

Mr. HANSON (York-Sunbury): Unfortunately there is an oath in some of the municipal income tax legislation with which we have to deal in our part of the country, and sometimes it gives me great anxiety. But this is an absolute reversal of the common law principle, and I do not think the minister has yet adduced an argument in favour of that reversal, except that it will be easier for the crown if it is left in this form. Changing the burden of proof is nearly always a dangerous thing. The crown has to establish a *prima facie* case; then the onus shifts and the executor may have to meet it, by the ordinary rules of evidence; and I think those ordinary rules ought to obtain. I am not going to fight this thing out, although it is a matter of principle. I would not hope to convince the minister, though I do not say that in any derogatory sense at all, because I find that on occasion the minister is amenable to suggestion, argument and reason. I do ask him to reconsider this provision, and I will put my request as respectfully and pleasantly as I can. I do not like the insertion of the principle proposed in the amendment.

Mr. ILSLEY: My difficulty with it as it stands is that there is no *mens rea* to be inferred from the mere proof of the fact that certain property was not disclosed in the statement. In the ordinary crime *mens rea* is to be inferred from certain facts. Let us say A hits B. You may assume that he intended to hit him; that is pretty clear. Suppose A kills B. Then you assume that it was negligent, intentional or accidental, depending upon the circumstances, and from those circumstances you may discover what was the state of mind. But there is nothing to be inferred from the mere non-disclosure. All this amendment says is that intention not to disclose is to be inferred from non-disclosure; that is all. Then the executor can come along and say, "I did not intend non-disclosure. It was a mistake. I did not know anything about the property." Once he establishes that he is free.

Mr. SLAGHT: I want to direct the minister's attention to another aspect of section 16 which I had not noticed when I addressed the Chair a moment ago, and suggest that it should be amended. The penalty for non-disclosure is described in line 31 as—

. . . as a penalty an amount equal to one hundred per centum of the amount of the duty levied. . . .

I suggest that this should read "an amount not exceeding one hundred per centum." There is no leeway, no latitude at all; the penalty

is statutory and, if this provision remains, must be the full one hundred per cent payable by an executor. That payment might bankrupt him; it might take all he had in the world if he had to pay the full one hundred per cent. Under those circumstances any tribunal dealing with the matter would feel that something less than one hundred per cent was a proper punishment. Why not make it human by leaving some discretion? If the minister should agree with me it could be amended quite simply by striking out the words "equal to" and substituting therefor the words "not exceeding." The provision then would read "as a penalty an amount not exceeding one hundred per centum of the amount of the duty levied."

Mr. HANSON (York-Sunbury): I think that is a reasonable suggestion.

Mr. ILSLEY: It may be that this suggestion can be accepted; I do not know at the moment. The difficulty is that we are dealing with an executor and a successor. I recall that under the succession duty act of Nova Scotia I always thought that if the successor left out property, just did not disclose it or kept it to himself—and there is a tremendous temptation to do that, especially in the case of gifts; it is a real evil, and is not anything that we can compromise with if we are to administer the law thoroughly—then the penalty was one hundred per cent. I think that provision runs through all these acts.

Mr. SLAGHT: No. If I remember rightly the Ontario act leaves a discretion.

Mr. ILSLEY: Well, let us see. I have the act here:

Every person in Ontario mentioned in subsections 1 and 2 of section 12 who fails to disclose to the treasurer any property passing on the death of the deceased or any disposition, which such person is required to disclose in accordance with the provisions of section 12, shall pay to the treasurer as a penalty an amount equal to one hundred per centum of the amount of the duty levied on such property or with respect to the transmission of such property or with respect to such disposition.

I am not so clear as to the necessity of being so severe with the executor; but in connection with the successor I feel sure that we must maintain this heavy penalty in order to get full disclosure. The temptation is so terrific not to disclose.

Mr. HANSON (York-Sunbury): This deals only with an executor, does it? There may be some distinction in regard to the successor.

Mr. ILSLEY: No, the section deals with both.