1953-54

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (7), intituled:

An Act respecting the Criminal Law

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, MAY 18, 1954
WEDNESDAY, MAY 19, 1954
TUESDAY, MAY 25, 1954
WEDNESDAY, MAY 26, 1954
THURSDAY, JUNE 3, 1954
WEDNESDAY, JUNE 9, 1954

WITNESSES:

Honourable Stuart S. Garson, P.C., Minister of Justice and Attorney General of Canada.

Mr. A. J. MacLeod, Counsel, Department of Justice.

REPRESENTATIVES OF

The Board of Trade of the City of Toronto.

The Canadian Congress of Labour.

The Canadian and Catholic Federation of Labour.

Division 123, Canadian Brotherhood of Railway Employees and other Transport Workers.

The International Union of Mine, Mill and Smelter Workers, Canadian Section.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

BANKING AND COMMERCE

THE HONOURABLE SALTER ADRIAN HAYDEN, CHAIRMAN

The Honourable Senators

Aseltine
Baird
Beaubien
Beauregard
Bouffard
Buchanan
Burchill
Campbell
Crerar
Davies
Dessureault
Emmerson
Euler
Fallis
Farris
Gershaw
Gouin
*Haig
Hardy
Hawkins
Hayden
Horner
Howard
Howden
Hugessen
King
Kinley
Lambert
*Macdonald
MacKinnon
McDonald
McGuire
McIntyre
McKeen
McLean
Nicol
Paterson
Pirie
Pratt
Quinn
Reid
Roebuck
Taylor
Vaillancourt
Vien
Wilson
Wood
Woodrow

* *ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Tuesday, 11th May, 1954.

"Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (7), intituled: "An Act respecting the Criminal Law", be now read the second time.

After debate, and—

The question being put on the said motion, it was—

Resolved in the affirmative.

The said Bill was then read the second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

92711—1½

MINUTES OF PROCEEDINGS

TUESDAY, May 18, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Beaubien, Bouffard, Euler, Gershaw, Gouin, Haig, Hardy, Hawkins, Howard, Howden, Hugessen, King, Kinley, Macdonald, McDonald, McIntyre, Quinn, Reid, Roebuck, Vaillancourt, Wilson, Wood and Woodrow.—25.

In attendance: The official reporters of the Senate, Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice.

Bill 7, intituled "An Act respecting the Criminal Law" was considered.

After discussion it was RESOLVED to consider only the clauses of the Bill that had not been approved by the Committee when Bill "O" was under consideration by the Committee at the last Session of Parliament.

The Committee proceeded to the consideration of the Bill.

At 9.45 p.m. the Committee adjourned until tomorrow, Wednesday, May 19, 1954, at 11.00 a.m.

WEDNESDAY, May 19, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Beaubien, Bouffard, Emmerson, Euler, Fallis, Gershaw, Gouin, Haig, Hardy, Horner, Hugessen, King, Kinley, Macdonald, McDonald, McLean, Reid, Roebuck, Taylor, Vaillancourt, Wilson, Wood and Woodrow.—25.

In attendance: The official reporters of the Senate, Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice.

Bill 7, intituled "An Act respecting the Criminal Law", was further considered.

It was moved that clause 400 of the Bill be amended as follows:—

1. *Page 134, line 14:*—insert after "400." the figure and bracket (1).

2. *Page 134,* insert after subclause (1) of clause 400 the following subclauses:—

(2) Every one who publishes or prints anything in the likeness or appearance of

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

(*b*) all or part of any obligation or security of a government or a bank,

is guilty of an offence punishable on summary conviction.

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

(a) no photography was used at any stage for the purpose of publishing or printing it, except in connection with processes necessarily involved in transferring a finished drawing or sketch to a printed surface,
(b) except for the word 'Canada', nothing having the appearance of a word, letter or numeral was a complete word, letter or numeral,
(c) no representation of a human face or figure was more than a general indication of features, without detail,
(d) no more than one colour was used, and
(e) nothing in the likeness or appearance of the back of a current bank note or current paper money was published or printed in any form.

The question being put on the said motion it was declared carried in the affirmative.

At 1.00 p.m. the Committee adjourned until 3.30 p.m. Tuesday, May 25, 1954.

TUESDAY, May 25, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.00 p.m.

Present: The Honourable Senators: Hayden, Chairman: Beaubien, Bouffard, Emmerson, Euler, Gershaw, Gouin, Haig, Horner, Howard, Howden, Hugessen, Kinley, Macdonald, McDonald, McGuire, McKeen, Paterson, Quinn, Reid, Roebuck, Vien, Wilson, Wood and Woodrow.—25.

In attendance: The official reporters of the Senate, Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice.

Bill 7, intituled "An Act respecting the Criminal Law", was further considered.

Mr. A. C. Crysler, Legal Secretary, The Board of Trade of The City of Toronto, filed a brief with the Committee and was heard in support of clause 365 of the Bill in its present form.

Messrs. A. R. Mosher, President, E. A. Forsey, Director of Research and Maurice Wright, Legal Counsel, the Canadian Congress of Labour, filed a brief with the Committee and made representations with respect to clauses 52, 68, 365 and 372 of the Bill.

Messrs. Pierre Vadeboncoeur and Gerard Pelletier, Canadian and Catholic Federation of Labour, informed the Committee that their organization wished to associate themselves with the brief submitted by The Canadian Congress of Labour.

At 6.00 p.m. the Committee adjourned.

At 8.30 p.m. the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Bouffard, Gershaw, Gouin, Haig, Howard, Hugessen, Kinley, Macdonald, McKeen, Pirie, Reid, Roebuck, Vien, Wood and Woodrow.—16.

In attendance: The official reporters of the Senate, Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice.

Mr. Angus MacInnes, Educational Director, Division 123 Canadian Brotherhood of Railway Employees and other Transport Workers, Toronto, Ontario, filed a brief and was heard in objection to certain clauses of the Bill.

Messrs. H. L. Robinson, Canadian Research Director, and N. Thibault, Canadian Vice-President, The International Union of Mine, Mill and Smelter Workers Canadian Section, filed a brief and were heard with respect to certain clauses of the Bill.

At 10.45 P.M. the Committee adjourned until tomorrow, Wednesday, May 26, 1954, at 11.00 A.M.

WEDNESDAY, May 26, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 A.M.

Present: The Honourable Senators: Hayden, Chairman; Baird, Beaubien, Bouffard, Emmerson, Euler, Fallis, Gershaw, Gouin, Haig, Howard, Hugessen, Kinley, Lambert, Macdonald, McDonald, McKeen, McLean, Pirie, Quinn, Reid, Roebuck, Taylor, Vien, Wood and Woodrow. 26.

In attendance: The official reporters of the Senate, Mr. John F. MacNeill, Q.C. Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice.

The consideration of Bill 7, intituled "An Act respecting the Criminal Law", was resumed.

The Honourable Stuart S. Garson, P.C., Minister of Justice and Attorney General of Canada, was heard with respect to the Bill and with particularity as to clauses 9, 25, 52, 68, 150, 367 and 372.

The Honourable Senator Bouffard moved that clause 171 of the Bill be amended as follows:—

Page 57, lines 43 to 49:—delete subclause (6) and substitute therefor the following:—

> (6) Nothing in this section or in section 431 authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment that may be evidence of or that may have been used in the commission of an offence under section 176, 177, 179 or 182 and that is owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

The question being put on the said motion it was declared carried in the affirmative.

At 1.00 P.M. the Committee adjourned until 3.30 P.M.

At 3.30 P.M. the Committee resumed.

Present:—The Honourable Senators:—Hayden, Chairman; Beaubien, Dessureault, Euler, Gershaw, Gouin, Haig, Horner, Howard, Hugessen, Kinley, Macdonald, McDonald, McKeen, McLean, Paterson, Pirie, Quinn, Reid, Roebuck, Taylor, Vaillancourt, Wood and Woodrow. 24.

In attendance: The official reporters of the Senate, Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice.

The Honourable Stuart S. Garson, P.C., was again heard with respect to the Bill and with particularity as to clauses 52, 365, 372, 690 and 691.

At 5.00 P.M. the Committee adjourned until Thursday, June 3, 1954, at 11.00 A.M.

THURSDAY, June 3, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 A.M.

Present: The Honourable Senators:—Hayden, Chairman: Aseltine, Baird, Beaubien, Beauregard, Bouffard, Burchill, Dessureault, Euler, Gershaw, Gouin, Haig, Hardy, Hawkins, Horner, Howard, Hugessen, King, Macdonald, McLean, Reid, Roebuck, Taylor, Vien and Woodrow. 25.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, and Mr. A. J. MacLeod, Counsel, Department of Justice, and the official reporters of the Senate.

The consideration of Bill 7, intituled "An Act respecting the Criminal Law" was considered.

The Honourable Senator Vien informed the Committee that he proposed to move the adoption of certain amendments to the French version of the Bill and he placed the said amendments before the Committee for consideration.

The Honourable Senator Roebuck, seconded by the Honourable Senator Gouin proposed certain amendments to clause 9 of the Bill.

The Honourable Senator Vien moved that clause 25 of the Bill be amended as follows:—

Page 13, lines 8 to 14: strike out subclause (3) of clause 25 and substitute therefor the following:—

"(3) Subject to subsection (4), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable and probable grounds that it is necessary for the purpose of preserving himself or any one under his protection from death or grievous bodily harm.

(4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and every one lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

The question being put on the said motion it was declared carried in the affirmative.

The Honourable Senator Roebuck suggested that clauses 690 and 691 be deleted from the Bill and the principal in the present law as it relates to *habeas corpus* continued.

The Honourable Senator Gouin moved that clause 68 of the Bill be amended as follows:—

Page 24, line 29: delete "receives" and substitute "has".

The question being put on the said motion it was declared passed in the negative.

The Honourable Senator Hugessen moved that clause 68 of the Bill be amended as follows:—

Page 24, line 42: after "do", insert "if he is satisfied that a riot is in progress,"

The question being put on the said motion it was declared carried in the affirmative.

At 12.30 P.M. the Committee adjourned to the call of the Chairman.

THURSDAY, June 9, 1954.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 A.M.

Present: The Honourable Senators:— Hayden, Chairman; Aseltine, Baird, Beaubien, Bouffard, Burchill, Crerar, Emmerson, Euler, Gershaw, Gouin, Haig, Hawkins, Howard, Hugessen, King, Kinley, Macdonald, Quinn, Reid, Roebuck, Taylor, Vaillancourt, Wilson and Woodrow. 25.

In attendance: Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, the Senate, Mr. A. J. MacLeod, Counsel, Department of Justice, and the official reporters of the Senate.

The consideration of Bill 7, intituled "An Act respecting the Criminal Law", was considered.

The Honourable Senator Roebuck moved that clause 9 of the Bill be amended as follows:—

Page 10, lines 1 to 9: delete clause 9 and substitute therefor the following:—

9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed.

(2) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal

(*a*) from the conviction, or

(*b*) against the punishment imposed.

(3) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and for the purposes of this section, the provisions of Part XVIII apply, *mutatis mutandis.*

The Honourable Senator Roebuck moved that clause 52 be struck from the Bill.

The question being put on the said motion it was declared passed in the negative.

The Honourable Senator Roebuck moved that clause 365 be struck from the Bill.

The question being put on the said motion it was declared passed in the negative.

The Honourable Senator Roebuck moved that clause 372 be struck from the Bill.

The question being put on the said motion it was declared passed in the negative.

The Honourable Senator Haig moved that clause 178 of the Bill be amended as follows:—

Page 61: immediately after line 38 insert the following as subclause (2) and re-number the subsequent subclauses accordingly:—

(2) Subsection (1) does not apply in respect of a race meeting conducted by an association mentioned in subparagraph (i) of paragraph (c) of that subsection in a province other than a province in which the association, before the 1st day of May, 1954, conducted a race meeting with pari-mutuel betting under the supervision of an officer appointed by the Minister of Agriculture.

The question being put on the said motion it was declared carried in the affirmative.

The Honourable Senator Howard moved that clause 178 of the Bill be amended as follows:—

Page 62, line 19: strike out "(2) and (3)" and substitute therefor "(3) and (4)".

The question being put on the said motion it was declared carried in the affirmative.

The Honourable Senator Roebuck moved that clause 690 of the bill be amended as follows:—

Page 238, lines 10 to 18: strike out clause 690 and substitute therefor the following:—

690. Nothing in this Act limits or affects any provision of the *Supreme Court Act* that relates to writs of *habeas corpus* arising out of criminal matters.

The question being put on the said motion it was declared carried in the affirmative.

The Honourable Senator Roebuck moved that clause 691 of the bill be amended as follows:—

Page 238, lines 19 to 32: strike out clause 691 and substitute therefor the following:—

"691. (1) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *mandamus, certiorari* or prohibition.

(2) The provisions of Part XVIII apply, *mutatis mutandis,* to appeals under this section."

It was resolved to report the English version of the Bill with the following amendments:—

1. *Page 10, lines 1 to 9:* strike out clause 9 and substitute therefor the following:—

9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed.

(2) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal

(a) from the conviction, or

(b) against the punishment imposed.

(3) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and, for the purposes of this section, the provisions of Part XVIII apply, *mutatis mutandis.*

2. *Page 13, lines 8 to 14:* strike out subclause (3) of clause 25 and substitute therefor the following:—

(3) Subject to subsection (4), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable and probable grounds that it is necessary for the purpose of preserving himself or any one under his protection from death or grievous bodily harm.

(4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and every one lawfully assisting the peace

officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

3. *Page 24, line 42:* after "do", insert the words "if he is satisfied that a riot is in progress,"

4. *Page 57, lines 43 to 49:* strike out subclause (6) and substitute therefor the following:—

(6) Nothing in this section or in section 431 authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment that may be evidence of or that may have been used in the commission of an offence under section 176, 177, 179 or 182 and that is owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

5. *Page 61:* immediately after line 38 insert the following as subclause (2) and re-number the subsequent subclauses accordingly:—

(2) Subsection (1) does not apply in respect of a race meeting conducted by an association mentioned in subparagraph (i) of paragraph (c) of that subsection in a province other than a province in which the association, before the 1st day of May, 1954, conducted a race meeting with pari-mutuel betting under the supervision of an officer appointed by the Minister of Agriculture .

6. *Page 62, line 19:* strike out "(2) and (3)" and substitute therefor "(3) and (4)".

7. *Page 134, line 14:* insert after "400." "(1)".

8. *Page 134:* immediately after line 22, insert the following as subclauses (2) and (3):—

(2) Every one who publishes or prints anything in the likeness or appearance of

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

(*b*) all or part of any obligation or security of a government or a bank,

is guilty of an offence punishable on summary conviction.

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

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

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

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

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

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

9. *Page 238, lines 10 to 18:* strike out clause 690 and substitute therefor the following:—

690. Nothing in this Act limits or affects any provision of the *Supreme Court Act* that relates to writs of *habeas corpus* arising out of criminal matters.

10. *Page 238, lines 19 to 32:* strike out clause 691 and substitute therefor the following:—

691. (1) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *mandamus, certiorari* or prohibition.

(2) The provisions of Part XVIII apply, *mutatis mutandis,* to appeals under this section.

It was resolved to report the French version of the Bill with the following amendments:—

1. *In the title*: Delete "pénal", and substitute therefor "criminel".

2. *Page 1, line 5*: Number from (1) to (44), inclusively, the 44 definitions prescribed in clause 2, according to their French alphabetical order.

3. *Page 7, line 19*: Delete "tout", and substitute therefor "une débenture,".

4. *Page 8, line 7*: Delete "(32)", and substitute therefor "(7)".

5. *Page 8, lines 15, 20 and 25*: Delete "(42)", and substitute therefor "(41)".

6. *Page 8, line 21*: Delete "de l'immeuble", and substitute therefor "des biens-fonds".

7. *Page 9, line 25*: Delete "pénal", and substitute therefor "criminel".

8. *Page 12, line 24*: Delete "provoquée", and substitute therefor "incitée".

9. *Page 37, line33:* Delete "pénal", and substitute therefor "criminel".

9. *Page 37, line 33:* Delete "pénal", and substitute therefor "criminel".

10. *Page 96, line 15:* Immediately after the word "billet", insert "une débenture".

11. *Page 148, lines 1 and 2*: Delete "prévoit expressément le contraire", and substitute therefor "y pourvoit expressément de façon différente".

12. *Page 148, lines 26 and 27:* Delete "prévoit expressément le contraire", and substitute therefor "y pourvoit expressément de façon différente".

13. *Page 149, lines 1 and 2*: Delete "prévoit expressément le contraire", and substitute therefor "y pourvoit expressément de façon différente".

14. *Page 153, lines 10 and 11*: Delete "prévoit expressément le contraire", and substitute therefor "y pourvoit expressément de façon différente".

15. *Page 156, line 2*: Delete "pénale", and substitute therefor "criminelle".

16. *Page 231, lines 45 to 48*: Delete clause 624 (1), and substitute therefor:

624. (1) Une sentence commence au moment où elle est imposée, sauf lorsqu'une disposition applicable y pourvoit de façon différente ou que la cour en ordonne autrement.

17. *Page 236, line 17*: Delete "Sauf dispositions contraires", and substitute therefor "Sauf lorsqu'il y est autrement pourvu".

18. *Page 236, line 44*: Delete "sauf dispositions contraires", and substitute therefor "sauf lorsqu'il y est autrement pourvu".

19. *Page 259, line 1*: Delete "Sauf si la loi prévoit le contraire", and substitute therefor "Sauf si la loi y pourvoit différemment".

20. *Page 268, line 34*: Delete "contraires", and substitute therefor "différentes".

21. *Page 270, line 19*: Delete "consentent au contraire", and substitute therefor "en conviennent autrement".

22. *Page 275, lines 40 and 41*: Delete "décision contestée", and substitute therefor "date à laquelle a été rendue la décision mise en question".

23. *Page 283, lines 4 and 17*: Delete "pénal", and substitute therefor "criminel".

24. *Page 296, Form 14*: Last line of the last paragraph: Delete "contraire" and substitute therefor "différent".

25. *Page 299, Form 17*: Last line of the last paragraph: Delete "qu'on l'en sorte", and substitute therefor "qu'il soit livré en d'autres mains".

26. *Page 302, Form 20*: Second last line of the last paragraph: Delete "qu'on l'en sorte", and substitute therefor "qu'il soit libéré".

Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, May 18, 1954.

The Standing Committee on Banking and Commerce to whom was referred Bill 7, an act respecting the criminal law, met this day at 8 p.m.

Hon. Mr. Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum so I will call the meeting of the committee to order. First, I would like a motion to print 400 copies of the proceedings in English and 200 in French.

Hon. Mr. ASELTINE: I so move.

Carried.

The CHAIRMAN: The plan, subject to what you may decide, is that we should settle a number of matters tonight and possibly do a little bit of work as well. I was going to suggest, inasmuch as there are about seventy-one amendments as against the bill that we sent over to the Commons, that the procedure in relation to that might be that we would deal with the amendments other than the ones which may be a little contentious. There are only about five or six which may be contentious, and possibly we could let them stand because the Minister at some stage will want to be heard on those. And then we shall also have to settle on the question of appearances. We have had requests from several organizations who want to appear. One, for instance, is from the Canadian Congress of Labour. Now, when we were considering the bill the last time my recollection is that we notified them and they indicated that they did not want to appear, and did not appear before the Senate committee, but they subsequently appeared before the committee in the Commons. Another organization wishing to appear is the Canadian Brotherhood of Railway Employees who have written expressing their wish to appear. There is also a request to be heard from the Board of Trade of Toronto. Outside of the Minister, those are the various organizations who want to appear. I do not think it is necessary for us to make a decision at this moment as it is quite likely that our consideration of this bill, since we are only going to sit tonight and tomorrow morning of this week, will go into the following week. So I wish you would think about it tonight and we can make a decision by tomorrow—that will be lots of time—as to whether or not we are going to hear these people, and, if so, when.

Hon. Mr. HAIG: Mr. Chairman, did these different organizations appear before the House of Commons committee and make representations on the bill as it now exists?

The CHAIRMAN: Yes.

Hon. Mr. HAIG: And the proceedings at all those meetings were printed?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: Now, did they? They had many conferences with the Minister but did they appear before the committee?

Mr. MACLEOD: The Canadian Congress of Labour appeared before the committee.

Hon. Mr. ROEBUCK: Did the other one?

Mr. MACLEOD: I think they did not appear.

Hon. Mr. ROEBUCK: Wait a minute. There is the Trades and Labour Congress.

Mr. MACLEOD: They appeared.

Hon. Mr. ROEBUCK: Then there is the Canadian Congress of Labour.

Mr. MACLEOD: They appeared.

Hon. Mr. ROEBUCK: And then there is the Catholic Confederation of Labour.

Mr. MACLEOD: My recollection is they did not appear before the committee but they had conferences with the Minister.

Hon. Mr. MACDONALD: The other organization wanting to appear is the Canadian Brotherhood of Railway Employees.

The CHAIRMAN: Did they appear?

Mr. MACLEOD: I think not.

The CHAIRMAN: Inasmuch as those are the only ones that we have had a request from, the Canadian Congress of Labour, the Canadian Brotherhood of Railway Employees and the Toronto Board of Trade, we must assume that those who were not heard in some fashion at the time the bill was in the Commons, and have not requested to be heard here, that they are not interested, or that they are satisfied, the one or the other.

Hon. Mr. MACDONALD: You have suggested, Mr. Chairman, that this question of hearing them may be put off till a little later?

The CHAIRMAN: I suggest we might think about it and come to a decision tomorrow because we would have to fix a time for their hearing and if we are going to hear them we should give them due notice. At any rate, it will be the following week before we could get down to hearings.

Hon. Mr. HAIG: Mr. Chairman, I would like when we are considering this question to take into account that we do not want to hear representations on this whole bill by some organization. If any representations are made, they should be confined to the sections we are really interested in, the sections which the House of Commons has amended.

The CHAIRMAN: No, we are not going to start de novo.

Hon. Mr. ROEBUCK: There is no suggestion of that, Mr. Chairman. I know pretty well what they are going to talk about.

Hon. Mr. HAIG: Some organization might come here and talk for two weeks, going over every section of the bill.

Hon. Mr. ROEBUCK: We would not stand for that.

Hon. Mr. HAIG: We heard Tim Buck once and we could not shut him off. We should have pinned him down to what we were interested in.

Hon. Mr. KINLEY: The bill originated here and went to the House of Commons and passed there.

Hon. Mr. MACDONALD: There may be other suggestions with regard to certain sections which the Senate originally approved. My suggestion would be that the clauses which have not been changed should be accepted; the Committee could be asked if anybody has any objections to them, or any suggestions to make, and if there are no suggestions, those clauses would carry.

The CHAIRMAN: The order of procedure on your suggestion was that tonight we might deal with the amendments which were made, standing those amendments which are likely to produce some discussion. There are only about half a dozen of those.

(Discussion continued as to procedure. The Chairman suggested, and it was agreed, that the committee should first deal with the sections

that had been amended, with the opportunity to members and other honourable senators to ask questions about any other sections, and that thereafter approval of the remaining clauses should be given by way of a blanket resolution.)

The CHAIRMAN: The only other thing to which I should direct your attention is that there are two other amendments, which we will take as they occur, which are being proposed by the department in relation to two sections which were passed by us and passed by the Commons, but as to which we have now discovered that some addition is required—and justifiably so—in order to continue the existing law. So I shall call your attention to this as we go along. They will not be contentious. The first section in Bill 7 which was amended as against the bill we sent to the House of Commons was section 9. That is the contempt section and is to be found on page 10 of Bill 7. There may be some discussion on that and the Minister may wish to present his views in support of the change which the Commons made, and therefore I suggest that that section stand.

The section stands.

On section 11—Offence punishable under more than one Act.

The CHAIRMAN: The next section I should call your attention to is section 11. That section was in the bill we sent over and was struck out by the Commons, and so far as I am concerned I think striking it out was all right. However, I shall read it to you in the form in which it went to the House of Commons:

> Where an offence is punishable by indictment or on summary conviction the prosecutor is entitled to elect whether the proceedings shall be by indictment or on summary conviction.

That was new when we passed it, and it is not in Bill 7 at all.

I am merely drawing the attention of honourable senators to this section because we had approved and passed it, and it was struck out of the bill as it came back to us. If that is the attitude of the Department then I am perfectly satisfied that the Crown should not be given that elective right.

Hon. Mr. HAIG: Carried.

Hon. Mr. KINLEY: Does that mean a jury if it is by indictment?

The CHAIRMAN: Not necessarily. You can proceed by indictment before a magistrate under certain statutes.

Hon. Mr. REID: Is this to be found in the present bill?

The CHAIRMAN: No, it was in the bill we sent to the House of Commons and they struck it out, and since it was a privilege being accorded to the Crown I am perfectly agreeable to it being left out.

The section was agreed to.

On Section 16—Insanity.

The CHAIRMAN: The next section I wish to deal with is section 16 of Bill 7. I only call the attention of honourable senators to this section because the subject matter of it was referred to the Royal Commission which is dealing on the question of insanity as a defence. The agreement was that the sections of which the subject matter was being dealt with by the Joint Committee of both houses of parliament, and also the sections which are affected by the Royal Commission of Inquiry, should be approved in their existing form until such time as reports are received from those various bodies.

Hon. Mr. HAIG: That was certainly the understanding.

The CHAIRMAN: So section 16 could pass.

The section was agreed to.

On section 20—Execution of warrant or summons on Sunday or holiday.

The CHAIRMAN: If you look at this section in Bill 7 you will find that the only change which has been made is that, as we sent it to the House of Commons, it said that a warrant that is authorized by this Act may be issued or executed on a Sunday or statutory holiday. They have inserted the words "or summons". It is not a serious change.

Hon. Mr. ROEBUCK: Pass.

The section was agreed to.

On section 25—Protection of persons acting under authority.

The CHAIRMAN: The Department has an amendment which it wishes to suggest to this section. The amendment involves adding subsections (3) and (4) to the present section 25. It will be noticed, of course, that section 25 deals with the protection of persons acting under authority. And the motion which it is proposed to have made is this—I will read it, and you can determine your wishes about the matter. It is that clause 25 be amended by deleting subclause 3 thereof and substituting therefor the following:

> (3) Subject to the subsection (4) a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death by grievous bodily harm unless he believes on reasonable and probable grounds that it is necessary for the purpose of preserving himself or any one under his protection from death or grievous bodily harm.

That is the same subsection 3 as you have it in the bill except that by this amendment it is made subject to a new subsection 4.

Hon. Mr. ASELTINE: Is "3" deleted?

The CHAIRMAN: It is deleted, and amended in 4 but made subject to a new subsection 4. Subsection 4 is simply the case of a peace officer attempting to apprehend a person who has violated the law to the extent that he may be arrested without warrant and is attempting to escape, and it has to do with the question of the force or the means that the officer may use in apprehending that person and the protection he gets when injury or death is occasioned to the person when the officer is preventing him from escaping. It is a section that is in the present law, but had been omitted for some reason or other, perhaps inadvertently; and the desire now is to put it in, otherwise there is no provision dealing with the protection of a police officer who is attempting to apprehend a person under circumstances in which he might do so without a warrant, and in the course of doing so using means to cause the death of the person. Taken from the existing section 25 of the Code, subsection 4 would read as follows:

> (4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offense for which that person may be arrested without warrant, and every one lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent matter.

Hon. Mr. ROEBUCK: I do not like it.

The CHAIRMAN: Well, you do not like the exact law, senator.

Hon. Mr. ROEBUCK: That means unless the policeman cannot run as fast as the other fellow he can shoot him?

The CHAIRMAN: That is right.

Hon. Mr. ROEBUCK: Well, he has no business to do it at all.

The CHAIRMAN: Well, that is the present law.

Hon. Mr. HAIG: You will recall reading about the robbing of the medical centre, when all the police were called upon. There were four robbers in the building, and they rushed out, three one way and one the other, and a policeman called out, "Halt", and to the robber he was chasing called out, "Look out, I am going to shoot." And the policeman drew his revolver and shot and killed the man.

Hon. Mr. ROEBUCK: And there was the threat to shoot back on the part of the man that was running.

Hon. Mr. HAIG: Yes.

Hon. Mr. ROEBUCK: He deserved it. On the other hand, you get boys who are guilty of some minor offence who are running away from the police, and where the police ruthlessly shoots a boy down unnecessarily. There were some bandits out breaking a bank, or something like that—

Hon. Mr. ASELTINE: In the case, did they not try him for manslaughter?

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN: The subsection I have read is the exact statement of law as it is in subsection 4 of the Code at the present time. Secondly, there is a saving clause which says "unless the escape can be prevented by reasonable means in a less violent manner." That is a saving clause. If the officer uses the most drastic means of stopping the flight, when less violent means would have done, he does not then get the protection of the section.

Hon. Mr. ROEBUCK: And if he cannot run fast enough, there is nothing left for him to do but shoot.

Hon. Mr. HAIG: I don't think there have been many people shot in my province under those circumstances—perhaps three or four in the fifty years I have practised law.

The CHAIRMAN: If there is anything of a contentious nature to the section, it should be let stand and considered by the minister.

Hon. Mr. ROEBUCK: I think we should do that.

Hon. Mr. CONNOLLY: Is that saving clause in the existing law?

The CHAIRMAN: It is in the existing law, and is carried through in the amendment.

Hon. Mr. CONNOLLY: Has this subsection been asked for by the House of Commons?

The CHAIRMAN: No.

Hon. Mr. ROEBUCK: Then let us have copies of it, Mr. Chairman.

The CHAIRMAN: Yes.

Section 25 stands.

On Section 28—Arrest of wrong person.

That section deals with the case where the wrong person is arrested. You will notice that in the bill as we passed it, section 28 used the word "justified". Section 28 as we passed it, read:

> Where a person is authorized to execute a warrant to arrest believes, in good faith and on reasonable and probable grounds, that the person whom he arrests is the person named in the warrant, he is justified in respect thereof to the same extent as if that person were the person named in the warrant.

Hon. Mr. EULER: Is it not sufficient to say "believes"? Does one have to say "believes in good faith"?

The CHAIRMAN: It does not say that here.

Hon. Mr. EULER: That is what you just read.

The CHAIRMAN: That part remains.

Hon. Mr. EULER: But if you believe a thing—

The CHAIRMAN: A person may go in a witness box and say he believes thus and so, but the court may decide that in making that statement he was not acting in good faith.

Hon. Mr. HAIG: That is the way the law has been?

The CHAIRMAN: Yes.

Hon. Mr. HAIG: Then leave it alone.

The CHAIRMAN: The only change made by the House of Commons was that the word "justified" has been deleted in both subclauses—I read the first one—and in place thereof they have used the words "protected from criminal responsibility".

Hon. Mr. KINLEY: That is Bill 7?

The CHAIRMAN: Yes, that is Bill 7. I was merely pointing out that in the bill we sent to the House of Commons we used the word "justified", and the Commons struck it out and substituted the words "protected from criminal responsibility".

Hon. Mr. ROEBUCK: Is not the difference between the two clauses this, that "justified" imports civil responsibility, and this is the criminal code?

The CHAIRMAN: In the new section that is now before us, we protect him from criminal responsibility.

Hon. Mr. ROEBUCK: But in the previous code we protected him from criminal responsibility, or we thought we did.

The CHAIRMAN: Under the code as we passed it, we protected him from criminal responsibility. Under the bill that came to the Senate, which was drafted as a result of the sittings of the Royal Commission, we used the word "justified" instead of "protected from criminal responsibility".

Hon. Mr. HAIG: I prefer it the way it now is.

The CHAIRMAN: Yes.

Hon. Mr. MACDONALD: That is, "protected from criminal responsibility"?

The CHAIRMAN: Yes.

The section was agreed to.

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

Section 33 deals with the duty of an officer if rioters do not disperse after the Riot Act has been read. You will notice in bill 7 the words, "by reason of resistance". Those are the only words which represent a change as against the section that we sent to the Commons. In other words, in the Commons they have said that no civil or criminal proceedings can be taken against an officer who is attempting to force the dispersal of people after the Riot Act has been read if death or injury results from such attempt—if it results by reason of the resistance of the people that they are seeking to disperse. Now that is a limitation on the protection given to an officer.

The section was agreed to.

On Section 46—Treason.

We had quite a discussion on section 46—that is the treason section—in the Senate and the change is in clause (*e*). I thing I would be justified in saying that the original clause (*e*) in section 46 was a horrible subsection. The

Minister was before us on it and fought hard for its preservation to the extent that we finally put it into section 50 of the bill as we sent it to the Commons. We said we would not call that kind of thing treason. Well, when it got to the Commons there was sober second thought on it and the thought was the language was horrible too. They have drafted a subsection (*e*), which, in my view, does describe something that is treasonable and its replacement in section 46 strikes me as proper and reasonable in the circumstances. If there is anything contentious about it we will have to stand the section.

Hon. Mr. REID: Is not section 46 the one that organized labour is protesting about now?

The CHAIRMAN: No.

Hon. Mr. ROEBUCK: I objected, as you may remember, to this paragraph (*e*) in unqualified terms. I am satisfied with it now.

The section was agreed to.

On Section 47—Punishment.

The CHAIRMAN: Section 47 deals with the penalties. You will notice the penalties are in relation to the different subsections of section 46. I would direct your attention particularly to subsection (*c*). That is the penalty for the person who commits treason. He may be sentenced to death or to life imprisonment if he is guilty of an offence under (*e*) or (*h*)—(*e*) is the one about communicating military information or sketches while a state of war exists between Canada and another country, or he can be sentenced to fourteen years for a offence under (*e*) or (*h*) committed while there is no state of war. It would appear to be a reasonable differentiation that was made in the Commons.

The section was agreed to.

On Section 50—Assisting alien enemy to leave Canada.

The CHAIRMAN: The next section in which there is a change is section 50, and the only change there is that the Senate had put this subsection (*e*) of section 46 into the old section 50 when we sent it to the Commons. They have placed it back in section 46 and so it disappears from section 50.

Hon. Mr. HAIG: That is the only change?

The CHAIRMAN: That is the only change, except that the Commons inserted the word wilfully—wilfully assists. The word wilfully has been added in the Commons.

The section was agreed to.

On section 52—Sabotage.

The CHAIRMAN: I would think that this section stands. The saving clause has been added.

Section stands.

On Section 69—Preventing proclamation.

The CHAIRMAN: The only change as against what we sent over to the Commons is that in the section as we sent it over we provided that after the reading of the Riot Act the people who were gathered had to disperse immediately, and the discussion arose in the Commons as to how soon is "immediately", and they have provided, "within thirty minutes". They have taken out the word "immediately" and substituted "thirty minutes". I cannot see any objection to that.

Hon. Mr. ROEBUCK: I do not see very much objection, but I do not think they have improved it very much. They have given the rioters thirty minutes to continue their operations.

Hon. Mr. EULER: Too long.

Hon. Mr. ROEBUCK: Well, previously they had to disperse in "a reasonable time". At the same time I don't think it is worth kicking about.

Hon. Mr. REID: I would think that when the Riot Act has been read they should disperse right away, rather than wait thirty minutes.

The CHAIRMAN: In the Code as it is at the present time it is "within the space of thirty minutes". In the section as we sent it to the Commons we converted the "thirty minutes" to "immediately". Now the Commons has gone back to "thirty minutes".

Hon. Mr. HAIG: I had the honour or dishonour of being in a city where the Riot Act was read; and thirty minutes was not too long.

Hon. Mr. WOOD: Not to long to get rid of them. We had one in Regina too, if you remember.

Hon. Mr. HAIG: I refer to the 1919 strike in Winnipeg. In front of the City Hall the Riot Act was read. I do not think that thirty minutes was too long. I did not think so at the time; I don't think so now.

The CHAIRMAN: The whole question is whether they should have to disperse sooner than that.

Hon. Mr. EULER: If they know they have got thirty minutes' time they can do a lot of damage in thirty minutes.

Hon. Mr. WOOD: I think you have got something there.

Hon. Mr. MACDONALD: Perhaps Mr. MacLeod can tell us whether a lesser time was urged in the other place, and what was the argument against fifteen minutes?

Hon. Mr. ROEBUCK: Why put in any special time? They should do it as quickly as possible.

Hon. Mr. HAIG: What you put in the bill originally was the right word,—"immediately". Let the courts decide what "immediately" means.

Hon. Mr. MACDONALD: Was a lesser time suggested in the other place?

Mr. MACLEOD: When it was in Bill O, the present law, it was "thirty minutes". That was changed by the Senate to "immediately". When the bill arrived in the special committee of the House of Commons, immediately they changed it to "forthwith". When it arrived on the floor of the House of Commons, "forthwith" was changed back to "thirty minutes". The reason appears largely to be this, that if you have a very large group of people, let us say in the number of thousands, though "immediately" is, maybe, all right for the people who are on the fringe of the group, the people who are in the centre, cannot, by reason of the physical circumstances, get away. And of course this must be linked up with the justification that is given to the police officers to use force for the purpose of dispersing a riot; and I believe that the feeling in the Commons was that if you authorize the police force to use force if there is not an immediate dispersal, then the people who are in the centre of the group, and have no opportunity to get away, will be the victims of the use of that force.

Hon. Mr. MACDONALD: Could there not be something in there to cause them to begin to disperse immediately, the movement to conclude within a certain time?

Hon. Mr. HAIG: I saw this thing, I saw it myself. There were at least seven or eight thousand people around the City Hall in the city of Winnipeg. The police had come down Portage Avenue, down Main Street, and the strikers attacked them, and they used force on the street. The police shot a man and killed him; and the magistrate then immediately read the Riot Act; and I think it took them forty-five minutes, because they could not get away; there, was such a mob.

The CHAIRMAN: That is all very well, but the difficulty that I see is this, that if they have thirty minutes in which to disperse, then, quaere, what protection would your peace officers have in using force to disperse them within that thirty minutes? The rioters could have a wonderful time for twenty-eight minutes, and then start dispersing.

Hon. Mr. CONNOLLY: Is there not a section in the British law which deals with this?

The CHAIRMAN: Mr. MacLeod tells me it is either thirty minutes or an hour in the British section; he is not sure which. If there is any contest over this we might let the section stand, to hear from the minister.

Hon. Mr. HUGESSON: Could not you use some words such as "as soon as reasonably possible"?

Hon. Mr. ROEBUCK: Either "immediately" or "as soon as reasonably possible".

Mr. MACLEOD: I might say that another consideration which applied in the Commons is that this has been in operation for a good many years now and has not been found to be unsatisfactory, and for that reason, rather than introduce new wording, the feeling was that we might go along with what has been the practice for years.

Hon. Mr. ASELTINE: All the Commons did was—

Mr. MACLEOD: To restore the present law.

Hon. Mr. ASELTINE: Put it back to what it was in the old Code.

Mr. MACLEOD: Yes.

Hon. Mr. ASELTINE: Let us pass it.

The CHAIRMAN: What is the feeling of the committee? Carried?

Section agreed to.

On section 88—Delivering firearms to minors.

The CHAIRMAN: Section 88 deals with the delivering of firearms to minors. In the Commons there was some discussion on these youngsters being able to buy and carry these spring or switch-knives, and the discussion waxed to the extent that subsection (3) was added, in an attempt to put more teeth in the prohibitions. Subsection (3) simply says this:

> 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.

Hon. Mr. ROEBUCK: What is a switch-knife?

The CHAIRMAN: As I understand it, they are a type of knife that have a little button or switch in them, and you press that, and the blade of the knife comes out.

Hon. Mr. KINLEY: That is a spring-knife.

The CHAIRMAN: Then I am sorry I cannot tell you what a switch-knife is.

Hon. Mrs. HODGES: Are they not sometimes called "switch-knives" and sometimes "spring-knives"?

Hon. Mr. WOOD: I think they have two heads.

The CHAIRMAN: That may be it; but I certainly know what the description of a spring-knife is.

Hon. Mr. ASELTINE: It is the same thing.

The CHAIRMAN: Mr. MacLeod suggests that in the spring-knife the blade is in the barrel. The user presses the button down and out comest the blade, whereas on the switch-knife the blade is conventional.

Hon. Mr. WOOD: It flies open.

The CHAIRMAN: Yes.

Hon. Mr. REID: Why is the age of fourteen put in there?

The CHAIRMAN: That is not in subsection (3), but it is in subsection (2). That was in the bill as we sent it to the House of Commons.

Hon. Mr. REID: I was asking for information as to why fourteen is the age limit there.

The CHAIRMAN: And it is in the present law. That age has to do with the children who carry these things.

Hon. Mr. KINLEY: He can carry it if he gets a permit. What kind of a permit can he acquire?

Hon. Mr. ROEBUCK: It must be remembered that if it is a concealed weapon the person is guilty.

The CHAIRMAN: Subsections (1) and (2) relate to firearms, and subsection (3) is in relation to switch or spring knives.

Hon. Mr. REID: What about that age limit of fourteen years? I have seen kids fifteen going around with these things.

Hon. Mr. WOOD: Subsection (3) does not refer to fourteen years of age at all.

Hon. Mr. REID: I am speaking of section 88 generally.

The CHAIRMAN: Subsection (2) of section 88 deals with the possession of firearms by a person under the age of fourteen. My guess would be that fourteen and above are the ages in respect of which you can get a permit. Is that right, Mr. MacLeod?

Mr. MACLEOD: That is correct.

The CHAIRMAN: In other words, you would not get a permit if you were under fourteen.

The section was agreed to.

On section 102—Frauds upon the government.

The CHAIRMAN: This is the section dealing with the question of money that is paid—I suppose the ordinary description would be of party funds.

Hon. Mr. HOWARD: We shall have to look carefully into this.

Hon. Mr. HAIG: You do not have to run again, Senator Howard.

Hon. Mr. BEAUBIEN: Is this the same as it was in the bill that we sent to the House of Commons?

The CHAIRMAN: No, the bill which went to the House of Commons read in this fashion:

> Every one 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.

Hon. Mr. HOWARD: That is the way we sent it over?

The CHAIRMAN: That is right, and the way it has been amended—and I think possibly the language has been clarified in the course of doing it—is:

> Every one 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.

Hon. Mr. KINLEY: This has to do with a contract, does it?

The CHAIRMAN: It could deal with a wide variety of things. If you have the contract and you give the money afterwards, then there is no possibility of an offence.

Hon. Mr. KINLEY: Is that not pretty wide open?

The CHAIRMAN: Well, do we approve of the amendments?

Hon. Mr. ASELTINE: The old section was never enforced anyway, was it?

Hon. Mr. HAIG: No.

Hon. Mr. ROEBUCK: Are you looking at subsection (b)?

The CHAIRMAN: No, it is subsection (2) on page 37. That is the one that was changed.

Hon. Mr. BOUFFARD: How did it read before it was amended?

The CHAIRMAN: You are looking at subsection (2) on page 37 of Bill 7?

Hon. Mr. BOUFFARD: Yes.

The CHAIRMAN: This is the way it read when we sent it over to the House of Commons:

> Every one 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 . . .

You can say that the language in Bill 7 is infinitely better.

Hon. Mr. KINLEY: What do you mean by better?

The CHAIRMAN: It has been clarified considerably.

The section was agreed to.

On Section 116—Witness giving contradictory evidence.

The CHAIRMAN: This deals with a witness giving contradictory evidence in two different proceedings. The only difference is that in the bill as we sent it to the House of Commons a man was guilty once the Crown established that he had sworn in a contradictory manner on two different occasions, unless he was able to establish that none of this evidence was given with intent to mislead. The onus was on him, on the person charged. Now, as the House of Commons has amended it, it is made part of the element of proof by the Crown; that is, that in those circumstances where you have contradictory evidence given on two different occasions by the same person, the magistrate or judge shall not convict 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. Therefore, in the House of Commons variation of it the Crown must present such evidence that the magistrate or judge will conclude that the person giving the contradictory evidence intended to mislead.

Hon. Mr. HAIG: It is harder to commit a man under the House of Commons amendment than under the section as we drafted it.

The CHAIRMAN: Right, and therefore I am in favour of it.

Hon. Mr. HAIG: So am I.

The CHAIRMAN: Then I should draw your attention to the fact that subsection (3) is added, under which you require the consent of the Attorney General in order to institute any such proceedings for falsely swearing. That would prevent any picayune action.

The section was agreed to.

On section 120—Public mischief.

The CHAIRMAN: The section, as we sent it to the House of Commons, read:

> Every one who causes a peace officer to enter upon an investigation by wilfully doing thus and so . . .

That has been changed to read, as follows:

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

Hon. Mr. BOUFFARD: That is a good amendment.

The CHAIRMAN: I think that is a satisfactory change.

Hon. Mr. ASELTINE: It means the same thing.

The CHAIRMAN: I think that there has been a clarification in the language.

The section was agreed to.

On section 131—Corroboration.

The CHAIRMAN: What has happened here is that the House of Commons has inserted section 142 as an additional section in respect of which there must be corroboration in some material particular of the evidence of the complainant.

The section was agreed to.

On section 134—Instruction to jury.

Now, the change as against what we sent over was to add to section 134, the section dealing with indecent assault of females, section 141. You will notice a list of sections in section 134. Section 134 as we sent it to the Commons had that same list of sections, and the Commons added section 141.

Hon. Mr. ROEBUCK:. As I remember the law, as it stands, a conviction cannot be registered against an accused unless the evidence of the complainant is corroborated. Now, at the present moment under this bill he can be convicted.

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: The only thing is, the judge has to warn the jury it is unsafe to do so, but the jury can bring in a verdict of guilty when the only evidence is that of the complainant?

The CHAIRMAN: That is not the present law.

Hon. Mr. ROEBUCK: No, that is not the present law, but it is this law?

The CHAIRMAN: Yes; what you have stated will be the law when Bill 7 becomes law.

Hon. Mr. ROEBUCK: The present law is that a conviction can be registered?

Mr. MACLEOD: It is the law of England, but it is not the law of Canada. In Canada neither corroboration nor special instruction to the jury are needed. A recent case in the Supreme Court of Canada held that. This addition to section 134 is something that will be new in the law.

The CHAIRMAN: And it does hold the umbrella a little more broadly over the accused.

Mr. MACLEOD: That is right.

The CHAIRMAN: Section 134 is against the present law.

Mr. MACLEOD: At the present time it is not necessary to instruct the jury that it is dangerous to convict. In the present law he will be required to.

Section 134 was agreed to.

On Section 150—Offences tending to corrupt morals.

The CHAIRMAN: All that has happened there is that the Commons has added paragraph (b) of subclause 7, in making a definition of crime comics.

What possible addition those words used in 7 (b) add to the situation, frankly I have difficulty in appreciating, and possibly if you read it you may have difficulty also. Section 150 (7) reads as follows:

> (7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially
>
> (a) The commission of crimes, real or fictitious, or
>
> (b) Events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

Now, Mr. MacLeod may explain to us what that adds.

Mr. MACLEOD: The reason was this, that between the time this bill was before the Senate previously and the time it arrived in the House of Commons there was a judgment of a magistrate in one of the prairie provinces who held that because a particular comic book contained no pictures or representations of the actual commission of crimes, therefore it was not covered by the provision in the present law or in this bill as it then was. As a result of that judgment, which remained for some time unchallenged, it was thought to be desirable to cover the point explicitly. Since that time, of course, the court of appeal has overturned that judgment, so that these words, theoretically, are not required now, but seemed to be very much required at the time, and the feeling was that even though the court of appeal had rendered its judgment, nevertheless, it would be desirable to have the point explicitly dealt with.

Hon. Mr. ROEBUCK: I do not like it—"events connected with the commission of crimes". Now, events that may be connected with the commission of crimes are very numerous and may be entirely harmless—utterly innocuous.

The CHAIRMAN: Riding a horse, for instance.

Hon. Mr. ROEBUCK: Why, of course; and what does it mean, "events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime."?

Hon. Mr. WOOD: I will bite—what does it mean?

Hon. Mr. ROEBUCK: I think it ought to be struck out.

Hon. Mr. HUGESSEN: What particular picture did this crime book show in this case?

Mr. MACLEOD: I cannot recall exactly the particular representation, but it would be this sort of thing, that you would see a number of figures in a room, shall we say, and in the next panel is a body lying on the floor with a great knife stuck in the heart, and a lot of blood flowing around. Well, that is not the commission of a crime, it is an event connected with the commission of the crime. You do not see a pictorial representation of the knife below being delivered.

Hon. Mr. BEAUBIEN: I am satisfied.

Hon. Mr. MCDONALD: We who are not lawyers have to depend on lawyers as to the suggested changes, to a large extent, and I hope the law clerk is approving of the changes that are being made. I wonder if he has any suggestions to offer regarding these particular amendments?

The CHAIRMAN: What have you to say, Mr. MacNeill?

Mr. MACNEILL: It is not for me to approve anything going on here.

Mr. MCDONALD: No, but I should like to know what you think about these things.

Mr. MACNEILL: That would be personal opinion. This is not for me to explain. It is the policy for the Minister to explain it.

The CHAIRMAN: Then I suggest that we stand this section, and hear from the Minister.

Hon. Mr. HAIG: Mr. Chairman, we are the one body in parliament that has been dealing with this, and we have passed resolutions, and surely we are not going to be the ones to cut down the strength of the probe?

The CHAIRMAN: All I am saying is that if there is any difference of opinion we stand the section.

Hon. Mr. ROEBUCK: You strengthen matters by making it clear what you are legislating against, and this clause does not make that clear.

Hon. Mr. HAIG: I understood Mr. MacLeod made it clear in his illustration.

Hon. Mr. ROEBUCK: Let us see if we cannot amend it in some way to show that we are really trying to prohibit something.

The CHAIRMAN: What are your wishes gentlemen?

Hon. Mr. HAIG: I move that the section pass.

Hon. Mr. KINLEY: The suggestion was made at the start—

The CHAIRMAN: Do you wish the section to stand, and to hear the Minister on it?

Hon. Mr. MACDONALD: Senator Roebuck would like to have it stand; I think we should let it stand.

The CHAIRMAN: I see no reason for not letting it stand.

Hon. Mrs. HODGES: Mr. Chairman, before we leave page 48, may I ask a question on subsection 3 which reads as follows:

> No person shall be convicted of an offence under this section if he establishes that the public good was served by the acts that are alleged to constitute the offence and that the acts alleged did not extend beyond what served the public good.

Can you tell me any instance under which the public good could be served by any of these acts?

The CHAIRMAN: It provides a defence, in case one could establish that they did serve the public good; but frankly, I cannot offhand recall any instance where crime comics could be said to serve the public good.

Hon. Mrs. HODGES: Or any obscene pictures or models.

The CHAIRMAN: But when you are put to the task in any particular case, you might be able to show that a certain act was for the public good. That would be a possible defence to an accused person.

Hon. Mr. MACDONALD: You might prove that crime does not pay.

The CHAIRMAN: In that way you might justify the publication.

Hon. Mr. KINLEY: Could any public good be served under the provisions of paragraph 2 (c)?

The CHAIRMAN: Mr. MacLeod, could you answer the question asked?

Hon. Mrs. HODGES: Could you name any offences that could be considered as being for the public good?

Mr. MACLEOD: In the ordinary case that comes before the court, it is a question of fact, and the court must decide whether or not the public good was served. That provision is put in as a defence for the accused, and he must establish affirmatively that the public good was served. There may be a case, as the Chairman has suggested, where the police are a bit too enthusiastic in coming forward and seizing printed material, and then they find that it was designed to serve the public good.

Hon. Mrs. HODGES: But the subsection 3 uses these words "—if he establishes that the public good was served by the acts that are alleged to constitute the offence—" It does not say the conviction or arrest or anything else.

The CHAIRMAN: No, but the police may go out and seize some literature on the basis of some offence which they think has been committed under this section. Then when the case comes to trial, the defence may be that no offence has been committed because the publication of this material was in the public interest and served the public good.

Hon. Mr. HUGESSEN: You might have a case of a medical journal publishing some disgusting material, which may be said to serve the public good.

The CHAIRMAN: Yes.

Hon. Mr. HAIG: Let the section stand.

Section 150 stands.

The CHAIRMAN: I should call the attention of the committee to the fact—I don't think it is of any importance—that there was a headnote in the bill we sent to the Commons between Sections 160 and 161, "Disturbing Religious Services". The Commons struck that out, but I do not believe that it adds to or detracts from the code.

Section 161 was agreed to.

On Section 162—Trespassing at night.

Hon. Mr. ROEBUCK: Is this the Peeping-Tom section?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: And there is no other?

The CHAIRMAN: No. This section deletes the word "wanders" which was in the section we sent to the Commons. Section 162, as we sent it to the Commons read:

> Every one who, without lawful excuse, the proof of which lies upon him, loiters, prowls or wanders upon the property of another person at night is guilty of an offence punishable on summary conviction.

You will see that the section has now been changed further by adding the words "near a dwelling house situated on that property."

Hon. Mr. KINLEY: And by striking out the word "wanders"?

The CHAIRMAN: Yes. I think the change is perfectly satisfactory.

Hon. Mr. ASELTINE: There was no section of a similar nature in the old code, was there?

The CHAIRMAN: No.

Hon. Mr. ASELTINE: And there was a Supreme Court decision on it.

Mr. MacLEOD: Yes; they held that it was no offence in common law.

Hon. Mr. REID: But suppose a man loiters on my property and goes near a powder magazine which is situated perhaps a thousand feet from the house. Is there any protection in those circumstances?

Hon. Mr. WOOD: That would be around your home.

Hon. Mr. REID: It becomes a question of what is "near".

Hon. Mr. ROEBUCK: It is a question of the trespass law.

The section was agreed to.

On Section 164—No apparent means of support.

This is the vagrancy section. Section 1(a), as we sent it to the Commons, read:

> 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

This provision caused the members of the Commons considerable concern, as under the wording of the bill as we sent it to the Commons, a person might be found guilty of vagrancy merely because he was unemployed. The Commons have made doubly sure that this will not happen. Under the amended subsection 1(a), the problem disappears.

The section was agreed to.

On Section 166—Spreading false news.

This section has been amended by adding the word "statement" to the words "a tale or news"; otherwise the section is the same as we sent to the Commons.

The section was agreed to.

On Section 184—Procuring.

Subsection 2 of that section has been amended by deleting the words "earnings of prostitution" and substituting "avails of prostitution".

Hon. Mr. ASELTINE: That is the old wording.

The CHAIRMAN: Yes, that is the old wording. And further the Commons have added paragraph (*k*) to subsection 1.

The section was agreed to.

On Section 200—Killing by influence on the mind.

The only effect of section 200 in the language in which we now find it, is to restore the language of the present code. I will read it as we sent it to the Commons and you will see the difference is not great. As we sent it to the Commons it read as follows:

> No person commits culpable homicide by reason only that he causes the death of a human being (*a*) by influencing his mind, or (*b*) by disorder or disease resulting from influencing his mind.

Hon. Mr. REID: Why is the word mind alone used there? That makes it very definite.

The CHAIRMAN: That is the present law, that is the first reason for it, and secondly, it is more restrictive than in the form in which we sent it to the Commons.

Carried.

Hon. Mr. ROEBUCK: How does the question come up of committing homicide by influence on the mind? Has it been interpreted at all?

Hon. Mr. REID: On the mind alone?

Hon. Mr. ROEBUCK: On the mind alone. Is it through hypnotism or that sort of thing?

Mr. MacLEOD: It probably would include that.

Hon. Mr. ROEBUCK: What else would it mean?

Mr. MacLEOD: It could be brought about by a course of conduct over a substantial period of time causing some person to commit suicide, by counselling them, let us say, to destroy themselves. I do not think there has been occasion for it to be interpreted very often.

The CHAIRMAN: This is an excusing section. It says: "No person who commits culpable homicide. . . ."

Hon. Mrs. HODGES: Does it mean that it is culpable homicide if a person causes a death of a child or a sick person by wilfully frightening him?

Hon. Mr. ROEBUCK: That is homicide.

The CHAIRMAN: This is a section which says what is not homicide. There is another section which says what homicide is.

Hon. Mr. ROEBUCK: It might refer to the Russian methods of mind washing and that sort of thing.

The section was agreed to.

Hon. Mr. HAIG: Where is the section that gives a magistrate power to withhold a warrant for twenty-four hours? I want to kill that section right off.

The CHAIRMAN: We will come to that later.

Hon. Mrs. WILSON: Mr. Chairman, section 213 always distresses me. Do you think it is necessary to have it in the Code? I have been appealed to on many occasions on that.

Hon. Mr. ROEBUCK: We discussed that at length in bill O and we kept it in the Code for this reason, that if you do not say the attempt to commit suicide is an offence, the police have no authority whatsoever. We changed it. Previously it was an indictable offence and the result of that was that a man could be put on trial in the sessions before a jury because he attempted to commit suicide. We struck that out, but we left with the police the power to carry that man before a magistrate who in all probability would commit him for mental examination.

On Section 217—Administering noxious thing.

The CHAIRMAN: The difference between this section as it is now before us and the section which we sent to the Commons is that in subsections (*a*) and (*b*) of section 217 on page 74, the change has been made to provide a penalty for a person who intends to endanger life. As it was originally drawn it only dealt with the case where life was endangered. In (*a*) as it is now before us, a person can be sentenced to a term of fourteen years if he intends to endanger the life or to cause bodily harm to that person.

Hon. Mrs. HODGES: How do you decide whether a person is trying to kill someone or just trying to annoy him?

The CHAIRMAN: It comes down to a question of fact of all the evidence adduced before the magistrate. A person might say, well I did not intend this in any seriousness at all, I thought it might be a little upsetting but I did not think it was likely to endanger life.

Hon. Mrs. HODGES: There are degrees of poisoning then?

The CHAIRMAN: I have heard of it, the same as you have degrees of burns.

Hon. Mr. BOUFFARD: Suppose he endangers life without intention. In the bill that we sent to the Commons we limited the offence to endangering life or causing bodily harm, whereas in the bill which is now before us it says, "if he intends thereby to endanger the life or to cause bodily harm to that person".

Hon. Mr. MACDONALD: It might come under the criminal negligence section.

Hon. Mr. BOUFFARD: As it is now it is a completely different section to the one that we sent to the Commons.

The CHAIRMAN: The wording of the section as we sent it was this:

> Every one who administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing is guilty of an indictable offence and is liable
>
> (a) to imprisonment for fourteen years, if thereby he endangers the life of or causes bodily harm to that person, or
>
> (b) to imprisonment for two years, if he aggrieves or annoys that person or does it with intent thereby to aggrieve or annoy that person.

Hon. Mr. WOOD: Does that apply to a doctor also?

The CHAIRMAN: Now you see the difference between what we sent to the Commons and what came back. It does not appear from section 217 that there is any penalty if you actually endanger human life. Mr. MacLeod, what have you to say about that?

Mr. MACLEOD: I think Senator Macdonald's point is perhaps the proper one, that it would be covered by criminal negligence in clauses 191, 192 and 193.

The CHAIRMAN: So a different kind of offence has been created as against the one that we sent over there. Now, whether the answer is that this section should cover both the case where life is endangered and also where he intends to endanger—maybe it should cover both.

Hon. Mr. WOOD: I think it is all right as it is.

Hon. Mr. HAIG: If sections 191 and 192 cover the situation, why have it here?

The CHAIRMAN: Are you satisfied, Mr. Bouffard?

Hon. Mr. BOUFFARD: Yes, Mr. Chairman. I wanted to have some explanation on it because it is completely different to what we sent to the Commons.

The CHAIRMAN: Yes. As we sent it over to the Commons it was a substantive offence, and they have changed it now to an intent to endanger life.

The section was agreed to.

On section 221—Criminal negligence in the operation of motor vehicle.

In subsection (2) all that has happened is that the phrasing has been changed, and I think I can show it to you by reading to you the language in Bill O as it went to the Commons.

> (2) Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, horse or vehicle, with intent to escape civil or criminal liability fails to stop his vehicle, offer assistance where any person has been injured and give his name and address is giulty of . . .

and then you have paragraphs (a) and (b).

As the Commons amended that, the language is this:

> (2) Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, vehicle or cattle in charge of a person, with intent to escape civil or criminal liability fails to stop his vehicle, give the name and address and, where any person has been injured, offer assistance, is guilty of

You will notice that by transposing giving his name and address it is now part of the procedure he must follow; whereas, as we sent it to the Commons, if anybody had been injured he must give his name and address.

Hon. Mr. REID: What about horses and sheep?

The CHAIRMAN: The definition of "cattle" will include them.

Hon. Mr. HAIG: The horses are all dead!

Section agreed to.

On section 241—Punishment.

The CHAIRMAN: If you look at subsection (2) of 241 you will see that what the Commons has done is to insert the words "issued under the authority of law" after the words "certificate of marriage". For the purposes of this section a certificate of marriage issued under the authority of law is *prima facie* evidence. The new words are "issued under the authority of law".

Hon. Mrs. HODGES: That means a church certificate?

Hon. Mr. KINLEY: A church, or a magistrate.

Hon. Mr. ROEBUCK: The point is that some of the certificates come from Europe, and there is no means of proving them, and this gives *prima facie* proof to one that purports to be issued under the authority of law.

Section agreed to.

On section 250—Punishment of libel known to be false.

The CHAIRMAN: All that this section does is, as redrafted, to change the penalty from "imprisonment for five years or a fine of $5,000, or both", to "imprisonment for five years."

Hon. Mrs. HODGES: No fine?

The CHAIRMAN: No fine.

Mr. MACLEOD: I might explain in relation to that that the dropping of the fine was consistent with the rest of the provisions in the Code. You will note as you go through that there are no other provisions where the fine is set out in the section. That is because section 622 provides that where an offence is punishable with imprisonment for five years or less a fine may be imposed in addition to or in lieu of the imprisonment.

The CHAIRMAN: So it is just repetitious to put it in here.

Section agreed to.

On section 251—Punishment for defamatory libel.

Section 251 is the same thing. That is, the penalty clause provides for two years and a fine of $1,000, and as amended it simply provides for a penalty of two years.

Section agreed to.

On section 252—Extortion by libel.

Section 252 is exactly the same type of thing, and the penalty clause has been changed in the same way.

Section agreed to.

On section 280—Punishment for theft.

THE CHAIRMAN: The only change is, that in Bill 7, the section we sent to the Commons, the word "alleged" had been used. It was a property "alleged" to have been stolen, and "alleged" value; and you will notice in section 280 they simply speak of where the property was stolen; the word "alleged" has been taken out. It does not seem to have been any material change.

Hon. Mr. ROEBUCK: Well, it is an important one.

Hon. Mr. CONNOLLY: Is there any reason for the deletion of the word?

Mr. MACLEOD: The reason is this. After the bill left the Senate we had some correspondence with the British Columbia section of the Canadian Bar Association, and they brought to our attention something which we had not noticed, and it was this, that actually we should not have the punishment

determined by the allegation that is made by the Crown. The degree of punishment, whether it is going to be ten or two years, should depend upon the fact that is established, what was the value of what was stolen, rather than the allegation.

Hon. Mr. CONNOLLY: It seems to be a lot clearer. But I just wondered what the background was.

Mr. MacLEOD: There are several other sections we will come to where a corresponding change has been made.

Section agreed to.

On section 295—Possession of house-breaking instruments.

The CHAIRMAN: You will notice the section as we sent it to the Commons has simply been re-phrased—in my view. As sent to the Commons, it read:

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

As the Commons have it before us, you can see the section now divides into two. The penalty for being in possession of an instrument for house-breaking, vault-breaking or safe breaking is fourteen years, and the penalty for having your face masked, etc., with intent to commit an indictable offence, is ten years.

Hon. Mrs. HODGES: Does that mean that in the case of a hold-up where men wear masks on their faces they only get ten years?

The CHAIRMAN: No. If they were arrested in connection with a hold-up they would certainly be charged with the most serious offense of which they could be charged.

Hon. Mrs. HODGES: That is the usual case in which they are masked—except for a fancy dress masquerade or something like that.

Hon. Mr. ROEBUCK: If he was commencing to break a house or make a hold-up, you would not charge him under this, for having a mask, but you would charge him with the offence. But here he also has against him the fact that he has his face covered with intent to commit such an offence.

Hon. Mr. HOWARD: Would he get twenty-four years under these two sections!

The CHAIRMAN: I suppose in theory he could!

Section agreed to.

On section 297—Punishment.

The CHAIRMAN: This is exactly the same as that section we referred to earlier—I think it was 280—where the word "alleged" has been removed.

Section agreed to.

On section 304—Obtaining by false pretence.

The CHAIRMAN: That is obtaining by false pretence. False statement in writing. The change is to drop the word "alleged". Also, sub-clause (4) of that same section is amended by deleting the words "and did believe" after the word "believe".

Hon. Mr. ASELTINE: What is the significance of that change?

Hon. Mr. MACDONALD: What clause is that?

Hon. Mr. ROEBUCK: I do not follow you. Where are you?

The CHAIRMAN: Turn over the top of the next page: "Unless the court is satisfied by the evidence that when the accused isued the cheque he had reasonable grounds to believe that it would be honoured if presented for payment within a reasonable time after it was issued." As the bill went over to the House of Commons it said: "Unless he had reasonable grounds to believe and did believe..."

Hon. Mr. CONNOLLY: Is there any difference between the sections?

The CHAIRMAN: I suppose one answer might be that you have a surplus of language and consequently if the words "did believe" added something to the section, then by taking them out you have made the course of the accused person not as onerous. Mr. MacLeod also informs me that by taking the words out it makes the language conform to the language of the present code.

The section was agreed to.

The CHAIRMAN: Then I should call your attention to the fact that onother heading was struck out between clauses 307 and 308. There was a heading on witchcraft in the bill as we sent it to the Commons, and that has been struck out. There is no material change.

On section 308—Pretending to practise witchcraft, etc.

The CHAIRMAN: I should direct your attention to the fact that the House of Commons inserted the word "fraudulently" in the first line of section 308. They amended it to read "Every one who fraudulently . . ." That word has been added to the section we sent to the House of Commons.

The section was agreed to.

On section 328—Fraudulent concealment.

The CHAIRMAN: The change there is that subclause 2 was added by the House of Commons, that is, that "No proceedings shall be instituted under this section without the consent of the Attorney General."

Hon. Mr. HAIG: That is the Attorney General of a province?

The CHAIRMAN: Yes, and this deals with fraudulent concealment, of document of title, and so on.

Hon. Mr. ROEBUCK: How do you know it is the Attorney General of the province?

The CHAIRMAN: It is in the definition section.

Hon. Mr. ROEBUCK: Thank you.

The section was agreed to.

On section 339—Salting mine.

The CHAIRMAN: This section deals with salting a mine or salting a sample. The House of Commons has amended subclause (1) by increasing the penalty from five to ten years in connection with salting a mine.

Hon. Mr. HAIG: I lost some money in a mine that way. I would like to recover it.

The CHAIRMAN: That is the only change—increasing the penalty.

The section was agreed to.

On section 341—False employment record. Time clock.

The CHAIRMAN: This section was redrafted. I think it is purely a change in language. If you will follow section 341 I shall read you what the same section was in Bill O:

> Every one who, with intent to deceive, (*a*) falsifies an employment record, or (*b*) punches a time clock, is guilty of an offence punishable on summary conviction.

The House of Commons has changed that, as you will see, by doing away with the subdivisions of (*a*) and (*b*) and running them altogether and saying:

> Every one who, with intent to deceive, falsifies an employment record by any means, including the punching of a time clock, is guilty of an offence punishable on summary conviction.

Hon. Mr. WOOD: I do not see that, somehow or other.

The CHAIRMAN: Punching a time clock is one way of falsifying a record.

Hon. Mr. WOOD: Is it not rather severe that they be prosecuted for it? I thought that was a responsibility of the employer.

Hon. Mr. KINLEY: A man can get another man to punch a clock for him.

Hon. Mr. WOOD: I still think it is the employer's responsibility.

The CHAIRMAN: Does the section carry?

Hon. Mr. REID: Is that not a direct change in the law? I thought that was a matter between the employer and the employee.

Hon. Mr. WOOD: That is what I thought.

The CHAIRMAN: No, it is an offence under the existing law. It is almost tantamount to stealing money if you have another man punch your time in on a clock and you are not there.

Hon. Mr. WOOD: Is that not still the responsibility of the employer?

Hon. Mr. HAIG: No. Suppose that Senator Reid and I worked for the same company and I telephoned him and said "Reid, punch me in this morning. I'm not going down." Supposing I told him my punch signal and he punched himself in and then punched me in. Who in the world would catch him?

Hon. Mr. WOOD: I still do not agree.

The section was agreed to.

On section 343.—False prospectus, etc.

The CHAIRMAN: This section deals with making, circulating or publishing false prospectus. The penalty has been increased from five to ten years in subsection (1). That is the only change here.

Hon. Mr. HAIG: I wish you would call Senator Howard's attention to that section.

The section was agreed to.

On section 365—Criminal breach of contract.

The CHAIRMAN: I have not heard anything contentious about this.

Hon. Mr. ROEBUCK: Oh my goodness, stand!

Hon. Mr. HAIG: I think there will be some discussion on this section.

The section stands.

On section 372—Destruction or damage.

The CHAIRMAN: I think this section should properly stand.

Hon. Mr. ROEBUCK: I think so.

Hon. Mr. HAIG: Agreed.

The section stands.

On section 386—Killing or injuring other animals.

The CHAIRMAN: This section deals with killing or injuring other animals. The House of Commons added the words "And without lawful excuse". The section as we sent it to the other house read "Every one who wilfully . . ." and then subsections (*a*) and (*b*) were set out. The only change is that the words "and without lawful excuse" have been added.

The section was agreed to.

The CHAIRMAN: We have an amendment to section 400 which is proposed by the Department at this time, and that is to be found in the currency sections of the code. In the present code they are in Part IX. I believe we have also embodied the sections in the present Currency Act. These particular sections, of which 400 is one, are what we call the currency sections.

Mr. MACLEOD: That is right.

The CHAIRMAN: And they are in Part IX of the present code?

Mr. MACLEOD: That is right.

The CHAIRMAN: I understood in addition we have taken provisions out of the Currency Act and incorporated them in Bill 7, is that right?

Mr. MACLEOD: That is right, but I do not think that applies to this particular amendment.

The CHAIRMAN: May I read the amendment? The amendment proposes this to section 400, that is, printing circulars in the likeness of notes:

> That clause 400 of Bill 7 be amended by adding thereto, immediately after subclause (1) thereof, the following subclauses:
>
> (2) Every one who publishes or prints anything in the likeness or appearance of
>
> (a) all or part of a current bank note or current paper money, or
>
> (b) all or part of any obligation or security of a government or a bank,
>
> is guilty of an offence punishable on summary conviction.

Hon. Mr. HAIG: That is all right.

Hon. Mr. REID: Mr. Chairman, I passed a store the other day in Ottawa, and in the window, I saw marked up, "Currency Bills for Games." These bills were the size of a Canadian dollar bill in every respect, and looked to all intents and purposes a dollar bill. Is there any prohibition against that?

Hon. Mr. WOOD: There is in this bill.

The CHAIRMAN: There is a saving clause, subsection 3:

> (3) No person shall be convicted of an offence under subsection (2) where it is established that, in publishing or printing anything to which that subsection applies,
>
> (*a*) no photography was used at any stage for the purpose of publishing or printing it, except in connection with processes necessarily involved in transferring a finished drawing or sketch to a printed surface,
>
> (*b*) except for the word 'Canada', nothing having the appearance of a word, letter or numeral was a complete word, letter or numeral,
>
> (*c*) no representation of a human face or figure was more than a general indication of features, without detail,
>
> (*d*) no more than one colour was used, and
>
> (*e*) nothing in the likeness or appearance of the back of a current bank note or current paper money was published or printed in any form.

Hon. Mr. EULER: Would that apply to a forgery of, say, American money—foreign money?

The CHAIRMAN: Yes. It says "current paper money". In section 391, you will find "current" defined as being "lawfully current in Canada or elsewhere by virtue of a law, proclamation or regulation in force in Canada or elsewhere as the case may be." So that is the definition of paper money, apparently,

Hon. Mr. HUGESSEN: I suggest that that is a rather long amendment, and we have not seen it. Would you not have that circulated?

The CHAIRMAN: Yes, I was going to ask Mr. MacLeod as to the reasons for seeking this enlargement of the section.

Mr. MACLEOD: In the House of Commons Debates of April 8th last, page 3919, a letter appears from Mr. A. E. Coyne, the Deputy Governor of the Bank of Canada, addressed to Mr. K. W. Taylor, Deputy Minister of Finance, at Ottawa; this letter sets out the reasons.

The CHAIRMAN: Then, we will stand the section in the meantime?

Hon. Mr. HUGESSEN: Would you not circulate copies of it, too?

The CHAIRMAN: I think I might have the clerk make copies of the amendment so that they will be ready for distribution tomorrow.

The committee adjourned until tomorrow at 11 a.m.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 19, 1954.

The Standing Committee on Banking and Commerce, to whom was referred the Bill 7, an Act respecting the Criminal Law, met this day at 11 a.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Last night we got as far as section 410, the "trade combination" or conspiracy section. The only difference between the section as it is now before us and as we sent it to the Commons is a re-phrasing, and the re-phrasing re-states the wording as it is in the present Code. May I just point out where the differences were. In Bill O, when we sent this clause to the Commons, it read in this fashion:

> Except where otherwise expressly provided by law, no person shall be convicted of conspiracy in restraint of trade by reason only that he
>
> (*a*) refuses to work with a workman or for an employer, or
>
> (*b*) does any act or causes any act to be done for the purpose of a trade combination.

There is a subsection too, but that remains the same. The way it was re-phrased in the Commons is simply this. The language, as you will see it in 410, is that they have taken the exception which occurs in the beginning of the section and they have put it down at the end of subclause (b), and you will notice the wording is: "unless such act is an offence expressly punishable by law".

Hon. Mr. MCDONALD: More affirmative.

The CHAIRMAN: Well, there was some feeling in the minds of some persons in the Commons as to whether, by re-phrasing, you were changing the meaning, or there was a possible change of meaning, and since the people concerned with this section felt comfortable with the section as it was, and I think there had been some law developed in connection with the section and they didn't want it disturbed, for these reasons the language was reverted to what you have in the Code.

Hon. Mr. WOOD: Are you satisfied with it as it is now?

The CHAIRMAN: Oh, yes.

Section agreed to.

On section 421—Offence committed entirely in one province not triable in another.

The CHAIRMAN: This is a section dealing with an offence committed entirely in one province and not triable in another, and the only amendment which the Commons made is this. If you look in the first line of subclause (3) you will see that after the word "writing" they inserted the words "before a magistrate," and then they added a new subclause (4), re-numbering the former subclause (4) as (3); and subclause (4), you will notice, states:

> No writing that is executed by an accused pursuant to subsection (3) is admissible in evidence against him in any criminal proceedings.

Those are the changes, and it is difficult to see that there is anything objectionable in the changes that were made.

Section agreed to.

Hon. Mr. BOUFFARD: I would like section 431 to stand, because I have an amendment to propose.

Section stands.

On section 432—Detention of things seized.

The CHAIRMAN: That relates to detention of things seized, and the changes which were made are in paragraphs (*a*) and (*b*) of subsection 3. All they do is spell out in more detail the meaning of disposal by a justice of the peace of goods seized under a search warrant when he is satified that they are no longer required for the purposes of the section; and then a new subclause is added, No. 7, which provides for an appeal if the party is not satisfied with the disposition which the justice of the peace makes.

Hon. Mr. WOOD: Would that be goods seized in connection with a charge against a bootlegger, or something like that?

The CHAIRMAN: This would refer to seizure under search warrant.

Hon. Mr. WOOD: That would apply to liquor, would it not?

The CHAIRMAN: Well, it could. It could apply to liquor; it could apply to documents, papers in connection with proceedings.

Hon. Mr. HAIG: There is an appeal.

The CHAIRMAN: An appeal is provided. As Mr. MacLeod points out, the search warrant issued under the Code in relation to liquor would have to be in relation to a federal offence.

Hon. Mr. REID: The Senate passed legislation not so long ago which authorized the National Harbours Board to dispose of stolen property without advertising the sale or giving the owner a chance to do anything about it. My question is can such a thing be done according to this law? In other words, have any powers been given to the National Harbours Board or any other board or commission which are not covered by law?

The CHAIRMAN: The National Harbours Board Act is a federal statute and I expect that the Parliament of Canada would have a plenitude of power that it could give to the Harbours Board, and it does not necessarily have to find its counterpart in the Criminal Code. Is that right, Mr. MacNeill?

Mr. MACNEILL: Yes.

The section was agreed to.

On section 437—By owner of property.

The CHAIRMAN: In my view the changes in this section merely rearrange the language. If you care to follow section 437 I shall read the section as it went to the House of Commons in Bill O:

> Any one who is (*a*) the owner of property, or (*b*) a person authorized by the owner of property, may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

You will see that the change is brought about by adding in subsection (*a*) the words "or a person in lawful possession of".

The section was agreed to.

On section 438—Delivery to peace officer of person arrested without warrant.

The CHAIRMAN: This section provides for the delivery of a person who has been arrested without warrant by some person who may be required or commandeered, shall we say, by a peace officer. It requires him to deliver the person arrested to the peace officer. The only changes made in this section

are in (*a*) and (*b*) of subsection (2). In the section as we sent it to the House of Commons we provided that the peace officer may detain the person who has been delivered to him, but he must as soon as possible bring that person before a justice to be dealt with according to law. The members of the House of Commons saw fit to interpret the words "as soon as possible" to mean within twenty-four hours, and then where a justice is not available they went on to provide "as soon as possible".

The section was agreed to.

On section 469—Magistrate may decide to hold preliminary inquiry.

The CHAIRMAN: This section deals with the matter of preliminary hearings. The members of the House of Commons added subsections (2) and (3) to deal with the procedure in any case where, during the hearing by the magistrate of the charge under 467, the value of the goods stolen appear to be in excess of $50. Section 467 deals with the proceedings before the magistrate where the goods have a value not in excess of $50, but if he is proceeding with his inquiry and it appears that the goods have a greater value, then, subsections (2) and (3) have been added to deal with the procedure in that case.

The section was agreed to.

On section 481—Continuance of proceedings when judge or magistrate unable to act.

In the section that we sent to the Commons they deleted the clause we sent over and substituted a new clause, which simply spells out procedural details as to how the section is to work, whereas in the section as we sent it I think it might have been necessary to enact rules. Just to indicate the difference, in the bill we sent to the Commons the section read:

> 481. (1) Where an accused elects, under section 450, 468 or 475 to be tried by a judge or magistrate, as the case may be, and the judge or magistrate before whom the trial was commenced dies or is for any reason unable to continue, the trial may be continued, without further election by the accused, before another judge or magistrate, as the case may be, who has jurisdiction to try the accused under this Part.

And then also is added:

> (2) A judge or magistrate who acts pursuant to subsection (1)
>
> (*a*) shall, if an adjudication was made by the judge or magistrate before whom the trial was commenced, impose the punishment or make the order that, in the circumstances, is authorized by law, or
>
> (*b*) shall, if an adjudication was not made by the judge or magistrate before whom the trial was commenced, commence the trial again as a trial de novo.

You will notice in section 481 as it is now before us, instead of having these two subsections there are a series of four subsections spelling out in detail what the judge who succeeds the original one may do, depending on the stage to which the proceedings have got at the time the original judge dies or it becomes impossible for him to continue; and I think I am fair in saying that it is simply detailing procedures for the functoning of the second or replacement judge or magistrate, that could well have been provided by rule, but to which you could have no objection.

Hon. Mr. WOOD: I think it is an improvement.

The CHAIRMAN: Well, it is a difference in viewpoint. It is certainly easier to find, than perhaps looking it up in rules.

The section was agreed to.

On section 510—Amending defective indictment or count.

In clause 510, subclause 5 was amended by the Commons by inserting in the fifth line thereof the words "to a subsequent day in the same sittings or the next sittings of the court."

This subsection provides for granting an accused an adjournment, if in the opinion of the Court he has been prejudiced. Now, all the amendment does is to delimit the length of the adjournment by saying "to a subsequent day in the same sittings or to the next sittings of the court."

It is quite obvious that a judge could do nothing else, anyway. In any event, those words have been added.

Hon. Mr. MACDONALD: That means there cannot be an intervening sittings—it cannot go beyond the next sittings.

The CHAIRMAN: Yes, but I know of no reason which would permit you to traverse a case beyond the next sitting; it would have to go to the next sitting.

Hon. Mr. CONNOLLY: But there is nothing to prevent a further adjournment from the next sitting to the next sitting.

The CHAIRMAN: And nothing in the amendment would prevent that.

Hon. Mr. WOOD: And not necessarily the next day?

The CHAIRMAN: No. It says a subsequent day and that does not mean the next day.

The section was agreed to.

On Section 511—Amended indictment need not be presented to grand jury.

This section, which deals with the provision that an amended indictment need not again be presented to the grand jury, was amended by the Commons by inserting in the third line thereof, after the word "necessary", the words "unless the judge otherwise directs".

The section was agreed to.

On Section 583—Report by judge.

That section, having to do with appeals of indictable offences, deals with the material to be furnished to the court of appeal. Subsection 2 of that section was amended by striking out the words "by the appellant" where they appear after the words "the reasons for judgment, if any, shall be furnished".

Hon. Mr. MACDONALD: How do the reasons for judgment get there now?

The CHAIRMAN: In those circumstances, my view would be that it would be up to the crown to furnish the reasons for judgment, rather than putting the burden on the appellant who might be the accused.

Hon. Mr. MACDONALD: But if the appellant is not the accused, what then?

The CHAIRMAN: There is no problem then. The crown would have to do it; the only case affected here is where the appellant is the accused.

The section was agreed to.

On section 592—Allowance for appeal against conviction.

This section deals with the powers of the court of appeal. The House of Commons deleted subsection 5 which we had enacted, and substituted therefor a new subsection. The subsection which we sent to the Commons read this way:

> (5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the new trial shall, without further election by the accused, be held before a

judge or magistrate, as the case may be, acting under the Part, other than the judge or magistrate who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the judge or magistrate who tried the accused in the first instance.

Hon. Mr. McDONALD: Is that not the same?

The CHAIRMAN: No.

Hon. Mr. WOOD: Is this amendment any improvement on the Senate's recommendation?

The CHAIRMAN: Specifically, it gives the accused the right to elect again to be tried by judge and jury, if he has so requested in his notice of appeal.

Hon. Mr. CONNOLLY: Would that apply if he had not elected trial by jury originally, and started all over again?

The CHAIRMAN: If he had not elected trial by jury originally, but in his notice of appeal he requested that if a new trial were granted that it be by judge and jury, he is entitled to it. That is the addition which has been made.

Hon. Mr. HAIG: It gives the accused the chance of a new trial.

The CHAIRMAN: It gives him an option all over again and I think there may be some benefit or advantage in it.

Hon. Mr. HAIG: There is no harm in it anyway.

Hon. Mr. CONNOLLY: I ask this question, Mr. Chairman, without having read the new correction. In the case of an application for a new trial, can the accused ask that it not be heard by the magistrate or court official who originally tried him?

The CHAIRMAN: He does not have to, because it is not to come before the same judge unless the court of appeal directs that it do so, so there would have to be a specific direction by the court of appeal that it come before the same judge or magistrate who originally heard the case.

Hon. Mr. CONNOLLY: In practice the same person does not usually hear the second case.

The CHAIRMAN: In practice I would say it would be very unusual to find the same judge or magistrate attempting to hear the case the second time.

Hon. Mr. ASELTINE: That applies in the civil law also.

The section was agreed to.

On Section 599—Notice of Appeal.

The CHAIRMAN: This deals with the question of notice of appeal, and the clause as we sent it to the Commons was amended by inserting the words "before or after the expiration of that period" after the word "unless" in the second last line of the clause. That has the effect of giving the Supreme Court of Canada power to extend the time either before or after the expiration of the time limit.

The section was agreed to.

On Section 628—Compensation for loss of property.

This clause was amended by the Commons. The effect of the change is that it gives the judge at trial the right to order payment of an amount by way of satisfaction or compensation, and provides for such order to be entered as a judgment in the court and to be enforceable as a judgment. I will read the subsection:

> A court that convicts an accused of an indictable offence may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction

or compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence of which the accused is convicted.

And then the section goes on to provide for the enforcement of that order by entering it as a judgment of the court, and the right to issue execution would flow from that.

Hon. Mr. WOOD: Suppose the man has not any assets, what then?

Hon. Mr. ASELTINE: We lawyers do the worrying about that.

Hon. Mr. WOOD: What I meant to ask is, is there some penalty imposed if the accused cannot pay the amount of the order?

The CHAIRMAN: The penalty is, that the man who has committed the offence has been convicted, and if the person who suffers the loss or damage wants a short method of getting a judgment which he thinks will have some value some day, the judge who made the conviction can make an order which has the effect of a judgment, so that the person who has been injured or suffered the loss is in a position, if the accused has any assets or is likely to have any assets some time in the future, of having a judgment and may issue execution. So it is of some benefit.

Hon. Mr. BOUFFARD: Is it not, Mr. Chairman, a civil matter? Suppose that person who has been aggrieved takes action before the man's conviction?

The CHAIRMAN: You mean, by civil proceedings?

Hon. Mr. BOUFFARD: Yes.

The CHAIRMAN: Then he is on his own civil remedy. This is only legislation that is really ancillary to the criminal law, punishing the person for the damage or loss of property which he has caused.

Hon. Mr. BOUFFARD: If a judge acting in a criminal case of that kind has the right to convict or condemn in a certain amount of money, is it not true that there would have to be a civil action? Has the aggrieved person to take a civil action? Because the man may be condemned to the amount of damage.

The CHAIRMAN: I have not understood the criminal law to be such that if someone is convicted of the theft of money in a criminal court I cannot take the civil remedies to collect the money that was stolen from me.

Hon. Mr. CONNOLLY: I have the same difficulty, but I think the answer is in the first five lines of the section. I think it is permissible on the part of the person aggrieved: he has an option to proceed before the civil courts.

The CHAIRMAN: The difficulty may be that if you brought your action in the civil courts, and you were ready for trial ahead of the criminal trial, the judge in the civil court might say, "I will adjourn this; I don't want to compromise the criminal proceedings." If that is the attitude you may as well get your judgment at the same time that the fellow was convicted.

Hon. Mr. CONNOLLY: It is cheaper.

The CHAIRMAN: Much cheaper.

Hon. Mr. BOUFFARD: Supposing the person aggrieved also takes a civil action—

The CHAIRMAN: He can only get one judgment for the money.

Hon. Mr. MACDONALD: The word "may" is in there. A judge or magistrate would not grant an application if he took action in the civil courts.

The CHAIRMAN: Oh, I would not say that. If he had a judgment he certainly could not; but if he had started action I think an order would only be granted in that action on terms that the other action would be discontinued; because you could not get two judgments.

Section agreed to.

On section 629—Compensation to *bona fide* purchasers.

The CHAIRMAN: This section deals with compensation to *bona fide* purchasers. That is, where third persons have purchased stolen goods. The same principle is involved, under which the magistrate or judge making a conviction can recognize the right of the third party who has purchased innocently the goods, and give him, on application, a judgment not exceeding, of course, what he paid for those goods.

Hon. Mr. ASELTINE: What change was made in the Commons?

The CHAIRMAN: The same change was made in section 628. That is not answering your question, senator, but the change was that under certain circumstances the judge is given power to order a payment of an amount to the purchaser of stolen goods not exceeding the amount paid by him, and such judgment can be entered in the Superior Court of the province and is enforceable in the same way as any other judgment.

Section agreed to.

On section 631—Costs to successful party in case of libel.

The CHAIRMAN: In the original section the awarding of costs was only provided for to a successful dependent. The way in which the Commons has changed it is that the costs in connection with defamatory libel proceedings may be awarded to the successful party.

Hon. Mr. BOUFFARD: That is quite all right.

Section agreed to.

On section 632—How recovered.

The CHAIRMAN: Section 632 is merely consequential to 631. It is simply providing a procedure for the enforcement of payment of the costs that have been awarded under section 631.

Section agreed to.

On section 634—Imprisonment for life or more than two years.

The CHAIRMAN: This is to clarify the situation with respect to imprisonment in a penitentiary and how that term is related to the situation in Newfoundland. It is technical, by reason of the consolidation of the statutes. Would you just explain that, Mr. MacLeod?

Mr. MACLEOD: The explanation is quite simple. When this provision was before the Senate previously, it was at a time prior to the coming into force of the Revised Statutes of Canada, 1952. They came into force on September 15, 1953. At the time the bill was before the Senate the reference here was to the then existing provisions in the Penitentiary Act. After the Revised Statutes of Canada in 1952 came into force, however, the Penitentiary Act had a different chapter number. It was a purely consequential change by reason of the coming into force of the Revised Statutes of Canada.

The CHAIRMAN: That is, in subsection (5).

Mr. MACLEOD: Yes.

Section agreed to.

On section 638—Suspension of sentence.

The CHAIRMAN: This deals with suspended sentence on probation. Mr. MacLeod tells me that what really happened was that when the bill left us containing this section it was in the same form as it is now in the bill which is before us, but in the process of getting printed for the Commons some changes crept in—typographical changes—and that is why it is back before us now, and we are considering it as if there were some change in it.

Hon. Mr. WOOD: Is there a change?

Mr. MACLEOD: The printer left one line out which you people had in; and the only way we could make the change in the Commons was by way of an amendment. So it is purely to cure a typographical error.

Hon. Mr. CONNOLLY: They put back our line.

The CHAIRMAN: That is correct.

Section agreed to.

On section 641—Execution of sentence by whipping.

The CHAIRMAN: Section 641 deals with whipping. The difference between the section that we sent to the Commons and the one that they have sent back is this: In subsection (3) of the bill which we sent to the House of Commons, we provided that every sentence of whipping shall be carried out in accordance with regulations to be made by the Governor in Council. The members of the House of Commons added a number of subsections spelling out the manner and the conditions under which the whipping shall be administered, and in doing that they have incorporated into the section the provisions of the present law Under the section as we sent it to the House of Commons the regulations were to be made by the Governor in Council.

Hon. Mr. HAIG: That is one of the sections which is being dealt with by the Joint Committee on Criminal Law, and if that committee is not in favour of the section as it stands it will be amended.

The CHAIRMAN: Yes, and in the meantime it is proposed that there shall not be any alteration made to the section.

Hon. Mr. CONNOLLY: Under the section as it now stands there will be no regulations, and the sentence will be carried out as laid down and as spelled out in the section.

The CHAIRMAN: Yes.

The section was agreed to.

On section 643—Sentence of death to be reported to the Minister of Justice.

The CHAIRMAN: I should call your attention to the fact that the expression "a report of the case to the Minister of Justice for the information of the Governor General" is not the same as the expression used in the bill we sent it to the House of Commons. We used the term "Secretary of State" in the place of the "Minister of Justice". You will observe a number of these changes involving the substitution of "Minister of Justice" for "Secretary of State".

Hon. Mr. HAIG: Why?

Hon. Mr. CONNOLLY: Why is that?

The CHAIRMAN: Because the Minister of Justice is the responsible officer who deals with it in any event.

Mr. MACLEOD: Perhaps another reason for it is this. There was an order-in-council in February of this year transferring from the Department of the Secretary of State to the Department of Justice, the administrative functions which had previously been performed by the Department of the Secretary of State.

Hon. Mr. CONNOLLY: Why was the Secretary of State ever involved in this kind of thing?

Hon. Mr. WOOD: I was going to ask the same question.

The CHAIRMAN: Policy, I suppose.

Mr. MACLEOD: Originally the Department of Secretary of State, or at the turn of the century, was the department that ordinarily served as the means of communication between the Governor General and the public at large, and it was always the practice for communications of the Governor General to be made through the Secretary of State.

The section was agreed to.

Hon. Mr. REID: May I ask a question with reference to section 641? Why do they designate the cat-o'-nine tails? I understand that in the penitentiaries they use a paddle which does not cut the flesh and yet inflicts the same kind of punishment. It is certainly punishment that no one relishes. I understand that in the penitentiaries no person ever returns for a second paddling, but the paddle is not the cat-o'-nine tails. That term conjures up something horrible in the minds of many people. The paddle will serve just as good a purpose in the way of punishment for the evil doer as will the cat-o'-nine tails.

The CHAIRMAN: First of all, there is no change in the law. Secondly, the provision in subsection (4) of section 641 is that the instrument of whipping shall be the cat-o'-nine tails unless some other instrument is specified in the sentence. In other words, if the judge specifies that the strap be used, then that is the instrument that will be used to inflict the punishment awarded. We have had evidence before the Joint Committee on Criminal Law to the effect that the strap is a more stinging and painful instrument in its application than the cat-o'-nine tails.

Hon. Mr. EMMERSON: The cat-o'-nine tails will cut the flesh whereas the strap will not.

The CHAIRMAN: When they used to knot the end of the cat-o'-nine tails some years ago there would be cutting, but that is not done now. The cat-o'-nine tails consists of nine separate cords and they are not knotted at the end. The evidence given by the warden of the Kingston Penitentiary was to the effect that the cat-o'-nine tails was not as effective an instrument for punishment as the strap.

Hon. Mrs. HODGES: That is right.

Hon. Mr. EMMERSON: They have had other experiences in other penitentiaries.

Hon. Mrs. HODGES: We had that view confirmed by another warden.

The CHAIRMAN: And we had Warden Christie from Oakalla before the committee yesterday and he testified that the instrument used chiefly in Oakalla is the strap because it talks very effectively.

Hon. Mr. WOOD: This section definitely provides for the use of the cat-o'-nine tails.

The CHAIRMAN: Unless the judge wants to direct otherwise.

Hon. Mr. WOOD: Does whipping apply to women?

The CHAIRMAN: It says specifically no in subsection (6): "No female person shall be whipped."

On section 648—Coroner's inquest.

The CHAIRMAN: The members of the House of Commons inserted a new subparagraph (5) to deal with the situation where a sentence of death is executed in a district, county or place in the province of Newfoundland in which there is no coroner. It deals with the functions of a coroner after the sentence of death has been carried out.

The section was agreed to.

On section 649—Documents to be sent to the Minister of Justice.

The CHAIRMAN: This section deals with documents that are to be sent to the Minister of Justice after the sentence of death has been carried out. The only amendment here is that the words "Minister of Justice" have been substituted for the words "Secretary of State".

The section was agreed to.

On section 656—Commutation of sentence.

The CHAIRMAN: The change here is to delete the words "Secretary of State" and to substitute the words "Minister of Justice or Deputy Minister of Justice".

The section was agreed to.

On section 690—Successive applications for *habeas corpus* not to be made.

On section 691—Appeal in *habeas corpus*, etc.

The CHAIRMAN: In view of the questions raised by Senator Roebuck on these sections in the Senate chamber, and because of the views held by other parties, I think these sections should stand. They involve the question as to whether or not *habeas corpus* proceedings should be the subject matter of an appeal. They mark a change in the existing law, and therefore we should let these two sections stand and discuss them when the Minister is here.

Section 690 stands.

Section 691 stands.

Hon. Mr. MCDONALD: Could you briefly give us the change that was made in the House of Commons?

The CHAIRMAN: Yes, the change made in the House of Commons was simply the insertion of the words "on the merits" after the word "refused" in the third line.

On section 694—General penalty.

The CHAIRMAN: This section deals with summary convictions. The members of the House of Commons saw fit to delete subsection (3) as we sent it to them, and to substitute a new subsection (3). The subsection as we sent it to the other house read like this:

> A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or at a time to be fixed by the summary conviction court.

And what the Commons has done you may see in the new subsection 3:

> (3) A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or, if the accused is unable to pay forthwith, at such time and on such terms as the summary conviction court may fix.

Hon. Mr. ASELTINE: They do that, anyway.

The CHAIRMAN: Well, in so far as any substantial meaning is concerned it is in effect the same as the subsection we sent to the Commons.

The section was agreed to.

On section 697—Any justice may act before and after trial.

The CHAIRMAN: What the Commons did was to add the subclauses 4 and 5 —dealing with waiving of jurisdiction. Subclauses 4 and 5 are on page 241:

> (4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings in favour of another summary conviction court that has jurisdiction to try the accused under this Part.

The idea, is that instead of having a man who is subject to be tried in several courts in relation to different charges, to get them all tried in the one court the other courts can waive jurisdiction. Is that not right, Mr. MacLeod?

Mr. MACLEOD: The situation is that at the moment if you are brought before the magistrate only that magistrate has jurisdiction to try. Frequently, he becomes sick or goes away, and no other magistrate may try the case. In this case, it can proceed before another magistrate, if he waives it.

The CHAIRMAN: Subsection 5 deals specifically with Quebec.

Hon. Mr. GOUIN: Why is there this special reference to a judge of the sessions of the peace?

Mr. MACLEOD: Our information was that there might be four or five magistrates in the court, and that rather than waive jurisdiction to a named one it would be preferable to just waive jurisdiction, and that any one of the other four could waive that jurisdiction.

Hon. Mr. BEAUBIEN: That is, jurisdiction in criminal matters?

Mr. MACLEOD: Subsection 5 says, "the summary conviction court that waives jurisdiction is a judge of the sessions of the peace."

The CHAIRMAN: So the general subsection 4 would apply.

Mr. MACLEOD: That is right.

The CHAIRMAN: In all other cases except five.

The section was agreed to.

On section 743—On question of law.

This is an appeal section, that is, appealing cases where there has been a trial *de novo* before a county court judge.

Mr. MACLEOD: That is right.

The CHAIRMAN: I was going to suggest that in relation to section 743 I should perhaps call your attention to the fact that the House of Commons did not change anything, but added subclause 5, which reads:

> (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.

In other words, it gives him the right of appeal on a question of law from a judgment in a trial *de novo*, but this section by virtue of this new subclause 5 is related, or may be related, to sections 690 and 691, on the right of appeal in *habeas corpus* proceedings.

Mr. MACLEOD: No, this is dealing with summary convictions.

The CHAIRMAN: Oh, this is summary conviction only. Then we do not have to stand this one.

Hon. Mr. HAIG: Pass.

Hon. Mr. MCDONALD: Why do they refer to the Attorney General of Canada instead of the Minister of Justice?

The CHAIRMAN: Well, he is both.

Hon. Mr. MCDONALD: Why are the words Attorney General of Canada used?

The CHAIRMAN: Well, when he functions in relation to the courts he is the Attorney General of Canada.

Mr. MACLEOD: And he acts in an advisory capacity as Minister of Justice.

Hon. Mr. CONNOLLY: I notice in the third line of subsection 5 the words, "at the instance of the Government of Canada" are used. The traditional way to refer to that has been, as I have always understood it, "Her Majesty the Queen in the right of Canada." Is that a departure?

Mr. MACLEOD: In criminal cases, it would be the Attorney General of Canada.

The CHAIRMAN: It says, "at the instance of the Government of Canada."

Mr. MACLEOD: That is the style of language used in the present Code in the provisions relating to the disposition of fines—fines that are imposed in proceedings instituted at the instance of the government of Canada, in respect of which that government bears the cost of prosecution. Those fines go to the government of Canada. There is no change in language there, because it is well recognized.

Hon. Mr. CONNOLLY: I know in substance it means the same thing.

Mr. MACLEOD: In the information it would read, "Her Majesty the Queen versus John Doe." In criminal proceedings you would not put in "in the right of Canada."

Hon. Mr. CONNOLLY: Thank you very much.

The section was agreed to.

On section 744—Fees and allowances.

The CHAIRMAN: There has been an alteration in the section as we sent it to the Commons, but I do not think there has been a material change, because if you will notice, for instance, fees and allowances that may be allowed to peace officers, in items 20 to, 21, 22 and 23, the mileage rate in Bill 7 is 10 cents for each mile. In the bill as we sent it to the Commons, in the schedule we provided for 20 cents.

Hon. Mr. WOOD: 10 cents is about right.

The CHAIRMAN: In some places there are changes, and in other places there are not. In item 20, for instance, we had provided for 20 cents for each mile both ways.

Hon. Mr. WOOD: Commercial houses usually give them 10 cents.

The CHAIRMAN: In items 21, 22 and 23 we had provided 20 cents a mile one way. The Commons have provided 10 cents a mile both ways.

Hon. Mrs. HODGES: It amounts to the same thing.

Hon. Mr. KINLEY: It may not; the man may not come back.

The CHAIRMAN: No, he may be arrested when he gets there.

Under "Fees and Allowances that may be allowed to witnesses", Item 25 of Bill 7 provides $4 a day. We had provided $3 a day.

Hon. Mr. ASELTINE: Even $4 a day is not too much in these times. It won't pay your hotel bill.

The CHAIRMAN: And we had provided 20 cents a mile one way and the Commons provides 10 cents a mile both ways. The same thing applies in connection with fees and allowances that may be allowed an interpreter under item 28; the allowance for living expenses has been increased from $5 to $10 a day, and the Commons have dealt with the mileage rate in the same way—where we said 20 cents a mile one way, they make it 10 cents a mile both ways. I agree with what Senator Aseltine says, that even $4 a day in these times is a pretty nominal witness fee.

Hon. Mr. WOOD: It wouldn't buy you a good meal down here.

Hon. Mr. KINLEY: But if you increased that would it not be then out of line with the fees paid to jurors?

Hon. Mr. HAIG: But witnesses have no living allowance.

The CHAIRMAN: Although these fees may seem inadequate, one must bear in mind that when costs are awarded against any person in a criminal proceeding, this is the scale on which they are awarded.

Hon. Mr. WOOD: That point has to be considered.

The CHAIRMAN: Of course in a civil proceeding you have a party and party tariff and a solicitor and client tariff. The party and party tariff is the basis on which you may tax costs against the other party and—

Hon. Mr. WOOD: This is not like the corporation lawyers, where one can charge anything he likes.

The CHAIRMAN: Is that so? I am glad to hear it.

The section was agreed to.

On section 745—Repeal.

In the bill which we sent to the Commons subsection 2 provided that certain provisions of the Yukon Act be repealed. Those references have been omitted from Bill 7. I think Mr. MacLeod will tell us that the reason for doing so is that we now have a new Yukon Act.

The section was agreed to.

On section 746—Transitional.

This covers the transitional period between the two codes. Section 746 in Bill O read as follows:

> Every offence against the criminal law that was wholly or partly committed before the coming into force of this act shall be dealt with, inquired into, tried and determined, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this act had not come into force.

We have a much longer transitional section in Bill 7. I think the reason for it, Mr. MacLeod, was that it was felt necessary to spell out the various situations that might arise.

Mr. MACLEOD: That is right. It insures that the accused will get the benefit of whichever is the lesser punishment as between the existing code and the new code when it comes into force.

Hon. Mr. WOOD: How long will it take this new code to come into force after it is passed?

The CHAIRMAN: It is a question of policy, but I believe the plan is to proclaim it as coming into force on January 1, 1955. It requires that much time after it has been passed for all law officers throughout the country to become familiar with it, and it may even be studied by some people in the light of violations they intend to commit, with a view to determining whether or not the penalties have been changed.

Hon. Mrs. HODGES: Do I understand that the penalties in the new act have been increased?

The CHAIRMAN: No; if a person has committed an offence before the new act comes into force, and the penalty under the present law is less, he is entitled to be penalized under the penal provisions of the present code.

Hon. Mrs. HODGES: If the penalty is greater under this act, then he would not come under this act.

The CHAIRMAN: That is true.

Hon. Mrs. HODGES: It is in favour of the accused.

The CHAIRMAN: Yes.

The section was agreed to.

On Section 748—Opium and Narcotic Drug Act.

On Section 749—Canada Evidence Act.

On Section 750—Combines Investigation Act.

These three sections were not in Bill O. I would ask Mr. MacLeod to give us the reasons why these sections are now included in the bill.

Mr. MACLEOD: The statutes that are referred in Sections 748, 749 and 750, namely Opium and Narcotic Drug Act, Canada Evidence Act and Combines Investigation Act, contain a great many references to sections in the present Criminal Code. Those statutes were not included when the revised statutes of Canada were published in 1952, but were published in a separate volume. In order that those statutes can operate in relation to the new bill, it is necessary to amend them in the light of the section numbers of this bill, and that is all these sections do. The moment this bill comes into force these other statutes will be amended accordingly, and there will be no confusion as between section numbers and provisions in the bill.

The CHAIRMAN: The section numbers in the act would not correspond to the section numbers of the new code.

Mr. MACLEOD: That is right.

The CHAIRMAN: Section 747, which refers to the interpretation act, repeals section 29 of the Interpretation Act. Have we amended the Interpretation Act so as to provide a new section?

Mr. MACLEOD: Perhaps I should read section 29 of the Interpretation Act:

29. Unless the context otherwise requires, a reference in any Act to

(*a*) The Summary Convictions Act shall be construed as a reference to Part XV of the Criminal Code;

(*b*) The Summary Trials Act shall be construed as a reference to Part XVI of the Criminal Code;

(*c*) The Speedy Trials Act shall be construed as a reference to Part XVIII of the Criminal Code

That provision is in the Interpretation Act because throughout the years various statutes were enacted which provided that the Summary Convictions Act would apply; and in order to know what the expression "Summary Convictions Act" meant, one had to know that it meant part XV of the existing criminal code. In the revised statutes of 1952 there are no references in any act to the Summary Convictions Act, the Summary Trials Act or the Speedy Trials Act; so that this catch-all provision can now be repealed.

The CHAIRMAN: And as you have said, Mr. MacLeod, it applies also to section 751, does it not? That is a new section as well, having reference to the Extradition Act.

Mr. MACLEOD: That is right. That is a general provision so that the expressions in the schedule to the Extradition Act will be references to the provisions in this bill.

On Section 753—Forms.

The CHAIRMAN: Are there any changes here? I think there was a change in one of the forms, was there not, Mr. MacLeod?

Mr. MACLEOD: I do not recall any. I do not think the forms were changed.

Hon. Mr. BEAUBIEN: Mr. Chairman, have these sections been agreed to?

The CHAIRMAN: These sections were passed, sections 747 to 751 inclusive.

Sections 747 to 751 were agreed to.

On Section 752—Coming into force.

This section simply provides for the coming into force on a day to be fixed by the Governor in Council.

The section was agreed to.

The CHAIRMAN: Gentlemen, that completes our consideration of the amendments except for—

Hon. Mr. WOOD: The forms.

The CHAIRMAN: The forms are the same as the forms that we sent to the Commons.

Hon. Mr. WOOD: I suppose we should pass them too?

Hon. Mr. MCDONALD: Mr. Chairman, how many amendments did we make last year?

The CHAIRMAN: When we sent the bill to the Commons we had made about 116.

Hon. Mr. MCDONALD: And how many of those 116 were amended there?

The CHAIRMAN: I could not tell you that. All I can tell you is the number of changes that were made to the bill in the Commons. There were 71 amendments made altogether. We have gone over those and approved certain of the sections and allowed other sections to stand. The following sections have been allowed to stand: 9, 25, 52, 150, 365, 372, 400, 431, 690 and 691.

Those are the sections on which we propose to hear the Minister, and then we will have to have our own deliberations afterwards as to what we think we will do with them.

There is one other question and that is whether or not we are going to have any public appearances from these organizations which have written in. There are three of them, the Canadian Congress of Labour, the Canadian Brotherhood of Railway Employees and the Toronto Board of Trade.

Hon. Mr. BEAUBIEN: Did they all appear before the House of Commons committee?

The CHAIRMAN: The Toronto Board of Trade and the Canadian Congress of Labour did. The Canadian Brotherhood of Railway Employees did not appear, according to my understanding.

We invited appearances from every person when we had the bill first before us, and we set aside time for it, and some of the people who were informed, including the Canadian Congress of Labour, did not choose to appear before us. The question for us to decide now is whether at this stage we are going to hear these bodies. The only word of caution I sound in that regard is that we have acquired a reputation over the period of a great many years as being a place where the public may come and be heard and be sure of being heard.

Hon. Mr. MCDONALD: I think, Mr. Chairman, we ought to hear them.

Hon. Mr. REID: I suppose all senators have received letters from various labour organizations professing to be interested in some sections of the bill. I think we ought to hear them.

Hon. Mr. KINLEY: We are entitled to follow through.

Hon. Mr. HAIG: Mr. Chairman, I think we ought to hear them, whether we pass the bill or not.

The CHAIRMAN: Then, the next question that arises is, when. It is proposed now to adjourn the sittings.

(Further discussion as to dates of hearings ensued.)

The CHAIRMAN: We will hear these organizations on Tuesday afternoon when the Senate rises. After we have heard them, we will arrange a time to hear the Minister.

There is one more matter. We distributed to all committee members this morning two amendments which were proposed by the Department of Justice, and those are two of the items that are standing. There did not seem to be any objection yesterday to either of them and I was wondering if we could

deal with those and take them off our list of sections that are standing. I am referring to sections 25 and 400. Section 25 is simply giving to peace officers the power to use force if necessary to stop an escape by flight.

Hon. Mr. BOUFFARD: Is not that the section that Senator Roebuck had some objection to?

Hon. Mr. ROEBUCK: This may be modified. I will read it over.

Hon. Mr. BOUFFARD: Is there any difference between the amendment and the present legislation?

The CHAIRMAN: No, the amendment re-enacts the present law word for word.

Hon. Mr. BOUFFARD: It has given rise to some abuse in the past.

Hon. Mr. ROEBUCK: This is what I questioned. Though I took objection to it I questioned it:

> . . . if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

That seems to give him the right to shoot a man down who is running away. There are conditions where he should do that, but there are many conditions where he should not.

Hon. Mr. WOOD: Is that not covered in here?

Hon. Mr. ROEBUCK: No; unless he can prevent an escape; then he can use any force that is necessary. That means that he could shoot.

Hon. Mr. ASELTINE: I do not see how you can change that, senator.

Hon. Mr. WOOD: I don't, either.

Hon. Mr. ROEBUCK: It should not apply to minor offences.

Hon. Mr. BOUFFARD: But it does apply to minor offences.

Hon. Mr. ROEBUCK: It does apply to minor offences in this class, and would be a complete reply, should a policeman be prosecuted for shooting a man who is running away. Now, we have put policemen on trial for doing that, over and over again.

The CHAIRMAN: Excuse me, senator; this section would not apply to a summary convictions offence. It says it is an offence for which a person can be arrested without warrant.

Hon. Mr. BOUFFARD: Yes, but it does apply in any case where a man is committing an offence, whether it is punishable on summary conviction or otherwise.

Mr. MACLEOD: It is an offence for which that person may be arrested without warrant.

Hon. Mr. WOOD: For instance, supposing a young fellow was seen near to a store, and started to run away, and a policeman told him to stop or he would shoot: well, maybe the kid would just be frightened, and run.

Hon. Mr. BOUFFARD: It is covered by 435:

> A peace officer may arrest without warrant
>
> (a) a person who has committed or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence, or
>
> (b) a person whom he finds committing a criminal offence

of any kind. Under paragraph (b) it may be a criminal offence which is not indictable.

The CHAIRMAN: Well, first, an indictable offence, and second, a criminal offence.

Hon. Mr. BOUFFARD: A criminal offence of any kind.

The CHAIRMAN: Well, if there is going to be any discussion we may as well stand over No. 25.

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

The CHAIRMAN: On section 400 no person had any objections, but Senator Hugessen thought the amendments were so long he would like to have a look at it.

Hon. Mr. HUGESSEN: I looked at them, and do not see anything objectionable.

The CHAIRMAN: Then, shall we carry section 400? That is struck out of the sections outstanding, but we will leave section 25 to stand.

Hon. Mr. HAIG: Then we will meet again Tuesday afternoon, as soon as the house rises.

The CHAIRMAN: This committee will adjourn to Tuesday afternoon, when the Senate rises.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Tuesday, May 25, 1954.

The Standing Committee on Banking and Commerce, to whom was referred Bill 7, an Act respecting the Criminal Law, met this day at 4.15 p.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: We have a quorum and I call the meeting to order. We have appearances by a number of organizations, including the Board of Trade of the City of Toronto, the Canadian Congress of Labour, the Mine, Mill and Smelter Workers Union, and the Canadian Brotherhood of Railway Employees. Mr. Maurice Wright of Ottawa is going to submit representations on the part of the Canadian Congress of Labour. I propose to call on Mr. A. C. Crysler, Legal Secretary of the Board of Trade of the City or Toronto, to come forward at this time.

Mr. A. C. CRYSLER, Legal Secretary, Board of Trade of the City of Toronto: Mr. Chairman and honourable senators, I understand that the brief that I am about to submit has been distributed. It reads as follows:

The Board of Trade of the City of Toronto, whose membership comprises some 6,000 persons drawn from large and small businesses in all lines of business activity and from the professions in Toronto and district, wishes first to thank the Chairman and Members of the Senate Banking and Commerce Committee for the opportunity afforded the Board to appear before the Committee to present its views concerning S. 365—Criminal Breaches of Contract—of House of Commons Bill No. 7—An Act respecting the Criminal Law. The Board's general position is in support of S. 365 in its present form for the reasons which are stated below.

S. 365(1) is designed to impose penalties for stoppages of work in breach of contracts which have consequences as stated that are deemed to be of a criminal character and to amount to something substantially more than the consequences normally attendant upon stoppages of work by reason that they.

(*a*) endanger human life
(*b*) cause serious bodily injury
(*c*) expose valuable property to destruction or serious injury
(*d*) wholly or to a great extent disrupt the supply of light, power, gas or water
(*e*) delay or prevent the operation of railways that are common carriers.

S. 365(2) distinguishes between stoppages of work which result from disputes which arise (*a*) during the course of collective bargaining when the parties are unable to reach a collective agreement, and (*b*) disputes which arise during the term or terms of collective agreements after they have been entered into. Subsection (2) places the operation of S. 365 in balance with the provisions of labour relations legislation which treats differently disputes which arise in the course of negotiating a collective agreement or a renewal or revision of it and disputes which arise under a collective agreement after it has been reached.

The provisions respecting disputes during the negotiation of collective agreements or their revision or renewal do not prohibit strikes, but place a

restraint on them until the negotiation and conciliation procedures prescribed by labour relations legislation have been complied with. However, stoppages of work in respect of disputes arising under collective agreements are prohibited and such agreements are required to contain provisions for the final settlement of differences under them by arbitration or otherwise without stoppage of work.

S. 365(2) would not prevent strikes following completion of negotiation and conciliation resulting from disputes arising in the course of collective bargaining when the parties are unable to agree on a collective agreement or a renewal or revision thereof. At such a time there would not be a collective agreement between the parties to the collective bargaining proceedings and the saving clause in S. 365(2) would operate as a protection for any breaches of contracts of employment which might occur even though all steps provided by law with respect to the settlement of industrial disputes are taken.

It is essential to retain that part of S. 365(2) which provides that 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. Otherwise, disputes under collective agreements could be carried through grievance and arbitration procedures prescribed in collective agreements, following which it would be possible to strike without contravening the section, despite the facts of the existence of a collective agreement and of the strike having the consequences defined in S. 365(1) as constituting a criminal breach of contract.

It is to be observed that S. 365(1) would only apply to the limited area of breaches of collective agreements by way of strikes defined therein as constituting a criminal breach of contract. Also, any danger of undue resort to S. 365 is minimized further by the requirement under S. 365(3) that no proceedings shall be instituted under the Section without the consent of the Attorney-General.

Apart from the legal aspects of the question, there is often a great practical difference attendant upon strikes following failure to negotiate a collective agreement or renewal or revision thereof and strikes under collective agreements. One of the fundamental values of a collective agreement should be that it gives an assurance of stable employee relations throughout the term of the agreement. From the nature of the circumstances the employer has to proceed upon the assumption that that will be the case. Consequently, it is impractical for him, in relation to every grievance which may arise during the life of the collective agreement, to place the operation of his business in a state in which a strike would not have much more damaging consequences than those necessarily attendant upon any stoppage of work. For instance, if a strike were suddenly called in one of the great utilities without an adequate period to prepare for the cessation of their service, it is difficult to estimate the damage which might be done. The same consideration would apply in the case of an industrial process in which it was necessary to clear the processing of materials, such as, for example, molten metals, in order that production facilities would not suffer a long-term impairment as a consequence of the strike. In contrast, in the case of a strike during the negotiation or renewal of a collective agreement, there would be a reasonable period of time during which the probabilities of failure to reach an agreement would become increasingly evident. That time period would enable an employer to take steps to minimize such undue consequences of a strike as those mentioned.

Mr. Chairman and gentlemen, as you will realize, we have cut our brief to what might be described as the bare elements of the subject. We do not know just what questions may be in your minds, and we have not attempted to anticipate and answer them, but if anybody has any questions to ask I would be glad to try and supplement the written brief, if I am asked to do so.

The CHAIRMAN: If there are any questions arising out of the reading of this brief, I think now will be a good time to hear them.

Hon. Mr. HUGESSEN: I take it you are in favour of the section as it now stands?

Mr. CRYSLER: That is correct, sir.

Hon. Mr. KINLEY: That is the section in the new bill.

Mr. CRYSLER: Yes; it is Bill No. 7 as passed by the House of Commons on April 8. It is the section as stated in that bill that we favour.

Hon. Mr. BOUFFARD: Mr. Chairman, has the witness anything to say about the other clauses, or does he limit his remarks to this clause?

The CHAIRMAN: Mr. Crysler, your brief is confined to section 365. Have you any view to express on the other sections, or are your views confined to this particular section?

Mr. CRYSLER: Mr. Chairman and gentlemen, the Board of Trade, as a matter of policy, makes no proposal respecting sections 52 and 372, nor does it object to them. I could express only a purely professional view, if you wish to hear such a view, but I have no policy.

Hon. Mr. EULER: You are speaking for the board.

Hon. Mr. HAIG: Do not give your own views.

Mr. CRYSLER: As I say, I have no policy on sections 52 and 372.

Hon. Mr. HAIG: Mr. Chairman, it is perhaps very well to ask some questions of this gentleman, but I should like to hear first what the other witnesses have to say. Their remarks may have some bearing on this first brief, and I may have some questions to ask about it in the light of what the later witnesses have to say.

The CHAIRMAN: I understand Mr. Crysler will be available, as he is to be in town until tomorrow afternoon; we can call him back if anyone has any questions to ask of him.

Hon. Mr. MCDONALD: This brief represents the views of the executive of the Board of Trade of Toronto?

The CHAIRMAN: Yes.

Hon. Mr. BOUFFARD: That is of Toronto—it does not include Montreal.

The CHAIRMAN: Quite so. Thank you for the moment, Mr. Crysler.

Our next witness is Mr. Maurice Wright, representing the Canadian Congress of Labour.

Mr. MAURICE WRIGHT: Mr. Chairman and honourable senators, I should like first to say that I have with me Mr. A. R. Mosher, President of the Canadian Congress of Labour and Dr. Eugene Forsey, Director of Research of the Congress. I should like also to add that the brief which I shall present today to you was prepared by Dr. Forsey.

May I also say, Mr. Chairman, that the Canadian Catholic Confederation of Labour is represented here today by Mr. Gerard Pelletier and Pierre Vadboncoeur. I have been authorized by them to say that they associate themselves with the brief that I am about to submit, and I have no doubt that they would be prepared to answer any questions directed to them.

Hon. Mr. WOOD: In other words they support the brief that you are presenting, without giving one of their own.

Mr. WRIGHT: That is correct.

The CHAIRMAN: In other words, they adopt it.

Mr. WRIGHT: Yes.

Mr. Chairman and Members of the Committee:

The Canadian Congress of Labour appreciates this opportunity of appearing before you on the bill to revise the Criminal Code. It will confine its representations to certain sections of particular interest to its members, notably sections 52, 68, 365 and 372, and will be chiefly concerned to clear up some misunderstandings which seem to have arisen with respect to its views on some of these sections.

I will deal first with Section 52 which is concerned with sabotage.

The Congress thinks sabotage is a serious offence, and should be punished, and it has never asked that unions or their members should be exempted from the section or given special treatment. All it wants is that the section should apply only to genuine sabotage, and should make it plain that ordinary strikes and peaceful picketing are not to be deemed sabotage.

Hon. Mr. WOOD: Not even if they destroyed machinery or plants?

The CHAIRMAN: I was going to suggest that we let Mr. Wright read his brief completely and then, if we have any questions, we can put them.

Mr. WRIGHT: I think you will find that I deal with that point as I go along, Senator Wood.

That is why it wanted the amendments which have been made to subsection (1), dropping the vague term "interests". That is why it wanted the present subsections (3) and (4) added. The Congress never said that the section as originally drafted was aimed at strikes and peaceful picketing. It did think that, without some such saving clauses as those embodied in the present subsections (3) and (4), there was danger that some court might hold that a strike or peaceful picketing did constitute sabotage, under subsection (2) (*a*). The sole purpose of subsections (3) and (4), in the Congress' view, is to make doubly sure the assurance which some may hold is already provided in subsection (1): that the prohibited acts listed in subsection (2) (*a*) are prohibited and punishable under this section *only* if they are done "*for a purpose* prejudicial to the safety, security or defence of Canada, or the safety or security" of allied armed forces lawfully present in Canada. A strike, or peaceful picketing, almost inevitably "impairs the efficiency or impedes the working" of one or more of the "things" mentioned in subsection (2) (*a*). The Congress wanted to have it made unmistakably clear that this did not mean they would come within the scope of the section.

Before subsections (3) and (4) were added, there was widespread fear among workers all across the country that the section could be used to crush all strikes and all peaceful picketing, and virtually destroy trade unionism. Lawyers may argue that the fear was not justified. But it was there, and the Communists and their hangers-on were exploiting it. The Congress submits that it was essential to make Parliament's purpose so clear that no reasonable person could be deceived into believing it was something quite different, something which threatened to destroy hard-won and basic rights. This, in the Congress' opinion, is what the section now does.

The next section I would like to discuss is Section 68, which deals with the reading of the Riot Act.

This section provides that, if a justice, mayor or sheriff or the lawful deputy of a mayor or sheriff receives notice that twelve or more persons are unlawfully and riotously assembled together, he "shall" go to the place named and "shall" read the proclamation. Apparently he *must* do it even if, when he gets there, he sees no sign of anything like a riot. The thing is automatic. Any malicious individual—and unfortunately there are some who come within that category—has only to hand the official a notice that twelve or more persons are "unlawfully and riotously assembled" to put the whole machinery in motion: the justice, mayor or sheriff has no option, even if he thinks the notice is totally contrary to the facts.

To put an extreme case: The members of this Committee might be peacefully eating their dinner in the Chateau Laurier; someone with a grudge against them might go to Dr. Charlotte Whitton with a notice that in the dining-room in the Chateau Laurier twelve or more persons were "unlawfully and riotously assembled;" whereupon the Mayor would have no option but to go to the Chateau dining-room and read the proclamation; and if your Honours did not peaceably disperse and depart within thirty minutes, you would render yourselves liable to the penalties set out in section 69.

This is not very likely. But what is perfectly possible is that, in a place where a strike is in progress, an employer may go to a local justice, or the mayor, with a notice that, at the union hall, twelve or more persons are "unlawfully and riotously assembled," and that the justice or mayor will then find himself obliged to read the proclamation, even though, when he gets to the place, he can see that the meeting is perfectly decorous and proper.

There are here today several officials representing labour organizations who, if requested by this Committee, can cite instances where it has been employed as a regular tactic or technique by certain employers in certain small towns. The employer simply calls up the peace officer—and remember that a peace officer includes the mayor of the municipality—and says, "There is an unlawful and riotous assembly going on at a certain point. There is a strike going on there." Gentlemen, it is not unlawful to strike. And the mayor goes there, and it is my respectful submission that, as the section now reads, the mayor has no alternative but to read the proclamation, or, as we used to call and do call it, the Riot Act.

Hon. Mr. EULER: But if he sees the assembly is not unlawful he does not need to read it.

Mr. WRIGHT: My submission is that there is the obligation to do so; and I would refer to section 68 of Bill 7:

> A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice that, at any place within his jurisdiction, twelve or more persons are unlawfully and riotously assembled together, shall go to that place and, after approaching as near as safely he may do, shall command silence and thereupon make or cause to be made in a loud voice a proclamation in the following words or to the like effect.

Now, may I just finish my point: section 70—I want to place the whole case before you—states:

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

Hon. Mr. EULER: It has got to be a riot, though.

Hon. Mr. WOOD: Yes.

The CHAIRMAN: Gentlemen, we have a procedure here, that we were going to hear the reading of the brief.

Hon. Mr. WOOD: I thought as a matter of fact we could deal with these points as we go along.

The CHAIRMAN: Shall we put it to the vote and see what the wish of the majority is? I think we decided that we would hear the presentation.

Mr. WRIGHT: It might be just as well if I were to complete the presentation. It may answer a number of questions.

As I said, this kind of thing has happened. The Congress thinks it ought not to happen. It therefore suggests that section 68 be amended by inserting, after the words, "as safely he may do", in line 42, the words, "and if he is satisfied that such persons are unlawfully and riotously assembled."

Section 68 would read in this manner:

> A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice that, at any place within his jurisdiction, twelve or more persons are unlawfully and riotously assembled together, shall go to that place and, after approaching as near as safely he may do, and if he is satisfied that such persons are unlawfully and riotously assembled, shall command silence . . .

and do all the rest of it.

In other words, if he is the person who is going to read the riot act, then give him an opportunity to decide whether or not there is any necessity for it.

Hon. Mr. WOOD: Whether there is any riot or not?

Mr. WRIGHT: Exactly.

Hon. Mr. CONNOLLY: You say "and". Do you mean "or"?

Mr. WRIGHT: No, I mean "and". It is conjunctive. "And if he is satisfied that such persons are unlawfully and riotously assembled" then he shall command and do all the rest of the things he has to do.

Hon. Mr. WOOD: It makes sense to me.

The CHAIRMAN: Will you continue, Mr. Wright?

Mr. WRIGHT: The section meant to apply only to real riots. I do not think there is any doubt about it, and I am not suggesting for a moment that this section was put in with the deliberate intention of destroying trade unions. I know that that was not the intention. The Canadian Congress of Labour knows that that was not the intention. It merely asks parliament to make sure it cannot be used in that manner. We submit that by incorporating the change we suggest this end will be accomplished.

Hon. Mr. HUGESSEN: It seems to me that the way the section reads now: "A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice . . ." it means that such person is required to go to this place and read the notice even if nobody is there at all.

Mr. WRIGHT: Exactly. That is exactly my point, sir.

The section meant to apply only to real riots, not just to anything that any individual may take it into his head to call a riot. The Congress submits that its proposed amendment would make this perfectly clear, and would remove widespread fears that the section as it stands may be misused.

The next section with which I should like to deal is section 365—Criminal breach of contract. It is a most contentious section.

The Congress' basic position on this is that breach of contract is a civil matter, and ought not to be dealt with by the criminal law at all. Breach of labour contracts is already punishable under the Dominion Industrial Relations and Disputes Investigation Act and under the corresponding provincial Acts. If these Acts do not provide sufficient protection for the public interest, then let Parliament and the Legislatures make the necessary amendments, and deal with the matter under laws expressly designed for such purposes. As far as the Congress knows, neither the Dominion Government nor any provincial Government has even hinted that the present provisions of the Labour Relations Acts and other relevant labour legislation (such as the Public Services Employees Disputes Act in Quebec) do not provide sufficient protection for the public interest. The Congress submits, therefore, that there is not even the shadow of a reason for the new provisions of section 365.

The Congress is, of course, aware of the argument that there are no new provisions. It has been stated to us and stated in the other house that section 365, as it appears at the present time in Bill 7, is merely a restatement or recodification of the law as it existed previously, as to the substantive part of the law.

But anyone who looks at section 365 of the Bill, and at section 499 of the present Code, will see at once that 365 (1) (*d*) and (*e*), as applied to *employees, is* new. The Government has contended that it is not, because something similar was there in 1892 but got left out by accident, or the incompetence of the draftsmen, in the revision of the statutes in 1906. The fact remains that, under section 365 (1) (*d*) and (*e*), employees will find themselves liable to prosecution for something they could not have been prosecuted for at any time in the last forty-eight years. For the plain man, that is certainly "new".

Possibly this may sound something like double talk at the moment, but the situation is this. When the Criminal Code was recodified in 1906 we are told now that either by inadvertence or an error made on the part of a draftsman, certain essential parts of what is today section 499 of the Criminal Code were omitted, and that section 499, as it presently stands, is inoperative and cannot be used effectively. I submit it can be used effectively. It provides for prosecution of certain classes, and they are not employees. We say that what is being done at the present time is that new law is being created which provides for the prosecution of employees. We object to it.

It has been contended that a prosecution under the present section 499 could never have been successful. The Congress contends that a prosecution of those covered by the present section 499 could be successful; the only prosecution that could not be successful is one directed against people not covered by the section.

The Congress submits that the drastic change in the law embodied in section 365 has not been shown to be necessary, and should therefore be dropped.

May I interject to say that the position we presently take is the result of about two years' negotiations with various members of government.

If the section is to be retained, then the Congress submits that the final six lines of sub-section (2) should be dropped, and the sub-section assimilated to the corresponding sub-section in sections 52 and 372. Illegal strikes should be dealt with by substantive legislation passed by whatever legislature has jurisdiction. They are, in fact, now so dealt with, and the Congress is not aware of any suggestion that the existing legislation on the subject is inadequate for the purpose. It submits that there is no reason whatever for adding extra penalties, which is the effect of the final six lines of sub-section (2), and that this action is especially objectionable because any provincial Legislature can bring the extra penalties of section 365 into operation (in industries within its jurisdiction), as well as any penalties it thinks fit to decree in its own legislation, simply by providing for extra limitations on the right to strike. Parliament, the Congress submits, ought not to write a blank cheque for provincial Legislatures.

I would like to interpolate at this point in order to make our position perfectly clear. We take the position that if I enter into a contract with Mr. "X" it is a civil contract. If I break the contract he has certain rights against me. He can sue me for damages. He can sue me for specific purposes.

Hon. Mr. WOOD: Could he sue a union?

Mr. WRIGHT: I could make my position perfectly clear if you just give me another minute or two. He has certain recourse against me personally. The question has just been put to me whether or not a union can be sued. Let me put my answer this way. We have eleven jurisdictions in Canada as regards labour relations. There is the dominion jurisdiction and the ten provincial jurisdictions. The law is by no means uniform across Canada. Certain provinces have attached certain consequences to an unlawful strike which do not prevail in other provinces in Canada. By way of illustration let me say that recently, only a matter of a few weeks ago, the province of British Columbia enacted legislation which provides—and I am not referring to this legislation with approval by any means; I am merely stating the facts as they exist today.

The province of British Columbia has introduced legislation that provides that if an unlawful strike is called by a trade union which has been certified to represent a certain group of employees, an employer may make an application to the Supreme Court in British Columbia. I do not want to misquote, so I will read from the legislation itself. The section provides that an application may be made to a judge pointing out to the judge that the strike is an unlawful strike. The judge may hear such evidence as he thinks proper either by affidavit or orally and may dispose of the matter summarily.

The judge shall, upon making his adjudication, certify the same to the minister.

Now, section 55 of this Act, which is called the Labour Relations Act of British Columbia, provides that:

55. Where a judge certifies to the Minister that a strike is or was illegal, and that a trade-union is or was involved in the strike, or that employees belonging to or represented by the trade-union are participating or have participated in the strike, the judge may declare that:—

(a) The existing collective agreement made by the trade-union shall be null and void; and

(b) The written assignment of wages made to an employer in favour of such trade-union under section 9 shall be null and void; and

(c) The certification of the trade-union shall be null and void; or may make any one of the said declarations.

Hon. Mr. WOOD: Or just impose penalties, in other words?

Mr. WRIGHT: These are mighty rigorous penalties, and we think they are a little unreasonable. The provincial legislature of British Columbia has enacted certain legislation to take care of illegal strikes. The province of Quebec has legislation to take care of illegal strikes in certain occupations.

Hon. Mr. WOOD: Has that legislation precedence over these sections here?

Mr. WRIGHT: Well, they co-exist. It is not a question of precedence. My submission is, and this is the considered opinion of the Canadian Congress of Labour, that there is only one place to deal with labour relations, and that is in the appropriate legislation dealing with the specific subject. The Industrial Disputes and Investigation Act provides for certain consequences which flow from an illegal strike. A trade union may be fined, employees may be fined. The dominion legislation provides that the collective agreement is binding (a) upon the trade union, and (b) upon the employees which it represents. It provides for certain penalties resulting from prosecution; and, we submit, that is the place in which to legislate in respect of anything relating to trade unions or to the field of industrial relations, and not in the Criminal Code of Canada, because there would be an unequal application of the law and a person living in British Columbia would be living under the provincial legislation and the Criminal Code. But in the province of Ontario, if I were a trade union employee and there was an unlawful strike, I would be exposed at the moment at any rate, to less rigorous consequences than my opposite number in British Columbia and at the moment, I think to less rigorous consequences than obtain in Quebec. I submit that the parliament of Canada should not seek to invade the field of industrial relations in the course of enacting the Criminal Code, that the consequences which flow from the breach of a civil contract should be found in the civil courts and under the appropriate labour relations legislation, and that the last place one would expect to find it would be in the Criminal Code.

Section 372 deals with the offence of mischief. Here, the Congress is most concerned to remove misapprehensions which seem to have arisen about its position.

The Congress has never said that this section was aimed at labour. It did say that, without some such saving clauses as are now embodied in sub-sections (6) and (7), it might be used against Labour. Without those sub-sections, almost any strike, or any peaceful picketing, might be held to come within the scope of sub-section (1)(*b*), (*c*) or (*d*). The Congress has never asked that one class in the community should be exempted from the operation of this section. It has asked only that actions which the section was presumably never intended to cover should be clearly excluded; that the mere act of striking or peacefully picketing shall not be held to constitute "mischief". That is the force of the words "by reason only." Sub-sections (6) and (7) do not mean that a person who is on strike or picketing can commit any outrage he feels like, and get off scot free, pleading that he was on strike or picketing. All they mean is that he can't be punished under this section simply because he is on strike or peacefully picketing, and so obstructs, interrupts or interferes with the lawful use of or enjoyment of the employer's or someone else's property.

Now, again I say that we have come a long way within the last 20 years or so, and right to strike has been vouchsafed to trade unions. Now, I am overstating my position, but in order to be perfectly clear, I wish to say that it may well be that the purpose of the strike may be to render the employer's property useless, inoperative or ineffective. And what strike does not have that result—precisely that result? Yet we find that under section 372, if a trade union does that it has committed the offence of mischief, provided of course that no saving clause is in the section. Sub-section (*c*) reads:

> Every one commits mischief who wilfully,
>
> (*a*) 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.

And any strike inevitably must have consequences of that kind.

The position we take is that if you are going to give a trade union the right to strike and at the same time not having a saving clause such as appears in the section now, and then hold it to be a criminal offence, then of course, possibly in accordance with the motif of this room, it is "Indian giving;" and therefore we suggested to the government, and the government saw fit to add the saving clause which provides that if a person does any of these things as a result of the failure of his employer and himself to agree upon certain matters relating to employment, or as a result of an industrial dispute, it does not constitute the offence of mischief. In my respective opinion I do not agree with the interpretation which Mr. Crysler has given to section 365 (2). I think all that section does is to distinguish between two types of dispute: (*a*) a dispute between an employer and an employee personally and, (*b*) a dispute between an employer and a trade union. My understanding has always been that the first part was put in by the government to take care of employees not represented by a trade union, and further not to interfere with the basic right of an employee to differ with his employer.

I would be glad to answer any questions which members of the committee care to direct to me.

The CHAIRMAN: Mr. Wright, in talking about section 372 you said that the inevitable result of a strike is some impairment or obstruction to property and the enjoyment of property by others, and that this section without the saving clause would, in the event of a strike, create an offence. In that connection I suggest that you have overlooked the use of the word "wilful", because the section says that any of these things such as destroy or damage property, must be done wilfully. Are you suggesting that if such a case came

before the courts—let us assume it is the result of a legal strike—that the stoppage of work incidental thereto and the enjoyment of property being interfered with would not be subject to the application of the word "wilful"? Would you please indicate what application the word "wilful" must have.

Mr. WRIGHT: Yes. I would prefer to illustrate my point by making particular reference to paragraph (*b*) of section 372 (1), which says:

(1) Everyone commits mischief who wilfully

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

If for instance there is a strike in a steel foundry—and unfortunately, my knowledge of steel foundries is very limited—and the men walk off the work, which in many circumstances they have the lawful right to do, it might very well render certain property dangerous, it certainly would render it useless, inoperative and ineffective. Of course it is wilful, because it is the result of a real and fixed determination on the part of the employees to do just that—to render the employer's property useless, inoperative and ineffective. After all, that is the purpose of a strike.

Hon. Mr. ROEBUCK: It is the inevitable consequences of a strike; and therefore if the strike is intended, the inevitable consequences are wilful.

Mr. WRIGHT: Yes, undoubtedly it is the inevitable consequences. The code tells us that every person is presumed to intend the natural consequences of his own act. Mr. MacLeod will tell me if I am wrong, but I would be surprised if that provision were not carried into Bill 7. I assume it is there. Every person is presumed to intend the natural consequences of his own act; therefore, there is the element of wilfulness; that is the *mens rea* which the law invokes. But I would go one step further and say that any employee who walks out on a lawful strike by any trade union—and I underline the words "lawful strike"—does it wilfully and precisely for the purpose of rendering the property useless, inoperative and ineffective.

Hon. Mr. WOOD: I take your point to be that if an individual who was, say, operating a furnace of some type, could be prosecuted if he left his job?

Mr. WRIGHT: That is right.

Hon. Mr. WOOD: It seems to me that I could quit a job tomorrow if I wanted to.

Hon. Mr. REID: But take the case of a man who has control of a bucket carrying fifty tons of molten steel in a steel foundry—and I know something about these places—who just told his employer to go to hell and left the metal running? What is the situation in those circumstances?

Mr. WRIGHT: Of course each case must be decided on the circumstances, but I would think in that case there would very probably be a prosecution for mischief.

Hon. Mr. REID: So do I.

Mr. WRIGHT: That is not the type of case we are discussing. The saving clause provides:

(6) No person commits mischief within the meaning of this section by reason only that

(*a*) he stops work—

It is most difficult to legislate and take care of all conceivable circumstances. But if the person to which you refer does say "to hell with the employer, I am going to cause him as much damage as I possibly can"—that is, if there is an element of spite or criminal intent—certainly the result would be different. But I am talking about a concerted cessation of work by employees, which almost always follows notice to the employer.

Hon. Mr. HAIG: I would like to ask the witness a question, Mr. Chairman. Do you agree with section 365 as it is now drafted?

Mr. WRIGHT: No, sir. Perhaps I should put my position in its various gradations. We take the position that we are quite satisfied with the present state of the law as set out in section 499 of the Criminal Code; if, however, the government does not intend to re-enact that section—and it has been made crystal clear that they do not intend to do so—we are stuck with section 365. If we must have section 365, then we say we want a saving clause which would make sure that if there is a breach of contract, a breach of collective agreement, that it will not render the trade union or any of the employees subject to prosecution.

Hon. Mr. HAIG: Do you mean to tell me that if the people who control the water supply to the city in which I live have a contract with the city, and they deliberately decide to break the contract and cut off the water supply, that that is not a criminal offence?

Mr. WRIGHT: It is not a criminal offence as of now.

Hon. Mr. HAIG: But if we adopt this section, it will become a criminal offence.

Mr. WRIGHT: If you adopt this section as it presently reads, and if the action takes place as a result of an unlawful strike it becomes a criminal offence.

Hon. Mr. HAIG: I am not concerned about whether it is an unlawful strike; there is no uncertainty in my mind about whether there may be a lawful strike. I know it is legitimate for labour to strike, but I frequently read in the papers of cases where the union in question did not favour a strike, but the employees just walked out. Surely, that is an unlawful strike, and under the saving clause the employees would not be liable. We are helpless in those circumstances. It is not so much a question of the effect of labour's action on employers and owners as it is on other individuals.

Mr. WRIGHT: The position that the Canadian Congress of Labour takes is simply this, that if there is an unlawful strike which results in any of the serious consequences that are enumerated—

Hon. Mr. HAIG: You mean a lawful strike?

Mr. WRIGHT: No, if there is an unlawful strike and some of the serious consequences that are enumerated in paragraph 1 of section 365 ensue, then it is up to the provincial legislatures so to frame their industrial relation laws as to take care of situations of that kind.

Hon. Mr. HAIG: Just let me submit your statement to the test of facts. Now, let us have it definite, you say an unlawful strike in an organization supplying water or any public utility to the residents of a city. You say that if the water supply is cut off, all they can do is to take a civil action against the union; that if the power is shut off that all that can be done is to take a civil action, and all that can be done if the gas supply is cut off in an unlawful strike, is to take civil action. I say no. I say if it is an unlawful strike then interruptions in the supply of utilities to a city should not be allowed to occur —that is to say, in an unlawful strike—unless they are criminally liable for what they do.

Dr. FORSEY: They are punishable under the provincial acts. They are punishable under the Manitoba Act.

Hon. Mr. HAIG: That does not go far enough.

Dr. FORSEY: Then let the Manitoba legislature amend the act.

Hon. Mr. HAIG: I have had to live through a city-wide strike in my home town of Winnipeg and I may say I know all about it. I know when the water

is shut off what it means; also when the electric light is shut off, I know what that means too. And when central heating is interrupted, I know what that means too. The dispute is between the employees and the company that owns the utility and the public has nothing to do with it. It is a very serious matter if there are children or babies or sick people in the house to have these utilities cut off. The supply of utilities is cut off from people who have nothing to do with the strike. I am wholeheartedly in sympathy with any union that has an agreement and goes out on a lawful strike. To that I have no objection.

Mr. WRIGHT: By way of digression, Senator Haig, I would like to point out that I am from Winnipeg myself originally. I have been away from Winnipeg for some time now but to my knowledge that case has never arisen in the city of Winnipeg where you or your children or anyone there has been deprived of central heating or light or any of the utilities by way of a lawful or an unlawful strike.

Hon. Mr. HAIG: You were not there in 1919?

Mr. WRIGHT: I was there but my memory is not too clear on it

Hon. Mr. HAIG: Well, I was there in 1919 and in my house there were six children and great inconvenience was caused. For instance, the bread wagon went through the streets with a sign on it saying that bread could be obtained by permission of the strike committee. The children needed milk and in order to get it I had to walk—if I could get it—to the plant two or three miles away. None of these staples could be delivered. Those people had no dispute with anybody. The strikers just went out on strike. I will say that there was no central heating in those days but there was electric power, and our lights were cut off. But I will say this, that the citizens rose in their might and they went and took control of the plants and ran them. That is what happened. I am in favour of legislation to protect an industry against an illegal strike when the necessities for the people are affected, and that is what this section does. I did not know it was so clear till I heard your explanation.

Mr. WRIGHT: The only comment I can make is this, and I think it is a valid one, that at the present time the public service employees to whom you have referred are punishable under Manitoba legislation.

Hon. Mr. HAIG: I know it.

Mr. WRIGHT: And, if for any reason the provincial legislature in its wisdom is of the opinion that the penalties are insufficient at the present time, then the way is open to them to amend the legislation.

The CHAIRMAN: Mr. Wright, it is all very well to talk about civil rights under a contract between the parties, but when you get into the field of public rights then their violation is a criminal matter. Public rights are protected under the criminal law. Now, if the rights under a contract are violated, then it is a question of taking civil action, but when the rights of the public are violated then it is a matter of criminal law. That is the test, and that is the thing that concerns us. This section 365 as it is written here, gives protection in connection with a legal strike but it certainly does not in connection with an unlawful strike.

Hon. Mr. HUGESSEN: With regard to your comment that provincial legislature should enact the necessary legislation, surely that does not apply in the case of a railway, which is a common carrier and subject to federal jurisdiction.

Mr. WRIGHT: Then the Dominion parliament should enact such legislation as is necessary.

Hon. Mr. HUGESSEN: So we can enact it here?

Hon. Mr. BOUFFARD: What distinction do you make between an unlawful strike and the criminal legislation that provides for it as against the provincial legislation that provides for penalties to anyone being intoxicated while driving a car or who drives a car negligently. The provincial legislatures impose some kind of a penalty, and that is what the criminal code does, it makes it a criminal act to expose someone to the danger of losing his life, and provincial legislation does the same for dangerous driving.

Mr. WRIGHT: I see your point, Senator.

Hon. Mr. CONNOLLY: Is not the point simply this, that an action can have civil implications and criminal implications and this parliament has the duty to provide for penalties in cases where criminal implications are involved, even if there are civil implications as well.

Hon. Mr. VIEN: Do I understand your submission to be made on the point of expediency or on the point of the right of parliament to enact such legislation? Is it a question of expediency when you say to us you should not do that? Or do you challenge the right of parliament to enact such legislation?

Mr. WRIGHT: Oh no, no.

Mr. PIERRE VADBONCOEUR: We should not forget that the section deals with breach of contract, not with stoppage of work in public utilities. Therefore, if a penalty is attached to a situation arising from the actions of the signatories of a contract, what we penalize in this section 365 is the collective agreement itself. We prevent workers and employers from getting together to sign a collective agreement. That is the point that should be stressed.

Hon. Mr. ROEBUCK: Mr. Wright, may I see if I have your point right. There are two factors in this section, one is a breaching of a contract, and the other is such things as endangering human life. Now, you have said that breach of contract should be taken care of by provincial law or where it is a Dominion proposition, by Dominion law, in the labour legislation field. You have not gone on as I think you really intended to, to say you are not in favour of endangering human life.

Mr. WRIGHT: No, no.

Hon. Mr. ROEBUCK: And that should be dealt with entirely aside from the breach of contract.

Mr. WRIGHT: Exactly. I am glad you brought that point up, sir.

Hon. Mr. ROEBUCK: Now, to cause serious bodily injury deliberately, and therefore wilfully, is of course now a crime under the Act. You are not opposed to that?

Mr. WRIGHT: No.

Hon. Mr. ROEBUCK: To expose valuable property, real and personal, to destruction or serious injury is a destruction of property, which is covered by one of the sections of the Code; and you are not quarreling with that, are you?

Mr. WRIGHT: No.

Hon. Mr. ROEBUCK: Not at all. Now, 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, and so on, and then transportation, as well, is added in the next section, is also a matter that might be dealt with entirely aside from any breach of contract?

Mr. WRIGHT: Exactly. That is right.

Hon. Mr. ROEBUCK: That is your position?

Mr. WRIGHT: That is my position.

Hon. Mr. VIEN: I did not so understand when Mr. Wright made this clear a minute ago.

Hon. Mr. ROEBUCK: That is why I am trying to clear it up. It did not seem exactly clear. And I notice senators were talking about depriving inhabitants of a city of their power and light and so forth, and you appeared to be defending it, where you are not doing anything of the kind?

Mr. WRIGHT: I am sorry I gave that impression.

Hon. Mr. ROEBUCK: No, you did not. That was for lack of going on and making it more clear. I take the same position with this section, that the breach of contract should be dealt with under one section, or by other law, not in the Criminal Code at all; that the Criminal Code should cover these other things; and moreover, that the depriving of a city of its essential services, whether it is involved with a breach of contract or not, should be legislated against. This section defines the defence of a city in respect to these cases where there is breach of contract. I would go further and protect the city in any event to the extent of our ability to do it, but I do not like this mixing up of breach of contract and very obvious criminal acts.

Hon. Mr. REID: Mr. Wright, I am looking at subsection (2) of section 365. I can understand a situation where an employee fails to reach an agreement with his employer. Perhaps I am wrong, but I think I have read of strikes that occurred where there was no trouble between the union and the employer at all, but they were jurisdictional strikes, where two unions would be fighting for control; a strike was called, the plant stood idle, and nothing could be done, because they picketed the plant. Would anyone who did that come under subparagraph (*b*) of subsection (2)?

The CHAIRMAN: What is your view on that?

Hon. Mr. REID: There have been strikes of that nature.

Mr. WRIGHT: My view on that is that as it reads at the present time it means exactly what it says, that unless there has been a wilful breach of contract there is no offence, and it would not cover the case that you advance.

Hon. Mr. REID: I think the Committee should take note of it, because it is a thing that is arising. You may have one big union, but so long as jurisdictional fights take place this kind of thing I mention can and does take place.

Mr. WRIGHT: That is exactly what you have labour relations boards for. It is terribly important that these things should be seen in their proper perspective—if I may say so most respectfully. You have the machinery set up in the Dominion and in each of the provincial jurisdictions.

The CHAIRMAN: Mr. Wright, can I just ask you to deal with this point while you are dealing with Senator Reid's question—deal with it on the phase of these labour boards in the provinces that have jurisdiction to deal with relations between employers and employees.

Mr. WRIGHT: That is right.

The CHAIRMAN: Set opposite that is the matter of public rights. Will you answer Senator Reid in that relationship?

Mr. WRIGHT: I would say again, with respect, I do not see the relationship between the two. The only way I can answer is this way: there has grown up, largely since Order in Council P.C. 1003, which was enacted in 1943, during the war, and all jurisdiction in relation to labour relations was transferred under the authority of the War Measures Act from the provinces to the Dominion, provincial labour relations boards, which were established with a right of appeal to the Dominion Labour Relations Board. Where you have a dispute between two unions, where you have competing unions or unions competing for the loyalty of some group of employees, the matter comes before these boards.

Hon. Mr. HORNER: And competing for the dollars of the men, too.

Mr. WRIGHT: That may be, and in that respect they are probably no different from any other part of society.

The CHAIRMAN: That is a pretty general occupation!

Mr. WRIGHT: One union applies for certification to the Labour Relations Board. The other union, a competing one, submits an application of intervention, when the employer is entitled to state his position. It may be a case of saying, "A plague on both your houses." It may be a case of saying, "We prefer Union A as against Union B, for certain valid reasons." For instance, there are craft unions, there are industrial unions, and it is terribly important from the standpoint of maintaining and developing industrial tranquility that all these things be considered. We have developed in Canada by and large competent labour relations boards who are able to distinguish in these matters. They must bear in mind three points of view: the point of view of the employer, the point of view of the employee, and the point of view of the public at large; and they decide which union will be certified as the representative of the group of employees affected. Very often they decide to hold a representation vote in order to arrive at their conclusions. In other words, the principle of self-determination applies, and the trade union which gets the largest number of votes is the one which is adjudged and declared to be the certified bargaining agent for the employees affected.

Hon. Mr. KINLEY: That is pretty definite, is it not?

Mr. WRIGHT: Yes. You do, admittedly, wind up in certain situations which are unfortunate, there is no doubt about it, where you have a jurisdictional dispute; and all I can say is that the sole purpose or one of the purposes for our present certification machinery is to reduce that abuse to a minimum. I regret it just as much as you do.

Dr. EUGENE FORSEY: May I interpolate here, Mr. Chairman, ladies and gentlemen, that in fact this machinery does work pretty well. I should be very hard put to it to cite any cases of jurisdictional strikes such as Senator Reid has referred to since that legislation came in operation in this country. Most of what we hear about exists south of the border, and there is a general tendency—an unpatriotic general tendency—to assume that anything that goes on south of the border also goes on here. I may also add something to what has been said in answer to the Chairman's point, labour relations legislation of the provinces and of the dominion within the jurisdiction of parliament do provide for the rights of the public. Take, for example, this Act of British Columbia which Mr. Wright was quoting from a few minutes ago. You have in section 58 penalties for illegal lockouts or strikes. Subsection (3) provides that every trade-union that authorizes or calls a strike contrary to this Act is guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred and twenty-five dollars for each day or part of a day that the strike exists. Subsection (4) provides that every officer or representative of a trade-union who authorizes or calls a strike contrary to this Act is guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars for each day or part of a day that the strike exists. Section 60 provides that "Every trade-union, employers' organization, or person . . ." and so on. Subsections (3) and (4) of section 58 apply to the trade unions and the officers, and so forth, but here you have the words "or person". This includes the ordinary member. If he does anything prohibited by this Act, which includes illegal strikes, he is liable on summary conviction to a fine not exceeding $50. So that the individual trade unionist and trade union as such and trade union officers and representatives are all penalized under that section of that Act.

Hon. Mr. BOUFFARD: Which act is that?

Dr. FORSEY: The British Columbia Labour Relations Act which was just passed a month or so ago.

Hon. Mr. MACDONALD: Are there similar acts in other provinces?

Dr. FORSEY: Yes, except for I think the province of Prince Edward Island where the legislation is much less complete. But then industry there is such that the legislature in Prince Edward Island has not found it necessary to make that provision. However, they have a provision in their Act, which I may say I do not think is too well drafted. I am not too sure how effective it would be, but they are satisfied with it.

The CHAIRMAN: Are you saying that because there is provincial legislation in this field, the federal authorities should not enact such legislation?

Dr. FORSEY: It is my submission, sir, that there is adequate provincial legislation for provincial jurisdiction and there is adequate dominion legislation for dominion jurisdiction in the various trade union Acts, labour relations Acts or whatever they are called. In addition, as Mr. Wright has reminded me, in the province of Quebec, as far as public services are concerned, a very wide term exists indeed whereby any strike whatsoever in any situation at all in a public service is illegal and can be very heavily penalized. The provincial legislation has recently added to the penalties under the celebrated Bill 20. Therefore the union which is guilty or whose members have been guilty of this illegal strike loses its certification, and the thing is retroactive for a full ten years.

Hon. Mr. KINLEY: How does that deal with the issue before us?

The CHAIRMAN: Excuse me, Senator Kinley. Dr. Forsey, I posed what I thought was a simple question and you gave me a long answer. If you do not want to answer it that is fine.

Dr. FORSEY: You posed the question about public rights?

The CHAIRMAN: My question was simply this. Do you take the position that because the provincial authorities have enacted certain legislation in relation to the operation of unions in provinces, that the federal authorities should stay out of that field? Is that what you are saying?

Dr. FORSEY: No. What I said was that to my mind the dominion parliament should not attempt to deal with this matter, this specific matter of labour relations in the Criminal Code in this fashion.

Hon. Mr. VIEN: Why?

Dr. FORSEY: Because it is already dealt with, as far as the dominion jurisdiction is concerned, in the Dominion Industrial Relations and Disputes Investigation Act, and, as far as the provincial jurisdiction is concerned, by the appropriate acts variously designated as trade union acts or labour relation acts in the various provinces.

Hon. Mr. VIEN: If public interest demands that we should protect life, health and property, and that we should make it a criminal act to attempt to harm life, health or property, why should we not deal with it in the ordinary way, which is to make a criminal offence of the acts complained of?

Dr. FORSEY: I think Senator Roebuck has already answered that. I do not think that I can add anything to what I have already said on the matter. It would be simply restating our position. I should just like to add one thing, however. If the Dominion Industrial Relations and Disputes Investigation Act, or the acts in the various provinces, is ineffective to protect public interest, it is curious that we have not heard about it.

Hon. Mr. WOOD: You are speaking about protection of the public in various provinces. Not more than three years ago we had a strike in Regina amongst the electrical power workers, and the power department was out of business for several days. Then we had a strike just a few days ago.

Dr. FORSEY: I am not denying that for a moment.

Hon. Mr. WOOD: The government took no part in the settlement.

Dr. FORSEY: The point seems to be that here you have legislation passed by the legislatures of the provinces. There has been no indication from the provincial governments that the thing has broken down at all. We have not had a succession of provincial governments coming and shouting that their legislation is ineffective. As far as this jurisdiction is concerned we had the Minister of Labour standing up in the House of Commons when this bill was before that body last year, and singing the praises of the wonderful Dominion Industrial Relations and Disputes Investigation Act, which apparently was like Plato's ideas which come down from Heaven. It had come down from Heaven; and it was working in such a fashion that the glorious and wonderful statesmen who devised it were barely less than angels.

Hon. Mr. EULER: What harm can result if there is federal legislation which perhaps overlaps provincial legislation?

Dr. FORSEY: I think we have explained that, as clearly as it can be explained, in this brief. Mr. Wright has also explained it.

Hon. Mr. WOOD: I have no objection to certain other services going on strike. Workers can strike as much as they like in a cement plant, but I am afraid it is a different matter as far as public utilities are concerned.

Mr. WRIGHT: That has been done. Possibly we are losing sight of certain things. That was done in the province of Quebec. Mr. Pelletier and Mr. Vadboncœur can tell us about that. It has been done by virtue of the Public Services Employees Disputes Act in the province of Quebec.

Hon. Mr. VIEN: Did not certain people of the province of Quebec object to it?

Mr. WRIGHT: Yes, as they had a democratic right to do, but it was enacted and that is a matter of law now.

Hon. Mr. BOUFFARD: They did not deal with the criminal side of it.

Hon. Mr. ROEBUCK: What about Ontario? Have you not got some legislation preventing the closing of public utilities?

Mr. WRIGHT: Yes, we have. I am not just as clear as I would like to be on this, but I know that firemen and policemen must not strike. I wish I could be more specific in my reply, Senator Roebuck, but I am under the impression that there is certain legislation. You may know better than I do about it.

Hon. Mr. WOOD: Either the street railwaymen or the firemen in Saskatcheman went out on strike.

Mr. WRIGHT: Well, then, there is nothing in the world to prevent a province—

The CHAIRMAN: It must be remembered that this Act applies all over Canada. You are not depending on provincial governments.

Mr. WRIGHT: That is right. It implies a certain aura of criminology to a breach of a collective agreement. That is something new in the field of labour relations and the field of contracts generally.

Dr. FORSEY: May I say, Mr. Chairman, that when you say that this legislation applies all over Canada that is true; when you say it does not depend on provincial governments, that is not true at all, because the very provision of subsection (2) of section 365—

The CHAIRMAN: Just a minute. Just don't go and misconstrue what I said. What I am saying is simply this. The passage of this legislation is determined by the Parliament of Canada and not by what a provincial government may decide. That is all I am saying. I am not talking about the effect or the scope.

Dr. FORSEY: I have no quarrel with that at all, that is an obvious fact, but the point I am making is the effect of what the provincial governments do. A provincial government can introduce all sorts of wrinkles into its labour relations legislation, and ordinarily any strike under the sun can be made practically illegal, and under this thing, therefore, criminal consequences would attach.

Mr. WRIGHT: It may be, Senator Hayden, I misunderstood what I read, but it was my understanding from reading the debates in the Senate a few days ago that it was suggested that there should be no saving clause of any kind added to any of the sections we have discussed, on the ground that favouritism would be shown toward trade unions.

The CHAIRMAN: If you are referring to what I said in the Senate, I only spoke to section 52, sabotage, and section 372, mischief. I did not deal with section 365, because I assumed it carried the judgment more or less willingly of all those who heard it in the Commons when it was dealt with. Anything I said had nothing to do with section 365.

Hon. Mr. HAIG: Dr. Forsey asked a question about subject to the consent of the Attorney General. I do not want that right taken away from the province

Dr. FORSEY: I did not raise that point at all, senator.

Hon. Mr. KINLEY: The last paragraph says that no proceedings shall be taken without the consent of the Attorney General. That means the Attorney General of Canada, does it?

The CHAIRMAN: The Attorney General of the province.

Mr. WRIGHT: Of the province; and I think Mr. MacLeod will bear me out when I say that that was put in at the suggestion of certain labour organizations who, quite frankly, were afraid—

Hon. Mr. KINLEY: Is there any intention to take that out?

Mr. WRIGHT: Well, I hope not.

The CHAIRMAN: All this discussion has been proceeding along in relation to section 365. Are there any questions to ask of this witness in connection with the sabotage section 52?

Hon. Mr. REID: The question I want to ask is for my own information. Are you not carrying it a little far when you hand a notice to the mayor of the city and say she can invade my room in the Chateau, if somebody told her there was an unlawful assembly there—or perhaps invade my home?

Mr. WRIGHT: It is carrying it a little too far, I agree, in so far as the official is concerned, but all I can do is read the section as it stands. It says:

> 68. A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice that, at any place within his jurisdiction, . . .

Mr. WRIGHT: The jurisdiction is within the municipality, whether he or she be mayor. The section continues:

> . . . twelve or more persons are unlawfully and riotously assembled together, shall go to that place and, after approaching as near as safely he may do . . .

In other words, as I interpret the section there is no discretion of any kind given. All that has to be given—and to bring it closer to home as far as trade unions are concerned—is that an employer in a small town may go to the local mayor and say there is an unlawful and tumultuous meeting taking place in the union hall, and twelve or more persons are unlawfully and riotously assembled together, and then the riot act can be read, because the section says the mayor must go to the hall and read the riot act.

Hon. Mr. EULER: I do not object to your putting it in if it makes it doubly sure.

Hon. Mr. BEAUBIEN: How can the mayor decide if people are gathered together unlawfully and riotously? It may be all quiet when the mayor arrives.

Hon. Mr. REID: I was wondering if we have not the same kind of law as Great Britain. There, the police cannot enter until the authorities give them the right to enter, because it was private property.

Hon. Mr. KINLEY: The power is still in the hands of the mayor or official to say what is to be done even after reading the riot act, and if that is so, the reading of the Riot Act is not so vital, then.

The CHAIRMAN: If they do not disperse within 30 minutes, under this bill, after the reading of the Riot Act, they are offenders against the law and can be treated accordingly.

I would like to ask Mr. Wright a question. I see in the latest issue of "The Canadian Unionist", references to sections 52, 365 and 372. The reference to sections 52 and 372 says:

> These subsections, which take strikes, both legal and illegal and peaceful picketing by strikers, right out of the section, were put in by the Parliamentary Committee last year as a direct result of the representations by the Congress. Our counsel is convinced they draw the teeth of the section, as far as unions are concerned, and render it applicable only to genuine sabotage.

Now, Mr. Wright, could you give me some explanation as to what is meant by drawing teeth of the section?

Mr. WRIGHT: As the section first appeared in Bill O, it read: "Every one who does a prohibited act for a purpose prejudicial to the safety, security or defence of Canada"—and so on, is guilty of sabotage. I see, Mr. Chairman, that you have only read one sentence, which is merely a brief explanation to the unions that the Congress of Labour represents, as to what transpired. We cannot possibly go into detail. But section 52 read that it was an offence, a prohibited act of certain things done prejudicial to the safety or interests of Canada; and in this section the words prohibited act mean an act or motion which impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery," and so on. The position we took was, "What is meant by interests?" Is it economic interests? If that is so, then most surely any strike would affect economic interests of an employer. We like to think, and I think I am stating the position quite honestly, that as a result of the representations by the Canadian Congress of Labour, together with other labour organizations, the government saw fit to eliminate the words "or interest". I honestly believe to that extent at least it did draw the teeth from the section.

The CHAIRMAN: It is a better wording in the bill that we now have before us—the security, safety or defence of Canada.

Mr. WRIGHT: I quite agree.

The CHAIRMAN: But that was not the purport of my question. My question is as to the view that you expressed as to the effect of the section in Bill 7 which is now before us. In speaking of section 52 you said that with the saving clause, in strikes both legal and illegal, peaceful picketing by strikers is put right out of the section.

Mr. WRIGHT: That is right.

The CHAIRMAN: I think that is correct. Then you say, "Our counsel is convinced they draw the teeth of the section—" That is, the saving clause in both these sections draw the teeth of the section.

Mr. WRIGHT: That is right.

The CHAIRMAN: What were the teeth of the section that you were seeking to draw?

Hon. Mr. KINLEY: And who were these teeth going to bite?

The CHAIRMAN: I am sure I don't know.

Mr. WRIGHT: May I just read the sentence again, and read in its entirety.

> Our counsel is convinced they draw the teeth of the section, as far as unions are concerned, and render it applicable only to genuine sabotage.

Hon. Mr. WOOD: In other words, it makes it ineffective.

Mr. WRIGHT: There was no saving clause in section 52 as it originally stood, and by the addition of the saving clause and the elimination of the words "or interest", we feel in so far as trade unions are concerned the teeth have been drawn from section 52.

Hon. Mr. ROEBUCK: But there is nothing sinister about it.

The CHAIRMAN: I have a further question, Mr. Wright, which you need not answer if you do not choose to. Why should there be a saving clause to protect any person in relation to a section that deals with the offence of sabotage?

Mr. WRIGHT: I thought I explained that point in the brief we submitted.

The CHAIRMAN: If you feel you have, do not bother to repeat it.

Mr. WRIGHT: It is possible that I have not made myself clearly understood.

The CHAIRMAN: I understood what you said, and I read fairly well, but I don't think—

Mr. WRIGHT: That being so, I cannot add anything to my explanation.

Hon. Mr. REID: The article which the Chairman quoted from contains these words:

> By representations to the Parliamentary Committee and the Department of Justice, and despite the apparent indifference of some other sections of organized labour, the Congress succeeded in getting saving clauses added—

I take is from that that the Congress of Labour has led in the making of representations?

Mr. WRIGHT: No; we are not asking you to draw that conclusion. It was simply that there was not complete unanimity of opinion amongst all branches of labour. But I can say without qualification that the Canadian and Catholic Federation of Labour and the Canadian Congress of Labour always saw eye to eye on representations we made, and we disagree with another section of labour.

Hon. Mr. REID: My reason for asking that question is that I am sure other senators, like myself, have received many communications from individuals and organizations who took no part in the representations when the bill was before the Commons.

The CHAIRMAN: Mr. Wright, there is one further comment I should like to make. My understanding of sections 52 and 372 is that they contain nothing, even if the saving clauses were removed, which would make it illegal to strike.

Mr. VADBONCOEUR: Every strike renders property useless, inoperative and ineffective—

The CHAIRMAN: That is not the question I was asking Mr. Wright. I pointed out that it is my view that even if the saving clauses were removed from section 52 or section 372, there is nothing in either section which makes it illegal to strike.

Mr. WRIGHT: If the saving clauses are removed from sections 52 and 372, they do not apply to the question of legality or illegality of a strike. I think that is the only answer I can make.

The CHAIRMAN: I say that those sections do not make it illegal to strike; in other words, the right to strike is not affected by sections 52 or 372, even without the saving clauses.

Mr. WRIGHT: The point Mr. Vadboncoeur was going to make was that if the saving clauses were not there, and if a legal strike occurred, it might very well have the effect of impairing the efficiency or impeding the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing.

The CHAIRMAN: I would rather have you deal with the same situation in an illegal strike.

Mr. WRIGHT: In so far as an illegal strike is concerned, the addition of the saving clause would not affect the situation one way or the other.

The CHAIRMAN: The saving clause, if it gives any protection, is the same protection for legal and illegal strikes?

Mr. WRIGHT: Yes.

Hon. Mr. HAIG: Could we not make the section give protection only in the circumstances of a legal strike?

Mr. WRIGHT: But we are dealing particularly with sabotage.

Hon. Mr. HAIG: I know what we are dealing with. In my opinion there are as many illegal strikes as there are legal strikes.

Mr. WRIGHT: I don't entirely agree with that.

Hon. Mr. HAIG: You will recall the officers refusing to tell the men that they have to go back to work—that is happening every day.

Mr. WRIGHT: Factually, I don't agree with it.

The CHAIRMAN: Are there any further questions?

Hon. Mr. HUGESSEN: I think I would agree with what Mr. Wright has said that section 52 is better with the savings clause in it. I do not think that section originally was intended to have anything to do with strikes, lockouts, or anything of that nature. It was merely for the protection of the interests of Canada in time of war or national danger. Perhaps there is a feeling that paragraph (c) of subsection 3 should be made clear so that it may not be misused or interfered with.

Hon. Mr. HAIG: Is that all for today?

The CHAIRMAN: We have another witness to hear. But first may I ask Mr. Wright if he has anything further to say.

Mr. WRIGHT: No, Mr. Chairman.

The CHAIRMAN: Dr. Forsey?

Dr. FORSEY: No, sir.

The CHAIRMAN: Mr. Mosher?

Mr. MOSHER: No, sir.

Mr. VADBONCOEUR: Mr. Chairman, may I point out that previous to these sections being introduced there were absolutely no hindrances placed in the way of the right to strike. In the proposed code we see sections which directly or indirectly interfere with the right to strike. At least, that is the situation as it strikes the eyes of the labour movement which we represent: It introduces criminal legislation which places some hurdles in the way of the right to strike, which is the only effective weapon that labour has in order to gain good working conditions and fair wages.

Hon. Mr. VIEN: Have you a reference to the section of the bill which would tend to limit the right to strike?

Mr. VADBONCOEUR: Yes. It has been stated several times here, but section 372, for instance, if there were no saving clause, simply impeaches any strike that renders property useless, inoperative and ineffective, or interferes with the lawful use or enjoyment of the property. Every strike does just that.

Hon. Mr. VIEN: Every strike does not do that.

Mr. PIERRE VADBONCOEUR: Surely, to some extent.

Hon. Mr. ROEBUCK: Pretty close to it, Senator. I do not know of any strike where it has not.

The CHAIRMAN: Gentlemen, we have two other groups to be heard on this bill and we certainly cannot hear them within the next ten minutes, it now being ten minutes to six. We would like to accommodate these groups by hearing them this evening as I know that some of them want to get away tonight and so I would suggest that we should adjourn now till eight-thirty.

The committee thereupon adjourned until 8.30 p.m.

Upon resuming:

The CHAIRMAN: Gentlemen, we have a quorum. It is now 8.30. The next organization represented here is Division 123, Canadian Brotherhood of Railway Employees; Mr. Angus MacInnes. It is Division 123, is it?

Mr. MACINNES: Well, we are the Toronto Division of the Canadian Brotherhood of Railway Employees, the third largest in the Canadian association.

Hon. Mr. WOOD: What do you mean: third largest group? Are there four or five unions?

Mr. MACINNES: No. There are many divisions all across Canada.

Hon. Mr. WOOD: Locomotive engineers?

Mr. MACINNES: No. We are non-operative. We are centered in the Union Station at Toronto, and we take in the heating plant behind the Union Station.

Hon. Mr. WOOD: You are just limited to a certain area?

Mr. MACINNES: Well, we are representing a certain area, yes.

The CHAIRMAN: How many employees would there be in this division?

Mr. MACINNES: I would say there are between four and five hundred.

Hon. Mr. WOOD: Is that a separate union, or just a division?

Mr. MACINNES: We are a division of the Canadian Brotherhood of Railway Employees.

The CHAIRMAN: Does that mean a Local?

Mr. MACINNES: You may call it a Local.

Hon. Mr. WOOD: Does that mean you can go on strike separately from the other groups if you want to?

Mr. MACINNES: Well, that is a matter—

Hon. Mr. WOOD: Well, I am asking: this is a plain question.

Mr. MACINNES: Well, I suppose there would be nothing to stop us if we wanted to.

Hon. Mr. WOOD: You are part of the union: you can do what you like: is that it?

Mr. MACINNES: We are supposed to be a section of—

Hon. Mr. WOOD: You are "supposed to", you do not have to?

Mr. MACINNES: Well, I think you do, under the constitution, but I am not quite sure on that matter.

Hon. Mr. VIEN: Is your division a union by itself?

Mr. MACINNES: Yes.

Hon. Mr. VIEN: By itself?

Mr. MACINNES: No; we are a division of the Canadian Brotherhood of Railway Employees.

Hon. Mr. VIEN: The Canadian Brotherhood of Railway Employees is the union?

Mr. MACINNES: Is the union, yes.

Hon. Mr. VIEN: And the division is 123?

Mr. MACINNES: Yes.

Hon. Mr. VIEN: What is your authority and the scope of the division in the union?

Mr. MACINNES: Well, as I explained to this other gentleman, our Local or division covers—and I am the educational director of that division, and—

Hon. Mr. VIEN: What does the division cover?

Mr. MACINNES: Well, I just explained that.

Hon. Mr. VIEN: I failed to understand. I am thick and dense!

Mr. MACINNES: The division covers a certain group of workers within a certain area. It does not cover all the workers all across Canada in the Canadian Brotherhood of Railway Employees, but certain sections. We have Locals in each city.

Mr. MACINNIS: Yes.

Hon. Mr. MACDONALD: You are representing your own local?

Mr. MACINNES: Yes.

Hon. Mr. WOOD: We are not trying to embarrass you, we just want to get some information.

Mr. MACINNES: That is all right.

Hon. Mr. MACDONALD: Are there any divisions?

Mr. MACINNES: Oh, yes, there are quite a number.

Hon. Mr. MACDONALD: Are there 123?

Mr. MACINNES: I am not just sure of the exact figure, but there is quite a number. The Canadian Brotherhood of Railway Employees negotiates with the A. F. of L. and, I believe, combined they represent the largest section of organized labour in Canada.

Hon. Mr. WOOD: The A. F. of L., is that the union for the railways?

Mr. MACINNES: Yes.

Hon. Mr. WOOD: Not the Trades and Labour Council?

Mr. MACINNES: Well, they are affiliated with the Trades and Labour Council of Canada—the A. F. of L.

Hon. Mr. WOOD: Do the conductors belong to one union and the trainmen to another?

Mr. MACINNES: Yes. They all have their separate groups.

The CHAIRMAN: These are non-operating.

Hon. Mr. WOOD: I am asking a question here. You have various unions within the railways: is that it?

Mr. MACINNES: Yes. There is various groups: operating, non-operating, porters, car conductors, engineers, firemen.

Hon. Mr. WOOD: Each one has some different union?

Mr. MACINNES: Not each of them, but a great many of them belong to different unions, but they all negotiate together at the time of negotiations.

Hon. Mr. VIEN: Take, for instance, locomotive engineers. They have the Brotherhood of Locomotive Engineers?

Mr. MACINNES: Yes.

The CHAIRMAN: They are A. F. of L., maybe?

Mr. MACINNES: A. F. of L. They belong to a separate—a different body, but still we all negotiate.

The CHAIRMAN: Affiliated?

Mr. MACINNES: No.

Hon. Mr. WOOD: They are all as one when it comes to negotiations?

Mr. MACINNES: When it comes to negotiations for wages we all negotiate together, or I would say, most. There are bodies in the railway that negotiate on their own behalf, but I believe that we—

Hon. Mr. ROEBUCK: There are three or four that you head up into. There are seventeen unions and one negotiation. I have represented ten or eleven at times.

Hon. Mr. WOOD: What I am trying to find out is why there should be so many unions in one railway.

Mr. MACINNES: That is what I would like to know. I think they should all be one big union.

The CHAIRMAN: Don't you have a brief you wish to read?

Mr. MACINNES: Yes. Before I commence with the brief I would like to thank you on behalf of this organization for allowing us to appear and present our brief; and before I begin I would like to request, because we were notified last Thursday, and we did not have time to notify other Locals and get together with other Locals to make representation, that this Committee continue to sit to allow further representations. I would like to make that request before starting.

The CHAIRMAN: I can tell you, we have been hearing people who have requested to be here. So if we do not get requests, that is the problem of the people who do not make the requests.

Mr. MACINNES: Our group in Toronto and district were in process of getting a larger delegation from other Locals, but in the short time we had, due to the notification that we received last Thursday, we just did not have time to get a bigger delegation to come down here.

Hon. Mr. HAIG: It is not the size of your delegation that makes any difference to the Committee, it is the brains of your representation that counts.

The CHAIRMAN: It is what you have to say.

Mr. MACINNES: I agree with you senator, but I think other organizations should be heard also.

The CHAIRMAN: Would you care to continue with the reading of your brief?

Mr. MACINNES: This is submitted by Division 123 of the Canadian Brotherhood of Railway Employees and other Transport Workers, Toronto, Ontario, and reads as follows:

Section 52. Sabotage

This section, before amendments in the House of Commons, in our opinion was a very dangerous piece of legislation in regard to democratic and labour rights in Canada. The changes made in this section in the House of Commons were of some value, but we still feel that labour is faced with heavy penalties, such as ten years in jail, under this section, and the right to criticize and the right of free speech are jeopordized. There are many loopholes in this section for prosecution of democratic groups wishing to exercise their rights.

We do not see why labour and democratic rights should be threatened under this section. Even during the last war a section such as this was not

needed; why should it be needed now? We feel that such an anti-labour and anti-democratic section such as this section is entirely unnecessary and should be dropped from the code; or at least improved by further amendments.

There has been much debate and opposition to this section in the House of Commons. I would like to quote some doubts expressed by one member of the House, the Honourable Stanley Knowles (CCF) M.P. Quote, "Mr. Chairman, I have been trying to study the wording of the amendment passed a few moments ago in order to see whether the point the Honourable Member, Mr. Barnett has in mind is covered; and I am not sure it is covered. As I understand it the point he is concerned about is a situation where one union is on strike and had a picket line, and a union that was not on strike and some members of the union that were not on strike did not wish to cross the picket line of the other union." He then requested that the clause be reopened at a future session. The Hon. S. Garson did not agree to this, and the clause was voted on and carried. .

Section 365.

Before this section was amended we felt that this was viciously dangerous to labour generally, and particularly to our group of railway unions. With the so called saving clauses it emphasized that only under set down and certain limited circumstances would a strike be lawful, and under any other circumstances it would be unlawful and a heavy prison sentence of five years in jail could be imposed. The changes made in the House of Commons, we feel, are of very little value with regard to this section, and we cannot help feel that so much dust is just being thrown in our eyes as far as the so-called saving clause and so-called improvements are concerned.

We cannot see why this whole clause was not dropped, as most of labour wished, or at least considerably improved. It would be breaking the law to honour a picket line, or to go on strike to support fellow workers in other unions, but that were working in the same industry, such as our different groups of unions in the railways; in the operating and non-operating trades, for example.

We would like to quote from the House of Commons debates to show some of the opposition to this section, by some of the Honourable Members. The C.C.F. member, Mr. Angus MacInnis, "Who is going to decide what is deemed to be contained in a collective agreement? It seems to me that it is a highly dangerous phrase. I would be very greatly surprised if the representatives of organized labour asked for that wording. I should like to get the Honourable Stuart Garson's explanation of the words contained in, or by law deemed to be contained in a collective agreement. I think we should be very careful because we are not legislating for today or tomorrow, but for a long time. And we are legislating on a matter that is of grave concern to many people in this country."

The Honourable D. Fulton, P.C., stated: "The reason I have these reservations . . ." (re. Section 365). "That it must be admitted, that in so far as the present criminal law is concerned, this introduces a new element, an element at any rate, which has not been in it since 1906, if indeed it was there before that time. That is why this making a breach of contract has between an employer and employee the subject of criminal law in a manner in which it was never previously."

The Honourable Stanley Knowles, C.C.F. member said, "But it seems to me that with respect to clause 365 the Honourable Stuart Garson has not filled the Bill, and even with the amendment he has proposed, this whole clause is quite unacceptable."

We in our organization feel that Clause 365 should be entirely dropped, and that Section 499 of the old Criminal Code be retained. It has been sufficient since 1906, and we see no reason why labour should be penalized by providing heavy jail terms and general drastic anti-labour legislation as contained in section 365; aimed we feel primarily at us as railway workers, and other public utility employees.

Section 372: This section in our opinion is also very dangerous to the labour movement. It provides penalties up to 14 years in jail for creating "mischief" in relation to public property, and five years in jail for mischief in relation to private property. The amendments put forward in the House of Commons were of some value, but in our opinion this section is too vague and sweeping in character. What is mischief? For example, any act could be termed mischief, such as refusal to cross a picket line. The sympathy strike by telegraph operators in supporting all operating unions on the railway would be unlawful. This section could be used unjustly against a group of workers in one province where it would not apply in another province because the provincial laws there might not be as severe.

I would quote the Honourable D. Fulton, P.C., on this section. "On Clause 372 as now amended may I say this: From looking at the explanatory notes on the right hand page it is obvious that this clause is a consolidation of fifteen separate clauses in the code as it now stands. It must be admitted that the job of the commission which first sat on this thing, was to do the work of consolidation. But here I think they have bitten off more than any commission however expert could chew. The widely varied types of offences covered in those original fifteen clauses with the widely different penalties prescribed, for each clause, were such that it is impossible to consolidate all these matters and cover them adequately in one section without getting a sort of porridge, and that is what we have here. May I say it is not a very tasty porridge either. They have left out the salt. It is very bad legislation."

We agree entirely with the Honourable Mr. Fulton that this is bad legislation, and as far as labour is concerned, vicious anti-labour legislation.

We feel as before that Section 372 should be dropped altogether.

We feel that the following sections could well open the door to McCarthyism in Canada.

Section 46 and 47

We feel these sections are a dangerous threat to free speech, criticism of governments, etc., and generally an attack on fundamental Canadian democracy, and should be dropped.

Sections 50, 60 to 62

These sections allow among other things for increases in jail terms from seven years to fourteen years for sedition, and other offences. We view with suspicion these sections. Why are they necessary all of a sudden, when they were not necessary in past wars? We feel this is a further departure from democracy. Are they to be used to stifle free discussion and criticism?

We are opposed to the severe increase in penalties and added implications under this section, and should therefore be revised to a view in correcting same.

Sections 64-69

All these sections deal with riots and so called unlawful gatherings of groups of citizens. We are opposed to these sections as undemocratic and terroristic with regard to the people of Canada. The Louiseville Strike in Quebec and the John-Mansville Company strike in the same province are of example of how the Canadian people were brutally treated under these sections.

The rights of the Canadian people to public assembly, as a fundamental democratic right must be recognized. We therefore oppose these sections and urge that they be dropped.

The House of Commons and especially the Senate, have made some very good improvements regarding Sections of the revised Criminal Code. But we still view with alarm certain sections of the code dealing with labour and democratic rights; and therefore we urge the Honourable Senators to consider them.

We understand that well over a hundred M.P.s were absent when Bill 7 was before the House of Commons. Under these circumstances we cannot see how such nationally important legislation could have got the proper consideration due it. We therefore feel that the important sections we have mentioned should be given further consideration by the Honourable Members of the House of Commons when a greater number of the representatives of the Canadian people are present.

The sections of Bill 7 that we have mentioned, in our opinion would cause more unrest and strikes than we have witnessed up to now, as proven by the passage of the Taft-Hartley Law in the United States. It is a proven fact that there have been more strikes since that anti-labour legislation has been enforced. The workers have ways of getting around repressive labour laws. We also feel these type of laws antagonize the vast majority of the people. They lose their confidence and respect in governments that passed those type of laws.

Canada's prestige, in the eyes of the world, as a country founded on British democratic traditions, would be undermined if we abandoned those historical democratic traditions.

Hon. Mr. REID: May I ask one or two questions, Mr. Chairman?

The CHAIRMAN: Yes, Senator Reid, you are first.

Hon. Mr. REID: At the beginnig of your brief, Mr. MacInnes, I note you say under section 52, that that section interferes with the right to criticize and the right of free speech is jeopardized. Would you mind explaining how section 52, on sabotage, interferes with the right to criticize and the right of free speech?

Mr. MACINNES: Well, honourable senator, the section commences: "Every one who does a prohibitive act for a purpose prejudical to

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

Isn't it true this section could be used to repress criticism of the United States forces on Canadian soil?

Hon. Mr. REID: I should like you to explain that, because I am just as great a democrat as you are.

Mr. MACINNES: Well, Your Honor, what is in some people's opinion the security and defence of Canada? Your interpretation and maybe somebody elses' interpretation might be different than mine, and I say this section, with this type of clause, is very vague and could be used by a reactionary judge or government to stifle criticism.

Hon. Mr. REID: I cannot see how right of criticism and right of free speech can be read into that section. You may be reading that into the section, but I cannot.

Hon. Mr. WOOD: Would you mind reading the first paragraph of section 52?

The CHAIRMAN: Look at subsection 2, and you find a definition of a prohibited act, which has nothing to do with free speech or democratic rights, or anything like that.

Hon. Mr. REID: Not by any stretch of the imagination.

Mr. MACINNES: Well, Your Honour, what is a prohibited act?

The CHAIRMAN: It is defined.

Mr. MACINNES: It says here:

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 things, or

(b) causes property, by whomsoever it may be owned. . . .

and so forth.

Hon. Mr. HUGESSEN: But that has nothing to do with free speech.

The CHAIRMAN: No, it has nothing to do with free speech.

Hon. Mr. REID: It has nothing to do with free speech or the right of criticism, at all.

Mr. MACINNES: Well, I still think it could still imply that. It says: Everyone who does a prohibited act for a purpose prejudicial to the safety, security or defence of Canada.

The CHAIRMAN: But first of all, Mr. MacInnes, you have to start with what is a prohibited act. Well, it is defined. You read the two subsections.

Mr. MACINNESS: Subsection (b) says, "the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada." With regard to that section, isn't it true?

The CHAIRMAN: No, the offence is doing a prohibited act, and the prohibited act is impairing the efficiency or impeding the working. Now, if you do that for a purpose prejudicial to the safety, security or defence of Canada, it is sabotage. But there is no speech that it interferes with.

Mr. MACINNES: Well, could you explain why is this section in that states the safety, security or defence of Canada?

The CHAIRMAN: Because you have got to do a prohibited act which is done for a purpose prejudicial to the safety, security or defence of Canada.

Mr. MACINNES: Well, what is the safety, security or defence of Canada?

The CHAIRMAN: Well, I can easily give you a simple illustration. If some employee, for instance, say in some plant that was working on defence orders for Canada set about to wreck the machinery of that plant, that could easily be sabotage under this section.

Hon. Mr. ROEBUCK: Providing it was engaged on military work.

The CHAIRMAN: That is right.

Mr. MACINNES: Well, what do they mean, the safety, security or defence of Canada?

The CHAIRMAN: Well, there might be American troops lawfully here in Canada, perhaps in the Northwest Territories, doing exercises, and some person for a purpose prejudicial to the safety, security or defence of Canada might criticize these forces for being on Canadian soil. But there is nothing there in connection with criticism.

Mr. MACINNES: It says the safety or security, and that could be interpreted—

The CHAIRMAN: No; you have got to do a prohibited act.

Mr. MACINNES: What is a prohibited act?

The CHAIRMAN: It is defined.

Hon. Mr. WOOD: We do not have to be at actual war; we can anticipate war, as we are now doing.

Mr. MACINNES: Well Senator, why has this section been put into the proposed code? What is the reason for it?

Hon. Mr. WOOD: For the reason that we can anticipate war at any time. We might go for two or three years, or we might go ten or twenty years, without having a war, but we still have to be on guard.

Mr. MACINNES: Is it not true that we had no need for such a section during the Korean war or in any previous wars?

Hon. Mr. WOOD: But the wars of today are entirely different from what they were forty, fifty or a hundred years ago. Today we have scientific research and development going on all the time; we don't want our enemies, or even neutral countries, to find out about them. If you or your union abuses that provision, then you come under this act.

Mr. MACINNES: We fail to see the need for this section at this time.

Hon. Mr. WOOD: The reason is that we are still in a cold war; indeed, we have wars in the world now.

Mr. MACINNES: But, as I say, we did not need it during the last war.

The CHAIRMAN: The witness has given his reasons, and whether we accept them or not, I think we should pass on to something else.

Hon. Mr. WOOD: But Mr. Chairman, we have our own views.

The CHAIRMAN: And no one is taking them from you.

Hon. Mr. KINLEY: The witness has said this is a new provision.

The CHAIRMAN: It is not new, though it is newer than a lot of the other sections in the code.

Hon. Mr. WOOD: Why should it not be put in, with changing world conditions today?

Hon. Mr. HAIG: Mr. Chairman, I suggest that we should not discuss these provisions now, but should hear the representations by the delegates.

The CHAIRMAN: Yes.

Hon. Mr. REID: Is Division 123 of the Canadian Brotherhood affiliated with the Canadian Congress of Labour?

Mr. MACINNES: Yes.

Hon. Mr. REID: Then why do you differ in your views with those presented in the latest journal by the Canadian Congress of Labour? I ask that question because there are so many letters coming from organizations such as yours which express views contrary to the voice of labour.

Mr. MACINNES: I will answer that, Senator. We are not opposing the brief of the C.C.L., but we say they did not go far enough. They are not defending the rights of the workers as they should. We say they should be defending us in a proper manner, and they are not doing so.

Hon. Mr. REID: That is a matter of opinion; you can argue that with them.

The CHAIRMAN: Having expressed those opinions, it does not do any good to argue the point.

Hon. Mr. ROEBUCK: The witness has a perfect right to express his opinions.

Mr. MACINNES: Thank you.

Hon. Mr. ROEBUCK: And your union is entitled to express its own opinions quite apart from the opinions of anybody else.

Mr. MACINNES: We received a letter from the C.C.L. requesting us to communicate directly on these serious issues with the honourable members.

Hon. Mr. WOOD: And you have a perfect right to do that.

Hon. Mr. ROEBUCK: And you are ready to allow us to have our views?

Mr. MACINNES: Quite true.

Hon. Mr. ROEBUCK: This is a democratic country.

Hon. Mr. WOOD: We are not here to disagree with you, but to get information.

Hon. Mr. VIEN: Has your union in the past, to your knowledge, committed acts which are prohibited under that section?

Mr. MACINNES: To my knowledge it could be interpreted that way. What I am saying now could be interpreted as criticizing the United States forces on Canadian soil, which I am criticizing them.

Hon. Mr. VIEN: But we have told you that the section is not capable of that construction. Taking the construction which the committee has put on that clause, as explained by the Chairman, why would you object to the Criminal Code containing a section which prohibits and provides a punishment for the commission of any such acts.

Mr. MACINNES: Because, your honour, as I have said before, in my opinion this section of the Criminal Code, section 52, could definitely be used against people who criticize the policy of our own government or a foreign government on Canadian soil.

Hon. Mr. VIEN: But we told you you should forget about that interpretation.

Mr. MACINNES: I can't forget it.

Hon. Mr. VIEN: You should forget it, because your interpretation is wrong.

Mr. MACINNES: I can't forget it.

Hon. Mr. VIEN: We have said that we do not agree that the section is capable of such an interpretation. Now, if the section is not capable of such a construction, and you must take the definition of the act as stated in subsection 2, would you be in favour of permitting any labour organization to commit these acts and to go unpunished?

Mr. MACINNES: I will answer it in this way. Paragraph (*a*) of subsection 2 reads:

> Impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing.

If I agreed with that, I would be agreeing to the taking away of our right to strike. I am opposed to the whole section. Not only does it limit free speech, but it limits the right to strike.

Hon. Mr. VIEN: You contend and submit that we should allow these acts to be committed freely and go unpunished.

Mr. MACINNES: All I am asking is that the old section of the code be restored. That provision was sufficient in the past, and we believe it will be sufficient in the future.

Hon. Mr. VIEN: That is not a candid reply to my question which was very clear.

Mr. MACINNES: I think it is; I can't make any other answer.

Hon. Mr. VIEN: Thank you, Mr. Chairman; I am through.

Mr. WRIGHT: May I interject momentarily, Mr. Chairman.

I am general counsel for the Canadian Brotherhood of Railway Employees and other Transport Workers—commonly called the C.B. of R.E.—which has upwards of 300 divisions across Canada, and collects dues from approximately 42,000 railway and other transport employees. The National Vice-President of the organization, Mr. H. L. Robinson, is here this evening, and I have been authorized and instructed by Mr. Harry Chapel, who is the National President of C.B. of R.E., to say that Mr. MacInnes represents this evening either himself alone or, at the very best, Division 123 of the C.B. of R.E.

Mr. MACINNES: On a point of order—I have not implied anything else.

Mr. WRIGHT: The position of the Canadian Railway Employees and other Transport Workers is that as expressed this afternoon by the Canadian Congress of Labour.

Mr. MACINNES: May I answer the remarks just made?

The CHAIRMAN: I don't think that is necessary, because I understood you to tell us you were representing Division 123.

Mr. MACINNES: Yes.

The CHAIRMAN: We understand that.

Hon. Mr. MCKEEN: Mr. Chairman, I would like a definition of the term "McCarthyism" used on the last page of the brief.

Mr. MACINNES: I feel that these sections are definitely infringements on our basic democratic Canadian rights that we have enjoyed in the past.

Hon. Mr. MCKEEN: But you used the term "McCarthyism".

Mr. MACINNES: I used that term because a reactionary government, or a government that had evil intentions, could use these provisions not only against our organization but against honourable senators here tonight.

Mr. MACINNES: These sections could be used not only against our own organization but also against the honourable senators here tonight.

Hon. Mr. MCKEEN: You have not given us a definition of McCarthyism.

Mr. MACINNES: A definition, I think, is when the rights to fundamental democracy, free speech and criticism of governments is taken away from the people.

Hon. Mr. WOOD: McCarthy does not do that.

The CHAIRMAN: Do not let us argue on this.

If there are no other questions to ask, I will thank Mr. MacInnes. We have your brief and when we are considering these questions we will remember what you have told us.

Now, we have two other people who are here tonight representing the International Union of Mine, Mill and Smelter Workers.

Mr. Thibault is going to give a little preliminary statement.

Mr. N. Thibault, Canadian Vice-President, the International Union of Mine, Mill and Smelter Workers, Sudbury, Ontario: Mr. Chairman and honourable senators, we too appreciate the opportunity of being here to make further representation on bill 7, further, that is, to the representation we made approximately a year ago to the House of Commons committee on bill 93. We are here today representing the Canadian section of the International Union of Mine, Mill and Smelter Workers.

Hon. Mr. WOOD: What union is that?

Mr. THIBAULT: The International Union of Mine, Mill and Smelter Workers, which was originally formed through its predecessor organization, the Western Federation of Miners in 1893.

Hon. Mr. WOOD: Is it AFL or what?

Mr. THIBAULT: Independent.

Hon. Mr. ROEBUCK: It is neither CIO nor AFL?

Mr. THIBAULT: At this time we are independent.

Hon. Mr. KINLEY: Who do you enrol in your membership?. What classes?

Mr. THIBAULT: The miners, smeltermen, refinery workers in the base metals and hardrock mining areas across Canada.

Hon. Mr. KINLEY: Do you enrol coal miners?

Mr. THIBAULT: No, that is a field of the United Mine Workers, John L. Lewis.

Hon. Mr. KINLEY: You enrol non-ferrous metal workers only?

Mr. THIBAULT: Non-ferrous metal mining workers only. Our organization at the present time consists of some 330,000 members in Canada, embracing the provinces of Quebec, Ontario, Saskatchewan, Alberta, British Columbia and the Northwest Territories and the Yukon.

I want to point out, Mr. Chairman, that we were not aware that the Senate committee was providing an opportunity to outside organizations to make representations to the committee.

Hon. Mr. ROEBUCK: We always do that. We never pass a bill on which we will not hear anybody.

Mr. THIBAULT: If I recollect correctly, when the committee of the House of Commons was hearing evidence on bill 93 there were public notices in the newspapers to the effect that outside organizations could appear. Therefore, we had considerable prior notice. I just point out that we were not aware of the hearings until last Thursday at which time I immediately called the Clerk of the Senate and found out that we could appear. The point I make is that we had a very short time to work on this brief of the Union and if some parts of it are not quite complete it is because of the haste in which we had to prepare this job.

Now, I am going to ask Mr. Robinson, our Canadian Research Director, to deal with the brief for you gentlemen.

Mr. H. L. Robinson, Canadian Research Director, The International Union of Mine, Mill and Smelter Workers, Toronto, Ontario: Mr. Chairman and honourable senators, I am naturally not going to try to read this brief, because it would be very far from brief and you would be here much later than I think you wish to be. I am therefore only going to touch on some of the highlights we make in our brief, with an endeavour not to say, unless in reply to questions, what has been said by other organizations, because a good deal of what has been said by other organizations we agree with, and particularly a good deal with what has been said by the two other trade union organizations that appeared here this afternoon and this evening.

I would like first of all to say a few words with regard to the famous sections 52, 365 and 372, and I would like to deal with section 52 and 372 together, because the saving clauses to those sections are identical.

Before I go on to say anything about that, I would like to mention the amendment which was made to section 52 (1) (*a*) where the language formerly read "safety or interests of Canada" and now reads "safety, security or defence of Canada". As far as we are concerned that is an improvement and I think it is fair to say that that improvement was brought about more by Senator Roebuck, who is here this evening, than any other person. I recall very well reading the Senate Debates when Senator Roebuck got up and said that, in proposing a saving clause to this section, that he was in splendid isolation and we thought that was a poor position for Senator Roebuck to be in and certainly it was a poor position for labour to be in, that they only had one person in the Senate—

Hon. Mr. WOOD: We do not all agree with that. He made his own speech. Others may have had some other ideas.

Mr. ROBINSON: When Senator Roebuck said that we would hear more about this section or I am no prophet, I think you will realize that his prophecy was not only correct, and I go on to say that it rendered a signal service to organized labour in Canada.

As regards the saving clause to these sections, I would like to put it this way in reply to a question I think was not entirely answered this afternoon. The question was why should anybody be exempt from these sections? The implication was that if you committed sabotage but happened to be a member of organized labour you would be exempt from these sections. I think that the saving clause has a different effect than that. I think the correct way to look at it is that it defines sabotage and mischief in such a way that certain actions on the part of organized labour do not constitute sabotage or mischief, and we think that is correct, that they should not constitute sabotage or mischief. The question therefore is whether these saving clauses accomplish the purposes which they are intended to accomplish or which we think they are intended to accomplish and which they should accomplish. Our opinion is that in respect to sections 52 and 372 they accomplish that purpose only partly and very inadequately.

The first thing to note is this, that the only thing that is exempted is a stoppage of work. Each clause or subclause, (*a*), (*b*) and (*c*), says "He stops work"; and from that I think it is clear that if he does anything else other than stopping work, particularly if he slows down his work, then he is not exempt, and we think that is a very serious shortcoming. In fact we go further than that. In so far as employees have to work at a machine the speed of which they do not control they are controlled by their employer. It could be argued that if an employee is unable to keep up with the speed which that machine dictates to him there is no exemption to provide for that and he is liable to the penalties provided in that section.

Hon. Mr. WOOD: He can sit down and not put anything in the machine, though. That is what you call "slow-down"?

Mr. ROBINSON: No, I do not call that "slow-down". What I am trying to point out is that the speed at which employees very frequently have to work is something over which they have no control, and in many cases is more than what the average worker should be required to work at, and we do not think that the Criminal Code should be the instrument of employers whereby they are able to drive employees to work at a pace at which they should not have to work.

Hon. Mr. HAIG: How can you do that under the section?

Mr. ROBINSON: The point I am trying to make is that the only exemption that is provided to these saving clauses is stoppage of work. The employee either works or he stops work, and there is nothing in between that which he is allowed to do without coming under penalties.

Hon. Mr. WOOD: A machine goes a certain pace, and a man does not put a piece of, say, a gear in the machine, but just sits back and doesn't put that in: that is slowing down, is it not?

Mr. ROBINSON: Well, Mr. Chairman—

Hon. Mr. WOOD: Well, now, be honest about it. The machine can still go on. He does not have to put the gear in there?

Mr. ROBINSON: Honourable senator, I suggest to you that you go into some of these plants where workers have to work,—

Hon. Mr. WOOD: I have been in a lot of them.

Mr. ROBINSON: —and see. They are not always able to sit down and let the machine take its course, without damage resulting. That obviously is not the case. If you are assembling radios or cars or airplane engines, and if the belt-line moves and the worker cannot keep up with it, there is damage there, and he gets charged under this section, either with mischief or sabotage. We think that a saving clause, if it is to be effective, should allow a concerted slow-down where there is a labour dispute; that that is just as legitimate as a strike.

Hon. Mr. WOOD: Then you are admitting there is a way of slowing down.

Mr. ROBINSON: Of course.

Hon. Mr. WOOD: That is the only point I am trying to make.

Mr. ROBINSON: If the saving clause is to accomplish the purpose of allowing legitimate, legal action on the part of organized labour it should exempt more than a stoppage of work, but a slow-down, which is just as legitimate as a strike, at a stage in the negotiations following conciliation.

Hon. Mr. WOOD: In other words, just a form of blackmail.

Mr. ROBINSON: I think you have to admit that if a strike is legal a slow-down is legal.

Hon. Mr. HAIG: We do not admit that at all. We admit a strike is legal, because then you are taking chances.

The CHAIRMAN: Under certain conditions.

Hon. Mr. KINLEY: Under certain conditions.

Mr. ROBINSON: I am trying to point out that, in any conditions under which a strike is legal, I do not know why a slow-down is illegal. We are not asking for the right to slow down under circumstances where strikes are illegal. That is not the point at all. The point is, if a strike is legal under certain circumstances, by that same token a slow-down is illegal.

Hon. Mr. WOOD: No. You are taking money under false pretences when you do that.

Hon. Mr. HOWARD: May I ask a question, Mr. Chairman?

The CHAIRMAN: Yes.

Hon. Mr. HOWARD: The man who has the floor is criticizing the saving clause under 52. We just had a brief submitted in which it was said: "The changes made in the House of Commons, we feel, are of very little value with regard to this section, and we cannot help feeling that so much dust has just been thrown in our eyes as far as the so-called saving clause and so-called improvements are concerned." Would you suggest taking the saving clause out?

Mr. ROBINSON: No, sir. I suggest it be improved, because I do not think it accomplished the purpose it is intended to accomplish.

Mr. MACINNES: You said section 52 you were talking about. Where does it say that?

The CHAIRMAN: 365.

Hon. Mr. ROEBUCK: No, you are talking about 52, are you not?

Mr. MACINNES: It is not in the same section.

Hon. Mr. KINLEY: They are both the same clause.

Mr. ROBINSON: We are not commenting on briefs that have been previously submitted. I think I have made that point clear with respect to this saving clause.

Hon. Mr. HOWARD: You are in favour of leaving the clause in?

Mr. ROBINSON: I am in favour of improving it.

Hon. Mr. WOOD: How would you improve it? By changing these words, "He stops work" to cover other kinds of legal actions?

Hon. Mr. ROEBUCK: What other actions besides slow-down?

Mr. ROBINSON: Slow-down particularly.

Hon. Mr. ROEBUCK: Any other action?

Mr. ROBINSON: I cannot think of any right now.

Hon. Mr. WOOD: You agree they should slow down?

Mr. ROBINSON: I don't say they should slow down. I say if they are allowed to strike they should be allowed to slow down.

Hon. Mr. WOOD: I can't agree with that. You don't get any pay for strikes.

The CHAIRMAN: Let us get first things first. We all think we know what the section means. The witness is making some statements in connection with it that we may not agree with, but he is speaking his view. Let us have his view and deal with it afterwards. But we will never get anywhere if we keep interrupting. So let him continue.

Hon. Mr. HAIG: The only thing is, some of us do not like to sit here and hear statements made we do not agree with at all.

The CHAIRMAN: I don't like it myself.

Hon. Mr. HAIG: And I do not want to have the papers tomorrow morning or next morning say that a man from the Mine, Mill and Smelter Workers got up and made statements and Senator Haig sat there and "didn't peep". Tim Buck tried to do that here, and I shut him up.

The CHAIRMAN: Section 52 does not say anything about the right to strike. That right exists independently of anything that is in section 52. All that section 52 says is that under certain circumstances it is not a prohibited act. If these people, for instance, stop work at their own plant and join a picket line at another plant, it is not a prohibited act by reason of that only. It says nothing about a right to strike. It does not deny the right to strike. It has nothing to do with it at all.

Hon. Mr. WOOD: Mr. Chairman, I think that Senator Haig is right. We have listened to all the other briefs and this is the last one. I think it is probably just as well if we ask the odd question as we go along. I would like to clarify certain situations, and I think these chaps would too. I am not opposed to unions. I think they are all right. There are probably some abuses, and that is what we are endeavouring to find out.

The CHAIRMAN: Is there anything else now in relation to section 52? Will you carry on them, Mr. Robinson. If any honourable senator feels he wants to challenge a statement, he may do so as we proceed.

Mr. ROBINSON: That is the first point. I shall skip over the other points which are perhaps not too important. I think paragraphs (*a*) and (*b*) clearly do not cover sympathy strikes.

Hon. Mr. ROEBUCK: Why? A person stops work in the case of a sympathy strike.

Mr. ROBINSON: I would be very glad to be told that I am wrong, but as I read the section it sets forth in paragraph (*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." The point about a sympathy strike is that there is not an agreement between the employee and his bargaining agent and the employer. It is not in relation to a matter in dispute between the employee and his employer.

Hon. Mr. KINLEY: Read paragraph (c).

The CHAIRMAN: Yes.

Mr. ROBINSON: I think the same thing applies to paragraph (c). I may be wrong here. It reads: "for their own reasonable protection". The question arises whether a sympathy strike would be construed as a reasonable protection in certain cases.

Hon. Mr. ROEBUCK: As workmen and employees. It does not say workmen and employees of the employer.

Hon. Mr. WOOD: No, it could be a railway strike and the lumber people could go on strike with them. What would be the sense in that?

Hon. Mr. REID: What about a jurisdictional strike where men go out on strike in sympathy with other workers in another jurisdiction?

Mr. ROBINSON: I think the matter lies in the interpretation that will be given the words "their own reasonable protection". If a sympathy strike were included under these words, then the section is good as it stands.

The CHAIRMAN: The protection provides "for their own reasonable protection as workmen or employees."

Mr. ROBINSON: I realize that.

The CHAIRMAN: Well, what other words can you put in there?

Mr. ROBINSON: As I say, we are very happy to hear this. We are here to raise questions, not only to make statements, some of which may be wrong.

Hon. Mr. ROEBUCK: There is a doubt here all right, but I thought it was wide enough to cover a sympathy strike.

Hon. Mr. CONNOLLY: I should like to make a comment at this time which I think applies to the point the witness is now making as well as to a point he previously made. He seems to be forgetting that these sections that we are now discussing must ultimately be interpreted by the courts. The points he is making I think are points upon which the courts will exercise reasonable discretion. I think on this particular point you could rely on the fact that the court would take a look at subsection (3)(c) and determine what that language means and apply it to the case before it. I think the same kind of comment applies to what the witness said before, mainly that you have to rely on the discretion of the judge who looks at this section. You cannot write legislation that is going to cover every conceivable point, as this witness seems to argue.

Mr. ROBINSON: I appreciate that, honourable senator, but I think on questions of such importance as this the legislation should be written clearly enough so that we do not have to depend on interpretations by the courts. After all, not all judges are sympathetic to strikes or to labour, and there are varying degrees, let us say, of understanding labour.

Hon. Mr. WOOD: You still have the law.

Mr. ROBINSON: Now, we are getting back to the point—"You still have the law." That is why we are here. We want to raise these points and not wait until we are before a court to wait for them to interpret the law.

The CHAIRMAN: No matter what we may say as to our views of the section, if the section is going to be challenged at all some person in authority some day will have to interpret it as judge, and if he is wrong then the matter can be referred to the appeal court.

Hon. Mr. HOWARD: Hear, hear.

The CHAIRMAN: That is the best protection we can give. I do not think we can give any better protection by attempting to meet some of the problems you have been raising here.

Hon. Mr. HOWARD: Next.

Mr. ROBINSON: Mr. Chairman, we are asking your opinion as to what the section means, and I do not think it is entirely satisfactory to be told that a judge might take a view that will agree with your view. We want to persuade you to rewrite the section in a way that we think is clear. We want to persuade you that what we believe is a correct and desirable thing.

Hon. Mr. WOOD: I think that is fair enough.

Hon. Mr. HUGESSEN: May I give the witness what I think is a proper interpretation of section 52?

The CHAIRMAN: Certainly.

Hon. Mr. HUGESSEN: First of all, we must bear in mind that the offence is a prohibited act for a purpose prejudicial to the safety, security or defence of Canada. Now, if a man goes out on a sympathy strike his purpose is not prejudicial to the safety, security or defence of Canada; his purpose is to help the workers in the other industries whom he is trying to assist. In other words, you cannot say that just because the worker goes out on a sympathy strike that his purpose is prejudicial to the safety, security and defence of Canada. His purpose is to help the other strikers with whom he is in sympathy.

Mr. ROBINSON: I see that. I think it is a very good point. Let us assume that a sympathy strike does occur and the strikers claim that their purpose was to go out on sympathy, but the Attorney-General or some other person comes along and says "We don't accept the purpose you state. We think you had another purpose." What happens then?

Hon. Mr. CONNOLLY: Then they will have to prove it. The onus will be on the complainant.

Hon. Mr. HUGESSEN: Obviously the primary purpose of a sympathy strike is to help the people already on strike.

Mr. ROBINSON: I agree, but if you turn to section 372 we find there is no qualification or limitation with regard to the purpose of what the act may be. So while your explanation may be of assistance in relation to the point we are making in so far as section 52 is concerned, I do not think it covers the case in so far as section 372 is concerned.

Hon. Mr. CONNOLLY: What do you want to add to section 372?

Mr. ROBINSON: I am not a lawyer, and perhaps Mr. Wright could be of assistance here, but I think a saving clause to this effect would cover the situation "No person commits mischief in the meaning of this section by reason of anything arising out of or related to a labour dispute."

Some Hon. SENATORS: Oh, oh.

Hon. Mr. WOOD: Why do you have the section in there at all then?

Hon. Mr. BOUFFARD: Even if you act unlawfully?

Mr. ROBINSON: I think you have to accept the view which we put forward to you that labour acts responsibly. Certainly if you examine the history of our union you will be hard put to find any irresponsible action by the members of our union.

The CHAIRMAN: I do not know whether you have considered the effect of subsection (2) in section 371, and there you have some protection because it provides that "No person shall be convicted of an offence under sections 372 to 387 where he proves that he acted with legal justification or excuse and with colour of right". That is pretty broadly explained there.

Hon. Mr. HOWARD: Labour is getting a pretty fair deal.

The CHAIRMAN: I say that is a very broad clause.

Hon. Mr. HUGESSEN: Would that cover a sympathetic strike?

Mr. ROBINSON: I think the question turns on legal justification.

The CHAIRMAN: Or excuse.

Mr. ROBINSON: I am not sure if I like that word "excuse". If it says "right", is that what is meant by colour of right?

Hon. Mr. ROEBUCK: That means any shadow of right.

The CHAIRMAN: Any shadow of right that you think you have.

Mr. ROBINSON: I see.

The CHAIRMAN: I do not know how you can write it any broader. What is the next point, Mr. Robinson?

Mr. ROBINSON: May we take it back, then, that in your view the sections as they now stand would allow sympathy strikes—they would not require a man to cross a picket line even though he was not directly involved in the strike as a result of that word "purpose" in section 52, and this subsection 371? Do you think we can give our people that assurance?

Hon. Mr. ROEBUCK: No, we could not possibly do that, Mr. Robinson.

Hon. Mr. REID: I have known a case where there was a jurisdictional strike, and both sides were unionists, and both were calling each other scabs. Why should they do that?

Mr. ROBINSON: Do what, sir?

Hon. Mr. REID: In the case of a union man, if he did not joint the other union. It is surely his right to join any union he wants to. Can you say he is wrong in crossing that picket line?

Mr. ROBINSON: I think the questions of joining a picket line and joining separate unions are two separate subjects. We do not question the right of any man to join the union he wants.

Hon. Mr. WOOD: In the case of steamships, there are two unions, and the union members go from one to the other.

Mr. ROBINSON: Well, as far as the right to join a bona fide union is concerned, they should have that right.

The CHAIRMAN: Do not let us go too far afield. The sections we have been discussing have nothing whatever to do with joining a union.

Mr. ROBINSON: That is right.

The CHAIRMAN: And how they have anything to do with crossing a picket line, I am rather puzzled too.

Mr. ROBINSON: Well, the question of crossing a picket line—take subsection 7, page 126—

Hon. Mr. HAIG: Mr. Chairman, Mr. Robinson is talking about a lot of things that are not in the bill. If he has other things to add, let him draft them in, and if he can get some senator to move them we will find out where we stand.

The CHAIRMAN: The picket line section presents no difficulty. For instance, the employees at plant ABC, under contract, working on a public utility or something of that nature, may join the picket line at plant XYZ, 50 miles away where the employees are on strike. Now, what this section says is that if they do that they do not commit mischief within the meaning of the section by reason only that they do that.

Mr. ROBINSON: Quite frankly, that is an interpretation which I have difficulty in accepting. I would be glad to be persuaded. For this reason, that the section previously says—it was under subsection 7, I believe, "By reason only that"—and then there were those words that he stops work as a result of the situation described in the section previously.

The CHAIRMAN: Subsection 7 was added in the committee in the House of Commons, and when it was added the minister was asked if this covered the situation of people going from a plant where there is no strike, to work on a picket line at another plant where there was a strike, and he said that was the purpose that was intended to be covered by subsection 7.

Mr. ROBINSON: That is right, but it previously read—

The CHAIRMAN: Well, there was not a subsection 7 before, was there?

Mr. ROBINSON: Yes. As I understand, the way the section was before, when a man had stopped work he was right to picket.

The CHAIRMAN: On his own plant.

Mr. ROBINSON: That is right.

The CHAIRMAN: And this permits him to go to another plant.

Mr. ROBINSON: Right. Those were the words in there previously. My understanding of the deletion of those words means that another person who has not stopped work under the circumstances set out in the previous subsection, and in fact, who has not stopped work at all is allowed to join a picket line, but I do not think we can carry it further to the point where it says that a man not involved in a dispute is allowed to stop in order to go and join that picket line. I don't see how you can construe the section in that way.

Hon. Mr. HUGESSEN: You admit, however, that those words out of subsection 7 are more favourable to you?

Mr. ROBINSON: Definitely; but there was an interpretation placed on it which made it go very much beyond what I think its reasonable meaning is, and to me, in reading that part of the reported debates, I could not see how the subsection could be interpreted in that way. In fact, I would go further, it never occurred to me that anybody had seriously suggested that we would be able to persuade parliament to write a section which would authorize that. What is authorized now is that you can join a picket line formed by other people on strike that cannot stop work in order to join that.

Hon. Mr. WOOD: But you hire people just as a steady job to go from one hotel to another or from one plant to another, just to carry signs.

Mr. ROBINSON: Well, I think that has never occurred in our union, to my knowledge.

Hon. Mr. WOOD: Well, it has to my knowledge.

Mr. ROBINSON: To your knowledge of the history of our union—the Mine and Smelters union?

Hon. Mr. WOOD: I am not talking about your union, I am talking about unions.

Mr. ROBINSON: As far as our union is concerned when there are pickets of the workers involved in the strike, those who join that picket are in sympathy.

Hon. Mr. WOOD: Why would you need somebody else to join your picket line?

Mr. ROBINSON: As I said, I don't think—

Hon. Mr. WOOD: You have not answered my question. Why?

Mr. ROBINSON: I don't quite understand your question.

Hon. Mr. WOOD: Well, the question is this: A sympathetic union from some plant in some other section in the country can join your picket line, but why would they need to join it?

Mr. ROBINSON: Why shouldn't they?

Hon. Mr. WOOD: I can understand going on strike, but why the picket line?

Mr. ROBINSON: Why shouldn't they? I think they often do join it—they join it to show their solidarity with those workers who are on strike, and there is nothing wrong about that.

The CHAIRMAN: Gentlemen, this is going beyond anything that the code contains about joining the picket lines. Let us get back to the section of the code. What is your next point, Mr. Robinson?

Hon. Mr. HAIG: Yes, let him get back to the section. He certainly has not influenced me on it, because he has not touched it.

Mr. ROBINSON: Mr. Chairman, I think we have to understand why we are here. The Chairman stated indirectly why we are here. We are not saying—in fact it is very obvious—that prior to the introduction of these saving clauses,

the sections nowhere specifically mentioned labour, labour's rights, or action taken by labour; but I think you will all agree that a reasonable construction of what was in those sections implied that they could be applied to labour, and action taken by labour.

The CHAIRMAN: They could be applied to anybody.

Mr. ROBINSON: That is right; but particularly it seemed to us very clear that they could be applied in such a harsh manner that the rights of labour which are well established would be infringed upon.

The CHAIRMAN: Now there you have made a positive statement. Let us take section 372 before the saving clause was added: you point out to me how any rights which labour has acquired and are recognized by labour could be infringed upon, as against the rights of any other person.

Mr. ROBINSON: Let me say that I am quite willing to reply to that question, but I wonder if we are not discussing a theoretical point; the fact is that the saving clause is now in. Should we not consider it with the saving clause in?

Hon. Mr. HAIG: But it might go out.

Mr. ROBINSON: Then I am glad to have the opportunity of pointing out why it should not go out.

Hon. Mr. HAIG: The Chairman has asked a fair question.

Mr. ROBINSON: Very well, then I shall answer it. It is well trodden soil, therefore it is not very difficult to answer. Section 372 reads:

(1) Everyone commits mischief who wilfully

(*a*) destroys or damages property

(*b*) renders property dangerous,

useless, inoperative or ineffective.

Let us take just that part. When a group of workers go on strike, what do they do? In their normal activity they work, let us say, in a smelter, where there are machines smelting ore and there is smoke coming out of the smoke stacks. When the men go on strike they render that property inoperative and ineffective; no smoke comes out of the smoke stack and no product comes out of that smelter. When the workers go on strike they do so for the specific and clear purpose of accomplishing that result; therefore, they do it wilfully. Of course they will the consequences of their act; they don't go on strike for the pleasure of going on strike, but in order to compel the owner of that smelter, because of the losses that occur as a result of the strike, to agree to whatever demands are at issue.

Hon. Mr. ROEBUCK: And they would be liable to five years in prison.

Mr. ROBINSON: Of course.

Hon. Mr. HOWARD: That does not answer the Chairman's question.

Mr. ROBINSON: I think it answers it as clearly as I can.

Hon. Mr. KINLEY: To render it inoperative means to destroy the machines so they cannot be operated.

Mr. ROBINSON: No, it does not. "Inoperative" means they do not operate them.

Some Hon. SENATORS: No, no.

Hon. Mr. KINLEY: It means that you make the machines so they cannot be operated.

Mr. ROBINSON: I think it means they become temporarily idle.

Hon. Mr. HAIG: Let me use another illustration apart from the smelter worker; take a man who is operating a planing mill, and who goes on strike. Can he be prosecuted under that section?

Mr. ROBINSON: In so far as he renders the machine that belongs to the employer inoperative, he can be prosecuted.

Hon. Mr. KINLEY: If he damages the machine.

Mr. ROBINSON: "Inoperative" does not mean damage; it means temporarily inoperative—it is not then operating.

Hon. Mr. GOUIN: But you have the saving clause.

Hon. Mr. REID: Labour has a saving clause against the ordinary citizen who does not belong to a union.

Mr. ROBINSON: No, sir.

Hon. Mr. REID: If the ordinary citizen does such a thing he can be prosecuted.

Hon. Mr. ROEBUCK: I suggest to you that you look at paragraph (c).

The CHAIRMAN: Just remember, gentlemen, the witness can only deal with one person at a time.

Mr. ROBINSON: Yes, Mr. Chairman; I have only two ears and one voice.

Hon. Mr. HAIG: But we are not going to let you brush off the answer. Answer my question based on the illustration of the planing mill.

Mr. ROBINSON: Mr. Chairman, may I please interject that there is no question of murder involved here. We are asking for the legally established rights of labour.

The CHAIRMAN: That is just a slang expression, and you know it.

Mr. ROBINSON: But I don't like the implication.

Hon. Mr. HAIG: Coming back to my question about the planing mill worker who walks off the job, tell me how he can be prosecuted.

Mr. ROBINSON: Yes.

The CHAIRMAN: He stops operating, but he does not render it inoperative.

Mr. ROBINSON: Mr. Chairman, I think the question was addressed to me.

Hon. Mr. KINLEY: Then answer it.

Mr. ROBINSON: I have given an answer which is not entirely acceptable to paragraph (b) and I come now to paragraph (c) which reads:

> "obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property"

May I construe that in the light of your illustration about the planing mill. Let us say that you, Senator Haig, are my employer, and I work for you; my going on strike clearly interferes with your lawful enjoyment of the property.

Hon. Mr. HAIG: No, you have not interfered with it.

Hon. Mr. HUGESSEN: Yes, he has.

Hon. Mr. HAIG: No.

Hon. Mr. HUGESSEN: It is absolutely clear.

Mr. ROBINSON: Let me ask you this question, why do you own that planing mill, and why do you employ me to operate it?

Hon. Mr. HAIG: Because I may think you are a good operator.

Mr. ROBINSON: Because I am a good operator and you are able to make a profit on joining together your planing mill, which belongs to you, and my labour which I sell to you.

Hon. Mr. KINLEY: But there may be a loss as a result of the operation.

Mr. ROBINSON: True, there may be a loss. In that case we are not talking about enjoyment, but rather "disenjoyment". When the senator who owns the planing mill gets a profit from it, he enjoys that property in a legal

manner. After all, what is the use of owning property except for the enjoyment from it by making a profit? If by going out on strike I prevent the senator who owns the planing mill from securing a profit—

Hon. Mr. KINLEY: But he may operate it himself.

Hon. Mr. WOOD: Or get somebody else to operate it.

Hon. Mr. REID: You are protected under subsection 6.

Hon. Mr. HUGESSEN: That is the whole point.

Hon. Mr. HAIG: In 1919 the Winnipeg fire brigade went out on strike, and volunteers walked in and took the brigade over—

Mr. ROBINSON: I am sorry, sir, I was not able to follow you.

The CHAIRMAN: Gentlemen, let us have some order. When Senator Reid and Senator Hugessen are engaged in a cross fire while the witness is attempting to answer some other question, we cannot expect to have a clear record of the proceedings. Witness, will you proceed with your explanation, if you have not dealt with it sufficiently for your own purposes.

Mr. ROBINSON: Mr. Chairman, I think my own purposes would be accomplished if I managed to persuade Senator Haig that in the absence of the saving clause which was referred to by another senator, that this section could be construed in such a way as to prosecute men who went on strike.

The CHAIRMAN: We have that point.

Mr. ROBINSON: Is that clear?

The CHAIRMAN: The point is clear.

Hon. Mr. HAIG: But that is all that is clear.

Mr. ROBINSON: You don't agree with it.

Hon. Mr. HAIG: Certainly not. If the point is clear, I need not repeat myself. However, I should like to mention that when I was talking about paragraph (*b*) I used the word "inoperative". Now it seems to me that if the word "inoperative" has the meaning which was suggested, that is to say you could not operate it any more because it was damaged, then clearly it would come under paragraph (*a*). Therefore, I think that the fact that we have damages in (*a*) sets off that type of action from what we have in paragraph (*b*), which is "inoperative" and I do not think the two paragraphs are co-extensive, they do not cover the same ground. Damages is one thing and rendering inoperative is not damage, it is rendering temporarily inactive.

Hon. Mr. KINLEY: You might take away a little part and you might not damage it.

Mr. ROBINSON: If you took a little part out you are damaging it.

The CHAIRMAN: Gentlemen, we are getting right back into the same groove we were in a few minutes ago. There is a limit to repetition. What is the next point, Mr. Robinson?

Mr. ROBINSON: I do not think I will cover the question of picketing again. There is another point that perhaps I would like to make before going on, and that is in relation to that paragraph (*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".

The CHAIRMAN: That is in subsection 6.

Mr. ROBINSON: Yes, on page 126. Now, the question I ask myself is what is the meaning of a bargaining agent acting on his behalf and specifically, is it restricted to a duly certified trade union?

Hon. Mr. ROEBUCK: I do not think so. It does not say "certified bargaining agent".

The CHAIRMAN: Whoever is in fact the bargaining agent.

Mr. ROBINSON: Under provincial law, certainly under the Ontario Labour Relations Act, it is very difficult to be the bargaining agent unless you are certified, and if you are decertified you are no longer the bargaining agent.

Hon. Mr. WOOD: Who decertifies you?

Mr. ROBINSON: The Ontario Labour Relations Board. Now the point is this, that if the provinces who, after all, have to enforce these enactments, interpret those words as meaning a bargaining agent certified by our provincial labour board, and I think they could very well do that, then we have the fact that this section stands behind any certification or decertification by the Labour Relations Board of a particular province.

I do not want to cast any aspersions on Labour Relations Boards, but I do want to say this, that the Labour Relations Board of the province of Quebec has arbitrarily decertified fifty-five unions who are no longer bargaining agents under the provincial law, and as I read this section it seems to me possible that any union arbitrarily decertified by the Quebec Labour Relations Board and who continues to bargain, and in the process of bargaining takes action which could be described as mischievous or sabotage, they would be liable to this prosecution provided there. You all know that the Catholic Teachers' Federation in the province of Quebec was arbitrarily decertified and until the Supreme Court of Canada overruled that decertification they were no longer the bargaining agent.

Hon. Mr. HOWARD: And they still are not?

Mr. ROBINSON: And they still are not, because Premier Duplessis passed bill 20 which retroactively wipes out—

The CHAIRMAN: I would say that we are not here to discuss the validity of a Quebec law, and there is nothing in this section dealing with this. All it says is, whoever is the bargaining agent, whoever can be established as the bargaining agent at the time.

Hon. Mr. WOOD: He might be elected by a group of people.

Mr. ROBINSON: I cannot accept that there should be anything in a federal statute which has the possibility of interjecting itself in a manner unfavourable to labour into what a Labour Relations Board may or may not do.

Hon. Mr. WOOD: It is not "favourable to labour"—it says, "anyone".

Mr. ROBINSON: The point is, is there not a possibility of interpreting those words to mean a union certified by the provincial Labour Relations Board?

The CHAIRMAN: That is only one thing. It means more than that. It means more than a bargaining agent that is certified. In some provinces they have no procedure for certification, and then it is the bargaining agent established as a matter of contract.

Mr. ROBINSON: What I am trying to say is this, I am trying to point out the possibility that basing themselves on this paragraph, a provincial legislature could say for the purposes of paragraph so and so of the Criminal Code, a bargaining agent shall mean a union duly certified by our Labour Relations Board.

The CHAIRMAN: It means more than that.

Hon. Mr. GOUIN: A provincial legislature cannot interpret our Criminal Code; it is not the provincial administration which would decide, it would be the courts.

The CHAIRMAN: I think we have the point that Mr. Robinson is trying to make. We are not going to gain anything more by arguing whether it means one thing or the other. What is your next point, Mr. Robinson?

Mr. ROBINSON: May I say, sir, that I am not categorically saying those are the meanings of those words. I am raising a question as I think it is a very

important point and I hope you will consider the possible implications of that question before you finally take action. That is all I am saying. I do not say that that is the interpretation but the mere fact that it may be is what concerns us.

The CHAIRMAN: What is your next point?

Mr. ROBINSON: The next point relates to section 365 and the saving clause therein. It is at page 122. May I say with regard to the saving clauses of this section, that the order in which they are made in our brief I think are in the inverse order of importance and therefore I do not think it is useful, particularly in view of the time, to deal with them in that order. I will deal with them in the order in which I think it is more proper for the purposes here.

The first point I would like to make in connection with this section is the point that was made here this afternoon. Because of the way that section 365 has been changed as compared with section 499 of the present code, it applies to employees now whereas before it used to apply only to employers, and it introduces an element of criminality into labour relations which is not there under the present section and we are opposed to it. We think that is a bad thing. Let me say as far as the point that was made here about vital public services and whether the interruption of those services should not be considered a crime, whether under a breach of contract or not under a breach of contract, I think that a certain point of view—well, it should be somewhat different. If there are vital public services which the public depends on, then as we see it, it is the public's duty to see and make sure that the employees in those public services have what they deserve to have.

Hon. Mr. WOOD: How are the public going to do that? One group may make a decision but what about the rest of them? There may be a million people in Toronto who would have no say at all.

Mr. ROBINSON: I think my thought was well expressed, in a statement that was made by Sir Wilfrid Laurier. I would like to read it.

Hon. Mr. HAIG: I think you should consider adjournment, Mr. Chairman.

Mr. ROBINSON: I will be very brief, Mr. Chairman. In connection with the point that I make, rather than making it a crime for public utility employees to do certain things, when they are compelled to do so as a result of their vital needs, there is this remark by Sir Wilfrid Laurier, which I will read: "What is hateful", Sir Wilfrid said, "are men who, when they are asked for a loaf, give a stone." And I think you will find that no public service employee will ever go on strike except under those circumstances—that when he asks for a loaf, he is given a stone.

Hon. Mr. HAIG: They did in 1919.

The CHAIRMAN: What is the next point?

Mr. ROBINSON: The next point is with regard to the loophole which apparently exists in the present Act. The mere fact that this so-called loophole was only discovered after forty-eight years, and not in connection with a labour dispute among public employees, but merely in the routine of a revision of the Criminal Code, indicates to me that that loophole could hardly have been prejudicial to the public interest, and that in the section of the Criminal Code as it now stands, loophole and all, the public interest was well protected; and the mere fact that that loophole was not discovered for forty-eight years shows convincingly, to my way of thinking, that there is no case whatever for the very, very drastic change which is being made in this proposed section 365—no case whatever. If that loophole had been there for two years and it was found that there was some serious situation that required remedying, there might be a case, but the historical circumstances show in my opinion there is no case.

The third point I would like to make flows from that loophole. The loophole is being plugged in such a way as to include railway and public utility employees, whereas they were not covered in section 499. Is it not significant that this so-called loophole is being plugged precisely at the time when railway employees have met with a complete lack of success in their bargaining proposals for the renewal of their contract?

Hon. Mr. WOOD: I would not say that. I think they did not have so many unions forty years ago as there are now.

The CHAIRMAN: Just a minute. Let us test that, Mr. Robinson. You want to be fair?

Mr. ROBINSON: Yes.

The CHAIRMAN: This difficulty between the unions and the arbitration in connection with their demands, that is something of which the result has been announced just recently; is not that right?

Mr. ROBINSON: Yes.

The CHAIRMAN: Well, I see that 365, in the form in which (*d*) and (*e*) now occur in Bill 7, in exactly the same language, was in Bill 4, which came to us in the fall of 1952. So there could not have been any correlation between the drafting of that section and the recent refusal—

Mr. ROBINSON: I did not say that.

The CHAIRMAN: That is what I took you to say.

Hon. Mr. BOUFFARD: It is pretty close to it, if you did not say it.

Mr. ROBINSON: Let me say this. In 1950 there was a railway strike, and without going into the circumstances of that, the fact that this new thing was introduced in the revision which came shortly after the railroad strike is significant. And furthermore, even if that was not so, even if there was no relationship between its original introduction, the fact is that, if this bill is now passed, it will be on the statute books precisely at a time when the railway unions may be involved in difficulties, and may have that repressive legislation.

Hon. Mr. WOOD: We did not have a strike on the railways for forty years before that.

Hon. Mr. REID: If it is passed it will not be proclaimed law, I understand, until January 1955.

Mr. ROBINSON: Let us hope the railways will manage to settle their problem before that.

Hon. Mr. HUGESSEN: May I ask you a question about the railway strike in 1950. Is it not a fact that that railway strike in 1950 did not take place until all the provisions for adjustment and settlement had been gone through, and it was a perfectly legal strike? If that is so, then the railway strike of 1950 did not fall within this exception in the subsection.

The CHAIRMAN: That is right. It was a legal strike, and a legal strike gets the benefit of the saving clause in 365.

Hon. Mr. HUGESSEN: That is so, is it not?

Mr. ROBINSON: I believe it is so, yes.

Hon. Mr. HUGESSEN: Then, what you are telling me is that the railway men should now be allowed to strike without going through the formalities of arbitration.

Mr. ROBINSON: You know, some of these formalities take a great deal of time.

Hon. Mr. HUGESSEN: But do you not think that in a case as important as that of railway transportation throughout the country, they should wait till they go through with these formalities?

Mr. ROBINSON: I am not arguing they should have the right to strike under the circumstances. I am arguing that if they are goaded to strike before these procedures are completed they should not be subject to a five-year sentence.

The CHAIRMAN: Wait. Do not let us have wild statements.

Mr. ROBINSON: I am not making wild statements.

The CHAIRMAN: We are dealing with 365. Nobody is suggesting any course of action in connection with negotiations of the railway people, up to the present moment, to indicate that they have been "goaded" into anything. "Goaded" is an entirely improper word to use.

Mr. ROBINSON: Mr. Chairman, let me say that that word—

Hon. Mr. HAIG: Just a moment. I raised this point a few minutes ago, that I do not think the committee should allow this young man to make statements of this kind. I do not agree with them at all, and I hate to have to sit and listen to them, because I do not agree with them. In 1950 I was here—

The CHAIRMAN: So was I.

Hon. Mr. HAIG: I was here when they went on strike, and they would not let us come back, and legislation had to be passed by the government of this country, and then that government had an election, and I never noticed any criticism of them for what they did in regard to that strike. I do not like this young man to come here and make these statements and then go and say to his union "I made the senators take that. I threw it at them. I made them take these statements." He can't do that. From now on I am going to object to everything he says the minute he gets off his—

Mr. ROBINSON: Go ahead and do it.

Hon. Mr. HAIG: Let us have this nonsense stopped.

Hon. Mr. ROEBUCK: Let us be fair. This witness did not say that the railway men were goaded into the proposed strike in 1950. What he did say was, as I remember it, that "if" men were goaded into a strike—

Hon. Mr. HAIG: It is the same thing.

Hon. Mr. ROEBUCK: No, it is not the same thing at all. There is the possibility of men being goaded into a strike before they have run through the strike procedure. That is what he says.

The CHAIRMAN: No; the witness intended to convey a lot more than that. There has been nothing in the proceedings to date that would indicate any "goading" by anybody, and I do not think it is proper to make that kind of statement.

Hon. Mr. HAIG: He talked about goading. That is what he talked about.

Mr. ROBINSON: If you want me to describe the situation as it stands today—

The CHAIRMAN: We are not dealing with the railway strike at all, and it does not come under this.

Mr. ROBINSON: Then I am quite willing to drop the subject.

The CHAIRMAN: Let us get on to the next point now.

Mr. ROBINSON: The next is a point which I do not think has to be made at any length, for you are familiar with it. The provincial legislatures could enact labour laws whereby the saving clause could never apply, because all the steps provided by law could extend indefinitely. In fact, they could enact laws which could outlaw strikes, and they could do many other things of that kind. Behind all the possible changes to the present labour laws would stand the five-year penalty which is provided here. This penalty of five years represents a twenty-fold increase as compared to the penalty under section 499. On the one hand, under section 499, you have legislation which deals mainly with employers and their relation with municipalities. When they broke their

contracts they could only get three months in jail, but now you have a proposal which is directed against employees, and they are to be subject to a penalty of five years.

The CHAIRMAN: Mr. Robinson, just let us stop and analyze that for a moment. All this section does is to create an offence for wilful breach of contract if you do certain acts enumerated here. It must be remembered that you connot argue anything as to the penalty, because it is a maximum penalty.

Mr. ROBINSON: The penalty before was a maximum of only three months.

The CHAIRMAN: If people are going to break the law we have to provide penalties that will keep them from breaking it.

Mr. ROBINSON: I ask you to consider whether the subject matter to which this section may apply shows any history which requires such an increase in penalty.

Hon. Mr. HAIG: I do not know.

Mr. ROBINSON: Have you noticed any disposition on the part of public utility employees to violate the law so that they can be compelled to keep the law only by a penalty of this kind.

Hon. Mr. WOOD: Well, they go out on strike.

Mr. ROBINSON: Yes, but that is legal.

Hon. Mr. WOOD: Yes, but people may be in hospitals having operations when electrical employees go out on strike, and all the power is shut off.

Mr. ROBINSON: What I am trying to say is that the law which is referred to there is the labour relations law, which is enacted by the provinces for the great majority of employees in the country. This means that if the provinces choose to change their laws in such a way that strikes among public utility employees are illegal under any and all circumstances, then the federal criminal code steps in and provides a penalty of five years.

Hon. Mr. BOUFFARD: If the laws of a province prohibit strikes, do you not feel you should obey those laws the same as anybody else?

Mr. ROBINSON: I think there are laws which are very unjust.

Hon. Mr. HAIG: You must remember that the persons responsible for provincial laws were elected by their constituents. We did not elect them. The people elected them.

Hon. Mr. WOOD: We are not here to discuss whether you feel the laws are unjust.

Mr. ROBINSON: All right.

Hon. Mr. WOOD: We are here to get information from you.

Mr. ROBERTSON: The information I was just about to give you. The information is that again in the province of Quebec, strikes among public utility employees have been outlawed, and it is a very bad law.

Hon. Mr. HAIG: The people passed the law.

Mr. ROBINSON: That law is being given federal support to the extent of five years in jail for any violation of it.

The CHAIRMAN: No it isn't.

Hon. Mr. WOOD: You don't believe in law.

Mr. ROBINSON: I didn't say that.

Hon. Mr. HUGESSEN: If the law of the province of Quebec outlaws strikes by employees in the public utilities, obviously this paragraph does not apply at all and cannot in the nature of things be of any help towards the settlement of any industrial disputes of the strikers.

Mr. ROBINSON: Oh yes, there can be compulsory arbitration.

Hon. Mr. WOOD: You have some protection there.

Mr. ROBINSON: I want to be clearly understood. It was suggested I was against the law. That is not so. But I see no reason why the federal government should compound to the extent of five years in jail a law which labour all across the country thinks is a very bad law.

Hon. Mr. BEAUBIEN: The rest of the province of Quebec has not said so.

Mr. ROBINSON: Excuse me, I said which labour all across the country said was a thoroughly bad law.

Hon. Mr. BEAUBIEN: They don't say that all across Quebec.

Mr. ROBINSON: I think the great majority of labour across Quebec does.

Hon. Mr. HAIG: He is getting into a political speech now.

Hon. Mr. ROEBUCK: He is only answering questions put by senators.

The CHAIRMAN: Mr. Robinson, you are here to make submissions in respect to the Code. If the rest of the honourable senators do not agree with me, they must appoint another chairman, but from here on you are going to address yourself to the particular sections, and we are not going to have any more political speeches. Tell us what your points are and develop them, and no more of this political harangue.

Mr. ROBINSON: I think I have made the point I intended to make, that as a result of the way in which this saving clause is drawn it gives federal support to changes in provincial labour laws, whatever those changes may be.

The CHAIRMAN: All right, we understand that.

Mr. ROBINSON: Right. Now, the next point I make is—and perhaps I shall read the brief.

The CHAIRMAN: What section?

Mr. ROBINSON: On page 13, again in relation to this same section 365. The brief makes the point by means of a quotation from a submission from the Canadian Congress of Labour, which I have been endeavouring to make.

The CHAIRMAN: Now, this is simply quoting from another brief?

Mr. ROBINSON: I want to read what follows, sir.

The question may seriously be asked whether this Section, because of the way it is related to the Labour Acts of the provinces, is not ultra vires. When labour has asked for a National Labour Code, the answer has always been that this was outside the Federal Government's jurisdiction and not possible under the B.N.A. Act. If it is beyond the power of the Federal Government to enact a Labour Code which would give nation-wide uniformity to the rights of labour, should it not also be beyond its power to support by federal statute the limitation and abrogation of these rights? It would certainly be ironic if the ground of being ultra vires were to prevail when it was a question of consolidating and improving labour's rights, and it were now found that this ground was no more than quicksand when proposals of heavy disadvantage to labour were involved.

The CHAIRMAN: What is the next point?

Mr. ROBINSON: The next point is one which I made earlier in the brief.

Hon. Mr. HAIG: Don't repeat.

Mr. ROBINSON: I am not going to repeat. The point is perhaps a legal one, as to how long a contract continues in effect.

The CHAIRMAN: What section are you addressing yourself to?

Mr. ROBINSON: Again in respect to section 365, which commences, "everyone who wilfully breaks a contract knowing" and so on and so forth. The question is how long does a contract which could be lawfully broken in those circumstances continue?

The CHAIRMAN: As long as it is a contract.

Hon. Mr. ROEBUCK: Is there not a yearly limit in the Ontario Act?

Mr. ROBINSON: It is not a limit; there is a minimum period but not a maximum period.

The CHAIRMAN: It is either by law or by contract, that is your answer.

Mr. ROBINSON: The question I pose is this: Because of the way the saving clause is drafted, I have the impression that a contract can be construed as continuing in effect until all of the steps provided by the labour act have been completed.

Hon. Mr. HAIG: Very well, we have your point. What is the next point.

Hon. Mr. HUGESSEN: I would have thought that this meant the ordinary labour contract. If your contract is for a year, when the year expires there is no contract; the men may be working under the same conditions but without a contract. This section does not apply at all.

Mr. ROBINSON: That is the point which concerns me, and it is one on which I should like to ask some questions. Let me take for example the federal act—

Hon. Mr. HAIG: Mr. Chairman, any opinions we express are our own opinions; they are what the lawyers call sidewalk opinions. This witness was told by Senator Connolly that if he did not understand the provision his union could take a case to the Supreme Court of Canada and find out what the law is.

Mr. ROBINSON: But if I may say so, we don't want to have to do that.

Hon. Mr. HAIG: You have to do it. Nobody can draft a law which will be acceptable to everybody. That is why there are lawsuits.

Mr. ROBINSON: I agree with that; but there are laws which are not clear, and there are laws which are clear.

The CHAIRMAN: Mr. Robinson, we have listened to you for some time; I am willing to listen longer, but I want you to address yourself to the particular question. If you have a question of law, tell us what it is. You are not going to advance the situation very much by arguing, nor are we. State your question, and if there is anything we want advice on, we have a law officer here who can advise us, and we will be guided by what he says. What is your next point?

Mr. ROBINSON: That is the point which I wanted to make, and it is dealt with more fully on pages 11 and 12 of our brief.

The CHAIRMAN: What is the next point?

Mr. ROBINSON: The next point, and I think it is the last one, is paragraph (b) of subsection 2 of section 365 which commences "being a member". I construe that possibly to mean that people who are not members of a union are not exempt. If that is so, I think it is in conflict with what has come to be known as the Roach or Rand or Sloan formula for union security. This formula implies that members do not have to be a member of a union which acts as their bargaining agent, but they do have to pay dues, usually by check-off, of an amount equivalent to the union dues.

The CHAIRMAN: This has nothing to do with the Rand formula, and it has never been declared by a statute to be the law of Canada.

Mr. ROBINSON: I agree with that.

The CHAIRMAN: All it deals with is a member of an organization of employees; and you think it might have a wider application.

Mr. ROBINSON: That is precisely what I think it should have, but it does not have.

The CHAIRMAN: You think it should be expanded.

Mr. ROBINSON: I think it should be expanded because I think it would be wrong for the Criminal Code in effect to offset a formula for union security which has become well established, widely accepted and found satisfactory in a great many labour collective agreements.

The CHAIRMAN: Without wanting to provoke an argument, Mr. Robinson, I just make the statement that I do not accept your statement that it is widely recognized and is widely in force.

Hon. Mr. HAIG: Mr. Chairman, Mr. Robinson is going back on the same old procedure, starting an argument again. He does not have to argue about everything. All he has to do is to give us his suggestions.

The CHAIRMAN: What is the next point?

Hon. Mr. ROEBUCK: I think everybody has got his point about this particular issue. As it comes to me, the point is that the bargaining committee will represent others in their bargaining who are not members of the organization, and therefore the ones who are not members of the organization are not covered by the exemption. Only the members are. It is a good point.

Hon. Mr. BOUFFARD: What about (2) (*a*)?

Hon. Mr. HUGESSEN: I was wondering if it would not be covered by (2) (*a*) of section 365.

Mr. ROBINSON: I do not think so. I am submitting an opinion. As I understand it, paragraph (*a*) relates to a situation where there is no collective bargaining agent and where the employee deals individually with his employer.

Hon. Mr. WOOD: There is nothing wrong with that.

Mr. ROBINSON: I did not say there was anything wrong with that. I say that it is different from the situation where there is a bargaining agent.

Hon. Mr. HAIG: What you say is that this paragraph does not include non-union men who are paying dues to your organization.

Mr. ROBINSON: Yes.

Hon. Mr. HAIG: That is all you have to say. You do not have to argue about it. We will have a look at it later on.

The CHAIRMAN: What is the next point?

Mr. ROBINSON: The next point is concerning the words "an organization of employees formed for the purpose of regulating relations between employers and employees". I think that is a very good description of what the purpose of a trade union is, but again it raises the question—

Hon. Mr. HAIG: What do you want us to do with it?

Hon. Mr. ROEBUCK: Let him alone, let him continue.

The CHAIRMAN: What is the question that it raises?

Mr. ROBINSON: It raises the question in my mind whether it does not give somebody with governmental authority the opportunity of saying that a particular trade union has not been formed for the purpose of regulating relations but has been formed for some other purpose, whatever it may be.

The CHAIRMAN: Do not let us stop too soon, Mr. Robinson. It is "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..." That is the test. He is acting in that capacity, as a bargaining agent.

Hon. Mr. WOOD: I could name you half a dozen corporations whose employees have no unions. Eastman Kodak Company is one.

The CHAIRMAN: Let us stay on the point now, please.

Mr. ROBINSON: The point I am trying to make is that this organization of which the people have to be members is described in a certain way, and if a government authority steps in and says the organization of which you are a member does not have the purpose which it is required to have under this paragraph (*b*), then you are out.

The CHAIRMAN: Will you give us the wording you suggest?

Hon. Mr. HUGESSEN: What you mean Mr. Robinson is that you would be satisfied if you took out those words "formed for the purpose of regulating relations between employers and employees"?

Mr. ROBINSON: That is right. I would be satisfied if you took out "member" and redrafted that whole paragraph to make it correspond to paragraph (*b*) of the other saving clause.

The CHAIRMAN: Now we understand the point. What is your other point?

Mr. ROBINSON: Even if all these improvements are made and because of what has been said before, both by myself and by other people, we think the section as a whole is bad and, if possible, should be deleted and I think that this point has been long gone into but just let me say this—

The CHAIRMAN: Just a minute, Mr. Robinson. It is *ad nauseum*, as far as I am concerned, but I can be overruled on that by the committee. I think that we have had all the reasons that can possibly be given as to why the section should be deleted. There is no use repeating them. It does not add anything. All you have said is that you think the section should be deleted, it is a bad section.

Hon. Mr. HOWARD: Wouldn't it save a whole lot of time to say it is no good?

Mr. ROBINSON: No, because I do not think I can persuade you to delete it. That is why I have tried to persuade you to improve it.

The CHAIRMAN: Let us have the next point.

Mr. ROBINSON: I do not think, in view of the time, it would be proper to go into the other sections and not the labour sections which our brief deals with, and I mean specifically sections 46 and 60, the treason and sedition sections.

The CHAIRMAN: We will have a look at those. What other sections?

Mr. ROBINSON: I would be quite willing to develop the points to be made in relation to those sections, but out of consideration for your time I do not wish to do so.

The CHAIRMAN: Your brief develops these points.

Mr. ROBINSON: Our brief develops these points, and I do not think we have to go over them all.

The CHAIRMAN: Anything else we should have?

Mr. ROBINSON: Again I would like to conclude on a more general note, and let me put it two ways. The position in which the country finds itself today is a difficult position as regards the economic situation, mainly.

Hon. Mr. WOOD: That has not got anything to do with this.

The CHAIRMAN: Let him finish. We want to see—

Mr. ROBINSON: In general, without trying to substantiate the points, because they are substantiated in our brief, our impression is that this bill is restrictive of the democratic rights of the people, and we feel that such a restriction is particularly inappropriate at a time like this, because in so far as the people of this country are going to have any success in coping with

the problems that face them, it will be by an extension rather than a contraction of their democratic rights. If they cannot express themselves peaceably, history shows that they will express themselves by other means, and this is what we want to avoid if we possibly can.

Hon. Mr. HAIG: We will avoid it. Don't worry.

Mr. ROBINSON: Let me add, again in relation to experience during the last period, which was very much worse than we have so far reached, namely the "hungry thirties" there was section 98 on the statute books, and I do not think section 98 helped the people of Canada to cope with the problems they had to face at that time. In fact I know it didn't, because the people themselves resented that section so much, and that resentment became so widespread that it was to a large extent deleted in 1936. I think that we should avoid, if possible, going through another such experience of having oppressive legislation at a time of economic difficulty, and a great deal of unrest, shall we say, precisely around the efforts which had to be made to get rid of that section. We should draw the lesson of what section 98 teaches us and improve this bill so that in no way could it be construed as oppressive of the democratic rights of these people, but rather that it should extend them particularly in relation to the problems of the economic situation as the country faces them today. That is all, sir, and thank you very much.

The committee thereupon adjourned.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, May 26, 1954.

The Standing Committee on Binking and Commerce, to whom was referred Bill 7, an Act respecting the Criminal Law, met this day at 11 a.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: I think we can call the meeting to order.

We have the Minister here today to deal with various sections that are standing, and the suggested course, subject to what the committee may feel, is that the Minister will deal with the sections one by one, and as he gives his explanation of a section, then we can ask him any questions, and then proceed to the next one; because there are only about seven or eight sections altogether.

Section 9, the contempt section, is the first one. Mr. Minister?

Hon. STUART S. GARSON (Minister of Justice and Attorney General): Mr. Chairman and honourable senators: I am informed that objection has been taken in connection with section 9 to the provision which was inserted in the Commons committee, making the appeal to the Court of Appeal subject to the prior approval of the Court of Appeal or a judge thereof. Now, the Commons committee thought that in that way they could guard against frivolous appeals. I think it must be realized that where an appeal is provided from the sentence or conviction for contempt which has been imposed by the judge, while it is desirable from the standpoint of a person convicted that he should have an appeal, the granting of such appeal still does embarrass the progress of the trial in which the contempt occurred. If, for example, a witness refuses to answer a question, and the judge cites him for contempt of court, the continuance of the trial with the jury empanelled is involved. If as a matter of defence tactics a witness refuses to answer the question, hoping perhaps he might get a citation and could then appeal, embarrassment and delay in the trial of the case itself ensues while that appeal is being disposed of. Our hope was that if any frivolous appeals were taken in this way the fact that they were frivolous would appear upon this application for leave to appeal and the leave would be refused. In that way we might minimize the possibility of embarrassment to the trial of the main case.

The CHAIRMAN: We are not opposing any appeal from conviction in the face of the court.

Hon. Mr. ROEBUCK: Mr. Minister, you run into that difficulty by changing the arrangement we sent over. We gave no appeal from a conviction in the face of the Court; we gave a conviction from the sentence only.

Hon. Mr. GARSON: That is right.

Hon. Mr. ROEBUCK: But we did give an appeal from the sentence—if it had not been served at the time the appeal got heard. Now they have changed that over in your committee, and they gave an appeal in the face of the Court, and so raised the difficulty about that you have now mentioned, which I rather think is a little overstated, in this way, that if you have an application for leave the merits of the case are all that you could possibly discuss. You see, there is no law connected with it, or anything of that kind, you go to a Court of Appeal or to a judge of the Court, and the application is on the merits of

the case, and the whole case is told to the court. Now, what will happen is this. You will go for an application for leave and you will state your case, and all the details of it, and the Court will take the two things at the one jump. They will dispose of the merits and the whole thing at the same time. But in my judgment you are complicating the situation unnecessarily by requiring the appellant to first get consent and then to argue his case, when he must argue his case in order to get consent.

Hon. Mr. GARSON: I think there is merit in your argument, but in the case of a purely frivolous appeal, would application or leave not be disposed of summarily?

Hon. Mr. ROEBUCK: We have a good many frivolous appeals, and the courts seem to handle them expeditiously. The only difference between an application for leave is that you may go to a judge of the court, but you don't have to.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: Except, for instance, in connection with criminal appeals where you have to get leave; if you went to a judge he would refer it to the court, and you would argue the question of leave and merits at the same time. Then when you have argued the whole matter, if the court does not want to look at the merits, they will say "We don't think it is a proper case for granting leave." That is what happens.

Hon. Mr. ROEBUCK: Yes, that is what happens.

The CHAIRMAN: Then there is the question of delaying a trial by the refusal of a witness to answer. The judge may warn him that if he continues that attitude he will cite him for contempt; the witness persists, the judge cites him for contempt and directs the sheriff's officer to take him to jail for five days or until he decides to answer. Under the Senate procedure that decision of the judge is final, and the only thing the man can do is appeal his sentence. If he appeals his sentence and wants to get out of jail pending his appeal, he has got to go before a judge to get bail; and I know of no judge, where a man is charged with contempt, convicted and the conviction is not disturbed, who would let him out on bail while the length of his sentence is being argued on appeal. He would likely have to stay in jail, and as far as the question of delaying the trial is concerned, as long as the witness is required to stay in jail he would be delaying the trial in any event. In other words, if he is not going to answer the question, he has to stay in jail and the trial must go on anyway.

Hon. Mr. CONNOLLY: In point of fact, Mr. Chairman, what is the period in which that appeal can be launched?

The CHAIRMAN: The usual rules would apply.

Hon. Mr. CONNOLLY: It is fifteen days in Ontario. I was wondering whether the Minister took that point into consideration.

Hon. Mr. GARSON: Yes.

Hon. Mr. CONNOLLY: The time within which the appeal can be launched would delay the trial anyway.

Hon. Mr. GARSON: Yes. According to one or two judges who have spoken to me about this matter, there is quite a serious effect upon the trial itself in the granting of an appeal. For instance, if the witness is giving evidence that is of a material nature, while he is languishing in jail pending an appeal—or even if there is a summary appeal provided for—the trial is being held up until his appeal is heard.

The CHAIRMAN: It is going to be held up anyway, if the witness is determined not to answer.

Hon. Mr. GARSON: Yes.

Hon. Mr. ROEBUCK: And if he serves his sentence, it doesn't make much difference.

The CHAIRMAN: Yes. And they may call him back at any time, pose the question again, and if he refuses to answer he can be cited a second time.

Hon. Mr. GARSON: That is right. The feeling on the part not only of the Commons' committee, but of some judges based on the practical knowledge which they possess, is that the granting of an appeal subject to all its formalities and delays in some cases may bring about the death of that particular trial. Since the appeal from sentence for contempt would take a considerable length of time; the jury in the trials itself could not be kept waiting until the appeal matter was disposed of. That would mean that the jury would have to be discharged and the trial started over again.

Hon. Mr. ROEBUCK: Well, you can do that now as a matter of fact, but I have never heard of it being done, appeal or no appeal.

Hon. Mr. GARSON: Do it now you mean?

Hon. Mr. ROEBUCK: A witness could do that.

Hon. Mr. GARSON: Only, Mr. Senator, by remaining in jail.

The CHAIRMAN: Even under this procedure he would remain in jail. He will remain in jail unless he can get bail and I suggest as a practical matter he would not get bail.

Hon. Mr. GARSON: Well, I have heard that point that you made, and you have had much more experience in criminal law than I have had, Senator, but I wonder if an application for bail were made in respect to the not terribly serious crime of being cited for contempt—it is not as if he had committed murder or bank robbery—would the court refuse him bail?

The CHAIRMAN: Mr. Minister, either this contempt in the face of the court is a serious thing, which we think it is, no matter whether the witness is important or not, and I do not know how you weight the importance of a witness refusing to answer a question. It is important that he answer or does not, and the offence is created by his refusing to answer. If it is not important, then it does not matter; if it is important, then he should answer the question. Well then, you were arguing against any appeal at all, I could follow the argument better than if you were arguing in support of the kind of appeal that the Commons provided as against the one we provided.

Hon. Mr. GARSON: I think that is a very just point the Chairman has made. The implication of my argument is against an appeal at all in respect of a contempt committed in the face of the court and . . .

Hon. Mr. ROEBUCK: You had better go back to what we started with.

Hon. Mr. GARSON: If I may just finish this sentence, Mr. Senator. While there is admittedly in the abstract an important element of injustice for a man cited for contempt in the face of the court not having an appeal; yet at the same time to grant him an appeal no matter whether it is subject to a previous application for leave tends to introduce into the trial itself such a delay that that trial will be pretty well finished, especially if it fits in with defence strategy that that trial should be delayed.

The CHAIRMAN: I do not know of any witnesses for the defence who have been cited for contempt.

Hon. Mr. GARSON: It is improper for me to speak and I am not now speaking on behalf of the House of Commons committee whose judgment in the matter you have already seen; but I wonder whether it would not be a wiser provision to have appeals from conviction and sentence for contempt committed outside of the court; but so far as cases of contempt within the court are concerned, to allow no appeal upon the grounds that we have

competent and just judges and that if we provide any kind of an appeal in these cases it simply means that that trial itself is going to be seriously delayed if not destroyed.

Hon. Mr. ROEBUCK: Well, in an appeal against sentence, Mr. Minister, that is what we do, you know. We give no appeal against a conviction for contempt in the face of the court but we do give an appeal against sentence. Now, see how that works out: if a man has been committed to jail he files his appeal and he stays in jail until the appeal is heard and he is acquitted, freed or something else by the court of appeal. In the meantime, the trial proceeds and is disposed of, and the appeal is disposed of later on. There is no harm done there.

Hon. Mr. GARSON: Senator, may I ask this question: supposing the witness in question, whose citation for contempt for refusal to answer questions, is a material witness and his evidence is necessary for the proof of a serious criminal case, when he is cited for contempt and appeals: is there any chance really, no matter what form the appeal takes, of that particular trial going on to its conclusion?

Hon. Mr. ROEBUCK: Why yes. Sometimes you can go on without him. But irrespective of what we do, that situation faces the court, and always has.

Hon. Mr. GARSON: Yes, it faces the court, and always has subject to this: that in most instances heretofore where there have been such citations for contempt, without any appeal, what has happened is that after being in jail for a day or so, the witness makes up his mind that he will answer the questions, and comes back and answers them.

The CHAIRMAN: How would it be any different if he only had an appeal from sentence, because, for one thing, if I may say so with respect, what is to prevent a resourceful defence counsel in that case from applying for bail?

Hon. Mr. ROEBUCK: What chance has he got?

The CHAIRMAN: Let us assume he gets bail. He goes to jail today. He appeals from sentence, under our change, he gets bail: all the trial judge has to do is to put him back in the witness box tomorrow, and if he refuses to answer, again he goes to jail for another time, and on that second occasion I would say without fear of contradiction there is not any judge in the country who would give him bail a second time.

Hon. Mr. ROEBUCK: No, he would not. The judge would say to the counsel, "You mean to say that your client refuses to answer a proper question in court, and is in jail. You want him let out in face of that situation? Nothing doing; let him stay there without bail." That would be the judge's answer.

Hon. Mr. HAIG: May I ask the witness a question?

The CHAIRMAN: Yes.

Hon. Mr. HAIG: As I understand the discussion, there is no dispute about an appeal where the contempt of court is outside the court—like that of a public newspaper. The only dispute is where the contempt is before a judge. I for one have expressed the view—it may be only my own—that I am inclined to give the judge a lot of power in his own court. I think he has got to have a lot of power, and I think that contempt in the face of a judge is something that the ordinary person does not like to see happen. I can say that with quite a bit of feeling. Our judges are appointed largely with a political background. Some of them have been pretty active in politics, and a fellow like me who practises before a judge on the opposite side of politics can speak with some knowledge in this matter. I have never known a case where a judge's political feelings got the best of him. I have never found that; and no lawyer in the jurisdiction to which I belong has ever come to me and said, "I wish you, as a senator, would 'kick' about the judges here." When I am before them they fight me

politically. I think that is very general throughout Canada, which is to the credit of the courts. For that reason I would give the judge a lot of power in his own court for contempt in his own court. I do not think there should be any appeal against his judgment at all. I feel that before the court the judge should be supreme and no appeal should be allowed from his ruling on contempt. I agree with you that matters of contempt of court outside the court should be brought to the attention of the judge so that he may make a ruling, such as was the case in the murder trial that was recently held in Cornwall.

Hon. Mr. GARSON: I must say that my own personal judgment has been influenced by representations which have been made to me by judges of long experience. They expressed the views that I have attempted inadequately to express to you today. I mention that fact because I cannot put my own judgment on criminal trials of that type up against the views of either your Chairman or Senator Roebuck. I would, however, venture to put the views of these judges before you. It is true that they were not official representations, . . . just personal conversations. We endeavoured all through this Code to hold our mind open to any new suggestions that will help to get a law that will be workable. These judges who have spoken to me are in complete agreement that there should be an appeal in respect to contempt committed *ex facie*, but where it is committed in the face of the court in respect of proceedings in the trial it is a different matter. If a judge has no control over his own trial it is not a very satisfactory state of affairs, so they say.

Hon. Mr. ROEBUCK: We are pretty well agreed on it, are we not?

Hon. Mr. GARSON: Yes.

Hon. Mr. LAMBERT: Is there a high percentage of contempt of the cases that the Minister mentions?

Hon. Mr. GARSON: I do not think there have been many cases either outside of the court or in the face of the court. It is such an infrequent offence that I wonder whether in respect to the small number of cases of contempt of court that have arisen, there is any reason to disturb the practice which has prevailed in the past. I am speaking, of course, without authority from the House of Commons on this subject, for they agree with your committee in that there should be an appeal.

Hon. Mr. LAMBERT: I understand the Minister to say that his advise is from judges—

Hon. Mr. GARSON: From some judges.

Hon. Mr. LAMBERT: That is the point. Is that advice of sufficient weight to offset the examples afforded by experience in the courts on these things?

Hon. Mr. GARSON: Do you mean, are the views that I have attempted to express here this morning sufficient to offset the concrete cases of abuse?

Hon. Mr. LAMBERT: Absolutely.

Hon. Mr. GARSON: Of the power of citation?

Hon. Mr. LAMBERT: Yes.

Hon. Mr. GARSON: I would not think that the concrete cases of abuse weigh against that opinion which the judges expressed.

Hon. Mr. LAMBERT: I have the impression from my own observation that in most of these cases the contempt is outside the court. As to those within the court, if the procedure is made more lenient than it is now, surely that will encourage contempt.

Hon. Mr. ROEBUCK: But you are not making it any more lenient.

The CHAIRMAN: No. Gentlemen, I think we have exhausted the argument on this section both ways, so could we pass on to the next section now?

On section 25—Protection of persons acting under authority.

A new subsection 4 is proposed to be added, dealing with the use of force in the apprehension of a person who is attempting to escape arrest. Some question was raised by Senator Roebuck as to the full effect of the subsection. You will understand that this is an amendment proposed by the department to cover the situation where a police officer is attempting to arrest some person for an offence for which he could arrest without warrant and the person is attempting to escape, and this subsection deals with the degree of force which may be used. This is to add to the present law. Senator Roebuck had some objection. I will read the subsection 4 proposed to be added:

> (4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and every one lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

That is the word for word provision in the Code which is in force at the present time.

Hon. Mr. ROEBUCK: My point was, Mr. Minister, just that the phraseology of this will permit a police officer to shoot anybody running away from him whom he orders to stop and the person does not stop. Now, there are times, of course, when he should shoot, where the situation is sufficiently drastic; but about one-half of the youngsters that the police run after get away from them, and this would justify a policeman in shooting down a young fellow who was perhaps scared into running and who had committed some minor offence, or perhaps no offence at all. It is too broad.

Hon. Mr. GARSON: Mr. Chairman, in reply to Senator Roebuck, I might say this, that while this clause comes in now at the eleventh hour in a form which, on the surface, looks as if it were an amendment to the law, it is not that at all; it simply continues the law which has been in force for many decades in this country. If you look at section 41 of the present Code you will see, as the Chairman has said, that this clause is almost word for word in the form of section 41. Now we must all confess to some embarrassment, which I would excuse upon the ground that in the consolidation of a Criminal Code which contains in it the substance of over 150 separate British Criminal Statutes some slips are bound to be made, and this is one of them. In this particular case the Royal Commission and the Department of Justice and the Senate and the House of Commons omitted this clause. Now all that this clause provides is that for the protection of a peace officer acting lawfully in the discharge of his duty, he is justified in using such force as may be necessary to prevent the escape of a prisoner that he has in his custody. Surely, there is nothing unreasonable about that. Surely, upon the whole, there have been very few abuses arise under this power in the past. Far from it being a new addition to the law, if we did not provide this in the Code it would be a serious gap in the law. We are merely continuing in effect what has been the law for a very long while.

Hon. Mr. HAIG: We understand that, Mr. Chairman.

Hon. Mr. ROEBUCK: Well, I am all for the policemen, as a rule, in these matters, but I don't want to see the door opened. I did not know this was the old law. It looks like something new.

Hon. Mr. GARSON: No, no, it has been the law in the Code since 1892, when our Criminal Code was first passed.

On section 68—Reading proclamation.

The CHAIRMAN: Dealing with the next section, there are three sections which I suggest we take together. There are just two small ones. Instead of section 52, I suggest section 68.

There was a suggestion, Mr. Minister, in a brief we had yesterday, if you will look at section 68, that where the mayor receives a notice that there is a riotous assembly, from there on he must act as the section requires even if he gets to the scene of the unlawful assembly and finds nothing that appears to be unlawful yet, he must, having that notice, read the riot act.

Hon. Mr. GARSON: Yes?

The CHAIRMAN: Now, it was suggested that if you added after the words "as safely he may do", in line 42, the words "and if he is satisfied that such persons are unlawfully and riotously assembled", that would give him some discretion. I wonder if you would make a comment with regard to that? Because I note that section 70 appears to give some protection, because that section says "a peace officer". Now, a peace officer by the definition section would include the mayor. Would it not, Mr. MacNeill?

Mr. MACNEILL: Yes.

The CHAIRMAN: Section 70 says:

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

Which would mean, I would think, that if the mayor got to the scene of the alleged assembly and found nothing unusual, if he did not read the riot act he would have a perfect defence under section 70 by saying, "I had a good reason for not reading it, there was no unlawful assembly going on at the time". For that reason, I don't think the words are necessary, but since the matter was raised, I feel we should bring it to your attention, Mr. Minister.

Hon. Mr. ROEBUCK: A man may not know about section 70, you know; and I mean, the one section requiring him to do so.

The CHAIRMAN: Well, if he is the mayor of the town, he has corporation council and can get advice.

Hon. Mr. ROEBUCK: In the course of a riot?

The CHAIRMAN: Before the riot.

Hon. Mr. GARSON: I would be inclined to agree with the chairman, that is, if you take sections 68 and 70 together, that the wording is sufficient; and I would like to cite a case which I cited in discussion of this same point in the House of Commons, because I have not read elsewhere the position of the unfortunate mayor, with an incipient riot on his hands, described in such lucid and cogent terms. This is the case of Rex *versus* Pinney, a prosecution of the Mayor of Bristol, England. The judge in charging the jury said, among other things:—

> Now a person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if, by his act, he causes death, he is liable to be indicted for murder or manslaughter, and if he does not act, he is liable to an indictment on an information for neglect; he is, therefore, bound to hit the precise line of his duty; and how difficult it is to hit that precise line, will be a matter for your consideration,—

And the judge continued:—

> —but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace-officer he has been compelled to take the office that he holds, the same rule applies; and if persons were not compelled

to act according to law there would be an end of society but still you ought to be satisfied that the defendant has been clearly guilty of neglect before you return a verdict against him.

That was the case, Mr. Chairman, in which the mayor was indicted because in a situation of that kind he had neglected to read the Riot Act, a riot had then taken place, and he was charged with neglect of his duty. This is part of the judge's charge in that case. It has always been clearly the law that the mayor or other responsible officer who is called to the scene of a riot has to decide whether under all the circumstances the appropriate thing for him to do is read the Riot Act; but as the judge in this case says, if he goes wrong on either line he is in difficulty. He is in a very awkward situation. That, I think, is reflected in section 70, to which the Chairman referred:

> A peace-officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse, fails to take all reasonable steps to suppress the riot—

And so on.

Hon. Mr. HUGESSEN: Just on that point, Mr. Minister, it seems to me that is not reflected in Section 68, where it is provided that when a mayor receives notice that there is a riot going on, he shall do such and such; he is commanded to read the Riot Act. There is no discretion in that section. In other words, if when he gets to the place he finds no conditions exist which would likely lead to a riot, under Section 68, if it is interpreted strictly, the mayor must read the Riot Act even if nobody is present at the time.

The CHAIRMAN: If he does not read it and he is prosecuted for failing to do so, the defence is open to him under section 70 to say that he had reasonable excuse for not doing so.

Hon. Mr. HUGESSEN: But under Section 68 it is mandatory whether a riot is going on or not.

The CHAIRMAN: But Section 70 provides:

> A peace-officer who receives notice that there is a riot within his jurisdiction and, without reasonable excuse, fails to take all reasonable steps to suppress the riot—

And that would include reading the Riot Act.

Hon. Mr. HUGESSEN: I am arguing the case where he receives notice, goes to the place and finds there nothing resembling a riot.

Hon. Mr. GARSON: That is the point to which I was going to address myself. Surely he has the right to judge whether the information, oral or written, which he has received constitutes a notice of a riot or not. If he gets a call from an irresponsible person who is unduly excited, and when he goes to the place in question he finds no riot, he can judge then that what he received does not constitute a notice of a riot, but merely purports to be a notice of riot.

In any event, the only thing that can be done against the mayor is prosecute him for not doing his duty. If there is no riot, and he does nothing, he has used good judgment. If on the other hand there is some doubt as to whether what is happening is a riot, and he decides that he will not read the Riot Act—

Hon. Mr. HUGESSEN: Is that not precisely what you said a few minutes ago, that it is up to him to exercise his judgment?

Hon. Mr. GARSON: That is right. Let us follow the thought through; if he exercises his judgment and it turns out his judgment was right, that what was taking place did not develop into a riot—indeed, one of the reasons it did not develop into a riot may be because of his good sense in not reading the Riot Act —then he is in the clear. On the other hand, if his judgment is bad, as the judge has pointed out in the case of the mayor of Bristol, then in such a case he has not been able to hit the right line of his duty. If in those circumstances

his judgment is wrong, what can be done about it except prosecute him? In such a prosecution a defence open to him in Canada would be section 70 of the code; and he could say that he received a notice that there was a riot, he went to that place and his reasonable excuse for not reading the Riot Act is that within the meaning of section 70 it did not appear to be a riot; he could plead, in the event that he was wrong, that he had acted reasonably. It would then be for the jury to say as a question of fact whether his explanation was a reasonable excuse, and if it were he would be let off.

Hon. Mr. HUGESSEN: Yes, Mr. Minister, but I am simply pointing out that under section 68 he has no discretion at all; if he receives a notice he has got to go to the place in question, he has got to read the Riot Act, whether a riot is going on or not.

Hon. Mr. GARSON: True, in that section it is mandatory, provided what he has received is a notice of a riot, but he is provided with a defence in section 70.

Hon. Mr. ROEBUCK: May I say a word? I think we are overestimating the possibility of a prosecution that may follow where an officer is wrong. Section 68 is directory. It tells him what he must do, and if he does not do it, a prosecution may follow; then section 70 gives him some defence. It is very seldom that a prosecution would follow. Is it not our duty to see that the directions we give are so very clear that the person in question knows what he should do. We are all agreed that he should not read the Riot Act if, when he gets there, he finds there is no riot or any possibility of one.

I say, therefore, that we should make section 68, which is a directory section, as clear as it is within our power to do. We should tell him that if he is satisfied that certain people are unlawfully and riotously assembled together, that he should read the Riot Act; but I think we are all agreed that if he does not think that to be the case, he should not read it. What possible reason is therefor not saying so, when we are directing him what to do? There is much more behind this section than the element of prosecution. The public may pass on the judgment of a public officer at the next election; he should have the protection of a clearly stated direction of what to do.

Hon. Mr. KINLEY: May I ask a question? Supposing a mayor or sheriff read the Riot Act, the people disperse and he goes away; then they reassemble at that place and the situation is bad. Does the reading of the Riot Act have an effect on that further assembly?

Hon. Mr. GARSON: I think it has the effect that once the Riot Act has been read the persons who are in that crowd—

Hon. Mr. KINLEY: Or any others.

Hon. Mr. GARSON: —or any others there, must disperse.

Hon. Mr. KINLEY: At the same place?

Hon. Mr. GARSON: No, where the riot is. It is of a very serious nature and force can be used to disperse them and they can be prosecuted for just remaining at the scene of the riot after the Riot Act has been read. The reading of the Riot Act certainly changes the status of those who are taking part in the demonstration.

Hon. Mr. KINLEY: But no force can be used unless the person who read the Riot Act gives permission?

The CHAIRMAN: It all flows. Once the Riot Act is read you are guilty of an offence if you remain at the place where it was read.

Hon. Mr. KINLEY: But they cannot automatically use force after the Riot Act is read, as I understand it.

The CHAIRMAN: The requirement is that those assembled must disperse after thirty minutes, but the police officers can proceed to carry out the effect of the Riot Act after the Riot Act has been read.

Hon. Mr. GARSON: The quickest way to show you the serious nature of the obligation which is imposed on the people present in that crowd by the reading of the Riot Act is just to read section 69 which follows the section giving authority to read the Act.

Every one is guilty of an indictable offence and is liable to imprisonment for life who

(a) opposes, hinders or assaults, wilfully and with force, a person who begins to make or is about to begin to make or is making the proclamation referred to,

(b) does not peaceably disperse and depart from a place where the proclamation referred to in section 68 is made within thirty minutes after it is made, or

(c) does not depart from a place within thirty minutes when he has reasonable ground to believe that the proclamation referred to in section 68 would have been made in that place if some person had not opposed, hindered or assaulted, wilfully and with force, a person who would have made it.

Hon. Mr. KINLEY: But the next day they might reassemble. In any event, the military could not fire on the crowd without receiving instructions from the person who read the Riot Act?

Hon. Mr. GARSON: I would not like to say that offhand.

Hon. Mr. REID: For how long a period, Mr. Minister, does the reading of the Riot Act cover? I was thinking that a crowd might reassemble two hours after the Riot Act has been read.

Hon. Mr. WOOD: Till the riot is over, I suppose.

Hon. Mr. GARSON: These hypothetical questions are sometimes quite difficult to answer. The Riot Act is read and then, as the bill reads now, the crowd has to completely disperse within half an hour. Since the purpose of the reading of the Riot Act is to disperse the riot, I suppose if a new riot occurs afterwards you would have very clear proof that the first riot was all over, and that it was a new riot.

Hon. Mr. MCKEEN: How large an area is the reading of the Riot Act supposed to apply to? For instance, if the Mayor of Vancouver reads the Riot Act, to what extent does that reading cover the city? Does it apply just to the block in which he has read the Act?

The CHAIRMAN: It applies to the persons assembled in that area.

Hon. Mr. HAIG: It generally includes everybody. Has anyone here ever heard the Riot Act read? Well, I have. I heard the Mayor of Winnipeg read it in 1919 and within half an hour two men had been shot because they refused to go away but fought the police instead, and the police used their guns. There was no second assembly because there were guards, returned soldiers, on every street corner, four to eight of them on the street corners. After the Mayor read the Riot Act, within ten minutes, as one of the young men told me the next day, the people were running past him just like lightning and he tried to grab a fellow who was shouting, "Let me go, let me go, they're shooting to kill" and that fellow ran off home as quickly as he was able to. The riot was broken up within an hour and there was no second assembly.

The CHAIRMAN: Now gentlemen, we have had the pros and cons of this matter and perhaps we could go on to another section.

Hon. Mr. HUGESSEN: I have one question to ask the Minister, on section 68. I am sorry to press this but it is important. We were told by some witnesses on behalf of labour organizations who appeared before us yesterday that there have been cases in the past where employees had been assembled in their union hall discussing grievances and information was conveyed to those in

authority that there might be a riot in the circumstances, and, as a result, the mayor had gone to the union assembly hall and read the Riot Act. Now it seems to me that if you put in the words suggested in section 68 you are then leaving it to the Mayor to determine for himself whether there is any possibility of a riot occurring, and if on arrival at the hall he finds members of the union there discussing their own grievances, surely he should have the option to say there is no possibility of a riot. Under section 68 as it is drawn he is bound to read the Riot Act in such a case.

Hon. Mr. GARSON: Senator I am sorry that I really cannot agree with your view.

Hon. Mr. HUGESSEN: Would there be any objection, and if so, what objection would there be to altering it? What harm would there be in changing the wording?

Hon. Mr. GARSON: This is in the hands of the committee, Mr. Chairman, and I would be the first one to bow to their wisdom, if you wish to change it, but I am simply giving the arguments on which you can base your judgment. You can reject these arguments if you wish. I would say that in a case of that kind, if the employer in question perhaps with an axe to grind or with an ulterior motive said, "Mr. Mayor, I want you to come along with me and see this riot", and the mayor and he go to the union hall and find that the citizens gathered there are discussing, in a most lawful and orderly manner, some business of their own, I cannot see where section 68 under this circumstance, imposes a mandatory duty upon the mayor to read the Riot Act merely because the employer had misrepresented to the mayor the nature of that meeting.

Hon. Mr. HUGESSEN: He may have felt that there was a riot.

Hon. Mr. GARSON: Yes, but I do not think that that would make an orderly assembly into a riot, or that the informant could transform an orderly meeting into a riot within the meaning of this section by falsely telling the mayor that the orderly meeting was a riot. If the mayor has any brains at all he or she will come and say, "You may call this a riot but I do not; and I am therefore not going to read the Riot Act".

Hon. Mr. HUGESSEN: Is there any reason then why we could not say so in the section?

The CHAIRMAN: The Minister has given his explanation and we know the opposite point of view, so we can deal with it in our deliberations.

I think Senator Roebuck asked to have section 150 stand. I think he questioned the definition of a crime comic in subsection 7, on page 49. Will you tell us your purpose, Senator?

Hon. Mr. ROEBUCK: Well, what I paused on was the wording in subsection 7, paragraph (*b*): ". . . events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime". The point I raised was, and I have discussed it later with Mr. MacLeod and we find, both of us, great difficulty in meeting my point. My point is that there are many events connected with the commission of crimes that are perfectly harmless. I pointed out the case of the Lone Ranger, which is on radio, and which the kids look at. All his actions are connected with the commission of crime, but nobody would prohibit the Lone Ranger, even if it were printed in a comic; and it goes very far. I am thoroughly agreed with the prohibition that it is intended. This business of depicting crimes in comic books for children to read is something terrible. At the same time, that never justifies hitting something that is perfectly all right because you don't like the thing that is wrong. I asked Mr. MacLeod if he could draw or re-draw that section so as to make it clear that what we are referring to is the objectionable features connected with crime, not the unobjectionable features. He did not seem to think he could do it.

Hon. Mr. VIEN: That is limited to 7 (*b*), is it?

Hon. Mr. ROEBUCK: Yes, just to 7 (*b*)?

The CHAIRMAN: 7 (*b*) is governed by the introductory words of 7.

Hon. Mr. ROEBUCK: Yes. You cannot include in a comic the commission of crimes, real or fictitious. Let me point out what there is against my thought. If you depict a man with a dagger sticking in him, and you show the fellow sticking it into him, that is the commission of the crime. If you show the man with the dagger sticking and the fellow with, perhaps, his boot disappearing off the scene, that would not be the commission of a crime. The crime would already have been committed. But it would be something connected with the commission of crime which should be prohibited. And that was in the minds of the people who drafted this section. But unfortunately they have gone so far as to include all events connected with the commisison of crimes.

Hon. Mr. GARSON: Is not the answer to that, Mr. Senator, that subsection (7), read as a whole, goes this way:

> In this section 'crime comic' means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially.

and then—

> (*b*) events connected with the commission of crimes real or fictitious, whether occurring before or after the commission of the crime.

Now, this Lone Star Ranger you are speaking of does not, I think, depict crime material exclusively or substantially, but only incidentally. But I think you will agree that if you have a story of a crime with the assailant drawing a dagger in one frame, and in the next frame the victim is lying on his back with the dagger sticking in him, you do not have to show the assailant putting the dagger into the victim in order to convey the wrong impression to the minds of the children who read the crime comic depicting such a crime.

Hon. Mr. ROEBUCK: Very well; let us pass is, and leave it to the good sense of the magistrate.

Hon. Mrs. FALLIS: The instance that Senator Roebuck talks of, would not that just contain an occasional picture?

Hon. Mr. GARSON: Yes.

Hon. Mrs. FALLIS: Books like The Lone Ranger just contain the occasional picture, and that would not come under this, because it has to be "exclusively or—"

The CHAIRMAN: "Substantially": that is right.

The next section is 171. There is an amendment. You have it, Senator Bouffard?

Hon. Mr. BOUFFARD: I move that this section be amended by deleting subclause (6) and substituting the following:

Telephones exempt from seizure

> (6) Nothing in this section or *in section 431* authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment *that may be evidence of or that may have been used in the commission of an offence under sections 176, 177, 179 or 182 and that is* owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

That is, in the case of gambling or betting houses it is not permissible to seize telephones and destroy them. Section 431, which is a new section, covers the same ground all over, and what can be done under the one section cannot be done under the other. So it is proposed to amend section 171, subsection (6),

and substitute for it the clause I have read. The only thing we are asking is, and which the amendment covers, is that the seizure cannot be made under the gambling sections, either under 171 or 431.

The two sections contradict themselves at the present time.

The CHAIRMAN: And the department has no objection, as I understand.

Hon. Mr. GARSON: We have no objection.

The CHAIRMAN: The exemption to the seizure of the telephones applies only to charges under the gambling sections?

Hon. Mr. BOUFFARD: Only to that, and that is why we propose to amend section 171 so that seizure canont be made either under 171 or 431.

An Hon. SENATOR: So if a man uses his telephone to slug a man over the head, you can seize the telephone?

The CHAIRMAN: It is an unusual way of conveying a message!

Hon. Mr. REID: Are there other cases where a telephone has been confiscated?

Hon. Mr. BOUFFARD: They would sometimes go into a gambling house and destroy twelve or fifteen telephones and disrupt communications all around, and the telephone company was not a party to the crime; it was a destruction of their property without any advantage. The Committee agreed that it should not be there as it is there now.

The CHAIRMAN: Carried.

Amendment agreed to.

Section as amended agreed to.

The CHAIRMAN: That makes it unnecessary for us to have a look at 431, because I had that noted in my list.

We come to a group of three sections now: 52, 365 and 372, and I think maybe they could be discussed at the same time; or seriatim—just as you wish.

Hon. Mr. GARSON: Well, Mr. Chairman, I will discuss these in order, and inasmuch as the point in each of them is a reasonably difficult one, perhaps it would be better if we had questions on each of them separately, and then any member can ask any questions on the three of them after we are finished. Would that be satisfactory?

The CHAIRMAN: Yes.

Hon. Mr. GARSON: If the members of the committee would look at section 52 they will see, I think, that in a prosecution on a charge of sabotage under the section the Crown must prove first that the accused did a prohibited act; that is any 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.

The second point that the Crown would have to prove under a charge under this section would be that the accused did this prohibited act for a purpose 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. If there were no saving clauses at all, that is the case that the Crown would have to bring home to the accused before it could secure a conviction against him. I think that is an important point to remember, for I feel it goes to the root of an understanding of the section. The Crown has to prove, as they say in law, that the accused has had a guilty mind or *mens rea*, an intent to prejudice Canada or the security or safety of Canada, or the security or safety of a foreign force lawfully present in Canada. Therefore, in relation to this saving clause, which I understand is the part of the section which was giving you some difficulty as it did with

us in the House of Commons, if the accused had done a prohibited act, not for the purpose of prejudicing Canada but merely by stopping work as a result of the failure of either himself or a bargaining agent acting on his behalf to agree with his employer upon any matter relating to his employment, then the Crown would not be able to get the evidence to prove even a *prima facie* case under section 52. Why? Because of its inability to prove that the accused's purpose was to prejudice Canada or a foreign force lawfully in Canada. Whatever offence these prohibited acts which were proven against the accused might constitute they would not constitute sabotage under section 52; and the Crown therefore could not prove its case. Thus I think it is clear that these saving clauses in section 52 (3) and (4) spell out in an abundance of caution what, without them, would be the law applicable to the facts of cases of that sort. To prove against the accused a charge of sabotage, the Crown must prove *mens rea* on the part of the accused, that the accused did the prohibited acts with the deliberate intent of prejudicing the safety, security, or defence of Canada.

There has been some discussion about sub-clause (4) of clause 52 which reads:

> 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.

To put it more bluntly, if the purpose is lawful picketing.

Hon. Mr. ROEBUCK: A picket line.

Hon. Mr. GARSON: Yes. The point I would make here is that the picketing which is covered by section 4, or by any such provision in any statute, is not illegal picketing. It is lawful picketing and lawful picketing only. Picketing is lawful only when it involves the attendance of a reasonably small number of men at the place picketed, and as to what is a reasonably small number of men is a question of fact which is always decided upon by the facts of the particular case. No judge has yet been willing to commit himself as to whether a reasonably small number of men means generally five or ten or any other number. What is a reasonable number depends on the facts of each case.

Since a good deal of the understanding of this section turns upon this point, let me at this point quote from certain judicial decisions. The first quotation is from Reners v. The King, (1926), 46 C.C.C. 14:

> If picketing is carried on in such a way as to constitute a nuisance, an unlawful assembly, and a trespass, it is an offence under 501 (*g*) of the Criminal Code.

That is to say, that kind of picketing is in itself an offence under section 501 (g) of the Criminal Code. In a word there is lawful picketing and there is criminal picketing.

The next quotation is from Canada Dairies v. Seggie, 1940, 74 C.C.C. 210, at 215:

> The relationship between section 501 of our Criminal Code which is the counterpart of the Conspiracy and Protection of Property Act (1875) of Great Britain . . . . and the common law concept of nuisance is indicated in the judgment of Lord Justice Fletcher Moulton (i.e., in Ward, Lock & Co. v. Operative Printers' Assistants Society), when, referring to section 7, the reasons state: I cannot see that this section affects or is intended to affect civil rights or civil remedies. It legalizes nothing, and it renders nothing wrongful that was not so before. Its object is solely to visit certain classes of acts which were previously wrongful, i.e., were at least civil torts, with penal consequences capable of being summarily inflicted.

Now, the section which is being referred to there is not the one we are discussing. It is section 501 of the present Canadian Criminal Code, of which the counterpart in the bill now before you is clause 366. These two and their British counterpart deal with intimidation. Unlawful picketing is one form of intimidation. Intimidation has always been wrongful in the sense of being a civil wrong. The British law and our Canadian Criminal Code both declare certain forms of intimidation also criminally wrongful, and provide a summary remedy for it.

My next quotation is from Rex v. Carruthers (1948), 86 C.C.C., 247, at 249:

> I can see nothing wrong with a member of a picket line using peaceful persuasion on an employee about to enter his employer's premises to work, but, if force is used, or, if any threat or threatening gesture is made, or if access to the premises is blocked by a member, such act is wrongful and without lawful authority, and a besetting or watching within the meaning and intent of section 501 (*f*) of the Criminal Code. That section, known as the intimidation section, is of long standing and was not enacted to restrict their rights of labour but to protect the rights of the subject.

The CHAIRMAN: Mr. Garson, on that subject 4, there was one statement you made, that it must be lawful picketing. I am sorry, I canont follow that, because the wording of subsection 4 is this:

> 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.

Now, whether he is doing a legal or an illegal act, if in fact what he does is to attend for the purpose only of obtaining or communicating information, then that is not a prohibited act, and therefore in the circumstances it would not be sabotage. It does not answer section 52, in my view, to say that if you are doing something unlawful in that connection you are committing another offence. What I am desirous of addressing myself to is whether you are exempting from section 52 both legal and illegal picketing, so far as the offence of sabotage is concerned under section 52. I am not concerned that another offence is being committed.

Hon. Mr. GARSON: I am grateful for your interjection, Mr. Chairman, because I want to make sure I am making my points clear to my listeners as I go along, and apparently on this point I am not succeeding in your case. My argument is that the use in subsection 4 of the words " he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information" does not constitute a definition of intimidation or, in other words, of unlawful picketing. This reference in subclause 4 of clause 52 is a correct reference to lawful picketing, and that is the only kind of picketing which under this clause or under any other clause of this code consolidation bill or under the law generally, is regarded as lawful; and I think you will search in vain in subclause 4 for any authority for a man to engage in unlawful picketing, or to plead on a charge of sabotage the defence that he is only engaged in unlawful picketing.

The CHAIRMAN: What I am saying is that you may have any number of individuals who will attend for the purpose of communicating information.

Hon. Mr. GARSON: Yes, but the number who do attend and their conduct will determine, on the facts of each case, whether the picketing is lawful or unlawful.

The CHAIRMAN: And you may get so many people there that you may have an offence—it may constitute illegal picketing, and while that illegal picketing may be an offence under some other section of the Code, if each one of these men goes there individually and they congregate there, and each one of them

says, "I attended there for the purpose only of obtaining or communicating information", he gets out under subsection 4, as far as sabotage is concerned.

Hon. Mr. HUGESSEN: Surely, you do not want to inflict the punishment of imprisonment upon illegal picketing?

The CHAIRMAN: No. My position, Senator Hugessen stated very shortly, not as Chairman but as a member of the committee, is that if sabotage is as serious as the Minister has said it is, and I think it is a most serious offence, everybody should have to take his chance under the law; there should be no exception, no saving clauses and no excuses jutifying anybody avoiding a charge of that kind.

Hon. Mr. CONNOLLY: You say, Mr. Chairman, that under subsection 4, if he is unlawfully picketing, he may escape the earlier subsections of section 52.

The CHAIRMAN: That is true.

Hon. Mr. GARSON: Mr. Chairman, I must respectfully take issue with that view. If you compare the language of subsection 4 of section 52 with the language of paragraph (*g*) of section 501 of the existing code, referred to in these cases I have cited, you will note that it commences by saying:

> Everyone is guilty of an offence punishable on indictment—

Hon. Mr. HOWARD: That is the present code?

Hon. Mr. GARSON: Yes, and it is carried forward into the bill as clause 366. The decisions I have cited are based on the language of section 501 of the existing code which is now carried forward into the new bill as clause 366. I wish to make the point clear that the judges in these cases which I have cited were of the view that the proper interpretation of these words which are used in section 501 of the present code is that which I am contending is the proper meaning of the same words used in clause 52(4) of this bill which we are now discussing.

Section 501 of the present code makes it an offence to intimidate; and provides that unlawful picketing amounts to intimidation.

Paragraph (*f*) of section 501 (clause 366 (*g*) of this bill) defines intimidation as including the act of an accused who,

> besets or watches the house or other place where such other person resides or works, or carries on business or happens to be

The saving clause of section 501 of the present Code (clause 366 (2) of this bill) reads as follows:

> attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section

Whether the offending union members or picketers fall within the meaning of the words "besets or watches" and are guilty of an offence under paragraph (*f*) of section 501 or, on the other hand, are innocent under paragraph (*g*), in that they are merely there to obtain or communicate information, has been for the court to decide in cases in which this question arises. Such decisions have imposed upon the courts the necessity of interpreting the meaning of this quoted language. If people appear before a place in reasonable numbers and manner only to communicate or receive information, they come under section 501 (*g*), which is lawful picketing; but if they congregate in great numbers and use violence, threats and intimidation, they come under 501 (*f*).

Hon. Mr. CONNOLLY: Because it is unlawful picketing.

Hon. Mr. GARSON: Yes, because it is unlawful. Now, what clause 52 (4) of this bill does is repeat the substance of Section 501 (*g*) of the present Code, when it says that "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".

Hon. Mr. HUGESSEN: What is the corresponding section of the new Code?

Hon. Mr. GARSON: Section 366 (2). You will find it substantially the same. The only reason I read the provision in the old Code was that I wanted to make it perfectly certain to the committee what was provided for in the existing Code which was referred to in these cases I have cited. The new Code when passed will not come into effect until next January.

Hon. Mr. HUGESSEN: Subsection 4 of section 52 is practically, word for word, the same as subsection 2 of section 366?

Hon. Mr. GARSON: Yes. Sometimes when we are dealing with a section like that in any statute we say this is the wording all right but we are not sure how the courts are going to interpret that wording. That is not so in this case. I could go on and cite five or six more cases, the most recent one decided as recently as two or three months ago interpreting this saving clause. The line of decisions is quite uniform. They have said that whether it is lawful picketing or unlawful picketing is a question of fact to be decided upon the facts of the particular case. There are some instances where the court has held the picketing to be unlawful and has granted an injunction against it.

The point that I wish to emphasize here is that the presence or absence of the saving clause from this section 52 does not relieve the Crown from the necessity of proving *mens rea*; and I do not think the Crown will be able to satisfy a jury that there was *mens rea* when all that the accused were doing was to engage in picketing which was lawful under section 362 (2), even if there were not a savings clause in section 52 (4) of this bill.

Hon. Mr. HUGESSEN: In other words, it is doubtful whether subsections 3 and 4 are of any practical utility.

Hon. Mr. GARSON: Here is our position and I want to be completely frank with the committee. When we were faced with the necessity of consolidating a code which had not been consolidated since it was first passed over sixty years ago, we knew that we were going to dredge up a lot of questions that attracted little or no attention because while they had been provided for in sections of the existing Code, no occasion had arisen to invoke these sections for a very long time, if at all. In respect of the labour sections of the Code, we expected that we were going to have a difficult task in reconciling the viewpoints of employers on the one hand and of the three great labour congresses on the other—the Trades and Labour Congress of Canada, the Canadian Congress of Labour and the Canadian and Catholic Confederation of Labour—indeed it is difficult to get the three congresses themselves to agree on some of these points.

Hon. Mr. HOWARD: We found that out last night.

Hon. Mr. GARSON: In our approach to this problem it seemed to me that the best method was to go to the congresses saying "What are your views upon this matter, although we cannot guarantee that we can give effect to them, but we would like to know what they are". We thought we should do the same with organizations which we thought reflected the viewpoint of the employer interests who were just as much entitled to be heard and have their welfare considered as the labour bodies. Consequently, over a long period of time we were discussing these matters with the labour congresses separately or with representatives of the labour congresses together. Co-incidentally with that, although not in the same gathering, we were consulting, particularly with the Toronto Board of Trade, but we received a communication from the Montreal Board of Trade to the effect that they were supporting the views of the Toronto Board of Trade. I must say that the leaders of the labour

congresses and the officials of the Boards of Trade were most helpful in every way. One difficulty was, of course, that they did not agree. Even the congresses did not in all respects agree with one another. We told these organizations that they could see how difficult it is going to be for us to arrive at a solution which is going to be one hundred per cent acceptable to the Toronto Board of Trade and the Montreal Board of Trade on the one hand, and to the three congresses of labour upon the other, so we suggested that the labour congresses consider alternative solutions and then write us a letter saying what is their order of preference. And then when we received the views of these organizations we tried to draft the legislation to protect the general public interest, and also, as far as possible, to achieve the maximum agreement with the largest number of the viewpoints that we had received. This legislation we have here now represents the outcome of all these deliberations; and the reason I am very anxious to have it passed in its present form is that if it is reopened I don't know whether we can again achieve as substantial a measure of agreement as is represented in the bill which is now before you. In saying this I am not representing the agreement as complete by any means, because the two Congresses did not agree on all points. But I think it is fair to say that we have this much: the Toronto Board of Trade, I understand, through Mr. Chrysler has indicated that it supports 365. So does the Trades and Labour Congress of Canada.

The CHAIRMAN: The Canadian Congress of Labour did not support 365 yesterday, as I understood.

Hon. Mr. GARSON: They supported 365, but not 352.

The CHAIRMAN: No, not 365.

Hon. Mr. GARSON: Sorry, you are quite right; I am in error.

The CHAIRMAN: They were here, and we heard them.

Hon. Mr. GARSON: The Canadian Congress of Labour, in their reply to me, stated their first choice was that we should eliminate 365 from the Code altogether, although it had been in the law of Canada since 1877, and they knew perfectly well, as I had told them many times, that we could not consider that course. It was the law of Britain during that same period of time; and in the whole period that it has been the law of Canada no trade union or trade union member has ever been prosecuted under it. So there was no ground for giving way to that first choice. The second choice was that we should have the saving clause in it without the last four lines that require these conditions to be complied with, and so on, and they knew perfectly well we could not agree to that either. The next choice was as between restoring the 1892 wording of the section which appears in the present bill as clause 365, or the placing into clause 365 of the whole of the present savings clause. They preferred the whole saving clause and since that choice coincided with our own judgment, we were able to give effect to it.

The CHAIRMAN: 365 is not a good section.

Hon. Mr. HOWARD: As I understand it, when the subcommittee of the Senate went through this whole thing and approved of the new Act, those saving clauses in these three ones were not in. That has been put in by the House of Commons.

Hon. Mr. CARSON: That is right.

Hon. Mr. KINLEY: What has the employer got to do with this? He is getting no saving clause. It is a crime against the state. The employer is not concerned about this. It is the state.

Hon. Mr. GARSON: It is not altogether the state. As the Chairman has said, these sections 52, 365 and 372 all are really part of the one general problem, and the employer is concerned even in 52.

The CHAIRMAN: Section 365 does not give you any trouble at all. Section 52 is the one that bothers me, the one about sabotage.

Hon. Mr. GARSON: The employer is concerned in section 52, and I will tell you the reason why in my judgment he is. If we were in a condition of war in which the maintenance of high activity in our airplane production perhaps meant our survival, the sabotaging of the war effort might take the form of the destruction of private property of any privately owned aeroplane manufacturing company or of any other manufacturing company engaged in war production.

Hon. Mr. HOWARD: That is right.

Hon. Mr. GARSON: And while it would hurt the interest of the nation it would hurt the private interest as well.

Hon. Mr. KINLEY: Well, he would be insured.

Hon. Mr. GARSON: We have been in constant consultation with the Boards of Trade, and they take the view that they are not opposing sections 52 or 372.

Hon. Mr. KINLEY: They have not opposed the saving clause?

Hon. Mr. GARSON: No.

The CHAIRMAN: We have had no view from any Board of Trade with respect to sections 52 or 372.

Hon. Mr. GARSON: Mr. Chairman, here is the position. Mr. Crysler, representing the Toronto Board of Trade is here now in the room, in case there is any question about this at all. All through this picture on every occasion on which any new development took place with the labour unions, we submitted it as an alternative, which we were considering, to Mr. Crysler as representing the Board of Trade, in order that he could consult with his people to get their viewpoint upon it. Any views they had we submitted to the labour people, not as their views but as alternatives which we were considering. We did not do this in any sense or in any way to set off the one viewpoint against the other, but we wanted to test the validity of the views of one side by the criticisms of the other in order to reach a wise judgment ourselves. Thus, as I said a few moments ago, these sections have only been arrived at over a long period of time—

The CHAIRMAN: Excuse me, do you mean the saving clauses?

Hon. Mr. GARSON: Yes, and the substance of the section as well.

The CHAIRMAN: The substance of the section outside the saving clause has not been changed from what we sent over to you.

Hon. Mr. GARSON: Yes, that is right, but we had to draft them in the first place and we reconsidered them after we received them from you.

Hon. Mr. ROEBUCK: May I have the floor? I have listened long and I have been very interested in what you have been saying in regard to these saving clauses. I attacked this section in the house, and perhaps I am guilty under the section for doing so. I should like to make my position clear in regard to it. When this section came before us first and I voiced objection to it, it provided that: "Everyone who does a prohibited act for a purpose prejudicial to the safety, security or interest of Canada. . ." Now, you struck out that word "interest" and in doing so you improved the section tremendously.

Hon. Mr. GARSON: I agree.

Hon. Mr. ROEBUCK: I was much opposed to that word because it was so indefinite. Then, besides that, it had a labour implication that appalled me, and you have cured that in these exemptions. I think you have tremendously improved the section in doing so. At the same time, our Chairman likes this section very much and I still dislike it.

The CHAIRMAN: What did you say about me?

Hon. Mr. ROEBUCK: I say that I think you like this section; you hav expressed so many times your appreciation of it.

The CHAIRMAN: Which section?

Hon. Mr. ROEBUCK: I am talking about section 52.

The CHAIRMAN: I like section 52 without any saving clause.

Hon. Mr. ROEBUCK: Yes.

Hon. Mr. KINLEY: I agree.

Hon. Mr. ROEBUCK: I still don't like it. Now, I want to make myself clea here as to why I don't like the section now, and it is a little difficult to do. T begin with, it says, "a prohibited act for a purpose prejudicial to the safety security or defence of Canada." That is not the purpose, necessarily. Th person may stop a boat that is travelling or a machine that is running; it ma not be his intention to prejudice Canada, and yet if he does he comes withi the section.

Hon. Mr. GARSON: It is his purpose, surely.

Hon. Mr. ROEBUCK: No, it is *a* purpose. The purpose may be to stop a boa travelling or a machine running; that purpose is prejudicial to Canada, there fore he falls within the section. Of course, everybody here at least agrees i prohibitions against any act, whether it be included in the provisions of thi section or not, that is prejudicial to the safety, security or defence of Canada We are ready to legislate against that, or to legislate against a prohibited ac for a purpose prejudicial to the safety or security of the naval, army or ai forces. "Prohibited act" means that which "impairs the efficiency or impede the working of any vessel, vehicle, aircraft, machinery, apparatus or othe thing", or "causes property, by whomsoever it may be owned, to be lost damaged or destroyed." Now, those ordinarily are minor offences; if yo impede the efficiency of a vessel, or an aircraft, or machinery, apparatus o other thing, or cause property to be lost, damaged or destroyed, it is a fairl minor offence.

The CHAIRMAN: It may or may not be.

Hon. Mr. ROEBUCK: It usually is.

The CHAIRMAN: Impairing the efficiency?

Hon. Mr. ROEBUCK: Impairing the efficiency of a machine, yes; it i destruction of property.

The CHAIRMAN: I was questioning whether or not the implication is tha it is a minor offence. I would think there are circumstances under which wha is done may be a very major offence.

Hon. Mr. ROEBUCK: It may be so, yes, as for instance, if property is destroye for the purpose of injuring Canada.

The CHAIRMAN: No, I am speaking of impairing the efficiency. You sug gest that may be a minor offence. But I suggest that it is more likely to b major, because if a man is working on an assembly line he is likely to stop th whole operation.

Hon. Mr. ROEBUCK: That is all legislated against in the Code; that is destruction of property is legislated against.

The CHAIRMAN: Well, impairing the efficiency may be destruction o property.

Hon. Mr. ROEBUCK: Yes. So that what you are doing here is to tak offences with regard to property and hitch them up to the safety, security an defence of Canada, and I don't like the combination of the two; I think th two stand separately and should not be united the way they are here. I d not like the whole section in consequence. I think we should legislate agains

the destruction of property or adversely affecting it in the way it is stated here, and they have done so. I think we should legislate for the safety, and security of Canada quite irrespective of whether the instruments used are property instruments.

The CHAIRMAN: But sabotage has to be in relation to something.

Hon. Mr. ROEBUCK: Very well; legislate against sabotage, if you like—you have already done so, in that you have legislated with respect to safety, security or defence of Canada in the treason sections. Here you are magnifying something with respect to property and hitching it up to the defence of Canada in a way which I do not like and which in my opinion may lead to abuse.

Hon. Mr. GARSON: But Senator, could not the interference with property in the modern type of war be of the quintessence of sabotage? For example, if there was some kind of subversive influence at the Chalk River plant, some damage might be done to a vital part of the apparatus there—

The CHAIRMAN: A reactor, for instance.

Hon. Mr. GARSON: Yes. That would be damage to property which would be in the highest degree prejudicial to the interest of Canada.

Hon. Mr. ROEBUCK: But why bring property into it? Any act which is prejudicial to the interest of Canada should be prohibited, that is, if the purpose is that it shall be prejudicial. This does not say for the purpose of an individual; it is for any purpose that is prejudicial. If your purpose to stop a machine, and it is found that is prejudicial to Canada, you are guilty; not that you intend to injure Canada, but that you intend to stop the machine, which is a purpose prejudicial to Canada.

The CHAIRMAN: If what is done is prejudicial to the safety, security or defence of Canada, surely that should be the very essence of the offence.

Hon. Mr. GARSON: How could we state it more clearly in the English language than in these words:

> Everyone who does a prohibited act for a purpose prejudicial to
>
> (*a*) the safety, security or defence of Canada.

What could be more clear than that?

Hon. Mr. ROEBUCK: You can make it clearer, Mr. Minister, by saying that anybody who does a prohibited act prejudicial to the interest of Canada—and at that point you read into it *mens rea;* leave the purpose out. The accused does not do this act for the purpose of prejudicing Canada, but he does it for a purpose which some court finds later is prejudicial to the interests of Canada. There is a vast distinction between the two.

Hon. Mr. GARSON: With deference, I think these words give the accused much more protection, because the crown has to prove what was his purpose.

Hon. Mr. ROEBUCK: His purpose was to stop a machine; the stopping of the machine is later argued to be prejudicial to the interests of Canada.

Hon. Mr. GARSON: But you must prove that he stopped the machine for the purpose of prejudicing Canada.

Hon. Mr. ROEBUCK: No, no.

Hon. Mr. KINLEY: We are in a machine age, and the machine is more important than the man today.

Hon. Mr. HAIG: I think it unfair to press the minister at this hour—

Hon. Mr. ROEBUCK: Yes; it is now ten minutes to one, and he will not be able to cover the other section before the lunch hour. I have stated my position, and I will not argue it further.

The CHAIRMAN: We know your position.

Hon. Mr. GARSON: Supposing I try to finish with the section 52. As I understand it, the fear, if any, that exists is that the saving clause may result in an improper protection being provided.

Hon. Mr. HAIG: Mr. Chairman, may I interrupt the Minister to say that our numbers are few, and I would like everyone to hear what he has to say on this subject. We don't want to do anything that would prejudice the Minister or anybody else.

Hon. Mr. GARSON: There is just one point I should like to mention now, and I shall refer to it again this afternoon.

Hon. Mr. HAIG: You can come back to it this afternoon.

Hon. Mr. GARSON: It will take but a few minutes to mention it. As you can see, we have here in those two sections, 52 and 372, fairly controversial material and very important material and we have been able to secure the assent of all the labour interests, to the sections as they are drafted, and after having been in constant communication with the Toronto Board of Trade, it has raised no objection to the wording of these sections. Now what I am concerned about is if we make any change in them, where do we go from there?

The CHAIRMAN: The committee will now adjourn till the Senate rises this afternoon.

The Committee resumed its sittings at approximately 3.45 p.m. the same day.

The CHAIRMAN: We have a quorum. We will resume with the Minister, Mr. Garson.

Hon. Mr. KINLEY: What section?

The CHAIRMAN: Sections 52 and 372.

Hon. Mr. ROEBUCK: I thought you finished 52. Did you not go on to 365 after I left?

Hon. Mr. GARSON: No. I am not dealing at any great length with 365, unless the Committee members wish me to do so, because my impression is there is no great argument on the terms of it in any case.

Hon. Mr. ROEBUCK: You have improved it so tremendously since I criticized it first that there is very little left in it that is objectionable. There is this point: objection has been taken to this—right at the very bottom:

> 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. . .

Now, some objection is taken to that "by law deemed to be contained in" an agreement because you place in the hands of provincial legislatures the possibility of their reading any kind of thing into an Act—anything almost, can be read into an agreement "by law". There has been some fear expressed by labour people that some of the provincial legislatures may read into their collective agreements provisions that are difficult or perhaps impossible to comply with.

The CHAIRMAN: You mean, statutory provisions?

Hon. Mr. ROEBUCK: Statutory provisions, yes.

The CHAIRMAN: How can you overcome that?

Hon. Mr. ROEBUCK: You cannot, under this.

The CHAIRMAN: But in any event? How could we write out of the Code some statutory provisions that a province would be saying as a matter of law must be read into every agreement?

Hon. Mr. ROEBUCK: It is very difficult to do it. I am pointing out the objections, that is all, and there are very few left in this clause. If there is nothing we can do with it, let's pass it. I don't know what you should do with it. I can see the force, however of the objection to and the possibility of trouble.

Hon. Mr. GARSON: Well we had that argument advanced to us on more than one occasion before the committee by some of the labour congresses, but it seemed to me every time it was made that it was really casting some doubt upon the whole operation of the democratic process because if we have not any confidence in our provincial legislatures, if we are afraid to include a clause which gives them authority to change the law from time to time, then I don't know how much confidence we have left in the democratic process of electing provincial legislatures to make laws concerning matters which fall under provincial jurisdiction.

Hon. Mr. ROEBUCK: I don't know that I want to put the Criminal Code behind all the legislatures in Canada.

Hon. Mr. GARSON: No, but you see what the nature of this section 365 is and always has been from the time it was first introduced in our law in 1877. It says simply that there are certain types of contracts the wilful breach of which will entail, for him who breaks the contract, more than civil consequences. These will be criminal breaches of contract. Once we do that, then the nature of a provision of this sort is such that, if there are any changes in the provincial law relating to contracts, they are bound to be imported into our criminal prohibition as time goes on. There is no way of avoiding it, as you say, Senator Roebuck.

Hon. Mr. ROEBUCK: I do not see how to avoid it.

The CHAIRMAN: Putting a deadline would not do any good.

Hon. Mr. ROEBUCK: The next objection to this clause is, we have made a breach of contract criminal, and the argument has been—and there is force in it—that a contract is a civil matter and should remain a civil matter subject to civil rights. On the other hand, to endanger human life, to cause serious bodily injury, to expose a valuable property, real or personal, to destruction or injury, ot deprive citizens of a city—and so on, are all matters that could be legislated on, and most of them are, in the criminal law, and I have advanced this argument, that to deprive the inhabitants of a city of these essential services is criminal, whether a contract is involved in it or not or whether there is a breach of contract; and so I think the law would be very much better if the breach of contract was separated entirely from these obviously criminal acts. I think that a breach of contract should be a civil matter, dealt with civilly. I am speaking of 365. I think these other things are properly included in the Code.

That, of course, is a general criticism against the whole section. I think we could drop the whole section with a good deal of improvement to the Code, and we should legislate with regard to the preservation of municipal services irrespective of contracts. The regulation of contracts, industrial contracts collective bargaining, and so on, agreements should be dealt with under the Labour Relations Acts, both of the Dominion and the provinces, not in the Criminal Code at all.

Hon. Mr. KINLEY: We are dealing with the saving clauses.

Hon. Mr. ROEBUCK: If you abolish the whole thing you would not need saving clauses.

Hon. Mr. KINLEY: You do not need the saving clauses if your argument is good.

Hon. Mr. ROEBUCK: My argument would abolish the whole clause, and then you would not need the saving clauses, but the section without the saving clauses is a very dangerous piece of legislation. I thoroughly approve of the saving clauses.

Hon. Mr. GARSON: The history of the legislation is that its counterpart was originally introduced in England in 1875 as the result of a report of a royal commission. After this commission had made its report both the unions and the employing interests were quite agreeable to the Act which was then put upon the British statute books pursuant to the report of that royal commission. We in this country thought so highly of that precedent that we incorporated it in our Canadian legislation in 1877. It was retained on our statute books until Sir John Thompson brought in the first Code in 1892. It was then incorporated in the Code, and has been the law of Canada, therefore, from 1877 until the present time. During the whole of that time I can only recall one instance in which this legislation was invoked against a trade union in Great Britan, and I don't think there are any cases in which there have been prosecutions for a breach of this section in Canada. So that it can hardly be maintained that any great abuses of labour interests have been brought about under this legislation.

Hon. Mr. ROEBUCK: That is true.

Hon. Mr. GARSON: I think I should add that, due to a draftman's error in the revision of the statute in 1906 under the method by which we still revise our statutes, that is to say, the revising committee revise the statutes which in their revised form do not come before Parliament for its approval—as a result, I say, of the error that crept into the counterpart of this clause 365, viz, the present section 499, it was made unenforceable as regards utilities and railways. To that extent the question of enforcement could not arise with regard to utilities and railways. But where we have a statute which has been passed as a result of the report of a royal commission in Great Britain followed by a statute in Canada, and that has been on the statute books in one case from 1875 and in the other from 1877, to the present time, and no abuses have arisen under it, it is pretty difficult to say there is anything radically wrong about continuing it.

Hon. Mr. ROEBUCK: It is not conclusive, is it.

The CHAIRMAN: It is persuasive.

Hon. Mr. ROEBUCK: To begin with, we do not follow everything they do in Great Britain, even by royal commissions.

Hon. Mr. GARSON: But it was approved by employing interests and by the interests of the employed—both masters and unions—at the time it was put on the statute books, as in Great Britain, and no abuses have arisen under it. With regard to the other point you raised, when you said in effect "Well, we should not apply this to a breach of contract, we should just make it illegal in any event to interfere with the utility services, for example of a great community, contract or no contract". My reply would be that the essence of this clause 365 is that it deals with a breach of contract . . . a criminal breach of contract. Ordinarily where you have a contract between, we shall say, the A.B.C. Mining Company on the one hand and its employees on the other—the unions involved on the other—a breach of contract which arises may prejudice either of those two parties to the contract. But what we are talking about here is not the interest of the unions on the one hand or the company on the other hand; we are talking about the interest of the whole public. We say that where a party—whether it be the union or the employer—wilfully breaks that kind of a contract, knowing the public is going to be prejudiced in a substantial and important way, then it is a crime and should be punishable as such.

Hon. Mr. ROEBUCK: As it is drawn now it affects the employer more than it does the employee. There is no exception for the employer if he breaks his contract.

The CHAIRMAN: No, he is nailed.

Hon. Mr. GARSON: There is no exemption for the employee either until he has fully complied with all the provisions of the law which he is required to comply with before he breaks the contract. If he complies with these provisions I doubt very much indeed whether the Crown could prove he was guilty of a breach of contract.

Hon. Mr. ROEBUCK: Tell me this. Is it possible to comply with the conditions and break the contract at the same time?

Hon. Mr. GARSON: No, I do not think it is. I think that in this case, as in the case of sections 52 and 372, we have, at the abundance of caution, spelled out what would be the applicable law in any case in language that could not be misunderstood by either party to the contract or by the public. They should know what their relative positions are. I make no apology for doing that. I think it is better to spell it out than to leave it to be surmised or presumed.

Hon. Mr. ROEBUCK: So do I.

The CHAIRMAN: I think the simple answer to section 365 is that when everything has been done and the strike which takes place is a legal strike, there is no contract and therefore there is no breach of contract. That is the simple answer in section 365, but not in section 52 and section 372. You said they were all the same. In sections 52 and 372 you could have an illegal strike or a legal strike under the saving clause there.

Hon. Mr. GARSON: I think not, Mr. Chairman.

The CHAIRMAN: Then the unions themselves are under a misapprehension because that is their opinion according to the latest publication of the Canadian Congress of Labour.

Hon. Mr. GARSON: I wish you would not make part of my case any selection from these labour magazines. It is the opinion of the legal advisers of the Board of Trade of Toronto that all that we do in section 52, dealing with sabotage, and in section 372, dealing with mischief, by the saving clauses, is to spell out what would be the law in any event. In other words, as I said this morning if the Crown is going to bring home a charge of sabotage against a man who has gone out on strike, the Crown must prove that he has been guilty within the language of the section of doing a prohibited act, and a prohibited act is defined. Then the Crown also has to prove what is an essential ingredient of the offence, and the Crown does not get a conviction until it proves it. If, without proper evidence to support it, a jury does bring in a conviction improperly, the accused can take it to the court of appeal and show that there is no evidence upon which the jury could have found such a conviction. The Crown must also prove that what was done was done for a purpose prejudicial to the safety, security or defence of Canada. Even if there were no saving clause at all, the Crown would still have to do this. So that when we put the saving clause in the section and the Crown proceeds to prove a charge under the section, it must still prove a prohibited act, and that it was done for a purpose prejudical to the safety, security or defence of Canada. The Crown has to establish a *prima facie* case; and then, having done that, the defence opens up their case. If there were no saving clause in the section the defence might still say, "Well, we don't admit exactly that what we did was a prohibited act, but maybe it was. In any event, we were not trying to prejudice the safety or defence of Canada. We were simply

doing in good faith what we regarded as a proper and lawful act to protect our own legitimate interests with no intent whatsoever to prejudice the safety, security or defence of Canada.

Hon. Mr. ROEBUCK: I do not agree with you in that, you know.

Hon. Mr. GARSON: Under these circumstances, I cannot see the average Canadian jury holding the accused guilty. But I do say that as in the case of section 365 it is preferable to spell the language out in the way in which it has been done. The reason I am so greatly concerned about this matter is that we were faced in the consultation of the Code, when dealing with these sections which have an interest for labour, with sections that had been on the statute books for a long while and had been used so seldom that many people, including members of the unions and the employers as well, were in some instances not conscious of being in the law at all.

Hon. Mr. ROEBUCK: And you might add Crown Attorneys to that.

Hon. Mr. GARSON: Yes, thank you very much. I did not have the courage to make that statement myself.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. GARSON: But I agree with you Senator Roebuck when you make that statement. We agreed when the Labour Congress said, "It is all very well that you have got to prove *mens rea*, a guilty mind, upon our part to prejudice Canada, but we would like to have this put in the section so that there is no argument about it." All through these negotiations we were in constant touch with the Toronto Board of Trade and it raised no objection to it. The present position is that the Board of Trade of Toronto raises no objection; the Montreal Board of Trade, supporting the Toronto Board of Trade, has raised no objection. The Trades and Labour Congress has supported this government bill from the beginning. I admit that in connection with section 365 the Canadian Congress of Labour very reluctantly and grudgingly agreed to the saving clause, but every labor congress concerned is supporting the savings clauses in sections 52 and 372. When in a matter of that kind which is highly controversial, we have got that measure of what shall I say, of, if you like agreement to disagree; and everyone concerned is reasonably content, I think we might better leave well enough alone and not make a change which would open the matter again as a subject of controversy once more.

The CHAIRMAN: Mr. Minister, that argument could be made in relation to any bill that comes to us. You have achieved a certain amount of agreement, perhaps as a result of compromise or otherwise, in the other house. However, now that the legislation has come to us we would prefer to look at it on its merits. The argument is persuasive but certainly not conclusive. But supposing you opened it up after, if you examine the House of Commons Debates you will see that in the case of some of the labour congresses the provisions written into these labour sections were not the first or second choice, but the third choice.

Hon. Mr. HOWARD: A compromise arrangement.

Hon. Mr. GARSON: Yes, and we have got it. And as one who has been in the middle of this controversy, I want to tell you we could have a much worse provision than this. I was conferring with the labour congresses and the Boards of Trade. I got the criticism from either side of the other's point of view, and we tried to harmonize as well as we could these views in the light of the general public interest. I think we have done so, certainly with regard to sections 52 and 372, because with regard to those sections in their present form not one of those interests is strenuously opposed.

The CHAIRMAN: May I ask one question? It dealing with section 52, that section has not been in the Code long enough for anyone to forget it. It only came in in the year 1951, and I think you were the one who put it in. Looking up the Senate *Hansard* I see that Senator Hugessen was the one who explained section 509 (*a*). I must assume that in the year 1951, which is not very long ago, something new coming into the Code at that time would come to the attention of them if it were presenting any terrifying problems so far as labour was concerned, and yet in that section as passed in 1951 I do not find any saving clauses. You are the author and creator of the section; you presented it to us in that form without any saving clauses and asked us to pass it, and we passed it unanimously.

Hon. Mr. ROEBUCK: No, not unanimously.

Hon. Mr. HOWARD: We did not put any saving clause in.

The CHAIRMAN: I must accept your statement, Senator Roebuck. In any event, we passed it, and there was no saving clauses; and I cannot recall any outbreak by way of criticism or protest from any of the labour unions. Then when it came to us for the first time in the revised revision of the Code it was in this same form as it had been passed a year before, and this carried through the second time, and it came to us in the Senate in the same form without any saving clause—and it is only when it goes back into the Commons that the saving clause is added. Now, it is all so new, and I am sure the Minister meant everything he said in 1951 as to the necessity for this section. I still take the Minister's original view. I think the section was good when it passed, but things have been improved by changing the wording to read "The safety, security or defence of Canada", but I still subscribe to the original view of the Minister that in its revised form it is still a good section. And what has happened in the last two years except an over-alert or over-acute feeling on the part of the labour organizations that it might hurt them? Is there anything more than that?

Mr. GARSON: I would not put the matter in quite that way, Mr. Chairman. I would say this is closer to the facts: You are quite right in saying that it was I who introduced this legislation, in the first place. It was pretty severely criticized when it was first brought in. You remember that. Quite an extensive debate in the House of Comons took place about it, and certain members with certain points of view said it was a severe section. Now, you say since we put it in without the saving clause, why should we make any change now, and you ask how that change came about. Well, I suggest that one of the reasons the change came about—and this is only my own theory in the matter —is this. When we consolidate a statute as large as the Criminal Code for the first time in sixty years, and in that connection weigh the merits of sixty years accumulations of amendments to that statute we inevitably bring to the attention of public opinion a lot of provisions in the law to which the public opinion had not previously given any particular attention.

The CHAIRMAN: This was so new.

Hon. Mr. GARSON: Yes, this particular section is quite new; but in the course of the labour congresses and the boards of trade having their legal experts examine as to what was being done in all the sections of the Code which they thought might have a bearing upon their interests, they came to this section and said, "Now, what is the position here?" And the position was, as I have tried to indicate it today, that with regard to section 52, if the Crown is going to prove a case against the accused it would have to prove the prohibited act plus the purpose of prejudicing the interests and safety and defence of Canada; and the congresses said—and I must say that if I were advising

them I would advise them to the same effect—it would be better if we could have that state of affairs which is in the section here spelled out by having a subsection stating just what the position is. Well, the position is, even if we had no saving clause, that we should have to prove *mens rea*—a guilty mind—to prejudice the safety of Canada; and that a mere labour act in itself, providing it was bona fide and was not being used to cover up a guilty intent, would not be sufficient to bring the offence home to the accused. So they said, "Is there any objection to putting in a saving clause to this effect?" And we said, "Well, let us consider this"; and we did; we submitted it to the Board of Trade and said, "Now, here, you are deeply concerned, you represent plants that may be affected by any offence under this section; have you any objection to putting in this saving clause in the section? Our view is that it does not change the existing law. What is your view?" And they said, after some consideration, "We agree with you." Therefore, when we had the union interests requesting something which in substance was no change, and the employer interest had no objection to it, we could not see that there was any reason why it should be withheld. As a matter of fact, my opinion is that the law is more clear for everyone who reads it with the saving clause in than it would be without it.

Hon. Mr. HUGESSEN: Since I was mentioned as having explained the bill, I should like to make my position clear. I have not read what I said in 1951 when introducing the section.

The CHAIRMAN: I am sure you supported the section.

Hon. Mr. HUGESSEN: I supported the section, but I never had any idea, nor had the leader, that the original section even without the saving clause did intend or would in any way affect normal labour relations. My view as stated to the committee yesterday afternoon is exactly that of the Minister, that if somebody would like these saving clauses in for abundant caution, I have no objection. They may improve the legislation, but in my view they have no real effect.

The CHAIRMAN: It may be they have no real effect. I noticed the Minister said many times there was no change in the law. But a prohibited act is an act or an omission under this section which has certain results defined in the section.

Hon. Mr. GARSON: Yes.

The CHAIRMAN: Then you have to prove that the acts were for the purpose of being prejudicial to the defence of Canada. Those are things which may be difficult to prove, and if that is so more protection is offered to an accused person. Then you say that the acts in those circumstances of a member of a union, on an illegal strike as well as a legal strike, are not prohibited acts. That makes it difficult for me to accept such a provision in relation to an offence as serious as sabotage. It must be considered a serious offence to have been brought in as it was in 1951, and to require the creation of that kind of offence. If there were circumstances at that time requiring it, they are just as serious today, and remain to be dealt with as firmly today as in 1951.

Hon. Mr. GARSON: I agree with that.

The CHAIRMAN: If in providing the saving clause there is a possibility that people can go on strike illegally and get the same benefit as those who go on strike legally, I find it difficult to accept that in relation to the offence of sabotage.

Hon. Mr. GARSON: But that is not what the section says.

The CHAIRMAN: Then we differ on that point, for I think it does say that.

Hon. Mr. GARSON: All that subsection says is:—

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

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

As long as he does only that.

The CHAIRMAN: But a prohibited act includes not only the act itself but an omission. The omission, in my view, must be an omission of something which is his duty to do; it must carry that connotation.

Hon. Mr. GARSON: That is right.

The CHAIRMAN: If a man goes on an illegal strike and omits to do something which it was his duty to do, such as protect the machinery in his charge, in those circumstances you excuse him in doing something that is illegal and omitting to do something that is his duty to do. In consequence of this subsection, he is excused.

Hon. Mr. CONNOLLY: Would it help you in that situation, Mr. Chairman, to look at section 366? Could he be charged there if it were an illegal strike?

The CHAIRMAN: Do you mean section 365?

Hon. Mr. CONNOLLY: I think it is 366.

The CHAIRMAN: In 365 there must be a criminal breach of contract.

Hon. Mr. CONNOLLY: It might not be a breach of contract, if he were on a legal strike.

The CHAIRMAN: He might be guilty of something else. The defence of sabotage is well defined; it is a much more serious offence than a criminal breach of contract.

Hon. Mr. REID: One point is not clear in my mind, and I posed this question the other evening. I cited the illustration of the man who was working in a steel foundry—and I have some knowledge of these places—who was handling a pot of molten lead; and after all steps had been taken to reach an agreement with his employer, and upon failure to reach agreement he said to hell with the employer and dumped the pot of lead and burnt the plant down. I say that is going a little too far, even if the strike is legal.

Hon. Mr. GARSON: But under such circumstances, is this not what happens in real life—and here I am going to ask the Chairman and Senator Roebuck to agree with me or correct me—when a case of this kind comes before the court, and the accused is charged with an offence under either section 52 or 365, the crown puts in evidence of the acts which the accused is said to have done, and the crown attorney states his theory as to what that evidence proves against the accused. In a case of that sort it becomes a question for the jury to decide whether on the facts of the case they think the only reason for the accused stopping work and walking out was by reason of a dispute with his employer. I would think if he acted in the way in which this hypothetical man acted, the jury might have some difficulty in reaching that conclusion; but in any case, if they did reach that conclusion, there still would certainly be a clear and wilful breach of contract under section 365. I think the Chairman and Senator Roebuck will agree with me that it is very easy to imagine a set of circumstances under which it would be possible to lay an indictment against an accused with counts in it under sections 52, 365 and 372, and that if there were any chance of his getting off because of the saving clauses in 52 and 372, he certainly would be found guilty under section 365. I have no doubt that those considerations were in the minds of the legal advisers of the Board of

Trade when they told me they were raising no objection to sections 52 and 372. In connection with the illustration given by Senator Reid, in which the property was destroyed by reason of the dumping of the pot of metal, I should like to point out that section 365 provides that:

> 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

Hon. Mr. REID: But it is subsection 2 that I am thinking of, which commences, "no person wilfully breaks a contract within the meaning of subsection (1) by reason only that—" There you are giving an escape clause to the type of individual which would commit some acts such as those set out in the first part of the section.

Hon. Mr. GARSON: But, Senator, if you read on to the end of subsection 2 you will note that the immunity under the escape clause is not completely established until he proves that

> . . . 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 those circumstances he could not establish immunity.

Hon. Mrs. HODGES: Hearing three lawyers argue leaves me somewhat in a quandary and so I want to reduce the arguments to layman's language. Is the chairman trying to establish the fact that he considers that sabotage should be sabotage irrespective of whether it is committed by union men or non-union men, members of organized labour groups or not, that sabotage should be sabotage without any qualification whatsoever?

The CHAIRMAN: That is my view.

Hon. Mrs. HODGES: From the arguments that you have adduced you have established what seems to me an opinion that sabotage should be sabotage without consideration of anything else. Does it not then seem superfluous to have these saving clauses in the sections 365 and 372.

Hon. Mr. GARSON: With great deference, I should think not, because the tenor of my argument has been, and the views of the legal officers of the unions on the one hand and the Board of Trade on the other have been to the effect that to prove the offence of sabotage, the Crown must not only prove the prohibited acts but must prove also that the prohibited acts which have been committed by the accused have been committed by him for a purpose prejudicial to the safety, security and defence of Canada. Whether there is a saving clause or no saving clause, and although his act might be regarded as reprehensible and might perhaps be an offence under section 365, it is not sabotage until the Crown establishes a guilty intent or *mens rea* on the part of the accused to do something prejudicial to the defence of Canada. In other words, he has got to intend to prejudice the safety, security or defence of Canada and not merely to stop work in protection of his own interests. That being so, what we are doing in putting in this savings clause is merely to spell out what would be the law applicable to that set of facts in any event.

Hon. Mrs. HODGES: That really means then that one class of people can commit sabotage and that same offence committed by somebody else would not be sabotage.

Hon. Mr. GARSON: No, I suggest not. This section 52, with or without the savings clause, provides that a unionist or you or I, in order to be convicted of sabotage, must be proven to have committed prohibited acts and in doing those prohibited acts he must have intended, must have had a guilty intent to prejudice and hurt our country.

Hon. Mr. HAIG: If your statement is correct, Mr. Minister, you do not need the saving clause at all.

Hon. Mr. GARSON: That is quite true, Mr. Chairman.

Hon. Mr. HAIG: Why put that saving clause in then, as Honourable Senator Hodges pointed out, and why raise an issue that appears to give an exemption even if it does not, to a certain class of people. I am opposed to that kind of thing.

Hon. Mr. GARSON: You asked me that question and I shall be glad to answer.

Hon. Mr. HAIG: I heard what the Chairman said. I remember the bill when it was before us in 1951. I may say that I am not an expert on criminal law and so I did not have very much to say, but I do remember the bill and it seemed to me to be a reasonable statute to pass. I have not heard of any case under it at all by which anybody was dealt with improperly. There may have been cases under it, and I do not think the savings clause would have changed it one iota, and your statement in answer to the question asked by Honourable Senator Hodges is that you do not need those clauses. Now, from what you have told us so far about these clauses conveys to us that you wanted to satisfy labour so that they would not object to them, and they said that they wanted these exemptions spelled out and other people did not object. Now I do not think that legislation should be passed under those conditions.

Hon. Mr. ROEBUCK: I cannot agree with Senator Haig in this, that these saving clauses have no effect.

Hon. Mr. HAIG: I did not say they have no effect, the Minister said so.

Hon. Mr. ROEBUCK: Well, you cannot read it carefully and find that to be the case. Mr. Minister, you have expressed the section in two different ways, showing that you have not grasped the point that I tried to make this morning. You say "Every one who does a prohibited act for a purpose prejudicial to

(*a*) the safety, security or defence of Canada", yet when you are explaining this you say "Every one who does a prohibited act for the purpose of prejudicing the interests of Canada". Sometimes you say, "does a prohibited act intending to prejudice the interest and safety and so on of Canada". The section does not say that. The section says it is a prohibited act for a purpose which is prejudicial. The two ideas are very, very different. If a man does an act—I illustrated it this way this morning—for the purpose of stopping a machine running and it can be argued that the stopping of that machine was prejudicial to the interests of Canada, then he comes under this section, and although he may have had no intention at all of prejudicing Canada, his purpose was to stop the machine, and the machine stopping may be prejudicial in some way or another to the safety and interests of Canada.

Hon. Mr. BEAUBIEN: He must have had a purpose in stopping the machine.

Hon. Mr. ROEBUCK: That is right, but the question is, what is the purpose. It is quite a different thing to have a purpose of stopping a machine—and the stopping of the machine perhaps is not in the interests of Canada—and to do something deliberately, absolutely to injure Canada.

Hon. Mr. GARSON: Senator, as I indicated to you this morning, I cannot agree with that interpretation.

Hon. Mr. ROEBUCK: I do not know how you can read it any other way and the courts would certainly agree with my interpretation.

Hon. Mr. GARSON: I think in order to bring home the crime of sabotage to any citizen that the Crown must prove a guilty mind.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. GARSON: Or *mens rea;* in other words, that what he did, he did to prejudice the safety, security or defence of Canada.

Hon. Mr. ROEBUCK: No, not under this section. You may desire it and you may think it is that way, but it does not say it. The doing of an act to stop the machine, that is the guilty mind. Now then, if stopping that machine was prejudicial to Canada then he has to face the section.

Hon. Mr. BEAUBIEN: Why should he stop the machine unless he had some purpose in doing it?

Hon. Mr. GARSON: Senator Roebuck, if you go back to the spy trials based on the Gouzenko disclosure—you remember those, I am sure—I think you will find in all of those cases that the Crown had to bring home to the accused that he did the acts which he did do for a purpose within the provisions of the Official Secrets Act. It is the same for any purpose prejudicial to the interests of Canada. I am sorry I cannot agree with your interpretation. We were informed by employer interests that, with reference to this section 52, from an examination of the elements which constitute the offences of sabotage and mischief, it would appear through the normal process of construction, of the statute that is, that acts within the meaning of the savings clauses would not fall within the offences. That has been my argument all along. If the only acts we have against the accused were acts which fell within the savings clauses, those acts would not constitute offences, whether there was a savings clause or not. The view is expressed to us that: Consequently the saving clauses do not appear to weaken the substantive provisions of the two sections and that presumably these sections are of a declaratory nature for the purpose of removing any doubt rather than for diminishing the force of the sections. This general view is supported by the judicial interpretations respecting these combinations of workmen, and picketing.

Now, when you have well and expertly informed labour congresses, on the one hand, and you have well informed boards of trade upon the other, and they are in agreement as to the nature of the savings clauses, it is pretty hard to convince the labour congresses that—

Hon. Mr. ROEBUCK: Oh, I know, but Mr. Minister, this is the Senate of Canada: we are not bowing down to the opinions of either the boards of trade or labour unions. We want to read this ourselves.

Hon. Mr. GARSON: I am not suggesting that you should bow—not for a moment—but what I am suggesting here is that where we have well-informed opinion upon a controversial matter which is in virtual agreement upon these points, it does not seem unreasonable that there should be included in the laws of our country a point which is not contrary to the general public interest and upon which there is that measure of agreement between conflicting interest immediately concerned.

Hon. Mr. ROEBUCK: The boards of trade are satisfied, but the men themselves have said, and the congresses have said, that they do not like this section. If they have to have it—

Hon. Mr. GARSON: Do not like which section?

Hon. Mr. ROEBUCK: 52, 365 and 372. They do not like any of them.

Hon. Mr. GARSON: That is right. Some of the congresses don't want Sections 52, 365 and 372. Two of the congresses would like to have these sections repealed.

Hon. Mr. ROEBUCK: But they say, "if we have got to have them, give us the saving clauses"; and you have told them they have got to have them, and so they are all through.

Hon. Mr. GARSON: That is true. But may I ask a question at this stage? Parliament has said or is saying that they have got to have them. Now are we also to say, "Not only do you have to have them, but you have to have them without the savings clause", which the other people are not opposed to—

Hon. Mr. ROEBUCK: I am not in favour of that.

Hon. Mr. GARSON: —What sort of a view are they then going to take of the government, or of Parliament?

Hon. Mr. KINLEY: But there is no virtue in the savings clauses, you say?

Hon. Mr. ROEBUCK: Oh, yes.

Hon. Mr. GARSON: No, I did not say that at all. I say that the virtue of the savings clauses is that they make clear what I think would otherwise be the law in any event, and if they do that, that is a great virtue, because clarity in the law is a good thing in itself.

Hon. Mr. KINLEY: Don't you think they do more than that?

Hon. Mr. GARSON: No, I don't.

Hon. Mr. ROEBUCK: Comeing back to this point of mine with regard to the prohibited acts, would it make any difference in the meaning of this section if, instead of it reading this way, "Everyone who does a prohibited act for a purpose prejudicial to," you said "Everyone who does a prohibited act for the purpose of prejudicing the safety . . ." and so forth?

Hon. Mr. GARSON: Well, Senator Roebuck, in an abstract sense, from a dialectical point of view, shall I say, I would not have any particular objection to that.

Hon. Mr. ROEBUCK: I think that would improve it very greatly.

Hon. Mr. GARSON: But, senator, we have on our statute books the Official Secrets Act, which, I am sorry to say, on one or two occasions we have had to invoke fairly widely, and we have invoked it, and cases have been decided on the strength of it. We have tried to employ in this section here language upon this point which is similar in character to that which is employed in the Official Secrets Act. That language has been interpreted by the courts. I do not think—and I think perhaps as a lawyer you can see my point—there is any purpose served in changing the wording, because if we change the wording then what sort of an interpretation are the courts going to place upon the changed wording? They know that we know what interpretation they placed upon the original wording.

Hon. Mr. ROEBUCK: Have you got the cases?

Hon. Mr. GARSON: No, I have not.

Hon. Mr. ROEBUCK: Where there is the interpretation of "for a purpose prejudicial".

Mr. MACLEOD: They would all be interpreted in those cases in 1947 that went to the court of appeal as a result of the prosecutions in the spies' trials.

Hon. Mr. ROEBUCK: You cannot turn up a case where "for a purpose prejudicial" is interpreted to mean the same as "for the purpose of prejudicing".

Hon. Mr. GARSON: We will check as to this.

Hon. Mr. ROEBUCK: I am satisfied of that.

Hon. Mr. GARSON: Clause 3.

"If any person for any purpose prejudicial to the safety of the state"—

That is, approaching inspectors, and so on—

The CHAIRMAN: Well, I think we have pretty well covered the position with reference to clauses 52 and 372, unless you feel there is something more you would like to add.

Hon. Mr. GARSON: No, there is not.

Hon. Mr. HAIG: I think we ought to express our thanks to the Minister.

Hon. Mr. ROEBUCK: No, we have got a lot yet. He is not nearly through.

The CHAIRMAN: There is just one other matter—690 and 691, dealing with *habeas corpus* and appeals.

Hon. Mr. REID: What about 431?

The CHAIRMAN: That was disposed of when we amended 171 this morning.

Hon. Mr. HAIG: They were made to join together, and we unanimously agreed on that.

Hon. Mr. MACDONALD: That was disposed of.

The CHAIRMAN: Would you explain the practice with respect to *habeas corpus* as between the present law and what is contemplated by these sections?

Hon. Mr. GARSON: Mr. Chairman, in order that my explanation of these matters may be uniform, would you permit me to repeat what I said in the House of Commons in explaining this particular point.

Hon. Mr. REID: Tell us laymen what *"habeas corpus"* means.

The CHAIRMAN: *Habeas corpus* simply means "May I have the body?"

Hon. Mr. GARSON: And it is a writ which is applied for by the counsel for an accused—

Hon. Mr. ROEBUCK: —or his friends.

Hon. Mr. GARSON: —when he suspects that his client is being detained without lawful warrant, and he says "Produce the body of my client in order that we may discuss the basis of your detention of him, and see if you have any right to detain him".

Hon. Mr. HUGESSEN: Sam Weller called it, "Have his carcass".

Hon. Mr. GARSON: Yes, that is right. In the House of Commons I explained this section in these terms:

> My honourable friend is right in saying that there was a practice in some of the provinces of Canada and in Great Britain whereby an applicant for a writ of habeas corpus could apply to one judge and if he did not succeed he could, upon the same set of facts and law, apply to another judge. If he was again refused he could apply to a third judge and so on until he had applied to every judge of the court.

I might interject at this point to say that in this respect there is quite an injustice to a Canadian who lives in Prince Edward Island for he only has three judges to apply to as compared with a man from Ontario who may apply to fifteen judges.

Hon. Mr. KINLEY: There are not as many people, though.

Hon. Mr. GARSON: The point is that in Ontario a prisoner could appeal to fourteen judges, and if thirteen rejected his application for habeas corpus, the last one could grant it and thereby in effect overrule his colleagues who had refused the application.

Hon. Mr. ROEBUCK: It would be very seldom that so many judges would be available.

Hon. Mr. HAIG: How many judges in Quebec are available?

Hon. Mr. GARSON: I think it is about fourteen in the high trial court. Perhaps Senator Hugessen would know.

Hon. Mr. CONNOLLY: Is it not all divided in districts, and you can go from one district into another?

Hon. Mr. GARSON: One of the drawbacks at the present time is that there is quite a division of legal opinion as to whether the privilege is to apply from one judge to another or from one court to another; and if it were from one court to another the very situation that you are referring to would exist.

Then I went on in my remarks in the House of Commons:

> However, this privilege was not uniform in all the provinces. In the province of British Columbia they had what I think is a more rational system, and the one that we are proposing to adopt here. In British Columbia they had a provision for an appeal from the decision of the judge refusing a writ of habeas corpus. The prisoner could take an appeal to the court of appeal in that province, and there the appeal would be heard in the same way that appeals from other judgments of the trial court are heard.

At that point Mr. Diefenbaker interjected with the following words:

> Most provinces do not have any right of appeal with respect to habeas corpus. That is why you can go from one court to another, is it not?

I replied as follows:

> That is right. I thank my honourable friend for his interjection. The privilege of going from one judge to another was not confined only to provinces of Canada but applied to Great Britain as well. In those jurisdictions where persons could go from one trial judge to another they did not have the right of appeal. In British Columbia, where they had the right of appeal, that was the remedy they had to pursue. The case of In re Fred Storgoff (1945) S.C.R. 526 was decided in 1945. The Supreme Court of Canada held in that case that where a writ of habeas corpus is applied for, as a civil remedy which the British Columbia statute purported to regulate, but applied for in connection with a criminal proceeding, the fact that it was applied for as a step in criminal proceedings gave the application for the writ of habeas corpus a criminal character. Since such a habeas corpus was of a criminal character, only the Parliament of Canada could legislate with regard to it under its power to deal with matters relating to the criminal law.

Under its power to pass laws such as the criminal code, for example.

> Therefore this right of appeal which the British Columbia statutes purported to give in relation to a habeas corpus judgment in a criminal matter was beyond the power of the British Columbia legislature to give, and the right of appeal was inoperative and void.
>
> Now the Storgoff judgment put British Columbia back in the same position as those provinces of Canada in which there was no appeal from the judgment of a trial court judge in a habeas corpus application. The thought behind the present section is that it is wiser to provide for the prisoner the right to apply to a trial judge, and if he is refused a writ of habeas corpus then he can take his appeal to the appeal court where a panel of appeal court judges will consider his appeal on its merits.

> It was felt this procedure was preferable to having the prisoner apply to trial judge A, then to judge B, then to judge C, then to judge D, all equal in status as trial judges, and perhaps arriving at the conclusion that after three or four judges have rejected his application for habeas corpus, the last one will grant it and thereby in effect overrule the majority of his colleagues who had refused the application.

We did not think that that sort of thing increased the prestige of the trial court—that the last judge applied to, a man of equal status, could overrule his colleagues by granting what they had turned down on the same law and on the same facts.

There was an article in the Canadian Bar Review in which this comment was made by Mr. D. M. Gordon, Q.C. He said this about the Storgoff case:

> This brings into focus the need for the Canadian legislature to rationalize the whole law relating to habeas corpus. The power of prisoners to canvass the whole beach of Superior Court judges is an indefensible survival of archaic ideas that seem to have been based on misapprehension from the first; and that the favourable views of any judge shall outweigh the contrary views of all of the rest without any right of appeal by the Crown is even more indefensible. The obvious course is for the legislature to limit applications to one judge and to give both the prisoner and the Crown an appeal. Talk of such a change infringing the liberty of the subject—

I am not endorsing this comment; I am just putting it forth as the opinion of Mr. Gordon—

> —is only too obviously nonsense.

I would not go quite that far.

> And there seems to be no good reason why appeals should not lie in habeas corpus to the Supreme Court of Canada. It seems the only way to secure uniformity of decisions.

The CHAIRMAN: You can go to a judge of the Supreme Court of Canada.

Hon. Mr. GARSON: That is the very point I was going to bring up, but what Mr. Gordon is referring to there is that if an appeal is taken from a trial judge in, say, British Columbia, who refuse the application of habeas corpus, to an appeal court of British Columbia, that there should be a further appeal from the appeal court of British Columbia to the Supreme Court of Canada.

As your Chairman has properly pointed out, by section 57 of that Act, a judge of the Supreme Court of Canada is given jurisdiction in habeas corpus concurrent with the courts and the judges of the several provinces of Canada; but by subsection (2) of section 57, if the judge of the Supreme Court of Canada applied to refuses the writ or remands the prisoner, an appeal shall lie to the full court.

One other reason for this present provision now before you is that there is a great difference of opinion as to the nature and extent of the present writ of habeas corpus and the privileges thereunder, and if you examine the latest issue of *Tremeear,* for example, you will find there the different views expressed which are in conflict with one another. For all of these reasons we thought it was desirable to clear the matter up by these sections 690 and 691, and provide that the appeal shall be made to a trial court judge, and if he turns it down, then the accused will have a right to appeal to the appeal court, or the Crown will have a right of appeal in the same way.

In my view, this rather anomalous procedure of having some member of a court of eight or nine judges, after a number of his colleagues have rejected the application for *habeas corpus,* turn around and grant the same law, brings the whole of the administration of justice into disrepute.

Hon. Mr. ROEBUCK: Has that not been the same since Magna Carta?

Hon. Mr. GARSON: In England.

Hon. Mr. ROEBUCK: Yes.

Hon. Mr. GARSON: But, senator, with great deference I still think it is wrong, even if they do it in England.

Hon. Mr. ROEBUCK: I never bow down to what they do in England, but when you change a fundamental right, it is most important. You are one of the very first to say this law has been in existence for a long time; you said that three or four times today, when I advanced the fact that this law has stood a long time. It at least indicates a ground for very careful consideration. Now, you have to consider what the application is. It is not to give a man a freedom or to put him in jail, but only to make the jailer, or perhaps the superintendent of an insane asylum, give cause for keeping a man in jail. That does not dispose of anybody's right. The Crown or the officials of public institutions should always be ready to show cause for keeping a man in jail; and all the judge does is to say, "produce the body," that is, "show your cause"; the man is brought, or the insane person is brought, to the court, and the case is inquired into, so that one judge is not reversing another judge, he is only finding reasons to enquire, that is all.

The CHAIRMAN: Senator, he is making possible a hearing of the issue.

Hon. Mr. ROEBUCK: Yes, that is all. He is not deciding any issue at all. He is making possible the hearing of an issue, and it is a doubtful thing when somebody questions the legality of an imprisonment, to refuse to enquire. The reason we have always been able to go from judge to judge is that the liberty of the subject is a day to day matter, and it is not something that you can carry to a court of appeal. Furthermore, for the first time in history you are giving an appeal to the Crown. You talked just now about the possibility of carrying the appeal from the provincial court of appeal to the Supreme Court of Canada. During that period the man stays in jail without an enquiry as to whether he should be there or not. That is pretty serious. That is the most drastic change that has ever been made in *habeas corpus* in all the centuries that it has been in vogue. Of course, *habeas corpus* is suspended now and again. But here there is the possibility of officials wanting to keep some man in jail, for some reason, or perhaps the government does—the King did it in days gone by—and an application is made to the court, and the court says, "Yes, produce the body, and let us find out if this man is properly imprisoned." And the Crown says, "We will appeal," the prisoner stays in jail for a week at least, because you put in a provision here that the appeal must be heard within ten days.

Hon. Mr. GARSON: That is right.

Hon. Mr. ROEBUCK: Yes. Well, ten days is a long time to stay in jail if you have no business to be there. And you know, too, how easy it is to delay, for some reason or other; perhaps you have to examine some person for discovery, or something of that nature, and delays creep in, as they always have done in matters of appeal. Then the court of appeal frees the man, or at least says there shall be an enquiry. And the Crown then appeals to the Supreme Court of Canada?

Hon. Mr. GARSON: If you will pardon me, I was quoting Mr. Gordon in this selection from the Canadian Bar Review.

Hon. Mr. ROEBUCK: He did not go very far with it when he was writing that article.

Hon. Mr. GARSON: I suppose that is a matter of opinion. But there is no suggestion here, nor legislation, that there should be an appeal to the Supreme Court of Canada. On the contrary, we have taken pains to see that not only

does the appeal go to only the provincial Court of Appeal but that it should be disposed of with more than ordinary expedition, thus recognizing the point that you have just made.

Hon. Mr. ROEBUCK: Why should there be an appeal at all, when the Crown is keeping a man in jail unjustly? Why should they not always have to justify their actions—if they can?

Hon. Mr. GARSON: Well, what they appeal, senator, is the disposition of the application which has been made by the judge to whom the application was made.

The CHAIRMAN: That simply means appealing the direction of the trial of an issue.

Hon. Mr. GARSON: If on the facts before him it is regarded as improper there should be a direction of the trial of an issue, why should not there be an appeal on that?

Hon. Mr. ROEBUCK: Why is it improper to enquire at any time when a suspicion is raised that a person is imprisoned unjustly?

Hon. Mr. GARSON: There is no reason in the world, and I do not suppose in the great majority of cases the appeal would be invoked. You say an accused is prejudiced because it takes some time to carry the appeal to the court of appeal?

Hon. Mr. ROEBUCK: Yes.

Hon. Mr. GARSON: What about the case where an application has been made to judge "B", and he turns it down, and then after some time they make an application to judge "C", and he turns it down, and then they make an application to judge "D", and he turns it down, and so does judge "E", and so on? That takes time, too. And the same issue is being tried. I could cite these cases, if you wish, but I did not wish to take up the time of the committee. But I am sure you will agree, senator, that there is a great deal of contradictory legal doctrine with regard to what the rights of habeas corpus are now?

Hon. Mr. ROEBUCK: This does not clear up that in any regard.

Hon. Mr. GARSON: Oh, I think so.

Hon. Mr. ROEBUCK: It may possibly bring cases before a court of appeal.

Hon. Mr. GARSON: Oh, no, I think it will clear it up. I quote now from Canadian Abridgment, volume 21, at 539, and this is an indication of the state of the authorities prior to *Rex v. Storgoff:*

> Canadian Courts have on several occasions, expressed and acted upon the view that there never has been a right to go from Judge to Judge of the same Court. *Re Hall,* 1882, 8 O.A.R. 135; *Taylor v. Scott,* 1899, 30 O.R. 475, C.A.; *R. v. Loo Len,* 1924, 41 C.C.C. 388.
>
> Other Courts, while concurring in this view, have considered that in a proper case, the Court en banc might well be convened to hear the application—*R. v. Romanchuk,* 1924, 42 C.C.C. 231; *R. v. Barre,* 11 C.C.C. 1.
>
> Other Courts have adhered to the view that the applicant has a right to go from Judge to Judge, even within the same Court, and have claimed to find authority for this view in *Cox v. Hakes,* 1890, 15 A.C. 506: *Re Royston,* 15 C.C.C. 96; *R. v. Gee Dew,* 1924, 42, C.C.C. 188. See 42 C.C.C. 210.
>
> This latter view appears to have been adopted without question by the Judicial Committee of the Privy Council—*Eshugbayi Eleko v. Nigeria Government,* 1928, A.C. 459, on appeal from the Supreme Court of Nigeria.

In the following cases the Courts acted upon the latter view, the Judges affirming their duty to consider independently any application brought before them, without in any way being influenced or bound by the effect of any decision upon a previous application: *Ex p. Byrne*, 1883, 22 N.B.R. 427, C.A.; *R. v. Carter*, 1902, 5 C.C.C. 401 (N.S.); *R. v. Jackson*, 1914, 22 C.C.C. 215 (Alta.); *Re Paul*, 1912, 20 CC.C. 161 (Alta.).

However, it was held in Ontario that the combined effect of the Habeas Corpus Act 1866 (Can.), c. 45, and of the Judicature Act 1881 (Ont.), c. 5, was to give a right of appeal to the Court of Appeal and "to establish the right of successive applications". *Re Hall*, 1882, 8 O.A.R. 135; *Taylor v. Scott*, 1899, 30 O.R. 475 C.A.

The virtue of the present arrangement is that we have one clear provision in the Criminal Code; we abolish all the differences in doctrine and the accused can make an application to an individual judge. If he is turned down by that judge, he can then take his case to the Court of Appeal, in which court there is provision for a quick hearing of his appeal.

Hon. Mr. KINLEY: Could you not give him two chances? If one judge turned him down, let him go to another judge, and if he is again turned down, that would end the matter?

Hon. Mr. GARSON: I suppose that could be done; but my objection to such a course is that I think it is reprehensible that trial judges, equal in status and acting on the same court, should sit in effect as an appeal judge from a finding of their brother judge.

The CHAIRMAN: It is putting a penalty on poor selection, is it not? For instance, if I am lucky I may pick the judge who is inclined to say "yes, there is an issue here;" but if I am unlucky I pick a judge who says "I don't think there is an issue here." Why should I not be permitted to go down the line until I come to a judge who finds there is an issue?

Hon. Mr. ROEBUCK: The difference is that one judge has found the issue, while the other has not.

Hon. Mr. GARSON: Take the ordinary case, what would be your reaction if we suggested that if upon being non-suited by Judge A, you could go on to have your case tried before Judge B?

The CHAIRMAN: But Mr. Minister, this is not a trial.

Hon. Mr. GARSON: I know it is not a trial.

The CHAIRMAN: This is only as to leave to have a trial of an issue.

Hon. Mr. GARSON: That is true.

Hon. Mr. ROEBUCK: Even suppose we go along with you, what justification is there for what you have said about giving an appeal to the crown? Why should not the crown produce the body whenever a judge says it must? It has always had to in the past. The worst feature of this provision is the giving of an appeal to the crown; that is much worse than taking away the ancient right of going from judge to judge, which I think has been far overstated in this argument so far. If an appeal is made to one judge, and he finds there is any grounds at all, by all means hear the issue; and obviously, when there is no possibility of a case being made, the judge will refuse the application. Let us have an appeal, if you insist, so far as the prisoner or his counsel is concerned, but why give that right to the crown and keep a man in jail when the inquiry ought to be on its feet, and a judge says it ought to be on its feet?

Hon. Mr. GARSON: Well, Senator, I have never been one of those who subscribed to the view that in making our legislation we should do so upon the assumption that the Crown is not conscientious and fair, or that the judges

are not competent and just. Surely in a matter of this sort the question as to whether a writ shall be granted or not is a question which is to be disposed of by the judgment of the trial court. If a conscionable view by the crown is that a certain judge is manifestly wrong in what he has decided, what is so reprehensible in asking an appeal court to pass upon it?

Hon. Mr. ROEBUCK: What is so reprehensible in producing the body, whether the judge is right or wrong?

The CHAIRMAN: It does not free the man.

Hon. Mr. GARSON: No.

The CHAIRMAN: You have a trial on the merits as to whether the man is properly in jail or not.

Hon. Mr. ROEBUCK: If one judge, be he the weakest judge on the bench, believes there is grounds for an inquiry into the imprisonment of a subject, what is reprehensible in an inquiry?

Hon. Mr. GARSON: Senator, has it been your experience that it is the weakest judge on the bench to whom applications of this sort are sometimes made?

Hon. Mr. ROEBUCK: No, I certainly will not agree with that at all.

The CHAIRMAN: The weakest judge is not necessarily the most humane.

Hon. Mr. ROEBUCK: If I have an application which is weak in any respect, I do not hesitate to go to the strongest judge on the bench.

Hon. Mr. KINLEY: I recall a case in which the government was speeding a man's leaving the country. When he got as far as Nova Scotia an application was made to Judge Melish and he issued a writ of habeas corpus. The case got some publicity, and it was stated that he was a strong judge, as very few judges would have done so.

Hon. Mrs. HODGES: What happened to the corpus?

Hon. Mr. KINLEY: They did not get him out of the country. The case I have in mind was that of a man who belonged to a certain religious group.

The CHAIRMAN: That is the Verigin case.

Hon. Mr. ROEBUCK: There have been other cases in which the immigration department officials were hustling somebody out of the country, and an application resulted in an inquiry being held. Of course the results are not always in favour of the prisoner, but they bring about a public inquiry and a judicial decision.

The CHAIRMAN: Is there anything further that you would like to say on this point, Mr. Minister?

Hon. Mr. GARSON: No, Mr. Chairman.

The CHAIRMAN: Those are all the sections we need your help on. On behalf of the committee may I thank you very much for the assistance you have given us.

Hon. Mr. ROEBUCK: And may I echo that vote of thanks, Mr. Minister.

Hon. Mr. GARSON: Thank you, Mr. Chairman and Honourable Senators.

Whereupon the committee adjourned.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Thursday, June 3, 1954.

The Standing Committee on Banking and Commerce, to whom was referred Bill 7, an act respecting the criminal law, met this day at 11 a.m.

Hon. Mr. HAYDEN in the chair.

The CHAIRMAN: I will now call the meeting to order.

Hon. Mr. VIEN: Mr. Chairman, Mr. MacNeill, the Law Clerk, and the Chief Translator have considered the French translation of the Criminal Code Bill, and we now have a list of amendments to the French version which have been carefully checked. They are perhaps not very material, but we consider them necessary to bring the French version of the new code into line with the present code.

The CHAIRMAN: Do these amendments relate to any of the subsections which we have not yet dealt with?

Hon. Mr. VIEN: No. I would suggest, however, that these amendments be made to the French version in order to bring it into line with the English version.

The CHAIRMAN: Do they mainly have to do with the definition section?

Hon. Mr. VIEN: Yes. In the first place, we prefer to use the word "droit criminel", because our province imposes penalties for various infractions of provincial legislation—we call that "droit pénal". It should be "droit criminel"; that is the way it has been in our French statutes since Confederation. Therefore, we suggest the substitution of the word "droit criminel" throughout the statute.

There is also the matter of the alphabetic order in which the subsections are identified. In the French version the numbers have been suppressed.

Hon. Mr. GOUIN: What numbers have been suppressed?

Hon. Mr. VIEN: In Section 2, for instance, which is the definition section in the English version, each definition is identified and all the subsections to that section are numbered. In the French version the numbers of the subsections have been suppressed. You will observe in section 3 that paragraph 2 of that section 2 has been referred to as subparagraph 32 of section 2; but there is no subparagraph 32 in the French version because the numbers have been suppressed. We restored these in keeping with the English version, in order that there may be a subparagraph 32 to which we may refer. We have very carefully checked the French version, and I move that this amendment which indicates by numbers the amendments to the French version be adopted.

Hon. Mr. GOUIN: Mr. Chairman, I have the greatest confidence in my friend Senator Vien, and I am quite agreeable to the amendments which he has just explained, but we have not seen the text of his report.

Hon. Mr. VIEN: I shall leave it with the chairman. My purpose in moving it now is that I am leaving for Montreal this afternoon and should the committee sit tomorrow, I wanted to have the report before it. If my honourable and learned friend, Senator Gouin, would like to read these amendments through, or if any other member wishes to peruse them, I certainly have no objection at all.

Hon. Mr. HAIG: I would like to ask how this proposed change in the French version came about.

Hon. Mr. VIEN: When we passed Bill O last year, we sent both English and French versions to the House of Commons. Amongst the translators for that house there was a difference of opinion, as there sometimes is among well informed people. The difference of opinion was to the use of the expression "droit pénal", which pleased the House of Commons better than "droit criminel". But it must not be forgotten that "droit pénal" covers not only crime but penalties imposed for offences as passed by various legislative bodies, and not referred to in the Criminal Code. Therefore, we restore the word "droit criminel", because we are dealing with crime, and not with penalties imposed generally by provincial legislatures and other bodies.

I may say that I have consulted the Superintendent of the Bureau for Translations and the Assistant Secretary of State, and I am authorized to say that they will come and explain the amendments if the committee wishes them to do so.

The Deputy Minister of the Secretary of State Department, which department has jurisdiction over the Bureau of Translators, and the Chief Translator have both agreed that this form which I am suggesting is better than the one in Bill 7.

Hon. Mr. BOUFFARD: There is no doubt about that.

The CHAIRMAN: Then we will hold these for the present. We are not in the position where we have to complete the Criminal Code today or tomorrow. We can finish it next week just as well. The proposal today was that we consider particular sections that have been left standing for our consideration. The first one of those is section 9 dealing with contempt of court. You will find that on page 10.

Hon. Mr. ROEBUCK: Mr. Chairman, may I deal with that? I shall read the section as it stands now in bill 7:

> 9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the court of appeal or a judge thereof, appeal to the court of appeal

—observe the words "may, with the leave of the court of appeal . . ."

> (*a*) from the conviction, or
>
> (*b*) against the punishment imposed.
>
> (2) For the purposes of an appeal under subsection (1) the provisions of Part XVIII apply, *mutatis mutandis*.

I think everyone is sufficiently familiar with the subject to realize that that requires, in the case of contempt of court, the appellant or proposed appellant to go first to the court and ask for the leave to appeal and in doing so he must argue his whole case because that is the only ground upon which he can ask a judge to allow him to appeal. So, you have made a double-headed affair to no purpose, and I would like to reinstate the law as we framed it in Bill O, and so, Mr. Chairman, I have drawn up an amendment. Let me read my suggestion. I have the pleasure and honour to be seconded by my honourable and learned friend, the gentleman to my right, Honourable Senator Gouin, and he moves this with me.

> Moved that the entire section as it stands in Bill 7 be struck out and the following substituted therefor, that is to say that the wording as it appears in Bill "O" as passed by the Senate on December 17, 1952,

section 8 (2) of that Bill with the exception only that in subsection (3) in the first line after the word "judge" insert the words "justice or magistrate" so that the section shall read:—

Now, that little amendment there, adding the words "justice or magistrate" . . .

The CHAIRMAN: We do not need that, for the reason that we are dealing with section 9 in the bill before us. If we are going to amend it then we move an amendment to the bill; we are not dealing with any amendment to Bill O.

Hon. Mr. ROEBUCK: That is right. I am merely pointing out to you that as between Bill O and the bill before us that there is a difference in the wording of the clause. I do not want to follow the text slavishly because I see a defect in that section, and the defect I see is that the first time the enumeration says "the court, judge, justice or magistrate", whereas the second time it says "with leave of the court of appeal or a judge thereof" leaving out the words "justice or magistrate".

Mr. MACNEILL: Mr. Chairman, I understood when we drafted that section last year that the justice or magistrate had no power to convict for contempt of court committed outside the court, and that is the reason for the difference in the wording of the two clauses. Under the common law a justice or magistrate has no authority to convict.

Hon. Mr. BOUFFARD: I think they have in the province of Quebec.

Hon. Mr. ROEBUCK: Well, I would rather risk a mistake by putting those words in—

Hon. Mr. BOUFFARD: So would I.

Hon. Mr. ROEBUCK: —than to risk a mistake by leaving them out. Anyhow, I shall read the section as I suggest that it should read.

> (2) Where a court, judge—now I add justice or magistrate—summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed . . . .
>
> (3) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and for the purpose of this section, the provisions of Part XVIII apply, *mutatis mutandis*.

Hon. Mr. EULER: Would you then have to get consent?

Hon. Mr. ROEBUCK: No, I have left out consent. We go back to the old section, which we approved, after a great deal of thought and care and consideration, last session. I do not give appeal against a conviction for an offence created in the face of the court, because if you do, you run into all the difficulties that the Minister of Justice tried to describe to us. The judge must have control of his court, and he ought to be able to send a person out and tell the guards to lock him up and keep him there until he behaves himself. There is no reason why, if an offence is committed in the face of the court and some sentence, perhaps thirty days, is imposed, perhaps much greater than that, he should not have an appeal against sentence, and whether he gets out in the meantime will depend on the good sense of the judge to whom he applies for bail. It was thought out. We had it all arranged properly last time, and I feel that they made their changes across in the Commons without considering the situation as fully as we did and so I move we go back to the law—

The CHAIRMAN: They certainly watered it down.

Hon. Mr. ROEBUCK: They watered it down with this "getting consent", which is utterly unnecessary; and it is more than unnecessary, it is objectionable.

Hon. Mr. MACDONALD: They also widened it.

Hon. Mr. ROEBUCK: And they widened it at the same time. They restricted it by making this getting consent, and they widened it by allowing an appeal in the face of the court against a conviction, although we had given it only as against a penalty. I am satisfied that we were wise at that time. And, notwithstanding what Mr. MacNeill says, unless we go into it a little more carefully to be perfectly sure the magistrate is not included in that section—

The CHAIRMAN: Certainly a justice of the peace in Ontario has no power to commit for contempt. Neither has a magistrate if it is not in the face of the court.

Hon. Mr. ROEBUCK: What about Quebec?

The CHAIRMAN: We are not conferring jurisdiction anyway. We say, if we have jurisdiction, it is subject to these things, so we are not doing anything very terrible.

Hon. Mr. ROEBUCK: It will not do any great harm if we give them that power.

Hon. Mr. GOUIN: I merely want to say I agree with Senator Roebuck. I think that the text that we adopted previously was a better text, for the reasons just explained, than the bill as it comes now from the other place, and I believe is better also to insert in the paragraph 2 of the present amendment the words "justice or magistrate".

I am not a criminal lawyer, but I am under the impression that in Quebec, in some cases, that will encourage the magistrate to exercise jurisdiction for contempt of court.

The CHAIRMAN: I am going to ask Mr. MacNeill to give us his opinion on that. In Ontario, for instance, we have a justice of the peace whose authority is quite limited. We also have a magistrate. I am not suggesting that we should change the subsection, but I would feel happier if Mr. MacNeill would express his view.

Hon. Mr. REID: As a layman may I ask if evidence of sufficient weight has been produced before the committee in regard to this section to warrant altering the decision reached by the Senate committee when it dealt with this section in the first instance before sending it to the House of Commons?

The CHAIRMAN: I do not think there has been any evidence. There have been opinions expressed by various people. We gave a lot of time to the matter before we drafted the original section in Bill O. Certainly the opinions seem to be almost unanimous, if not unanimous, that there should be a provision for appeal; that a commital for contempt is quite an arbitrary procedure if there is no right of appeal. It was just a question then of what should be the form of the appeal, and we thought it should take the form which we indicated. We felt that the judge who commits for contempt in the face of the court should have pretty strong control over that court, and that if he convicts then nobody should be able to review his decision. On the other hand, he might be a little upset by the contempt, the nature of it, and his penalty might be too great. We thought, in view of that, his decision should be subject to review. In cases of contempt outside the face of the court we felt that the person charged should have the same rights of appeal that any other person has in the matter of appealing from a conviction and also from a sentence.

Hon. Mr. MACDONALD: My concern is whether these words "justice or magistrate" might imply that they had the right to convict.

The CHAIRMAN: We are not conferring any jurisdiction on them by this section.

Hon. Mr. MACDONALD: What has Mr. MacNeill got to say about this?

Hon. Mr. ROEBUCK: Let us hear from Mr. MacNeill.

Mr. MACNEILL: The section does not confer jurisdiction on the magistrate. All it provides for is an appeal where he exercises his common law jurisdiction.

The CHAIRMAN: That is right

Mr. MACNEILL: What I am thinking about is this. It may be all right when the magistrate has some legal training and he says "I have no jurisdiction here". On the other hand, a justice of the peace very often has no legal training at all, and he may read that as giving him some jurisdiction in matters of contempt, which the section does not deal with. It might lead to a good deal of confusion so far as the justice is concerned.

Hon. Mr. MACDONALD: And it might require clarification by a court.

Mr. MACNEILL: Yes, proceedings would have to be taken to clarify the situation. Senator Bouffard has said that the magistrate has that jurisdiction in the province of Quebec. I do not think he has in common law provinces.

Hon. Mr. ASELTINE: Could Senator Bouffard cite his authority for stating that the magistrate has got that authority in Quebec?

Hon. Mr. BOUFFARD: We have a code of procedure which authorizes it. In the case of civil law, the justice of the peace in Quebec has practically no jurisdiction, but the magistrate does have that right. But we are not giving anybody any jurisdiction here.

Hon. Mr. ASELTINE: It might be confusing, and the Justice of the Peace might say he had authority.

The CHAIRMAN: I suggest that we strike out the word "Justice."

Hon. Mr. ROEBUCK: I would suggest that we refer the matter to our law counsel and let him thoroughly investigate this. It is only a small thing, as far as my own thought is concerned. We want to make it as perfect as we can and leave no loopholes that anybody can pry into in the other court. If you will, let us pass the general amendment.

The CHAIRMAN: Mr. MacNeill has said that in his view, certainly in the common law provinces the Justice of the Peace has no authority to convict for contempt of court outside the court. Now, if we refer it to him, I gather that it is still going to be his opinion.

The CHAIRMAN: I suggest that the word "Justice" should be struck out.

Hon. Mr. ROEBUCK: Well, you do that in the copy before you, then, please. That is right, is it not, Senator Gouin?

Hon. Mr. GOUIN: Yes.

Hon. Mr. ROEBUCK: Then we are ready for the question.

Hon. Mr. MACDONALD: I think the law clerk should be given a little time to consider the wording of this. It may be that a magistrate in the province of Quebec only has this jurisdiction; he may have that jurisdiction; and the law clerk may be able to word it so that it would be clear that it is just the magistrate of the province of Quebec.

Hon. Mr. VIEN: If we sit next week, why not let this matter stand and refer it to him?

The CHAIRMAN: This amendment stands for the opinion of our law clerk on whether or not the word "magistrate" should be included in the proposed subsection (2).

Hon. Mr. ROEBUCK: Do we not pass the general principle of it? We are all agreed, are we not?

The CHAIRMAN: That is the way I put it, senator.

Hon. Mr. ROEBUCK: Just on that one point?

The CHAIRMAN: Just on that one point. Is it the pleasure of the committee otherwise that the form of this amendment should carry?

Agreed to.

On Section 25—Protection of persons acting under authority.

The CHAIRMAN: I have Section 25 noted here, but I think we approved an amendment to that last time, and I think we should carry the section.

Hon. Mr. ROEBUCK: I have an amendment to that, gentlemen.

The CHAIRMAN: We received an amendment last time deleting subsection (3) and adding a new subsection (3), and also subsection (4). That is the section dealing with the apprehension of some person attempting by flight to escape arrest. The proposal of the minister was to add something that was in the present Code, but in the drafting somehow or other it was omitted, and I understood that the committee last time approved of those amendments.

Hon. Mr. ROEBUCK: No, it was the amendment I asked to have stand.

The CHAIRMAN: No; if I might quote the honourable senator against himself, but not hold it against him, unless he wants to change, he said last time, "I didn't understand that when I objected originally."

Hon Mr. ROEBUCK: I didn't understand it.

The CHAIRMAN: I took you to mean that you were approving of the proposals, because they were merely restating the present law. If you want to change that position—fine.

Hon. Mr. ROEBUCK: I do not want to change that position, because I did not take that position.

The CHAIRMAN: The record will be there to support what I said.

Hon. Mr. ROEBUCK: Well, that may be so. I did not know that was the old law, but that does not mean that I approve them. There is a whole lot in the old law that I do not approve.

The CHAIRMAN: You gave the greatest expression of acquiescence, and when you are acquiescing you certainly indicate it.

Hon. Mr. ROEBUCK: Well, if I acquiesced, then I wish to withdraw that acquiescence now.

The CHAIRMAN: You certainly may.

Hon. Mr. ROEBUCK: I appreciate the difficulty of the approach to this particular section, and I am going to move this amendment to section 4.

Hon. Mr. HOWARD: Let us have the minister's wording first.

The CHAIRMAN: Clause 3 was struck out. The two subsections that are added to section 25, are as follows:

> (3) Subject to subsection (4) a person is not "justified for the purpose of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable and probable grounds that it is necessary for the purpose of preserving himself or any one under his protection from death or grievous bodily harm.

Hon. Mr. ROEBUCK: I appreciate that; there is no question about that.

The CHAIRMAN (continuing):

> (4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and every one lawfully assisting the peace

> officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

Well, that is exactly the language of the present section.

Hon. Mr. ROEBUCK: Now, my objection to it is that it seems to give complete justification to a police officer to shoot a prisoner who is running away from him irrespective of the—

The CHAIRMAN: Not only a prisoner, but a person he is seeking to apprehend.

Hon. Mr. ROEBUCK: A person he is seeking to apprehend, irrespective of how serious or trivial may be the offence, so long as it is one of that long list of offences for which a person may be arrested without warrant. While I appreciate the difficulty in this matter, I think the right to shoot, which is the use of maximum force, should be restricted only to the more serious crimes.

Hon. Mr. BEAUBIEN: How are you going to know?

Hon. Mr. ROEBUCK: Well, you have to know the crime in the law as it now stands.

The CHAIRMAN: No.

Hon. Mr. ROEBUCK: Yes, it is for an offence for which a man can be arrested without warrant. That is the only time that a police officer is entitled to use any force; he at least must have in his mind the offence with which the man is accused.

Subsection 4 of section 25 reads:

> A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and everyone lawfully assisting the peace officer, is justified—

. . . in using force.

Now I move that the words "for an offence for which that person may be arrested without warrant" in lines 3 and 4 of the subsection be struck out and that the following words be substituted therefor (that is to say enumerating the offences such as murder, manslaughter, treason, etc.,)—.

I did not have the time or perhaps the ability to list all the offences. I am ready to leave it to the department to say what offences are serious enough to permit an officer to shoot a man who is believed to have committed such an offence.

The CHAIRMAN: I cannot follow the logic of your proposed amendment. The amendment by the minister says that:

> A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant—

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN: That gives the category of the offences right away.

Hon. Mr. ROEBUCK: That is a very wide category.

Hon. Mr. BOUFFARD: You can arrest without warrant an offender for any crime at all.

The CHAIRMAN: That is right.

Hon. Mr. ROEBUCK: Yes, for any crime at all. I want to strike that out and substitute those offences for which the maximum amount of force may be used.

Hon. Mr. VIEN: What is the principle underlying your proposed amendment?

Hon. Mr. ROEBUCK: Do you mean how do I divide between the one and the other?

Hon. Mr. VIEN: No, how do you justify your amendment?

Hon. Mr. ROEBUCK: Do you mean justify the officer using the maximum amount of force in the case of murder, for instance?

Hon. Mr. VIEN: No; why do you suggest that the wording of the present amendment be changed and that your wording be adopted?

Hon. Mr. ROEBUCK: Because I submit that the use of maximum force to stop a runaway person should be restricted to serious crimes only, such as murder, manslaughter, treason and such other offences as the department think should be included. They should be specifically stated.

The CHAIRMAN: Just let us see what would happen if we add your proposed additional general words. In my opinion, we would end up exactly where we are now:

Hon. Mr. ROEBUCK: Now wait a minute, Mr. Chairman; hear me through. You are troubled now with the first amendment I am making?

The CHAIRMAN: No, I am troubled with section 31 of the bill before us.

Hon. Mr. ROEBUCK: Very true, but just wait a minute. I will proceed. Following the words "murder, manslaughter and treason" I continue: and adding at the end of the paragraph the following words:—

and for any other offence—

The CHAIRMAN: That is exactly the point to which I was addressing my remark.

Hon. Mr. ROEBUCK: That is why I asked you to desist until I was through.

The CHAIRMAN: I had read it; and section 31 seemed to hit it right on the nose and bring it back exactly as the minister had brought it in.

Hon. Mr. ROEBUCK: But wait a moment. I continue:

> . . . and for any other offence for which that person may be arrested without warrant, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner and unless the force that is used is intended or is likely to cause death or grievous bodily harm.

Hon. Mr. BEAUBIEN: Suppose a man knocks me down, I am not quite dead, and he runs away—

Hon. Mr. ROEBUCK: That is assault with violence.

Hon. Mr. BEAUBIEN: —how does a police officer know whether the man has committed murder or assault?

Hon. Mr. ROEBUCK: He knows that assault with violence has been committed, and that would be one of the offences for which the department can provide the use of maximum force.

The CHAIRMAN: Let me point out to you the wording of section 31:

> Every peace officer who witnesses a breach of the peace and every one who lawfully assists him is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable and probable grounds, he believes is about to join in or renew the breach of the peace.

That is the broadest language possible—arrest without warrant—and it takes you back to the minister's proposal.

Hon. Mr. REID: May I ask a question about the amendment suggested by the minister? It uses the word "violent" which would presuppose shooting. Could he not acomplish his purpose without being violent?

The CHAIRMAN: Suppose he struck a man with his night stick on the head a few times; that might be considered reasonably violent.

Hon. Mrs. HODGES: It depends on who is receiving the blows.

Hon. Mr. REID: Is the word "violent" generally used or is that something new?

The CHAIRMAN: No; "violent" is the word used in the code now.

Hon. Mr. HAIG: This provision has been in the code a long time, as those of us who have had long years of practice know. But for my part, I have never heard a complaint in my city of Winnipeg—and it is not one of the most law abiding cities—that there was any abuse of this provision. I know there have been several cases in the city of Winnipeg when after a major robbery or other violent crime has taken place a police officer has shot the criminal in flight, and in each case the officer has been tried and acquitted.

The CHAIRMAN: What would happen if a police officer, when he saw a man trying to escape, had to consider the interpretation of the amendment which my friend Senator Roebuck is proposing? The likelihood is he would sit down and consider it for so long that the criminal would escape and the officer would have done nothing to apprehend him.

Hon. Mr. BURCHILL: Is subsection 4 in the law now?

The CHAIRMAN: Yes, but it is not given here.

Hon. Mr. BURCHILL: It was deleted?

The CHAIRMAN: It was not deleted, but for some reason or other it did not get into the original draft.

Hon. Mr. GOUIN: If you will allow me, Mr. Chairman, I may say that in what I would call the old code, at the end of section 42—

The CHAIRMAN: Section 41.

Hon. Mr. GOUIN: At the moment I want to refer to the last words that Senator Roebuck suggested. I want to be quite frank in stating that to my knowledge sections 41 and 42 have now been combined. I have in mind the question of juvenile deliquency. The question was asked the other day about a boy who might be committting a mild offence, such as stealing nickels and dimes from a telephone booth. Is a police officer justified in shooting to apprehend a boy who may have stolen 80 cents, say? If he is a good marksman he may kill the boy. It is for that reason that I felt a distinction should be made between the offences which justify arrest without warrant and those which require a warrant. There is provision in this respect in the old code; it is found among other places in section 646—I do not know the number of the present section. In section 646 of the present Code—which corresponds to section 25 in the bill before us—there is a long list of offences for which arrest without warrant is justified, and I am afraid that it would take pages to reproduce that enumeration. However, when it comes purely and simply to the matter of adding to subsection 4, the words suggested by Senator Roebuck, I think the suggestion is wise. My opinion is that it would indeed, be fair, because circumstances have changed. We read in the press every day in cities like Montreal and Toronto of teenagers who do things which are quite reprehensible, but I say that they must be given a chance.

Hon. Mr. VIEN: Subsection 4 as submitted by the Minister does not allow anyone to use any greater force than is necessary.

The CHAIRMAN: That is right.

Hon. Mr. VIEN: And should the police officer or anybody assisting the police officer in making the arrest use more force than is necessary, he would be subject to punishment.

Hon. Mr. ROEBUCK: Than is necessary to effect the arrest.

Hon. Mr. BOUFFARD: It seems to me that there are two cases to be considered here. There is the case where the officer making the arrest is in possession of a warrant and in that circumstance there can be no doubt as to the nature of the offence because it is described in the warrant. If the offence described in the warrant is of a very minor nature, why should the police officer be entitled to go to extremes in making the arrest. That is one case. Then there is the case of an arrest without warrant for an offence, and that creates a little more difficult situation, because a police officer can arrest any person if he finds that person committing an offence, and that covers any type of offence. As I say, that is a little more difficult situation. However, it seems to me that when the police officer has a warrant in his possession and knows that the offence is of a minor nature, he should not be allowed to kill.

Hon. Mr. VIEN: Either with or without warrant.

Hon. Mr. BOUFFARD: But when he has a warrant he knows exactly what the offence is, whether it is of a minor nature or of a serious nature. There can be no doubt in that case at all. It seems to me that there should be a restriction put upon his right to use extreme force, even to kill, when offences of a minor nature are involved.

Hon. Mr. EULER: I am not a lawyer, and I just want to put this discussion on the basis of ordinary layman's language and common sense. I think we have had cases where perhaps a juvenile who may have done some pilfering from a fruit stand and then ran away, and I would like to know if under this legislation is a police officer going to be given the right to shoot that lad when he is running away?

Hon. Mr. ROEBUCK: That is what it does.

Hon. Mr. EULER: Well, I do not like it.

Hon. Mr. MACDONALD: The section has a proviso which says unless the escape can be prevented by reasonable means in a less violent manner.

Hon. Mr. ROEBUCK: That is to say if the policeman can run faster than the offender.

Hon. Mr. HAIG: That is always a question for the jury. It amounts to the offence of murder if the jury does not acquit the accused.

The CHAIRMAN: We had a case recently in Toronto where there had been a number of break-ins in this particular commercial premises, so police officers were checking those premises particularly each time they went around. One day, in the middle of the evening, certainly after dusk, it was not nightfall, the policeman found a window open leading to the cellar. He went down in there and heard a shuffling sound and he commanded "Stop, come out with your hands up or I will shoot". Instead of doing that there was more shuffling and packing cases started moving towards him and so he shot several times. Well, there was a young lad of fifteen or sixteen in one of the packing cases who was doing the shuffling and he was killed. I think in those circumstances the police officer had every reason to think that an offence was about to be committed and the people who had done it were coming after him.

Hon. Mr. ROEBUCK: Entirely justified in that case, but that does not apply to this section at all.

The CHAIRMAN: It is the policeman's life that is being risked.

Hon. Mr. HAIG: In Winnipeg, a fellow by the name of Rosmas was out on bail for having committed robberies. He and three other fellows entered an establishment while he was still on bail. Somebody upstairs heard them rustling around and they telephoned the police. The police came and as soon as the police came all of these men ran away. The young man Rosmas ran around behind a car and shouted: "Look out, I am going to shoot", and the policeman shot him.

Hon. Mr. ROEBUCK: That is not under this section at all, Senator Haig.

The CHAIRMAN: Everyone seems to be making the assumption that the police officer is going to go out in all cases and pull his gun and shoot to kill. I do not think that is the attitude of the police at all.

Hon. Mr. VIEN: It is not our experience

Hon. Mr. ROEBUCK: No, no, but what we are assuming is that this Code will justify a policeman under all circumstances to use extreme force in making an arrest.

The CHAIRMAN: It does not justify him under all circumstances, but we have to go a long way with the police officer because he faces dangerous situations and his life is exposed.

Hon. Mr. BOUFFARD: I am a little bit puzzled about this, especially when the officer has a warrant, knowing that the offence is of a minor nature and yet he is entitled to shoot, according to this provision. That is the only point that I have.

Hon. Mr. HAIG: But that has been the law right along.

Hon. Mr. EULER: That does not make it right though.

Hon. Mr. HAIG: Those things only happen in very few cases, and where any did happen the ones involved have all been brought to trial and the juries found that the police officers were justified in doing what they did. I have not heard of one case where they were not justified.

The CHAIRMAN: Well, if you consider the situation of an officer who has a warrant to arrest somebody for some minor offence and that person attempted to escape, first of all, I doubt very much if any police officer would use his gun in those circumstances. Secondly, if he did use his gun and killed the one he was about to arrest, I would think that most juries would say he used more force than was necessary having regard to the offence and would not exempt him from punishment.

Hon. Mr. EULER: What about the case you just referred to?

The CHAIRMAN: In that case the policeman was justified.

Hon. Mr. BAIRD: Do all police officers carry revolvers in this country?

Hon. Mr. BOUFFARD: Nearly all.

Hon. Mr. BURCHILL: Has our experience been such as to justify this change?

The CHAIRMAN: There has been no abuse of this power at all.

Hon. Mrs. HODGES: My understanding is that all police officers in this country do not carry guns.

The CHAIRMAN: No, they do not.

Hon. Mrs. HODGES: Senator Bouffard says that most of them do. My understanding is that most of them do not.

The CHAIRMAN: Police officers on duty at night time carry arms.

Hon. Mr. BAIRD: I do not think municipal officers carry arms, though.

The CHAIRMAN: Yes, they do.

Hon. Mr. BAIRD: In any event, those who do carry revolvers are men who are highly trained and thoroughly efficient.

The CHAIRMAN: We have to give the police officers certain powers and certain protection. We may run into a poor police officer the same as you run into poor citizens, but we cannot legislate in relation to these particular cases. We have to cover the situation generally.

Hon. Mr. EULER: We just have to hope that they will use their discretion.

The CHAIRMAN: All of this is based on past experience. I have not found any reckless use of arms by police officers anywhere.

Hon. Mr. EULER: Take the instance of this lad who pilfers from a fruitstand and then runs away—I think that the police officer under this legislation certainly has the right to shoot him.

The CHAIRMAN: First of all, he has not the right to shoot him.

Hon. Mr. EULER: That is what I want to know.

The CHAIRMAN: It is a question of whether the apprehension of that person could be made by a less violent means.

Hon. Mr. MACDONALD: You must remember this, that every policeman who is carrying a gun knows that if he uses that gun when it is not necessary to use it, and kills a man, he is subject to be charged with murder. That is very foremost in his mind.

Hon. Mr. EULER: I say it is up to his discretion.

Hon. Mr. MACDONALD: I know, but he knows what he is up against. He knows that if he shoots and kills a man he is going to be tried for murder.

Hon. Mr. VIEN: If I am not rushing too much, I would like to move "that the amendment submitted be adopted".

The CHAIRMAN: Submitted by the Minister?

Hon. Mr. VIEN: By the Minister—namely, that section 25 be amended by deleting clause 3 and substituting a new clause 3 and adding clause 4 in terms of the text submitted by the Minister.

The CHAIRMAN: What is the view of the committee? Those in favour? . . . Contrary? . . .

Hon. Mr. ROEBUCK: I have called the attention of the committee to what seems to me to be important.

The CHAIRMAN: The discussion has been useful, too.

Hon. Mr. ROEBUCK: If the committee, after hearing what I have said and after what Mr. Gouin said and what Mr. Bouffard said, and my friend here, Mr. Euler, wishes to carry it, it is perfectly all right.

Hon. Mr. VIEN: I would like to say on this that we are very grateful to Senator Roebuck for the light he has thrown on this section, and if our experience proves that further amendments should be necessary, he will not fail to bring the matter up again.

Hon. Mr. ROEBUCK: Yes. All right.

Amendment agreed to.

Section as amended agreed to.

The CHAIRMAN: We now run into section 52, which we have considered before in relation to sections 365 and 372. In the meantime do you want to dispose of section 150, relating to crime comics? Some objections were made by Senator Roebuck. Have you any objection now to section 150, Senator Roebuck?

Hon. Mr. ROEBUCK: We had a discussion on it, and I still see some difficulty in connection with it, but it has been minimized in the discussion; and furthermore, I found it impossible to come to any conclusion myself with regard to an acceptable amendment. So I think we had better pass it.

The CHAIRMAN: All right. Then, section 150, in the form in which it appears in the bill, is approved.

Hon. Mr. GOUIN: I wanted to make a remark concerning clause 68.

The CHAIRMAN: I will get back to 68. We have adopted 150.

The other two sections that stood, outside of these saving clause sections, are Nos. 690 and 691, dealing with *habeas corpus.*

Hon. Mr. ROEBUCK: Let us take them in order. With regard to section 52, dealing with sabotage, we have discussed it *ad nauseam.* Everyone here knows exactly what the objections are and I expect you are going to carry it.

The CHAIRMAN: You mean, in the form in which it is?

Hon. Mr. ROEBUCK: Yes . . . You are not so sure?

Hon. Mr. EULER: I am against it.

The CHAIRMAN: If the committee wish to deal with these three sections we can let the *habeas corpus* sections stand until later.

Hon. Mr. HAIG: There are sections 52, 365 and 372. Let us clean up the other ones first.

The CHAIRMAN: Let us deal with 690 and 691.

On section 690—Successive applications for *habeas corpus* not to be made.

On section 691—appeal in *habeas corpus,* etc.

The CHAIRMAN: The point in connection with sections 690 and 691 was the question of *habeas corpus* and the present procedure in relation to *habeas corpus.* That is, you apply for *habeas corpus,* asking the person—be he sheriff or jailer or whoever he is—who is holding the particular individual, if the judge makes the order, the order is to deliver the body to such-and-such a place at such-and-such a time, and then there is inquiry whether the man is legally or illegally being detained. Under the present law as it stands you can apply to a judge for such an order, and if he does not give it to you you can go and rap on the door of another judge, and you either get such an order before you exhaust the panel of judges, or you exhaust the panel of judges and that is the end of your search. In addition to that, in criminal matters there is a right provided for *habeas corpus* in the Supreme Court of Canada Act under which you can go to a single judge for *habeas corpus,* and if he refuses you, you have the right of appeal to the full court.

Hon. Mr. BOUFFARD: I think you have the same provisions, in so far as the court of appeal is concerned, in Quebec.

The CHAIRMAN: You have not in the court of appeal in Ontario.

Mr. MACLEOD: I do not see how they can legislate in relation to criminal law.

Hon. Mr. BOUFFARD: But in relation to civil matters.

The CHAIRMAN: This is the criminal law we are talking about. The two sections in the amendment before us substitute the provision for appeal in lieu of your shopping around from one judge to another, in the original instance, and also gives right of appeal to the Crown. If I may be permitted to summarize the discussion on the last day, I would think the feeling the last time was that the Crown should not have the right of appeal. The reasoning seems to be this, that when you apply for an order of *habeas corpus* in these circumstances, questioning the legality of the order or authority under which the man is being detained, if you get the order all you are getting is, you have to be heard to present your case, for and against; and at that stage it seemed to be the feeling of the committee that the hearing should take place, if there is any question about the legality of the man's

detention, and that the Crown is not being prejudiced at all by being called upon to show cause why the man should be detained, and that they should not be permitted, by being given a procedure of appeal, to embarrass the party applying—

Hon. Mr. ROEBUCK: Has not that always been the law?

The CHAIRMAN: But these two sections would permit the Crown to have an appeal at that stage, and we think the position of the Crown is amply protected, because they can appear on a hearing, and if they justify the detention, that is the end of it. As to what the view of the committee was on the present provision, as against the provision of an appeal here, I think maybe on balance the committee felt it was a more orderly thing, if you applied for an order and were turned down, to appeal, rather than just visit another judge.

Hon. Mr. ASELTINE: Even with this section as it stands you can still shop around?

The CHAIRMAN: No. You have the right of appeal.

Hon. Mr. ASELTINE: You have to appeal.

The CHAIRMAN: That is right.

Hon. Mr. MACDONALD: Is an amendment proposed?

The CHAIRMAN: In view of what I thought might be the attitude of the committee I asked Mr. MacNeill to prepare an amendment along that line, which he has done. May I read it to you:

That clause 691 be struck out and the following substituted therefor:

691. (1) An appeal lies to the court of appeal from a decision refusing the relief sought in proceedings by way of *habeas corpus*.

(2) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *mandamus*, *certiorari* or prohibition.

(3) The provisions of Part XVIII apply, *mutatis mutandis*, to appeals under this section.

(4) 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.

The CHAIRMAN: Under the suggestion contained in this amendment, if some person applies for *habeas corpus* on behalf of a man who is in jail and he is refused, he would have a right to appeal and he would be entitled to be heard seven days after the notice of appeal was filed.

Hon. Mrs. HODGES: I understand, thank you.

Hon. Mr. BAIRD: In other words, the person would be detained in penitentiary.

The CHAIRMAN: He would be detained there unless he could get an appeal, but I would not think he could get an appeal under the circumstances.

Hon. Mr. ROEBUCK: May I have the floor for a moment. I like the old law much better than the amendment drafted by the Law Clerk on the suggestion of the Chairman. At least that is from a hasty reading of it. As I understand it, this allows a person to apply to one judge.

Hon. Mr. HAIG: Are you talking about the present law?

Now, is the effect of this proposal, Mr. MacNeill, that the Crown would have no right of appeal?

Mr. MACNEILL: It would have no right of appeal in *habeas corpus*.

The CHAIRMAN: Yes, that is what I mean.

Hon. Mrs. HODGES: May I, as a layman, ask a question? In the case of a person having to go to the Crown, how long would the subject be detained in jail or prison? What is the shortest period of time?

The CHAIRMAN: To the extent that there is an appeal it must go on within seven days after the notice of appeal has been filed. The proposed amendment takes away the right to appeal to the Crown.

Hon. Mrs. HODGES: I am wondering how long any person could be kept in detention in such a case.

Hon. Mr. ROEBUCK: The drafted amendment allows a person to apply to one judge, and if the judge refuses him he can then go to the court of appeal. The court of appeal may hear the case at once, which would be rapid service indeed, or it may take seven days. We are asking in this proposed legislation that the case be heard within seven days. That is to say, the case is called in seven days but there is no provision as to how long the court shall take to consider it, and so on. In point of fact it could take much longer than seven days. Seven days is a long time when a man is in jail. Freedom to the subject is a question of from day to day or hour to hour. The old law has worked very well. The attack on it has been overstated; that is, the argument about a person going from one judge to another, and so on. That could take place but in actual practice—certainly in my practice—it has never taken place. If there is the slightest scintilla of right, or seeming right on the part of the applicant, the judge says yes, because all he requires is that the Crown produce the evidence as to why this man is kept in detention, and they practically always say yes. If some erratic judge says no when he ought to say yes, you appeal to his neighbor. The two judges may be in the same room, and either will decide the matter. My point is that if any judge, let him be the weakest on your panel, states that there is sufficient grounds for the Crown to show why they are detaining somebody, the Crown should show it. Public officials should always be ready to show at any time the right by which they detain a subject. Habeas corpus proceedings are used, you know, in a good many cases. We use them in connection with insane persons all the time. A person is committed by two doctors without any public hearing whatsoever. These two doctors sign a piece of paper and off the subject goes to the insane asylum. His friends, not necessarily his counsel, run up to the judge and the judge grants a habeas corpus and the matter is inquired into at once.

Hon. Mr. BOUFFARD: Is this not a civil matter rather than a criminal matter?

Hon. Mr. ROEBUCK: It might be civil but it is under the Criminal Code.

The CHAIRMAN: No, that would be civil.

Hon. Mr. ROEBUCK: No, there are provisions in the Criminal Code with regard to the appeal of insane persons.

The CHAIRMAN: Are you not talking about a procedure that takes place in Ontario under our civil law?

Hon. Mr. ROEBUCK: Yes, I accept that correction. However, where a person is referred to a psychiatric institution, and so on, that matter comes under the code.

The CHAIRMAN: A simple illustration would be this. If a magistrate misconceives his authority in a particular case and sentences a man to jail when he had no authority to do so, application is then made for habeas corpus.

Hon. Mr. HAIG: That happens.

Hon. Mr. ROEBUCK: Yes, it does happen, and if any judge thinks that a magistrate has erred in that respect, why should it not be argued? It works much better in actual practice to allow the friends of the subject to go to anybody they like and appeal. But do not stop a man from going from one judge to another. I do not mind the appeal. That would probably add to the protection of the subject. It would be all right if, when one judge refuses, you could appeal, but do not stop the person from going from Judge A to Judge B and from Judge B to Judge C. The objection to that has been vastly overstated; that is, the argument that you are asking one judge to hear an appeal refused by another judge of co-ordinate jurisdiction. You are really not doing anything of the kind, but even if you were it would not matter if it involved the freedom of an individual.

The CHAIRMAN: They do in other matters anyway.

Hon. Mr. ROEBUCK: Yes, of course they do.

Hon. Mr. MACDONALD: What judge do you stop at?

The CHAIRMAN: When you run out of judges.

Hon. Mr. ROEBUCK: I would let them appeal from any judge who refuses, but I would not stop them from going from one judge to another.

The CHAIRMAN: You would have both courses of action?

Hon. Mr. ROEBUCK: That is right.

The CHAIRMAN: There is nothing like being well armed.

Hon. Mr. MACDONALD: The citizen of Prince Edward Island is at a disadvantage compared to a citizen of Ontario. If a person in Prince Edward Island commits the same crime as a person in Ontario he can appeal to three judges only, whereas the citizen of Ontario can appeal to sixteen.

Hon. Mr. ROEBUCK: He cannot do so in actual fact. You go to Osgoode Hall and you will find that only three or four judges are available. It might be hard luck in the case of a Prince Edward Island resident, but do not deny us that right in Ontario.

Hon. Mr. GOUIN: I support the remarks of Senator Roebuck. I think the interested party should have the right to go from one judge to another, and so on, although most of the time in Quebec the person is told "You have the right of appeal". It is a question of interpretation. We say at the end of the amendment which is before us that the Court of Appeal if it is not sitting shall be convened for the purpose of hearing the appeal. I do not know if I am wrong, but I am not sure, from this convoque, if it does not mean that they should sit on appeal right away, otherwise they might say in June, for instance, "All right, we will hear this in September." I think we should add the words "as soon as possible," or something similar.

Hon. Mr. ROEBUCK: Or "forthwith".

Hon. Mr. GOUIN: "Forthwith." Otherwise, they could say, "All right—sitting for September 2nd," and there would be delay.

Hon. Mr. MACDONALD: The section as amended says that the appeal will be heard within seven days, or the court will have to be convened within the seven days.

Hon. Mr. GOUIN: That is my point, that I think we should put it that the appeal should be heard either during the sitting or during the special sitting within the seven days.

Hon. Mr. MACDONALD: I think that is what it says.

Hon. Mr. GOUIN: The way I read it, I do not think they are obliged to hear it within the seven days.

Hon. Mr. HAIG: Mr. Chairman, I know the committee do not like to hear lawyers give an opinion on things.

Hon. Mr. EULER: Why shouldn't they?

Hon. Mr. HAIG: But I honestly think, much as I hate to admit it, that the present law works all right.

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN: No doubt about that.

Hon. Mr. ROEBUCK: I am satisfied.

Hon. Mr. HAIG: I think the present law works all right. You are not dealing with the crime itself at all. You are just saying that the fellow shall be brought before a court and the case shall be heard. Now, I have often been behind the bars of a jail with a prisoner, and when the guard locks the doors and goes away, one really feels locked up. And so you are locked up, and it is quite a long time, I might tell you, after you get through interviewing your man; and the guard comes back, unlocks the door and says, "Mr. Haig, would you like to get out?" I say, "Very much." That experience has always made me feel that whether the prisoner should be behind the bars or not, he is not being let out of jail, except to have his case tried. In other words, he is not being let off.

I would support Senator Roebuck in his statement that we should go back to the old amendment.

Hon. Mr. BOUFFARD: I have one objection. What happens in the case of a man who goes to one judge and does not tell him that the first judge refused him? It seems to me it is like an appeal from one judge to another without the one judge knowing.

The CHAIRMAN: There is nothing reprehensible about that, is there senator? We used to shop around for an interim judgment, ex-parte, do you remember?

Hon. Mr. HAIG: Will you permit me to speak again, Mr. Chairman?

The CHAIRMAN: Yes, of course.

Hon. Mr. HAIG: In Manitoba some years ago we had six trial judges; five of them had cars, one of them didn't. Now, if you had a car case, you tried to jockey the list so as not to have it come before that one judge, because he was always against the car owner, no matter if the speed travelled was 10 miles an hour, and the law said 25. So we used to dodge him as much as possible. Sometimes we got caught, and had to go to the Court of Appeal to get it straightened out.

The CHAIRMAN: I suggest that we ascertain which principle the committee wants, because if you want the principle of the present law we are going to have to stand the section and have Mr. MacNeill make us a redraft.

Hon. Mr. MACDONALD: Before you decide on the principle, if you are going to accept the present law or the proposed new law, I think you must decide whether you are going to allow an appeal, because if we allow the old law to stand—

The CHAIRMAN: Then there will be no need for an appeal.

Hon. Mr. MACDONALD: There will be no need for an appeal. The Crown would have an appeal from that decision, of course.

Hon. Mr. BEAUBIEN: May I ask one question?

The CHAIRMAN: Yes, of course, senator.

Hon. Mr. BEAUBIEN: Supposing you go before all the judges in order to get your prisoner justified as to whether he has been detained properly or not, in Ontario, and you pass them all. In that case, there are no more judges. Where do you go from there?

The CHAIRMAN: Then you are through.

Hon. Mr. ROEBUCK: The point is this, that if you have exhausted the panel you have gone to all the trial judges and the appeal court Judges, so the appeal would be of no value after that.

Hon. Mr. MACDONALD: One more reference before we decide on accepting the principle. I think it is quite important in the new law that the case will be decided on its merits, where there is an appeal. At the present time, you go to a judge and you say your man should be let out, and if he says No, that is the end of it. You go down the line, and if they all say No, that is the end of it, and the case on its merits has never been tried.

The CHAIRMAN: Well, because no judge thinks there are any merits.

Hon. Mr. MACDONALD: All right, no judge thinks there are any merits, but there may be merits to it, and if the accused has a right of appeal, as he would have in the proposed new law, it would then go to the court of appeal and the case would be tried on its merits as to whether the accused should be in jail or released.

The CHAIRMAN: No, that is not the procedure.

Hon. Mr. ROEBUCK: No, whether he should be heard.

Hon. Mr. MACDONALD: Yes, whether he should be heard or whether he should not, but when he goes to a judge and says, "I want to be heard," and the judge says, "No, you can't be heard," that is the end of it. He goes to the next one, and that judge says, no, he cannot be heard; but if he has the right of appeal then he can go to the court of appeal and the merits as to whether or not he should be heard are argued.

The CHAIRMAN: The same as they are capable of being argued before a whole series of single judges. The court of appeal judges are no better than—

Hon. Mr. MACDONALD: It would be a hearing before the court of appeal, and there would be counsel for the accused and counsel for the crown; and the whole question of whether or not this man should remain in jail is then heard by the court. Then, as the law is at the present time, it can be passed off without giving the question very careful consideration.

Hon. Mr. ROEBUCK: I am perfectly satisfied to give an appeal, so long as you do not cut off the right to go from one judge to another. You can have them both, but if you are going to cut off the right to canvass the panel, as it is called, in exchange for an appeal, then I am opposed to that change.

The CHAIRMAN: After you have exhausted the panel, what is your appeal from, all the judges or one of them?

Hon. Mr. ROEBUCK: From any one of them.

The CHAIRMAN: Then it gets to the court of appeal, and about 18 or 12 or 6 judges, whatever the number might be, have turned down the right.

Hon. Mr. ROEBUCK: Then they turn it down, too.

Hon. Mr. BURCHILL: Mr. Chairman, speaking as a layman, from the discussion this morning it would seem that the law as it is at present works very well, judging by the comments. Is there any demand for a change by the Canadian Bar Association, or by any other quarter, that the present system should be changed?

Hon. Mr. ROEBUCK: When the minister was here last time he read a letter from a man I had never heard of.

The CHAIRMAN: Mr. Gordon.

Hon. Mr. ROEBUCK: He did not describe the man enough to identify him to me; he simply said "a man by the name of Gordon." The minister read the letter, and the letter showed that the man did not understand the sentence.

Hon. Mr. BAIRD: We have the case of Al. Valmanis, just recently, who went from his lawyer to here and there, and nothing came of it, and the man is still in jail.

The CHAIRMAN: The question is whether you want the principle in the present law as it relates to habeas corpus continued, or prefer the provisions in that respect in this bill. Will those in favour of continuing the present law indicate by raising your hand?

I declare the vote carried in favour of the continuance of the present law. We will ask Mr. MacNeill to prepare a draft accordingly, and we authorize him to do whatever is necessary.

On Section 68—Reading proclamation.

Senator Gouin raised some question the other day about section 68.

Hon. Mr. GOUIN: Mr. Chairman, my remarks on section 68 will be very brief. The section commences:

> A justice, mayor or sheriff or the lawful deputy of a mayor or sheriff who receives notice that, at any place within his jurisdiction, twelve or more persons are unlawfully and riotously assembled together—

And so on. Specifically, it contains the words "receives notice", and in the French version "qui recoit avis". The old code, as I call it, reads "has notice", and in French "qui est averti". Under the new section the justice or mayor must receive notice, and as explained to the committee, he is obliged to go to the place—it might be the Place d'Armes square in Montreal—and read the riot act. Of course, I am not passing judgment on anything which has taken place in the province of Quebec; nevertheless, the labour representatives who appeared before us felt very keenly about this question. I do not have all the facts before me about the Louisville incident, and I cannot say who was right and who was wrong, but there was a reading of the Riot Act under certain circumstances which may not have warranted it.

The people of the labour movements believe that this amendment may enable some people to abuse what I would call the privileges concerning the reading of the Riot Act. It is a question of legal interpretation. I am not an expert in the English language, so on the question of interpretation I must be very cautious. But I see no good reason why the words "has notice"—or in French "qui est averti"—should be changed to read "receives notice"—or in French "qui recoit avis". Unless it can be explained to me that there is some real purpose in the change of the words, I would move that section 68 be amended at line 39 thereof by substituting the word "has" for the word "receives".

If that amendment were adopted, and the language of the section restored, the labour people would have no reason to complain. Generally speaking, I do not think there has been any abuse of the privileges concerning the Riot Act.

Hon. Mr. BOUFFARD: What are the provisions under the present Code?

The CHAIRMAN: The present code says that a justice, mayor or sheriff who has notice, must do certain things; and in the bill if he "receives notice", he must do certain things. There seems to me to be a marked difference between the old and the new. For instance, if a mayor is walking down the street and observes a situation which he thinks is a riot, he would have to read the Riot Act; but in the provision before us, his responsibility to act commences when he receives notice from some other person.

Then we should consider section 70, which gives defence to the behaviour of a peace officer. It commences with these words:

> A peace officer who receives notice that there is a riot within his jurisdiction—

Hon. Mr. HUGESSEN: Mr. Chairman, does section 70 of the old code use "has" instead of "receives"?

Hon. Mr. GOUIN: To the best of my knowledge, it does.

The CHAIRMAN: Yes. Section 94 of the code uses the words "who has notice". The difference between that and the proposed words is that a peace officer's responsibility starts when he receives notice while under the old section he would have responsibility without receiving notice from anybody.

Hon. Mr. HUGESSEN: As he should.

The CHAIRMAN: That is a matter for the committee to decide. I am only expressing a personal view at the moment.

Hon. Mr. HAIG: Is there any great difference between the two provisions? I thought the minister made a pretty good explanation of this section the other day. I was against him on it when he came in, but after his explanation I rather favoured it. He dealt with 68 and 70 together, and it seemed all right.

The CHAIRMAN: The difference the other day was not on this question but on the question of it being mandatory that the peace officer shall read the Riot Act. The discussion the other day was about the circumstances of a peace officer being given notice and coming upon a spot where nothing was going on, that he need not then read the Riot Act. The present point is as to whether we should restore the word "has".

Hon. Mr. REID: Does this provision indicate as to whom the information can be received from?

The CHAIRMAN: He can receive it from any person, and it is up to him to decide whether it constitutes notice or just a complaint from a "crackpot". The question before is whether the committee wants to place the mayor or peace officer in the position of being a self-starter, instead of having to wait until notice comes to him.

Hon. Mrs. HODGES: The meaning of the new section is that anyone could give notice to the mayor.

The CHAIRMAN: Yes. But under the present section, if the mayor is walking down the street and sees something that would indicate a riot and does nothing about it, having received no complaint, he could be charged with failure to do his duty. It is a question of whether you want to burden him with that responsibility.

Mr. HAIG: I think the amendment is satisfactory.

The CHAIRMAN: I think it is too.

Hon. Mr. BAIRD: In other words, the mayor can get his information from anywhere.

The CHAIRMAN: Yes: I thought the other question was going to be raised, as to whether or not we should give him some discretion; my thought the other day was that we did give him some discretion, but some other senators did not think so.

Hon. Mr. HAIG: The minister felt that way too.

Hon. Mr. HUGESSEN: I was going to raise that point.

The CHAIRMAN: Now is the time to do it.

Hon. Mr. HUGESSEN: But Senator Gouin is now dealing with another part of that section.

The CHAIRMAN: What is the view of the committee as to whether we should retain the word "receives" or restore the original word "has"?

Hon. Mr. ASELTINE: Let us protect the mayor and leave it as it is.

The CHAIRMAN: Those in favour of the word "receives" as it occurs in the bill, please indicate by raising their hand.

It remains with the word "receives".

Hon. Mr. HUGESSEN: I was going to suggest in line 43, Mr. Chairman, on page 24, after the words "approaching as near as safely he may do", add the words "and if he is satisfied that such persons are unlawfully and riotously assembled." It seems to me that those words make common sense because otherwise, as the section reads, the mayor receives notice that a riot is taking place and he may go there and see nobody, and yet he is bound to read the Riot Act.

The CHAIRMAN: I have been thinking of that and have this suggestion to make. How would you go for the addition of the words "if he is satisfied that a riot is in progress".

Hon. Mr. HUGESSEN: Yes, that is all right.

The CHAIRMAN: I do not like the word "such". I would prefer the words "if satisfied that a riot is in progress".

Hon. Mr. HAIG: That is good.

The CHAIRMAN: That is in line 42, and the suggestion is that we insert those words after the word "do" in that line.

Hon. Mr. BOUFFARD: Would you not go a little further and have the words "riotously and unlawfully" inserted too?

The CHAIRMAN: Riot is defined in section 65 as an assembly which has begun to disturb the peace tumultously.

Hon. Mr. BOUFFARD: That is true.

The CHAIRMAN: All those in favour of inserting these additional words. Against.

It is agreed that these words will be inserted in line 42.

Now that brings us back to the three sections 52, 365 and 372. We may as well start in with section 52. The question is: to be or not to be. That may be one of the questions, to be or not to be, as far as the saving clause is concerned in the offence of sabotage.

Hon. Mr. HAIG: Mr. Chairman, it is now 12.30. Do you think we are going to be able to finish this today?

The CHAIRMAN: Not before one o'clock at any rate.

Hon. Mr. HAIG: Then, Mr. Chairman, I would move that we adjourn.

The meeting adjourned to the call to the chair.

EVIDENCE

THE SENATE

OTTAWA, Wednesday, June 9, 1954.

The Standing Committee on Banking and Commerce, to whom was referred Bill 7, an Act respecting the Criminal Law, met this day at 11 a.m.

Hon. Mr. Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum. There are several things that we have to tidy up in connection with the Criminal Code. I think when we adjourned last time we had approved in principle as to what we were going to do with the sections dealing with habeas corpus, and we left it up to our Law Clerk and Mr. MacLeod to settle on the language of the proper amendment. Have you done that Mr. MacNeill?

Mr. MACNEILL: Yes, sir.

The CHAIRMAN: That is in reference to clause 690—successive applications for habeas corpus not to be made—and clause 691—appeal in habeas corpus, etc.—which we were discussing.

Mr. MACNEILL: Clause 690 is the clause which changes the law with respect to habeas corpus and the instruction of the Senate was that the law be put back as it were to the state that it was before this proposal was made. To do that we deleted clause 690, but in order to keep the numbering we re-enacted subclause 2 as new clause 690. It does not mean very much but it does keep the numbering, and it does not do any harm, so that the new clause 690 will read this way:

> Nothing in this act limits or affects any provision of the Supreme Court Act that relates to writs of habeas corpus arising out of criminal matters.

Subclause 1, which goes out, is the clause which prevents what is called shopping around from judge to judge when making an application for a writ of habeas corpus. Now there is a consequential amendment, therefore, in clause 690, because that clause deals with appeals in habeas corpus, mandamus, certiorari and prohibition, and what we are doing is taking out the provision for appeals in habeas corpus matters, and we also take out subclause 3 which designates the court of appeal as the appeal court where an application for a writ of habeas corpus must be heard. Now there is no appeal in matters of habeas corpus. So the neatest way we could do it is to delete clause 691 and re-enact it, and the subclause 1 of the new clause 691 will be exactly the same as it is now, except that the words habeas corpus will be deleted. Subclause 2 will be the same. Subclause 3 will disappear altogether.

The CHAIRMAN: Subclause 1 deals not only with habeas corpus but also with mandamus, certiorari and prohibition.

Mr. MACNEIL: Yes, that is what I said, we re-enacted it.

The CHAIRMAN: What I am getting at is, subclause 3 in present clause 691 would deal with the subject of appeal in relation to mandamus, certiorari or prohibition.

Mr. MACNEILL: The reason that was put in was to make a provision against a person staying in jail in a habeas corpus application longer than seven days.

The CHAIRMAN: If you take out the writ of habeas corpus, it means that the ordinary criminal law rules will apply in an appeal from prohibition, certiorari and mandamus.

Mr. MACNEILL: Quite so.

The CHAIRMAN: The first proposal is that section 690 be amended by striking out subsection 1. That is the effect of it. Strike out subsection 1 and then 690 will simply read as follows:

> Nothing in this act limits or affects any provision of the Supreme Court Act that relates to writs of habeas corpus arising out of criminal matters.

Is that satisfactory to the committee?

Hon. Mr. ROEBUCK: May I say, Mr. Chairman, that I have gone into this matter with Mr. MacNeill and I am quite satisfied with the proposal.

The CHAIRMAN: I can say the same thing for myself, Senator.

The amendment was agreed to.

The section as amended was agreed to.

Now with regard to section 691, that has to be amended to conform to the principle which the Senate laid down last time. The words habeas corpus have been struck out of subsection 1, subsection 2 remains as is, and subsection 3 is struck out. So now you have preserved all the rights, you have maintained the present status in relation to habeas corpus and you have preserved all the other rights provided in section 691.

The amendment was agreed to.

The section as amended was agreed to.

The CHAIRMAN: On the contempt section there was something.

Mr. MACNEILL: On the contempt section Senator Roebuck and I were to get together, and we did get together. We have agreed that there is no jurisdiction and therefore that these words are not necessary in subclause (2). So we would re-enact the clause which was adopted by the Senate last year as 8 (2) of Bill O. That would read as follows:

> 9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed.
>
> (2) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal
>
> (*a*) from the conviction, or
>
> (*b*) against the punishment imposed.
>
> (3) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and for the purposes of this section, the provisions of Part XVIII apply, mutatis mutandis.

The CHAIRMAN: The vote of the committee last time was that we restore the provisions in relation to contempt both in the face of the court and outside the court to the form in which we had settled them and in which they had gone forward to the Commons. What our Law Clerk has just read is incorporating that language, and if it is your wish, then a motion is in order to repeal section 9 in the bill which is before us and replace it.

Hon. Mr. BOUFFARD: A magistrate has no power to commit for contempt of court, even in Quebec.

The CHAIRMAN: We are convinced of that.

Hon. Mr. KINLEY: Under that section, Mr. Chairman, if the applicant is refused by one judge he can appeal to another?

The CHAIRMAN: No; this is contempt we are dealing with now. We have passed habeas corpus, and the way we disposed of it was to restore the old law as we had agreed on it last time.

Hon. Mr. ROEBUCK: At the last session we agreed we would restore the law as we had planned it in Bill O and sent it to the Commons. I saw what I thought was a defect in it—that we mentioned the justice and the magistrate in the first section but not in the second, and it seemed to be just an oversight; but I was wrong in that.

The CHAIRMAN: It turned out it was not an oversight.

Hon. Mr. ROEBUCK: It was properly done.

The CHAIRMAN: As the poet would say, we were "righter" than we thought we were.

Hon. Mr. ROEBUCK: And we are still "righter" now; and I am satisfied with the section.

The CHAIRMAN: Is it the wish of the committee to repeal clause 9 and replace it by the clause which has been read?

Hon. Mr. REID: Has "contempt" itself been defined?

The CHAIRMAN: Well, it certainly is not defined in the Criminal Code. There are many decisions of the courts which lay down principles as to what constitutes contempt. However, I would not say that even the decisions of the court are exhaustive.

Hon. Mr. ROEBUCK: No, they are not.

Hon. Mr. EULER: What do you mean when you say that a man is beneath contempt?

The CHAIRMAN: If you say that to a judge in open court that may be contempt.

Hon. Mr. GOUIN: It is also a matter of common sense as to what is meant by contempt of court.

The CHAIRMAN: There are many decisions, so you have quite a guide.

Hon. Mr. MACDONALD: It will no doubt be discussed in the court of appeal some day.

The CHAIRMAN: I am sure you will have some jurisprudence on it in the course of the next few years.

Hon. Mr. ROEBUCK: We are going to build up a body of law in consequence of this change in the Code.

The CHAIRMAN: That is right.

Hon. Mr. ROSS: As I understood it as Mr. MacNeill read it, if contempt occurs outside the court the person may appeal from the conviction or from the penalty.

The CHAIRMAN: Yes.

Hon. Mr. ROSS: Can he appeal from both?

The CHAIRMAN: Yes.

Hon. Mr. ROSS: That is clear, is it? I am not just sure it was clear that he could appeal from both.

The CHAIRMAN: He can appeal from either one. If he appeals the conviction the sentence is not necessarily involved, because if he succeeds on the appeal from the conviction nobody cares about the sentence.

Hon. Mr. ROEBUCK: If the decision is sustained in the court of appeal he may then want to attack the amount of penalty.

The CHAIRMAN: Is it the pleasure of the committee we carry these sections?

Some Hon. SENATORS: Agreed.

The CHAIRMAN: Before we agree to pass all other sections, the only ones left to be dealt with are the three sections with the saving clauses. I refer to sections 52, 365 and 372. Then there is section 178 in which there are certain amendments to be suggested because of a bill that is coming before the Senate. I thought we might first deal with the three sections that have saving clauses. I should like to take a minute to state my position, for I have taken a pretty strong position in relation to sections 52 and 372. I have stated that I am perfectly satisfied with section 365, dealing with criminal breach of contract. With respect to section 52, my view as I have expressed it on a number of occasions is that in dealing with an offence of sabotage everybody should be on an equal footing. I have been bothered very considerably since the Minister was in here and gave his explanations.

The saving clauses which were added in sections 52 and 372 were added as the result of a very long period of negotiation, and really achieved a compromise.

Hon. Mr. CRERAR: With whom?

The CHAIRMAN: With all the various interests, including the various views expressed in parliament, as well as with the labour organizations of Canada—I mean the legitimate labour organizations of Canada, who felt that the section standing without any saving clause sort of singled them out as being the ones particularly involved in these offences.

Hon. Mr. MACDONALD: And with the Board of Trade?

The CHAIRMAN: Yes, and also discussions with the Board of Trade of Toronto.

Now, after weighing all those things, I still hold the same view with respect to section 52, and, as a matter of fact, I think underneath it all maybe the minister does, but a lot of law and other things are brought about as a matter of compromise, and you get as much as you can get, and as much as you think you will be able to get, and let the future take care of itself. I am sure if we pass the sections with the saving clauses in them and if any problem resulted in a case of prosecution in connection with sabotage and some workers escaped because of the conviction, and it was a serious enough case, parliament would right the situation at once.

Taking section 52, the only difference I see is that if you had section 52 without a saving clause, and some employees who were operating under a contract in good standing with their employer suddenly decided they wanted to go to another plant 50 miles away to join a picket line there, walked off the job and joined the picket line, and as a result of their doing so the machinery was damaged, so that apparently there was a prima facie offence under section 52, and a charge of sabotage was laid, well, if there is no saving clause in that section the Crown's position, in the first instance, in establishing a prima facie case is a lot easier; and if the worker goes in the witness box and says, "Oh, I didn't intend to do anything prejudicial to the safety, security or defence of Canada," the Crown, of course, would have the opportunity in reply to attempt to prove that he did have some intention, and it would be up to the jury to decide whether or not there should be a conviction. But once you put the saving clause in, then the onus shifts, and instead of the accused person, in the first instance, having to raise it as a matter of fact in defence, the Crown would have to develop evidence as part of its case

in chief to establish that not only the act of sabotage done was covered by section 52 but also that it was done in circumstances which were prejudicial to the defence of Canada beyond simply the fact of the man going off his job to go and join a picket line. It does make the Crown's case a little more difficult, but sabotage is a serious offence, and if it is a serious offence a person charged with it, I suppose, is entitled to whatever legitimate protection we think he should have. The saving clause is not too drastic. I would have preferred the section without it, but frankly I felt I had to express my view here, since you know how strongly I have expressed my opposition to the section. I am still expressing my opposition to the section as much as ever, and think it is wrong to have a saving clause, but you cannot always get what you want and as far as I am concerned I am prepared to meet the minister's wishes on it and vote for the section with the saving clauses in it.

Hon. Mr. CRERAR: Mr. Chairman, how is sabotage defined?

The CHAIRMAN: Section 52 defines sabotage, on page 21. It gives the definition of a prohibited act, and then in order to constitute the offence you must do that prohibited act for a purpose prejudicial to the safety, security or defence of Canada.

Hon. Mr. REID: Would that take effect in times of peace and war?

The CHAIRMAN: Oh, yes.

Hon. Mr. ROEBUCK: Mr. Chairman, may I also have the privilege of stating my position? You have stated yours, and I had stated mine previously. I think I am pretty well understood by the members here as to what my position is, but I would like to restate it and have it on the record. I appreciate the chairman's position in coming along in what he understands to be a compromise; and I quite agree with him that there should be no saving clauses, generally speaking, but in this section a savings clause is a positive necessity, unless you wish to put the labour unions of this country out of business by criminal law. I say if these three sections—and they are all open to the same attack and all have the same justification—stand, then the labour unions might just as well fold up. There never was a strike that did not involve the prohibited acts mentioned in these sections. Without the savings clause, if we are able to enforce the act, the labour unions are out of business, and may as well fold up and go home.

Somebody to my left just said "a good job". That is a matter of opinion, and my friend is entitled to his own opinion. But I think the majority of the people of Canada hold a different view, and see in our labour unions some very fine forces in this country.

Hon. Mr. BAIRD: And some very bad ones too.

Hon. Mr. ROEBUCK: That is your opinion, and you are entitled to express it. At the same time, I don't know that any of us want to put the labour unions out of business by criminal law.

Hon. Mr. EULER: You have said that the labour unions might just as well go out of business. Do you mean by that that unless the savings clause, or clauses, are in the act that no successful strike is possible?

Hon. Mr. ROEBUCK: Yes, I do.

The CHAIRMAN: Senator Euler, may I add this. Senator Roebuck is perfectly entitled to make his statement and go to the extreme in his description of the results that may flow from the section, but I would draw his attention to the fact that section 52 was enacted in 1951 without a saving clause.

Hon. Mr. ROEBUCK: But it has not been in force.

The CHAIRMAN: It has been in force since 1951, and no labour union has gone out of business since the existence of that section.

Hon. Mr. ROEBUCK: Section 52 has been in the law since 1951, but it has never actually been enforced.

The CHAIRMAN: You may say that it has not been enforced, but it has been in force.

Hon. Mr. ROEBUCK: It hasn't been enforced because it is impractical.

The CHAIRMAN: The existence of that section without the saving clause has caused no union to go out of business.

Hon. Mr. ROEBUCK: That may be so.

Hon. Mr. REID: Then why is the saving clause introduced into the section at this time?

The CHAIRMAN: Because we are presenting a new bill, and trying to get agreement between all parties who are concerned with the enforcement of this type of legislation. And when you are trying to reach agreement, unless you are prepared to swing the big stick and say this is it, it has got to develop as a result of some compromise. That is why I say I am prepared to come along, and I think the compromise is reasonable in all the circumstances.

Hon. Mr. EULER: Are all the parties who are interested in this provision—that is the labour people, manufacturers, producers and so on—satisfied with this saving clause?

The CHAIRMAN: When the minister was here the other day he said that this represented substantial agreement. He also said that they were able to reach agreement in some instances by submitting three or four choices of a saving clause to some of the labour organizations and they were asked to select one. The various organizations selection of different ones—they approved of this one in the sense that they selected it—would indicate that if they had been permitted a wider choice, they would have thrown them all out and tried to draft some other type. But to this extent the saving clauses are acceptable.

Hon. Mr. REID: They are a protection to the labour unions.

Hon. Mr. ROEBUCK: Mr. Chairman, I had the floor and I would like it back.

The CHAIRMAN: You have it.

Hon. Mr. ROEBUCK: I shall re-state my objection. section 52 commences:

> 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.

Let me say that I hold no brief for people who do something that is prejudicial to the safety, security or defence of Canada; and I don't care whether he uses a tool or how he accomplishes it. That is treason, or very close to it, and should be prohibited; and the penalty should be fairly strong.

I continue with subsection 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.

To interfere with the use of a property or cause it to be lost, damaged or destroyed, is usually of a minor character and frequently is only a civil matter for which one may sue for damages. But there are in the Code sections which

prohibit the destruction, the wilful destruction of property. I have no objection to them. But what I have objection to in this section is hitching up the one to the other and so making it a major offence to do what is really a minor act, to bring the sanctity of loyalty to Canada—the safety and security of Canada—and hitching it up to the protection of property. I have admitted many times that I am much more interested in human rights than I am in property rights, that I am much more interested in protecting people than I am in protecting some property, but in that I am not unanimous in Canada by any means. There are those who look upon property as more important than anything else and it is the endeavour—

The CHAIRMAN: I would suggest they are few in number, Senator.

Hon. Mr. ROEBUCK: I have the floor.—to weave around the protection of property, the sanctity—

Hon. Mr. GOUIN: Are you speaking against subparagraph (*b*) only or do you include subsection (2) in your remarks? Are your remarks directed against both subparagraphs?

Hon. Mr. ROEBUCK: No, I am not talking against that. Those are the exemptions you are referring to, are they?

The CHAIRMAN: No.

Hon. Mr. ROEBUCK: In subsection (1) of section 52, paragraph (b), it speaks of the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada. What I say with regard to them is that there should be an act prohibiting something that is inimical to the safety of the army or of those forces which are in Canada legally, such as the American forces now up north. I am quite satisfied with prohibitions of that kind but I am not satisfied to tie them to property, to sort of increasing the sanctity of property in that way. The two offences should be tried separately.

Hon. Mr. GOUIN: Even in the case of vessels, aircraft and so on?

Hon. Mr. ROEBUCK: Yes, decidedly. It is perfectly all right to legislate against attacking vessels or destroying property of any kind, but to hitch up the two and make it a sort of treason to interfere with a vessel to my mind is all wrong, and I say you have gone too far.

The CHAIRMAN: This is not treason, this is sabotage. You said treason.

Hon. Mr. ROEBUCK: That is pretty nearly treason. It hitches the idea of the safety or security of the state up to the protection of the owner of property and that is what I do not like.

The CHAIRMAN: It magnifies the offence if it occurs under certain conditions.

Hon. Mr. ROEBUCK: You have it exactly right.

The CHAIRMAN: Why should it not be?

Hon. Mr. ROEBUCK: It magnifies—

Hon. Mr. EULER: Not unduly.

Hon. Mr. ROEBUCK: Yes, unduly. It makes it a matter of a sentence of ten years if you do something that interferes with the use of property. Let me give an illustration: If you strike for the purpose of stopping a boat sailing and then the Crown can argue that your purpose to stop the boat sailing was prejudicial to the safety and of the security or defence of Canada, then you have it.

Hon. Mr. EULER: Why not?

Hon. Mr. ROEBUCK: The two things should be separated. If you are doing that for the purpose of prejudicing Canada in time of war, you can make the offence as strong as you like, but to have this provision in the time of peace where the purpose is to stop a boat sailing—

Hon. Mr. MACDONALD: Is the security of Canada in time of peace less valuable than the security of Canada in time of war?

Hon. Mr. ROEBUCK: I would think it was a decidedly different proposition.

The CHAIRMAN: It might only go to the matter of sentence.

Hon. Mr. ROEBUCK: It would go to the matter of sentence—it does always.

The CHAIRMAN: The quality of the act would be the same.

Hon. Mr. ROEBUCK: If you follow me you have my objection to it. I do not expect to have the concurrence of the committee but it is not the first time I have been alone in my statements with regard particularly to the criminal law and other things, and I want my position fairly understood and of record. I object to this thing because it is an attempt to weave around property the loyalty of people to the state.

The CHAIRMAN: Your position is that these sections should be struck out?

Hon. Mr. ROEBUCK: Yes, and I so move.

The CHAIRMAN: The motion is that sections 52, 365 and 372 should be struck out. Is there a seconder for Senator Roebuck's motion? I do not think, strictly speaking, you need a seconder, Senator.

Hon. Mr. ROEBUCK: No, I do not need a seconder.

The CHAIRMAN: Well, there is a motion by way of amendment before the committee to strike out sections 52, 365 and 372. Those in favour?

Hon. Mr. MACDONALD: To strike out the whole section?

The CHAIRMAN: Yes, the whole section.

Hon. Mr. REID: The only difference in the section 52 before us and what we had recommended previously is the addition of the saving clause.

The CHAIRMAN: That is right. Senator Roebuck has moved an amendment that the entire sections 52, 365 and 372 be deleted.

Hon. Mr. ROEBUCK: But we are considering section 52 only. You cannot do it that way.

The CHAIRMAN: We can do anything we wish if the majority of the committee support it.

Hon. Mr. ROEBUCK: Well, go ahead, do it as you wish.

Hon. Mr. EULER: He can make his motion as he likes, though.

The CHAIRMAN: Yes, but I had asked him if his motion was to strike out these three sections and his answer was yes.

Hon. Mr. ROEBUCK: Perhaps I did, but I took you to mean to ask, did my argument apply to all three sections. Anyway, my motion now is that section 52 be struck out.

The CHAIRMAN: There is a motion before us that section 52 in its entirety should be struck out. Those in favour? Oppose?

The motion is lost.

Those in favour of section 52 with the saving clause please indicate. Oppose?

The section was agreed to.

Now section 365—Criminal breach of contract.

Are you making a motion in respect to that section, Senator?

Hon. Mr. ROEBUCK: Yes. May I state my position in connection with section 365?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: I will read the section:

> Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequence 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 or 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 is liable to imprisonment for five years, . . .

My point in connection with that is this, that I am entirely in sympathy with legislation which prevents the endangering of human lives, that prohibits the doing of serious bodily injury to anybody, that would prohibit the exposing of valuable property, real or personal, to destruction, and I am opposed to depriving the inhabitants of a city or place of their supply of light, power, gas or water and so on. These are all matters which have been legislated on and which are properly the subject for more legislation from time to time.

Hon. Mr. REID: Is there power anywhere else to deal with cases of that kind outside of section 365?

Hon. Mr. ROEBUCK: Yes, there is, and where it is, they may be applied without any objection from me. But I would say with regard to this section that it is wrong to hitch up these things with the breaking of a contract. They are all offences, irrespective of whether or not there is a contract, and it is just as serious or very nearly as serious when there is no contract as when there is a contract. Contract is a matter of civil law and should be dealt with in the civil courts. The accomplishing of any of these things that I mentioned concerns criminal law and should be provided for in the criminal code and dealt with under the criminal code, but my point is that there is no necessity of bringing in this contract business at all into this section. I have my suspicion of what the purpose was, and therefore I would strike out the clause entirely, because the actual acts are all prohibited, and it is therefore entirely unnecessary to bring in this breach of contract.

The CHAIRMAN: I would point out to the committee, although they may know it already, that in connection with 365 the various offences, the ones endangering human life and causing serious bodily injury, have been in the Code since, possibly, 1877, and the other offences—although the draftsmanship was very defective—that is depriving the inhabitants of a city of light, water, etc., came into the Code possibly in 1906 or somewhere around there.

Hon. Mr. REID: Under the present section?

The CHAIRMAN: Yes. But, as I said, the sections in relation to depriving a city of gas, water, etc., were so defectively drawn that if they had ever attempted to prosecute under them the prosecution could not have succeeded. The intention was clear but the draftsmanship was bad. So they are not in the strict sense new sections. They have been there a long time. And it is

nothing novel or new that you might have a civil right and there might also be a criminal responsibility. That principle is as old as organized society, I would say. You have a civil right to recover damages for injury to your person or to your property, but the state may be interested in the offence too, and therefore the state provides criminal laws and penalties for that sort of thing. It is not shocking, it is not novel, and it is not aimed at any particular group of people. It is general law; and it may well be that breaches of contract in some instances should attract criminal responsibility.

Hon. Mr. EULER: The clauses to which Senator Roebuck objects have been in the law for some time?

The CHAIRMAN: The sections dealing with endangering human life and with causing serious bodily injury have been in since, possibly, around 1877. The portions dealing with the question of contracts in relation to the supply of gas or water came in about 1906, but they were so badly drafted that you could never have made any prosecutions under them, because they proceeded on the basis that the breach of contract was in relation to a contract between the workman and the municipality. It is the municipality itself that has the contract with, maybe, a private gas works for the supply of gas, or it may be that the municipality if it is in business itself, has individual contracts with the inhabitants of the city; but you have not a contract between the workmen and the inhabitants for the supply of gas, so the draftsmanship was such that you could never succeed in a prosecution. This, however, is properly drawn now so as to cover that type of case.

We have a motion to strike out section 365.

Hon. Mr. ROSS: When we were discussing section 52 you said you were agreeable to the saving clause there. Are you agreeable to the saving clause here?

The CHAIRMAN: I have never had any objection to the saving clause in 365. The saving clause in 365 is a saving clause giving the workmen the right; if they are going out on strike when a strike is legal, then there is an exception made by reason of the fact that they go out on strike when it is legal for them to strike. They have not, by virtue of that act alone, committed an offence under section 365.

Hon. Mr. KINLEY: Senator Roebuck has based his argument largely on the fact that he is in favour of human rights. I hope that everyone here is in favour of human rights as well as property rights, but I have never understood that among human rights is included the right to damage or destroy another man's property. The Criminal Code is for the purpose of regulating society, and I do not think that anybody should be given any preference in relation to its provisions: everybody ought to be on the same basis. Saving clauses have been added. It is a new idea, which has probably been adopted because of pressure, but I believe most of us are of opinion that it is wrong in principle; and in justice to every sentiment I hold, I believe I have the right to vote against a proposal such as this. I have always got along with labour; I have been dealing with labour all my life, and I have a great regard for what they do. But this talk about human rights is, I think, over-stressed and perverted for purposes for which the principle is not intended. We might as well realize that a regulated society, one that has some regard for property, for peace and for law, is the best society for all concerned.

The CHAIRMAN: We have a motion by Senator Roebuck to strike out section 365. Those in favour of that motion? . . . Opposed . . . The motion is lost.

Those who are in favour of section 365 as it stands, with the saving clause in there, will please signify. . . Those opposed . . .

The section is approved.

On section 372—Destruction or damage.

The CHAIRMAN: Section 372: Have you anything to say on that, Senator Roebuck?

Hon. Mr. HAIG: I just want to apologize to the committee because a number of us were not here this morning when the meeting opened, but we were in another committee and could not get away.

The CHAIRMAN: I know. I have already made that statement, knowing how faithful you are to your duty here.

Hon. Mr. ROEBUCK: What I have said in regard to the other two clauses applies also to 372, which is headed "Mischief":

> Every one commits mischief who wilfully
> (a) destroys or damages property,
> (b) renders property dangerous, useless, inoperative or ineffective.

I pointed out a long time ago that that would involve and would prohibit every strike.

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

That is, if you stop any kind of a machine turning around, why, you would be guilty of mischief and goodness knows what the consequences would be.

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

That is to say, you are once again surrounding "property" and its use and enjoyment and that sort of thing with the most extreme of penalties, a life penalty. The labour unions, of course, raised a row about it, and a compromise was necessary with them because of their economic and political power. But I object to the whole clause. I have no objection to protecting property but to make it a life affair as this thing does is extreme, unnecessary, unwise and once again, gentlemen, you will hear about it.

The CHAIRMAN: I should point out that the life penalty in section 372 is only provided in relation to the offence where a person commits mischief that causes actual danger to life.

Hon. Mr. ROEBUCK: Very well. Anyone who commits anything that causes actual danger to life might well be legislated against. But why hitch it up with property? Why throw this sanctity around "property" as these three sections are trying to do?

The CHAIRMAN: Subsection (2) only deals with an act that causes actual danger to life, and the penalty is up to life imprisonment. That is the only place in that section where you have the provision for life imprisonment. You are hitching the reference of life imprisonment to the property offences under this section. Well, there is no life imprisonment penalty in connection with property offences.

Hon. Mr. HAIG: It is five years.

Hon. Mr. EULER: The penalty there is life imprisonment in case human life is endangered.

The CHAIRMAN: That is right.

Hon. Mr. EULER: Supposing there is no loss of life—

The CHAIRMAN: A person does not have to lose his life; it is a matter of causing actual danger to life.

Hon. Mr. EULER: If no actual life is lost could you then, under those circumstances, apply the penalty of life imprisonment?

The CHAIRMAN: That is in the discretion of the judge. The penalty is anything up to life imprisonment.

Hon. Mr. EULER: I do not think he should have that power.

Hon. Mr. REID: Suppose a man sets fire to a home knowing that people are in the home? This man may want to destroy someone in the home, and if the fire is caught before there is any damage it is still a serious crime.

Hon. Mr. MACDONALD: It has to be a wilful act.

The CHAIRMAN: Oh, yes. Now, then, we have the same motion on section 372.

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN: We have a motion that section 372 be struck out in its entirety. Those in favour of that motion please signify. Those opposed? I declare the motion lost.

What is the wish of the committee? Do they approve of section 372 as it stands? Mr. MacLeod informs me that in connection with both sections 52 and 372, with the saving clauses, were approved by the Labour Congress, the C.C.L., the Canadian Catholic Federation of Labour, and that no objection was made by the Board of Trade.

Hon. Mr. HAIG: Question, Mr. Chairman.

The CHAIRMAN: Those in favour of the section with the amendments? Opposed?

The section as amended was agreed to.

The CHAIRMAN: Honourable senators, there is a bill coming to the Senate shortly which makes a slight change in section 178 of the Criminal Code. It is necessary to incorporate it into this Code. The purpose of the amendment is to ensure that a racing association that has been incorporated in one province shall not be entitled to conduct race meetings, with pari-mutuel betting, on race tracks that it acquires in another province. This amendment is in connection with the supervision given by the Department of Agriculture in connection with pari-mutuel betting. They regulate supervision in the various provinces and if you are operating there and you move over into another province as well, then the supervision is not going to follow you. Mr. MacNeill has prepared the amendments in connection with this, which appear at page 61 of the bill to amend the Criminal Code. The amendment is as follows:

> Insert immediately after subclause (1) the following as subclause (2) and re-number the subsequent subclauses accordingly:—
>
> (2) Subsection (1) does not apply in respect of a race meeting conducted by an association mentioned in subparagraph (i) of paragraph (c) of that subsection in a province other than a province in which the association, before the 1st day of May, 1954, conducted a race meeting with pari-mutuel betting under the supervision of an officer appointed by the Minister of Agriculture.

Hon. Mr. HAIG: I so move.

The CHAIRMAN: All those in favour? Opposed?

The amendment was agreed to.

The CHAIRMAN: There is a consequential amendment to be made at page 62 of Bill 7. In line 19 it is necessary to strike out "(2) and (3)" and substitute therefor "(3) and (4)".

Hon. Mr. BOUFFARD: I so move.

The amendment was agreed to.

The section as amended was agreed to.

The CHAIRMAN: We have now dealt with all the sections in which there was any change as against the bill that we sent to the House of Commons. What is left represents what in our considered judgment was what the Criminal Code should contain when we considered it on two different occasions and sent it to the House of Commons. A motion is now in order to approve all the sections which are not contentious and not in dispute, for they are sections we settled and the House of Commons accepted.

Hon. Mr. GOUIN: I so move.

The motion was agreed to.

The CHAIRMAN: There is one other matter left, and that is the question raised by Senator Vien in connection with the French translation. Would Mr. MacNeill give us a report on that?

Mr. MACNEILL: I think Senator Gouin is ready to do so.

Hon. Mr. GOUIN: I could do that. This matter was referred to me, although I had no special capacity for dealing with this problem. The amendments before us simply involve a question of form and language. It has to do with grammar or syntax. There is only one point. As I called to the attention of Senator Vien, and also our Chief Translator Mr. de Montigny, the word "delivered" in French does not mean "deliveré", but on the contrary, means "livré". When an accused is held under warrant and has been committed for trial and handed over to the proper authority to stand his trial, it would not be a very pleasant situation for him not to have his trial and to stay in jail until his death. Therefore, I changed the verb. I forgot, I was told, to strike out the pronoun "en", which means "from". It should not read "qu'il *en* soit livré", in the French text,—the word "en" should be deleted. Our chairman shows me the original draft and I see that I had already struck out the word "en". I do not know why they called my attention to it again.

Hon. Mr. HAIG: The Speaker in the House of Commons referred to this the other night, Mr. Chairman, when he said on the floor that somebody had made a slight mistake in the translation.

Does the committee approve of calling these changes to the attention of the French translator?

Hon. Mr. BEAUBIEN: Did you make a change in the title, and substitute "criminel" for "pénal"?

Hon. Mr. GOUIN: Yes. We have used the word "criminel" for fifty years in this country. There is no reason in the world why it should be called "pénal" now.

The CHAIRMAN: For the purposes of our report which we must make, I assume we have a motion concurring in these changes in the French translation?

Some Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report Bill 7 with the amendments?

Hon. SENATORS: Agreed.

The CHAIRMAN: Well, gentlemen, we have ended a laborious task which has gone on for at least two years. I know that I shall heave a sigh of relief, and I hope the members of the committee will feel that they can breathe easier now that this job is over.

Hon. Mr. ROEBUCK: But is it over, Mr. Chairman? Our amendments still have to go to the Commons, you know, and must be concurred in by them before the act becomes law, so that perhaps we are not entirely through. However, I thoroughly concur in what the Chairman says about the bringing to the end, or nearly to the end, at least, of this long and tedious job, which, nevertheless, has been so highly in the public interest. I do not mind giving ourselves a little pat on the back once again for what we have done in connection with the Code. It is a very much better bill than came to use some two years ago. I think that is conceded by everybody. The Senate in its review of the bill brought about further review in the House of Commons, and that review was all to the good. The House of Commons improved the bill. We improved it over that drawn by the commission and the officers of the Justice Department, and they improved it over what we did. Some of the things, however, were not improvements, but then we have gone over those again and adjusted them; so that the act now goes out to the public, but I can assure the senators that we have not heard the last of it. When it is put into actual practice we will know more about it after it has been in force for a couple of years, than we do now. The old process that applied to the old Code will also apply to this one. There will be amendments from time to time, undoubtedly, and you will find that new sections are not working as well as we had hoped, or perhaps the older sections will be open to attack. There is a greater interest in the Code by the public today as a result of the work done by the Senate and which has been done for many years previously. I look forward to a shower of amendments coming to us, perhaps two years from now.

Hon. Mr. EULER: Mr. Chairman, I wish to say that those of us who are not members of the legal profession, I think, owe rather a debt of gratitude to those of the profession for the manner in which they have handled this work so rapidly and efficiently. I am not going to mention any names, except perhaps I should say that a special bouquet should go to the Chairman himself.

Hon. SENATORS: Hear, hear.

The CHAIRMAN: Thank you.

Hon. Mr. HOWARD: I have nothing more to say, Mr. Chairman, except that I think it is only fair that this committee express its real thanks to the special committee that was appointed, and which has done such excellent work. Regardless of the fact that I do not always agree with my friend Senator Roebuck, I still think that you gentlemen worked tirelessly during the past two years and have done an excellent job, and I think we appreciate what you have done.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. GOUIN: Mr. Chairman, as a non-criminal lawyer, I wish to congratulate you and the members of the committee, especially including Senator Roebuck, for the work you have done. I think that those who rise so much to criticize the Senate, should at least show a little more feeling in our favour. We have done all we could possibly do in the last two years in this very, very arduous task.

Whereupon the committee adjourned.