they were printed. The amending section merely substitutes the word "home", thus restoring the original intent.

Mr. Brooks: I do not have reference to that.

Mr. Bennett: If the hon. member just meant qualification under the Veterans Land Act, he is quite right. Under section 13 of the War Service Grants Act the date is January 1, 1957, but that has nothing to do with the National Housing Act.

Mr. Brooks: I think you will find there is a reference there.

Motion agreed to and bill read the second time.

Hon. J. J. McCann (for the Minister of Veterans Affairs) moved:

That the said bill be referred to the special committee on veterans affairs to be appointed by the house at a later date.

Motion agreed to.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Wednesday, February 24, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Applewhaite in the chair.

On clause 208—*Punishment for infanticide.*

Mr. Knowles: Clause 208 has to do with the punishment for infanticide. I would invite the minister's comment on a question similar to one I have asked in relation to certain other sections. I hope, however, that he will not make the same answer that I have received on previous occasions. I find it difficult to see the virtue of uniformity so far as penalties are concerned. I realize that the minister has indicated that there are two or three classes within which these penalties fall, but even so that is based on the idea of as much uniformity in length of sentence as possible.

I think it is correct to say that the maximum penalty upon conviction for infanticide has been increased from three years to five years. I wonder—although I am willing to listen to argument from the minister—if that is not a rather severe sentence in view of the definition of infanticide that we have already been given. That definition is set out in clause 204, and perhaps I might be permitted to read it. I am not reverting to clause 204, but merely quoting the definition as it has a bearing on this clause. It reads as follows:

A female person commits infanticide when by a wilful act or omission she causes the death of her newly born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

As I understand the definition, there is imported into it exceptional or unusual circumstances. It seems to me that causing the death of a child, in the sense of it being outright murder, is covered in other sections. Causing the death of an unborn child is covered in clause 209. But I come back to my question, namely, in view of the fact that infanticide is defined as something that happens under exceptional and understandable circumstances, is it not rather severe to increase the penalty from three to five years?

Mr. Garson: I am sorry to disappoint my hon. friend but I am afraid I will have to again answer him in the same terms. Might I point out that under the new bill it is proposed to have five types of penalties, those two years and under, those five years and under and so on. Since the present penalty under the existing code is three years, that penalty would fall within the five year group.

Mr. Knowles: Was consideration given to reducing it to two years?

Mr. Garson: Consideration was given, but on the basis of the cases which had arisen it was thought desirable to leave that much leeway with the court. The commissioners either had to reduce it from three to two years or bring it in under five, and they chose the latter of the two courses.

Mr. Knowles: On that point, does the minister know the considerations that were taken into account when that decision was made? I presume that the decision to adopt five years rather than two years was made by the commissioners rather than by the Senate committee or our own committee of last session. It would appear to me that the decision was made simply on a mathematical basis. It looks to me as though, the penalty having been three years and there now being no three year penalty, it either had to be two or five, so they adopted the period that covered the existing sentence.

Mr. Garson: Oh no, I think it would be quite wrong to suggest that it was done solely on such a mathematical basis as that. I assure my hon. friend that the decision as to whether the penalty of three years should be cut down to two would be based upon criteria which were not mathematical. As I said a moment ago, they would consider a variety of circumstances which had arisen in cases under this section. The question which they would, I think, pose for themselves and answer

would be whether, in covering a variety of circumstances, it was desirable to have a penalty of five years or two years. They decided on the five years. Now, that decision was reviewed by the other place on two different occasions and by the special committee of the House of Commons at the last session of parliament, and no change has been made. There is nothing to prevent us from making a change here if it is thought desirable.

Clause agreed to.

On clause 209—*Killing unborn child.*

Mr. Stick: Clause 209, subclause 2, states:

> This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.

I take it that provision applies more to the medical profession?

Mr. Garson: Yes.

Mr. Stick: The medical profession is not specifically mentioned there, so anyone else who may have to take action in such circumstances may be leaving himself open to a charge. An ordinary person, under those circumstances, may have to act as a doctor and may be acting in good faith. In what position is he placed then?

Mr. Garson: He is placed, I suggest, in the position which is indicated by the language of the section itself. In the case in which he is charged, if he can establish that he did this act in good faith because he thought it was necessary to preserve the life of the mother of the child, then he could establish that defence and could be acquitted. I know that in the great majority of cases this will apply to the medical profession. But there are cases that arise in some hamlet remote from medical attendance, in which a midwife might be involved, or perhaps not even a midwife. If the lady who was ill had no other skilled service available, it might be some individual who had no medical training at all.

Where anyone acted in good faith when he was faced with that emergency, I think there will be general agreement that it would be desirable that he should not be left wide open, by the terms of the statute, to being found guilty, as he might be if there were not a saving clause in the section.

Mr. Stick: The reason I asked is that in some parts of Newfoundland and Labrador the medical services are rather scattered, and ordinary men have had to act in such cases. They would be safeguarded by this clause?

Mr. Garson: Yes, my hon. friend is quite correct in that. As a matter of fact, in replying to his question I could not help but think that was perhaps the point he had in mind. It is a point very well taken.

Mr. Hansell: I am a little confused by the wording of the section, Mr. Chairman. I fancy that this section is the section in the Criminal Code that deals with abortion.

Mr. Garson: No, the one that deals with abortion is section 237.

Mr. Hansell: Perhaps I should reserve anything I have to say until that section is called.

Mr. Garson: That is right.

Mr. Hansell: I do not know whether the minister can answer a medical question, but at what time in the prenatal existence does the child become a human being? I cannot quite understand that, and perhaps I should not bother my mind about it.

Mr. Garson: If my hon. friend has the bill in front of him, would he look at clause 195? It reads:

> A child becomes a human being within the meaning of this act when it has completely proceeded, in a living state, from the body of its mother whether or not
> (a) it has breathed,
> (b) it has an independent circulation, or
> (c) the navel string is severed.

Mr. Gillis: If clause 209 does not mean abortion, what does it mean?

Mr. Garson: An illegal operation which, I suppose, my friend might argue is a form of abortion.

Mr. Gillis: It is the same thing.

Mr. Garson: No, this is the killing of the fetus, that has not become a human being. If my hon. friend will look at clause 237 I think he will see the answer to his question.

Clause agreed to.

Clauses 210 to 220 inclusive agreed to.

On clause 221—*Criminal negligence in operation of motor vehicle.*

Mr. Nowlan: I wonder if the minister would comment on the effect of this section, which is entirely new, on that very important matter of motor manslaughter. What is the difference between the law as it will be after this clause is passed and the law as we now have it under the existing Criminal Code?

Mr. Garson: While in the printed bill on the right hand side of the page it is indicated that clause 221 (1) is new, actually it replaces in part section 285 (6) of the present code.

The present clause 221 (1) is I think, in its clear terms, pretty well self-explanatory. In drawing it in the form in which my hon. friend now finds it, it was felt that in so far as the operation of motor vehicles was concerned, an offence should be created only when there was wanton and reckless disregard for the safety of others, leaving it for the provinces to deal with the less serious forms of careless driving under their motor vehicle control acts. Accordingly this provision is found in the form in which it is.

Mr. Nowlan: As the law is now, Mr. Chairman, as I recall it, we have three classifications, shall we say, of criminal negligence with respect to motor vehicle accidents. In the first place we have the dangerous driving section. Then we have reckless driving, and ultimately we have manslaughter.

Mr. Garson: No, we have criminal negligence in the operation of a motor vehicle under this clause 221 (1). Then if the criminal negligence which could be charged under this clause causes death or bodily injury, such cases could fall under clauses 192 and 193 which we considered yesterday.

Mr. Fulton: And also under clause 207.

Mr. Nowlan: As I was saying, under the existing law I have heard judges instruct juries, when dealing with manslaughter, somewhat along these lines: "There are four classes of negligence. First of all there is civil negligence with which, gentlemen, we are not concerned. Then you come to the question of dangerous driving"—and I heard one judge, rightly or wrongly, and not too long ago, say that is the first step on the ladder. "Then we go up one step farther on the ladder and we come to reckless driving. That is the second step. And then," as this judge pointed out, "if we stand on the top of the ladder we have come to the charge of manslaughter."

I am not sure that charge to the jury was one which would stand the test before a judge who is not too far removed from this building. Nevertheless that was the way the judge charged at that time, and he had some cases to support him. I understand that this has been changed to some extent by this all-inclusive definition of criminal negligence, and I am curious to learn what changes, if any, that judge would have to make in his charge if the code we have in front of us is passed, as compared with the charge he did make.

Mr. Garson: As regards the judge's charge apart from some clarification and simplification I doubt if there is any substantial change effected. As I have said, you begin by laying a set of facts before a crown prosecutor. It is the crown prosecutor's task to consider those facts and make up his mind as to what sort of charge the facts would prove and therefore as to what charge he thinks might properly be laid.

If those facts will prove only a charge under the present clause 221, then he lays a charge under that clause. But if death has supervened, then he may lay a charge of manslaughter, or of criminal negligence occasioning death, as set out in clause 192. Or, if it was a case of occasioning bodily harm, he would lay a charge under clause 193. Then the courts would proceed to consider such a charge in the same way they would consider charges under the existing code.

Mr. Fulton: We really have three clauses under which charges arising from deaths caused by motor vehicles can be laid, have we not? We have clauses 192, 207 and 221.

Mr. Garson: The hon. member is referring to the existing code, is he?

Mr. Fulton: No, the new code, or the code as it will be when this bill is passed.

Mr. Garson: Clause 119 has to do with obstructing justice.

Mr. Fulton: No, I was referring to clause 192. After this bill becomes law, in connection with a person driving a motor vehicle I understand there are three clauses under which he can be charged; these are clauses 192, 207 or 221.

Mr. Garson: That is right.

Mr. Nowlan: I was not in the committee last year which dealt with the Criminal Code, but what I have in mind may be covered in a clause we have not yet reached. However, as the minister knows, if today a man is charged with manslaughter there are several alternatives. The jury may find him not guilty of manslaughter and may find him guilty of (a) reckless driving or (b) dangerous driving. I take it that clause 192, which has slipped in so quietly, indicates that the minister and the commissioners have been trying to avoid what we might describe as the repugnance of juries to convict on a manslaughter charge. So now we are going to have this new offence under clause 192 involving death by criminal negligence. And, as the minister said a moment ago, this might be the charge in connection with a death caused by an automobile.

Now, what is the situation? If a charge is laid under clause 192, death by criminal negligence, is there a proposition which says that a jury may find him not guilty of that charge but guilty of an offence under another clause.

Mr. Garson: Yes, there is.

Mr. Nowlan: Then why is there an increase in the sentence under clause 221? Under the present section 285 (4) anyone guilty of reckless driving, or of wanton and wilful misconduct, is liable on conviction to a fine of a small amount, or a certain length of time in jail. Now, under clause 221 in the bill, there is provision for a penalty of five years, which is certainly substantial and well above the one now prevailing in the Criminal Code.

I should think that we are going to be faced with four possible convictions. There is the possibility of a conviction under clause 192, death by criminal negligence. Then a person not guilty of that could be charged under clause 221, with being criminally negligent in the operation of a motor vehicle. Then we still have reckless driving and dangerous driving; or are they both abrogated by this clause?

Mr. Garson: Well, I think on a set of facts under which a crown prosecutor would be warranted in laying a charge of criminal negligence, it would be pretty difficult, in the result, to end up with a charge of reckless driving.

Mr. Nowlan: It can be done today, as the minister knows, even with a charge of manslaughter.

Mr. Garson: Yes.

Mr. Fulton: There is no equivalent for reckless driving in the proposed new code, is there?

Mr. Garson: No; because it was felt, as I said a moment ago, that it was desirable to leave those lesser offences to the provincial statutes, and that we would deal with those offences having to do with the operations of motor vehicles which were criminal in their nature.

Mr. Fulton: Then that leaves unanswered the question asked by my honourable and learned friend, the hon. member for Digby-Annapolis-Kings, regarding the increase in penalty. Both sections 284 and 285 provide maximum penalties of two years. Now these are to a large extent being replaced, in connection with the driving of motor vehicles, by clause 221 in the bill, under which the maximum penalty is five years. Would the minister indicate why it was felt proper to increase the maximum penalty to that extent?

Mr. Garson: Well, the answer to my hon. friend's question is that, in relation to this present charge, it was the view of the commission that it was appropriate to bring the penalty into that second grade of offences which make provision for imprisonment up to five years. This is a quite serious charge. If my hon. friends will take a look at the definition of criminal negligence in clause 191 they will see that in order to prove a charge of that nature it has to be shown that in doing anything or omitting to do anything that it was his duty to do, the accused exhibited wanton or reckless disregard for the lives or safety of other persons.

Mr. Fulton: I understand that.

Mr. Garson: Now, I think it would be hard to argue that that type of criminal negligence when proven should carry a lesser penalty than five years as a maximum. Or, to put it this way, it would be hard to imagine that it was impossible for a set of circumstances to arise somewhere in Canada in which criminal negligence had been shown that was of a sufficiently grave nature to merit a penalty of five years.

As my hon. friend knows, in each of these cases the penalty is in the discretion of the court. If the court should see fit it could send an accused to jail for two days. For my part, I am in agreement with the commission. When we have motor car criminal negligence defined the way it is in this new Bill 7 it is a very different offence from that under section 285 (6) under the present code, and should carry a penalty of five years. Anything less than that would be too small. As a matter of fact, I think perhaps an argument could be made that it might even go higher.

Mr. Fulton: I do not know. Let me direct the attention of the minister to the wording of section 285, which is largely replaced by clause 221 and subsequent clauses. Section 285 starts off as follows:

> Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage or motor vehicle, automobile, or other vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person.

I suggest that the words "by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect" are quite as strong as the words "shows wanton or reckless disregard for the lives and safety of other persons". To any layman they would mean very much the same thing. Wanton or furious driving, or racing or other wilful misconduct while in charge of an automobile, is certainly very wide. Would it not be included in the words "shows wanton or reckless disregard for the lives and safety of other persons"? In driving wantonly or recklessly you come pretty well under the

old section which had a maximum penalty of two years, whereas now it is going to be five years.

Mr. Garson: With great respect I suggest to my hon. friend that wanton or furious driving is not the equivalent of doing anything that shows wanton and reckless disregard for the lives and safety of other persons. If I drive furiously and recklessly down an empty road in the country and there is no person there, I can bring myself under the definition which my hon. friend was quoting, but I am very much more criminally negligent if I drive down that road when there is a crowd of people walking on it, or many persons walking on it, whose lives or safety may be endangered.

Mr. Fulton: The minister misapprehends the point. In section 285 there must be a person there for a charge to be laid. Therefore if the minister is driving wantonly or furiously and there is nobody there, he could not hit him and therefore could not be charged. I suggest that wanton or furious driving and racing down a road on which people are present, as must be the case for a charge to be laid under section 285, is the same as driving with a disregard for the lives and safety of other people.

I am not going to press the point, as I think perhaps it is taken care of by the maximum, though I do not think the courts would be more inclined to approach near the maximum than otherwise. I would point out that it is possible for an offence, which it seems to me under the old code could not attract a penalty of more than two years, to now attract a penalty of five years.

Mr. Nowlan: I should like to clear up this one point raised by the hon. member for Kamloops, and then I am through. I want to reinforce what my hon. friend said with respect to this matter of punishment. I say with all respect to the minister that I feel the commissioners who were responsible for drafting these sentences were not too conversant with the practice in the criminal courts. Frankly I cannot see any reason for having three platforms on which to stand, the two year platform, the five year platform and something else. This happens to come within the five year category.

What is happening under this motor manslaughter charge, if I may use that term, as now found within the code is that heretofore juries have been reluctant to convict and as a result have been prone to bring in verdicts of not guilty of manslaughter but guilty of reckless driving or dangerous driving. If a man is convicted of motor manslaughter, depending on the circumstances of the negligence, he may get from three years to five years. If he is convicted of reckless driving the chances are that he will get two years in the penitentiary. If he is convicted of dangerous driving he may get from four to six months in jail. I think that is the general practice followed by the courts, at least those in which I have had a little experience.

We have done away with motor manslaughter, to all intents and purposes. We still have manslaughter. We have the new clause 192 which gets rid of that. We now say:

> Every one who by criminal negligence causes death to another person is guilty of an indictable offence and is liable to imprisonment for life.

Instead of having charges of manslaughter we are going to have charges of death by criminal negligence. We have abolished reckless and dangerous driving, and we come down to clause 221 under which anyone convicted could receive a sentence of five years in the penitentiary.

I am suggesting that this is not a realistic approach to the matter of punishment. The minister says that if there is criminal negligence anyone convicted should be given five years. I think you will find that nine juries out of ten will never convict. Undoubtedly there are many cases where the criminal negligence warrants a sentence of five years or more, but I say that in 90 out of 100 cases there will be difficulty in getting a conviction for criminal negligence. A jury may find a verdict, but usually there are extenuating circumstances of time and conditions, and I think it would be very seldom that a sentence of five years would be imposed even for manslaughter.

Now we have reached the stage where we have a lesser charge which is carrying a maximum sentence of five years. I contend that one of two things will happen. We will be imposing too heavy a sentence for the offence. It is all right to say that this is a maximum sentence and the judge could give two days, but no judge is going to give a two-day sentence under circumstances such as these if a man is charged and found guilty. I think very often a judge will feel compelled to impose a more severe sentence than the circumstances warrant.

On the other hand I can envisage a jury, with perhaps the judge intimating to them that there are only two charges on which the accused can be convicted and for which the sentences are life in the one case and

five years in the other, considering that five years is too much. I am sure the minister knows from his correspondence that thousands of people have been acquitted of manslaughter because the jury felt that if they convicted the judge would sentence the accused to life. It was an awe-inspiring, frightful term, and they did not want to convict. Very often they would bring in a verdict according to the last rung on the ladder, a verdict of dangerous driving.

Now you have only one rung on the ladder under the clause we are dealing with now. In my humble opinion, if convictions are made the sentences will be more severe than they should be. I am not speaking now of certain types of cases where the sentence could not be too severe. I feel that in many cases there will be opportunities for the defence to argue in that way. One might intimate to the jury that this is a most unfair thing the government has done, and thus get an acquittal. It is not as easy as the minister suggests.

Mr. Knowles: As the minister knows, I have on a number of previous occasions protested the increases in penalties set out in this revised code. I have also objected to the blanket idea that penalties have to be placed in certain categories. I appreciate the argument that has just been made by the hon. member for Digby-Annapolis-Kings, and I appreciate also the position of the minister, namely that criminal negligence when it is related to the operation of an automobile is a very serious matter and that something very serious has to be done about it.

However, I am not sure that stiffer penalties should be considered as the only answer, as the only serious reply to this very menacing situation. I do not suppose there is anything we shall be dealing with today, so far as the Criminal Code is concerned, that is more serious than this question of death on our highways. I refer not only to the tremendous number of deaths that take place, but to the tremendous number of bodies that are maimed and lives that are ruined because of accidents. These deaths and accidents arise in part from carelessness, recklessness and criminal negligence, covered by the words used in this clause, and they rise in a very large degree from alcoholic intoxication, and other matters which will be discussed under later clauses.

I wonder if this whole subject is not something that should be given much greater study than it has been given thus far. I am mindful of the fact that some questions have been referred to a special committee and that one question is to be referred to a royal commission. I do not wish to make invidious comparisons, but I believe the question of death on our highways is a more important matter than the question of whether we should revise our attitude towards lotteries.

I would still like to see matters which are involved in this clause, and in the next several clauses, given a much more thorough study than has yet been the case. I have in mind the possibility of this whole subject being studied by the special committee which has already been set up, or by some other special committee. Despite my reluctance to agree to too many of these federal-provincial conferences, I can see that this might be a field in which that device could be employed.

The minister has suggested that there are certain traffic offences which come within provincial law. That being the case I offer this as a suggestion. I am not at this point able to move a motion that something be done, but I am throwing out this suggestion because I feel that even if we have no alternative at the moment but to go through these clauses and pass them as they are, with slight amendments and improvements which might be made, even after that is done it is high time a serious attempt should be made in this country to grapple with this problem of death on our highways.

Perhaps the immediate reaction people feel is that stiffer penalties would be a good idea. Certainly the Minister of Justice expressed that immediate reaction when he rose a moment ago. But the proposal that penalties be stiffened does not always represent the kind of serious thought that really goes to the heart of the problem. Perhaps I am challenging myself to do something which I am not in a position to do. What is the answer? I do not claim to know, but I do know that an answer simply must be found. It is not reasonable that we as intelligent human beings in this latter part of the twentieth century should go on permitting the number of deaths which take place on our highways the year round, not to mention the very heavy toll over week ends or when traffic is heavy.

I feel very strongly about the clauses which are to come in a moment or so, particularly those that deal with intoxication and alcoholism. It seems to me something should be done about that major cause of highway accidents and again I appreciate the minister's instinctive response, shared by others, when he recommends stiffer penalties. But is that the final answer? The fact is that we simply must find ways and means of preventing accidents on the highways. Does it restore a

life that has been taken, or does it give back the health that has been ruined, simply because someone has to spend two years or five years or even life in jail as the result of an accident which has taken place?

We can get off into all the theories and ideas we have about crime and its prevention, but perhaps the reason I am taking a few moments to say what I might have said in a few sentences is that I feel it is extremely important that whatever we do to these clauses of the code, this must not be the end of Canada's attempt to deal with the problem of death on our highways. One of the dangers of putting through legislation in this house is that there is a tendency to say, "Well, that matter has been dealt with. A law has been passed and put on the statute books. We can go on and deal with something else." But we cannot take that attitude toward this very serious problem, and I believe the people of Canada have a right to expect of us something more than just a few changes in this part of the Criminal Code.

I believe my proposal for a committee, a royal commission or a federal-provincial conference on the whole question should be taken very seriously. The minister suggested a while ago that this clause involved something more, but little more, than a codification of the existing law. I contend that this problem is so serious that it calls for a great deal more.

Mr. Garson: Mr. Chairman, I am sure there is no one in this chamber, certainly not I at any rate, who would differ in any way with the hon. member for Winnipeg North Centre in regarding this matter of, as he puts it, death upon the highway as one of the most serious problems with which not only Canada but most civilized countries in which there is heavy automobile traffic are faced.

I am in agreement with him when he states that we cannot solve this or any of our other social problems solely by means of the criminal law. I believe it is the view of people who have made a study of this matter that personal courtesy or the lack of it shown by many motorists, who seem to be very courteous people until they get behind the wheel of a car, has a great deal to do with our high accident rate. I am sure the consumption of liquor by certain car drivers also has a great deal to do with it.

I would be the last one to suggest that a dominion-provincial conference or a conference of those who have some special training in this field, with a view to curing this problem, would not be a very desirable step to take. But in our approach to this problem in connection with the clauses we are now considering, it is rather important that we retain as accurate an impression as possible of what we are doing here. We are not dealing with courtesy. We are certainly not dealing directly with the relationship of the liquor traffic to highway traffic. We are simply dealing with a question which is only one facet of the problem of death on the highway, namely what are the proper clauses which can be put in the Criminal Code which will help to ameliorate if not cure this problem?

That is our task; and when my hon. friend from Digby-Annapolis-Kings or my hon. friend from Winnipeg North Centre suggests that we should send these clauses on to a royal commission, a parliamentary committee or something of that sort—

Mr. Nowlan: I did not suggest that.

Mr. Garson: I know my hon. friend did not —or casts any aspersions upon them directly or by implication, I think, with deference he is being a little bit unrealistic in refusing to recognize the competence of the commission which dealt with this matter, a competence based on their actual experience in dealing with the subject matters of these sections as men who, from their own actions at the bar and their own long experience on the bench, knew what they were talking about in this matter just as well as any committee that we are ever likely to set up here.

Let us consider some of them. One is the chief justice of Saskatchewan who, for several decades now, has been on the bench hearing amongst others cases of this sort. Another is the senior county court judge of the county of York, His Honour Robert Forsyth, who had long experience in this field. Another is Mr. Justice Fernand Choquette. Another who participated in this drafting work was Joseph Sedgwick, one of the most distinguished criminal defence lawyers in Ontario. Another is Arthur Slaght, who is certainly in the same category. Then in the later stages we had the lawyer members of the special committee of the House of Commons last year, some of whom had had legal experience in this field. Then there was Mr. A. A. Moffat, who for many long years was crown prosecutor in the city of Winnipeg.

Mr. Nowlan: Just what I said; the prosecutor complex.

Mr. Garson: He was also for many years after that crown counsel in the department of the attorney general, and for several years after that he was deputy attorney general of Manitoba.

My hon. friend says that he has a crown prosecutor complex, but no person can charge

that he is ignorant of this subject or that he does not know what the problem is. I would venture to say that this last gentleman of whom I am speaking has probably had more cases of this kind, either as a defence or prosecuting lawyer, than perhaps any lawyer here in the House of Commons, and he knew exactly what he was dealing with in this bill. If he has a crown prosecutor complex, what about Senator Farris of Vancouver, who was one of the chief members of the subcommittee of the other place, who was a distinguished criminal lawyer and who has had a whole lifetime of experience?

Mr. Fulton: As attorney general.

Mr. Garson: What about Senator Arthur Roebuck, who for many years was attorney general of Ontario?

Mr. Knowles: Mr. Chairman, to what extent are we allowed to discuss senators in this chamber? I would be interested in knowing.

Mr. Garson: I think we can discuss the membership of these committees which have considered this bill without in any way dealing with what transpired in the other place.

The Deputy Chairman: Order. I should like to make this suggestion to the minister, not on the point of order raised by the hon. member who just raised it but on the general scheme of debate. If, every time we raise a question as to a section of the code, we are going to come back and discuss the merits of the commission on the Criminal Code, I am afraid we are not going to get very far. I think perhaps the minister might come to the remarks which have been made on the section itself.

Mr. Garson: I accept your suggestion, Mr. Chairman. I was not addressing myself to the section before us but was addressing my remarks to the suggestion that we should now turn this matter over to a competent body to consider. I was merely making the point that it has been considered by an extremely competent body and last year was reviewed by, I think it is fair to say, the membership of the House of Commons committee.

Mr. Knowles: Will the minister permit an interruption, or a question?

Mr. Garson: Certainly.

Mr. Fulton: Which is it going to be now?

Mr. Nowlan: An inter-question?

Mr. Knowles: Did the minister himself not say a few moments ago that all of this relates only to what we do in the Criminal Code about this matter?

Mr. Garson: Quite so.

Mr. Knowles: In other words, is it not fair to say that as yet nothing has been done about the broader question of taking steps to prevent death on our highways? My suggestion was not that the commission or anybody else had been incompetent so far as this aspect of the matter was concerned but rather that, after this is all done, there is still more to do.

Mr. Garson: I am sorry if I misunderstood my hon. friend. I thought what he had in mind was that we should send these sections off to be considered by some body of that sort. If my hon. friend means that after passing these sections it might be desirable for our government to call a conference with the provinces upon this matter, or that the law enforcement officers in the provinces might get together on the matter—because they are the prosecuting authorities—I am in complete agreement.

Mr. Knowles: That is what I am asking for, a study of the broader subject.

Mr. Garson: I am in complete agreement. I agree with my hon. friend, as I said when I opened my remarks, that it is an extremely important problem which is deserving of the best attention that we can give to it. However, my point is this. I do not think we are going to help solve the problem particularly by not proceeding to pass these clauses now, for they represent, in my judgment, a very excellent disposition of that facet of the problem which comes within the purview of the criminal law.

Mr. Drew: In the first place, Mr. Chairman, I simply wish to express my keen interest in the confidence the minister has indicated he has in royal commissions. Recently in this chamber there have been certain comments which suggested that the government had no faith in them. I find it extremely comforting to realize that this instrument of inquiry commands the measure of confidence now expressed by the Minister of Justice. The fact is that in naming the people who were appointed to this commission, and in emphasizing his own belief that they were competent to make a finding, he has supported the contention we have made, and will make on other occasions, that this is an extremely useful instrument to inquire into and report upon facts that cannot be brought together loosely here in this chamber and digested by the members in the course of a debate.

As to this section and the problem before us, there may be different points of view. There are different points of view that are related perhaps to the experience members have had in this field. My own belief is that we are dealing with one of the most serious

problems facing this country, and that it is going to be an increasingly serious problem as each year goes by, as we see the power of automobiles increasing beyond anything we would have imagined possible a few years ago. When we realize that cars of 200 horsepower, 220 horsepower and 240 horsepower are going to be second-hand cars in the hands of youngsters on the highways in only a few years from now, we realize something of the threat that is presented. When we also realize the increasing size of the trucks, occupying so much space on whatever highways are available, I do not think we should be in any way reluctant to do anything that will lessen the slaughter on the highways. It is a slaughter that has become manslaughter in many cases through the carelessness of those who are driving the vehicles.

As I wish to say a few more words on this subject, Mr. Chairman, I would ask you to call it six o'clock.

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

On clause 221—*Criminal negligence in operation of motor vehicle.*

The Deputy Chairman: Order. At six o'clock we were discussing clause 221.

Mr. Drew: Mr. Chairman, I wish to continue the remarks I was making with respect to the subject now under discussion. Perhaps I speak with some feeling about it, having returned this afternoon from visiting a recent victim of one of these many tragic accidents. I only mention that because in hospitals all over the country today, from one side of Canada to the other, there are people on the verge of death or people on the way to recovery whose whole future is uncertain because of circumstances entirely beyond their control, and where there can be no possible remuneration as the result of any court proceedings that would compensate in any way for the uncertain position of the whole family in the years ahead and for the long years of suffering that may result from accidents of this kind.

Without emotionalism, I think we should realize that we are dealing with something that has now reached the proportions of a major national tragedy. As we see the total figures of deaths and serious accidents piling up, reaching figures that almost have the appearance of heavy battle casualties, the time has come for us to devote all the thought we can to ways in which the proper use of our highways can be brought within reasonable bounds and some measure of safety restored to this vitally important part of our ordinary daily movement from place to place.

The Minister of Justice said quite correctly that you cannot deal with this problem alone by any words you introduce into the Criminal Code, or by the penalties you impose. I certainly agree with that statement. I think this is an appropriate time to mention one aspect of the problem that it is proper to mention in the House of Commons inasmuch as the policing of our highways is divided among police under the authority of the federal government, police under the authority of the provincial governments and police under the authority of municipal councils. Therefore any remarks I may make in that respect are general remarks applying to policing of our highways, and are made without any suggestion that I presume to advise either the provincial or municipal authorities as to what they should do. Nevertheless I think remarks that would apply to police under the authority of the federal government would apply to the others with equal force, because the problem is the same; and as we all know, much policing is now done in the provinces and municipalities by police coming under federal authority.

It seems to me that the time to stop fatal accidents is when recklessness first becomes apparent. The time to avoid a fatal accident is when it is evident that someone is driving recklessly, in a manner that may cause a fatal accident. It happened that I was on highways in different parts of this country during the heavy snowstorms last week, and as I travelled along I saw several accidents. They were caused by a number of contributing circumstances. Undoubtedly the major contributing factor was the heavy snowstorm itself with its resulting slippery conditions, but I saw something that must impress itself on everyone who has occasion to drive under such conditions. I saw heavy truck after heavy truck occupying so much of the road that under difficult driving conditions and with low visibility the driver of an automobile whose view was obscured by these trucks had great difficulty in seeing what was coming some distance beyond.

I know it is easy to say that the driver behind a truck should simply stay there. Nevertheless the fact remains that the law permits certain speeds which are regarded as reasonably safe, with certain modifications in the light of general conditions. I noticed on a number of occasions that these very large trucks would not move to the right if a car was coming from behind in the same way they were bound to move over when a car or

another truck was approaching them. I wish to make it perfectly clear that I am offering no general condemnation of those who operate or drive these trucks. It is legal to do so. It is a part of our transportation system, and I am satisfied that in most cases truck drivers are doing the best they can under very difficult conditions.

Nevertheless this is a problem we must all face. Whether it be the careless truck driver or the careless driver of an automobile, I think more can be done to stop carelessness before it reaches the stage of tragedy than has been done. Certainly there were different occasions last week during the heavy snowstorms, if it had been pointed out to these drivers that what they were doing was extremely dangerous it might have been very useful at some time in the future. I feel sure we will all agree that this is a part of the general problem. There can be no sweeping statement made as to the limitation of the use of our highways or a suggestion that any special rules should apply to one or another type of motor vehicle operation.

I repeat that most truck drivers are performing their daily task to the best of their ability. However, we have placed on highways never built to be great freight carriers, vehicles that are little short of freight trains; and it does seem to me that in the policing of our highways the greatest care should be exercised to assure that these trucks will observe the law because their very size and the extent to which they block the ordinary view contribute greatly to many accidents.

I am not going to speak at the moment about one of the very serious contributing factors, the use of alcohol by those driving trucks, because that will be dealt with under another section. I am speaking simply about careless driving, reckless driving or driving with no regard for the possible consequences that may flow from what is done. Under our Criminal Code a person who uses a lethal weapon with complete disregard for the outcome, and in such a way that what he does causes death, may be guilty of murder. What is happening on the highways today in many cases is little short of murder.

That applies to the drivers of automobiles just as much as to the drivers of other vehicles. This appalling toll of death and destruction that is unfolded to us day by day through the press and over the radio, with all the consequent tragedy that will go on for many long years, is something that should engage the most careful thoughts of every one of us.

I recognize that any punishment that is too severe may well defeat its own purpose, because courts are disinclined to inflict a punishment that may seem unreasonable. On the other hand I have a very strong feeling that if there is real negligence and real disregard for the consequences, when the jury recognizes the tragedy that has resulted they will not be disinclined to impose a heavy penalty. This penalty is not merely for the purpose of punishing a person who has erred, but is for the purpose of discouraging recklessness in others and making safer the highways, where so much of the movement of our people now takes place. I do not think there is one of us today who is not worried when those near and dear to him are on long trips on the highways. We may have complete confidence in their ability or our own, yet we know this may prove to be no safeguard under the conditions which arise.

I hope that in approaching this problem we will recognize that we are dealing with no mere minor departure from reasonable caution. We are dealing with something that can bring the gravest tragedy to families which had every reason to expect a long and happy life together. If a young man is going to drive the engine of a railway train, guide a street car or any other fast, heavy vehicle of that kind, it is customary to make sure he is skilled before he gets behind the controls. We are strangely lax in the measure of supervision that is imposed before people can get behind the wheel of an automobile that can move at 100 miles an hour or more, and can carry death and destruction to people who had no reason to be in any doubt that they were going to arrive safely at their destination.

I simply repeat what I said before, that while we cannot prevent accidents the place to stop recklessness is before it has caused death or tragedy. Wherever it comes within the jurisdiction of the federal government I would hope that instructions are very definite that such reckless driving as has not yet caused tragedy will be dealt with in a way that is likely to prevent some subsequent tragedy.

Mr. McIvor: I should like to say a brief word on this, Mr. Chairman. I think we should deal with the cause of highway accidents. It has been my experience to find a good many young men, who had broken the law, in the police station. What was the cause? Well, they had been taking something that the government licenses, and I have a good deal of sympathy with them. I can see a group of six at Christmas going out and having a time. They had an accident

and ran into the police patrol car before they got home. Of course they were in the police station the next morning. I thought it was a kind of a joke, but we should call a spade a spade.

We not only license the cause of many highway tragedies but we allow it to be advertised in many of our leading magazines, and I think that is asking for trouble. I should like to speak for an hour about this, but I think I have shown where I stand on the cause of highway accidents. If we, as members of parliament, do not get on the water wagon how can we expect other young fellows to do so?

Mr. MacInnis: The particular matter dealt with by the hon. member for Fort William is covered in the sections immediately following this one. I feel we all must agree with the remarks made by the Leader of the Opposition and by the member for Winnipeg North Centre before the dinner recess. The question is how much can be done through the Criminal Code, and how much has to be done outside of it?

In the matter of the operation of trucks, I think possibly there is not sufficient supervision of truck drivers. A moment ago the Leader of the Opposition mentioned railways, street cars and that sort of thing. They are well regulated. The railways are regulated by the board of transport commissioners, and the speeds at which he can travel are laid down for every driver when he gets into his engine. Buses and trucks are under the control of the provincial authorities, and when an accident occurs I think there should be some investigation of the schedules these drivers have to maintain. If the schedules are such that they have to drive at speeds that are dangerous, then someone should have the authority to see that the schedule is set so the drivers can proceed at safer speeds.

As I said, I do not know just how much we can do here. All we can do is impose penalties. As the Leader of the Opposition said, if we make them too severe then they will not be enforced. Probably one of the difficulties in getting convictions in cases of this kind is that almost everyone drives a vehicle of some kind. When a case comes before the jury, each juryman thinks he had better not be too severe in this case because it might be his turn to have an accident very shortly. It is, therefore, difficult to get a conviction. It seems to me that the punishment in this section is severe enough, indeed very severe. I do not know what else can be done under the code.

Mr. Mitchell (London): The whole field of criminal negligence is one that is new. It is expanding as we in Canada and on this continent expand our way of life. This section constitutes one additional change in this law of criminal negligence. I suggest that in considering the penalties which we prescribe for negligence there are several views we must examine.

The first of these is that the car has become an inherently dangerous object. The minute it leaves the showroom it becomes a dangerous thing in the hands of many people; in fact it is more dangerous than a gun. In the fall we all read of the number of persons who are killed as a result of the improper use of guns, but in fact that number is so infinitesimally small compared to the damage and destruction wrought by cars that it is rather surprising we even notice it.

The second problem in dealing with motor cars is this. I am sure each of us has said at some time or other, when we have referred to a person charged with an offence involving the use of a motor car, "Oh, poor Tom; he is not really a criminal". We are confronted with that state of mind, and this reflects itself not only in the public at large but in the minds of our juries.

Now we are faced with a change in this clause setting a higher penalty in terms of imprisonment. I submit we are bound to run up against juries who will say, "Oh, well, now, this fellow is a perfectly normal citizen who has just made a mistake". They forget all about the damage and havoc he has wrought either through sheer negligence or perhaps for some other reason such as the consumption of alcohol. We also forget the number of cases in which we find that persons have been convicted not only once but perhaps two or three times.

Having said that, we must consider what should be done with those people. I have three suggestions which with your permission, Mr. Chairman, involve consideration of clause 225. The first has been most aptly expressed by the Leader of the Opposition, and has to do with licensing. Upon that I shall say no more. The second has to do with the possibility of setting up separate places of confinement for offenders against the appropriate and ordinary uses of the automobile. In that way we can say, and justifiably so, that they are not convicted as criminals, as such, but are convicted for making our highways places of slaughter.

Third, and most important, we should consider most seriously placing a minimum, and not a maximum, on the licence suspension of offenders. I notice in clause 225 that the court may prescribe in certain cases a prohibition from driving for a period not

exceeding three years, or if it is an offence which could carry with it life imprisonment, for any period in the discretion of the judge.

I suggest to you, Mr. Chairman, that a minimum suspension of at least 10 years, and probably more, should be placed upon a driver convicted under a section involving life imprisonment; and that in respect of any other section a period of at least five years should be prescribed during which there would be prohibition from driving. In that way not only would we rid our highways of the repeaters, but I feel also that we would go a long way toward making people realize that our highways are places where more care is required than in any other facet of modern living.

Mr. Nesbitt: Mr. Chairman, I endorse fully the remarks just made by the hon. member for London. I should like to take the matter one step farther. In this matter of penalties, while I quite agree that there ought to be a minimum period during which licences should be suspended, I feel that in respect of this clause and clauses 222 and 223 there ought, in addition, to be a minimum penalty of imprisonment as well. Some time ago in this country there was an outbreak of car thefts, and it was found necessary to impose a minimum penalty of one year for that offence. This seems to have had a reasonably salutary effect, although this has been somewhat modified by the provisions of the other section popularly known as the joy-riding section.

I should like to suggest that on any conviction under this clause, in addition to a minimum suspension of licence there should also be a minimum period of imprisonment of possibly three months. We have heard this afternoon and this evening about the greatly increasing numbers of people killed on our highways, due to the mishandling of motor vehicles. It has been pointed out that these fatalities have occurred when people should have known that their actions could have serious results. The fact must be brought home to them more clearly.

I quite agree with what has been said to the effect that juries, magistrates or judges, as the case may be, do not wish to impose heavy sentences, because they say, in effect, "There but for the grace of God go I". The way to get around that is to have a minimum penalty. I suggest some consideration might be given to this point.

Mr. Stuart (Charlotte): Mr. Chairman, many of the members who have taken part in this discussion have been of the legal profession. However, I have been listening to the discussion, and it has occurred to me that we are considering a problem that comes within the jurisdiction of provincial legislation. When licences for motor cars are controlled exclusively by provincial governments; when drivers' licences are also under the same provincial jurisdiction, and when we consider that the cancellation of a driving licence is a provincial matter, it seems to me that the subject now before us is also provincial. We are discussing a licence that has been provided by a provincial government to a resident of that province.

I shall make only one comparison and then I shall resume my seat. I was on the water for a great many years, and as a young man I was able to obtain my master's certificate. Since that time I have had a good deal to do with young men who have made application for masters' certificates through the Department of Transport. In that connection I have seen young men in their thirties and forties who were denied masters' certificates due to faulty eyesight.

I recall one particular occasion involving a young man, a personal friend of mine, who had a mail and passenger contract during the summer months between Campobello and Eastport, Maine. The trip was made during the afternoon, arriving home before dark. This young man made application for a master's certificate, which was refused by the Department of Transport because of his eyesight. He has served on the water since he was 16 or 17 years of age, and if I know him as well as I think I do, he is on the water tonight and is able to carry on in that capacity without any trouble at all.

Now, I am not criticizing the regulations under which certificates are granted by the Department of Transport, but it would appear to me that we are much too lax in our provincial regulations having to do with the granting of permits to drive motor cars. If the same approach was used in our provincial legislature that is used by the Department of Transport, there would be very few people driving cars who were incapable of driving them. I am convinced that it is from this cause that a great percentage of our trouble comes.

As the Leader of the Opposition pointed out, a person will apply for a licence to drive a car at speeds of perhaps 75, 80 or even 100 miles an hour. These people may be wearing spectacles an inch thick, and driving at night in all sorts of weather. Yet they are given drivers' licences. If those same persons applied for masters' certificates to operate boats on the water, travelling at 10 or 12 knots at the outside and with no danger involved, they would be turned down on account of faulty eyesight.

Having followed the discussion which has taken place so far I feel that if we are looking for a remedy the proper place that we may expect to find such remedy is in our provincial legislatures. As I said at the outset, the granting and issuing of licences to drive cars is completely under their jurisdiction, and I feel that the provincial legislature is the one and only body that can deal with the question we have been discussing.

Mr. Nowlan: Mr. Chairman, there are several factors in connection with this clause, and particularly the subsection, with which I should like to deal, but I assume the Minister of Justice will want to deal with the matters that have just been brought forward. I am not going to speak on them for the moment, but later on I shall expect to deal with one or two technical matters in respect to subsection 2.

I think the discussion which has taken place this afternoon and this evening has been most interesting and original, and indicates the evolution which has taken place in our concept of law and society within this country. As has been pointed out by the hon. member for Charlotte and others who have spoken, the control of motor vehicles lies within the scope of the provincial legislatures. Only within the last few days I remember reading in the press that the Minister of Transport had stated he thought that the control of motor trucks within Canada should be left to the provinces rather than to the federal government. With that view I am not quarrelling at the moment.

I think the discussion has pointed up the crux of this problem with which we are faced tonight. If we have not already reached it, I suggest to the Minister of Justice that we are rapidly approaching the stage where not only will the punishment of anyone who violates a section of the Criminal Code be a matter of criminal law, but possibly the whole control of driving on the highways should be brought within the ambit and scope of criminal law within this country.

The Leader of the Opposition and other hon. members have referred to this. The hon. member for Vancouver-Kingsway raised the question of the locomotive engineer who is licensed to drive his locomotive at a certain speed. The hon. member for Charlotte raised the question of licensing with respect to motorboat and fishing boat operation. In so far as the highways are concerned there is no control at all; yet if a person happens to come within clause 221, with which we are now dealing, the accused may have committed a criminal offence.

[Mr. Stuart (Charlotte).]

With respect to what has been said before, I do not think it is a matter of punishment. I have had some little experience with these matters, covering more years in court than I sometimes like to think about. I suppose I have had to deal in one way or another with 100 or 150 manslaughter cases and never once—I will not say once, but certainly in not more than 5 per cent of those cases—have I heard a person say that he was responsible for doing something wrong. In 95 per cent of the cases the person would sit in my office and say, "I did not do anything wrong. I don't know what happened. It happened so fast I cannot tell you what happened, but I know I am not responsible". You could have a section in the Criminal Code saying that such a man should be hanged by the neck until dead, and he would still operate his car in exactly the same way because he never thinks of himself as a criminal. In other cases the element of *mens rea* arises, but there is no *mens rea* in these cases.

I realize that it is a most difficult situation with which to deal, but I doubt if the solution is a matter of punishment. I think it is a matter of education in the first place. We have to go a lot further than we have gone heretofore in dealing with this matter. As the Leader of the Opposition and others have pointed out, we are faced with a great slaughter on our highways today.

Without wanting to set myself up as a constitutional authority, I think it lies within the ambit of this parliament to declare that certain things come within the scope of the criminal law of this country. I do believe we have to approach this matter in an entirely different way than we have heretofore done. This may be only a preliminary discussion, and it may be five or ten years from now before the matter is finalized. There are constitutional problems involved which I am going to deal with on another clause which we will get to later on. There is also a moral problem. There is a problem going to the roots of every home in this country. I think it has reached the stage where it comes properly within the jurisdiction of the federal parliament and our concept of criminal law.

I know I cannot properly discuss at this time the matter of the cancellation of licences. If this parliament is going to determine that licences can be cancelled for a certain length of time we will be impinging upon civil rights, apart from the punishment imposed for the commission of any crime.

Mr. Garson: May I say that we do not cancel licences. We do not grant them, so we cannot cancel them. The accused's provincial licence to drive and his provincial

motor vehicle licence are dealt with under clause 225 of this bill by empowering the court to order that the convicted accused cannot drive under his provincial licence. Then I think the provincial authorities follow that up by having the licence cancelled.

Mr. Nowlan: The statute provides that the magistrate may do certain things. That is one example of the approach which can be made to this problem. I am suggesting that sooner or later we will have to approach it on a far different basis than we have heretofore. I think it is going to have to be done by virtue of the Criminal Code, but I do not think it is going to be done simply by increasing sentences or suggesting that they should be more severe.

Mr. Hahn: I believe this clause involves the problem which was raised earlier. Since this is a revision of section 285, or a portion of it, to me the one part that stands out particularly is that the onus is on the driver to prove he is not guilty of a certain offence. From the portion of the debate that I could hear—the acoustics are not too good at this end of the chamber—I understand that a driver will have to prove that he is not guilty. I do not understand from the wording of clause 221 that it is necessary for someone to prove that the accused is guilty of the negligent operation of a motor vehicle, in which case there is no onus on the driver, unless we have a case similar to what was discussed the other day, where the individual must prove that he is not responsible.

Mr. Garson: May I ask my hon. friend what clause or subclause he is referring to?

Mr. Hahn: I was referring to a section further on, but they all are in the same division. I am aware that we are dealing with clause 221, but from what has been said up to this point by hon. members who have spoken before me I gather that it would be necessary for the individual to prove that he is not guilty.

Mr. Knowles: I should like to express appreciation for the sympathetic attitude which the Minister of Justice indicated this afternoon toward my insistence that there is something more to this problem than just passing the clause now before us. I think it is fair to say that the views of Canadians generally were never better expressed by their representatives in parliament than they have been this afternoon and this evening by hon. members in various parts of the house who have risen to stress the urgent need of something more being done about this problem of death and injury on our highways.

The hon. member for Digby-Annapolis-Kings, with the concurrence of the Minister of Justice after the minister made one correction, has drawn attention to the fact that constitutional considerations notwithstanding we do have an interest in this question of driving on the highways from the standpoint of the federal Criminal Code. Further, we have an interest because of our concern with respect to criminal negligence, and our concern over the protection of human life. There was one statement made by the hon. member for Digby-Annapolis-Kings which I hope was not taken too seriously. I refer to his suggestion that it may be four or five years before something is done about this matter.

Mr. Nowlan: Democracy goes slowly.

Mr. Knowles: I realize my hon. friend has been sitting opposite a government that moves slowly, but in this instance I hope he will be pleasantly surprised and that there will be something done in relation to this matter in less time than he indicated.

I wonder if consideration might not be given to this matter being studied along with the other matter which has to be considered by the conference being called by the Minister of Transport. Only two days ago the Minister of Transport announced that in view of another situation he proposed to call a conference of provincial ministers having jurisdiction over highways to discuss the problems arising therefrom and to endeavour to find a common ground on the best way to regulate and control highway transport whether intraprovincial, interprovincial or international.

I recognize that that decision to call together the provincial ministers of highways arose out of a different situation, but in view of the fact that the Minister of Justice this afternoon stated that he concurred in the desirability of a conference being called at a federal-provincial level on this matter, I would ask that serious consideration now be given by the two ministers to whom I am speaking, and perhaps we might add the Minister of National Health and Welfare—I see he is over there and I know he will be interested too—

Mr. Martin: All the big guns are together.

Mr. Fulton: That requires a salvo.

Mr. Knowles: This is something that needs big shots to deal with it. I hope the matter will be treated with the seriousness it merits.

While I am dealing with this subject, Mr. Chairman, and as an indication of a field in which something of great value can be done, I believe that tribute should be paid to the work that is being done in the province from which the Minister of Justice and I both

come. As he knows the provincial government's highway safety division has imposed in Manitoba, particularly in the greater Winnipeg area, very strict regulations with regard to the issuance of drivers' licences. I have had some connection with people who have obtained licences there in recent months, and I believe it is fair to say that what the applicants go through is not just a test but a course of training. As a matter of fact, they have had enough experience already in the greater Winnipeg area in the educational work being done by the highways branch to know that it is paying off in terms of less frightening statistics with regard to accidents in that area.

I believe something of that nature could be instituted generally throughout the country. I am not too sure, but I believe something similar is done in British Columbia. At any rate I believe the experience they have already had in some parts of the country and the information they have amassed could be shared at a federal-provincial conference. I agree with those who say that you cannot solve the matter entirely by law. Yet we will have to do something about it at the level of criminal law, and certainly this whole field is wide open for real progress. I hope the federal government will accept its responsibility to give a lead in this important matter.

Mr. Fulton: Mr. Chairman, I hope that if these three big guns who are together over there do finally manage to fire a salvo it will not just be a matter of making a report and then letting the matter drop.

Mr. Knowles: All some of them can do is make a retort.

Mr. Martin: That is as far as you can go with a peashooter.

Mr. Fulton: Some of the suggestions advanced are deserving of serious consideration, though I believe we should get back to a closer study of clause 221. In saying that I do not wish to be critical of what was said before. I say that because I believe it can be related very strictly to the problem now before us.

I wish to refer to the discussion which has arisen out of the suggestion made by the hon. member for Digby-Annapolis-Kings and me, namely that it is a mistake to increase the maximum penalty under clause 221 to five years when before, under the same section, it was two years.

What I have to say here follows very closely what was said by the hon. member for London, or at least what was inherent in his remarks, namely that here we are dealing with the subject of criminal negligence. We are dealing with a subject concerning dangerous objects, in other words motor cars on highways; yet at the same time we are dealing with it under the Criminal Code. What we are trying to deal with under the Criminal Code in this instance is something which is not essentially criminal, something which is not essentially a crime. It is a perfectly legal thing to drive a motor vehicle on the highway and, as has been said, before there can be any conviction there has to be proven an element of intent or *mens rea*. Yet by the introduction both in the present draft bill and in the previous bill of an element of negligence, we eliminate to a large extent the element of intent. You are making a crime of that which a person did not intend to do. You are making him guilty of a crime simply because he was careless.

I am not questioning the right of parliament to do that. That right has been established. But the fact is that you are making a crime out of something or continuing as a crime something which does not necessarily involve the element of intent. I would therefore suggest, particularly in regard to the subject matter now under discussion, that by this negligence arising out of the use of motor vehicles you are creating what I might call a quasi-criminal offence for which the proper punishment may be not so much purely criminal, that is a jail sentence, as it may be punishment of what I might call a quasi-civil nature, namely prohibition of the right to drive.

I therefore go right back to clause 221, where I question the advisability of making the maximum penalty five years. I would suggest that the maximum penalty be continued as before at two years and then later, when we come to clause 225, that we greatly increase the prohibition on driving which a magistrate may impose. Possibly under clause 225 (a) if the offence is one which upon conviction could result in a sentence of life, it should be provided that the prohibition against driving should be for not less than 10 years. If it is under clause 225 (b) for an offence which would not result in a sentence for life, the prohibition against driving should be a maximum of 10 years. In other words you relate your penalty more closely to the civil element of the offence, and you diminish the criminal element of the penalty because the offence is not so much a criminal offence as it is quasi-criminal or indeed quasi-civil.

I hope I have not become too technical. I believe the minister follows my reasoning. I do not want to move this—I do not think the minister agrees with me necessarily, but I hope he follows my reasoning—

Mr. Garson: I follow your reasoning, but I disagree.

Mr. Fulton: It is all right if the minister does not agree with it. We are entitled to have a difference of opinion in this house. But I venture to suggest that in the light of everything that has been said here the general consensus of opinion, at least on the part of those who have spoken, is that this is not purely a criminal matter. Indeed one might frequently have raised points of order and said, "Why are you discussing this matter under the Criminal Code?"

As I see it the fact is, of course, that we are dealing in the Criminal Code with a matter which is not essentially a criminal offence. As the hon. member for Digby-Annapolis-Kings (Mr. Nowlan) has pointed out, these men did not intend to do what they did, and they will deny until their dying day that they were responsible in a criminal sense. Yet we have felt it proper to deal with the act which was done under the Criminal Code which, by and large, involves the element of intent.

I do not think I need to say anything more in order to explain my meaning. The minister perhaps will not agree with me but I hope that, even if it is not done now, within a measurable period of time the penalties with respect to the prohibition of the right to drive will be increased; and at the same time I think it would follow that as to the strictly criminal punishment, the length of the prison sentence might be reduced. Otherwise you probably will not get a jury to convict.

Mr. Garson: I think my hon. friend, in the course of his remarks—as did the hon. member for Digby-Annapolis-Kings — dealt with the nub of this matter. The real question here is whether this kind of negligence that we are discussing in this section is criminal negligence. That is the point. As I indicated previously in this new code the commissioners have deliberately left out lesser motor vehicle offences as coming more appropriately under provincial legislation, which I take it would be in accord with the views of both of my hon. friends.

Is this which we are discussing criminal negligence? I do not think a better answer to that question can be found than in a brief quotation, which perhaps I might put on the record, from the report of the royal commission on the Criminal Code itself. This is what it says:

Mr. Fulton: What page?

Mr. Garson: This is page 12.

The definition of criminal negligence in clause 191 is in accord with the judicial authorities which state that wanton or reckless misconduct is required to support a charge involving criminal negligence.

In other words, before the negligence that is in question in a prosecution can be shown to be criminal negligence, the crown must prove wanton or reckless conduct. They quote there as authority Rex *v.* Bateman, 94 L.J.K.B., 791; Andrews *v.* Director of Public Prosecutions, 106 L.J.K.B., 37; Rex *v.* Greisman, 59 L.R., 151 and 46 Canadian Criminal Cases, 179; Rex *v.* Baker, (1929) Supreme Court Reports, 354. Then the report goes on to say:

In Rex *v.* Bateman supra, Lord Hewart stated that to support an indictment for manslaughter based on criminal negligence the prosecution must prove the matters necessary to establish civil liability (except pecuniary loss) and in addition—

That is the point.

—must satisfy the court that the negligence alleged "went beyond a mere matter of compensation and showed such disregard for the lives and safety of others as to amount to a crime against the state and conduct deserving of punishment".

That is the point of this clause. What we are defining is criminal negligence; and we are providing punishment for that criminal negligence. I agree with everything that has been so well said by the Leader of the Opposition, the hon. member for London—

Mr. Nowlan: The hon. member for Digby-Annapolis-Kings?

Mr. Garson: Yes, by the hon. member for Digby-Annapolis-Kings, the hon. member for Kamloops and the hon. member for Oxford.

Mr. Nowlan: The minister left out the hon. member for Winnipeg North Centre.

Mr. Garson: Yes, and the hon. member for Winnipeg North Centre who was pre-eminent.

Mr. Knowles: Don't forget the Minister of National Health and Welfare.

Mr. Garson: I agree with them when they say that the place to prevent this death on the highways is in the licensing and in provincial legislation such as that to which my friend the hon. member for Winnipeg North Centre properly referred in the province of Manitoba where, under that legislation, they have cancelled the licences of thousands of drivers because they showed, by their conduct, that they were not fit to have a licence. But the licensing of motor cars is a matter of property and civil rights which comes under provincial jurisdiction. The licensing of drivers likewise comes under provincial jurisdiction. The rules of the road are under provincial jurisdiction. The policing of the

roads, even when it is done by the Royal Canadian Mounted Police under contract with the various provinces, is under the direction of the provincial authorities. We here are powerless to accomplish anything in that particular field of the prevention of highway accidents. The only thing in this connection that is under our jurisdiction is the criminal law and, as a result of the recent privy council judgment, the question of interprovincial or international traffic but not intraprovincial traffic.

The great bulk of the traffic we are now discussing as the source of traffic accidents and deaths takes place wholly within the confines of one province. These things being so, we have to confine our contribution to the stamping out of death upon the highways to those matters which come under our jurisdiction. To that end the royal commission has recommended, and I think very wisely, that we should undertake to state, as we do in the section under discussion, that where the negligence of a motor car driver is of such a serious character as to be a crime against the state, we should so designate it and should so penalize for it.

We have so designated it, and we have provided a maximum penalty of five years. Surely a maximum penalty of five years is not too much where, as a result of gross negligence, one man—a motor car driver—may have crippled a fellow citizen for life. I am sure the victim would be very glad to change places with him, to have his body back whole again and serve the penalty for him. With all deference to my friend the hon. member for Digby-Annapolis-Kings—who, I admit, has had a great deal more experience in these matters than I—I do not think the jury are going to shrink from bringing in a verdict of guilty if the facts of a case are sufficiently heinous, because the judge may impose a sentence of not more than five years or maybe as little as one day, following their verdict.

I agree with much that has been said in this very constructive debate, and I want to express my appreciation for the non-partisan, fair-minded, sincerely constructive and co-operative manner in which all members have taken part in the discussion. I agree with much of what they have said; but I also emphasize that our best contribution toward a solution of the matter is that we in this house should deal now with those things which are within our power. Having done this we then can go on and do our part toward encouraging the provincial and municipal authorities to do the best they can in their spheres.

[Mr. Garson.]

Mr. Knight: Mr. Chairman, probably I know more about automobiles than I do about law, and I am not rising merely in order that I may have a chance to attach my name to the distinguished list of legal authorities given by the minister but because there is one idea arising out of my own experience that I thought I might interject.

I was very much interested in the suggestion of the hon. member for London, I believe it was, that suspension of the permit to drive is likely to be one of the best deterrents. I agree with him completely in that respect. Having said that as an introduction, I merely want to say this. I have had two or three people from my own city of Saskatoon write me after they got into difficulties through infractions of the law of the province of Saskatchewan. I could not help but notice in each case that while it was bad enough to have to pay a fine or go to jail for a week or two, the thing that concerned them particularly was the fact that the province of Saskatchewan had, in view of the offence committed, suspended their permission to drive for three months, six months, a year, or whatever it might happen to be.

I am completely in favour of the suggestion of the hon. member for Winnipeg North Centre that this matter should be discussed on the dominion-provincial level. I am well aware that licensing lies within the jurisdiction of the provinces, and perhaps it should be discussed at a dominion-provincial conference such as the hon. member proposed. Perhaps it might be discussed at the conference suggested by the Minister of Transport. If it could be discussed the provinces might be able to get together on their ideas with respect to the matter and reach some degree of uniformity, which I think would be an excellent thing from the point of view of licence suspension acting as a deterrent to this criminal negligence.

While most of us drive cars at least partly for pleasure, some of the people who get into trouble make their living by driving trucks, small delivery vans or whatever it may be. The letters I received from constituents of mine who had gotten into trouble were from people of that type. They said that the $40 or $50 fine was not so bad, but the point was that they made their living with the vehicle. These people of course ignore the fact that such vehicles can be driven at 70 miles an hour down a road and, weighing a couple of tons, attain a momentum of I know not what. They ignore the fact that in their hands these vehicles can be dangerous and lethal

weapons. I think there is merit in the idea of the suspension of licences, and if some uniformity among the provinces as to what should be done in that regard could be achieved I think it might help to meet the situation.

Mr. Garson: May I make one point. We will shortly come to clause 225, and the hon. member for Saskatoon will see that there we ourselves are taking the power to prohibit a convicted person from driving. That provision will be uniform in effect across Canada.

Mr. Argue: Like the hon. member for Saskatoon, I know far more about automobiles than I do about criminal law. I would not need to know much about automobiles to know more than I do about criminal law, because my knowledge of criminal law is just about zero. It seems to me that even though section 221 may represent the best draftsmanship possible, even though it may be the best that can come out of the discussion tonight, there is nothing in the section that will do much to prevent accidents. As the hon. member for Winnipeg North Centre has said, we should not think that the passing of this section will meet the problem completely.

I have noticed, as have other hon. members, that the federal government is now to have jurisdiction over interprovincial automobile and truck traffic. I have one suggestion to make to the minister if he should attend a dominion-provincial conference on the control of automobile and truck traffic in the interprovincial sphere. In my opinion one thing that would do more to reduce accidents than anything else would be to exercise some control over the horsepower of engines installed in modern automobiles. Automobile manufacturers are making bigger and more powerful cars all the time. You can buy a car now that is—

The Chairman: Order. The hon. member must recognize that we are discussing clause 221 and not something having to do with governors on automobiles.

Mr. Argue: I have been sitting here for some time, and I have listened to others discussing what the minister might do as a result of the judicial decision respecting the control of interprovincial highway traffic. I had pretty nearly completed my comment in any event. I believe it is something that the minister might well consider, because it is my opinion that if you put an ordinary human being in one of our very powerful modern cars he is going to try out the automobile irrespective of section 221 of the Criminal Code.

Mr. Nowlan: As I intimated earlier, before the clause carries I have two questions to ask and a general comment to make about subsection 2. Before I leave the lofty plane on which we have been travelling for the last hour and for an hour before dinner, I must say, with all respect, that I am not too impressed by the minister's statement that after all this is a matter of provincial jurisdiction. Just to show you how long, unfortunately, I have been practising law, may I say that I can well remember that one time I was defending a man for driving while intoxicated. He was charged under the Nova Scotia statute. At that time he came under the law of the province of Nova Scotia, but during the period between the time the information was laid and the time he came up for his trial the parliament of Canada decided that it constituted a crime, and made it a section of the Criminal Code. I appeared before the magistrate on that benign morning, pointed out the section of the Criminal Code and got an acquittal under the Nova Scotia statute.

That is how the wheels turn throughout the years and, as I say, it is an admission of more years gone by than I should like to admit. But if that can be done with respect to a prosecution for driving while drunk, some of these other matters which the minister has quite properly said come within provincial jurisdiction can by a declaration of this parliament be transferred, as was the charge of driving while intoxicated, and come within the scope of this volume of law which we have before us tonight.

Having said that, I want to refer to one or two matters of a very mundane nature. The first subsection refers to "every one who is criminally negligent in the operation of a motor vehicle." There is no definition of "motor vehicle". I am wondering whether there may be judicial decisions on this point. I am not certain. I am thinking, for instance, of a farmer driving a tractor, and of various other vehicles operated on the roads. Will they come within the scope of that provision?

Mr. Garson: If my hon. friend will look at clause 2, subsection 25, page 4, he will see that it reads:

> "Motor vehicle" means a vehicle that is drawn, propelled or driven by any means other than by muscular power, but does not include a vehicle of a railway that operates on rails.

Mr. Fulton: Are horses muscular?

Mr. Garson: Yes.

Mr. Knowles: Do you mean the ones that were in the army?

Mr. Nowlan: Turning to subsection 2, again I want to say what has been said by others. Here again we get an increase in the penalty, which has been stepped up from the old section. To illustrate how rapidly the penalty has been increased, I may say that I have in front of me the 1938 edition of Crankshaw which shows the penalty as 30 days. After that the penalty was increased to six months, and now it has been increased to two years.

I quite realize that a reading of that clause, covering one who runs away to avoid this, that and the other thing, indicates it is a very formidable-sounding charge. Actually one finds from experience that in 999 out of 1,000 cases—perhaps that is too many, but certainly in 990 out of 1,000—the man has temporarily lost his head; he is scared, and he acts on an impulse. He is technically guilty of an offence under this clause. If anything of a serious criminal nature has occurred he can be convicted under one of these other clauses with which we are dealing. I doubt very much if it is necessary to increase the penalty under this clause. It seems to me this is a catch-all provision, that if you fail to convict him on some other offence then you convict him under this clause and you can still give him a fairly stiff sentence.

Actually, as anyone who has had experience in defending these cases knows, in most cases if he had remained at the scene there would have been an acquittal anyway because there would not be any suggestion of criminal intent. It is the fact of his running away which probably results in a conviction. With all respect to the Minister of Justice, who this afternoon read this very formidable list of members of this commission, and who says these men are without fault and are the perfect men—

An hon. Member: Carried.

Mr. Nowlan: It is not carried, and it will not be carried for some time if someone keeps interrupting.

As I say we were discussing the matter of the commission this afternoon, and the Minister of Justice read the names of the members. We have great respect for them, but I still say many of those gentlemen have not had much experience in either prosecuting or defending—some of them have prosecuted—for a good many years. Without becoming at all critical of them I say—I have said this privately and I will say it in connection with other clauses—there is a prosecution complex in connection with many of these clauses where the sentences, it seems to me, have been automatically increased without justification. I want to express my protest against that.

There is one other minor question, but still a rather important one, I think. In subclause 2, Mr. Chairman, there is reference to accidents involving a person, horse or vehicle. I wonder why you have the horse in that provision. Apparently it is not an offence to have a collision with a cow. Certainly I realize that is the phraseology from the old section. I know of cases containing judicial comments as to why it is there.

The Minister of Justice referred to these commissioners, and took credit for all the work they had done. I am suggesting that possibly they would have been wise if they had omitted the reference to the horse, because the words "person or vehicle" would be wide enough. As the minister knows, it very often happens that a horse breaks out of a field and runs down a road alone. Why should it be an offence to strike that horse, and not an offence to strike any other animal? I think the phraseology is bad, and some attention should be given to it.

Mr. Garson: I believe I should give some attention to the two points raised by my hon. friend. So far as the penalty is concerned, he will see it is only where the charge is considered by the crown prosecutor to be sufficiently serious that he proceeds by way of indictment that it takes the penalty of two years. My hon. friend is quite right that in the great majority of cases, it is a minor offence. In such cases the crown proceeds by way of summary conviction and, as I recall it, a summary conviction takes a penalty of six months or $500; which is the maximum for a summary conviction.

With reference to the inclusion of the word "horse", my hon. friend is quite right in saying that is the language which was taken from the old section. The reason for its inclusion may be that the phrase has been judicially interpreted, and it was thought desirable to retain it. I would prefer to be cautious and leave it the way it is.

Mr. Fulton: The minister is not quite right, with respect, in saying the wording has been taken as a whole from the other section.

Mr. Garson: The word "horse" has been.

Mr. Fulton: The old section related to a horse in charge of a person, not just an accident involving a horse. The horse or vehicle had to be in charge of a person before the

offence of rushing away without stopping and reporting the accident became a criminal offence. As the hon. member for Digby-Annapolis-Kings points out, if you run into a horse or a vehicle or an empty car, you now come within the provisions of the proposed section. Under the old section the horse had to be in charge of a person.

Mr. Nowlan: I think there is an anomaly here that should be looked at.

Mr. Garson: If my hon. friend would look up the proceedings he would see that the very point he is raising was discussed at great length in the committee of the other place and in the House of Commons committee, and after this discussion they decided to keep it as it is.

Mr. Fulton: Why?

Mr. Bell: Why was the joy-riding section, I think it was section 285 (3), taken out of here? I appreciate that it comes in later under car theft, but I wondered why it was not left in here where it was a so-called lesser offence. Is it the intention of the provincial legislatures to cover that?

Mr. Garson: If my hon. friend will make a note of his question, could we consider it when we come to the other clause?

Clause agreed to.

On clause 222—*Driving while intoxicated.*

Mr. Nesbitt: There are one or two brief observations I should like to make. It has been the custom in the past, as most hon. members are aware, if a person is found in an intoxicated condition in a motor vehicle, even if it is motionless on the side of the road, to convict that person under this section. It has always seemed rather peculiar to me that a person who has obviously been drinking but feels incapable of taking charge of the car and has pulled off to the side of the road, should be punished for having removed himself from the road when he was obviously a menace. It does not seem reasonable to me. I cannot help but feel there ought to be some change in this section to take care of such a situation. I know of two people in my own constituency who, within the last four months, removed their car from the road knowing they were in no condition to drive it, yet received a sentence of seven days upon being convicted of this offence.

Another thing I should like to mention is the difference between the alcoholic and the ordinary, to coin a phrase, Saturday night drunk. There is quite a difference between the two, because the alcoholic is a sick person and seven days in jail is not going to keep him from continuing to drink and drive. I think the punishment in this section is quite suitable for the ordinary Saturday night drunk or the person who is drunk after a party, although the penalties might even be increased a little. I believe there is a difference when we are dealing with alcoholics.

Would the minister take into consideration, either on this clause or at some other point in the Criminal Code, the possibility of some alteration which would give a magistrate discretion, where it is shown that a person is an alcoholic, to send such person to some type of institution? I do not like to refer to it as punishment, because it is not punishment I have in mind. I should think that such person might be sent to an institution for some period of time to take treatment. If he would not go, then the penalty set out in clause 222 could be imposed. This might be worth consideration, because it would draw a distinction between the ordinary party drunk and the type of person who might be considered an alcoholic.

Mr. Knight: Before the minister answers I should like to place before him a situation which I believe causes greater injustice than the one described by the hon. member who has just taken his seat. The presumption would be that if a man was out driving on the road, felt too intoxicated to carry on and pulled in to the side of the road, the crown would not have much difficulty in proving that he had been driving and had been in an intoxicated state.

But, if that is an injustice, then I know of one that is much greater. I know of a case which happened not long ago where a man came to town, went to a dance, had two or three drinks and decided he would not drive home while intoxicated or, in the words of clause 223, "while his ability to drive a motor vehicle was impaired by alcohol". One of the other fellows with him said, "Oh, come on home". He said, "No, I am not going to drive. I might get picked up. I am not going home at all". The other man said, "What are you going to do?" He said, "I am going to stay in town until I am sober". The unfortunate part of it was that he had spent his money and could not afford a hotel bed. The other chap said, "Where are you going to sleep?" He said, "I am going to sleep in my car". So he foolishly climbed into the front seat of his car and went to sleep. He refused to go home. He did not leave town at all—did not even commence his journey. The police came along about three or four o'clock in the morning, wakened him up and laid a charge against him, I presume under this

clause, for being in charge of an automobile, even though it was not in motion. I think this has some bearing on my hon. friend's case.

While I am on my feet I should like to make one other remark, and that is that the difference between clauses 222 and 223 is that in one case the person is intoxicated while in the other he is driving his car while his ability is impaired. I suggest that he is still intoxicated; and I do not see any particular difference between being intoxicated and being in a condition where your ability to drive is impaired.

Some hon. Members: Oh, oh.

Mr. Knight: My legal friends have had their turn, and now a mere layman is going to have his inning. I have been reading in the newspapers about blood tests, breath tests, and tests of different varieties—whether they can write their names, whether they can say "three grey geese"—and perhaps my inability to say that clearly may indicate my inability to drive a car, or that my ability is impaired. The point I wish to make is that—

The Chairman: The hon. member appears to be discussing the clause dealing with impaired driving which, I believe, is clause 223. I was wondering whether it might be the wish of the committee to discuss those two clauses together.

Mr. Knight: If my argument follows, that the terms are synonymous, then I am discussing clause 222, which refers to driving while intoxicated; and I shall stick to that.

Mr. MacInnis: Would there be any objection to discussing the two clauses at the same time?

Mr. Garson: The chairman has made an excellent suggestion, that they are two branches of one matter, and I think we might very well discuss them together.

Mr. Hahn: Clause 224 deals with the same matter, and I would hope that it might be included also.

Mr. Knight: I have no objection to adding clause 224, so long as I am allowed to speak.

The Chairman: Then is it agreed that we discuss clauses 222, 223 and 224 at the same time?

Some hon. Members: Agreed.

Mr. Fulton: I was going to suggest that we go back to clause 221 and allow it to stand.

Mr. Garson: I thought it was passed.

Mr. Fulton: I find I do not quite agree with the minister's statement, because I have checked with my colleagues who served on the House of Commons committee and neither of them recalls a discussion of the question to which we referred. Unfortunately there is no transcript of proceedings; therefore it is impossible to say definitely. Would there be any objection to letting clause 221 (2) stand?

The Chairman: But clause 221 is carried.

Mr. Fulton: I am making this request. The minister made a statement when we were discussing clause 221 (2) to the effect that it was discussed fully in the Senate subcommittee and in the special committee of the House of Commons. I was not able to engage in a discussion of the point because, as I say, there is no transcript of proceedings of the House of Commons committee. However, I checked immediately with my colleagues who were on the committee last year and, without wishing to enter into any controversy, they simply say they cannot recall any such discussion.

All I am asking is that under the circumstances clause 221 (2) be allowed to stand—not the whole clause—because I have some observations which I think are important.

Mr. Knight: May I ask for guidance? Am I in order in speaking?

The Chairman: I am entirely in the hands of the committee. I must remind hon. members, however, that I cannot allow them to revert to clause 221 without unanimous consent, because it has been carried.

Mr. Knight: I am asking, Mr. Chairman, if I am in order in discussing clause 222; that is all I want to know.

The Chairman: I understand the committee has agreed to discuss clauses 222, 223 and 224 at this time.

Mr. Knowles: May I ask whether there was any objection when the request was made by the hon. member for Kamloops that clause 221 be considered carried so far as subclauses 1 and 3 are concerned, but that subclause 2 be not regarded as carried?

The Chairman: Has the hon. member for Kamloops leave to revert to clause 221 (2)?

Mr. Knowles: And have it stand.

The Chairman: Is it agreed?

Mr. Fulton: And I would ask that that subclause stand, if there is no objection.

Mr. Garson: I have no objection.

Mr. Fulton: The minister has no objection.

Mr. Knight: Mr. Chairman, I had only one other thing to say, before I was interrupted.

I wanted to talk about the word "intoxicated" in clause 222. I was saying that I am very hazy as to the definition of that word. I am convinced, however, that a great many of the accidents, and perhaps most of the fatal accidents, are attributable to indulgence in alcohol. I am not for the moment criticizing drinking; but I am going to say this, that if a man is going to drive a car he should not drink at all. I would go so far as to say that he should not have even a single drink. And I think that if we go farther with higher speeds on the road, and better roads and more powerful automobiles, we are going to reach a state of affairs where it will have to be made a criminal offence for a man to drive a motor car if it can be proved that he has indulged at all in alcoholic drinks.

In other words, so far as I am concerned, to save lives I should like to see it made a criminal offence if a man steps into a car and takes charge of it, if it can be proved that he has had even a single drink. It is not a case of being a teetotaller, and I am not now discussing that particular phase of morality, whether you should drink or should not. But I do say that when it is so difficult to prove the state of intoxication of a person after an accident has happened, because there may be an element of shock which is often mistaken for the effects of alcohol, it seems to me that we will get to the point, and it will not be very long, when we will have to decide that a man should not be allowed to drive a car at all if he has had a single drink.

Speaking for myself, if I had to drive two or three hundred miles I would not drink a single glass of beer, because I know perfectly well it is not a good thing to do. It is not safe for me and it is not safe for the people I meet on the road. I wonder if the minister would mind commenting on the case of the man who is wise enough not to go home or even to start to go home because he feels he is not capable of doing so.

Mr. Garson: We are dealing in this instance with what has been referred to as death on the highway, and serious injury on the highway. It is a rather harsh and painful subject for many people and this notion that we can try to stamp it out without hurting anybody's feelings is a mistaken one.

If a man is intoxicated and has the good sense at that particular stage of his intoxication to pull off to the side of the road and go to sleep or stay there in a sort of stupor, there is no guarantee that later on, when his intoxication wears off a little bit, he will not switch on the ignition and start to drive his car.

There is difference of opinion as to what is intoxication and there is some variation in the interpretation of this word by the courts. Several cases have held, and I think quite rightly, that if a man is drunk in his car at the side of the road he should be charged and convicted under the section. If you do not impose that hardship upon him you are going to provide a wide-open defence for every person who has still enough sense to be quiet when the police come along. He will simply say, "I have been sitting here not doing anything at all", and he will get off. If you are going to prohibit driving while intoxicated, in my judgment you have to go the whole way. It is much better to have that injustice, if you like, than to have some person crippled.

Mr. MacInnis: I think the minister has made a very good case for the enforcement of the law when a person is found in a car on the highway, whether the car is in motion or not. Besides what the minister has said, I think it is putting a tremendous responsibility on the police officer if when he is going to arrest a man he has to take the responsibility of saying not only that he is drunk but that he may not drive his car while he is drunk.

We discussed this in committee, and I cannot see that a case can be made out for not invoking the law against a person found in charge of a car, whether the car is or is not in motion. As the minister says, there is no telling when he is going to turn the key and start off.

Mr. Cardiff: Suppose he had given the key to somebody, or somebody had taken it from him and he was left there to sleep; what about that?

Mr. Garson: I think perhaps in that case he could prove that he was not in control of the car within the meaning of the section and would be able to establish a defence, although as a matter of legislative policy I wonder even in that case whether it is not better that the prohibition should be an outright prohibition of an intoxicated man being in a car. In this death and maiming on the highway we are dealing with something we should not trifle with; and in my judgment it is better to make the prohibition outright. You will find that in those provincial jurisdictions where there is a strong enforcement of this law there are lower accident and insurance rates.

Mr. Cardiff: It may be rather difficult to handle a man in that condition. He may be in a mood where you cannot take him out

of his car or do anything with him. You want to protect him, so you take his key from him and leave him in the car. Then the police come along and pick him up after you have tried to make him safe. It does not seem exactly right that he should be fined for not doing anything with the car.

Mr. Lusby: With regard to that situation, in my own province it is generally considered that if the car cannot be started, it is not an automobile. There are a series of cases which hold that a disabled car or one that cannot be started is not considered to be an automobile within the meaning of the section.

However, the point I wished to speak on more particularly was the one touched upon by an earlier speaker, that is the question of intention with regard to care or control. I was under the impression that there was a difference of opinion in the courts of the different provinces about whether the intention to drive was a necessary element. I know it has been decided in Nova Scotia in Rex v. Crowe that no intention was necessary. That was a case in which the man was so drunk that he could form no intention whatever. He was found in his car hopelessly drunk.

I was under the impression, which may not be correct, that in some of the other provinces it has been held that it is necessary to show that the man had the intention to drive. I suggest that it would be most desirable that there be no such conflict. The wording of clauses 222 and 223 should make it perfectly clear whether the intention of driving is a necessary element in the charge of care or control.

I have heard it said that clause 224(2), which was an amendment passed I think in 1951, indicated that parliament intended that it must be proved when not presumed that the man had the intention of driving. If that is so, it is a very weak and uncertain way of indicating it. If there is any uncertainty, and I think there is, then I submit that the wording of the section should be changed to make it absolutely certain whether the intention of driving is a necessary element. I am not so much concerned with whether it should or should not be made an element—I think the Minister of Justice considers that the intention of driving should not be a necessary element—but I do suggest that the section should remove any such uncertainty.

Mr. Winch: I am interested in the discussion which is taking place, but before making any comments I should like to ask whether we are dealing only with clause 222 or with clauses 223 and 224?

[Mr. Cardiff.]

The Chairman: I understood that the committee had agreed to discuss clauses 222, 223 and 224 at this time.

Mr. Winch: As I said, I am very interested in this discussion. As a general rule I find that I can go along with the explanations of the Minister of Justice, but this is one time when I certainly cannot go along with his explanation and his thinking. It may be somewhat repetitious, but I wanted to go over it again.

There is one point I should like to make. A man or woman goes into a club or some place where drinks are served. He or she has perhaps one too many and heads for home. If he or she is picked up on the way home, that is just their bad luck under the law. But if he has enough sense left to realize that he is not capable of driving and pulls to the side of the road or a parking place, according to the statement made by the minister he can be charged, and he said he should be charged, because of the fact that he may, while still under the influence of liquor, start driving.

Now, Mr. Chairman, I would like to deal with this matter. Since when did we in the Dominion of Canada give the police authority to arrest someone under the Criminal Code because they think that person may break the law? It seems to me an extraordinary supposition that a person who has done the right thing should be arrested because in the minutes or perhaps the hour ahead he might do something wrong. To my mind that is an absurd interpretation of the meaning of justice, and there can be no justification for the arrest of a man simply because the policeman thinks he might break the law. I believe a man or a woman who does the right thing in that manner should have a medal instead of being condemned and indicted, because even with befuddled brains they did do the right thing, pulled to one side and stopped.

The minister referred to a later clause relating to a person being in a position to drive. If a person happens to go to sleep in the driver's seat it appears he is then in control of that car, although it is at a standstill. But I honestly cannot understand the Minister of Justice putting forward that kind of proposition. I can understand the provision in clause 222 under which a person can be charged if the vehicle is stationary, because it is conceivable that they might stop in the middle of the street to the danger of the general public simply because of the manner in which they were stopped; but surely if drivers pull to the side and park because

they realize they are not in a fit condition to drive, then that should be recognized under some provision in this code, and they should not be considered guilty because they might drive a car afterward and still be under the influence of liquor.

I would like the minister to think that over. However, as the chairman has said, we are discussing three clauses. In this regard I would like the Minister of Justice to consider clause 224 (3) which deals with the chemical analysis of a sample of blood, urine, breath or other bodily substance which may be admitted in evidence. Subsection 3 of clause 224 reads as follows:

> In any proceedings under section 222 or 223, the result of a chemical analysis of a sample of the blood, urine, breath or other bodily substance of a person may be admitted in evidence on the issue whether that person was intoxicated or under the influence of a narcotic drug, or whether his ability to drive was impaired by alcohol or a drug, notwithstanding that he was not, before he gave the sample, warned that he need not give the sample or that the results of the analysis of the sample might be used in evidence.

Now, Mr. Chairman, this is the point I would like to draw to the attention of the Minister of Justice. Under this clause, whether a person is warned or not, if the sample is taken upon his being charged it can be introduced in evidence and undoubtedly on being introduced in evidence it will have some influence on the magistrate, judge or perhaps the jury, depending on the procedure under which he is being tried.

The point I am particularly concerned with at this moment is the fact that under subsection 3 of clause 224 there is the right to take a sample of the breath. That sample is taken and it is chemically analysed. But there is nothing whatsoever in this subsection which states that the instrument used in the chemical analysis of the breath must be an approved instrument or machine. The reason I raise this, Mr. Chairman, is that there are, as far as I know, somewhere in the neighbourhood of 12 such machines on the market at the present time, but only three of them are recognized as being fairly accurate. The first is known as an intoximeter, the second is the drunkometer and the third is the alcometer. Tests with these machines are admitted as evidence in, I believe, 17 states in the United States. In spite of that there is nothing in this subsection which states that an approved machine must be used in analysing a sample of the breath.

I wonder if the reason for that omission is that subsection 3 of clause 224 is only a permissive clause, and that ancillary legislation will be required by provincial legislatures or city councils or municipalities. An hon. member beside me says "No" and I hear "No" from other hon. members; it would therefore appear that this is the law. If that is so, then it would appear that as the law reads any chemical test without the use of approved machines can be submitted as evidence as to whether a person is inebriated, or as to the percentage of alcohol in his breath. That is the way I read it, and I believe it is an important point which should be cleared up.

An hon. member beside me says that it depends on the nature of the test, but I am not referring to a test of the urine or the blood. I am referring to a test of the breath. My hon. friend says that the same rule applies, but where has there been a rule established as to the correctness of that medical evidence? That brings me back to my point that there are 12 machines on which the breath can be tested, but only three are recognized in the United States. Have I made my point clear?

Mr. Garson: Yes, quite clear. At the time this legislation was introduced we in the justice department called in some scientists of the University of Toronto to assist us in devising a method of dealing with such matters. There were then two courses of action which might have been followed. One would have been to do as has been done in some European countries; that is, to provide for the taking of blood or other tests by specified and approved apparatus under strict control at all stages by competent technicians, and then use these tests, without any further evidence of intoxication at all, as conclusive evidence of intoxication if these proper tests showed X parts of alcohol in the blood. After careful consideration we came to the conclusion that if this method were to be adopted at all then we thought it would be more consonant with British justice that the burden of proving the case should continue to rest upon the crown, and that we should admit evidence from these technicians and this apparatus for what it was worth in establishing the facts which it purported to prove.

Of course, as is implied by the remarks of my friend the hon. member for Vancouver East, in a case under our legislation here the crown, after having laid the charge and undertaken to prove it by this method, would have to show that the sample of the breath was taken—or a sample of the urine or of the blood—by a certain apparatus, and would have to trace that sample from the body of the accused person to the laboratory, then have the man who had taken the sample and analysed it appear in court and testify and submit

to cross-examination as to what the analysis was. They would have to show that it had been handled from beginning to end with such care that the resulting data were accurate.

I should think that in most cases, unless they were careful and expert, using proper apparatus, they would put the case for the crown in a very weak position indeed; for defence counsel, by merely cross-examining those who had had the handling of the sample, would be able to show either that the apparatus was not on the approved list that my hon. friend for Vancouver East referred to and therefore was not reliable, or that the proper precautions were not taken in getting the sample in the first place and in caring for it from the time it was taken until the time it was analysed.

Mr. Winch: May I ask a question before the minister leaves that point?

Mr. Garson: Yes.

Mr. Winch: Would it be up to the prosecutor then to prove the qualifications of the man who had taken the test and also the approval of the machine? My third question is on the same subject. If a definite figure of 1·5 per cent or 1·537 per cent of alcohol in the blood is accepted by the Department of Justice as a state of intoxication, should it not then be in the act?

Mr. Garson: No. I thought I had made it clear that we rejected the method of X per cent or any other percentage in the blood as being conclusive evidence of intoxication. That was one of the alternatives which we could have adopted, but we rejected it. This present legislation provides for this sampling device being used as evidence for what it is worth to prove a straight question of fact of how many parts of alcohol the accused had in his blood. As I can see from his remarks my hon. friend understands that the crown would have to show that the technician who took the sample was competent. The technician would have to undergo cross-examination on how he took it; what he did with it; if it was kept at a certain temperature; if when he took it from the accused's blood he used alcohol in swabbing the skin before he injected the hypodermic needle and so on. The whole thing would then just be a simple question of fact no different in character from the evidence a policeman gives as to whether the accused could walk a straight line after he was arrested.

We thought in this way the accused's right to a fair trial would be better safeguarded than by our adopting this method of convicting him solely because he had X parts of alcohol in his blood. This was a midway position between the full reliance placed by some European countries on the alcohol content of bodily substances, and our then method of proving intoxication by police evidence of the accused's behaviour. We thought this was a happy compromise.

Mr. Winch: I do not know whether or not I used the correct term, but the minister understands what I have in mind. Is there any case law on this matter at all, on which you are basing this legislation?

Mr. Garson: Yes.

Mr. Winch: Could I have the information on it?

Mr. Garson: There is not very much, I must confess. I do not think it is going to be of much use to my hon. friend because it establishes, in the province in which it was taken, that the enactment of this subsection (4d) and subsection (4e)—that is of the present section—has not changed the law as laid down in Rex *v.* McNamara, 51 Ontario Law Reports, that evidence of a blood sample taken from the accused in custody, even without his consent, is admissible. In other words, in the province of Ontario it has been held, before this amendment was brought down in parliament here, that the blood sample could be taken and was admissible in evidence in the courts of Ontario. All this case law establishes is that the enactment of these sections has not changed what the courts, before they were enacted, had declared to be the law.

Mr. Winch: In other words there is no case law as far as your introduction of this subsection is concerned?

Mr. Garson: No, not on any of the points raised by my hon. friend. That is right.

Mr. Stick: I should like to ask a few questions of the minister, but as it is ten o'clock may I move the adjournment of the debate?

Mr. Fulton: It is not ten o'clock yet.

The Deputy Chairman: Shall I call it ten o'clock?

Mr. Fulton: How about letting clauses 222 to 225 inclusive stand?

Mr. Knowles: Clause 225 has not been called.

Mr. Garson: As far as I am concerned I have no objection to that procedure. I would bespeak the co-operation of my hon. friends when we take them up again, that we might put them through fairly expeditiously.

Mr. Winch: And may I bespeak co-operation in having the answers to the other questions?

Mr. Harkness: Do I understand that these sections will not be discussed when we come back to the Criminal Code next?

Mr. Garson: I think what the hon. member for Kamloops meant was that we should let them stand merely from this sitting until the next sitting.

Mr. Fulton: Yes.

Mr. Garson: That is right.

Mr. Knowles: Ten o'clock.

Mr. Garson: While I am on my feet I might clear up the other point raised by the hon. member for Vancouver East. I am sorry if he does not agree with my opinion as to what the legislative policy in this matter should be. As I said when I was on my feet the last time, the Canadian courts differ in their interpretations. Some of them take the position that it is not necessary, to use the terms used by the hon. member for Cumberland, to establish *mens rea* or any guilty intent. Such courts interpret these sections as an absolute prohibition of a person being intoxicated while in a motor car. Notwithstanding my hon. friend's protest, I must confess that that is the interpretation which seems to me to be the more appropriate one.

Mr. Fulton: If I am not mistaken, is that not the case in the United Kingdom where there is not a criminal code?

Mr. Garson: My hon. friend may be right in that regard. But on the other hand the courts of other provinces have held that it is necessary to prove *mens rea*, and that an accused found in a car under the circumstances named by my hon. friend, too drunk to have any criminal intent, should be acquitted.

The suggestion has been made by the hon. member for Cumberland that we should clear up this point by an amendment to this clause. With deference may I say that, unusual as my suggestion may seem to be, it might be better not to clear it up. I say that for this reason. The efficacy of legislation of this kind is directly proportionate to the efficiency with which it is enforced by provincial authorities. When we have not received requests from any of the provinces for a clearing up of this point, it may well be that the interpretation which is made by the courts of the provinces is the one that is most satisfactory to the law enforcement authorities, and under which they would prefer to carry on their work of law enforcement.

Mr. Winch: Where does the authority lie with regard to the machine or the test? Is it federal or provincial authority?

Mr. Garson: I am speaking of the other point my hon. friend raised, as to the position of an accused who has been found in a hopelessly intoxicated condition in a parked car. I think we can probably get a more effective enforcement if we leave each province with that interpretation now in effect which, from the fact that they have not made any representations to us concerning it, they seem to favour.

Mr. Winch: What is the position—

Mr. Fulton: Ten o'clock.

The Deputy Chairman: Order. I think it is generally understood that at ten o'clock clauses 222, 223 and 224 were under discussion. Shall I report progress and ask leave to sit again?

Some hon. Members: Agreed.

Clauses stand.

Progress reported.

BUSINESS OF THE HOUSE

Mr. Harris: Mr. Speaker, tomorrow we shall continue with the Criminal Code. On Monday we shall move to go into supply and if we do attain that desirable end we shall proceed with public works after calling six departments.

Mr. Knowles: It was four the last time.

Mr. Harris: It goes up two a week.

Mr. Knowles: If you keep raising it you will never get into supply.

At ten o'clock the house adjourned, without question put, pursuant to standing order.