Hon. James Sinclair (Minister of Fisheries): In recent years a decline in the Atlantic salmon fishery has been giving great concern to both the federal authority and the five Atlantic provinces. On the federal side we have stepped up our research program, have increased predator control and stream clearance and improved our hatcheries. There was also the problem of having uniformity in the length of the fishing seasons, both commercial fishing in the area and sport fishing on the rivers of the provinces.

On March 1, we had a conference here in Ottawa of deputy ministers from the provinces, who met with our officials and discussed and agreed upon a joint program which was taken back to the provinces. I am happy to say we have now received the consent of the five provinces concerned to the introduction of uniform salmon fishing regulations in the whole Atlantic area. Instead of having five provinces all with different seasons and different sizes of catch, we will now have uniformity over the three areas: the Atlantic coast area where the salmon come first, then the bay of Fundy, and then the gulf of St. Lawrence.

This program will involve the shortening of the open season for both commercial fishing and sport fishing. This is the type of program which has met with conspicuous success on the west coast, where we are happy to see the salmon fishery increasing each year. I am sure we shall have a similar result on the east coast. I feel I should say that we are very happy about the warm co-operation we received from the five provincial governments concerned.

SALT FISH—MEETINGS WITH NEWFOUNDLAND AND NOVA SCOTIA OPERATORS

On the orders of the day:

Right Hon. C. D. Howe (Minister of Trade and Commerce): Yesterday, the hon. member for Shelburne-Yarmouth-Clare asked me the results of a recent conference on the marketing of salt codfish in Newfoundland as it affected maritime producers. I can now give the answer.

As the house will be aware, meetings were held on April 1 and 2 here in Ottawa to discuss the new arrangements for the marketing of Newfoundland salt fish. Although final plans have not yet been completed, I am in a position to say, in reply to the question of the hon. member, that sales of Newfoundland salt bulk fish to mainland merchants will be permitted, under appropriate conditions, on approval of the Newfoundland fisheries board.

Last year mainland merchants were permitted to buy salt bulk fish in Newfoundland, outside of the control of the Newfoundland Associated Fish Exporters Limited, commonly known as NAFEL, provided that they entered into firm contracts before the end of May, 1953. The time limit has been removed, as has the need for determining the price in advance for the season's purchases. However, steps will be taken to ensure that Newfoundland fishermen will not be encouraged to produce salt bulk fish in excess of requirements. This change should be mutually beneficial.

Except for sales of salt bulk fish from Newfoundland to mainland merchants, salt fish will continue to be exported from Newfoundland exclusively through NAFEL.

UNEMPLOYMENT INSURANCE

REQUEST FOR EXTENSION OF SUPPLEMENTARY BENEFITS

On the orders of the day:

Mrs. Ellen L. Fairclough (Hamilton West): I should like to direct a question to the Minister of Labour or whoever is acting for him. Will the acting minister say whether consideration is being given by the unemployment insurance commission to the extension of the period for the payment of supplementary benefits beyond April 15?

Hon. Paul Martin (Minister of National Health and Welfare): Speaking for the Minister of Labour, may I take notice of the question and bring it to the minister's attention when he returns.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Tuesday, April 6, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

The Chairman: The committee is considering group 5 and I shall call clause 32.

On clause 32—*Use of force to suppress riot.*

Mr. Gillis: I do not want to start making a noise while these other meetings are taking place, Mr. Chairman.

The Chairman: Order.

Mr. Gillis: This clause 32 does not stand by itself. The subject matter dealt with is covered in section 33 and sections 64 to 69, so there is plenty of provision in the Criminal Code covering it. The two sections I have just mentioned have to do with unlawful assembly, riots and so forth. What I am going to say will have a bearing on all the sections I have indicated, because they deal fully with the subject matter. Let me point

out that they are not new in the code; they are sections that have been in the code for a long time. For example, clauses 32 and 33 replace the old sections 48, 49, 50 and 51 as well as section 93. Then, clauses 64 to 69 deal with the same subject matter as was covered in the old code in sections 87 to 92. What we have before us is merely a consolidation of all those older sections, and there is no change in the law.

In the briefs I have read respecting the Criminal Code, particularly those having a bearing on the rights of labour, this particular subject matter has been completely missed. I have seen no comment on any of these sections in any of the representations made. In my judgment however these are the most dangerous sections in the Criminal Code, so far as the labour movement is concerned. In those other matters dealing with contracts, strikes and the like, the legislation is fairly substantial. But after one has gone through all the legal machinery provided by the labour codes and the Criminal Code, and has been successful in detouring around those, he will get into a position where, in the event of a legal strike, but one which is not popular with the boss of the plant being picketed, he will have to come to these sections of the Criminal Code.

This is pretty tricky legislation. Let me say to the minister that I have listened to the debate in the house concerning the length of imprisonment. I would say that it is immaterial to me whether the term of imprisonment is seven years, fourteen years or two years; but to the person affected, any of those sentences amounts to a life sentence. Because once a person is convicted of a crime under the Criminal Code and enters a federal penitentiary he carries with him from that penitentiary a stigma for the rest of his natural life. An imprisonment of that kind will seek you out in your employment; you become an outcast in the community; you are debarred from holding public office. I have never seen anyone rehabilitated successfully after leaving one of those institutions.

That is one reason why we should be all the more careful when we are setting down the laws, to assure ourselves that there is nothing in those laws that may leave future scars. The law should be clear in that respect.

Let me indicate to the minister just how tricky the law can be—and I shall relate my own experience. I have seen these laws at work. For example, on one occasion I saw a strike, one which was legitimate in every way and in connection with which there had been no disturbance. However, the company decided it would turn the public mind against those who were on strike, and did this by taking off the job the men who operated the pumping station. That pumping station provided water to the community, to hospitals, and other places requiring it. However, the strikers, those who were involved in the strike, proceeded to operate that plant. Then these sections of the Criminal Code became effective.

I am not particularly concerned with the situation where the mayor of a city or town, or the reeve of a municipality, someone having public responsibility, decides that he has lost control of law and order, or that a bad situation has developed and that he must invoke these sections of the Criminal Code. But I am concerned about a case such as I have described, where the company placed itself in an illegal position by shutting off the water. Yet these sections of the Criminal Code were brought into force through getting some pinheaded chap who had been appointed as a magistrate to make a declaration that a state of riot existed.

It is that sort of thing I am trying to guard against. Because if three men are assembled —and it boils down to that—someone can suggest that, arising out of that small assembly, a riot may be precipitated. But that riot never takes place; and most certainly the use of the riot act only aggravates it. Hon. members will let their minds go back to the situation in Cornwall only a few years ago, when the seamen were out on strike. Things were running along peacefully until a Montreal detective agency organized in that city truckloads of thugs, and armed them with old car springs, and weapons of that nature. It will be recalled that we put the facts on the record right here in the House of Commons. I am sure the hon. member for Dauphin remembers it. Those thugs were sent in from Montreal with instructions to start trouble, to cause a riot, so that the blame would be placed on those who were carrying out a legitimate strike under the laws of the country.

Because of these sections in the Criminal Code that kind of thing can happen; and it has happened in the past. We have not changed the law in any way to prevent it happening again.

I am not concerned about what goes on under clauses 32 or 33, but I am concerned with what goes on under clause 68. But they are all tied together. I should think clause 68 might be amended so that if, in the judgment of an elected person, perhaps the mayor or the reeve of a municipality, law and order had got out of hand and assistance was required, such person could issue a proclamation. That would be a proper procedure, rather than

leaving it in the hands of doubtful persons, with the possibility of a situation such as developed in Cornwall, and also in my own part of the country. Because men can be picked up for $5 or $10 to precipitate the sort of condition some people want to have precipitated.

I suggest that before these clauses are passed the minister should consider amending clause 68. I have pointed out that the clauses are not new, but they have caused a lot of trouble for all of us. In my view they are the most dangerous in the Criminal Code; because if I am in a gathering of three or four, or even ten people, and I am picked up, although I may be an innocent bystander and be quite innocent, I can be charged. I can be picked up and arrested, and there is not very much defence I can offer under the section as it now stands.

It will be kept in mind that one can get anything from two years to life imprisonment under clause 68 of this bill. We should be a little more careful about it. There may have been times in the history of this country when perhaps you needed it, but that is not so today. In every province of Canada I am sure there are adequate police to take care of any situation that might arise. There are the regular police and the mounted police in most of the provinces. Then there are the provincial police, and they could take care of any situation that might arise in any part of this country today without involving the whole community in the kind of thing that is connected with the reading of the riot act.

Not so long ago the police invaded Louiseville, and their conduct while there left much to be desired. If this type of legislation had not been on the statute books that would not have happened. The mayor of any city has ample protection to handle any situation that might arise under any given circumstances. Before we dispose of these clauses finally the minister ought to think out some amendment to clause 68 that would place the elected responsible people in authority in any community. If any action of this kind were necessary, they should be the people to decide rather than have the kind of thing that has happened in every community that I have ever seen where this legislation has been invoked.

Mr. Ellis: The hon. member for Cape Breton South has just placed before the committee very good reasons why some changes should be made not only in this clause but in clause 64. I would remind the minister that other incidents have occurred in Canadian history which indicate the need for some caution in this regard. While I was attending high school I had the opportunity to witness an event in my own city, the Regina riot, on July 1, 1935. I do not want to go into the history of that incident. If I wanted to take the time I could read some quotations from speeches made by some of the supporters of my hon. friends on the other side of the house, who at that time were in opposition, and some of the things that they had to say about the way in which that affair was handled by the government of the late R. B. Bennett. I believe that incident is still fresh in the minds of Canadians. The incident in itself should draw to the attention of hon. members the necessity for making some changes in these clauses.

You will recall that at that time the police were assembled in Regina from all over western Canada. I understand that Canadian National railway policemen, Canadian Pacific railway policemen, and mounted policemen from all over western Canada, were assembled in the city of Regina, and the riot that occurred at that time was largely the result of provocation on the part of police acting under direct instructions from the government at Ottawa. I realize that a commission was held immediately afterwards and whitewashed the whole affair, at least to the satisfaction of the government of the day. But the history of that event indicates the very serious and dangerous nature of these sections of the Criminal Code.

Clause 32 (1) reads:

> Every peace officer is justified in using or in ordering the use of as much force as he believes, in good faith and on reasonable and probable grounds,
>
> (a) is necessary to suppress a riot, and
>
> (b) is not excessive, having regard to the danger to be apprehended from the continuance of the riot.

I realize that if that right is exercised in good faith we will not have too much to worry about, but I suggest there have been instances in this country where good judgment has not been exercised. I think that a good deal of power is given to law enforcement officers in this connection. I would just remind the house that the people who were involved in that riot were not the relief camp trekkers at all. The disturbance started at a public meeting which was attended by a great number of Regina citizens. Some of the single unemployed may have been present at that meeting, but most of the people at that meeting were Regina citizens who had gone out to hear the case being put forth by a number of speakers. Instead of the police exercising good judgment and, if they felt it necessary, arresting the leaders of the trek and placing them in jail to await trial—and I understand the leaders made it perfectly clear that they were available whenever the

government decided to have them arrested—the police waited until the vast public meeting had commenced and then quite unexpectedly, without warning of any kind, they descended from all directions, with tin hats and clubs, onto this large public meeting in the city of Regina. In these circumstances, human nature being what it is, provocation will undoubtedly lead to retaliation, and one thing will lead to another, until eventually there is a full-scale riot.

It is not my purpose to recount the history of that event, except to relate enough to indicate the manner in which the power given to our enforcement officers in this case was abused. I suggest that in the interests of justice and in order to prevent a recurrence of this sort the government should give reconsideration to a number of these clauses.

The hon. member for Cape Breton South has suggested a change in connection with clause 68, having to do with reading the proclamation. I believe that is one way in which the abuse of this power could be overcome. In the incident to which I have referred a Tory government at Ottawa ordered the police to assemble at that particular point, and it was on their responsibility that this riot occurred. Therefore I ask the minister to give serious consideration to making some changes to prevent a repetition at any future date of not only the incident I have related but other incidents at Louiseville, Cornwall and Estevan, which was another example in my own province prior to the time of the Regina disturbance.

Mr. Gillis: Cape Breton had half a dozen.

Mr. Ellis: There have been a great many incidents in this country. Since we are reviewing the Criminal Code at this time we should take great pains to prevent recurrences of these most unfortunate incidents.

Mr. Nesbitt: I have heard some very moving and colourful descriptions of sad events of the past from hon. members to my left; but, occasionally, circumstances arise that bring about these incidents. As the Minister of Justice has been pointing out, the purpose of this house is to pass laws; it is not the responsibility of this house as to how those laws are enforced locally. That is no concern of ours.

Without going into any detailed and long descriptions of events that have taken place in the past, I should like to draw to the attention of the minister and of my hon. friends to the left a situation that occurred last spring in western Ontario where there was a trucking strike, which was directed from the city of Detroit. During the time of that strike roadblocks were put up and all sorts of things to inconvenience the public, and everything else. It was impossible for the police to handle them all. There were not enough of them to place them at all points. There was a great deal of violence.

In situations such as this, without going into the matter in any further detail, it seems that ordinarily a clause such as clause 68 would not be used, but it would be advisable to retain that clause because circumstances might well arise, perhaps through lack of judgment on the part of some local police or law enforcement officer, where it might be essential to have it on the statute books. That could happen under any section of the Criminal Code and of course such lack of judgment on the part of peace officers would not be the responsibility of parliament. However, the machinery in the law should be there to meet such situations if they arise, seldom though it may be, and for that reason I certainly believe the present section should be retained without alteration.

The Chairman: Shall clause 32 carry?

Mr. Gillis: I wonder if the minister would care to make a comment on this?

Mr. Garson: Mr. Chairman, I was about to get to my feet, but I try not to be guilty of talking out my own clauses and there seemed to be a disposition on the part of the committee to pass this clause. In addition, what I might say on clause 32 could just as easily be said on any of the other clauses.

The points which have been raised by the three speakers who preceded me are of importance. They are all valid, the inconsistency between them being more apparent than real. We are dealing here with a question of riots, a subject matter of really great difficulty, and I do not know of any predicament I would more like to avoid than that of being a mayor of a city with a riot on my hands.

Mr. Gillis: You would not have one. They are all imported.

Mr. Garson: May I attempt to illuminate this problem to some extent by reading a report from an old British case. I am not submitting that this is the law or that it is now applicable to this country, but simply as an illustration of the dilemma in which a magistrate, peace officer or mayor may find himself in the case of a riot. This is the report of the judge's charge to the jury in the case of Rex *v.* Pinney which was a prosecution of the mayor of Bristol, England, in 1832. The judge among other things said this:

> Now a person, whether a magistrate, or a peace-officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if, by his

act, he causes death, he is liable to be indicted for murder or manslaughter, and if he does not act, he is liable to an indictment on an information for neglect; he is, therefore, bound to hit the precise line of his duty: and how difficult it is to hit that precise line, will be a matter for your consideration,—

And the judge continued:

—but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace-officer he has been compelled to take the office that he holds, the same rule applies; and if persons were not compelled to act according to law there would be an end of society but still you ought to be satisfied that the defendant has been clearly guilty of neglect before you return a verdict against him.

Such is the situation in which he finds himself, and that is the situation with which these clauses deal. It would be expecting an almost impossible degree of perfection of judgment to insist that every person who finds himself in that position is going to be able to hit that precise line between his responsibility for the consequences of the use of force, on one hand, or of his neglect upon the other. Under the stress of a very critical and urgent situation such as that, the judgment of human beings who are placed in that situation is not often 100 per cent perfect. This imperfection is pretty much what one would expect. So when my hon. friends say, let us cure that defect in human judgment in advance by a provision in our law, I say, "Well, all right, but what is the amendment which you would move to cure that defect in human judgment?"

As the judge said to the jury in the remarks I have quoted, there are few more difficult tasks that could face any human being than the task of hitting the precise line of duty when he has a riot on his hands. I would say this to my hon. friend from Cape Breton South that I believe he will find in all these instances in which abuses have arisen under the law we are discussing, which has been on our statute books for many decades and for a long period before that was the law of England, that where the fault usually lies, if you can call it fault, is that the judgment and the courage of the official who had a riot on his hands was not equal to the emergency he had to face.

For my part I would withhold my criticism because I would be very much afraid that if I were in the same position I might not do much better than he did when faced with this responsibility of hitting the right line between committing an offence on one hand or the other. It is a very bad position in which to be. I am therefore quite a little sceptical as to whether we can solve this difficulty here by improving upon the work of generations of former legislators who have had to deal with this problem both in Canada and in Great Britain.

I am inclined to think that, wise as we think we are in 1954, it is just possible that there were men somewhere along the line during the several generations just past who would have changed this law which we have inherited from them with regard to riots if they had thought it was possible by legislative enactment to inject better judgment into those who deal with riots.

Mr. Knowles: But you have made changes in clause 69.

Mr. Garson: Yes, that is correct, but we have made them for obvious reasons. This bill was reported upon by the special committee of the House of Commons at the last session. From time to time since we have had requests from the three large labour congresses in Canada for conferences to discuss various clauses of Bill No. 7, and while the government agrees it was appropriate for us to introduce the bill in the exact form in which it came from the House of Commons committee, it seems to me that it was natural and proper that we should hear further representations from these large and responsible congresses. We have done that and we have also received representations from what might be regarded as organizations submitting the employers' point of view. For example, we heard from the board of trade of the city of Toronto. In connection with the series of clauses which we are now considering and which deal with riots, I would like to submit one or two amendments which I hope will go some distance toward meeting the legitimate points which have been raised by the hon. member for Cape Breton South, although they will not deal with the particular point which he has mentioned in regard to clause 32.

In that connection the suggestions we have received from these labour congresses have been so valuable that I think I should put a tribute to their helpfulness on the record and say that Mr. Percy Bengough, president; and Mr. Leslie Wismer, public relations and research director of the Trades and Labour Congress of Canada; Mr. Gerard Picard, president; Mr. Theodore L'Esperance, counsel; Mr. Pierre Vadboncoeur, technical adviser, and Mr. Gerard Pelletier, public relations officer of the Canadian and Catholic Confederation of Labour; Mr. Donald MacDonald, secretary-treasurer; Dr. Eugene Forsey, research director; Mr. Maurice Wright, counsel of the Canadian Congress of Labour; and Mr. A. C. Crysler, legal secretary, the board of trade of the city of Toronto, who is quite an expert

in labour relations law, have all contributed a great deal in the way of useful suggestions which in part we have tried to embody in amendments that we will be submitting to members of this committee on these sections that we have now to consider, including the ones concerning riots that are immediately under discussion.

If in response to the suggestion by the hon. member for Cape Breton South and the hon. member for Regina City I were to say that I did not accept an amendment to this section 32 which merely continues what has been a law of long standing, that is not because I deny for a moment the difficulty which they raise but simply because I think that the difficulty cannot be met by amending legislation. Unless there are good reasons —and I hope to advance some extremely good reasons for the changes which I will propose —I think it is the policy of prudence, in connection with legislation of this character, to adhere to language in the law which has stood the test of time.

Mr. Knight: I should like to ask the minister if there is any provision in the law for the punishment of a peace officer who gives an unlawful order for the suppression of a riot. It seems queer and it brings back memories to me of, I think it is, about nineteen years ago. It so happens that I too was in Regina, like my friend the hon. member for Regina City, on the night of that particular riot. I am a bit amazed at my friend the hon. member for Oxford defending the law and the status quo.

An hon. Member: He was not there.

Mr. Knight: I am well aware of the fact that he was not there. But the supporters of his particular party were in charge of things at Ottawa at that particular time. I might say to the hon. member for Oxford that there is no single event in the province of Saskatchewan that has contributed so much to the keeping out of power of his party in Saskatchewan and to keeping it out of power in Ottawa so far as Saskatchewan voters are concerned as did the mishandling of that riot at that particular time. I think that is perfectly true. The people of Saskatchewan have never forgotten. When my friend the hon. member for Cape Breton South says that riots are mostly imported, he certainly has the best proof in that particular riot because, as everybody knows, that riot was imported from the province of British Columbia. There is no good purpose to be served by going into the history of the thing. Everybody knows how those boys were guaranteed free conduct. I see the Minister of Agriculture sitting there looking at me. He probably knows more about it than does any other man in this chamber.

Mr. Ellis: Quote some of his speeches.

Mr. Knight: Yes; I have some of them. I know this, however. It was common knowledge or at least it was common opinion that these boys were promised free conduct, as it were, to go down to put their case at the foot of the throne here in Ottawa. Instead of that, they were unloaded at Regina where plenty of mounted police and police of other kinds were available and waiting.

I have said that I happened to be there and when I say "happened" I mean just that. A few of us had gone down from Saskatoon to fulfil our usual task at the end of the year's term, namely that of correcting high school papers. We heard this noise and we went outside. I certainly witnessed the thing. There were women there with baby carriages at that meeting. It was a perfectly legitimate meeting, gathered around there to discuss this thing and all of a sudden a group of police poured in from all sides with all sorts of weapons and started to beat these people. When a member said here today it was a brutal spectacle, he was perfectly correct. I was extremely lucky that I got away from there unscathed myself.

There is another thing that I should like to point out in connection with this Criminal Code. As matters now stand, anyone who is found loitering after the riot act has been read is liable to be put in jail for life or some such term. I do not know how many years it is, but I know it is plenty. I think there should be some amendment to this particular clause.

Mr. Garson: Would my hon. friend permit a question?

Mr. Knight: I am not very good at answers. I hope it is not a legal question.

Mr. Garson: No; it is not a legal question. It is a very simple one.

Mr. Knowles: Is it an illegal one?

Mr. Garson: On the facts as I have stated them, would he not say that the fault there was not that of the law but of some human judgment that was involved?

Mr. Knight: Some human judgment? Of course all the mistakes that are made, as far as I know, are as a result of human judgment. I do not know that anybody else but humans can make mistakes.

Mr. Knowles: That is how the Liberals got into power.

Mr. Knight: That is why I am suggesting that the law should deal with this human mistake. If you have a police officer who unlawfully gives an order, I think there should be something in this code to deal with the matter. The minister has yet to answer my question whether there is anything in the law as it stands to deal with the matter.

Mr. Garson: Yes; there is; it is right in this bill.

Mr. Knight: Let us have it.

Mr. Garson: All right. If my hon. friend will get his bill and look at it he will see this:

> Every peace officer is justified in using or in ordering the use of as much force as he believes, in good faith and on reasonable and probable grounds,
> (a) is necessary to suppress a riot, and
> (b) is not excessive, having regard to the danger to be apprehended from the continuance of the riot.

If he does not do this in good faith or if there are not reasonable and probable grounds, then by the fact of his giving this order or taking this action he will be a party to every crime which is committed as a result of the action which he has taken because he can only take it upon reasonable and probable grounds and in good faith. I ask this question of my hon. friend. In what other words of the English language could that section be phrased in order to make it more clear that the peace officer can only use that force which he believes in good faith and on reasonable and probable grounds is necessary to suppress the riot? I think my hon. friend would agree that society itself goes to pieces if it has not the capacity for suppressing a riot. All that this law says is that in order that society may remain stable and that riots may be suppressed, peace officers shall have the power to use such force as they believe, in good faith and on reasonable and probable grounds, is necessary to that purpose. What could be more reasonable than that?

Mr. Knowles: Mr. Chairman, I suppose that I shall be told that if I had studied law I would know the answer to this question. But I should like to know who decides what is involved in the words "in good faith" and who decides whether the grounds on which the peace officer may have read the riot act were reasonable and justified? While I am setting out these questions for the minister, may I ask him whether he has before him the wording of the comparable British law? The reason I ask that question is this. A while ago he gave us a case which was based on British law and in which it was suggested that a person in this position is in a real dilemma. As I listened to the dilemma that the minister read from that case I wondered, as did the hon. member for Saskatoon, whether there is anything in the Canadian law that puts a peace officer in this country in the danger of going too far.

Mr. Garson: My hon. friend has it right under his eye, right at this minute. It is in section 32, all spelled out. He says: Who decides this? If there is a riot, or an unlawful assembly which is approaching riotous proportions, and a peace officer comes along and exceeds the authority given to him under section 32 and assaults some people—

Mr. Knowles: Suppose as the result of his reading the riot act somebody else bashes up somebody else, although he started it.

Mr. Garson: Let us discuss one section at a time. We are discussing section 32 now. Let us confine our discussion to it for the time being. I will be very glad to discuss the other one later but there is no purpose in mixing up the discussion by talking about more than one section at a time. If a peace officer under section 32, lacking reasonable and probable grounds and not in good faith but in bad faith, assaults another man, then he is guilty of assault. If he shoots him he is liable to prosecution for murder. My hon. friend asks who decides this. The court decides it. The jury decides it as in the case that I cited. The judge was charging the jury how they should decide it. He said that the man they were judging was faced with a very difficult task and that they had to decide whether, in relation to the facts, he exercised proper judgment.

I must confess that if I were a juror in a case like that I would not be too uncharitable because the judgment that a person exercises in a crisis of that sort is a very difficult judgment indeed to exercise. Even where he takes a step which later proves to be wrong, it would be a pretty uncharitable person who would say that on the appearance of things at the time he exercised the judgment any person would know for sure that the man was wrong. The peace officer is in the same kind of predicament because this is not outright protection here by any manner of means but protection only if he is acting upon reasonable and probable grounds and in good faith.

Mr. Knowles: The minister says that the peace officer in such a situation is in a very difficult position. I agree, but I do not think the minister would want it to be any less difficult. The seriousness of that type of situation is such that the minister would not want it to be too easy for the peace officer to read the riot act and to do the other things that are permitted once the riot act has been

read. My question is this: Should there not be some wording right in these riot act sections making it clear that it is an offence for a peace officer to read the riot act unlawfully?

Mr. Garson: Oh no. May I make this suggestion? We are not talking about reading the riot act now and it would do nothing but make for confusion if we were to bring that element into the picture. We are talking now about the degree of protection that a peace officer is afforded who uses force in the suppression of a riot, and that is all. I suggest we suspend our discussion about reading the riot act until we get to the section that deals with that. Let us confine our discussion to this matter because we will have a hard enough time keeping our minds clear about this issue without mixing it up with something else.

Mr. Knowles: All right. I will accept that, but I should like to ask the same question in relation to the use of force under such a situation as is set out in section 32. This is my point. Instead of having to rely on sections elsewhere in the Criminal Code dealing with assault or attempted murder or what have you, should there not be some wording right in section 32 or section 33 making it clear that it is an offence to make unlawful use of force for the purpose of this section? I suppose the minister is going to tell me that the section permits him to do it only if it is lawful.

Mr. Garson: Certainly.

Mr. Knowles: What happens if he does it when it is unlawful? Should there not be some restraint in the wording of this section?

Mr. Garson: No, I do not think so for a minute, because there is no sense in having the crime of assault, for example, provided for twice in two different parts of the code. Let us make this thing perfectly simple. Suppose I am a peace officer and I hit my hon. friend a blow upon the head with my baton and fracture his skull, and then I say I am justified by section 32 in doing that. That is my out. That is all that section 32 purports to do, to give the peace officer protection where he acts in good faith upon reasonable and probable grounds.

Mr. Knowles: The result would be a by-election in Marquette.

Mr. Garson: If the blow were hard enough I think it would be a by-election in Winnipeg North Centre.

Mr. Hodgson: Let us have one in both places.

Mr. Garson: Suppose my hon. friend says: "I object to this as a free citizen and I am not going to stand for it. There were no reasonable and probable grounds in this case and I am going to the police station to swear out a warrant against this peace officer upon charge of assault causing grievous bodily harm". Then the case just goes on from there. When the case comes up for trial my hon. friend, if he is conducting a private prosecution—the chances are the crown prosecutor would do it for him on a serious charge of that sort—brings his witnesses there to prove as a question of fact whether there were reasonable and probable grounds for this act of the peace officer. If there were reasonable and probable grounds section 32 would clear me. If there were no reasonable and probable grounds then I would be guilty of wounding or—

Mr. Fulton: Assault occasioning grievous bodily harm.

Mr. Garson: Assault occasioning grievous bodily harm, and I would have to pay the penalty. That is the position in which peace officers are in relation to riots. I ask my hon. friend if he were a peace officer would he not want section 32? How would he like to act without any protection of that sort? When a man has this invidious responsibility of trying to maintain order and to suppress a riot and acts in good faith and uses good judgment, is it not fair that there should be a clear statement of the law that he is protected?

Mr. Knowles: May I answer the minister by saying that I agree that the protection should be there but I think the restraint should also be in the same section.

Mr. Fulton: The restraint is all throughout the code.

Mr. Garson: Of course it is all throughout the code. Here is the difficulty. The restraint would have to be in relation to some act. It might be common assault, it might be grievous bodily harm, it might be manslaughter, it might be murder. Are you going to specify all these things in that section? I think that would be absurd. They are specified in the code in their proper place, and all that this section purports to do is to say that the peace officer will be absolved from whatever the facts establish as an offence upon his part, provided he acts upon reasonable and probable grounds and in good faith.

Mr. Herridge: I have been following with interest the points made by the hon. member for Cape Breton South and the hon. member for Winnipeg North Centre, and I am not satisfied with the section as it is. I remember during the depression a peaceful parade of unemployed consisting of less than a hundred men. When they were marching down the main street of a small town a group of police

arrived and started to pound the leaders over their heads with their batons. Naturally no man is going to stand and take that. Personally I was very glad to see three or four of the police bowled over pretty quickly. But once a man has done that it then becomes an unlawful assembly and a riotous condition. Under those circumstances I am quite sure that these men were justified in retaliating against an unfair attack, but if it came to a question of law I am also sure they would lose out because they had struck a peace officer in self-defence.

Mr. Garson: Is not the difficulty in all of these cases due to the human element and a fact that cannot be cured in the law, namely, that the men who were marching on that occasion may not have followed up the matter by laying an information? When the whole affair was over they may have felt that it was best to let it drop.

If my hon. friend is right, and I am not questioning his statement, that the police did make an unprovoked attack and started the riot, and if the evidence proved that fact in a court of law, I think there is no doubt that the police would be guilty of some offence, depending upon what the facts proved. But if no person takes proceedings, then no such consequences will follow. If they do not take proceedings and the consequences do not follow, that is not the fault of the law; it is the consequence of their inaction.

The point I am making is that in all these matters one thing that the law cannot do is to cure these human frailties. If I have rights and I will not exercise them, that is not the fault of parliament. The duty of parliament is to provide rights and whether or not a man exercises them is for him to decide.

Mr. Gillis: The trouble with all these sections under this heading is that we are discussing the wrong one first. We should be discussing clause 68 first because it is the basis for all these clauses.

Mr. Garson: I agree with my hon. friend, and I have no objection to discussing clause 68 first. I did not start this discussion. It was my hon. friend himself.

Mr. Knowles: You brought in the bill.

Mr. Garson: The hon. member rose to his feet, and I courteously let him proceed. If my hon. friend would like to start on clause 68, I have no objection. I have an amendment to offer with regard to clause 33. Might we pass clauses 32 and 33, and then go on to clause 68. If my hon. friends want to come back later to clause 32 or 33 I would have no objection to that.

Mr. Barnett: Is the minister suggesting that we stand clauses 32 and 33?

Mr. Garson: No, I shall move an amendment to clause 33. We could pass clauses 32 and 33 and if later my hon. friends, for any reason, would like to reopen those clauses I would have no objection.

Mr. Knowles: Perhaps the minister might tell us what the amendment is.

Mr. Garson: Yes.

Clause 32 agreed to.

On clause 33—*Duty of officers if rioters do not disperse.*

Mr. Garson: This amendment arose out of our discussion with the congresses and it reads:

That subclause (2) of clause 33 be amended by inserting after the word "that" in line 23 on page 15 the words "by reason of resistance".

The clause would then read:

No civil or criminal proceedings lie against a peace officer or a person who is lawfully required by a peace officer to assist him in respect of any death or injury that, by reason of resistance, is caused as a result of the performance by the peace officer or that person of a duty that is imposed by subsection (1).

In other words, to put it into even simpler language, it is only where the person has resisted the peace officer that he is warranted in using that degree of force.

Mr. Pickersgill: I move the amendment.

Mr. Knowles: Might I ask a question or two concerning this amendment? I take it that the amendment, and the subclause both before and after the amendment, refer only to an injury occasioned directly because of what the peace officer has done, or might it refer to injuries suffered by party B from party C, but which arose because party A, namely the peace officer, tried to interfere in a situation?

Mr. Garson: No, if my hon. friend will look at subclause 1 of clause 33 he will see it starts out, "where the proclamation referred to in section 68 has been made..."; that is where the riot act has been read. In such a case, when a peace officer or person who is lawfully required by him to assist to disperse or arrest persons who had not complied with the proclamation, no civil or criminal proceedings lie against the peace officer or person who was lawfully required to assist him in respect of the death or injury resulting by reason of resistance. In other words, he

may not move out and just knock people down. It is when they resist him that he is protected.

Mr. Knowles: So that this is more in the direction of a restraint.

Mr. Garson: Yes.

Mr. Knowles: It is not in the direction of greater latitude.

Mr. Garson: Did my hon. friend think the congresses would be urging something in that direction?

Mr. Knowles: The minister also mentioned the Toronto board of trade.

Mr. Garson: They were not identified with this.

Amendment agreed to.

Mr. Fulton: What does this amendment actually accomplish?

Mr. Garson: It makes it quite clear that a peace officer, on that occasion, cannot move irresponsibly into a group of people who are not resisting at all and, because the time provided for in the riot act proclamation has expired, proceed to use violence irresponsibly.

Mr. Fulton: Is not the irresponsible use of violence already protected against?

Mr. Garson: Perhaps I might reassure my hon. friend by telling him that this is merely a provision that has been in the law, is in the present code and is being carried forward.

Clause as amended agreed to.

The Chairman: Is it the pleasure of the committee that I should now call clause 68?

Mr. Garson: May I suggest that we call clauses 64 to 69 inclusive, because they are all part of the one subject matter. Is that satisfactory?

Some hon. Members: Agreed.

On clauses 64 to 69 inclusive—*Unlawful assemblies and riots.*

Mr. Gillis: The reason I suggested clause 68 should be the first clause in this set up, and really should be clause 32, was that you do not get a riot until the riot act is read by a police officer, the sheriff, the mayor or their representatives. Now, you do not have any trouble until that is done. All the other provisions contained in the other clauses relate to penalties arising out of the riot. It is by clause 68 that you determine what constitutes a riot.

The Minister of Justice has a lot more faith in the justice of the courts of this country than I have. He says that if a policeman knocks your head off, you go down and have him charged with assault under the Criminal Code. If you did that, do you know what would happen? They would put you in jail with four more charges against you. I could give you examples of that, but I do not want to do so here. Do not fool yourself that you would get away with it.

Mr. Garson: May I ask my hon. friend a question? Would he think that if the man in question went to the attorney general, who is always the chief law officer of a province, that the attorney general would treat him that way?

Mr. Gillis: Not if I went to him or you went to him, but 99 per cent of the people affected by this provision could never get to see him.

Mr. Garson: They could go to him.

Mr. Gillis: Yes, provided they could travel the 300 or 400 miles to the capital. Then, they could see his secretary and he would likely be away fishing. By that time, your case is rather cold. This is being realistic about it.

Take the history of riots across this country, and let us see who caused them? Well, it was not the man in the street who caused the riots. We know that in Regina the orders came from here. It was the peace officers, in whom the Minister of Justice has so much confidence, who came out there with tear gas bombs and rifles. There was no disturbance until they disturbed the peace.

Mr. Knowles: And last night the Minister of Finance reduced the tariff on tear gas.

Mr. Gillis: There was tear gas, and there were weapons; and there is to be no more duty on them.

Mr. Knowles: It looks suspicious.

Mr. Gillis: That was the so-called riot in Regina. And what were those desperadoes doing? Well, they were on a hunger march; they were marching because they could not afford to ride. They were not disturbing the peace.

Mr. Gardiner: They were riding on freight trains.

Mr. Gillis: It was supposed to be a hunger march. But who was it who disturbed the peace and created the riots? It was the police officers, the peace officers who have the authority to read the riot act, as set out in clause 68.

Then, there was the Vancouver post office incident. That was the only place the unemployed had in which they could sleep, in the post office. They were peaceful enough; they wanted to sleep. But tear gas was thrown

in at them and, again, a riot was set up. It was not set up by the unemployed, those who did not have a place to sleep, but by your own police officers who had the authority to read the act under this clause.

Mr. Garson: No; may I make a correction. The clause right in front of the hon. member says—

Mr. Gillis: Oh, I have read it.

Mr. Garson: —"justice, mayor or sheriff."

Mr. Gillis: I am giving my own interpretation; and a sheriff is a police officer, and a magistrate is a peace officer—

Mr. Fulton: Peace officer.

Mr. Gillis: Yes, peace officer, certainly—and the mayor is the chief magistrate.

Mr. Fulton: But the hon. member said "police officer".

Mr. Gillis: I meant to say "peace officer". I am sorry; I am not a Rhodes scholar, and I do make slips in my terms.

Mr. Fulton: You do not resent help, do you.

Mr. Gillis: Oh, I appreciate it very much. The hon. member for Kamloops is always so helpful.

And that, Mr. Chairman, is the Vancouver post office incident—hungry people, who did not know where to sleep. Some sheriff or magistrate or justice declared a state of emergency, and tear gas was thrown.

And in my own part of the country—well, I would hate to tell you the story, because it would make pretty bad reading. But I have seen that province barbed-wired three times, and just as effectively as it was on the western front. We had no riots on the streets, but the cavalry came along with their curfew. There was no trouble from the people in the community; they did not cause the trouble at all. And the person who read the riot act and set up that state of war was not a very reputable magistrate, either. He had some kind of appointment that went away back, years before, a kind of commissionership for the taking of oaths. I think it was a political appointment.

I am not concerned about the penalty because, you see, I am not advocating riots. In fact, I have had experience in helping to quell them, when the police got into a good big mess and they had to get out. We had to turn policemen, ourselves, and put some of them in jail—to save their lives.

Mr. Garson: The policemen?

Mr. Gillis: Yes, to get them out of the way, after they had the trouble started.

An hon. Member: Protective custody.

Mr. Gillis: Protective custody, that is right.

Mr. Fraser (Peterborough): Special Officer Clarie.

Mr. Gillis: No, but we had a sense of law and order, and we resented that law and order being disturbed by people who did not have sense enough to leave it alone when it was all right.

I am not afraid of the penalty, but I want to be sure that someone may not make it appear, under clause 68, that I am disturbing the peace when, in fact, I am not—and do that for his own purposes.

It was not the textile workers in Louiseville who disturbed the peace—and this was not so long ago. In the middle of the night there was an invasion of that community—and I am sure the minister cannot remember any of the police officers having been prosecuted as a result of that incident. And they certainly wielded their batons aplenty; there were some pretty ugly pictures in the press. But they had charge of the town.

The only point I am concerned about is that some person in a community who is responsible to the people of that community should have the say as to whether or not a riot is in progress. And I am positive, with my knowledge of disturbances right across Canada, that none of those disturbances would ever have happened if they had not been provoked by people who were supposed to maintain law and order—always of course under orders from somewhere else. A policeman has to do what he is told.

In many cases the big industrialists in a community have more power than the elected representatives and can order the people around—and get away with it. As I said before, I want the minister to look at clause 68. When we elect the mayor of a city I expect he will be the chief magistrate of that city, and responsible to its people. He is highly respected—otherwise he would not be elected. It is his responsibility to determine whether law and order can be enforced by his regular officials, or whether it is necessary to declare war—and that is what it is, when you bring in outsiders to maintain law and order.

I want a tightening up of the old section so that there will be responsible administration. If that is done I do not think there will be riots; and if there are no riots then, regardless of the penalties, you do not need the other sections of the Criminal Code dealing with this matter. However, they remain there to deal with a real emergency, if one should develop.

Then, before the minister determines what the penalties should be he must keep in mind

that we must define just how a riot develops, what incites it, who provokes it and the like. If you can do that, and place the reading of the proclamation under the control of the mayors of cities and reeves of municipalities, you are not going to have riots. That is my judgment in the matter, anyway.

And do not forget this, that troops can be brought in under this arrangement. The mounted police can be brought in and billeted. Then the municipality has to pay the maintenance bill all the time the mounted police are in the community. That is another good reason why civic officials should have the responsibility of declaring an emergency, when it means an added tax burden on the taxpayers.

Mr. Barnett: Mr. Chairman, I have been listening to the discussion with a good deal of interest, and I can say, with the hon. member for Cape Breton South, that I am against riots. But I do feel when we come to a revision of the Criminal Code in connection with these clauses that we should be prepared to inform ourselves on the fundamental points before we permit the clauses to pass.

To my mind the crux of the question we are considering is that it is our responsibility to assess the level of maturity we have achieved in a democratic society. These clauses come under the general heading of offences against public order. The other day I listened with a good deal of interest to the history of the crime of treason as it was outlined by the minister. I have almost wished that he might have given us a somewhat similar outline of the history of the riot act, or of riots generally. Because, unless I am entirely wrong in my understanding of the history of this matter, the riot act as we have it in our present legislation goes back over a long period of time. It arose essentially out of the feudal concept of society in which there was a higher order of people and a lower order, with the cohesion of society being predicated upon holding the mass of serfs, or whatever they might have been, in rein or in check.

In other words, basically, the idea of a riot as an offence against public order assumes an immaturity of outlook on the part of citizens generally which makes it impossible for them to control their actions in the mass. That is a question that I have to ask myself when I am considering this clause. We have listened to descriptions of some of the incidents in this country within the memory of most of the people in this house where this clause has come into force. The thought that has been going through my mind is whether or not in every instance where the provisions of that riot act have been invoked they were actually creating more trouble than they were avoiding as far as public order was concerned. No hon. member has risen to give an instance of where this riot act was used in a way that did not leave a more bitter and lasting taste in the minds of the ordinary citizens of the country than existed before.

I have also looked through this clause and I have tried to find in it any offence which is not covered by some other clause of the Criminal Code. In clause 169 and the following clauses we have various provisions to protect us against disorderly conduct. In the group of clauses from 216 to 220 we have offences having to do with acts causing bodily harm, and in clauses 372 and 373 we have offences provided against destruction of property and various forms of mischief. I have tried to imagine an offence that could be created by an individual involved in what is described as a riot that is not already covered by one of these other clauses?

If I am completely wrong in my understanding of it I should like to have the minister explain just in what way. The minister has made it clear that this is a difficult clause to administer at the level at which it has to be administered. It involves some very tricky matters of wisdom and judgment on the part of the individual responsible. If there were some way in which we could maintain an orderly society without having this thing in here at all it would be an indication that in Canada we have risen to a level where we consider ourselves to be a country of free citizens capable of acting in a responsible manner. It seems to me that if the offences that people commit as individuals against property or against the persons of other people could be dealt with individually rather than in the mass, the way they are in these clauses that we are considering, there would be much less likelihood of injustice being done and of people on the spur of the moment being wrongfully injured and wrongfully punished.

Mr. MacInnis: Mr. Chairman, I should like to say a few words in regard to this group of clauses having to do with the matter of riots and unlawful assemblies. What constrained me to speak was the phrase used by the hon. member for Comox-Alberni. He said that if there were a way of maintaining an orderly society without these clauses in the Criminal Code, or something like that, that is what we should be trying to do. I maintain that, useful as these provisions might be in time of trouble, they will not of themselves maintain an orderly society. We have riots, and we have riots only when

economic and social conditions have brought people to the point of desperation. These are the basic causes of this sort of disturbances of people. There may be some other factors at times.

Mr. Pickersgill: The Montreal riot in 1849.

Mr. MacInnis: That was shortly before my time; I cannot recall it. But other reasons may arise in a less well-informed society than the present one, and in a society where people are not free there may be riots, and there may be riots because of religious matters, but there is not very much danger of that, at least in my own section of the country. Actually, there is not much danger of any riots rising because of that reason today.

I have read considerable history, and particularly British history. The riots that I have read about all arose from the desperation of the people. Probably the one that we remember the most is the Peterloo massacre near London some hundred years or so ago—probably it is not quite that long. But if we concern ourselves with good conditions of living, or as reasonable conditions of living as we can, and bring all our people in it so that they may have a part in our government and a part in the economic organization of society, then, people who have constructive opinions like that today are not going to riot and destroy the work of their own hands. Until you have that, these clauses may make provision for putting people in jail, but they will not of themselves create and maintain an orderly society.

If we do these things that we should do in this country that is so rich and has so many resources I believe riots and disorderly and unlawful assemblies would become as extinct as the dodo. I believe we are dealing with the whole series of clauses from 64 to 69, and this is the one that causes the difficulty:

> A riot is an unlawful assembly that has begun to disturb the peace tumultuously.

Why is the word "begun" there? How does a person know, if there is a beginning, there is going to be a continuation? How much beginning is there going to be before we can say there is a riot? Would it not be much better to say that a riot is an unlawful assembly which has disturbed the peace tumultuously. It seems to me we are trying to get a thing before it is there at all. There are other phrases similar to this which might make sense to learned lawyers but to the ordinary person like myself they do not make an awful lot of sense. I would emphasize again that from the little experience I have had with riots and disturbances of the peace it is my impression that they all arose at a time when the young men of this country could not get a better outlet for their energies and they organized some sort of resistance or protest against their conditions. That protest embarrassed the local authorities and then to excuse themselves for their failure to do anything they read the riot act.

Mr. Fraser (Peterborough): Mr. Chairman, it was not my intention to speak on this clause but I saw the mayor of a city many years ago read the riot act and that is why I am on my feet at the present time. According to clause 68:

> A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice that, at any place within his jurisdiction, twelve or more persons are unlawfully and riotously assembled together, shall go to that place and, after approaching as near as safely he may do, shall command silence and thereupon make or cause to be made in a loud voice a proclamation in the following words or to the like effect: "Her Majesty the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business upon the pain of being guilty of an offence for which, upon conviction, they may be sentenced to imprisonment for life."

In this case in a city many miles from my own riding I saw the mayor on the steps of the city hall with 50 or more policemen around him and hundreds of people out on the street wondering what it was all about. He read this clause or something similar and immediately he had finished reading it the policemen started down among the crowd. They dispersed them with their batons and I never saw anything so cruel in my life. I saw many innocent people being injured. I believe there should be something in this clause which would make it necessary for the police to hold back for some time in order to give the people an opportunity to disperse. I am not a lawyer but I cannot see anything in this clause that gives the people time to disperse.

Mr. Knowles: There was in the old section but it was taken out, unfortunately.

Mr. Garson: We are proposing to move an amendment to that clause.

Mr. Fraser (Peterborough): I am glad to hear that an amendment will be moved but I wonder if the minister would read it now so that we may know what its effect will be?

Mr. Garson: I will move the amendment as soon as we reach that clause.

Mr. Fraser (Peterborough): Would it not be better to move it now so that we may know what it is?

Mr. Garson: I have no objection if that is agreeable to the committee.

The Deputy Chairman: I would suggest that the amendment be read now for the information of the committee and it can be moved formally when we reach the clause.

Mr. Garson: The amendment would be to delete the word "forthwith" where it appears in lines 15 and 16 on page 25 and substituting therefor the words "within 30 minutes."

Mr. Knowles: Mr. Chairman, I realize that this amendment is not now before the committee and will not be moved until we reach clause 69 but I will say I am glad the minister is going to propose this amendment. Among other things he will be saved from listening to a half-hour speech from me and in effect he will be saving 30 minutes here as well as putting 30 minutes in the appropriate clause. As the minister knows, that provision was in section 92 of the code as it stood before, and we were going to propose its reinstatement. I rise at this moment, however, to point out that there has been another change made as between the old section 92 and the present clause 69 which I believe requires justification. The old section read in part:

(b) continue together to the number of twelve for thirty minutes after such proclamation has been made, . . .

That "number of twelve" has been deleted from the new section, as was the reference to 30 minutes. Is the minister going to move an amendment to put the word "twelve" back in the clause as well as the 30 minutes? I notice that the "number of twelve" was in section 91 of the old version and it is in clause 68 of Bill No. 7, but whereas the "number of twelve" was in section 92 of the old version it is not in clause 69. It seems to me it ought to be there and I would like the minister to indicate why it has been deleted.

Mr. Garson: Both the matters we have been discussing, the deletion of the reference to thirty minutes and the number of twelve, were recommendations made by the royal commission because they thought presumably that the references were not necessary in the existing code. In the case of the number of twelve I do not believe a great deal turns on it because if there were a real riot and the riot act is read and there is a period of thirty minutes within which they can disperse the fact of there being twelve left is not particularly material. The purpose of reading the riot act is so that a group assembled together can disperse. The group may be 75, 100, 500, or 1,000, and I can see that if they are all assembled together in a riotous group it would be necessary as a matter of common sense to permit some time within which the people in the forefront could have space in which to move away but I do not think it would be a matter of great moment that there should be less than twelve left at the end of that period of time.

For that reason and in view of the fact that that was the view of the royal commission and of all the bodies who have considered this up to the present time we thought, after consultation with these labour bodies, that it was wise to restore the thirty minutes but that there was no particular purpose served in restoring the number of twelve.

Mr. Knowles: I agree the thirty-minute provision is much more important than the other one, but I can but recall that half an hour or so ago the minister urged us to recognize that there was a great deal of wisdom in the past in dealing with sections covering the suppression of riots and the reading of the riot act, and he cautioned against any change from the collective wisdom of centuries gone by. He states that nothing may turn on this, but I believe a good deal might turn on it for the last ten or eleven people who are left. I wonder whether it was necessary to strike out the reference to the number of twelve.

Mr. Ellis: Mr. Chairman, clause 68 reads in part as follows:

A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice . . .

My question is this: Who are authorized to notify the mayor or the sheriff that there is an unlawful assembly or that the peace is about to be disturbed tumultuously?

Mr. Garson: There is no person who is authorized particularly. It would be rather ridiculous if when a riot was in progress we said that the only people who could carry the news of the riot must be the mayor, a member of parliament, the chief of police or someone like that. A person can carry the news to him and will say, "Mr. Mayor, there is a riot out here and we need your official presence right away to deal with it". The only purpose of that language is to say, in effect, that when the mayor or when these other officers receive the notice it is part of their official duty to go there and to take the necessary steps which are part of the responsibility of their office to deal with a riot under this section.

Mr. Ellis: What proof has the mayor that there is indeed a situation as described to him? In other words, must the mayor or the sheriff accept a report brought to him that there is an unlawful assembly and that a riot has begun? If so, is it mandatory for him, on the information given to him, to read the riot act? That is what I am trying to get at.

Mr. Garson: No. My hon. friend must not imagine a lot of difficulties about a matter which is really one of common sense. If within the language of the section a mayor or sheriff, or the lawful deputy of a mayor or sheriff acting if he is not there, receives notice that at any place within his jurisdiction twelve or more persons are unlawfully and riotously assembled together, he shall go to that place and he shall read the riot act. That is a statutory direction to him as to what his duty is in the matter. He is the man upon whom the responsibility falls. His responsibility is to choose between the consequences of not doing what the statute directs him to do, for which he will have to answer, or doing what the statute directs him to do. If he is guilty of a bad mistake in judgment and it turns out that it really is not a riot that he is dealing with at all, then he is answerable for that also. He is therefore unavoidably in an extremely unhappy position; but that is what he gets for being mayor.

Mr. Ellis: That is the point I wanted to get cleared up, because of the word "shall". I read that word "shall" as indicating that it was the duty of the mayor, upon receiving this information, to go to this place and to read the riot act. I am glad that the minister has cleared up this matter to my satisfaction by saying that it is up to the mayor, after the information has been received, to decide on his own authority whether or not a situation does exist where the reading of the riot act is necessary.

Mr. Garson: I will say this to my hon. friend. Where a statutory authority is in these terms imposed upon any public official, what he does is this: Where he receives the notice, he goes to the place, looks at the alleged riot and tries to form the best judgment he can as to whether what is taking place is actually a riot or not. He has to use his good sense to make that decision, knowing that if he errs on either side he will be at fault. Faced with that situation, he exercises his judgment as best he can. If he says, "No; I do not think it is a riot," and if it turns out that there is a riot and that he is wrong, then he is guilty of an offence of failing to carry out his statutory duty. If my hon. friend will look at clause 70—perhaps I may be allowed to refer to it; it is not one of the ones we are now considering; it is just beyond that—he will see this provision:

> A peace officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse, fails to take all reasonable steps to suppress the riot is guilty of an indictable offence and is liable to imprisonment for two years.

Hence the mayor or sheriff has quite a decision to make.

Mr. Ellis: In other words, in view of section 70, the safest course for the mayor to follow would be to read the riot act, because if he does not read the riot act and there is a great deal of criticism of his action, he could be held liable to imprisonment under section 70.

Mr. Garson: Yes; he could. But on the other hand if he read the riot act as a result of the exercise of bad judgment he would be responsible for some consequences there also. That is why I say that where the human being in an official capacity like that is vested with that type of responsibility, there is no way that I know of whereby we, in passing laws in this parliament, can avoid the consequence of errors in human judgment any more than we have done in the sections in the statute at the present time. My hon. friend may not think they are perfect but if he objects to any of these clauses I wish that in the course of doing so he would suggest some alternative to them.

Mr. Ellis: During the discussion this afternoon we have had all sorts of examples given where the riot act was read and where there was no need to read it. My question to the minister now would be this. In those cases, what happened to the magistrate or the mayor who read the riot act under those circumstances? Offhand, I cannot recall any action being taken against those people because they read the riot act. But I am suggesting that if they do not read the riot act, they are liable to imprisonment. I think the minister will agree with me on that point. In the examples given this afternoon, I think the minister will agree that there have been many incidents in this country where there was no need to read the riot act and that it was an unfortunate episode. We will all agree on that, I believe. But under these circumstances, no action has been taken whatsoever against either the peace officers or the responsible authority who read the riot act in those circumstances.

Mr. Garson: If my hon. friend will read the section carefully again, I think he will find the answer to the argument that he has just been making during these last five minutes. It says:

> A peace officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse . . . fails to take all reasonable steps to suppress the riot is guilty of an indictable offence . . .

If he is charged under that section he would come in and he would say, "The reason I acted in the way I did was as follows. I got the notice. I went there. This is what I saw. My excuse for not reading the riot act is as follows." It may be that he made an error in judgment but if he could convince a jury—if it is a jury trying the case—that this was an honest error in judgment and if they regard his excuse for not acting was reasonable, that would secure him an acquittal, I should think. It would be for the jury to decide that issue as a question of fact.

What other provision could we make? We have got to put the responsibility there. It must be remembered that these are not infallible people who are making these decisions but just fallible human beings like you and me. Would any of us be unreasonable enough to say that we should leave out from this clause the term "without reasonable excuse"? I think these sections are quite good. And they should be; for they have been carefully considered over many decades.

Mr. Ellis: Will the minister point out where the specific punishment is spelled out for those who err in the other direction, namely those who read the riot act and precipitate a situation?

Mr. Garson: Mr. Chairman, I have gone over all this before. I even spelled it out. Perhaps my hon. friend was not listening, but what I said was that where peace officers or other such officers, relying upon these statutory protections, without reasonable cause and in bad faith exceed their jurisdiction, they would then be responsible for whatever crimes their acts would constitute if they were done without authority. I cited the case of a peace officer in the pretended exercise of authority striking a gentleman over the head with a baton and I said that would probably be assault occasioning grievous bodily harm but for the protection he has under the code.

Mr. Knowles: That was the minister attacking me.

Mr. Cameron (Nanaimo): I wonder whether the minister can tell us of any instance in Canadian history in which the question of reading the riot act without justification has been made the cause of an action against the official who read it.

Mr. Garson: I am sorry that I cannot. Beyond the fact that I am piloting this bill through the house, I have no more knowledge of riots than my hon. friend who asked the question. I have never had any occasion to look into this matter. I think this must be said, that very frequently those who might have some cause for complaint or some reason for laying an information against a peace officer under these circumstances are the ones who on the facts are perhaps less likely to have any interest in doing so. It may be that some informations of that sort should have been laid that have not been laid. However, as I said on a previous occasion in this debate, that is not something that we can take care of in the law. All we can do in the law is to state rights and provide remedies. If those who have those rights and remedies choose not to exercise them, the law cannot in advance deal satisfactorily with a situation of that sort.

Mr. Cameron (Nanaimo): I asked that question because I perhaps have more knowledge of riots than the minister inasmuch as I have been on the spot on two occasions when the unlawful assembly sections of the code have been used. To my knowledge they were used on two occasions for the sole purpose of railroading genuine trade union pickets to jail.

For the information of the minister, I will describe one of these incidents which was a notorious case on the coast of British Columbia. Perfectly legal union pickets in a legal union strike that had gone through all the provisions of the trade union legislation of British Columbia were driven from their places on the picket line into an ambush prepared by the police. Many of the men went to hospital and the others were arrested the next day on a charge of unlawful assembly. I watched them being arrested. Those men went to jail. I was not arrested myself because I happened to be a member of the provincial legislature of British Columbia at the time. Otherwise I undoubtedly would have been. But that was one occasion.

I saw another case involving another perfectly peaceful orderly strike in the mining district of British Columbia where the same provisions were used on the same flimsy grounds because half a dozen men had collected. It was an opportunity to railroad them to jail and get them out of the way. That is how these provisions were used. I do not know of their ever having been used for any other purpose. What protection is there?

Mr. Philpott: I have listened with a good deal of interest and a little bit of amusement to some of the remarks from my hon. friends opposite. It seems to me that in their indignation about occasional abuses of power through the reading of the riot act they are

losing sight of the necessity of having a perfectly good section in our Criminal Code to deal with riots. I think anyone who reads the history of this country or who talks to his old mother or his grandmother will very quickly learn that there have been many riots in this country for many different reasons and not, as the hon. member for Vancouver-Kingsway says, merely arising out of poverty or industrial disputes.

For instance, we had riots in 1849, and the reason we are meeting in this chamber in Ottawa today instead of in Montreal, which was the natural capital of Canada, arises from the fact that the more ardent Conservatives of 1849 rather went on a rampage and stoned the governor general of that day. As I recall it, they burned down the parliament buildings. I am not sure whether anyone had time to read the riot act, but if they did not they should have. If you will read the history of a little later time you will see where Orangemen rioted against Catholics and Catholics rioted against Orangemen. There was a very serious riot in the holy city of Toronto when someone tried to put on the wrong kind of religious parade on the wrong day.

I can remember that in my boyhood a very serious riot took place in Hamilton. I also saw the serious consequences of a mayor reading the riot act on a wrong occasion. But I would point out to the hon. members opposite that we are living in a democracy under a system of responsible government, and the last court of appeal is always the common sense of the Canadian people. If a mayor reads the riot act wrongly we know what to do with him at the next election. We toss him out.

Mr. Cameron (Nanaimo): I think the hon. member for Vancouver South has just proved my point because he has referred to the number of riots that have taken place despite this provision in the law, which shows that it is of no use whatever in stopping a real genuine riot. It takes place anyway.

Mr. Knowles: I merely wish to cite an example, which will be familiar to the Minister of Justice and I believe to the memory of the historian of the house, the Secretary of State, to prove that it is not necessary every time informal notice is given to a mayor that there is trouble brewing for him to read the riot act. I refer to an instance in the city of Winnipeg in 1935. The two hon. gentlemen opposite to whom I referred will remember that John Queen was mayor of the city at the time, and in his absence Alderman John Blumberg was acting as deputy mayor.

Shortly after the riots had taken place in the city of Regina a situation began to develop in Winnipeg with large numbers of these marchers on Ottawa passing through our city. I remember the incidents myself quite well but I have also heard John Blumberg tell the story a good many times in the way that he alone can tell it. The chief of police was of the opinion that the riot act should be read. Indeed, if I recall the story correctly, I believe there were others in authority who expressed the same opinion to John Blumberg. As the minister has pointed out, the responsibility of making the decision rested on that occasion on John Blumberg. He refused to read the riot act and it was not read. I think my hon. friends opposite would agree with me it was a good thing that it was not. I put that on the record to emphasize the point that even after legislation has been provided, whether good or bad, it is important to have persons in positions of responsibility who can exercise good human judgment.

Clause 64 agreed to.

On clause 65—*Riot.*

Mr. Knowles: Before this clause carries may I ask the minister whether any consideration was given to amending it so as to make it clear that a strike would not be deemed to be a riot? I believe this suggestion was made to the minister by some of those who waited on him recently. What has he to say on the point?

Mr. Garson: Yes, that was considered and discussed. It was our view, which I think I am right in saying was shared to quite an extent by others with whom the discussion took place, that a provision of that sort would add nothing to the clause, and indeed might create the impression that a strike was a riot unless declared by the clause not to be a riot.

Clause agreed to.

Clauses 66 and 67 agreed to.

On clause 68—*Reading proclamation.*

Mr. Gillis: I should like to ask the minister if he might not think over an amendment to clause 68. A moment ago, the hon. member for Winnipeg North Centre stated that the acting mayor of Winnipeg refused to read the riot act and that turned out to be a very good thing. All I have been asking is that someone with some responsibility to the community, the city, town or municipality affected, should be the one to make the decision as to whether or not it was necessary to read the riot act. As the clause now reads, that is not the case. The sheriff or his agent, the magistrate or his agent, the mayor

or his agent may read it. I should like to see that provision limited to persons responsible to the municipality.

In my judgment all the trouble I have seen in connection with the application of this section of the code has arisen from the fact that the people who read the riot act merely read it for the purpose of precipitating a riot rather than preventing it. If it were amended so that the mayor or his representative in the community were the ones to have that responsibility, I should be quite satisfied.

Mr. Garson: We have felt all along that in the very respect the hon. member for Cape Breton South raises this point the clause in its present form is fairly tight already. The only people who have the right or the duty to read the riot act are a justice, who is a judicial officer, or a mayor or a sheriff or the lawful deputy of the mayor or sheriff, but not, as my hon. friend says, the agent of a justice. Having regard to the fact that this section is of general application all across Canada, and that circumstances might arise under which the mayor is not present or the justice is not present and perhaps even the sheriff does not happen to be around at the time this riot occurs, it does not seem unreasonable to say that the deputy mayor who, in most cases of which I am aware is another elected member of the council, or the deputy sheriff, shall have the right to perform this function.

It may be that my hon. friend objects to the idea of the deputy sheriff upon the ground that he is not an elected representative. I would not object to striking out the word "deputy sheriff" but I do not think we should strike out the word "sheriff" because the sheriff is one of the main peace officers of the community. In most cases of which I am aware he is a long resident there and is a man who enjoys the confidence of the community. If my hon. friend would like to have this power limited to a justice, the mayor, the sheriff or a deputy mayor, I would accept that amendment. However, I do not think we should leave any of the others out because they are all responsible officials.

Mr. Gillis: They may be responsible all right, but they have no responsibility to the community in which that kind of action might take place. The sheriff is a political appointee, and in many cases—

Mr. Pickersgill: May I ask the hon. member a question?

Mr. Gillis: Yes.

Mr. Pickersgill: Does he realize that there are some provinces, including the one I happen to represent, where in many cases we have no organized municipalities so if the word "justice" were taken out the law would not apply there at all.

Mr. Gillis: I am not suggesting the word "justice" should be taken out, but we want to make sure he is a recognized and legitimate magistrate. There are a lot of people running around this country who are classified as justices of the peace, but who have no responsibility or any roots in any community. The services of such people might be used in reading the riot act. I would be quite prepared to leave in that word "justice" on the understanding it was someone administering justice in that particular community, and not someone imported. I certainly do not agree with the word "sheriff" or the words "deputy sheriff". In the final analysis, the responsibility should be that of the mayor or the justice in the community, as described by the Secretary of State. I believe the wording of the clause is altogether too loose just now.

The Chairman: Shall clause 68 carry?

Mr. Knowles: On division.

Clause agreed to on division.

On clause 69—*Preventing proclamations.*

Mr. McCann: I move:

That paragraphs (b) and (c) of clause 69 be amended by deleting the word "forthwith" where it appears in lines 15 and 16 on page 25 and substituting therefor the words "within thirty minutes."

Amendment agreed to.

Mr. Knowles: I have a question to ask about the clause as amended. Has any consideration been given to the question of the severity of the penalty provided under this clause? As a layman it strikes me that it is a rather severe penalty, imprisonment for life for failing to disperse because some deputy sheriff read the riot act?

Mr. Garson: Yes, consideration was given to that, but the whole basis for all these provisions relating to riots is that it is in the interests of a stable society, first of all, that the riot should not take place at all. It is in the interests also of society, and of the rioters, that the riot should not continue. Those who persist in taking part in the riot are made liable to these severe penalties —although the maximum penalty is not too often imposed upon those found guilty of rioting—with the view that the riot should not continue and possibly result in some serious loss of life, limb or property. It is for that reason the penalty is, and always has been, so severe.

Mr. Knowles: I might concede, though I do not think I would even go that far, the

severity of the offence under paragraph (a), concerning anyone who opposes, hinders or assaults, wilfully and with force. But when you get to paragraph (b) concerning a person who does not peaceably disperse and depart from the place, or to paragraph (c) concerning a person who does not depart from a place forthwith—that is now within thirty minutes—I believe the penalty is severe. Conceivably, a person might take thirty-one minutes to get away and he would have broken the law and be liable to imprisonment for life. Perhaps I am overstating the case by bringing up a ridiculous example, but it does seem to me, in the light of penalties that are imposed for other crimes in the code, that this one is too severe.

Mr. Garson: All I can say in relation to that is if my hon. friend will look at similar legislation in other countries, and in this country for many years, he will find the same severe penalties upon those who are called upon to disperse and who do not disperse. The grievous by-products that the riot produces are what the legislators are trying to avoid by imposing this severe penalty. My hon. friend says that it sounds ridiculous. Well, it has not been regarded as ridiculous by generations of legislators and lawmakers over the years. And I must say that, for my own part, I certainly do not regard it as a ridiculous idea. I think it is very desirable for everyone concerned that riots should be dispersed as quickly as possible.

The Deputy Chairman: Shall the clause carry?

Mr. Knowles: On division.

Clause as amended agreed to on division.

On clause 52—*Sabotage.*

Mr. Garson: In connection with clause 52 I propose—

Mr. Knowles: Have you got my amendment?

Mr. Garson: Yes; there are three amendments here. The first one refers to words in paragraph (a).

Mr. Knowles: Hear, hear.

Mr. Garson: The words "the safety or interests of Canada" seemed rather broad. It is suggested that the clause would be more precise if paragraph (a) of subclause 1 of clause 52 were deleted and the following substituted therefor, "the safety, security or defence of Canada, or".

Mr. McCann: I move:

That paragraph (a) of subclause (1) of clause 52 be deleted and the following substituted therefor:
"(a) the safety, security or defence of Canada, or"

Mr. Knowles: While the amendment offered by the minister is not exactly the one I was going to send to you, Mr. Chairman, it does meet our main objection. We certainly did not like the word "interests" in the subparagraph. As the minister pointed out when we were dealing with clause 46, the word had appeared there in an earlier draft, and even Their Honours in the other place thought it went a little too far. It had been my intention just to move for the deletion of the words "or interests". The subclause would then have read, "the safety of Canada, or". But it seems to me the words now proposed by the minister mean much the same thing. They relate to the military safety rather than what might be regarded as economic interests.

Amendment agreed to.

Mr. Garson: Then Mr. Chairman, I have another amendment to suggest, and which I would ask my colleague to move.

Mr. McCann: I move:

That subclause (3) of clause 52 be amended by deleting the word "or" at the end of paragraph (a) and adding a comma and the word "or" at the end of paragraph (b), and by adding, immediately after paragraph (b), the following paragraph:
"(c) he stops work as a result of his taking part in a combination of workmen or employees for their own reasonable protection as workmen or employees."

Mr. Fulton: I take it the amendment follows the representations made by the Canadian and Catholic Confederation of Labour, as submitted to the minister on March 2. This is the exact amendment they suggested, is it not?

Mr. Garson: Yes; all three labour congresses are in agreement, and also Mr. Crysler, representative of the Toronto board of trade.

The Deputy Chairman: Is the amendment agreed to?

Some hon. Members: Agreed.

Mr. Barnett: I should like to say a word in support of the amendment.

Mr. Fulton: It has been carried.

The Deputy Chairman: The hon. member for Comox-Alberni may proceed.

Mr. Knowles: Who is using the steamroller now?

Mr. Barnett: I was not aware that it had been passed. However, I wish to rise only to say that I am very glad to support the amendment proposed now by the minister. As a matter of fact, I had prepared a draft of an amendment somewhat along the lines of that the minister has offered, although

perhaps not in identical terms. I assume that the one he has offered may be more appropriate from a legal standpoint that the one I had drafted.

I did feel that the section as we have had it before did leave some very serious loopholes, in so far as the proper protection of those representing bodies of workmen or individual workmen was concerned. We all know that in the normal manner in which trade union organizations are set up there are people involved who are not employees of a particular plant. I feel that if we are going to make it clear that this section is not designed to be used other than for the protection of the legitimate rights of the workers when dealing with their employers we are taking a proper procedure. I am sure no one would quarrel with the fact that during the period of hostilities from 1939 forward the workers of Canada had a very good record in supporting the safety and interests of the country. I think it should be made perfectly clear that this clause is not designed to be used against the workers of Canada, nor against those whom they select to represent them from time to time in their discussions with employers.

I feel that if that assurance can be incorporated in the clause it offers the best possible protection our society can devise against those who may be interested in acts of sabotage during times of war or of approaching war. I know there has been a good deal of propaganda among working people to the effect that this was a clause which was going to be used against the legitimate rights of labour. I am happy to see the minister agrees so entirely that protection of the workers' rights is necessary, and has put forward this amendment.

Mr. Michener: I should like to ask the minister about the word "combination". It is an unusual word in labour legislation, and I am wondering whether it was chosen for some particular reason. I should have thought the normal word would have been "association" or "union". Is there some significance in the expression "combination of workmen"?

Mr. Garson: Yes, that is an expression used in the existing code.

Mr. Michener: Where?

Mr. Garson: I will give the hon. member the section in a moment. It is lifted bodily from the existing code; so that it is authorized by usage.

Mr. Herridge: I should like to say briefly that I had the opportunity to discuss this clause with several union groups, and I am pleased indeed the minister has seen fit to move the two amendments he has moved today. I think both of them will remove a great amount of the objection organized labour had to this clause.

Mr. Philpott: I should like to point out that all of these changes were made by the government side completely voluntarily and without any pressure whatsoever from the opposition.

Mr. Knowles: Is the hon. member trying to stir up a riot?

Mr. MacInnis: It is amazing how quickly some people deteriorate after they come to this house. At one time I thought my hon. friend was a non-political person. As a matter of fact, I could produce columns of material that he wrote advocating the election of members of the opposition to the House of Commons as well as myself. I have a question for the minister. When the delegations from the various labour organizations were discussing this matter with him, did they discuss the deletion of certain words in lines 25 and 26 of subclause 4: "having stopped work in the circumstances set out in subsection 3."

Mr. Garson: If my hon. friend will allow me, I was going to move an amendment—

Mr. Fulton: Before the minister does that, and before we dispose of this clause, I do not think the absurd remarks of the hon. member for Vancouver South should go without a little further answer.

Mr. MacInnis: When you know him you will let him go.

Mr. Fulton: Those who have not read the columns of the Vancouver *Sun* for as long as my hon. friend and I would perhaps not know of the depths of absurdity to which he can go. My hon. friend is well aware of the fact that if it had not been for the opposition all those clauses would have passed with the support of hon. members from the other side, so that the representations of organized labour would not have had any effect. One should be thankful for the fact that they were held up and allowed to stand at the request of the opposition, and that having been held up organized labour and others interested have made representations.

Mr. Garson: Mr. Chairman—

Mr. Fulton: I think for the purposes—

The Deputy Chairman: Order.

Mr. Garson: On a point of order—

The Deputy Chairman: Order.

Mr. Garson: On a point of order, I want to raise—

The Deputy Chairman: Order. I think that, in all fairness, perhaps the provocative remark which was made by the hon. member for Vancouver South was of such a nature that it would have been only fair for me to allow some reply thereto. I might point out to the committee that now there have been two replies to the one remark, and the replies have been considerably longer than the remark. I think the committee might now come back to the discussion of the amendment now before it.

Mr. Garson: Mr. Chairman, in the interests of having a good code, no matter who gets the credit for it, I move that clause—

The Deputy Chairman: Is it the desire of the committee that this amendment should be read so that they will know what it consists of? We have not yet carried the second amendment. Is the committee ready for the amendment?

Mr. Knowles: Let us hear the other one. May 4 be related to 3 (c)?

Mr. Garson: No. The amendment reads:

That subclause (4) of clause 52 be amended by deleting the words "having stopped work in the circumstances set out in subsection (3)".

That again has the approval of all the labour congresses and the board of trade of Toronto.

The Deputy Chairman: The question is on the second amendment, which deals with adding clause (c) to subparagraph 3. Shall the second amendment carry?

Mr. Herridge: Would you mind reading it again? It is quite difficult to get the whole implications in an amendment.

The Deputy Chairman: The amendment that is now before the committee is:

That subclause (3) of clause 52 be amended by deleting the word "or" at the end of paragraph (a) and adding a comma and the word "or" at the end of paragraph (b), and by adding, immediately after paragraph (b), the following paragraph:

"(c) he stops work as a result of his taking part in a combination of workmen or employees for their own reasonable protection as workmen or employees."

Amendment agreed to.

Mr. McCann: I move:

That subclause (4) of clause 52 be amended by deleting the words "having stopped work in the circumstances set out in subsection (3)" where they appear in lines 25 and 26 on page 21.

Mr. Fulton: I appreciate the fact that these amendments have been requested by the three main trade union organizations and apparently approved by one of the boards of trade in the country; but in the brief submitted on March 27, while the changes were suggested, I cannot see any arguments in support of them, and I must say I am at a loss to know why it is felt that these words should be deleted. As I look at the clause as it now stands, even with the amendments that have been adopted so far, it seems to me that these words are appropriate and are not unduly restrictive. I will not go any further and express my final opinion on it, but I should like to know what arguments were advanced in support of deleting these words.

Mr. Garson: Because the stoppage of work of that sort has no particular relevancy to the crime of sabotage.

Mr. Knowles: Does it not also have this effect, that with the words in there, which the amendment now proposes to take out, the saving effect of the clause was limited to the persons who had actually stopped work at the plant in question; whereas now it is possible for others than those actually on strike from a particular plant to be part of the picket line. Is not that the effect?

Mr. Garson: Yes, of attending for the purpose of obtaining or communicating information.

Mr. Knowles: That phrase the minister has just read is the legal way of describing a picket line. I think I have correctly stated what the effect of the amendment is that the minister moved. Certainly it was our intention to move an amendment to have that effect. I believe the minister has achieved it.

Amendment agreed to.

The Deputy Chairman: Shall the clause, as amended, carry?

Mr. Barnett: I take it that the minister has no further amendment to propose in connection with this clause?

Mr. Garson: No; is my hon. friend opposing the last one?

Mr. Barnett: No. I have one which I feel covers a point which has not yet been covered. I would like to move:

That clause 52 of Bill No. 7 be amended by adding at the end thereof the following:

"(5) No person does a prohibited act within the meaning of this section by reason only that, having information communicated to him, as provided in subsection (4), he refuses to do, or to continue to do, any act pertaining to his employment."

I do feel, Mr. Chairman, that if this clause is to be clear and not involve those engaged in legitimate trade union disputes, in addition to the amendment which the minister has proposed it should be made clear that, to put it in ordinary words, a member of another

union who respects a picket line or recognizes certain information with respect to it, which has been communicated to him, is not committing sabotage simply because he recognizes the existence of that picket line and may refuse to do certain acts as a result of the information that has been communicated to him. If this is not in the clause I can conceive of a situation where the people responsible for the closing down of a plant might be completely immune from any possible charge of sabotage, and yet someone who was not nearly as directly involved might become subject to such a charge.

Mr. Garson: May I ask my hon. friend a question? What would be covered by the amendment my hon. friend has moved that would not be covered by the amendment, paragraph (c), passed a few moments ago?

Mr. Barnett: Well, Mr. Chairman, if I may in turn ask a question of the minister. Is his understanding of this paragraph (c), the amendment which was moved a few moments ago, such that he believes the wording of it will cover those who may not be immediately involved in the operations of a plant which has been closed down, or those who may be connected as union officials?

Mr. Garson: My trouble, Mr. Chairman, is that I am not too sure what my hon. friend is trying to cover. We have already covered quite a large area in this paragraph (c). If my hon. friend is urging another amendment then I think we should not pass it unless he can show there is an area left which this other amendment of his will cover, because the amendment we have suggested here is the product of very long and careful discussion with the three congresses and with the legal experts of the Toronto board of trade. In a matter of this kind it is easy to make a legislative blunder, and I would be disinclined to accept his amendment unless he can demonstrate it legitimately covers something which is not covered by the amendment passed a few moments ago.

The Chairman: Perhaps I should read the amendment moved by the hon. member for Comox-Alberni:

That clause 52 of Bill No. 7 be amended by adding at the end thereof the following:

"(5) No person does a prohibited act within the meaning of this section by reason only that, having information communicated to him, as provided in subsection (4), he refuses to do, or to continue to do, any act pertaining to his employment."

Mr. Barnett: Mr. Chairman, first of all, as I believe I mentioned earlier, I gave some consideration to what seemed to me to be weaknesses in this clause. The series of amendments which I have drafted, as I explained, are not worded in the same manner as the amendment which the minister introduced, and the amendment which I have just moved was based upon the wording of other amendments which I have not moved because the minister introduced his amendment. I must say I have not been able to satisfy myself that the point I have in mind is completely covered by the wording of the amendment which the minister introduced, and I am wondering whether it might be possible to allow this clause to stand for the present—

Mr. Garson: Mr. Chairman, I do not think that is reasonable. This bill has been in process now for some five years and I have told my hon. friend that the amendments we have brought in this afternoon have been reached after long and careful discussion with those who should know and who should be well posted in these matters. After hearing the views of both sides we have been able to meet the suggestions they made. I would be strongly disinclined to accept the amendment moved by my hon. friend because I am not sure what the results of it would be upon the amendments we have already passed, and unless he can tell us what the results would be I do not think we should accept his amendment.

Mr. Barnett: Mr. Chairman, I believe I can state the purpose of my amendment in very few words. Its purpose is to protect a worker from the possibility of having a charge of sabotage laid against him because he refused to cross a picket line. In ordinary phraseology that is the purpose of the amendment which I moved because I felt that under the wording of the previous clause no such protection was offered. If the minister could assure me that in his understanding paragraph (c) covers that situation, and if he is satisfied that that factor was given adequate consideration when this subclause was drafted, then I will not be too concerned about the present amendment. But I would like to feel satisfied on that point.

Mr. Garson: Mr. Chairman, with all the good will in the world it is not my function to explain to my hon. friend what the result of his amendment would be, nor is it my function to explain to him what in his amendment is covered by what has already been passed. Perhaps he has not my amendment before him which reads:

(c) he stops work as a result of his taking part in a combination of workmen or employees for their own reasonable protection as workmen or employees,

My hon. friend will have to answer his own question as to whether "he stops work" includes the crossing of a picket line.

The Chairman: Shall the amendment carry?

Mr. Knowles: Mr. Chairman, may I make this suggestion? I take it the minister is not prepared to consider the request that the clause be allowed to stand. Perhaps the amendment can be defeated without prejudice to my colleague's right to bring it in again, or it could be withdrawn on the understanding that if the hon. member for Comox-Alberni, after considering the matter further and perhaps discussing it with the minister privately, wishes to bring it in again at a later sitting then the minister might consider this clause being reopened.

Mr. Garson: I do not want to be unreasonable but I am not prepared to give that undertaking because we have tried to be fair to the people who are primarily concerned, the employers on the one hand and the congresses on the other. We have reached a wording which is satisfactory and I believe that unless a better case can be made than the hon. member has made thus far for his amendment we should not further tinker with the wording we have now.

Mr. Knowles: Mr. Chairman, I was not asking the minister to give an undertaking that he would agree to the amendment tomorrow when he is not prepared to agree to it now. I was merely asking that he give an undertaking that if the hon. member for Comox-Alberni was able to persuade the minister that the point should be considered that he would not be unwilling to have the point reopened at some future sitting. Frankly, Mr. Chairman, I have been trying to study the wording of the amendment passed a few moments ago in order to see whether the point the hon. member for Comox-Alberni has in mind is covered and I am not sure that it is covered. As I understand it, the point he is concerned about is a situation where one union is on strike and has a picket line and there is another group of men who may be working on the other side of that picket line and who are not on strike, but where some members of the union which is not on strike do not wish to cross the picket line of the other union. I may not have described too precisely the point the hon. member for Comox-Alberni has in mind but I am suggesting that the minister agree to discuss the matter privately with the hon. member and if they agree the clause might be reopened at some future sitting.

Mr. Garson: I think I would rather that the question be voted on now, because I do not want to disturb the section we have at the present time. We have gone to a great deal of trouble in getting to it and I do not think we should disturb it.

Mr. Knowles: All right; call the vote.

The Chairman: Is the committee ready for the question?

Some hon. Members: Question.

Amendment negatived: Yeas, 10; nays, 52.

The Chairman: Shall the clause as amended carry?

Mr. Knowles: On division.

The Chairman: Carried on division.

Clause as amended agreed to on division.

On clause 372—*Mischief.*

Mr. Fulton: I understand that the minister has an amendment.

Mr. Garson: Yes; I have an amendment. The amendment would be as follows:

That subclause (6) of clause 372 be amended by deleting the word "or" at the end of paragraph (a) and inserting a comma and the word "or" at the end of paragraph (b), and by adding, immediately after paragraph (b), the following paragraph:

"(c) he stops work as a result of his taking part in a combination of workmen or employees for their own reasonable protection as workmen or employees."

That is the same subclause that was moved a moment ago in connection with clause 52. That clause dealt with sabotage. This clause deals with mischief. I would ask my colleague the Minister of Fisheries to move the amendment.

Mr. Sinclair: I so move.

The Chairman: Shall the amendment carry?

Mr. Fulton: I take it that the minister intends to bring in the same amendment to subsection 7 as that which he brought in in connection with subsection 4 of section 52?

Mr. Garson: Yes; I intend to do that.

Mr. Fulton: In that case I will not say anything at this stage until after the two amendments have been disposed of; but I would not want our silence on this point to be taken as indicating that we approve of the section as a whole. I think that these amendments will improve it. I am therefore prepared to see them go through, and will make my remarks after they have been dealt with.

Mr. Garson: Perhaps I had better indicate the other amendment now so that everyone will know what it is he is voting on. The amendment reads as follows:

That subclause (7) of clause 372 be amended by deleting the words "having stopped work in the circumstances set out in subsection (6)" where they appear in lines 16 and 17 on page 126.

These amendments also have the approval of the three congresses and the Toronto board of trade. I would ask my colleague the Minister of Fisheries to move this amendment.

Mr. Sinclair: I so move.

The Chairman: Shall the amendment carry?

Mr. Knowles: As the hon. member for Kamloops has pointed out, may I just say that although there are some fundamental aspects of this whole clause that we dislike, nevertheless both of these amendments make slight improvements. Without prejudice to our opposition to the clause as a whole, we support the two amendments.

The Chairman: Shall these amendments carry?

Amendments agreed to.

The Chairman: Shall clause 372 as amended carry?

Mr. Fulton: No, Mr. Chairman. On clause 372 as now amended, may I say this: From looking at the explanatory notes on the right-hand page, it is obvious that this clause is a consolidation of fifteen separate clauses in the code as it now stands. It must be admitted that the job of the commission which first sat on this thing was to do the work of consolidation; but here I think they have bitten off rather more than any commission, however expert, could chew. The widely varied types of offences covered in those original fifteen clauses, with the widely different penalties prescribed for each different clause, were such that it is impossible to consolidate all these matters and cover them adequately in one section without getting a sort of porridge; and that is what we have here. May I say that it is not a very tasty porridge either; they have left out the salt. It is rather bad legislation.

I made some notes on a comparison of what is now in one section with what was previously in the previous sections. Section 96 prescribed a penalty of life imprisonment. Perhaps I should first have said that the main objection, in view of the fact that here you have a whole vast field of offences consolidated into one section, is that the penalties, since they have to be commensurate with the most serious of those offences, have therefore to contemplate life imprisonment. This section covers anything from life imprisonment down to imprisonment for a term of five years. The fact is that the wide variety of offences covered is such that, in my opinion, it is not capable of being dealt with in that way by a sort of broad general scope of penalties of that kind. The result is that some things which previously carried only minor penalties may now carry penalties of five years or even fourteen years. That is the sort of result you are bound to get when you make such a hodge-podge clause as is found here.

The meaning of these remarks will be clearer, I think, if we take a look at what was done by the old sections which are now consolidated. Under section 96 it is true there was a penalty of life imprisonment, but the act had to be a riotous or tumultuous assembly. There had to be riotous destruction of property before you would get life imprisonment. Then again in section 97 it is true there was a maximum penalty of seven years. But again there had to be riotous damage of property. There was a real offence there. It was not damage done accidentally. There had to be an element of riot, and in the first place, as I have pointed out, there had to be actual obstruction.

The next section is 238 (h), which was one of the subsections covering the offence of vagrancy in the old code, and the only penalty for it was one imposed by means of summary conviction, being a maximum of $50 or six months, or both. Under the clause in the bill you have the possibility of five years imprisonment or fourteen years or even imprisonment for life. The old section, where the maximum was $50 or six months, is now included in a section where the maximum is five years.

Then we come to section 510 in the old code. It is true that the penalty there was imprisonment for life, but there had to be danger to life, and the types of offences covered by that section were spelled out in four specific subsections, each defining a specific offence with great particularity, none of which is present in this general porridge of a section that we now have before us.

Under another subsection of section 510 it was possible that a person could get a term of imprisonment for fourteen years, but this penalty only followed if there had been substantial damage to substantial property creating danger, such things as interfering with or removing or destroying navigation marks, thus endangering the safety of vessels and the lives of those aboard them. Again, this type of specific offence and the specific penalty provided were carefully and fully spelled out in two subsections.

Then there was a further subsection providing a penalty of seven years, but again for substantial damage, and here with the greatest particularity the types of offences were spelled out in ten further separate subsections of old section 510. Then there was another class of offence which might carry a penalty of five years. These were spelled out again with great particularity in five subsections, and then there was one general subsection at the end of 510 providing a maximum of two years for all other cases of damage to property.

Section 516B of the old code again was a specific offence carefully defined and with a maximum penalty of one year and/or a fine of $500 provided. Here again we have the maximum penalty raised from one year to a possibility of five years.

Taking section 517 of the old code, there is a possible penalty of five years in the case of a person who causes danger to valuable property, or life imprisonment in the case of a person causing such danger with intent. But again six specific offences are spelled out in six specific subsections. Section 518 admittedly was only one section creating a specific offence. Section 519 contained two specific and clearly defined offences in two subsections. Section 520 had five subsections and section 521 two subsections.

Mr. Garson: Will the hon. member permit a question? What advantages does my hon. friend claim for all this specification of a number of detailed offences?

Mr. Fulton: I will come to that when I have finished making the comparison between what was contained in the old code and what we have in the bill. Section 522 of the old code contained three separate and clearly defined offences in three subsections. Sections 533, 534 and 535 had one section each.

We now have in clause 372 of the bill an attempt to consolidate the law contained in fifteen separate sections, those fifteen separate sections in turn containing forty-seven separate provisions by way of subsections or subsubsections. The importance of that is that here you are dealing with a great variety of types of damage to property constituting an offence against criminal law. Under the code as it now exists it was felt that different types of damage, carrying with them different degrees, if you like, or irresponsibility, should carry different degrees of penalty, and that not only, therefore, should the offence itself and the property with respect to which it was committed be defined and spelled out carefully and clearly but the penalty for that particular action should also be spelled out distinctly, with a separate penalty for each separate offence.

Mr. Garson: The maximum penalty in each case.

Mr. Fulton: No. In some cases it was a specific penalty without any alternative. In many of these cases the penalties were very much less than the possible penalties provided here. As I have said, in one case the only penalty that could be imposed was six months or a fine of $50 as a maximum. Here there is in every case at least the possibility of five years imprisonment. As I see it, it just is not sound law because, notwithstanding what the minister has said on other occasions, it is our view of the criminal law that it is not necessarily poor legislation to have a number of subsections or a considerable number of words defining an offence. In fact we believe the soundest approach is to spell out each particular offence and provide for that offence a particular penalty. It is an important and undisputed maxim of the law that ignorance is no excuse and it is only fair to provide for all our people the opportunity of knowing that if they follow a certain course of action they will incur a certain penalty and not leave a penalty of a vague and undetermined nature so that a certain course of action in one province may result in one penalty to a certain party and in another province exactly the same course of action may result in a penalty very much less severe. Indeed, not only in different provinces may that difference arise but in different judicial districts.

That does not seem to me to be a sound basis upon which to set out your criminal law. It is for these reasons that we are opposed to this section. It will be obvious to the committee that a section consolidating fifteen old sections and forty-seven separate subsections is not capable of intelligent amendment here to meet the objections which we have in mind. Otherwise I would have drafted such an amendment. But it seems to

me that the only thing that it is feasible to do is to go back to the old fifteen previous sections. We cannot achieve that by any amendment that I can draft. Therefore our only course is to oppose the section which, if we were successful, would have the effect of having it deleted and thus forcing the government to re-enact the fifteen former sections. That is the course we propose to follow.

Clause stands.

Progress reported.

BUSINESS OF THE HOUSE

Mr. MacInnis: I wonder whether we can be told what will be the business for tomorrow?

Mr. Garson: We will go on with the code. When that has been finished we will take estimates in the following order: public works, northern affairs and national resources, national defence and fisheries.

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