantity of smoke in the neighbourhood and the question arises as to whether that constitutes a nuisance. In the absence of any qualifying law that might change that situation, such as the provincial and municipal laws permitting a certain amount of smoke, I should think that would undoubtedly constitute a common nuisance. Perhaps I might cite a case which had to do with water that we were discussing previously, but it is rather on the point about which my hon. friend has asked. This is a Canadian case of Regina *v.* Brewster and Cook. I may say this was not a civil action; this was a criminal prosecution for nuisance. It was decided in 1859 but it is on the law of nuisance that we have carried along into the code as it stands today. In that case the accused were indicted for a nuisance in maintaining a dam which affected the health of people living in the neighbourhood. By the way, the citation is (1859) 8 U.C.C.P. 208. At page 212 Chief Justice Draper says this:

> It would be a strange proposition if a man could for his own profit overflow some 15,000 acres of land with nearly stagnant water, so as to render the land surrounding and adjoining uninhabitable, except at the imminent risk of health,—

Not against health but "at the imminent risk of health".

> —and to say that, having done this before they were inhabitants, they cannot complain that he is guilty of a nuisance, for they need not have come to it . . .

That is the point my hon. friend has raised.

Mr. Nesbitt: Yes.

Mr. Garson: Then the chief justice continues further down in the judgment:

> . . . The settlement of a valuable tract of land cannot be lawfully impeded or obstructed by a nuisance prejudicial to public health, any more than a public highway can be obstructed so as to prevent intercourse through the same portion of country.

That case seems to be fairly clear in point, except that it has not to do with smoke. If there is a set of facts like that, in that case they were apparently held by the chief justice of common pleas to have that result.

Mr. Nesbitt: Thank you very much.

Mr. Campbell: The city of Prince Albert and the town of Battleford have been put to considerable expense. I asked this question the other night but I did not get an answer. The city of Prince Albert has spent something over $3,000 for hauling water up to the 23rd of last month. The town of Battleford has had a drilling machine busy for some time at $100 a day. Suppose those two municipalities decided to take legal action against the Canadian Chemical Company. Does the minister think they have any hope of getting damages under the present act?

Mr. Garson: Mr. Chairman, I do not think that any person can accuse me of having

relied upon my rights not to advise the members of the house. I have almost exceeded the bounds of propriety in the frankness with which I have discussed these sections because I realize that in a bill of this sort it would be difficult to make much progress if I took the position that I would not express an opinion on any of the clauses to assist the members. But there really is a limit to which I can go. I cannot here express opinions that even indirectly might be used as a basis for civil action in the courts. That procedure would be highly improper. We cannot very well tax the legal profession in the way in which we do through the income tax, and then operate here in competition with them on the floor of parliament. If these people have these claims for damages, the thing for them to do is to consult a solicitor and get advice from him as to whether he thinks they can succeed. In that connection may I say this. The giving of advice by a lawyer to a client not to prosecute or not to sue or anything of that sort is not necessarily based upon legal points. It may be based upon common sense, strange as that might seem.

Mr. Knowles: Is there a difference?

Mr. Garson: As I indicated in earlier discussion here, as soon as the facts were known it is more than likely that an adjustment of the matter could be effected by an understanding between the parties without having court action at all.

Mr. Campbell: There is another point that I should like to bring to the attention of the minister and it is this. The city of Prince Albert, through their counsel, sought advice as to whether they could take action against the Canadian Chemical Company. The advice they obtained was that they would have to find a riparian owner in the province of Alberta who would be willing to take action himself under his own name; the farmer or riparian owner in Alberta would have to do that.

The Deputy Chairman: Order. If I understand the hon. gentleman aright, he is now discussing what civil rights of action for damages may be caused by the situation on the Saskatchewan river. I do not think anybody, including myself, has tried to narrow this discussion down too much; but I must say that we cannot go into whether or not matters of civil action have been allowed to arise on the Saskatchewan river. We must retain our perspective and focus our attention on the Criminal Code. With that point perhaps the hon. member will continue.

[Mr. Garson.]

Mr. Campbell: Thank you, Mr. Chairman. I will ask my question in a different way. Could the municipalities take action under the Criminal Code without going and finding a riparian owner in the province of Alberta to make the charge?

Mr. Garson: If my hon. friend will read *Hansard* of this afternoon's proceedings, he will see that I have already given him an answer to that question in the terms of a section of the existing bill.

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

Some hon. Members: Question.

The Deputy Chairman: The question is on the amendment. Those in favour of the amendment moved by the hon. member for The Battlefords will please say yea.

Some hon. Members: Yea.

The Deputy Chairman: Those against will please say nay.

Some hon. Members: Nay.

The Deputy Chairman: In my opinion the nays have it. I declare the amendment lost.

Amendment negatived.

The Deputy Chairman: Shall clause 165 carry?

Mr. Barnett: Before this question is proceeded with, I have one question I should like to ask the minister. I mentioned the point when I was speaking on Friday evening. I still have not been able to understand the wording of this clause, with what to me appears to be a double qualification in subsection 1 and subsection 2. In section 1 it mentions, under common nuisance:

> Every one who commits a common nuisance and thereby
>
> (a) endangers the lives, safety or health of the public, . . .

Then subsection 2 reads:

> For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
>
> (a) endangers the lives, safety, health, property or comfort of the public, . . .

I could understand it if that section were to be set out so that subsection 2 were subsection 1 and then the present subsection 1 were labelled as subsection 2 and read:

> Every one who commits a common nuisance is guilty of an indictable offence.

But the question that comes into my mind is this. What punishment or what penalty is there for someone who endangers the property or the comfort of the public? There is provided a penalty for those who endanger

the lives, safety or health of the public, but I have not been able to see how, under that section, an offence against the property or comfort of the public is an offence subject to a penalty.

Mr. Garson: Section 165, subsection 2 defines a common nuisance. This question arises as to what kinds of common nuisance shall be subject to penalty under the criminal law, and subsection 1 says that of all the common nuisances that there can be, within the definition in subsection 2, it is those that endanger the lives, safety or health of the public that are the ones in respect of which prosecutions can be laid under this section.

Mr. Barnett: Could I ask the question in this way? What redress has a person whose comfort is interfered with?

Mr. Garson: For the purposes of the present discussion, he has not the redress of a criminal prosecution. I do not like to give these offhand statements, but he may very well have a civil action in respect of the nuisance in this other case. In other words, when the Criminal Code purports to define a common nuisance it defines it in terms of what it is and then it goes on to say that only common nuisances which affect lives, safety or health shall be open to prosecution under criminal law.

Mr. Noseworthy: On that point, why does subsection 2 (a) differ from subsection 1 (a)? Why are they not the same?

Mr. Garson: Well, that is what I just finished explaining.

Mr. Noseworthy: Nobody understands it.

Mr. Garson: I will take it by steps. First of all we ask ourselves the question: What is a common nuisance? The answer to that is in subsection 2. The next question is: What kinds of common nuisance can be the subject matter of criminal prosecution under this section? The answer to that is in subsection 1.

Mr. Noseworthy: Then although endangering property or comfort of the public is a common nuisance it is not indictable under this section?

Mr. Garson: That is right. If you endanger my property it is a common nuisance, and, depending upon the circumstances, I may very well have a good action for an injunction and damages. But in this section, which is simply carrying on what has been the criminal law of Canada for many long years, it was not considered proper, and has never been, that if you commit a common nuisance which endangers my property you should be guilty of an indictable offence. But if you endanger my life, my safety or my health, then that would be a criminal offence.

Mr. Barnett: I do not want to pursue this too far, but we have discussed this section so thoroughly that I should like to be able to understand it. Let me put my question this way. It would seem that endangering property or comfort is a relatively more minor offence, but if it is going to be included for the purposes of defining a common nuisance why should not such offences be made liable to summary prosecution? A number of other sections of the code make provision for summary prosecutions for relatively minor offences, and more serious acts are covered by indictable offences. But I still cannot see why, for the purposes of this section, endangering property and comfort should be included in the definition of a nuisance if the penalties in the section are not in any way applicable.

Mr. Garson: I do not think there is anything very difficult to understand. When you define anything for the purpose of a particular section you define it for what it is. Nor do I think there is anything difficult to understand when I say that you do not necessarily indict people for everything that is included in that definition. So far as our present position is concerned, we have good reasons for wanting to retain this language in the present bill. It has been in the law for a good number of years. Cases have been decided upon it in which these sections have been interpreted. We know what the courts consider that they mean, and thus we think it would be injudicious and incautious for us to change the wording. We know what the courts have said it means, and it is preferable to carry on that meaning. I must add that I do not find the difficulty at all that either of my hon. friends has stated.

Mr. Cameron (Nanaimo): Can the minister tell me this? Is the distinction between the way in which the two types of offence are going to be dealt with to be found in these respective words—"guilty of an indictable offence", and "does an unlawful act"? Do these two phrases indicate the respective methods by which the offence is to be treated?

Mr. Garson: No, they do not.

Mr. Cameron (Nanaimo): Can the minister tell me why it is merely an unlawful act to endanger the lives of people under subsection 2(a) and an indictable offence to endanger their lives under subsection 1(a)?

Mr. Garson: I must confess that I am afraid I will have to refer my hon. friends to *Hansard*, and if they still do not comprehend

it I will be glad to discuss it with them if they will see me. The one defines a common nuisance in general and the other says what kinds of common nuisances shall be indictable. We can state these two facts in a dozen different ways but we come back to the two facts in the end.

Mr. Cameron (Nanaimo): I point out that you are defining them in precisely the same terms, and I want to know why when "endangers the lives" is used in one part it does not mean the same when it is used in another part.

Mr. Garson: I think it might have been easier for my hon. friends to understand this clause if the two subsections had been transposed. If my hon. friend will just think of No. 2 as being No. 1, I think a lot of his difficulty will be overcome. In other words, first of all you say what is a common nuisance and define it. Then you go on to say that every one who commits this common nuisance which we have already defined, and thereby endangers the lives, safety or health of the public or causes physical injury to any person, is guilty of an indictable offence, but it is not considered appropriate that a man should be indicted whose only offence is that he has injured somebody else's property. In other words, it puts the lives, safety and health of people ahead of injury to property.

Mr. Fulton: One is a criminal offence and the other is a civil action.

Mr. Noseworthy: Then what has the reference to "property or comfort" got to do with this section at all? Of all the kinds of common nuisances one can think of, why are only those two selected and put in this definition when neither of them is indictable?

Mr. Garson: Because they are a part of the definition of common nuisance. All this purports to be is a definition of common nuisance.

Mr. Knowles: This is a very minor point. Perhaps the minister can look at it at his leisure. He might even have Their Honours in the other place deal with it.

Mr. Garson: At my what?

Mr. Knowles: In the minister's spare time. The question I wish to raise has to do with the headings in this general part of the code. I refer to the heading that is inserted just ahead of clause 165, and also to the heading that is inserted just ahead of clause 161. I do not propose to argue the point the minister was trying to make, I think falsely, on Friday with regard to the other heading. I do suggest that the heading "disturbing religious services" does not really apply to clauses 162, 163, 164. It applies only to 161. In support of that argument I point out that clause 163 was section 501A in the old code and it was under the general heading "wilful and forbidden acts in respect of certain property." I have no desire to take up any time, but it does seem to me if it were possible the other day for the minister to be misled, if I may say so, by the heading "disturbing religious services", it might be well to have some change made.

Perhaps it calls for a new heading or some rearrangement of the clauses. As I say, this can be looked at later, but I suggest to the minister it might be well to have it looked at.

Mr. Garson: I have no objection in the world to striking out the term "disturbing religious services." The only reason I mentioned that the other day was, if my hon. friend will examine section 163, he will see that defines an offence in relation to meetings, throwing stench bombs and so forth in meetings. Since there is an intervening section, trespassing by night, my hon. friend's point is quite well taken, that the heading there does not really add to the lucidity of the bill.

Mr. Knowles: Just to get this clear, where is the reference to meetings in clause 163?

Mr. Garson: It says:

> . . . throws or injects or causes to be deposited . . . into or near any place,
>
> (b) a stink or stench bomb or device from which any substance mentioned in paragraph (a) is or is capable of being liberated, . . .

My hon. friend, I am sure, must be sufficiently cognizant of the facts of life to know that is what these bombs are for, to cause discomfort, and usually at a meeting. It might conceivably be a religious service, but it is a meeting. True there is an intervening section, "trespassing at night". For my part, if my hon. friend wishes to move an amendment to strike out "disturbing religious services", I have no objection. This heading certainly does not add anything to the meaning of the act.

Mr. Knowles: Before the minister gives me that permission, may I ask if he is satisfied then that all the sections from 158 to 164 inclusive might properly come under the general heading of "disorderly conduct"?

Mr. Garson: Yes, I think they would.

Mr. Knowles: I agree with the minister on that point, and it might remove some of the confusion. Therefore, as the minister suggested, I move that the heading "disturbing religious services" be deleted from the bill where it appears between lines 6 and 7 on page 52.

The Chairman: Actually, we are discussing clause 165. Has the hon. member leave to revert to that part of the bill?

Some hon. Members: Agreed.

The Chairman: Hon. members have heard the amendment proposed. Is it the pleasure of the committee to adopt the amendment?

Amendment agreed to.

Clause 165 agreed to.

The Chairman: We are now proceeding to group 4, treason. I shall call clause 46.

On clause 46—*Treason.*

Mr. Knowles: This is a clause which may occasion considerable—

Mr. Garson: I was proposing to offer to the committee some amendments to this section, and perhaps the amendments we have in mind might meet the point my hon. friend is about to discuss. I might submit them to the committee for consideration.

Mr. Knowles: I should be glad to defer my remarks until we have all the amendments the government has in mind.

Mr. Garson: This section of the bill, Mr. Chairman, is one which has already come in for a great deal of consideration, both in the special committee of the House of Commons and also in the other place and in its committees. I feel we will be able to deal with it more intelligently in this discussion if I trace the history of the section up until the present time. Perhaps hon. members will forgive me if, before doing that, I review briefly the law of treason generally. In the banking and commerce committee of the other place such a review was presented on a question and answer basis which is not always very satisfactory.

Now an understanding of the basic law of treason is not without importance in dealing properly with this section before us. In this present brief review I am drawing heavily upon the excellent and succinct chapter in Sir William Anson's "Law and Custom of the Constitution", dealing with the question of treason. As he points out, the law of treason is connected with the law relating to allegiance in two ways. Allegiance is always due from a British subject, wherever he may be, and any subject who acts disloyally overseas may be punished if he at any time can be apprehended afterwards in Great Britain. In the same way, allegiance is due from a Canadian citizen and he can be punished, even although his treason may have been committed outside of the boundaries of Canada, if at any time later on he can be apprehended in Canada.

If we go back in legal history, we find that treason depended, like allegiance, on the personal character of the feudal relations, because treason first came into being in the days of feudalism. Treason at that time was offence against the person, the representatives, or the personal rights of the king. It was a breach of the feudal bond, a betrayal in one form or another by the subject of his lord.

The vagueness of the early law on this subject led to a request by the Commons in 1352 that the king should legislate upon the subject of treason. The answer to their request was the statute upon which the law of treason is still founded in the United Kingdom. This is 25 Edward III, statute 5, chapter 2, and it named seven distinct offences of treason. The first was to compass or imagine the king's death, the queen's—but not if a dowager or if divorced—again indicating the personal monarch—or that of the heir to the throne; second, to levy war against the king in his realm; third, to adhere to the king's enemies; four, to violate the king's wife, the wife of his eldest son, or his eldest daughter, being unmarried; five, to counterfeit the great seal, the privy seal, or coin; six, to issue false money; seven, to kill the chancellor, the treasurer—

Mr. Fulton: How about the Minister of Justice?

Mr. Garson: My hon. friend's question is an exceedingly timely one. He must have known what was coming up. It is not quite the Minister of Justice, but the king's justice, the king's justices of either bench, or of assize, in the discharge of his office.

One cannot fail to notice the personal character of all these offences; the king, not the crown in parliament, or the state as embodied in the existing constitution, but the king in person is the object which the statute was designed to protect. The statute of Edward III was designed to protect the king's person; the king's sovereignty; the king's family relations; the *indicia* of the royal will in administration, the seals; the representatives of the royal will in judicature, the chancellor and judges; the privileges of royalty as they were in those days; the coinage. These are what the feudal society thought it was treason to infringe.

Now, these last four offences need no special notice; they remain as treason on the statute books, though they may be dealt with as felony. The first three have been extended—that is, to compass or imagine the king's death, to levy war against the king in his realm and to adhere to the king's enemies—have been extended by construction. That is, they first of all apply to the

personal king. They have been expanded as the concept of kingship developed, and they have also been the subject of much legal comment.

Now, to demonstrate that insight, foresight and wisdom are not the monopoly of these modern times, I should like to quote from this statute, which was passed nearly 150 years before Christopher Columbus discovered America, another short passage. This passage states a principle which we shall be considering this afternoon in the clauses that I shall be discussing in this bill later on. This is the short passage from the statute to which I refer:

> And because that many other like cases of treason may happen in time to come which a man cannot think or declare at this present time; it is accorded, that if any other case, supposed treason which is not above specified, doth happen before any justices, the justices shall tarry without going to judgment of the treason, till the cause be shewed and declared before the king and his parliament whether it ought to be judged treason or other felony.

Now, by these expansions, by construction of the statute of Edward III, we have principles which are very important in legal history: Compassing or imagining the king's death was construed to mean any act directed to the deposition or imprisonment of the king, or to acquiring the control of his person, or any measure concerted with foreigners for an invasion of the kingdom, or going or intending to go abroad for any of these purposes. Cases of mere riot were treated as "levying war against the king".

The Riot Act, 1 George I, statute 2, chapter 5, made it unnecessary to strain the definition of treason in order to punish disorder which had no political end in view; that is to say, if the riot were just a common riot and had not any political or ulterior motives connected with it, it would come under the Riot Act and would not be regarded as a form of treason. But the law of treason took no cognizance of offences against the state which could not be construed to be also offences against the person or personal authority of the king.

It was not until 1795 that statutory force was given to the extended interpretations of the act of Edward III, and an actual or contemplated forcible attempt to make the king change his counsels or to intimidate both houses or either house of parliament was made treason. That is, an offence which was not against the person of the king but against his advisers. In 1848, all the acts or compassing mentioned therein, which did not tend to the death, personal injury, or personal restraint of the sovereign, were made treason-felony, and so not necessarily punishable with death; and that, as a matter of fact, it was that distinction in its present modern form which gave the other place and gave the special committee of the House of Commons a great deal of concern in connection with this clause 46.

In the United Kingdom the treason statute of Edward III still remains treason on the statute books of Great Britain, but treason as distinct from treason-felony is the doing or designing anything which would lead to the death, bodily harm, or restraint of the king, levying war against him, adhering to his enemies within or without the realm, or otherwise doing acts which fall under the statute of Edward III.

Conspiracies to levy war, to deprive the king of the crown or of any part of his dominions, or to incite foreigners to invade the realm are treason-felony, and may perhaps be dealt with as constructive treason. Force contemplated or applied to make the king change his counsels, or to intimidate either or both houses of parliament is treason-felony. Thus, for example, conspiracies of the Fenian brotherhood to use force to separate Ireland from the crown were treason-felony. In considering these precedents I think we should note this, that apart from the case of Lynch in 1903 and of Sir Roger Casement in 1916, all prosecutions in England since 1848 for treasonable offences have been made for felony under the act of 1848.

Now, with that short introduction, we might come to the clause before us. I would like to make first of all the following points with regard to clause 46 (1) (e). The first point is that there is no provision in the present law which is in the same terms as paragraph (e) of clause 46 (1).

The second point is that the Criminal Code revision commissioners apparently considered that the Official Secrets Act, which provided a maximum punishment of 14 years, was not adequate to deal with modern problems connected with the unlawful communication of information to agents of states other than Canada.

The third point is that as recommended by the Criminal Code revision commission and as introduced in the Senate as Bill No. H-8, the provision was as follows:

> Every one commits treason who, in Canada,
> (e) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada;

The punishment authorized was death or imprisonment for life. Now, when one says: "death or imprisonment for life" it means that it is a different kind of death penalty from that provided now in the code for

murder, which is a mandatory death penalty, with a judge not having any choice but to impose it. The penalty of death or imprisonment for life with no minimum, means that the judge in a case can, if he sees fit to do so, impose a death penalty or he may impose life imprisonment or such lesser imprisonment as he in his wisdom may see fit, which may be imprisonment for a week or a day; so that there is a very great deal of difference between a mandatory death penalty and the penalty that was first named in this Bill H-8.

Mr. Knowles: The minister is commenting on the meaning of the words "liable to"?

Mr. Garson: Yes, that is right.

Mr. Knowles: Would he care to elaborate further by pointing out the position of a judge in a case where the punishment is death only. He has referred to a case where an accused is liable to life imprisonment.

Mr. Garson: If I recall correctly, I think the code says that for the crime of murder the convicted man shall be sentenced to death.

Mr. Knowles: That is clause 206.

Mr. Garson: Yes, that is clause 206. My hon. friend has it before him, no doubt. Then, the section in the present code, 263, is as follows:

Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death.

It does not say that he is "liable"; it says that he shall be sentenced to death.

Mr. Knowles: Perhaps the minister would clear this up. He made it clear with regard to punishment for treason, where the punishment is a liability to life imprisonment, that a judge might make it for a lesser period—such as, as he suggests, only one week. What is the position of the judge where the punishment is a liability to be put to death, and where no alternative is stated? What is the lesser punishment in that case?

Mr. Garson: I do not think there is any such sentence. Where a mandatory death sentence is authorized in the Criminal Code it says that, upon conviction for murder, he shall be sentenced to death.

Mr. Knowles: I am referring to clause 47 (1) (a)—unless that is one of the clauses the minister is amending.

Mr. Garson: It says that he shall be liable to be sentenced to death. Well, I would want to consider that point. I do not think it has ever been raised before. It does not say "shall be". I would want to look at it and, if I may, to comment later.

I think it might be of some service if we were to compare the form of wording used in Bill H-8 with section 3 (1) of the Official Secrets Act, which provides as follows:

If any person for any purpose prejudicial to the safety or interests of the state

(a) approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place; or

(b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power; or

(c) obtains, collects, records, or publishes, or communicates to any other person any secret official code word, or pass word, or any sketch, plan, model, article or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power;

he shall be guilty of an offence under this act.

Now, the provision was discussed in the Senate banking and commerce committee, but the committee did not report. So that no recommendation was made either in favour of or against the provision. When the bill was introduced in the Senate for the second time as Bill "O"—it was first of all introduced as Bill H-8, and then died on the order paper, and was revived as Bill "O"—the provision was in the same form I have already indicated. The Senate banking and commerce committee, to which the bill was referred, thought at first that the paragraph was too broad and, secondly, that the conduct referred to in the paragraph was not such as should be defined as treason.

Actually the Senate removed paragraph (e) from clause 46 and inserted it in clause 50 as paragraph (c) in a changed form, reading as follows:

Every one commits an offence who

(c) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada.

Now, by transferring it to clause 50 it made the punishment applicable to it a period of 14 years imprisonment. The provision was then introduced in the House of Commons in the form, naturally, in which it had left the Senate. In due course it went before the special committee of the house at the last session.

The special committee did not agree with the change the banking and commerce committee in the other place had made, and they further amended the paragraph so that it took the form that it now takes in the bill before us. That is, as my hon. friend can see, the form in section 46 (1) (e) as it now reads. Perhaps I might comment upon that wording. It is quite different from the original wording and says:

without lawful authority, communicates or makes available to an agent of a state other than Canada,—

And then, instead of the single word "information" it particularizes as follows:

—military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial—

Not to the "safety and interests of Canada", which is a rather vague expression, but—

—to the safety or defence of Canada.

This makes it clear that it was military and scientific information relating to the safety or defence of Canada which was prohibited.

The relevant amendments that were moved in the House of Commons special committee were moved by the hon. member for Vancouver East, and the former member for St. John's West, Mr. Browne, and the former member for Gloucester, Mr. Robichaud. The effect of the amendment was to restore this provision back to the treason section, but to narrow it substantially from the broad and less certain terms in which it had been set out when it was before the Senate.

I have already indicated in the house that the government felt under an obligation, when introducing Bill No. 7 at the present session, to introduce it, with a few minor typographical corrections, in the exact form in which it had been reported upon by the special House of Commons committee at the last session, so that the house would know that Bill No. 7 was the bill which had been considered by the parliament of Canada in a preceding session, and that it came to us again in the exact form in which the House of Commons special committee had passed upon it.

We in the government thought that if we had any views of dissent from the conclusions of the House of Commons committee we should lay before the members of the House of Commons the exact text upon which the House of Commons committee had passed, and then that we should bring in amendments to this text which we in the government proposed. In this way members could judge what had been approved by the House of Commons committee and would know exactly what we were proposing to change.

We in the government were quite deeply concerned with the question of what was the proper punishment for an offence of this kind.

How heavy the appropriate penalty should be for the disclosure of military and scientific information of this sort is a matter which is not without very great difficulty to determine. This new sort of treason is in line with the great change which has come over the offence of treason from what it was in feudal days when it might have been an act of disloyalty to a personal king. But today there could be disclosure of information with regard to the H-bomb or the atomic bomb which might have consequences much more serious for the state than even a personal attack upon the monarch.

Without detaining hon. members of this committee with details I think I should say that the government considered this problem at great length and also in a subcommittee of the cabinet set up for that purpose. We came to the view, which I will introduce amendments to support, that a distinction should be drawn between the offence when committed in peacetime and the offence when committed during wartime when it would be of a particularly heinous character and would be an act just as serious as adhering to the king's enemies. We knew that we would be one of very few free nations which imposed even on a non-mandatory basis the death penalty for an offence of this sort in peacetime. We therefore thought that the penalty sections of clause 46 should be amended to provide that it would continue to carry the present penalty, if the offence were committed during a time of war, and if committed during a time of peace it would carry the penalty of 14 years imprisonment.

For these reasons, Mr. Chairman, I would ask my colleague the Minister of Fisheries to move amendments to clauses 46 and 47. Before he does so, however, I would point out that the amendments to clause 46 are consequential to the amendments to clause 47. I think the amendments to clause 47 will be self-explanatory but if not I will be glad to explain them.

The Deputy Chairman: I believe it would meet with the approval of the committee if these clauses were treated as a group and discussed as a group and we can move the amendments when each clause is reached.

Mr. Sinclair: Mr. Chairman, I move:

That subclause (1) of clause 46 be amended by deleting paragraph (f) and (g) and substituting therefor the following:

(f) conspires with any person to do anything mentioned in paragraphs (a) to (d);

(g) forms an intention to do anything mentioned in paragraphs (a) to (d) and manifests that intention by an overt act; or

(h) conspires with any person to do anything mentioned in paragraph (e) or forms an intention to do anything mentioned in paragraph (e) and manifests that intention by an overt act.

I would also move:

That clause 47 of Bill No. 7 be amended by deleting subclause (1) thereof and substituting therefor the following:

47 (1) Every one who commits treason is guilty of an indictable offence and is liable

(a) to be sentenced to death if he is guilty of an offence under paragraph (a), (b) or (c) of subsection (1) of section 46;

(b) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (d), (f) or (g) of subsection (1) of section 46;

(c) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (e) or (h) of subsection (1) of section 46, committed while a state of war exists between Canada and another country; or

(d) to be sentenced to imprisonment for fourteen years if he is guilty of an offence under paragraph (e) or (h) of subsection (1) of section 46, committed while no state of war exists between Canada and another country.

The Deputy Chairman: I will now put the amendment relating to clause 46 as moved by Mr. Sinclair.

Mr. Fulton: Mr. Chairman, it is difficult to assess the exact effects of these amendments quickly but they do seem to me to meet the objections which have been advanced, particularly against the inclusion of paragraph (e) as it at present stands in clause 46, subclause (1), which may, as clause 47 stands now, carry the possibility of a sentence of death. If I understand the effects of the amendment to the Criminal Code proposed by the minister—if I am wrong he will no doubt correct me—an offence under clause 46, subclause (1), and paragraphs (a), (b), and (c) will still carry the sentence of death, and the offence under paragraph (e) will only carry the possibility of a sentence of death if committed in time of war. Even there, if the circumstances are such that in the discretion of the court it is felt inappropriate to pass a sentence of death, then the accused, if found guilty, may be sentenced to life imprisonment or a lesser term of imprisonment. That seems to be a sensible thing.

Further, if a person commits an offence now contemplated under paragraph (e) of clause 46, subclause (1), when we are not in a state of war he can only be liable to be sentenced to imprisonment for 14 years or such lesser term as in the court's discretion seems appropriate. That also seems to be a sensible provision. But, in order that we may understand the effects of the amendments, may I refer to the proposed amendments to clause 47 and ask the minister whether by virtue of paragraphs (c) and (d) of that proposed amendment the sentence of death or of imprisonment for 14 years will follow, whether or not the information is communicated to the country with which we are at war?

In other words it is now provided that if a state of war exists between Canada and another country—it may be only one country—then if a person commits an offence under paragraph (e) of subsection 1 of section 46, that is, if he communicates information to an agent of a state other than Canada, then if we are at war with another country he may be liable to be sentenced to death. It would follow from those words, would it, that that death penalty would be imposed even if the information is communicated to an agent of a country other than a country with which Canada is at war? As I read the proposed section or the proposed amendment to section 47, that would be the effect. I am wondering, however, whether that was the intention or whether it was the intention to provide that the penalty of death would follow only if the information was communicated to an agent of a country with which we are at war.

Mr. Garson: My hon. friend's question really divides itself into two parts. He said, "Would the death penalty follow?" The death penalty would not necessarily follow. This is not a mandatory death penalty. So far as the death penalty is concerned—

Mr. Fulton: I should have said that.

Mr. Garson: I know, but I think it is important to emphasize this. The judge has a wide discretion here to fit the penalty to the crime, depending upon the evidence that comes before him, from a non-mandatory death penalty if the evidence is heinous enough to warrant such a sentence down to a very slight term of imprisonment if it is not heinous at all.

Mr. Fulton: There is room for that discretion.

Mr. Garson: Yes. I am sure my hon. friend is clear on that point. With regard to my hon. friend's other question, while the section clearly states "while no state of war exists between Canada and another country," it is not necessary that the accused person should convey the information to a citizen of the country with which we are at war. I am sure that any person who is familiar, even on a novel-reading basis, with espionage and counter-espionage these days, knows perfectly well that there is no guarantee that if information of this sort is passed out to an agent of country A, it may not be designed from the very first to end up with our enemy country B; and that the purpose of disclosing to country A in the first place was that it might be passed on to enemy B.

I am sure that my hon. friend is also aware of one other fact. If we proceed under the Official Secrets Act, most of the prohibitions are outright prohibitions in connection with which *mens rea* does not have to be proved. But *mens rea* has always been an essential ingredient of the crime of treason

and *mens rea* would have to be proved in the present case. That would be the greatest protection that the accused could have because it would have to be shown that, in the terms of the statute, he, with a guilty mind and "without lawful authority", communicates this information. This can hardly be said to be unfair to the accused. When the crown must go to this extent to prove its case against the accused in order to secure his conviction, even although the information which is disclosed was to a citizen of some country other than the one with which Canada was at war, I think it can hardly be said to be unfair to the accused.

Mr. Fulton: Then I think we are clear that in the case of communicating information under paragraph (e), if it is done at the time when Canada is at war with another country, and then if, let us say, it was communicated directly to an agent of that country with which we are at war, it is possible to impose the death penalty. It is also possible to impose the death penalty even if the information was not communicated directly to that country but was communicated to a third country with, let us say, the intention that it should go to the country with which we are at war; there would still be room for the death penalty, under those circumstances. If as the minister has said, the offence itself was less heinous and amounted to a careless communication of information to some other country with which we were not at war, then there would be room for the penalty of imprisonment for life or such lesser term as might be thought to be appropriate.

But if there is no war at all—and I presume this means a state of declared war; and that would be important to determine—then for the offence contemplated under section 46, subsection 1, paragraph (e), there is no possibility of the death penalty. If I am correct there, then I think the other points which I should like to ask the minister to clear up are these. Is it necessary that there should be a declaration of war, or do the words "state of war exists" cover such a situation as the Korean war which I prefer to call a war although it was not a declared war but was covered, I think, in an earlier amendment in 1951 by the term "state of hostilities existing between the armed forces of another country and Canada"? Is that situation contemplated in paragraphs (c) and (d) of the proposed amendment to section 47?

Mr. Garson: The answer is no. My hon. friend can examine for himself the basis for that answer by comparing the wording of subsection 1, paragraph (c) of this same section which covers the Korean situation and paragraph (e) of that subsection. Paragraph (c) reads as follows:

Assists an enemy at war with Canada,—

That is at war in the same sense that we have been discussing it in the section before us.

Mr. Fulton: Yes.

Mr. Garson: The paragraph continues:

—or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

Mr. Fulton: Yes.

Mr. Garson: That is the situation in Korea. My hon. friend can see that that is a very different set of words from the set which is used in section 46, subsection 1, paragraph (e).

Mr. Fulton: I suppose that in the case of communicating information, if it was to a country with whom, while there has been no declaration of war, nevertheless our armed forces are engaged in hostilities, then there would be the chance of laying the charge under either paragraphs (c) or (e) because the mere communicating of information might be sufficient to assist the armed forces against whom Canadian forces are engaged in hostilities. There would be room for an alternative charge, would there not? Here I am thinking of the reverse of the situation. In the one case we are trying to modify the penalty. But here I am thinking of a situation where information is communicated for the deliberate purpose of assisting an enemy country, a country which is in fact an enemy although no declaration of war has been made, a country with which we are engaged in hostilities. I think my doubt is cleared up to some extent. We are forced to think out loud, as it were, because this amendment has just been handed to us. I think my doubt is cleared up by the fact that there would exist the option of laying a charge under paragraph (c) if we wanted to ensure the heavier penalty in a case of that sort.

Mr. Garson: I would suggest to my hon. friend that if he reads paragraph (c) correctly he will see that it would be quite difficult, I should think in most cases, to prove the offence against the accused because the assistance under paragraph (c) is the assistance of the armed forces against which Canada is engaged; and it would have to be shown that the information in question was of assistance to the armed forces. I am not saying that it is impossible to prove that

information was of assistance to the armed forces, but I should think that in most cases it would be more difficult to prove that than it would be to prove that the accused had communicated contrary to section 46 (1) (e) to a state other than Canada information of a military or scientific character that he knew or ought to have known might be used by that state for a purpose prejudicial to the safety or defence of Canada. In order to prove an offence under 1 (c) he would have to prove that the information communicated would assist the armed forces. If he could not prove that, the case would fail.

Mr. Fulton: I am not very happy about this although I do not know whether it is a fundamental objection. It does seem to me, however, that by the amendment we have precluded the possibility of the death sentence. Again I want to be careful of my words because to some extent we are thinking out loud and trying to sort this thing out, but is it not a fact that if these amendments carry we have precluded the possibility of the death sentence against a person who communicates information of a military or scientific nature which is designed to assist the country with the forces of which our Canadian forces are engaged in hostilities, although no declaration of war has been made? Under (e) now, for the death penalty to follow there must be a declaration of war and the communication of information must be made under those circumstances. If, as in the case of Korea, there was no declaration of war and information had been communicated directly to North Korea or communist China designed to assist them and they are not an enemy in the usual sense of the word, then if it did not actually directly assist their armed forces it seems to me we have precluded the possibility of the death sentence although an act, which seems to me to be a highly treasonable one, has been committed.

Mr. Philpott: I should like to ask a question on this same section. We have all received a great many communications from different organizations in Canada about Bill No. 7, but there are no sections concerning which we have received communications about which there is so much confusion as this particular one and the ones having to do with labour. There is a widespread impression abroad that in this case the new section is more drastic than the old one, but I think anyone who examines the section in the code as it now exists will see quite clearly that the new section is not as drastic as the old one.

For instance, I as a newspaperman might be sent to Kenya and my sympathies might or might not be with the Mau Mau. If I came back to Canada and wrote in favour of the Mau Mau then I would come under section 74 (i) of the Criminal Code as it now stands. That subsection reads as follows:

> assisting any public enemy at war with His Majesty in such war by any means whatsoever.

Under that section I would be liable to the final penalty. Under the new clause I would have to assist an enemy at war with Canada or armed forces against whom Canadian forces are engaged. It is much more restricted than under the old code. I was not in the house when the action was taken, but I for one have never been quite clear why this business of invoking war penalties when we were in a state of war which we had not declared was ever put into the code. It has always seemed to me that we got off on the wrong foot and made a lot of trouble for ourselves in fighting the war in Korea. We never did come right out and call it a war and I for one, without further illumination on the point, think that we took a wrong step.

It seemed to me that we followed too closely the example of the United States which wanted to bring in that thing they call a police action without having to get a declaration of war from congress. It seems to me that we should declare war if we are going to have to fight a war. We should declare that a state of war exists and get away from many of these difficulties that arise from different penalties applying with respect to a declared war and an undeclared war. For my own information I should certainly like to hear from the minister why we ever did that with respect to Korea. Would it not have been better to declare war and be done with it?

Mr. Garson: If I neglect to answer some part of someone's question I hope the person will bring it to my attention. To answer the question of the hon. member for Vancouver South first, I must say that the declaration or non-declaration of war does not come under the Department of Justice. All that comes under the Department of Justice is the legislative containment of the results of the non-declaration of war. This is what we have tried to do in clause 46.

Addressing myself to the question raised by the hon. member for Kamloops, it seems to me, although I am very far from being an expert in this field, that where there has been no formal declaration of war the only basis you have for the imposition of penalties upon a traitor in relation to what is going on, for example, in Korea is the basis we have stated here in clause 46 (1) (c). We

only arrived at the wording of this clause after the most careful consideration. What is it we are involved in? We are engaged in hostilities. That is all that we can say the fact is. There is no declaration of war, no state of war recognized according to the rules of international law. All there is is a state of hostilities, and that is the basis.

Actually, to get down to moral reality, the only information that will come within the status of the activities in which we are engaged is information which will assist the armed forces with whom we are engaged in hostilities. That is so not only for the reason I stated before but also for this reason. At a certain sector of the battlefield we may happen to be engaged with forces A of one country, with forces B of another country and with forces C of a third country. In a month or so forces C may go some place else and not be engaged there at all. We have to deal with the facts as they are from time to time in the hostilities. That is the only basis we can have for the use of a penalty against a person who discloses information of that sort. In the great majority of cases I would think that if information is given to North Korea or to Red China in connection with the hostilities, it is more than likely that the information given to them, in relation to mere engagement in hostilities as distinguished from a state of war in law, will be in relation to the armed forces. Indeed if information is given which is of value to the North Korean state apart from military activities then there is no reason in principle why that act should be any more culpable under clause 46 (1) (c) than if the same information were given to any other country with which we were not at war.

Mr. Stick: I do not want to make it too difficult for the minister, but there is a possibility that Great Britain may be at war with a country and we might not. What happens then? Does the section apply? For instance, Great Britain has recognized communist China, and we have not, so there could be complication in that respect. How would the section be interpreted if information were given to a country which we did not recognize? If we were not at war with a country, then the person giving the information could only receive a sentence of fourteen years; he could not get the death penalty. We are making the law now for the future, and not for the moment.

Mr. Garson: The answer to that question is that Canada is an autonomous nation. When we are talking about being at war within the terms of this section, we are talking about Canada being at war and not Great Britain being at war.

[Mr. Garson.]

Mr. Fulton: It has nothing to do with recognition.

Mr. Garson: I was going to say that a country like Canada need not recognize a country in order not to be at war with that country. And it is the fact of Canada being at war or not being at war which will determine the penalty to be imposed upon a person found guilty of communicating information contrary to clause 46 (1) (e). But if not being legally at war our forces are engaged in hostilities with other forces then assistance to these hostile armed forces if proven will constitute an offence under clause 46 (1) (c).

Mr. Fulton: I think the minister has cleared it up satisfactorily.

Mr. MacInnis: I feel it is rather late in the day to discuss how we happened to get into the Korean war, and I imagine that none of us, despite the very unsatisfactory way in which it went, would wish we had not gone into it. Today we are trying to legislate for the offence of treason in the light of conditions into which the relationship between the nations of the world have brought us. I was glad to learn that this section had given concern to the cabinet, because I did not think the cabinet as a whole ever had time to give detailed thought to matters of this kind.

The point with which I find fault in section 46 is paragraph (g). I understand that when this provision appeared in the earlier draft of the bill in the other place they deleted it. Paragraph (g) reads:

> (g) forms an intention to do anything mentioned in paragraphs (a) to (e) . . .

I understand that with the amendments offered that will be changed to "forms an intention to do anything mentioned in paragraphs (a) to (d)."

> . . . and manifests that intention by an overt act.

How could it be ascertained that a person had formed an intention to do something if he did not manifest that intention in an overt act? I notice the Minister of Citizenship and Immigration indicating he could do it in writing, but the writing itself would be an overt act. I do not believe we should have in this bill any provision relating to forming intentions to do something. I think we could meet the situation equally well by an amendment to clause 46 (f) by saying, "every one commits treason who, in Canada, conspires with any person to do anything mentioned in paragraph (a) to (e)." I should like to see the minister remove paragraph (g) altogether, and also the implication that would have.

This phrase "forms an intention" sticks in my crop. I do not see how in the world you

are going to convict a person of an intention if that intention has not manifested itself in an overt act.

Mr. Knowles: At the outset, Mr. Chairman, I want to say that like some of the others who have spoken I am glad to note the amendments the government proposes to make to these sections. I feel it should be pointed out, however, that when one studies them closely there is really only one change being made. So far as the crimes listed in paragraphs (a), (b) and (c) are concerned, they are still punishable by death or life imprisonment. The only change that is being made is with respect to communicating information under certain circumstances. In time of war that is still punishable by death or imprisonment, but in time of peace that act is punishable by a sentence of only fourteen years. I see the minister agreeing with me that the latter is the only change that is made by the amendments that are now proposed to the committee.

As hon. members know, most of us in this group question capital punishment itself, and in my thinking that carries over into this section of the Criminal Code. I had hoped the minister would be prepared to go farther than his amendments suggest, although that does not detract from my welcoming those amendments. In respect of the one change that is made by the two amendments, namely, that the maximum sentence of fourteen years be imposed in the case of communicating information in peacetime, I feel constrained to point out that that sentence seems to have been chosen to parallel the sentence of fourteen years that is provided in clause 62 of the bill with respect to sedition.

I point out that the sentence under that clause was only two years up until 1951, when it was increased to seven years, and it is now being increased to fourteen years. It does seem to me that, bearing in mind the circumstances under which a person might be convicted under this section, the length of sentence is rather long. I hope that might be looked at still further.

I am glad that the member for Kamloops questioned the minister as he did so that we were able to get the picture clear as to the meaning of the phrase "at war" in the amendments being proposed. I think it is now quite clear, although I must not speak for the hon. member because I do not think he is as satisfied as I am on that score. However, he can speak for himself.

The fact that the government has felt it necessary to introduce a wording in these new amendments that refers only to an actual state of war prompts me to ask the question as to whether any consideration was given by the government at this time to the wording of clause 46 (1) (c). That wording of course was put in in 1951. As the minister knows, it was the subject of considerable debate in this house. Here again the hon. member for Kamloops and I did not agree.

It seems to me there is still some question as to what might be involved in the phrase "assisting forces engaged in hostilities against Canadian forces." An example comes to my mind. Some hon. members may think it is far-fetched, but I lay it before the committee in all seriousness. It has been said in this house in recent days—and I am not trying to revive another debate—that to argue for the recognition of the present government of China is to assist that government.

Mr. Garson: Assisting the government is not the point; it is assisting the armed forces.

Mr. Knowles: It is pretty hard to distinguish between a government of a country and its armed forces, and I think that applies very definitely to China. I know they do, but it is not the case here. What is the position of a person not in the parliament of Canada where there is immunity, but of a citizen of Canada, making a speech and urging upon the government of Canada the recognition of the present government of China.

Mr. Fulton: We are not engaged in hostilities with them.

Mr. Knowles: I am glad my hon. friend mentioned that. I know we are not now engaged in hostilities with them, but suppose that had happened before the truce was arrived at in Korea. Although we were not engaged in hostilities against them even then, it was alleged that armed forces of that country were engaged in hostilities against the forces of Canada. I wonder whether the minister can say that under that circumstance there is the possibility of one's words, in this land of free speech, being construed as in violation of clause 46 (1) (c)? In other words, Mr. Chairman, what I am asking is whether or not consideration was given to the revision of the decision that the government reached when it brought in the 1951 amendments to the Criminal Code.

Another point which I mention, just to include it in this context, is of course the one the minister wants time to think over. He told me that a few minutes ago. I suggest seriously that he does have to decide what the position is in the case of a judge who finds that the code offers only one sentence that he may impose, namely, liability to death, if the judge feels that the sentence should be something less. The minister has made it clear that where the possible sentence is liability to life imprisonment, the judge can

impose imprisonment for a lesser period of time right down to one week. But I put the other question. It is a serious one. I do not raise it facetiously at all. What is the position of a judge in respect of the offences which carry the punishment of being liable to death, where the code provides no alternative, if a judge feels that there should be a lesser sentence?

I have one or two other points I want to comment on with respect to clause 46, and the last one I shall comment on is the one that my colleague, the hon. member for Vancouver-Kingsway, had something to say on a moment ago. First of all, Mr. Chairman, I wonder whether subclause (f) as it now appears in clause 46 (1) is necessary at all, in view of clauses 21 to 24 of the code. These are the clauses that provide generally for parties to offences. Since they make that provision generally for all offences throughout the code, why does (f) need to be repeated in clause 46 (1)? I ask the same question with respect to subclause (g) of clause 46 (1). Why is it necessary, in view of the fact that the point there seems to be covered in clauses 406, 407 and 408?

As I say, Mr. Chairman, there are those and a number of other minor points that one might raise; but I think the hon. member for Vancouver-Kingsway has touched on the most questionable part of this whole clause, namely, 46 (1) (g), which reads in the printed version:

> Every one commits treason who, in Canada,
> (g) forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act.

I hope the minister will not mind an illustration that now comes to my mind that I should like to lay before the committee. I remember back about 1943 or 1944 when a very largely attended meeting was held in the city of Winnipeg in the civic auditorium. It was held under the auspices of the Canadian-Soviet Friendship League. The principal speaker on that occasion was a chap whose name I do not recall at the moment, but he was a major in the Soviet army and he was at that time a military attaché connected with the Soviet embassy here in Ottawa. When the spy trials were held later and the royal commission made its report, the name of that military attaché, the very one who had spoken at that meeting in Winnipeg, figured very largely as having been a key person in what was covered in the report of the royal commission. I wonder whether the minister remembers who was chairman of that meeting? By the grin on his face I know he does. The then premier of Manitoba, the Hon. Stuart Garson, was the chairman of that meeting. I now ask the same Stuart Garson, who is now Minister of Justice, to look at the section of the code which he as Minister of Justice is now piloting through this house. This is what it says:

> Every one commits treason who, in Canada,
> (g) forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act.

That clause does not say how closely the overt act has to be related to the alleged intention. I wonder whether the overt act of the Minister of Justice, the then premier of Manitoba, in giving his blessing to that particular person could be regarded as manifesting the fact that he had formed an intention, without lawful authority, to communicate or make available certain information to another state.

Mr. Philpott: Come, come!

Mr. Knowles: I hear some people say "come, come"!

Mr. Abbott: What is an overt act?

Mr. Knowles: I hear people suggesting that—

Mr. Philpott: Will the hon. member permit a question? Would he level the same charge at the Right Hon. Sir Winston Churchill for having had meetings with Stalin during that precisely same period?

Mr. Knowles: No; I am not suggesting that any such charges should be laid against the minister. It is precisely because I think such charges should not be laid against Sir Winston Churchill, or against the Minister of Justice, or against the hon. member for Vancouver South for some of the things he has written for the Vancouver *Sun*, that I contend that language such as this should not be in the Criminal Code.

The hon. member for Kamloops wants to know how the minister becomes involved, how the former premier of Manitoba is covered by this clause. This clause refers to a person having formed an intention to do anything mentioned in the whole paragraph, including conspiring. Does the overt act to which I have referred indicate that the Minister of Justice, who was then premier of Manitoba, and chaired the meeting, had formed the intention to conspire with the special speaker on that occasion to do some of the things prohibited in this section?

Some hon. members may take a certain amount of amusement out of this; even the Minister of Justice is amused. But I suggest something like that is no more fantastic than some of the things that have happened in this country. What I want to speak about

chiefly in this connection will be more applicable when we reach the sections on sedition. However I should like to make a passing reference to the subject at this time.

I suggest it is no more fantastic that the Minister of Justice be charged under this section with an overt act, having chaired that meeting, which might have been regarded as manifesting an intention to conspire with a certain person, than it was to lay a charge of conspiracy against the late J. S. Woodsworth for quoting passages from the book of Isaiah. It is not one bit more fantastic, in fact it is not as fantastic as that was.

Mr. Pickersgill: It never went to trial.

Mr. Knowles: The hon. member for Bonavista-Twillingate—pardon me, the Secretary of State—says the case never went to trial. I know; because a similar charge against F. J. Dixon was heard first, and he was acquitted. So J. S. Woodsworth was given a stay of proceedings, proceedings which were never dropped. That stay of proceedings was with him as long as he lived. And through most of those remaining years he was a member of the House of Commons for the constituency of Winnipeg North Centre.

I submit this is not as facetious or as fantastic as some hon. members think it is. What we have here is legislation which, in my view, approaches thought control. We have legislation that gets at people, not for what they do but for what they think or what they intend to do. I submit that is going too far.

I enjoyed the minister's speech when we began discussion of this section, particularly the historical treatise he gave us concerning the development of the law of treason. I noted in particular the way in which he pointed out that it has moved from a concern for the persons of those who wear the crown to a concern for society as a whole. I also noticed his telling us that the range of offences that could be regarded as treason had been narrowed. He pointed out that in the early days there were various offences which are now considered as felonies but which, in those days, were treason.

My quarrel with section 46 is that, to an extent, it reverses that course of history. The course of history has been to narrow the field to such things as attacks on the person of the sovereign, and to the actual waging of war or the aiding of an enemy of the state. In section 46 we have a broadening of that arrangement to include the change made in 1951, and to include also the phrase to which I have been objecting more particularly, and which I have called legislation with regard to thinking.

While I am on my feet, despite the fact that it was my intention to make this reference when we reach the sedition clause, I should like to say a word about another former member of this group who, like J. S. Woodsworth, my predecessor in the constituency of Winnipeg North Centre, had the distinction of being charged with seditious conspiracy. I am sure all who knew him were indeed sorry to learn the news last night, and to read in the press this morning, concerning the death of the former member for Winnipeg North, Mr. A. A. Heaps.

I think it is highly significant that we should be discussing these sections at the present time. The law can sometimes be wrong. Those who enforce the law can be wrong. This country has had many instances where people who were charged under sections like this have been able to show to the country that they were its real patriots, its foremost citizens. I am pleased to have this opportunity today to pay my tribute to the work that was done in the council of the city of Winnipeg and here in parliament for many years by the former member for Winnipeg North, Mr. A. A. Heaps.

Mr. Nesbitt: Mr. Chairman, I, for one, am very sorry to see the minister proposing certain amendments to section 46. I feel that the section as it stands in the proposed code is quite adequate. My reason for saying this is that I cannot help feeling that a very unrealistic attitude is being taken concerning the word "war". I know there are plenty of legalistic niceties as to whether we are at war or are not at war with a country. But the situation in the world today is not the same as it was a hundred years ago when people sent a nice, formal declaration of war.

The present situation of the world is, I suggest, almost unique—and I believe the minister would agree with that statement. One may apply the various gradations of war —hot war, cold war, lukewarm war, undeclared war, hostilities—everything else. I think it is time we took a good look at what the situation really is. We were not a few months ago technically at war with communist China or with North Korea. But we had men fighting over there, men who died there. Yet we were not at war with them, of course!

Then, at the present time we are not technically at war with Russia; but to say the least, I cannot help feeling that there is a certain tension between the two countries. Let us suppose that Mr. X sells secrets to Russia or to some of her satellites concerning our radar defence in northern Canada, or about weapons we may have, which he knows perfectly well would be a procedure detrimental to this country and the United States.

At the present time he would go to prison, under the suggested amendment, for only fourteen years. I am sure there are many members in the house, who, whether they choose to say so or not, would agree with me when I say that a penalty of fourteen years for a person who sold secrets concerning our radar defence either to Russia or to Poland, or to some other country, would not be sufficient.

I cannot understand why the minister has made the change in this section. I know that during the past few weeks and months we have been bombarded with letters from the Canadian peace congress, and all sorts of other organizations, some of them genuinely sincere and believing that they are taking a proper procedure. One hears all sorts of stories about some mythical scientist who might by some accident communicate some form of information in the field of medicine to another country, and bring himself under this section.

I suggest however that in the present wording of the clause, prior to the suggested amendment, there is wide enough scope for a judge to make a proper decision in the matter of penalty.

Only in the very extreme case, such as the one I have cited where someone sells Canadian radar network secrets to Russia, would, I imagine, the death penalty be contemplated. But I cannot for the life of me see why the minister proposes this change. It is just playing right into the hands of the propagandists who work on behalf of the communists and fellow travellers.

Mr. Herridge: Mr. Chairman, I would like to say a few words on this section before the minister replies. I agree with the hon. member for Winnipeg North Centre when he made the comment that the amendments introduced by the minister are at least a slight improvement. However, it is very difficult to discuss the amendments if you do not have a copy of them before you. But in any event I rise particularly to support the point of view advanced by the hon. member for Winnipeg North Centre and the hon. member for Vancouver-Kingsway.

There are two major objections to this particular clause. As the hon. member who has just resumed his seat pointed out, we have been bombarded in recent months with communications, cards and briefs from trade unions and other organizations interested in civil liberties and human freedom. I received one from the study group at Carleton College which presents in quite an excellent manner their criticism of the clause we are now discussing. I do not believe, Mr. Chairman, that I can do better than just quote briefly from their letter because they emphasize, in other directions, the very points raised by the hon. member for Winnipeg North Centre and the hon. member for Vancouver-Kingsway. I believe this is a very thoughtful presentation with respect to these proposed amendments to the Criminal Code, but before dealing with their specific objections I want to read a short introductory paragraph from this letter which was formulated by a student Christian movement study group at Carleton College in Ottawa. I presume this letter was sent to every hon. member in the house. This paragraph reads:

> Generally speaking, however, we feel quite definitely that certain civil rights are being infringed upon. We realize that Canada, both internally and externally, is attempting to adjust herself to changing world conditions. But even in these troubled times, basic freedoms, dear to our democracy, should not be forgotten. War hysteria is a phenomenon which, unchecked, could threaten the very foundations of our democratic way of life. In trying to protect ourselves against forces which are the embodiment of injustice and totalitarianism we must not become unjust and totalitarian ourselves.

I am sure all hon. members in this house will agree with those sentiments. The letter continues:

> We feel that our findings are well worth your consideration and trust that you will seriously and conscientiously read our objections.

The letter continues with respect to clause 46 dealing with treason:

> (1) Every one commits treason, who in Canada (c) assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are.

After quoting that section they go on to offer these criticisms:

> We do not object fundamentally to the phrase "assists an enemy at war with Canada" but we do object to the remainder.

I have received representations from a good many people who do. The letter continues:

> We do not question the right or the necessity of the crown to exercise vigilance in a time of international tension. We do not condone those who commit treason by helping an enemy at war with Canada. But is not a wide interpretation possible here? First of all, what does "assists" mean? Justice Minister Garson has said (House of Commons Debates, June 1951 at page 4636) "assisting means assisting in any way whatever". This consideration aside, *Saturday Night*, Vol. 67 No. 30, editorialized on this clause under the heading "What's Treason Nowadays" . . . "The extreme uncertainty and obscurity of the new definition of treason which makes it cover, not merely assistance to an 'enemy' but also assistance to 'any armed forces against whom, etc.? . . .' The existence of a state of war, and consequently of a defined enemy, is a matter of proclamation. The Queen tells her Canadian subjects to whom

they may not lend assistance . . . No such official action is necessary to turn a legitimate action into treason when the test is merely that the action benefits any armed forces against whom Canadian forces are engaged in hostilities".

There is also the important matter of considering with how many countries Canadian forces are presently engaged.

Of course, this was drawn up during the Korean war. The letter continues:

No doubt Canadian forces are fighting Chinese forces. Does this mean that a Canadian businessman who consigns a cargo of non-war goods to Red China, even through intermediary countries, is treasonous, or that a Canadian labourer working with the United Kingdom (for by section 46 (2) this man would not have to be in Canada but only one "who owes allegiance to Her Majesty in right of Canada") engaged in trade with Red China would be found guilty of treason? We understand the situation it is designed to cover. Even so, we do not feel that the situation justifies such variation in the definition of treason, a crime punishable by death.

I would like the minister to deal with these criticisms in his reply. The letter then quotes clause 46 (1):

Every one commits treason who, in Canada,

(f) conspires with any person to do anything mentioned in paragraph (d);

(g) forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act.

I thought the hon. member for Winnipeg North Centre dealt with that clause very well and I completely agree with his remarks. But the letter comments as follows:

Here an overt act manifesting mere intention is punishable by death, or life imprisonment, for example, it would appear that a person writing a letter to an agent of a state other than Canada arranging a meeting to communicate information might be guilty of treason—even though the letter was never mailed. It would be a reasonable police power to make the writing of such a letter an offence. But to go this far "behind the harm" and call it treason is unjust and out of line with the general tenor of our criminal law.

I believe the latter point is well taken. I would like the minister when he replies to the criticism of the act in regard to this clause to give his opinion of the criticisms outlined in this brochure.

Mr. Ellis: Mr. Chairman, I think I should call it six o'clock.

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

The Chairman: When the committee rose at six o'clock we were discussing clause 46 and the amendment proposed by the hon. member for Coast-Capilano. Shall the amendment carry?

Mr. Ellis: Mr. Chairman, I want first to comment on the remarks made by the hon. member for Vancouver-Kingsway when he spoke with regard to paragraph (g) of subsection 1 of section 46 which reads as follows:

Every one commits treason who, in Canada . . .

(g) forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act.

I wholeheartedly agree with the comments made by the hon. member. I think it an unusual section for one to find in our Criminal Code. I think it indicates a departure from our accepted idea of our law. There are several other sections on which I should like to comment very briefly.

In paragraph (d) of subsection 1 of section 46 provision is made that:

Every one commits treason who, in Canada,

(d) uses force or violence for the purpose of overthrowing the government of Canada or a province;

I should like the minister to define the words "force or violence". Those two words are perhaps open to wide interpretation. In our own history I think we have witnessed events which should point out the seriousness of this particular part of the section. In 1935, I recall that a group of young men from western Canada arrived in my own city on the way to Ottawa to place before the government their demands for work and wages. I recall people in my own city who at that time said, "These people are ne'er-do-wells: they are out to overthrow the government and to disturb constituted authority." Indeed there were many people in responsible positions who took that point of view. We know that the end result of that episode was an unfortunate riot. I draw that matter to the attention of the committee in order to indicate that in recent history there have been times when the interpretation of the use of force or violence and the intent of individuals were open to a great deal of question.

I do not think anyone who wanted to give the matter any serious thought or who thought about it objectively would ever have suggested that young, single, unemployed men who were looking for work and wages were out to overthrow the government of Canada by violence or force. But I remind the committee that in this country there were people who said that. Indeed, editorial opinions were expressed to that effect and even sermons were preached from some of our pulpits to the effect that the main purpose behind this march was an attempt to overthrow constituted authority.

There have been other occasions when the intent of individuals was open to question.

The hon. member for Winnipeg North Centre referred to the Winnipeg strike. In doing a little bit of research and reading on that matter I have uncovered evidence pointing out quite conclusively that there were many people who at that time argued that the Winnipeg strike was not an ordinary strike at all but was an attempt to overthrow the government of Canada by force and violence. I draw those two incidents to the attention of the minister in order to indicate the seriousness of the particular section and the need for a clear-cut definition. I should therefore like the minister to give a definition of the term "force and violence" in connection with the overthrow of the government, so that it will be crystal clear as to what this section means.

Then in paragraph (e) of subsection 1 of section 46 reference is made to communication of military or scientific information. I think the term "scientific information" is one which should be carefully defined. In this world of ours I think we realize that all information and scientific knowledge is cumulative, and that it is the result of investigation and research being done by many hundreds or thousands of scientists in all parts of the world. We should therefore be careful to define our terms so that by no stretch of the imagination will this provision restrict the normal interchange of scientific information. I can quite appreciate the intent behind this section. Certainly none of us would approve the transmitting of information of a highly strategic character to any nation with which we might be at war or with which our relationships are not altogether too satisfactory; but I think we have to be careful in this instance to make certain that we do not restrict normal scientific advance.

I recall several years ago listening to a University of Chicago round-table discussion on a Sunday morning. At that time the scientists in the United States were greatly worried about the activities of the government in the country, particularly those of the army, in restricting and censoring papers which they wished to read at scientific conferences. On this score I think the minister should make clear to the committee just what is meant by this term "scientific information".

In paragraph (c) of subsection 1 of section 46 we find the words "assists an enemy at war with Canada". Some other hon. members dealt with this matter this afternoon. I think the main thing here is to have a clear definition of what we mean by "assists". The word "assist" has a broad meaning. In the light of present-day conditions I think we ought to be careful to make quite clear what we mean. I think one hon. member this afternoon mentioned the Mau Mau terrorists in central Africa to develop a point. I should like to indicate, perhaps by using this hypothetical case, the danger involved here. At the present time British troops are employed in central Africa combating the Mau Mau terrorists. It is altogether possible that in Great Britain there are differences of opinion as to how the government should deal with this particular problem. The official view of the government seems to be that the terrorists should be crushed and that the status quo should be maintained in Kenya. There may be those in the United Kingdom who believe that the best way of handling that situation would be to make some improvements in that country in order to meet some of the difficulties or complaints which have brought about this wave of terrorism. Indeed there may be those who argue that the best thing for Britain to do is to withdraw completely from that colony. There is a difference of opinion.

At the present time, if the section which we are now discussing were the law in Great Britain, a situation could develop wherein, if the official government position was that the British government was going to use all the military measures at its command to beat down the Mau Mau menace, anyone in the country who spoke against that policy and who advocated, for example, the withdrawal of Britain from that particular part of the area, or who urged the government to quit that area, could be described as giving aid and comfort to the Mau Mau terrorists and therefore, I suggest, could be held to be guilty of treason under the act.

Mr. Philpott: Oh no.

Mr. Ellis: Perhaps that is an interpretation with which some hon. members will not agree, but I suggest in all sincerity that it could be interpreted in that way.

Mr. Philpott: Will the hon. member permit a question? Surely not under the new act, under the old act, but surely not under the new act—

Mr. Ellis: Mr. Chairman, I did not quite get a question out of that. I heard a comment.

Mr. Philpott: I can make it a question. When it is plainly stated that the enemy must be at war with the forces of Canada, how can the hon. member get the Mau Mau terrorists into that?

Mr. Ellis: I thought I had explained that I am taking a hypothetical case. I am suggesting what the situation might be if the section we are now discussing were the law of Great Britain. I am taking the situation over there. I am trying to get away from this country because I realize that in this

day and age it is very difficult to be entirely objective on these matters. I think we can be a little more objective sometimes if we make our propositions hypothetical and remove them from our shores. I think I made my point quite clear. I am suggesting what could happen in Great Britain if the section which we are discussing were the law of that land.

If an Englishman were to criticize his government about Kenya or to insist that the government quit Kenya rather than supporting the police action or punitive measures being taken in that country against the Mau Mau, he could be held liable for treason under this section.

Mr. Michener: Which section?

Mr. Ellis: The section we are discussing, 46. Subsection (c) reads:

assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities . . .

That is the situation I have been describing with respect to England, and if this section were the law in that land it would read:

assists an enemy at war with Great Britain, or any armed forces against whom British forces are engaged in hostilities . . .

The Mau Mau could be construed as an armed force and they are engaged in hostilities against the British forces in Kenya. Therefore under the terms of this provision persons in Great Britain who oppose the policy of the government could be accused of treason. That is my suggestion to the minister. He may disagree with that. When he replies he may take a different point of view, but from a reading of this section I cannot see why the government could not interpret it to include the kind of situation I have just described.

In recent times we have seen police action taken on behalf of the United Nations, and I think perhaps we may see more instances of that kind.

Mr. Fulton: Where? Indo-China?

Mr. Ellis: With respect to the Korean situation, when it was decided that the United Nations forces should go north of the 38th parallel and move towards the Yalu river that move was opposed by the British government, by the Indian government and by a great many other governments. If this section had been in effect at that time a citizen could have been liable under it if he had expressed disapproval of that particular phase of the police action. I suggest that the important thing we must remember is that we do not want in any way to restrict the rights of Canadian citizens to express their opinions on matters of policy, including matters of foreign policy.

I realize there are many in this country who are opposed to some of these sections for different reasons than those for which we are opposed to them. But regardless of who may be in favour of this provision and who may be opposed to it, I think we as members of the house must use our individual judgment and decide about this section on its merits. I should like to draw to the attention of the committee an editorial that appeared in *Saturday Night* of May 3, 1952. It is headed, "What's 'Treason' Nowadays?" It deals with these sections of the Criminal Code and reads in part as follows:

Saturday Night had no enthusiasm for those amendments at the time when they were quietly wangled into the code with the least possible advance notice, and we have no more enthusiasm for them now, being convinced that they are potentially dangerous to the freedom of the citizen.

We pointed out at the time the extreme uncertainty and obscurity of the new definition of treason, a crime punishable by death, which makes it cover not merely assistance to an "enemy" but also assistance to "any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists". The existence of a state of war, and consequently of a defined enemy, is a matter of proclamation; the Queen tells her Canadian subject to whom they may not lend assistance and when such assistance becomes treasonable. No such official action is necesary to turn a legitimate action into treason when the test is merely that the action benefits any armed forces against whom Canadian forces are engaged in hostilities.

Incidentally, this removal of the distinction between "hostilities" and "war" abolishes at one sweep all the "laws of war" as they have developed over the centuries, and creates a new situation to which no precedents or treaties concerning war have any application. Among other things it is not necessary that the Canadian forces in question should have been ordered into hostilities by any action of the Canadian government; they may have been plunged into them by the commander of an allied but alien army. It may be treason to aid an armed force about which the Canadian government does not even know that it is "engaged in hostilities" against our forces, for the amended code says nothing about any action by the Canadian government whatever.

These amendments were drafted very hastily, and upon the urgent instigation of the United States. They have been sharply criticized by many of the best liberal-minded lawyers of the country. They should be very carefully overhauled at the present session.

Mr. Nesbitt: Would the hon. member permit a brief question? Is the hon. member taking into consideration the fact that it is necessary under this section to have what is called *mens rea*, a guilty mind? There has to be the intention to do these things.

Mr. Ellis: I am not going to get involved in a legal discussion with my learned friend. I am not a lawyer and I must confess that my

interpretation of this law is that of a layman. I will leave it to my hon. friend to pursue his particular approach to this matter.

Mr. Knowles: We can give him the answer from Tremeear later.

Mr. Ellis: I have read this editorial opinion to indicate that there are many in this country, apart from those people who have been described by hon. members as submitting urgent recommendations regarding this bill, who look upon some of these sections as being very serious in their effect. I think as members of the committee we should look at this matter from the standpoint of the rights of the individual Canadian citizen. I do not think that in the past we have encountered any particular shortcomings so far as the Criminal Code is concerned. Throughout our history we have found it possible to take care of those who have been guilty of treason against the country.

This afternoon the minister gave a talk in which he went back into the early history of the crime of treason. I think what he said is in itself very good reason why we should be most careful before we make any new departures with respect to the treason laws. When a change in law is made I think it is quite obvious that there should be some reason for that change. We in this group are progressive people. We advocate change but only when change is absolutely necessary, not change just for the sake of change. When the Criminal Code is being revised and consolidated there should be particularly strong reasons why any substantial change should be made.

I believe the minister will have to agree that during our long history—I am speaking now of British history because after all all our laws have been inherited from the British—our laws have not failed to take care of these cases of treason when they have arisen. I feel, therefore, the minister should have a very good reason for suggesting any new departures in so far as this law is concerned.

Mr. Pickersgill: Would the hon. gentleman permit a question? Would he apply the same principle to the economic system?

Mr. Ellis: As I see it, we do apply that principle. We advocate change because, from past history, the need for economic change has been proven. We have had serious depressions in this country. In case the hon. member's memory is short, there were serious economic conditions in this country from 1935 until 1941 which his predecessors did not solve. We in this group advocate change, and we do so because we know that change is necessary. If the hon. member is prepared to accept the conditions that existed prior to the outbreak of world war II as being normal, then that is his right but we in this group maintain that the history of this country has shown the need for a change.

If the minister can show us a great need for a change in this particular section, then of course that will go a long way towards influencing our opinion on some of these things.

Mr. Garson: There is not any change.

Some hon. Members: Oh, oh.

Mr. Ellis: There is a great deal of change here. I cannot quite accept that. I have not the statute with me, but it seems to me that prior to the introduction of this bill the old act required that there be a declaration of war before a person could be charged with treason. A person had to give assistance to a nation with which Canada was at war, whereas under the new section there need be no declaration of war at all.

Mr. Garson: I think my hon. friend is labouring under a delusion because, so far as this particular section is concerned, Bill No. 7 re-enacts the law which my hon. friend from Regina City is discussing as it was on the statute books at the time the bill was under preparation; and the amendments we introduced today are I take it all in the same direction as the hon. member is thinking.

Mr. Fulton: In order to clarify the matter, may I say that paragraph (c) is not new because it was enacted in 1951. However, the minister would not say that paragraph (e) had been there before. I am not discussing whether or not it is justified, but let us be fair and say that paragraph (e) is new law.

Mr. Garson: But paragraph (e) is not what my hon. friend from Regina City has been talking about as I understand him. He has mentioned clause 46 (1) (c) and 46 (1) (d), but he has not mentioned (e). So far as (e) is concerned, the hon. member for Kamloops is quite correct; but the points to which my hon. friend from Regina City is referring as having been changed contain no change.

Mr. Ellis: I am not talking about changes in the last year or so. When we are finished with this bill, as I understand it, this is going to be the Criminal Code of Canada. There are a few matters in connection with capital punishment and lotteries that the commission will have to decide, but my understanding is that we are now revising the Criminal Code of Canada. What I am saying is that the provisions which we are now being asked to pass are different from the law which has

obtained in this country over the years. The minister will agree with that, will he not? I am not referring to what happened a few years ago, but prior to world war II there was a provision that made a declaration of war necessary before a person could be charged with treason. Am I not correct?

Mr. Garson: In so far as clause 46 (1) (c) is concerned, but that was added to the code in 1951. If I recall correctly it was changed at that time, but it is not changed in this bill. This bill simply carries forward what was introduced into the law in 1951.

Mr. Ellis: I am not going to argue the point of whether this was changed in 1951. My whole approach to this bill is that it will be the revised Criminal Code. It is true that some of the changes made a year or so ago are going to be incorporated, but whether or not a particular change was incorporated two years ago or more does not alter the validity of the arguments which are being raised now. We want this changed, and that is my argument.

Mr. Garson: You want it changed back.

Mr. Ellis: Certainly, I am saying it has been changed from the established practice. Merely because the change was made two years ago does not mean it was the established practice.

With regard to this section, Mr. Chairman, I do feel the objective which we should seek in this committee is to make this country safe from treason and espionage. I feel all hon. members are agreed that we should have good laws on our statute books to protect this country against those who commit treason. When we have gone that far, we must be extremely careful not to make the laws so ambiguous or so difficult to understand that it might be impossible to apply justly and thus create a lot of borderline cases. There should be no possibility of any misunderstanding. I suggest that there are terms used in this section that are extremely difficult to define exactly.

So long as the section is in the form it is now, it does offer some threat to the liberty of the individual. Once we have protected this country against acts of treason, it should be our task to be just as zealous in removing any possibility that this section could be used to deny any Canadians the right to express their opinions on matters of urgent public importance.

Mr. McIvor: I know something about the Winnipeg strike and the marches that took place. One of the causes of this was section 98 of the Criminal Code. I thought then that section 98 should be obliterated, and when our party came into power that was done.

Mr. Knowles: Not entirely.

Mr. McIvor: It took away individual rights. I do not see anything in this act so far that would compare with section 98. So far as the Winnipeg strike was concerned, I was in favour of it up to a point. The strike was won, and decidedly won. The strike committee did not use their grey matter or else they did not have any. If they had waited another week it is the consensus of the middlemen that the strike would have been won. What did the strike committee do? They called out the firemen; they closed down the waterworks; they called out the milk wagons. They took over the government of the city and then they issued cards by permission of the strike committee. Then the middlemen in Winnipeg woke up. They formed a committee of a thousand and that is what beat the strike.

Those who are in charge of labour or those who are fighting labour have to be fair. To me the trouble then was absolute selfishness on both sides. Until we find some way to kill absolute selfishness, there will be trouble.

There is one thing that I should like to say—

The Chairman: Order. I am extremely sorry to interrupt the hon. member, but I wish he would confine his remarks to clause 46 and the amendment proposed by the Minister of Fisheries.

Mr. McIvor: I do not mind being called to order by you, sir, but there is one thing that follows in clause 46, and that is the penalty of death. I may be wrong, but I am one of those who is not absolutely sure that we should have the penalty of death in any case. Thank you.

Mr. Fulton: I know very well that the minister will be anxious to answer the arguments that are being put up. In so far as the defence of the government is concerned, I am not disposed to rush to his rescue, because he is capable of taking care of himself and the government does not deserve, indeed if it needs any, help from this side in respect of its own case. But because we of the official opposition take a rather different view from the views expressed by the hon. member for Regina City particularly, and one or two others who have spoken, there are some factors which are important to bear in mind in order that we may be fair in what we are doing if we should enact this clause in its present form or that of the amendment suggested this afternoon.

In the first place, in so far as subclause (c) is concerned, it is important to bear in mind that it is not the government that is going to be interpreting the clause. I may interpolate here, thank God for that. But the fact is that it is the courts that are going to be interpreting the clause and are going to decide whether an overt act has been committed, or any other act, which indicates that the person accused has done something with the intention of assisting an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities. Owing perhaps to the reluctance of this government to face facts, what used to pass for or be called "at war" is now described as "a state of hostilities." We have things called "states of hostilities" today and if we have that state of hostilities, then it seems to me that we have to take account of it in our criminal law, and that is what this section enacted in 1951 did, and that is I imagine the purpose for which it is being continued.

I suggest this also to my hon. friends who are concerned about the possible abuses of the section. I recall very clearly when the section was under discussion in this house in 1951 I asked whether it would be possible that it might apply to the case of a Canadian who at that particular time was engaged in making broadcasts from North Korea in favour of the enemy, and accusing the United Nations' troops of indulging in germ warfare, which to me is very close to treason, if in fact it does not constitute treason. I was told at the time that it was the opinion of the law officers of the crown that this section was not sufficiently wide to make it possible to lay a charge against that person when she might return to Canada. If that is so, then it seems to me that the effect of the section is pretty narrowly restricted, and it is going to cover only genuine cases of treason. It does seem to me that we should admit in realism the possibilities of treason under the new set of circumstances, and that what we have is called a state of hostilities instead of a state of war. Therefore I am not very much alarmed by the continuation of subclause (c) which was enacted in 1951.

I should like to deal for a moment with subclause (g) which also has given rise to concern and express why it is that we are prepared to support this clause in its present form. It is being suggested that to provide that a person who forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act is guilty of treason is something that should not be in our Criminal Code. I just point out that it is in that form in almost these words in section 78 of the Criminal Code, which has been there since at least 1906, if not indeed since 1892, and which reads:

> Every one is guilty of an indictable offence and liable to imprisonment for life who forms,—

Then there are detailed certain intentions, and it continues:

> . . . and manifests any such intention by conspiring with any person to carry it into effect, or by any other overt act, or by publishing any printing or writing.

Therefore subclause (g) has been in the law for quite some time.

Mr. Knowles: That does not sanctify it.

Mr. Fulton: Not at all, but I think my hon. friends will have to make a better case against it than they have made so far in order to justify its removal.

I should like to ask the minister to enlighten the committee with respect to this matter of liability. I am using the word "liability" in the sense that it says a person is liable. It is pointed out in clause 47, which is the section imposing the penalty:

> Every one who commits treason is guilty of an indictable offence and is liable
> (a) to be sentenced to death—

Now, by the amendments there are certain modifications introduced, and an alternative is made in time of war when he may be liable to be sentenced to death or to imprisonment for life. The question has been raised as to whether the provision of that section providing for a sentence of imprisonment for life makes it possible to impose an alternative punishment. The question was raised by the hon. member for Winnipeg North Centre as to whether that form of words "liable to be sentenced to death" makes it possible to impose an alternative punishment to the death penalty. It seems to me that clause 621 would be the governing section here, where you find in subsection 1 the following:

> Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

Then, subclause 2:

> Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

With these two provisions taken together, it would seem to me that where it says the person is liable to be sentenced to prison for life that is not prescribed as a minimum punishment, and therefore, in the discretion

of the court imposing the sentence, any imprisonment for a lesser term than life could be imposed. But where you have it set out that a person is liable to be sentenced to death, then I do not see any alternative; I do not see any room for discretion, because if you sentence him to death he is sentenced to death. You cannot sentence him to partial death or to less than death. There surely is no room for discretion. I think we should be quite clear, particularly because of the amendments advanced with respect to clause 47.

I would like the minister to tell us the effect of these apparently alternative sentences, the different sentences of death or of imprisonment for life. I take it that they are alternatives. In other words, a judge can sentence to death, but he need not sentence to death. Therefore if you are not going to sentence to death, you can impose any jail sentence you like—a sentence of life, or any other lesser term. Because of its importance, under section 47, about which I shall have something to say later, I should like the minister to confirm whether or not that view of the law is correct.

Mr. Garson: I think my hon. friend from Kamloops is trying to heap coals of fire upon my head for having opposed his resolution the other day in the matter of crime comics, for he has undertaken tonight to answer three or four arguments for me, and in a manner upon which I certainly must commend him, and with most of which I am in complete agreement. For that reason I do not think it will be necessary for me to devote further time to reply to the hon. member for Regina City. The hon. member for Kamloops has done a first-class job of this already.

Now, with regard to the point he has raised: when I was asked that question this afternoon, without stopping to look at the wording of the section, I was in some doubt, because in the section dealing with murder the wording is that an accused shall be sentenced to death, whereas in the case before us the words used are that he shall be "liable to be sentenced to death". I think, however, for the reasons given by the hon. member for Kamloops, that it is clear beyond peradventure that a distinction has to be drawn between the mandatory sentence of death authorized in clause 47 (1) (a) as it is in the bill, on the one hand, and the discretion given to a court to impose a sentence of death, or imprisonment for life, under clause 47 (1) (b), on the other. Because here are two subsections in juxtaposition, one of which says that the convicted person is liable to be sentenced to death or to imprisonment for life, and the other of which says that an accused person shall be liable to be sentenced to death. It seems quite clear that in the first case there is a discretion in the court as to which of two alternative sentences may be imposed, but in the second, there being no alternative to the death penalty, it is mandatory.

Members who want to make absolutely certain of this point wish to amend 47 (1) (a) so that it would have the same wording as that in the section providing for the death sentence for murder. I do not think that is necessary because, historically, the death sentence has always been mandatory for treason, and the wording we have in section 47 (a) is the wording which goes back to 1892, when the code was first enacted, and which has prevailed ever since that time.

Mr. MacDougall: Mr. Chairman, like the hon. member for Regina City, I am not a lawyer; and I was impressed by the lack of reality in his speech.

It seems to me that the Criminal Code, basically and fundamentally, is a Canadian Criminal Code for Canadians. I do not know why we should get involved with the Mau Mau. What I am asking is that we keep to the idea that this is a Canadian Criminal Code. If we were to do that I think it would be better for all members in the house, and all Canadians outside the house.

As to this question of treason, I would point out that when the Criminal Code was first discussed in the house two years ago I had a few words to say on the subject of treason and sabotage. I have not changed my mind one iota since that time.

Mr. Knowles: A typical Liberal.

Mr. MacDougall: It is quite possible to put up a plausible argument for a lessening of the penalty for treason. One can allow himself to be drawn away from the fundamental principle, and that is that a person who commits treason against his country, particularly in wartime, is not only guilty of the villainous act of treason but, additionally, he is guilty of mass murder. And let us not mistake that situation.

Through the medium of the press and through debates in the house we hear suggestions concerning those poor people who have committed murder, to the effect that they should not be hanged. Well, whether they should or should not be, it seems to me the time has come for parliament and all people in Canada to realize that when someone is murdered, that murdered person is one of a family who will sorrow for the loss, just as we see people sorrowing about the fate of the murderer.

I believe we can allow our emotions to run away with us on an issue like this. My suggestion is that we should keep in mind the horrible results that can flow from treason. It is not the murder of one person or two: It may be the murder of 200 or 2,000 innocent people. Rather than go along with the hon. member for Regina City, and try to minimize the effect of the Criminal Code, I suggest to the House of Commons through you, sir, that we should increase the intensity of punishment. We should not allow ourselves to be carried away by emotional sentiment.

I will admit much can be said on both sides of the question. But let me explain this, that freedom is not licence. When we have freedom in the country it does not mean that we are permitted by the laws of the country to commit mass murder. And, particularly in wartime, it seems to me the death penalty is not too great when treason has been proved. I think the people of Canada generally would agree with me when I say that treason is one of the most despicable crimes that can be committed against one's fellow man.

I recall from my public school days a verse which, while not written particularly on the subject of treason, does make reference to those who have no patriotic feeling toward the land of their birth. If my memory is not at fault, the verse runs like this:

Breathes there the man, with soul so dead,
Who never to himself hath said,
This is my own, my native land!
Whose heart hath ne'er within him burn'd
As home his footsteps he hath turn'd,
From wandering on a foreign strand?
If such there breathe, go, mark him well;
For him no minstrel raptures swell;
High though his titles, proud his name,
Boundless his wealth as wish can claim,—
Despite those titles, power and pelf,
The wretch, concentred all in self,
Living, shall forfeit fair renown,
And, doubly dying, shall go down
To the vile dust, from whence he sprung,
Unwept, unhonour'd, and unsung.

Surely the man or woman who holds Canadian citizenship either by naturalization or by birth should not at our hands receive a lesser sentence than has been depicted in the closing words of the verse I have just recited. Treason is a despicable crime and the tougher it is made on one who has committed such a crime then as far as I am concerned the happier I will be.

Mr. Cameron (Nanaimo): Mr. Chairman, if we can come down from the realm of the poetic for a moment and discuss the very unpoetic and pedestrian wording of this clause I should like to have some explanation regarding subclause 3 of clause 46 which states:

(3) Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

If we look back to subclause 1 it will be noted that there are two paragraphs there which appear to cover that particular case. For example paragraph (f) states:

conspires with any person to do anything mentioned in paragraphs (a) to (e).

I assume that the actions set forth in paragraphs (a) and (e) comprise the circumstances under which it is treason to conspire. Then in paragraph (g) we have it carried a little further. I refer to the paragraph to which my colleagues objected and to which I add my own objection. Surely we are attempting to decide what were the intentions of those who conspired. The question I want to find the answer to is the necessity for subclause 3 when we already have paragraphs (f) and (g) of subclause 1. Is there some other purpose to it than is set out there? It seems to me we cover quite effectively the treason which is involved in conspiracy in the previous subclauses. Or is there some distinction between committing treason and committing an overt act of treason? Would the minister give us an explanation?

Mr. Garson: Mr. Chairman, clause 46 in subclause 1 lists under paragraphs (a) to (d) inclusive examples of different forms of treason and then in paragraph (e) it lists the paragraphs which have been mainly under discussion this afternoon and this evening which cover the communication of information which being brought in under the treason section is made treason. Paragraph (f) refers to the conspiracy of committing the offence of treason.

Mr. Cameron (Nanaimo): As set out in the previous subclauses?

Mr. Garson: Yes, in all the previous paragraphs. In other words, they may not succeed in committing the offence of treason under paragraphs (a) to (e) inclusive, and it may not be possible upon the evidence which is available to the prosecutor to say anything more than that a conspiracy was hatched to commit treason, and that at the time this conspiracy was disclosed the act of treason itself had not been consummated. But the act of conspiring to commit treason is in itself a crime. Paragraph (g) specifies and refers to an overt act indicating an intention to do any of these things above mentioned. But this reference to an overt act is some measure of protection for the accused because it means he cannot be

charged with a mere idea. He cannot be convicted for having an idea. It is only when as a result of entertaining that idea he has done some overt act that he offends against clause 46 (1) (g); and unless that act can be proven against him he will not be convicted under clause 46 (1) (g).

Subclause 3, the other point to which my hon. friend refers, is I believe pretty largely self-explanatory. It states:

Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

In other words, where the conspiracy which is charged is in reference to an act which is treason then the act of conspiring itself is an overt act of treason within the meaning of paragraph (g) of clause 46, subclause 1.

Amendment agreed to.

Mr. Knowles: Mr. Chairman, before we carry the clause as amended I wonder if the minister will comment on the suggestion some of us have made that reconsideration might be given to the wording of clause 46, subclause 1, paragraph (c). A number of hon. members have quoted from an article in Toronto *Saturday Night*. I have in my hand an editorial from the Ottawa *Citizen* dated Friday, May 2, 1952, which was written on the basis of the article in *Saturday Night*, and also on the basis of what happened in the House of Commons here in 1951. The minister is perfectly correct in drawing attention to the fact that in so far as Bill No. 7 is concerned we are not enacting clause 46, subclause 1, paragraph (c), for the first time. It is old legislation, but not very old. It was introduced for the first time in 1951. Despite the poetic utterances we heard from the hon. member for Vancouver-Burrard on the effect of this clause, I would like to draw attention to this paragraph from the editorial in the Ottawa *Citizen*. The heading is "What is Treason?" and the editorial states:

"Treason," a crime punishable by death, may be interpreted as assisting by trade, criticism, or in any way whatever any armed forces against whom Canadian forces are in "hostilities". Under the term "hostilities" might come any police action in which Canadians were involved by other than Canadian authorities, regardless of whether or not the Canadian government had issued an order or a declaration of war.

The editorial writer of the *Citizen* went on with a sentence which modesty prohibits me from quoting in full, but I will say it refers to the fact that these amendments were passed over protests of a number of "parliamentary watchdogs" of civil liberty and the names listed therein include members of the Liberal party, Progressive Conservative party and the C.C.F. My hon. friend from Vancouver-Kingsway and myself happened to be included, but so also was the hon. member for Prince Albert, and Senator Arthur W. Roebuck in the other place. The *Citizen* editorial writer goes on to say:

When parliament deals with the report of the royal commission on Criminal Code revision, the changes of last June should be reviewed and improved beyond criticism.

I should like to know what the minister has to say in response to that. I think it is fair to say that there has been, in his own words, no substantial change in clause 46, subclause 1, paragraph (c) from the form in which this legislation was enacted in 1951.

Mr. Garson: If my hon. friend will look at the present Criminal Code, if he has it in front of him, he will find that section 74 (i) reads as follows:

Treason is
(i) assisting any public enemy at war with His Majesty in such war by any means whatsoever;

Then if he will look at the first part of section 46 (1) (c) he will see the words "assists an enemy at war with Canada". I am sure that he will not object to that language.

Mr. Knowles: That is pre-1951.

Mr. Garson: Yes, indeed; for many years. The language here used in clause 46 (1) (c) is not so explicit or so far-reaching as that of the code from which it is taken. I take it therefore that when my hon. friend says he wants reconsideration of paragraph (c), he is talking entirely of the words commencing with:

—or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

Mr. Knowles: That is correct; reading the word "assists" in connection with the words which the Minister of Justice quoted.

Mr. Garson: That is right. In other words, the whole thing would read as follows:

Every one commits treason who, in Canada,
(c) assists . . . any armed forces—

And so on. There is a good deal of editorial opinion to the effect that this wording is the product of inadequate consideration and lax draftsmanship. In a matter of this kind it is extremely easy to sit on the sidelines and criticize. I can assure my hon. friend and those critical editors that we were, in the anomalous situation in Korea, confronted with a legal problem of great difficulty. In international law there was not any state of war. There was no declaration of war. Yet large forces were engaged in a violent conflict and scores of thousands of people were being killed and wounded. Nearly all of the physical and military

characteristics of war were painfully self-evident. Under these circumstances the legal draftsman has a task of no little difficulty to provide that a treasonable act done in relation to these hostilities in Korea which, had it been done in relation to killing people in an officially declared, formal war, would certainly be an act of treason.

I think that there will not be too much disagreement in this committee that treason in substance is treason whether it is committed in relation to the hostilities in Korea or whether it is committed in relation to a war officially declared according to international law. The task of providing words that would cover a case of that sort fell upon the parliamentary draftsmen, and it was only after a great deal of consideration that these words that appear in the section were chosen.

To those who are inclined to criticize them, including the editors, I would say that we who shared in the responsibility take the criticism in good part. We realize that the words may not be perfect. But we should be greatly interested and gratified if our critics would produce a better concept and a better wording to delineate the offence we were trying to provide for. The matter is most difficult. Two or three states may be involved as enemies. We hardly ever know whether any given state is engaged in the war. We are not sure until their troops are identified there that they have any part in it; and even then they may deny it. There is therefore no use of defining the treason in any sense in relation to the state that is concerned. It must be defined in relation to the forces which are engaged in hostilities. That is what has been done. With all due deference to the views that have been expressed this afternoon and this evening by the hon. member for Winnipeg North Centre and the hon. member for Regina City, I would submit that since penal statutes are strictly interpreted by the courts, the assistance that is meant here, and that the courts would interpret to be meant here is assistance to the armed forces of the enemy.

Mr. Ellis: Will the minister say why it would not be possible to put those words in the act?

Mr. Garson: If my hon. friend will just listen carefully, I will read the section to him. It reads as follows:

> Every one commits treason who, in Canada (c) assists—

[Mr. Garson.]

I will leave out the reference to "an enemy at war with Canada".

> —any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

Sometimes we can determine who the forces are but we are not so able to determine to which country they belong. Under these circumstances the draftsman is bound to relate the act to assistance given to those forces.

My hon. friend was talking about the Mau Mau and so on. I would ask him if he has such little confidence in a jury of Canadian citizens that he thinks that a person would be found guilty on a charge under this section for making a speech upon the foreign policy of Canada advocating that the British people or rather the Canadian people—I suppose it would be ourselves if we were at war with the Mau Mau; if you could call an affair of that sort war—should withdraw; or, as to Korea, for making a speech in Canada questioning government policy in Korea. A great many such speeches have been made, in fact, and I have not heard of any charges being laid under this section. But how could the best prosecutor in the country convince a jury of Canadian citizens that a man who made a speech in Canada questioning the wisdom of Canada's foreign policy in relation to Korea could be assisting the forces in Korea against whom the Canadian forces were opposed?

We must use a little bit of common sense in the interpretation of these provisions. Indeed, as I said before, when penal sections come before the courts the general practice is to interpret them strictly because we do not believe in depriving the accused of his liberty unless the charge can be strictly brought home to him. More than that, one of the difficulties of proving a charge of treason is that there is no other section in the Criminal Code in respect of which the necessity for proving *mens rea* or the guilty mind is more strict than it is in connection with the offence of treason. It would not only have to be proved that the accused in a case of that sort had been guilty of some act the effect of which would have been to assist those armed forces, but the crown would have to bring home to him the *mens rea*, the guilty mind or intent that in what he was doing his intention was to assist the forces engaged against the Canadian forces in Korea. Therefore all this talk about this section being an interference with freedom of speech in Canada is—if I may use this word and if it is parliamentary—just pure unadulterated poppycock.

Mr. Fulton: A stronger word could be used.

The Deputy Chairman: Shall the clause as amended carry?

Some hon. Members: Carried.

Mr. Knowles: On division.

The Deputy Chairman: Carried on division.

Clause as amended agreed to on division.

On clause 47—*Punishment.*

The Deputy Chairman: Mr. Sinclair moves:

That clause 47 of Bill No. 7 be amended by deleting subclause 1 thereof and substituting therefor the following:

"47 (1) Every one who commits treason is guilty of an indictable offence and is liable

(a) to be sentenced to death if he is guilty of an offence under paragraph (a), (b) or (c) of subsection (1) of section 46;

(b) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (d), (f) or (g) of subsection (1) of section 46;

(c) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (e) or (h) of subsection (1) of section 46, committed while a state of war exists between Canada and another country; or

(d) to be sentenced to imprisonment for fourteen years if he is guilty of an offence under paragraph (e) or (h) of subsection (1) of section 46, committed while no state of war exists between Canada and another country.

Shall the amendment carry?

Mr. Fleming: Will the mover of the amendment explain?

Mr. Fulton: Mr. Chairman, it is with some regret that I have to say that we find the amendment to this section moved by the minister unacceptable. The reason for that is the amendment deals—I think the minister will agree with me—pretty well exclusively with the fact of a verdict of guilty under subsection (e) of section 46. The intent of the amendment is to provide that if a person conveys information of a military or scientific nature to the agent of an enemy state in peacetime, then the maximum sentence will be fourteen years, and if he conveys such information to an agent of an enemy state when a state of war exists between Canada and any other country then there will be the possibility of the sentence of death or sentence for life or any lesser jail term that may be imposed in the discretion of the court.

It is to the effect of this amendment on subsection (e) of section 46 that I intend to address myself exclusively. I am sorry that the hon. member for Vancouver-Burrard is not in the house because, while I do not echo all the sentiments he expresses, I would imagine he would approve of the sentiments I am about to express and upon which I am about to give him the opportunity to vote. I hope that perhaps some of his colleagues will acquaint the hon. gentleman with the fact that this opportunity is to be afforded him so that he can come in and tell us where he stands.

I take the position that subsection (e) of section 46 is the sort of provision which we should not enact lightly in the Criminal Code of Canada. It is the sort of section which, as I see it, arises out of and is made necessary by the revelations of the royal commission on espionage which revealed the extent to which and the skill with which enemy agents are able to infiltrate even the government service, even the realms in which the most secret research and scientific work is carried on. The royal commission indicated to us not the possibility but the very grave danger of the betrayal of these secrets to the agents of an unfriendly foreign country.

With the developments that have been taking place in the Pacific in the last couple of weeks, with the knowledge we have that Canada is building a radar screen across the north country, and with the knowledge we have that we and our allies are doing our best to develop our own defences against the possibility of attack and also to seek weapons on the basis of the existence of which we hope to be able to deter anyone who may have it in his mind to make an attack, I think it becomes obvious that one of the most vital interests of the state is to prevent knowledge of these defensive systems and of these possible weapons from falling into the hands of the only potential aggressor. It seems to me to be perfectly obvious that that is the aim and object of subsection (e) of section 46.

As I say, even with the reluctance that we experience in enacting this sort of thing in peacetime, it does seem to me that we are justified in placing this type of provision in our law with all the safeguards that have been described in the discussion that has just concluded on the previous section. It seems to me that if we are going to put that into our law we are going to deprive it of any effect, particularly any deterrent effect, if we make the penalties such that a dedicated agent of a foreign country may incur them without too much regard for the consequences. That is the first consideration which comes to my mind.

The second consideration is that probably no more dreadful thing can be done than to betray to a potential enemy the very methods by which we are trying to make ourselves secure against his attack, and particularly

to place in the hands of that potential enemy the weapons which we are developing and which we ourselves rely upon, for the time being at any rate, as being the most powerful deterrents against that sort of attack. In other words, it occurs to me that it boils down to this, that it is just as dastardly an act of treason to betray our secrets at this period as it would be to betray them in time of an actual shooting war, and that therefore the effect of the amendment moved by the minister, providing that the maximum penalty that may be imposed for that type of treason committed at the present time should be fourteen years, is not well conceived and should not be accepted by the committee.

I had thought of moving an amendment to the amendment which would change subsection (b) of the proposed amendment to read:

to be sentenced to imprisonment for life or such lesser sentence as the court in its discretion may impose if he is guilty of an offence under paragraph (e) while no state of war exists between Canada and another country.

But looking it over it occurred to me that that object was already achieved in subsection (c) of the proposed amendment because subsection (c) provides that such person may be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph (e), and that that effect would be achieved if we deleted the last two lines of subsection (c) and all of subsection (d). Then you would leave alternative sentences, a penalty of death or a penalty of life imprisonment or such lesser jail term as the court in its discretion thought fit to impose.

Therefore the court could take cognizance of the nature of the offence if proven. When I say "proven" I ask my hon. friends of the C.C.F. party and all other hon. members to give due weight to that word. We are not letting down the barriers which protect an accused. We are not making it any easier for the crown to discharge the onus on it, but we are saying that when the crown has discharged that onus of proof, then it shall be in the discretion of the court to take cognizance of the heinousness or otherwise of the crime of which the accused is now convicted by a jury of his peers. If the crime of which he is guilty, and was found to be by that jury of twelve men, is a very serious and dastardly one, possibly giving away important secrets with regard to our radar defences or secrets with regard to atomic or hydrogen bomb development, then it shall be in the discretion of the court to impose the penalty of death. But if the crime is a lesser one, perhaps resulting only from carelessness, inadvertence, or from the fact that the accused was genuinely interested in scientific development and it is at least open to suggestion that the communication he had with the foreign country was to his mind merely a process in the stage of scientific development, and that he had no thought of betraying his country by something of that nature, then it will be in the discretion of the court to impose a jail term up to a maximum of life imprisonment. I call to witness here what the minister has said to me on other occasions about the undesirability of imposing too many restrictions on the court as to the discretion it will use in imposing a sentence or in making the punishment fit the crime. I suggest we are entitled, in the interests of the state, to leave it to the court to decide whether this act of treason, committed at a time when there is no declaration of war between Canada and any other country is a type that merits the death sentence or the lesser sentence of imprisonment up to the maximum of life.

I feel, therefore, that having taken the step, which is a hard step to take, to enact subsection (e) of section 46, we should not weaken our position by deciding that the person who is guilty of that sort of crime in time of peace, possibly with the most reprehensible of motives and the most deliberate of intentions, should not be liable to suffer the most extreme penalty. He may have acted deliberately; he may have acted in a way that makes it clear he knew quite well the effect of his action would be to deprive hundreds of thousands of his fellow men of their lives, so I do not think it is too much to suggest our courts should have the discretion of exacting from him the severest of penalties.

I therefore move:

That the amendment be amended by deleting therefrom all the words after the words "section 46" in the proposed subsection (c) thereof.

Mr. MacInnis: As it has been indicated there is likely to be a vote called on this section, Mr. Chairman, I wish to put myself on record as supporting the amendment that was moved earlier by the Minister of Fisheries. The hon. member for Kamloops said that this amendment imposes too many restrictions on the judge in passing sentence. I do not agree because this amendment outlines quite clearly the penalty for committing the crime, not only under different circumstances but at different times as well. I do not believe that the commission of the crime mentioned in section 46 (c) is the same when committed in time of peace as it is when committed in time of war.

I think probably this should be said by a person who finds himself in my position. A most amazing amount of thought and consideration has been given to the revision and consolidation of this code. I believe it is a

very great thing that the bill has been reviewed in this committee of the whole with such meticulous care. When the bill becomes law there will be sufficient evidence, I believe, of what the parliamentarians had in mind that when the judges have to deal with any of these offences they will find their decision easier than otherwise might have been the case. I do not believe that the crime of communicating secrets to the enemies of Canada is the same thing when committed in time of peace as it is in time of war. If this section comes to a vote we are bound in the interests of good lawmaking to support the amendment.

Mr. Pearkes: I find it extremely difficult to draw an exact line between peace and war. I think of Pearl Harbor. The United States and Japan were at peace, but Japan struck at Pearl Harbor. Might not a situation arise in the future where some treacherous person was able to guide a flight of enemy bombers through, shall we say, our radar screen and up to some vulnerable target in this country, then turn back and leave the bombers to go to their target? He would be, I suggest, committing an offence just as deadly as if he had gone right in with those bombers.

Under this amendment, if he were subsequently captured I suggest he would be able to plead that war had not been declared and that the treacherous act had been committed during peacetime when he had shown the enemy flight of bombers the way to avoid our defences, but before the actual act of war had been completed he had turned around and gone back. He would be able to plead he had committed this offence in peacetime rather than in war.

Mr. Knowles: Like the hon. member for Vancouver-Kingsway, all of us in this group will oppose the subamendment moved by the hon. member for Kamloops, and in turn support the amendment which has been moved on behalf of the government by the Minister of Fisheries. On the assumption that the amendment carries, I may say that we are still not satisfied with clause 47. In our view there are two or three things that are still unsatisfactory about it. We have already expressed our views with regard to capital punishment itself, and I want to say I do not think the minister satisfied me earlier this evening on the point as to what the judge does with respect to a person accused under clause 47 (1), (a), (b) or (c), where the penalty may be the liability to be sentenced to death.

What I have in mind there is that though in the lesser crimes the judge is given an alternative, in connection with the highest form of treason there is no alternative whatsoever. However, I do want to extend my commendation to the government and to the cabinet for having given consideration to this matter, for having set up a subcommittee, as the minister pointed out this afternoon, to go into it and to come up with at least some amelioration of the situation as proposed in the amendment of the government which is now before the house.

As I listened to the hon. member for Kamloops, I recalled something I ran across a few days ago in a book by Lord Rosebery on the life of Pitt. He discussed some of the very restrictive and coercive laws that were put on the statute books in the days when Pitt was prime minister, at the turn from the eighteenth to the nineteenth century. He speaks as an Englishman who is not happy over the fact that there had been on the statute books of that country at various times certain restrictive and coercive pieces of legislation, and he says one or two things that I should like to quote:

> It is not easy in cold blood to defend these proclamations and prosecutions and bills. Still less easy is it for a generation that has so often resorted to coercion to criticise them. Ever since the death of Pitt, all English governments have at times adopted those exceptional measures for which their supporters are so apt to censure him.

He goes on a little further to say:

> For the extraordinary laws parliament itself bears the burden. Its secret committees and reports made it impossible for any minister to refrain from proposing coercion bills. The scandal and terror caused by the assault on the king were the cause of others.

This is the sentence to which I draw particular attention:

> These laws were passed, and these prosecutions instituted under the ignorant ferocity of panic.

I hear people saying there is no comparison. I submit we are brought very close to that situation in the remarks that some hon. members are making. There is panic and there is fear, and some amongst us are forgetting some of the great principles of freedom and liberty that are so basic to our way of life. I think of those words of another Conservative, uttered not so long ago, Sir Winston Churchill, when he said that we must not lose faith in democracy's capacity to tolerate free speech. It seems to me, Mr. Chairman, that these restrictive measures, these attempts to increase penalties like this, suggest a sense of panic that is really not necessary and is not in keeping with our democratic tradition.

The Deputy Chairman: The question is on the amendment to the amendment.

Mr. Fulton: Before the question is put I think one should deal just briefly with the suggestion that I suppose is bound to be made

on a matter of this sort, and that is the amendment that we have moved here today, the amendment to the amendment, represents a restriction on free speech. We are dealing with subclause (e) of clause 46, and the penalty to be imposed if a person is convicted of an offence against that section. Let us read what it says:

(e) without lawful authority, communicates or makes available to an agent of a state other than Canada military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character—

And here are the important words:

—that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada.

I am not able to see that there is any infraction of the right of free speech in stating that a person will not be free to communicate to an agent of a state other than Canada information of a scientific character which refers to radar, radar installations, the H-bomb, our atomic research in the field of weapons; that sort of scientific information, or of a military nature; the disposition of Canada's defences, the defence plans and installations which are designed to protect us against aggression, or to be called into effect if we ourselves should be attacked; information of that nature that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada. Is there any infraction of the right of free speech in saying that a man will not be free to convey that sort of information which he knows or ought to know may be used against us, against his own fellow citizens? I think, sir, although I am a member of the Conservative party and of the official opposition, that I have a reasonable—I was almost going to say a liberal mind; I don't mind using that word—

Mr. Fleming: Make sure it is spelt with a small "l."

Mr. Fulton: Yes, and a much more liberal mind than some of my colleagues on the other side of the house. I think that our whole position over the past few months and years has indicated that, but I cannot see anything here that is an infraction of the right of free speech. Since we have taken that position to make it an offence to convey to an agent of an enemy state such information for such purposes, then it seems to me that it is a matter we can discuss and debate here without accusing each other of transgressing on civil liberties as to whether, if a person is found guilty by a jury of his peers of that offence, and found guilty after he has been tried in our courts with all the safeguards that exist there, and which we certainly at this time have done nothing to remove; with all the safeguards which surround an accused person, then, what we are doing by our amendment to the amendment if it carries, in modification of the minister's amendment, is saying that it shall be open to the courts to determine whether the crime of which the accused is convicted is of a sufficiently heinous nature with respect to its effects upon the fellow citizens of that accused person to warrant even the imposition of the most extreme penalty.

It will be up to the courts to determine that. We are not saying that every person accused shall be dealt with in that way. We are saying that if the crime is potentially dastardly enough we are justified in leaving it to the courts, if the accused has been found guilty, to say whether or not he shall be punished in that way; that is all.

Mr. Nesbitt: I expressed my views on this, I may say, in no uncertain terms this afternoon. Before we come to a vote on this amendment to the minister's amendment I was wondering whether he would care to comment on some of the arguments that have been presented by this party; because I cannot conceive how the minister could have moved the amendment he did, in view of some of the arguments that are being presented here.

The Deputy Chairman: Is the committee ready for the question. The question is on the amendment to the amendment.

Amendment to the amendment negatived: Yeas, 16; nays, 55.

The Deputy Chairman: I declare the amendment to the amendment lost.

The question is on the amendment. Those in favour of the amendment will please say yea.

Some hon. Members: Yea.

The Deputy Chairman: Those opposed will say nay.

Some hon. Members: Nay.

The Deputy Chairman: In my opinion the yeas have it.

Mr. Fulton: Carried on division.

Amendment agreed to on division.

The Deputy Chairman: Shall clause 47 as amended carry?

Mr. Knowles: On division.

Clause as amended agreed to on division.

On clause 48—*Limitation.*

Mr. Cameron (Nanaimo): I notice that subsection 2 of section 48 contains some restrictive aspects on the proceedings for overt treason, as set out in clause 47. I notice that it does not include the overt act of treason that is defined in section 46 (3). I wonder if the minister could tell us why that distinction has been made?

Mr. Garson: Mr. Chairman, until I heard my hon. friend comment just now I would have said that clause 47 provides penalties for all offences described in clause 46. It will be noted that clause 47 is the penalty clause. What is the language upon which my hon. friend is relying in support of his allegation to the contrary?

Mr. Cameron (Nanaimo): In the first place we turn to section 48 and we see this:

> No proceedings shall be commenced under section 47 in respect of an overt act of treason expressed or declared by open and considered speech—

And so on. Now then, overt acts of treason set forth in clause 47 are only those that are set forth in paragraphs (a), (b), (c), (d), (e), (f) or (g) of clause 46, and have no reference to clause 46 (3).

Mr. Garson: May I point out that clause 46 (3) is a subsection in the nature of an interpretation section. It does not create a new offence, but it makes it clear that the "overt act" referred to in paragraph (g) of clause 46 (1) includes the act of conspiring to commit treason. Subsection 3, in a sense, is a definition section, and it explains what an "overt act" of treason includes. It includes the act of conspiring to commit treason.

Mr. Cameron (Nanaimo): I am still a bit at sea. I was not at all satisfied with the minister's explanation when I raised the point on clause 46, and I am still in a fog. I said at that time that I could not see any necessity for subsection 3. It does not refer specifically to the previous subsections of clause 46. It just says, "where it is treason to conspire". Now, where is it treason to conspire?

Mr. Garson: Clause 46 (1) (g) reads in this way:

> Every one commits treason who, in Canada . . .
> (g) forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act.

Now, if a charge were laid under paragraph (g) the question would then arise: What does such overt act include? Subclause 3 of clause 46 answers that question by saying:

> Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

So that then the prosecutor and the accused person himself knows that when a charge is laid under clause 46 (g), among the other overt acts of treason that can be brought home against an accused is the act of conspiring to commit treason.

Clause agreed to.

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

Mr. Knowles: I should like to ask the minister one or two questions on this clause. First of all, will he comment on lines 31, 32, 33 and 34 which read—

> —unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby, or—

Is this not another case of putting the burden of proof on an accused? I see the minister shaking his head and, while I like to see him shake his head, I would rather hear what he has to say.

Mr. Garson: To begin with, as the sidenote on the opposite page indicates, this is a re-enactment of section 76 in the existing Criminal Code. The lines about which my hon. friend complains provide a defence for an accused against the charge brought against him, and where it has been proven that he "incites or wilfully assists a subject of (i) a state that is at war with Canada, or (ii) a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are, to leave Canada without the consent of the crown". These lines enable the accused to make a defence for himself by proving that he did not intend to assist such state or such hostile forces.

Perhaps I might illustrate by giving a parallel example of a case that actually occurred in Great Britain. This was the case of Rex *v.* Ahlers, 51 K.B. 616, where the accused was charged with adhering to the king's enemies by aiding and comforting them. The accused, who was a naturalized British subject, acted as consul for the German government in the first world war. He assisted German people to return to Germany in August, 1914, after a state of war existed between Great Britain and Germany.

I would ask my hon. friend to follow this, as compared with the defence provided in this bill, because the charge was somewhat the same. His defence was that he believed that under international law nationals of belligerent countries were allowed a certain time to return to their own countries if they so desired, and that he had no evil intent

in assisting the Germans to return to Germany. It was held by the court of appeal that the jury should have been told in the judge's charge that they must consider whether the acts of the appellant were done by him with the intention of assisting—

Mr. Knowles: I wonder if the minister would go back a sentence or two, and repeat.

Mr. Garson: Yes, it was held the jury should have been told by the judge whether that action had been taken with the intention of assisting the king's enemies, or whether, on the other hand, he acted without any such evil intentions. The crown must prove the intention. In the present case it is specifically provided the accused can come along and establish that the assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby, and in that way he establishes his defence. In this case in Great Britain it was held the judge should have charged the jury as to the nature of the defence which was established in that case.

Mr. Knowles: Was the case in Great Britain quoted by the minister based on British law or was it an appeal in connection with a Canadian case?

Mr. Garson: It is based on British law.

Mr. Knowles: Has the minister the corresponding section from British law?

Mr. Garson: I do not think we have a charge of adhering to the King's enemies but that I believe would come under (c) assisting an enemy at war with Canada, or specifically it would come under assisting enemy aliens to leave Canada and get back to their own country.

Mr. Knowles: I appreciate the case the minister has brought to our attention and I can see that it might cover this clause, but I confess I am not fully satisfied. I think the reason for my last question was obvious, namely that the court's decision was based on the wording of a British statute which may not be parallel to this clause. Its significance would not necessarily carry over. According to clause 50, it is a defence for the accused to be able to establish that the assistance he is charged with having given was not intended to be assistance to the enemy. That is a defence.

Mr. Garson: Yes.

Mr. Knowles: But supposing he is not able to establish that defence? Does the case then go against him automatically on the basis that he has not established the required defence? What is there in the section to require the crown, in the absence of the accused establishing that defence, to prove that there was intent?

Mr. Garson: First of all, the crown has to prove that he wilfully assisted, and they prove that by showing that in fact he got these people back to their homes in the same way as the crown has to establish the case in Great Britain. Then he comes along and says: "Well, I got them back all right, but I did not do that to help this other country. I did that because I was under the impression that there was a period of time during which it was quite proper for them to go back and I did not do it to help the German government against the British government. I did it because of this mistaken impression that there was a period of time during which it was proper for me to do that." I have not read the full report, but judging from the Ahlers case he was found guilty and then the case was taken to the court of appeal on the grounds that there had been a misdirection and that the judge should have charged the jury to the effect that the crown must prove an intent on the accused's part to assist the king's enemies and that the jury should consider the evidence which showed that he had no such intention.

Mr. Knowles: I hope that judgment from the British court has significance for our own courts.

Mr. Garson: But the advantage of this clause in clause 50 is that the case goes against the accused, unless the accused establishes that assistance to the state referred to in subparagraph (I), and so on was not intended by what he did.

Mr. Knowles: I can see that that is a defence if he is able to produce it.

Mr. Garson: If he is not able to produce it then he would not have a defence and he would be found guilty.

Mr. Knowles: That is my point. Does it follow automatically that if the accused cannot prove himself innocent he is then found guilty?

Mr. Garson: No, it does not. It is only when the crown is able to produce evidence to prove a prima facie case against the accused that if the accused cannot answer this prima facie case the crown has brought against him he will be found guilty, and I believe rightly so.

Mr. Knowles: Let me ask one more question. I note the penalty under this clause, which was two years under the old code, is now increased to 14 years. That is a substantial jump. Can the minister give any

justification for that? It was two years as set out under section 76 of the old code.

Mr. Garson: One fact that should be kept in mind in that connection is that these sections in the old code, as my hon. friend can see from the footnotes, go back to the last revised statutes of 1927 and probably before that. In the interval there have been a number of international events such as the second and perhaps the first world war, and other international developments which have led people to revise their ideas as to the proper punishment that should be imposed in cases of this kind. This penalty to which my hon. friend refers is one that was recommended by the royal commission which drafted the code and it has gone through the other place on two separate occasions. Finally, it came back into the House of Commons at the last session and went before the House of Commons special committee and now comes before this committee at the present time.

Mr. Knowles: May I remind the minister that in the interval between the time when this section was first put on the statute books there were amendments in 1951 which dealt with other sections in the code both before and after this one and apparently at that time it was not felt necessary to change the two-year sentence.

The Chairman: Shall the clause carry?

Mr. Herridge: Mr. Chairman, may I point out that it is ten o'clock?

Clause stands.

Progress reported.

BUSINESS OF THE HOUSE

Mr. Harris: Mr. Speaker, tomorrow the Minister of Finance (Mr. Abbott) would like to take the second reading of the Quebec Savings Banks Act hoping and believing that there will be practically no debate on it since it will be sent to the banking and commerce committee after second reading has been granted; then we shall continue with this debate hoping to finish it before five o'clock.

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