with our interpretation of the text, he may offer an amendment with regard to it.

Mr. Henderson: Will the bill contain a definition section defining highway, or will that be defined by the Highway Traffic Act?

Mr. Garson: I would think, Mr. Chairman, that highway would be defined by the provincial act.

The Chairman: May I suggest that if the minister gives an indication to the hon. member of what will be in the bill, he will have to reply to the other members. We should not anticipate discussion on the bill at this stage.

Mr. Knowles: May I ask the minister whether the legislation contemplated by this resolution has any bearing upon the position of civil servants in their personal capacities in respect of debts, garnishee arrangements and so on? I see the minister shaking his head. Can he indicate what the situation is in that connection while we are on this resolution? At the same time, will he tell us what the position of members of parliament is in these matters? Having regard to ourselves, I want to say that I do not think we should be in any preferred position. I was wondering whether this resolution might be of the kind that would do away with any preferred position, if there is such, so far as members of parliament are concerned.

Mr. Garson: The point which the hon. member raises is one which has no relevancy whatever to the present resolution. This resolution will not touch it in any way, and therefore I think that it would be only proper observance of the rules of the house to postpone any discussion of that point until some more apt occasion.

Resolution reported, read the second time and concurred in.

Mr. Garson thereupon moved for leave to introduce Bill No. 105, respecting the liability of the crown for torts and civil salvage.

He said: Mr. Speaker, before you put that motion may I say that His Excellency the Governor General, having been made acquainted with the subject matter of this resolution, recommends it to the consideration of the house; and having also been acquainted with the purport of the measure to be introduced has given consent, so far as Her Majesty's prerogatives are affected, to the consideration of the bill.

Motion agreed to and bill read the first time.

[Mr. Garson.]

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

Hon. Stuart S. Garson (Minister of Justice) moved the second reading of Bill No. 93, respecting the criminal law.

Mr. Fulton: I presume that the minister will make a statement advising us of his intention with respect to the course of the legislation.

Mr. Garson: Mr. Speaker, we have been going along so rapidly here that my file on this Bill 93 is on its way to me from my office at the moment.

Mr. Fulton: We know that the minister is capable of speaking extemporaneously.

Mr. Garson: Mr. Speaker, the bill, the second reading of which I am now moving, passed the Senate before the Christmas adjournment and will, I expect, be referred to a committee of this house. As a matter of fact, I propose to make a motion to that effect after the second reading has been given. Having regard to the fact that it will be considered—as it was in the Senate—in great detail in this committee, I feel that there is no necessity for me to deal with it at too great length at the present time.

Before touching on the main principles of the bill I desire to say a word or two concerning its preparation. On April 7, 1952, I tabled in this house the report of the commission which had been instructed to prepare for consideration by the government a draft bill to amend and revise the Criminal Code. In that report, which I am sure all hon. members have read, there are set out at length the various stages of the work which was done and which culminated in the presentation of the draft bill that was tabled along with the report.

I should like to pause here to pay tribute to those men who were responsible for the revision. The Criminal Code revision commission was originally composed of Hon. W. M. Martin, Chief Justice of Saskatchewan; J. H. G. Fauteux, Q.C., then of the Quebec bar and now Hon. Mr. Justice Fauteux of the Supreme Court of Canada; Mr. F. P. Varcoe, Q.C., deputy minister of justice. To assist this commission and to undertake in large measure much of the detail, there was appointed a committee composed of Mr. Robert Forsyth, Q.C., then with the Department of Justice, now senior county court judge at Toronto; Mr. Fernand Choquette, Q.C., then of the bar of Quebec, now Mr. Justice Choquette; Mr. H. J. Wilson, Q.C., deputy attorney general of Alberta; and

Messrs. Joseph Sedgwick, Q.C., and J. J. Robinette, Q.C., of the bar of Ontario. The personnel of the committee was subsequently increased by the appointment of Mr. W. C. Dunlop, Q.C., of the Nova Scotia bar; Mr. H. P. Carter, Q.C., director of public prosecutions of Newfoundland; and Mr. T. D. MacDonald, Q.C., who prior to succeeding Judge Forsyth in the Department of Justice was deputy attorney general of Nova Scotia.

The work of the commission and the committee was commenced in 1949 and continued until September, 1950, when there was a reorganization and the work from that time on was carried on by a committee which was subsequently appointed a commission, and was instructed to prepare a draft bill for the consideration of the government.

I am sure hon. members will agree that as the Criminal Code which was first enacted in 1892 had not had any major review or overhaul since that date, the time had arrived, when this commission was appointed, when this task or revision should be undertaken. Indeed that is rather an understatement, if anything.

The terms under which the commission was asked to enter upon the preparation of a draft bill are as follows: (a) Revise ambiguous and unclear provisions; (b) adopt uniform language throughout; (c) eliminate inconsistencies, legal anomalies or defects; (d) rearrange provisions and parts; (e) seek to simplify by omitting and combining provisions; (f) with the approval of the statute revision commission omit provisions which should be transferred to other statutes; (g) endeavour to make the code exhaustive of the criminal law; and (h) effect such procedural amendments as are deemed necessary for the speedy and fair enforcement of the criminal law.

Hon. members will note from the terms of reference that the purpose of the revision was not to effect changes in broad principles but was to produce as simple a code as possible by the elimination of unnecessary or obsolete provisions, the correction of errors, the removal of inconsistencies and by such consolidation and rearrangement of provisions as was deemed necessary to facilitate reference. The work involved was arduous and required great care. I am sure that hon. members who have studied the bill will agree that the commission has admirably fulfilled this very exacting task.

In this connection, I should like to refer to a statement contained in the report of the subcommittee of the standing committee on banking and commerce of the Senate which made a study of the bill:

> Your subcommittee is of the opinion that our new Criminal Code will be a better code than the one it will replace and a large measure of the credit for it must be given to the commissioners.
>
> Your subcommittee wishes further to record its appreciation of the great public service given by the commissioners in the performance of a laborious and difficult task. The condensation, rearrangement and clarification of many of the sections of the present code will effect a marked improvement in the criminal law of Canada.

I have pointed out that the commission was not charged with the task of making changes in broad principles, but was asked to evolve as simple a code as possible and in doing so to make such consolidation and rearrangement as it thought necessary to the accomplishment of this end. Hon. members will observe that there has been considerable consolidation and rearrangement. This phase of the work has contributed to the marked reduction between the number of clauses in the bill and the number of sections contained in the present code. This feature of the work of the commission will, I am sure, prove of great advantage to those who are called upon to interpret and to administer the criminal law.

Another matter which I wish to call to the attention of the house is the extent to which the bill will be exhaustive of the criminal law. Under the terms of reference the commission was asked to endeavour to make the Criminal Code exhaustive of the criminal law. The commission, however, came to the conclusion that the code should be exhaustive in so far only as criminal offences are concerned, and that the criminal law of England, as presently in force in Canada, should be continued in respect of other matters, *inter alia*, procedure, matters of defence and rules of evidence not already codified. The result is that no change has been effected in so far as the common law may now have effect in Canada, other than to preclude the institution of proceedings for common law offences. The commission found upon consultation with the provinces that resort has been had to common law offences in a very limited number of cases, and there have been incorporated in the draft bill those common law offences which the experience of the past sixty years has shown could be continued as part of the criminal law of this country.

I am sure hon. members will agree that it is much more satisfactory to have those things which constitute crimes clearly set out in a statute readily available to all than to have to refer to ancient texts to ascertain what conduct is criminal in this country.

The commissioners in their report dealt at some length with punishment. There is just one phase of this matter, however, to which I wish to direct the attention of hon. members at this time, and it is their recommendation,

carried out in the draft bill which they presented, that minimum punishments and higher maximums for subsequent offences both be abolished in order to leave a greater degree of discretion to the courts.

This recommendation was not acceptable in toto and in this bill minimum punishments have been restored in respect of driving a motor vehicle while intoxicated and where ability to drive is impaired, and also in the case of certain minor offences in respect of the mails.

May I for a moment now touch on the provisions dealing with procedure? In the present code there are two parts dealing with the non-jury trials of indictable offences. In the bill, these two parts have been consolidated, and the provisions of part XVII, which deal with jury trials where they are not inconsistent, have been made applicable. The advantage of this is to have uniformity in so far as possible in the trial of indictable offences.

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

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

The principal matters with which I wish to deal in respect of changes in procedure in summary conviction offences are the following: Under the bill provision is made for the inclusion of more than one offence in single information. This is not an innovation. A similar provision will be found in statutes of parliament and of the provincial legislatures, and the practice was widely adopted in connection with wartime regulations. As a proper safeguard, it will be noted that power is given the court to order a separate trial on any one or more of the included charges if the court is of opinion that such a course is necessary in the interest of justice.

Under the present provisions of the code, where an appeal is taken in a summary conviction matter, the court must hold a new trial. The commissioners recommended that the appeal should be determined on the evidence taken in the court of first instance as in the case of indictable offences, and that in order that the court should have before it all essential evidence, authority should be given to hear additional witnesses as well as witnesses called on the trial. It appears, however, that the proposal that appeals in summary conviction matters should be heard on the evidence taken before the court of first instance did not appeal to the hon. members in the other place, with the result that the bill that is now before this house provides that appeals in summary conviction matters shall be by way of trial *de novo*, as they are under the existing law.

Before leaving this branch of the bill, I should point out that the summary trials part and the part relating to summary conviction offences were submitted to provincial representatives at a joint meeting held in Toronto in September, 1951. These parts were discussed section by section, and the commission in its report points out that in general the revision of these parts was acceptable to the provincial representatives.

I think some reference should be made to what has happened to the bill since it was tabled, in draft form, in this house on April 7, 1952.

The bill was introduced as letter H-8 of the Senate on May 12, 1952, and on May 13 I attended in the other place, as ministers of the crown may now do, to speak on the motion for second reading. The bill was referred to the banking and commerce committee of the Senate which appointed a subcommittee to consider the measure clause by clause. After twelve meetings the subcommittee reported to the main committee on June 20. The main committee held three meetings for the purpose of considering the amendments and subsequently recommended to the Senate that, because of the amount of work remaining to be done, the bill should not be proceeded with further at that session.

During the summer of 1952 the bill was reviewed by the officers of my department in the light of the recommendations made by the banking and commerce subcommittee and a number of recommendations made by that subcommittee were adopted. The views of the criminal law section of the conference of commissioners on uniformity of legislation in Canada were also sought and secured in respect of particular provisions in the bill. I might also mention that the bill was the subject of a paper delivered by Mr. F. G. Scott, crown prosecutor for the city of Vancouver, to the section on the administration of criminal justice of the Canadian Bar Association at the meeting of that organization at Vancouver in September last. Mr. Scott, after observing that the bill had been

studied intensively by a committee of lawyers, including the provincial deputy attorney general, a learned magistrate and nine or ten lawyers recognized as very skilled in criminal law, made the following comment in connection with the bill:

> One comment I find is common to every brief that I have received: this is the wholehearted commendation to the commission for what is unanimously termed a wonderful piece of work.

In addition, during the summer recess, the Department of Justice received comments on the bill from a number of barristers in Canada and, after due consideration, certain proposals made by these gentlemen were incorporated in the bill which is now before you.

The bill was again introduced in the Senate in November at the opening of the present session of parliament and was referred again to the banking and commerce committee. The subcommittee held fifteen meetings and examined the measure clause by clause. In their deliberations, the subcommittee and the main committee had the assistance of officers of my department who were familiar with the bill. In addition, the main committee heard witnesses representing interested groups in Canada.

I think that in closing my remarks I should mention two matters that were the subject of amendments in the other place and that will undoubtedly merit discussion here when the bill is in committee.

The first of these is the question of appeals from convictions for contempt of court. Neither under the law of England nor under the law of Canada is there express provision granting an appeal, as of right, by a person convicted of contempt of court in connection with criminal proceedings. The Senate apparently considers that some provision should be made in the criminal law to permit appeals in such circumstances, and accordingly an amendment has been made in the other place to clause 8 of the bill providing for an appeal to the court of appeal of the provinces. Under the amendment, where a contempt is committed in the face of the court, no appeal would lie in respect of the conviction, but an appeal would lie in respect of the sentence imposed. Where the contempt is committed not in the face of the court, an appeal would lie both from the conviction and from the sentence imposed. I do not propose to discuss this question further at this time, but I shall have more to say in this connection when the bill is in committee.

The other matter to which I should like to direct the attention of hon. members is clause 46 of the bill, which defines the offence of treason. In the draft bill prepared by the Criminal Code revision commissioners and in the bill introduced in the Senate, paragraph (e) of clause 46 provided:

> Everyone commits treason who, in Canada, conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada.

This was undoubtedly an extension of the law of treason beyond what is contained in the law of treason at the present time under the Criminal Code and the common law. The punishment provided in the bill for this offence was death or any term of any imprisonment up to life imprisonment. It appears to have been the opinion of the hon. gentlemen in the other place that this is not an offence that should properly be defined or punished as treason, and the paragraph in question has accordingly been transferred by the Senate to clause 50 of the bill which provides a punishment of imprisonment for a term not exceeding fourteen years. This is also a matter upon which I shall have more to say when the bill is in committee.

In conclusion I might point out again that the revision of the Criminal Code was not undertaken for the purpose of effecting changes in broad principles. As hon. members know, our system of criminal jurisprudence embodies the high principles of the British system and provides as fair and just a system as it is possible to devise to ensure that justice will be accorded to all. I am sure that hon. members who study this bill will agree that there has been no departure from these principles.

In closing I should like to say on behalf of myself and the government that we appreciate fully the work which has been done by the commissioners who produced the original draft and by the various lawyers, the commissioners on the uniformity of legislation and others who have taken a keen interest and have made many useful suggestions, some of which have been incorporated in the bill before us.

Of all that group there are none who are entitled to greater commendation and gratitude than the members of the Senate committee on banking and commerce, in particular Senators Hayden, Farris and Roebuck, members of the subcommittee. Their long and arduous labours upon this bill have been invaluable and entitle them to the gratitude of the people of Canada.

Mr. Fulton: I wonder if before concluding the minister would say a word with respect to the proposal to send the bill to a special committee. The minister merely referred to that, but did not enlarge upon it.

Mr. Garson: After second reading a motion will be made to refer the bill to a committee.

Mr. Fulton: It is the intention to move that motion immediately following second reading?

Mr. Garson: That is right.

Mr. Fulton: There will be an opportunity at that time to discuss the matter?

Mr. Garson: That is right.

Mr. E. D. Fulton (Kamloops): Mr. Speaker, it is difficult at this stage to say very much on a subject of this nature. This is the motion for second reading of a bill, not to amend so much as to revise and consolidate the Criminal Code. In discussing the principle of the bill one would be discussing the very principles of criminal justice, to which the minister has made reference in his closing remarks. The principles of criminal justice as they prevail in Canada are not of themselves the object of this bill now before us. As the minister said, the intention was not to alter or vary those principles but rather to codify the various sections of the code as they have grown up over a large number of years, dealing with various criminal offences and the procedures by which they would be tried.

My remarks will not be extensive, but there are some observations I should like to make. At the outset I join in what the minister said by way of expressing gratitude which this house and country owes to the commission and committee appointed to undertake this revision and also to the committee of the Senate which reviewed the bill the commission drafted. It is no detraction from my sincere expression of appreciation to those bodies when I say that no minority report was submitted by the committee, although it is my understanding that certain members had some reservations which they did not feel could be placed in a minority report. They were nonetheless serious, although not reduced to writing in that form.

It is not to cavil at the really outstanding job done by these bodies to say that I feel that these reservations, which were shared by other lawyers in the country, should be referred to at this stage in the hope that when discussed in the committee and advanced as objections or reservations in connection with certain provisions in the bill they may perhaps form the basis of amendments in an effort to improve the work done.

I should say also that I am speaking on behalf of the official opposition in the absence of at least one and perhaps several who are more qualified than I am to deal with this subject. I express the regret of this party, and I am sure the regret of the whole house, at the unfortunate and enforced absence of the hon. member for Lake Centre (Mr. Diefenbaker) on this occasion. In the remarks that I shall make I am frank to confess that I speak not as an expert but simply in an effort to put into workmanlike language the views which have been expressed to me by those who are undoubted experts in this field.

The fundamental criticism which has been advanced to me is that while the committee and commission were instructed and did make a real effort not to rewrite the substantive portions of the Criminal Code, but merely to codify them, they did in fact on a number of occasions yield to what has been described as temptation to rewrite the substantive as well as the procedural law, and to use words with respect to that substantive law.

The objection advanced to that course is that criminal jurisprudence has been built up over the years, in fact for almost a century, around the wording of the Criminal Code as it was first enacted, and it will be a matter of considerable difficulty for the courts to interpret the new provisions of the substantive law. It will be necessary for the courts to reinterpret words and to that extent build up new jurisprudence. Wherever words of an old section dealing with an offence have been changed it will necessarily involve the development of new jurisprudence regarding interpretation and application.

It seemed to those who expressed this view that it was unnecessary that that course should have been followed, that a greater determination should have been shown not to write new law but simply to stick to the task of codifying the existing law.

Then there have been objections and criticism with respect to another matter mentioned by the minister in his remarks this afternoon. That is in connection with the enlarged jurisdiction of magistrates. It is no part of my intention, Mr. Speaker, to imply in any degree that magistrates are not conscientious, hard-working and, for the most part, fully qualified men; nevertheless I think it is a fact that by the very nature of things magistrates are not as highly qualified as judges of either the county or supreme courts of our provinces. It is felt for that reason that it is a dangerous tendency, particularly in criminal matters, to enlarge the jurisdiction of magistrates, and it has been suggested that to do so, to enlarge the jurisdiction of magistrates, who sit of course always without a jury, obliquely abolishes or whittles away

the right of an accused to trial by jury which is such a fundamental part of our criminal law.

In that connection I realize that the commissioners have themselves pointed out that the accused is still free to elect whether or not he will be tried by jury. What the commissioners have to say on that point is found at page 13 of the mimeographed copy of their report which was presented to parliament last year. They say:

> Consideration was given to the extension of the absolute jurisdiction of magistrates and it was decided that certain minor extensions of this jurisdiction would be justified.

Then they go on to refer to the actual sections of the new bill which have that effect. They say:

> The absolute jurisdiction was further extended—

This is absolute jurisdiction, not qualified or elective.

> —to include attempts to commit the offences of obtaining property by false pretences, receiving and retaining, where the value of the property does not exceed $50.

Then they go on to say:

> In view of the requirement that magistrates who are to exercise jurisdiction under the part must be expressly appointed for the purpose, it was decided that the number of offences which should now be required to be tried by judge and jury should be reduced to include only treasonable offences, piracy and piratical acts, murder, manslaughter, combinations in restraint of trade, discrimination in trade, accessory after the fact to murder or treason, attempt to commit murder and conspiracy to murder. The rights of an accused are in no way impaired as he is entitled to elect whether he will be tried by a judge and jury, by a judge alone, or by a magistrate.

Although they have placed in there that last sentence I have read, and the minister himself has referred to it, I beg to take some issue with that statement. My submission is that, the jurisdiction of the magistrate having been enlarged and in some cases, as contained in the extract from which I quoted earlier, absolute jurisdiction having been extended, it is a fact that that is a whittling down of the right of the accused to trial by jury. Even where an accused has an election, Mr. Speaker, I suggest that it is a dangerous tendency because we know that there is a temptation to the police, who are conscientiously endeavouring to do a good job—it is with that spirit that they approach their duty, and I fully recognize it—to get a case disposed of as quickly as possible and to suggest to an accused person that he probably will be better off if he has his case disposed of with as little fuss and bother as possible, and probably it would be to his advantage to elect to be tried by a magistrate.

There are ways and ways of suggesting to an accused person just how it will be to his advantage to follow that course. Accused persons, perhaps people in trouble for the first time, not being aware of the seriousness of their position and not always realizing the fact that they are going to have a blot on their records which will follow them for the rest of their lives, are prone where the police seem friendly—they do want to keep it out of the papers and so on—to accept these suggestions. I believe that is a dangerous tendency. I realize that it is one that is welcome to prosecuting officers, but I believe it is a dangerous tendency thus to enlarge the jurisdiction of magistrates and, as I have said, to whittle away the absolute right of an accused to trial by jury.

I have heard criticism by lawyers well qualified and experienced in these matters that in this respect, as well as in some of the revised procedural sections, there has been a tendency to rewrite the law from the point of view of the prosecuting officer so as to make it easier to obtain convictions. There has been a tendency to eliminate some of the difficulties experienced by these very prosecuting officers in the past in obtaining convictions, and I state very definitely that is a fundamentally wrong approach to the task of revising the Criminal Code.

A closely related subject to that which I have just been discussing has to do with the question of the trial *de novo*. That is the question of the appeal from a conviction by a magistrate to a superior judge which, under the code as it stands, has to be a trial *de novo*, that is to say a new trial with witnesses called and the full evidence presented again. The proposal of the commissioners in the draft bill was that such an appeal should not be a trial *de novo*, but merely an appeal on questions of law; that all that should be before the judge of the higher court would be the record, such as it might be, of the proceedings in the magistrate's court, and that the judge should not have before him the witnesses and the evidence upon which the conviction was based.

I am very glad indeed to find that the Senate committee recommended, and in fact has written into the bill as reported to us from the other place, the principle that formerly existed in the code that an appeal from a conviction by a magistrate to a higher court shall be by way of a trial *de novo*. I hope this house will preserve that provision which the Senate has rewritten into the bill before us.

I do not wish to transgress the rule against discussing particulars, but I think these are matters of principle. I want to mention the reservations that are felt by a large number of qualified lawyers with respect to the

elimination of the necessity for corroboration in sexual offences. That is referred to at page 16 of the report of the commission. They say:

> One example is that under the present code on a charge of rape or indecent assault, the evidence of the complainant need not be corroborated. However, a rule of practice requires the trial judge to give a warning as to the danger of convicting on the complainant's evidence alone. This rule is codified and extended to cases of carnal knowledge with the result that under the draft bill corroboration of the evidence of the complainant is no longer required in cases of carnal knowledge.

I know that those who have had experience in criminal law and criminal trials have very great misgivings as to the tendency to eliminate the necessity for corroboration in connection with offences of this kind.

There are two other matters which I should like to mention in connection with the bill and the report of the royal commission. In reading the report I was disturbed to note that after the commissioners had stated that they had eliminated minimum fines, which I believe is a sound principle, they went on to state at page 19, in connection with the punishment for summary conviction offences:

> In keeping with our desire for simplification, the draft bill provides one general penalty for all summary conviction offences, namely, a fine of $500 or six months' imprisonment, or both.

I mention this, Mr. Speaker, because I think it is perhaps important and certainly of general interest to those who may be considering this matter who probably would have been as disturbed as I was to see that, on a first reading of these words at any rate, a standard fine of $500 for all summary conviction offences was being included. However, when you turn to the relief section and the new part dealing with summary convictions, you will find that the fine of $500 is a maximum with no set minimum at all, and that minimum sentences have been eliminated. However the first impression gathered from a reading of the committee's report is that everyone convicted on summary procedure would be fined $500. That is not borne out by the words of the section involved, which I think is 694.

The final subject which I would like to mention is in connection with this section referred to by the minister, dealing with the offences of treason and related offences against the state. I have certain very definite views on this matter, Mr. Speaker, and I think it is most unfortunate that the waters have been muddied to a certain extent by presentations—I do not want to dignify them by that word, but it was a form of presentation—made to the Senate committee by the communist leader in this country, Tim Buck.

I take the view that notwithstanding the fact that the communists may have muddied the water, we should not refrain from expressing our own considered opinions on the merits or demerits of these provisions because we are in the unfortunate position that somebody else may have spoken on the matter.

I am not going to go into detail in this house at this stage on all these questions, but I think there are certain things which can be said on these matters, as well as the relation to what I have described already as an unfortunate tendency to make it easier to obtain convictions. As I said, one matter is improperly enlarging the jurisdiction of magistrates in certain respects. However, I think the proper place for that discussion would be in the committee which the minister proposes to set up. What we say here is of general application and it is not easy to be specific.

I do want to say that while I reject absolutely the hypocritical utterances of the communist leader, Tim Buck, in this regard, nevertheless I hope that all other members will feel free, as I do, to express their views when the matter is reached.

Just in case it should appear from my remarks, which have dealt with what I consider to be weaknesses in the bill, that I am too critical, I want to say that I hope I have not left that impression. I think the bill represents tremendous work and improvement by way of codifying and shortening the code. I want to say that I join fully with the minister in the sentiments he expressed regarding the debt which the country owes to the commission and the Senate committee who have done such outstanding work in this connection.

Mr. Knowles: I should like to make a few remarks on second reading of this bill. I notice that it is getting pretty close to five o'clock, and on two or three occasions we have trespassed on the hour for private and public bills, so I wonder if the house would be willing to call it five o'clock now and go on with other items. If so, I might make my remarks in a more connected fashion at eight o'clock.

Mr. Deputy Speaker: Would the house consent to call it five o'clock?

Some hon. Members: Agreed.

PRIVATE BILLS

BEAVER FIRE INSURANCE COMPANY

The house in committee on Bill No. 43, respecting Beaver Fire Insurance Company —Mr. Rooney—Mr. Beaudoin in the chair.

views to one of the railway companies about what they should do; that they should consider this question as a matter of collective bargaining and not expect parliament to deal with it as a matter of legislation.

Some hon. Members: Six o'clock.

On motion of Mr. Dickey the debate was adjourned.

At six o'clock the house took recess.

AFTER RECESS

The house resumed at eight o'clock.

CRIMINAL CODE

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed consideration of the motion of Mr. Garson for the second reading of Bill No. 93, respecting the criminal law.

Mr. Stanley Knowles (Winnipeg North Centre): Mr. Speaker, we readily approve of the suggestion which has been made by the Minister of Justice (Mr. Garson), that after this bill has been given second reading it should be referred to a special committee, so that that committee, on behalf of the house, might make a very thorough study of all its provisions. We are aware of the fact that a great deal of study has already gone into the preparation of this bill. We realize that there was considerable work and study before the bill was ever introduced. It is also a fact that the members of the Senate gave a great deal of thorough study to the provisions of this bill, and that as a result of that study quite a number of changes were made. Those changes are incorporated in the bill in the form in which it is now before this house.

Nevertheless, we feel that it should not be contended that because of all the prior studies by the commission, by the officers of the department and by the members of the Senate, this should curtail to any degree whatsoever our examination of the provisions of this legislation. After all, the members of this House of Commons are the elected representatives of the people of Canada. It is we who are most responsible for legislation that goes on the statute books, and I strongly urge that the committee which is set up to study this bill be given plenty of time, all the assistance it needs and all possible encouragement to do a really thorough job on this revision of the Criminal Code. I hope, too, that that committee will be given the usual powers to send for persons, papers and records; and that it will use that power to extend invitations to interested bodies and organizations that may wish to appear before the committee to make representations. I want to say that, in our view, we cannot be too careful in discharging our responsibility as the elected representatives in this parliament with respect to this very important piece of legislation.

It is true, of course, that in many sections of this bill we have simply a consolidation, codification or carrying forward in slightly different language of the provisions or principles that have been in the criminal law of Canada for a long time. As a matter of fact the Minister of Justice this afternoon suggested that the desire in revising the Criminal Code was not to effect changes in broad principles, and in many sections of the bill that idea has been kept in mind. However, despite the fact that that desire was laid down by the minister as a guide, it does seem to us that there are a number of instances where very definite changes have been made in this legislation, both as to principle and with respect to the severity of punishment that is prescribed for certain offences. I shall, in developing my remarks, refer to some of the instances where it seems to us new law is being written in this code. I mention it now simply to support the plea I make that there be no attempt to rush this committee, but that it be given a chance to do a thorough job on this very important piece of legislation.

With respect to the principle of the bill, the subject matter of the legislation itself, we feel that there are certain shortcomings. I need not take time to speak of the advantages of revising the code, and all the good things which are in it which are being carried forward. Those can be taken for granted. It is our job, particularly on the opposition side of the house but also we feel it is the job of all members, to be concerned where we feel there are errors or shortcomings in legislation of this kind. I shall point to a number.

In the first place, we are dissatisfied that the legislation contains no clear statement as to the purpose of the punishment of criminals. I draw attention in particular to what, in my view, was the very excellent brief on the revision of the Criminal Code which was presented to the minister on June 8, 1950, by the Canadian Welfare Council. The point I have just now suggested is made very effectively as the first point in that brief. To put it in the language of the Canadian Welfare Council, I would quote from page 2 of the brief where they say:

> This committee recommends inclusion in the Criminal Code of a statement of the purpose of criminal punishment emphasizing that the aim is the protection of society through the reform of the individual.

The Canadian Welfare Council gives certain instances where the purposes of similar legislation have been indicated in the legislation itself, and in my view the government has not paid sufficient attention to that part of the brief submitted to it by the Canadian Welfare Council.

Mr. Macdonnell (Greenwood): Would the hon. member permit a question?

Mr. Knowles: Yes.

Mr. Macdonnell (Greenwood): Did I understand the hon. member to say that he would give illustrations where the aim of the legislation was contained in the statute?

Mr. Knowles: Right on the next page of the brief I hold in my hand the Canadian Welfare Council states this:

> Such a guide is provided in similar legislation. Section 38 of the Juvenile Delinquents Act, 1929, states:

There is a paragraph from that act, and perhaps I should put it on the record.

> This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.

I am not suggesting that in the Criminal Code for adults the purpose would be exactly the same as that; but I am suggesting that if in that legislation it is possible to state its purpose, it should be possible to do it in this legislation.

As has often been said by the hon. member who has just interrupted, because of his own great personal interest in the whole question of penal reform, we have made great progress in our thinking as to crime, and its punishment, and the reform of criminals. I agree with the representations made by the Canadian Welfare Council that this progress in our thinking with respect to crime, its punishment and the reform of criminals should be reflected in the legislation when we are rewriting the Criminal Code.

Mr. Fulton: Will the hon. member permit a suggestion as to what the title might be?

Mr. Knowles: Yes.

Mr. Fulton: I suggest that the title should be "An act for the prevention and punishment of crime." That is what it is concerned with.

Mr. Knowles: I think the suggestion is one that deserves consideration, and I am glad to have these interjections by my two hon. friends. I hope these interjections will suggest to the minister that maybe this point which they are supporting, and which the Canadian Welfare Council urged upon this government, should be given more consideration than it appears to have been given thus far.

A second shortcoming or complaint that it was my intention to develop a bit with respect to this legislation was given to the house this afternoon by the hon. member for Kamloops (Mr. Fulton). I fully agree with the position he took, so I shall not take time more than just to state it. He quoted certain authorities in support of his position—and my legal advice is the same—that the legislation seems to have been drafted from the viewpoint of the prosecution, its aim apparently being to make it easier to secure convictions. That aim, Mr. Speaker, is obviously inconsistent with the modern philosophy of the treatment of crime, to which I have referred in quoting from the Canadian Welfare Council. We feel that here too there is a shortcoming, and I hope this aspect will be gone into thoroughly by the special committee which deals with this legislation.

At the expense of being repetitious, I repeat my plea that the committee not be rushed, that it not be told by whoever is its chairman that this bill has all been gone over by the commissioners, by the officers of the department and by Their Honours in the other place and therefore it should be put through in a hurry. By doing that we would not be discharging our responsibilities as elected members of parliament.

A third aspect of this legislation which it seems to us should be looked into carefully is the way in which a number of the punishments provided have been considerably increased in severity. Entirely apart from the question whether or not that course is consistent with modern philosophy so far as the treatment of crime is concerned, and just on the basis of older ideas, we find it hard to understand why there should be so many instances where the punishment has been increased, in some cases from several months to a number of years, in some cases from two years to fourteen years and in some cases from a few years to the possibility of life imprisonment. I need not worry the house with details; I have a number of them jotted down.

Despite the fact that this aspect may have been looked at by those who have gone over this legislation before us, we suggest that is a fairly serious change to be making in the law of this country, and that the committee should look at it carefully. There is one case—it slips my memory for the

moment but it does not matter—in which the punishment provided was increased the last time we went over the code in 1951; and now, only a year and a half or two years later, it is being increased again to quite a substantial extent. We therefore feel that that is another aspect of the code which the members of this house and of the committee which will do the main work on this legislation should look at carefully.

Then, too, as a fourth comment about this bill—and one which underlines the need for giving it careful study—I wish to mention the fact that it seems to involve a good deal of changing of established law. In view of the things I say from time to time, and will probably continue to say, about lawyers and their reliance on precedents and so on, it may seem a bit out of character for me to take the other side for a moment; but despite the shortcomings of the law, the way it has been written and the way it has been phrased, it seems to me that to make the number of changes that are being made in this legislation, without careful and thorough examination of it, would not be wise or responsible action on our part.

It may be that every one of these changes can be defended, but let us not rush into it. There is an atmosphere of fear and anxiety abroad today; and sometimes there is undue pressure, it seems to me, to try to deal with things by suddenly changing the law and making the punishment more severe. All of this is exceedingly important. I would suggest that it would be far better to take considerable time to go over this legislation with respect to its codification and its legal aspects and produce a good bill, one that is really satisfactory, rather than just to have the satisfaction the minister might like to experience of getting the legislation through and getting it on the statute books.

Mr. Carroll: May I ask the hon. gentleman a question? What was the particular crime to which he made reference, as to which a change was made in the punishment some years ago and another change is made in the present legislation?

Mr. Knowles: I believe that is in the sections dealing with treason, but I am not quite sure. If I can find my notes on that point, so my answer may be correct, I should be glad to do so.

An hon. Member: Try the other pocket.

Mr. Knowles: It is section 62 which deals with sedition. I did not have quite the right word. In 1951 the penalty was increased from two years to seven years; and by this bill it would be increased to fourteen years. At any rate, that was the example I had in mind.

Mr. Speaker, thus far I have given four reasons why we feel that this bill should be looked at carefully, and we regard each of those reasons as important. I have left to the last, the fifth of our criticisms of this bill, an aspect which is perhaps more important than any of those I have mentioned thus far. It is our feeling that in this legislation there are provisions which will have the effect of imposing greater restrictions on the rights of citizens, particularly in relation to the rights of labour and established civil liberties, than we have yet had in this country. As I launch into a few comments on this question I want to say how much I appreciated—as I think all hon. members of the house did—the way in which the hon. member for Kamloops (Mr. Fulton) approached this question this afternoon. I am sure we all agree with him that it does not matter what anyone else may have said about these questions, the rights of labour, and civil liberties; it does not matter that criticisms have been levelled against these sections in this bill by people whose motives we may not trust; surely if we think these restrictive sections are wrong, it is our right and our duty to say so, and it is our privilege to say so without any charge of association being applied against the hon. member for Kamloops or any of the others of us who may be concerned about legislation which seems to impose restrictions on the rights of citizens which are contrary to the principles of democracy.

As I said a few moments ago—and we all recognize it—there is in the atmosphere of this day and age quite an element of fear. We know whence that fear comes, and there is no point in trying to deny that it is there. Most of us can remember the days in the early part of this century when we thought freedom and democracy were on the march, and it was just a matter of time until their glory would spread and cover the entire earth. We have seen quite a reversal of that trend in the last few decades, and we live today in the fear that we might lose some of the freedoms which were won in the nineteenth century, and which were cherished by our forefathers at that time.

I think it is still true that many of us in this place regard as some of the greatest speeches of the past that we like to read the speeches that dwelt on that same theme of the freedoms that had been won and how important those freedoms are to us. We get the occasional uplift of that kind today. I was

particularly interested in a speech by Mr. Churchill not many months ago when there was a discussion in the British House of Commons with respect to free speech as it applied to a certain person in that country. Mr. Churchill stood up in true loyalty to the belief in freedom that is so characteristic of that little island, and insisted that freedom was for everybody if we believed in it at all, including the particular person who was being discussed at that time. And I insist, agreeing as I do with what Mr. Churchill said on that occasion, that we must not lose confidence in democracy's capacity to tolerate free speech.

It is not often, Mr. Speaker, that I feel it is appropriate to use the word "sacred" in application to political concepts. But when we are talking about freedoms we are talking about something that is really sacred, and in my view we must be careful not to hedge the old sacred freedoms with restrictions born of fear and capable of costing us the very freedoms we are seeking to protect.

In the light of that affirmation of faith in democracy and in the principle of freedom, I want to suggest that in our view there are some provisions in this legislation that need to be looked at very closely by the committee. My view that they should be looked at closely is I think borne out by the fact that some of them were looked at very closely by Their Honours in the other place; and in some instances they made changes which in my view definitely improved the legislation. In this instance I take my hat off to Their Honours, at whom I sometimes make cracks.

Despite the improvements they have made, there are still sections of the bill which we feel should be looked at very carefully. There is a provision dealing with prohibited acts, to which the Minister of Justice (Mr. Garson) referred this afternoon when he pointed out that a clause which formerly was in the section under treason, where it was punishable by death, had been moved down into a section headed: "Prohibited acts" where the punishment would be less severe. I was glad that he was able to point out that that change had been made; but I would point out that in that section, even in the new place where it has been put, there still appears the word "likely", where it seems to me you ought to put words to indicate the quality of intent. We cannot discuss the details of sections of the bill on this occasion, but perhaps I may be permitted to go as far as the Minister of Justice went and say that what we do not like about that section under prohibited acts is that the wording suggests that there are certain things which are liable to punishment if they are likely—with emphasis on the word "likely"—to be prejudicial to the safety of Canada. We feel that is a place where the word "likely" should be taken out and some other word put in that would convey the quality of intent to be prejudicial to the safety of Canada.

Mr. Garson: Will the hon. member permit a question?

Mr. Knowles: Yes.

Mr. Garson: Will he not agree that its inclusion in the section dealing with treason in itself would require the proof of mens rea?

An hon. Member: Explain.

Mr. Knowles: I am not perplexed by the minister's use of Latin; I am perplexed by his suggestion that if it were in the section on treason it would make a difference. It has been taken out of the section on treason, has it not, and put in section 50 rather than in section 46 where it was before?

Mr. Garson: I understood my hon. friend was complaining about it having been put in the section on treason in the first place. At least when it is in the section on treason it is necessary to prove intent, and if my hon. friend says that is what he wants, I would point out that is what he had at the beginning.

Mr. Knowles: Mr. Speaker, this is one of the things we can go into in committee. Perhaps we are misunderstanding each other, or it could readily be that I am lacking in legal training, but my point was that it has been taken out of—

Mr. Riley: What an admission!

Mr. Knowles: Everyone says it is obvious, and everyone knows it. But this subsection has been taken out of section 46 and put in section 50. One of the points we should go into is the question as to what happened to this very point in the Senate committee. I have no doubt that the argument made by the Minister of Justice was made over there, and I have no doubt that the argument I am making was made over there, even if in more legalistic terms.

Mr. Riley: You are circling now.

Mr. Knowles: No, I am trying to convince my hon. friend that we have a point here that has to be gone into by our committee without our being told that this has been dealt with before by the commission or by the Senate. I have looked at it pretty carefully; I have some friends who are lawyers; I have discussed the matter with them, and

at this moment I am persuaded that the quality of the intent should be included in that section.

Similarly, Mr. Speaker, there is a section that happens to be numbered 52—but we are not supposed to refer to sections—dealing with sabotage. It was section 49 of the bill when it was first introduced into the other place. This is a section which it seems to us could be used as an anti-strike weapon. The minister shakes his head. The minister may be right, but there are a lot of people who do not agree with him. There are many people who feel that this could be used as an anti-strike weapon. We know the minister will say here again that such actions as interference with the movement of vehicles and so on would have to be prejudicial to the safety and interest of Canada before it could be brought under the terms of this section. But the point I wish to make is again parallel to a point that was made at the other end of this building; that is, that the word "interests" still appears there. That section, by the way, was improved in the other place. They put in the quality of intent but they left in the word "interests". The safety of Canada is something that we can all understand and there is no quarrel with that part of the section; but as one of Their Honours in the other place pointed out in relation to another section, when you talk about the interests of Canada you bring in things of an economic nature. In my view there is real danger of this being an anti-strike weapon. We feel that this section, formerly section 49 but now section 52, is one that must be looked at most carefully. I hope there will be complete freedom and abundant liberty for the labour organizations of this country to appear if they wish to do so, and I know they do, before the committee to state their views with respect to this section.

Similarly, I believe labour would like to appear before the committee and have something to say about the breach of contract provisions in section 365. Here again I anticipate that the minister will probably shake his head from right to left, but there is a feeling on the part of labour that this may be an anti-strike provision despite the fact that we have other legislation which recognizes the strike weapon under certain conditions. I suggest that there is something new in this section 365, despite the minister's statement earlier today that there was no desire to effect changes in broad principle.

In so far as you can relate this to other provisions in the code, there has been a considerable increase in the penalty involved. If you make more stringent provisions of that kind and increase the penalties, I suggest that you put into the hands of those who are hostile to labour—and we may as well admit that there are such still in the country—a weapon that they can use to the detriment of organized labour in particular.

Mr. Macdonnell (Greenwood): Mr. Speaker, on a point of order, I probably shall not have another opportunity to question the hon. member for Winnipeg North Centre, but is he entitled to discuss all these sections in detail at this time?

Mr. Knowles: The point of order is well taken. The only trouble is that it should have been taken when the Minister of Justice was speaking this afternoon.

Mr. Speaker: If the point of order is well taken it will not be necessary for me to make a ruling.

Mr. Knowles: As I said myself before I started referring to the sections, I shall just refer to the provisions. The Minister of Justice recognizes, and we all have recognized it in discussing this same legislation every year, that it is pretty difficult to talk about the principle of this kind of legislation without talking about the things it does.

Mr. Browne (St. John's West): Especially a code.

Mr. Knowles: As the hon. member for St. John's West says, especially when you are dealing with the Criminal Code which contains so many provisions. However, my time is just about up and the points I wanted to deal with are just about exhausted, but there is one other I should like to refer to. Another provision in this legislation deals with what is termed mischief. As a matter of fact, we think that the section itself is mischievous. It deals with obstructing the use of property. Here again we feel there is something that could be used as an anti-strike provision, which is contrary to the provisions of the Industrial Relations and Disputes Investigation Act and to court decisions which have upheld the right to strike and the right to peaceful picketing. That is section 372; and I shall not mention any more sections.

I hope I have demonstrated the main point I wanted to make, that this legislation is extremely important because it covers so many subjects. Despite the fact that it may be a good idea to bring the code up to date, to revise and codify it, there are still these aspects which make it necessary for the committee to do a thorough job on it. So far as we are concerned we are prepared to listen in committee and again in the house to all the legal arguments that can be

advanced with respect to the matters at stake. But I want to say clearly that we will urge the importance of the three or four points I spoke about in the earlier part of my remarks. Furthermore, when it comes to things that are basic, when it comes to the concept of freedom, we will oppose with all the vigour we possess any sections of the bill which in our view curtail the rights of labour or in any way impinge upon or diminish the established liberties of democracy.

Mr. Solon E. Low (Peace River): Mr. Chairman, I do not think it will be necessary at this stage to enter into any lengthy discussion of this bill respecting the criminal law, because the minister has indicated already that it is to be referred to a small committee of this house for careful study and report back to the house.

It is not my intention at this stage to enter into a discussion of the individual provisions of the bill. If I did so I would clearly be out of order, as has been admitted already by the hon. member for Winnipeg North Centre (Mr. Knowles) and the hon. member for Greenwood (Mr. Macdonnell). As a matter of fact I would feel hesitant at this stage to enter into a discussion of the specific provisions of the bill because I consider it to be foundation law, and I feel I will know more about it when the committee has finished its studies. I will be in a better position to discuss with something like authority the provisions of the bill when it is referred to the committee of the whole house. So I shall resist any temptation to discuss the individual provisions.

I find myself in thorough agreement with the principle of the bill as expressed this afternoon by the Minister of Justice (Mr. Garson). As a consequence of a study of this monumental work I have wondered whether the bill continues to adhere closely to the principle that was laid down. While it was the definite purpose of the committee which worked on it for so long to produce a simple modification of the Criminal Code rather than to change any broad principles, I am wondering if in some cases there has not been what could be called extensions of the law that may have the result of affecting seriously fundamental principles and liberties of the Canadian people. Many Canadians who have given this careful study believe that to be so.

When we come to the committee stage we ought to give the most careful consideration to the claims of these people and take plenty of time to study their claims, as against the study that has been made by the hon. members of the other place. We should make doubly certain that we do not unnecessarily abridge the rights and principles of the Canadian people. At the same time we should realize that we are living in a day when there are many people who are all too ready to abuse the privileges and liberties they enjoy. Unfortunately that is so, and I am afraid that it becomes more so the further we get from the great struggle which our fathers made to win these freedoms for us. As a consequence we simply must have law with teeth in it so we can protect the rights and liberties of all the people.

In my judgment we have to look at both sides of these cases. Let me take, for example, the case that was raised by the hon. member for Winnipeg North Centre (Mr. Knowles). When we talk of the liberties, rights and privileges of the labouring people, with which I thoroughly agree, at the same time we have to consider the rights, privileges and liberties of those people who are hirers of labour. These things must be fair. They must be just to both sides, and in our studies let us make sure that the law that is laid down extends justice to all parties in the land. I am more concerned about those things than I am about some of these other things that have been mentioned.

We think it was wise to omit most of these mandatory minimum sentences that are prescribed in the present Criminal Code. But having said that, I think it may be established—I am not going to say that it can be but it may be—that there have been altogether too many unnecessary increases in maximum penalties. I am not going to criticize at this stage because I have not yet been convinced that that is so, but that fact may be established as a consequence of our careful study.

I am going to take the same position that was taken by the hon. member for Kamloops (Mr. Fulton) this afternoon. I thought it was a good point, and I believe it would be well for all of us to approach the study of the bill to amend the Criminal Code with this thought in mind. No matter who has said what about it, we should be prepared to take a careful look at all opinions that have been expressed with regard to it, and certainly no one should have the right to call anybody else a communist or a communist sympathizer simply because he may say something that the communists have already said.

Having said that, I want to assure the minister that we are prepared to support the bill being sent to a committee, and we are prepared to accept our responsibilities in the committee to give it a thorough and competent study.

Mr. G. C. Nowlan (Annapolis-Kings): Mr. Speaker, the minister has already stated that it is his intention to refer this matter to a committee and, as the hon. member for Peace River (Mr. Low) has just stated, I am sure there is no one here who will question the advisability of that action. However, tonight I was looking over the list of standing committees of the house, and I was rather impressed with the fact that we have no standing committee to which such legislation can be sent. I know the Minister of Justice (Mr. Garson) is a modest man who is carrying out his duties in accordance with the constitution of the country, but perhaps he does not appreciate the fact that as Attorney General of Canada and as Minister of Justice of this country, by virtue of his position and the matters with which he deals, he is actually the second man in the government of Canada.

When you look over the standing committees of the House of Commons you see that we have a committee on a restaurant, we have a committee on elections and privileges which may sit once in twenty years, and we have a committee on a library. Yet we have no committee on justice to which fundamental matters such as this may be referred. One sometimes wonders if there should not be a further amendment of the rules of the house, because today there certainly should be a standing committee to which this and kindred legislation could be sent. There was a time when the position of minister of justice in administering a few general statute laws was such that, although he had a most responsible position, it was kept within rather narrow confines. Today we see it in every phase of our lives, and I do think that when legislation such as this comes before the house we should have a standing committee to which such matters can be referred.

In the absence of that, Mr. Speaker, I do think the committee to which the bill is referred should be fairly large. We have here various members who are qualified to sit on such a committee. We have the hon. member for Winnipeg North Centre (Mr. Knowles), whose modesty prevents him from admitting that he is one of the outstanding lawyers of this house though we all recognize the legal qualities which the hon. gentleman possesses. We have in the house tonight a gentleman who for many years was one of the outstanding jurists in eastern Canada and who presided over many criminal trials with fairness and ability. I know because I appeared before him on many occasions.

Mr. Stick: In what capacity did you appear?

Mr. Nowlan: Coming from Newfoundland my friend will immediately suspect a case of politics, but that is not necessarily true of those who come from the rest of Canada. There are many lawyers in the house who I think would like to make some contribution to this committee. Perhaps their contribution would not be great but at least they would have an opportunity of expressing their views and possibly giving some of their experience. If the matter is referred to a small committee of the house, then I am afraid the minister may not save as much time as he would like in dealing with this very bulky and most important legislation, because certainly when it comes back to the house there will be many who will want to deal with it clause by clause and section by section and express their own views, which possibly would not be the case if the committee were larger. It has been whispered privately—and when I say "privately" I do so with no opprobrium —by the minister in discussions with various members of the house that the committee might be of a size which I frankly think is too small if it is to deal expeditiously with the matter and accomplish the results which he would like to see accomplished, namely a fairly detailed and comprehensive discussion in the committee. Then the house could deal with it much more expeditiously than would otherwise be the case.

So much for the general suggestion as to the reference of the measure to a committee. I simply want to reiterate what was mentioned by the hon. member for Kamloops this afternoon. There are many phases of the bill which one could question—I will not say quarrel with—if one were going to deal with them in detail. However, that is not the purpose of this debate and I do not propose to do so. But very obviously from a reading of the report of the commissioners and of the general bill there is, as was stated this afternoon, a further curtailment of the right of trial by jury if this bill is adopted in its present form.

A few moments ago the hon. member for Winnipeg North Centre referred to the rights of labour and expressed the fear that they would be curtailed. Frankly I am no more interested in the rights of labour than I am in the rights of farmers or fishermen. What I think we are concerned with are the rights of Canadian citizens, and I do suggest that any curtailment of the right of trial by jury in this day and age is a dangerous infringement upon our rights which we should scrutinize most carefully. It is true that if the rules permitted, and if one were going to deal with the sections in detail, one would probably find that the absolute jurisdiction conferred upon magistrates is only increased

in one or two cases, perhaps in cases of receiving stolen goods up to a value of $50 or something like that.

One may say, why bother about a matter such as that; but I wonder how many here have tried cases in a magistrate's court. I wonder if the Minister of Justice, who has been removed from active practice for some years, realizes the atmosphere which pertains today in provincial magistrates' courts where you perhaps have a docket of 30, 40 or 50 cases in the morning. Some of them are simple drunks. Some of them are for offences under the game act. Some of them are for offences under the motor vehicles act. Some of them are minor infringements of the Criminal Code.

You spend an hour or two taking the pleas of guilty, and then you start back on those cases who wish to plead not guilty. Some poor lawyer has to defend them before a magistrate who is harried and rushed, and who probably has to appear in some other court fifty miles away at half past two that afternoon. Those are the conditions under which magistrates operate and I say, sir, that it is unfair to them to increase their absolute jurisdiction one iota.

If a prisoner wishes to elect to be tried before a magistrate and the magistrate can find the time to try him, well and good; but let us not impose on these overworked magistrates any heavier burden than they have at the moment. I can tell you, speaking at least of the magistrates in my own province, for whom I have the greatest respect, who are men of real ability and who do the best job they can, that it is impossible for them to carry the load they have now without imposing anything further on them.

As I said, you can forget the mechanics of the situation and go beyond the atmosphere of the courtroom; and why should the right to jury trial be curtailed on the part of anyone—whether it is for theft of $50 or of 25 cents. In these days and times when pressure of all kinds is mounting, when you have suspicion and distrust of the power of government—and I am not saying this at all politically—there is this one fundamental safeguard of the liberty of every Canadian citizen. It is his or her right to appear before twelve good men and true, or women as the case may be, and have the case tried before them.

I deprecate any enactment which will in the slightest degree infringe upon that fundamental safeguard. It is true that somebody will say that if persons are tried absolutely before a magistrate they are very fortunate because they can only receive a maximum sentence of six months; that is all that can be imposed upon them. There are many cases where a sentence of one day may be fatal to a person. It is not the extent of the sentence with which many of these accused are concerned, it is the fact that they are convicted at all.

Without embarking on other fields outside the scope of this debate, if a man is convicted and sentenced for one day, one month or six months, and is obliged to serve that sentence in jails such as are provided by municipalities in many parts of Canada today, then I say that is a dire punishment indeed. It is one matter which I think probably should be dealt with by a committee on justice. The whole administration of justice, the enforcement of the law and enactment of laws, and the whole question of punishment and the question of our jails and the use of them should be dealt with by a committee of this house.

So without taking further time now, Mr. Speaker, I do want to say that when this matter is before this house again, or in committee, I personally want to make many criticisms of the special sections; and I am going to continue to insist that there should be no abridgement of the right of trial by jury. It should be extended rather than abridged. These are fundamental rights which are guaranteed by practices which have gone on through the centuries, and they should not be interfered with by this special statute which, as we all know, is to some extent an infringement or alteration of the old English common law on criminal practice which has grown up through the centuries.

Mr. J. L. MacDougall (Vancouver-Burrard): It was not my intention to enter this debate and, first of all, may I explain that I am not a lawyer. But I dare say I am as good a lawyer as my good and honourable friend from Winnipeg North Centre (Mr. Knowles).

Mr. Knowles: A Q.C. for you.

Mr. MacDougall: Down in the maritime provinces they have a term they apply to a non-lawyer who tries to speak as a lawyer. They call him a seafaring lawyer, I think. Well, I am not even a seafaring or sea-going lawyer—a sea lawyer; I am corrected. However, in my opinion there is something to be said by hon. gentlemen in this house at this time in connection with this tremendous job of revising the Criminal Code. I think there are something like 477 clauses.

Mr. Fulton: There are 700.

Mr. MacDougall: Seven hundred and forty-four. Well, there are a lot of clauses but I am not going to deal with them individually, you may rest assured.

There are a couple of surprising aspects about this report, to me at least. Despite the fact that there has been an increase in crime across the Dominion of Canada, we have some hon. members of this house saying that we should be more lax in our punishment of crime. Although I have not the number of it before me, I recall the clause on treason. The penalty there has been increased considerably, and I want to deal with that for a moment. If in this country we are to continue a virile democracy, the harder parliament, through the enactment of amendments to the Criminal Code, cracks down on treason the better for the people of Canada. We hear a lot about sabotage in various countries of the world today and there are a lot of people in this country—I hope not too many, but I think I am on safe ground to say a few thousand—who are determined to alter the government of this country not by the votes of the electors but by force.

I have had and I am sure a great number of members have had communications from the Canadian peace congress. Strangely enough, no matter where those letters come from—and I have received them from pretty well all over western Canada and certainly all over the province of British Columbia—they list the same clauses and this is the number one that is complained of as anathema to democracy. If we take them too seriously I think we are going to run ourselves into a great deal of trouble because in this modern, scientific era there is such a thing as a thermal bomb. A few people, undemocratic in their views of government, could do a terrific amount of damage to the economy and welfare of the Dominion of Canada through the use of a few thermal bombs.

I do not think my hon. friend from Greenwood (Mr. Macdonnell) was laughing at me when he laughed just now, because what I say is quite factual. Those bombs do not need to be any larger than your fountain pen, and ten or twelve of them thrown along the railroad tracks going through the Fraser canyon, for instance, would completely sever rail communications between the Atlantic and Pacific oceans. These are serious aspects of our amendments to the Criminal Code.

In so far as the amended clause with respect to treason is concerned, I would say that as originally drafted it was not sufficiently specific. With respect to that aspect, and that aspect only, I believe the gentlemen in the other place were quite right in their amendment. In the final analysis we, as representatives of the Canadian people, ought to be very careful that when this bill goes to committee, the committee hearing is not going to result in a repetition of the principle of *stare decisis*. If it is, it is going to be too bad for the amendments to the Criminal Code. I will admit that the members of that committee should be clever jurists. The hon. member for Annapolis-Kings (Mr. Nowlan) spoke about poor lawyers. I hope he was referring to them in a monetary sense rather than in a qualitative sense.

Mr. Fulton: I do not think he mentioned poor lawyers.

Mr. MacDougall: He said "poor lawyers"; you read it. The point is that we want to do the best possible job on these amendments to the Criminal Code. We must always keep in mind the fact that some of the country's outstanding jurists gave these revisions a great deal of thought over approximately a two-year period. The members of the other place did likewise. I only ask that we, as members of this house and of that committee, give these amendments equally sound thought. We should keep constantly in our minds that what we are trying to devise is something that is going to be of specific benefit to the Canadian people as a whole, not one class or one group within the community.

Finally, I may say, with respect to the whole set-up of the revision of the Criminal Code, that unless we are determined to tighten the sections concerning treason and sabotage, and all those related matters, in my opinion as members of this House of Commons we are falling down on our job. I hope that is one thing that will come out of the discussions in the committee. It is almost axiomatic, Mr. Speaker, that if we allow freedom to be undermined in any part of Canada through laxity in our law, then our liberty is a farce.

Mr. H. W. Herridge (Kootenay West): I wish to make some observations on this rather mammoth document of 294 pages, Mr. Speaker. I can assure you that I shall be quite brief, because I think the member for Winnipeg North Centre dealt quite effectively with this subject, particularly with our concern and the concern of many others over certain sections in this bill. I must say that I enjoyed the speech delivered by the member for Kamloops (Mr. Fulton) this afternoon. I thought he made a most thoughtful contribution to this debate.

Since this bill has come to public notice as a result of a draft copy being made public early last summer, there has been considerable interest in certain sections of the bill. Since that time it has been given close scrutiny by a large number of trade union groups

in this country, by gentlemen of the legal profession, and I might say, Mr. Speaker, by the C.C.F. group in this house and others who belong to it outside of this house. According to parliamentary practice we are only permitted to discuss the principle of the bill on second reading. There are, however, sections of this bill of serious concern to the people in the groups I have mentioned, who consider they are a violation of traditional civil liberties and traditional trade union rights. I think the speaker who just preceded me made some references which indicated that there may be irresponsible people taking exception to some sections of this bill.

To illustrate the concern of the labour movement, I am going to place on record a letter sent by the secretary of the Canadian Congress of Labour to the secretaries of affiliated and chartered local unions, labour councils, federations of labour and representatives of the congress, concerning this bill. This letter is dated November 25, 1952, and reads:

Greetings:

The congress has received a number of inquiries about Bill H-8.

Of course, it is now Bill O.

This was a bill to revise the Criminal Code, submitted to the Senate at the last session of parliament. It was a bill of 744 sections, running to 294 pages of type.

The congress officers studied it, and referred it to the congress legal adviser; and the congress would have made representations on certain sections if it had not become clear that there was no chance of the bill passing last session. Actually, it never even got to the House of Commons.

During the summer, the congress was in touch with the government on the matter. The government said that the bill would be reintroduced at the present session, and would be referred to a special parliamentary committee, before which everyone interested would have ample opportunity to appear and make representations. The bill is in fact, so long, so elaborate, and so important, both to ordinary citizens and to the legal profession, that this course is inescapable. The bill just cannot be rushed through; every lawyer in parliament will insist on a most minute examination.

The moment the new bill is printed, the congress also will subject it to a most minute examination, with the assistance of the congress legal adviser. When it has done so, it will make prompt and full representations to the parliamentary committee, to parliament and to the government, on any and every provision of the bill which appears to be in any way dangerous either to the rights of unions or to the civil liberties of ordinary citizens.

Yours fraternally,

Donald MacDonald,
Secretary-Treasurer.

Now, Mr. Speaker, that was a letter addressed to the local unions of the congress, and it shows concern over certain sections of this bill. I have received correspondence from unions affiliated with the Trades and Labour Congress of Canada, from independent unions, and even from quite small groups of employees organized on a local basis. In addition, I have received communications from other groups in the community, groups interested in civil liberties, women's groups and so on. I have noticed in my own constituency that quite a number of the gentlemen of the legal profession are most interested in this bill. In fact I was asked to send several copies of this bill to members of the legal profession in my own constituency.

At this point I might say that I was interested in what the hon. member for Winnipeg North Centre had to say when he was making reference to the legal profession. As a rancher, one of those who make their living from the soil and the forests, I will freely admit that years ago I used to have a somewhat sceptical approach to the legal profession because, on occasion, I had found that it was quite expensive to have dealings with that profession. I will, however, say this. Since being a member of the legislature of British Columbia and a member of this house, I have come to the conclusion that the great majority of the people of Canada do not realize what a great deal they owe to the legal profession, having regard to their interest in civil liberties, the traditional rights of Canadians and that sort of thing. I have always noted that, regardless of party, they take a keen interest in this type of legislation.

As I said before, I have had a number of lawyers in my constituency ask me for copies of the bill, express quite severe criticism of certain sections of it, and promise to write me at length when they had an opportunity to study the latest draft of the latest bill which is Bill O. I have had responsible businessmen in the constituency I represent write me at length and ask for copies of the bill. They have given it some consideration and have expressed their objection to certain sections included in it.

In addition to that I have received in the neighbourhood of one thousand communications. On one hundred of these communications I notice the signatures of men who have served this country in either the first or the second world war. I therefore do not think it is quite correct for the hon. member who spoke previously to me to suggest—if I heard him correctly—that people who take objection to some sections of this bill are not entirely responsible or are not too greatly concerned about the welfare of this country.

I am not going to deal with the various sections of the bill, Mr. Speaker; in fact, I do not think I am capable of, shall I say,

getting away with it as well as did the hon. member for Winnipeg North Centre when he dealt with them. I heartily support the criticisms be brought forward concerning certain sections, as we all do in this group. We were rather delighted to see that he followed the example of the Minister of Justice (Mr. Garson) in so doing.

We in this group were glad when, last session, in reply to a question by the hon. member for Winnipeg North Centre, the Minister of Justice said that this bill would be referred to a committee. We believe that is an excellent practice. It is impossible to deal with a tremendous bill of this sort—one that is full of technicalities, legal phrases and that sort of thing—in the House of Commons in debate or actually in the House of Commons in committee of the whole. This committee will have a great and important task. I trust, Mr. Speaker, that it will be a committee of sufficient size and not just a small committee composed only of legal experts, with a few members from all parties in this house. I hope it will be a substantial and representative committee of this House of Commons, with members on it representing various points of view, various professions and trades, and so on. There is no question about it, the important work on this bill, so far as the House of Commons is concerned, will be done by the committee to which it is referred at the conclusion of this debate. That committee will have the opportunity to hear representations from trade unions—and I am sure a good number of them will make representations—and other groups.

In that connection I should like to make a point. I have answered dozens and dozens of letters about this bill, and I have made it a particular point to draw to the attention of the people who wrote me that Canada is a democracy, that the minister had advised us that the bill would be referred to a committee, and that all representative groups would have an opportunity to express their point of view, their objections to certain sections and so on.

I say again that we are extremely pleased that this bill is going before a committee. We hope the committee will take plenty of time. There is no need to hurry this matter through. In the opinion of this group it is far better to take two years before we finally adopt this measure than it is to make one mistake that transgresses any traditional Canadian civil liberty, any of the rights of trade unions, or any of the freedoms and democratic facilities we have enjoyed to date and trust that we shall continue to enjoy.

As I said before, Mr. Speaker, this committee has an exceedingly important and serious task to perform at this time in connection with this bill. I trust that it will give every consideration to the representations that are made to it and that it will make certain that, when the bill is returned to the house, it will recommend amendments, as necessary, to remove any suggestion that there is a violation of the traditional civil liberties or traditional trade union rights.

Mr. J. M. Macdonnell (Greenwood): Mr. Speaker, I have a few observations to make on this measure; but before doing so I just want to follow through, as it were, on two things which have been said by others.

In the first place, I should like to join with those who have suggested that they view the task of the committee as a most important and onerous one and who believe its numbers might be increased. I know that ordinarily one is inclined to think a small committee is better than a large one. But having regard to the magnitude of this task, and having regard to the fact that, for inevitable reasons, members are obliged from time to time to be absent, I think it is worth while to have a larger committee.

The second thing I should like to say is by way of comment on what the hon. member for Annapolis-Kings (Mr. Nowlan) said with regard to trial by jury. I remember reading a statement years ago by that great English lawyer, F. E. Smith as he was originally and who was subsequently Lord Birkenhead. He was a man who, I suppose, had pleaded in scores—perhaps even in hundreds—of jury trials. He spoke about the British jury and said that, in all the cases he had tried, there were only three in which he thought the jury had come to a wrong conclusion. He also said that in two of those cases he had since come to the conclusion that it was not the jury that was wrong, but himself. To me that was a tremendous endorsement of this practice. It is easy to make fun of the jury. A good deal of wit has been exercised at the expense of the jury; but there we have the opinion of a great and experienced authority.

I should like to make one or two comments on the measure itself. In the first place I was utterly astounded to find how many people are affected by the criminal law in this country. I could hardly believe my eyes when I read the debate in the other place. According to the figures given, there were 918,000 convictions in the year 1948. That does not include the people who were tried and let off. Of course the great majority of those convictions were for trivial offences. One

does not want to create the impression that the people of the country generally are criminals. A great many of the offences would perhaps be due to a little bit of excessive enthusiasm the night before, and we should not take them too seriously. But on the other hand it is a tremendous figure, and it makes one realize how close this legislation comes to the lives of a great many people.

On looking over the provincial records I read with some regret that my own province of Ontario has the unenviable pre-eminence of leading the list. The ratio to 1,000 of population in Ontario was 147·4. For reasons that will be better known to the people of that province than they are to me, Saskatchewan was at the bottom of the list with 29·2 per 1,000. I can only hope that we in Ontario have this pre-eminence perhaps because of superior energy which has to be let loose in one way or another.

I was born and brought up in Kingston. We had many advantages in that city. We had a penitentiary, an asylum and a university. I remember once walking past the penitentiary where a very novel view of crime was presented to me, which I do not endorse for one moment. I just pass it on as the view of a whimsical man. As we were walking past he pointed out the penitentiary and said that in there were people who possessed such energy that we could not compete with them, so we conspired to lock them up. That is not a view of crime that I wish the committee to take into serious consideration, but it just occurred to me as I was going along.

The other chief point I would like to make is what an amazing advantage it has been to us who live in this country that in the wisdom of the framers of confederation, in spite of what must have been great difficulties, we ended up with one criminal law; whereas in the United States, and I read from volume 6 of the "Encyclopaedia Britannica", they have—

> For purposes of the administration of criminal justice each of the forty-eight states, and the federal government, is a sovereign state with its own law, its own exclusive jurisdiction, its own judges and other officers of justice, its own system of penalties.

And so on. I think we are all familiar enough with life in the United States to know the results of this multiplicity of jurisdictions and different laws. When I say "different laws", there is this that is common to them all, that all or nearly all of them embody a great deal of the common law of England. I might refer to one thing here, that the common law was very general throughout the states, but on the other hand it was not accepted in toto. For example, in an early Pennsylvania case I read the following from the judgment:

> The common law punishment of ducking (which was the punishment for the offence of being a common scold in England) was not received nor embodied by usage, so as to become a part of the common law of Pennsylvania. It was rejected—

I understand that "scold" as used there means "wife".

Mr. Browne (St. John's West): It is retained here especially.

Mr. Macdonnell (Greenwood): The hon. member says it is retained here especially. That is a comfort; I did not know that. These things are important to have in mind when one thinks of the difficulties in the United States due to this multiplicity of jurisdictions that has occurred. Any number of undesirable pardons have been issued there by state governors. As I understand it, you can work up such a lobby that it is often easy to have the ends of justice defeated. That leads one to pay tribute to the wisdom and the generosity of the framers of our constitution, because it meant a good deal of giving up here and there to make concessions necessary to have a common criminal law, which has meant a great deal to the development of juridical life in this country.

There are one or two other comments I wish to make. I should like to endorse what my colleague, the hon. member for Kamloops, has said on the subject of treason. When one thinks of treason, it is not so many years ago that we thought of it as something that existed in funny far-off countries, where they did not know how to live together and where strange things happened, which of course could never happen here. Well, since then things have changed. I imagine most of us have read that book "It Can't Happen Here". I suppose that everyone who read it had the same feeling I had, how easily it could happen anywhere if people became careless about the protection of their freedom.

The protection of freedom is not an easy thing, because there is a great temptation, when we find freedom attacked in one way that we find abhorrent, to crack down on it in ways which perhaps strike against the very principles we are trying to protect. Therefore, as I say, this question of treason is terribly difficult. We have to be firm; we must not be sentimental or unrealistic in recognizing the fact which I for one was slow to recognize, namely that there are people in this country who go about among us, who

seem like us, who are personally quite pleasant, who take full advantage of our institutions, who have had the benefit of them, but nevertheless are prepared to conspire to overturn them; and yet in our indignation at them we may go too far, for it is so easy sometimes to feel that we must go the limit in cracking down.

Without elaborating the matter further, Mr. Speaker, the only safe place I can find where I can come to rest is to say that we shall not try to punish men for what they think; we shall only punish men for what they do. As to the definition of the act, I am not going to discuss it further. Someone said here earlier, and I agree with it, that what we have to do is consider this act as something which is for the benefit, not of this section or that section, but of every citizen of Canada.

As I take my seat I should like to reiterate something that was said to this house earlier; that in spite of all the difficulties and sometimes they are terrible ones—facing us in some of the things abhorrent to us which people will do, I recall again Churchill in different circumstances. He was mentioned earlier tonight. I suppose if there is one man in this world who must have tried the patience of those having to do with him it is the red Dean of Canterbury. Our late colleague, whom we all remember with regret and affection in this house, the former member for Calgary West, Art Smith, spoke of him one day in this house in terms of great vehemence which I think reflected the views of all of us, but when Churchill was pressed to take some action—I suppose it would have meant a change in the law in order to do it—he said: "We must remember that the principles we believe in have to be preserved; even though we suffer greatly in the doing of it, we must stick absolutely to the law."

We have here this tremendous bill, tremendous in size and tremendous in importance. I agree with all that has been said about the care and thought which should be given to it. The thing is not to get it back here quickly; the thing is to get it back here in the best possible shape it can be given.

Mr. W. J. Browne (St. John's West): I should like to make a few remarks. I commend the Minister of Justice on his wisdom in agreeing to have this bill sent to a special committee. We should not rely entirely on the experienced lawyers in the other place, because there are so many lawyers and ex-judges in this place who can give us the benefit of their experience in such an important matter as a new revision of the Criminal Code.

I should like to make an humble apology to the hon. member for Greenwood (Mr. Macdonnell) for interrupting him when he was speaking on the serious offence of being a common scold. My memory was at fault. I said it was being specially retained. It is being specially rejected. I find this in the commissioners' report:

> Certain common law offences are, in the opinion of your commissioners, obsolete and archaic and are not retained, for example, champerty and maintenance, barratry, refusing to serve in office and being a common scold.

I think most of these offences are as Greek to the ordinary layman.

There are two special subjects about which I should like to speak, and they are both linked together here in this report of the commission that dealt with this subject. They are the questions of restitution of property and compensation, and the jurisdiction of magistrates.

As everyone knows, when property is damaged maliciously or is stolen the state feels that a public offence has been committed. It is an offence against the state; that is why there is a hue and cry and action by the police and the attorney general and so forth. But the person who suffers most is the one whose property has been taken or damaged, or who has received personal injuries. Quite often his rights are neglected and he may suffer more in fact than the prisoner who is punished. At times the prisoner is punished but the party who is injured is completely forgotten.

A person may have property stolen. The Criminal Code now provides that he might be compensated to the extent of $1,000, which would constitute a judgment debt against the convicted person. That provision is going to be changed; the limit has been taken out and the compensation is now limited to the moneys found in the possession of the prisoner when arrested. In other words the prisoner may be a millionaire, but if he has no money on him when arrested there will be no restitution of property or compensation for the injured person.

I know of an instance where a place was broken into and property stolen and damage done to the extent of about $500. The accused was unable to obtain a bondsman to provide bail, and he offered the magistrate a certified cheque for $4,000. He was allowed out. When he went to the supreme court they would not take this cheque as bail, so the money was returned to his lawyer and some of it went to his wife. The person whose property was damaged has not yet received any compensation. I do not see how anyone

can call that administration of justice. The one person who is most concerned is the one whose property is damaged and in that case he has not yet received any compensation. The matter was pursued in the civil courts, but the accused person had left the country. He was released by authority of the Department of Justice because he was ill, and he escaped from the jurisdiction. Compensation has not been given to the person whose property was damaged.

I feel that consideration should be given to this important matter. I know from experience that it has been a most valuable provision for a judge to be able to order that compensation should be given. In my opinion, apart from the punishment of the guilty person, that should be done whenever possible. These people who have suffered injury should not have to bear the expense of a civil action. Their losses may run more than $1,000, and the present limit should be removed and compensation, whatever it may amount to, ordered to be paid out of any property belonging to the accused, not merely what he has in his possession at the time of arrest. The arrested person may be cute enough to pass whatever money he has to some friend before he is actually put in the cell block. By that means he could escape having to pay any compensation. I hope therefore that this matter will receive consideration when the bill goes to the committee.

I should like to deal now with the question of the jurisdiction of magistrates. This bill proposes to enlarge their jurisdiction to some extent. It must be remembered that magistrates are concerned chiefly with the administration of provincial laws, and these are considerable in number. I think that constitutes the bulk of their work. Every year new laws are passed which must be dealt with summarily by magistrates. Over the last 50 years the work performed by magistrates has increased manyfold.

The tendency has been to give more work to the magistrates and to take work away from the judges. The Minister of Justice (Mr. Garson) knows that in Newfoundland we have only the supreme court and the magistrates' courts; we have no county court or district court. I had the honour of being the last district court judge; no appointments have been made since. The law provides for five district court judges, but not one has been appointed.

The magistrates are being given tremendous powers, the same as judges of the supreme court, to pass sentences up to fourteen years. Only two or three of the magistrates in Newfoundland are lawyers, and I do not think it is fair to give an untrained layman the responsibility of imposing a sentence of that severity. I know serious mistakes have been made. It is a reflection upon those responsible for the administration of justice that such power over their fellow men should be given to men who are not legally trained. I think my hon. friend will agree with that.

I know the magistrates are overworked. The magistrate's court in St. John's is a disgrace. Anyone who has gone there and who has had any experience anywhere else knows that they are tremendously overworked. It is a reflection upon those responsible for the administration of justice down there. You have a courtroom, and you have an office that is sometimes used as a courtroom. The magistrates have even to hear trials in their offices.

Mr. Deputy Speaker: I believe the hon. member is getting much farther away from the bill than perhaps any other previous speaker. The facilities available for magistrates, about which he is now speaking, should not be discussed on the second reading of this bill. I know some latitude has been given, but I am asking myself if I should not intervene at this time and ask hon. members to confine themselves to discussing the principle of the bill and not go into individual cases, the application of the law or the organization of the provincial courts.

Mr. Browne (St. John's West): I wonder if I may, with deference, disagree with some of the observations you have just made about speaking to the principle of the bill. I would point out that this is a code which contains many principles and which deals with many subjects.

Mr. Deputy Speaker: I did not make a ruling, I simply made an observation in the hope of getting the co-operation of hon. members. I do not want to enter into a procedural debate. The hon. member may continue.

Mr. Browne (St. John's West): This increased work has been given to the magistrates without any consideration being given to increasing their salaries. If you increase the jurisdiction of a judge or magistrate I think it is only fair that that point should be considered also.

Another point to which I wish to refer is the taking of evidence by commission where a witness cannot be brought before the court. That provision applies only to trials in the higher courts, and I submit that it should apply to the magistrate's court as well.

I should like to repeat the two points that I wish to make. First is the importance of providing restitution of property as part of

the penalty inflicted upon a person convicted of an offence. Second, there should not be too great responsibilities placed upon the magistrates, either by giving them too much work or too much power.

Mr. J. W. Noseworthy (York South): Mr. Speaker, I wonder if before he closes the debate the minister will put on the record, for the benefit of a number of groups which I know are desirous of coming before the committee, the details of the procedure that should be followed. Will the minister indicate also whether, as far as his department is concerned, the bill as now amended and presented to us is like the law of the Medes and Persians, not to be changed? Is this bill going before the committee with the minister and his supporters being there to see that no change takes place? Will the committee be given some latitude to hear and weigh representations and, without the use of the party whips, be free to try to reach fair conclusions regarding some of the points in the bill which are in dispute?

Hon. Stuart S. Garson (Minister of Justice): Mr. Speaker—

Mr. Deputy Speaker: If the minister speaks now, he will close the debate.

Mr. Garson: Mr. Speaker, in reply to the question which the hon. member for York South has asked, I should like to point out that, while I am sure there were no implications, aspersions or insinuations in his question and that he was just asking for information, I really do not think, with great deference, that on the basis of the performance of the government in this matter to date he is really entitled to entertain any doubts at all upon the points he has raised. The fact of the matter is that in my memory there has been no bill in this house, or in any other legislative body in which I have been, to which a greater amount of genuinely democratic consideration has been given, than to this.

The first draft was made by a commission of highly qualified and experienced experts in the field of criminal law who were representative of all parts of Canada. In spite of the eminence and the outstanding and recognized ability of all the members of the commission, which, may I say in rebuttal to those who have suggested that nothing but the prosecution viewpoint has been reflected in this bill, included such eminent defence lawyers as Mr. Joseph Sedgwick, Mr. J. J. Robinette and Mr. Arthur Slaght, and in spite of the undoubted excellence of the draft bill which they produced, this government has never at any stage taken the position that it was a law of the Medes and Persians. When we have received and in several cases acted upon representations from individual lawyers, from the bar of British Columbia and the bar of Nova Scotia as professional groups, from the commissioners on the uniformity of legislation, criminal section, from the attorneys general of the various provinces and from the members of the other place, particularly from the subcommittee of the Senate committee on banking and commerce which turned over the great bulk of work which was done by that committee, the spade work, the hard work of drafting, to three senators, namely, Senator Hayden, Senator Farris and Senator Roebuck, who are known from one end of the country to the other as eminent, skilful and experienced defence criminal lawyers, it seems to me that it is not altogether in accordance with the facts to suggest that we have refused to accept worthy suggestions, or that there has been a bias in favour of the prosecution in the drafting and revision of this bill.

If indeed there ever was at any stage of the proceedings, it has certainly been counterbalanced by what was done by these three senators in the subcommittee. These men are all outstanding as excellent criminal lawyers, and if they have any bias at all it would be extraordinary if it were not in favour of the defence when they have been acting for the defence in so many cases over the years. The government has maintained an open mind in respect of all these matters and it will continue to maintain an open mind with relation to the many valuable suggestions it has received from these several sources. We have always welcomed and we have given most careful consideration to these proposals. We have adopted a large number of them. If those members who are familiar at all with the bill as it was introduced in the other place last year will compare it with the bill which was introduced in the other place this year they will see that there have been many material changes in the draft which, when it came from the commission, was recognized from one end of the country to another as excellent to begin with.

Therefore, while I agree with the viewpoint of every one of the speakers who have preceded me as to the wisdom of this house making its own decisions with regard to the provisions of the bill, you may rest assured, sir, that if these decisions commend themselves to the open mind which we shall maintain, just as much in relation to the proposals of the House of Commons as we have maintained in relation to the suggestions of the other place, we shall give effect to them.

All of these Canadian citizens to whom I have referred have taken a very great and

keenly intelligent interest in this matter. The work which they have performed on a voluntary basis has been of a most creditable character. Their contributions and the manner in which they have been received by the other place to begin with, by the government, and, as I am sure they will be, by this house, have constituted a heart-warming example of democracy in action in a matter in which everyone from the ordinary citizen to parliament itself has played his part in a co-operative effort to get as good a law as we possibly can in this consolidation of the Criminal Code.

I do not share all the views of the hon. member for Winnipeg North Centre (Mr. Knowles). Indeed, I think on every one of the specific points he raised tonight I find myself, quite reluctantly of course, in disagreement with him, but there is no harm in that. Our disagreement will produce all the better debate in the committee if he will venture to become a member of it. While I have great respect for the hon. member for Annapolis-Kings (Mr. Nowlan), there is one respect in which I must quite modestly venture to disagree with him. I must say in all frankness that if one had not had the experience of this measure in the other place before one, one would be inclined not to disagree but to agree with his viewpoint as to the value of a large committee. But it was very clear there that when a committee is dealing with the actual drafting section by section of a difficult statute, which is a tedious, grinding job, in the end, as happened there, the great bulk of the work falls upon the shoulders of three very hard-working men who put in long hours of labour on the bill.

For that reason—and I may say I have discussed this matter with the leaders of the other parties—I think that perhaps the best membership for the committee that we could set up would be a membership of 17. Once the house gives second reading to the bill I should like, if I may, to have unanimous consent to move that the bill be referred to a committee and to provide for the setting up of that committee this evening if possible.

Motion agreed to and bill read the second time.

APPOINTMENT OF SPECIAL COMMITTEE—REFERENCE OF LEGISLATION TO COMMITTEE

Mr. Deputy Speaker: Does the minister wish to have leave to revert to motions?

Mr. Knowles: Mr. Speaker, before you contend that leave has been given, in the light of an experience we had yesterday I do not think it should be assumed that leave has been given to what the minister proposes to do until we know precisely what that is. I wonder if there is any hurry about the bringing in of the motion setting up the committee. Is it not possible—I think it is procedurally correct—for the minister to move that the bill be referred to a committee to be designated later?

Mr. Garson: Yes, that is right.

Mr. Knowles: I thought the minister was now going to indicate the number of members of the committee and its composition. It is only the number of members of the committee and its composition that I think should be left over. I am not opposed to a motion that it be referred to a committee to be designated later.

Mr. Garson: May I suggest, Mr. Speaker, that I naturally conferred with the Clerk in this matter and reached agreement that this is the form of motion which it is now appropriate to move. Perhaps if I read the motion my hon. friend may consider whether he wishes to object to it or withdraw his objections. The motion is:

That a special committee be appointed to consider Bill No. 93, an act respecting the criminal law, and all matters pertaining thereto, with power to send for persons, papers and records, to examine witnesses, to print its evidence and proceedings, and to report from time to time its observations and opinions thereon; that the said committee consist of seventeen (17) members to be designated at a later date;—

Mr. Fulton: Is there not something about a provision regarding one of the standing orders?

Mr. Garson: Yes.

—and that standing order No. 65 be suspended in relation thereto.

If I am not out of order perhaps I might indicate the second motion which would follow there.

Mr. Deputy Speaker: Has the hon. minister unanimous consent to proceed in this fashion? He has not had leave to revert to motions. Has the hon. gentleman leave to revert to motions at this time?

Some hon. Members: Agreed.

Mr. Deputy Speaker: I am speaking now about the first motion, the one that was read by the minister a moment ago.

Mr. Fulton: The minister indicated that in order that we should know what was contemplated he would indicate, without moving it, what the motion was, so that we may have the whole picture before us.

Mr. Deputy Speaker: Hon. gentlemen realize that this sort of procedure can only take place with unanimous consent?

Some hon. Members: Agreed.

Mr. Garson: The second motion would be:

That Bill No. 93, an act respecting the criminal law, be referred to the special committee appointed to consider the said bill.

Mr. Knowles: If we pass these two motions we will adopt everything except the names of the persons to compose the committee, and that will be left to a later date.

Mr. Deputy Speaker: Hon. members have heard the two motions. Are they agreed?

Some hon. Members: Agreed.

Mr. Fulton: I want to make a brief observation on the motion, although I am agreeable to the procedure.

I just want to take this opportunity to support fully what was said earlier by the hon. member for Annapolis-Kings (Mr. Nowlan). While this is the only way in which this bill could be referred to a committee, I think it indicates more clearly than anything else the desirability of having a standing committee on justice under the rules of this house.

I want to point out to the house and the minister that the judicial committee, as it is called in the United States congress, is one of the most important committees of that body. We have had a number of experiences with bills requiring more in the way of legal consideration than partisan or political consideration, matters on which there is no difference between the parties. They require very careful consideration for their legal implications, and I believe that type of bill should be referred to a standing committee on justice. I believe that is indicated by what has happened here today, in fact by the readiness of the house to give its agreement to this procedure. And it would seem more appropriate if it were not necessary to ask for that type of consent, and if it might be recognized practice of this house that bills of this kind would be referred to a standing committee which should be set up for the purpose.

I hope the minister will give his consideration to it, not only because of what has happened here tonight but because I believe that questions coming before this house dealing with the administration of justice in this country are matters of great importance and warrant the setting up of a standing committee on justice so they may be automatically referred there.

Mr. Knowles: Just one word on these motions. One of them is debatable, even if the other is not. I am referring to the motion to set up a committee of 17 members, whose names are to be designated later. If that number is as high as the minister is prepared to go I presume we have no alternative but to accept it. It is certainly better than the rumour we heard some time ago as to what the number might be.

I just want to say, in line with what other members have said tonight, that it seems to me that the importance of this question is such that, out of a house of 262 members, with the plethora of lawyers we have here, 17 is hardly enough. One of my reasons for having demurred just now was the hope that the minister might consider a larger number than 17; but it is better than the smaller committee, and if that is as high as he will go we have no alternative but to accept it.

Mr. Deputy Speaker: Is it agreed that this bill is referred to the special committee appointed to consider the said bill?

Some hon. Members: Agreed.

Motions agreed to.

SAINT JOHN BRIDGE AND RAILWAY EXTENSION COMPANY

PROVISION FOR ACQUISITION BY CANADIAN PACIFIC RAILWAY

Hon. Lionel Chevrier (Minister of Transport) moved the second reading of Bill No. 38, respecting the Saint John Bridge and Railway Extension Company.

Mr. Green: I suggest that we call it ten o'clock.

Mr. Chevrier: I have no objection provided it is made *mutatis mutandis*.

Mr. Green: I did not hear that.

Mr. Chevrier: It is a Latin maxim.

Mr. Deputy Speaker: Does the hon. member for Vancouver-Quadra (Mr. Green) move the adjournment of the debate?

Mr. Green: No, Your Honour, I did not move adjournment.

Mr. Fournier (Hull): It has to be that way.

Mr. Green: I suggest the minister move adjournment.

Mr. Chevrier: I have no objection at all.

On motion of Mr. Chevrier the debate was adjourned.

BUSINESS OF THE HOUSE

Mr. Fournier (Hull): Mr. Speaker, Monday is private members' day. We will proceed according to standing order 15.

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