*Inquiries of the Ministry*

**Mr. Knowles:** Is that not something the government should do something about?

## FERRY SERVICE

NORTH SYDNEY-PORT AUX BASQUES—COMMENCEMENT OF OPERATIONS

On the orders of the day:

**Mr. W. M. Buchanan (Cape Breton North and Victoria):** I should like to direct a question to the Minister of Transport. I wish to inquire as to when the new ferry to run between North Sydney, Nova Scotia, and Port aux Basques, Newfoundland, will commence its scheduled run?

**Mr. L. Langlois (Parliamentary Assistant to the Minister of Transport):** I received no previous notice of this question. As my hon. friend knows, this ship is being built at the present time, and I will ascertain the date when it is due to commence its scheduled sailings and report to the house later.

## POTATOES

REQUEST THAT SEASONAL DUTY DATE BE ADVANCED

On the orders of the day:

**Mr. F. G. J. Hahn (New Westminster):** Would the Minister of National Revenue consider moving the seasonal duty date on United States potatoes forward from June 15 to June 1, with the present six-week protective period still to apply, and so give the early potato growers protection by having the markets cleared of the vast quantities of United States potatoes that get to our market by beating the present tariff date deadline?

**Hon. J. J. McCann (Minister of National Revenue):** I thank the hon. member for having given me notice of this question. The answer is that this date cannot be changed because it is in the statute and is item 83 of the Customs Tariff. It is bound by GATT and could only be changed by international agreement and by subsequent amendment to the statute.

## BRIDGES

BURLINGTON CANAL—PROPORTION OF COST TO BE PAID BY FEDERAL GOVERNMENT

On the orders of the day:

**Mr. R. E. Reinke (Hamilton South):** I should like to direct a question to the Minister of Public Works. Can the minister say whether the federal government has decided to share with the Ontario government the cost of the proposed highway bridge over the Burlington canal? If so, can he say what the total cost will be and to what extent the federal government will participate?

[Mr. Gregg.]

**Hon. Robert H. Winters (Minister of Public Works):** Mr. Speaker, the Ontario government has not yet submitted detailed plans or estimates of cost. We have, however, been told that on the basis of preliminary estimates the proposed high level bridge will cost approximately $13,300,000.

This problem is primarily one of facilitating highway traffic, but since the canal over which the bridge is to be built is a federal structure we have informed the Ontario government we are prepared to participate up to one-third of the cost of the bridge, on the understanding that Ontario will assume full responsibility for highway traffic over the canal, thereby enabling the federal government, in the interests of navigation, to remove the low level bridge it maintains at the present time.

## CANADIAN NATIONAL RAILWAYS

PALMERSTON-SOUTHAMPTON BRANCH LINE

On the orders of the day:

**Mr. W. M. Howe (Wellington-Huron):** I should like to direct a question to the Minister of Transport or in his absence to his parliamentary assistant. Is he in a position to make a statement concerning the rumoured intention of the Canadian National Railways, as published in the press, to make changes in the Palmerston-Southampton branch line, and if so what are these changes?

**Mr. L. Langlois (Parliamentary Assistant to the Minister of Transport):** In the absence of the minister on official business, may I say that I received a copy of this question shortly before the lunch hour. I have been unable to obtain the necessary information from the management of the railway company, so I am taking this question as notice.

## CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

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

**The Chairman:** When the committee rose yesterday we were discussing clause 372.

On clause 372—*Destruction or damage.*

**Mr. MacInnis:** I should like to say a few words in connection with this clause. I listened rather attentively to the hon. member for Kamloops when he spoke on this clause just before the adjournment yesterday afternoon. In his criticism of this clause

the hon. member made approximately the same criticism as was made by the delegation from the Canadian Congress of Labour in the brief they submitted to the parliamentary committee at the last session.

**The Chairman:** Order. The hon. member for Vancouver-Kingsway has a very fine voice, but he cannot possibly compete with all the other members of the committee. I must ask other members to maintain silence while the hon. member is speaking.

**Mr. MacInnis:** I thank you for those kind words. I have often heard my voice described as loud, but never before as fine. I am not suggesting the hon. member for Kamloops is not capable of making his own analysis, but I was interested to note how closely it paralleled some of the criticisms made by the Canadian Congress of Labour.

**Mr. Fulton:** The criticisms were probably prepared by another good lawyer.

**Mr. MacInnis:** I do not believe they were. They might have had a lawyer's advice, but the criticisms were prepared by a professor, I believe. The submission made by the Canadian Congress of Labour last year to the parliamentary committee, one which I believe might be considered the best submission made to that committee, covered six pages of printed matter. The importance which they gave to section 372 is indicated by the fact that more than two of the six pages are given over to an analysis and criticism of this clause in the new bill. Perhaps I could not do better than quote briefly from the submission to show what the Canadian Congress of Labour thinks about what has been done to the sections dealing with mischief. They say:

> Section 372 (mischief)
>
> This is appropriately named: it is one of the most mischievous sections of the whole bill. With section 373 (which limits the scope of 372 in cases where actual danger to life is not involved, or where the destruction of, or damage to, property is not more than fifty dollars), it purports to consolidate or condense no less than sixteen sections and part of a seventeenth in the present code, many of them long and elaborate. All the present sections are specific; the new section 372 is general and sweeping, vague and ambiguous. In the attempt to cover a multitude of sins in a few lines, the drafters have exposed the individual to impossible hazards.

That criticism is well merited in this instance. Then, later in the submission they say:

> When parliament intends to make certain conduct punishable, and *a fortiori* when it imposes heavy penalties, it should state clearly and specifically which acts or omissions involve criminality.

This, they insist, is not done in the present clause. And, to quote again:

> The attempt to condense over 250 lines of the present code, covering well over fifty distinct and widely differing offences, with a great variety of penalties, into 41 lines and seven blanket offences, with four different penalties, is bound to mean the use of general and vague language which can only lead to abuse of parliament's intention.

Their concluding paragraph is brief and to the point:

> This whole section 372 is vicious, and should be dropped. The sections of the present code which it purports to replace may need some amendment, notably in respect to penalties, but their general effect is satisfactory, and, subject to necessary amendments, they should be retained.

I presume that in revising and consolidating the Criminal Code the purpose was to bring it more into accord with conditions in this country as we have them today. I do not believe it was the intention, or that it should have been the intention, to replace clarity with obscurity. That is what is done in the clause now before us.

**The Chairman:** Shall the clause as amended carry?

**Some hon. Members:** No.

**The Chairman:** On division.

**Mr. MacInnis:** No.

**Mr. Knowles:** On division.

Clause as amended agreed to on division.

On clause 373—*Damage not more than fifty dollars.*

**The Chairman:** Shall the clause carry?

**Mr. Fulton:** On division.

Clause agreed to on division.

On clause 365—*Criminal breach of contract.*

**Mr. Fulton:** Perhaps the minister would describe the general effect of the amendments before he moves them—that is, if there are more than one.

**Mr. Garson:** I think the wording of the amendment will be self-explanatory. However, if a further explanation is required, I shall give it.

**Mr. Fulton:** Is there only one?

**Mr. Garson:** Yes, just one.

**Mr. Fulton:** I thought probably there would be two.

**Mr. Garson:** If hon. members will look at clause 365, and follow the amendment I am about to offer, I think it will be easier for them to understand what the amendment does. The amendment is—

> That subclause (2) of clause 365 be deleted and the following substituted therefor:

Then, in subclause 2, paragraphs (a) and (b) will be the same; but instead of the last three lines—

—if, before the stoppage of work occurs, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration—

The following words will be substituted:

—if, before the stoppage of work occurs, all steps provided by law with respect to the settlement of industrial disputes are taken and any provision for the final settlement of differences, without stoppage of work, contained in or by law deemed to be contained in a collective agreement is complied with and effect given thereto.

I would ask my colleague the Minister of Public Works to move this.

**Mr. Winters:** I move:

That subclause (2) of clause 365 be deleted and the following substituted therefor:

"(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or,

(b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization, if, before the stoppage of work occurs, all steps provided by law with respect to the settlement of industrial disputes are taken and any provision for the final settlement of differences, without stoppage of work, contained in or by law deemed to be contained in a collective agreement is complied with and effect given thereto.

**Mr. Fulton:** I am not very happy about this amendment, in so far as it might be an attempt to meet the well-reasoned opinions of some of the labour organizations. That is to say, I do not think that it does meet their objectives in full. If the minister would tell us whether this has been worked out and agreed upon as being fully satisfactory to the labour organizations it might help us to clear our thinking. As I see it, however, I would be inclined to think that it would not be satisfactory.

**Mr. Garson:** Perhaps I had better state the position of the various labour congresses. The Trades and Labour Congress are wholly in favour of the amendment. The Canadian Congress of Labour's position I think I shall state by reading a letter from the secretary-treasurer to myself, dated at Ottawa, April 5, 1954. It reads as follows:

Pursuant to the meeting which was held in your office last Friday, April 2, I wish to advise that the Canadian Congress of Labour has given careful consideration to the provisions of section 365 as it appears in Bill No. 7. You have provided us with a redraft of subsection 2 of section 365—

[Mr. Garson.]

That is a redraft of subsection 2 that has been moved in amendment. I continue:

—and you have also provided us with what purports to be a redraft of section 521 of the Criminal Code of 1892, as it existed prior to the revision of 1906.

Perhaps I may interject there the significance of that sentence. Is my hon. friend aware what happened there?

**Mr. Fulton:** Yes.

**Mr. Garson:** All right, I will go on:

You have asked me to indicate the wishes of the Canadian Congress of Labour in order of preference.

The reason we asked for the wishes in the order of preference was this: We were trying to get a clause in respect of which the maximum amount of agreement amongst the labour congresses might be achieved. And inasmuch as there was no agreement on the clauses we asked for an order of preference so that we might make an effort to meet that order of preference, if it were possible to do so. I go on with the quotation from the letter:

The position of the Canadian Congress of Labour in our order of preference is as follows:

(1) There should not be any legislation pertaining to a criminal breach of contract. The reasons for this position have already been advanced to you.

(2) If there must be such legislation, then we would suggest the implementation of section 365 as it presently appears in Bill 7 without the saving clause which appears at the end of subsection 2, commencing with the words: "if, before the stoppage of work occurs—"

(3) If the government persists in having such a saving clause as aforesaid, then the Canadian Congress of Labour would suggest implementation of section 365 as it appears in Bill 7 or as worded in the redraft supplied to me on Friday.

That is the redraft that has been moved in amendment just a moment ago.

(4) The Canadian Congress of Labour sees no merit in reintroducing the old section 521.

The Canadian and Catholic Confederation of Labour agrees with the Canadian Congress of Labour with regard to suggestions (1) and (2) and expresses no opinion with regard to (3) and (4).

**Mr. Fulton:** Mr. Chairman, it is not easy, when we are faced with an amendment on short notice, as we are here, and are told that the congresses have given it even the rather cautious approval they have, to enter into an argument in detail, but I still have reservations with regard to this change which, as it appears from the text of the amendment, affects only the last three lines of the saving clause. The reason I have these reservations is that it must be admitted that in so far as the present criminal law is concerned, this introduces a new element, an element

which, at any rate, has not been in it since 1906, if indeed it was there before that time. That is why this making a breach of a contract as between an employer and an employee the subject of criminal law in a manner in which it was never previously—

**Mr. Garson:** My hon. friend is quite wrong. It was back as far as 1875 that the English analogue of this legislation was passed with the approval at that time of employers and employees in England; and it was in 1877 that the substance of this English legislation that we are discussing was passed in Canada. That was carried on, in fact, in the Canadian Criminal Code of 1892 and has been the law of Canada therefore continuously from 1877 until the present time.

**Mr. Fulton:** Not since 1906.

**Mr. Garson:** Yes, since 1906, as regards the first three items: "(a) to endanger human life, (b) to cause serious bodily injury, (c) to expose valuable property, real or personal, to destruction or serious injury".

**Mr. Fulton:** Yes; I should have said it is new since 1906 with respect to subparagraphs (d) and (e) of clause 365.

**Mr. Garson:** That is right. But my hon. friend would not be completely accurate if he just dropped his statement there. The reason that this section 365 was not effectively operative with regard to utilities and railways as from 1906 was not through any absence of parliamentary intention but because in the revision which took place in 1906, purely through a draftsman's error, which is quite obvious to one who reads the section, it was so drafted that it was not practically enforceable. If hon. members are interested at all, I could go into the minutiae of the reasons for that. They are technical reasons but I have not found anyone yet, even those who are quite strongly opposed to the clause as a whole, who is prepared to argue that the ineffectiveness of the section as from 1906, in its application to utilities and railways was the result of deliberate policy, or anything else than the result of a draftsman's blunder.

**Mr. Fulton:** The point there is this. It is perhaps not very material except to this extent, that while that may have been the reason, the fact is that since 1906 this has not been a provision, or at any rate not an enforceable provision, of our law with respect to subparagraphs (d) and (e) of subclause 1. Therefore you cannot really say that that fact was not due to the absence of parliamentary intention, because since 1906 to the present time parliament has not acted to make it an enforceable provision of the law. Therefore, how can you possibly say that it was not because of absence of parliamentary intention? If it had been desired to make it a real and enforceable part of the law, then the section would have been amended; but it has not been amended and no attempt has been made up until the present time to change it. That is an argument with regard to history, and perhaps it does not go to the merits of the situation. The merits of the question now are: Should it be made applicable to contracts between employers and employees in this field, whereas in effect it has not been applicable to it before but has applied only to contracts between corporations engaged in this field? Does the minister disagree?

**Mr. Garson:** Yes, I do disagree. As nearly as I can judge, I think that the reason that parliament did not form an opinion in relation to this gap in this section was that until we began the consolidation of the code and had some experts examine the section, parliament was not conscious of the fact that that defect did exist in the section in relation to public utilities and railways. In the interim no occasion had arisen to invoke this section and thus no occasion to see whether it was invocable. It was just a hiatus in the law that no person was conscious of. It is an extraordinary thing regarding this legislation relating to criminal breach of contract, which was the product in England of a royal commission and of great public attention to the report of the royal commission by, as I said before, the employers and employees, who apparently were of the opinion that this was required to meet situations which might arise, that I have not been able to find, nor have my assistants, either in Great Britain or in Canada, any single instance in which the British statute or the Canadian statute had been used as a basis for a prosecution. That is my reason for submitting what, I admit, is just a personal theory of my own that no person had discovered the real effect of the section until we started to examine it for the purposes of consolidating the code.

But there is no question about the policy involved in this section; for if my hon. friend is interested, he can go back and examine the debates when the code was being passed in 1892 when Sir John Thompson discussed this clause, or go back to when Edward Blake discussed it in 1877 under the Alexander Mackenzie government, when it was first introduced, and see their clear explanations for its presence in the law of Canada.

I expect that in future it will not be invoked any more than it has been in the past. This section was introduced into the law to deal with only certain types of labour difficulties. It was not introduced so much in the interests of the employers on the one hand, or labour upon the other, as in the public interest. The distinction was drawn in the British statute in this way. They said, here is a small group of contracts which we think in the public interest it should be a crime to break. One of the occasions of examining this in England was a strike of workmen in the gas converter industry which put a large part of the city of London in darkness for a long period of time. That was a rather outstanding example of the public interest being seriously affected by a wilful breach of contract, and that is one of the things which inspired this provision. Happily, in Canada we have never had to invoke it, and I hope we never shall, but there is no question about the legislative policy which inspired it and kept it on the statute books; and the only reason there has been since 1906 a gap in this section in relation to utilities and railways is bad draftsmanship in the Revised Statutes of Canada for 1906.

**Mr. Fulton:** Perhaps we can leave the historical interest of the matter for the time being, though I believe this observation will be made by responsible labour people who are uneasy—and I am interested only in the responsible ones—that the reintroduction of this provision as part of the Criminal Code, if in fact it has never been invoked, is unsound. I believe they would say that, on the basis that there has been no occasion since 1906 to find out whether it was enforceable with respect to employees, because no case arose. That is a fairly good argument in support of their view, and they claim that if it ever should be necessary to deal with a problem of this nature then the proper place to provide for it is not in the criminal law but rather in the field of labour relations legislation. That is their point and I must say it seems to me a point of some substance.

But I am prepared to leave that argument for the time being and deal with it on the basis that the government put it in the code in the form in which it now is. In that respect, as I understand the attitude of responsible labour organizations, they say that if a breach of contract between employer and employee is going to be introduced into the field of criminal law then you must introduce it in such a form that the normal and recognized rights of labour to strike, after due conciliation processes have been complied with, should not be made the subject of criminal prosecution. That is their concern.



They recognize that an illegal breach of contract is wrong, and they feel the same way as others do in that regard. In fact, they feel as strongly about an illegal breach of contract as any of the rest of us, but they say they do not want this clause used, and I think they are entitled to say that. They agree there should be a prosecution in connection with a perfectly legal breach of contract: in other words, where a contract has been discontinued or broken after the appropriate effort prescribed by conciliation legislation has been complied with. But they were concerned with the wording of the clause, particularly the last three lines where there appears to be room for a maliciously-minded employer to put them in such a position that they would be forced to disregard the detailed terms of some labour statute regarding conciliation and where they might be aggravated and irritated to the point where they would be unable to restrain their members any longer so that a technical breach is committed. This would then be the subject of criminal prosecution, and they feel these last three lines are too restricted in character. I felt they had a case there and an argument which is well founded.

What we have to do, it seems to me, is to look at the proposed amendment to see whether in fact it removes that objection. I have some rather grave doubts as to whether it does. It restates it in different language, it is true, but it still seems to me to tie them down pretty tightly as to the exact steps which must be taken, the absence of which, they say, should not be made so much a matter of criminal prosecution as a process in the field of labour legislation. I drafted an amendment so that that principle would be there, the language of which, I submit with all humility, achieves that purpose rather better than the present amendment. My amendment was in this form, that the clause be amended by deleting from subclause 2 the words in the last three lines and substituting the following: "If, before a stoppage of work occurs, there has been a bona fide attempt by such a person or a bargaining agent to invoke and observe the provisions of the law then and there in force relating to the settlement of industrial disputes". That is an attempt to state the general principle that, provided the employee or the union has made a bona fide attempt to abide by the terms in force under any labour legislation which might cover a particular contract, and that, if he or they made that bona fide attempt to abide by these provisions, a breach of contract, or a strike, if you like, subsequent to that shall not then afford an opportunity for criminal prosecution. I believe it is sound to suggest that that

principle should be stated in broad general terms, leaving it to the court to decide whether there has been that bona fide attempt, because it is difficult to draw an absolute distinction here and determine who is responsible, the employer on the one hand or the employee on the other.

But we do know, as a matter of fact, that there are some employers, unfortunately, who do not share the generally accepted view with regard to labour unions and will place obstacles in their way and will, in fact, at times conduct themselves in such a manner that the task of the union on its side to comply with the regulations regarding industrial disputes is made difficult. For that reason we could state this general proposition, that provided the employee or the organization has made this genuine attempt to comply with the terms of labour legislation covering industrial disputes, it should not be possible to lay criminal prosecutions, although you might still be free to invoke whatever the provisions are of the labour legislation or the terms of the civil law with regard to the breach of contract. As I say, with all due humility, I rather feel that the type of amendment I had in mind would achieve that object better than would the amendment moved by the minister. I will send him over a copy of the amendment and I would ask him if he would consider the possibility of accepting it as a substitute for his own.

**Mr. Garson:** Perhaps I might deal with the hon. member's suggestion now. I am afraid that I would not accept it, Mr. Chairman, for this reason. I do not for a minute hold myself out as being any better labour lawyer than is my friend the hon. member for Kamloops.

**Mr. Fulton:** I do not think that either of us is particularly well qualified in that field.

**Mr. Garson:** No; I do not think we are. Labour law is quite intricate law. I prefer to rely upon specialists in this field. When we have had this particular clause in the Canadian law for upwards of seventy years and when we were consolidating the code and had fairly clearly decided as a matter of policy that the substance of this law was to be carried on, it seemed to me that the most intelligent way of providing for a wording that would continue that substance in a manner that would be acceptable to these people who were immediately concerned, namely the labour congresses on the one hand and the employer interests on the other, was to go directly to them, let them bring in their legal counsel, sit in with us and see whether we could work out a satisfactory wording upon which agreement could be secured. I do not pay any disrespect to my friend the hon. member for Kamloops when I say that I would quite honestly prefer the views of Mr. Maurice Wright, for example, counsel for the Canadian Congress of Labour, to those of my hon. friend and I would prefer Mr. Crysler's views, because these are men who are competent specialists in this field.

**Mr. Fulton:** But sometimes they have to be content with what they can get. It does not necessarily mean that what they can get is what they want.

**Mr. Garson:** No, it does not necessarily mean that what they can get is what they want. First of all, in legislation one has to decide on what the policy is to be. But even after that decision has been made there is always involved, in a matter of this kind, the intricate problem of draftsmanship. The best thing to do in a specialized field of this sort is to go to the people who are experienced and competent. That is what we have tried to do. The result is that the Trades and Labour Congress accepted this wording that I have moved. The Canadian Congress of Labour in effect say, "We do not want the legislation, but of course that is a question of policy. If you are going to have legislation, then we would prefer to strike out this 3-line clause at the end of clause 365 (2) of the bill entirely." It seemed to us that to do this might make it possible for a wildcat strike to frustrate completely the intent of clause 365. The Canadian Congress of Labour's next choice was the saving clause that is provided by this amendment which I have moved. That means that so far as the drafting end of it is concerned the two congresses, as a matter of draftsmanship, approve of the wording in the way and to the degree I have indicated. I may also point out that Mr. Crysler says that as far as he can judge there are no defects in this wording having regard to workability. That is an important consideration.

I am sure I do not need to inform my hon. friend that the provinces of Canada have their labour codes. We have our labour code in the federal field, namely the Industrial Relations and Disputes Investigation Act. When one drafts a provision of this sort in the Criminal Code, cognizance must be taken of these other laws. The wording we have here is the result of efforts in consultation with the men whom I have named, whom I certainly regard as being experts in this field, to draft a workable section in order to perpetuate in the law this penalizing of a wilful breach of contract.

There is one other point I should like to make. This wilful breach of contract is by no means confined to labour unions. It applies to everyone. If there is an unlawful lock-out it applies. If there is wilful breach of contract on the part of some company that has nothing to do with labour relations at all, it applies. The purpose of the application is to see to it, amongst other things, that there shall be a continuous supply of light, heat, power and transportation for society, and that human life will not be put in danger, that serious bodily injury will not be caused and that valuable property will not be exposed to destruction or serious injury.

**Mr. Knowles:** The minister has proposed an amendment to his own proposition and the hon. member for Kamloops has proposed another one. As I see it, neither proposition is acceptable. If I may, I should like to deal first with the proposal put forward by the hon. member for Kamloops. It seems to me that it is just as unacceptable as are the last three lines that are now in clause 365. Whether you keep clause 365 as it is with those last three lines in it which read:

> . . . if, before the stoppage of work occurs, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration—

—or whether you substitute the words suggested by the hon. member for Kamloops, you are limiting the saving clause by whatever labour legislation is now on the statute books of Canada or on those of any of the ten provinces. You are also limiting it by labour legislation that might, in the future, be put on the statute books in any of the provinces. I think that that comment applies equally to the last three lines as they now stand in clause 365 and to the proposal made by the hon. member for Kamloops.

In my view the position taken by the Canadian Congress of Labour is the correct one, namely that we should not have this legislation at all, bearing as it does on trade union contracts. I agree with the position taken by the Canadian Congress of Labour—and it is a position that has already been argued effectively by the hon. member for Kamloops—that any matters affecting trade union contracts should be covered in labour codes or in labour legislation rather than in the criminal law.

As I say, we never know what changes may be made in the law of the provinces. We never know when some province may have in power a provincial government with an anti-labour bias which can change the labour law of that province, with the result that the activities of labour unions within that province could be brought under the umbrella of the Criminal Code, resulting in an effect which was not the intention of parliament at this stage of the game.



Therefore when the minister tells us that some of the labour people have an order of preference, I do not think it should be suggested that the second or the third choice is really very acceptable. It may be a second choice or it may be a third choice but there is a long gap between the first choice and the second choice. When the minister indicated to us earlier in the discussion—I believe it was yesterday—that there were going to be amendments to clause 365, I had hoped that he would consider an amendment which I understand was laid before him a few days ago by the representatives of the Canadian and Catholic Confederation of Labour. I understand their proposal was that clause 365 be amended by deleting the present subclause 2 and inserting the following:

> 2. No person wilfully breaks a contract within the meaning of subsection (1) by reason only that
>
> (a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or
>
> (b) he stops work as a result of his taking part in a combination of workmen or employees for their own reasonable protection as such workmen or employees.

The proposal that was laid before the minister by the Canadian and Catholic Confederation of Labour, and which I believe had the support of some of the others whom the minister saw the other day, stopped there. In other words, their proposal was that the last three lines that are now in clause 365 should be omitted. Thus they would prefer not to have the words the minister has proposed or the words proposed by the hon. member for Kamloops. The effect of the proposed amendment I have just read would have been to make this saving clause really a saving clause so far as labour is concerned.

My basic position is that we should not have a section that requires a saving clause of this nature so far as trade union contracts are concerned. The minister gave us quite a little story about parliament in the past not being too conscious of what it was doing on one or two occasions. Well, we are conscious now of what we are doing. We know now that clause 365, if enacted, will relate to corporation contracts and will also relate to trade union contracts. It is our very strong view that trade union contracts should not be the subject of criminal law but should be confined to the Industrial Relations and Disputes Investigation Act, so far as federal labour relations are concerned, and to the labour codes so far as provincial labour relations are concerned.

With respect to the amendment that the minister has moved, I find it a bit of a toss-up whether it is any improvement on the wording now before us in clause 365. He says that in some order of preference it is acceptable to some of the trade union groups. This wording has just been presented to us and naturally none of us has had any opportunity to consult with any trade union people on it. But my first reading of it, indeed, my fifth and my tenth reading of it, make me feel that it still further restricts the saving effect of the so-called saving clause. The minister shakes his head.

**Mr. Garson:** Shakes his head in dissent.

**Mr. Knowles:** Oh yes, that head was going from right to left. The words that the minister proposes to add, it seems to me, add another condition that has to be met before the trade union concerned gets the benefit of the saving clause. Before this amendment was put forward the only condition unions had to meet in order to get the benefit of the saving clause was to make sure that all the steps provided by law had been taken. Now, in addition to that, any provision for the settlement of differences, without stoppage of work, contained in or by law deemed to be contained in a collective agreement must be complied with and effect given thereto.

As I say, it seems to me that is an addition to the conditions that must be met before a question involving a trade union contract can be said to be beyond the pale of clause 365. If the minister can offer an explanation showing that it does the other thing, perhaps we can toss again as to whether this amendment is better than the minister's original wording. So far as I am concerned, it is little more than a toss because both of them are quite unacceptable. It seems to me that a change is being made here that should not be proceeded with at all. For my part, I think it would have been better if the government had retained, with such amendments as would need to be made to bring it up to date, the wording of the old section 499. A number of changes would have had to be made if that had been brought forward—the reference to hard labour and some points of that kind.

But it does seem to me in reading the wording of the old section 499, and it is a very long one, that the whole context of it related much more clearly to contracts by companies and corporations whereas the wording of clause 365 is so much broader that it has definitely brought trade union activities within the compass of this breach of contract legislation. I appreciate the fact that the minister has continued meeting the labour people right up to the eleventh hour so far as the code is concerned. I appreciate the fact that he has made some changes in some of the other sections that have improved them slightly, but it seems to me that with respect to clause 365 he has not filled the bill, and even with the amendment he has proposed this whole clause is quite unacceptable.

**Mr. Winch:** Mr. Chairman—

**Mr. Garson:** May I reply? I do not want to stand in the way of the hon. member for Vancouver East, but I think I should reply now to some of the specific points raised by the hon. member for Winnipeg North Centre. In the first place, I think I should make it clear—perhaps I did not do so sufficiently before—that the revision in 1906 was the same kind of general revision of the statutes of Canada that took place in 1927 and in 1952. Such revisions are conducted by revising officers or draftsmen and never come before parliament at all. Therefore when I say that parliament did not exercise any legislative intention with regard to leaving out public utilities and railways so far as the operation of this bill is concerned, I mean precisely that. This revision was conducted by drafting experts—at least, they pretended to be experts but they were not very expert in this particular matter.

**Mr. Knowles:** Parliament had many years in which to correct that if it felt it necessary.

**Mr. Garson:** Quite so but, as I say, it has never had to be invoked. I do not think any person was conscious of the fact until we came to examine the consolidation of the Criminal Code. When we got to it I must say that I was quite embarrassed. I called in the labour bodies and said, "Now, the law is not effective in this field now. I think there is no doubt at all as to what the intention has been all along, and I am telling you candidly that we will have to make this section effective with respect to utilities and railways as it has always been with regard to these other classes that are affected by it."

As I have indicated before, we have been discussing the means by which that might be done. At the conclusion of his remarks a moment ago the hon. member for Winnipeg North Centre raised the point that he thought it might be better to restore the wording of the provision of the 1892 code. We put that up to the labour congresses, and that is covered in this letter that I got only two or three days ago. We said: "If we cannot reach any kind of agreement on this clause, would you prefer that we should wash out all these long drawn out discussions and just re-enact the provision of 1892? Mind you, I have no right to make this offer to you as a firm offer. I have to clear it with my colleagues and the

like, but what do you think about it?" The answer came back in this letter. They rejected that alternative and they said that while they would prefer to have the act removed from the statute books, where it had been for over seventy years—of course, I am sure they must have realized that suggestion was not very realistic—if there must be legislation of this sort their second choice would be to strike out the three last lines of clause 365 (2) that are now in the draft bill, and if that were not considered feasible then they suggested we adopt the wording which is now before the members of the committee.

**Mr. Winch:** I wonder whether the lawyers and the ministers would mind if the small voice of a trade unionist were heard for a few minutes? I am very much interested in clause 365, and I am very disturbed by it. I speak as a trade unionist, and also as an electrician. I have had the honour of being a member of the international brotherhood of electrical workers for some twenty-eight years. This section specifically mentions workers in light and power industries and places certain restrictions on the activities of trade unionists in those fields if they take certain action. Quite honestly, Mr. Chairman, I feel that this section is dangerous or can be dangerous to the workers and trade union to which I belong. There is specific mention in this provision of light, power, gas, and water and the workers in those industries are brought under the Criminal Code. They are subject to certain penalties if they strike without following certain procedures. There are others who are in what we might term public utilities or public services, who are not mentioned here, and who do not have the right to strike because of an agreement under provincial legislation. I know that in British Columbia the policemen and fire fighters have an agreement under which they have no right to strike. However, it is mandatory under that act that in any dispute the majority award of the arbitration board be accepted by both parties to the dispute.

The electrical workers are in a different position. I think they are in a dangerous position because they are brought into this Criminal Code. If we felt absolutely certain that every provincial government was going to be a fair government, and have on its statute books fair labour legislation, then we would not be too much worried about section 365 as it is now or as the minister proposes to amend it. However, we have not got that assurance that we will have fair governments and for all time to come. We know of certain types of legislation in Quebec. We know right now that if you take the viewpoint of all the trade unions in British Columbia concerning labour legislation now before the legislature, they consider the government as anti-labour. Yet, the government is determined to put through this legislation that is bitterly, completely and unanimously opposed by labour. Since they are determined to put it through, it automatically follows it will be enforced.

If enforcement is found to be impossible, as labour now feels it is, then under provincial legislation there will be penalties imposed because the labour laws of the province have been broken. I say to the minister, Mr. Chairman, that I believe it is most unfair to place the trade union movement, for all future time or until the provision might be changed, again in a position of being under the complete domination of an anti-labour government. If the union did not conform to the provincial legislation, then it would also be committing a criminal offence. As a matter of fact, I feel that most of the penalties provided for the infractions of the provincial legislation are not nearly as serious as the penalties we now have under the Criminal Code. I think it is unfair to have this double-barrelled shotgun aimed at the trade union movement of this country. I also think, sir, that it is not justice to give power into the hands of potentially anti-labour governments so that they can legislate as they please within their jurisdiction with the knowledge that this parliament has carried it forward into the Criminal Code without knowing what may be on the statute books of a province in the future. Actually, that is what we have in this clause. I cannot see any other way of putting it. We are giving a blank cheque power to the provincial legislatures to deal with the trade union movement in their province. I am not going to repeat these arguments that have been mentioned before. I want to say this as a member of the union that is most vitally affected by the measure, as a trade unionist, and as I say I am somewhat concerned. I can only ask the minister if he cannot see that inherent danger, if he cannot see the position in which it is going to place thousands of workers, and so remove the application of the Criminal Code to an individual who breaks a provincial statute.

**Mr. Gillis:** I am just going to say a few words on this subject. Either the Canadian Congress, in the memorandum they presented to the minister in February, 1953, is wrong —I think that was the only major job they did—or else the minister is wrong. The minister stated that this is not new and has been in the code since 1892.

**Mr. Garson:** And since 1877, in Canadian statute law.

**Mr. Gillis:** Since 1877, then. The minister has admitted that Maurice Wright, who advises the Canadian Congress of Labour, is a fair lawyer and specializes in this field. In that memorandum on clause 365 they have devoted a great deal of space to their criticism, much more than they did to any other clause. If the minister will look at that memorandum, in the second paragraph dealing with this section, he will find they had this to say:

> For one thing, this section embodies a legal concept not found elsewhere in our law: that a person can be prosecuted under the Criminal Code for breach of a civil contract. Traditionally, breach of a civil obligation involves the right to seek a remedy in the civil courts; for example, a right to sue for damages, or to restrain by injunction. Section 365 provides that in certain circumstances breach of contract, a civil matter, shall also be punishable by a court of competent criminal jurisdiction. This is a principle which, if admitted at all, should be admitted only because of the most clear and overwhelming public necessity, and confined within the narrowest possible limits. No such necessity has been shown in this instance, nor is the principle so confined.

I would judge from that comment on this particular section that it is a new principle that you are now permitting union strikes to come under the Criminal Code, whereas the general principle in law is that breach of contract is tried in the civil courts. It is a civil matter; it is not a matter for the Criminal Code.

I want to say, further, that I agree with the congress officials, or the representatives of labour, when they say that, in so far as it affects union contracts, it should not become operative. Evidently the minister says that it will be, so that is what we have to deal with.

Those who are connected with labour look upon this clause as the thin edge of the wedge in connection with the outlawing of strikes. That is their conception of it. Rightly or wrongly, they see it that way. That labour movement is exemplified by the three large congresses in this country, and I would point out to the minister that in a time of trouble they are pretty good allies to have. There has never been any suggestion that in troubled times they have been unfair, or have taken any advantage of a state of emergency. We want to be most careful, I should think, that in legislation of this kind we should not do something or say something that might cause the disaffection of those allies, who might be so useful in time to come. If we adopt a reasonable attitude toward them, and show them we are going to be fair, they can make a better contribution.

However, they do feel that this is the thin edge of the wedge. So long as this provision affecting trade union agreements is in the code, I do not think it will be possible to find any wording that would soften the effect or would make it more palatable.

If the minister insists that the clause remain, then I suggest to him that the clause as it now appears in the bill is just as good as the proposed amendment because, in my view, the amendment is as it has been described by the hon. member for Kamloops.

After this discussion is concluded, and if it appears that the clause is going to remain as he has suggested—and apparently it will—I intend to suggest that we should try to have it pinned down to some particular person who can say when, so far as trade union agreements are concerned, this clause should become operative. I would like to see inserted a paragraph following subsection 2 that would place the onus on the attorney general of a province of deciding when the clause might become operative in the matter of trade union agreements.

While the hon. member for Vancouver East did not appear to like the type of government in British Columbia, and there seemed to be a feeling that there is danger in the kind of government we find in Quebec, the fact remains that it is the employers I am afraid of. I fear the employer who wants to carry on some sharp practice. While the provision may have been in existence since 1887, that employer might not have known about it. As a matter of fact, in the discussion of the Criminal Code we have been smartening up a lot of people about laws they could have been using. From now on they may use them—and especially those employers who, in violation of a contract, may want to outflank or bypass a labour code in a province or, so far as that is concerned, a national labour code. Penalties are provided for the violation of contracts; and if an employer did not want to take a chance he could take action under the Criminal Code, in its present wide-open state. But if we placed the responsibility upon an attorney general for the decision as to when the clause is to become operative, then at least we would have a guarantee that the attorney general would see that all the machinery in the province in connection with the labour code would be exhausted before he would permit action under the Criminal Code.

After we dispose of this amendment I will ask the Minister of Justice if he will consider what I have been saying. I shall send him a copy of what I have in mind. So far as I am concerned, the only way we can soften this up would be by putting someone in a position to

say when it would be operative. While an attorney general may not like that, I think the safeguard is necessary.

**Mr. Herridge:** Mr. Chairman, I rise to speak briefly in support of the opposition expressed concerning this amendment. I do this because there is widespread opposition to the clause among the working groups in Canada.

I would point out that I have received many representations from my own constituency about this clause. The largest group of organized labour in my constituency is the international union of mine, mill and smelter workers, who have expressed strong objection to the clause. All affiliates of the Canadian Congress of Labour in my constituency have expressed similar objection and, to the best of my knowledge, the local affiliates of the Trades and Labour Congress of Canada have done likewise. Sometimes the local business agent or local official, who is more closely in touch with the day-to-day life of the working people concerned than the union is, has a better idea about what the rank and file are thinking than do some of the persons in high places.

I, personally, have not had any experience as a trade unionist. As I have said before, I have been a peasant farmer all my life. However, I do listen to what these people have to say. And when I find such united and general opposition to a clause, as I do in this instance, I realize there must be good grounds for that opposition.

Quite recently I received a letter from the secretary of the building trades council of Vancouver, New Westminster and district, in which he deals with this clause. The letter is signed by Mr. E. Kennedy, secretary. Apparently the council retained a well-known firm of barristers and solicitors in Vancouver to make a study in particular of clauses 365 and 372. After making this study the lawyers in question wrote as follows to the labour organization:

> Pursuant to your request for a considered opinion on sections 365 and 372 of Bill 7 and pursuant to my suggestion to you, I have engaged senior counsel Mr. Thomas F. Hurley, to give an opinion. As you know, Mr. Hurley is eminent in the field of criminal law and his opinion carries considerable weight in our profession.
>
> Accordingly, I enclose the opinion given by Mr. Hurley. I must say that I have read the same carefully and can only agree with the conclusion therein set forth.
>
> Please be assured that both Mr. Hurley and myself will be pleased to elaborate further upon request.
>
> Yours very truly,
> Shulman, Fouks and Tupper
> per "I. Shulman".

The name of Tupper is, of course, a distinguished name in Canada.

[Mr. Gillis.]

When I receive representations from all sections of labour in my constituency, in which they express views that are held generally across Canada, and when I receive the considered opinion of well known counsel I, as a layman, and without any special or personal knowledge of the situation, must be of the opinion that there is some ground for the opposition expressed with respect to this clause.

I should like to quote briefly from the brief prepared by Mr. Hurley with reference to clause 365. He says:

> It is to be noted that it is almost inconceivable that there can be any strike that does not come within the purview of subsection (1). The phrase "valuable property, real or personal", opens the door wide to every kind of strike that it is possible for me to imagine.

Then he goes on to say:

> It has been suggested that subsection (2) is a saving clause. I consider this to be unfortunately not so. Rather, it seems to me to emphasize the brutally negative aspects of subsection (1).
>
> Subsection (1) makes virtually any strike illegal, under an infinite variety of circumstances. Now, examining subsection (2) (a) it will be seen that the so-called saving clause places the onus on the employee first, to show that the only reason he stops work is as a result of the employer and himself failing to agree upon any matter relating to his employment. I assure you that such proof could be difficult indeed, as any other reason could be sufficient to eliminate the "saving" effect. In addition, the onus is placed on the employee to prove that before the stoppage of work occurred, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration.
>
> The additional burden thus placed upon the accused has numerous dangerous aspects. It places the employee in the position of having to determine questions which, in many cases, might well give pause to experienced counsel . . . when have all the steps been taken? Have each of the steps been properly taken? Has there been any defect in the proceedings which could subsequently face the employee with an unexpected legal interpretation? The employee could easily be placed in the position of having ceased work, thinking that all steps have been taken, only to find that this was not so. It is well known that ignorance of the law is no excuse. An employee might, therefore, carefully proceed through all the manifold intricacies, only to find himself faced with possible serious consequences, because he or his solicitors have overlooked or misunderstood a requirement of a provincial statute.
>
> Perhaps an even more glaring danger lies in the fact that by this proposed section of the Criminal Code the dominion government would give power to provincial governments to legislate crimes into existence, at their whim—

I think that point was well made by the hon. member for Winnipeg North Centre and the hon. member for Cape Breton South. I continue:

> —leaving labour at the complete mercy of any provincial government. That this may well give the labour movement cause for alarm, is certainly clear from an examination of the recent record of certain such governments, notably that of Duplessis of Quebec. This legislation would give

Duplessis' government, or that of any other province, complete power of legal life or death over all trade unions in its jurisdiction.

It makes it possible for a provincial government to insist upon compulsory arbitration, with government-appointed arbitrators, and with criminal sanctions to enforce them.

It makes it possible for a provincial government to make strikes illegal, with like sanctions.

It makes it possible for a provincial government to remove virtually all of the rights labour has won throughout the centuries.

The proposed section 365 can be described, not as a step toward a police state, but as a final step into a police state in so far as labour is concerned.

Now, Mr. Chairman, these concluding sentences are written in quite strong language but they are written by an eminent counsel in Vancouver, and because of the basic feeling of labour as a whole, from its experience in the past and because it is also the opinion of eminent counsel, I as a layman can do nothing else but support the objections raised by previous speakers to this amendment.

**Mr. Garson:** Mr. Chairman, I am not aware of the eminence of the counsel to whom my hon. friend referred, but if this opinion from which my hon. friend quoted is a sample of his handiwork one can only wonder how he became eminent, because I cannot imagine any responsible counsel dealing with a matter of this kind expressing a legal opinion in the language which he has used.

It has been suggested that this is a new principle that is involved; that this is the first time, in 1954, we are introducing this new principle into the law. In proof of the fact, I think pretty conclusive proof of the fact, that that is not so I should like to read very briefly from the remarks of the lord chancellor in England when he introduced the British statute in 1875. He said this:

The government decided to draw a broad line of demarcation between civil and criminal breaches of contract and to leave that line to be determined, not by the tribunal, but on the face of the act of parliament itself.

The employers and workmen bill dealt with civil breaches of contract alone, laying down the general rule—apart from certain exceptions which came under the other bill—that breach of contract which resulted in damages should be treated as giving rise to a civil remedy, and not as constituting a crime.

Certain procedure was set up where the damages were under or over £10.

The breaches of contract which were to be made criminal in future were included in the conspiracy and protection to property bill.

That was the bill he was introducing. It is the British analogue to this legislation. I continue:

That bill dealt first with questions affecting the supply of gas and water. It provided that where a person employed by a municipal authority or a company wilfully and maliciously broke a contract of service, knowing or having reasonable cause to believe that the probable consequences of his doing so would be to deprive the public of gas or water, he should be liable . . . They held that a person so acting not only committed a breach of contract incurring civil damages, but a criminal offence for which he ought to be criminally responsible . . .

Then the next clause (5) proceeded exactly on the same principle as clause 4, the only difference being that it contemplated a breach of contract, whether by a person serving or by a person hiring, which involved serious injury to life, personal injury or which exposed valuable property to destruction or serious injury. There, again, a breach of contract having those consequences was treated differently from a mere civil contract.

That legislation went through. It has remained upon the statute books of Great Britain ever since, and I for one have never regarded Great Britain as being a police state in the language of this eminent counsel of Vancouver who said that we were on the way to becoming a police state if we continued in our law a principle which has been there for over seventy years, and which during the whole of that period of time has been on the statute books of Great Britain.

When the Canadian bill was introduced in 1877, the Hon. Edward Blake, who was then minister of justice, gave the following explanation. He said:

In these modern times, the enormous inconvenience of stopping the whole system of communication between one part of the country and the other was very apparent, and he was justified in holding that any man who produced that result by wilfully breaking his contract was guilty of a crime. The principle of that portion of the bill was similar to the English act. But he wanted to avoid class legislation and therefore he had made the law applicable to others as well as to workmen engaged on railways.

Included in that were public utilities. As a matter of fact, the original English act applied only to gas because at that time they did not have electricity; but as soon as they had electricity it was brought in under the British section. Later on Sir John Thompson —I apparently have not the quotation with me—in carrying forward the same provisions into the code of 1892, gave a similar explanation of this difference between a civil breach of contract and a criminal breach of contract. Therefore the suggestion that we are now in 1954 even attempting to foist upon the Canadian people some new principle of law is really quite without foundation. What we have been seeking to do is simply to carry forward a principle of law which has been on the statute books, recognized both in Great Britain and in Canada, from 1875 in the case of Great Britain and from 1877 in the case of Canada, continuously until the present time, and I think a pretty salutary principle of law. What I find most extraordinary is, if it is open to all this abuse that Mr. Hurley says it is open to, that in that period of time neither in Great Britain nor

in Canada has there been a single case in which any trade union has ever been prosecuted under it.

My hon. friend quotes from sources that he regards, I suppose, as reliable, but I should like to quote from a letter which was sent out by the Trades and Labour Congress of Canada to all of its affiliated unions after a lot of propaganda had been spread amongst its locals in opposition to this provision in the Criminal Code and to the other labour sections generally. On page 4 this is what the Trades and Labour Congress of Canada had to say with regard to section 365:

> This section 365 dealing with a criminal breach of contract is now in the Criminal Code—

That is quite true, but it was defective so far as utilities and railways were concerned. That quality of not being operative however was not apparent to the lay reader. It required a fairly astute lawyer to discover that it was defective in relation to utilities and railways. But so far as parliamentary intention was concerned it was on the statute books and it was intended during all of that time to be on the statute books.

I continue to read from this Trades and Labour Congress letter:

> This section has never been used against trades unions.

That statement is quite true. So far as I know no union has been prosecuted under it.

> However, the executive council of the congress sought and obtained an amendment which is now contained in section 2 which clearly states that an employee or a trade union does not break such a contract because of a legitimate work stoppage arising from an industrial dispute.

Now, I make no aspersions upon this eminent counsel Mr. Hurley when I say that I would prefer to have the views of the national executives of the Trades and Labour Congress as set out in this letter. May I add, in addition, that these are the views not only of the executive but views which were approved in the convention of the congress held a short time ago.

**Mr. Ellis:** Mr. Chairman, the minister in his remarks did not, I believe, deal with the most pertinent point raised by the hon. members who have just spoken. If Canada were a unitary state and if this government could establish a fair national labour code and then apply this clause there might be a little more validity to his argument, but the objection which has been raised by the hon. member for Winnipeg North Centre, the hon. member for Vancouver East and in the letter quoted by the hon. member for Kootenay West was that this legislation deals with various provincial legislatures, and we find that even in the amendment proposed by the minister namely:

> . . . if, before the stoppage of work occurs, all steps provided by law . . .

Now, the "steps provided by law" are the regulations or the laws in effect in the ten provinces of Canada. It simply means that we are now concerned with the law which is going to be applied differently, or interpreted differently, in perhaps ten different provinces of Canada. I think it should be a principle of law that the law should apply to all Canadians. Here we are faced with a situation where a particular province in Canada can enact labour legislation which denies the trade unions all the hard-fought-for and hard-won gains they have made and which would make it virtually impossible for them to comply with a particular provincial law.

Under these circumstances, if the union felt it necessary to go on strike they would be, under the terms of the provincial law, guilty of a breach of contract. A statute passed by the federal parliament will then be used by this province for the purpose of prosecuting and possibly jailing trade unionists.

To me that is the crux of this matter, namely the penalties provided for in this clause will be applied and enforced in terms of laws passed by the various provincial legislatures and, as I have suggested, it is altogether possible that a provincial legislature could enact labour legislation which would make it virtually impossible for a trade union to carry on its normal operations without breaking provincial labour laws. Under these circumstances, this clause could be used to punish these trade unionists. I wonder if the minister would care to comment on that, because that is the point which causes us the greatest concern.

**Mr. Garson:** I will be very glad to comment on it. I withheld any comment upon it because I was afraid it might be difficult for me to express myself in language which would not be offensive. I will try to express myself in inoffensive language. But may I remind my hon. friend and those who preceded him with the same argument that they are talking about a clause in this bill which was put there at the express request of the labour congresses, and these arguments they have made have no relevancy except in relation to a saving clause which has been put in the bill at the request of the labour congresses.

**Mr. Knowles:** Not the whole clause; just the saving part.

**Mr. Garson:** No. If my hon. friend will look at the briefs submitted by the labour congresses in relation to this bill as drafted in the first place, and which merely continues the former section 499 in the form of clause 365 of this bill, he will see that these briefs asked that it be made clear in this bill that it would not apply to a lawful stoppage of work. In order to give effect to their request we drafted this clause. We wanted to meet them half-way. We have nothing against organized labour. We have many reasons, of which my hon. friends of the C.C.F. group will be conscious, of wishing to be friendly with labour, just as they wish to be, so when they came up with the request that there should be a saving clause put in here covering a legitimate industrial dispute or strike we said: "Yes, by all means."

The argument advanced by the hon. member for Vancouver East, the hon. member for Regina City and some other hon. members on the other side of the house, to the effect that we are trying in this parliament to bring the labour unions of Canada under the control of terrible provincial legislatures which are going to take away their rights are absurd. For the only basis they have for that argument is the saving clause which we have put in the bill at the express request of the labour congresses themselves. There is no other basis for this branch of their argument.

Now, Mr. Chairman, I come to another point. A good deal has been said about a police state by this lawyer in Vancouver and we find this opinion quoted at great length on the editorial page of one of our local papers in the form of a letter written to that paper over the signature of a man who is the national executive secretary of the league for democratic rights, a communistic-front organization. These gentlemen talk about the police state, but what sort of argument is it that a provision in a federal law puts anyone at the mercy of a democratically-elected provincial legislature anyway? Is that argument a vote of confidence in democracy? What is this idea of being at the mercy of parliament or at the mercy of any legislature which is elected by the free vote of the people of Canada?

I did not take part in this debate before because I felt I would have some difficulty in restraining my indignation in the face of an argument of that sort. For if such an argument is made before a committee of this house or made in this country, it is a clear expression of want of confidence in the whole democratic process. The idea is that any law of this sort might depend upon a future law passed by a provincial legislature, and the people involved cannot take the chance of being "put at the mercy of" a democratically-elected Canadian legislature. They would be taking a chance in Russia or in other countries where they do not enjoy freedom of the franchise but surely not in Canada. I realize in saying this that we have had poor governments in this country on some occasions and poor legislatures also; but who, may I ask, put them there? Was it not the people themselves? And surely the people themselves who put them there are free to put them out on another day. Perhaps it would not be a bad thing if they did that in some cases. This argument is not up to the high democratic conceptions which I am prepared to admit that the C.C.F. party have displayed on happier occasions. I do not think it does them credit.

**Mr. MacInnis:** The Minister of Justice has departed from his usual role. He has usually been very fair in this matter but he has stooped to political manoeuvring and to drawing red herrings across the trail—

**Some hon. Members:** Oh, oh.

**Mr. MacInnis:** Oh, yes; I heard it. He has stooped to political manoeuvring and to drawing red herrings across the trail when he says any government of Canada elected by the will of the Canadian people is one to which you can trust everything. That is not what my hon. friend says when he is talking about this party on the political platform. That is what he said here today. It is not what my hon. friends over there on the other side of the chamber said either.

**Some hon. Members:** Oh, oh.

**Mr. MacInnis:** I know, because I have heard what was said, and I can also read. The Minister of Justice says that this provision has been on the statute books since 1887, if my memory serves me aright and I believe he said it is almost unchanged. But if it was there on the statute books and almost unchanged, why did the labour movement of this country—the Trades and Labour Congress of Canada as well as the Canadian Congress of Labour—rush here to tell the minister how dangerous this act in the present case would be to organized labour and to suggest the amendment that has been made to it, if it has been unchanged? The fact is that previously the clause we are dealing with now applied—at least I think it was

so considered—to employers that held contracts and did not apply to labour organizations. I believe an amendment was made in 1927; when there was some suggestion that it did apply or might apply to labour organizations, an amendment was made to prevent that being the case.

**Mr. Garson:** Might I ask my hon. friend a question?

**Mr. MacInnis:** Yes.

**Mr. Garson:** Did I understand my hon. friend to say that this statute had applied only to employers when it was first passed?

**Mr. MacInnis:** I believe that was the understanding.

**Mr. Garson:** Oh, no.

**Mr. MacInnis:** It was the statement made by the representatives of the Canadian Congress of Labour when they appeared before the parliamentary committee.

**Mr. Knowles:** The minister himself said it had never been invoked against trade unions.

**Mr. MacInnis:** I do not know whether it has ever been invoked against anybody.

**Mr. Garson:** That is right.

**Mr. MacInnis:** Here is a law that has never been invoked against anybody. There was no need to invoke it. In order to say that it is more effective than it was before they have got to tighten it up with greater penalties. Surely the commissions that drafted or prepared these revisions of the Criminal Code were short of something to do when they had to deal with matters of that kind. This is a statement made by the delegation that appeared for the Canadian Congress of Labour before the committee:

> For one thing, this section embodies a legal concept not found elsewhere in our law: that a person can be prosecuted under the Criminal Code for breach of a civil contract. Traditionally, breach of a civil obligation involves the right to seek a remedy in the civil courts; for example, a right to sue for damages, or to restrain by injunction. Section 365 provides that in certain circumstances breach of contract, a civil matter, shall also be punishable by a court of competent criminal jurisdiction. This is a principle which, if admitted at all, should be admitted only because of the most clear and overwhelming public necessity, and confined within the narrowest possible limits. No such necessity has been shown in this instance, nor is the principle so confined.

These are statements that were made while the minister was present. If they were not correct statements, they were not answered and they still apply today.

[Mr. MacInnis.]

**Mr. Garson:** Mr. Chairman, I rise on a point of order. I just finished, about three minutes ago, answering it or at least trying to do so.

**Mr. MacInnis:** I know; but what the minister said two or three minutes ago did not have anything to do with this matter. The minister was speaking on a lower plane or level than that which is customary with him; and it was different from that on which he spoke both in this house and in the committee. I should like the minister to understand that I am not saying these things lightly. I am tremendously appreciative of the co-operative attitude of the minister all during the sittings of the committee. I am quite free to admit to him that I never sat in any committee where more willingness was shown to try to meet the views of everybody who had something constructive to contribute. It is because of this that I greatly regret that the minister departed from it momentarily a few moments ago; at least I hope it is only momentarily.

Amendments were proposed and it was announced at the time at least that one of the larger labour bodies never accepted them as being adequate, principally for the reason that has been pointed out, namely, that labour legislation, excepting that part of it that is covered by the national labour code, is under the jurisdiction of the provinces. The provision made here is:

> . . . if, before the stoppage of work occurs, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

That may change from day to day. Indeed in any province laws may be passed which labour would find it absolutely impossible to accept. Before I sit down I am going to draw to the attention of the minister something along that line. I think the hon. member for Vancouver East referred to the new labour bill that has been proposed and perhaps, for all I know, has been passed in British Columbia. R. K. Gervin, secretary of the British Columbia trades union congress, general secretary of the trades and labour council of the New Westminster and Vancouver district and vice president of the Trades and Labour Congress of Canada, when appearing before a committee of trade unionists at a meeting with the minister of labour of British Columbia, said this:

> We do not want you to force us into the position of rebelling against something which is impossible—and this bill is impossible.

Then another representative of the trade unions said:

We are not here to legislate our unions out of business and that is what we would be doing if we allow this bill to go through.

Then another labour leader said:

To get justice (under the new act) is a luxury which small unions can't afford—there will be some decertifications because our members will never cross the picket line.

In a report in the Vancouver *Province* of April 1, dated from Victoria, we find this:

Thinly veiled warnings from British Columbia top labour men that labour-management relations are headed for real trouble if the government persists in pushing through its new labour legislation highlighted the second day of a joint meeting of British Columbia major labour organizations today. One speaker after another, supporting the conference decision in asking the government to withdraw the bill for further study, said bluntly that labour does not intend to give up rights it has won.

There is a danger here in the election of an irresponsible government. Irresponsible governments can be elected and it takes a little time to get them out of office and to right the wrong. There is the danger here that this provision puts trade unions under the necessity of complying with a labour law with which they cannot comply. I do not know whether the amendment proposed by the minister is an improvement on the clause found in the bill as it came from the parliamentary committee. I am rather disturbed about some of the words in the last part of it, particularly these:

. . . if, before the stoppage of work occurs, all steps provided by law with respect to the settlement of industrial disputes are taken and any provision for the final settlement of differences, without stoppage of work, contained in or by law deemed to be contained in a collective agreement . . .

**Mr. Knowles:** That is dangerous.

**Mr. MacInnis:** Who is going to decide what is deemed to be contained in a collective agreement? It seems to me that is a highly dangerous phrase. I would be greatly surprised if the representatives of organized labour asked for that wording. I should like to get the minister's explanation of the words, "contained in or by law deemed to be contained in a collective agreement". It would take some time to find out what was deemed to be contained in a collective agreement. I think we should be very careful because we are not legislating for today or tomorrow but for a long time, and we are legislating on a matter that is of grave concern to many people in this country.

**Mr. Byrne:** I have hesitated to take part in this debate—it would seem to be a debate although we are in committee—but there are a number of questions that I should like to have asked in order to clear my thinking on the matter before making a statement. I will not delay the committee too long but I should like to make one or two observations. I was not a member of the special committee although I attended at times when this legislation was being considered and listened with very great interest. At the time this saving clause was suggested I can recall that I mentioned to some of my colleagues that it was a dangerous section and that it seemed to point more directly at trade unions and make it appear that the section had been designed to prevent strikes by organized labour for the purpose of winning rights. I felt at the outset that the original wording was better, namely:

Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others . . .

As long as a contract exists between employer and employees no responsible union would condone a wildcat stoppage of work that would endanger human life or cause serious bodily injury. In any event, that would be contrary to most provincial legislation. There was another thought that came to my mind. We can conceive of the reasonableness of there being a criminal offence when life is endangered or there is a possibility of serious bodily harm, but if I were to suggest an amendment it would be to delete the entire clause having to do with delaying or preventing the running of a locomotive. It is inconceivable that any serious bodily harm is going to be caused simply through delaying a locomotive by picketing or some such action, and for a strike to be effective it certainly must have some economic repercussions or it is valueless.

This afternoon we have heard the opinion of Mr. Hurley, the so-called eminent counsel. His condemnation of this clause has to do almost entirely with the saving section which does bring unions under the jurisdiction of provincial legislation within the application of the Criminal Code. Apparently it is not enough that unions are restricted by various provincial laws, but we must come along with federal legislation which in effect prohibits certain actions. So far as union contracts are concerned, if a contract is in effect for a year or two years and then terminates at the end of December or the end of June, it is my interpretation of the original section that there would be no offence if the union and the employer had failed to reach an agreement at that time.

But with the amendment to the saving clause there is an implication that there is still a contract by virtue of the fact that the two participants in the disagreement, shall

we say, have not reached an agreement. Nevertheless the union agreement with the company has expired as a matter of actual fact. I have said before that I felt that the original wording was better and that if the contract had expired the union did not come under this legislation. I should like the minister to clarify that for me.

I want to say again that I cannot see why it should be a criminal offence to take action that is simply economic. That should be left to the provincial statutes, and many of the provincial statutes make ample provision for prosecution should such action be taken.

**Mr. Garson:** I think if the hon. member, and all hon. members for that matter, will look at the existing law, which is found in clause 499 of the present code, they will see that there is no saving clause at all protecting—

**Mr. Fulton:** Because it does not apply to employees.

**Mr. Garson:** Oh no, my hon. friend is quite wrong about that. Why, in England it was brought into effect in the first place as the result of the very unsatisfactory state of the law between employers and employees, with which the public, employers and employees were all dissatisfied. They had a royal commission, and on the strength of that royal commission's report they introduced a bill. In the selection I quoted from the lord chancellor's speech introducing the bill in the House of Lords he made it very clear that a distinction had to be made between a criminal breach of contract and a civil breach of contract.

All that this section has purported to do during the whole time it has been in the Canadian law is to provide that what is defined as a criminal breach of contract shall be an offence which shall be punishable under the code. It is ironical that all this criticism is being heaped on the government, largely in respect of the language of a saving clause that was introduced into the section at the express request of the labour congresses. In the case of the Trades and Labour Congress, they were proud enough of their handiwork to circularize all their local units stating, in effect, that they had sought and obtained the saving clause to protect unions in respect of all stoppages of work that might occur that might otherwise constitute a breach of the section, that is that were lawful stoppages under their contract or under the relevant laws.

**Mr. Knowles:** Is it not true that the saving clause was requested and given by the government because the unions felt the wording of clause 365 was so different from the old clause 499 that they had to have a saving clause where they did not have to have it before?

**Mr. Garson:** No, I do not think so.

**Mr. Knowles:** I am sure that is the reason the unions wanted it.

**Mr. Garson:** If my hon. friend will look at the wording of the existing code and examine it carefully he will see the arguments he has just made is not tenable. I think what happened was this. As the hon. member for Vancouver-Kingsway said, this provision had been in the code for a long time and it had been completely inoperative. Perhaps many who might otherwise have been interested were unaware of its existence. There was never any occasion to examine it. But when in the course of the duty which devolved on the government and the royal commission to consolidate the code it was found that here was a clear principle that had been retained in the British law and the Canadian law during all these years, then we had to deal with this provision in the course of consolidating the code.

In the ordinary course of the consolidation of the code the royal commission brought this provision forward and it was brought to the attention of, amongst others, the labour congresses. Upon being put upon notice of that fact, they said in effect, "Well, here is something that may possibly affect us." As my hon. friends who sat on the committee of the House of Commons will recall, and as I recall from the Senate committee hearings, the congresses' representatives appeared and said that if this section were to be carried forward in this form they did not think it should apply to a work stoppage which occurred as the lawful result of their contract. That seemed to be a reasonable proposition, and from that point on we had been applying our efforts towards finding the best language in which a saving clause to that effect could be worded.

I must apologize for being somewhat indignant a moment ago but what made me indignant was that, after all our hard labours and long hours of consultation, having managed to secure a wording here which meets with the complete approval of one labour congress and, I must admit, the carefully qualified approval of another and the even more qualified approval, if you could even call it that, of the third—

**Mr. Knowles:** That is hardly a majority, is it, one out of three?

**Mr. Garson:** No, it is hardly a majority. I do not want to go into the details but I must say I do not share my hon. friend's view that this section is not as good as the

previous saving section. In other words, I agree with the views expressed by the Canadian Congress of Labour, that if this clause 365 is to be continued—

**Mr. Knowles:** Which the Canadian Congress of Labour does not want.

**Mr. Garson:** That is right, they do not want the clause at all. What they are suggesting is that this clause should not be in the act, to provide that not only workmen but employers and everybody else shall not commit a wilful breach of contract that has an adverse effect upon the public interest. The Canadian Congress was undoubtedly in favour of deleting this clause although that has not been done in Great Britain and I do not think it should be done here.

Then the Canadian Congress of Labour takes the position that if the clause is to remain in the law, they would prefer that we use this language which I moved earlier in the debate than to re-enact the provisions of the code of 1892. I told them we would have to re-enact the provisions of the code of 1892 because the revision of 1906 was botched and it did not carry into effect the wishes of parliament. They recognized the validity of this contention. From what I said I think they recognized that if we were going to carry it forward we would have to carry it forward either in the terms of the code of 1892 or in the terms that are now before the committee. They said that of those two alternatives they would rather we would adopt the language now before the committee.

One of the reasons why I favoured that language—I might as well be quite candid about the matter—was that I had a great deal of respect for the knowledge of these men in the labour congresses. I have a great deal of respect for the legal ability of Mr. Crysler, who is representing the employers' viewpoint. When these gentlemen say that this is the language in which this saving clause could be effectively stated then I, for one, would be prepared to accept their views on that point, especially so when there is also concurrence on this point from the Trades and Labour Congress of Canada. Now, that is the position. Does that answer my hon. friend's question?

**Mr. Byrne:** I should like to put the question in these words. If clause 2 did not exist in the proposed amendment and a contract had expired but negotiations were going on for perhaps two months without an agreement, and there was provincial labour legislation providing for certain steps to be taken such as conciliation, arbitration and so on and the union officers could no longer maintain the membership which perhaps went on strike, would the union be indictable?

**Mr. Garson:** I think the answer to my hon. friend's question is this. The clear indication of clause 365, in its language, is that everyone who wilfully breaks a contract is guilty. Now, if there is no contract there cannot be any guilt, no matter what is done. The gravamen of the offence is the wilful breach of contract. And if the contract has run out, then there is nothing that can be broken. But another argument is this—although it has never been stated so explicitly—"Well, supposing we want to walk out while the contract is in effect, what then?" Then the saving clause would be necessary and would have of course to be complied with. If there was compliance with the saving clause, subclause 2 then goes on to say—and while it does not say this exactly, I am putting it in these terms—that notwithstanding the main body of the clause says that every one who wilfully breaks a contract commits an offence, subclause 2 says that—

> No person wilfully breaks a contract within the meaning of subsection (1) by reason only that (a) being the employee of an employer he stops work—
>
> or—
>
> —being a member of an organization of employees—

—he does certain things, provided always that he complies with the requirements of the law, or of the contract with regard to—

**Mr. Knowles:** A contract deemed by law to be in effect.

**Mr. Garson:** Yes, or in the language of the saving clause.

> —if, before the stoppage of work occurs, all steps provided by law with respect to the settlement of industrial disputes are taken and any provision for the final settlement of differences—

And so on. But certainly the hon. member for Kootenay East is quite right when he says that if a contract has run out, and there is no contract in existence, saving clause or no saving clause there is no offence under clause 365 because there is no contract that can be broken.

**Mr. Barnett:** I think when we consider the closing words of the minister we will realize that we are getting close to the crux of the matter. The point made by the hon. member for Kootenay East is an important one. In suggesting that when a contract has run out there is no offence the minister is pointing up the reason why some of us are concerned about the last three lines of this clause.

While the dangers of legislatures making mistakes have been pointed out—and rightly

so, because we all admit that legislatures in this country have made mistakes, and may make them again—and while some of us who have some association with the labour movement are concerned about the wording of clauses of this kind, because we realize that more and more in this country the area of battle in respect of labour disputes is moving into the legal field, I suggest that may be why the labour congresses have shown such concern over the wording of these clauses.

I think the real reason some of us are so concerned about the last three lines is that we know that under some of the provincial legislation as we understand it a contract does not run out when it expires.

Perhaps I could illustrate by reading a portion of the amendment the minister has introduced, leaving out certain parts of it. By doing this I believe I can illustrate the point I have in mind. Hon. members will recall that the amendment sets forth the saving clauses (a) and (b). I shall read, then, what follows as I think it could be worded:

If, before the stoppage of work occurs, all steps—

And I shall leave out some of the words.

—contained in a collective agreement are complied with, and effect given thereto.

I do not believe any responsible trade unionist would argue that labour should have the right simply to go out, willy-nilly, and break a contract, particularly if such things as causing serious bodily harm or shutting off the public utilities of a city are concerned. I do not think any responsible trade unionist in this country would argue that labour should have that right.

On the other hand, when we have signed an agreement with an employer and under the terms of our agreement we want to reopen the agreement for negotiation at the termination date, and we negotiate with the employer for two months or so, we do not want it to be held that if at the end of that time a stoppage of work occurs a criminal breach of contract has been committed.

The problem is that certain labour legislation is being introduced which, in effect, nullifies the right of labour to terminate its own contract. Leaving aside for the purposes of this discussion whether that is right or wrong, I still feel that if labour is put in a position where it may break some provincial legislation respecting its right to terminate its contract, it should be prosecuted only under the provincial legislation and should not, because of legislation passed in this House of Commons, become liable to prosecution for a criminal breach of contract.



This becomes of concern not only in situations where human life is endangered but also, as the hon. member for Kootenay East pointed out, in situations such as delaying the running of railway locomotives, or exposing valuable property to serious injury.

I think we can all be realistic enough to know that if there is a major strike in one of the leading industries in this country, a great deal of valuable property is going to be liable to serious injury. The very fact that that is so is the major weapon labour has to make its strike effective. Labour has to decide whether the loss of income it is going to suffer is worth while—has to weigh that against the amount of discomfort or injury that can be caused the employer.

That is just what a strike is. So far as I am concerned a strike is just the sort of thing that happens between nations when all negotiation breaks down and a state of war exists. Within the structure of economic life, that is what a strike is. I feel one has to face the reality of that situation. I know that in the last strike in which my own union was involved millions of feet of lumber were piled on the various docks and in the various yards of British Columbia, and they suffered serious injury. That was one of the main reasons in my opinion why the strike was so effective.

I cannot see why that should constitute a criminal breach of contract, in line with the underlying condition of this clause. My suggestion is that the clause be worded so that labour would be held responsible to observe its contract. Some time ago in the discussion the minister referred to wildcat strikes. Well, a wildcat strike that caused serious loss of life or bodily injury could possibly be considered as something subject to criminal charges concerning criminal breach of contract. But those last three lines as they are worded in effect mean that this parliament is, in many instances, taking away from the trade union bodies of this country the right to terminate their own contracts.

**Some hon. Members:** No.

**Mr. Barnett:** That is the reason I am concerned about it. If the amendment suggested by the minister had read in the words that I quoted a few moments ago then I would not have been unhappy about it.

I have been rather interested in following the line of argument that the minister has

pursued in suggesting that this clause is necessary, because it struck me in effect that he has been taking a very different tack from that which he has followed in the discussion of some other clauses of the code. On a number of occasions when the code has been discussed he has tried to suggest that we should not move into the field of provincial legislation by any provision of the code.

**Mr. Knowles:** He nods his head to that, too.

**Mr. Barnett:** On page 3632 of *Hansard* the minister said this during the discussion of the clause on pollution:

> For that reason we will find that if we are to draft a law of general application for Canada we are more severely restricted in the scope we can take in, because it has to be of general application.

I would submit that this is a case where that principle is equally as valid as he said it was in the case we were arguing at the time that he made those remarks. All in all, I feel the amendment he has proposed certainly does not meet the situation, and I think the minister would agree that it is the right and the duty of hon. members to take a good second look at this clause before it is put through; since it is possible that the labour congresses, in requesting that there be saving clauses, and in having provision made to put in saving clauses, may not have given as full consideration to all the possibilities as could have been given.

The position of the Canadian Congress of Labour has been pretty well stated, and without going into any of the details, I do know that on many levels those union bodies that are affiliated with the Trades and Labour Congress are giving a good deal of concern to this clause. I can say there are a good many of them who are not very happy. I am now speaking only of representations that have been made to me from within the province in which I reside. These things are in the minds of the trade union movements in British Columbia at the present time because there is a proposal to repeal and replace the conciliation and arbitration act that we have had in effect for a number of years by another act. Again without going into details, the fact that trade unionists from the province of Quebec have some concern as to the situation is something that we should give a good deal of attention to. Therefore all in all I do wish the minister could see his way clear to disentangle this saving clause from the present mixture with the legislative rights of the provinces.

**Mr. Garson:** Just for a moment may I reply to my hon. friend's remarks, the validity of which from his standpoint I recognize. I put this to him. He says that in several contexts I have been hesitant about legislating here with regard to any matters that came under the field of provincial jurisdiction, and that is quite right. But might I point out to him that neither the government, none of its supporters nor I am seeking at this point to write into the criminal law any new principle at all. This principle we are discussing has been in effect here for over 70 years; it is in effect now. The only question is as to whether it should be continued or not. There is no valid argument that I have heard that it should be discarded at this stage. At the present stage there is no saving clause at all. When we introduced Bill No. 7—

**Mr. Knowles:** Except the words "made by him".

**Mr. Garson:** Well, if my hon. friend regards that as a saving clause I will not argue with him on that point. I would not say I agree with him, but I leave him to that argument.

**Mr. Knowles:** And they have been deleted.

**Mr. Garson:** But when we introduced this Bill No. 7 to continue what has been in the law for over 70 years the trade union congresses appeared before our committee and said: We think we should have a saving clause in this legislation. And what we have said is—and I think it is fair—all right, we are quite willing to grant one. We did not say it quite that quickly. We considered it at some length, and then we agreed. Then, Mr. Chairman, after we had done some work upon it ourselves, knowing that the people who were directly concerned were the ones most likely, with their legal counsel of long years of experience, to have a pretty good idea as to what would be the proper wording of a saving clause of that sort, we went to them, that is to the employees' representatives, the trade union congresses, on the one hand and the employers' legal advisers on the other, and we conferred at great length with them in order to reach a wording which would provide the effective saving clause which they desire.

Now, I ask the hon. member for Comox-Alberni, who seems to be a fair gentleman, what more can we do than that? When we bring that clause in here and it does not meet with the approval of my hon. friend and some of his colleagues, I cast no aspersion upon him at all when I say I doubt whether

in the examination of the clause which they have performed in the last 2½ hours they are likely to have reached as carefully a considered view concerning it, as the counsel for the trades and labour congresses and the counsel for the Canadian Congress of Labour who presented briefs on it back on February 17, 1953, and have been considering it since that time, and have indicated in the letter which I read into the record, written to me after careful consideration on April 5, 1954, what their position was.

I mean no disrespect to my hon. friend when he offers the wording, or to any other hon. gentlemen who have offered wording of what they thought should be in the saving clause; I mean no disrespect to any of them at all when I say I would very much rather take the saving clause which has been worked out in these long consultations with the trade union congresses, and I think upon reflection that they will agree with me in that.

**Mr. McIvor:** I ask the minister whether the Trades and Labour Congress is agreeable to this.

**Mr. Garson:** Yes, indeed, they are certainly agreeable to it.

**Mr. McIvor:** I was once a member of the Trades and Labour Congress, and I was also at one time president of a union. I found the Trades and Labour Congress very sensible and reasonable folks, as much so as any other union in Canada.

**Mr. Fulton:** There is some confusion, I think, with respect to the matter of whether there is a change between the law in the section as it now stands and clause 365 of the bill which replaces section 499. Leaving out of account whether section 499 was mistakenly drafted, I would ask the minister certain questions which I believe will establish if there is a very important change in the law. I believe the minister will agree that clause 365 (1) paragraph (a) which covers the position of the person who wilfully breaks a contract and thereby endangers human life is not a new provision because it was covered by section 499 (1) paragraph (a). Is that correct?

**Mr. Garson:** That is right.

**Mr. Fulton:** Then clause 365 (1) paragraph (b) which covers everyone who wilfully breaks a contract having reasonable cause to believe that the consequences will be to cause serious bodily injury, is not, I suggest, a new offence, because that was covered also under section 499 (1) paragraph (a). Does the minister agree with that?

**Mr. Garson:** I do.

[Mr. Garson.]

**Mr. Fulton:** Then clause 365 (1) paragraph (c) covers the case of everyone who wilfully breaks a contract, etc., which has the effect of exposing valuable property to destruction or serious injury. I believe the minister will agree that that was covered under section 499 (1) paragraph (a) which covers the case of both employer and employee.

**Mr. Garson:** Right.

**Mr. Fulton:** Then I come to clause 365 (1) paragraph (d) which covers the case of everyone who wilfully breaks a contract the consequence of which is to deprive the inhabitants of a city or place, wholly or to a great extent, of their supply of light, power, gas or water. Now, I wonder if the minister will agree with me that that was covered in part by section 499, subsection 2.

**Mr. Garson:** Let me read it for a moment. Yes.

**Mr. Fulton:** My question is; is that covered by section 499—

**Mr. Garson:** Yes, in part.

**Mr. Fulton:** Would the minister agree there is an extension, or a difference if he likes, between section 499 subsection 2 and clause 365 (1) paragraph (d) to the effect that clause 365 (1) paragraph (d) now covers a breach of contract having effect where a breach of contract is committed by the employer or by the employee, whereas section 499 subsection 2 made a breach of such a contract an offence applied exclusively to employers.

**Mr. Garson:** No.

**Mr. Fulton:** Let me read the wording of section 499, subsection 2:

> Every municipal corporation or authority or company, bound, agreeing or assuming to supply any city, or any other place, or any part thereof, with electric light or power, gas or water, which wilfully breaks any contract made by such municipal corporation, authority or company, knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place or part thereof wholly, or to a great extent, of their supply of electric light or power, gas or water . . .

And so on. That surely cannot be taken to cover anything but a municipal corporation itself or a company or an authority?

**Mr. Garson:** I agree with that, but if my hon. friend will look at section 499 paragraph (b) he will see another coverage he might have overlooked.

**Mr. Fulton:** Yes, section 499 (1) paragraph (b) also covers paragraph (d) in part. Paragraph (d) was covered in part by two parts of section 499.

**Mr. Garson:** Would not the proper thing to say be that section 499 in subsection 1 paragraph (b) and subsection 2 purported to cover the whole field covered in clause 365 (1) paragraph (d).

**Mr. Fulton:** Yes, and paragraph (e) was covered previously by section 499 (1) paragraph (c).

**Mr. Garson:** That is right. Section 499 (1) (c) purported to cover what is now actually covered by clause 365 (1) (e).

**The Chairman:** Shall the amendment carry?

**Mr. Knowles:** There is one other point I wish to make with respect to the wording of the amendment proposed by the government this afternoon. Like my hon. friend from Kootenay East I am concerned about the situation when contracts or agreements allegedly run out, and I note particularly the words, "contained in or by law deemed to be contained in a collective agreement." My mind went back to something that happened in this parliament a few years ago and I sent out for a copy of chapter 1 of the statutes of the fall session of 1950. That was the bill known as the Maintenance of Railway Operation Act, the law that brought the railway strike of that fall to an end. In looking through this act I am reminded of one feature which was omitted from the legislation, and which we were very glad to see omitted, and that was that there was no provision for any penalties in that law in the event those affected failed to carry out the provisions of the law. The law said those affected shall do such and such, but, I suppose as a matter of tact, no penalties were included in the law.

Hon. members will recall some of us were against this legislation at the time. But I am not seeking to revive that debate. However, I note in section 5, subsection 4, of the Maintenance of Railway Operation Act of 1950 there is a rather lengthy wording, which I need not quote in full, but which says, in effect, that after the arbitrator has decided on any matter that has not been agreed on between the railway company and a union the railway company and the union shall give effect to such decision and conclude a collective agreement. It then goes on to say, and I quote:

> . . . and until they do so the collective agreement to which this act applies to which they are parties shall be deemed . . . to have been amended . . .

And so on. My point is that there is a case where a collective agreement, a contract, was amended, not by the parties concerned but by a law passed by this parliament. This parliament included in the law this provision that if the parties did not get together and do such and such a thing by a certain time and did not change their contract accordingly it was by law deemed to have been changed anyway.

Now I ask a question. It is hypothetical because the men went back to work and stayed at work and things seem to have been a little better since. But supposing the clause which is now before us in the name of the government had been on the statute books then. Am I not correct in assuming that these workmen would have been in a position, had they failed to carry out the terms of a contract deemed by law to be in effect, where they would have been guilty of a criminal breach of contract and subject to the penalty set out in this clause, which is five years.

It is that sort of thing, Mr. Chairman, that I find questionable about this phrase referring to contracts deemed by law to be in effect.

**Mr. Garson:** It was for precisely that reason that in working out any of these saving clauses we wanted to confer with the trade union congresses and their counsel. I have no excess of modesty when I say that their counsel know a great deal more about trade union law than I do. We wanted to make sure that, when they had requested a saving clause and when we had agreed in principle that it was proper that they should have it, we should confer with them as to the wording of the saving clause we were prepared to agree to. As to this railway case that my hon. friend has raised, I do not remember the details of it with sufficient precision to express any opinion. Perhaps he may remember it. As I recall it that statute was passed to carry into effect a sort of informal agreement—was it not—between all concerned to provide for the carrying on of the arbitration?

**Mr. Knowles:** No. That statute put people back to work. It amended the contract to a certain extent right away and left either to agreement or to settlement by an arbitrator the disputed points.

**Mr. Garson:** Yes; that is right.

**Mr. Knowles:** The position was that if the disputed points were not settled by agreement between the parties, the arbitrator was to make the decision and the contract was to be deemed to be amended by virtue of what the arbitrator decided.

**Mr. Garson:** Yes, that is right. Can my hon. friend think of a single case in which there is in existence in any province in Canada today any legislation that would have the same or a similar effect?

**Mr. Knowles:** I hope there is not, but there might be. The minister may smile, if he wishes; but that is the whole point; there might be.

**Mr. Garson:** I think if my hon. friend asks some of his lawyer friends or if he, not being a bad lawyer himself for an amateur, looks up the law himself, he will find that there is none. As I say, I do not know what precautions we could take or what attitude we could take that could be more fair than the one we have taken. I will admit that to the Canadian Congress of Labour it might not seem fair that we should not give effect to their request to forget all about this provision that for over 70 years had been in the law and just to wipe it out entirely. But then we could not do that and did not see our way clear to strike out these last three lines in the clause 365(2).

**Mr. Knowles:** Incidentally that is the C.C.L.'s second choice, is it not?

**Mr. Garson:** Yes, that is right.

**Mr. Knowles:** And it is also the second choice of the C.C.C.L.?

**Mr. Garson:** That is right.

**Mr. Knowles:** And it is also the second choice of a great many T.L.C. local union organizations?

**Mr. Garson:** I do not know as to that.

**Mr. Knowles:** I do.

**Mr. Garson:** I have been most frank with the trade union congress, with the employers' representatives and with the members of this committee in stating exactly what we have done. Short of taking out of the law this section which has been there over 70 years, I think we have done that which is in the best interests of everybody, including the members of the trade union congresses.

**Mr. Fulton:** Perhaps the minister and I could continue this discussion we were having previously, in which I said I thought I would be able to get him to agree that there is a change in the law. We had got down to subsection (d) of clause 365, having agreed that in the first three subsections there was no change. Then when it came to subsection (d) we agreed that it was covered in part, with respect to employers only, by section 499 (2). Then the minister referred to section 499(1)(b) and said that that covered the same point as is now contained in clause 365(1)(d).

**Mr. Garson:** No; I certainly did not say that it covered that; I said it purported to cover it, which is very different.

[Mr. Garson.]

**Mr. Fulton:** Purported to cover?

**Mr. Garson:** Yes.

**Mr. Fulton:** I am glad the minister corrected me. Will the minister agree with me that section 499 (1) (b) applies to companies making contracts to supply municipalities essentially and does not cover a contract made between an employee working in, let us say, an electric light plant, operating a dynamo, and his employer because the employee is not a party to any contract to supply electricity to a city.

**Mr. Garson:** Mr. Chairman, I have already said about four times that one of the difficulties in this connection was that the draftsmen in 1906, in revising this statute, made this mistake to which my hon. friend is now referring and by so doing made section 499 (c) not applicable to employees.

**Mr. Fulton:** I think the minister meant (b); he said (c).

**Mr. Garson:** I meant section 499 (b); they made it not applicable to employees; and similarly in (c). But that is the point that we were clearing up in the ordinary course of consolidating this statute. My hon. friend is quite right in that.

**Mr. Fulton:** To that extent, as I say,—without rehearsing the historical arguments or what was the intent of parliament back in 1906 whenever this section 499 (b) was first enacted in that form—the fact is that clause 365 (1) (d) extends to employees a liability for breach of contract covered in that group which previously did not apply to them; that is, the criminal law for breach of contract covered in that class of contracts did not previously apply to employees.

**Mr. Garson:** What clause 365 in Bill No. 7 does is this. It restores the conditions of the law, in so far as employees of utilities and railways are concerned, to that condition in which it was from 1877 to 1892 and from 1892 to 1906; and in so doing, it changes the position in which they were from 1906 until the present time.

**Mr. Fulton:** That is the whole point.

**Some hon. Members:** Question.

**Mr. Fulton:** I think that is a very serious point because it certainly makes a change in the law as it has been for the last 48 years. There can be no question about that, whether it was accidental in 1906 or not.

**Mr. Garson:** I am not arguing that there is any question about it. I agree with my hon. friend.

**Mr. Fulton:** I am glad the minister agrees because there have been occasions this afternoon when he has said "This has always been the law"; that is, that what is provided in clause 365 has always been the law. But it has not always been the law. It has not been the law for the last forty-eight years with respect to that particular class of contracts and the position of employees under those contracts. It therefore seems to me that there is room for question as to whether this is the right method of covering employees under that class of contracts. I suppose that the object is to prevent wildcat strikes and things that might almost amount to sabotage; in other words, pulling the switches in the power plant and suddenly depriving a city of its utilities without having gone through the proper processes of conciliation and so forth.

I wonder whether it is the proper thing to make that matter the subject of criminal breach of contract or whether, if that should ever happen or be done with that motive, it would not more appropriately fall within the class of prohibited acts. I wonder whether, even though it might have been by accident, section 499 was not better legislation than is clause 365 and whether, if the object is to deal with what amounts to sabotage, you should not deal with it in some other way rather than by trying this extraordinary method of making it a criminal breach of contract. At the same time that you do that you make it extremely difficult for men who are employed in that type of work to exercise what has been and is still regarded as their proper legal right to take advantage of a strike if they go through the processes of conciliation, arbitration and so on.

Now they can be prosecuted and can be required to show that they have complied with every step. All sorts of obstacles can be placed in their way in complying with those steps. I must say I think it might be better to go back to 499. Then there would be no question. No congress, nobody, employer or employee, union, company or anybody else could object to it because that has been the law for the last forty-eight years. If it is felt that there is a danger of wildcat strikes by irresponsible badly-led unions pulling the switches and walking out without a real industrial dispute ever having arisen, surely that should be included under the classes of prohibited acts. In other words, surely we do not want to cover in the criminal law the consequence of a genuine industrial disagreement. That is a matter of negotiation and bargaining. You give rise to all sorts of misunderstandings and misinterpretations if you put it in as a part of the criminal law.

Surely if your object is to prevent—well, I will be frank—communist-led unions from pulling the switches as an act of intimidation and violence, making it a criminal breach of contract is not the way to do it; the way to do it is to make it a prohibited act. I think you are mixing the two branches of law hopelessly by trying to do it in this way. I would sooner see clause 365 revoked, section 499 restored, and action taken under the prohibited acts section to deal with the thing which I think the minister must admit is really in the minds of the government when they are trying to do it in this indirect way.

**Mr. MacInnis:** I would not want anything I have said today to be taken as meaning that I believe that trade unions are above the law or that wildcat strikes should be countenanced. When strikes of that kind do occur today they are very often called primarily for political reasons, and we should not have protection in the law for that kind of thing. But we want the protection of the law for what has become a customary and traditional exercise of trade union activity.

I must say I am in agreement with the Minister of Justice when he says that he places a high value on the opinions of the executives of the national trade union bodies and their legal advisers. While I might hold a different opinion at any time I would have to hold it very strongly before I would go so far as to oppose their wishes. I want to ask the minister whether the three national labour bodies have asked for the change contained in the amendment now before us from what was in the bill when it came from the parliamentary committee. The provision found in clause 365 of the bill is in these words:

> . . . if, before the stoppage of work occurs, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

What I want to know is whether the Trades and Labour Congress of Canada, the Canadian Congress of Labour and the Canadian and Catholic Confederation of Labour asked that those words be changed to what is found in the amendment, namely:

> . . . if, before the stoppage of work occurs, all steps provided by law with respect to the settlement of industrial disputes are taken and any provision for the final settlement of differences, without stoppage of work, contained in or by law deemed to be contained in a collective agreement is complied with and effect given thereto.

It seems to me that the words of the saving phrase as it appears in clause 365 of Bill No. 7 are quite simple and easy to understand, but it is an altogether different thing when you take the words of the amendment put before the committee by the minister this afternoon. Did the labour bodies ask for this change, and if they did not who insisted on the change being made?

**Mr. Garson:** We have seen these different labour bodies separately and together on different occasions. The wording which I moved this afternoon, as you can tell by the fact that we had to move it after the bill had been printed, is different from the one that we had made up our minds to use at the time the bill was printed. The present wording that we have here was the result of a meeting which was held in my office on Friday last with representatives of the three labour congresses and had to do with a number of suggestions, including the suggestion of a clause with respect to 365 which we had received a short time before from the Canadian and Catholic Confederation of Labour. When we got these we called in the other two groups to make sure that if possible anything we did from that point on would have the concurrence of all three.

At that meeting with the three congresses this wording was discussed as an alternative that we might use in this connection. We asked the Canadian Congress of Labour to take it away, examine it, and then write and let us know the order of their preference in connection with section 365. It was pursuant to that arrangement that we got the letter that I read into the record earlier this afternoon. That was after this wording had been discussed at the meeting and they had taken it away and considered it. They then wrote this letter to me.

The Canadian and Catholic Confederation of Labour did not write a letter but my assistant, Mr. MacLeod, was in oral consultation with them this morning and they indicated to him the information I read on the record so far as their stand was concerned. That is the way in which this wording was arrived at. It is the one which was discussed at the last meeting and which the Canadian Congress of Labour took away, had a look at, and then wrote me respecting it in these terms.

**Mr. Knowles:** In other words, this wording was not asked for by these bodies, but they have all seen it?

**Mr. Garson:** They have all which?

**Mr. Knowles:** They have all seen it.

**Mr. Garson:** Oh yes, seen it and discussed it at great length.

[Mr. MacInnis.]

**Mr. Knowles:** And they have all categorized it somewhere down the list?

**Mr. Garson:** No, I would not say that. I would not think that would be true of the Trades and Labour Congress of Canada. They were there and took no exception to it.

**Mr. Knowles:** The Trades and Labour Congress took no exception to this wording. The Canadian Congress of Labour accepted it as a third choice. Their first choice was no clause 365 at all. Their second choice was clause 365 without the last three lines that are now there.

**Mr. Garson:** That is right.

**Mr. Knowles:** All that can be said on behalf of the Canadian Congress of Labour—I am trying to interpret what the minister said—with respect to this amendment is that it is preferable to the old section 499, in their view.

**Mr. Garson:** That is right.

**Mr. Knowles:** The hon. member for Kamloops questions that. I suppose the most I can say is that I am surprised at that. As for the Canadian and Catholic Confederation of Labour, all we have, with respect, is hearsay evidence. It seems to me it is not very satisfactory. In view of the fact the minister has gone to great pains to tell us of his efforts to meet the views of labour and very eminent counsel, when we come to this extremely important question we have an amendment moved by the government at the eleventh hour on which the views of the various labour bodies are conditional, and it turns out to be a wording that is not satisfactory to us on the floor of the house.

**Mr. Herridge:** In view of the fact I quoted this afternoon from a brief written by Mr. Hurley, a barrister and solicitor in Vancouver, I want to explain, in view of the rather strong language Mr. Hurley used that somewhat annoyed the minister, that I find I am quite correct in saying he is a brilliant defence counsel. I have been informed also from a reliable source that he is a prominent member of the Liberal party and his wife is a perennial organizer.

**Mr. Noseworthy:** As the minister well knows, I opposed this clause in committee last year, and I am still opposed to it. I fail to see where the amendment suggested by the minister improves the section in any way. With his legal mind, he may be able to see that. The only advantage that I can see in the amendment he offers is that it will give lawyers something more to argue about.

I am opposed to this, Mr. Chairman, because as long as the code is geared to provincial labour laws employees will be able to enjoy certain rights in one province which will be a criminal offence in other provinces. You cannot escape that fact. In my opinion, when we are making a Criminal Code we should make sure that what is a crime in British Columbia is a crime in Ontario, Prince Edward Island or anywhere else. So long as this measure is geared to the provincial labour laws and dependent upon abiding by those laws, workmen in some provinces are going to be able to enjoy rights which, if workmen in other provinces attempt to enjoy, will be an offence under the Criminal Code.

On that basis I opposed it last year, and notwithstanding the executive council of the Trades and Labour Congress, I still oppose it. I might tell the minister that although he may take some comfort from the fact the executive council of the Trades and Labour Congress has given him their blessing on this section, the rank and file of trade unionists not only in that congress but in others who know anything about this clause are opposed to it. I have communications from locals within the Trades and Labour Congress indicating they do not go along with their own national executive on this question. The other congresses do not go along with them. The sum total of the provision in this Criminal Code is, whether the government wanted it or not, that they have a sharper and much more effective instrument for the government and the police to use against the unemployed in the next depression than they had in the last.

Amendment agreed to.

**Mr. Gillis:** Now that that amendment is out of the way—

**Mr. Fulton:** Well, I have an amendment—

**The Chairman:** Is the hon. member for Kamloops rising to speak on the amendment?

**Mr. Fulton:** No, I rose, Mr. Chairman, to speak on the clause as amended and then I understood the amendment had not carried.

**The Chairman:** The amendment has carried, and then I gave the floor to the hon. member for Cape Breton South.

**Mr. Gillis:** Now that the amendment is out of the way, I may say that I indicated when I made a few observations on this clause this afternoon that I was sending over to the Minister of Justice an amendment to subclause 2. He has had an opportunity of looking at it and I am wondering whether he might move it or whether I should move it. While there is a lot of validity to the argument that you are going to get different administrations in each province, nevertheless we cannot legislate here for the voters in British Columbia or Quebec; that is their responsibility.

What I am trying to do is to at least pin the responsibility for action under this clause upon the attorney general of the province in order that he will have the responsibility for seeing that the labour laws of the province are carried out and that employers are not able to circumvent the laws of the province. It is a simple little addition that is in a lot of clauses in the code now. I am just wondering whether the minister would be prepared to move this amendment or I should move it. It reads as follows:

That clause 365 of Bill No. 7 be amended by adding thereto immediately after subclause 2 thereof the following subclause:

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

It might mean renumbering all the clauses and this might have to be subclause 2, and the last amendment we carried might be subclause 3. I shall leave that to the judgment of the minister. If he wants to move the amendment, that is all right. I know that governments do not look with favour upon someone amending their legislation.

**Mr. Garson:** I have no objection to my hon. friend moving that amendment, Mr. Chairman. The argument is sometimes put forward that a clause of this sort might be illegitimately used by an unscrupulous employer who could not get consent to proceedings under the labour code and would then turn around and make a flank attack by police court proceedings. An amendment of this sort would prevent that, and so far as the government is concerned we have no objection to it. If my hon. friend wants to move it we shall accept it.

**Mr. Gillis:** I would move that, Mr. Chairman, seconded by the hon. member for York South.

Amendment agreed to.

At six o'clock the committee took recess.

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## AFTER RECESS

The committee resumed at eight o'clock.

**The Chairman:** The committee was discussing clause 365. Shall the clause carry?

**Mr. Knowles:** Mr. Chairman, before the clause carries, there is one point which I think, for the sake of the record, should be

straightened out. If the clause had been already carried I might have had to raise this point on a question of privilege; but since we are still on the clause I can do it as part of the debate.

This afternoon, as the minister realizes, we were a bit surprised with respect to some of the things that he said as to the attitude of certain of the trade union people toward the amendment which he proposed to clause 365. In particular I was somewhat surprised at his indicating—perhaps it was a case of a misunderstanding between us—that the Canadian Congress of Labour preferred the amendment which he proposed this afternoon to the old section 499.

This afternoon I questioned the minister on that point, and I have been checking the record to see what we said. I find I asked the minister if it was clear that the C.C.L. people, as first choice, preferred no clause 365 at all, and the minister said that was the case. Then I suggested that their second choice, as he was indicating it to us from the letter he read from Donald MacDonald, secretary-treasurer of the Canadian Congress of Labour, was clause 365, without the three last lines. The minister agreed. Then here is the point where we got into difficulty: I asked the minister if, as a third choice, he was telling us that the Canadian Congress of Labour preferred his amendment, as he moved it this afternoon, to the old section 499. To that the minister's reply was, "That is right".

I might say that I have talked this matter over on the telephone during the recess, since six o'clock, with Donald MacDonald and with Maurice Wright, of the Canadian Congress of Labour, and they feel that the matter should be cleared up. When it came to their third choice, they preferred 365, as it was set out in the printed version that we have, or as it was amended this afternoon by the Minister of Justice, to the old provision as it was prior to 1906. But they did not prefer 365 in any form to the old section 499. And what they wish to have clear on the record is that in the recent negotiations 499, as it now is in the existing code, was not offered to them by the Minister of Justice. Indeed, Mr. Maurice Wright has sent to me, in case there is any necessity to produce the evidence, the two typewritten drafts which were offered to them. One of them is in the form in which it was passed this afternoon, and the other was a redraft of section 521 of the Criminal Code of 1892, as it existed prior to the revision of 1906. And it is that redraft of that old section 521 that the Canadian Congress of Labour rejected, out of hand.

[Mr. Knowles.]

When the minister put Donald MacDonald's letter on the record, that was clear. But in the later discussion it did seem to me the minister suggested—in fact his answer was specific in his reply to me—that the Canadian Congress of Labour preferred the amendment of this afternoon to the old 499. They tell me that if the old 499 had been offered to them they would have accepted that as their first or second choice, but 499 was never offered to them and therefore did not figure in that letter.

In other words, to get these choices lined up, what was passed by the house this afternoon was actually their fourth choice, so far as the Canadian Congress of Labour is concerned.

**Mr. Garson:** I am very thankful indeed that my hon. friend has raised this matter, because otherwise there would have been a pretty serious misunderstanding between him and me. I thought I had made it clear before my hon. friend asked the question—his first question to which he has just referred—that the old section 499 was out of the question because it was so defective in its application to the utilities and railways that it was completely useless, so far as they were concerned, for the purposes for which it was passed.

When my hon. friend asked his question —I know he did not intend it as a trap— what I had in mind, once 499 was eliminated as an alternative, was the restoration, as I thought I had already made clear two or three times, of the text of the code of 1892, in which code this section 521, which is referred to in Mr. Donald MacDonald's letter, is the relevant section. Section 521 of the 1892 code conforms to 499 of the present code which, in turn, becomes 365 of the bill before us. I must look up the blue copies and see the number of the section to which my hon. friend was referring; but certainly I had completely eliminated section 499 of the present code from my mind and thought we were discussing only 521 of the 1892 code. And that, of course, is the only one referred to in Mr. Donald MacDonald's letter which I put on the record. And I put myself in the position where I could not very well misrepresent the contents of the letter, because I had put it on the record. That was the first thing I did in connection with it.

**Mr. Knowles:** What was seriously wrong was the minister's statement that the Canadian Congress of Labour preferred this afternoon's amendment to the old 499. As the minister now makes it clear, the old 499 was not offered to them.

**Mr. Garson:** No, it never was.

**Mr. Knowles:** If it had been, it would have been their first or second choice.

**Mr. Garson:** It would probably be that, of course, because as regards about two-thirds of the whole section it would be quite inoperative. They might have preferred to have a section which was thus inoperative. But my hon. friend can see, if he reflects upon the matter at all, that there would be no purpose whatever from our standpoint in offering to the Canadian Congress of Labour a section 499, all the references in which to utilities and railways were completely defective. Why would we offer that?

**Mr. Knowles:** The minister will realize that this puts a quite different complexion on the significance of Donald MacDonald's letter.

**Mr. Garson:** Well, that is not correct. I do not know how I could have been more fair to the Canadian Congress of Labour than to read into the record their written letter.

**The Chairman:** Shall the clause as amended carry?

**Mr. Fulton:** There will be an interesting opportunity afforded now, because I propose to move an amendment that 499 be restored. We had it clearly established this afternoon, as a result of some questions and answers before six o'clock, that the present section 365 changes the law as it has been in operation since 1906.

Now the minister has said that what came into operation in 1906 came into operation by mistake, by oversight, by error in draftsmanship. That is very interesting. But I did not hear it suggested this afternoon, and I have not heard it suggested since 1945, when I came here, nor have I heard it suggested that the suggestion was made at any time prior to 1945, that section 499 was inadequate, and that there may be many defects in it of a nature which the government would have liked to cure, or that they might have proceeded under the cured section but found themselves unable to proceed because of the defect in that section.

If the minister would tell us, which he has not yet done, that there have been cases of wildcat strikes where they felt there was a serious gap in the law in that there was no section under which the situation could be adequately dealt with, they were trying to fill a loophole, then the thing might take on a very different complexion; but we have had no such suggestion this afternoon, nor have we been told that the law enforcement officers were conscious of serious defects from the point of view of enforcement and the preservation of law and order. We have been told that when they came to examine the situation they found that an error was made in 1906.

I suggest that the whole of the suggestion this afternoon establishes conclusively that the error, if there was an error in 1906, has created no anomalous situations; that it has not left the country a prey to disorders which should have been dealt with and which could not be dealt with, and so on. Therefore we are left with the stark and simple fact that we are creating a very substantial alteration in the law as it has existed for the last 48 years, and that we are now asked to bring into the realm of criminal law certain actions on the part of men who work in industry which up to now it has not been possible to deal with by way of criminal prosecution.

I stated this afternoon that the proper way to deal with these things was under the ordinary civil law regarding damages for breach of contract; or alternatively the penalties which might follow under provincial statutes dealing with labour relations or, if it was in the field of federal jurisdiction, which might follow from the statutes dealing with federal labour relations. I remain convinced that it is quite inappropriate to try to mix up the two sorts of law and get labour relations confounded and confused with illegal breaches of contracts.

For that reason I repeat the suggestion I made earlier, that if what is desired is to make it possible to deal with wildcat strikes which amount to acts of sabotage, then we should take the steps of dealing with them under the category of prohibited acts which is a well-established category of offences under the Criminal Code. That is where they should be dealt with, and the matter of the relation between employers and employees should not be a matter of criminal prosecution; it should be the subject of civil action. On the basis of that philosophy I therefore move, Mr. Chairman, that clause 365 be deleted.

Perhaps I might explain the purpose of my amendment. It is to delete clause 365 and substitute for it section 499 of the present Criminal Code. It will be appreciated that section 499 is a lengthy one. In single-spaced typing it occupies one and a quarter pages of ordinary size paper. But I may say to you, sir, and to the committee, that I have had this carefully compared with what is now in the Criminal Code as section 499, and I therefore suggest that I should be absolved from the necessity of reading the amendment in full, and that when you put the amendment it would not be necessary for you to read it in full, but that we should

deal with it on the basis that clause 365 be deleted and the following substituted therefor, and then to move the substitution in exactly the same words as appear in section 499. I appreciate that that will make necessary, if it were carried, a consequential amendment to a group of sections starting with section 49 on page 20 of the draft bill before us. That is the way I think it should be dealt with. We should deal with these possible disorders, if they should occur, under a group of sections covering the subject of prohibited acts. That is the way we feel it should be dealt with, not in the field of criminal liability or breach of contract.

**Mr. Knowles:** As one who prepared a similar amendment which we too were going to move, I wonder whether I might ask the hon. member for Kamloops if he left out the reference to hard labour and also whether he changed "His Majesty" to "Her Majesty"?

**Mr. Fulton:** Yes, I have changed the words "His Majesty" to "Her Majesty", but I did not leave out the reference to hard labour, for the reason that we also have had some discussion of this question with union organizations interested, and it was made quite clear to us that they would be very glad to see the restoration of section 499 in its present form; and they realized that if that were done, then the fact that it is necessary to provide some method of dealing with this question of wildcat strikes, that is now provided for by the section, would have to be dealt with somewhere else in the code; and they feel that the group of sections dealing with prohibited acts was the appropriate place to deal with it, and indeed the more appropriate place to deal with it, than in a section dealing with breach of contract. I am not going to quote anybody, but I am prepared to state and do state that the suggestion now put forward carries the approval of two of the labour organizations of Canada and I put it forward in exactly the same form as it is now for the purpose of avoiding controversies over matters of detail.

**Mr. Garson:** Before my hon. friend takes his seat may I ask him whether his proposal is to delete clause 365 from the bill and substitute for it the whole text of section 499 as it appears in the present code?

**Mr. Fulton:** That is right.

**Mr. Garson:** I ask the question because I find his act incredible. All afternoon we discussed a point which no person has disputed, because they could not, namely, that ever since 1906 section 499 (1) (b) and (c) have made no sense at all; they are just blithering nonsense.

[Mr. Fulton.]

**Mr. Fulton:** No, they are not.

**Mr. Garson:** If that is what my hon. friend wishes to put on the statute books, let us just read them.

**The Chairman:** Order. I cannot agree that I should not read in full the amendment which has been proposed by the hon. member for Kamloops. I thought I should say that before any further discussion took place, unless I have the consent of the committee to refrain from so doing. However, before reading the amendment, or before requesting the consent of the committee, I should like to draw attention to one question which is causing me some concern at the moment.

We have already agreed to two amendments which were put this afternoon, one to subclause 2 and one adding subclause 3. I would draw the attention of hon. members to citation 669 of the third edition of Beauchesne's rules and forms, which reads in part as follows:

> Each clause is a distinct question and must be separately discussed. When a clause has been agreed to it is irregular to discuss it again on the consideration of another clause.

And here more particularly may I draw the attention of hon. members to these words:

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

Now, we have already amended subclause 2. I would think that the effect of the amendment proposed by the hon. member for Kamloops would be also to amend the antecedent part of subclause 1. Therefore, I am myself in some doubt at the moment as to whether I can accept the amendment, and as to whether it is in order.

**Mr. Fulton:** May I point out, Mr. Chairman, in reply to that point of order that the effect of the amendment is not to amend the clause in particular or in detail but, as is said in the words of the amendment, to delete the clause entirely. It reads: "That clause 365 be deleted and the following substituted therefor." Therefore, I am not seeking in this amendment to amend an earlier subclause of clause 365, or indeed any particular subclause. I am moving that the whole clause be deleted and another clause be substituted therefor.

I have waited until the other amendments were disposed of because if I had felt these amendments made the clause generally acceptable then it would not have been necessary to move this amendment. But these amendments do not, in my view, make the clause acceptable. I am therefore moving that the clause be deleted. Perhaps my

amendment should read that clause 365, as amended, be deleted and the following substituted therefor.

I respectfully submit that the citation to which you have referred does not apply. If I were now seeking to amend subclause 1 of clause 365 then the citation would apply, but I am not doing that. As the text of my amendment makes clear I am seeking to delete the whole clause.

Now, sir, with respect to the question of whether Your Honour should read the whole amendment it is quite immaterial to me. I was merely seeking to save the time of the committee and I would point out to any hon. member who wishes to know what is in my amendment that he can find it in its exact form simply by referring to section 499 of the present Criminal Code. I therefore suggest it is not necessary for Your Honour to read the amendment, though it is a matter of no moment to me.

**Mr. Garson:** My hon. friend pointed out a few moments ago, and quite correctly, that section 499 in the present code in subsection 2 makes it clear that the municipality or company supplying light, power or gas is liable under this section if it wilfully breaks a contract to supply that gas, and therefore the position of the employing company is taken care of by subclause 2 of clause 365. However, subparagraphs (b) and (c) of section 499 of the present code deal with the case of the employee of a utility company or the employee of the railway company wilfully breaking his contract of service. I think it will be seen when I read the language of that subclause that it would be nonsensical for this parliament to pass the amendment which my hon. friend from Kamloops seeks to put on the statute books to read in this way:

> Every one is guilty of an offence punishable on indictment or on summary conviction before two justices and liable . . .

And so on, who—

> (b) being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water, . . . wilfully breaks such contract . . .

In other words, the section dealing with the employee defines him as being a person who is going to supply power, electricity or water, and it is because of that drafting blunder in the 1906 revised statutes that it is necessary in the present bill to bring in language which cures that defect.

Then, so far as railway contracts are concerned, it reads:

> Every one is guilty who
> (c) being bound, agreeing or assuming, under any contract made by him with a railway company, or with Her Majesty, or any one on behalf of Her Majesty, in connection with a government railway on which Her Majesty's mails, or passengers or freight are carried, to carry Her Majesty's mails, or to carry passengers or freight, . . . wilfully breaks such contract . . .

Obviously the employees of a railway company do not themselves make a contract to carry Her Majesty's mails. George Jones the conductor, or Bill Smith the locomotive engineer, does not make a contract to carry Her Majesty's mails. It is because of the defective manner in which those contracts are ascribed to the railway employees rather than to the railway company that this section is defective and inoperative. That is what we are trying to cure in the bill now before us. What my hon. friend's amendment would do would be to strike out the efforts we have made to cure these serious defects and restore this defective legislation to the statute books. On that ground alone I believe that the course which he recommends is ridiculous and that the hon. member's amendment should therefore be defeated.

**Mr. Byrne:** On a point of order, Mr. Chairman, if this amendment is being accepted for discussion I believe it is important that it should be read into the record. I believe there has been a great deal of confusion because—

**The Chairman:** Order. Perhaps I was at fault. I understood the Minister of Justice was rising to a point of order. Do I understand the Minister of Justice wishes to speak to a point of order?

**Mr. Garson:** No, Mr. Chairman. I do not wish to interrupt my hon. friend's point of order.

**Mr. Byrne:** Mr. Chairman, as I was saying, I believe there has been a great deal of confusion in the minds of hon. members in that they do not know what appears in the present section of the code.

**The Chairman:** Order. Then I must read the amendment proposed by the hon. member for Kamloops.

**Mr. Fulton:** I would point out, Mr. Chairman—

**The Chairman:** Order.

**Mr. Fulton:** —that the text of the amendment will appear in *Hansard*.

**The Chairman:** Order. Apparently there is not unanimous consent so I must read the amendment. It is moved by Mr. Fulton:

That clause 365 be deleted and the following substituted therefor:

"Every one is guilty of an offence punishable on indictment or on summary conviction before two justices and liable on conviction to a penalty not exceeding one hundred dollars or to three months' imprisonment, with or without hard labour, who

(a) wilfully breaks any contract made by him knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury; or

(b) being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place, or part thereof, wholly or to a great extent, of their supply of power, light, gas or water; or

(c) being bound, agreeing or assuming, under any contract made by him with a railway company, or with Her Majesty or any one on behalf of Her Majesty, in connection with a government railway on which Her Majesty's mails, or passengers or freight are carried, to carry Her Majesty's mails, or to carry passengers or freight, wilfully breaks such contract knowing or having reason to believe that the probable consequences of his so doing, either alone or in combination with others, will be to delay or prevent the running of any locomotive engine, or tender, or freight or passenger train or car, on the railway.

2. Every municipal corporation or authority or company, bound, agreeing or assuming to supply any city, or any other place, or any part thereof, with electric light or power, gas or water, which wilfully breaks any contract made by such municipal corporation, authority, or company knowing or having reason to believe that the probable consequences of its so doing will be to deprive the inhabitants of that city or place or part thereof wholly, or to a great extent, of their supply of electric light or power, gas or water, is liable to a penalty not exceeding one thousand dollars.

3. Every railway company, bound, agreeing or assuming to carry Her Majesty's mails, or to carry passengers or freight, which wilfully breaks any contract made by such railway company, knowing or having reason to believe that the probable consequences of so doing will be to delay or prevent the running of any locomotive engine or tender, or freight or passenger train or car on the railway, is liable to a penalty not exceeding one hundred dollars.

4. It is not material whether any offence defined in this section is committed from malice conceived against the person, corporation, authority or company with which the contract is made or otherwise.

That is the amendment proposed by the hon. member for Kamloops. I previously expressed some doubt as to whether or not this amendment offended against citation 669 in that it might be deemed to refer to an antecedent part of a clause after a later part of the clause had already been amended. I do not think I will make a ruling at this time. I think possibly I will allow the amendment to stand.

Is the committee ready for the question?

**Some hon. Members:** Question.

**The Chairman:** The question is on the amendment proposed by Mr. Fulton. Shall the amendment carry?

Amendment negatived: Yeas, 33; nays, 68.

**The Chairman:** Shall the clause as amended carry?

**Mr. Barnett:** I do not intend further to debate the clause at this time, Mr. Chairman, but I should like to move the following amendment:

That clause 365 of Bill No. 7 be amended by deleting therefrom subclause 2 as amended and by substituting therefor the following:

"2. No person wilfully breaks a contract within the meaning of subsection 1 by reason only of

(a) being an employee of an employer he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

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

**The Chairman:** Hon. members will recall that I expressed some doubt whether the amendment proposed by the hon. member for Kamloops was in order by reason of citation 669. If I may, I should like to read the latter words of that citation once more:

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

May I point out to hon. members that we have already amended the latter part of this section, according to the amendment this afternoon. I therefore must declare this amendment to be out of order. Shall the clause as amended carry?

**Mr. Knowles:** On division.

Clause as amended agreed to on division.

Clauses 366 and 367 agreed to.

**The Chairman:** We now proceed to group 1, clause 206.

**Mr. Garson:** I wonder if I might have the unanimous consent of the committee to reopen clause 410. I do so because, in the conference last Friday to which I have already referred, representations were received by us from the Canadian and Catholic Confederation of Labour with regard to the effect of providing clause 410 of the bill in place of section 590 of the present code. They were deeply concerned lest in this clause which is very important from the standpoint

of organized labour, the change in wording which was effected by clause 410 in some ways prejudiced the rights of labour at present enjoyed under section 590. This argument had not previously been addressed to us—

**The Chairman:** Order. I am sorry to interrupt the minister but may I ask whether the minister has leave to revert to clause 410?

**Some hon. Members:** Agreed.

On clause 410—*Saving.*

**Mr. Garson:** As I was saying, this argument had not been previously addressed to us but it seemed to us in the government that in a bill which will require for its effective operation a feeling on the part of those concerned that they have been fairly dealt with by it, it was probably better to restore the language of section 590, rather than to have any misunderstanding in the matter. We cleared this matter with the other two labour congresses, and I would accordingly ask my colleague the Minister of Labour to move the following amendment:

That subclause (1) of clause 410 be deleted and the following substituted therefor:

"410 (1) No person shall be convicted of the offence of conspiracy by reason only that he

(a) refuses to work with a workman or for an employer, or

(b) does any act or causes any act to be done for the purpose of a trade combination, unless such act is an offence expressly punishable by law.

**Mr. Gregg:** I so move, Mr. Chairman.

**Mr. Fulton:** Will the minister explain to us what is the effect of this transposition, because that is all it is. It is the taking of the words "except where otherwise expressly provided by law" from the introductory words of the subsection and putting them in at the end in the form "unless such act is an offence expressly punishable by law" and in addition eliminating the words "in restraint of trade" where they qualified previously the word "conspiracy", the phrase being "conspiracy in restraint of trade". What is the effect of that transposition?

**Mr. Garson:** Mr. Chairman, I do not think that there is any real change in substance by this new wording. The fact of the matter is that with respect to section 590 of the Criminal Code, which in effect says that a trade union shall not be a combination in restraint of trade—that is the great principle for which the trade unions have always fought—I think there was a suspicion—

**Mr. Knowles:** The minister keeps saying 590. Does he not mean 409?

**Mr. Garson:** I mean 590 of the present code—that in changing from the wording of 590 of the present code to 410 of the bill the new wording had changed the sense. Therefore we said: Well, we will not argue on that score; we will change it back to the old wording. That is what we have done. Since there was no change in substance in changing from the wording of 590 in the present code to 410 in the bill, there is no change in substance by changing back again, and it reassures the congresses concerned that their rights are still intact.

**Mr. Fulton:** In other words, this is one occasion on which the minister is prepared to admit that the draftsmen of the old statute did not do such a bad job after all. On that basis I would be quite prepared to consent to the amendment.

**Mr. Garson:** I was not admitting that. I was simply saying—

**Mr. Casselman:** Do not talk it out.

Amendment agreed to.

Clause as amended agreed to.

**The Chairman:** We will now proceed with group 1, and the first clause is clause 206.

On clause 206—*Punishment for murder.*

**Mr. Knowles:** Before this clause is put to the committee, may I say that this is one of the clauses that I asked to be allowed to stand in case the committee dealing with capital and corporal punishment and lotteries should happen to finish its work before we reached this stage of our dealings with the Criminal Code. That has not happened, so I realize that the committee and the house must decide whether or not to re-enact this clause which provides for capital punishment. It is not my purpose to endeavour to launch a debate on the question now but I wish to indicate that, as far as I am concerned, if the house wishes to enact it I am opposed to it.

**Mr. Winch:** I want to say a word or two on this clause. I am a member of the special committee, but I understand completely that we have to have something in the code until the committee has reported and a decision has been made by the government and the House of Commons on the question of capital punishment. But because of my opinions I cannot vote in favour of what is now before us, and therefore I should like to ask the minister if he will not consider making provision for the suspension of capital punishment under the code until the committee has made its report?

**Mr. Garson:** I do not think that I really have anything to add at the present time to the answer I gave my hon. friend on the previous occasion. As I explained then, I think it would be highly improper for the

executive by its own action to change the law which under our system of government only parliament can change. That being so, I cannot give my friend any different answer from what I gave him on the previous occasion. I think I should say that I believe it was generally understood by all members of the house when we set up the joint committee of the House of Commons and the Senate and the royal commission on the rule in M'Naghten's case that none of us would be forsaking our principles or voting against them by providing some section in the code as it stands until we had received the reports from the committee and the royal commission.

I know the difficulty of my hon. friend's position. I respect him very much for having sincere views and feeling very deeply about them, but I do not think that any of us compromise our principles in continuing the present law under these heads until we get the reports from these other bodies.

**Mr. MacInnis:** I feel that I am in the same position as the hon. member for Vancouver East but yet I agree that the position taken by the minister is correct. I think to suspend laws of this kind would be a very dangerous thing for the executive to do at any time. While I am opposed to capital punishment, I think we will have to let this section stand as the law is today, and I will salve my conscience by saying, "on division".

**Mr. Winch:** I want to make one other statement. As the minister and the hon. member for Vancouver-Kingsway have stated, I have certain definite ideas and opinions on this matter, but I want it to be very clearly understood that as a member of the committee of the House of Commons I am keeping an entirely open mind and will judge on the evidence. However, because there is a committee considering this matter I thought that the death sentence might be done away with until the committee was able to report.

**The Chairman:** Shall clause 206 carry?

**Mr. Knowles:** On division.

Clause agreed to on division.

Clause 289 agreed to on division.

Clauses 641 to 643 inclusive agreed to on division.

**Mr. MacInnis:** On a point of order, Mr. Chairman, citation 669 in Beauchesne, third edition, has been brought into operation on several occasions during the discussion of this bill. If the chairman will look at that citation he will see that besides preventing amendments except in the proper sequence it also provides that the marginal notes of sections should be read by the chairman. I think that is important so that we may know what the particular section involves. We are not all conversant enough with the Criminal Code to know by the mere reading of the number of the clause what is involved in it.

Clause 644 agreed to.

Clause 645 agreed to on division.

Clause 646 agreed to.

Clause 647 agreed to on division.

Clauses 648 to 651 inclusive agreed to.

Clauses 652 and 653 agreed to.

Clause 661 agreed to.

**Mr. Garson:** May I again ask the indulgence of the members to move an amendment to clause 400. In order to do that, we would have to reopen the clause and I must, in all frankness, say that this is a matter which has arisen within recent days. I shall have to get the unanimous consent of hon. members to reopen the clause.

**The Chairman:** Has the minister leave?

**Some hon. Members:** Agreed.

On clause 400—*Printing circulars, etc., in likeness of notes.*

**Mr. Garson:** I feel that I cannot do better than to read a letter from the deputy governor of the Bank of Canada in support of this amendment. I shall ask the Minister of Finance to move this amendment which reads as follows:

That clause 400 of Bill 7 be amended by adding thereto, immediately after subclause (1) thereof, the following subclauses:

"(2) Everyone who publishes or prints anything in the likeness or appearance of

(a) all or part of a current bank note or current paper money, or

(b) all or part of any obligation or security of a government or bank, is guilty of an offence punishable on summary conviction.

(3) No person shall be convicted of an offence under subsection (2) where it is established that, in publishing or printing anything to which that section applies,

(a) no photography was used at any stage for the purpose of publishing or printing it, except in connection with processes necessarily involved in transferring a finished drawing or sketch to a printed surface,

(b) except for the word 'Canada', nothing having the appearance of a word, letter or numeral was a complete word, letter or numeral,

(c) no representation of a human face or figure was more than a general indication of features, without detail,

(d) no more than one colour was used, and

(e) nothing in the likeness or appearance of the back of a current bank note or current paper money was published or printed in any form."

**Mr. Abbott:** I so move.

**Mr. Garson:** Now, the explanation for this is contained in a letter from Mr. J. E. Coyne, the deputy governor of the Bank of Canada, addressed to K. W. Taylor, deputy minister of finance, at Ottawa, reading as follows:

We have noticed an increasing tendency for people to produce photographs and other reproductions of Bank of Canada notes, either for use in connection with commercial advertising or for some other purpose or just as a matter of interest or curiosity. In such cases the makers and users of the reproduction have no intention of passing off the pictures as currency or of making any wrongful use of the negatives or plates used in producing them. We believe, however, that it would be highly desirable if reproduction of Canadian currency in this way could be prevented. For one thing, every such action tends to encourage others to imitate them or to think up new ways of making representations of currency, and generally cheapens the position of bank notes in the public eye. For another thing, once plates have been made, though for the most innocent purpose, they may pass into wrongful hands and be put to a wrongful purpose by persons who would not be able to produce the plates themselves.

**Mr. Fulton:** I am a believer in the principle, and I think the minister has subscribed to this principle on other occasions, that you should not go around creating criminal offences unless it has been reasonably clearly established there is a need for them. I have not heard the minister say anything yet to establish that this section will plug a loophole or fill a gap—

**Mr. Abbott:** Let the minister finish reading the letter.

**Mr. Fulton:** I thought he had finished when he sat down.

**Mr. Abbott:** I thought he sat down when you got up.

**Mr. Fulton:** I am not like the Minister of Finance; I do not interrupt.

**Mr. Garson:** The letter is quite a long one but perhaps I had better read the whole thing. I thought the first paragraph was quite convincing so far as I was concerned, but I am probably more gullible than the hon. member for Kamloops. The letter reads:

As a practical matter, however, it seems that such use cannot be entirely prevented because of the lack of a workable definition of what constitutes a "reproduction". For this reason representations that vary in their approximation of reproduction will continue to appear unless the law can be made more definite and more enforceable.

In the past when advertisements and other material have come to our attention we have referred the matter to the Department of Justice. The department apparently takes the view that, except in actual case of intent to pass off false notes as genuine, they are unable to carry on a successful prosecution under the existing sections of the Criminal Code even in the case of exact photographic reproduction. The consolidation of the Criminal Code now before parliament somewhat changes the existing provisions and in our opinion renders the law in this regard even less effective than before. We have discussed this matter in general terms with representatives of the Department of Justice, who say they are unable to prepare a more satisfactory clause under instructions from the Minister of Justice that no amendments of substance are to be made to the Criminal Code in the present bill.

The new series of Bank of Canada notes will be put into circulation in September of this year and will occasion a good deal of public comment. The newspapers and others will no doubt wish to publish photographs and other reproductions of the new notes. Technically, they would be breaking the present criminal law in doing so but apparently would not be subject to prosecution.

In this connection, we propose to meet the "news" problem by giving the papers an outline drawing showing the shape and position of all major elements on the face of the new notes, which may be used to illustrate written descriptions and stories. We shall provide such drawings in proof, mat and plate form, according to the wishes of each paper. We believe this is as far as representation should go, but fear that some papers, and some commercial concerns seeking to take advantage of the publicity of the new issue, will indulge in a wide variety of simulations ranging as far as exact photographic reproduction.

We would think it highly desirable that the law in this regard be established on a more satisfactory basis than at present. We suggest that the Criminal Code should contain an absolute prohibition against photographing Bank of Canada notes, and also against reproducing them in any other way if such other reproduction exceeds the limits of permissible "simulation" set down on the attached memorandum. These limits would have the effect of defining more clearly the nature of what would constitute a reproduction and consequently provide better grounds for prosecution. The representations made possible could not conceivably be diverted to wrongful use. Finally, "simulation" within the limits would enable reasonable illustrative representations to be made for either news or advertising purposes. Since simulation would be an approximation of appearance only this would preclude commercial use of the more objectionable sort which usually depends on a close facsimile treatment.

**Mr. Fulton:** It is difficult, Mr. Chairman, to grasp the whole of the problem from the letter or to grasp the seriousness of the problem outlined to us merely from the reading of the letter. We have had no previous notice and no opportunity to study the problem. But I should imagine that the fact that a whole new series of bank notes is to be run off, in view of the accession of Her Majesty, will create a great deal of interest. People will want to see them illustrated or reproduced in the newspapers. Therefore a real problem will be created.

This is a quite complicated section and deals with a very difficult matter, namely the general subject of counterfeiting. I am going to suggest that because it is so difficult to deal with, and to ensure that we have not made a change that will either go too far or fall short of what is necessary, in view of

the fact that the banking and commerce committee is now sitting, and as this is not a matter involving only legal considerations but one involving also questions of counterfeiting and the like, the sections in this amendment might be referred to the banking and commerce committee, discussed there and reported back.

We have completed our discussion of the rest of the code. This is new and comes before us just at the last moment. As the Minister of Finance is here, perhaps the two ministers might confer on my suggestion.

**Mr. Abbott:** I understand this bill is to go from this house to the other place. The section before us is one to which the Bank of Canada attaches some importance, particularly because, as the house knows, we are bringing out a new series of Bank of Canada notes in September. They will be rather different from the present Bank of Canada notes. I should not anticipate what they will be, but I have approved the designs.

**Mr. Knowles:** How much will they be worth?

**Mr. Abbott:** Oh, they will be, as they always have been, the strongest currency in the world. They will represent characteristic Canadian scenes. I think it is important that there should be a proper provision in the Criminal Code to prevent facsimile reproductions of currency, because a good many people are easily taken in by that sort of thing, and they are protected by the provision in the Criminal Code.

I would say there would be no objection to the suggestion that the proposed amendment should be looked at by the banking and commerce committee, and perhaps the deputy governor of the Bank of Canada might go there and elaborate upon the reasons he has given in the letter to my deputy minister. I do not suppose the house would want it to come back here. If the banking and commerce committee were satisfied with the explanation, it could be referred to the other place and dealt with there.

So far as I am concerned I would be happy to have the officers of the Bank of Canada report before the banking and commerce committee the reasons they feel proper provisions should be put in the Criminal Code now to prevent the facsimile reproduction of Bank of Canada notes.

**Mr. Fulton:** I wish to assure both ministers that there is no dispute either on my part or that of the official opposition as to the necessity for some such provision. It is just that this is a quite complicated matter and we would like to know what the mechanics of the procedure would be.

**Mr. Garson:** May I suggest that it might be wise if my colleague were to withdraw his amendment. This text might be submitted to the committee on banking and commerce and discussed there. Then when the bill goes to the other place, as it will have to do, and be considered there clause by clause, it would be a simple matter indeed for the Senate to put in a Senate amendment. That would be passed in due course and come back to the House of Commons.

**Mr. Fulton:** In other words you suggest that we should approve of it.

**Mr. Garson:** No.

**Mr. Knowles:** It will have to come back to us afterwards.

**Mr. Abbott:** We will have the Senate put the amendment in. Then it will come back here to us.

**Mr. Knowles:** Will the Senate do whatever you want them to do?

**Mr. Abbott:** It may refuse it.

**Mr. Knowles:** We know they do your bidding; but we are surprised you admit it.

**The Chairman:** Is it understood that the amendment is to be withdrawn?

**Mr. Abbott:** Yes, I will withdraw the amendment.

**The Chairman:** Has the minister leave to withdraw the amendment?

**Some hon. Members:** Agreed.

Amendment withdrawn.

Section agreed to.

Title agreed to.

Bill reported.

**Mr. Deputy Speaker:** When shall this bill be read a third time?

**Some hon. Members:** Now.

**Mr. Fulton:** No.

**Mr. Deputy Speaker:** When shall this bill be read a third time? Next sitting?

**Mr. Fulton:** Agreed.

**Mr. Abbott:** By leave, now.

**Some hon. Members:** Now.

**Mr. Garson** moved the third reading of the bill.