There are, of course, many consequential changes, but these do not require explanation at this time.

In conclusion, Mr. Speaker, I believe that the amendments proposed in this bill will benefit these two institutions, which have served their respective communities so well for more than a century, and will also benefit those who use their services.

As I have indicated, when the bill is given second reading I shall move that this bill be referred to the banking and commerce committee, where I am sure it will receive the careful study it deserves.

Mr. J. M. Macdonnell (Greenwood): Mr. Speaker, again, in view of the fact that the minister proposes to refer this bill to the banking and commerce committee, I shall reserve any comments I wish to make until that time.

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

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Monday, April 5, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

The Chairman: When the committee rose last evening we were considering group 4, and I shall now call clause 50. Shall the clause carry?

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

Mr. Herridge: I just want to ask a question or two about this clause. I have one or two recent letters here that deal with it. One, in dealing with section 50 (1) (a), has this to say. In order to save time I am not going to read the section.

> The same phrase "engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are" appears here. The same objections mentioned in regard to section 46 (1) (c) hold here. Further, we object to the shifting of the burden of proof; in this section the accused has to "establish" his lack of intent to assist the foreign state. Traditionally in our criminal law an accused has had the protection of a "presumption of innocence"; here the presumption is rather of guilt.

I should like to have the minister's comment with regard to that criticism of the section.

Mr. Garson: I did not catch my hon. friend's concluding sentence. My hon. friend said "I should like"; I did not hear what he would like.

[Mr. Abbott.]

The Chairman: Order.

Mr. Herridge: The question that was raised was this:

> Further we object to the shifting of the burden of proof:

I am talking about clause 50 (1) (a). The letter continues:

> in this section the accused has to "establish" his lack of intent to assist the foreign state. Traditionally in our criminal law an accused has had the protection of a "presumption of innocence"; here the presumption is rather of guilt.

Mr. Garson: Mr. Chairman, I thought I had dealt with that question at some length yesterday in reply to the points that were raised by the hon. member for Winnipeg North Centre. I pointed out that the necessity for the accused's establishing what his intentions were did not arise until after the crown had first proved a prima facie case against him. I dissented from the view which the hon. member for Winnipeg North Centre had expressed that there was any shifting of the onus in this section. I said that what the section really did was to spell out that if the accused, although he might have committed some act from which it appeared that he had committed the offence, was able to show that his intent was not to commit it, that would constitute an effective defence.

Clause agreed to.

On clause 57—*Offences in relation to members of the R.C.M. Police.*

Mr. Knowles: I wonder whether the minister will offer a few comments on clause 57? I believe a few changes have been made from the wording as it was in section 64 of the former version of the code. One is—and I mention this with approval—that the word "wilfully" has been introduced. The only other change of significance seems to be in that the last three lines have been reduced to one line. I take it that the punishments to be meted out for an offence of this kind are on summary conviction and are covered elsewhere in the code. The main question I want to ask is this. Why is it that, in the case of clause 54, no proceedings shall be instituted without the consent of the Attorney General of Canada whereas there is no such proviso in the case of clause 57? Perhaps the minister could indicate not only why that proviso is in one clause and not in the other but could also tell us what is the effect of having that proviso in or out?

Mr. Garson: The Royal Canadian Mounted Police, as an institution of government, come under the direction of the Attorney General of Canada. In the ordinary routine of laying a charge under this section I would think the charge would presumably be laid on the

recommendation of the commissioner of the Royal Canadian Mounted Police, which recommendation would be made to his minister who would be the Attorney General of Canada. That would not be true in section 54.

Mr. Knowles: Mr. Chairman, that opens up another question. Why then is the consent of the Minister of National Defence not required in the case of clause 54? I throw out that question to the minister. I still ask him if he can give an answer to my other question, even though he may think it does not now apply: what is the legal significance, in a case like that of clause 54, of having the proviso that the consent of the Attorney General of Canada must be obtained?

Mr. Garson: The legal significance is that before proceedings can be instituted, perhaps irresponsibly, the case has come to the personal attention of the Attorney General of Canada who, being a lawyer, is able to examine the facts upon which it is alleged that the proceedings can be instituted in order to make sure that the facts support the proposed charges and that no person will be put to the inconvenience of defending such proceedings unless the sufficiency of the evidence has been passed upon by the Attorney General of Canada.

Clause agreed to.

On clause 60—*Sedition.*

Mr. Knowles: Clause 60 is the first of three clauses dealing with the subject of sedition, seditious libel and seditious conspiracy. We bordered on this subject yesterday when we were dealing with the subject of treason although, as I understand it, there is a distinct difference. The hon. member for Fort William yesterday spoke with satisfaction of the fact that soon after the Liberals came to power in 1935 action was taken to delete the former section 98 from the Criminal Code. Many of us were indeed pleased that that action was at long last taken in 1936. I do not have yesterday's *Hansard* in front of me in order to make a direct reference to it but, as I recall it, the hon. member for Fort William suggested that section 98 had been obliterated completely and I offered the interjection "Not entirely". I rise to explain my interjection and to go on from there.

If one looks at chapter 29 of the statutes of 1936, which was an act to amend the Criminal Code, he will find that section 1 did what the hon. member for Fort William said was done. It repealed in its entirety section 98 of the Criminal Code, chapter 36 of the Revised Statutes of Canada, 1927. Accordingly, these volumes that some of us have which purport to be office consolidations of the Criminal Code as it now exists have a blank between sections 97 and 99. There is no section 98 in the code that is at present in force. However, if one looks further into the same chapter 29 of the statutes of 1936 which repealed section 98 of the Criminal Code, he will find that section 4 of that statute added a new subsection 4 to section 133 of the code. Section 133 of the code is the section dealing with sedition. The point I wish to make—indeed the point I had in mind when I made my reply to the hon. member for Fort William last night—is that some of the words that were in the former section 98 were retained in the code by putting them in subsection 4 of section 133. I refer in particular to such words as "who teaches or advocates". I want to make it quite clear that as I read subsection 4 of section 133 of the code as it now stands—

Mr. Philpott: Which code are you referring to, the new one or the old one?

Mr. Knowles: The old one at that moment—or as I read clause 60 of the bill now before us, it is difficult to take exception to any of the words in either instance, although I do take exception to certain words in clause 62. Nevertheless the fact is that under words like those in clause 60—and these are some of the words that were in the former section 98—some things have happened in this country which some of us cannot forget. I made a passing reference yesterday to what happened in Winnipeg in 1919, and the hon. member for Fort William also made reference to the events in Winnipeg in that year. I have no intention of recounting the events of the general strike that took place in my city in that year, but I do remind members of the House of Commons that on that occasion some nine or ten citizens of my city of Winnipeg were charged under the Criminal Code with various offences, in most cases the charge being seditious conspiracy.

I referred yesterday to the case of the former leader of this group, who was the former member for the constituency I have the honour to represent, the late J. S. Woodsworth, who was charged under the Criminal Code of Canada with seditious conspiracy. One of the several counts laid against him in that charge was that he had quoted these words in certain articles which he had written:

> Woe unto them that decree unrighteous decrees, and that write grievousness which they have prescribed;
>
> To turn aside the needy from judgment, and to take away the right from the poor of my people, that widows may be their prey, and that they may rob the fatherless! . . .
>
> And they shall build houses, and inhabit them; and they shall plant vineyards, and eat the fruit of them.

They shall not build, and another inhabit; they shall not plant, and another eat: for as the days of a tree are the days of my people, and mine elect shall long enjoy the work of their hands.

These passages from the book of Isaiah actually got into print in an article over the name of J. S. Woodsworth and, believe it or not, they were included amongst the counts laid against him when he was charged with seditious conspiracy. There was a fifth count against him which had to do with certain articles that had got into type but which had never reached print. They have of course reached print since then. In fact I should like to read at the moment from a book on the life of J. S. Woodsworth by his daughter, Grace MacInnis.

Count five, "Alas! the poor alien", was one of those articles seized in type. An indication of its nature can be had from its opening and closing sentences. It began: "When is an alien not an alien? Answer: When he is a rich man, a scab-herder, or a scab." And it ended: "If after a fair trial undesirable aliens are found, let them be deported. Meanwhile, how about deporting the profiteers? Everyone knows they are undesirable."

There was another count, count six, containing a quotation from the Right Hon. Arthur Henderson, later a minister in the British cabinet. Entitled, "The British Way", it outlined the platform of the British Labour party together with the comments of Mr. Woodsworth, including the following:

This is the British way, and remember! It is absolutely constitutional!

I should say in passing that the reference in some of these quotations to deportation was of course in connection with a certain amendment to the Immigration Act which was passed rather hurriedly during the heat of the Winnipeg strike. I went to the library yesterday to refresh my memory on that part of the story, with which I was already quite familiar, and despite the fact that I have known the story for many years it did seem rather strange to look at just two pages of the printed *Hansard* for June 6, 1919, and to discover that within the compass of those two pages one finds the record of the introduction of a bill which had been passed in the other place, and which was given first reading, second reading, consideration in committee of the whole, third reading and was passed, all, as I say, within the compass of two pages of *Hansard* for June 6, 1919.

Hon. members may be interested in knowing what the very next item was immediately after that bill had been given its three readings in such a short space of time. The next item recorded in that *Hansard* was that there was a messenger at the door, namely, the Gentleman Usher of the Black Rod. Parliament was in high gear. The bill had been passed in the Senate that same day, before it came here. It was passed here in less than an hour and the governor general or his deputy was ready to give approval to that amendment to the Immigration Act. Indeed, it was an amendment to amendments that had already been made at that session.

Such was the speed with which parliament acted on that occasion towards people like J. S. Woodsworth and A. A. Heaps, both of whom I mentioned yesterday. Eight others were involved, including William Ivens, John Queen, George Armstrong, R. E. Bray, Robert Russell, W. A. Pritchard, R. J. Johns and F. J. Dixon. These are not men, Mr. Chairman, who can be thought of any longer in this country as guilty of sedition, although a number of them spent time in jail, several of them in Stony Mountain penitentiary or at what was known as a prison farm.

As the Secretary of State pointed out yesterday, the actual case against Mr. Woodsworth was never brought to trial. The reason for that was that the charge against F. J. Dixon was very similar to the one against J. S. Woodsworth and the case of F. J. Dixon was called first. He defended himself in an address to the jury which is one of the masterpieces of the history of our area, and he was acquitted. As a result of his being acquitted, Mr. Woodsworth was informed a few days later that there was a stay of proceedings so far as his case was concerned and that he need not appear until he was advised. Well, he never was so advised, but that stay of proceedings stood for the rest of his life.

I have mentioned the case of William Ivens, one of the few of this group who is still alive. He is living in the city of Winnipeg and is still active and interested in the affairs of this nation. Some months ago I had occasion to make a close study of Mr. Ivens' life in connection with an address I was asked to give. Indeed, it was at a banquet that we tendered him as a testimonial at the time of his seventy-fifth birthday.

I was quite interested in some of the material that is on record, and this relates very substantially to this whole question of what is sedition. My whole point is that we have to distinguish between those who are definitely against the community as a whole, definitely against society, definitely against Canada, and those who are merely seeking or advocating reform. As I suggested yesterday, some of those who have been adjudged criminals by the laws of the land have turned out to be the nation's real patriots.

Just before the incidents of the strike period in Winnipeg in 1919 it appears that Mr. Ivens, who was writing in a publication known as the *Western Labour News*, said

something rather critical of the Winnipeg *Free Press*. That goes on all the time and to those of us who live in Winnipeg that sounds like today rather than thirty-five years ago. At any rate, shortly after that the chief press censor for Canada—I need not bother to name him now except to say he was a civil servant—wrote the editor of the *Free Press* and said something like this: "I note in the issue of the *Western Labour News* of January 31, 1919, a bitter and unwarranted attack on the *Free Press*. You might be interested in knowing the record of this man Ivens as revealed by an examination of his writings made at this office."

Then, after using a few epithets and adjectives that were not altogether complimentary, and in my view were quite false and unwarranted, the chief press censor set out to give to the editor of the Winnipeg *Free Press* some of the quotations from Mr. Ivens' writings which were objectionable, which were seditious, which were terrible. I am going to give one or two of them.

Mr. Garson: Did he say "seditious"?

Mr. Knowles: He left that to the *Free Press*. I am sorry I have not the full text of the letter, and I would not want to make that assertion without checking back on it, but certainly that was the inference. This is one of those objectionable quotations:

> War will end not by war and not by the professions of the diplomats while war is in progress, but by the establishment of justice on the earth.

Imagine that as an objectionable statement! I can imagine the Secretary of State for External Affairs saying practically the same thing today. He might use slightly different words but he would express those same sentiments.

Here is another quotation:

> The imperative call for the statesmen of the world to adjure and utterly repudiate their imperialistic secret treaties and to restate their war aims in conformity with their claims of a war for justice, right and democracy is resounding across the world today.

As I say, it was quotations of that sort that the chief press censor of Canada drew to the attention of the *Free Press* so that they might answer "this man Ivens". I must digress for a moment to say that I have not been able to find anything in the files of the *Free Press* during the period following the writing of that letter to indicate they made use of the information conveyed to them by the chief press censor for Canada. By the way, I should just complete briefly my reference to William Ivens by pointing he was one of those who, during the strike of 1919, was charged with seditious conspiracy and upon being convicted was sentenced to jail. He came out of jail to take his place in the legislature in Manitoba, having been elected to that legislature while he was still in jail. The same thing happened in the case of John Queen and George Armstrong, if not in the case of others as well.

As a matter of fact, the Minister of Justice will recall being associated with these men as a member of the legislature of Manitoba during the time when he and they were there together. I am sure he will agree with me that they were not seditious characters. They may have given him a lot of trouble—

Mr. Garson: As a matter of fact, one of them, the Hon. S. J. Farmer, was my colleague in the Manitoba cabinet for two or three years.

Mr. Knowles: I do not wish to spoil the minister's story, but the gentleman to whom he refers was not put in jail.

Mr. Garson: No, that is right.

Mr. Knowles: He was one of the group who did not happen to have that distinction conferred upon him. John Queen, who was one of those who spent time in jail, was not only in the legislature along with the Minister of Justice when he was there, but for some eight or nine years was mayor of the city of Winnipeg, as was S. J. Farmer shortly after the strike.

It is very easy to talk about these things in retrospect and to say that they will not happen again. I am sure that the people of Winnipeg, prior to these incidents, would not have imagined that these men would be charged with seditious conspiracy and would spend time in jail. It did happen, and some of this language is still a part of the code. I want to say quite frankly that I find it difficult to quarrel with most of the precise wording in the clause that is before us, but I do not like the use of those words "teaches and advocates," because they were in section 98 and have been carried over into this clause 60. I do make a plea for an understanding of this whole situation, and for the realization that we have to distinguish between treachery to one's country and the attempt to win reform, even radical reform. In other words, sedition must be recognized as treachery against the country as a whole and not just opposition to the government that happens to be in power.

Mr. Garson: Would the hon. gentleman permit a question? In the remarks he has made within the last two or three sentences, has the hon. member taken into account the provisions of clause 61 of the bill?

Mr. Knowles: Yes, and that is one of the reasons why I confess that I find it difficult to pinpoint many words in these clauses against which one could complain, although I am against the length of the sentence provided in clause 62. As the minister says, there is a saving feature in clause 61, which purports to make it clear that one can point out errors or defects in various governmental bodies. With the indication we have of the errors and defects across the way, we would have to claim that right whether or not it was accorded to us.

I ask, Mr. Chairman, that this country not forget the incidents to which I have been referring, and that we lean over backwards to keep it clear that opposition to the government that happens to be in power is not treachery or sedition, but rather that there is a place and a need for the reformer, for the real patriot, for the real citizen of the country who sets out to make things better than they are.

Mr. Garson: Now that my hon. friend has finished his remarks, I rise to a point of order. I would suggest that what we are dealing with here is clauses 60 and 61 of the present bill, which have nothing to do with section 98 that was formerly in the Criminal Code. I am afraid that if we get off into a debate of section 98, which could be such a fruitful subject of discussion, we may talk for a long while and not be on the point at all.

Mr. Knowles: The minister will admit that some of the wording in the former section 98 was, in 1936, transposed to section 133 and is now in clause 60.

Mr. Garson: I would admit that, but I do not think it has any relevancy to what we are discussing now, because if my hon. friend would look at the case of Rex *v.* Boucher, decided in 1951, he would agree that most of the points he has been making this afternoon are obsolete.

Mr. Knight: I should like to ask the minister one brief question on clause 60. I am interested in a definition of sedition as the minister understands it. If the minister will look at clause 60 (1) he will see the peculiar manner in which the definition is stated. It says:

> Seditious words are words that express a seditious intention.

And then:

> A seditious libel is a libel that expresses a seditious intention.

Again we have sedition defined in terms of sedition. I wonder if for the record the minister could give a definition of just what sedition is, in terms of clauses 60, 61 and 62?

[Mr. Garson.]

Mr. Garson: If my hon. friend will look at clause 60 (4) I think he will find on the record the definition he is seeking.

Mr. Winch: I was going to ask the same question about clause 60 (4). It says, "without limiting the generality of the meaning of the expression 'seditious intention'." And so on. In other words, we do have power under subclauses 1 and 2, but it is worded in such a way that it says that black is black and white is white. That is exactly what it says.

An hon. Member: What is wrong with that?

Mr. Winch: Well, it certainly does not give a description of the meaning of sedition. It just does not make sense.

Mr. Ellis: On that point would the minister give us the significance of the words "without limiting the generality of the meaning of the expression 'seditious intention'." In other words, in clause 60 (4) we find what, indirectly, can be described as a definition of sedition as a conspiracy to carry out a seditious intention, or to teach or advocate the overthrow of the government. I would ask the minister to tell us why it is necessary to have written in this section the words, "without limiting the generality of the meaning of the expression 'seditious intention'."

Mr. Garson: Well, perhaps I had better attempt to clear up these doubts in the minds of my hon. friends by giving them an example of a case where the words "seditious intention", that are defined in clause 60 (4), were considered. That was the case to which I have already referred. It is a decision of the Supreme Court of Canada in the case of Boucher *v.* the King, 1951, S.C.R. 265. The main point dealt with in this case was as to whether "seditious intention" included an intention to incite to acts of violence or public disorder in all cases. Excerpts which express the views of the members of the court I shall now quote.

In this instance, the opinion of Chief Justice Rinfret was as follows:

> The advocating of force is not the only instance in which an accused could be found guilty of a seditious intention.

That is a minority judgment, as my hon. friend will see as I go along.

Then, this was the opinion of Mr. Justice Kerwin:

> The intention on the part of the accused which is necessary to constitute seditious libel must be to incite the people to violence against constituted authority or to create a public disturbance or disorder against such authority. An intention to bring the administration of justice into hatred or contempt or exert disaffection against it is not seditious unless there is also the intention to incite people to violence against it.

Mr. Justice Taschereau stated the following:

Upon application a new hearing was granted and heard by the full court, and in view of the opinions now expressed by the majority, it is settled, I think, that generally speaking, the writings complained of must, in addition to being calculated to promote feelings of ill-will and hostility between different classes of subjects, be intended to produce disturbance or resistance to the lawfully constituted authority. But as pointed out by my brother Cartwright, there is another definition of seditious intention which I think must be accepted. I agree with him that an intention to bring the administration of justice into hatred or contempt or to excite disaffection against it, is a seditious intention.

And then, Mr. Justice Rand:

The test is not either the truth of the language or the innocence of the motive with which he publishes it. The test is this: Was the language used calculated, or was it not, to promote public disorder or physical force.

As Mr. Justice Rand indicates, the words in which he specifies the test are taken from the judgment of a British judge, Mr. Justice Coleridge, in the British case of Rex *v.* Aldred.

Then, Mr. Justice Kellock expressed the following:

It is noteworthy that the draft code of the royal commissioners was not accepted by parliament, and in my opinion, incitement to violence toward constituted authority, that is, government in the broad sense, or resistance having the same object, is, upon the authorities, a necessary ingredient of the intention.

In my opinion, to render the intention seditious, there must be an intention to incite to violence or resistance or defiance for the purpose of disturbing constituted authority. I do not think there is any basis in the authorities for defining the crime on any lower plane.

At the present time, therefore, in England, matter of the character here in question, if made the subject of criminal process at all, appears to be treated as contempt of court, rather than as seditious libel. Such matters may, of course, be regarded from the standpoint of seditious libel if intention of the necessary character be established.

Then, Mr. Justice Estey:

I would clarify my previous reasons by adding that a seditious intention must be founded upon evidence of incitement to violence, public disorder or unlawful conduct, directed against His Majesty or the institutions of the government. With great respect, I am of opinion that in all cases the intention to incite violence or public disorder or unlawful conduct against His Majesty or an institution of the state is essential.

Then, Mr. Justice Locke:

The question remains whether it is accurate to say that "a seditious intention is an intention to excite disaffection against the administration of justice" as stated by Stephen.

The great English commentator:

Only if disaffection be construed as meaning resistance to or disobedience of the law or the authority of the state is it accurate, in my opinion.

I concur in the opinion by my brother Kellock that that portion of Stephen's definition which declares that "the intention to promote feelings of ill-will and hostility between different classes of such subjects" is a seditious intention without more, is inadequate as a statement of the common law and I agree with his conclusion upon this aspect of the matter.

Then Mr. Justice Cartwright:

The reasons of my brother Kellock bring me to the conclusion that the definition quoted above ought not to be accepted without qualification, and that before a writing can be held to disclose a seditious intention by reason of being calculated to promote feelings of ill-will and hostility between different classes of His Majesty's subjects it must further appear that the intended, or material and probable, consequences of such promotion of ill-will and hostility is to produce disturbance or resistance to the authority of lawfully constituted government.

In my opinion at common law an intention to bring into hatred or contempt or to create disaffection against the administration of justice is a seditious intention, and I do not find anything in the provisions of the Criminal Code to negative this view.

I think it will be seen from these judgments that there is a clear majority of judges on the Supreme Court of Canada who hold that incitement to violence is a necessary ingredient of the offence of sedition. It might perhaps illuminate the matter a little bit further if I were to quote at further length from the judgment of Mr. Justice Rand, which I will now do:

The definition of seditious intention as formulated by Stephen, summarised, is, (1) to bring into hatred or contempt, or to excite disaffection against, the King or the government and constitution of the United Kingdom, or either house of parliament, or the administration of justice; or (2) to excite the King's subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or state by law established; or (3) to incite persons to commit any crime in general disturbance of the peace; or (4) to raise discontent or disaffection amongst His Majesty's subjects; or (5) to promote feelings of ill-will and hostility between different classes of such subjects. The only items of this definition that could be drawn into question here are that relating to the administration of justice in (1) and those of (4) and (5). It was the latter which were brought most prominently to the notice of the jury, and it is with an examination of what in these days their language must be taken to mean that I will chiefly concern myself.

There is no modern authority which holds that the mere effect of tending to create discontent or disaffection among His Majesty's subjects or ill-will or hostility between groups of them, but not tending to issue in illegal conduct, constitutes the crime, and this for obvious reasons. Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life. The clash of critical discussion on political, social and religious subjects has too deeply become the stuff of daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality. A superficial examination of the word shows its insufficiency: what is the degree necessary to criminality? Can it ever, as mere subjective condition, be so? Controversial fury is aroused constantly by differences in abstract conceptions; heresy in some fields is again a mortal sin; there can be fanatical puritanism in ideas as well as in morals; but our compact of free society accepts and absorbs these differences and they are exercised at large within

to move an amendment, or have the Minister of Citizenship and Immigration move an amendment, to restore the penalty to a term not greater than was set in 1951?

Mr. Garson: If any hon. member in this committee can move me I am sure it is the hon. member for Vancouver-Kingsway. But I would point out that this recommendation came from a royal commission. It went into the other place on two separate occasions and it was debated there and in its banking and commerce committee. It came back into the House of Commons and was considered here and before the special committee of the House of Commons at the last session of parliament. If my memory serves I think I am right in saying that until the exception was taken here this afternoon no person has as yet, in the five years that this bill has been extant, raised the question that this penalty was excessive. Under our laws of sedition that are not in any sense harsh laws and that only apply to genuine sedition where that is proven, I must say I do not think that a maximum penalty of fourteen years is out of the way in the world in which we live today. When I say that I admit, in order to be perfectly candid—and in this perhaps I agree with the hon. member for Vancouver-Kingsway—that this section may not be invoked very often. I hope it will never be invoked. But when it is invoked for an offence under the language that we have here in this bill it will be invoked for quite a serious offence for which it seems to me that the penalty indicated is not excessive.

Mr. Fulton: May I suggest to the committee and to my friends of the C.C.F., including the hon. member for Vancouver-Kingsway—for whom in general I have great admiration although not always for his judgment—that it seems to me that they are missing out one important point. They seem to be looking at the section—and this was my feeling in connection with the discussion of yesterday evening—and looking at the penalty it provides, and then translating their natural sympathy—the natural sympathy which we all have for a person who may be unjustly accused—into an automatic assumption that such a person will be convicted. I think the point that my hon. friends miss is that these penalties will not be imposed unless the person is convicted. If therefore such a person has not been guilty of the offence described here, these penalties are not going to be exercised against him.

I am not familiar with all the history back of the period to which my friend the hon. member for Winnipeg North Centre was referring. It may well have been that the prosecution was ill-conceived and improperly laid. I am not justifying or attempting to justify anything that may have been unjustifiable there. It is a great mistake and almost a miscarriage of justice to launch prosecutions under those circumstances. But, as I understand it, the fact is that in the test case the accused was found not guilty. Therefore the penalty was not imposed.

Surely our attitude should be this: What is the crime which we are seeking to cover and for which we are providing a penalty? Is that penalty commensurate with the seriousness of the crime that is under consideration? If it is, then that penalty should stand, because even although it may be a severe penalty it could only follow for an extremely serious crime and will not be imposed against persons who are innocent of that crime. I would say that for the man who is guilty of sedition, uttering seditious words, seditious libel or taking part in a seditious conspiracy within the meaning of those offences, the maximum penalty of fourteen years is not too much.

Mr. Knowles: I suggest to the hon. member for Kamloops that he had better be careful. He may be inviting that penalty for himself one of these days.

Mr. Fulton: I do not think that I shall ever be guilty of sedition, seditious libel or seditious conspiracy. If I were, then I would deserve the penalty.

Mr. Knowles: Some of the things my hon. friend might say might be thought to be that by other people.

Mr. Fulton: Yes; but they have to be proved to be that in court.

Mr. Knowles: The point I really rose to deal with was something which the minister raised. A moment ago he gave an answer which, if I may say so with respect, he has given us a good many times, namely that this has been gone over through all the various stages and that this point has not yet been raised. Even if it has not been raised, that is the purpose of this consideration, namely to check on the various clauses of this bill before it is reported to the house for third reading.

May I also remind the Minister of Justice that, with respect to the clause having to do with treason, he pointed out yesterday that, notwithstanding all the consideration that had been given to the treason clause and the offences and penalties under it, the matter was considered by a special committee of the cabinet. He even boasted—and I do not blame him for so doing—that there were in

the cabinet people who were more exercised about some parts of the treason section than were some persons outside of the cabinet; and hence yesterday he proposed an amendment reducing the sentence in the case of that section of the treason clause that deals with communicating information where that happens in peacetime. Even if no previous consideration had been given to this point, I suggest that it might well be considered by the cabinet, as was done in connection with treason.

However, I am afraid that I cannot accept the assertion that the point has not been raised during the past five years. I have not all the documents at my desk but from amongst the many papers I have here I was able to draw the submission which the Canadian Congress of Labour made to the special committee of the House of Commons on Bill No. 93, under date of February 17, 1953. On page 2 of this brief I read the following:

> Section 62 (Seditious Offences).
>
> This is the present section 134, with a much higher penalty. Down to 1951, the maximum was two years; then it became seven; now it is to be fourteen.
>
> Why? It may be arguable that the 1951 increase was necessary because of the vast change in world conditions since 1927, or even since the repeal of the old section 98. Even that is questionable.

I point out that these people not only raised the question but cast doubts upon the increase. I continue reading from the brief:

> But what drastic change in the situation in the last year and a half makes it necessary to double the maximum penalty now?

Those are almost the very words used by the hon. member for Vancouver-Kingsway a few moments ago.

> We are not, of course, suggesting that sedition is a good thing, or even a trifling offence.

That is what the hon. member for Kamloops just pointed out.

> But presumably the government's "object all sublime" is "to make the punishment fit the crime". Does this do it?

It runs in my mind that there have been editorials on this matter and that there have been other briefs that have raised the very same point. I therefore submit, Mr. Chairman, that it was not quite correct for the minister to say that this question had never been raised. On the basis of the evidence I have given it certainly was raised before the House of Commons committee by the delegation representing the Canadian Congress of Labour.

Mr. MacInnis: Mr. Chairman, I imagine that while we are discussing the three sections, it would not be in order to move an amendment to section 62 until that section is called. I am going to move an amendment. I was going to say that the trouble is that, when questions of this kind arise, they usually arise in times when the minds of people are troubled. In the case that we have been referred to by the hon. member for Winnipeg North Centre in 1919, people were in a state of panic. In my opinion the most seditious thing that was said during that whole affair was not said by any of those who were arrested but was said by the then solicitor general, I think it was; in any case, it was Arthur Meighen. He sent a wire to a lawyer in Winnipeg to have these men on the high seas within twenty-four hours and that the legality of the matter would be gone into afterwards. If there was ever anything that was seditious—and a seditious conspiracy at that—it seems to me that was it, coming from the fountainhead of government. Therefore you can see the sort of atmosphere in which cases of that kind are likely to arise. It is then very difficult for counsel, judge or jury to act reasonably and as they normally would.

Mr. Barnett: I have been listening to this discussion with some interest. The particular point I want to make is along a somewhat different line from that which has just been followed, but I imagine if the minister has any further reply to make on the question of penalty he will be prepared to do so. I must confess that the thought that has been running through my mind is that the word "sedition" is a nasty one. I know perfectly well that if I go back home among my fellow workers and use the word "sedition" it conjures up a lot of things in their minds and in the mind of other ordinary citizens of this country. Those of us who are fortunate enough to be able to sit here as members of this committee have had the benefit of the explanations that the Minister of Justice has offered with respect to what is involved in sedition. But I think what we have to realize is that most of the people of Canada are not going to have the benefit of that kind of explanation.

In looking at this section I first of all read the words in subsection 1, namely:

> Seditious words are words that express a seditious intention.

I must say that my mind was not greatly illuminated. I then looked through all the dictionaries I could find in the library to find out what are seditious words and what is a seditious intention. Not a great many citizens of Canada are going to take the trouble to do that. I must say that there come to my mind the words that the Minister of Justice uttered earlier with respect to the revision of the Criminal Code when he said that it was the desire and intention to produce a revised Criminal Code which would

be more readily understandable by the ordinary citizens of Canada. A great many sections of the bill set out that for the purposes of the particular section the offence shall be (a), (b), (c), (d) and (e). From my point of view the greatest weakness of this section is that the expression "seditious intention" is not thus defined.

It is something which the ordinary person cannot understand. It is something that can be used by those who wish to mislead the ordinary citizens of Canada. It gives the right and opportunity to do so. I do not know whether other members of the house are as aware as I am of the all-out campaign being conducted at the present time by what are, to my way of thinking, certain subversive interests in connection with the revision of the Criminal Code. As far as I am concerned, if we leave the section the way it is we simply are handing these people ammunition.

I know that if I went home and tried to explain to the working people of my constituency that this is an innocuous section, that it can only be invoked in case of an all-out conspiracy to overthrow our government, I would have great difficulty in making them realize that is what is intended. Actually I am not at all convinced myself that such an interpretation of the section would hold water as the section stands at the present time. I think that is the first thing that should be changed. "Seditious intention" should be spelled out as meaning such and such and such and such and such and such and such. From the very use of the phrase in subsection 4, "without limiting the generality of the meaning of the expression 'seditious intention'," it does not need much imagination to see how a spell-binding communist orator—and they have them—could take that particular phrase and mislead and disturb the ordinary people of the country. That is what they are trying to do and that is what they are going to continue to do if we leave the section as it stands.

If it could be clearly stated that the only way in which the offence of sedition could be committed would be when it involved an offence against the state, I must say that much of the misunderstanding and fears existing in the minds of the working people of Canada would be allayed. But from listening to the minister I still have the understanding that under certain circumstances, in times of stress in labour disputes, this section might very well be invoked again as it has been in the past. If that is the case, then I suggest that the section tends to foment the very conditions which most of us are anxious to prevent. I feel the section should be so worded that by no stretch of the imagination could it be considered to apply in the ordinary dealings between the employing class and the working class in Canada. If that were done, we would have done a good deal to strengthen democracy in Canada.

From my personal knowledge and associations, and partly as a result of my own thinking, I know that there is a deep-rooted latent fear in the minds of the working people of Canada that at some time in the future those things are going to be done again which have been done in the past, and that as the result of the ill-advised disposition of police forces or other agencies of so-called law and order wrongful acts are going to be committed by the so-called lawfully constituted authorities which will result in counter-measures on the part of the working people, with men being arrested and convicted under these sections.

I have been looking at the provision with regard to the administration of justice in Canada and wondering whether not so long ago I was not in grave danger of being liable under this section. Some of us who are associated with the trade union movement have been gravely concerned by what appears to be a trend on the part of the employing interests to run to the courts and secure various forms of injunctions. We had a situation in which certain members of my own union were involved. I happened to have the responsibility of producing a radio broadcast on behalf of the organization, and I am quite willing to admit now that at that particular moment I was a little hot under the collar. I think I produced a phrase in the script that went something like this, that if this sort of action were continued I could see that it might render the judges of our country—I phrased it very carefully—liable to the suspicion of palm greasing. Now, of course, my script went before the counsel for the radio station, a chap whom I happened to know, and he threw up his hands in horror. He really went through the roof. He said, "Never in the history of British justice..." and so on. I tried to explain to him that I was just as concerned with the preservation of the high tradition of British justice as anyone else. I was concerned to see that no action was taken which might tend to lower the dignity of the courts in the minds of the people of the country.

However, I can quite imagine that if, under the stress of possibly a more serious situation than existed at that particular time, I had gone on the air with some such statement as that, I might have been liable under this section as it is now worded. I maintain that my intention was not a seditious one, although

certainly I may have been in the mood to be highly critical of certain actions that were being taken by a portion of the structure of our society. I feel that the most important thing that might be done with this section would be to rewrite it in such a way that a person with an ordinary education would find the offences clearly spelled out. There should be a clear indication that this section is designed to deal with deliberate and, if you like, full scale intent to overthrow the structure of our society by violence.

Mr. Hollingworth: I believe that what we should consider in connection with this section is the whole question of civil rights. Certainly, I shall fight as vigorously as anyone else in this house against any infringement of civil rights. After a careful consideration of this section, and the other sections dealing with this problem, and after listening to the minister's explanation, particularly the quotation from Mr. Justice Rand's judgment, I do not feel that one can take exception to the drafting of this section. I am of the opinion it does not infringe upon the civil rights of the individual, and that is the all important matter with which we should be concerned here.

I must say though, Mr. Chairman, that I do not like the fourteen year penalty. I realize that, as the hon. member for Kamloops has pointed out, it is only the guilty person who is going to suffer, but nevertheless the fact that the section has not been invoked except on rare occasions seems to indicate that the extension of that time limit is unwarranted. The only thing I can say in justification of it is the fact that it is the maximum penalty. It is quite conceivable a judge would impose a lesser penalty if the crime were less serious. However, as I say, I do not like the fourteen years. I would be inclined to agree with the hon. member for Winnipeg North Centre in his remarks in that regard. The saving clause, of course, is that it is the maximum penalty and that period would not have to be invoked. Those are my general observations.

Mr. Nicholson: The hon. member for Vancouver East, Mr. Chairman, did ask the minister a very easy question to answer, I think, when he pointed out that the wording of this clause is not easy for the layman to understand. Subclause 1 of clause 60 reads:

> Seditious words are words that express a seditious intention.
>
> (2) A seditious libel is a libel that expresses a seditious intention.
>
> (3) A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.

It would appear to me that before members of parliament are asked to support legislation of this type, the minister should be able to give an explanation of the meaning of sedition so that a layman could understand it. He referred to the case of Rex *v.* Boucher, and while I listened carefully it will require a reading of the extended remarks before I can understand just what learned jurists had to say about this question. I wonder whether, even at this stage, the minister might not start over again and put his comments in words that the members of the house who have not been to law school might be able to understand.

Mr. Fulton: That is an invitation that I hope the minister will be able to resist.

Mr. Nicholson: This is a rather disturbing piece of legislation to be asking us to support, since it includes that fourteen year penalty. I believe members in all sections of the house are agreed that any person who becomes an enemy of the state should be dealt with harshly. However, I feel we should clearly outline what the offences are. As has been pointed out by my colleague, a number of people in Winnipeg went to jail for sedition back in 1919, and certainly if this clause had been on the statute books at that time they would have received a fourteen year sentence.

In view of the fact that we have had an exceptionally good record in Canada, we should not be asked to support legislation that is not set out in words that everyone can understand. I feel that the fourteen year penalty is an unreasonable period to be suggesting for offences that cannot be explained in more precise language.

Mr. Herridge: I want to support the arguments made by the other members in this group against what we consider the indefinite terminology of this section. I might explain that some of the experiences I have had in life have made me somewhat wary of this word "sedition". It is one that is extremely difficult to define. Sedition can be many different things in different times and circumstances. It depends on the mood of the day.

On one occasion in 1933 I recall being asked by an Anglican clergyman to give an address at the funeral of a member of the C.C.F. party. I gave what I thought was an excellent address, and what do you think happened? The local magistrate informed the attorney general of British Columbia that I had been preaching sedition and asked for me to be investigated. I did not know anything about this until about a month later. The police officer who had been sent in to

conduct the investigation came to my house and told me all about it. He said it was a lot of rot and they had been investigating the wrong person.

On another occasion, which I think the hon. member for Vancouver-Kingsway will recall, I was going to address a public meeting in a small town in my constituency. This incident illustrates how time and circumstances alter things. At that time the C.C.F. was far from respectable in many quarters. I went to rent a hall in this small town, and I was refused a hall. The person who refused me told me that the magistrate there had said we were talking sedition. We could not rent the hall and I am quite sure if we had come before that magistrate, or the one I mentioned previously, we would have been proven guilty of sedition and given the penalty imposed by this clause.

In any event, we could not get a hall. Finally, I saw the chief of police and convinced him I was a respectable person. We were allowed to hold a meeting in the public square under police supervision. I just mention these two incidents to indicate how the definition of sedition changes under certain circumstances. We have got beyond that now, and those incidents would not happen today. I mention them to indicate the possibility of the mood of the public or the circumstances changing. I think other members of this group who have suggested that the definition is not clear enough, and that the penalty is too severe, are quite right in those objections.

Mr. Enfield: To get back to the subject of the definition of sedition, I think when we are discussing the Criminal Code we should look at the clauses from three distinct considerations. One, of course, is the wording of the clause itself. Secondly, we must always keep in mind that there must be an element of what is known as *mens rea*, or guilty intention to commit a crime. That must always be appended to every clause we discuss. Then, thirdly—and perhaps most important—we have to look at how a section has been interpreted by the judiciary. I know that often many students of law are inclined to think that more legislation is passed by the judiciary than by the legislature itself.

As the minister has already referred to the case of Boucher *v.* Rex, which seems to be the leading and the most modern case on the subject, I shall not repeat the details of it. However, some hon. members have asked for a capsule summary of what Boucher *v.* Rex says. I just happen to have, as luck would have it, what I think is a good summary of the *ratio decidendi* of Boucher *v.* Rex. I think perhaps it would be of interest if I were to place it on record.

[Mr. Herridge.]

It was held in that case that there is no finding of seditious intention unless there is evidence of incitement to violence. And it is interesting to note throughout this summary that the words "violence" and "resistance to law" are given great emphasis by the judges concerned. It states that there is no finding of seditious intention unless there is evidence of incitement to violence, public disorder or unlawful conduct directed against the Queen or the country's institutions.

It is stated that an intention to promote feelings of ill will and hostility between different classes of Her Majesty's subjects, without anything more, cannot be seditious. I think that is very important to be kept in mind, and it will bear repetition—that an intention to promote feelings of ill will and hostility between different classes of Her Majesty's subjects, without more, cannot be seditious. You have to have something more than that.

Then it must be shown, further, that the intended or natural and probable consequences of promoting such feelings is to produce disturbance of the government, or resistance to its authority. That carries it very much farther. There must be the intention to incite resistance to law, not merely an intention to criticize or to promote contempt for law.

That is the summary from the headnote of the case, which is reported at page 265 of the Supreme Court Reports of 1951. It is true that the summary is prepared by the legal editor concerned. But the idea is to read from the headnote, and then to look through the judgment. If one's feelings are more or less in agreement with the headnote, it provides a basis upon which to summarize the case. Because, obviously, one cannot take these cases and comb through them thoroughly. The job would be monumental. Hence the headnote is provided for the sake of convenience.

As I say, this is the summary that I have found from reading the case. I am giving it to the committee for what it is worth. I suggest that before any change in set-up is made it is absolutely necessary to go into the question of how the courts have interpreted the law. If a change is made there is a great possibility that the judicial interpretations that have gone before are completely lost. You open the door for an astute counsel. The section is changed, and one cannot quote with authority a judgment based upon an earlier section that reads differently from the present one.

So, before we entertain any amendment I suggest, with respect, that this point should be seriously considered. As to the penalty of fourteen years, it seems to me that by comparison with some of the other sections we have covered, where there are penalties of fourteen years, this penalty is a fair one. For example, we dealt yesterday with clause 46 (c), the transferring of scientific information, and a clause which carried a sentence of fourteen years.

When we look at these sections, in comparison, it seems to me that the fourteen years in this clause is justified. The offence is just as serious. Anyone promoting resistance to the law—and presumably this would be some type of force or bodily resistance—is committing just as serious a crime as anyone who gives information to someone else who in turn might use that information to promote bodily resistance or force against the present government.

The penalty of fourteen years is a maximum. Upon making inquiry with respect to judicial interpretation one finds few cases on the subject. Those that have been tried before the courts have been of a serious nature.

One would not want to leave the penalty too low. Where there is a serious offence the court must have the opportunity to punish fully and properly. On the other hand, this is a maximum, and the court still has discretion to limit the sentence to what would be considered appropriate for the offence involved.

An hon. Member: The hon. member has answered the point.

Mr. Martin: And a very good answer.

Mr. MacInnis: Does he say that the penalty before 1951 was so low that it promoted sedition in Canada? In how many cases was the law of sedition invoked during those years?

Mr. Enfield: I do not think one can say that the penalty was so low that it promoted sedition. But when the Boucher case was tried in 1951 it was felt that, owing to the seriousness of the situation involved, the law as it stood did not provide sufficient in the way of penalty to cover the degree of wrong that was committed. I am only going by the reported cases on the subject, and there appear to be very few of them. There is Rex *v.* Frost, in 1889—and I must say I have not counted them up. Then there is Rex *v.* Shaefer, Rex *v.* Snyder and Rex *v.* Felton. There are only about four cases quoted.

Mr. MacInnis: Since 1951?

Mr. Enfield: Since 1951, so far as I know,—and I may be wrong—there is no reported case. I would imagine that any case on the subject would be reported, because it is very serious.

Mr. Gillis: Are those Canadian cases?

Mr. Enfield: Yes. As a matter of fact, two or three earlier cases were British.

Mr. Ellis: As important as penalty is the reason for the change. I have not heard a very lucid explanation as to why it has been found necessary to increase the penalty. The minister was asked by the hon. member for Winnipeg North Centre how many cases of sedition he could recount, and I believe he said that offhand he could not say how many cases there were, but that the largest batch of such cases occurred at the time of the Winnipeg strike.

Judging from the change proposed in this bill one might almost be under the impression that this country is seething with discontent, and that the government is mightily worried about the great numbers of people who are guilty or who are likely to become guilty of sedition. I am inclined to believe that any outsider who read this section would be under the impression that sedition had become so serious in Canada that the parliament of Canada found it necessary to increase the penalty in 1951 from two years to seven years, and that it has worsened since that time and again the parliament of Canada has found it necessary to increase the penalty to fourteen years.

The minister suggested the reason the change is proposed is that in troublous times such as we are going through there was apprehension in the minds of the people who proposed the change, and consequently they felt that a more severe penalty was necessary. That argument was used yesterday in connection with the treason clause. I can understand that there is some logic behind that reasoning in so far as the treason clause is concerned. I think hon. members will agree that certainly our history to date would indicate that there are reasons why we should look upon treason perhaps in a different light from what we might have fifteen years ago. But I suggest that in so far as the law respecting sedition is concerned, we should not confuse the two at all. In so far as sedition is concerned, I can see no reason whatsoever why the government should have found it necessary to increase the penalty.

Is it that the government anticipates difficulties and feels that it must strengthen the legislation? Perhaps they have reasons for suspecting that in the future a more severe law might be needed.

As it affects civil liberties, I suggest that if a situation ever develops where people are so discontented that they will listen to those who suggest the overthrow of the government by force, you will find that laws concerning sedition will not serve the purpose for which they were intended. Our history has shown that even during the depths of the great depression of the 1930's—and the minister will admit this—there were very few cases of sedition. Therefore I can see no valid reason whatsoever for this most spectacular increase in the penalty from two years to seven years and then doubling the seven years to fourteen years. This is a move which I feel deserves a very careful explanation on the part of the minister, and I should like him to give us clearly and concisely the reason why at this time it should be necessary to double the penalty over the 1951 maximum.

The Deputy Chairman: Shall the clause carry?

Mr. Gillis: I should like to say a word or two on this clause. The hon. member for Vancouver East and the hon. member for Comox-Alberni made statements which should cause the minister to give this clause a little more consideration. The increase in the penalty does not bother me very much; it is the possibility, under the clause, of convicting people of sedition who might just be criticizing.

A few moments ago the hon. member for Kamloops said that he did not intend to commit sedition. He made a radio broadcast, if he will recall it, not so long ago—

Mr. Fulton: It was not a radio broadcast, it was a statement in the press.

Mr. Gillis: I saw it in the press, and I thought it arose out of a radio broadcast. It could have been construed as causing disaffection to Her Majesty's forces.

Mr. Fulton: Not at all.

Mr. Gillis: It just depends on the condition of the liver of the judge that you meet that morning whether you are guilty or not.

Mr. Fulton: It would be a jury who would decide, twelve good men and true.

Mr. Coldwell: They might be upset, too.

Mr. Gillis: In the final analysis the judge will decide whether you will get fourteen years or not.

There are not very many in this house who have led any kind of an active life who could not have been picked up on a good many occasions under this clause. That is the dangerous part of it. My hon. friend across the way gave four cases that he had looked at. He did the committee a service when he put that side of the question on the record. I am not particularly concerned about how many years a person gets for sedition provided it is proved beyond a shadow of a doubt that he did commit sedition. The thing that I am concerned about is the possibility of a miscarriage of justice on account of the ambiguous language used in the clause and the many interpretations that could be put on it either by a judge or by a jury.

One case sticks out in my mind that my hon. friend did not put on the record. I have had little experience with some of these things. A man who was secretary-treasurer of the mine workers union in 1922 became involved in a strike. The union was on strike, and arising out of that strike force was used on the part of the government. The attorney general armed a lot of thugs and put them on horseback. They came into the area and they created trouble. As a consequence of that difficulty the secretary-treasurer of the union made a press statement, and on the basis of that statement he was arrested for sedition. I had the privilege at that time of being one of the people who collected money to provide a defence for him. He was tried and convicted and sentenced to two years in Dorchester penitentiary. That was the maximum penalty at that time.

I know that we cannot criticize the judge who rendered that decision. We are not permitted to criticize the judiciary here, but it has always been clear in my mind that there had been a miscarriage of justice when that man was sentenced for sedition because the statement he made was not any stronger than statements I have made a good many times under similar circumstances. It was because of a section like this that that could happen. Anything at all can be construed as being seditious or having a seditious intent, and that kind of thing. As my hon. friend said, with a good smart lawyer in there to prosecute you and with the average jury that you pick up across Canada and with the ambiguous language contained in the clause, the lawyer can almost convince them of anything.

An hon. Member: With an emotional approach.

Mr. Gillis: Yes. The attorney general of that day—I am not going to name any names because most of them are dead, including the person involved—could justify that conviction at that time. He practically admitted that the statement made in the press was true. He told the truth; he merely stated the truth of a certain situation, but there were times when it was a crime to tell the truth. That is the way he justified himself. As I said before, I am not so much concerned about how long

the sentence shall be, but I am concerned about the circumstances under which a judge and a jury can try you and sentence you for sedition.

The hon. member for Vancouver East was quite correct, if press reports are correct, that looming up in British Columbia is a struggle. The changes in the labour code of British Columbia are not so good, and the trade union movement, and rightly so, is up in arms and questioning these changes. Statements have been made and will be made in that city that could render those people liable to sedition. The Minister of Justice should not forget that the enforcement of this law will be in the hands of the provinces and in the struggle of the unions in British Columbia to maintain democracy that struggle is going to be with the provincial government.

I will not impute motives to anyone out there, but it is only natural for a government or an individual to defend themselves and fight back if they believe what they are doing is justified. The danger there is apparent, and I believe the warnings given by the hon. member for Vancouver East are justified. I know of another province in this country where this code will be enforced and where those who will administer this code and laws in that province are not going to be very lenient or understanding in relation to matters which might be misconstrued under this particular clause. I believe the hon. member for Comox-Alberni has stated the case correctly. I believe where we have a clause such as this, where freedom of speech and thought is concerned, and in view of the development of the world situation, the minister should rewrite that clause and make it clear beyond the shadow of a doubt that no one can misapply it or use it for purposes of their own in any given situation. I would like to see the minister remove some of the ambiguous language from this clause because as it stands now it can definitely be misapplied and misunderstood.

Mr. Garson: As he so often does, the hon. member for Cape Breton South has just raised points of real substance which I think are certainly deserving of a reply. I would like to make that reply in these terms. The leading case upon this subject is Boucher *v.* R. which was decided as late as 1951. Now I can quite understand the views of laymen to the effect that it might be better for the purposes of defending this clause against those who criticize it, not always fairly, to attempt to produce an interpretation of all the judgments of the judges of the Supreme Court in the Boucher case, and insert this interpretation in clause 60 as a definition of sedition. From the political point of view there is a great temptation to take that easy way. But it seemed to us that clause 60 is tied up closely with the civil rights of the individual Canadian who may be on trial on a charge of sedition. When therefore we already had in the Criminal Code a section dealing with sedition which has been interpreted definitively by the highest court in Canada, it is better to leave that definite result upon the law books even if it is less explicable politically, than to attempt to write another clause into the code which again has to be interpreted judicially before one can say precisely what the law of sedition is.

We have a firm law now and I think it is a very good law. It may be that in the selections I made from these judgments I read extracts which were rather long and by doing so confused the issue. I did so consciously because if there is anything I abhor it is having a sentence or two taken out of context, and in each case I tried to give enough of the context so that the real sense of the single important sentence could be understood by this committee. But perhaps if I were to go through the judgments and read just the single important sentence—

Mr. Winch: The Rand judgment is important.

Mr. Garson: They are all important because the law is established by a court of nine judges. As the hon. member for York-Scarborough said, the *ratio decidendi* of that case can only be established by a proper understanding of all the reasons for judgment given by all of the judges.

In the case of Mr. Justice Kerwin this is the single sentence:

> An intention to bring the administration of justice into hatred or contempt or exert disaffection against it is not seditious unless there is also the intention to incite people to violence against it.

In other words, in order to bring home the charge against the accused you must prove against him an intention upon his part to incite people, to whom his expression of opinion or his speech is made, to violence against the government.

Now, the next single sentence is from Mr. Justice Taschereau:

> I think that, generally speaking, the writings complained of must, in addition to being calculated to promote feelings of ill-will and hostility between different classes of His Majesty's subjects, be intended to produce disturbance or resistance to the lawfully constituted authority.

He must intend to create violence, not to make a speech. Mr. Justice Rand puts it in the form of a question:

> The test is this: was the language used calculated, or was it not, to promote public disorder or physical force.

If the language was so calculated, it must also be proven that the person who uttered it intended to create disorder and violence.

Mr. Justice Kellock said:

. . . in my opinion, incitement to violence toward constituted authority, i.e., government in the broad sense, or resistance having the same object, is, upon the authorities, a necessary ingredient of the intention. . . In my opinion, to render the intention seditious, there must be an intention to incite to violence or resistance or defiance for the purpose of disturbing constituted authority.

Then Mr. Justice Estey said:

I am of the opinion that in all cases the intention to incite violence or public disorder or unlawful conduct against His Majesty or an institution of the state is essential.

Mr. Justice Cartwright said:

. . . before a writing can be held to disclose a seditious intention by reason of being calculated to promote feelings of ill-will and hostility between different classes of His Majesty's subjects it must further appear that the intended, or natural and probable, consequence of such promotion of ill-will and hostility is to produce disturbance or resistance to the authority of lawfully constituted government.

Now, what we are talking about in the offence of sedition is the deliberate intention to create violence and disturbance against the lawfully constituted government. That is not too dissimilar in principle to treason. For the offence of sedition a maximum penalty of fourteen years imprisonment is applicable. Now I recognize the force of the argument submitted by the hon. member for Vancouver East and the hon. member for Cape Breton South that it would make both the government's position and the task of hon. members of the house defending this legislation much easier if there were in clause 60 a definition of sedition which reflected accurately all of the reasons for judgment in the Boucher *v.* R. case.

But if we do that, then we have a different section in the act from that upon which the judgments were decided. If a case arises and comes before the court, then the new language has to be interpreted again. We shall then have found that we have purchased this political facility of explaining our position at the expense perhaps of some doubt as to what the law is, and a doubt that is in relation to a law which is of great importance to the accused. That is the reason why we thought that of those two alternatives, the intellectually honourable thing to do was to stand by certainty in the law and face any criticism in which such a course might involve us.

The Deputy Chairman: Shall the clause carry?

Mr. Knowles: On division.

[Mr. Garson.]

The Deputy Chairman: Carried on division.

Clause agreed to on division.

Clause 61 agreed to.

On clause 62—*Punishment of seditious offences.*

Mr. MacInnis: Mr. Chairman, I have an amendment to propose to clause 62. I think that sufficient has been said on this matter of penalties and that I need not take up the time of the committee any further. It is shown that breaches of these sections of the Criminal Code are few and far between. As I see it, unless the government falls down in its duty of providing good government in this country, there is nothing in front of us that would indicate there is any danger that there will be more reason for sedition in the future than there has been in the past. I therefore move:

That clause 62 of Bill 7 be amended by deleting therefrom the words "fourteen years" and by substituting therefor the words "five years".

I myself hardly know why I did not put in "two years" instead of "five years" but I imagine that I did it, in my usual reasonable way, in trying to get the support of those who would think that two years was too little. I am sure there are many members in this chamber—on the other side as well as on this side—who think that, without a single case being before the courts, raising the penalty from two years to fourteen years is altogether unreasonable.

The Deputy Chairman: Shall the amendment carry?

Amendment (Mr. MacInnis) negatived: Yeas, 9; nays, 53.

The Deputy Chairman: Shall the clause carry?

Mr. Knowles: Before you put the clause, Mr. Chairman, there are just two or three things I should like to say. It seems to me—and as a result of the discussion that has taken place this afternoon I feel it more strongly than I did before—that this whole question of sedition should be referred to a royal commission. I think it is at least as important as are some of the subjects which have been referred to a committee of this house or to a royal commission.

The second thing I want to say is this. I feel that the fact that there is to be on the statute books of Canada legislation of this nature providing for the type of penalty that is involved in clause 62, now that our amendment has been defeated, makes even more important the need for a bill of rights. Along with this kind of legislation I think there

should be a companion measure setting out what are the civil rights of Canadian citizens.

The third thing I suggest is this. I think that perhaps what is needed in the country more than coercive legislation is an institution, if I may call it that, akin to Hyde park in London. If we had a few places like that across Canada where people were perfectly free to express their views on any subject in any way under the same kind of circumstances as those under which views are expressed at that famous corner, I think we would gain from it even as the people of Great Britain have gained from that symbol of civil liberty and freedom of speech.

Mr. Garson: I have only one thing to say, Mr. Chairman, and I shall say it briefly. My hon. friend has no reason at all to say that under the laws of Canada there is not available the same freedom of speech that is available in Hyde park in London.

The Deputy Chairman: Shall the clause carry?

Mr. Knowles: On division.

The Deputy Chairman: Carried on division.

Clause agreed to on division.

The Deputy Chairman: I notice that it is now just on the verge of five o'clock, and we have completed one group of sections. The next group which I presume the committee will start on at its next sitting commences with clause 32 and deals with riots. As hon. members know of the special program that has been agreed upon for this evening, shall I rise, report progress and ask leave to sit again?

Some hon. Members: Agreed.

Progress reported.

PRIVATE BILLS

BESSIE KATZ ELMAN

The house in committee on Bill No. 312, for the relief of Bessie Katz Elman—Mr. Hunter—Mr. Applewhaite in the chair.

Clauses 1 and 2 agreed to.

Bill reported.

Mr. John Hunter (Parkdale) moved the third reading of Bill No. 312.

Motion agreed to and bill read the third time.

The Acting Speaker (Mr. Applewhaite): Is it agreed that the bill do now pass and that the title be as on the order paper?

Mr. Fulton: On division.

Title agreed to and bill passed on division.

Private Bills

NIAGARA GAS TRANSMISSION LIMITED

On the order:

House in committee on Bill No. 325 (Letter D-10 of the Senate) intituled: "An act to authorize Niagara Gas Transmission Limited to construct, own and operate an extra-provincial pipe line."

The Acting Speaker (Mr. Applewhaite): Bill No. 325 and Bill No. 389 both come from the standing committee on railways, canals and telegraph lines. Is it agreed that they be committed together?

Some hon. Members: Agreed.

CONSIDERED IN COMMITTEE—THIRD READING

Bill No. 325, to authorize Niagara Gas Transmission Limited to construct, own and operate an extra-provincial pipe line.—Mr. Hunter.

TRANS-CANADA PIPE LINES LIMITED

The house in committee on Bill No. 389, respecting Trans-Canada Pipe Lines Limited—Mr. Decore—Mr. Applewhaite in the chair.

On clause 1—*Repeal.*

Mr. Knowles: Before this clause is carried, there is a question I should like to ask. At the moment I am not sure whether it should be asked on this bill or whether it should have been asked on the other bill. What happened to the suggestion made by the Minister of Trade and Commerce that one of these bills might be amended by the addition of a coming into force clause?

Mr. McIvor: It was not needed.

Mr. Howe (Port Arthur): If I may answer that, before the bill was referred to the committee the two pipe line companies, Niagara Gas and Trans-Canada, had entered into an agreement, which was signed by both parties and which was submitted to the committee. The committee believed that agreement adequately protected the situation, and that is my own opinion. Therefore I see no present purpose in the inclusion of a coming into force clause.

Mr. Green: May I ask the minister if there is not the further fact that Trans-Canada Pipe Lines Limited is to build the line from the Niagara river to Toronto?

Mr. Howe (Port Arthur): Yes.

Mr. Green: Whereas the original intention was that it should be built by Niagara Gas Transmission.

Mr. Howe (Port Arthur): Yes. The result of the agreement is that Trans-Canada Pipe Lines Limited will build the line.