

matter of common sense, because people generally are aware of the circumstances in which they act, and they generally do foresee that what does result from their conduct will result from it. If, on the other hand, a credible explanation is offered, the jury must consider the evidence as a whole, and if they entertain any reasonable doubt, the general rule that the prosecution has the burden of proof obliges the jury to give the accused the benefit of that doubt.

That benefit of the doubt, and that strict burden on the Crown to prove guilt beyond any reasonable doubt which has been followed in the courts of this country since before confederation, were perhaps best stated in an appeal from the Court of Criminal Appeal in England to the House of Lords in the following important sentences taken from the speech of Lord Sankey. I am referring to the case of *Woolmington against The Director of Public Prosecutions*, which can be found in the 1935 Appeal Cases, page 462. Here is what Lord Sankey said:

—if it is proved that the conscious act of the prisoner killed a man and nothing else appears in the case, there is evidence upon which the jury may, not must, find him guilty of murder.

It is difficult to conceive so bare and meagre a case, but that does not mean that the onus is not still on the prosecution... Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal.

No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

And that is the law of Canada at the same time.

Now, Mr. Chairman, I also want to refer to the well recognized doctrine of proof of similar acts in order to establish a course of conduct. The hon. member for New Westminster, when he was speaking on second reading, demonstrated conclusively that this has always been a principle of the law—

Mr. Lewis: Have you much more to go?

Mr. Turner (Ottawa-Carleton): Not much more. I can finish in perhaps three or four more minutes. He demonstrated that it is a quite accepted and traditional principle of British criminal law, applied by the Canadian courts, that similar acts related to the conduct of the accused prior to the offence can be relied on as proof for the offence, I repeat even if the conduct was prior to the offence.

• (5:00 p.m.)

Under that doctrine, evidence can be adduced against an accused to assist in establishing his guilt, even though the evidence—

The Deputy Chairman: I regret having to interrupt the hon. minister but the Chair has done its best not to see the clock. I wonder how long the minister might wish to continue because, according to the rules, the Committee

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has not the authority to extend the hours of sitting. If the minister is hoping to make his point and complete his remarks within a minute, perhaps the Chair could permit him to continue, but no longer than that, I think.

Some hon. Members: Agreed.

Mr. Turner (Ottawa-Carleton): I should like to thank the Chairman and the committee for their indulgence.

Under that doctrine of similar acts, evidence can be adduced against an accused to assist in establishing his guilt even though the evidence relates to conduct on the part of the accused prior to the date of the offence charged in respect of which the accused has not been convicted, or indeed even charged.

It must be borne in mind in the absence of a provision like clause 8 that, having regard to the clandestine nature of the FLQ, it would be impossible, apart from admissions on the part of the accused, to establish the commission of an offence created by clause 4(a). In other words, it is obvious that when you are dealing with a clandestine conspiracy, to attempt to rely on admission or actions or conduct subsequent to October 16 would render this legislation impractical.

The hon. member for York South said the FLQ was not unlawful prior to this bill and prior to the regulations. I contest that most vehemently. I point out to him that prior to October 16 the FLQ had a record of violence—

Mr. Lewis: On a point of order, Mr. Chairman. I am sure the minister would not want to misrepresent what I said. I carefully said that it was not an unlawful association in the sense which this bill makes it one. I went on to say that it was, of course, an association against the law as a criminal conspiracy, committing crimes. We are not disagreeing on that.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, I accept the hon. member's restatement of what he said. He is perfectly accurate, and I do not contest it.

What I am submitting is that the FLQ, under sections 60 and 62 of the Criminal Code, satisfied the definition of a seditious conspiracy, which is:

—every one shall be presumed to have a seditious intention who

(a) teaches or advocates, or

(b) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.

Then, "everyone who speaks seditious words," and so on "is guilty of an indictable offence" and so forth.

It is quite clear that the conduct which we are trying to reach here is conduct which we have rendered more precise by making it an offence to be a member of the FLQ so as to limit the extent of power of arrest, so as to limit the extent of detentions, so as to limit search and so as to limit the other suspensions of ordinary criminal law and relate it particularly to clause 4. That is why we make the FLQ an unlawful association, in order to