

Hon. Mr. MURDOCK: Honourable members, I express regret that I was not here prior to the evening sitting. I am told that Bill 124, an Act to amend the Customs Act, was passed here to-day. May I ask the right honourable leader, or some other senator who is a lawyer, if it is not a principle of British justice that an accused person is deemed innocent until proved guilty? I have always understood that to be so, and therefore I should like some explanation with regard to the last clause of this Bill, paragraph 2 of new section 218A. The first paragraph provides that no person shall make any signals for the purpose of giving notice to anyone on board a smuggling ship, and the second paragraph, which has to do with onus of proof, reads:

If any person be charged with having made or caused to be made, or for aiding or assisting in making, any such signal aforesaid, the burden of proof that such signal so charged as having been made with intent and for the purpose of giving such notice as aforesaid was not made with such intent and for such purpose, shall be upon the defendant against whom such charge is made.

I am heartily in sympathy with the objects of this Bill, as I understand them, but it seems to me that the paragraph I have just read is a reversal of the principle of British justice.

Right Hon. Mr. MEIGHEN: I think I can state clearly why the paragraph is justified. It is one of the cardinal principles of British law that the subject is innocent until proven guilty. But the paragraph to which the honourable gentleman refers has to do with the procedure to prove guilt. At this point may I say to my honourable friend that in our Criminal Code, as in the British and American codes, there are similar dispositions of the burden of proof in certain cases. What is the case intended to be covered here? A man is charged with signalling from the shore, by radio or otherwise, a vessel engaged in smuggling, with intent to advance a smuggling operation. The Crown, first of all, has to prove that signals were made to the vessel. That might not be difficult, but if the paragraph were changed to read as the honourable gentleman thinks it should read, it would be necessary to prove what was in the man's mind—that he signalled with intent to help that smuggling vessel. Proof of that would be impossible. His intent may appear to have been wrongful, but he may have had an honest motive. It having been proved that he did the signalling, the law says that the onus is now on him to show what his intent was.

Right Hon. Mr. MEIGHEN.

This shifts the onus from the Crown, which in such a case could not possibly discharge it, to the party who can discharge it.

Hon. Mr. MURDOCK: I see the point more clearly. Now I wish to ask the right honourable gentleman to define the difference between this question and the one we were considering a few days ago, when the right honourable gentleman was insistent that the owner of an automobile should be entitled to get back possession of his car if it was seized.

Right Hon. Mr. MEIGHEN: In that case I was on the other side. In fact, as I explained to the Committee, I had had some experience of persons being persecuted. That question did not concern our Criminal Code, but had to do with a man who under the present law forfeits his automobile if it has been seized after being used by someone else in an effort to defeat the revenue statutes. The owner of the car, or a person who had a mortgage on it, however innocent he may have been, or however careful to see that the machine did not get into the hands of someone likely to use it for illegal purposes, was penalized by losing his property. I objected to that law. The history of revenue laws is such that stringent enactments are almost universally made to assist the authorities in enforcement. My submission was that if the owner of such an automobile, not accused of an offence, established before a judge that he was innocent, that he had not been in collusion with the offender, that before letting his car out he had taken reasonable action to see that the person to whom he was letting it was not likely to use it for illegal purposes; or if a mortgagee or lien-holder proved that before taking the mortgage or note he had made all reasonable inquiries to assure himself that the mortgagor or lien-giver was not likely to use the machine illegally; then such owner, mortgagee or lien-holder should be entitled to his property. The Senate accepted my amendment to that effect, as the other House later did. In that case, as in the one referred to by the honourable senator, I was in favour of the full onus being on the subject, but I felt that a man who had obeyed the law to the extent I have indicated should not forfeit his property merely because, against his wish, someone else committed a crime.

Hon. Mr. SINCLAIR: The onus of proof is on the subject in both cases.

Hon. Mr. DANDURAND: And he must establish that he is innocent.