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1879.

Bill 117

CRIMINAL CODE (INDICTABLE OFFENCES) BILL.

LEAVE. FIRST READING.

THE ATTORNEY GENERAL (Sir JOHN HOLKER), in rising to move that leave be given to bring in a Bill to establish a Code of Indictable Offences and the Procedure relating thereto, said: Towards the middle of last Session I had the honour, on the part of the Government, to ask the leave of the House to introduce a Bill entitled the Criminal Code (Indictable Offences) Bill. On that occasion I entered upon a long and elaborate explanation of the principles upon which the measure was founded and the objects which the Government desired to accomplish by its means. I have a very lively recollection of the circumstances under which that measure was introduced to the House, and I am bound to add also of the fairness of discussion and attention accorded by all who listened to the explanation which I had to give, an explanation necessarily full of technicalities, and I was going to say necessarily somewhat tedious. The House did give me very great attention, and after having heard the statement which I made, consented to the first reading of the Bill, and, as far as I could gather, certainly gave a general approval to the measure. The Bill was accordingly printed and was presented to hon. Members for their consideration; it was circulated through the country, and I am happy to say that in a very short time afterwards, both hon. Members in this House and numbers of other persons living in the country who were conversant with the subject, and thoroughly

able to form a just opinion upon it, appreciated the efforts that had been made by the framers of the Bill, and, in fact, received the measure with high approval; and not only was it received with approval by the House and country generally, but the Press took up the subject, and I believe I am stating accurately what occurred when I say that it was unanimous in approving the determination which the Government had exhibited, of codifying, and of codifying effectually, an important branch of the law. Now, Sir, the prospects of the Bill which I obtained leave to introduce last Session were at first undoubtedly bright, and not only was it well received, but there seemed to be a concurrence of opinion among hon. Members that whenever the measure came on for discussion, or partial discussion, as it did on some occasions, that every facility ought to be given for passing this measure into law. Unfortunately, however, although the prospects of the Bill were such as I have described them, soon after it was introduced, and as time went on, the interest in it became somewhat thin. This was owing to the complication of foreign affairs, and other causes which I will not now dwell upon, and it was due to these that the remainder of the Session was occupied with affairs of perhaps greater importance than any piece of domestic legislation, and it very soon became apparent, although the Government were desirous, earnestly desirous, no doubt, of giving every facility in their power for the advancement of the measure through the House and facilitating its becoming the law of the land, that they were nevertheless unable to afford the facilities requisite. Accordingly, it was resolved by Government that before the Session came to an end the measure should be abandoned, with the view of re-introducing it as early as possible during the present Session. But the Government considered this Bill as an extremely important measure. It was regarded as—and it was, in fact, so far as I am aware—the first and only serious attempt ever made in this country towards codifying any portion of the law; and because it contained not only a codification or consolidation of a considerable portion of the Criminal Law of the country, but also enacted several radical alterations therein, it was thought advisable to utilize the interval between the end of the last Session and the beginning of the present by submitting the Bill to a most thorough and exhaustive examination and review. It was also thought advisable that the opportunity should be seized of extending its provisions to Ireland, and thus assimilating and bringing into harmony and concord, to a great extent, the Criminal Law of the two countries. Now, for the purpose of accomplishing these ends, the Government resolved upon appointing a Commission. Accordingly, towards the close of last Session, Commissioners were appointed to examine and revise the Code, as well as to suggest any alterations which they might think proper to be made therein. Their powers were, in fact, necessarily exceedingly large and ample. The Commissioners appointed were, I think all will agree, men of the greatest eminence and experience, and thoroughly competent for the task imposed upon them, weighty though it was. As the House is aware, Lord Blackburn, who is a tower of strength wherever he may sit, whether as a member of a Tribunal or a Commission, was—or rather I should say is, for the Commission is still sitting—the Chairman of the Commission; and the other members were Mr. Justice Barry, one of the most eminent of the Judges of Ireland, and who, I understand, is a Judge of great experience in the treatment of Criminal Law. Then there was Mr. Justice Lush, who will be allowed by all those who understand the administration of justice in England to be a man of the greatest ability and of the greatest experience; and, finally, Sir James Stephen—now Mr. Justice Stephen—the drafter of the Bill, whom I think everybody will admit to be a man who has signalized himself by his earnest and constant endeavours to simplify and improve the law. Such were the Commissioners appointed. I believe when it was under consideration who should be appointed as members of the Commission, a good many hon. and learned Gentlemen in this House thought it was desirable that the Lord Chief Justice of England should be a member and the head of the Commission; no doubt, if it could have been arranged that he should have been present upon the Commission, a man so able, and so illustrious a jurist

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as the Lord Chief Justice of England, his presence would have given great weight to any suggestions which the Commission might think proper to make. But, unfortunately, the necessities of the case demanded that when the Commission was formed its sittings should be continuous. The Commissioners were not to be interrupted in their labours, and the arrangement and understanding was that the Commission should sit *de die in diem*. It was, therefore, seen to be impossible that the work of the Courts of Justice at Westminster could have been properly proceeded with if the head of those Courts were to be withdrawn altogether during several months from the multifarious and important duties which devolve upon him in connection therewith. For this reason, the Lord Chief Justice was not placed upon the Commission, and for this reason only. But although the necessities of the case rendered it impossible to place the Lord Chief Justice upon that Commission, I have no doubt that hon. Members will confess that the Commission is one in which I am entitled to ask that the House should place every confidence. The Commissioners commenced their labours in November last, and they have been engaged upon those labours continuously and sedulously ever since. I shall not presume for a single moment to endeavour to describe the labours of those learned Commissioners; for, if I were to make the attempt, I am sure I should fail to convey to the House any adequate idea of them. It is enough to say that I am perfectly convinced, and can assure the House, that not only has every chapter and section, nay every line, of the Criminal Code of last Session been subjected to the most thorough and searching examination, and, so to speak, manipulated with extreme care and patience, but that a great number of alterations have been introduced. I believe when the measure, which I shall ask permission of the House to introduce in the shape in which it has left the hands of the Commissioners, is compared with the Bill of last year, it will be found that those alterations are very considerable. I will describe them in as few words as I can command. They consist in the main of a very considerable amplification of the statement of the law with regard to certain matters, especially the law relating to the justifications and excuses for acts which would if committed without such justifications or excuses be criminal. There is also a considerable alteration in the arrangement of the subjects dealt with; and then, again, it must be noticed that there have been excisions from the Bill of certain obsolete and antiquated Statutes which perhaps it has never been necessary to enforce, or that really do not require to be enforced—for instance, the Act relating to the observance of Sunday, and that which makes it illegal to hold a meeting within a certain distance of the Houses of Parliament. There has also been the excision of some Statute Law which, although not obsolete, the Commissioners have, for very good reasons, thought fit not to include in the Code. And, again, there has been a substitution for that part of the Code which relates to procedure for carrying out objects intended to be attained by clauses introduced into the original Bill, which are now sought to be attained more fully and in a somewhat different manner. The Commissioners have also introduced certain improvements in the law altogether novel in themselves, not contained in the original Bill, in which there have been made very considerable alterations both in the drafting and phraseology. When I mention the general character of these alterations, I feel that I am bound, in justice to Sir James Stephen, who drafted the original Bill, to say that, on the whole, the principles upon which it was founded remain undisturbed, and that the lines upon which it was drawn have been, on the whole, pursued. But, Sir, the Commissioners have not quite finished their task, because, as I understand, the Schedule of the Statutes which, in their opinion, ought to be repealed, either wholly or in part, is not yet complete. It requires to be finally settled; and, moreover, the Commissioners have not yet agreed upon their Report. The Schedule will, nevertheless, soon be perfected, and I have no doubt that the Report will also be agreed upon very shortly. I look forward to the latter with great anxiety, and immediately it is received, it will be presented to the House. But the draft of the Bill is substantially complete, and that being so, I do not see why there should be any delay in presenting a statement with respect to it to the notice of the House.

It is desirable that I should do so before the Easter Recess, in order not only that hon. Members may have an opportunity of considering the Bill, which I am confident will be in their hands before that period, but that people throughout the country may also be able to consider the measure, which is one of very great importance, and which will be recognized as effecting long desired amendments in the law of the land. Now, the Bill may be called a Code of Crimes and Procedure in Criminal Cases. Some of its provisions refer to crimes of all kinds, not merely to indictable offences; but, in the main, they are confined to those crimes for the commission of which the alleged perpetrators are punishable on indictment. This will be explained more fully when I have the opportunity of going further into the matter than I am able to do this evening; but I may mention that the Bill does not include summary offences, for the very simple reason that if you were to make it applicable both to indictable and summary offences, you would produce a measure of such magnitude as it would be hopeless to attempt to pass into law. The Bill, as it now stands, may, perhaps, in the opinion of some hon. Members, be considered very formidable. I will explain, as succinctly as I can, the nature of the provisions contained in the Code; but before entering upon those explanations, I will, if the House will allow me, make some remarks upon the subject of codification generally. Now, as I understand the term, a Code is nothing more or less than a legislative declaration of the law, and the whole of the law relating to any particular subject, which declaration is made by an enactment or enactments expressed in precise and perfectly accurate language. The law which is thus declared may, of course, be derived from a variety of sources; it may be derived from Acts of Parliament, decided cases, the records of ancient customs, or from text-books of authority. When, however, it has been drawn by the Legislature from its various sources, and has been declared in such enactments as I have described, this declaration is to be accepted as correct, and it is not admissible in any way to question its accuracy; all doubts are, of course, removed, all controversies are set at rest, and the Code is made a fresh point of departure, and a fresh source of law, beyond which, or behind which, it is not permitted to go in order to carry out further investigation. I know there are some of my hon. and learned Friends who say, and no doubt they profess what they believe, that they cannot understand the advantage of a Code. They say—"We do not see the utility of codification; the existing law is settled, and those who are initiated know what it is;" or, what amounts to the same thing, that "they know where to find it." And then they argue that to put the law in the shape of a Code is merely to undertake a useless labour, and is something very like making a copy of a document, instead of referring to the document itself. To these arguments I reply, in the first place, that the law on any given subject is not always settled. It often happens that there are conflicting interpretations and opposing decisions; and although it may be that a mind sufficiently educated, astute, and experienced can select the most trustworthy interpretations and pick out the most trustworthy decisions, nevertheless, the process is one which is both long and tedious, and involves very frequently an enormous expenditure of research and labour. And then, again, although it may be considered that the initiated may know the law, or the sources at which it may be found, it must, I think, be admitted that they are but a very small minority in the community, and that it is certainly most undesirable that, with regard to the law—under which everybody lies, and by which everybody is bound—the general body of the public should be excluded from any reasonable use of the means for obtaining access thereto. Moreover, even the initiated are not acquainted with all the law, and much of it they can only ascertain by the study of Acts of Parliament, text-books, and reports of cases in which it, so to speak, lies hid—a process that will occupy infinitely more time than the simple reference to a Code. Surely, it is a desirable thing that anybody who may want to know the law on a particular subject should be able to turn to a chapter of the Code, and there find the law he is in search of explained in a few intelligible and well-constructed sentences; nor would he have to enter upon a long examination of *Russell on Crimes*, or *Archbold*, and other text-books, because he would have a succinct and clear state-

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ment before him. The advantage of this clear and natural statement of the law, expressed in a few words, has never been stated better than by Sir James Stephen in a recently-published book, which he calls a *Digest of the Criminal Law*. The Bill which I am about to introduce contains a statement of the existing law relating to crime, or rather the main or great bulk of the Code consists of a statement of the existing law relating to crime. Some portions of the Bill, as I have already mentioned, declared the law with respect to matters which are applicable to all crimes punishable upon indictment or by summary proceedings. I take for example these sections which refer to the parties by whom crimes may be committed, and those which refer to the justifications and excuses for acts which would otherwise be criminal; but there are other portions of the Bill applicable simply to indictable offences for reasons which have been already given. It would be a mistake if the House were to come to a conclusion that the Bill included every indictable offence to be found in the Statute Law; but it does include in its pages all the indictable offences which are ordinarily considered as crimes. Now, stated shortly—In the first place, the Bill contains provisions as to the application of the measure; second, an enumeration of the punishments which may be imposed, and some minute provisions with regard to them, designed to make those punishments consistent, and, if I may say so, harmonious in themselves, and to prevent the possibility of the infliction of sentences of undue severity. Then, again, in the third place, there is a very elaborate and careful enunciation of various matters which are dealt with under this head; and I think it will be found, upon examination of this portion of the Bill, that the Commissioners have expended infinite time and labour to make the subject of excuses and justification as complete as possible. Then, fourthly, there is a statement of circumstances in which persons become parties to the commission of crimes and the relative degrees of culpability which attach to those persons who themselves commit crimes, or incite others to their commission. There are, in the fifth place also, definitions given of various offences of the nature of ordinary crimes, made perfectly clear and as consistent as possible. The Bill also contains, in the sixth place, a very succinct statement of the procedure which must be adopted for the purpose of bringing offenders to trial, the mode in which the trial should be conducted, and of certain steps to be taken after trial and before sentence has been carried into effect. These are the heads of the Code. But I may be asked why it does not include all indictable offences known to the law? I should myself desire that all such offences should be included; but the reason given by the Commissioners for not making the Code to include every indictable offence known to the law is that there are a great many offences dealt with by carefully-considered Statutes passed in recent times, which constitute practically Codes in themselves, and that there are also Statutes relating to other offences, of an antiquated and obsolete character inapplicable to the present times, such as those to which I have already referred—laws which, perhaps, it would not be wise to repeal, but which it would certainly not be politic to re-enact. Although the Code does not contain an exposition of the law relating to every indictable offence to be found in the Statute Books, it certainly contains, to my mind, this very salutary provision. Many people speak of the elasticity and flexibility of the law; but I think that our object should be to ascertain what is the Criminal Law, and not to stretch it for the time being in order to include an offence. There has been inserted in the Code a provision that everyone who is a party to an indictable offence shall be proceeded against under some provision of the Bill, or some Statute not inconsistent therewith, and shall not be proceeded against at Common Law. It is thus secured that every crime shall be distinctly and clearly described, and not be the subject of doctrines which ingenuity may render sufficiently flexible to suit the occasion. But the Bill does something more than codify the law; it alters it in several material particulars. I am not going to trouble the House by repeating at length the description given by me with considerable elaboration last Session, and which I believe was a perfectly accurate one, of these various alterations; but will content myself by saying as shortly as possible in what they consist. These altera-

tions consist—First, in the placing of the law relating to punishments on a more satisfactory footing; in doing away with minimum punishments, and, in some instances, diminishing their variety and preventing the possibility of their being unduly severe. For example, it is well known that the punishment of two years' imprisonment with hard labour is one of the greatest possible severity, so much so that if a person should be sentenced to this term for one crime, and again on its expiring sentenced to undergo it for the commission of another, he would not be able to endure it unless there were some provisions for its relaxation. Then, again, the distinction between felony and misdemeanour is abolished, and amendments are introduced in the law which are rendered necessary by this abolition. Now, a difference of opinion may arise upon this subject, although I do not think it will, for surely you can get rid of a distinction which is not necessary. Why the false pretence by which a man gets £1,000 out of another and so defrauds him of his property to that extent should be called a misdemeanour, and the act of stealing a mutton chop should be called a felony, it is difficult to understand. Then there are alterations in the law under the head of homicide, and also with regard to murders intended, to secure that a man should only be convicted of murder when he has intended to take away life, or was utterly careless whether the consequences of his act resulted in taking away life or not. Let a man be convicted of this terrible crime of murder, for which he is subjected to the most awful punishment that man can lay down, if he intended to take away life, and not otherwise. But under the head of homicide, also, there are provisions with regard to provocation, by acts of insult, which reduce an act that would originally come within the category of murder to the crime of manslaughter. I will not attempt to go through these provisions; but I believe it will be found that they place the law in a much more intelligible and satisfactory basis than the present. Then there is a provision which remedies the defects existing in our law with regard to infanticide. At present, if a child is killed before it is completely born into the world, although it is a morally guilty act, it is not held to be murder; a provision has, therefore, been introduced, to make that act punishable as a capital offence. It has also been made penal for a woman on the point of being delivered of a child to abstain from procuring assistance, a provision that I think will do away with the necessity of that portion of the law which relates to the concealment of birth, under which many persons are convicted of the minor offence and escape conviction for a crime of much greater magnitude. Then the old doctrines of the law with reference to theft and offences cognate thereto have been swept away and replaced by principles of a plain and intelligible sort, and consonant with the habits and feelings of the age in which we live. I mean that it is declared that a man shall be guilty of a crime if he steals any property, no matter what sort. There are a variety of old doctrines on this subject which have been doubtless rendered difficult and mysterious by Statutes passed for the purpose of making various sorts of property subjects of larceny, and it is better that these should be swept away. Further improvements have been effected in the law relating to forgery and the fabrication of false documents, with regard to which I think an unwarrantable distinction has prevailed. This is to be removed, and the result will be that it is no longer declared to be a crime punishable with penal servitude for life that a man should forge a receipt for a few shillings, whereas the fabrication of a document in which thousands of pounds are concerned, and which may entail most serious loss, should only subject the offenders to fine and imprisonment. We now come to that part of the Bill relating to procedure; and, undoubtedly, a great deal of the old law on this subject has been re-enacted; but it has been freed altogether from its entanglement, subtle technicalities, and confusing requirements. In the first place, the abolition of the distinction between felony and misdemeanour undoubtedly requires a considerable change to be made in the execution of warrants for the arrest of prisoners, the bailing of challenges, and the joining of charges in indictments, and the House will find that these necessary changes have been introduced. Further, the difficulties arising under the present law from the doctrine of *venue*, by which a man having committed an offence in county A might

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escape punishment by being brought up for trial in county B, are entirely removed. A provision has also been inserted, enabling the Court in suitable cases to direct that proceedings on trial by indictment shall be taken after the model of the proceedings in civil cases. Then the Bill extends the provisions of the Vexatious Indictment Act substantially to all cases whatsoever, so that no man shall be indicted unless he has been in the first instance taken before a magistrate, and except on condition that the prosecutor should incur the risk of being compelled to pay the costs of the proceedings in case he fails in his application. A change has also been made by which a person may make an admission on trial; for instance, concerning letters produced in criminal causes. The old law required that somebody should be called to prove the handwriting which everybody may know, but none will admit, to be that of a certain person. Again, there are many alterations in detail of considerable importance, introduced with the view of making the administration of justice simpler and more effective; and, in illustration of this, I will refer to the abolition of the necessity for backing warrants, and the giving of power to magistrates to take evidence upon oath in cases where it is clear that a crime has been committed, although no one is specifically accused. It is also enacted that, in future, no one shall be tried upon a coroner's inquisition, but that the effect of a coroner's warrant shall be to send suspected persons for further examination before a magistrate. Into this portion of the Bill has also been introduced a very important alteration in the law, and one which will probably give rise to discussion—that is, the alteration which authorizes the examination of prisoners; but, at the same time, it may be stated that there are enactments also introduced which will act as safeguards and prevent the possibility of any unfair advantage being taken of this power. On this subject my own mind is almost evenly balanced. I can understand that were this power possessed many more persons would be convicted, because there can be no means of arriving at the truth so safely and so surely as that of the examination of the accused, or, rather, no means of exhibiting his guilt so surely. On the other hand, it might operate hardly in the case of a man unjustly accused of a crime, but whose antecedents were of that character which would unfairly prejudice his case if they were exhibited to the jury. I shall be glad if the discussion on this portion of the measure should be both full and ample; and I beg to assure hon. Members that if the House should exhibit a feeling adverse to the introduction of such a principle, I shall at once consent to its withdrawal. The simplification of proceedings in error also forms an important alteration of the law. A Court of Appeal is established for criminal cases, and there is a provision which gives a right of appeal in certain cases from that Court to the House of Lords. A provision has also been inserted in the Bill enabling a prisoner convicted of an offence to obtain a new trial if it should appear that the verdict was not satisfactory, or if fresh evidence has been adduced. This provision has been loudly called for, and I trust that it will be thoroughly and cordially approved by the House; for I could never understand why a person in a civil action, involving perhaps the sum of £35, should have the opportunity of showing that the verdict of the jury is erroneous, and that the like opportunity should be denied to a prisoner convicted and, perhaps, sentenced to lose his life. Several improvements in minor matters have also been made which may now be passed over without remark; but I think I ought to dwell upon one, which may be considered as important—namely, the simplification of the pleading in criminal cases. Any hon. Member who has had experience in these cases will know that the pleadings are very often preposterous, the offence being set out in an indictment, the meaning of which it is almost impossible to understand, and which conveys to the unhappy prisoner, who has not the faintest idea of what it is all about, no information whatever. With the object, therefore, of removing this difficulty, the provision I have mentioned has been introduced, so that an indictment against a prisoner, instead of being long, perplexing, intricate, and technical to the highest degree, and, I may add, on the whole, almost unintelligible to the ordinary lay mind, will, in future, be perfectly plain and easily comprehended. This result will, I am sure, be regarded as a great boon

by magistrates and solicitors, and, in short, by all who have to do with the administration of justice in criminal cases, and will not fail to lead to a considerable reduction of cost in these proceedings. Before concluding, I desire to say a word or two with regard to the prospect of carrying this measure into law. Now, the Government are very anxious that this should be effected. They consider the Bill to be an extremely important one, and that the demand for a thorough simplification of our law cannot be any longer resisted. There has been a cry for codification in the country, but, of course, you cannot codify the law all at once; it is a matter that will occupy considerable time, and which must be the result of very great labour. The Government also regard the Bill as one which, if passed into law, will effect a large measure of necessary legal reform and amendment. They are, however, fully aware that the Bill is a voluminous one, containing provisions on a great variety of subjects, and which it will be impossible to pass without the cordial co-operation of the House. The difficulties in the Bill must be grappled with firmly and fairly, without any desire to avoid discussion. The Government will be most ready to consider any proposal made by any considerable body of the Members of this House. My hon. and learned Friend the Member for Taunton (Sir Henry James) seems to have an idea that the device of dealing with this matter piecemeal might be adopted. The hon. and learned Gentleman made a speech on the subject the other night, which, I must confess, filled me with dismay. He said that it would be impossible for the House to forego the careful consideration of the measure, and that the only way of dealing with it will be to take it in sections. Sir, what is the meaning of that suggestion? I presume that if my hon. and learned Friend's plan were resorted to this Session, the portion of the Bill relating to excuses and justifications would be considered; next Session the House might direct its attention to the law relating to treasons; the Session after that to offences against property; the Session after that to the proposed amendment in the Law of Homicide, and so on. The consequence of such a proceeding would be—if everything went on as prosperously as could possibly be hoped, perhaps the Criminal Code might, in the course of 15 or 20 years, be enacted into law. Sir, when I contemplate having to wait for the accomplishment of an object which I earnestly desire to encompass for that period, I own I grow very sick at heart. I cannot think that resort to this dilatory process is necessary. There are, no doubt, changes in the law proposed in this Bill of an important character, which the House cannot fairly be called upon to sanction without careful consideration and discussion; but I do not see that it is impossible to discuss them all within the remainder of the present Session. With regard to the rest of the measure—that is to say, by far the greater portion of it—it contains simply a consolidation and codification of the existing law upon certain subjects; and I must own that it appears to me that such consolidation and codification can never be properly accomplished unless the House will be content to confide the preparation of the Bill to persons who are known to be thoroughly competent, and to accept the result of their labours. I thank the House for the attention accorded to the statement which I have had to make, and have only, in conclusion, to move for leave to bring in the Bill.

Motion made, and Question proposed,

"That leave be given to bring in a Bill to establish a Code of Indictable Offences, and the Procedure relating thereto."—(*Mr. Attorney General.*)

MR. LAW concurred with his hon. and learned Friend the Attorney General as to the importance and magnitude of the measure he was about to introduce. Unquestionably, it would make great changes in the Criminal Law, one of the most important of which would be the reduction of a portion of the unwritten law into statutory law—a matter of extreme difficulty and nicety. Notwithstanding the confidence they all had in the great ability and skill of the distinguished persons to whom the revision of the Bill had been intrusted, they could not, he feared, relieve themselves from the responsibility of carefully examining its provisions. He would suggest that the second reading should be postponed for at least as long as Bills of the first magnitude generally had been, and that they should be furnished with the Report of the Commissioners. The

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hon. and learned Attorney General was mistaken as to what had fallen from his hon. and learned Friend the Member for Taunton (Sir Henry James), who, he was sure, had no desire that the consideration of the Bill should be confined to one small portion during each of several Sessions. There was, on the part of hon. Members at his (Mr. Law's) side of the House, no desire for such needless delay; and he hoped the Attorney General would succeed in carrying through the House a measure which was calculated to effect so desirable an object as the simplifying and codifying of the entire Criminal Law of the United Kingdom.

MR. WADDY said, he feared that the Bill had been already introduced too late in the Session. He regretted that the promoters of the Bill had wandered away from their original intention. It was understood, when the Bill was first proposed, that it would be a Bill which would codify existing law, and not one which would introduce radical changes into the very substance of the law. No one could have listened to the speech of his hon. and learned Friend the Attorney General without being convinced that the Bill was not a codification, but a revolution, of the existing law. If it had been a codifying and consolidating Bill merely, he would have been willing to take a great deal of its contents for granted; but the measure being a revolutionizing one, hon. Members could not abdicate their functions and neglect their duty, which would compel them to go clause by clause through the Bill, and examine its minutest details. The measure, he contended, must be dealt with on the "sectional principle." Moreover, the Bill was most incomplete. He could not approve the proposal of the Attorney General to leave out of the Code a great many laws because they were already contained in Acts of Parliament; nor did he think it right that some laws should be omitted because his hon. and learned Friend did not think it desirable to re-enact them. In some respects the existing law was changed in the Bill which it was sought to introduce. His hon. and learned Friend seemed to contemplate a change in the laws with regard to the observance of Sunday; but if any vital change were actually to be made in those laws, such an amount of contention would be caused in the country and the House as it would be almost impossible to allay. The Attorney General ought to give them a good digest of the proposed alterations in the Criminal Code, so that they might fully consider what were the vital changes recommended. So far as the measure was one of consolidation and codification, the House would be prepared at once to deal with it; but such changes as that which he (Mr. Waddy) had indicated, if introduced by the Bill, would create a widespread feeling of dissatisfaction, and the Attorney General might rely upon it that a very long time would be necessary before any conclusion could be arrived at respecting the merits of his measure.

MR. MORGAN LLOYD said, that the statement of the Attorney General, that the Bill was an improvement on the Bill of last Session, justified the opposition which he and his hon. and learned Friend the Member for Taunton (Sir Henry James) gave to that measure, on the ground that it was an imperfect one. They had no means of knowing whether this Bill was or was not obnoxious to the same objection. Many of the alterations proposed to be made by it were of a revolutionary nature, and would entirely change the spirit of the Criminal Law of the country. The Bill of last year was altogether a doctrinaire measure, and proposed to introduce into the Criminal Code of this country the provisions of the Criminal Law of France and other countries. It proposed to change the most important and characteristic principles of our law by the proposal to make prisoners competent witnesses. It was one of the liberties gained at the Revolution of 1688, that the prisoner should have every chance — that he should be considered innocent until found guilty, instead of forcing a confession upon him. If a Bill of simple consolidation were introduced, the House could consider it; but alterations in the law, such as the proposal to allow a prisoner to give evidence in his own case, and to apply for a new trial, ought not to be approved without full discussion—in fact, they ought to be brought before the House in distinct Bills. He would suggest that the Attorney General should be a little less ambitious in his scheme, and that he should be content to

introduce a measure consolidating the existing laws. To request the House to adopt the proposed changes in the Criminal Code on the faith of three or four gentlemen, however eminent they might be, was equivalent to asking the House to abandon its position as representing and legislating for the country.

SIR GEORGE BOWYER said, he was disposed, without pledging himself to its details, with which he was now imperfectly acquainted, to give the Bill his best support. The spirit in which the measure had been brought forward did the Attorney General great credit. There were two courses open to the Government—the one was to introduce a mere consolidation of the existing law, and the other to introduce a Bill not only consolidating, but making improvements in that law. The latter was the bolder, and, he thought, also the right course. He had the honour of being the Member of a Commission to inquire into the propriety of a Digest or Code of other branches of the Law, and the conclusion to which that Body came, after great study of the subject was, that if a digest of the law were made exactly as the law stood—that was, a mere consolidation—it would be worth nothing. The case was the same, in many respects, with the Criminal Law. Our Criminal was superior to our Civil Law, being much simpler; nevertheless, there were many things in it which must be altered; and if our Criminal Law were consolidated just as it was, the work would be of very little value. It was said to be a great obstacle to the passing of the Bill that it did away with the distinction between felony and misdemeanour; but, in his opinion, no consolidation of our Criminal Law would be satisfactory without the abolition of that distinction. That distinction arose entirely under the feudal principle. Felony was a term of feudal law which imported the forfeiture of property by the vassal to the lord, and misdemeanour was not dependent on feudal law. There were many misdemeanours which were far more serious offences than felony, and the distinction between the two could not be maintained. That great jurist, Savigny, said that the evil of a Code was that it fixed the law as it was and prevented its improvement. That was a very serious objection to all Codes. If they made a Code when the law was imperfect, all the existing imperfections and absurdities of the law were stereotyped and crystallized. In no country but ours was an accused person denied the privilege of giving evidence in his own behalf, his evidence being taken for what it was worth. That was a matter which must be dealt with in any consolidation of our Criminal Law. It might be urged that a measure both reforming and consolidating the law could not be passed this Session. But they could not reasonably expect the whole Criminal Law of England, which had grown up from a very remote period, to be consolidated and made into a *corpus juris* and passed through both Houses of Parliament in one Session. He thought there would be no difficulty in getting a continuous Act in such special circumstances, providing that next Session they might take up the Criminal Code Bill just at the point it had reached at the close of the previous Session. If in that way they could, in two or three years, pass a complete system embodying the whole Criminal Law of this country, they need not grudge the time spent over the work. He would suggest that the Attorney General should include in his Bill one more improvement of the law—namely, a Statutory Limitation for Criminal Offences. Such a provision existed in all countries except this. There was much the same reason for a statutory limitation in regard to criminal as in civil cases; and it was, perhaps, more important in the former than in the latter. Under the Church Discipline Act, no proceedings could be taken against a clergyman except within a certain time. He had himself drawn that Act for the late Bishop of Exeter, Dr. Phillpotts, and he remembered preparing a clause containing such a limitation in order that a clergyman might not have a charge kept hanging over his head all his life. Many men had been indicted 20 or 30 years after the date of the offences charged against them, and in some instances they had been executed for them. An innocent man's memory might have failed him, or a material witness for his defence might have died or gone away; and it was very hard that such a man should be liable to have an indictment, perhaps for murder, brought against him at any moment for an indefinite period. Such a charge might even be preferred to extort money, and

the accuser might have waited long for an unfair advantage. In passing a Statute of Limitations in criminal matters, we should only be following the example of every civilized country, and we should thereby effect a great improvement in our law.

MR. COLE thought that the Bill would in many particulars be a most valuable one; but doubted whether, as it stood at present, it would be possible to pass it during the present Session. If, however, the matters which involved important alterations in the existing law were struck out of the Bill, in order that they might be embodied in separate Bills, the present measure would have a good chance of passing, because hon. and learned Members near him would do their best to assist the Attorney General in getting it through during the present Session. He advocated the reduction of the maximum term of imprisonment, which was now two years, and was much too severe, to 18 months, and the restoration of the power of giving three years' penal servitude, which he regretted had ever been abolished. He also thought that there should be a power of giving five years' penal servitude in cases where a former conviction was proved; at present, nothing less than seven years could be given. He also felt the necessity for the simplification of indictments, which, under the existing system, in complicated cases sometimes extended to the length of the House. The question of appeal was extremely important; but then there was this difficulty—that if they gave the prisoner the right of appeal, they must give it also to the other side—the Crown; and the question altogether was so large and difficult, that he thought it would have been better not to have introduced it into the present measure, but to have dealt with it by a separate Bill; the same observation would apply to the provisions for new trials. As to the examination of prisoners, he thought this alteration would have been better left out, as it must cause great discussion. In his view, the practice would prove exceedingly dangerous; it would eventuate in a system of torture, because a man put on his trial was not likely to have full possession of his nerve. If the prisoner were examined, he would have to be cross-examined; and if he had ever previously been implicated in a case even of mere suspicion, this would come out and damage him, and he would not have a fair trial. Parts of the Bill were very valuable indeed, and he could see no reason why they should not be passed this Session. He was quite sure that with reference to these portions the Government would receive the assistance of that side of the House. He hoped, however, that the second reading of the Bill would not be taken for six weeks, so as to enable hon. and learned Members who were obliged to go on Circuit to have time to consider its provisions.

MR. GRANTHAM observed, that if the measure were to be discussed in the spirit that had been exhibited by hon. and learned Members opposite, it would be hopeless to expect that it could ever pass. It was idle to talk of consolidating our Criminal Law without at the same time endeavouring to improve it. The object was to sweep away all the anomalies which existed in the Criminal Law. Many of the alterations in the Bill were, no doubt, important; but the Judicature Act had introduced far greater alterations, and yet had passed the House in a single Session. It was much better that the alterations should be introduced into the Code and form part of a whole, than that each change should be embodied in a separate Bill. None of the alterations were of such a nature as to require a prolonged discussion; and, at any rate, that was not the proper time to discuss the various alterations, nor to express their opinions upon them. He hoped an effort would be made to deal with the Code as a whole, and that they would not cut out the alterations which were its most important part, and leave them to be dealt with piecemeal. He desired to see the Bill passed this Session, and practically, at all events, in its entirety.

MR. HOPWOOD, while earnestly desiring that some such Code as this should pass, thought there were many difficulties in the way. He regretted that the Commission to which it had been referred had consisted exclusively of Judges, and had not contained an admixture of the civilian element. Lawyers, like other professional men, were greatly benefited by the criticism of the outside world, and it would be undesirable to take the Bill merely upon the authority of the eminent Judges through whose hands it had passed. At the same time, he de-

sired to assist as much as possible in the passing of the measure.

MR. GREGORY said, as it was necessary to act upon the principle that ignorance of the law excused no one, they were bound to make the law as simple and intelligible as possible to all. The questions they had to consider were these—whether a codification of the law would be satisfactory without some alteration and amendment, and, if so, how they were to get the measure passed through the House? As to the desirability of the alterations with respect to felony and misdemeanour and the mode of procedure, there was a general concurrence of opinion; but there were others which might lead to mere controversy, but which it was, nevertheless, essential to raise in so general and comprehensive a measure as the present. Discussion on the alterations proposed was right and proper; the question was how, without preventing the discussion, they were to get the Bill passed through the House. It was unfortunate that a Bill for consolidating large branches of the law should, like other Bills, end with each Session of Parliament. Some years ago a Parliamentary Committee, of which he was a Member, had this question under consideration. They recommended that Bills consolidating the law, such as the present one, if they failed to pass in one Session, should be taken up in the next at the stage at which they had arrived. This might be done by means of a Resolution of both Houses; and if ever there was an occasion for the exercise of the discretion of Parliament in that matter, it would be found in dealing with the Bill now before it.

SIR HENRY JACKSON was glad that the measure was in no sense of a Party character, in spite of the very manageable majority of the Government. From his side of the House there was, he believed, no intention to oppose the Bill in a factious manner. The progress of the Bill was probably not assisted by any desultory discussions of its provisions before the House knew exactly what was proposed. A Bill of that kind might be opposed by minute and endless criticism of its details; but no measure could pass if it were so treated, and the result would be either that the House would have to abandon its great work of codification and consolidation, or that it would be obliged to take many of the provisions of the Bill upon trust. They knew that they must make some sacrifices if the Bill were passed. Codification, in its proper sense, was new to their legislation. They had an immense body of consolidated law and of statute law; but he did not know of any Act of Parliament which might properly be called a Code in its technical sense. At present they all knew that the public at large left the law very much to the discretion of the Judge; and so the House, without discussing *seriatim* all the provisions of the Bill, might take upon trust the principles on which it was based. It had been urged that those who were to be punished by the law ought to have an opportunity of knowing the law as well as the Judges who administered it; and as the law was made known, so the more easily could it be made known. If there was an amendment in the law, some authority would have to be appealed to. He knew not what that authority might be; but some day or other the House would have to do what all Legislative Bodies had done when making laws, to trust to authorities for explanation and for declaration what the laws should be for any practical result to be obtained. Whether they had yet arrived at that period they were scarcely in a position to discuss; but they would be in a better position when the Bill was before them. He thought they could easily facilitate the progress of the Bill by at once allowing the hon. and learned Gentleman to bring in his Bill as soon as possible, and by his naming a day for its second reading at an early date.

MR. SERJEANT SIMON said, that he would give his hon. and learned Friend (the Attorney General) all the assistance he could in order to pass the Bill; but he could not relinquish his duty as a Member of the House to exercise his judgment upon it. He was astonished at the argument of his hon. and learned Friend the Member for East Surrey (Mr. Grantham) that, because the Bill would contain existing laws which had, therefore, in past times received the sanction of Parliament, those laws should be passed as a matter of course. One of the objects of the Code was to amend and alter many of the laws; and even if that were not so, the House, before re-enacting them, ought to consider in how far they ought to be altered or amended. To re-enact them would be to give a new sanction to them.

and that ought not to be done as a matter of course. Again, his hon. and learned Friend the Member for Coventry (Sir Henry Jackson) had said that, as the public accepted the interpretation of the law by the Judges, the House ought to accept the recommendations of the Commissioners. He (Mr. Serjeant Simon) was astonished at such an argument. The public accepted, and were bound to accept, the interpretation of the law by the Judges, because the Judges were the Constitutional expositors of the law. The Commissioners had no such character or authority. Parliament was the only Legislative Authority known to the Constitution, and it could not abdicate its functions without a violation of its duty. It was responsible to the country for the laws it passed, and it could not throw off that responsibility; and he, for one, was not prepared to sanction such a course. No doubt the opinions and the recommendations of the eminent men who sat under the Commission were entitled to the greatest consideration, and they would receive it from the House; but even the recommendations of a Select Committee appointed by that House, which the Commissioners were not, were not always adopted by the House, and he certainly did not feel bound implicitly to adopt the recommendations of the Commissioners. Some of those recommendations involved important changes in the law as well as in procedure. Some of those changes had been referred to in the course of the debate. The law relating to Sunday trading, for instance, would give rise to considerable discussion if it was proposed to re-enact it as it stood at present, and to omit it altogether from the Code, as it seemed to be intended, was open to grave objection. The Code would not be a complete Code, and would not fulfil the character and object of a Code, if it omitted any portion of the Criminal Law. Again, the admission of prisoners as witnesses in their own cases would be a most important alteration in our Criminal Procedure. The subject was introduced last Session by the Bill of his hon. and learned Friend the Member for Poole (Mr. Evelyn Ashley), and the discussion of it occupied a whole morning. It could not be expected that such a change, if proposed by the Code, could be accepted simply because it was recommended by the Commissioners. Then, again, with regard to the abolition of the distinction between felony and misdemeanour, whilst he admitted that the distinction, so far as related to its feudal origin, had lost its significance, and that as it now existed it was absurd, he did not approve of placing all criminal offences in one category, and calling a common assault and a murder by the one common designation of "indictable offences." He thought that offences should be classified, either by bringing the graver and more heinous kind under the head of felony, and the lesser under that of misdemeanour, or by ranging them according to their degrees of gravity. Here, however, he must express the hope that the Bill would not contain the subtle and scholastic distinctions which were in the Bill of last year, many of them showing more the character of the Sciolist than the Legislator, and more suited to the Professor's Chair than the practical administration of justice. With regard to codification, he must say that there was a great deal of idle talk upon the subject, just as if a Code would necessarily be a fixed, unalterable body of laws, and that it must necessarily be simple and easy to be understood. They could not have such a thing. Every Code, like every law that was passed, would require interpretation, and must of necessity expand in time, and receive accretions from the growth of judicial decisions. Pass the code to-morrow, and they would soon have commentaries upon it, and reports and digests of the decisions to which the ever-changing circumstances of life would give rise. Still, however, it was an important thing that our laws should be classified and arranged, as far as possible, in symmetrical form; and he could only repeat that, whilst he should feel it his duty to exercise an independent judgment upon the Bill about to be introduced, he should give all possible consideration to the recommendations of the Commissioners, who had accomplished a great public work, and all the help he could to his hon. and learned Friend in passing the Bill.

MR. WHITWELL hoped the hon. and learned Attorney General would proceed with this measure, notwithstanding all he had heard to discourage him from hon. and learned Members. The hon. and learned Gentleman must expect that every clause in his Bill would be

subject to discussion; but he (Mr. Whitwell) trusted it would pass more smoothly than the reception the Bill had met with would lead them to suppose.

MR. P. MARTIN said, it was not his intention to now enter upon any lengthened discussion of the principles or provisions of the Bill proposed to be introduced. The House, of course, was compelled to judge the character and probable effect of the measure from the statement of the Attorney General. In his judgment, he was glad to say a disposition had been shown to make a wise and salutary advance. Very many of the provisions would, no doubt, operate most beneficially in the administration of justice. But he desired to guard himself against it being assumed that he, as a Member of that House, was bound to accept and approve any provision, merely because it had received the sanction of the very eminent and able Judges who had sat as Commissioners. He feared, though he had the highest possible respect for the Irish Judge selected to serve on the Commission, and considered no Judge on the Irish Bench had higher qualifications or was better suited for the post than Mr. Justice Barry, that some omissions had been made in the proposed repeal of Irish Acts, which would still leave Ireland subject to an exceptional and more severe Code of Criminal Law than England. He thought it right to remind the Attorney General that in Ireland, in dark and evil days, a Code of extraordinary severity was enacted, and they had Insurrectionary Acts, Whiteboy Acts, and a number of other similar oppressive Acts. He trusted, therefore, when this Bill was being further proceeded with, the Attorney General would see that all these Acts were repealed, and let them start with a measure of Criminal Administration for Ireland the same as they had for England. With regard to the proposed examination of prisoners, he thought that, so far from its being for their benefit, it would militate strongly against innocent persons. Many persons found it very difficult to recollect facts with clearness and accuracy. If prisoners were to be rendered liable to examination, he thought it would be better to have resort to the Code in France. At present the prisoner might practically make a statement if he pleased; but to enact that the privilege of tendering himself for examination should be given, would, if he did not do so, militate strongly against him, because, of course, the prosecuting counsel would invariably comment on the fact if the prisoner did not make a statement. At present, a prisoner had full opportunity to make any statement he wished, through the medium of his counsel; therefore, the proposal in this Bill would require a full and searching examination before they committed themselves to the principle. Personally, he was opposed to the proposed change, and he hoped a majority of the House would be found to be of the same opinion. One matter, however, he must congratulate Her Majesty's Government on—that was, that they had had the courage to propose that there should be an appeal in criminal cases. This was a great step in advance, and he congratulated the Government upon what they had proposed in this respect.

MR. PARNELL wished to add his voice to the chorus of admiration with which this Bill had been received, though his feelings were very much damped, because he felt there was a very great probability that the Bill would never be passed. He did not charge the Government with having wasted the time of the House in introducing the Bill this evening, because it was, no doubt, desirable that the House and the country should have an opportunity of studying the details of a Bill of this character. At the same time, in looking to the future, he felt a sort of despair as to the capability of the House of Commons to deal properly and suitably with a Bill involving such enormous and important questions—questions of varied interests and various people. No doubt many of the provisions of the Bill were exceedingly good, and they ought not to be viewed in any sense from a Party point of view; and all sides of the House should endeavour, if they possibly could without the sacrifice of principle, to aid the passing of the Bill. There was one proposal which he would take as an example of the benefits of the Bill if it passed. The hon. and learned Gentleman the Attorney General announced that he proposed to do away with the offence of constructive murder. In Ireland they had been looking for such a change for a long time. They had had many instances in

Ireland where men had been found guilty of constructive murder in order to punish them for other offences. Ten or 12 years ago they had a remarkable instance of this. In 1867 a number of young men in Manchester banded together to rescue two Fenian leaders. These young men were admittedly banded together for an unlawful purpose, and they attacked a prison van, and a shot was fired, which killed Sergeant Brett. It was not proved at the trial that this shot was fired by any of the prisoners; yet, notwithstanding this, five young men were found guilty, and sentenced to be executed. It fortunately turned out before the day of execution, one prisoner, Maguire, was able to prove a most conclusive *alibi*. The sentence on another prisoner, Condon, was commuted to penal servitude for life, though, thanks to the clemency of the Government, he had since been set at liberty. Three young men, however, were executed for the firing of this single shot. Now, had this been in existence as it was at present proposed, none of these young men would have been sentenced to death, and they would have received a punishment commensurate with any illegal act of which they might otherwise have been guilty. He did not agree with much that had been said on the subject of the examination of prisoners. It seemed to him that the liberty proposed to be given to a prisoner under trial of submitting himself to examination would tell most against those who were guilty, and least against those who were innocent; because, if a prisoner knew he was guilty, in nine cases out of 10 he would hesitate to submit himself to the examination of a clever cross-examining counsel; whereas the man who believed himself to be innocent would have the courage which innocence nearly always gave. Therefore, he was inclined to think that, guarding the matter as the hon. and learned Gentleman the Attorney General proposed to guard it, they might, on the whole, fairly adopt some modification of the hon. and learned Gentleman's plan, so as to allow prisoners an opportunity of proving their innocence in the only way in which very often it could be proved—by themselves. With respect to the appeal in criminal cases, it was a matter of the greatest importance. It had always appeared to him to be a relic of barbarity that they should never have allowed an appeal in criminal cases. The case of the young man Habron, sentenced to death a few years ago, but who had recently received Her Majesty's gracious pardon, was an example of the enormous value that would be derived from a full and free appeal in criminal cases. He would undoubtedly have been able to establish his innocence if he could have brought his case before a Superior Court of Criminal Appeal. He hoped that the gloomy anticipations that had been indulged in as to the possibility of passing the Bill into law might not be fulfilled; but he very much feared that, under present circumstances, and as Parliament was at present constituted, the prospects of the measure were not of the brightest possible character.

MR. HERSCHELL said, this was a subject in which he had always taken the greatest possible interest; but, unless the Bill were treated with considerable judgment, there would be very great difficulty in passing it at all. The Bill consisted of a great number of clauses, the vast proportion of which were a mere codification of the existing law. But then there were some momentous changes proposed, which the House could not abdicate its functions by accepting on trust from a Commission composed of men, no matter how experienced and able. Of course, those recommendations were entitled to the greatest respect; but he would remind hon. Members that if the changes did not turn out beneficially, the responsibility would rest with the House; and, therefore, it was incumbent upon the House to give those changes the greatest possible consideration. The only practical way to deal with the subject seemed to be this—so far as the Bill was declaratory, to avoid discussion, accepting those clauses on the authority of the Commission who had so laboriously considered them; but, when it was proposed to alter and amend the law, to debate the clauses and form their own opinion upon them, giving only due weight to the high position and great learning of those who recommended them. He made this suggestion in no hostility to the measure, for no one could more earnestly desire than himself that the Code should pass into law. Even if it turned out to be not possible to pass the

Code this Session, advantage would be derived from having had the Bill under the notice of the House and before the public. He, therefore, respectfully urged his hon. and learned Friend, on the second reading, clearly to indicate those parts of the measure which were new, and to keep them separate from what was merely declaratory.

MR. BULWER expressed his concurrence in much that had fallen from his hon. and learned Friend. He hoped the Bill would pass during the present Session. Indeed, if it were treated in the spirit which had characterized the remarks of his hon. and learned Friend, he saw no difficulty about it. So far as the Commission on the Bill had exercised a legislative, as distinct from a judicial capacity, the House ought to be jealous of giving its consent to any change they proposed. For instance, to admit the evidence of prisoners would be to recur to an old practice which had been abandoned because of its abuse. At present if, on his examination before the magistrates, a prisoner made a statement of facts which the prosecution did not inquire into before the trial, and were not prepared to contradict that statement, it would be accepted as true, and he would have the benefit of it; but as no prisoner who was really guilty would, if he knew that he was to be examined at the trial, be foolish enough to make any statement before the magistrates, if on the trial he made a statement of new facts the truth of which could not be tested immediately, was the trial to be adjourned in order that inquiry might be made? And if not adjourned the prisoner might possibly get the benefit of a false statement being accepted by the jury as true. They were already merciful enough to prisoners, and in their anxiety for the innocent were apt to allow many who were guilty to escape. The right of appeal in matters of law already existed, and it was not desirable to give an appeal upon matters of fact, which were thoroughly sifted at the trial. While the House ought to be jealous of its jurisdiction respecting alterations of the law, it might accept, on the authority of the Commission, those portions which made no changes, but were merely a codification of the existing law; and if it would do so, he saw no good reason why the Bill should not pass this Session.

MAJOR NOLAN objected to the principle that this Bill was not to be discussed by lay as well as legal Members. This was a Bill which affected the public, whose Representatives they were; and, in his opinion, instead of referring it to lawyers, and instead of curtailing discussion upon it, both legal and non-legal Members of the House should do their best, especially as it threatened the interests of the public to such a serious extent, to assist the House in insuring it full and fair discussion.

MR. O'DONNELL considered that a Bill dealing with such an immense variety of subjects of such importance as this did must be regarded as one requiring to be examined most carefully and thoroughly. He thought that Members of the House would not have discharged their duty if they took any portion of the Bill, whether purporting to be new law or old law, upon the recommendation even of the distinguished persons forming this Commission. He thought that the House should take the opportunity, on questions of such importance being brought to its notice, carefully to review all the questions dealt with by the Bill in detail, both as regarded the penalties surrounding the rights of property, and with regard to the protection of personal liberty, and in regard to the maintenance of public authority. With regard to the punishment of offences against authority which, in some cases, should rather be regarded as acts in defence of public liberty, whether they considered them in relation to the general or to the particular, to the interests of the State or the interests of the individual, this Bill ought to be criticized, and the fact that its introduction under the auspices of the admirable, and, in many respects, able men, but yet who had not a grave interest in the maintenance not to say the extension of public liberty, should be an additional reason why independent Members should submit the measure to their strictest scrutiny. He did not care to touch upon particular points. He agreed with the hon. and learned Member for Ipswich (Mr. Bulwer) that the interrogation of prisoners was a matter which invited criticism upon more than one side. It was a principle which might work well, and it was a principle which had often worked badly. He by no means disliked the idea of the intro-

duction of the principle if it were surrounded with proper safeguards; but, at the same time, they should remember that no scenes had been more unworthy of human justice than those which had been perpetrated by means of a liberty of examination, often amounting to torture, being placed in the hands of Judges. He alluded to such a system of interrogation as that to which French prisoners were subjected. Sentimental torture was inflicted upon them; and he regretted to say that a variation of this principle had been introduced into Ireland, where, under one Coercion Act—namely, the Westmeath Coercion Act—the power of examining persons suspected of being capable of giving information was given, and a power to punish the refusal of information even where the prisoners alleged that they possessed no such information. He thought he was only expressing the sentiments of his hon. Colleague, when he said that no enactment had more perfectly violated the sense of popular liberty than that enactment. This power of the interrogation of prisoners placed in the hands of Judges such as they had had in Ireland, and might have again, and such Judges as they had had in England, and might have again, such a power might be most destructive of public liberty, and most injurious to the well-being of the individual. He was not sure whether he was very much in love with the principle of giving a right of appeal in all cases. He had often thought that a fair and thorough trial, was more satisfactory than a multiplicity of appeal. He did not wish to dwell upon that point; but he could not express too strongly to the House his own determination to oppose to the uttermost of his ability the passing of that Bill, as bearing any weight from its being recommended to the House by any authorities whatever outside the House. Of course, he had not had an opportunity of studying the Bill, and he was aware the Bill differed materially from that introduced last year. In the Bill of last year he thought there were a great many chapters and provisions dealing with the existing law which required modernizing and humanizing. The conflict between law and material justice was still strong enough in a great many departments of law. There were many other matters upon which he should like to make suggestions; but at present he would confine himself to one point. He would venture to say that, so long as the present system of permitting public prosecutions to take place, and public inquiries to be made into the circumstances and lives of persons charged, which prosecutions involved great hardship and suffering to the accused, and afterwards declared innocent, persons, he could but not think that the State should recognize that it owed compensation to the persons thus treated. Whenever persons were charged before the State Tribunal, and suffered great hardships thereby, and were afterwards declared innocent, either through the prosecution breaking down against them, or it being found that no charge could be sustained against them, or through a verdict of acquittal at the trial, then he thought compensation should always be made. A case had recently occurred in the North of Ireland, where some men accused of an agrarian murder were thrown into prison, and treated with great severity, one of them dying under the severity of the prison treatment. After the investigation had proceeded for months, the prosecution discovered that it had no ground for proceeding, and these men were turned out of prison. Instead of the prosperous farmers that were put into prison a few months before, the State turned out of it two poverty-stricken wretched men. In such a case as that, there ought to be some redress for the immense injuries suffered. He thought the introduction of this Bill a favourable opportunity for noticing some provision providing a remedy in such cases.

MR. ASSHETON CROSS: I do not quite agree with what has fallen from the hon. Member for Dungarvan (Mr. O'Donnell). I think it is plain that if his suggestion was carried out it would work very hardly against prisoners, because the theory of our law is that a man is to be considered innocent until his guilt is proved. But we do acquit a great number of men against whom there is no evidence—the evidence is not strong enough to convict them. When we declare that such men are innocent, we simply say that because their guilt has not been clearly demonstrated. I should be sorry if it were suggested that persons were not to be

acquitted unless the jury were convinced of their innocence, for that would be an entire reversal of our notions of the Criminal Law. An immense number of prisoners escape justice, because the truth is not brought home against them. I do not want to alter that system the least in the world; therefore, you cannot say that because a man is acquitted he is to be compensated. He might have been guilty, very likely he was, and if compensation is to follow acquittal, then many that now escape would not do so in the future. At present, we are satisfied with insisting that the guilt of a prisoner must be absolutely proved to the satisfaction of the jury; but either that principle would have to be altered, or many really guilty persons would become entitled to compensation. With regard to the consideration of that portion of the Bill which consolidates the existing law, I have only to say that if we were considering an entirely new Code—new in all its provisions—it would take a considerable number of the Sittings of Parliament to do it. I quite agree with what has fallen from the hon. and learned Member for Durham (Mr. Herschell), that the Bill has been completely sifted by persons thoroughly qualified, and though their judgment is not the least binding upon the House, still they have prepared and submitted to the House what, in their opinion, is the law—not what the law ought to be—and the House should be very careful not to be too hasty in disputing their judgment as to the actual declaration of the law. For, although it is quite true that every law must be submitted to us, still after the law has been thoroughly sifted and declared, as this is supposed to have been, and the competent Tribunal has declared what the law is, we ought to be very careful before we quarrel with their judgment. I think it ought to be in the absolute power of this House to deal with the whole matter. It may be that the whole question is before us, even if we accept their declaration of the law as it exists. No doubt, the intention of Parliament will be complied with, and it will either pass the Bill or certain portions of the Bill, and pass another Bill in a future Session making alterations in the law itself. So far as the declaration of the law goes, we should be, at all events, very careful before we put aside what in the opinion of those learned persons the law is. When we come to the changes of the law, I entirely agree with every word that fell from the hon. and learned Member for Durham, and there are certain cases upon which I have the greatest doubt. I have great doubt with regard to the examination of prisoners. I quite agree with the hon. Member for Dungarvan that much may be said against that system in practice, and that it may work great hardship against prisoners. These are questions which must be decided by this House, and by no one else, however capable; and I quite agree with what has been said, that we ought not to be bound in the least by any statements made by persons outside the House. In any case, we should not adopt the statement without full consideration. I hope the House will remember that there are two or three ways of discussing the Bill. You may take the discussion on the Bill when it is read a second time, and you may raise a series of objections to the second reading, and raise a three or four nights' debate, and you may raise the same discussion again in Committee. The course I venture to suggest as a means of saving time, and really thoroughly discussing the Bill, is that we should get into Committee on the Bill, and then that hon. Members should fix upon the points which, in their opinion, constitute changes, and bring them forward for consideration when they are reached in Committee. The Government will take care that the most ample opportunity for discussion is then given. That will be better than to have a rambling debate on the second reading of the Bill, when all points will be raised, and nothing practical done. We shall save time on the second reading, and we shall save time in Committee. We shall discuss this Bill much more thoroughly and in a much more business-like way by the course I have suggested than by any other. I, for one, hope that the Bill will pass during the present Session, for I think it will be a boon, not only to the Judges and the Bar, but to the general public. The simpler a Criminal Code is, the more likely it is to be understood and observed by those who come under its provisions. I therefore trust that the House will not waste any further time in discussing the points now raised, and will excuse me for making the sugges-

tions I have done with a view to facilitate its progress, for I am most anxious that the Bill should pass into law as soon as possible, and that everything should be done to facilitate it.

SIR HENRY JAMES wished for the attention of the House for a few minutes. What he had to say with regard to the introduction of the measure had been to a great extent forestalled by what had fallen from the right hon. Gentleman the Secretary for the Home Department, with whose observations he thought most hon. Members would be disposed to agree to a certain extent. No one could wish to object to the introduction of the Bill. Yet for upwards of four hours a rambling discussion had taken place as to whether the Bill should be introduced or not. It seemed to him that the only doubtful point was as to the extent to which the House could accept the labours of the Commissioners. His hon. and learned Friend the Attorney General had wished the House to accept from the Commissioners the result of their labours in relation to matters of technical procedure. With that suggestion he was disposed to agree, and thought that the House would do well to adopt it. But the Attorney General had attributed to him the statement that the Bill would not pass in its entirety at the end of 15 or 20 years. That was entirely a matter of imagination of his hon. and learned Friend, for he had never made such a statement. But the suggestion he had made, and which he now ventured to repeat, was with regard to the way in which this measure should be carried. The Attorney General did not wish them to accept the measure in its entirety on the faith of the labours of the Commissioners; but he asked them to accept on their character and authority all matters relating to technical procedure. Probably there were very few Members of that House competent to follow the intricacies of that subject, and he thought they would be doing well in accepting the labours of the Commissioners in their entirety with regard to procedure, and those technical matters with which the Bill dealt. The second point which the Attorney General asked them to accept from the Commissioners was their declaration of the existing law, though the hon. and learned Gentleman admitted that the subject was open to discussion. He agreed that the existing law ought to be open to discussion, for the fact that the law existed did not mean that they considered that it ought to be re-enacted. To take, for instance, the Sunday Observance Act of Charles II. He presumed there would be some difference of opinion on the desirability of removing that Statute. Some might wish to alter it, and others might wish that it should be continued. But many would say that they would not take the responsibility of re-enacting that Statute, although they might be content to leave it alone as obsolete law. In all these cases, therefore, in which the learned Commissioners had stated what, in their opinion, the existing law was, it did not follow that the House would undertake the responsibility of re-enacting it. It seemed to him that the Bill dealt with two classes of measures. The first class consisted of those provisions about which there could be no controversy; and a second of those matters about which considerable difference of opinion might arise. He thought that the second class of provisions ought not to be inserted in the Bill at all. This was a Bill of some 500 sections, and, in his opinion, it contained the substance of 10 or 12 Bills in one, which they were therefore asked to discuss *en bloc*. The right hon. Gentleman the Secretary of State for the Home Department would recollect the sensitiveness of the House some years ago upon the question of Sunday Observance. The Commissioners had thought it right to put in the Bill the law with regard to Sunday as contained in the Act of Charles II.

THE ATTORNEY GENERAL (Sir JOHN HOLKER) explained that the Commissioners had not included that and other matters in the Bill.

SIR HENRY JAMES said, that if that were the case this was not a codification of the law at all. A complete consolidation of the Criminal Law would include all branches of it, and the House would not be satisfied with a consolidation of the law which left unrepealed certain Statutes. There were many other cases as to which differences of opinion would infallibly arise, and the Government could not expect that all those matters could be discussed in one measure in one Session of Parliament. Take the questions of law, of political crimes, of treason, the punishment of

political criminals, and other matters. All those would be obstacles which the House would assist upon discussing at length. The best course to adopt would be to strike out the controversial portions of the Bill and pass the remainder; then different Bills could be brought in to consolidate those portions which were left out by this measure. Everyone that knew the evil resulting from the present state of the law would wish to see an alteration in it. He should be glad to support the Government in getting a second reading of that portion of the Bill not dealing with controverted points.

SIR JOSEPH M'KENNA thought that too much was attempted to be done at one time by this Bill. He ventured to say that hon. Members would resist any process of re-enacting laws which they condemned, and, at the present time, there were many such upon the Statute-Book. There were some few observations which had been made in connection with the law which called for some comment. The hon. and learned Member for Ipswich (Mr. Bulwer) said that in the course of judicial proceedings men were very often acquitted who had a right to be convicted; that was merely the hon. and learned Member's opinion; he could not know. The Home Secretary had talked of men being acquitted who were not innocent. Such cases might, no doubt, sometimes occur, and as they also knew, innocent men were sometimes convicted. But every man by law was presumed to be innocent until he was proved to be guilty; and, therefore, if he were acquitted, he was to be regarded as innocent. He did not, of course, believe that all the guilty were punished; but he did think it was desirable that as many should be convicted as could be convicted safely, and no more.

Question put, and *agreed to*.

Bill *ordered* to be brought in by Mr. ATTORNEY GENERAL, Mr. Secretary CROSS, Mr. SOLICITOR GENERAL, and Mr. ATTORNEY GENERAL for IRELAND.

Bill *presented*, and read the first time. [Bill 117.]