THE SENATE

Tuesday, May 11, 1954

The Senate met at 8 p.m., the Speaker in the Chair.

Prayers.

Routine proceedings.

DIVORCE PETITIONS
REPORTS OF COMMITTEE

Hon. Mr. Roebuck (Chairman of the Standing Committee on Divorce) presented the committee's reports Nos. 390 to 399, dealing with petitions for divorce, and moved that the said reports be taken into consideration at the next sitting.

The motion was agreed to, on division.

CRIMINAL CODE BILL
SECOND READING

The Senate resumed from Wednesday, May 5, the adjourned debate on the motion of Hon. Mr. Hayden for the second reading of Bill 7, an Act respecting the criminal law.

Hon. Arthur W. Roebuck: Honourable senators, this long and difficult bill has been the subject of study for some five years, first by the Criminal Code Revision Commission, and since then by this and the other house. I approach discussion of it by expressing gratitude to the honourable senator from Toronto (Hon. Mr. Hayden) for the very capable review which he gave of the bill as it came back to us from the House of Commons. I am grateful to him not only for what I learned from what he said, but also because his review makes it unnecessary for me to attempt any comprehensive discussion of the measure and leaves me free to refer only to those sections in which I am especially interested or on which I think comment would serve some useful purpose.

Will honourable senators permit me a general comment? In my humble opinion this bill in its present form is a better statement of the criminal law of Canada than that which is contained in the Criminal Code now in force. Not only is it a better, but it is a shorter statement, and that is of some virtue. There are in the code 1,152 sections; in the bill before us there are 753. In other words, the bill we are now considering is shorter than the code by 399 sections. What has been omitted from the bill is a considerable document in itself; as a matter of fact, it would make a fair-sized book. Further, the code has 382 pages, while the bill has 297, or 85 fewer pages. That is a conservative calculation, because from a comparison of the two documents I am quite sure that there is more reading to the page in the code than in the bill; so in reading matter the bill is shorter than the code by more than 85 pages. Perhaps I am overstating the value of condensation, but remember that the Criminal Code is a public document that is supposed to be understood by the common people of this country, not by magistrates and lawyers alone, and that it affects the lives of thousands upon thousands of people. Therefore, the advantage of a short, simple, concise and readable statement of the code is almost inestimable.

Condensation, however, is not the only accomplishment that one finds in this new bill. Generally speaking, in my judgment the rewriting of the measure has resulted, first, in a clearer statement of most of the sections, secondly, in the elimination of a very considerable amount of dead-wood; and thirdly, in a better arrangement of the subject-matter, a very important improvement in an act of parliament which is being used daily in magistrates' courts, as is the code.

The work that has been done on this bill, I suggest to honourable seantors, is another illustration of the part which the Senate plays in the revision and improvement of legislation. When the bill was introduced here in the first place it was regarded by some as an almost perfect measure; it was backed by some great names of both bench and bar and by high officials of the Department of Justice. We were assured by the Minister, who spoke in this house on the presentation of the bill, that it was a very fine piece of legislation—and, of course, in the main it was, notwithstanding the fact that we pulled it to pieces and found opportunities for improvement. We made no less than one hundred and seventy-nine changes in the bill before it was sent to the House of Commons, and under provocation of the scrutiny which the bill received at our hands the Department of Justice worked on it again during the parliamentary recess. At the present session, the bill was brought down in the Commons, and that house made seventy-one amendments to it before sending it on to us.

I would like to make as forcibly as I can this general observation: there is simply no substitute for what takes place in the discussions of deliberative assemblies in the preparing and perfecting of legislative measures—measures to which large numbers of men must submit.

The criminal law, like the city of Rome, was not built in a day. It is the result of

many years of development. It is the product of time, of experience and of endless discussion, not only in high places but in low places; on the bench, in magistrates' courts, in legal circles and in parliament. The sum total of all this thought has produced the criminal law of today. In my opinion the House of Commons improved on the work that we did, as we improved on the work of the royal commission and of the departmental officials.

The first of the sections in which I am specially interested is clause 9, with respect to appeals from convictions for contempt of court. Usually, I have found, there is a tremendous resistance to any proposal to change from the established order. As a lifelong reformer, I can say that with some feeling. But in this instance—a very refreshing instance indeed—I have found a rather new experience. From time immemorial the judge has exercised absolute authority in the court over which he presides. Contempt of court procedure has a much greater purpose than of merely sustaining the egotism or the vanity of somebody who sits on a bench. That, really, is not the idea at all. Contempt of court is the holding up to ridicule, not necessarily of the judge personally, but of the administration of justice which is in his hands. Contempt of court is interfering with the processes of the court, so as to impede or to prevent the granting of justice as between the crown and an individual on trial or as between individual and individual. Finally, it is the disobeying of the court's orders. The jurisdiction of the judge in matters of contempt of court extends far beyond the confines of the court itself, and the judge may summon a person to appear before him to answer for an act to which the judge objects. In charges of contempt of court the judge may be the witness against the accused; he registers his judgment without the intervention of a jury, and he finally imposes the penalty. It can be seen, therefore, that the authority of the judge is not only wide but it is arbitrary; and under criminal law from time immemorial, both in this country and in Great Britain, there has been no appeal from either the conviction or the penalty which a judge may impose for contempt of court. As far as I know there is no limitation, either by statute or common law, on the severity with which a judge may deal with the accused in convictions of this kind.

When this legislation first came before the Senate, as Bill H-8, I thought fit to suggest that there should be an appeal in these cases, and at that time the newspapers published widely my suggestion. The Senate agreed, both in committee and in the house, that there should be an appeal against both convictions and penalties in cases of contempt of court. When I returned to Toronto for the Christmas vacation, I wondered just what would be said to me by judges because of the limitations of authority which I had suggested, but when I interviewed a number of the high court judges I was surprised to find that they were all in favour of my proposal; indeed, Chief Justice McRuer, of Ontario, had actually published a pamphlet in which he advocated this idea, and he sent me a copy of his brochure. However, I was assured by the judges that, if we took away the arbitrary character of these adjudications, there would be many more convictions for contempt of court and many more penalties imposed than there have been in the past. That frightens me not in the least, for I have already shown that contempt of court usually consists in contempt of the rights of some individual who is subject to the court—an interference between the court and some person indicted that may make a fair trial impossible, or it may consist in interfering in litigation so as to prejudice the case of one litigant and advance the case of another. That is interference with the course of justice which should not be allowed. Therefore, I am not at all worried by the statement that abolition of the present arbitrary procedure would result in more convictions and more penalties than have been imposed in the past.

I need hardly remind honourable senators that the proposed amendment was praised in the press from coast to coast; and now the Commons, too, have expressed their approval, much to my satisfaction. However, the Commons went farther than we did. In our effort to be moderate we did not provide an appeal from a conviction by a judge for an offence of this kind committed in the face of the court—that is, committed while the court is in session—but we did give an appeal from the penalty imposed under those circumstances. The Commons went farther and gave an appeal from the conviction as well as the penalty, and whether the offence is committed in court or out of court. I am ready to go along with them in that, but unfortunately they have made the right of appeal subject to leave of the court of appeal or a judge thereof. I am opposed to that. In my judgment, an application for leave to exercise the right of appeal is unnecessary and serves no useful purpose. The argument for the right of appeal must necessarily be upon the merits of the case; likewise, the argument with regard to the conviction itself or the penalty must necessarily be upon the merits of the case. The aggrieved party must thus present to the court of appeal two

arguments when one will suffice. Two procedures, when one will do, but add to the expense of appeal, and of course involves delay.

Finally, in my judgment an appeal should be allowed as of right and not as a matter of grace or of favour. I hope that when the committee examines these sections it will recommend to the house that we accept the widening of the grounds of appeal as suggested by the Commons, but that we strike out that provision added by the Commons making necessary two procedures for one purpose. We should strike out the requirement for consent to appeal, for it is of no value and involves the extra expense and delay of two arguments.

The next section to which I wish to refer is that with regard to treason. I suppose it is unreasonable to expect that honourable senators will now recollect the protest which I made against section 46 (e) in bill H-8, when it came before us two sessions ago. That section then read as follows:

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.

Observe, honourable senators, the paragraph does not say "communicate information prejudicial to the safety or interests of Canada", although that could be read into it: it applies to all information. What are the interests of Canada? Are they the interests of some class in Canada? If so, such a section would indeed be pernicious. Were we making it treason to tread upon the toes of the corporate or financial interests of Bay street or St. James street? Evidently the Senate agreed in part at least with my denunciation of this section, because we struck out the words "interests of Canada".

And then perhaps honourable senators will recollect that I protested against making it an offence to communicate information to the agents of a foreign state. There are literally thousands of people who might be described as agents of a state other than Canada: indeed, all the civil servants of another state are the agents of that state, as are members of the armed forces, and there are many others. To ban the giving of all information to so large a body of people is an unwarranted limitation of freedom of speech and the press in Canada. I argued further that the prohibition of giving information of that kind was not in keeping with the historic idea of treason; and I succeeded, if you will remember, in having that section transferred from the treason provisions and placed under the heading "prohibited acts". One of the results of that change was that it reduced the penalty from death to fourteen years' imprisonment. However, I was not at all satisfied that the section should be retained at all. So, I am very much pleased that the Commons did what I think we should have done, that is replaced a badly drafted and objectionable section by a completely new section. The substituted section now reads:

46 (1) Every one commits treason who, in Canada,

(e) without lawful authority—

Which is a good provision.

—communicates or makes available to an agent of a state other than Canada, military or scientific information—

That is a different matter from all information.

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

Not to the interests of Canada.

—to the safety or defence of Canada.

I wish to congratulate both the Minister of Justice and the House of Commons upon having put something which is treason into this treason section, and upon wiping out the highly objectionable wording to which I have referred. Obviously the betrayal of valuable scientific or military information to a foreign state which the betrayer knows or ought to know will be used to the disadvantage of Canada, is treason of the most despicable kind, and should be clearly prohibited and punished.

There are three sections to which I should like to refer, and which the honourable senator from Toronto (Hon. Mr. Hayden) in his excellent speech of last Wednesday mentioned as a group, because each has a labour connotation. I refer to sections 52, 365 and 372. I may say that these sections, from my personal experience, have been regarded in union circles from coast to coast as anti-union; and so widespread has been the objection taken to them by large numbers of people that the Commons saw fit to save organized labour harmless from their application. To the Minister of Justice I give credit for his efforts to make this particular criminal law acceptable to the labour unions of Canada.

But observe this: these sections although made inapplicable to the activities of unions, still apply to the rest of us, and I submit that legislation sufficiently vicious that it must be made to by-pass the organized and the powerful, and left to apply to the unorganized and the uninfluential, should be eliminated entirely. I do not like making fish of one and flesh of another, and there is that

element in the amendments which now come to us with regard to these three sections. Now, let me take them one by one and in the numerical order that I have mentioned. I commence with section 52. First I will read it as we passed it in Bill O.

52. (1) Every one who does a prohibited act for a purpose prejudicial to

(a) the safety or interests of Canada, or

(b) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada, is guilty of an indictable offence and is liable to imprisonment for ten years.

Now, as I said, I took objection to that phrase "the interests of Canada" because it might mean the interests of some class in Canada, and I see that the Commons have struck out the phrase in this section as they did in another, and they have substituted "(a) the safety, security or defence of Canada". That is a very great improvement. I congratulate the Commons and the Minister upon doing what I think we should have done when the bill was before us.

I will now read the section as it appears in section 52 of Bill 7, the bill that is before us:

52. (1) Every one who does a prohibited act for a purpose prejudicial to

(a) the safety, security or defence of Canada, or

(b) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada, is guilty of an indictable offence and is liable to imprisonment for ten years.

I submit that the section, so far as I have read, is much less objectionable than it was in Bill O, if it is objectionable at all. But, let me go on. I will read subsection 2 of section 52 of Bill 7:

(2) In this section, "prohibited act" means an act or omission that

(a) impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or

(b) causes property, by whomsoever it may be owned, to be lost, damaged or destroyed.

Let me comment on that. I have no objection at all to penalizing those who prejudice the safety, security or defence of Canada or of our armed forces, but I do object to hitching that prohibition to publicly or privately owned property. There is no need to drag in all property and make that an element in the offence. As the subsection now stands it means that anyone who impairs the efficiency of any publicly or privately owned mechanical device, from a jacknife to a cargo ship, or causes any kind of property to be lost, damaged or destroyed, risks being liable to a ten-year term in the penitentiary, if the result is prejudicial to our own or any visiting armed forces and observe that this applies both in times of peace and in times of war. Is it not sufficient to prohibit acts prejudicial to Canada or our armed forces without coupling that type of loyalty to private property rights? I confess, honourable senators, that I am much more concerned with human rights than I am with property rights. Property rights are, after all, the rights of humans with regard to property, and I object to hitching property rights, and all that goes with such rights, to the loyalty of those who would not for the world interfere with the safety of our armed forces.

And then, as though section 52 were not enough to support the sacred rights of property, there now appears in Bill 7 a section entitled "Mischief", which is number 372. Let me read it as it appeared in Bill O, which we revised. This is under the title of "Mischief":

372. (1) Every one commits mischief who wilfully

(a) destroys or damages property,

(b) renders property dangerous, useless, inoperative or ineffective,

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

(3) Every one who commits mischief in relation to public property is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(4) Every one who commits mischief in relation to private property is guilty of an indictable offence and is liable to imprisonment for five years.

Honourable senators, I have no objection to penalizing any person who endangers human life. I might not make the punishment quite so severe as life imprisonment, but there is no objection in principle to defending the citizen against threats to his life. There is no objection to defending public property. There are other sections in the bill which do that in both instances. And there is no objection to defending private property; indeed, in the code you will find provisions prohibiting the wilful destruction of property. To that we are all agreed, but to make it "mischief" in this fashion is quite another matter. When this section was before us at the last session of parliament I pointed out that no strike ever occurred in Canada or elsewhere which did not in some way interfere with the operation or enjoyment of property. Obviously the purpose of a strike is to interefere in some way with the profitable use of property. In committee I submitted an amendment as follows:

A lawful act done in furtherance of the purpose of a trades union is not mischief.

I then found myself in the somewhat humorous position of being the only one who

voted for my amendment. Honourable senators may smile when I recall my quip at the time in this house that I stood in what I called "splendid isolation", but I added these words: "You will hear about this clause in the future, or I am no prophet". Honourable senators, I was a prophet, and a good prophet, for my words alerted the labour unions of this country from coast to coast and liberal-minded people all over Canada, including members of the House of Commons and the Minister of Justice; and the result is that both these objectionable sections, namely 52 and 372, come back to us with provisions added which purport to make them non-applicable to labour unions. Unfortunately, however, they are left applicable to the rest of us. Let me read the saving clause. I will read that which appears in Bill 7 as section 52, subsection (3), and senators will note that almost exactly similar words have been added to both sections.

(3) 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.

Then, subsection (4):

(4) 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.

I congratulate the House of Commons and the minister on relieving labour unions from the operation of these highly objectionable sections. But the question naturally arises, what about the rest of us? Are we to remain subject to restrictions and penalties simply because we are not so well organized to protect our liberties? I favour the amendment as it stands, but as I do not believe in making fish of one and flesh of another I submit that both clauses in their entirety should be eliminated.

I now refer to section 365. It is associated with sections 52 and 372 because of its actual or possible effect upon labour unions. In section 365 there is reference to the breaking of contracts. I will read the clause as it appears in Bill No. 7:

365. (1) 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, will be

(a) to endanger human life,

(b) to cause serious bodily injury,

(c) to expose valuable property, real or personal, to destruction or serious injury,

(d) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or

(e) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway that is a common carrier,

is guilty of

(f) an indictable offence and liable to imprisonment for five years.

With regard to this first subsection, I agree that no employer or employee should condone bad faith in the breaching of contracts. Integrity in the observation of contracts is the basis of civilized life. But let me point out that contractual rights are civil rights, and from time immemorial civil rights have been enforced in civil courts. Such courts may order specific performance or give damages for breach of contract. In the past, it has not been criminal to breach a contract, but now we are asked to make breach of contract a crime, incurring penalties. I say that society is perfectly right in protecting itself against such disasters as the cutting off of supplies of light, power, gas, water and transportation. But I would add that, in respect of that right, it makes little difference whether any contract or breach of contract is involved. I am not prepared to agree that society's right to defend itself exists only when there is a breach of a contract. It is inherent in society to protect itself whether or not a contract is involved and whether or not there is a breach of contract. It seems to me, therefore, that the enforcing of the contract should be left, where it belongs, to the civil courts, and that the protection of society against the loss of its public services should be a matter of comprehensive legislation for which some government should take responsibility; rather than having both these matters dealt with in this haphazard fashion in the proposed Criminal Code as we find it. It is bad draftsmanship; it is not good statesmanship; it has not been well thought out; and I submit that the Senate should courageously redraft the entire section.

In my view section 365 is not sound legislation, and the government in consequence ran into difficulty with the labour unions in respect to it. There has been a widespread outcry from coast to coast against what labour unionists regarded as anti-unionist legislation. I give the Minister of Justice credit for struggling manfully to satisfy the labour unions. As a result of his efforts he secured some very, very qualified approval from the three congresses of labour to the amendments which he made to this section. The section comes back to us with the following amendment:

(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.

Honourable senators, I have read and reread this section. I have considered every word of it, but I admit that I do not know what the section means. Does it mean that a workman who quits work during the term of an agreement, and so breaches the agreement, does not in fact breach it if, prior to to quitting work, the conciliation processes of either dominion or provincial law have been run through, and all steps deemed by law to be contained in the collective agreement have been observed? Does the section provide that a breach of contract is not a breach of contract under these circumstances? On the other hand, does the section prohibit the quitting of work after the termination of an agreement but before conciliation procedures and everything deemed to be in the agreement have been completed? Finally, does the section give the force of criminal law to acts of provincial legislatures now in effect or later to be enacted? It looks as though it does. Honourable senators will not be surprised when I tell them that the debate in the other house on this particular question filled thirty-one pages of Hansard. So doubtful did that house appear to be about this section that the government took the precaution of adding the further provision that no proceedings under the section shall be instituted without the consent of the Attorney General. I suggest that this section should be read with extreme care by every senator in this house. I further suggest that we should not approve this legislation until we have heard the officers of the three great federal unions: The Trades and Labour Congress of Canada, The Canadian Congress of Labour, and The Canadian and Catholic Confederation of Labour.

There are only two more sections to which I wish to refer, namely, sections 690 and 691, which deal with applications for habeas corpus. Under the code as it now reads, and under criminal law as it has stood from time immemorial, there is no appeal from a judge's decision refusing an order compelling those responsible for the imprisonment of an individual to show authority for his detention. There has never been any appeal by the crown against a habeus corpus order, for officials of the crown must by law be ready at all times to justify in the courts the imprisonment of an individual.

Should a judge order his release, the prisoner is set free immediately, and that is the end of it. No appeal is provided for the applicant, because appeals take time, and the liberty of the subject is a matter from day to day. Since appeal in these circumstances is impracticable, the application for a writ of *habeas corpus* may be secured from any judge who is available. The prisoner's friends or counsel may apply to as many judges as may be reached in order to find one who will take the responsibility—and it is not a great one —of requiring the crown officials to justify the detention of the prisoner. Honourable senators, that system has been in effect from the time of Magna Carta, and it has furnished a cardinal, basic, legal provision for the security of the subject.

Sections 690 and 691 propose to abolish the right of the subject to apply for an order of *habeas corpus* to all judges available or to as many as necessary, and in the place of such right to grant the right of appeal from the first judge's decision, should he refuse to grant the application. Honourable senators, this is a major change in a primary, time-honoured, British, right of the individual. In my judgment, the proposal to grant an appeal to the crown against a *habeas* order to produce the body is even more grave, for it means that authorities may continue the imprisonment of an individual after a judge has granted an order of *habeas corpus*, or actually ordered his liberation, by simply filing a notice of appeal, at least until the matter finally comes before a court of appeal. The gravity of that proposed change was recognized by the Commons when they added to section 691, subsection 3, as follows:

Notwithstanding anything in part XVIII or in rules of court, 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.

That is to say, even though the court is in session, the notice of appeal need not be served until the end of a whole week after a judge has ordered the jailer, to produce the body, or after a judge has said that the man should be freed. That is a decided and important restriction upon the right of *habeas corpus* which should be justified to us beyond all measure of doubt before it passes this house.

At the moment I am not prepared to argue completely the wisdom or unwisdom of this new suggestion, but, honourable senators, when I see a major change made in one of the fundamental rights that we call British justice, it gives me pause, and I want it justified beyond all peradventure before I consent to it.

I suppose this house will send the bill to the Banking and Commerce Committee.

Hon. Mr. Reid: May I ask the honourable senator a question?

Hon. Mr. Roebuck: Yes.

Hon. Mr. Reid: Am I to understand that, under the section as it now stands, a man who has been freed from jail by some judge could be held, when an appeal is filed, for seven days or more?

Hon. Mr. Roebuck: Yes, that is right. As the law now stands, a man ordered by a judge to be freed is released right then and there, and that is the end of it. If anybody feels that some relative or friend has been improperly imprisoned, and he can find a judge who will make an order of *habeas corpus*, the prisoner is brought before the judge at once and the jailer is required to show his authority for detaining the prisoner. That is the most fundamental provision of all British law—to maintain and protect the security of the subject. I hope this bill will go to the Banking and Commerce committee, and that that committee will refer it to a smaller committee, or to several small committees, so that each one of the bill's provisions may receive the same meticulous care, inquiry and scrutiny that was given to Bill H-8 and Bill O when they came before us in previous sessions.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. John T. Haig: Honourable senators, I do not intend to make a speech on this bill, but I do want to appeal to the members of the Banking and Commerce Committee, to which this bill will undoubtedly be sent. Many other important pieces of legislation have come before this house in the last ten or fifteen years, but this bill deals with a very important matter affecting this country, namely, the criminal law as set out in the code. This proposed legislation, of course, is a re-enactment, not only of the old Criminal Code in Canada, but of the common law in England

As the honourable senator from Toronto-Trinity (Hon. Mr. Roebuck) has pointed out, this bill in one form or another has been before us on two occasions. But the practical problem as I see it, is that when the present bill is referred to our Banking and Commerce Committee many honourable senators who do not belong to the legal profession will say that it is a matter for the lawyers to discuss and decide. I want to say most emphatically that the decisions to be made are the responsibility of every member of the committee, and perhaps the responsibility is a little greater for the members who are not lawyers.

Hon. Mr. Reid: Hear, hear.

Hon. Mr. Haig: Undoubtedly this will be our last opportunity to discuss the criminal law, as the bill will be passed at this session in some form or other. The subject has been before parliament long enough to permit us to decide what conclusions should be reached. Therefore, if I may speak on behalf of the Senate, I implore every member of the Banking and Commerce Committee to attend its meetings. True, at times the subject-matter may seem dull to some members. But law, as an abstract thing, is a little dull, and perhaps even a little stupid, especially to people who are not lawyers.

Hon. Mr. Macdonald: Now, now.

Hon. Mr. Haig: As both the honourable senators from Toronto-Trinity (Hon. Mr. Roebuck) and Toronto (Hon. Mr. Hayden) have pointed out, there is often a difference of opinion. But it is important to remind ourselves that we still have trial by jury in this country. In the province of Manitoba lawyers are exempt from jury duty, and I think it is generally so throughout Canada that juries are composed of laymen. They are the people who decide the law in the country.

Hon. Mr. Aseltine: They decide the facts.

Hon. Mr. Haig: Yes, they find the facts.

We are by this bill drafting new legislation and if, for instance, the senator from Toronto (Hon. Mr. Hayden) should take one side of a question and I should take another, it will be up to the laymen on the committee to decide which view in their opinion should become the law of Canada. Every member of the committee must share responsibility for what the committee does.

The Banking and Commerce Committee of this house has done some fine work. The outstanding example is its work in respect to the income tax legislation. It was the Senate which advocated the setting up of the Income Tax Appeal Board, and it took the House of Commons two or three years to recognize the importance of our committee's investigation and to adopt its recommendations. The Income Tax Appeal Board has done much to make the income tax law of Canada readily enforceable.

I repeat, it is the responsibility of every member of the committee, lawyers and lay members alike, to give adequate consideration to this important bill. I do not think its consideration will take as long as my honourable friend from Toronto-Trinity (Hon. Mr. Roebuck) anticipates. The subject has been well covered by the two senators who have spoken on the second reading of the bill. However, undoubtedly a vote will be taken in committee on some sections.

Perhaps I may be permitted to say that this has not been a busy session. But now we have a real job of work in the proper examination of the proposed new code, and we should all do what we can to ensure that Canada's criminal law is just as good as we can make it.

I should like to suggest that the Minister of Justice attend the committee's meetings; at least, that he be invited to attend them. He has a first-hand grasp of the subject; whether we agree with his views or not, I think he has more knowledge in this field than any other member of the House of Commons. He has made a great contribution to the discussions in that house, and he would be of invaluable assistance by meeting with us and telling us why he did this or that and did not do something else. His explanations would help us to reach proper decisions.

Hon. Salter R. Hayden: Honourable senators—

The Hon. the Speaker: Honourable senators, if the honourable senator from Toronto (Hon. Mr. Hayden) speaks now, he will close the debate.

Hon. Mr. Hayden: With respect to a number of things which my friend the senator from Toronto-Trinity (Hon. Mr. Roebuck) has said, I am in agreement. In the two previous sessions when the bill was before us he played an active and vigorous part in the consideration of it; and the position he took then with respect to certain sections was the same as he has taken tonight. I recall that in this very chamber he attempted at one stage to be prophetic with relation to sections 52, 365 and 372. But when my friend, in discussing sections 52 and 372, states a view which, as I understand it, is certainly contrary to the view I hold, I have to indicate the considerations which I think should govern us when we come to decide in what form these sections should finally go forward.

Section 52 deals with sabotage, and section 372 with mischief. My friend, having a logical mind, is driven to a logical conclusion; and he realizes just as well as anybody else who reads these two sections that when you provide saving clauses to substantive offences of the nature of sabotage, wilful damage to property and endangering of public health and life, and when you single out a section of the community to benefit from those saving clauses, instead of extending the benefit to all the people, there must be very sound reasons for doing so. Being driven by his logic, my friend first says that he congratulates the Minister of Justice upon having provided the saving clauses, because these two sections seem to be aimed at labour and their unions. Then, logical as he is, he says he cannot see any justification for a section which creates a criminal offence, yet which exempts from its effect a certain group of people because they may be more vocal through their organizations than the rest of the people; and therefore, he argues, these sections should disappear entirely.

Now, to say that section 52 should disappear entirely is to say that we have no need in our law for an offence known as sabotage in the terms in which it is provided in this bill. And to say that there is no need for section 372, which deals with mischief—and I am more concerned about the offence itself than the name used to describe it—is to say that we have no need for an offence dealing with wilful damage to property and endangering of life. It is a matter of policy, of course, to decide whether or not there should be such substantive offences and whether they should be created in the terms in which this bill creates them. They antedate the present bill, and have been part of the law of our land for many years. As a matter of fact, the first three paragraphs of subsection (1) of section 365, which has to do with a criminal breach of contract and to which my friend referred, go back to about the year 1877, and the remainder of the subsection goes back, I think, to the consolidation which took place in 1906. In the present code it is known as section 499. The only unfortunate feature of section 499 is that it used such language that a prosecution under it could never have been successful. I suppose that is why nobody ever objects to the section. The wording is defective, as my friend undoubtedly knows. The section deals with breach of contract connected with the supply of power, light, gas or water, and it says that every one is guilty of an offence who:

> 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 . . .

Well, by no stretch of the imagination could it ever be suggested that the man who works in an electric power plant or in a gas

plant or in a water supply plant is a person who has a contract with the city for the supply of water, light or power, so the language which was used made the section a meaningless sort of thing for a great many years.

The first three paragraphs of subsection (1) of section 365 have been in force since 1877. They read as follows:

365. (1) 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, will be

(a) to endanger human life,

(b) to cause serious bodily injury,

(c) to expose valuable property, real or personal, to destruction or serious injury,

I think any person who has any appreciation of the rules and regulations needed in order that organized society may function properly and for the greatest good of the greatest number, would certainly have to agree that some kind of substantive offence involving those prohibitions must be part of the law of our land if we are going to have an effective weapon for the protection of the security and the decent living of the people of the country.

Hon. Mr. Reid: Will the honourable senator allow a question? Take the case of a man who has no contract with the company, and is looking after a small power plant in a small town, with a hospital probably depending on the plant's operation. If he walks out and leaves the city and the hospital without light, is there anything in that section to cover his case?

Hon. Mr. Hayden: Of course, my friend is dealing with a different offence. At the moment I was only commenting upon section 365, by way of interjection, to show that it is not something new, that parliament in its consideration of the code is not creating a new offence.

In paragraphs (d) and (e) of subsection (1) of section 365 the language is made to be meaningful instead of having no meaning at all. When moving the second reading of the bill I referred to what might be regarded as the corresponding section in the present law, but it seems to me that the general observation that I made is still sound, that if people are bound by contract to perform certain services or to do certain things and they wilfully break that contract, thereby endangering human life, that is properly an offence.

There is an exception to section 365 which covers the case of a union having a contract with an electric power plant or some other organization. If the union has exhausted all its rights under the contract and as required by law in the matter of bargaining and negotiation, and a legal strike takes place, one which is proper under the law, I think that the situation is tantamount to one where there is no legal and effective contract; and if there is no legal and effective contract, there cannot be a breach of contract. As I said the other day, even if the Commons had not put the saving clause in section 365 it would still be a good defence for a man to say, "My contract is at an end for this purpose". Therefore I had no objection to the changes made in section 365.

Now we come to section 372, dealing with mischief. Let us consider for a moment how destructive of any meaning the saving clause is with reference to the offence created under this section. Subsection (1) says that every one commits mischief who wilfully destroys or damages property. Then subsection (2) says:

Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

And subsection 5 says:

Every one who wilfully does an act or wilfully omits to do an act that it is his duty to do is, if that act or omission is likely to constitute mischief causing actual danger to life, or to constitute mischief in relation to public property or private property, guilty of an indictable offence and is liable to imprisonment for five years.

Now, that is the essence of the offence—wilfully. If I wilfully do an act, or wilfully omit to do something which it is my duty to do and as a result of which it is likely to constitute mischief, constitute actual danger to life or to property, that is the offence. Then the Commons added a saving clause, the effect of which is to single out a certain section of the community, not only the unions but any employee of a company, and to provide that if an employee has a contract in good standing and therefore has a duty to his employer, and if the employee has no grievance but walks off the job to discuss labour problems or protection with other members of his union or to picket at another plant which is not associated or identified in any way with his employer, then in those circumstances his walking off the job is not an offence under section 372.

Now, how can you argue logically in support of a saving clause when the offence consists in the wilful doing of something or the wilful omission to do something which it is a duty to do? If you take that as being the essence of the offence, and if the man walks off the job under the circumstances which I have related and abandons the operation that he is looking after, and human life is thereby endangered, how can you say that he should be excused? I would say this, that quite apart from the saving clause, if the employee were able to go into

court when faced with a charge under section 372 and to say to the court that he had no intention of doing any damage, that he did not realize or appreciate that his going away from work would result in damage, and if the court believed his explanation, there could be no conviction under section 372. But why should one section of the community be favoured by being provided with a defence or a possible defence to a charge under this section, when such a defence is not open to anybody else?

I am not speaking against the unions. My honourable friend has said that these sections, including No. 372, have a "labour connotation." I say in all seriousness that they have no more a labour connotation than they have a connotation in relation to any person who brings himself within the scope of the substantive offence by doing something which is made a substantive offence. As far as I can gather, the clause is not aimed at labour. It is true that labour representatives have seen in it the possibility of application to the unions, but so may any employed man see the possibility of its application to him, or so may any employer. Those who choose to disregard a clear provision of the law in the form of a substantive enactment must be prepared to take their chances. Under these circumstances I do not think it is right to create an offence which involves the intent—the wilful intent—to destroy property or to endanger life, where the duty is to do exactly the opposite, and then to permit the offender to plead that because it was in furtherance of his union views and principles to meet with his brother members, he should be excused for what otherwise, under section 372 or section 52, would be an offence. It does not seem to me sufficient to argue that the act was done for the purpose of meeting other union members to discuss matters of mutual interest, or of going on a picket line to help a brother in another industry to picket his employer's plant. It is perfectly proper for a man to go on a picket line, but if he has a valid contract or a duty to those for whom he is working he should give thought to that duty as being, perhaps, paramount at the moment, and if he wants to assist in picketing he can do it after hours or otherwise arrange his activities for that purpose.

I say in all seriouness, with regard to this offence of mischief, whether it be called "mischief" or "wilful damage to property," that it is proper, in my opinion, to have in the criminal law a provision to regulate the conduct of people in their business and their day-to-day relations, and to ensure proper respect for human rights, life, and property, whether that property be public or private.

I have also something in particular to say in relation to section 52, which defines sabotage. I think we shall agree that at this time, possibly more than at any other time, there is need for very stringent provisions with regard to sabotage, which means the doing of acts causing damage to property, and under certain circumstances endangering life, and which acts are prejudicial to "the safety, security or defence of Canada." So far as section 52 is concerned, one can do such acts to his heart's content unless it is established that they are prejudicial to the safety, security or defence of Canada. My honourable friend, in speaking on this matter, did not seem sure whether this section should be linked with—or "hitched" to, I think was the expression he used—private property rights. Suppose it may be said that the section does not achieve that end. What is accomplished by it is to "hitch" the safety, security or defence of Canada to those private operations the damaging of which would be prejudicial to the safety, security, or defence of Canada. Let me illustrate. At the Avro plant substantial operations for the defence of Canada are being carried on, yet the enterprise comes within the classification of a private as opposed to a publicly-owned operation of the people of Canada. Supposing in these circumstances some employees or groups of employees of the plant walked out, without notice, at a time when their contract was in good standing and they, as well as the employer, had duties and obligations under it, and as a result of their walk-out and neglect of duty the safety, security or defence of Canada was endangered. Would it be in the interests of Canada to insert a saving clause which would excuse the defendants if they could satisfy the court affirmatively that they left their employment, not with any intention prejudicial to the safety, security or defence of Canada, nor with the intention of damaging property, but solely to join in a picket line to help out union members in respect of some entirely different industrial operation? In my opinion there should be no qualification of the language which creates an offence which has as its basis an act prejudicial to the safety, security or defence of the country. Every person should be required to take his chances in relation to everything he does, and to so govern and regulate his actions that he shall not create damage to property or to life which can be established, by the proof required in a court of law, to be prejudicial to the safety, security or defence of Canada.

For these reasons, in my view, the saving clauses in sections 52 and 372 in the form in which they appear have no place there

at all. Whether there should be any qualification or modification of the rigour with which these offences are treated, I am not at the moment in a position to say. But in my opinion, as to sabotage, involving wilful damage to property and endangering life, there should be no saving clauses. The offences here dealt with are of such a character that for those who are brought within the scope of the section by virtue of having committed them, no alleviation should be permitted except in respect of the penalty they may endure for the commission of such offences.

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

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Hon. Mr. Hayden, the bill was referred to the Standing Committee of Banking and Commerce.

The Senate adjourned until tomorrow at 3 p.m.