examination and consideration. I might state, though, that it is the duty of the department to carry out the provisions of this section of the act, the same as with any other section of the act, and it is done without prompting or request from any particular line of manufacturers.

WATER POLLUTION

NORTH SASKATCHEWAN RIVER—REPORTED ACTION OF ALBERTA GOVERNMENT

On the orders of the day:

Mr. A. M. Campbell (The Battlefords): I should like to direct a question to the Minister of National Health and Welfare. Has the minister a report to make with regard to the reported action of the Alberta government in connection with one of the chemical plants in Edmonton?

Hon. Paul Martin (Minister of National Health and Welfare): As my hon. friend will note, there is on the order paper a question standing in the name of the hon. member for Meadow Lake (Mr. Harrison). On Monday I shall be tabling a complete reply, bringing up to date the reaction of the government of Alberta to this matter and further discoveries resulting from investigations made by our technical officers.

GRAIN

INQUIRY AS TO TABLING OF REPORT OF BOARD OF GRAIN COMMISSIONERS

On the orders of the day:

Mr. W. G. Dinsdale (Brandon-Souris): I should like to direct a question to the Minister of Trade and Commerce. Can he inform the house when we might expect the report of the board of grain commissioners from the queen's printer?

Right Hon. C. D. Howe (Minister of Trade and Commerce): All I can say is that the report is in the hands of the queen's printer and has been there for some two weeks. I will make inquiries as to when the report can be tabled.

Mr. Dinsdale: As a supplementary question may I ask whether that report, when it becomes available, will be referred to the committee on agriculture?

Mr. Howe (Port Arthur): Yes. I have already said that it would be.

DEFENCE PRODUCTION

INQUIRY AS TO DEPARTMENTAL REPORT FOR 1953

On the orders of the day:

Mr. Donald M. Fleming (Eglinton): In regard to the printing of reports, may I ask the Minister of Defence Production when we may expect the report of the Department of Defence Production for the calendar year 1953 to become available?

Right Hon. C. D. Howe (Minister of Defence Production): Mr. Speaker, I shall make inquiries and advise at a later time.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Thursday, February 25, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

The Chairman: When the committee rose previously we were considering clauses 222, 223 and 224. Shall these clauses carry?

Mr. Fulton: Mr. Chairman, may I at this stage ask the minister, subject to the approval of the other members of the committee, whether sections 222, 223, 224 and 225 might stand. When the committee rose last night we had had considerable discussion on these sections in general. Since that time I have made inquiries amongst the members of the official opposition and can say that it is our desire to discuss these sections further at some considerable length with respect to both the social and the moral implications involved and with respect to the law itself. I have reached the conclusion, with which my colleagues here agree, that it would take us some time to complete the type of discussion we have in mind. I should therefore like to suggest to the minister—as I say, subject to the approval of the other members of the committee—that these sections 222, 223, 224 and 225 should be allowed to stand for later detailed consideration in accordance with the arrangement made when we started consideration of this bill in committee.

Mr. Garson: I have no objection to allowing the clauses to stand as suggested.

The Chairman: Clauses 222, 223, 224 and 225 stand.

Clauses 226 and 227 agreed to.

Criminal Code

On clause 228—*Duty to safeguard dangerous places.*

Mr. Nesbitt: I have a question I should like to ask the minister with respect to subsection 2. In the opinion of the minister, would that provision go so far as to include swimming pools or something of that nature?

Mr. Garson: I am reluctant to express these casual legal opinions on hypothetical cases, but I would be inclined to think that under certain circumstances it would. The gravamen of the offence is the leaving of an excavation, which a swimming pool certainly involves, in an unguarded state which may result in damage to those who stumble into it by accident. I would think that it could cover the case of a swimming pool which, my hon. friend will notice, is an excavation on land that he owns.

Mr. Nesbitt: What I have in mind is that a great many people in large and small cities and towns and elsewhere have on their property such things as fishponds, swimming pools and so on into which children may fall. I was wondering whether under such circumstances these people would be liable to criminal prosecution.

Mr. Winch: As a layman I should like to know whether "excavation" means excavation by any instrument or implement or does it refer to a natural excavation that is below the normal grade level?

Mr. Garson: I think that the term "excavation" clearly indicates the result of excavating, which is a human act applied to the land. I do not think that the word "excavation" could be applied to a natural condition.

Mr. Nesbitt: Would the minister clarify the question that I put? In his opinion does the provision cover such things as fishponds and swimming pools? There are thousands of them throughout the country, and while I am quite sure that sort of thing was not contemplated it could be covered by the wording of the section.

Mr. Garson: I think it might perhaps answer my hon. friend's question if I were to refer to a case decided under the corresponding section of the existing law. This case is Rex *v.* Eastcrest Oil Company (1945) S.C.R. 191. The note on this case in Tremecar's criminal code supplement page 85 is as follows: "section 287 (6)".

That is the analogous section in the existing code.

. . . requires that an excavation, etc., shall be fenced in such a manner as to prevent an accidental fall into it, not so that entrance is impossible.

[The Chairman.]

Then Mr. Justice Rand of the Supreme Court of Canada is reported as saying:

What is contemplated is the prevention of injury from hidden openings; the fence or guard must protect the unwary; but when the existence of the opening is made evident, the purpose of the fence or guard is accomplished. The owner must protect the trespasser on the land from a trap, but he is not called on to protect against a subsequent danger from trespassing on the guard itself raised against that trap. The duty is not to prevent the person from falling into an opening but falling in "accidentally", that is, accidental as to the existence of the thing holding the threat.

If my hon. friend applies that language to the examples he was posing a moment ago he will see that the great bulk of them would be covered by that statement of the law.

Mr. Nesbitt: I quite agree, but what I mainly had in mind was the question of small children where that judgment would not necessarily apply.

Mr. Brooks: I should like to ask the minister a question having to do with abandoned mines. Very often mining companies go on a private property, work a mine and then abandon it. Would the owner of the property have to take steps to see that no injuries occurred to people coming on the land afterwards? Whose responsibility is it?

Mr. Garson: I am sorry I was not able clearly to hear my hon. friend.

Mr. Brooks: I referred to the case of abandoned mines. Mining companies may go on private property, work a mine and then abandon it. Is it the responsibility of the private individual to see that such mines are protected so far as the public are concerned?

Mr. Garson: Yes, I would think so.

Mr. Brooks: It is quite a responsibility.

Mr. Winch: I am sorry that I have to ask so many questions at this time but I should like to be very clear about the matter. What is the meaning of the words "is under a legal duty to guard"? I ask that because subsection 2 refers to anyone who has an excavation on land which he owns. On the land where I have my home in Vancouver I have three fishpools and they are quite deep. Is there any legal responsibility involved there? I am not quite sure.

Mr. Garson: Mr. Chairman, I have to draw the line somewhere. I cannot object to being asked to interpret the bill we are considering, but the legal responsibility to which my hon. friend refers may be a legal obligation imposed upon my hon. friend or any other owner of land by the laws or provincial legislation of British Columbia. I am sure

that, standing here today, I cannot tell him what the laws of British Columbia are with relation to a matter of this kind.

The wording of this clause 228 (2) which we are discussing is:

> Every one who leaves an excavation on land that he owns or of which he has charge or supervision is under a legal duty to guard it in a manner that is adequate to prevent persons from falling in by accident and is adequate to warn them that the excavation exists.

As long as my hon. friend brings himself within that language then he remains clear of any penalty under this clause. What he has to do is to see that the protection is adequate to prevent persons from falling in by accident and is adequate to warn them that the excavation exists. It may be that the type of excavation my hon. friend has on his land is such that the mere presence of it gives that warning to people coming along. If that be so I would think that to anyone who is reasonably observant at all the presence of that pool would be adequate to warn him that the excavation which had been made to provide the pool existed.

Mr. Winch: I am up against a most difficult problem because what the minister has said drives home to me something that I have been completely unable to understand in our entire discussion of the Criminal Code. Time after time in answering questions and discussing clauses the minister has said that the matter depends upon legislation of provincial governments.

Now, perhaps the minister can gather what I am trying to get at. I find it difficult to understand why the provisions of acts of this house are dependent upon acts of the provincial legislature. This explanation was given in connection with sections 221 to 225 which the minister allowed to stand. How does one reconcile the status of an act passed here with the minister's statement that it depends on an act of the legislature?

Mr. Garson: I suggest that part of the difficulty is that my hon. friend asks as to what his legal responsibility is in relation to a fishpond on his property.

Mr. Winch: Under this act.

Mr. Garson: Only under this act? Well, under this act my hon. friend is not liable to incur a penalty providing the fishpond of which he speaks is guarded in a manner that is adequate to prevent persons from falling in by accident, and the precautions taken are adequate to warn that an excavation exists. If my hon. friend's fishpond is such as to bring him within that language and within the interpretation given by Mr. Justice Rand that I read a few minutes ago, then that clears him so far as this section is concerned.

As to whether or not he is cleared with regard to civil liability is another question entirely. When my hon. friend was speaking I was not too clear which of the two liabilities he meant. In most cases he is in greater danger, I would think, as regards civil liability than he would be under this section.

Mr. Nesbitt: There is only one other point I should like to mention. I am sorry to keep questioning about this rather trivial matter, but if we got it cleared up now it might save a great deal of time in the courts in the future. Since persons would naturally include children, it seems to me that, unless one had a great fence around the fishpond, the proper precaution as against small children would not have been taken under the wording of this section. Small children do tend to wander about the neighbourhood and might very easily fall into a fishpond and be drowned. It would seem to me that to prevent children from falling into a fishpond extreme precautions would have to be taken, such as a high wire fence, to meet the liability imposed by this section. I was wondering if that is what the section contemplates.

Mr. Winch: That is my point. I understand that this Criminal Code, being an act of the House of Commons, takes priority over any other act. Mention is made of an excavation on property which you own. There must be hundreds of thousands of properties across Canada upon which there is an excavation. I do not know how it is at most places, but I know at my place the children from the neighbourhood come there because I happen to have a property with trees, shrubs, and fishponds. As I read this section, because I have an excavation in the shape of a fishpond on my property, if any children accidentally fall into it, I am responsible because I have not given any warning or, as my hon. friend says, erected a fence. I should like to have an explanation from the minister.

Mr. Garson: I am afraid I am unable to illuminate this matter any further for my hon. friend. I have read into the record, where he can find it and at his leisure read it carefully, the very carefully considered interpretation of this particular section by one of the best judges in Canada. The section is quite clear to me. I would suggest to my hon. friend that if he reads the judgment at his leisure, as it will appear in *Hansard*, I think he will find the answer to his question.

Mr. Harkness: The question brought up by the hon. member for Royal, and the minister's answer to it, seems to indicate that the responsibility for this excavation, and the danger to trespassers or others who happen to be going over private property, is in the wrong place. As the minister knows, in Alberta and Saskatchewan most of the surface rights on the land are owned by the farmer but the mineral rights are not. A company may secure the mineral rights and put down a mine or, as in a particular case I know of, an oil company might conduct exploration work and might put down what is known as a slim hole. Last year being a wet year, water came up into the hole and a soft spot developed into which a neighbour's truck sank. It happened that there was no loss of life. However, children pass that spot going back and forth to school, and one of them could have been drowned in that hole.

The responsibility, as I understand the minister's answer, is on the owner of the land although he had no responsibility for putting down the hole or, in the case mentioned by the member for Royal, for digging the mine. A company puts down a hole, then goes off and leaves it and they have no responsibility. The sole responsibility is on the owner of the land.

Mr. Garson: I certainly do not profess to be any expert on mining law problems in Alberta. But it has been my impression, and I think perhaps it is the impression of the hon. member for Calgary North himself, that the owner of the mineral rights has to make an arrangement with the owner of the surface rights in order to use the surface rights for the purpose of realizing upon his minerals. I would imagine that the contract which is made between them, if it is properly drawn, would contain a clause protecting the owner of the surface rights by stating that after the mining operations have been concluded the surface would be restored to that condition which will not leave the owner of the surface rights open to a penalty under a clause such as this clause 228 (2). I am sure that whatever the issue may be as between the owner of the surface rights and the owner of the mineral rights, the law should not leave out of account the position of those who could fall into a trap of that sort and be seriously injured. It is the purpose of this clause 228 (3) to protect these persons. This law has been the law of Canada since the code was passed originally in 1892. In that time there does not seem to have been any great hardship developed under it.

[Mr. Garson.]

Mr. Harkness: Where the mineral rights go with the surface rights, I can see it would be entirely a matter of contract, and there would be no difficulty. Where you have a situation such as that which prevails in most of Alberta, Saskatchewan and Manitoba, where the mineral rights and surface rights do not go together, you get a different situation. As the hon. member for Kamloops says, you cannot contract out of a criminal liability. The criminal liability, under this provision, applies to the owner of the land.

Mr. Garson: I suggest to my hon. friend that while one cannot directly contract out of a criminal liability, yet if a criminal liability arises because a certain thing is not done, one can have a clause in a contract to provide for the doing of that thing. By so doing, he will get out from under that criminal liability.

Mr. Knight: A good many accidents on the prairies are due to the fact that wells, perhaps abandoned or unfinished, are left without fencing, or the fencing has deteriorated to such a degree that children or livestock can fall in. My understanding of the law is that the owner of the land is liable for the value of such livestock.

Then there is another type of accident that has become more common, where children are drowned in what are considered to be swimming holes, but which are really dugouts, many of which were dug under the auspices or the sponsorship of the Prairie Farm Rehabilitation Act administration. I am wondering what the responsibility would be of the federal government, as the owner of some of these places, in the matter of keeping them fenced, or having warning notices in regard to bathing, and that sort of thing.

Mr. Garson: I dislike repeating a careful statement I read earlier to members of the committee, but perhaps the quickest way to clear up any possible misunderstanding in connection with the clause is to repeat the language of Mr. Justice Rand. I shall do that and ask my hon. friends to take careful note of what it says. Mr. Justice Rand says, in part:

> What is contemplated is the prevention of injury from hidden openings.

That is, a child has gone swimming over a period of time in a pool that has been excavated and has been in existence for a considerable period of time. The child is not drowned because of a hidden opening, but rather because he has suffered a cramp, or may have gone beyond his depth, or could not swim, or some other such reason.

Then, continuing the quotation:

> The fence or guard must protect the unwary; but when the existence of the opening is made evident, then the purpose of the fence or guard is accomplished.

In other words if one had a gravel pit on his farm large enough for anyone to see, even at night, and people came there to swim, and if as a result of doing so someone was drowned, it could not be argued that he stumbled into the hole by accident. Under such circumstances I should think that the language used by Mr. Justice Rand, read in conjunction with the language in this clause, would indicate that there would be no criminal liability.

On the other hand, if one had a dug well, level with the surface of the ground, and a person coming along could not see it until he fell into it, I should think criminal liability under this clause could likely be established.

Mr. Ferguson: With reference to mineral rights in Alberta, if an oil company or a mining company obtained the right from the province to drill a well—and I believe that is necessary now, because they control the mineral rights—

The Chairman: Order. We are discussing a clause which deals with excavations. We are not discussing mineral rights in Alberta.

Mr. Ferguson: My question is apropos of the explanation given by the minister. You could not have an oil well without having an excavation. These are excavations. Perhaps I should not call them oil wells; I shall call them excavations. If an oil company makes an excavation and a child or an adult falls into it, the owner of the land upon which the excavation was made could be sued for damages. Could not the claimant sue the province of Alberta, jointly with the oil company, because the province has given the right to make the excavation? Would they not be jointly responsible?

Mr. Garson: Mr. Chairman, there is a limit to irrelevancy and I think in this question we have passed that limit. It seems to me the question as to whether one can sue Her Majesty in the right of the province of Alberta involves many other questions, among others the question of whether they have a petition of right act in Alberta and whether one could obtain permission to sue the provincial crown under that act. I suggest the hon. member's question has no bearing on the clause we are discussing because, as I said before, while a person may have mineral rights, my understanding is that the owner of the mineral rights has to make an arrangement with the owner of the surface rights, by contract. He must pay for the use of those surface rights, so that he can go on the surface in order to get at his minerals. In the course of doing this it is an elementary precaution for the lawyer drawing up the contract to see that there is included in it a clause stating that these holes are to be properly filled in when derricks or other apparatus are removed from the operation.

Mr. Fulton: I agree with the minister, as far as he goes; but I do not think he has dealt with the point raised by the hon. member for Calgary North. I do not know, actually, whether it can be dealt with, or whether there is a way in which the owner of the surface rights can avoid criminal liability. True, he makes a contract with the oil drilling company or the mining company which calls upon them to fence in the excavation and to put up adequate warning. The criminal liability is not going to arise unless that duty is not performed. It is a question of what happens when, admittedly in breach of contract, they fail to put up a fence and someone falls in and is injured. It looks to me as if the owner of the surface rights is the only person criminally liable. As the hon. member for Calgary North has said, he cannot contract out of that criminal liability. He cannot contract for the company to go to jail in his place; he has got to go to jail. I do not see that there is any way out of it.

There certainly is no way under the present law. The answer might be that the owner of the surface rights has to give greater supervision and see that the mining company does fulfil the contract. Has any consideration been given to the matter? Does the minister know of any case where the owner of land has been prosecuted under those circumstances, where an excavation was made by a mine?

Mr. Garson: No.

Clause agreed to.

On clause 229—*Sending or taking unseaworthy ship to sea.*

Mr. Trainor: Is there any exception on the basis of size or tonnage, or does the clause apply to any boat or vessel, irrespective of size? Would it apply even to a small motorboat, carrying only one person?

Mr. Garson: There is no limitation, provided the vessel in question comes within the reference in the clause to a Canadian ship.

Mr. Trainor: Supposing the ship is only a motorboat driven by its owner and carrying no passengers. If it is unseaworthy, is he liable to prosecution?

Mr. Garson: I would question very much whether a small boat like that would fall within the term "ship".

Clause agreed to.

On clause 230—*"Assault"*.

Mr. Bell: I should like to feel satisfied that this general clause covers two recent cases about which we have been reading in the newspapers. The first of these occurred in the United States where a southern negro was charged with an assault of some kind when he leered across a field at a white woman, a distance of two or three hundred yards. I do not know the outcome of the charge, but I do know the case received publicity.

Then, secondly, I would refer to the slasher cases in Montreal which, I presume, would come under this assault clause. I am wondering if the minister feels satisfied that in these extreme cases the clause is sufficient.

Mr. Garson: Did the hon. member say the first case was that of a negro who leered?

Mr. Bell: Yes, leered—what we do across the floor of the house sometimes.

Mr. Garson: I think this leering would not be an assault under Canadian law. If on the other hand he aimed a loaded rifle at her, it would be different. However, I should think it would be very difficult to assault someone by leering across a distance of—how far did the hon. member say?

Mr. Bell: It was quite a few yards.

Mr. Garson: I thought the hon. member said 200 yards.

Mr. Bell: It was about that distance.

Mr. Garson: Yes. In that connection would my hon. friend look at subclause (b) of this section, which reads:

> A person commits an assault when, without the consent of another person or with consent, where it is obtained by fraud, (b) he attempts or threatens, by an act or gesture, to apply force to the person of the other, if he has or causes the other to believe upon reasonable grounds that he has present ability to effect his purpose.

I do not think it would be possible by leering at a person across a distance of 200 yards to convince the other person that he had the present ability to assault her. Indeed I do not know whether leering would be an act or gesture which attempted or threatened to apply force. It might be a look of admiration.

The Chairman: Shall the clause carry?

Mr. Bell: I am wondering about the second point I brought up about the slasher in Montreal; I am wondering whether that would be covered by this clause or perhaps by one of the others.

Mr. Garson: Again, if my hon. friend will look at the clause he will find:

> A person commits an assault when . . .
> (a) he applies force intentionally to the person of the other, directly or indirectly.

The application of a razor to the body is the application of force.

Clause agreed to.

Clauses 231 and 232 agreed to.

On clause 233—*Kidnapping.*

Mr. Enfield: This clause reads:

> Every one who kidnaps a person with intent . . .

I do not see any definition of "kidnap" in the definition section of the act. Should that not be included? There is no formal definition of the word "kidnap" in this clause.

Mr. Garson: In the interpretation sections of statutes like the Criminal Code there are included definitions of terms which it is thought might be misinterpreted if they were not defined for the purpose of the act. However, the term "kidnapping" is of a reasonably precise meaning as taken from the dictionary, and I would not think it would be necessary to define its meaning in the interpretation section. When we mention the word "kidnapping" I do not think that anyone would take it to mean other than that which we all take it to mean.

Mr. Fulton: Does the minister then mean that in the case of the sale of those babies there is no room for the application of the criminal law under subclause (b) where it is mentioned:

> To cause him to be unlawfully sent or transported out of Canada against his will.

In the case of an infant you cannot get the act of consent. Does the minister not think there is room for argument that absence of consent would bring the offence within the provisions of subclause (b), particularly if the sale was unlawful by virtue of the terms of a provincial statute? Would there not then be room to argue that in addition to the contravention of the provincial statute a criminal offence is committed?

Mr. Garson: Of course, Mr. Chairman, a great difficulty, an almost insuperable difficulty in discussing the Montreal cases that are being reported in the newspapers is that it is impossible to find out with any precision from the newspaper reports what all of the facts are that are within the knowledge of the prosecutors who are laying the charges.

Mr. Fulton: I agree with you there.

Mr. Garson: The last report that I got on these cases indicated that there were three types of charges that had been laid, and none of them was kidnapping. I should not have thought that where the mother—I am not suggesting that this is a fact in the Montreal cases, because I do not know—of an illegitimate child who herself might be impoverished and did not feel that she could properly provide for it, parted with it voluntarily, that the person to whom she surrendered it would be a kidnapper because there would not be any element of taking the child away from her. She might surrender the child voluntarily, and if so it would seem to me that it might be difficult to establish any charge of kidnapping.

Mr. Fulton: I am confining it exclusively to subclause (b) on the ground that the parent has consented. The parent has apparently received payment for the transaction. Certainly the parent has consented. Therefore I agree that the only room for argument along the lines that I am suggesting is whether it has been considered as coming under subclause (b), which refers to the infant itself, by virtue of the fact that the clause will read:

> Every one who kidnaps a person with intent—
> (b) to cause him to be unlawfully sent or transported out of Canada against his will.

That appears to be pretty close to the cases that are taking place. They are transported out of Canada. It is unlawful in that it contravenes a provincial statute, and since the infant is below the age at which he can give an act of consent, it might be argued that it is against his will. I know it is hypothetical and one hesitates to ask the minister to give an opinion on hypothetical cases. I am asking him simply whether he thinks there is any room for an argument of that sort. I should like the matter to be given a little publicity through the medium of the committee here. I am asking whether he does not think that, under the wording of the new clause 233, the prosecuting officer in cases of this sort might well contemplate laying a criminal charge as well as proceeding under the terms of the provincial statute.

Mr. Garson: My understanding is that three groups of criminal charges have already been laid.

Mr. Diefenbaker: What were those charges?

Mr. Garson: They were perjury, falsification of the register and conspiracy to commit an indictable offence.

Mr. Diefenbaker: What was the indictable offence?

Mr. Garson: There was no indication as to what it was. That is the difficulty. You see, we are discussing here cases, which are sub judice and the full facts of which we do not know. That being so, as I suggested the other day in the statement that I made in the house, it seems to me that if legislation be required, we can decide upon the type of legislation that is required much more intelligently when this matter is no longer sub judice and all the facts become known, and thus we could know accurately the nature of the problem that the proposed legislation would be aimed at.

Mr. Diefenbaker: This is a very interesting point. Certainly this clause does not cover the situation, because the essence of this clause, as I see it, is the kidnapping of a person with intent to do certain things, namely, to cause him to be unlawfully sent or transported out of Canada against his will. The essence of this offence is the kidnapping. In the circumstances of the cases now before the courts, which we cannot discuss, the essence of the offence is not kidnapping. However, I should like to ask the minister whether his law officers have given any consideration to the creation of an offence to cover facts similar in nature to those that today are receiving such publicity by reason of actions before the courts at the present time. Certainly the rights over children are clearly within the jurisdiction of the provinces, and yet if this type of thing becomes general it has in it all the elements of crime. I would like to ask the minister whether there is any common law offence at the present time to cover the situation disclosed by the investigation and by the evidence which is known to him to exist in these cases, which are at present before the courts in Montreal. The minister says that the accused are charged with forgery—

Mr. Garson: Falsification.

Mr. Diefenbaker: Yes, falsification and—

The Chairman: I am sure the hon. member would not wish to pursue this line of discussion too far especially in view of the explanation which the minister already gave this afternoon and in view of his statement a few days ago. The hon. member will agree that we are discussing clause 233 and surely we should confine our discussion to strictly relevant matters appertaining to that clause.

Mr. Diefenbaker: Mr. Chairman, we are attempting to determine what set of facts this clause might be applicable to, and we were in an inquiring state of mind; for after all—

The Chairman: Might I suggest that the hon. member confine his inquiries to the clause before the committee.

Mr. Diefenbaker: But there had been no reference by you, Mr. Chairman, to the effect that this discussion was out of order, and it was only after I started discussing it and tried to find out the degree to which this clause might be applicable that Your Honour saw fit to raise the point of order. With all due deference, sir, and without in any way wishing to continue the discussion, I would like to ask the minister this. What is the nature of the conspiracy? What is the indictable offence?

The Chairman: Order. The hon. member will surely agree with me that he cannot proceed with a discussion of that kind under clause 233.

Mr. Diefenbaker: Mr. Chairman, with the greatest deference, there is no other clause under which it can be discussed and—

Mr. Garson: Mr. Chairman, on a point of order. I believe I can clear the matter up for my hon. friend to his entire satisfaction. I thought I had made it clear on four or five previous occasions that even if it were proper for us to discuss it when it is sub judice, it is extremely difficult to obtain the facts in the case. Therefore, not having the facts, it is impossible for any lawyer to say whether a certain section of the code applies to facts which he does not know.

Mr. Diefenbaker: Mr. Chairman, there is just one question I would like to ask the minister. What is the nature of the indictable offence? After all, the crown cannot simply say that a person is guilty, or charge him with conspiracy to commit an indictable offence. Is the indictable offence kidnapping or abduction?

The Chairman: We cannot discuss this matter when it is sub judice.

Mr. Diefenbaker: Mr. Chairman, I do not wish to appeal against your ruling, but—

Mr. Garson: Might I say to my hon. friend that while we have competent lawyers in Montreal watching the progress of this case for us, we have had no information as yet as to the indictable offence which is involved in that conspiracy charge.

Mr. Fulton: I suppose forgery might be.

Mr. Garson: It might be either forgery or falsification of the register.

Mr. Diefenbaker: Would falsification of the register be a criminal offence?

Mr. Garson: Oh, yes. Fourteen years is the penalty.

[Mr. Diefenbaker.]

The Chairman: Shall clause 233 carry?

Some hon. Members: Carried.

Clause agreed to.

Clauses 234 to 236 inclusive agreed to.

On clause 237—*Procuring miscarriage.*

Mr. Knowles: Mr. Chairman, I would like to ask a question with respect to clause 237. When we were on clause 209 there seemed to be some relationship between it and clause 237. However, in the case of clause 209 it was pointed out that there was protective language covering cases carried out in good faith. That protective language does not seem to appear in clause 237. On the other hand, I believe that section 303 in the present code did contain the word "unlawful". I think the minister will see the point I am getting at.

Mr. Garson: Section 303 of the present code?

Mr. Knowles: Yes. Has the minister found it?

Mr. Garson: Yes.

Mr. Knowles: What I am getting at is that under the code as it now stands there would seem to be protection for a doctor who, for example, might perform an abortion for the sake of saving the life of the mother, but that protection which was there in section 303 of the present code seems to be missing from the language of clause 237. Perhaps the minister can point it out to me if it is there.

Mr. Garson: My hon. friend might prefer to use the particular term that it is "missing" but if he will look at the existing code section 306, which is the analogue of clause 209 in Bill No. 7, he will see the saving clause, which is subsection 2 of clause 306, and he will note that we have reproduced in the new bill the substance of the enactments under both these headings in the former code.

Mr. Knowles: That is exactly the point I was getting at when I first rose, Mr. Chairman, namely that the protective wording was there in both 303 and 306 of the former code, but in the code now before us the protective language is in clause 209 but is missing from clause 237. Can the minister assure us that such protection as is required—

Mr. Garson: We are discussing two cases here. One, which is under clause 209 of the bill, is an illegal operation and the other under clause 237 is abortions. So far as the illegal operation is concerned, the existing code and the new bill contain a saving clause. In relation to abortion there is no saving clause, so that—

Mr. Knowles: Does the minister say there was not such a clause in the former code?

Mr. Garson: Has my hon. friend the present code?

Mr. Knowles: Yes.

Mr. Garson: Will he look at—

Mr. Knowles: Section 303?

Mr. Garson: Yes, and he will see there is no saving clause in the abortion section—

Mr. Knowles: Does not the word "unlawful" cover that?

Mr. Garson: I do not think so. Clause 237, subsection 1, reads:

> Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention . . .

Intent is written into that clause. It is obvious that a person who intends to do that in breach of this section would certainly be liable.

Mr. Knowles: Is the minister satisfied that a doctor who performs such an operation for the purpose of saving the life of the mother is covered—

Mr. Garson: Yes, I am sure he would be because there would be no *mens rea* in a case of that sort, and in all these cases, without it being specifically mentioned in each section, it is necessary for the crown as part of its case to prove a guilty mind upon the part of the accused, whether it is so specified or not. I am sure my hon. friend would agree that it is very desirable that when that guilty mind is present, in the case of a doctor, he should be held to account criminally.

Mr. Knowles: Yes.

Mr. Garson: Most reputable doctors are very hesitant about performing an operation of this kind unless they take very careful precautions against falling into difficulties of this sort.

Mr. Knowles: Is the minister satisfied that the principle of *mens rea* covers that?

Mr. Garson: Yes.

Mr. Fulton: Who is to say whether it is justified?

Mr. Garson: Whether it is justified or not is a question of fact for the court to decide.

Mr. Trainor: With regard to clause 237, I should like to ask the minister whether he knows of any drug that may be used as a means of procuring an abortion.

Mr. Garson: I think that is a question I should be asking my hon. friend who is himself learned in the science of medicine rather than that he should be asking me. However, I do not think it is particularly material because the gravamen of the offence under clause 238 is this:

> Every one who unlawfully supplies or procures a drug or other thing knowing that it is intended to be used to procure the miscarriage of a female person, whether or not she is pregnant, is guilty of an indictable offence.

The cases indicate that even where there have been used, for the purpose of accomplishing an abortion, drugs which would not be effective for that purpose, the offence is complete under the section if the person supplies it for the purpose of procuring a miscarriage. One of the purposes of a clause of this kind is to discourage the practice of abortion.

Mr. Trainor: There is a case, I submit, Mr. Chairman, where a drug may be given and where the person concerned may know perfectly well that it will not produce an abortion but the person to whom it is given may not know that and may think that it will do so. As a consequence, the person who gives the drug merely, we will say for example, to satisfy the individual person, might still be guilty of an offence, even though he or she knew that it would not be effective but the person to whom the drug was given might think that it was going to be effective. There are cases in which doctors may do that sort of thing where they are approached and are asked for something that would have the effect of procuring an abortion. In order to satisfy the individual, they may give a perfectly innocuous drug.

Mr. Garson: I would suggest that that would be a very dangerous practice indeed for a doctor to engage in.

Clause agreed to.

Clauses 238 and 239 agreed to.

On clause 240—*Bigamy.*

Mr. Knowles: I notice that subclause 2 of clause 240 reads in part as follows:

> No person commits bigamy by going through a form of marriage if . . .
> (d) the former marriage has been declared void by a court of competent jurisdiction.

The marginal note out to the left of subparagraph (d) reads: "Annulment". Can the minister tell me what constitutes a court of competent jurisdiction under the heading of "Annulment"?

Mr. Garson: I am afraid that I could not give my hon. friend a comprehensive statement on that matter. It would be that court in the various provinces of Canada that had jurisdiction in respect of annulment. I could look that point up for my hon. friend but I could not give him the answer offhand.

Mr. Knowles: When the minister refers to a court of competent jurisdiction in any particular province, does he have in mind only a civil court or are there other kinds of courts that are recognized by this language?

Mr. Garson: It is not a case of recognition by this language. We have to interpret this language. But the court which determines these questions is a court established by the provincial authorities under the law in effect in a province.

Mr. Fulton: Perhaps the minister would deal with his own province and describe the situation there. That would probably answer the question.

Mr. Garson: I can do that very easily. In my own province it would be the court of king's bench which is the trial division of the superior court.

Mr. Knowles: It is the court of queen's bench now.

Mr. Garson: That is quite right. It would be the analogue of that court in the other provinces. In all cases the identity of that court is established by provincial law.

Mr. Knowles: I do not want to get into a question here that is too thorny or too embarrassing to anybody nearby or to anyone farther away either. What about the situation with respect to annulments that take place in provinces where they do not have a civil divorce court? Is the voiding of a marriage by the process of annulment in such provinces recognized by the code as the annulment of a marriage by a court of competent jurisdiction?

Mr. Garson: I cannot see my hon. friend's difficulty in this wording at all. It seems to me to be self-explanatory. It says this:

> No person commits bigamy by going through a form of marriage if . . .
> (d) the former marriage has been declared void by a court of competent jurisdiction.

Mr. Knowles: What is such a court?

Mr. Garson: That which is a court of competent jurisdiction is determined by the law in effect in the province concerned. If a civil court or an ecclesiastical court has jurisdiction to make such a declaration, then the only question that arises under this wording is whether it is of competent jurisdiction. The word "competent" covers it. You could not determine it in any other way because if it were not competent then the declaration of nullity would itself be void and the marriage would remain in effect.

Mr. Knowles: Does the minister know whether the court in the province of Quebec which corresponds to the court of queen's bench in our province, namely the Quebec superior court, entertains petitions for nullification of marriage?

Mr. Fulton: As distinguished from divorce.

Mr. Garson: I am afraid that I do not.

Mr. Knowles: I am sure the minister sees the difficulty that presents itself to us in connection with this matter. As the minister knows, there is no court—no civil court, at any rate—dealing with divorce in two of the provinces of the country. Yet we are informed that annulments take place in those provinces, after which there are instances of remarriage. So far as the Criminal Code is concerned, does that mean that whatever body it is in either of these provinces that annuls marriages, that body is for all practical purposes a court of competent jurisdiction?

Mr. Garson: No. I do not want my hon. friend to put words into my mouth.

Mr. Knowles: Let the minister choose his own words.

Mr. Garson: I know that he does not intend to do that. Clause 240 (2) (d) means that no person commits bigamy by going through a form of marriage either if the first marriage has been by divorce made a nullity or if the first marriage has been declared void on annulment proceedings.

Mr. Diefenbaker: A marriage could not be made a nullity by divorce.

Mr. Fulton: The marriage bond is dissolved.

Mr. Garson: My hon. friend is right, the relationship between man and wife is dissolved. The point my hon. friend is making is that in annulment proceedings a marriage is treated as null and void. That is the distinction, but in either case there is no longer a marriage. Therefore, since there is no marriage between the accused and any other person, it is not bigamy when he goes through a second form of marriage. Bigamy is the offence of going through a form of marriage when one is already married. If he is not married when he goes through the form of marriage then obviously he does not commit bigamy.

Mr. Knowles: I shall not pursue the matter, partly because I see that we are not getting anywhere. But I wonder if the minister would be good enough to make a note of this point and have someone in his department advise me, even if the information has to be sent to me in the form of a letter, whether it is federal or provincial law or the Quebec civil code that constitutes what is referred

to here as a court of competent authority for declaring void marriages that have taken place in that province.

Mr. Maltais: I might give these details to the hon. member by way of further clarification, and I may have some questions to ask. From my own experience, having only been married nine years, it would appear to me that in the province of Quebec competent jurisdiction would be that of the authorities of the religion to which one belongs. The people of Quebec do not recognize the right of courts in the province of Quebec to declare void a marriage that has been consummated legally. So far as paragraph (d) of subsection 2 is concerned, under the Catholic religion the competent authority would not declare that a marriage was void but could give a declaration to the effect that the marriage had never been consummated. That is the situation. In accordance with our old traditions we do not recognize the authority of any civil court to interfere in marriages. That is why I would say that under this clause the only competent authorities would be the ecclesiastical authorities.

Mr. Knowles: We all know that many churches do not follow the practice of dissolving marriages performed under their aegis. The United Church of Canada, for example, the one to which I belong, does not follow the practice of declaring null and void a marriage performed by a United Church clergyman, and I should like to know where is the recognition in law of the practice to which the hon. member for Charlevoix has just referred. Perhaps that is what I was asking for when I asked the minister if he would have the matter investigated. Maybe it is somewhere in the Quebec civil code.

Mr. Maltais: I still say that under the Catholic faith the authorities do not dissolve a marriage that has been consummated, and only interfere very rarely where there has been some serious mistake or misrepresentation. Our authorities would take the position that the marriage never took place, so there is no cancellation of a marriage that has taken place. When something like that happens, then under their concept our authorities just say that the marriage did not take place. They say that there was no former marriage and therefore there is no dissolution. Once you are married under the Catholic faith you are married forever, and that is why we do not want divorce in the province of Quebec.

Mr. Harkness: Are these courts of competent jurisdiction all courts within Canada or are courts outside of Canada recognized?

Mr. Garson: Any court of competent jurisdiction anywhere would be recognized. But to this I must add a warning. Divorces granted by courts of some jurisdictions which are based upon an obviously false residence of some six or eight weeks are not necessarily recognized as effective under Canadian law. But if a Canadian by a business transfer for example establishes genuine domicile in some other place, a domicile recognized under Canadian law, if he has to go there because of business or family considerations and intends to continue to live there; and having thus established a genuine domicile secures a divorce there, then that divorce will be valid. That divorce court will then be a court of competent jurisdiction, and the divorce granted by it will have the effect intended by this subsection 2(c) of clause 240. But if the accused has gone away and got a divorce upon the basis of residence which is not recognized in Canadian law the divorce would not be valid here.

Mr. Harkness: The minister has been referring to divorce generally in foreign countries, but I take it that subsection 2(d) is concerned with annulments rather than divorces. Perhaps I should have framed my question more definitely. Are any courts outside of Canada, whether ecclesiastical or otherwise, looked upon as courts of competent jurisdiction as far as annulment of marriage is concerned?

Mr. Garson: Yes, as long as they are of competent jurisdiction. In addition, so that my answer will not be misunderstood, the court not only has to be of competent jurisdiction but the proceedings taken in that court and the facts in connection with those proceedings must be such as, by the principles of private international law relating to marriage and divorce, will result in a finding by that court which will be effective in Canada in order to have the divorce recognized here.

Mr. Harkness: I am still not clear. Do I understand that if, for example, the ecclesiastical court of the archbishop of Mexico declares the marriage of two Canadian citizens is null and has never taken place that would be recognized in Canada?

Mr. Garson: I have not the faintest idea. This is a purely hypothetical question. It is quite impossible for anyone to sit here and rattle off opinions with respect to

whether a personage or a court in Peru or any other country would be a court of competent jurisdiction. Whether the civil or ecclesiastical court that grants the foreign divorce of a Canadian marriage is a court of competent jurisdiction will depend upon the laws of the other country, upon the question of domicile and other difficult points. It is a matter both of the law of that other country and the law of Canada. For example, if a Canadian man and wife go down to Reno to get a Reno divorce, it will not hold water in Canada because Canadian law does not recognize the type of domicile that is established in Reno, which is mere residence for a period of time without any intention whatever of staying there permanently.

Clause agreed to.

Clauses 241 to 246 inclusive agreed to.

On clause 247—*Newspaper.*

Mr. Fulton: Might I ask the minister, if the other members of the committee concur, if he would be kind enough to allow clauses 247 and 248 to stand? It was indicated to him that members on this side would like to make some extended remarks on defamatory libel.

Mr. Garson: That is satisfactory.

Clauses 247 and 248 stand.

Clauses 249 to 251 inclusive agreed to.

On clause 252—*Extortion by libel.*

Mr. Knowles: I should like to ask the minister to comment on clause 252 in relation to clause 291. It occurs to me that these two clauses are at least in the same field. As a matter of fact, the marginal note on clause 252 is "extortion by libel", and the marginal note opposite clause 291 is just "extortion". As I read the two separate clauses, it strikes me that the offence set out in clause 252 is every bit as serious an offence as that set out in clause 291. In fact, I can see an argument being made for the position that the offence under clause 252 is more serious than the one under clause 291. Let me read a bit of clause 252.

> Every one commits an offence who, with intent
> (a) to extort money from any person, or
> (b) to induce a person to confer upon or procure for another person an appointment or office of profit or trust, publishes or threatens to publish or offers to abstain from publishing or to prevent the publication of a defamatory libel.
> (2) Every one commits an offence who as the result of the refusal of any person to permit money to be extorted or to confer or procure an appointment or office of profit or trust, publishes or threatens to publish a defamatory libel.

Despite the fact that that strikes me as a rather serious offence, the punishment for it is only five years, whereas the penalty under clause 291 is 14 years. Would the minister comment? There certainly does not appear to me to be that much difference in the seriousness of the two offences, and it strikes me that the offence under 252 might be even more serious than that under 291.

Mr. Garson: If my hon. friend were going to the code and examining these punishments for the various crimes that are listed there, he would see that those which involve violence or the threat of violence to the person of the victim carry a heavier penalty, on the average, than those which do not involve violence. This is certainly true of the two clauses which my hon. friend is comparing now.

Under the present code and in the first draft of the new one, clause 252 only carried a penalty of two years. It was increased to five years in the House of Commons special committee, and appears as five now by reason of that increase. Now, extortion by violence or threat of violence comes under the heading of robbery, which is theft by violence, and it is the element of violence which attracts the heavier penalty. In the case of this clause the penalty is the penalty that has been in the existing code.

Clause agreed to.

Clauses 253 to 275 inclusive agreed to.

On clause 276—*Theft by person required to account.*

Mr. Diefenbaker: Has any change been made in this section or is it entirely a reproduction of the old section 355? I have not a Criminal Code before me.

Mr. Garson: No change.

Clause agreed to.

Clauses 277 to 288 inclusive agreed to.

On clause 289—*Punishment for robbery.*

Mr. Knowles: Would the minister care to comment on this clause? Perhaps I should make the same request with respect to it that I made with respect to the clause having to do with capital punishment. Before doing so, may I ask if I understand the situation correctly? It seems to me that the penalty has been increased from what it was in the former code. It was 14 years before, was it not, and it has now been increased to imprisonment for life and whipping. I am sorry, I was only partly right. It was 14 years and whipping and it has been increased to life imprisonment and whipping. I think it would only be reasonable to make the same request I made with respect to capital punishment, and ask that this clause

be allowed to stand, just in case the special committee gets through its work before this committee does.

Mr. Garson: I agree with that. You are speaking about clause 289?

Mr. Knowles: Yes.

Clause stands.

Clauses 290 to 292 inclusive agreed to.

On clause 293—*Being unlawfully in dwelling house.*

Mr. Knowles: Once again we have this phrase, "proof of which lies upon him". Can the minister answer that satisfactorily in a brief statement or should we ask that the clause stand?

Mr. Garson: Yes, I think I can.

The man who enters or is in a dwelling house with intent to commit an indictable offence therein is in a dwelling house which is not his own; and it does not seem at all unreasonable to expect him to say why he is there. If he is innocent, that is his obvious defence. Prima facie he has no business being there; but if he has a lawful excuse for being there, that can very easily be established.

Mr. Knowles: The hon. member for Kamloops and I have been trying to look up the old section. There certainly is a difference in the wording. We have not yet been able to make up our minds as to whether there is a difference in meaning. The new wording does include for the first time the idea of putting the onus of proof on the accused.

Mr. Garson: It was on him under the old section.

Mr. Knowles: Now that we are getting at this, let us see what the old section says.

Mr. Garson: It is section 462 (2).

Mr. Knowles: Section 462 reads:

Every one is guilty of an indictable offence—

Mr. Garson: No, subsection 2 of the section.

Mr. Fulton: That is the same as subclause 2, but the onus of proof is placed on the accused for the first time here. The onus of proof that he is there with lawful excuse is placed upon the accused for the first time by this wording.

Mr. Knowles: The old section read:

Every one is guilty of an indictable offence and liable to seven years' imprisonment who unlawfully enters, or is in, any dwelling-house by night with intent to commit any indictable offence therein.

The term of imprisonment is now being changed to ten years. And then subsection 2 in the old code:

The unlawful entering or being in any dwelling-house by night shall be prima facie evidence of an intent to commit an indictable offence therein.

The suggested wording in the new clause is this:

293 (1) Every one who without lawful excuse, the proof of which lies upon him, enters or is in a dwelling house with intent to commit an indictable offence therein is guilty of an indictable offence and is liable to imprisonment for ten years.

It strikes me that the matter of putting the onus of proof on the accused has been imported into the clause, whereas it really was not there before. In other words, I am suggesting this is more than codification; this is a change.

Mr. Garson: No; I suggest that in a case of this kind, if an accused has been found in a dwelling house, both under the old law and the proposed new law, the unlawful entering or being in the dwelling house is prima facie evidence of intent to commit an offence.

When the fact is established in the hearing that an accused was in the house, that fact under subsection 2 is prima facie evidence of his intent to commit an indictable offence therein.

Then if my hon. friend will compare this new clause 293 with the present section 462, he will see that the accused is given what he did not have under the present section. The new clause says, "Every one who without lawful excuse". If he has a lawful excuse for being there, that will protect him.

Mr. Knowles: The old section contained the words "unlawfully enters".

Mr. Garson: Yes, "unlawfully enters"; but under the new clause he has the defence of a lawful excuse if he can establish it. As in several of these cases, when the onus is shifted to the accused it is so shifted because the evidence by which that excuse is established is peculiarly in the possession of the accused. Nobody else can prove his excuse.

He is in the house unlawfully. By the operation of this subclause 2 he is prima facie there for the purpose of committing an indictable offence. The new clause says that if he has a lawful excuse, that will protect him. But he must establish what that excuse is. How could anyone else establish it? The crown does not know what his excuse is. Is it not reasonable that where he is found in a house in that fashion he should have the opportunity of excusing himself by establishing within the terms of the new clause such lawful excuse, and who but the accused himself could establish it?

Mr. Diefenbaker: As a matter of fact there is an authority on that point. It is Rex *v.* St. Clair, 21 Canadian Criminal Cases, 350, which deals with the establishment of a defence in respect of a lawful excuse. At that time they were dealing with section 228, the old section, of being found in a disorderly house without lawful excuse. The case states that the defence may presumably set up not only the circumstances which would at common law justify his presence in the house, but show that he was rightfully there in pursuance of a duty imposed by municipal or provincial authority—for instance as a sanitary officer inspecting premises, and so on.

While this clause does have the appearance of establishing an onus, if I read it correctly, it is in reality putting into legal phraseology the responsibility which has always rested upon an accused person, that of proving he was there by lawful excuse.

Mr. Garson: That is right. I agree entirely with the statement of the hon. member for Prince Albert. If the crown rested its case by proving he was there, where he should not be, and he did not offer any evidence at all, he would have a hard time to avoid conviction.

Mr. Lusby: I am wondering if, when the redrafting was being done, any consideration was given to the advisability of making it an offence when an accused enters a dwelling house without any reasonable excuse, but when such person does not have the intent to commit an indictable offence. As I understand it, a man could under these circumstances come to my house in the dead of night, push open a closed window and roam around the house, and yet he would not be committing a criminal offence. It seems to me that he should be made guilty of an offence punishable on summary conviction. In my view there should be an offence of some kind set up under the Criminal Code to deal with those circumstances.

Mr. Garson: Is that not fairly well covered by the existing law, when clause 293 states that if a man enters another man's house unlawfully, the fact that he is there is prima facie evidence that he entered or was in the dwelling house with intent to commit an indictable offence therein. He can be prosecuted for that. Of course my hon. friend is right when he says that, if he can offer a lawful excuse, he will secure acquittal.

I suppose my hon. friend's complaint is that in such case he should be subject to conviction for some lesser offence. It runs in my mind that there is a section in another portion of the Criminal Code or elsewhere defining the offence of trespass and that the circumstances described by the hon. member would come under that section. However, I cannot put my hand on it at the moment.

Clause agreed to.

On clause 294—*Entrance.*

Mr. Fulton: I suggest that clause 294 is to some extent new, although it says that it is founded on section 340. Yet I find in Tremeear the statement that under the present law a person is not guilty under section 462, which is the section corresponding to the new clause 293, if only his hand or a portion of his body is in the house. It is specifically provided now that:

> A person enters as soon as any part of his body or any part of an instrument that he uses is within any thing that is being entered . . .

I observe that that is very much the same wording as section 340 of the old code. Yet it appears that, as I say, according to the authority of Tremeear's statement at page 113, at the bottom of the page:

> Accused was found at night climbing up the side of the building, with one arm in through an open window. He was convicted under a statute similar to section 462.

As I point out, section 462 is now clause 293. I continue:

> On appeal, held, the conviction must be quashed. The statute required that accused be found in a building, and this accused was found outside the building trying to get in. While he might have been guilty of other offences, he was not guilty of the offence charged.

The case there is an English case, namely Rex *v.* Parkin, 1929, 2 All England Reports. As Tremeear points out, it is a statute similar to our section 462. I ask the minister why it was decided that clause 293 should be made applicable to a person who was not wholly in but only partly in the building. Was that a deliberate decision, or did it come about by accident?

Mr. Garson: It was quite deliberate. This new clause 293 corresponds to the present section 340.

Mr. Fulton: No, 462.

Mr. Garson: This new clause 294 corresponds to the present section 340, and subparagraph (b) (ii), to which my hon. friend refers, is in part new, and it is the new part that my hon. friend is querying. It was to overcome the difficulty which arose in the case of Rex *v.* Miller, 91 Criminal Cases, 270, in which it was held that the raising of a window that was already partly open did not constitute a breaking as that term was defined in the law as it then stood, that the change in wording was made.

Mr. Fulton: In other words, as the minister said, Rex *v.* Miller held in effect that

attempting to get in or being found in the act of getting in but not being actually in was not included in the section and a conviction could not be founded upon those circumstances. I do not see that there should be much objection to that intention if it is clearly proven that the man was attempting to get in. I have no objection. I just wanted to establish that it was being deliberately done to bring that set of circumstances within the ambit of the clause.

Clause agreed to.

On clause 295—*Possession of housebreaking instruments.*

Mr. Knowles: Will the minister comment on this clause as well? I note once again that the phrase "the proof of which lies upon him" is in this clause.

Mr. Diefenbaker: That was in the old section, too.

Mr. Knowles: All right; I will accept the correction of the hon. member for Prince Albert that the wording was there before, but as a layman it does seem to me that this phrase is in the code a great many times. We hear it said so often that it is one of the basic principles of British justice or Canadian justice that the accused is innocent until he is proven guilty. I certainly do not like to take a position that might be misinterpreted as condoning any of the offences that we are dealing with in this part of the code, and I am sure no one would so misinterpret my position. But I wonder whether in this case consideration was given to this point. While the minister is commenting will he comment on the fact that in this instance the penalty has been increased to 14 years? When I compare clause 295 with clause 293 it turns out that it is a more serious offence to have in one's possession an instrument for housebreaking than it is actually to enter a place. You may have an instrument, I suppose, and do nothing with it. You may have it in your possession and get 14 years. But if you enter without lawful excuse, under clause 293, the maximum penalty is 10 years. Maybe it is just a case of a layman needing a little instruction. On the face of it it looks odd to me.

Mr. Garson: We might examine my hon. friend's contention by seeing how this would read if we took up the language to which he objects and had it say:

> Every one who has in his possession any instrument for housebreaking.

Mr. Knowles: The minister forgets the words "without lawful excuse".

Mr. Garson: All right; I will take it this way, the way in which I have read it, leaving out "without lawful excuse":

> Every one who has in his possession any instrument for housebreaking, vault-breaking or safe-breaking is guilty of an indictable offence and is liable to imprisonment for fourteen years.

That would be very hard upon an honest person who might have those instruments for perfectly honest purposes. Therefore it seems reasonable that we should insert the words "without lawful excuse". Once we insert the words "without lawful excuse" we run into the same old difficulty: how is the crown going to prove the accused's excuse? He is the only one who knows what his excuse is. If he has a good excuse, if he is an honest man, all he needs to do is to state his position and he is clear. If he is not an honest man, if he is unlawfully in possession of housebreaking instruments then he should be prosecuted.

Now, with regard to those penalties to which my hon. friend refers, I can only say that the question was considered at great length in the Commons committee and we there came up with the view that the penalty should remain as it is. It, too, is a maximum penalty, and the question which arises is whether the facts of such a case as could arise under this section would be sufficiently serious to warrant the imposition of a penalty of that magnitude.

Mr. Knowles: If I may deal with the latter point first, I should like to point out that under the old code, for what is now under clause 293 the penalty was seven years, and the penalty for what is now under clause 295 was five years. The relationship has been reversed. The first one is now raised to 10 years and the second one to 14 years.

Mr. Garson: With great respect, Mr. Chairman, I think the linking by my hon. friend of the penalty under clause 295, which has to do with the possession of housebreaking tools, with the penalty under clause 293, which has to do with being unlawfully in a dwelling house, is not a proper one. The comparison should be between the penalties under clause 295, I suggest, and those for breaking and entering under clause 292 because there is a distinction drawn between the case of a person who is unlawfully in a dwelling and a man who uses housebreaking tools to break his way in. That distinction goes through the whole piece; and the possession of housebreaking tools was considered to bring the accused into the category of a burglar and the penalty therefore, as in clause 292, is 14 years.

Mr. Knowles: One other point occurs to me. I find I was a bit hasty in accepting the correction of the hon. member for Prince Albert a moment ago. Now I am relying on the advice of another of my legal friends, the hon. member for Kamloops. Apparently in this instance it is a good idea to have two lawyers on your side.

An hon. Member: What about yourself?

Mr. Knowles: As a matter of fact the only time I had occasion to take a case to court I had one lawyer and my opponent had two and I won the case. However, in this instance I am relying on the judgment of two lawyers. It is pointed out to me that under section 464 the requirement that the proof should lie upon the accused applied only in the case of possession of housebreaking instruments by night. Now there is the necessity of the accused proving that he had a lawful excuse, and that necessity applies to both day and night.

Mr. Garson: The provision of a lawful excuse in the terms of the clause itself is an advantage to him, and he is the only one who can establish it. The clause imposes no disability upon the accused in saying that he is not guilty if he has a lawful excuse. The accused is better off for the inclusion of the words "without lawful excuse", and once they are included the accused is the only man in a position to provide the evidence of his lawful excuse.

Mr. Fulton: In that respect I do not know that a great deal hinges upon it, but I believe we should be clear in our thinking. Under the present code, section 464, the having of tools in a person's possession by night was an offence unless he had a lawful excuse, the onus of proving which was placed upon him. If he had them in his possession by day it was not an offence regardless of whether he had a lawful excuse. Even if he had them in his possession by day the crown had to prove that he intended to commit an offence with them, and the onus on the crown was very great. If the crown could prove that he had them with intent to commit an offence, then that completely negatived the possibility of any lawful excuse. Therefore the onus on the crown in the case of a charge of being in possession of housebreaking instruments by day was a very heavy one, and in connection with the possession of housebreaking instruments by night it was not quite so heavy. It is true, though, that the onus of proving the lawful excuse was on the accused, and that seems reasonable.

In other words there was a difference in the degree of onus and degree of automatic liability, if you like, attaching to the possession of housebreaking instruments by night, as against the possession of these instruments by day, and that difference has been eliminated in the new clause. I wonder if the minister could tell us by what process of reasoning the conclusion to eliminate that difference was arrived at, because it seems to me the clause as it now stands will go hard with the genuine artisan who always carries his tools by day, who might well be faced with the prospect of answering a charge of being in possession of housebreaking instruments.

I believe that is why in the case of possession by day, under the present section, the crown was under that very heavy onus of having to prove intent to commit an unlawful act. People will be walking about with tools or instruments that might be used for housebreaking but which in fact are in their possession for perfectly lawful purposes, yet the onus on the crown to prove the element of intent is less under the new clause. Can the minister say why it was decided to eliminate that difference between possession by night and possession by day?

Mr. Garson: Mr. Chairman, as I recall the discussions in the House of Commons committee it was considered desirable that it should be equally unlawful whether by night or by day. Then by providing that the accused was guilty only in those cases where he had no lawful excuse, in view of the fact that asking him to provide the evidence to prove this excuse was not an unreasonable provision, the committee thought that this would be a better clause than the old one.

Mr. Fulton: I understand it was discussed at length in the special committee. I wish a transcript had been kept of the evidence presented at that committee as well as a record of the minutes of their proceedings. I am not very happy about this because the carpenter, the plumber, the road foreman, and the mining foreman are now all in the possession of instruments by day which could certainly be used as housebreaking instruments, yet the legality of their possession is made shakier than it was under the old section. I am not very happy about it, but since it was discussed at length by my colleagues in the committee last year and they were satisfied I shall not press the matter any further.

Clause agreed to.

Clauses 296 to 302 inclusive agreed to.

On clause 303—*"False pretence"*.

Mr. Ellis: Mr. Chairman, I am wondering whether subsection 2 of this clause would grant some measure of protection to purchasers of goods, particularly those who sign contracts to purchase goods where the advertisement or approach by salesmen would constitute gross exaggeration. There have been several cases brought to my attention where salesmen have managed by one sales gimmick or another to persuade persons to purchase goods and sign contracts and it was only after they had signed a contract that they realized just what they had become involved in.

I would like to know whether this clause as it is at present constituted would give some measure of protection in cases of that kind. I am well aware of the old maxim "let the buyer beware" and that the purchaser of goods has to exercise a certain amount of judgment, but I do feel there are instances where sales techniques are being used which are not morally sound, and I believe some provision should be made to take care of cases of that kind.

I think perhaps I have made my point clear, and I hope it will be understood that I am referring to sales that are made by means of such methods. I recall being approached by a salesman at one time, and according to him the goods were free. They were going to give me a gift of goods; then of course the next step was to involve me in an agreement to receive perhaps a gift or a particular item. One step would lead to another and eventually the customer would be tied by a contract. I believe there are many instances of that and certainly a number of them have been brought to my attention recently. Does this clause provide a measure of protection against what I consider to be offences of that kind?

Mr. Garson: I presume that what my hon. friend means when he uses the word "protection" is the protection that should be provided by the criminal law.

Mr. Ellis: That is right.

Mr. Garson: I think clause 303 does provide such protection. What I suggest to my hon. friend is that he look at clause 303, subclause 2. It reads:

> Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried to such an extent that it amounts to a fraudulent misrepresentation of fact.

Concerning this my hon. friend says to me very properly, "What is a fraudulent misrepresentation of fact?" The next subclause gives the answer to that question. It reads:

> For the purposes of subsection (2) it is a question of fact whether commendation or depreciation amounts to a fraudulent misrepresentation of fact.

Therefore it is a question of fact that has to be decided on the facts of a given case as to whether the false pretence charged amounts to a fraudulent misrepresentation of fact. If my hon. friend feels that, in selling him a bill of goods, a salesman has carried this exaggerated commendation to the point where it is fraudulent misrepresentation, then he goes to the crown prosecutor and says, "This salesman has defrauded me by making the following fraudulent misrepresentations to me". The crown prosecutor listens to my hon. friend's story and, if he thinks there is a reasonable case there, he lays an information under this clause. The case then comes before the court for trial. Whether the statements that were made by the accused salesman to my hon. friend constituted a fraudulent misrepresentation is the question of fact which the court has to decide upon the facts of the case. If the court decides that question of fact in my hon. friend's favour it will bring in a verdict of guilty.

Mr. Hahn: In that connection I would say there are thousands of fraudulent misrepresentations of facts over the radio every day of the week in this country in connection with soap advertising. The only reason no action is taken is that so little money is involved per person. I believe that possibly greater care should be taken to see that, with respect to the exchange of goods for small amounts of cash, the householder is more fully protected. It may be only a matter of 30 or 35 cents to the housewife; but if she buys a package of one kind of soap, the next thing she knows she hears that it is the worst soap on earth because it does not get clothes as white as some other product. Is there in the act a section to protect one from such fraudulent practices?

Mr. Garson: Will my hon. friend look at clause 306? Perhaps I had better put it on the record.

Mr. Knowles: It is a long one.

Mr. Garson: It reads in part as follows:

> Every one who publishes or causes to be published an advertisement containing a statement that purports to be a statement of fact but that is untrue, deceptive or misleading or is intentionally so worded or arranged that it is deceptive or misleading, is guilty of an indictable offence and is liable to imprisonment for five years, if the advertisement is published

(a) to promote, directly or indirectly, the sale or disposal of property or any interest therein, or
(b) to promote a business or commercial interest.

Then in other parts of that same section it goes on to prohibit other types of false advertising.

Mr. Hahn: A charge has to be laid by the individual concerned, does it not?

Mr. Fulton: An information has to be preferred.

Mr. Garson: An information would have to be laid; yes.

Mr. Hahn: My point is this. We have thousands and thousands of these cases, let us say, of boxes of soap being sold; but no one individual is going to take the time off to go through court procedure in order to prove that one make of soap is not as good as another.

The Deputy Chairman: Shall the clause carry?

Mr. Fulton: May I please have the consent of the committee to revert to section 253 for the following purpose—

The Deputy Chairman: Order. Is clause 303 carried?

Some hon. Members: Carried.

Clause agreed to.

Mr. Fulton: It will be recalled that when we reached sections 247 and 248 I asked for and obtained agreement that they should stand. My colleague gave me a note indicating the sections in question. I was going to blame him and say his handwriting was bad, but I will assume the responsibility myself. I misread his writing. He asked that several clauses should stand. I read his figures as "353" whereas in fact he requested that clause 253 should stand. May we revert to clause 253 for the purpose of having it stand? It deals with the same general subject as do clauses 247 and 248.

The Deputy Chairman: I am of the opinion that, having passed clause 253, we can revert to it only by unanimous consent. Is the committee agreeable that clause 253 shall be treated as having been marked "stand"?

Some hon. Members: Agreed.

The Deputy Chairman: Then clause 253 will stand.

Clauses 304 and 305 agreed to.

[Mr. Garson.]

On clause 306—*Publication of false advertisements.*

Mr. Diefenbaker: I am asking this question for information. A moment ago mention was made of radio advertising. Has there been any case in the country to the effect that radio advertising constitutes publication?

Mr. Garson: Within the meaning of this clause?

Mr. Diefenbaker: Yes.

Mr. Garson: Offhand, I think not. I shall be glad to check up on that matter and see whether there has been or not. If certainly has not come to my notice.

Mr. Diefenbaker: Does the minister consider that, within the definition of publication, putting information over the radio would indeed be publication?

Mr. Garson: I would think it would be.

Mr. Fulton: What was the minister's answer? I am sorry, but I did not hear it.

Mr. Garson: I would think it would be.

Mr. Hansell: I do not know whether the minister's thoughts on the matter settle the point. We are now revising the Criminal Code for the first time in many years. Here is a new form of advertising that is becoming quite prominent. It may even be displacing some other forms of advertising. I think the meaning of the term "publish" should apply to radio advertising as well as to anything else. The minister says, "I think it would", but the minister thinking so does not make it so. I believe a word or two here in the form of an amendment might make it all-embracing.

Mr. Garson: My hon. friend's point is very well taken indeed; my thinking so does not make it so. But I believe we can agree that if that particular point has not yet come before the courts, all that one can do is to express one's own opinion. I am afraid I did not use the word "think" in an exact sense. We will check to see whether there have been any cases decided under this section, and then raise the matter again in committee.

Mr. Fulton: The English case in connection with a libel decided that the broadcast by means of radio constituted publication in order to make it libel as distinguished from slander. That would certainly be fairly powerful argument in this connection under

clause 306, would it not, that the broadcasting by means of radio of advertising in the same way constitutes publication?

Mr. Garson: That is another reason I thought so.

Clause agreed to.

Clause 307 agreed to.

On clause 308—*Pretending to practise witchcraft, etc.*

Mr. Knowles: Can the minister tell us whether in this day and age we still need laws against witchcraft?

Mr. Dechene: That refers to the C.C.F.

Mr. Knowles: In the light of the jocular interjection of the hon. member for Athabaska I am glad to note that burning at the stake is not the penalty.

Mr. Diefenbaker: It might be some day.

Mr. Knowles: As I say, the heading "witchcraft" is rather intriguing for a Criminal Code in 1954. I wonder what the word includes. Does even teacup reading come under the ban of the Criminal Code? I was starting to read Tremeear on the point but we moved a little too fast and I did not get to it in time. Perhaps the minister can tell me.

Mr. Garson: I think the significance of this clause turns on the adverb "fraudulently". It is every one who fraudulently pretends to exercise or to use any kind of witchcraft and so on, who fraudulently undertakes, for a consideration, to tell fortunes, who fraudulently pretends from his skill in or knowledge of the occult, and so on. It is not witchcraft in the old sense. It is using these ideas to commit fraud upon naïve people or people who can be imposed upon. That is the gravamen of the offence. If it is not done fraudulently there is no offence under the section.

Mr. Cameron (Nanaimo): Bona fide witchcraft is all right, is it?

Mr. Garson: If it is not done fraudulently it does not come under this section. I do not know whether I would say it is all right.

Mr. Diefenbaker: Under this section is an offence created in the case of anyone who purports by occult science to have spiritualistic communication with the dead?

Mr. Garson: I can only repeat that if any of these practices are done for a fraudulent purpose there would be an offence. If it is not done for a fraudulent purpose there would not be an offence. Therefore it is not a case of witchcraft or no witchcraft; it is a case of fraud or no fraud.

Mr. Diefenbaker: If it were for the welfare of the state it would not be an offence.

Mr. Ellis: I cannot understand the use of the term "fraudulently" with respect to the exercise of witchcraft. We find at fairs, and I am quite sure in many of our cities, palm-reading establishments.

Mr. McCann: That is amusement.

Mr. Ellis: These people pretend to be able to foretell the future. Am I to understand that the reason they are allowed to do so is that they are doing it for amusement? Is that the escape provision by reason of which they are not dealt with under this section?

Mr. Garson: No. My hon. friend should interpret against me only the language which I myself used. I never said anything about amusement. What I was discussing was fraud. I say that none of these practices constitute an offence unless they are done for a fraudulent purpose. To continue the practice I have been following, let me take the facts of a case that has been decided in order to illustrate my point. It is the case of Rex *v.* Duncan et al., 1944 K.B., 713. This case was decided in Great Britain in 1944, not very long ago. In Great Britain they have an excellent administration of justice, great respect for individual freedom, and in general a pretty level-headed view of these matters. Their act in question was the witchcraft act of 1735 and the relevant words in this act were these:

> Pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration.

As to these words the court said:

> What was aimed at, as shown by the language of the statute itself, was that ignorant persons—

I merely used the word "naïve".

> —should not be deluded or defrauded by the pretence to exercise or use any kind of conjuration. The word "conjuration" means traffic with spirits and the words "any kind of" show clearly that the conjuration is not limited to the holding of conversations with evil or wicked spirits.

Suppose, for example, some ignorant person got in the hands of a fraudulent person who pretended to have these occult powers; and that over a period of time the ignorant person paid $1,000 for the fraudulent professional services of this crafty person. I think such a case would come under this section. I do not know why such acts should not be penalized, and I think this section is quite a good one to have in the code.

Mr. Ellis: In my opinion that still does not answer the main point. Clause 308 reads:

> Every one who fraudulently
> (a) pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration . . .

Take the case of a palm reader who charges a dollar to read a palm. What is the purpose behind the payment of the dollar on the part of the customer, and what is the intent of the palm reader? I mentioned amusement a moment ago because I know many people will go into a cafe, have a cup of tea and have their teacup read. I do not think people generally look upon that as being very serious. It is a matter of entertainment. But I am referring now to persons who read palms for a living and charge a sum of money for doing so. If it is not amusement, if it is not for purposes of entertainment, then these people are claiming to possess certain supernatural powers. Is it not a form of fraud to claim such powers?

The Deputy Chairman: Order. It being five o'clock, the house will proceed to the consideration of private and public bills.

PRIVATE BILLS

ASSOCIATED CANADIAN TRAVELLERS

The house in committee on Bill No. 170, respecting the Associated Canadian Travellers—Mr. Hanna—Mr. Applewhaite in the chair.

On clause 1—*Qualification for membership.*

Mr. Diefenbaker: I have not the bill before me at the moment, but I think a word might be said concerning this bill in general. I feel that it represents a really worth-while change in the laws of this association as they have existed heretofore. All of us have a high respect for the Associated Canadian Travellers, who make a tremendous contribution to every part of our country.

Up until the present time, under the laws of incorporation under which this organization operates, provision was made whereby any white male person over the full age of 18 years might, subject to the terms of the duly enacted bylaws of the association, become a member of the association. I think this organization deserves high praise for removing what was indeed a discrimination based upon colour. Though the purpose of having the legislation in its original form may not at the time have been considered very serious, in the world of today, with the challenge of communism on every hand, nothing is of greater importance in the preservation of democracy than the removal and extirpation of everything that in any way indicates racial discrimination.

The removal of this qualification for becoming a member of this organization, that he be of the white race, is a step forward and deserves commendation and appreciation. Since five out of six persons within this commonwealth belong to the coloured races, anything in the nature of racial discrimination has a mobilizing influence for communism, and is one of those bloodless weapons that communism uses. I think this association, the Associated Canadian Travellers, in asking parliament to grant it the power to have in its membership people of all colours rather than restricting membership to the white race, has given a lead to a course of action that should characterize all of us in every democracy in the world today.

Mr. Knowles: I am sure, Mr. Chairman, we all agree with the words of commendation expressed by the hon. member for Prince Albert with respect to the way in which this bill removes an element of discrimination. We are all happy to approve a bill with such a purpose. May I ask the hon. member for Edmonton-Strathcona, who I believe is the sponsor of this bill, why the bill does not go a step farther and remove discrimination against women? We in this house are glad to welcome any persons—men or women—as members, provided they are elected by their respective constituencies. Formerly, this legislation contained the words, "any white male person", and that is now being revised to read "any male person." Why not remove the other element of discrimination as well?

Mr. Hanna: First of all, if I may, I should like to say that I agree wholeheartedly with the remarks made on clause 1 by the hon. member for Prince Albert. In reply to the hon. member for Winnipeg North Centre, I would say that the amendment is worded according to the request of the Associated Canadian Travellers. I am sorry that I have not had the opportunity of discussing with them whether or not they would object to including women in their membership. I cannot give you their views on that. This is the wording the association requested.

Clause agreed to.

Clause 2 agreed to.

Preamble agreed to.

Title agreed to.

Bill reported, read the third time and passed.

ALFRED RUBENS

On the order:

Second reading of Bill No. 298 (Letter E-10 of the Senate), intituled: An act for the relief of Alfred Rubens.—Mr. Hunter.

Mr. Adamson: Is the other bill not going to be dealt with now? I merely wanted to speak in support of it, and I notice the sponsor is not here.

Mr. Harris: There is no intention of allowing Bill No. 296 to stand, unless there was an arrangement to do so of which I was not aware.

Mr. Adamson: I merely wanted to support it. I know the principals in the matter, and I merely thought it might go through. I wanted to say a few words in support of it.

Mr. Harris: I would ask you to call order No. 27, Mr. Speaker.

BRAZILIAN TELEPHONE COMPANY

The house in committee on Bill No. 296, respecting Brazilian Telephone Company—Mr. Hunter—Mr. Applewhaite in the chair.

On clause 1—*Head office may be transferred.*

Mr. Adamson: I merely wanted to make a few brief remarks on this bill. I do so because this company is a clear example of the beneficial results of Canadian capital at work in another country. At the inception of the Brazilian Traction Company and its subsidiary, the Brazilian Telephone Company, they were and still are pioneers in the development of great national public utilities. The success of this company has been due to the intelligent operations of its officers, both Canadian and Brazilian, and its growth has been so phenomenal that in order to obtain the necessary capital to expand, as many other telephone companies in the world find it necessary to do, the head office is being moved to Brazil and the company is having Brazilian incorporation.

An excellent speech was made on February 10 in the other place concerning this matter, and with it I entirely concur. I should like to read the explanatory note of the bill, which says:

> This bill is desired so that the people of Brazil may be given an opportunity to invest in the company in order that capital may be raised in the public market and from other sources in Brazil to enable the company to carry out the expansion of its facilities which is essential to its continued successful development, while at the same time preserving the corporate existence of the company, its liabilities, its rights and obligations under the contracts and concessions through which it operates as well as the good will of its business acquired over the course of many years of operation in Brazil.

I do not think one could find an equally good example of good will between Canada and another country, good will developed through an investment which was risk capital at the time, as is found in this bill. The operations are now being moved in their entirety to the United States of Brazil, a great and friendly nation with which Canada has such intimate associations.

It is for these reasons, Mr. Chairman, that I have said these few words this afternoon in support of the bill.

Clause agreed to.

Clauses 2 and 3 agreed to.

Bill reported.

Mr. Speaker: When shall the bill be read a third time?

Mr. Harris: Under the circumstances it might be desirable to allow this stage to stand.

Mr. Speaker: Next sitting of the house.

SECOND READINGS—SENATE BILLS

Bill No. 298, for the relief of Alfred Rubens.—Mr. Hunter.

Bill No. 299, for the relief of Clara Stein Rosenberg.—Mr. Hunter.

Bill No. 300, for the relief of Birdie Gladys Schwarz Bard Yudelson.—Mr. Hunter.

Bill No. 301, for the relief of Lilli Schwab Barber.—Mr. Hunter.

Bill No. 302, for the relief of Laura Fanny Hoddinott Peckford.—Mr. Hunter.

Bill No. 303, for the relief of Michael Samulack.—Mr. Hunter.

Bill No. 304, for the relief of Natalie Wynohradnyk Wolcovitch.—Mr. Hunter.

Bill No. 305, for the relief of Joan Bechard Tutty Copeland.—Mr. Hunter.

Bill No. 306, for the relief of Georgette Mertens Herscovitch.—Mr. Hunter.

Bill No. 307, for the relief of Mary Veronica Carmichael Mosher.—Mr. Hunter.

Bill No. 308, for the relief of George Thomas LeGrow.—Mr. Hunter.

Bill No. 309, for the relief of Marie-Reine Roy Laflamme.—Mr. Hunter.

Bill No. 310, for the relief of Gabrielle Gagne Nantel.—Mr. Hunter.

Bill No. 311, for the relief of Velma Mackland Giles Boyer.—Mr. Hunter.

Bill No. 312, for the relief of Bessie Katz Elman.—Mr. Hunter.

INDUSTRIAL RELATIONS

AMENDMENT OF CHAPTER 152, REVISED STATUTES OF 1952—VOLUNTARY REVOCABLE CHECK-OFF OF UNION DUES

The house resumed, from Tuesday, February 23, consideration of the motion of Mr. Knowles for the second reading of Bill No.

The question of the check-off was again sent to a committee in 1953, and again the committee recommended the principle of the bill. It seems to me that is sufficient evidence to indicate that members of the house generally are in favour of the principle. I know the Minister of Labour (Mr. Gregg) suggested that some changes will be made when the amendments to the labour code he has in mind are brought forward, but I do not think he has informed the house yet whether or not this will be one of the changes. Nevertheless the matter is before the house now, and I think this is a good time for the house to express its opinion so the Minister of Labour will have a little bit more backing for the inclusion of such a provision in his proposed amendments.

I want to make it very plain that one thing which I do object to is trade unions taking part in politics. The larger part of my riding, before redistribution, was industrial. Drumheller and east Calgary are highly industrial areas. We have unions there composed of members with all sorts of political beliefs. There are C.C.F., Social Credit, Liberal, Conservative and even communist supporters. They contribute to the unions. I do not think a union should use its funds to sponsor any political party in an election, or for other political purposes.

Mr. Knowles: Would you let the manufacturers do so?

Mr. Johnston (Bow River): No, I do not think that as an organization they should do it either, but two wrongs do not make a right. In our province it causes a good deal of hard feeling.

Mr. Gillis: Mr. Speaker, I rise on a point of order. Do you want a debate on whether or not unions should take part in politics? Is that subject relevant to this bill?

Mr. Johnston (Bow River): Yes, it is very relevant. It is relevant to the extent that when unions use their money to assist political movements such action has a very disturbing effect on their membership. Union funds are made up of contributions by all members, or perhaps I should say that the unions hope all members will contribute, and the bill before us will assist unions to obtain a greater amount of revenue. I have found that one thing that disturbs labouring people in my constituency particularly is that they are asked to contribute money in the form of fees and then the unions sponsor a political party which all the members do not endorse.

Mr. Barnett: Would the hon. member permit a question?

Mr. Johnston (Bow River): Certainly.

[Mr. Johnston (Bow River).]

Mr. Barnett: Does the hon. member not think it might be better to allow the unions to settle that matter themselves rather than for us to try to settle it here?

Mr. Johnston (Bow River): That is exactly what we are trying to settle here in one particular part of the labour code. We are trying to introduce this agreement, in order to assist unions to obtain greater financial revenue with which to carry on their operations. That comes right within the scope of the bill. Speaking from my own experience as one having a labour riding, I do not think union members should be forced to contribute to any political party in which they do not believe. Some may say that all they have to do is to vote against such action when the matter comes up at the union convention, but past experience shows that while a great many may object, the motion is carried at the convention. Therefore they have to contribute to a political party. If such were not the case I believe there would be greater satisfaction among union members, and it would lead to greater unanimity of thought in the betterment of the unions.

What I have said on this point does not detract from my support of this particular measure. We have always favoured the check-off and do now, but we think the unions should use a little more discretion in the way they spend their money for the betterment of the unions.

An hon. Member: Six o'clock.

Mr. Deputy Speaker: May I remind hon. members that at eight o'clock the house will resume the business which was interrupted at five o'clock.

At six o'clock the house took recess.

AFTER RECESS

The house resumed at eight o'clock.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

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

On clause 308—*Pretending to practise witchcraft, etc.*

Mr. Knowles: I suggest very seriously, Mr. Chairman, that the minister at least try to find some other word for the heading which precedes this clause. Some of us were speaking a bit jocularly, perhaps, before five o'clock, but I suggest in all seriousness that

in this day and age we do not believe in what is meant by the word "witchcraft", and it hardly seems appropriate now that we should have a law against it.

I went to one of the offices a few moments ago to look up the definition of witchcraft in a modern dictionary. I find it given as follows:

> The occult practices or powers of witches or wizards, especially when regarded as due to dealings with the devil . . .

On the other hand, also in the same dictionary which I believe was Funk and Wagnalls, it says that witchcraft was formerly a crime and it goes on to point out that in the earlier days it was punishable by burning at the stake. I have found it interesting to read some of the case law on the subject as it is set out in Tremeear. I do congratulate last year's special committee for putting the word "fraudulently" in this new section. It is clear from pages 497 and 498 of Tremeear that as matters stood under section 443, almost any form of fortune telling, or pretending, as spiritualists, to be able in seances to receive messages from the spirits of the dead, came under the ban of the Criminal Code.

Mr. Justice Robson, in our own province of Manitoba, on one occasion made the comment that it might be that undertaking to tell fortunes by palm reading would amount to a violation of section 443 of the Criminal Code. The minister knows as well as I do, perhaps better, that that comment was drawn from the precedents which had been established, for example in Stonehouse *v.* Masson, where a decision was made by a court of five judges that *mens rea* was unnecessary in this offence. There are a number of other citations with some interesting mouthfuls of Latin which I need not mention now.

I think it is fair to say that section 443 as it stood was certainly very wide in its coverage. I am glad that if we must have something of this nature in the code, we have modernized it a bit by putting in the word "fraudulently". I think for appearance, if for no other reason, we should go a bit further and see if we cannot find a better heading than the word "witchcraft". As a matter of fact, if I may be permitted this slight digression, I might say that if we need anything along this line today what we need is a law not against witchcraft but against witch hunting.

Mr. Garson: I entirely agree with my hon. friend. As a matter of fact the most inappropriate part of this section is its heading. It is the heading that has created a lot of misunderstanding as to the nature of the section. I would go my friend from Winnipeg North Centre one better and say that this section does not deserve a heading at all. If we take the heading out, the next preceding heading in Bill No. 7 is "false pretences" of which the offence under section 308 is another one. This is just another kind of false pretence of fraudulently pretending to put the victim in communication with Marcus Aurelius and that sort of thing.

Mr. Knowles: That would still leave the word "witchcraft" in the section itself, which I think is perhaps unnecessary. But at least the minister has gone a long way, and I will not press him any further, if he will move an amendment to strike out the heading "witchcraft".

Mr. Garson: Suppose you move it.

Mr. Knowles: I move, Mr. Chairman, that Bill No. 7 be amended by striking out the heading "witchcraft" where it appears between lines 19 and 20 on page 102 of the bill.

Mr. McIvor: I feel that having this heading of "witchcraft" would help a student or a lawyer find this more easily.

Amendment (Mr. Knowles) agreed to.

Mr. McIvor: I should like to ask a question on this clause. Supposing a person paid $2 to one of these people who promised to find a lost article and he found the lost article, would that be considered fraudulent?

Mr. Garson: I think that would be a case of value received.

Clause as amended agreed to.

On clause 309—*Forgery.*

Mr. Fulton: I am just going to bring up a small point concerning the insertion of some commas in paragraph (b) of subclause 1. After the words "some person should be induced", would the minister insert a comma, and then insert another comma after the word "genuine"? I think it makes the meaning more clear.

Mr. Garson: Insert a comma after "induced", is it?

Mr. Fulton: Yes, and another one after the word "genuine", so it would read:

> that some person should be induced, by the belief that it is genuine, to do or to refrain from doing anything . . .

Mr. Garson: We would certainly accept that if my hon. friend would move it.

Mr. Fulton: I would move, Mr. Chairman, that in line 34 a comma should be inserted after the word "induced", where that word occurs, and that in line 35 a comma should be inserted after the word "genuine", where that word occurs.

Amendment agreed to.

Clause as amended agreed to.

On clause 310—*Punishment for forgery.*

Mr. Fulton: I have a question here which could probably be answered by the principles of the law surrounding corroboration. I wonder if the intention here is to require the corroboration of another witness or whether the corroboration could be afforded by the document itself? In other words, it says:

> No person shall be convicted of any offence under this section upon the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

If a witness is giving evidence and says that a document is forged, would the document itself be corroboration of the evidence of the witness, or would it require another witness or another document?

Mr. Garson: No. I think the clear meaning is, as the clause states, "corroborated in a material particular by evidence that implicates the accused." There is no indication that that has to be evidence given orally by another witness.

Mr. Fulton: It would be broad enough to include the document complained of? If something in the document substantiates the statement of the witness, the minister thinks that would be corroboration within the meaning of the clause?

Mr. Garson: Yes.

Clause agreed to.

Clauses 311 to 324 inclusive agreed to.

On clause 325—*Fraudulent manipulation of stock exchange transactions.*

Mr. Knowles: What is involved in this clause, and how far does it go? What kind of stock market transactions are illegal?

Mr. Garson: These are what are usually known as wash sales. It is a repetition of section 444A in the existing code, with no change.

Clause agreed to.

Clauses 326 to 338 inclusive agreed to.

On clause 339—*Salting mine.*

Mr. Adamson: Is this an increased penalty for salting?

Mr. Garson: Yes, that is right. The committee considered this at some length and thought it was desirable to offer further discouragement to this practice. Therefore the penalty was increased.

Clause agreed to.

Clause 340 agreed to.

On clause 341—*False employment record. Time clock.*

Mr. MacInnis: I do not remember the discussion of this clause in the committee. I am wondering what is involved in this reference to punching a time clock. Would an employee in a factory be subject to arrest and conviction if he punched a time clock for somebody else, or someone else punched it for him? It seems to me this is a rather small thing to have in the Criminal Code. Perhaps it is not, but I should like to have the minister's explanation.

Mr. Garson: Mr. Chairman, section 415A (b) and (c) in the present code from which clause 341 was taken was passed following the enactment in 1935 of the Minimum Wages Act, the Weekly Rest in Industrial Undertakings Act and the Limitation of Hours of Work Act. All of these acts, as my hon. friend probably recalls, were declared to be ultra vires, and this section 415A was provided to continue the provisions contained in it after these other acts had been declared ultra vires.

Mr. MacInnis: I can understand that if an employment record being used by the unemployment insurance commission, or some such organization, were falsified there might be some reason for prosecution. However, I cannot see the reason for this reference to the punching of a time clock. It says:

> Every one who, with intent to deceive . . . punches a time clock, is guilty of an offence punishable on summary conviction.

This seems a rather small thing to have in the Criminal Code.

Mr. Garson: The hon. member will recall the new deal legislation put through in 1935, or some time before that, of which this was a part. When that legislation was declared unconstitutional this particular section was taken from it and put into the Criminal Code, where it has remained ever since. In revising the Criminal Code we have just carried it on. The hon. member will notice that the offence is punishable only on summary conviction. I think it is clear that if an employment record is falsified or a time clock punched in a manner designed to deceive, it is really obtaining wages under false pretences.

Mr. MacInnis: The punching of the time clock would be part of the falsifying of the employment record, would it?

Mr. Garson: That would be one way of doing it.

Mr. Gillis: I agree with the hon. member for Vancouver-Kingsway that this should not

be in the Criminal Code at all. The manner in which an employer requires his employee either to punch a time clock or sign a sheet, in and out, is a matter of arrangement between employer and employee. To bring it in as an offence under the Criminal Code in my humble opinion opens up many kinds of abuses, if you happened to be dealing with an employer who is not reasonable.

It could happen right in this building. A stenographer could sign a sheet coming in and going out. If she wished to leave a half hour earlier to get her hair fixed up, or if she was feeling indisposed, her member might say, "You may go now." One of the other girls might sign her out, or an arrangement might be made with the boy at the desk whereby she would be signed out. Under this clause of the Criminal Code that could be considered an offence. The same applies in a steel plant or a coal mine. They have their methods of keeping the records of employees as to their coming in and going out. I suggest it is a matter of agreement between employers and employees, and that is where it should be left.

That part of the clause dealing with the falsification of records is all right, and could be used in its relationship to the Unemployment Insurance Act and other measures. But how you go in or go out should be a matter of arrangement between employer and employee, and it should be left as it has been in the past. I suggest that paragraph (b) should be eliminated.

Mr. Garson: I am in a bit of a weak position in this matter, since we have already gone quite a long distance to meet the viewpoint that my hon. friend is now enunciating. Under section 415 (a) of the Criminal Code:

> Every one is guilty of an indictable offence and liable to two years imprisonment or to a fine not exceeding $5,000, or to both such imprisonment and such fine who, knowingly:
> (b) falsifies . . .

—and so on. Now, at least my hon. friend must give the commission and the committees who have laboured upon this full credit for having reduced this to a summary conviction offence, as it is in the bill now before the committee. In that connection, when bringing down a new code it would be a little bit difficult to maintain all the other offences intact and let this one go. The commission has not done too badly in all the circumstances.

Mrs. Fairclough: I wonder whether there is going to be any differentiation between an individual who in a single instance might falsify an employment record, and the wholesale padding of payrolls.

Mr. Garson: If my hon. friend will read the clause she will see that it is very clear there. It says:

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

This means that the accused is merely brought before a magistrate and the fine is usually fairly nominal. As I say this offence, which in the new deal legislation of 1935 was treated as a very serious indictable offence with large penalties, now has been substantially reduced, and I question very much whether with propriety we could effect a greater reduction. Bringing it down to a summary conviction offence puts it very much in perspective, I think.

Mr. Cameron (Nanaimo): Has the minister really thought of all the implications of this punching the time clock? It is not very many months since I was punching a time clock; in fact it is less than a year. I know if this had been in force at the time and I had been prosecuted I would have been haled in front of the magistrate almost every working day of the week.

Mr. Garson: May I put it to my hon. friend that he is in a worse position than that. Under the law as it is at the present time he would not merely come up before the magistrate, he would come up on an indictable offence for which he could get two years, or a $5,000 fine, or both.

Mr. Cameron (Nanaimo): That makes it even worse. I ask the minister, then, would he suggest that it is any part of the business of the courts of this country, for instance, to arrest a man because he had left the place of his employment and sneaked off five minutes, ten minutes or fifteen minutes ahead of time? Would he think that was any part of the job of the courts of this country? Is that not a matter between the employer and the employee? If the employer thinks fit he will fire a man for that?

Mr. Garson: Would my hon. friend say that when a stock promoter comes and fraudulently separates one from $100 or $200 or $500 of hard-earned money, that is a matter only between the salesman and the man who is cheated? I do not think so.

Mr. Cameron (Nanaimo): That is an entirely false analogy, Mr. Chairman. I think that is a straw man the minister has stuck up to knock down with vigour. The fact of the matter is that this clause does take over the job of the employer. It puts on the courts the job of enforcing the conduct of

an employee, the work that a competent employer should look after himself, which is to see that his employees give him honest service. If through carelessness on the part of the employer an employee is able to rob him through false punching of the time clock, whether it be a matter of a few minutes—which is always the case in big plants where the man who drives a car gets someone else to punch the time clock for him while he himself gets the car out of the parking lot, which is illegal under this clause, and it is always carelessness on the part of the employer when that is done—it is no part of this parliament and no part of the courts of this country to do work for employers that they should do for themselves.

Mr. Barnett: Mr. Chairman, with all due deference to my colleagues, on a previous reading I had not seen in this particular clause what they have apparently seen. If this clause were used in the manner in which they have suggested it could be used, then I would be in agreement with them; but the impression I formed from reading it was that this clause was designed to protect both the employer and employee from the wilful falsification of employment records or the wilful punching of a time clock, such as might be done by someone who had a grudge against me and who took this method of wreaking his anger upon me.

I would suggest that by a little rearranging of the words of this clause it might be made plain that something of that sort is the intent, and not what has been suggested by my colleagues. If it were to read "with intent to deceive, falsifies an employment record by punching a time clock or other means", then I think it could be made clear that it is intended to protect people from the wilful misuse of various facilities used for keeping the time of workers. I would say that also would be a protection as far as paragraph (a) is concerned, if an employer through his agent were to falsify employment records with a view to short-changing the employee on his pay cheque. A little rearranging of the wording could make it clear that it is that sort of thing the clause is designed to protect against. It is designed to protect both sides from infractions.

Mr. Garson: With great deference, for I agree with the point my hon. friend is making, I would say that the wording as it is now clearly covers it. If an employer comes along and falsifies his employment records for the purpose of cheating his employees he is just as guilty as the employee who falsifies them.

[Mr. Cameron (Nanaimo).]

The law applies to everybody. Or in the case my hon. friend speaks of, if some enemy who had a grudge against the workman came and falsified his record with intent to deceive, he would come under the clause.

The section, much more onerous than the present clause, has been in effect for pretty nearly 16 years. Speaking for myself, I must say that when we considered this it was the first time that I knew it existed. I think that is probably true of most hon. members.

Mr. Cameron (Nanaimo): It is the first time I knew of it.

Mr. Knowles: I have another question I want to ask, if we are through with that aspect of the matter. I notice that section 415A which clause 341 replaces also had a subparagraph (e) which made it an offence to employ any child or minor person contrary to any law of Canada. Am I to understand that that subparagraph was found to be ultra vires, or is there any other federal law against child labour?

Mr. Garson: I cannot answer my hon. friend's question offhand as to whether that was a part of the law which was declared to be ultra vires. The whole of this law, as I understand it, was in the new deal legislation of 1935 and when that legislation was found to be ultra vires section 415A, as it appears in the present code, was set up to take the place of those provisions as they appeared in the new deal legislation which was declared to be ultra vires.

I believe the reason the clause to which my hon. friend referred was not carried into the present section is that there are clauses in other labour laws in the country which cover that matter; and when we bring the present offence down from an indictable offence to a summary conviction offence there is no purpose in retaining clause 415A (a) and (e) which will be in effect by bringing in the new clause which is now before the house.

Mr. Knowles: There is one point on which I certainly agree with the minister and that is that legislation respecting matters of this kind would be more appropriate in our labour legislation rather than in the Criminal Code.

The Deputy Chairman: Shall the clause carry?

Some hon. Members: Carried.

The Deputy Chairman: Does the hon. member for Winnipeg North Centre wish to speak?

Mr. Knowles: I defer to my friend from Nanaimo.

Mr. Cameron (Nanaimo): Mr. Chairman, I move that clause 341 be amended by striking out the words "or (b) punches a time clock" so that the clause as amended would read:

Every one who, with intent to deceive,
(a) falsifies an employment record, is guilty of an offence punishable on summary conviction.

The Deputy Chairman: Would the hon. member for Nanaimo please write out his amendment and send it to me.

Mr. MacInnis: Mr. Chairman, I would like to say a word before you put the amendment to the committee. It has just occurred to me that this is a record of labour time. When the international labour organization was set up it was declared that labour was not a commodity. Now, if labour is not a commodity I do not see that there is any need for a clause of this kind, because it would appear that no one has been defrauded even if a time clock is wrongly punched.

I agree with the hon. member for Nanaimo that when a man wrongly punches a time clock, whether it is his intention to deceive or otherwise, it should be a matter between an employer and an employee, and discipline should be in the hands of the employer and not written into the Criminal Code.

Mr. Enfield: Mr. Chairman, before you put this amendment there are a few observations I would like to make in regard to this clause. I believe hon. members opposite are inclined to give too little attention to the words "with intent to deceive". Anyone who has had any experience in presenting such cases in court will realize that it is very necessary to absolutely prove the intent, and no one would lightly lay such a charge unless this intent to deceive were present in no uncertain terms.

There seems to me to be some assumption that the clause in all its sections is drawn to protect the employer more than the employee, but there is protection on both sides. An employer by taking the time cards and punching the time clock at different times could obviously obtain a great advantage for himself, just as the employee could. In any event, according to the way the amendment reads, if you merely remove the line "or (b) punches a time clock", you leave the falsification of the employment record. But falsely punching a time clock is in effect falsifying an employment record, so in my opinion the amendment does not accomplish anything.

I would therefore submit on that basis that the clause as it stands is a protection to both parties. The minister has pointed out that during the past 18 years, to his knowledge, we have never come to any real grief in regard to this, and it seems to me it should be left as it is. Apart from that, the offence has been cut down to a point where it involves merely a summary conviction, and I believe we will lose more than we will gain by amending this clause.

Mr. Ellis: The suggestion that because the penalty has been reduced the law is in any way changed is not a proper basis, I believe, from which to view this clause. If the law states that a group of employees by taking certain action are breaking the law, then in the eyes of the law they are lawbreakers regardless of the penalty.

Mr. Garson: On a point of privilege, Mr. Chairman, I had something to do with the drafting of this law and I want to say there is no basis for a suggestion of that kind. There is no reason for any person in this house assuming for one moment that this is any more applicable to an employee than an employer. As a matter of fact the employer who wants to cheat is in a far better position to do so on a basis that will give him some real return than is the employee who wants to cheat the employer.

Mr. Ellis: Mr. Chairman, could I ask one question? The minister has suggested that he did not know this particular clause existed, the implication being that since it has not been used it does not matter whether or not it is left out. That is the point to which I would like to refer. Because a clause of the Criminal Code has not been used, or because it is not likely to be used, is not a valid reason for retaining in the code a clause which does not meet the purpose.

Mr. Garson: May I ask my hon. friend a question?

Mr. Ellis: Yes.

Mr. Garson: Would he suggest that if in his community they had not had a murder for five years, they should remove from the code the prohibition against murder?

Mr. Ellis: No, certainly not, Mr. Chairman. That is another straw man such as the one raised a few minutes ago. I do not think that is any valid comparison at all. The suggestion has been made that since this section has not been in use or rather that since it has not been applied, there is no particular reason why it should not be kept in the code.

My suggestion is simply this. Whether a man is actually brought before a court and tried for an offence or not, the fact is that under this section Canadian citizens are going to be lawbreakers; they are going to be breaking the law. Whether or not they

are going to be running any great risk of being punished for it, the fact is that in the eyes of the law they are lawbreakers. For that reason I think that this section should be amended in the manner suggested by the hon. member for Nanaimo. I have not heard any valid reason suggested this evening to indicate why this provision should be retained. If an employer is not satisfied that the employee is giving good service, then the employer has it in his power to punish him by whatever measures he deems necessary, even to the point of dismissing him.

It seems to me that is the way this problem should be tackled, and not from the standpoint of the Criminal Code or the law enforcement officers. This is a matter which the employer himself should take care of, and where he should take appropriate action against any employee who is not giving full value for the wages he is receiving.

Mr. Shaw: Those of us who served on the committee of the House of Commons which studied Bill No. 7 will recall that the Trades and Labour Congress and the Canadian Congress of Labour both appeared before us, presented their briefs and remained with us for some time for the purpose of questioning. I personally have no recollection of either of those two labour organizations taking exception to this section. May I ask the minister if he has any such recollection?

Mr. Garson: No, I have not.

Mr. Fulton: May I ask the minister one thing that may help us in making up our minds on the amendment. Is it his view that subclause (a), "falsifies an employment record", embraces the punching of a time clock?

Mr. Garson: Yes, I think it does, because a time clock is an employment record. If my thought be correct, then it is going to leave the employee who punches it doing so while not being as familiar as he should be with the fact that it is in breach of the law.

Mr. Fulton: The minister's point there is that he would rather see paragraph (b) kept in not so much because it is necessary for the completeness of the law, but that it is necessary as a warning to those who might otherwise offend?

Mr. Garson: Of course.

Mr. Fulton: I understand.

Mr. Gillis: The minister has not offered many good reasons why it should be kept in there. He tries to justify it by saying that it has been there for 18 years and has never been used, and that it has been modified. That is correct. But this Criminal Code has not had very much advertising in the last 18 years, and it is getting a great deal of advertising right now. We may smarten up the employer to the point where he will say, "Why should I be getting in trouble over taking my employees to task for wrongfully punching the clock or getting someone to punch it for them? Why do I not just turn them over to the law enforcement officers? Then I do not get in trouble with the union".

As for the second point, that it has been there a long time and has not been used, the minister will recall that only within the past few years you had a strike here in Ontario where the employer was exceedingly anxious to crash the picket line but could not find any law against peaceful picketing. They therefore dug away back into the archives and found the law covering watching and besetting. They dragged that law out of the mothballs and used it rather effectively.

I agree with the hon. member for Nanaimo that this matter of the time clock should be out. The minister says it works both ways, or that it is protection both ways. The employer does not punch a time clock, and he is not affected. It is the person who punches the time clock who is affected and about whom I am concerned. I can envisage all kinds of people across this country getting convicted in court for little practices that have grown up over the years and that have become laws by themselves. The employer has all kinds of protection already, in my opinion, with the paragraph "falsifies an employment record"; that is enough. But when you make that time clock stand out like a sore thumb, it is a short-cut.

I know if I were heading up National Steel tomorrow and I was losing a lot of minutes on the time clock, with the signing of sheets in and out, instead of firing four or five men as a matter of discipline I would say, "Why should I get in wrong with the men? I am likely to have a stoppage of work over it. I will therefore call in the law enforcement officers and lay charges against three or four men. They will pay fines, and they will have a conviction against them in court." It is an easy way out for the employer.

In view of his own admission that in 18 years we have not used it and that we do not anticipate using it, I think the minister would be well advised to have it taken out. Let us take out that time clock provision as is suggested by the amendment of the hon. member for Nanaimo. Let us try it with the first part of the section only and see how it works over the next two or three years.

Mr. Montgomery: I am sorry, but I cannot support the amendment. I think there is some protection there for the employee. While it has not been used, perhaps that has been through the good fortune that they have not had any bad employers. I feel that the paragraph should be left there. There are possibilities. It may be one and the same thing. I am not too familiar with how payrolls are made up, but strictly from the legal standpoint I think I can see where it is a good thing to have it there. Even if it has not been used, as the minister said a few moments ago, that is no reason why we should take it out of the code.

Mr. Knowles: Like the hon. member for Victoria-Carleton, I should like to look at the matter from the legal viewpoint. The minister has drawn attention to the fact that what is now before us is a boiling down of what was in section 415A. May I point out that section 415A had five subparagraphs. I have read it two or three times while this debate has been going on, and I think it is fair to say that section 415A, taken in its entirety, had provisions which were beamed in some respects more often at employers and in other respects more often at employees. I think it is correct to say that paragraphs (a), (d) and (e) of section 415A were more likely to be violated by employers than by employees, whereas paragraphs (b) and (c) were more likely to be violated by employees than by employers. The minister shakes his head but I think that is a fair summary of section 415A as it stood.

When you come along and take out three parts of that section, and those parts are paragraphs (a), (d) and (e), I think you leave something that has a different flavour from the context of the whole section as it stood before. I point out that Tremeear—and that is my authority when the hon. member for Kamloops is not ready to advise me—suggests that section 415A has been inoperative since the courts ruled ultra vires the so-called Bennett new deal legislation.

Mr. Garson: Did my hon. friend say that it has been inoperative since then?

Mr. Knowles: Perhaps I had better—

Mr. Garson: Oh, no.

Mr. Knowles: —read exactly what is said.

Mr. Garson: It was put in here because it was inoperative in the other form, in order to make it operative here.

Mr. Knowles: With regard to the new deal legislation, Tremeear says:

> These acts were all held to be ultra vires, and section 415A, while it does not appear to have been referred to the courts, would presumably fall with them, with the possible, but doubtful, exception of paragraphs (b) and (c).

Paragraphs (b) and (c) are the subparagraphs that are found in clause 341 of the bill. Notice, however, that Tremeear says they may possibly be excepted from that statement that section 415A falls with the new deal legislation, but he casts doubt even on that. I will read those words again:

> . . . section 415A, while it does not appear to have been referred to the courts, would presumably fall with them, with the possible, but doubtful, exception of paragraphs (b) and (c). In any event, whether or not the section is ultra vires, it is clearly inoperative, with the possible exception referred to, since it refers to "any law of Canada", and there is, and can be, no such law.

It seems to me that from quite a legalistic point of view there is some doubt as to whether that portion, two-fifths of section 415A, should have been carried forward, and I wonder whether the minister would not consider letting the clause stand and giving some further thought to it. I have not noticed that he is very sympathetic as yet toward the amendment moved by the hon. member for Nanaimo, but if he were to give the matter further thought the idea might commend itself to him.

Mr. Garson: I really owe a debt of gratitude to my hon. friend, because I was afraid he was going to ask why the other three clauses were left out. Instead of that he has got up and given the very explanation for which I thought he was going to ask me. I thought his line of attack might be, why did you save these two particular provisions? Why did you carry them forward and leave the other three behind? He has just finished making an excellent statement as to the reason for that.

Mr. Knowles: The minister does not interpret Tremeear in the same way I do.

Mr. Garson: Well, that may be. There is also the additional reason that clauses (a), (d) and (e) all refer to a man doing something which is contrary not only to the code but to other laws of Canada, whereas (b) and (c), the ones we are concerned with here, simply describe as an offence the act of falsifying an employment record with intent to deceive, which would seem to me to be clearly within the provisions of the criminal law, or the act of punching any time clock with intent to deceive, which would be equally within the jurisdiction of the dominion government under its control over the criminal law of Canada.

In view of the fact that the record of employers and employees in Canada during the past 18 years has been so good under

this law that it has not been necessary to invoke it very often, I am a little bit more optimistic than the hon. member for Cape Breton South in that I have great confidence that just as we have not had any occasion to use this law during the past 18 years, I do not expect that we will use it in the future. But I cannot imagine a weaker argument against a provision in the criminal law than to say that because we have law-abiding citizens we should repeal the Criminal Code.

When we enact this clause 341 I think we will carry on in the future as we have in the past, and I hope and anticipate that we shall not have to invoke this clause at all. I am fortified in that view because while all the big labour organizations came before the committee and made excellent representations upon other parts of the Criminal Code, I do not remember them raising any objection to this provision. I think they were wise in that, because I think any fair reading of the law will indicate that it protects the employee just as much as the employer.

Mr. MacInnis: Would this apply to members of parliament who sign a form as to days absent every time they receive a pay cheque? If there were any falsification, would this law apply?

Mr. Garson: I am afraid I did not hear my hon. friend's question.

Mr. MacInnis: Members of parliament have to sign a form indicating the number of days they have been absent from duty. Could a member of parliament be charged with falsifying an employment record with intent to deceive?

Mr. Garson: That is an opinion I would rather hesitate to express, for this reason. I have always understood the indemnity of the member of parliament to be what it is termed, an indemnity for the time he loses in carrying out his duties as a member of parliament. While I have never had occasion to check the matter carefully, I would be inclined to suspect that the relationship of employer and employee does not exist with respect to the indemnity that a member of parliament receives. Whether that situation will be changed when we are paid on an annual basis I do not know, but I rather think the position has been maintained that we are still members of parliament and have that independence. The opinion my hon. friend seeks is one that I would prefer not to express without going into the matter more carefully.

Mr. Byrne: I find it somewhat difficult to follow the reasoning of some hon. members, particularly that of the hon. member who proposed the amendment to this clause. First of all, I feel that it is a reflection upon the integrity of the multitude of people who are working and punching time clocks, and I may say that I have heard that old bell ring many times. I cannot conceive of any way in which it would be possible to falsify time clock records unless one were to punch two numbers and by some means or other take two full pays for a day, a week or a month. Certainly if that is done it is a completely dishonest act, and is the same as any other kind of stealing.

What surprises me more is the suggestion that this provision would take away from a union the responsibility of managing its affairs. I have had the responsibility of drawing up a considerable number of clauses in union agreements, and I do not remember ever seeing one instance where a union endeavoured to protect a dishonest worker.

There is one way in which a workman might falsify records, and that is by going home three or four hours earlier and having someone punch the clock for him when the time arrived. I have seen that happen, and certainly when the individual was caught in the act he was not haled before the courts, nor was he discharged. He was given a reprimand and told that sort of thing just could not continue when he returned to work. Either he had to stay on the job or he would not have a job.

There is another way in which a man might falsify the record. He might punch the clock, then go into the factory and not do any work all day. In such a case the union might attempt to prove that the man had accomplished a regular day's work, but that would be the union's responsibility. Possibly that would not be the type of falsification this clause contemplates. It is nice to be friends to all men, but let us be reasonable. If a person is dishonest, whether he is an employer or an employee, I think all should be handled in the same manner.

Mr. Fulton: I wonder if I could suggest an amendment to the amendment which might get us out of some of this difficulty. I can appreciate the view of those who feel that the setting out of the time clock in a separate subclause might appear to be aimed at the employees, although I do not share that view myself. On the other hand surely a man, whether employer, employee or anyone else, who does a dishonest act must expect to take the consequences of it. I think it is quite proper, therefore, this being a dishonest act, that it should be included in the code and subject to punishment.

I was impressed by what the minister said, that he felt subclause (a) would embrace subclause (b) but that subclause (b) should be in there to draw attention to the fact that the dishonest punching of the time clock is also a criminal offence. I wonder, therefore, if we could not reconcile all these difficulties by the following, which I move as an amendment to the amendment:

That clause 341 be amended by deleting therefrom all the words after the words "Every one who, with intent to deceive", and substituting the following: "falsifies an employment record by any means, including the punching of a time clock, is guilty of an offence punishable on summary conviction."

That takes out the time clock as a separate subclause, and just includes it as an example of the falsification of an employment record.

Mr. Hansell: We have been doing quite a bit of talking about this time clock business, but I think perhaps I shall take a little more time. I have never punched a time clock in my life, but I have quite a few people in my constituency who do punch time clocks. I trust that we have not overlooked this fact. It seems to me that this is a protection for the employer in case one of his employees leaves an hour or so early and gets a friend of his to punch the clock for him. The hon. member for Kootenay East has said that the friend will punch the clock twice, once for himself and once for his friend.

Now then, who is the criminal in that case if the offence is under the Criminal Code? Who is it that has deceived? It is the man who leaves work a half an hour early and is paid for half an hour's work that he does not do. He is stealing from his employer half an hour's wages, but he is not the one who gets punished. It is the friend who punches the clock who is punished under this section, yet it is the other man who steals the money.

It appears to me that if you look at this in another light you will get the picture. A man robs a bank. He is the criminal who steals the money. He rushes out the door of the bank, jumps in a car and is driven away by his chauffeur. It is the chauffeur who is punished as well as the thief in that case. In this case of the time clock, however, the man who leaves work early and steals the half hour's wages does not come within the provisions of this section. I do not know whether or not that has been brought out.

In so far as the employer is concerned, I do not suppose any employer ever punches a time clock. It is conceivable that he might slip out into the hall and punch the clock for two or three of his employees an hour or so ahead of time. At the end of the week there would be a dispute as to how many hours these employees had worked, even though the clock might have been punched later by the employees. Such a case could not very well be settled on the basis of management and employee relationships. It is all very well to say that an employer can fire an employee, but an employee cannot fire his employer, so you have to equalize those two and get something which is fair for both. I do not believe for a moment that there would be many employers who would deliberately punch a time clock to falsify their employees' records. However, it could be done.

The one point I wanted to bring to the attention of the committee was that the accessory after the fact rather than the criminal receives the punishment under this section.

Mr. Cameron (Nanaimo): I sometimes wonder if some of the people who have been discussing this provision really know what a time clock is or what its purpose is. I have yet to see an employer who, for the fun of it, will punch a time clock to give some of his employees a day's wages if they do not happen to be at work. I think we should recognize that the time clock was devised by the employers, and established as a cheap and easy method of keeping accounts. They have, by virtue of their position as employers, been able to enforce the co-operation of the employees in this cheap and easy method of keeping accounts. That is one point we should bear in mind. If they want to do it in that way, that is their right. Let them do it, but they must take the risk of doing it.

There is another matter I wish to mention. I think it is perhaps time some of the facts of industrial life were imparted to some members of this assembly. The truth of the matter is that in a great many plants, in fact I might say possibly the majority of plants, the time clock is placed in such a position that the employer robs his employees every day of a few minutes' time. I shall describe what happened in the plant in which I was working at the time I was elected to this assembly. The time clock was placed a good six or seven minutes walk from the place where I was actually employed. As a consequence, when I came to work in the morning I had to reach that time clock and punch it in plenty of time to take that six or seven minutes walk and be at my place of employment by the time the whistle blew. At night I had to stay on the job until the whistle blew, and then take the six or seven minutes walk to the time clock afterward.

I believe that is the usual state of affairs in plants, and employees resent it very much.

They try all manner of dodges in order to get that six or seven minutes back from the employer.

They do it in this way on some occasions. One man will arrange to punch the time clock at the gate, on his way out, at such and such a time, for the other. This will indicate that the employees had waited at their place of employment the time they would have had to wait had they punched the clock at the right time. All these dodges are employed.

I can tell of another procedure that is being followed; and I might say that it was only a year or so ago, when I worked in one of Her Majesty's dockyards. We were employed there for the time being. The car parking lot was five or six minutes walk away from the drydock. The time clock was opposite the drydock. If those of us who were driving cars had to wait until the actual time for the punching of the time clock before we went down to the lot to get our cars, we would have had to give our employers another five or six minutes of our time. So what we did was this. Those of us who were driving cars got someone else to stay by the time clock and punch it, while we went down and got our cars. All these things could be punished by summary conviction.

I want to conclude by reiterating that the institution of the time clock was chosen by employers because it is a simple and cheap way of keeping records. It means they do not have to keep such close supervision—and it is expensive supervision—of their working force. All right; in those circumstances they should be prepared to look after that device themselves, and not ask the courts to impose penalties for them.

Mrs. Fairclough: One hon. member who spoke a moment ago said that he did not see how a time clock record could be falsified by an employer. Well, it would be a very simple process, and I think this point has been overlooked in the debate. It would be a simple matter for an employer to put in a half dozen extra time cards and charge them up on his payroll, thus evading income tax. It would not be the first time this has been done. Likewise it would not be the first time a timekeeper had done that, and taken the remuneration when it came to him for distribution and put it into his own pocket. Those things are fairly common, and there have been convictions as a result.

So I say we are barking up the wrong tree when we try to pretend that this clause is intended to trap the employee in some of his nefarious schemes to get a few extra minutes of time out of his employer. I think the employee is protected by the clause just as much as the employer.

Having said that, however, I do think the second subclause is redundant. I believe it could all be handled simply under the (a) part of the clause. I believe the minister has already agreed that the second or (b) part is only a matter of warning, and I think he might still consider it from that standpoint. However, I am forced to admit that I think we are making a great noise about something that is not very important because, the practice being what it is, most of these things are caught in the ordinary course of events.

The Chairman: The hon. member for Kamloops has moved that the amendment be amended so that the clause would read:

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

I was at first in doubt as to whether the amendment was relevant to the amendment offered by the hon. member for Nanaimo. But, further than that, we have before us clause 341 in a certain wording, and I feel it would be somewhat dangerous to accept an amendment to the amendment in this form. If the hon. member would agree, I would rather accept it in the form of the deletion of certain words and the addition of other words, for purposes of certainty. So if the hon. member would consent, I think the amendment to the amendment might be withdrawn.

Mr. Fulton: I must confess that I offered the amendment to the amendment in an effort to find a middle course, and in the hope that it might be acceptable to the hon. member offering the amendment. I realize that it really does not amend his amendment, but rather states an alternative proposal. However, I have put it forward, and if the hon. member for Nanaimo indicates that he does not accept it as an alternative I would be glad to withdraw it and let him put his amendment. Then, after his amendment is disposed of, I could draw up an amendment in proper form dealing with the clause as amended or as it now stands, if the hon. member's amendment does not carry.

Would the hon. member accept my amendment to the amendment as an alternative proposal? If not, I could then proceed immediately to put it in proper form.

Mr. Cameron (Nanaimo): No, I cannot accept it as an alternative to my amendment.

Mr. Fulton: Then I shall withdraw it.

The Chairman: Has the hon. member for Kamloops leave to withdraw the amendment to the amendment?

Some hon. Members: Agreed.

The Chairman: Is the committee ready for the question on the amendment?

Mr. Castleden: Speaking to the amendment, I should like to say I am quite sure the vast majority of workers throughout Canada would be in favour of having such a clause left out of the code. The practice of punching a time clock is quite flexible and, through time, I think has probably suffered as much by abuse as by use. The matter of proving intent to deceive becomes a sort of legal technicality which most Canadians try to avoid, if possible, and keep out of the courts.

Among its other objectionable features, it seems to me that paragraph (b) has the additional feature, which I think should eliminate it immediately, that it might be used to intimidate employees. I do not think the criminal law was ever intended to be used for that purpose. Someone might say, "This man was guilty of punching a time clock incorrectly on a certain day, and because he did so we maintain he did it with intent to deceive, and therefore he is a criminal." In this way there could be included within the provisions of the criminal law a great many men who otherwise would be considered good workmen.

I do not think that is the intention of the law. I strongly urge the adoption of the amendment, and that the subclause be left out of the act.

The Chairman: Is the committee ready for the question?

Some hon. Members: Question.

Amendment (Mr. Cameron, Nanaimo) negatived: Yeas, 13; nays, 67.

The Chairman: I declare the amendment lost. Shall the clause carry?

Mr. Fulton: It has been emphasized that there may be some thought in the minds of persons immediately concerned that dishonest punching of a time clock is incorrectly made a criminal offence. Also the use of the word "or", it seems to me, would indicate that the intention to deceive by wrongly punching a time clock is different from the intention to deceive by falsifying employment records. If there is any justification for the inclusion of this as an offence, it seems to me the main justification is that it is a falsification of employment records to punch a time clock incorrectly.

Therefore, in order that the matter might be stated in perhaps more acceptable form and, I suggest with respect, a more strictly accurate form, I would move the amendment which I previously mentioned that clause 341 be deleted and the following substituted therefor—you have the words of the amendment in front of you, Mr. Chairman, which I previously wrote out.

The Chairman: Mr. Fulton moves:

That clause 341 be deleted and that the following be substituted therefor:

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

Is the committee ready for the question?

Mr. Garson: Mr. Chairman, while I do not think it is very necessary that it should be so amended, the amendment does not change the sense appreciably, and is quite acceptable.

The Chairman: Shall the amendment carry?

Amendment agreed to.

Clause as amended agreed to.

Clauses 342 to 344 inclusive agreed to.

On clause 345—*Trader failing to keep accounts.*

Mr. Leduc: Can the minister tell us whether there is a similar clause in the Bankruptcy Act with regard to this?

Mr. Garson: Yes, there is a clause which, without being identical in language, is substantially similar in effect.

Mr. Shaw: Why the figure $1,000? Is that merely an arbitrary figure?

Mr. Garson: Yes, I think my hon. friend has used the correct term. This is an arbitrary figure which has always been in the section and is carried forward in the present clause.

Clause agreed to.

Clauses 346 to 350 inclusive agreed to.

On clause 351—*Passing off.*

Mr. Knowles: This is a new clause, according to the explanatory note. It has been suggested to me that perhaps this is a case of transferring certain offences from the civil list to the criminal list, but I will not press that point too far. I should like to hear from the minister as to what is intended by the wording of clause 351, and whether or not it is felt by the authorities that the clause as drafted will deal with the situation the minister has in mind.

Mr. Garson: Clause 351, Mr. Chairman, while it is indicated on the page opposite as a new section, is a combination of section 488 and 489 of the existing code.

Mr. Knowles: Just a minute. I wonder whether the minister has examined the matter closely. Clause 350 certainly was drawn from section 488 and clause 349 from section 486. I do not see anything in section 488 or section 489 that is a basis for clause 351. The note on the righthand side is correct; this is new.

Mr. Garson: Yes, my hon. friend is right in that. I was in error in what I said.

Mr. Knowles: We will not call that criminal negligence.

Mr. Garson: Just ordinary negligence. The new clause 351 to which my hon. friend refers and the preceding clause 350 have been adopted in general terms largely from clause 7 of the bill revising the Unfair Competition Act to cover the forgery of trademarks and the passing off of goods.

Mr. Stick: I am not quite sure of this, but can the minister answer this question. If I order goods from a firm and they have not the style of goods on hand that I order but send me something else which I did not order will they be guilty under this act of passing off something to me without first ascertaining from me whether or not I want it?

Mr. Garson: No. I think the case my hon. friend speaks of, if I understand his statement of the facts correctly, would give rise to a civil claim against the other party. In these offences here a criminal element of bad faith and an attempt to deceive come in. Clause 351 provides:

> Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not,
>
> (a) passes off other wares or services as and for those ordered or required—

If my hon. friend ordered goods of a certain type and the person from whom they were ordered sent along to him the closest approach to those goods which he could supply and called my hon. friend's attention to them, then obviously the only claim my hon. friend would have would be some adjustment in the price, or the like. But if my hon. friend ordered goods of a certain brand name or with a certain trade mark on them and he got from the supplier goods which purported to be that same brand with the same trade mark on them but were very fraudulent imitations, then it would fall within this clause.

Mr. Stick: I may be stating borderline cases, but since union we have done a lot of business with mail order houses on the mainland, and some of our people have claimed that a lot of old stuff has been put off on them; that they have ordered certain goods from the catalogue and did not get what they ordered. They got something somewhat similar, but it was not the same thing. I was wondering whether, if that is so, they would be liable under this clause. I am not mentioning any names now.

Mr. Garson: No; but would my hon. friend not agree that the case of which he speaks would hardly fall under the category of deliberate and calculated attempt to deceive as to the nature of the goods?

Mr. Stick: I would call it a borderline case.

Mr. Garson: Paragraph (b) of this clause 351 goes on as follows:

> (b) makes use, in association with wares or services, of any description that is false in a material respect as to
>
> (i) the kind, quality, quantity or composition,
>
> (ii) the geographical origin—

That is, representing them as coming from one country when they come from another country. I continue:

> (iii) the mode of the manufacture, production or performance of such wares or services.

—where this is a deliberate attempt to deceive the buyer in such a way as to fraudulently induce him to accept goods which are quite different from those he thought he was getting.

Mr. Knowles: Do we understand that the (b) part of this clause would refer to the wholesale or retail trade in respect of, shall we say, clothes? If someone tries to pass off an article of clothing as 100 per cent wool and it is not, or as made from Australian wool when it is made from something else, that person could be charged under this clause?

Mr. Garson: That is right. If a person attempted to pass off a pair of high grade binoculars that were supposed to have originated, say, in Germany and they originated in a different country altogether and were only superficially of high grade quality, that would come under this clause.

Mr. Knowles: In other words, from now on ladies' fur coats will have to be described as exactly what they are?

Clause agreed to.

Clauses 352 to 364 inclusive agreed to.

Mr. Fulton: Mr. Chairman, I wonder if clauses 365 to 367 inclusive could be permitted to stand.

The Chairman: Shall clauses 365 to 367 inclusive stand?

Some hon. Members: Agreed.

The Chairman: Clauses 365 to 367 stand.

Clauses 368 to 371 inclusive agreed to.

The Chairman: Clause 372?

Mr. Knowles: Stand.

The Chairman: Clause 372 stands. Clause 373?

Mr. Fulton: Stand.

The Chairman: Clause 373 stands.

On clause 374—*Arson.*

Mr. Knowles: Mr. Chairman, under clause 374 there is a question I would like to take up with the minister. I admit it is somewhat general in nature, but I wish to relate it to the clauses having to do with arson and fire. The minister is probably aware that I have raised this question on a number of occasions with one of his colleagues.

I am referring to the large number of fires which are started by cigarettes. Can the minister tell me what the law is with regard to safety matches, and whether any consideration has been given to the enactment of a clause in the Criminal Code with respect to the way in which cigarettes are manufactured? We all know that the Minister of Public Works when he was minister of resources and development had some very interesting memoranda and documents on this question. I believe it has been clearly established that something could be done by way of controlling the manufacture of cigarettes in order to make tailor-made cigarettes less of a fire hazard than they are now.

I need not go into this in detail so far as the subject matter is concerned because I have done it fairly often in the past, but I am wondering whether any consideration has been given to this matter by the Minister of Justice so far as doing something about it in the Criminal Code is concerned.

Mr. Garson: I am not entirely clear as to the point my hon. friend seeks to make with regard to safety matches. Is my hon. friend referring to some treatment which they receive in their manufacture? If so, to what was he referring in connection with them?

Mr. Knowles: It is my impression that there is a law respecting matches which controls the way they are manufactured to the extent of making them less of a fire hazard than they were before that law was put on the statute book.

Mr. Garson: And my hon. friend wishes to apply that same principle to the manufacture of cigarettes?

Mr. Knowles: The minister apprehends correctly.

Mr. Garson: I must confess I do not believe I can tell my hon. friend offhand which law relating to the maintenance of quality in tobacco products the amendment of which would achieve the result he seeks in connection with cigarettes. I take it that my hon. friend is referring to these fires which are caused by people who go to sleep when they are smoking.

Mr. Knowles: There was one in Winnipeg the other night involving a friend of ours.

Mr. Garson: Yes, I know of that. There is some ingredient put in cigarettes, I have heard it said that it is saltpetre, which is put in cigarettes to keep them burning; I imagine the manufacturer in resisting my hon. friend's suggestion would answer that like all democratic people he is seeking the greatest good for the greatest number. The great number of his customers want a cigarette which will stay lit, and they would object rather strongly to one that goes out between puffs. They would probably argue that if there is a small minority of cigarette smokers who are careless enough to go to sleep when smoking cigarettes, that is no reason why the great majority of cigarette smokers should not have a cigarette which would stay lit between puffs.

I think there would be a real contest on that point; and whatever the law may be, I do not think it comes under the Department of Justice.

Mr. Knowles: The minister asserted in another connection, I believe it was yesterday, that if we are going to do something to prevent loss of life from reckless driving we have to have the kind of laws that are going to hurt somebody. I submit that if there is a great deal of loss of life and property from this cause, then we have a responsibility at this level of government to see that something is done about it. When the former independent member for Comox-Alberni, now treasurer of the Liberal party in British Columbia—which indicates how independent he was—was in the house here, and I refer to Mr. Jack Gibson, he pointed out on a number of occasions that to his knowledge those in charge of woods operations would not allow the use of tailor-made cigarettes because of their fire hazard.

There has been a great deal of research done on this question, and—to my knowledge, because I have had correspondence from the tobacco people—there certainly is resistance on the part of tobacco manufacturers to laws of this kind. But many laws which have as their object the protection of life and property were in the first instance resisted by people who had a special interest.

My contention is that we have a responsibility to our people in connection with this matter, and I believe it should be pursued further. I wonder if the minister would be willing to allow one of these clauses—any clause under the heading of arson or fires—to stand, and I will submit to him for his own perusal some memoranda and other material I have on this question.

Mr. Garson: I have no objection whatever to allowing one of these clauses to stand.

Mr. Knowles: Clause 374, for example?

Mr. Garson: Yes, clause 374. I might say that I think there is a great deal of merit in my hon. friend's suggestion, and I shall be glad to co-operate in examining the matter.

The Chairman: Clause 374 stands.

Clauses 375 to 378 inclusive agreed to.

On clause 379—*Interfering with saving of wrecked vessels.*

Mr. Dinsdale: I am here looking for information more than anything else. I notice that clauses 379 and 380 apply to seafaring activities only. I am wondering how you would cover interference with an aircraft wreck under clause 379 or clause 380, or interference with aerial navigation aids. How would that situation be covered?

Mr. Garson: I think the likelihood is that it is covered by some of our aeronautical legislation. I shall make a note of that question, get the information and give it to my hon. friend.

Clause agreed to.

Clauses 380 to 388 inclusive agreed to.

On clause 389—*Transportation of cattle by rail or water.*

Mr. Winch: Mr. Chairman—

Mr. Garson: I was going to suggest that this clause might stand. Would that suit my hon. friend?

Mr. Winch: Oh, yes.

Mr. Garson: There are certain members who are interested in it who are not here tonight.

The Chairman: Is it agreed that the clause stand?

Some hon. Members: Agreed.

Clause stands.

Clauses 390 to 412 inclusive agreed to.

On clause 413—*Jurisdiction.*

Mr. Knowles: Will the minister give us a brief explanation of clause 413?

[Mr. Knowles.]

Mr. Garson: Before I deal with that matter, Mr. Chairman, I wonder if I might deal first with something else. I have treasured this memorandum for a long while, and I do not want to overlook it. I suggest that there is a typographical error in line 5 of page 140. The word "officer" should read "offence".

Mr. Knowles: No wonder I did not understand it.

Mr. Garson: My hon. colleague the Minister of Citizenship and Immigration will move that amendment.

Mr. Harris: Yes.

Mr. Knowles: It should be easier to explain with that amendment than it was before.

Mr. Garson: That is right. On this question of jurisdiction, I think it would save a good deal of time if we let this clause stand, and I will have a prepared statement on it in which I shall try to cover the matter as succinctly as possible.

The Chairman: Do I understand that clause 413 is to stand?

Mr. Garson: Yes, if that is all right.

The Chairman: Is it agreed?

Some hon. Members: Agreed.

Clause stands.

Clauses 414 to 416 inclusive agreed to.

On clause 417—*Trial without jury in Alberta.*

Mr. Fulton: I should like to ask the minister what efforts were made to try to bring the procedure in Alberta into line with the practice and procedure elsewhere. I understand that the commission's policy was to seek elimination of all procedural provisions peculiar to a province in order to effect uniformity throughout the whole dominion. Yet Alberta appears to have emerged with its major procedural differences under this section and the proposed new section 541. It might be alleged that in both cases the effect is to lessen the weight of the jury.

Will the minister say a word about that matter, namely as to what efforts were made to bring the practice in line in all the provinces, and as to what were the major arguments advanced by the province of Alberta in favour of the retention of their different practice in this case?

Mr. Garson: I have a memorandum here. It is a fairly lengthy document. As a matter of fact there were negotiations extending over some considerable time. I think it will save time if we let this section stand and

I shall try to bring this statement into a shorter compass so it can be handled more expeditiously.

The Chairman: Do I understand that clause 417 is to stand?

Mr. Garson: That is right.

Clause stands.

Clauses 418 to 428 inclusive agreed to.

On clause 429—*Information for search warrant.*

Mr. Fulton: It has been suggested to me that the word "anything" as it appears as the introductory word in each of paragraphs (a), (b) and (c) of subclause 1 of this clause is too narrow. It appears to restrict the search to a search for things. It has been suggested to me that that is going to make it rather difficult in some cases where the obtaining of a search warrant or indeed the taking of action on a search warrant is urgent. Will the minister say a word about that matter?

Mr. Garson: I am not sure that I get my hon. friend's point there. The clause reads as follows:

A justice who is satisfied by information upon oath in Form 1, that there is reasonable ground to believe that there is in a building, receptacle or place,

(a) anything upon or in respect of which any offence against this act has been or is suspected to have been committed . . .

may at any time issue a warrant under his hand authorizing a person named therein or a peace officer to search the building, receptacle or place for any such thing . . .

I think the word "thing" there is of quite wide application. Was it my hon. friend's view that some other noun would have a broader application than the word "anything"?

Mr. Fulton: It is perhaps difficult to suggest anything that might have a wider application than the word "thing", but does the minister think it is possible that the word "anything" might be taken as confining it to an inanimate object? Suppose you were searching for a concealed body or corpse. I think perhaps that is the case in point. Does "anything" include a human body?

Mr. Garson: Offhand I would be inclined to think that "anything" would be a very broad application. In the same way, in getting a charter for a company, if one could persuade the provincial secretary to issue a charter to "engage in trade", that would be the widest kind of charter that one could have. Sometimes it is when we spell out powers that we restrict ourselves. Here he can look for anything. I might say that this is the language of the existing code and has been for many, many years. If it were defective or restrictive in any way, I think the law enforcement officers would have sought to have it amended before now.

Clause agreed to.

Clause 430 agreed to.

On clause 431—*Seizure of things not specified.*

Mr. Knowles: A number of questions come to my mind with respect to clause 431. First of all, I note that it is new. That fact catches my eye right away. Then I read it, and it does seem to me to place rather wide powers in the hands of peace officers. Let me read it:

Every person who executes a warrant issued under section 429—

That is the one the hon. member for Kamloops was just discussing with the minister, and which is already pretty wide. In fact the minister admitted that.

—may seize, in addition to the things mentioned in the warrant, anything—

The word "anything" is certainly very wide.

—that on reasonable grounds he believes has been obtained by or has been used in the commission of an offence, and carry it before the justice who issued the warrant or some other justice for the same territorial division, to be dealt with in accordance with section 432.

We are back in a sense to this question of warrants, and here is a case where a warrant is drawn up and issued for a search for certain specific things. Yet when the person who is armed with the warrant gets into the place he may go beyond the terms of the warrant. I realize there is the qualification that what is seized must be dealt with in accordance with section 432. As a matter of fact there are some parts of section 432 which are new, and which I want to question when we get to it. But even before we get there we have this power given to a peace officer armed with a warrant to go beyond the terms of the warrant just the same as the government, when it tries to amend a bill, goes beyond the scope of the bill. I do not like that and I do not like this.

Mr. Garson: My hon. friend says quite accurately that the objection here is that the person who is executing the warrant is authorized to seize things in addition to those which are covered by the warrant. What are those things? That is the point. We can find the answer to the question as to whether it

is wrong to permit him to seize these additional things by asking what they are. The clause says the peace officer—

> . . . may seize, in addition to the things mentioned in the warrant, anything that on reasonable grounds he believes has been obtained by or has been used in the commission of an offence, and carry it before the justice who issued the warrant . . .

In other words, without this provision a constable armed with a search warrant could go into a thief's kitchen and find there some article worth a dollar that was covered by the search warrant and not be able to find anything else at all covered by the warrant, while at the same time there might be in the same place a thousand dollars worth of goods which he had every reason to believe, within the terms of the clause, were stolen. But for this section he would have to turn his back on those, go back to the magistrate and swear out a new information for a new warrant for this thousand dollars worth of goods. That does not seem to be a reasonable method of enforcing the law. Therefore as long as the searching police officer is confined to those additional things which upon reasonable grounds he believes to have been obtained by or to have been used in the commission of an offence, I think that the section is quite reasonable.

Mr. Knowles: In view of the fact that this is a new section, what has been the practice thus far?

Mr. Garson: But for this he would not have the power, and that is the reason we are taking it now.

Mr. Knowles: But this is new.

Mr. Garson: Yes, it is new. That is right. My note on this is that officers executing search warrants very often find things which are the proceeds of some other crimes or have been used in the commission of other offences, and the power to seize such things would appear to be fully warranted. That is the justification for the section.

Mr. MacInnis: I think the question asked by the hon. member for Winnipeg North Centre has not been answered. What is the procedure under the code as it now stands? If a person is looking for stolen articles and finds something other than what is mentioned in the warrant, is he not able to seize that article as well under the code as it now operates?

Mr. Garson: To be quite candid, I must say that I am not familiar with police practice in

that regard, but from the fact that we are seeking the power to do this now I would assume that in the absence of that power he would not do it and could not do it, or if he did take the article then he would be acting unlawfully, with all the risks in which that would involve him.

Mr. Nowlan: The minister has said that he thinks this is normal procedure, but I wonder whether that is so. You have an information laid for one offence and a search warrant is issued to search for a washing machine, an automobile or something else that has been stolen. The police officer enters and finds something that he thinks has been obtained by an offence.

The minister says, and I think quite properly, that this is a new section and that police officers did not have the power to do this before. I know this matter was discussed by the committee. I am told by my learned friend sitting beside me that the matter was discussed in the special committee last spring, that objection was taken to it but that the clause was passed nevertheless.

I know there is no point in discussing the matter at any great length now, but I do suggest that this again is one of these instances where we are departing farther and farther from the principles which we at one time recognized. The minister may say that if you have a search warrant for an article worth a dollar and you find it, and you also find a thousand dollar diamond ring it is an unfortunate thing if you cannot seize the diamond ring, and I think that is true. But there is a fundamental principle that it is better to have somebody escape once in a while provided we follow proper practice.

I also think any information that would ordinarily be laid would be wide enough—the police would see to that—to take in any matter which could be embraced within the particular offence. If, for instance, you are dealing with a theft case and looking for the stolen articles, and you also find that the man has been guilty of bootlegging, shall we say, I am rather doubtful that you should take advantage of the situation and bring in the evidence pertaining to that offence. Otherwise, why have an information at all?

Mr. Knowles: Ten o'clock.

Mr. Nowlan: It is ten o'clock and I am not going to labour the matter further, but I want to protest against it.

Clause stands.

Progress reported.

BUSINESS OF THE HOUSE

Mr. Harris: Mr. Speaker, on Monday we shall continue the debate on the motion to go into supply and, as I announced last night, we shall call two additional departments, namely fisheries and transport. It is the intention, and I think there is unanimous agreement, that when we get into supply we shall call the Department of Public Works, deal first with the item having to do with the construction of the national film board building in Montreal and debate that to the exclusion of others until it is completed.

Mr. Green: After that you would go on with administration?

Mr. Harris: After that we would revert to the general item on public works and continue with public works.

Mr. Fulton: Has the minister anything in mind now for Tuesday?

Mr. Harris: I have been informed by people whom I thought were well informed that we would not get into supply on Tuesday.

Mr. Knowles: Tuesday's program will be the same as Monday, is that it?

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