THE SENATE

Wednesday, May 5, 1954

The Senate met at 3 p.m., the Speaker in the Chair.

Prayers.

Routine proceedings.

REPRESENTATION BILL

THIRD READING

Hon. Mr. Macdonald moved the third reading of Bill 420, an Act to amend the Representation Act.

The motion was agreed to, and the bill was read the third time, and passed.

CRIMINAL CODE BILL

MOTION FOR SECOND READING—
DEBATE ADJOURNED

Hon. Salter A. Hayden moved the second reading of Bill 7, an Act respecting the criminal law.

He said: Honourable senators, this bill in one form or another has been before us on several occasions, it having been first introduced in the Senate about two years ago in the form in which it had been drafted as a result of the work of the Criminal Code Revision Commission which studied the subject-matter for a number of years. At the 1952 session our Banking and Commerce Committee made some sixty-three amendments to that bill. At the following session a redrafted bill, incorporating in the main the amendments which had been proposed by the Senate, was introduced in this chamber; and after the bill had been studied by the same committee and a subcommittee, approximately 116 changes were made, some substantial and some more or less minor. The bill with those amendments was then sent to the House of Commons, and it was considered in a committee of that house that session. At the present session the bill was introduced in the House of Commons, as Bill No. 7, incorporating some of the changes proposed by the committee last session.

The bill as it now comes before us, after further study by the House of Commons and one of its committees this session, contains some seventy-one changes from the bill which we passed and sent to that house. Some of the changes amount simply to a rephrasing of certain sections without, in my view, effecting any change in the substance of those sections. Other changes involve changes in penalty, which in most instances would represent an increase in penalty. But a number of changes have to do with sections which in my view are controversial, some of which sections the Senate took a very decided stand on when the bill was before it, and I want to comment particularly on the treatment those sections received in the Commons. I do not propose to deal with all the seventy-one changes. If the patience of honourable senators does not run out I may deal with a number of them, but certainly with not more than 50 per cent. With some of them I may deal fully; with others, very casually.

The first section I wish to refer to in Bill 7 is section 9, which was section 8(2) in the bill we sent to the Commons. The subject-matter of that section is contempt of court. Even at the present time there is no appeal provided from a conviction for contempt of court. When the matter was originally before the Senate committee we felt it was a very drastic, very arbitrary power which could be exercised by a judge or magistrate. The circumstances in which he would be called upon or permitted to exercise that power would be peculiar. Usually the contempt, if it took place other than in the face of the court, would be brought to his attention, he would order the offender to be called before him, he would read the article or statement complained of and if he decided there was contempt of court he would impose the penalty; and there was no appeal from the conviction or sentence. Likewise, there was no appeal from the conviction or sentence of a person for contempt committed in the face of the court—that is, before the judge or magistrate who finds the person guilty and imposes the sentence.

We felt that that was basically wrong and provided for an appeal in this fashion: we said that where a person was convicted of contempt in the face of the court—where a person during proceedings in court was guilty of conduct or of making remarks which could be construed as holding the court or judge up to ridicule or contempt, and where in the interest of maintaining the decorum and dignity of the court the judge should be given strong powers—such a person should be allowed a right of appeal from the sentence only. It might very well happen that the judge, under pressure of the circumstances—for judges are human—would impose a penalty which upon reflection he would regard as being a bit too severe.

On the other hand, we provided a right of appeal both as to conviction and sentence for contempt not committed in the face of the court.

The House of Commons, in its consideration of the measure, changed the section to

provide a right of appeal against conviction for contempt in any event, whether it took place in the face of the court or otherwise. However, the proposed right of appeal is not an absolute right, but is subject to leave being given by the court of appeal or a judge of that court.

Honourable senators may feel, as I do, that the right of appeal should be an absolute right, and not subject to leave being given. The value of the right of appeal, in my thinking, lies in the absolute nature of that right. In these circumstances, our committee might very well give further consideration to this question of contempt of court, and decide whether perhaps our earlier thinking on the subject was correct, or whether we should accept the change made by the House of Commons.

Perhaps I should add that the subject of contempt of court has been given particular prominence lately. I am not attempting to express any opinion on convictions under that charge, because without a full statement of the facts it would be very dangerous to do so. But one recent case which struck me rather forcibly was that of a news dealer who was sent to jail because some offending magazines were found on his counter. His explanation apparently was that under his contract he could only get a supply of certain publications if he accepted certain other publications which were sent to him and over which he had no right of selection. I may say that New York State has recently realized the danger of such a contract, and has introduced a law making it illegal. Nevertheless, this charge to which I refer certainly placed the news vendor in a most difficult situation. He was charged with contempt and he defended himself in the only way he could. There seemed to be some merit to his defence; nevertheless he went to jail. I am not suggesting that the judge was arbitrary, but it was an arbitrary exercise of an absolute power; and in the interests of justice and democracy there should be a means by which the correctness of such a charge and conviction could be tested as of right by an appeal.

I wish to refer briefly to section 33 of the bill, which section, by the way, bore the same number in the bill that we sent to the House of Commons. That section has to do with the duties of officers at the time the riot act is read. As the bill went to the Commons it contained a provision that if death or injury resulted to persons assembled, the peace officers or any person drafted to aid them could not be charged in any civil or criminal proceedings in respect of any such death or injury. The Commons chose to restrict that protection of officers to proceedings brought in respect of any death or injury that is caused "by reason of resistance" to the performance of duty by peace officers and those assisting them. Possibly that is a reasonable restriction. I have no strong views on it one way or the other, and I simply pass it on without comment.

We next come to a section which provoked considerable discussion in the other place. That is section 46, dealing with treason. Section 46 of the bill as it originally came before us, as drafted by the Revision Commission, provided in section 46(1):

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

Now, as the result of our deliberations on that section we concluded that this was a departure from the well-known concept of what constituted treason, and while we were perfectly prepared to provide a penalty for an offence of the character described by the words I have read we felt that we should not confuse the concept of treason by calling such an offence treason; so we took that paragraph (e) out of section 46 and put it into section 50, under which the act described in the paragraph became an offence, and we provided for a penalty of fourteen years. We also made one change in the phrase "prejudicial to the safety or interests of Canada", by striking out the words "or interests". Well, the Commons restored paragraph (e) to section 46, with some change in the language, and made the act treason. So the proposed section 46(1) now reads:

> Every one commits treason who, in Canada,
>
> (e) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada.

It will be noted that that language is more particular, and the elimination of the words "or interests" by the Senate has been confirmed in the amendment. Also, the unlawful communication is not of information in the broad term as used originally, but it is now information of a military or scientific character, and the paragraph goes on to elaborate on that.

Having regard to the way in which international affairs are now carried on and have been carried on for some time, the developments in modern methods of warfare, the importance of scientific information in relation thereto, and the know-how in connection with these processes, it may now be more important than ever that a country should be

able, by the most drastic penalties possible, to safeguard that information and to provide against its possible communication to other countries where it could be used against the best interests of Canada. It may be that, as schemes of defence against modern developments in warfare are progressive things, with developments occurring from day to day, their importance to the safety and defence of the country is such that we must be prepared to treat the communication of information about them to the agent of a foreign state as the most serious offence, so far as Canada is concerned, that a person can commit, and term it treason—a word which denotes the most awful offence of which one can be guilty in relation to his own country. In any event, the Commons has included this offence under the heading of "treason". I think the section itself is now much better phrased. There are still attached the qualifying words that the purpose for which the information is communicated must be prejudicial to the safety or defence of Canada.

In this connection I would refer honourable senators to section 47, which prescribes the penalties, and in which several changes have been made. For treason in its original concept, embodied in paragraphs (a), (b) and (c) of section 46, the penalty of death is retained; for the offences indicated in paragraphs (d), (f) and (g), the penalty may be death or life imprisonment. In the case of the particular subsection to which I have been referring, and which I have read to you, relative to the communication of military or scientific information, the penalty is to be death or life imprisonment if a state of war then exists between Canada and another country at the time the information is communicated; but if there is not a state of war, the penalty is fourteen years.

It may be that, as a result of all the discussion which has gone on, with the weighing of all points of view, the method of treatment which is here set before us is by and large a satisfactory way of dealing with the matter, and that we should not feel that, because heretofore treason has been identified only with offences of a certain character, there are not circumstances under which the concept should be enlarged. My own view is that if the application of the term "treason" to the communication of information under these circumstances is more likely to strike terror in the heart of some person or persons who may be urged to so communicate information of this kind, one may be perfectly content to have such acts described as treason.

Section 50, to which some amendments have been made, is included in the same group of sections as those pertaining to treason. As I have already stated, paragraph (c) of section 50, relating to the conveying of information, has been removed from that section and returned to section 46. I have no comment to make on the addition to paragraph (a) of the words "wilfully assists".

I come now to a series of sections which are, I believe, the kernel of this matter, and I should like to discuss them together. I refer to sections 52, 365 and 372. I should like to take a few moments to tell the house what these sections embody, what the practice has been in respect of them, and perhaps express some views about them.

Section 52 is known as the sabotage section, section 365 as the criminal breach of contract section, and section 372 as the mischief section.

Under section 52 the basic element of sabotage is that the prohibited act must be prejudicial to the safety, security or defence of Canada, or the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada. A "prohibited act" is then defined as being an act or omission that impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or causes property, by whomsoever it may be owned, to be lost, damaged or destroyed. That is the essence of sabotage.

As defined in section 365, criminal breach of contract stems from acts which may result in endangering life, causing serious bodily injury, endangering property, depriving citizens of certain services or delaying or preventing the running of trains. I would point out, however, that an offence of criminal breach of contract might not be sabotage, for in the case of sabotage the act must be prejudicial to the safety, security or defence of Canada. An act of mischief is also something that falls below the character of being prejudicial to the state.

Having made these general observations I shall proceed to state what was done by the Senate. The bill which originally came before us restated more or less the existing law in those three sections, which we passed without any amendment providing for a saving clause exempting any group or groups of people from the application of those provisions. Thus the sections, as passed by the Senate, simply restated the present law. I would point out that section 372 represented an attempt to restate in one section what is contained in perhaps as many as twenty sections in the present code. The House of Commons added saving clauses, both in the same language, to sections 52 and 372. The saving clause in section 52 provides:

No person does a prohibited act within the meaning of this section by reason only that

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

(b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment, or

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

Subsection (4) was also added, as follows:

No person does a prohibited act within the meaning of this section by reason only that he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

That same saving clause was added to section 372, but the saving clause added to section 365 was different. Reference was made by an honourable senator to the treatment that was given to section 365, his comment being based on the saving clause that was embodied by the Commons in section 365, but that clause underwent considerable amendment before appearing in its present form in Bill 7. It now reads:

(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 . . .

The next part is the important one:

(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.

In addition a new clause has been added:

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

Hon. Mr. Aseltine: Is that the section about which some honourable senators have received correspondence? I have received at least half a dozen letters requesting me not to vote in favour of Bill 7, in order to preserve the freedom of the people of Canada, and all that sort of thing.

Hon. Mr. Hayden: I do not know, of course, what is contained in the correspondence you have received. I know that I myself have received letters dealing with these three sections. I think that by and large the labour organizations feel that if section 365 is at all necessary it is in its most acceptable form as it appears in the bill before us. The section simply says this: If property damage results from a workman walking off the job at a time when all steps provided by his contract and by law with respect to the settlement of industrial disputes have been taken, and there are no other steps to be taken short of legal strike, then the saving clause in the section would apply if the act of walking off the job was not a wilful one. The House of Commons attempted to provide a further protection against any multiplicity of prosecutions by providing that no prosecution can take place under this section without the consent of the Attorney General of the province. Frankly, I can see no objection to the form in which the section now appears. If a walkout occurred after all negotiation proceedings had been exhausted, and when there was a right to strike, I would think that even without the saving clause there is inherent in the section the right of a workman to walk out as long as he did not wilfully break a contract. If he quit work after his right was exhausted, and damage to property resulted, and he was charged with criminal breach of contract, I think it would be a good defence in law for him to say, "My contract is at an end for this purpose". In my view, therefore, all that the saving clause does is to make explicit what I regard as already implicit in the section, even without the saving clause. Therefore, I have no criticism to offer.

I have indicated the view of the labour organizations; and I think even management has said, in similar language, that if there must be a saving clause the paragraph now in section 364 is the best that could be done, and it is satisfactory to them.

I cannot look with equal approval upon section 52, which deals with sabotage, or section 372, with mischief. The two sections are entirely different. Section 372 has to do with wilful damage to any property, but section 52 goes farther and affects the safety, security and defence of the state. The saving clause has been added in both sections, and operates in this way: If a workman engaged by an employer, where there is a contract of employment, decides to quit his job to go and join a picket line to help other members of his union who are on strike at another plant having no relationship to the plant from which he quit, the saving clause permits him to do so. May I point out that the language of the section is that he is not guilty of an offence under that section by reason only of doing so. In order to indicate to honourable senators what was intended, I will read what the Minister of Justice and Mr. Knowles said in the other place. In dealing with these

saving clause amendments Mr. Knowles said, as reported in the *House of Commons Debates* of April 7, 1954, at page 3875:

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

And the Minister of Justice replied:

> Yes, of attending for the purpose of obtaining or communicating information.

Now we know the purpose of the saving clause is to permit workmen, in violation of a contract so far as the offence of sabotage is concerned, to quit work to go and join a picket line or have a meeting with other members of the union about any matters affecting the rights and protection of workmen; and in so doing, unless a workman does something more than simply quit work, the saving clause applies. That is one interpretation of the section. There is another obvious interpretation, it seems to me. If a man quits work when he is under contract to work and there has been no default in the contract, and if he is the operator of a machine and knows that if he walks out the machine will be damaged, it might be inferred that as part of his employment under the contract it is his duty to protect that machine, by turning it off or doing whatever else is necessary, before he walks out, and that otherwise in walking out he would be guilty of a criminal breach of contract and of an offence under section 365. But if the offence affected the safety, security or defence of Canada it would be called sabotage. I do not know that it is good business to settle for something else, or whether it is proper to take the attitude that a workman operating under a contract that is in good standing may walk off the job in circumstances which would protect him from prosecution under section 52, yet render him liable to punishment for a criminal breach of contract under section 365. That is a bit puzzling to me.

I am not suggesting that any special burdens should be imposed on workmen. They have rights to which they are entitled; the law protects them, to some extent, as a matter of contract; they have the right to strike, and no question about the right to strike is involved in our consideration of these sections. All we have to consider, in the first instance, is this: Where the safety, security or defence of Canada is concerned, in certain relationships, should there be any saving clause, and if so how broad should that saving clause be? The law down to this date has provided no saving clause at all. One is provided here by reason only of the situation of a man leaving his job to join a picket line at another plant, and in picketing disregarding his obligations under his own contract with his own employer. That is a saving clause which it is difficult for me to accept. I am not saying that my mind is closed to it, but that it is a difficult proposition for me to understand. Perhaps I have not looked at it long enough, but I have looked at it as long as it has been in this bill and have not been able to adapt my thinking to a full acceptance of it. It seems to me that by adding this saving clause in the language as given we are attempting to excuse what otherwise might be sabotage in relation to the safety, security or defence of Canada, or in relation to the safety and security of foreign troops that may be lawfully stationed in Canada. It may be that there is some happy hunting ground in between where some language might be evolved that would give comfort to those who are concerned about the absolute nature of the section; but the section in its absolute form has been in existence down to this time, and all I can say is that if there was ever a time when strong laws in regard to the safety, security and defence of Canada are needed, it is at present.

An Hon. Senator: Hear, hear.

Hon. Mr. Hayden: To the extent that this saving clause may weaken the law, I would want to give more serious consideration to whether I should support it or not. All I am seeking to do is to bring to the attention of honourable senators what the saving clause does. The decision is for honourable senators to make when the bill is in committee, and again when it is returned to this house for further consideration.

The same kind of saving clause has been put into the mischief section. This section is not as broad as the sabotage section, for of course sabotage affects the state. In so far as the mischief section goes, it would apply to any property damage. I am thinking of an incident which occurred some years ago at Arvida, Quebec, where the workmen went on strike and left pots full of molten metal to cool and freeze, and thus caused very substantial destruction of property.

Hon. Mr. Howard: A tremendous loss.

Hon. Mr. Hayden: A tremendous loss resulted. That is the sort of thing which, if it does not go so far as to be sabotage and prejudice the defence, security or safety of Canada, certainly affects a contract in good standing. Such an incident might very well be the basis of an offence under either section 372 or section 365, depending on whether

there was a contract, the nature of the contract and the circumstances under which the men walked out.

Honourable senators, I am sorry that I have taken more time than I intended on those sections, but they strike me as being of considerable importance; certainly, the House of Commons spent some time on them. I may add that representations were made to the Commons which were not made to us with respect to the saving clauses. I do not say that I resent that sort of thing, but I do think we should have had the opportunity of considering them, because we had the bill before us for a long time and we gave serious consideration to that subject. However, it is before us now.

I should like now to consider a group of sections, namely 64 to 69, and particularly section 69, which have to do with unlawful assemblies and riots. Bill O, which we sent to the House of Commons, provided that once the riot act has been read people must immediately disperse. The problem has come up as to what is meant by "immediately". Apparently some police officers immediately went into action upon the riot act having been read by the mayor or other official. This gave rise to complaints and disorders. As a result the House of Commons has provided an amendment to the effect that people must disperse and depart within thirty minutes after the reading of the riot act.

The next section to which I would refer in passing is section 88. By the way, I should say that from section 88 onwards the section numbers in the new bill correspond with those in Bill O, which we sent to the House of Commons.

Honourable members of the other house were so disturbed about the threat of what are normally called switch-knives or spring-knives that they added to section 88 subsection 3, which explicitly provides that:

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

It was hoped that by setting out this specific provision in the code, merchants would be discouraged from selling this type of knife to youngsters who feel it is a smart thing to be equipped with a knife on which the pressing of a button or lever causes the blade to swing into action.

Section 102 of the bill is a section which I should think, after having been a member of this house for some years, would be of no interest to honourable senators. However, I might in passing tell you the nature of the section. It has to do with the matter of subscribing to what might be called party funds. The opening words of subsection 2 of that section in Bill O, as sent on to the House of Commons, read as follows:

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

Incidentally, I do not think that valuable consideration includes the making of speeches; at least, it has not been interpreted as such. Some discussion took place on this particular subject in the Commons, and as a result an amendment was adopted which I think honourable senators would appreciate as being very satisfactory. Subsection 2, as amended, now reads:

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

This clearly expresses the matter, so that he who runs may read and understand what the true situation is. It may not be said to be in any way inhibitory. Perhaps I should add that the penalty for an offence under this section is imprisonment for five years.

I turn next to section 116, which deals with a witness who gives contradictory evidence or who perjures himself. Of course we all share the feeling that the proper conduct of our courts is a most important thing, and one of the strongest contributing elements is the ability to rely on testimony being honestly given. True, it may not always be a faithful statement of the facts, but at least we would hope that it is honestly given. And to assure that it will be honestly given, we provided in Bill O that a person who has given contradictory evidence on two different occasions could be charged with an indictable offence, and the onus was on him to defend himself by establishing that none of the evidence was given with the intention to mislead the court. The House of Commons has adopted a little more lenient approach to that question by placing upon the crown the onus to establish certain things. Part of subsection 1 of section 116 reads as follows:

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

In other words, it reverses the proof.

There is the further safety clause provided by subsection 3 of section 116 which reads as follows:

> No proceeding shall be instituted under this section without the consent of the Attorney General.

This provision would mean, for instance, that a private litigant who lost a civil action

because a witness changed his story, could not prosecute without the leave of the Attorney General. Although section 116, as we submitted it to the House of Commons in Bill 0, was somewhat stiffer, I have no comment to make on the amendment.

Section 120 deals with the question of public mischief. In Bill 0 the opening words of that section read:

> Every one who causes a peace officer to enter upon an investigation wilfully—

The Commons thought there might be some confusion in the interpretation of those words, and amended them to read:

> Every one who, with intent to mislead, causes a peace officer to enter upon an investigation by—

It is a clarification, and I do not think it seriously changes the scope of the section.

In section 131, which deals with the question of corroboration in certain types of sexual offences, the Commons added section 142 to the group of sections under which a material particular of the evidence given must be corroborated before there can be a conviction.

Next I will mention section 150, on the question of crime-comics. I commend to honourable members a careful reading of this section, and particularly subsection 7 (b). Frankly, I have some doubt whether that paragraph (b), which was put in by the Commons, adds anything of substance but it contains some nice sounding words in any event.

Section 164, which has to do with what we might ordinarily describe as the offence of vagrancy, was the subject of considerable discussion in the Commons. In the form in which the bill was sent over from the Senate that section said:

> Every one commits vagrancy who
> (a) not having any apparent means of support
> (i) lives without employment, or
> (ii) is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found.

There was considerable discussion on the possibility of that language being interpreted to mean that unemployed people were automatically guilty of an offence under this section. Well, in their wisdom, the Commons saw fit to run all the words together and thereby to make it clear that it was a combination of these things that had to result before the offence would exist, and section 164 (1) now reads:

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

There may have been some justification for the concern over the former wording, and if there was a possibility of misinterpretation I think the change, which removes any reason for doubt, is good.

Section 250 deals with the publication of defamatory libel known to be false, section 251 with the publication of defamatory libel, and section 252 with extortion by libel. In these three sections all that the Commons has done has been to increase the penalties. For instance, in section 250 of the bill as we passed it the penalty provided was imprisonment for two years or a fine of $5,000 or both, and the Commons provided for a straight term of imprisonment of five years with no provision for a fine. Section 251 as we sent it forward to the Commons provided for a penalty of imprisonment of two years or a fine of $1,000 or both, and the Commons made the penalty two years. In section 252, for extortion by libel, we provided for a penalty of two years or a fine of $1,000 or both, and the Commons substituted a term of imprisonment for five years without any provision for a fine.

Section 295 deals with possession of housebreaking, vault-breaking and safe-breaking instruments. This section as we passed it read:

> Every one who without lawful excuse, the proof of which lies upon him,
> (a) has in his possession any instrument for house-breaking, vault-breaking of safe-breaking, or
> (b) has his face masked or coloured or is otherwise disguised,
> is guilty of an indictable offence and is liable to imprisonment for fourteen years.

The Commons rephrased that to provide for a penalty of fourteen years where there was possession of any instrument for housebreaking or vault-breaking, etc., but for a penalty of only ten years if the convicted person had his face masked or coloured or was otherwise disguised.

Hon. Mr. Aseltine: Did they make any provision for more jails?

Hon. Mr. Hayden: No, they did not. I take it that it would still be perfectly in order for masquerade parties to be held without running into conflict with this section.

Hon. Mr. Euler: Is there a saving clause for that?

Hon. Mr. Hayden: No, there is no saving clause except the combination of the language in the section, which would be sufficient. It reads "with intent to commit an indictable offence", so if you wear a false face and the crown cannot establish intent to commit an indictable offence, you escape.

As I intimated before, I am skipping over a large number of sections where the changes did not, in my opinion, involve any change in substance. We can refer to them and

call for an explanation and understanding of them in committee, but I do not want to take time to deal with them here.

Section 328 deals with fraudulent concealment of documents of title, etc., and the Commons saw fit to add a clause requiring the consent of the Attorney General to prosecute in such a case.

The Commons altered the penalty in section 339, which has to do with the salting of a mine and the salting of a sample taken from a mine. The penalty in the bill as it left the Senate was five years, but the Commons saw fit to increae it to ten years.

In section 341 there is a change, but it is only a rephrasing and we do not need to be concerned about it at this time.

Section 343 creates an offence of making, circulating or publishing a false prospectus, and the Commons increased the penalty from five to ten years.

I have already dealt with sections 365 and 372, so I do not need to spend any time on them now.

Next I want to refer to section 432, which deals with the detention of things seized under a search warrant. It will be recalled that in the Senate bill this section provided that when things are seized under a search warrant they must be brought as quickly as possible to the justice who authorized the issue of the search warrant. The changes made by the Commons in this section are lengthy, but all they do is to provide in more detail for the manner of disposal of goods which have been seized under search warrant when they are no longer required for the purposes for which they were seized.

Section 438 is an important section. It deals with a situation where a person has been arrested without warrant and, it may be, by a person who is not a peace officer. In the section as passed by us it was provided that anyone who arrests a person without warrant shall deliver that person to a peace officer, and that the peace officer shall, as soon as possible, bring such person before a justice to be dealt with according to law. Apparently it was felt in the Commons that the term "as soon as possible" was not precise enough, so the section was amended to provide that where a person who has been arrested without warrant is delivered to a peace officer, the peace officer must, if a justice is available, bring him within twenty-four hours before that justice, and if a justice is not available within that period of twenty-four hours the peace officer must bring him before some justice "as soon as possible". I cite these facts to illustrate the great care and consideration which this section has received. We have an interpretation of "as soon as possible".

I now draw attention to a rather important section. Section 481 provided for the continuance of proceedings where a judge or magistrate was unable to act. The clause as approved by us was rejected by the Commons and replaced by a much lengthier one which spells out in considerable detail what steps must be taken. For instance, if the judge or magistrate before whom a trial is commenced dies, or for any reason is unable to continue, certain provisions are made applicable. If he had got to the stage of adjudication, but had not imposed sentence, some other magistrate may step in and impose sentence. If he had not got to the stage of adjudication, the judge or magistrate who substitutes for him will start *de novo:* and procedures to cover these situations are outlined. The only difference I can see is that, in the form in which the section was passed by this house the procedure could have been worked out by regulations or rules of criminal practice; but in its present form the section eliminates the necessity for rules by spelling out the procedures in the various subsections of section 481.

Section 628, as revised, deals with compensation for loss of property. It is provided that a court which convicts an accused of an indictable offence may award, out of moneys found in the possession of the accused at the time of his arrest, "an amount by way of satisfaction or compensation for loss of or damage to property suffered . . ." Again we find a somewhat elaborate procedure attached to the section as amended. In the circumstances I have mentioned it is provided that the judge may order an accused to pay to the aggrieved person an amount by way of satisfaction or compensation for loss of or damage to property, and where the amount so ordered to be paid is not paid forthwith, the applicant may, by filing the order, have it entered as a judgment in the Superior Court in that particular case, and all the incidents that attach to a judgment of record will then follow for the purposes of ensuring the collection of the money.

Under section 629 we have exactly the same situation in relation to compensation to *bona fide* purchasers. Where somebody has stolen goods and sold them to someone else who is a *bona fide* purchaser, a procedure is spelled out as to how that purchaser may, when a conviction is made, get an order of the judge for reimbursement of the amount of money which had been paid for the goods, and the judgment is enforceable in the same manner as if it were a judgment of a court of record.

I think honourable senators will be interested in section 631, which deals with the

costs in proceedings by indictment for defamatory libel. The section sent to the Commons provided that a successful defendant in a prosecution for defamatory libel would be entitled to his costs. The section as amended by the Commons provides that the reasonable costs of the successful party may be recovered. This means that, whichever side is successful, the costs follow the event.

Section 632 is merely consequential upon the clause to which I have just referred.

I turn now to section 641, with the remark that honourable senators may begin to breathe more easily, as we are within one hundred sections of the end of the bill. Subsection (3) of section 641, as passed in this chamber, provided that every sentence of whipping should be carried out in accordance with regulations to be made by the Governor in Council. Apparently honourable members of the other place felt some concern about what these regulations might be, because they have spelled out in subsection (3) and in new subsections (4) and (5) the conditions under which a sentence of whipping will be administered. Provision is made for the type of instrument to be used, the circumstances under which whippings may occur, and for supervision by a medical practitioner. In short, instead of leaving these matters to be determined by regulations of the Governor in Council, specific directions are incorporated in the section itself.

Section 690 is one of a group of clauses relating to extraordinary remedies. The particular one with which it deals is where an application has been made for *habeas corpus*. In the bill as passed by us it was provided that, where an application for *habeas corpus* had been refused, successive applications could not be made. I presume that honourable members of the House of Commons became a little concerned as to whether or not that was sufficiently clear, so they added the words "on the merits". In other words, if the application for the *habeas corpus* is refused on the merits, then successive applications cannot follow.

Hon. Mr. Aseltine: Who makes that decision?

Hon. Mr. Hayden: I suppose that if a person tried to fly in the face of the law by attempting another application he would be refused on the basis of this section. I admit that putting in the words "on the merits" might promote quite a scope of argument as to whether or not the merits had actually been gone into. Under the section passed by the Senate there was certainly some finality to the proceedings.

In passing I should like to draw attention to section 691, providing for appeals in *habeas corpus*, *mandamus*, *certiorari*, and other proceedings of that kind. In their concern that these appeals should be promptly heard, the Commons inserted subsection (3), which specifically provides that the appeal of an appellant who has filed notice of appeal shall be heard within seven days after the filing of proof of service of the notice of appeal upon the respondent and, where a notice of appeal is filed when the court of appeal is not sitting, a special sittings of the court of appeal shall be convened for the purpose of hearing the appeal. This clause is no doubt justified, but in my view it provides something that might have been covered by the rules of criminal procedure.

I should like to refer to section 743, to which the Commons added a new subsection (5):

> (5) The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this Part.

This has to do with appeals following trials *de novo*. In certain circumstances a trial *de novo* may be held before a county court judge, following an appeal from a conviction or an acquittal by a magistrate. There is a provision elsewhere in the code for an appeal on any question of law.

Hon. Mr. McDonald: Are the offices of Minister of Justice and Attorney General of Canada always held by the same person?

Hon. Mr. Hayden: Those offices may be held by the same person and usually are. At the present time the Minister of Justice is also the Attorney General of Canada.

I should direct the attention of the house to section 746, which deals with the transition between the operation of the present code and the new code. For instance, the section provides for the handling of cases where offenders charged under the present code are not brought to trial until the new code is in operation.

Hon. Mr. Davies: May I interrupt the honourable gentleman to ask a question?

Hon. Mr. Hayden: Certainly.

Hon. Mr. Davies: On several occasions you have said that certain things cannot be done without the permission of the Attorney General. I take it that you have been referring to the Attorney General of Canada and not to provincial Attorneys General?

Hon. Mr. Hayden: No, I have been referring to the Attorneys General of the provinces.

I should have referred honourable senators to section 744, which deals with fees and allowances that may be allowed to peace

officers, witnesses and interpreters. For peace officers the mileage rate of 20 cents which we proposed has been reduced to 10 cents per mile. The fee for witnesses has been increased from $3 to $4 per day, and the mileage rate has been reduced from 20 cents to 10 cents per mile. The allowances for living expenses of interpreters has been increased from $5 to $10 per day, and here again the mileage rate reduced from 20 cents to 10 cents per mile. In other words, the Commons increased the *per diem* allowance for witnesses and interpreters over what the Senate had provided, but reduced the mileage rate.

Hon. Mr. McDonald: What was the recommendation of the Senate as to the *per diem* rate?

Hon. Mr. Hayden: We set the rate for witnesses at $3 per day.

Honourable senators, I have covered all the sections which I deem of sufficient importance to call to your attention at this time. I believe I have dealt with thirty of the seventy-one amendments that have been made by the Commons, and it may be felt that some of the others should be discussed in this chamber or in committee. I felt it was unnecessary to deal with amendments which merely involve rephrasing without change in substance. I referred to changes in penalties where I thought it might be useful to call these changes to the attention of the house. The substantial changes are not many and are confined to the important headings of treason, sabotage, wilful breach of contract, mischief, contempt of court and possibly a few others. Those are the major ones that loom up at this time. In the process of boiling, which has gone on in our consideration of the various drafts of this code over a period of two or three years, many problems have been worked out and common ground reached. Certain others remain and some may prove to be very contentious. I hope that my presentation of today may be of some assistance to honourable senators in their deliberations of this matter.

Some Hon. Senators: Hear, hear.

On motion of Hon. Mr. Roebuck, the debate was adjourned.

The Senate adjourned until tomorrow at 3 p.m.