CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Wednesday, March 10, 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 we were discussing clause 631. Shall the clause carry?

On clause 631—*Costs to defendant in case of libel.*

Mr. Knowles: Mr. Chairman, before we proceed to the discussion of clause 631, I wonder if it would not be useful and helpful to all members if the minister could outline his plans for the further consideration of the remaining clauses of the Criminal Code. As the minister is aware, I am asking this question on the basis of certain information of which two or three of us are in possession. However, it occurs to me that it might be well for the entire committee to have that information.

I believe it is understood that today we shall continue with the bill, dealing with the clauses remaining to be dealt with; but that so far as today's program is concerned, we will just make the first run-through. This would then leave quite a number of clauses, something of the order of 50 or 60, that have been stood over, some because they were highly contentious and some for other reasons.

As the minister is aware, there has been an unofficial meeting of the minister with representatives of the opposition parties; and as a result of that unofficial meeting the clauses allowed to stand have been placed in certain groups. I have that list, thanks to the minister who sent it to me; but it occurs to me that it might be helpful to the committee as a whole if the minister were to place that list on *Hansard*. The whole list might be put on, placing the various clauses in their respective groups. If this is done, then when we come to those days when we are to continue discussion of the Criminal Code, announcement could be made that on a certain day we would take the clauses in group 1, group 2, group 3, group 4 or group 5, as the case may be. Perhaps the minister would consider the suggestion I have made.

Mr. Garson: Mr. Chairman, my hon. friend has already covered a lot of the ground he has asked me to cover. I wish to express my appreciation to him for having done so.

Mr. Fulton: I am sorry, Mr. Chairman, but I cannot hear a word the minister is saying; and it is not the minister's fault, either.

The Chairman: Order.

Mr. Garson: As I was saying, the hon. member for Winnipeg North Centre has already covered a good deal of the ground which—

The Chairman: Order. I cannot hear what the minister is saying, and I must ask hon. members to maintain silence.

Mr. Garson: Mr. Chairman, as I have already said on two occasions the hon. member for Winnipeg North Centre has already covered a good deal of the ground that he has suggested I should cover. He is quite right when he says that a few days ago the hon. member himself, representing his party, the hon. member for Kamloops, representing the official opposition, and the hon. member for Red Deer, representing the Social Credit Party, met with me to discuss the manner in which we might expedite the consideration of those clauses in the bill which, in our preliminary consideration of it in this committee of the whole, we have set aside for further attention.

In order to do this we had thought we might continue with the consideration of those clauses in the bill which thus far we have not considered, and that when that was completed we would return to a consideration of those clauses set to one side, dealing first of all with those which seemed to us to be of a less contentious nature, reserving until the end those matters of major importance which we thought were worthy of arrangements as to time for debate, and perhaps also as to length of time to be taken in debate. Carrying out that idea, we divided into six groups the clauses set aside. Perhaps, for the convenience of hon. members I should place those groups on record.

Group No. 1 deals with unrelated clauses which are not considered of primary importance. In each instance I shall indicate the name of the hon. member who asked to have the matter stood aside. They are as follows: clause 16, subject matter insanity, the hon. member for Kamloops; clause 102, subject matter, frauds upon the government, the hon. member for Vancouver South; clause 116, subject matter, witness giving contradictory evidence, the hon. member for Kamloops and the hon. member for Winnipeg North Centre; clause 119, subject matter, obstructing justice, the hon. member for Vancouver East; clause 120, public mischief—in respect of which I understand an amendment will be offered—the hon. member for

Winnipeg North Centre; clause 164, no apparent means of support, or vagrancy, the hon. member for Kamloops and the hon. member for Winnipeg North Centre—and again, an amendment will be offered; clause 206, punishment for murder, the hon. member for Winnipeg North Centre. I might point out that I understand this is stood over as a matter of form in the hope that by some miracle the report of the special parliamentary committee on capital punishment might be received before we have completed dealing with the bill here.

Then, to continue: clause 221 (2), failing to stop at the scene of an accident, the hon. member for Kamloops—and I understand there is to be an amendment; clause 289, punishment by whipping, the hon. member for Winnipeg North Centre, and again this is just a formal standover; clause 374, dealing with arson, a matter concerning which the hon. member for Winnipeg North Centre wished to discuss with me certain matters relating to the composition of cigarettes. I think we might pass that clause and he and I can deal with that subject for him outside of this bill altogether; clause 413, jurisdiction of the courts, the hon. member for Winnipeg North Centre; clause 417—

Mr. Knowles: The minister forgot clause 389.

Mr. Garson: I understand that the request to stand had been withdrawn. The hon. gentleman who asked to have it stood over does not wish to press it.

Mr. Fulton: You still have to pass it.

Mr. Garson: Yes. Then we come to clause 417, trial without jury in Alberta, the hon. member for Kamloops. That was disposed of yesterday by the reply which I gave to the hon. member for Prince Albert. That comprises the whole of group 1.

Group 2 is made up of clauses of major but not primary importance. The first group of clauses is: clauses 222 to 225 inclusive, drunken and impaired driving, the hon. member for Kamloops; clauses 150 to 153 inclusive, crime comics and obscene literature, the hon. member for Kamloops; clauses 247, 248 and 253, defamatory libel, the hon. member for Kamloops and the hon. member for Oxford; clauses 163 and 165, nuisance, the hon. member for Prince Albert. That comprises group No. 2.

Group No. 3: clause 134, instruction to jury re sexual offences, the hon. member for Digby-Annapolis-Kings; clause 141, indecent assault on female, the hon. member for Prince Albert; clause 142, incest, the hon. member for Digby-Annapolis-Kings. That comprises the whole of group No. 3.

We now come to those matters which we think are of major importance. Group No. 4: clauses 46 to 48 inclusive, treason, the hon. member for Prince Albert; clause 50, assisting the enemy, the hon. member for Winnipeg North Centre; clause 57, offences in relation to Royal Canadian Mounted Police, the hon. member for Winnipeg North Centre; clauses 60 to 62 inclusive, sedition, the hon. member for Winnipeg North Centre.

Next is group 5, which deals with a number of clauses all related to one another, in that they directly or indirectly deal with labour matters: clauses 32, 33, and 64 to 69, riots; clause 52, sabotage; clauses 372 and 373, mischief. In connection with all these clauses the name of the hon. member for Winnipeg North Centre is given, and in connection with clauses 372 and 373 the name of the hon. member for Kamloops is also associated with that of the hon. member for Winnipeg North Centre; clauses 365 to 367, criminal breach of contract, the hon. member for Kamloops.

Group 6 is made up of clauses which have been stood over since March 9, 1954: clause 432, detention of things seized, the hon. members for Kamloops and Digby-Annapolis-Kings; clause 446 (2), procedure to procure attendance of prisoner, the hon. member for Winnipeg North Centre; clauses 467 and 468, jurisdiction of magistrates, the hon. member for Kamloops; clause 499, count for murder to stand alone, the hon. member for Kamloops; clause 557, accused other than corporation to be present at the trial, the hon. member for Winnipeg North Centre. That comprises the entire list.

I think the idea is that we shall continue with our work this afternoon on the code itself, and if we are able to finish it we shall go back and start at the beginning of that list.

Mr. Knowles: On that point we were left in an indecisive position last night, but I discussed the matter by telephone today with the Minister of Citizenship and Immigration and he agreed to our request that if we finished the first run-through today, we should not try to go back to any of these clauses that have been stood over, but that they should be left until some other sitting of the house. My reason for asking the minister to do what he has now done is clear, I think. It means that from here on when an announcement is made as to what we shall deal with when we take up the Criminal Code, it can

be done by announcing that consideration will be given to the clauses in group 1, group 2 or one of the other groups recorded in today's *Hansard*.

While I am on my feet may I draw to the minister's attention the fact that two clauses which were allowed to stand over seem to have been omitted from this list. I did this checking just before we came down at 2.30, and I did not have time to call them to the minister's attention. I refer to clause 88 and clause 289. I believe clause 88 was stood over at the request of the hon. member for Vancouver East, and clause 289 stood at my request. If I might presume to say so, I think both could be included in group 1.

Mr. Garson: I mentioned clause 289; it is on record.

Mr. Knowles: I am sorry; I was looking at an earlier list.

Mr. Garson: With regard to the first point raised by my hon. friend, I was suggesting only that we might go back to these matters of lesser importance which have been stood over in the rather improbable event that before six o'clock this afternoon we shall have finished all of the remaining sections of the code. I do not think we need to waste time debating that question, it is rather academic at the moment.

Mr. Knowles: We can deal with it if and when it arises.

Mr. Garson: Before we enter into consideration of the clauses before us, perhaps I can clear up this point as I go along.

The Chairman: Order. I have listened with some interest to the suggestion as to procedure presented by the Minister of Justice, which appears to have been agreed to by the various groups; but of course I am in the hands of the committee. May I ask the committee whether the suggested procedure is agreeable to it?

Some hon. Members: Agreed.

The Chairman: Shall we deal with clause 631?

Mr. Garson: I wonder whether I might have unanimous consent to clear up a very simple matter as we go along, which does not come under the heading of clause 631 but under clause 626, which has been passed.

The Chairman: Has the minister leave?

Some hon. Members: Agreed.

On clause 626—*Fines and penalties go to provincial treasury.*

Mr. Garson: The hon. member for Kootenay West asked me a question yesterday and perhaps I had better read it. It was as follows, as reported at page 2872 of *Hansard:*

> I was informed by a person I consider to be quite responsible that when the R.C.M.P. lay a charge for an offence involving the operation of sweepstakes, particularly the Irish sweepstakes, the case is heard in Ottawa and the fine or any moneys seized are paid to the city of Ottawa rather than to the municipality in which the offence occurred.

I did not have the information on hand when he asked the question. I have since checked with the commissioner of the Royal Canadian Mounted Police, who informs me as follows. The R.C.M.P. has not laid any charge in respect to sweepstakes in Ottawa, nor seized any money relating to that offence, as cases of this sort do not come within this jurisdiction. In the province of Ontario any information on cases of this nature which might come to the R.C.M.P. in any way would simply be passed on to the municipal or provincial force having jurisdiction at the point where the matter was reported.

Mr. Diefenbaker: Will the minister allow one question there? Is it a fact that in the city of Ottawa searches are made—

Mr. Winch: If I may rise on a question of privilege, we can never hear my hon. friend here on the back benches. Would he speak up?

Mr. Herridge: On a question of privilege, the loud-speaker system is not working very well this afternoon. We have had difficulty with it ever since we commenced the sitting today.

Mr. Diefenbaker: I thought the reason for the installation of this appliance was to permit an informal discussion to take place in committee, particularly, so each of us would not be yelling at the top of his voice in order to make himself heard. I thank my hon. friend very much, as I did not know I was speaking in such subdued tones. Is it not a fact that during the last year seizures have been made by municipal officials of money being forwarded by operators of lotteries, which seizures took place as trains were passing through the municipality in question? What right has a city to make such seizure? I understand that has been done.

Mr. Garson: I am sorry, but I cannot accommodate my hon. friend. The seizures to which he refers would be made by municipal police forces. I have no knowledge concerning them and therefore cannot answer

his question. The individuals who made the seizures would be the ones who should answer for the authority under which they were made.

Clause agreed to.

On clause 631—*Costs to defendant in case of libel.*

Mr. Garson: Yesterday at six o'clock we were debating this clause and the hon. member for Kamloops was contending, as I understood him, that while he had no objection to the successful defendant in a prosecution for defamatory libel being given his costs, he thought it was rather inconsistent that in the same bill we were proposing to delete the provision for the prosecutor getting costs in those cases in which the prosecutor was successful. The hon. member thought that was an anomaly which should be cured.

We always give careful consideration to worth-while suggestions made by members of the house. But we did not think it would be proper to restore the allowance of costs to a prosecutor for in the great majority of cases the prosecutor is the crown itself. While there have always been these clauses in the Criminal Code which permitted the awarding of costs, the crown has not claimed such costs but has charged them up to the administration of justice. I do not think any of us would regard it as desirable that the crown should collect these costs. Hence I think the hon. member for Kamloops will agree that in the great majority of cases it would not be desirable to restore this section.

But so far as the offence of defamatory libel is concerned, I think there is good warrant for allowing the prosecutor his costs if he succeeds, in the same manner we propose under the provisions of this clause as it now reads to allow costs to a successful defendant. I hope this will in part meet the viewpoint expressed by the hon. member for Kamloops, and I would therefore propose to amend the bill by striking out clause 631 as it is now in the bill and substituting the following:

631. The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court.

I would ask the Minister of Citizenship and Immigration to move that amendment.

Mr. Harris: I move accordingly.

Mr. Garson: I would also suggest that clause 632 at it is now in the bill be struck out and the following substituted therefor:

632. Where costs that are fixed under section 631 are not paid forthwith the party in whose favour judgment is given may enter judgment for the amount of the costs by filing the order in the superior court of the province in which the trial was held, and that judgment is enforceable against the opposite party in the same manner as if it were a judgment rendered against him in that court in civil proceedings.

Mr. Harris: I move accordingly.

The Chairman: Is it agreed that we deal with clauses 631 and 632 at the same time?

Some hon. Members: Agreed.

Mr. Fulton: I wish to express to the minister my appreciation for the consideration which he and his department have given to the point I raised last evening, and to say that the amendment is perfectly satisfactory. The point I made last evening had relation to the whole field of costs for the prosecution or for the crown in criminal proceedings. As I pointed out, section 1044 gave the right to the crown to recover costs and expenses incidental to the proceedings if it desired to do so. I can see some reason for retaining that section because I can imagine that in particularly aggravating or irritating cases it might be desirable to take advantage of it. Yet I can appreciate what the minister has indicated to me privately and also in the house, that the section has never been used in past years, that the crown in the right of the provinces has tended to regard it as being incidental to the administration of justice that they have to bear the costs of criminal prosecutions. Therefore the section has never been used.

I understand it is felt, and I must say that it seems to be generally acceptable, that a section which is never used should not continue to be part of the law. While I have some minor reservations regarding the deletion of the general right on the part of the crown to recover its costs, I certainly could not insist with any vigour on its retention. Since the minister has met me with respect to the rights of a person launching a prosecution for defamatory libel, that is where an individual rather than the crown is concerned, I have no further objection to the dropping of section 1044. I thank the minister for having continued that particular right by virtue of the amendments which he has just suggested.

Amendments agreed to.

Clause 631 as amended agreed to.

Clause 632 as amended agreed to.

Clause 633 agreed to.

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

Mr. Dinsdale: I understand that when a person is serving time for a specific charge and another province prefers a similar charge against him, it is necessary upon discharge for that man to go to that other province to stand trial. If that is so it seems to me that time and money might be saved if the province in which the prisoner was convicted could be given sole responsibility for trying that prisoner on charges of a similar nature, relating to other provinces.

Mr. Garson: Has my hon. friend Bill No. 7 with him?

Mr. Dinsdale: Yes.

Mr. Garson: If he will look at clause 421 (3) he will see that is designed to cover the case he has in mind. I do not believe it goes quite as far as he wishes, but it does provide a means whereby the accused can have all his offences cleared up so he can start serving his sentence on them all. I think that is what my hon. friend has in mind.

Mr. Dinsdale: Yes, that is so.

Mr. Garson: I believe he will find that covers the point.

Mr. Dinsdale: But if it was discovered after conviction in one province that there were offences of a similar nature committed in another province, would the accused have to face charges in that other province?

Mr. Garson: No, I believe if my hon. friend reads that clause he will see that it is designed to cover that point.

Mr. Dinsdale: Then this is new?

Mr. Garson: Yes.

Clause agreed to.

On clause 635—*Sentence served according to regulations.*

Mr. Nesbitt: Mr. Chairman, this clause reads:

> A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced, and a reference to hard labour in a conviction or sentence shall be deemed to be a reference to the employment of prisoners that is provided for in the enactments or rules.

From a practical point of view certain difficulties occasionally arise with regard to this matter of hard labour. I wonder if the minister would take into consideration the possibility under various parts of the code of having people sentenced to, say, labour instead of hard labour? The practical difficulty that arises is this, that we have people sentenced for traffic offences such as impaired driving, and they are sent to a county jail. It very often happens a prisoner in that position in a county jail would like to get out and work on the lawn or shovel snow or do something of that nature. But because the sentence does not call for hard labour they are not allowed to do so, and prison officials will not permit them to undertake such work on the ground that it would be breaking the law.

It is my belief there might well be two divisions in respect to sentences. For example, there might be hard labour, which involves heavy work such as on the old fashioned rock pile or something of that nature, and another division of labour which would enable prisoners in a county jail, not a penitentiary, serving sentences for some of these traffic offences, to be employed on lawns and so on. Very often these people would be glad to get out to do such work.

Mr. MacInnis: Mr. Chairman, I believe the time has arrived for the elimination of these words altogether.

Mr. Garson: They are eliminated.

Mr. MacInnis: Perhaps the minister wishes to say something? If so I shall gladly give way to him.

Mr. Garson: The addition to the penalty of a provision for hard labour has been removed under the new code. The purpose of this present provision is to enact that a reference to hard labour in any conviction under this clause will always be used for the employment of prisoners provided for in the enactments or rules. As my hon. friend from Oxford knows, prisoners who are convicted of an offence under the code and sentenced to a prison term of less than two years do not go into a federal penitentiary. They go into certain provincial institutions, which are recognized as the proper places to incarcerate them under the provisions of the federal Prisons and Reformatories Act.

While a careful check is kept by the Department of Justice as to the practices which prevail there, each one of these prisons will have its own rules. Clause 635 (1) is for the purpose of making clear that when they go in there they will work in accordance with the rules, and it will be up to the provincial jail superintendent, if that is the proper term, who is in charge of that institution to regulate the conduct of the prisoners there.

Mr. MacInnis: Mr. Chairman, after taking a second look at this clause I see it is not quite what I thought it was, and I wish to thank the minister. I was not suggesting that prisoners who are sent to jail should remain in idleness. I believe that if reasonable work can be provided, then these men

should be permitted to work. As far as British Columbia is concerned my information is that for a great many years the addition of the words "hard labour" simply meant that a man would have better medical attention while in jail.

Mr. Nesbitt: I wonder if the minister would clarify what he said. When a person is sentenced to jail for an offence such as impaired driving and he goes to a county jail, not a penitentiary, can one draw the inference that under this clause he could not do simple work such as raking leaves or shovelling snow even if he wished to do so, unless the term "hard labour" was attached to his sentence? Is that correct?

Mr. Garson: No, it is not correct to draw that inference.

Clause agreed to.

Clause 636 agreed to.

On clause 637—*Binding over person convicted.*

Mr. Knowles: I wonder if the minister would care to comment on a point which strikes me under this clause. Clause 637 is in part a revision of section 1059 of the Criminal Code as it now stands, and I notice under that section it states that:

> Whenever any person . . . has . . . remained imprisoned for two weeks, the sheriff, gaoler or warden shall give notice, in writing, of the facts to a judge of a superior court, or to a judge of the county court of the county or district in which said gaol or prison is situate . . .

—and so on. That has been changed in the clause now before us to provide that the prisoner himself may apply to a judge for a review of the order of committal. There might be a very simple answer to this, but it strikes me that a prisoner in jail is in a rather helpless position in this regard. My colleague for Vancouver-Kingsway points out to me that a prisoner might not have a copy of the Criminal Code with him in his cell and he may not know of this right. It appears to me as a layman that there is something lost in the new clause. Formerly the sheriff, jailer or warden had to make a report, and now he is not required to make that report. In other words, the prisoner has a right of which he may not be aware. Can the minister explain?

Mr. Garson: While I am not, thank goodness, familiar with the procedure inside a jail I would not think the fact that the report was made in a routine fashion would necessarily produce a review, and for that reason it seems to me that if the prisoner has the right to ask to be taken before a judge under this clause to have his position reviewed, then that might well be more valuable to him than the previous provision was.

Mr. Knowles: I can see the point the minister is making, in that there is a deficiency in both wordings. He says that under the former wording the sheriff, jailer or warden might make a report and the judge do nothing about it. I agree with that criticism of the weakness in the former wording. However, under the present wording he has the right to apply but he may not know of it. Would it not be possible to include some wording to make sure that this information is communicated to the prisoner? The advantage of the former wording was that a report had to be made. Is the point not worth looking at?

Mr. Garson: Well, perhaps it is; but I think the prison officials, who are pretty humane and intelligent men nowadays, would in all likelihood bring this provision to the attention of the prisoner. Did my hon. friend have in mind putting a provision in the section that the warden of the prison should bring this to the attention of the prisoner? I think that could be achieved better by having an understanding among ourselves and the provincial authorities that this might be done, rather than writing it into the Criminal Code. The important thing here is that the prisoner is given the right to go before a judge and have his case reviewed. The next subclause, as my hon. friend can see, provides that the judge shall review it and shall make up his mind as to what disposition should be made of the case.

Mr. Knowles: It is not quite that certain in the next subclause. However, that is not the point of the debate. The next subclause reads:

> A judge who receives an application under subsection 3 may order the discharge of the person referred to . . .

The word "shall" does not appear. I do not like to take the time of the committee to pursue this point. It has been our experience on some of these other points that if the minister consents to the clause standing sometimes a change is the result. I wonder whether he would let this clause stand and take a look at it. If after he has done so he thinks it should go the way it is, I shall not take any time on the matter at a later stage.

Mr. Garson: Would my hon. friend agree to pass it on my undertaking that I will look at it? I think it is in quite good shape the way it is.

Mr. Knowles: I do not mind, if the undertaking also means that the minister will

introduce an amendment at this session if he thinks one should be made after looking at the clause.

Mr. Garson: Oh, certainly. I do not think we have given any indication throughout the consideration of the bill that we were not prepared to amend where good cause was shown.

Clause agreed to.

On clause 638—*Suspension of sentence.*

Mr. Nesbitt: Clause 638 deals with a case where an accused is convicted of an offence and there is no previous conviction against him. Reference is then made to having regard to the age, character and so on of the accused, and provision is made that sentence may be suspended. The special committee on reform institutions of the Ontario legislature has made a carefully prepared, revealing and detailed report on many matters, and I could not help noticing, as I have no doubt the minister has seen, that they recommended that sentence should be suspended in the case of persons who are first offenders unless it is felt by the court, in view of certain particular circumstances, that this should not be done.

Possibly I am speaking in a circle, but under this clause as it reads now the court may, if it sees fit, suspend sentence. I wonder whether the minister would agree to let the clause stand in order to permit members a chance to read the report made by this committee. It might be that it would then seem advisable to alter the clause so it would read that the court shall suspend sentence unless there are particular circumstances which make the court feel that sentence should not be suspended.

Mr. Garson: When a judge or magistrate is appointed to judge cases it seems to me to be of the first order of importance that you should not surround him with too many statutory directions which give him no scope to exercise his own judgment. I would think that in this clause we have an instrument by which a system of probation, which I think my hon. friend has in mind, could quite easily be made operative. But would my hon. friend not agree that a judge in dealing with a series of cases coming before him has to decide in each case upon the facts of the particular case whether or not he will grant what is popularly referred to as suspended sentence? If we provide that, if two or three conditions are met, the judge must grant suspended sentence, the judge may have before him a few exceptional cases in which it would not be proper for him to grant suspended sentence at all, even although these conditions had been met.

If he is a competent judge, as we must assume they all are, it seems to me to be far better to leave that discretion with him. I do not think there would be any purpose in standing the clause over until further consideration is given to the report to which the hon. member has referred. The only thing that can happen to that report is for it to be implemented or not implemented, and it is not until it is implemented that the point the hon. member now raises has any particular relevancy.

The whole question of probation comes under the heading of the administration of justice, which is entirely provincial in character. It is a part of the general administration of justice policy which depends for its success upon the co-operation of the crown prosecutors and the departments of the provincial attorneys general. I think the position is that in clause 638 there is ample provision for the implementation of a more extensive probation policy in any province in Canada if the province concerned wishes to put such a policy into effect.

Mr. Nesbitt: I fear that possibly the minister may have misunderstood me. First of all, I realize full well that the report of this committee of the Ontario legislature is provincial in nature. However, it touches on many subjects dealt with in Bill No. 7, and I am quite sure those of us who are interested in commenting on the clauses as we go through the bill might be able to gain a great deal of valuable information if given a chance to study the report of this particular committee. One of the clauses of the bill now before us which would be involved is this one dealing with suspension of sentence and probation.

I quite agree with the minister that it is a very bad thing to hamper judges or magistrates with too many statutory rules. No one would be more ready to agree with that than I. But in the past, as I think the minister well knows, the imposition of what is popularly called suspended sentence has been the exception rather than the rule, although lately social thinking has possibly resulted in sentences being suspended more frequently.

What I really had in mind was that this clause might be rephrased to impress upon magistrates and judges the desirability of imposing suspended sentences. The emphasis could be shifted so that suspended sentences would be imposed more often, though there would have to be a saving clause so the judge would be at perfect liberty not to suspend

sentence if the circumstances were such that he thought that should not be done. In the past suspended sentences have been the exception rather than the rule, and I think the emphasis might be shifted so that suspended sentences for first offenders would be the rule rather than the exception.

Clause agreed to.

Clauses 639 and 640 agreed to.

On clause 641—*Execution of sentence by whipping.*

Mr. Winch: May I ask that this clause stand, because it deals with whipping.

Mr. Garson: Yes, it could stand. Before we do so, in line 37 there is a typographical error. The word—if it is a word; I think it is just a jumble of letters—"practioner" should read "practitioner".

Mr. Martin: I shall be happy to move that amendment to correct my colleague's language.

Amendment agreed to.

The Chairman: Is it agreed that the clause stand?

Mr. Knowles: It could be associated with clause 289 in group 1 for later consideration.

Mr. Garson: I suppose we all realize that we will stand it now, but we shall likely have to pass it before receiving the report of the committee.

The Chairman: Shall the clause as amended stand?

Clause as amended stands.

On clause 642—*Form of sentence.*

Mr. Winch: Could we do the same with clauses 642 and 643?

Mr. Knowles: Would you stand the entire group from clause 642 through to and including clause 653? They could be stood and considered later in association with clause 206 in group 1.

Mr. Garson: All right, but before we do that might I suggest another amendment in clause 643, lines 16 and 31? The expression "Secretary of State" should be deleted and the expression "Minister of Justice" substituted therefor. If my colleague the Minister of National Health and Welfare would move that?

Mr. Martin: I so move.

Amendment agreed to.

Clauses 642 to 648 inclusive stand.

[Mr. Nesbitt.]

On clause 649—*Documents to be sent to Secretary of State.*

Mr. Garson: In clause 649 the words "Secretary of State" in line 45 should be deleted and the words "Minister of Justice" substituted therefor.

Mr. Diefenbaker: Would the minister say why the change is made?

Mr. Garson: Yes. It has to do with certain functions in connection with the matter of capital punishment. Until the present time the practice has been that the advice and documents passed through the Secretary of State to the Minister of Justice. We have made arrangements to have them go to the Minister of Justice directly.

Mr. Diefenbaker: On that point, would the minister say where the Solicitor General comes in on the question of the procedure to be followed after a capital sentence has been imposed. Has he any function today?

Mr. Garson: Yes, the Solicitor General is connected with the Department of Justice, and at the present time he actually discharges all of these functions relating to remissions and commutations, but he does so as a colleague in the Department of Justice. The Minister of Justice is the responsible official who answers for all these matters in the House of Commons and always has been.

Mr. Diefenbaker: Was that always in effect, or is that a recent innovation?

Mr. Garson: No, that has been in effect.

Mr. Diefenbaker: I thought a change was made a couple of years ago.

Mr. Garson: Yes, the situation has always been that the Minister of Justice was answerable in the Commons for the department, including the actions of the Solicitor General therein. Up until, as my hon. friend says, about two or three years ago the Solicitor General looked after all cases of remission except those involving commutation of the death sentence. At that time the Solicitor General took over all cases of remission, including the commutation of death sentences, and the Solicitor General is handling that work now.

Mr. Knowles: Do I understand that when an official review is made by the cabinet of a death sentence, the preparation and presentation of that material is made by the Solicitor General rather than by the Minister of Justice?

Mr. Garson: That is right.

The Chairman: May I point out that since a request has been made for the clauses to stand, the amendment can only be made by leave. Does the committee grant leave?

Some hon. Members: Agreed.

Mr. Lapointe: I would move that line 45 of clause 649 be amended by deleting the words "Secretary of State" and substituting therefor "Minister of Justice."

Amendment agreed to.

Clause stands.

Clauses 650 to 653 inclusive stand.

Clause 654 agreed to.

On clause 655—*To whom pardons may be granted.*

Mr. Knowles: Would the minister explain whether there is any significance in the distinction between mercy granted by Her Majesty and a pardon granted by the governor in council?

Mr. Garson: There is not any practical difference. The royal prerogative of mercy is a prerogative which has always been attached to the British crown, regardless of any statute. As my hon. friend can see, clause 658 reads:

Nothing in this act in any manner limits or affects Her Majesty's royal prerogative of mercy.

The exercise of that royal prerogative is carried on in accordance with the other provisions which are in the Criminal Code.

Mr. Knowles: Then is subclause 1 of clause 655 really necessary in view of what is in clause 658?

Mr. Garson: Well, I would think so; because if my hon. friend will look at clause 655 he will see that it spells out the different kinds of acts the governor in council may do in the exercise of the royal prerogative of mercy. I think it is desirable to have these things set out in the Canadian statutes rather than leave the subject to conduct a research in the law library to ascertain of what the royal prerogative of mercy consists.

Mr. Winch: The only question which comes to my mind is this. When, on Her Majesty's birthday or on the coronation, she announced remission of sentences for those in jail, is that carried through as a prerogative of the crown or do we in Canada then take the necessary steps to promulgate her announcement?

Mr. Garson: We pass an order in council which gives effect to Her Majesty's amnesty in Canada.

Mr. Nesbitt: I should like to ask a question of the minister for which no doubt there is a very simple explanation. Clause 655 (1) states:

Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an act of the parliament of Canada, even if the person is imprisoned for failure to pay money to another person.

Would the minister explain the necessity for the words "even if the person is imprisoned for failure to pay money to another person." Why is an exception made in that way?

Mr. Knowles: It sounds in the same category as witchcraft.

Mr. Garson: No, it is not witchcraft.

Mr. Winch: Is that the most serious crime that can happen?

Mr. Garson: The prisoner in question may be in prison because he has failed to pay penalties which have been levied against him, or moneys which he has been directed to pay. This subsection makes it clear that the royal prerogative of mercy may be extended to him even in cases of that kind.

Clause agreed to.

On clause 656—*Commutation of sentence.*

Mr. Garson: I would ask my colleague to move an amendment to this clause.

Mr. Lapointe: I move:

That in clause 656 the words "Secretary of State or under-secretary of state" be deleted from line 19 and that the words "Minister of Justice or deputy minister of justice" be substituted therefor.

Mr. Knowles: Where is the written provision by which these functions, which by law are assigned to the Minister of Justice, are actually handled by the Solicitor General?

Mr. Garson: That would be by order in council, under the Department of Justice Act.

Amendment agreed to.

Clause as amended agreed to.

Clauses 657 to 659 inclusive agreed to.

On clause 660—*Application for preventive detention.*

Mr. Winch: What I shall have to say on this clause may tie in, in part, with clause 666. It is a matter which has come to my attention as a result of being elected to the House of Commons and having had the opportunity to visit penitentiaries. According to my understanding of the law as set out in clauses 660 and 666, when a man is apprehended on a criminal charge he is first of all tried and

sentenced on that charge. Under clause 660 he can then be charged as an habitual criminal. Any sentence on that charge does not become effective until he has served the sentence on the charge for which he was arrested. I believe I am correct in my understanding of the law in this respect.

I have in mind a case in point which I do not understand, and for which I am asking an explanation from the minister. When, before coming to this session, I visited the penitentiary in British Columbia I met two young men who, first of all, had been sentenced on the charge on which they had been arrested, and were then sentenced under this clause. In order to make my point clear, these men were arrested on a charge of robbery and received sentences of three years. Then they were further sentenced as habitual criminals. Under the existing act, and in the clause now before us, it is my understanding that the Minister of Justice must review every three years the case of a criminal sentenced under clause 660, to see whether or not there are circumstances under which he should receive parole. But the minister cannot do that until the prisoner has served three years under the second sentence.

To my mind it is strange that a man can serve his sentence of three years, six years or ten years, as the case may be, on a charge for which he has been arrested, subject to review under the program of rehabilitation, which I hope is to be continued—and I believe it is being carried out in the British Columbia penitentiary—but after serving his sentence of three, six or ten years, as the case may be, the Minister of Justice is not permitted to consider the case until three years have been served under the provisions of this clause. That is my reading of the law, and definitely my understanding from the authorities in the British Columbia penitentiary. My information is that the cases of these men cannot be considered by the minister until three years after they have served the sentences resulting from their convictions.

I believe this is a wrong procedure. I say the proper time to consider whether or not mercy should be exercised would be at the completion of the first term.

Mr. Garson: I should like to compliment the hon. member upon his lucid explanation. Most of what he has said is quite correct. However, notwithstanding the impression he may have received from the prison authorities in British Columbia, I am afraid he is mistaken on one point. I am sure my hon. friend himself can see that he is wrong by reading clause 666, which says:

> Where a person is in custody under a sentence of preventive detention, the Minister of Justice shall—

"Shall"—I must do it.

> —at least once in every three years, review the condition, history and circumstances of that person for the purpose of determining whether he should be permitted to be at large on licence, and if so, on what conditions.

Mr. Winch: That is the very point I have made. The minister must review the case when the prisoner has been under preventive detention. I am informed that he is not under preventive detention on that charge until he has fulfilled the sentence on the charge for which he was arrested.

Mr. Garson: I think my hon. friend is right in that. But the fact that clause 666 says the minister shall at least once in every three years review the conditions, history and the like, does not mean that he cannot do it on other occasions, if he wishes. There is nothing in clause 666 which purports to abridge in any way the royal prerogative of mercy. And if it were not possible to do it in any other way it could be done by royal prerogative.

What this clause says is that whether the minister wishes to do it or not, he shall—he is specifically directed—do it once every three years. But it does not say that even during the determinate sentence of a prisoner, the initial sentence of three years, or during the indeterminate sentence, the Minister of Justice, in the exercise of the royal prerogative of mercy under this part of the code, may not at any time commute or remit some portion of either of those sentences. That is not taken away. If my hon. friend has misunderstood the information which he got in British Columbia, or if it was given to him and he did not misunderstand it, then all I can say is that it was wrong. I agree entirely with my hon. friend that we should have that power. We do have it; we do not want to give it up.

Clause agreed to.

On clause 661—*Evidence.*

Mr. Nesbitt: I should like to request the minister to stand this clause over. I discussed it with my colleague, the hon. member for Kamloops. In view of the same report of the Ontario legislature committee on reform institutions, the fact that a number of hon. members wish to go at some length into this matter, and that I have some comments and suggestions I wish to make to the minister with respect to a royal commission to go into this matter, I request that the clause stand.

Mr. Garson: That is quite all right.

The Chairman: Clause 661 stands.

Clause stands.

On clause 662—*Notice of application.*

Mr. Nesbitt: Clause 662 (2) reads:

An application under this part shall be heard and determined before sentence is passed for the offence of which the accused is convicted and shall be heard by the court without a jury.

Will the minister tell us why this paragraph is inserted and why there should be no jury? It would seem to me that when a person is liable to be put away for a long, indefinite period he should be entitled to trial by jury.

Mr. Garson: The logic of this clause is based upon the premise that the issue of whether an accused is a criminal sexual psychopath is one which the average judge will be more competent to try than the average jury. Perhaps we shall be better able to judge of the merits of the suggestion made by the hon. member for Oxford after we have received a report on this subject from the royal commission.

I may say that we have discussed with Chief Justice McRuer the question of having this matter of the criminal sexual psychopath considered by the royal commission which has been set up to consider the subject matter of insanity as a defence to a charge of criminal responsibility. The chief justice is of the view, in which we concur, that it would be a mistake to combine these two subjects, both of which are technical and difficult, in the one inquiry. He thinks and we agree that it would be preferable to set up another smaller commission, of which the chief justice is prepared to accept the chairmanship, to deal with this question of criminal sexual psychopaths alone.

My suggestion would be that we pass the clause in its present form upon the understanding that it and the other clauses under this heading will be reviewed when we shall have received the report of that second commission.

I am sure my hon. friend, or anyone else who has had to do with this problem, will agree that it is an extremely difficult matter. We think that by far the best way to deal with it is to get a small body of really expert advisers to consider it, and then give the most careful consideration to the report they bring in. I should be glad to know from my hon. friend, with his long experience in this field, whether he does not agree with that view.

Mr. Nesbitt: I most heartily agree with the minister's answer that a royal commission is to be set up to study this matter of criminal sexual psychopaths. I made the suggestion some time ago in the house, and I am delighted to hear that the minister has taken it up.

There is one other comment I should like to make in regard to this matter. Regardless of what the report of this commission may be, I still think it is very dangerous to depart from the old, time-honoured principle of criminal law that a man should be tried by a jury, particularly when it may result in his being put away, possibly for life. While I agree with the minister that in certain circumstances a judge may be more competent to deal with the facts, particularly technical facts, nevertheless when a person's liberty for the rest of his life is endangered I cannot help feeling that a jury ought to have at least some say in the matter; otherwise it may be the thin edge of the wedge. If we do it in one case we are apt to start doing it in another; and before long trial by jury, which we have had for generations and generations, and which is one of the cornerstones of British justice, may begin to slip away from us. I just thought I should make those comments. I agree in principle with the minister's remarks.

Mr. Garson: There is a point that I should clear up as we go along. I am in complete agreement with my hon. friend as to the vital importance of maintaining the jury system in general. I am entirely in agreement with all the efforts that are made to protect those civil liberties and rights of the individual citizen, even of the worst criminal. But while still retaining a quite open mind on this subject and being quite prepared to review this matter in the light of any report upon it that might be brought in by a royal commission, I would be inclined to think that this type of prisoner would get at least as favourable a chance from a judge who having dealt with other cases of this nature might have perhaps a better understanding of the nature of the man's troubles and the disease that was afflicting him. The facts of these cases are not very pleasant as a rule. The judge could and likely would be at least as fair to the prisoner as a jury might be.

Mr. Nesbitt: Will the minister permit one question?

Mr. Garson: Yes.

Mr. Nesbitt: I was not thinking particularly of criminal sexual psychopaths but of people who are habitual criminals, and who would come under this clause as well, I believe.

Mr. Garson: Yes, that is right. Perhaps a distinction could be made. The ultimate

decision might be to draw a distinction between the two groups; but in the meantime I cannot see any objection, and I do not think my hon. friend can either, to letting this section go through in its present form upon our undertaking, which I have given before now, to give the most careful consideration to the report when we receive it.

Mr. Nesbitt: I agree with the minister, but I would just like to illustrate what I mean, particularly with respect to the habitual criminal. Clause 660 (2) (a) reads:

He has previously, since attaining the age of 18 years, on at least three separate and independent occasions been convicted of an indictable offence for which he was liable to imprisonment for five years or more and is leading persistently a criminal life—

Then he is liable to this sentence of preventive detention. There might conceivably be a case where somebody made an application under this section, and there might very well be three separate convictions on indictable offences but they might not be serious. I think in that case a jury would be better, because we all know that some judges are more severe than others. Perhaps the minister would take into consideration some change in the future with respect to the habitual criminal part, having that done by a jury, whereas probably the other part could be done by a judge because in a sense we are dealing with an illness rather than crime.

Clause agreed to.

On clause 663—*Evidence of character and repute.*

Mr. Enfield: The words "persistently leading a criminal life" appear in this clause, as they do in clause 660 which deals with habitual criminals. I should like to know the legal effect of those words. Do they not boil down to this. If a man is convicted of three offences he may be considered to be an habitual criminal, but I am wondering if it means something more than that. It seems to me that you should not be held to be leading a criminal life unless you have first been convicted of some sort of crime. It seems a little confusing the way it is worded and I should like to know the history of this particular wording and its legal effect.

Mr. Garson: To begin with, I think it should be emphasized that the purpose of this clause is to indicate that evidence as to character and repute may, where the court thinks fit, be admitted on the question whether the accused is or is not persistently leading a criminal life or is or is not a criminal sexual psychopath, as the case may be. That provision for evidence is made available both to the crown and to the accused. When an accused is charged under this section he may take the position, "That is not so. I am going to bring evidence to indicate that this charge is unfounded." Clause 663 provides that either the accused or the crown may bring evidence on that point. But the charge that has to be proved is still the charge under clause 660. The crown has to bring the case within the provisions of clause 660 before it can establish a case against the accused.

Clause agreed to.

On clause 664—*Commencement of sentence.*

Mr. Winch: I should like to speak on this clause. When I was speaking on clause 660 I mentioned 666, but I deliberately left out any reference to 664 because I was afraid if I brought it in at that moment it might be confusing. Now that we are on clause 664 I hope that I can convey to the minister just what I have in mind.

Under this clause when a man is convicted and sentenced for a criminal offence and then following that is sentenced as an habitual criminal, the governor in council may commute the sentence for which the man was arrested and start the sentence on the habitual criminal charge from the day he goes to jail. That brings me to my first point.

The actual administration of justice comes under the provincial authorities, as do the jails. When a man is found guilty on a charge and then also found guilty under the habitual criminal section of the code, is the Minister of Justice notified immediately so he can consider the case and recommend as to whether or not the provisions of 664 should be applied and the preventive custody start from the commencement? If that is not done —I hope the minister will point that out, because I understand it is not—then this section does not mean anything.

Unless the man who is convicted has money, has a lawyer, or has friends who understand the Criminal Code and can make the necessary application, this provision means nothing. I would appreciate information as to how often this section has been used. At the end of three years the Minister of Justice shall review the situation. May I just follow up from that and say—

Mr. Garson: If my hon. friend wants me to answer some of these questions he had better give me a chance or I will forget what they are. I take it that his question is whether we are advised when a prisoner goes to prison to serve a certain definite period with an indeterminate period thereafter. We are certainly advised if he goes into a penitentiary, because the penitentiaries are operated by the Department of Justice. So far as the provincial jails are concerned, when a prisoner goes into custody in them

we receive advice in due course, and are in a position to exercise the provisions. Moreover, in most cases, if there is any desire on the part of the prisoner to apply for that privilege or that commutation his counsel will see to it, or he himself will write and ask that his case be considered.

Mr. Winch: As the minister says, the penitentiaries come under the Department of Justice and the minister or his officials would automatically hear about it. Just suppose the officials hear that a man somewhere in Canada has been sentenced on an arresting charge and also under the habitual criminal section. Do you then automatically make that review to see whether you should exercise the provisions of section 664? It seems to me that ought to be done automatically. I think that information should be available.

Mr. Garson: First I should like to make a correction. I said a moment ago that if the accused went to a provincial institution we would be informed. The fact is that he never does go to a provincial institution because all of these cases go only to the penitentiary. My information from my assistant, who is head of the remissions branch along with his many other duties, is that when the prisoner goes to a penitentiary we open a file at once. We get about ten thousand applications for pardon a year, and a file is opened in every case. The decisions reached in connection with these cases are based upon reports by the trial judges or magistrates, by the police, and by the wardens of the penitentiaries or jails.

Mr. Winch: I have one other question on this point, Mr. Chairman. When clemency —and I believe I use that term correctly— under clause 664 is not exercised, and the arresting sentence is served, does the justice department or the remission branch, to which I presume the application goes, automatically know that the sentence has been served and that the criminal is starting on a sentence as an habitual criminal, and therefore submit to the Minister of Justice that the prerogative as to clemency should now be exercised? Is that automatic, or does the person in jail have to rely upon his counsel or a friend to handle this matter?

Mr. Garson: The answer is yes, it is automatic.

The Chairman: Shall the clause carry?

Mr. Winch: Before this clause is carried, Mr. Chairman, I would like to ask through you—though I do not want to hold up the committee—if the Minister of Justice will check on his statement and investigate this question in regard to habitual criminals. I know in British Columbia—

Mr. Garson: Mr. Chairman, I rather resent my hon. friend's suggestion. I told my hon. friend that I had with me the head of that department and I was able to check that statement. He assures me that it is automatic. Cases of this sort, and there are not very many, are dealt with automatically. I have no objection to checking, but I think my hon. friend in the meantime at least should take my word for it.

Clause agreed to.

Clause 665 agreed to.

On clause 666—*Review by Minister of Justice.*

Mr. Dinsdale: Mr. Chairman, this clause states that:

> . . . the Minister of Justice shall, at least once in every three years, review the condition, history and circumstances of that person . . .

—and so on. That refers to the habitual criminal, and I would like to know what information and advice the minister receives in reviewing these cases. For example, is there a parole group within the penitentiary which supplies information on the progress made by an habitual criminal? In addition, what sort of remedial work takes place with regard to the habitual criminal?

Mr. Garson: I have no objection in the world to going into this question, but these really are matters which might more properly be raised on the estimates of the Department of Justice. This debate relates to the wording of Bill No. 7, to which we should be addressing our remarks. However, though I have no objection to answering any hon. friend's question, I might add that it would take me 15 to 20 minutes to cover the ground at all comprehensively and would involve an explanation of the whole of the rather elaborate system we have in our penitentiaries to take care of persons from the time they enter.

We have classification officers in our penitentiaries who are trained psychologists—university men. When the prisoner comes into a penitentiary a file is opened up for him and a card index folder is maintained. Full particulars of his background, family life and everything of that nature is filed in the same way quite a number of enlightened industries check upon their employees as to their aptitude, and so on. A classification officer is in constant contact with the prisoners who are under his care. When we come to consider the question of the

prisoner's release these particulars which the classification officer has of the prisoner form some of the more important material which we consider.

We check as to how the reformation which we have tried to achieve in the penitentiary has progressed, and whether it would be safe in the prisoner's own interests to release him. We have on his file the report of the convicting judge, the police report, and a report from the superintendent of the penitentiary as to the record of this prisoner as a prisoner. In addition we have a report of the psychologist who is his classification officer as to developments in the prisoner's character in the penitentiary and the prospects of his making good if released. It is only after full consideration of all these factors that we reach our decision as to whether to remit any portion of the prisoner's sentence. It is also in relation to that record and to his aptitude or interest that he is permitted to take up various training courses within the penitentiary.

We have found that we have now reached the point where those who have taken training courses in the penitentiary have upon release established themselves, in 80 per cent of the cases, as good citizens. That is a very high rate indeed. My hon. friend can see when he asks a question of this sort that in order to give any adequate answer at all we would have to cover subjects which should not really be discussed while we are on this bill.

Mr. Dinsdale: I think the minister was discussing remission in general terms, but I would like to know whether the habitual criminal constitutes a special case, and whether he is subjected to the program which the minister just outlined.

Mr. Garson: Those who go in as criminal sexual psychopaths or as habitual criminals are a most difficult type and obviously constitute special cases. They are given special attention, but their reformation is not any easy task. It is not always possible to achieve the results for which one would hope. But a really sincere effort is made.

Mr. Nesbitt: I would like to ask the minister two questions. I will ask the first one and dependent upon the answer there may be no necessity for the second.

Mr. Knowles: There is nothing like being hopeful.

Mr. Nesbitt: Under this clause the Minister of Justice shall at least once in every three years review the circumstances of the case. That might be suitable at the present time, but the Criminal Code may not be reviewed again for many years, and looking into the future I can envisage a situation when this provision might not be quite so suitable. Is there a provision under the code under which a person who is in prison for a sexual offence might through his counsel make application to a judge of the supreme court for a review of his case?

Mr. Garson: He cannot make application to the supreme court.

Mr. Nesbitt: Or to the minister of justice?

Mr. Garson: The foot of the throne is always accessible to any person who is seeking mercy. Any of these prisoners can at any time make application for a review. Of course if he made an application every two weeks then it would not receive a great deal of consideration. But this provision in this section of the code which we are discussing is mandatory. No matter how busy or preoccupied we may be we must make a review of the case every three years. But in addition to this mandatory consideration the prisoner can write a letter in longhand himself at reasonable intervals and say, "I feel I am making progress, and I would like you to consider letting me out." In this form of application he would get the same kind of consideration as if he had the most expensive lawyer available.

Mr. Nesbitt: I wonder if the minister would consider the very special circumstances which come under part XXI, and in addition to the normal review which takes place every two years under this clause introduce another form of application of which the prisoner could take advantage. In other words, the section might be widened. As it is now, there is a review once every three years, but in addition the section might be widened so that the person could make an application to a judge of a superior court. Then his case would be reviewed by a judge as well as by the minister of justice. It is just an extra precautionary method.

Mr. Ellis: Can the minister give us some information with respect to the review provided for under this section? Can he tell us how many prisoners were permitted to go free as a result of the consideration given under this section? Has he any figures to indicate to what extent the section is used?

Mr. Garson: We have in the whole penal system of Canada twenty-seven habitual criminals and sixteen criminal sexual psychopaths. Therefore you can see that the volume of applications, from that comparatively small number of prisoners in a nation of some 14,500,000 or 15 million people, is not large. With respect to applications for remission

that have been made in relation to this small group, we have not seen fit so far to release any of them.

Clause agreed to.

Clauses 667 to 679 inclusive agreed to.

Schedule to clause 679 agreed to.

Clauses 680 and 681 agreed to.

On clause 682—*Where conviction or order not reviewable.*

Mr. Knowles: When one compares clause 682 with the corresponding part of section 1129 one sees that there seems to have been a slight change. That change turns up in these words in subclause (a) —"whether or not the appeal has been carried to a conclusion". What is the significance of those words, and does that addition subtract anything from the rights of a convicted person?

Mr. Garson: The effect of the words to which my hon. friend refers is that where an accused has taken an appeal and the appeal is pending he may not apply for *certiorari*. In other words, if he chooses the appeal method and launches his appeal, then clause 682 provides that the appeal must be completed before he can apply for *certiorari*. To that limited extent it deprives him of the privilege of making an application for a writ of *certiorari* while his appeal is still pending.

Mr. Diefenbaker: As a matter of fact it goes further than that. I know the case upon which this amendment must be based. It is the case of Rex *v.* Irons. In that case counsel for the accused launched an appeal. The appeal was to the wrong court and therefore was withdrawn. *Certiorari* proceedings were taken which resulted in the quashing of the conviction. The court in that case expressed the view that once notice of intention had been shown by the appellant that he wished to proceed by way of appeal he could not afterwards have a second bite at the apple and determine that he might be more successful if he went ahead by *certiorari*. It covers not only the case the minister mentions but also the case of an appellant who launches an appeal and then decides that he might be better off not to have the case reviewed by the court of appeal and that he might very well rely on some technical objection. He then decides to take a second chance.

Mr. Garson: My hon. friend is quite right. His supplementary answer is very helpful.

Clause agreed to.

Clauses 683 to 689 inclusive agreed to.

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

Mr. Knowles: I want to say a word on this clause which has to do with habeas corpus. If I may be pardoned for making a personal reference, every time habeas corpus is mentioned I am reminded of a discussion we had on the matter in the house one time when the late Humphrey Mitchell was with us. He greatly enjoyed making the suggestion that I was the best example of habeas corpus he had ever seen. Of course all of us who remember Humphrey Mitchell will know that he said it in a very kindly way.

I note that clause 690 is new. As I understand the situation, formerly it was possible under the common law for a person to go from one judge to another making successive applications for a writ of habeas corpus. Am I correct in understanding that the purpose of the new clause is to do away with that? If so, why has it been changed?

Mr. Garson: My hon. friend is right in saying that there was a practice in some of the provinces of Canada and in Great Britain whereby an applicant for a writ of habeas corpus could apply to one judge and if he did not succeed he could, upon the same set of facts and law, apply to another judge. If he was again refused he could apply to a third judge and so on until he had applied to every judge of the court. However, this privilege was not uniform in all the provinces. In the province of British Columbia they had what I think is a more rational system, and the one that we are proposing to adopt here. In British Columbia they had a provision for an appeal from the decision of the judge refusing a writ of habeas corpus. The prisoner could take an appeal to the court of appeal in that province, and there the appeal would be heard in the same way that appeals from other judgments of the trial court are heard.

Mr. Diefenbaker: Most provinces do not have any right of appeal with respect to habeas corpus. That is why you can go from one court to another, is it not?

Mr. Garson: That is right. I thank my hon. friend for his interjection. The privilege of going from one judge to another was not confined only to provinces of Canada but applied to Great Britain as well. In those jurisdictions where persons could go from one trial judge to another they did not have the right of appeal. In British Columbia, where they had the right of appeal, that was the remedy they had to pursue. The case of In re Fred Storgoff (1945) S.C.R. 526 was decided in 1945. The Supreme Court of Canada held in that case that where a writ

of habeas corpus is applied for, as a civil remedy which the British Columbia statute purported to regulate, but applied for in connection with a criminal proceeding, the fact that it was applied for as a step in criminal proceedings gave the application for the writ of habeas corpus a criminal character. Since such a habeas corpus was of a criminal character, only the parliament of Canada could legislate with regard to it under its power to deal with matters relating to the criminal law. Therefore this right of appeal which the British Columbia statutes purported to give in relation to a habeas corpus judgment in a criminal matter was beyond the power of the British Columbia legislature to give, and the right of appeal was inoperative and void.

Now the Storgoff judgment put British Columbia back in the same position as those provinces of Canada in which there was no appeal from the judgment of a trial court judge in a habeas corpus application. The thought behind the present section is that it is wiser to provide for the prisoner the right to apply to a trial judge, and if he is refused a writ of habeas corpus then he can take his appeal to the appeal court where a panel of appeal court judges will consider his appeal on its merits. It was felt this procedure was preferable to having the prisoner apply to trial judge A, then to judge B, then to judge C, then to judge D, all equal in status as trial judges, and perhaps arriving at the conclusion that after three or four judges have rejected his application for habeas corpus, the last one will grant it and thereby in effect overrule the majority of his colleagues who had refused the application.

Mr. Diefenbaker: Not to overrule them.

Mr. Garson: Not to overrule them perhaps in a strict sense, but he grants an application on the same material upon which his brother judges have rejected it. From the standpoint of creating respect for the administration of justice, this present clause provides for a much more orderly procedure. For if what in effect are appeals are going to be taken, it is more orderly and proper to have those appeals considered by the court of appeal which is set up for that purpose and in which they are considered by a group of judges, than it is to have them considered by a succession of brother trial judges of the judge of the trial court who turned the habeas corpus application down in the first place. That is the reason for this new provision. We think it is a better provision in the interests of everyone, including the accused, than the present system.

[Mr. Garson.]

Mr. Nesbitt: This clause 690 is rather related to clause 691, in view of the minister's explanation. It seems to me that throughout the latter part of the code there has been an increasing tendency on the part of the framers to use expediency rather than some of the older principles of the code. I go along with what the minister has said about an appeal going to the court of appeal; that is fine. But writ of habeas corpus proceedings under this clause are very unusual and extraordinary remedies. Usually the time element is one of the most important factors in considering this remedy. It is all very well to give the right of appeal to the court of appeal, but by the time the appeal is heard the importance of the time element may have been completely sacrificed.

Mr. Garson: If my hon. friend will look at clause 691 (3) he will see that the point he now raises is fully covered.

Mr. Nesbitt: Yes, there is mention of it being heard in seven days. Even seven days sometimes is too long when it is a matter of urgency; two or three days might be of importance. I agree with the minister that the old practice of going from judge to judge might be embarrassing to some of the judges who had been visited and who had not granted the relief, but this is an extraordinary remedy that is only used in unusual cases where the time element may be of the utmost importance. I feel that no useful purpose would be served by eliminating the right of a person to go from one judge to another if it is necessary. If the circumstances did not merit the writ of habeas corpus being issued, the judges would keep on refusing. In these borderline cases, one or two judges may refuse and the third one might say yes.

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

Mr. Nesbitt: Yes.

Mr. Garson: Does my hon. friend, as a crown prosecutor, think it is a good plan to give the last of five judges the power, in effect, to overrule the decision of the four judges who have preceded him in refusing the application?

Mr. Nesbitt: My experience as a crown prosecutor was limited to a period of about two years some little time ago. I agree with the minister that in some cases it might not be a very good policy to have to go to the fifth judge, who would be the one to grant the writ. It may very well be that it would not be the fifth judge but it might be the

second judge who would grant the writ. It is an unusual and extraordinary situation, and one judge can say yes or no. The time element is an important factor in these cases, and I doubt very much if seven days would be of much help. These applications are not so usual that any real harm is going to be done by leaving the Criminal Code as it was so that you could go from judge to judge. I do not feel I can agree with this section.

Mr. Knowles: There is one point which might be mentioned before we leave this clause. I am sorry, the point I want to comment upon deals with clause 691. Perhaps I should wait.

Clause agreed to.

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

Mr. Knowles: The point I want to make is that I think a bouquet should be extended to our own House of Commons committee at the last session for having added subclause 3. I believe it was not there when the bill came from the Senate. The minister a moment ago cited subclause 3 as making the change more palatable than it otherwise was. I am sure he is glad to have the credit given where it is due.

Mr. Garson: My hon. friend is entirely correct. The difficulty of the time element mentioned by the hon. member for Oxford was threshed out in the committee and the seven days inserted in this clause. It provides summary justice.

Clause agreed to.

Clauses 692 and 693 agreed to.

On clause 694—*General penalty.*

Mr. Diefenbaker: I want to speak on clause 694, to which I made reference the other day. This clause provides in part:

> Except where otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

I am rather surprised that a considerable change was not made in this clause to follow the practice in other jurisdictions and also to follow the recommendations that were made by the Archambault commission. In other words, we have still retained in our law, in effect, imprisonment for debt. It is on that matter I wish to speak at some length and to refer to the report of the Archambault commission as well as the practice of the United Kingdom. I brought this matter up some years ago, I think it was in 1947, and referred to the same question again two or three weeks ago.

In various newspapers in the country on those occasions widespread support was given to the argument I advanced that, where an offence has been committed that merits only the imposition of a fine, no one should be imprisoned because of his inability to pay that fine, and that the onus should be upon the crown not to stigmatize that person by an alternative in jail simply because of the fact that his financial condition denied him what was available to those in a better financial position, namely the payment of the fine and by this means avoiding imprisonment.

This clause is one that has been with us for many years. It used to be regarded as normal that if a person could not pay a fine he should be imprisoned. But for many years that has not been the view either in Great Britain or in most jurisdictions in the United States.

In other words, in my opinion it is an essential part of our system of justice that every person, regardless of his financial capacity, shall have equality before the law. And I feel that this clause, which makes provision for an alternative of imprisonment in lieu of payment of a fine, is simply a relic of the past, and denies that humane administration of the law that is characteristic of all legal systems today that follow the British doctrine of punishment and reformation.

In 1914 the parliament of the United Kingdom in effect abolished this practice. If anyone reads the debates of that time—and it is now forty years ago—he will find that the law lords, the legal authorities in the House of Lords, as well as some of the outstanding lawyers in Britain, pointed out how unjust and unfair a continuance of that relic of the past actually was, whereby inability to pay a fine had as its consequence an unfortunate period of imprisonment for the individual.

Chapter 58 of the British statutes of 1914 made provision whereby any person against whom a fine was imposed was permitted, in the event of his inability to pay such fine at the moment, to pay it by instalments.

This was the law until 1934-35, when a further change was made. I am not going to read the sections. I shall merely designate their numbers so that hon. members may be able to find them. In 1935 this further provision was made:

> Where a court of summary jurisdiction adjudges a person to pay a sum by a conviction and allows time for payment, the court shall not on that

occasion impose on the defendant a period of imprisonment in default of payment of that sum: Provided that this subsection shall not have effect where the court on that occasion and in the presence of the defendant determines that for special reason, whether having regard to the gravity of the offence, to the character of the defendant or to other special circumstances, it is expedient that he should be imprisoned without further inquiry in default of payment.

In other words, anyone who was in the position of having the ability to pay, or belonged to that parasitical class who endeavour to live by their wits and at the expense of others, must pay; but, with the exception of those classes, imprisonment should not be imposed in default of payment of the fine, unless upon inquiry it is shown and proof is provided that the person in question is able to pay his fine.

I am sure all of us who have read Dickens' story about Little Dorrit will realize that, actually, what we are doing in this twentieth century, by imposing imprisonment in default of payment of a fine, is in effect a continuation of that to which Dickens had reference when he dealt with the deplorable situation then prevailing in the prisons.

Mr. Macdonnell: And from which his own family had suffered.

Mr. Diefenbaker: As the hon. member says, there was a personal feeling in what he wrote. It was based on experience.

The result of the changes that have taken place in the United Kingdom has been to reduce the prison population of Britain, as compared to ours, to an extent almost beyond comprehension. While I have not the exact figures here, I believe I am speaking with reasonable certainty when I say that the number imprisoned in Canada today is almost three times that in Britain, despite the fact that our population is only one-third of Britain's.

It is most interesting to see what happened after the British parliament abolished this practice, iniquitous in its results and detrimental to good citizenship in that many a person whose only offence was that of poverty suffered the indignity of imprisonment.

What happened in Britain was this. In 1913 the number imprisoned for default in payment of fines was 79,583. By 1923 that had fallen to 15,261. Then came the amendments of 1935, as a result of which the number in prison in 1938 stood at 7,936.

One of the briefs presented to the special committee was to the following effect:

We believe that it is time a similar provision were made in Canada for payment of fines on time. Everyone in Canada is supposed to enjoy equal rights under the law. It can hardly be said that this is so when people have to serve jail sentences because they are not financially able to pay fines, except on instalments.

[Mr. Diefenbaker.]

The Archambault commission in 1938 went into this matter in detail. I shall quote from page 167, so that the record will be reasonably complete. It states:

The attention of your commissioners has frequently been drawn to the large number of persons who are annually committed to jail for non-payment of fines. The number shown by the Canadian criminal statistics for 1936, to have been sentenced to jail with the option of a fine was 9,593, but statistics are not available to show how many of these served sentences in jail.

Under the provisions of the Criminal Justice Administration Act passed in England in 1914, the court is obliged to allow time for payment of fines and for investigation of inability to pay.

Farther on, we get this quotation:

The matter was the subject of an extensive investigation and report by a departmental committee in England in 1934. The report resulted in the enactment of the Money Payments Act (Justices Procedure Act) of 1935.

I made reference to that act a moment ago. I continue:

The act makes further provision for the investigation of the means of the defaulter before imprisonment . . . The statute provides that no one is to be sent to jail for non-payment of a fine unless it can be shown that he might reasonably be expected to pay such fine. This act came into force on January 1, 1936, and the results of its first year of operation are shown by a substantial reduction in imprisonments for non-payment.

Then it sets forth the statement that was placed on the records of the House of Commons in the United Kingdom by the then home secretary, Sir John Simon, afterwards Lord Chancellor. He pointed out that the number of persons imprisoned in 1935 in default of payment of fines was 16,567. In 1936 it fell to 11,623. This change would bring about some of the penological advances that have been made in other countries. It is no encouragement to crime. I am speaking of the person who is fined $5 and costs. May I give an example. Many years ago I happened to go into a police court where a number of men who had no work were charged with an offence. They were each fined $5 and costs or in default thirty days. They were respectable men, unable to work because no work was available. They were willing to work. In addition to the thirty days, they were fingerprinted, and because of the social attitude of all of us toward those who have been convicted for offences and sentenced, the futures of these men were undermined. Their only offence was that they could not pay a picayune $5 fine. What did the Archambault commissioners recommend? This is what they recommended:

Your commissioners recommend that the principle embodied in these English statutes should be introduced into Canada.

Imprisonment for non-payment, when the convicted person has not the means or ability to pay, is, in fact, imprisonment for poverty. The injustice of such a law is patent. The poverty-stricken man is

punished more severely for the commission of the same offence than the man with means. Your commissioners are of the opinion that many recidivist criminals often receive their first education in crime upon being committed to prison for non-payment of fines.

Mr. Chairman, that conclusion of a commission composed of learned and able men is a terrible indictment of our system of imposing imprisonment because of inability to pay fines. Let me repeat it:

Your commissioners are of the opinion that many recidivist criminals often receive their first education in crime upon being committed to prison for non-payment of fines.

I simply place that before the minister. I feel that many of the recommendations and changes made in the Criminal Code are worthy and necessary, but I do believe that this is one responsibility that the commissioners could not accept; for in reality they were not to establish substantive law. That is the manner in which they interpreted the commission that they had. In large measure the changes that they made neither create nor diminish responsibility.

The committee should give most earnest consideration to this matter. I know there are some magistrates who, when an accused comes before them, on occasion grant time to pay, but they have no authority to do that. They are but the few compared to the many. The reductions in the numbers of those who were imprisoned in the United Kingdom, when this provision came into effect, have not only had a beneficial effect on the individual but they have also had a material effect in reducing the prison population and the expense of maintaining prisons.

That is another argument I advance. By permitting people to pay fines on time the population of our prisons would be considerably reduced. By "prisons" I mean "jails"; and public funds would be saved in the process. With all the power I possess I place this matter before the committee and ask support on behalf of the proposition I advance, that we bring our criminal law up to date and that in this country we do not imprison individuals, against whom a fine of $5 or $10 would be sufficient, simply because they are unable to pay that fine.

Mr. Knowles: I wish to support wholeheartedly the plea that the hon. member for Prince Albert has made. He has stated the case so well that one does not need to repeat his arguments. He himself indicated that perhaps the strongest argument is the one contained in the report of the Archambault commission, and I hope that the minister will yet give consideration to altering the law so that we do not in fact send people to jail because they cannot afford to pay a debt—in this case the debt being a fine.

It seems to me, Mr. Chairman, that the case which the hon. member for Prince Albert has made is strengthened by a change which is included in subclause 1 of clause 694, which is now before us. I had something to say yesterday about the apparent effects of inflation, Liberal inflation, on the Criminal Code. Yesterday we had an instance where, because of inflation, the monetary figure had been doubled, but in this instance the former ceiling of $50 has been increased to $500. In other words, Mr. Chairman, under clause 694, subclause 1, there is even more chance that a person may be unable to pay a fine levied against him on summary conviction than was the case before. Previously such a fine could not exceed $50, but now this type of fine may go as high as $500. Thus I can see an even greater possibility of people being in the situation of not being able to pay the fine and having to go to jail.

Yesterday afternoon when we were discussing clause 623 I complained because a limitation was being imposed with regard to fines levied against corporations in respect to summary conviction offences. In defence of the limitation of $1,000 the minister suggested that summary conviction offences might in some cases be trifling and therefore it was proper to fix that limit. We are dealing now with cases that come under summary conviction having to do with individuals rather than corporations, and yet here the ceiling is being raised from $50 to $500 with the additional phrase, or six months' imprisonment, or both.

I support as strongly as I can the plea made by the hon. member for Prince Albert and I suggest that this tremendous increase in the amount of fine that may be levied under summary conviction strengthens the case made by the hon. member. I think that there is something to be said for the point that this would be a substantive change and therefore the commissioners can be pardoned for not having implemented the Archambault recommendation in this respect. But it does seem to me that the responsibility rests with the government, and in turn with parliament, to give more serious consideration to that recommendation.

Mr. Shaw: My colleagues are united in their request to the minister to give serious consideration to this matter. We feel that the hon. member for Prince Albert has put the case clearly and forcibly and therefore it is unnecessary to add to the arguments he has advanced. I repeat that we are absolutely

united in our view that the minister should grant this matter favourable consideration.

Mr. Macdonnell: Mr. Chairman, this seems to me to be a case where it is not necessary to have any experience in the administration of criminal law in order to feel entitled to express an opinion. I have listened to what has been said by the hon. member for Prince Albert and it does seem to me that the case he has made is really inescapable on the grounds of humanity and decency.

Mr. MacInnis: I can only say here what I said in the parliamentary committee when we were dealing with this matter, that it seems to me wrong that a person should be penalized with a term in jail if he has not the money to pay a fine. It really means that he is not going to jail for his crime; he is going to jail for not having the money to pay his fine. Surely this parliament ought to make a decision that the time has arrived when we will not allow a thing of that kind to exist.

Mr. Cannon: The hon. member for Prince Albert may have mentioned in his speech the point I have in mind, since I heard only the end of it. If subsection 2 is amended to take away the sanction for not paying a fine, judges may be more likely to condemn to jail immediately under subsection 1 rather than impose a fine.

Mr. Diefenbaker: I would not think that those charged with the administration of justice would be imprisoning when a fine would be sufficient.

Mr. Cannon: If there is no sanction for not paying a fine?

Mr. Barnett: Mr. Chairman, I should like to say at the outset that I agree with the views which have been expressed in regard to sending people to jail simply because they are not able through poverty to pay a fine, but after listening to the various speakers who have dealt with this subject I feel that there are one or two other aspects which have to be considered. To me at least that is where the conundrum exists in drafting a section of this kind.

I feel that in dealing with cases under summary conviction you have to consider, not only the class of people who through poverty are unable to pay a fine but those who are obstinate or careless or shiftless and who, unless there is some compulsion, will simply refuse to pay a fine. I think we have to consider the position of the magistrate dealing with that kind of person.

In respect to the raising of the maximum fine which a magistrate can impose, I have had some conversations with people who have experience in this sort of thing. I believe that we have to acknowledge that the inflation my colleague referred to does exist and also that the total in effect may prevent a magistrate from sending a man to jail. I know that there was a tendency when the ceiling was set at $50 for magistrates to feel that the maximum was merely a trifle to the person convicted, that he would simply pull a roll out of his pocket, hand over $50 and go out and commit the same offence again the following Saturday night.

Personally I feel that the raising of the ceiling under present conditions will tend to reduce the number of jail sentences which magistrates will impose. I do not profess to have a solution to this conundrum but I do feel we must consider the obdurate individual who without some proper form of compulsion may get around the paying of the fine.

Mr. Diefenbaker: The hon. gentleman who has just taken his seat says that there would have to be some compulsion. I would point out that there is provision for compulsion in the act in the United Kingdom. There is an immediate investigation for the purpose of determining ability to pay, the circumstances as to the enormity of the offence, the seriousness of it and evidence of repetition such as the hon. gentleman mentioned. In other words, the jail sentence is not mandatory upon failure to pay the fine. An investigation takes place immediately into the ability to pay and into the other circumstances referred to by the hon. member.

Mr. Garson: I should like to compliment the hon. member for Comox-Alberni upon his short but excellent contribution to this debate. We are dealing here with a matter in which the reforms we are introducing if they are going to be of any value must be realistic. As the hon. member pointed out, unless we have some method whereby some form of discipline can be imposed upon those who, not having too much in the way of worldly goods, break the law, the result would be that we would have no sanctions with which to compel observance of the law by that kind of person. My hon. friend from Prince Albert has painted a very interesting picture of the condition of Canadian law, and of the experience under, and condition of, the English law. I am sure that as far as he went it was most accurate. It was the truth, but it was not the whole truth by any manner of means—

Mr. Diefenbaker: Was the Archambault commission untruthful?

Mr. Garson: I listened with interest to my hon. friend's speech. Will the hon. member now please listen to mine.

Mr. Diefenbaker: Do not make the suggestion that the Archambault commission recommended that.

Mr. Garson: I am referring to the comparisons my hon. friend made between Canada and Great Britain. It is quite true that in Great Britain they have reduced their prison population by a very substantial percentage over the last 40 or 50 years. But I am sure my hon. friend from Prince Albert, upon reflection, would not wish to leave the impression with this committee that that reduction was in any sense solely attributable to the payment of fines by instalment in that country. I am quite sure he knows, though I regret he did not tell us, that the main contributing factor to the reduction of the prison population in Great Britain is a very thoroughgoing probation system under which they have the facilities to supervise, as he indicated a few moments ago, the arrangement and collection of these fine instalments. My hon. friend was then speaking in reply to the hon. member for Comox-Alberni. The British probation officers must examine the ability of persons to pay a fine. The only alternative to that is to say that if a man's income is below a certain figure he need not bother observing the law at all. He cannot pay a fine, you do not want to put him in jail, and so you allow him to be a privileged person.

The point I wish to make so far as Canada is concerned is that we propose under this present bill to continue the provision in our existing law under which magistrates are given wide latitude and can give time for the payment of a fine. One of the main reasons why that practice is not followed in this country is that we have no elaborate probation system such as exists in Great Britain and which provides the supervision necessary to administer the payment of fines by instalment.

Mr. Diefenbaker: The magistrate does it there.

Mr. Garson: They do it there upon the basis of information supplied by probation officers of whom there are large numbers, but we do not have anything even remotely approaching the same number here. One of the difficulties we have in this country to which my hon. friend pays no apparent attention at all is that under the unitary government of England the legislative body which passes the law largely enforces it, with the assistance of municipal law officers. In Canada the law we pass in this parliament has to be enforced by ten provincial administrations over a widely scattered area under conditions which are totally dissimilar to those of Great Britain. Comparisons between the two are not fairly drawn, especially when all the facts on each side are not placed before the members of this committee who are asked to make that comparison.

Mr. Diefenbaker: You should have read that lecture upon the findings of the Archambault commission.

Mr. Garson: Clause 625, paragraph 1, reads:

> Where a term of imprisonment is imposed in default of payment of a penalty, the term shall, upon payment of a part of the penalty, be reduced by the number of days that bears the same proportion to the number of days in the term as the part paid bears to the total penalty.

This clause should be examined in relation to clause 694, paragraph 3, which we are now discussing which provides that "a summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or at a time to be fixed by the summary conviction court".

I suggest, Mr. Chairman, that in any cases in which a fine or penalty has been adjudged to be paid by a magistrate under this summary conviction clause there is nothing in law which prevents him saying that the total amount of this fine shall be paid by the prisoner, "at a time which I hereby fix for a certain date in future." The accused then may pay part on account if he wishes, and if he has not paid the whole amount in full then he will be entitled to credit under clause 625, paragraph 1, which I quoted a moment ago, and for the amount that has been paid on account and there will be a corresponding reduction in the imprisonment that would otherwise have been served.

Mr. Diefenbaker: I would like to ask the minister a question. Suppose a person is fined $10 and he is able to pay only $5 and the failure to pay the initial $10 carried the alternative of 20 days in jail. Would he then serve 10 days in jail because of his inability to pay the remaining $5?

Mr. Garson: That is right.

Mr. Diefenbaker: That is still imprisonment for debt.

Mr. Garson: If it is a fine of $10 will my hon. friend say that under this clause time may not be fixed which will enable the accused to pay that fine? The clause reads in part:

> . . . shall be paid forthwith or at a time to be fixed by the summary conviction court.

I know that the corresponding section of the present law is not invoked very often, and I suggest one of the reasons for that is that summary conviction courts do not like to

take the trouble to make an order under this section. I see my hon. friend nodding his head in agreement.

Mr. Diefenbaker: Is it not a very good argument to have the clause say that, so they will not be able to evade the issue?

Mr. Garson: I would like to remind my hon. friend that, as I have stated on previous occasions in this house, where you have jurisdiction over the criminal law divided between a legislature which enacts that law and other authorities which administer it, all we can do here is to provide them with a law under which they will have a discretion. It is up to them to exercise that discretion. Not only is it true that the time can be extended and any money paid applied in reduction of the penalty of imprisonment, but under the heading of suspended sentence—this has no reference to fines—payment of costs or compensation, where those are applicable, can be made by instalments as a condition to the suspended sentence. In other words, in the absence of a thoroughgoing probation system in the provincial administration of justice in Canada, I think we have provided in this section all of the discretion which summary conviction courts are prepared to exercise with the facilities they now have at hand. If there is a real desire to give some time for payment, I think they could certainly do so under the law as it stands and as we propose to continue it in the new act.

That being so, it seems to me, under Canadian conditions and in view of our divided jurisdiction, that we have gone as far as practical conditions make possible. When it is represented to us by those who are responsible for the enforcement of the law that they want greater discretion than they now have we will certainly be very glad to consider it. But until that is done we have no reason to suppose, on the basis of the manner in which the present law is invoked, that any further discretion would be exercised to any extent.

Mr. Diefenbaker: Am I not right that the Canadian Bar Association, representative of the bar of every province in Canada, has recommended this change?

Mr. Garson: Well, if my hon. friend is right, that proves that the Canadian Bar Association is in favour of it.

Mr. Ellis: The hon. member for Prince Albert gave a very interesting example of a convicted person paying part of a fine and in lieu of payment of the balance serving a portion of the jail term. To my mind this brings out a very important principle, the question of the maximum fine of $500 or maximum imprisonment of six months. This implies that $500 cash is equal to spending six months in jail. If we believe in the principle of equality before the law, I think it is the height of absurdity, when a man is accused of an offence and convicted, to offer him the choice of paying $500 or spending six months in jail. Many a man can walk into a courtroom, be tried and convicted, take out a cheque book and write a cheque for $500 and walk out of court a free man. Other men who lack money go to jail for six months. In view of the quotation read by the minister a few moments ago, I should like him to tell the committee whether in his opinion the payment of $500 in cash bears any fair relationship to spending six months in jail.

Mr. Garson: Personally I do not think that it does. I certainly would not want to trade the one for the other. But I would point out to my hon. friend that his question has no element of reality to it. If he will read the section carefully he will see that it says:

> . . . every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

There is no suggestion in that section that, as the hon. member would have us believe, $500 is balanced against six months' imprisonment. All that the section says is that the top limit of the monetary penalty is $500 and the top limit of imprisonment is six months. But if a well-to-do person is in the dock and is convicted and the magistrate takes a dark view of the crime he has committed and the circumstances connected with it, it does not by any means necessarily follow that the magistrate is going to impose a penalty of $500 on him. He knows that would be no penalty at all, and under this section he can quite readily send him to jail for six months and on top of a $500 fine, which will be a very different thing.

Mr. Diefenbaker: They certainly would not be exercising very much discretion if they followed that system.

Mr. Garson: On the other hand, if the circumstances of the offence had elements about them which seemed to entitle the accused to some consideration and the accused did not appear to be well off the magistrate could impose a money penalty of anything from $500 down to $5 or less and not a prison term at all. After having imposed that penalty he could under this law give the accused time in which to pay it. If during that time the accused pays something on account of the penalty another section of the code says

that any penalty of imprisonment imposed in lieu of payment of the balance of the fine will be reduced proportionately.

What I wish to emphasize is that until we instal a system of probation in this country under which a provision of this sort will be administered in the way in which I agree with the hon. member for Prince Albert that they do it successfully in Great Britain, the idea that we are going to accomplish a great reform by amending the existing provision for the giving of time to pay is quite illusory for the cogent reasons which the hon. member for Comox-Alberni has stated.

So far as we in the department are concerned, we have an entirely open mind on the matter and are quite prepared to consider any amendment that will actually produce a real reform. But I suggest that if the law-enforcing authorities are going to keep track of a large number of people making payments of instalments on account of fines it is a very different thing to do it in the city of Manchester than it is, for example, in the town of Russell in my constituency, surrounded by a large rural area. Who are going to collect these instalments? If we can answer that question satisfactorily, have we not in the law as it is now a practical provision for time payment that can be applied in a practical manner? Can we not apply the law that we have now in a much greater number of cases if we really want to do it?

Mr. Ellis: The minister says that the magistrate may take certain factors into consideration, but that depends on the interpretation of the law by the particular magistrate sitting on a particular case. So far as Bill No. 7 is concerned, the law with which this parliament is concerned, irrespective of the various difficulties the minister has suggested would arise in collecting fines on the instalment plan, I suggest that much more serious consequences are involved on the other side of the picture in people going to jail. I suggest that for a great many Canadian citizens to be sent to jail under such circumstances in the next few years will be a far more serious matter than any difficulties that might arise in the collection of fines. I suggest that what the minister has said in no way upsets the validity of the statement I made previously, that while it is true a magistrate may impose a jail sentence and a fine—

Mr. Garson: Or both.

Mr. Ellis: Yes—"a fine of not more than $500 or to imprisonment for six months or to both." In other words, it is left wide open. The fact remains that under the law as it is proposed now persons in Canada will be brought before magistrates and tried and if convicted will be faced with the alternative of either paying a certain sum of money or going to jail.

I believe the comparison made with Great Britain might be all very well, but even if the question of what is being done in Great Britain had not been brought up at all, the validity of the argument presented here this afternoon would not be any less. When a man is tried and convicted of an offence he may be given the alternative of paying a definite sum of money or going to jail for a definite amount of time. If he goes to jail, he is going to jail not because he has committed the offence in the first place but because he was unable to pay the fine imposed by the court.

Mr. McIvor: The prisoner is not given any choice in the matter, Mr. Chairman.

Mr. Garson: In relation to the remarks just made by the hon. member for Regina City, I would point out that if he would examine the British legislation I am sure he would find that the court is given a discretion in those cases to decide whether the accused is able to pay, and should therefore pay forthwith, or whether he is not able to pay and, as the hon. member for Prince Albert said, should pay by instalments over a period of time. We have the same discretion in Canada. He can pay forthwith or he can pay at a time to be fixed by the summary conviction court. The only difference is that it is not spelled out that it can be paid by instalments. If the time is fixed far enough ahead, there is nothing in the world to prevent the accused from accumulating, at the same rate he would pay the instalments, the moneys that are necessary to meet that fine. Therefore I say that, while I respect the motives for the speeches that we have heard this afternoon, I do not think they take sufficiently into account that under our present Canadian law the courts can give time to pay the fine. Not only that, but after they have given the time, if the accused quite honestly has not paid up the full amount, then he gets full credit for everything he has paid on that amount.

I am not saying that this is perfect. If the administrative authority wanted to go to the trouble of collecting instalments and that sort of thing and had the officers to do it, I am not saying it might not be better to so provide; but the time to provide that will be when much greater advantage shall have been taken of the present provision than has been taken so far by the administrative authorities.

Mr. Ellis: Would the minister assure the committee, then, that the practice to be followed in the future will be that in summary convictions, in all cases magistrates will give the convicted person time to pay his fine.

Mr. Garson: I am very greatly indebted to my hon. friend for having asked that question because he has illuminated this whole matter with a great light. The reason, sir, I cannot give that assurance, and the reason for much of the difficulty that we have in connection with this matter, is that all we can do here is to enact the criminal law and make provision for the payment of these fines on time. But these magistrates are not appointed by this government; the prosecutors who act in these courts are not appointed by this government; we have nothing whatever to do with the administration of justice in these courts. We have no influence whatever over them. We can pass laws here until we are black in the face about the desirability of the instalment plan, but we could not, by the mere fact of passing these laws, give a guarantee that the objectives my hon. friends think are so desirable would be reached; that is the point.

Mr. Diefenbaker: That is no point at all.

Mr. Ellis: Then, this parliament can change the law.

Mr. Garson: I would be most delighted if I could give an assurance to my hon. friend that these acts would be done by those over whom I have no authority whatever. Constitutionally it is beyond my power to give such an undertaking.

Mr. Ellis: It is not beyond the power of this parliament to enact a section of the Criminal Code which will take away from magistrates the power to send a man to jail because he cannot pay a fine. That is within the power of this parliament. The arguments that the minister has used in the last couple of minutes are the best arguments given this afternoon for changing this code in the manner pointed out by hon. members on this side.

Mr. Croll: I was going to ask the minister a constitutional question, and one which he is able to deal with. It does lie within the minister's authority to set up a system of probation. Would he give us the approximate date when that might be set up?

Mr. Garson: I dislike disagreeing with the hon. member for Spadina, but I think he is confusing the system of probation with the system of parole. The system of probation is a system under which, when the accused is before the magistrate, the magistrate, instead of sentencing him to any penalty whatever, releases him on probation. Now, at that point in the accused's appearance before the court he has not come within any of our federal fields of authority at all. He is the subject of the administration of justice, a purely provincial function. It is only when he has had a sentence imposed upon him and he becomes either an inmate of the federal penitentiary system, which of course is under our authority, or the object of the royal mercy in the matter of the remission of his sentence, that he comes under federal jurisdiction.

At the present time, we have in our penitentiaries something which my hon. friend from Toronto Spadina seems to think of as a probation system. But our federal system is not a probation system; it is a parole system. We have had it in effect for some considerable time. Under a ticket-of-leave we release prisoners from our penitentiaries on the recommendation of the parole board to the John Howard Society, the Salvation Army, and other similar organizations. But these are prisoners who have been sentenced to prison and have thus come under our federal constitutional authority. They are released by us under that same authority.

But so far as the probation system is concerned, as I am sure the hon. member for Prince Albert would agree, it is a system under which instead of having a conviction registered or a sentence imposed upon the accused the magistrate binds him over under the probation officers to behave himself from that time on. All of this happens as part of the provincial administration of justice. Such a provincial probation system in Canada is the analogous body to that which in England has been responsible, as the member for Prince Albert has rightly said, for the great reduction in the prison population of Great Britain, and the great reduction in cost to the taxpayer. That is the body that looks after the collection of these fines on instalments and so on. I suggest that in order to make effective a law that we pass here for the payment of fines by instalments, it will be necessary to provide for it some such type of administration set-up.

Mr. Nesbitt: I was wondering if the minister would care to comment on the suggestion I should like to make with regard to subclause 3. The whole discussion might be obviated if subclause 3 were amended somewhat along the following lines:

A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or if the accused

is unable to pay forthwith, at such time and on such terms as may be fixed by the summary conviction court.

Mr. Garson: I would be quite willing to accept that suggestion. I doubt whether it will make much difference in practice, but in the light of what I have said this afternoon, there is no reason why we should not extend the discretion of the summary conviction court in the manner which has been suggested. And we can see what effect that will have.

Mr. Diefenbaker: Then, Mr. Chairman, mention was made by the minister that the system in effect in the United Kingdom could not be applied here because they had probation officers, and the like. The system of probation officers was not established in its present form until after the original statute passed in 1914. The British act reads as follows:

(1) A warrant committing a person to prison in respect of non-payment of a sum adjudged to be paid by a conviction of a court of summary jurisdiction shall not be issued forthwith unless the court which passed the sentence is satisfied that he is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the court whether he desires that time should be allowed for payment, he does not express any such desire, or fails to satisfy the court that he has a fixed abode within its jurisdiction, or unless the court for any other special reason expressly directs that no time shall be allowed.

(2) Where any such person desires to be allowed time for payment the court in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days.

That is the 1914 act. I had the 1935 act here, but I lent it to *Hansard*. I suggest that this clause be allowed to stand so that consideration might be given to the drafting of an amendment, as a first step toward a very necessary reform in our country. The long discussion regarding the distribution of authority between the dominion and the provinces was, to say the least, quite inappropriate, and inapplicable to the arguments I have advanced.

The discussion this afternoon has at least brought about a review of the situation. I suggest this is one of the most important clauses to come before us. The clauses dealing with murder and other serious offences will not have such general application. In other words, comparatively there will be very few of those serious offences. The large body of offences in this country is that body in respect of which a fine is regarded as sufficient penalty.

In so far as the criminal law is concerned, when a fine is sufficient, I was glad to hear the minister say that imprisonment should not be enforced. He referred to the subclause as it now stands:

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

That clause as it now stands is honoured more in the breach than in the observance, simply because it is general and is not given ad hoc application, and in its present general form it has no actual mandatory application. Under the law in England, and particularly the 1935 amendment, the mandatory principle is applied. The minister has said that if a person were fined $10 with an alternative of twenty days, and could pay only $5, he would have to serve only ten days. Well, I do not think there is anybody in our country who wants to serve a jail term on instalments, or that the minister's suggestion helps the situation at all.

I cannot understand why my observations engendered such heat on the part of the minister because, after all, the generation of heat does not always bring light. I was glad the hon. member to my left, by his references, gave some illumination to the minister. I have tried to discuss the matter objectively. What I have placed before the committee represents a general demand with which I am sure the minister is in agreement. For this reason I suggest that this very important clause, applying as it does each year to more than 10,000 people in our dominion, deserves to be stood aside for the time being, to the end that, through a community of counsel, we may be able to arrive at some arrangement that would be satisfactory to the minister.

Mr. Garson: Did the hon. member hear the suggestion of the hon. member for Oxford?

Mr. Diefenbaker: I have not considered it.

Mr. Garson: Does my hon. friend agree with it?

Mr. Diefenbaker: I do not know, because I cannot say how far it went. I suggest that the terms of the English act be made applicable, to the extent that our conditions permit. The amendments in the United Kingdom were brought about through a committee of parliament with the assistance of Sir John Simon, one of the jurists of his time, who was at the time Home Secretary and who subsequently became Lord Chancellor. And with that community of effort in the British

House of Commons, with outstanding members of the department of the Home Secretary and of the British parliament, amendments were made that, after the experience of nineteen years, have been found to be effective and to have greatly reduced the prison population in the United Kingdom.

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

The Deputy Chairman: Order. At six o'clock the committee was considering clause 694. Shall the clause carry?

Mr. Nesbitt: In view of the fact that the suggested amendment I gave to the minister for consideration might stand more careful study, I request that this clause stand.

Mr. Garson: What I suggest we might do is to take my hon. friend's clause and perhaps revise it slightly without changing its principle and bring it in when we meet on the next occasion.

The Deputy Chairman: Does clause 694 stand?

Mr. Barnett: Just before the clause is allowed to stand I should like to say a few words on two points. Perhaps the points I have in mind could be considered by the minister while the clause is standing. Earlier in the discussion, I believe, the minister himself suggested that one of the difficulties in regard to clauses such as this was that while this parliament can enact certain things we have no jurisdiction in enforcing the procedure. However, the point I should like to make revolves around the idea that by power of our suggestion, if by nothing more, we may have a certain effect on how these clauses are carried out and administered.

The first suggestion I have in mind is in relation to this matter of allowing payments to be made over an extended period, or to be delayed. It does seem to me that one reason which might deter a magistrate from entering into any arrangement for delayed payments is the trouble and the difficulty involved in making the necessary collections. What I am wondering is whether under subclause 3 of clause 694 there could be included some specific plan whereby the person on whom the fine had been imposed could assign more or less in the way garnishee orders are made for the deduction from wages or by an assignment that would be collectible from his bank account, or some such arrangement as that. If a plan of action were suggested in the subclause, a magistrate on reading it might be more disposed to follow through with that idea. I think he would be influenced in that regard if the clause contained a concrete suggestion that the magistrate could arrange with a person who had been fined to assign a portion of his wages, if he were regularly employed, or a deduction from his bank account, if he were self-employed, or something along that line. Could something like that be considered in any drafting that is done on this clause?

Mr. Garson: I question very much whether we would be warranted, in a law of general application of this character, in going into details of that sort. After all, that is part of the magisterial discretion. A magistrate is quite at liberty to make arrangements of this sort; that is a sensible arrangement. If he wishes to he can enter into those arrangements. But it is not customary to give direction of that sort in a law of general application such as this Bill No. 7.

Mr. Barnett: I have another point that I feel I should bring up here on behalf of one irate citizen of this country. I will explain it, and the minister can say whether or not this could be worked. This has to do with the fact that under this clause, when the person pays his fine, no provision is made for him to get a receipt for the money that he has paid in. As I say, I know of an instance where a certain irate citizen went so far as to go to the attorney general of the province about this, and he was informed that there was no provision. I believe it was something on the theory that his freedom was his receipt; but this particular citizen was not satisfied with that provision. He felt that if any agent of the crown was collecting money, no matter what he might be collecting it for, he should give the person who had paid that money a receipt. My question to the minister is: Could that be included, and if not, why not?

Mr. Garson: I do not think it should be included, and the reason is this. Both of these matters that my hon. friend has raised are pretty largely questions of administration. If the province concerned does not see fit to have a system under which its magistrates or clerks of court, and the like, give official receipts for all the moneys that they receive officially in the discharge of their duties, then it would be most unusual for us to direct in the criminal law of Canada that they should give receipts and the like. That is purely a matter of provincial administration.

Mr. Barnett: In other words, the minister thinks that it comes within the province of the attorney general?

Mr. Garson: Quite, and that distinction goes all through the piece.

Mr. Boisvert: Before this clause stands I should like to say a few words about it. I listened this afternoon to the many good suggestions from the other side of the house. I have been studying these suggestions, and in my humble opinion they will not help the administration of justice in this country. I have been practising law in the province of Quebec for twenty-five years and I have always found that the judges and magistrates had quite a lot of discretion in cases such as we were dealing with this afternoon. I have also found that in the exercise of their discretionary power the judges and magistrates have postponed their sentences to give the poor people a chance to pay their fines. Sometimes they have postponed them for one month, for two months or three months so that the poor people were able to pay their fines and had not to go to jail. Therefore I do not think that the suggestions made this afternoon would improve the administration of justice in this country, as I said before. I say that from the bottom of my heart because I have always been on the side of the poor people, the weak and the miserable. But when we are dealing with justice in a country like Canada I think we should respect the discretion of the judges and magistrates and retain the system we have been enjoying up to date and which after all has not destroyed the framework of our community.

Mr. Enfield: Mr. Chairman, there is something I should like to get clear regarding this procedure of allowing clauses to stand. I was under the impression that if we came to a clause on which it was expected there would be a great deal of discussion it was to stand in order that we might make progress with what we are doing. We spent a great part of this afternoon discussing clause 694 only to find when we returned this evening that it is going to stand anyway. My own view is that hon. members have had the utmost opportunity to express themselves concerning clause 694 and if it is allowed to stand we will only be repeating the process all over again at a later date. I would move that clause 694 pass as it stands.

The Deputy Chairman: My understanding is that the committee agreed that this clause should stand although not on exactly the same terms as those which have stood up to date. The Minister of Justice suggested that this clause stand until next time in order that a change in the wording might be considered and submitted to the committee.

Mr. Enfield: I think it was at the suggestion of the hon. member for Oxford that it stood, and I as a member of the committee certainly did not consent.

Clause stands.

Clauses 695 to 709 inclusive agreed to.

On clause 710—*Adjournment.*

Mr. Knowles: If I read this clause correctly it has the effect of doing away with a change which was made in 1948. Subparagraph (a) of subclause 3 of this clause provides that in certain circumstances;

—the summary conviction court

(a) may proceed *ex parte* to hear and determine the proceedings in the absence of the defendant as fully and effectually as if the defendant had appeared.

Section 718 of the former code was amended by section 20 of chapter 39 of the statutes of 1948 which provided in part:

—as if the defendant had personally appeared in obedience to such summons and had pleaded "not guilty".

Can the minister tell us the significance of those words "and had pleaded not guilty". Will he tell us why they were put in in 1948 and why they are being taken out now?

Mr. Garson: Both the existing section in the code and the proposed clause in the bill provide for summary conviction hearings proceeding in the absence of the defendant. When it so proceeds the crown will have to prove a case against the defendant and the provision that it should proceed as if he had pleaded not guilty is surplusage; for the crown certainly could not proceed as if he had pleaded guilty. The onus is always upon the crown to prove the case when it proceeds in the absence of the defendant.

Mr. Knowles: I realize that the minister was not here in 1948 when those words were put in. Does he know why they were inserted, in view of the comment he has now made?

Mr. Garson: No, I do not.

Mr. MacInnis: The sense is pretty much the same, whether they use the one set of words or the other.

Clause agreed to.

Clauses 711 to 716 inclusive agreed to.

Criminal Code

On clause 717—*Where injury or damage feared.*

Mr. Nesbitt: This clause is not greatly different from what it used to be but I cannot help feeling that this clause and the similar section in the code have omitted to correct a situation which has arisen not infrequently. Perhaps I could illustrate my point by giving an example. On one occasion the children's aid society in the city in which I live received a telephone call around midnight from a man who told them they had better come to get his children as he was going to shoot his wife and then commit suicide. There were several young children who had to be looked after.

The police were informed quickly and when they arrived there they found that fortunately the man's wife had not arrived home so he had not had a chance to shoot her, nor had he shot himself. But he appeared to have every intention of doing this, for a loaded gun was standing by the door. Apparently the wife was out committing some indiscretion. They were unable to do very much about it as the man in question had not threatened his wife directly. He had simply told somebody else that he was going to shoot her and they could not do anything about it.

He was held for a few days and I suppose actually the magistrate had no authority to do that. However, he was afraid to let the man out for fear he would carry out his threat. There have been several similar situations that have occurred and with which I have been confronted. This question of putting up a surety of $100, $200 or $500 to keep the peace means nothing to a person who has every intention of carrying out a serious offence like that.

In Ontario the administration of justice is helped somewhat by the provisions of the Ontario mental hospitals act, under which a person may be held for observation for sixty days when there is suggestion of mental illness. It rather cools them off. But where there is no question of mental illness and a person threatens to commit a crime, the situation is quite different. Another example would be line fence disputes out in the country where sometimes people get quite acrimonious.

I should like to see this clause stand and possibly the minister might consider an amendment which would permit a magistrate or a justice, upon evidence being presented that a person was likely to commit an indictable offence, to hold such person in jail for from seven to ten days, a sort of cooling-off period. It is quite difficult to administer the law as it stands, because a magistrate does not feel he can hold a man, while on the other hand he hates to let him go if he may possibly kill someone.

Mr. Garson: I suggest we let the clause stand and we will consider the matter.

Clause stands.

Clauses 718 to 742 inclusive agreed to.

On clause 743—*On question of law.*

Mr. Garson: Mr. Chairman, I would like to move that clause 743 be amended by adding thereto subclause 5, reading as follows:

> The attorney-general of Canada has the same rights of appeal in proceedings instituted at the instance of the government of Canada and conducted by and on behalf of that government as the attorney-general of a province has under this part.

Mr. Winters: I so move.

The Deputy Chairman: The committee has heard the amendment proposed by Mr. Garson. Is it agreed by the committee that the amendment be carried?

Amendment agreed to.

The Deputy Chairman: Shall the clause as amended carry?

Clause as amended agreed to.

On clause 744—*Fees and allowances.*

Mr. Nesbitt: Mr. Chairman, on the matter of fees and allowances there are a few observations I would like to make. These are matters which previous committees have possibly considered, but I believe they are worthy of further consideration.

The Deputy Chairman: I wonder if the hon. member would agree to the committee carrying clause 744? That clause and the schedule thereto are treated as two separate items and if we carried clause 744 the hon. member could then perhaps address his remarks to the schedule.

Mr. Nesbitt: That is agreeable to me, Mr. Chairman.

Clause agreed to.

On the schedule.

Mr. Nesbitt: Mr. Chairman, I think it would be easier if we referred to this in terms of page numbers, since that would enable members to find more easily the items to which I wish to refer. On page 260 of Bill No. 7 item 25 deals with fees and allowances payable to witnesses. It seems to me, Mr. Chairman, that a $4 fee per day for a witness is not commensurate with the present cost of

living. If a person is a witness at a trial then it is my feeling that such a person should receive no fee at all, or they should be paid a fee which is commensurate with the loss of wages they would incur through their attendance at such a trial. I would like to suggest that that figure be doubled or set at the amount of, say, $7.50. Personally I would like to see it doubled.

Item 26 on this page deals with the mileage travelled to attend a trial and the fee covers the distance travelled each way. For each mile travelled there is an allowance of 10 cents. It strikes me there might be an additional provision there covering the full train fare of people who travel by rail.

Item 27 on the same page deals with interpreters and schedules an allowance of $2.50 for each half day attendance at a trial. That amount is ridiculous. This problem of interpreters is becoming increasingly grave all over Canada at the present time owing to the great number of new Canadians, particularly those who seem to be involved frequently in traffic accidents. Perhaps it is because they are not accustomed to driving according to our highway rules, or possibly it is because they are not accustomed to driving or having a car at all. However, that can be brought up at some other time. The fact remains that even in parts of Canada where interpreters were hardly ever necessary before they have now become necessary and in order to get an interpreter who can properly interpret the questions usually put at such trials we require people of some considerable education who are usually possessed of a fairly good job. They come into a court room and have to sit around for half the day before the case is called and—

Mr. Garson: Is the hon. member aware that he is discussing a summary conviction trial and not a trial in a high court?

Mr. Nesbitt: Yes, but nevertheless these people have to wait around and $2.50 for half a day of their services is I think ridiculously low. I believe an interpreter should certainly be paid a rate of $10 per day at the very least for attending these trials. I would suggest that item 27 be increased from $2.50 to $5.00 per half day.

These are the only items to which I wish to refer but I would like to say that before making these suggestions I did take the opportunity of discussing these fees with a number of people who are responsible for enforcing the law in the province of Ontario and the suggestions I have made met very largely with their approval.

Mr. McIvor: Mr. Chairman, supposing a man who is a mechanic is called as a witness or for jury duty and he is earning $2.17 an hour. Is it fair to ask such a person to attend court for eight hours for $4 per day when he could earn in the same time $16? I do not believe the hon. member's suggestion goes far enough and if it is to be raised at all a witness should get as much as he would earn if he were following his normal occupation.

Mr. Nesbitt: I quite agree with the hon. member for Fort William. I did not expect the minister would consider a suggestion quite as generous as that put forward by the hon. member, and in the belief that half a loaf was better than no loaf at all I suggested the lower figure.

Mr. Garson: I would like to address a few remarks now to those hon. members who this afternoon were so concerned about the position of a needy accused in a summary conviction court. These fees we are discussing here relate to summary conviction proceedings where the matters being adjudicated upon are often pretty trivial and no large amounts of money or very serious crimes are involved. These fees we are throwing around in our discussion are fees which will have to be paid by the accused if he is found guilty—the same man the payment of whose fine by instalments we were discussing for some time this afternoon. The fees which are set out in this list were not arrived at by accident or carelessly. They received lengthy and very careful discussion before the special House of Commons committee on the Criminal Code last year. This committee took into account the fact that in very many cases it would be quite poor people who will have to pay these fees on top of any fine which may be levied. It was fully realized that the allowance to a witness would not be as high as he himself could otherwise earn in his ordinary work, as my hon. friend from Fort William has pointed out. But in view of the fact that most of these summary conviction cases concerned humble and needy people, we thought it was not unreasonable to expect these citizens who come in as witnesses to make their attendance part of their contribution as citizens to the administration of justice at this level. Unless the provincial authorities are prepared to shoulder the great bulk of these costs rather than the parties to these summary conviction matters, it means that the parties to summary conviction trials, who for the most part are people in pretty humble circumstances, will have to pay a burden of court costs altogether out

of proportion to the issues in these summary conviction cases. To discuss the matter of the interpreter, for example, if this interpreter appears in a rural district he certainly will not be a person who is imported from any great distance for I agree that the fee that is indicated is certainly not exorbitant. On the other hand, if the costs are to be kept down that is about the amount that the traffic will bear. If he is in a city this amount can be charged in a case and there may be quite a number of cases in the police court in which he will appear as an interpreter in one day.

It was only after the most careful consideration by the committee that these fees were arrived at and although they do represent disadvantages in some respects, we think that upon balance it is better to leave them as they are. As a matter of fact, there is a typographical error in the amount at the bottom of page 260. I refer to item No. 29, "mileage travelled to attend trial, each way, for each trial, 20 cents". That should be 10 cents. I was going to move that the "20" be reduced to "10" in order to correct that typographical error. I would ask my colleague to so move.

Mr. Harris: I so move.

Amendment agreed to.

Mr. Nesbitt: I should like to make one brief observation. I would be quite willing to go along with the minister on the matter of witnesses because, as I have mentioned before, there has always been a fairly strong feeling that to appear as a witness is in the same category as jury duty. It is a matter of public duty. I can see the minister's point very well there, but with respect to the interpreter I feel that the amount for interpreters should be raised somewhat.

Mr. Barnett: Some of the remarks made by the minister may change slightly some of the things I had it in mind to say about this schedule. Like the hon. member who has just taken his seat, I am quite concerned about the fee of $4 a day for a witness. It would not even cover his out-of-pocket expenses if he had to be away from home, let alone reimburse him for his loss of pay. When I looked at the schedule I actually wondered whether or not it had been considered carefully by the committee. It struck me that the schedule was something that had been carried over from a different form of society than the one in which we live today, a rural type of society where to be absent for a day from one's normal activity on the farm, or whatever it might be, did not matter very much.

But I do know that there is a different attitude today, particularly in industrial centres. Wherever possible a man is going to try to avoid becoming a witness or being placed in the position where he will have to be a witness because he knows if he is called he is going to have to forfeit his normal income for that day. His pay cheque is going to be that much smaller at the end of the week. I know from my own observation that in a good many instances citizens will take pains to avoid having to be a witness. Whether that is because of a lack of appreciation of the responsibilities of citizenship, and is something to be frowned upon, I do not know, but at the same time we have to be concerned with the effective administration of the law. That leads me to refer to the first part of the schedule. I am not very familiar with all the phrasing and I hope the minister will correct me if I am on the wrong track, but I take it that the fees and allowances that may be charged by summary conviction courts under the first part of the schedule are the type of fees and allowances which accrue to the magistrate.

Here again it strikes me that the concept is a carryover from the days when the magistrate was the country squire and a man of independent means. I think that is not altogether true today. I think the discussion we had earlier today on summary conviction revealed how important it is that the offices of magistrates and justices throughout the country be filled by men of high calibre. Let me refer to items 9 and 10 in the schedule. Item 9 is "hearing and determining proceeding, $1." Item 10 is "where hearing lasts more than two hours, $2." I take it from that that the magistrate is being paid at the rate of 50 cents an hour for the time he spends on a preliminary hearing in determining whether or not the man should be committed for trial.

People have observed to me that there are cases where the magistrate has received the allowance of $1 and at the same time the accused is paying his lawyer $100 to defend him and get him off. Perhaps there are two lawyers each getting $100, and the magistrate who has to determine between the arguments of this high-paid talent is in the position where his take-home pay is $1.

In view of the importance of attracting men of experience and judgment to these positions, I think there is a very strong case for establishing a more suitable scale of reward for these men for the time they spend on these matters. Perhaps I am on the wrong track. If I am, the minister will correct me, but I think he will recognize the importance of what I am trying to get at.

Mr. Garson: Whether my hon. friend is on the wrong track depends upon the attitude that society takes towards the administration of justice in a local community. In England they have excellent justices of the peace, first-rate men in every way, who serve year in and year out for nothing at all and count it a great honour to do so. No person pretends that the fees allowed to magistrates of that type in any way compensate them in a manner which would appeal to a more mercenary man. But if the magistrate is appointed by a government that uses good discretion in its appointments, I have not the slightest doubt that in most communities it will be quite possible to find first-class men and women who will count it an honour to discharge with great competence the important function of the administration of justice in their community even if their fees are only nominal.

When it comes to magistrates who are professional, those, for example, who sit in the larger cities, and who try indictable offences without a jury with the consent of the accused, they of course handle a large volume of that type of work, and in all the cases I know of are paid quite substantial salaries because that is their only source of livelihood. But so far as these summary conviction matters are concerned, the whole philosophy of their disposition is that the people who act as judges will be substantial citizens in the community who will count it an honour, as they do in England and as they do in many places in Canada, to have the privilege of administering justice amongst people who in many cases cannot afford to pay high court fees. So far as my hon. friend's suggestion that the parties in cases of that sort are paying $100 a day to opposing lawyers is concerned, I am sure he will not resent my saying that his remarks disclose an unfamiliarity with the practice of law at that level.

The problem that we have here is a very difficult one. Everybody knows that these witness' fees and magistrates' fees are not adequate compensation for the time lost or work done. If they are made adequate, then it simply means that the disputes of humble people cannot be determined at all except at a cost which would be completely exorbitant for them to pay. This afternoon we discussed for an hour and a half how much time we are going to give a man to pay a $10 fine, yet we could easily enough run up to $40 or $50 in costs in connection with the same matters if we adopt an attitude that anyone who has anything to do with it has to get paid for the full amount of the time spent at his union wages.

There is no way of handling this matter, except by the method I have suggested or by the provincial governments, if they choose to do so, coming forward with a plan to pay fees to witnesses and magistrates that are two or three times as great as these we are discussing and make up the difference by a provincial subsidy. This would leave the parties in summary conviction matters with about one-third of the costs actually incurred that they would have to pay.

Mr. Lusby: On that question of witness fees, I wonder if the minister or some member of the bar of Ontario could tell me what the witness fees are in the superior courts of Ontario in criminal matters? They are only $3 per day in Nova Scotia, and it would be rather an anomaly to pay $8 in summary conviction matters.

Schedule agreed to.

On clause 745—*Repeal.*

Mr. Knowles: I take it the reference to the Criminal Code, chapter 36 of the Revised Statutes of Canada, 1927, would include all the amendments made to it from that time down to the present?

Mr. Garson: By the Interpretation Act; it includes that.

Clause agreed to.

Clauses 746 and 747 agreed to.

On clause 748—*Opium and Narcotic Drug Act.*

Mr. Garson: May I suggest an amendment to clause 748. The Opium and Narcotic Drug Act should be amended by deleting lines 39, 40 and 41 on page 261 and lines 1, 2 and 3 on page 262, and substituting the following therefor—the sidenote will read:

Except in cases tried before two justices no appeals in cases taken under section 4 (1) or (2).

The body of the section will read as follows:

25. Except in cases tried before two justices of the peace sections 719 to 732, inclusive, and subsection (2) of section 742 of the Criminal Code do not apply to any conviction, order, or proceedings in respect of any offence under subsection (1) or (2) of section 4 of this act.

Mr. Winters: I so move.

Amendment agreed to.

Clause as amended agreed to.

On clause 749—*Canada Evidence Act.*

Mr. Garson: There is a typographical error here I should like to clear up if I may. I would move:

that the figure 159 in line 10 on page 262 should be deleted and the figure 158 substituted therefor.

This is to correct a typographical error.

Mr. Winters: I so move.

Amendment agreed to.

Clause as amended agreed to.

On clause 750—*Combines Investigation Act.*

Mr. Knowles: Would the minister state by what process the information as to the changes being made with respect to these other acts will be appended to these other acts? In the case of clause 749 which we have just passed, I can see that an office consolidation of the Canada Evidence Act would, of course, include the amendment that will be made to that act by clause 749 of this bill. In the case of clause 750 the wording there does not seem to call for an amendment to the Combines Investigation Act, but rather we have here an interpretation with respect to that act. Could the minister state how this is handled so as to make the reference available?

Mr. Garson: My hon. friend is aware of the purpose of these, and that they are consequential amendments.

Mr. Knowles: Quite.

Mr. Garson: I think, in connection with the Combines Investigation Act, those could be picked up in the office consolidation.

Mr. Knowles: Either that or as footnotes.

Mr. Garson: My assistant tells me that the amendment will be seen in the index of the annual statutes; it will be noted there.

Mr. Knowles: There will be a note there in relation to the Combines Investigation Act.

Mr. Garson: Yes, in the index of the annual statutes under the heading of the Combines Investigation Act.

Clause agreed to.

Clauses 751 and 752 agreed to.

On clause 753—*Forms.*

The Deputy Chairman: I am advised that the forty-five forms in part XXVI, and which follow clause 753, are to be considered as coming under clause 753.

Clause agreed to.

The Deputy Chairman: I am now in the hands of the committee as to what further procedure the committee wishes to take.

Mr. Knowles: I suggest we move on to the film board.

Mr. Garson: I think that is a good suggestion. We have made good progress today.

Mr. Philpott: Could we take clause 102 now?

Mr. Knowles: No; film board.

Mr. Philpott: I am sure we have one or two non-contentious clauses that we could certainly dispose of tonight, whereas the other thing will take a good deal of time.

The Deputy Chairman: I should like to suggest to the committee that, perhaps not too formally at the moment, we might come to a decision as to what we are going to do with the Criminal Code in the immediate future. I do not feel it would be fair to hon. members present or absent for me to call haphazardly chosen clauses. Perhaps the Minister of Justice or the leader of the house has a word to say.

Mr. Harris: I have only this to say, Mr. Chairman. I believe it was clearly understood that when we had come to the end of the Criminal Code we would stop there and go on with the film board. While I appreciate that there are probably sections on which hon. members feel there might be complete agreement, with all respect I think we ought to go through with the arrangements as we made them last night.

Progress reported.

SUPPLY

The house in committee of supply, Mr. Robinson (Simcoe East) in the chair.

DEPARTMENT OF PUBLIC WORKS

368. Quebec, $10,890,000.

Mr. Nicholson: Mr. Chairman, I think the ministers who have spoken in the debate established the fact that parliament had been given a fair warning. However, when an hon. member who attends as regularly as the hon. member for Ottawa West, and who was then parliamentary assistant to the Acting Prime Minister, was not aware of what was happening, there is some excuse for other members of parliament being unaware that this very important change was taking place. I do not wish to accuse either the Minister of Citizenship and Immigration or the Minister of Public Works of bad faith, but I think they are displaying very bad judgment. I think their remarks indicate, too, that the government is not likely to change its mind.

I believe the indication given by the Prime Minister earlier in the session, that this matter should stand until members in all sections of the house had a chance to discuss it in committee and decide whether the arguments in favour of moving to Montreal overweighed the very serious objections to the