

Section 58—Burden of proof.

Carried.

Mr. MARQUIS: Wait a minute, as to burden of proof: I would draw your attention, Mr. Rasminsky, to this: "it shall not be necessary to establish in proof of the offence that the person charged did not possess a permit or has not been exempted from the applicable provisions of this Act, and the burden of proof that he possessed the necessary permit or had been exempted from the applicable provisions of the Act shall be upon the person charged." I do not know why you put the onus of proof on the shoulders of the accused because the board itself knows whether he has been given a permit or not. As to the permit if someone has no permit you can prove very easily that he has not a permit because you issue it yourself. Perhaps in some cases a man may not have a permit himself—

Mr. IRVINE: He might swear that he has one.

Mr. MARQUIS: But in that case he does not possess evidence you see.

Mr. IRVINE: Perhaps the lawyers would become judges, and perhaps they will try to get the best of them.

Mr. TARR: The reason for this is that in fact it is practically impossible to prove that any individual did not have a permit for a particular transaction. The vast majority of permits and declarations are approved by the ranks and are eventually sent in to the board, but it would mean going through thousands of permits on file in the board. Also, we would not know whether it had been granted and did not reach us.

Mr. MARQUIS: I am satisfied.

Carried.

The CHAIRMAN: Section 59.

Carried.

Section 60: In section 60, Mr. Rasminsky, would it be possible to have a rider added that, "if the court is satisfied that any offence has been committed unwittingly or in ignorance of the law the court shall have discretion to acquit"? It does seem to me that that would answer a lot of questions that have been raised about this Act, about breaking the law.

The WITNESS: I think, Mr. Chairman, that those who drafted this measure did have in effect the intention that you have suggested. If you will look at section 56, subsection (1) which defines offences:—

"Every person is guilty of an offence who (a)—that speaks for itself; then, (b) wilfully deceives; (c) wilfully obstructs; (d)—that is rather different; (e) knowingly; (f) knowingly; (g) without lawful excuse; (h) with intention to evade the provisions of this Act.

The CHAIRMAN: And then (i) violates or fails to comply with any provisions of this Act or any regulation; does it "knowingly", offends.

Mr. MARQUIS: I think, Mr. Chairman, that provides the discretion which applies in those particular cases; that where it is clear that the person concerned did not know the law the judge would give them a very small sentence.

The CHAIRMAN: I have known so many convictions out of the Wartime Prices and Trade Board where the magistrate has said that a technical offence has been committed and I have no option, I must impose a penalty. I have had magistrates come to me and tell me they knew the man committed the offence innocently and they didn't want to make a conviction but they had no option. I do not think we should allow any legislation to go through our hands without the most complete safeguards, and I think the word "knowingly" should come in front of the word "guilty".