Bill F-8, an Act for the relief of Eleanor Mary Courtney Flannery.

Bill G-8, an Act for the relief of Florence (Fanny Ruth) Sacks Roitman.

The motion was agreed to, and the bills were read the third time, and passed, on division.

PRIVATE BILL

THIRD READING

Hon. Mr. Stambaugh moved the third reading of Bill S-6, an Act to incorporate the Hotel Mutual Insurance Company.

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

CRIMINAL CODE BILL

SECOND READING

On the Order:

Second reading of Bill H-8, an Act respecting the criminal law.

Hon. Wishart McL. Robertson (Leader of the Government) withdrew from the Senate, to return accompanied by the Honourable Stuart S. Garson, Minister of Justice, whom he escorted to a seat in the chamber.

Hon. Mr. Robertson moved the second reading of the bill.

He said: Honourable senators, in line with the intimation that I previously gave to the house, we have the pleasure and honour of having the Minister of Justice here today to explain this bill.

Hon. Stuart S. Garson (Minister of Justice): Honourable senators, first of all I should like to express my appreciation of your having agreed to consent to waive your rule requiring at least two day's notice of a motion to move the second reading of a bill. Unfortunately, I had for tomorrow an appointment of several weeks' standing that it would have been virtually impossible to break, and the honourable the government leader of your legislative chamber (Hon. Mr. Robertson) tells me that you have very kindly made this afternoon available for an effort which should have been reserved until tomorrow.

One of the quite important reasons why we in the Department of Justice and in the Government decided to avail ourselves of the services of your honourable chamber on this occasion was the magnificent work which you did for us in considering the Bankruptcy Bill of 1949, and which I, as the minister in charge of that bill in the House of Commons, am confident did much more than cut our task in that house in two; I should think it probably reduced it by about 90 per cent. When that bill came there with your *imprimatur* upon it, the impression we had was that that was about all that was required in our debate. I hope that the same confidence will be entertained with respect to your efforts on the bill now before us.

Hon. Mr. Euler: Just as you treat our divorce bills.

Hon. Mr. Garson: The honourable senator says he hopes that we shall treat this as we treat the divorce bills that come from your chamber. I do not know that I would be able to subscribe to that view in all cases.

This bill, copies of which I believe have been tabled, is quite a voluminous document. It is a very large book indeed, I should think about the size of *Anthony Adverse*, and upon the whole for the average layman much duller to read. But it has this in common with all other books—at least, so it seems to me—that one of the important things to know about it is who is its author. In the present case we have not merely one author, but a large number of them, and they are all well known as competent men.

One of the hallmarks upon which this body and the members of the other place have to depend in considering a work is the good name of the author, so perhaps you will permit me to amplify the remarks that were made yesterday by the honourable leader of the opposition in the Senate (Hon. Mr. Haig) as to the manner in which this bill came into being.

The Criminal Code Revision Commission was originally composed of the Honourable W. M. Martin, Chief Justice of Saskatchewan; J. H. G. Fauteux Q.C. then of the Quebec Bar and now the Honourable Mr. Justice Fauteaux, of the Supreme Court of Canada; Mr. F. P. Varcoe, Q.C., Deputy Minister of Justice. To assist this Commission and to undertake in large measure much of the detail, there was appointed a committee composed of Mr. Robert Forsyth, Q.C., then with the Department of Justice, and now Senior County Court Judge at Toronto; Mr. Fernand Choquette, Q.C. then of the Bar of Quebec, now Mr. Justice Choquette; Mr. H. J. Wilson, Q.C. Deputy Attorney General of Alberta, and Messrs. Joseph Sedgwick, Q.C., and J. J. Robinette, Q.C., of the Bar of Ontario. The personnel of the committee was subsequently increased by the appointment of Mr. W. C. Dunlop, Q.C., of the Nova Scotia Bar, Mr. H. P. Carter, Q.C., Director of Public Prosecutions of Newfoundland and Mr. T. D. MacDonald, Q.C., who prior to succeeding Judge Forsyth in the Department of Justice was Deputy Attorney General of Nova Scotia.

The work of the commission and the committee was commenced in 1949 and continued until September, 1950, when there was a reorganization, and the work from that time

on was carried on by a committee which was subsequently appointed a commission, and was instructed to prepare a draft bill for the consideration of the government.

The commission, in accordance with their instructions, prepared the draft bill which I tabled in the House of Commons along with their report on April 7, and which my colleague, the honourable government leader in this house, has tabled in the Senate.

The bill now before you is a redraft of the commission's draft containing changes in some minor respects made by the Department of Justice, under instructions of the government. In the preparation of their draft bill, the commission had, of course, the benefit of the work already done, and their draft bill can be said to give effect in large measure to the views of all groups engaged in the work from the time it was commenced at the beginning of 1949.

The terms under which the commission were asked to enter upon the last phase of the work, namely, the preparation of their draft bill, were as follows:

(a) revise ambiguous and unclear provisions;

(b) adopt uniform language throughout;

(c) eliminate inconsistencies; legal anomalies or defects;

(d) rearrange provisions and Parts;

(e) seek to simplify by omitting and combining provisions;

(f) with the approval of the Statute Revision Commission, omit provisions which should be transferred to other statutes;

(g) endeavour to make the Code exhaustive of the criminal law; and

(h) effect such procedural amendments as are deemed necessary for the speedy and fair enforcement of the criminal law.

The main principle of this bill which we are now discussing on second reading, is that the Criminal Code of 1892, which has been in existence for 60 years without having had any major review and overhaul, should now be revised and consolidated.

The wisdom, and indeed the necessity for this step are so obvious that I shall not detain the honourable senators with any justification of it.

Honourable senators will note that under the terms of reference the purpose of the revision was not to effect changes in broad principles, but was to evolve as simple a Code as possible by the elimination of unnecessary or obsolete provisions, the correction of errors and the removal of inconsistencies, and to effect such consolidation and rearrangement as was deemed necessary to facilitate reference. The work involved was arduous and required great care. I am sure that honourable senators will agree that the commission have performed their work in an admirable way.

The report which was tabled deals with the number of meetings which were held and points out certain matters to which the commission felt attention should be drawn. It is not my intention to review the report of the commission, but to deal with the bill as a whole, pointing out general matters as well as certain specific matters which are thought to be of importance. It is neither appropriate nor possible for me to deal with every matter in which there has been change, so I shall confine my remarks to those things which can be considered of major importance. I therefore propose to deal with the bill under the following heads:

(a) Matters of a general nature.

(b) Changes in substantive law.

(c) Procedure:

(1) Indictable offences—

(i) Extension of jurisdiction of magistrates;

(ii) Method of election;

(iii) Sentences.

(2) Summary conviction offences—

(i) Inclusion of more than one offence in an information;

(ii) Appeal to be on evidence.

Under the general heading I shall deal first with the matter of rearrangement and consolidation. I have pointed out that the commission were not charged with the task of making changes in broad principles, but were asked to evolve as simple a Code as possible, and in doing so to make such consolidation and rearrangement as was thought necessary to the accomplishment of this end.

Honourable senators will have observed that there has been considerable consolidation and rearrangement. This phase of the work has contributed to the marked reduction in the number of sections in the bill as compared with the number of sections contained in the present Code. It is obvious that this feature of the work of the commission will, prove of great advantage to those who are called upon to interpret and administer the criminal law; and as a noteworthy example of this branch of the work I would direct the attention of honourable senators to Part XIX, in which are consolidated all clauses providing for the calling of witnesses in all proceedings to which the Act applies.

I would like now to deal with the extent to which the present bill is exhaustive of the criminal law.

Under the terms of reference the commission were asked to endeavour to make the Criminal Code exhaustive of the criminal law. The commission, however, as they went on with their task, came to the conclusion that the Code should be exhaustive in so far only as criminal offences are concerned, and that the criminal law of England, as presently in force in Canada, should be continued in respect of other matters; inter alia, procedure, matters of defence and rules of evidence not already codified. The result is that, in so far as the common law may now have effect in Canada, no change has been made other than to preclude the institution of proceedings for common law offences. In other words, once this bill has been made law, any information that may be laid will have to be laid for an offence which is defined as such in the Criminal Code. It will not be possible, as it now is, to lay an information against an accused for offences in respect of those matters which are not covered by our Code.

In case there may be some apprehension about this change, namely abolishing common law offences, let me touch briefly on the relevant history of the Code and the precautions taken by the Commission.

The English draft Code of 1878 is said to be the source of the Canadian Code of 1892. Perhaps I already have said that Canada has had only one Code, namely, the Code which Sir John Thompson introduced in 1892, and which this present measure is to consolidate. This 1892 Canadian Criminal Code was based in large measure on the English draft Code of 1878—a draft which never passed into law. While the English draft Code was intended to codify the criminal law of England, the offences set out therein were not drawn solely from the common law. A great many were drawn from statutes then in effect, and in particular, those Acts of 1861 which had been passed to consolidate and amend the criminal law of England.

In Canada, after confederation, a group of Acts affecting the criminal law were passed in 1869—about twenty-three years before our Canadian Code was introduced. These Acts contained a great many of the provisions of the English Acts of 1861 to which I have just referred. In introducing the Canadian Acts of 1869, Sir John A. Macdonald said that the primary object in introducing these criminal laws was the assimilation of the whole criminal law of the Dominion, and every consideration was subsidiary to this. That is to say, while the Acts of 1869 were not designated a Code, they did purport to assimilate the whole of the criminal law of Canada as it stood at that time.

In introducing the Code of 1892, Sir John Thompson made this observation:

> The present bill aims at a codification of both common and statutory law; but it does not aim at completely superseding the common law, while it does aim at completely superseding the statutory law relating to crimes.

The point I am making is that the statute law which the Code of 1892 aimed to supersede already included much of what had theretofore been the common law.

Bearing in mind the English statutes of 1861 and Canadian statutes of 1869, which had been passed, it is clear that even before the Canadian Code was passed in 1892 there had been extensive codification of the criminal law; and that therefore the number of common law offences to which resort would be had after the Canadian Code was passed would not be great. The Martin Commission has found, after consultation with the provinces, that resort has been had to common law offences in a very limited number of cases, and the commission have incorporated in their draft bill those common law offences which the experience of the past sixty years has shown should be continued as part of the criminal law of this country. Having regard to the fact that before the Code of 1892 a considerable number of common law offences were dealt with by statute, and that there has been a careful examination of the cases relating to common law offences since 1892, and all those regarded as applicable incorporated in the bill, it is clear that what is referred to as the abolition of common law offences in this bill is not at all extensive; indeed its compass is very small.

I am sure honourable senators will agree that it is much more satisfactory to have those things which constitute crimes clearly set out in a statute, readily available to all, than to have to resort to ancient texts to ascertain what conduct is criminal in this country. In view of what I have pointed out, there is strong assurance that the draft bill contains all the common law offences which are required and that there will be no gap in our law in this respect.

The commissioners in their report have dealt at some length with punishment. There is just one phase of this matter with which I wish to deal at this time, and that is their recommendation to abolish both minimum punishments, and higher maximums for subsequent offences. The purpose of this is to give the courts a wider discretion in the imposition of punishments. It is recommended as a general principle that all minimum punishment shall be abolished and that there shall be no stated maximum for subsequent offences, but that the judge, on the facts of

the case before him, and within a wide discretion permitted to him under this new Code, shall exercise his own judgment, and if the accused has been guilty on more than one occasion of the offence charged, he shall take the fact into account and punish the man accordingly.

In so far as minimum punishments for first offences are concerned, the recommendation of the Commission has not been accepted *in toto* by the government. The instances in the present Code in which a minimum sentence must be imposed on conviction for a first offence are few in number. Had the Commissioners retained the principle of minimum punishment, the following offences would have carried minimum terms in the bill: or, putting it in another way, the offences I am now going to name are the only ones in the present Code for which minimum terms are provided:

Driving while intoxicated ..... (cl. 222)
Driving while ability impaired ..... (cl. 223)
Thefts of certain matter from the Post Office (cl. 298)
Theft of a motor car (theft of a motor car was not carried in as a separate offence).
Robbery of the mails ..... (cl. 390)

However, in view of the recommendation of the Commissioners, minimum punishments for these offences were not continued in their draft bill, which is attached as an appendix to their report.

In the bill now before this chamber minimum punishments have been restored in respect of offences relating to the Post Office and in respect of drunken driving or driving while ability is impaired. Upon a purely pragmatic basis we think it is better, in relation to these specific kinds of offences, to maintain the minimum penalties. As there will be full opportunity for detailed discussion in committee I will at present say only this, that while there may be some merit in the recommendation of the Commission, we think that because of their deterrent effect, minimum penalties should not be entirely abolished, and it is for this reason that we propose they should be retained in respect of the offences I have just mentioned.

I should now like to discuss changes in the substance of law, and in doing so will attempt to discuss, as one can appropriately do on second reading, the principles of certain changes in the substantive law which the Commissioners regarded as properly part of the task assigned to them. In accordance with rules I shall confine my remarks to such principles, and the relevant sections can be considered in greater detail when the bill is in committee.

It will be observed that the definition of treason has been redrawn. The effect of this revision is, in my view, to place somewhat greater emphasis on those phases of this subject which relate to the security of the state.

In respect of the offences of sedition, the Commission included in the draft bill which it submitted a definition of "seditious intention". No doubt the Commission was moved to do so by reason of the fact that the question of what constituted a "seditious intention" had recently been dealt with by the Supreme Court of Canada in *Boucher v. The King* (1951) S.C.R. 265.

We examined the judgments of the various members of the Supreme Court in that case and we came to the view that it would be wiser to leave that decision itself to govern what constitutes a "seditious intention" and to have the advantage of future judicial pronouncements as to the effect of that judgment before attempting to reconcile and codify in a few short passages what constitutes "seditious intention" as laid down in the reasons for judgment in that case. Sometimes it is difficult to codify reasons for judgment.

Another change to which I feel I should at this time direct the attention of honourable senators is the creation of a new offence designed to meet those cases of perjury where it is impossible to determine which of two sworn inconsistent statements is false. Cases arise where in preliminary proceedings a witness will swear to certain facts and later at the trial will give contrary evidence. In such cases, there cannot possibly be any doubt that perjury has been committed in respect of one or other of the statements. However, it is impossible to establish which statement is false because the person testifying is sometimes the only person who can establish this. It is to meet situations such as this that clause 116 of the bill has been inserted. I would point out that this provision is confined to testimony on a material issue and provides safeguards in cases of honest mistake.

In Part IV of the bill, which is the part dealing with sexual offences, there is one matter to which I wish to direct attention, namely a change made in connection with the offence of carnal knowledge of girls under fourteen years of age.

The simplest way of dealing with this matter would be to quote what is said by the Commissioners in their Report at page 16 in dealing with substantive changes:

> One example is that under the present code on a charge of rape or indecent assault, the evidence of the complainant need not be corroborated. However, a rule of practice requires the trial judge to give a warning as to the danger of convicting on

the complainant's evidence alone. This rule is codified and extended to cases of carnal knowledge (clause 134) with the result that under the draft bill corroboration of the evidence of the complainant is no longer required in cases of carnal knowledge.

It was rather anomalous that it should be required in that case and not be required, for example, in rape.

The next matter I should like to discuss is that of criminal negligence. The subject of causing death or bodily harm by criminal negligence is one to which the Commissioners have paid careful attention and which they have dealt with at considerable length in their report. There is no purpose in my repeating here what has been said by the Commissioners in their report, but I would like to emphasize that while a new offence has been created and a definition of criminal negligence inserted, this effects really no substantive change in the law but is for the purposes of clarification and to bring the Criminal Code into accord with judicial interpretation.

I now pass on to clause 365 of the bill. This provision deals with breaches of contracts, the result of which will endanger life, deprive the public of essential services or prevent the running of passenger or freight trains.

May I, for a moment, touch on the history of this section. The provision was first enacted in the Breaches of Contract Act passed by the Canadian Parliament in 1877. In introducing the bill, Mr. Blake (later Sir Edward Blake) said:

> The bill did not profess to deal even with a strike, or to interference with the freedom of the employee to leave the service of his employer at any time when his contract expired. It professed in general terms to say that, save under special circumstances, breach of service was not a crime. It professed to define certain breaches of contract, or in the event of certain breaches of service, when they involved consequences of such moment and were connected with such results as might in the opinion of the government, fairly be called crimes, to define and punish them as such. To deal with such a measure was an entirely different question from such as how to avoid a breach of contract, or how to treat a riot, how persons obstructing railway engines were to be treated, how persons who made murderous assaults, as alleged, were to be treated, or how the militia of this country was to be called out in aid of the civil powers.

Under the enactment of 1877, it was an offence for anyone who was under contract to provide light or water to a municipality or who was under contract with anyone who had agreed to supply such services to break such contract knowing or having reason to believe that in doing so the inhabitants of the municipality would be deprived of light or water. There was a similar provision relating to railways.

The provision thus created two offences, namely,

1. To break a contract to supply services, and 2. To break a contract with a person who had agreed to supply services.

Next I wish to deal with the effect of the 1906 revision upon these Statutes. Before I do so, however, I should point out that the enactment of 1877 was carried forward into the Code of 1892, and when certain revisions of the Statutes were taking place in 1906, the sections dealing with this type of contract came under consideration.

In the 1906 revision of the statutes the wording of the relevant sections was so changed that while they purported to continue this second offence—that is, the offence of breaking a contract with a person who had agreed to supply services—the amended wording left at least a grave doubt as to whether they did have that effect. It is to remove this doubt that the commission have recommended that clause 365 of the present bill be enacted, so as to put the section back to its original substance, except that it now contains no reference to the carriage of the mail.

The Commissioners, in keeping with Canada's status as an autonomous nation, by clause 420 give effect to the criminal law in territorial waters surrounding Canada. This clause is an adaptation of the provisions of the Territorial Waters Jurisdiction Act of 1878. However, in the draft bill as submitted by the commission a limit of twelve miles was fixed for territorial waters. It was felt by the department and by the government that this was an undue extension for the purposes of administration of the criminal law and that there should be no departure from what is generally recognized as the limit of territorial waters under international law, namely, three nautical miles. We have no doubt that the adoption by the commission of the twelve-mile limit was for the purpose of making this bill dealing with the criminal law uniform with the Customs Act, which permits search of Canadian vessels within this limit. But in the administration of the Customs Act the officials have the problem of vessels hovering about to commit a breach of the Act, which is not usually encountered in the administration of the criminal law in general, and we do not think it necessarily follows that because there is a twelve-mile limit under the Customs Act we should have the same limit under the criminal law. We do not think that foreigners and foreign ships within the twelve-mile limit should be brought within the purview of the Criminal Code.

Now I come to habeas corpus proceedings. Under the law as it stands at present, although there has not been universal acceptance of this, an applicant for a writ of habeas corpus, if not successful in securing the relief sought in the first instance, may make successive applications to a single judge. That is, if he applies to Judge A for a writ of habeas corpus and the judge says "No", he may next apply to Judge B, who may also say "No"; and after applying to four or five other judges he finally gets, say to Judge F, who may say "Yes". That gives Judge F in effect the power of an appeal court over his brother judges. It has been held that where the statute contains a provision for an appeal court, an applicant must avail himself of the machinery of appeal and may not go from judge to judge. It was so held in *In re Hall*, 9 O.A.R., 135, by Mr. Justice Patterson, at page 149:

> Where an appeal is given from the court in terms to the Court of Appeal, the important consequence naturally suggests itself that there be no longer the right to apply for a writ of habeas corpus to one court after another.—The intention of the legislature evidently was that the remedy should be worked out by the machinery of the appeal and that there should be no second writ allowed.

It was further held in *In re Davis*, 25 D.L.R., 96, by Chief Justice Harvey of Alberta, at page 98:

> The disadvantage of one judge being required to sit practically in appeal from a brother judge and the consequent loss of dignity and respect to judicial decisions in case of a difference of opinion, caused our practice to be changed and now by r. 20 of the Crown Practice Rules, the decision of a judge on an application for habeas corpus is final, subject only to appeal to the Appellate Division.

In the provinces of Ontario, Quebec, British Columbia and Alberta provision was made for an appeal, and in some instances successive applications were prohibited unless the subsequent application was based on new facts. Of course, if there were a new set of facts then in a sense there was a different case. The reason I say "in some instances" is that in two of these provinces there was some difference of judicial opinion, which is not particularly relevant to our present discussion. Then a decision was rendered by the Supreme Court of Canada in the case of *In re Storgoff*, 1945, S.C.R., that the provincial enactments providing for an appeal from the refusal of an application for habeas corpus did not apply to habeas corpus arising out of criminal proceedings, as habeas corpus was essentially a matter of civil law.

That had not been the law until this case of *In re Storgoff* was decided. It had previously been held, although not with complete uniformity, that while according to our constitution, criminal matters come under the jurisdiction of parliament and matters of civil procedure come under the jurisdiction of the provincial legislatures, a provincial law providing for appeal in the case of habeas corpus proceedings applied not only to civil cases in the provincial courts but, as procedure, applied also to criminal matters in provincial courts. That had had the effect in most cases of preventing habeas corpus applications in criminal matters from being made from one judge to another, since it was held that because of the provincial statutes an appeal had to be taken to the Court of Appeal. But in the case of *In re Storgoff* the Supreme Court decided that these enactments no longer applied to applications for the writ where the applicant was in custody as a result of criminal proceedings. That is, since criminal proceedings were under the jurisdiction of the federal parliament, these provincial enactments did not apply to them. Nevertheless, the fact that provision had been made in certain provinces for an appeal in order to preclude successive applications indicates a considerable body of opinion opposed to the practice of successive applications to a single judge on the same facts.

The commission, as can be seen from their report and this draft bill, were of opinion that there should not be successive applications, but that an appeal should be given to the full Appellate Court, thus restoring the practice which had obtained in certain provinces prior to the decision in *In re Storgoff* and extending the appellate procedure to the whole of Canada. If this is done, an applicant who feels that his application has been improperly rejected by a judge will in all cases have the right of an appeal to the Appellate Court.

That disposes of the main changes in the substantive law.

Under the general heading of "Procedure" I should like to deal with the consolidation of Parts dealing with non-jury trials of indictable offences. In the present code, there are two Parts dealing with the non-jury trial of indictable offences. In the bill these Parts have been consolidated and the provisions of Part XVII which deal with jury trials, where they are not inconsistent, have been made applicable. The advantage of this is to have uniformity in so far as possible in the trial of indictable offences.

Extension of Jurisdiction:

It will be observed that under the provisions of the consolidated Parts, the jurisdiction to be exercised by Magistrates will be exercised only by those who are specially appointed for that purpose.

In view of this and in the expectation that jurisdiction to act under this Part will be

bestowed on qualified persons, the jurisdiction to try an accused with his consent has been extended to include certain offences which must now be tried by jury. I would emphasize that this in no way impairs the right of an accused to trial by jury and that the accused will continue to have the right to select the method of trial which he desires.

New Form of Election:

There has been a change in the form of election which an accused may make. Under the code as it now stands, an accused who is before a Justice of the Peace is given no election as to method of trial but the Justice is empowered to hold only a preliminary hearing. Provision is made in the revision whereby the Justice, if he decides that a case for committal is made out, will then require the accused to elect for trial by a judge sitting without a jury or by a judge and jury.

Where an accused is before a magistrate, he may now elect for trial either before a magistrate or before a judge and jury. Under the Bill, the election will be for trial before either a magistrate, a judge without a jury or a judge and jury, and he makes his choice.

Put briefly, the change effected by the new form of election is that an accused when in the police court will be given an opportunity to elect trial by a judge alone if that is the method of trial he prefers.

I would point out that the right of an accused who has elected trial by jury to re-elect for trial by a judge alone, which now exists, has been continued—that is to say, under law as it stands at the present time an accused who has been committed for trial may elect trial by jury, but if later on for one reason or another he desires to change his election to trial by a judge alone, he may exercise that right. Under the amendment such a right of re-election is maintained.

Sentences:

Under the present Part XVI, which deals with summary trials by magistrates, of indictable offences, there are special provisions relating to sentences in respect of those offences over which a magistrate has absolute jurisdiction.

Under the revision, these special provisions have been abolished and the sentences which may be imposed for these offences will be the same as those which may be imposed in any other court.

It was anomalous that a person tried in a higher court should be subject to a greater penalty than a person tried by a magistrate under Part XVI.

Appeal by Attorney General of Canada:

As honourable senators know, prosecutions under certain Dominion statutes as well as under the Code are conducted by the Department of Justice by arrangement with the provincial authorities. That is to say, the administration of justice—notwithstanding the designation of the federal Department of Justice—is a provincial function, but the provisions of certain statutes are enforced by the federal Department of Justice after first making arrangements with the provincial authorities. In such cases, the provincial authorities take no part in the trial. It was the view of the commission that in such cases the Attorney General of Canada should have the same rights of appeal as those possessed by provincial Attorneys General and a provision has been inserted to this effect (clause 601).

Summary Convictions:

The principal matters to which I wish to direct attention in respect of changes in procedure in summary conviction offences are the following:

(a) Inclusion of more than one offence in an information. Under the Bill, provision is made for the inclusion of more than one offence in an information. This is not an innovation. Similar provision will be found in both dominion and provincial Acts and the practice was widely adopted in connection with wartime regulations. As a proper safeguard, it will be noted that power is given the court to order a separate trial on any one or more of the included charges if the court is of opinion that such a course is necessary in the interest of justice.

(b) Appeal to be on Evidence. Under the present provisions of the Code where an appeal is taken in a summary conviction matter, the court must hold a new trial or as the lawyer calls it a trial *de novo*. The practice has grown up among certain shrewd lawyers of not putting in any evidence for the defence at a first trial; then being familiar with the Crown's case, an appeal is launched and the case is tried *de novo*. Having heard the Crown's case such a lawyer is in a position to bring in his evidence, and it is sometimes thought that acquittals are so won which are not warranted.

Hon. Mr. Euler: Disgraceful.

Hon. Mr. Garson: The commissioners have recommended that in future the appeal should be determined on the evidence taken in the

court of first instance as in the case of more serious indictable offences. In order that the court will have before it all essential evidence, authority is given to hear additional witnesses as well as witnesses called on the trial. It would appear that this is a proper change as it seems an unnecessary duplication to have witnesses called to give the same evidence on two separate occasions in respect of the same issue.

Before leaving this branch of the bill, I should point out that the summary trials part and the part relating to summary conviction offences were submitted to provincial representatives at a joint meeting held in Toronto in September last. These parts were discussed section by section, and the commission in its report points out that in general the revision of these parts was acceptable to the provincial representatives.

In closing, there is one general observation I would like to make. In opening I pointed out that the revision was not undertaken for the purpose of effecting changes in broad principles. Our system of criminal jurisprudence embodying as it does the high principles of the British system provides as fair and just a system as it is possible to devise to ensure that justice will be accorded to all. I am sure that those who have studied the Bill will agree that the Commission in its work, and the bill now before you, honourable senators, have maintained those principles.

Some Hon. Senators: Hear, hear.

Hon. John T. Haig: Honourable members, it is not my intention to adjourn the debate. I have had the good fortune to have an opportunity to read the memoranda which the commissioners sent with their bill, and the Honourable Minister of Justice has commented extensively on that information.

I propose to repeat somewhat my remarks of last night, in that I think there is nothing to be gained by a long discussion on the bill in this house. It is a type of measure that is better handled in committee, where honourable senators may have a free and frank discussion of its provisions. The memoranda accompanying the bill give a very clear exposition of what is intended by the amendments. I did not have to attend the Divorce Committee this morning, so I spent a good deal of time going over the material before us. I checked up on some of the changes and, with respect, I say to the honourable minister that I am not sure that I agree with his views. But as I am not an outstanding lawyer, it may well be that the commission is right and I am wrong.

To study the bill in committee would help us to understand it better: each clause could be considered by itself as we went along: most of the sections would be read and passed without debate. I do not markedly disagree with the Minister of Justice. This is not the first time that I have sat with the honourable gentleman in a legislative assembly. For eight years we occupied seats opposite each other in another place, so that his voice and manner are not unfamiliar to me. I offer him my congratulations; personally I am delighted to see him here.

I would not withhold for some poor fellow accused of an offence the right to a trial *de novo* if he has been before a certain magistrate or in certain courts. From my experience with some magistrates, and with due respect to them, I would say that were I charged with an offence, I would rather take my chances in a higher court than before them in the court below. However, that is a detail. My point is that the house should send this bill to committee in order to understand it better.

The minister made a very fine presentation this afternoon. Although myself a lawyer of sorts, it kept me busy to follow all the changes he proposes, and I think it must have been very difficult for laymen to understand the significance of them all. I shall not repeat what I said yesterday, but if a certain gentleman—the minister knows to whom I refer—or someone as well qualified were available to the committee, we would gain a much clearer understanding of this bill. The man I have in mind is really experienced in this matter. One cannot serve ten years in a city police court without getting a pretty good idea of the ramifications of the criminal law. So I suggest that he be allowed to meet the committee; then we can have a discussion, and when the bill is reported to the house all of us will have a better understanding of it. Further, if I am not in agreement with some decision of the committee, I want to be free on third reading to raise such objections as I see fit. By voting today for second reading of the bill I am not to be understood as confirming it. I think that all of us need more information, and that a better job can be done in committee.

I thank the minister for his references to the Bankruptcy Act. He might also have mentioned the income tax law, on which some of us have very definite opinions.

In conclusion, I am persuaded that if we do a good job in connection with the present bill, members of the House of Commons, no matter how they may talk about the Senate when they are away from Parliament Hill, when inside this building will admit that we are a pretty fine class of people.

Hon. Thomas Reid: May I be permitted to ask the minister a question? During his speech he said something about territorial waters and the jurisdiction relating thereto. He spoke of the twelve-mile limit as it relates to customs law enforcement, and also referred to the three-mile limit. In view of the fact that international law knows nothing of the three-mile limit, or territorial waters, has the commission given consideration to the idea of extending our territorial waters and so protecting our fisheries?

Hon. Mr. Garson: Honourable senators, I think the answer is, that what is meant by "territorial waters" is determined to a considerable extent by the subject-matter with which you are linking it. Let me take as an example, in order to make my explanation as brief as possible, the criminal laws of the United States and of all the various members of the British Commonwealth retain this three-mile limit. When you get into customs administration you must have regard to the fact that you are dealing with a new set of practical problems, problems of vessels hovering off the coast, waiting until darkness falls in order to start their criminal activities; and the same sort of practical problems arise when you are dealing with questions of fisheries. One of the most recent judgments of the International Court at the Hague had to do with the question of Norwegian territorial waters. The report is not yet available, but an article upon it has been written by Professor Lauterpacht, a member of the staff of one of the British universities, who has analysed and summarised this judgment. One has only to read his article to see that the judgment deals with the question of territorial waters in connection with an entirely different matter, namely Norwegian fisheries, wherein the conformation of their coastline and their fiords, the places in the ocean where fish are to be found, and similar considerations play their part, and the law in such a case is not a very satisfactory guide to what we should enact in our Canadian Criminal Code. So far as the disposition of the matter before us is concerned, it relates only to the criminal law. One of the problems with which we had to concern ourselves was the consequences of asserting jurisdiction over a foreign ship within the twelve-mile but beyond the three-mile limit. Supposing it is a Norwegian ship, with a Norwegian captain and crew, sailing under the Norwegian flag: are we to say that it is the responsibility of the Mounted Police or any other Canadian police or of the Canadian courts, if a murder is committed on that ship while it is within those nine miles of water, to bring the murderer to justice? I do not think we would want to do that. If we have enlarged our jurisdiction in connection with fisheries or customs, the only reason is in order to deal with the practical problems which arise in relation to both these matters.

Hon. Mr. Hayden: May I ask the honourable minister a question, as unfortunately I was not here during the whole of his speech. Did he deal with the question of a new definition of criminal negligence?

Hon. Mr. Garson: Yes.

Hon. Mr. Hayden: By what process of logic and reasoning has he finally evolved the present definition?

Hon. Mr. Garson: Well, honourable senators, I cannot plead guilty to having defined it. It was defined by the commission, and after consideration of their commission we adopted it, and I think it can be defended.

Hon. Mr. Hayden: As I read clause 191, Mr. Minister, it purports to define criminal negligence as follows:—

(1) Everyone is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other persons
(a) by doing anything, or
(b) by omitting to do anything that it is his duty to do.
(2) For the purposes of this section, "duty" means
(a) a duty imposed by law, or
(b) a duty for the breach of which a person may be found liable in civil proceedings.

It strikes me that if I am required to do something on the civil side of the law, and I fail to do it, and I can be sued for damages, that would appear to be made one of the elements in the constitution of "criminal negligence" as defined in section 191. Now, is that intended?

Hon. Mr. Garson: I think it would help if I were to repeat what I said on this subject when my honourable friend was not present. It was this: The subject of causing death or bodily harm by criminal negligence is one to which the commissioners have paid careful attention and which they have dealt with at considerable length in their report. There is no purpose in my repeating here what has been said by the commissioners in their report, but I would like to emphasize—and I think this answers my honourable friend's question—that while a new offence has been created and a definition of criminal negligence inserted, this effects really no substantive change in the law but is for the purposes of clarification and to bring the Criminal Code into accord with judical interpretation.

In other words, if the view of the commission and of the Department of Justice is right, and I think it is, we have done nothing more in this than to state what is now

established as the law by our jurisprudence; in other words, to codify the legal decisions upon this point. I think that will become apparent when it is discussed in detail in committee. If my honourable friend wanted to go into it we could supply the whole list of decisions which brought us to this conclusion.

With reference to the specific question as to whether the mere breach of a duty in itself would constitute criminal negligence, I would be very much surprised if there are any decisions to that effect, or if the proper interpretation of the section which the honourable senator has read is to that effect. As I have always understood, and I am sure my honourable friend agrees with me, the breach of a duty imposed is negligence; but whether coupled with all of the other circumstances in the case it proves a wanton and criminal negligence is a question of fact, to be determined upon the facts of the case before the court. I think that is the only answer I can give to my honourable friend at this time. I do not altogether agree with his point but it is properly taken, and I would be glad to go into it in committee.

Hon. Mr. Hayden: I am not quarrelling with your statement of the law, but I am wondering whether section 191 is drafted in a way which reflects that.

Hon. Mr. Garson: It is thought by the commission that it does that, and by our departmental and parliamentary draftsmen, to whom my honourable friend the leader opposite (Hon. Mr. Haig) was referring in such glowing terms a few moments ago. It is possible that they may be wrong, and if they are, we could correct this in committee. One of the reasons this matter is being considered by the Senate is that this body can make corrections of that sort.

Hon. Mr. McDonald: Do I understand the honourable gentleman to say that he will be available at our committee meetings?

Hon. Mr. Garson: Yes.

Hon. Mr. McDonald: Are the sections that are new so marked for study purposes?

Hon. Mr. Garson: We shall have, for the purposes of the committee, a list of all the sections which have been discontinued and dropped, all those in respect of which substantive changes have been made, all of those which have been changed as to wording without change as to substance, and all of those which are carried into the new bill in their identical form. By using these means one can move right through the bill and know exactly what has happened to every section in the present law.

Hon. Wishart McL. Robertson: Honourable senators, I wish to join with the leader opposite (Hon. Mr. Haig) in thanking my colleague, the Minister of Justice (Hon. Mr. Garson) for having given us such an interesting exposition of this bill on the motion for second reading. Of course, my prime object in life is to expedite the passing of legislation. I suppose, therefore, I should welcome the suggestion made by the honourable leader opposite, that second reading be given to this measure today. At the same time I should point out that one honourable senator who was unable to attend today was assured that this legislation would not be given second reading this afternoon. I do not know whether this honourable gentleman, who has always taken an active interest in matters of this kind, may wish to say something on the second reading or not, but in fairness to him I would be reluctant to have the debate closed at this time. Unfortunately I was unable to supply copies of this bill before honourable senators came to the chamber today.

Hon. Mr. Aseltine: Will we have copies tomorrow?

Hon. Mr. Robertson: There are twenty copies available now, and I think additional ones will come to us progressively. It is merely a question of getting them printed, and I shall certainly see that members get them as soon as possible. In case any honourable senator decides to speak on the second reading of the bill, I am going to suggest to my deputy whip that he adjourn the debate.

Hon. Mr. Taylor: Honourable senators, I move the adjournment of the debate.

The motion was agreed to.

CANADA DAIRY PRODUCTS BILL

SECOND READING

On the Order:

Resuming the adjourned debate on the motion for the second reading of Bill B, an act to amend the Canada Dairy Products Act.

Hon. Mr. Robertson: Honourable senators, as I stated last night, I shall not be in a position to take part in this debate before tomorrow at the earliest. I have been desirous of consulting my colleagues about the matter, but there has been no meeting of the government for the last few days, and at present the Prime Minister is away. I hope, however, to have a consultation tomorrow and to make my little contribution to the debate in the afternoon. I therefore ask that the order stand.

The Hon. the Speaker: The Order stands.

The Senate adjourned until tomorrow at 3 p.m.