

Mr. OZERE: I think some statutes do not use the word "wilfully" and others use the word "wilfully". The Criminal Code has it in this way—"resists or wilfully obstructs", but there are several other statutes that do not have it, and the Department of Justice thought that the word "wilfully" does not add anything to it, that it will be the same situation because you will have to prove guilty intent. We would have no objection to have the same wording in paragraph (d) as appears in the Criminal Code, for the sake of uniformity.

Mr. ROBICHAUD: My learned friend will agree that the word "wilfully" by itself raises the question of intent and places the burden on the Crown. The word "wilfully" places the burden on the Crown or the prosecution to prove *mens rea* and guilty intent, and unless they so do, the accused does not have to take the stand, whereas the absence of the word "wilfully", leaves the door open and the burden is then on the accused to prove certain mitigating circumstances, to establish the lack of intent, and so I am strongly in favour of the word "wilfully" preceding that subsection, for the reasons I have already indicated, namely, the impossibility in most cases of "bring to" a sailing vessel.

Mr. STUART: I think that the term is not going to give us a great deal of worry. I have spent some little time on the water myself and I have never seen the time when I could not "heave to" when necessary. I do not believe that under the conditions outlined there would be any necessity for asking leave, because in that case I think you would have quite a job catching him.

Mr. ROBICHAUD: Let us forget the circumstances of "heaving to", and "wind tacking". I submit that a sub-section of this nature should be prefaced by the word "wilfully" for the reasons which I have already explained.

Mr. STUART: The clause which worries me is the next one. Might I ask a question on that? That is paragraph (b) which reads:

7 (b) being aboard a fishing vessel, refuses to answer any questions on oath put to him by a Protection Officer;

It would appear to me that it puts the onus on the fisherman rather than on the department. I think it should be up to the department to prove him guilty, rather than to use the procedure which is outlined here. Was it the same under the old Act?

Mr. OZERE: Yes, it was the same sort of thing.

Mr. STUART: Would it apply in this way: suppose I am catching small lobsters and suppose a fisheries inspector—one of your inspectors—is very much convinced that I am catching small lobsters. Without any evidence at all he can take me before the court and say: "I am of the opinion that this man has broken the law, and I want him put on his oath", without his producing any evidence at all to show that I have in any way violated the law.

Mr. OZERE: This applies only to foreign fishing vessels.

Mr. STUART: Well, in that case I have no more to say.

Mr. OZERE: You do not always want to search the vessel.

Mr. STUART: I see.

Mr. ROBICHAUD: But it could apply to the master of a Canadian vessel.

The CHAIRMAN: Does clause 7 carry?