

Criminal Code

Mr. Garson: The responsibility is on the paper. "Every one who"—and then you have (a), (b), (c) and (d), and (d) is "prints or publishes any advertisements".

Clause agreed to.

Clause 124 agreed to.

On clause 125—*Escape*.

Mr. Regier: In the third line of subsection (c) appear the words "the proof of which lies upon him", and at the end of the section a penalty of two years is provided. In a country such as ours I can see that many situations may arise whereby a man may arrive two hours or a day late, and he may have considerable difficulty producing evidence. Is there a need for those words, "the proof of which lies upon him", in that particular section? I realize that no difficulty would be involved in an urban area because the minute the person failed to appear a warrant would be issued and he would be located. But Canada is a large country.

Mr. Garson: If my hon. friend will read the whole clause I think he will see that its meaning is pretty self-evident. It reads:

Every one who . . .

(c) having been charged with a criminal offence and being at large on recognizance fails, without lawful excuse, the proof of which lies upon him, to appear in accordance with the recognizance at the proper time and place for his preliminary inquiry, to stand his trial, to receive sentence or for the hearing of an appeal, as the case may be, is guilty of an indictable offence and is liable to imprisonment for two years.

This involves a man jumping his recognizance and going away. If he is caught he is guilty of this offence. I take it my hon. friend's objection is that the words "the proof of which lies upon him" involve a shifting of onus that is not fair to the accused. I see my hon. friend nodding his head in assent. If that is the point, then I would say that it is generally recognized in the law that it is not unreasonable or unfair to leave the proof upon the accused in a case like this where he is the only person who has the evidence that will discharge that onus. He is the only man who has the excuse, and if he has a lawful excuse—

Mr. Fulton: He is the only one who knows it.

Mr. Garson: Yes, he is the only one who knows it. There is no way at all that the crown can prove it. If he has an excuse all he has to do to meet the onus that is upon him is to say: "Well, Your Worship, I am sorry that I was late in turning up but the bus in which I was travelling broke down and I could not get any alternative transportation", or, "I had an airplane ticket and the planes

were all grounded because of fog." This will clear him and it is no hardship to him to produce evidence like this which only he can adduce.

Mr. Fulton: That is the way this house is, quite often.

Mr. Garson: Cases of that sort arise frequently and the person involved, who is the only one who has the evidence, is asked to produce it in order to establish a lawful excuse.

Mr. MacInnis: I would agree that the hon. member for Burnaby-Coquitlam has not got a very good case here but I am glad he brought up the point because, as we go through the bill, I think we will find other cases where the onus of proof is on the accused and where it is not so well placed as in this instance. In this case something additional is given to the accused. He is already guilty of an offence but if he can prove a reason for his non-appearance then that mitigates the offence. While I would not agree that my hon. friend has anything in this particular case, I am glad he brought up the point.

Mr. Diefenbaker: I agree with the hon. member who has just taken his seat. As one looks over these amendments, and we will come to various onus sections a little later, one would almost conclude that a number of these new onus sections had their origin in the difficulty of crown counsel in establishing their cases with that ease that crown counsel sometimes like. That observation does not apply to this section, but as I see the situation it does apply to one or two others that we will be dealing with later. As far as this section is concerned, if that provision were not there I do not know what would happen to the accused. In other words, the crown can say to an accused: You were there and you should have been here; you are guilty. Then he has an opportunity to say: The reason I was not here was that I had a lawful excuse to be where I was. Certainly there is no onus placed on the accused in this section, although a reading of it would give that appearance.

Clause agreed to.

On clause 126—*Permitting escape*.

Mr. Ellis: There is one question I should like to ask on this clause. I presume this provision refers to a peace officer who allows a prisoner to escape. Is it necessary to prove any intent to allow the prisoner to escape? Say a policeman, through negligence, permits a prisoner to escape: is he liable under this clause?