

*Foreign Exchange Control*

On section 58—Burden of proof on the person that he possessed necessary permit.

Mr. FULTON: Subsections 1 and 2 of this section shift the burden of proof which would normally rest on the person prosecuting the case—on the crown, that is to say, or whoever has laid the information—to the defendant. I am going to move an amendment that the whole section be deleted. If the whole section were deleted it would in no way interfere with the principle of foreign exchange control and would not interfere with any powers necessary for its efficient administration, because this clause concerns only the prosecution of a person charged with an offence against the act. The reason I think it is important to delete the section is that it is time parliament put an end to the practice that has been creeping in of shifting the burden of proof on to an accused person or defendant. I admit there are precedents for that in the Customs Act and Excise Act, but that does not make the principle a good one. I do not think one wrong is justified by another. Secondly, this is an entirely new set of circumstances. Even the minister has admitted that he hopes this control will only be temporary and that he does not want to give powers that are not essential. That in itself makes the argument as to what was done before in some other act invalid in this case. A further reason why this section should be deleted is to be found in the sections immediately following, sections 59 and 60, which provide that all proceedings under this act are to be laid in accordance with the criminal code. There is no separate procedure provided for by this bill. If the proceedings are brought under the criminal code it becomes in essence, although some details of the procedure may vary, an offence that partakes of the nature of a crime. It has always been held, and never questioned, that before a man can be found guilty of a crime the crown must prove the element of intent, and I think it is a bad principle to make it possible to lay proceedings under the criminal code and then to say "we will exempt the crown from the obligation of proving that the man intended to commit the infraction of which he is charged." If it is not intended that the crown should have to prove that intent, if it is not intended that the crown should accept all the burdens imposed on it by the criminal code, I suggest that some other procedure should be laid down.

By reason of a conviction under this act a man is virtually branded a criminal, because that is the effect when an information is laid under the criminal code. I suggest that

[Mr. Abbott.]

the effect of this section 58 that when a person is charged with an offence, and it is established in proof that the person did any act or omission for which a permit is required, it shall not be necessary to establish in proof of the offence that the person charged did not possess a permit or had not been exempted, and so on, and the burden of proof that he did act in accordance with the regulations shall pass to the person charged—means that the crown is relieved from the burden of proving that the person intended to break the law. It is admitted, of course, that ignorance of the law is no excuse; a man cannot plead "I did not know the law and therefore I am not guilty of intentionally breaking the provisions of the act." But many people, knowing the law, nevertheless do things entirely innocently as far as intent is concerned, having no wish to break the law or even infringe any of its provisions. I know that similar provisions are found in many regulations under the wartime prices and trade board with regard to rationing, and that it is provided that if a certain set of circumstances is proved the onus of proof is placed on the accused person to show that he did not commit an infraction of the act. But these infractions may extend back over three to five years, and no one can prove, if he is in business, that every single transaction back over that period complied with the terms of the act, because he will not have all the records to show it. Virtually all the crown has to do is to lay a charge, and he cannot prove his own innocence, and therefore he will be found guilty. That will be the result of section 58 in many cases.

I feel that it is time we in parliament objected to what is in effect a change in the principles of the criminal law and in the procedure under the criminal code. Members of parliament should take a stand in defence of the rights of individuals who were placed under so many regulations passed by this and other boards that, although the legal maxim "ignorance of the law is no excuse" still exists, it is utterly impossible to know what the law is. When we follow that up by saying, "Whether you know the law or not, and whether you intended to break it or not, you shall be found guilty and the crown shall not have to prove the intent", I submit we are introducing a very bad principle. I ask the minister whether he is prepared to delete this section.

Mr. ABBOTT: Perhaps I may say a word at this point to explain the reasons. My hon. friend is quite right when he says that the provisions of this section have nothing to do