

over by adding the two words, "and proved;" then the onus of showing his authority is upon the accused.

Hon. Mr. FOWLER: But it is not necessary to provide for that: the law already provides for that. If a charge is laid and proved the onus is upon him. As my honourable friend knows, the onus of proof shifts during the course of a trial.

Hon. Mr. DANDURAND: I would draw attention to the fact that the charge laid states that the accused did certain things without a license. Of course, it must be made clear that he did a certain thing which contravened the Act.

Hon. Sir JAMES LOUGHEED: How is that to be done?

Hon. Mr. DANDURAND: That is a question of fact. He is accused of having imported, or of having in his possession, or of having given to a minor.

Hon. Sir JAMES LOUGHEED: No.

Hon. Mr. DANDURAND: The charge says, "without a license." In many instances it has been held that the onus was upon the Crown to establish the charge that the accused had done certain things without a license; and it has been necessary to communicate with Ottawa, and to have an officer of the Department come and declare that according to the books the accused had no license when that charge had been laid. At all events, I am giving the Department's version. So the reason for this clause is that when the fact has been established and the defendant's plea is that he did it under a license, the onus will be upon him to prove that. My honourable friend may say, "But it is not for the Crown to prove a negative." Yet the Crown alleges that the defendant contravenes a certain section. Even if the Crown alleges only that, what does the section say? "Without a license." So the defendant may say: "But you have not proven the allegation that I had no license and violated the Act." In any event, what harm is there in this section? During the last twelve months representations have come to the Department from all over the Dominion asking that this clause be re-enacted. We shall see. I will ask that the clause be allowed to stand. However, I would like to make it clear that once the fact of contravention is established, the onus of proof as to the license is upon the accused.

Hon. Mr. FOWLER: I would have no objection to that; but that must be clear.

Hon. Mr. BELCOURT.

There must be a prima facie case made out by the Crown.

Hon. Mr. DANDURAND: Undoubtedly.

Hon. Mr. FOWLER: The mere laying of a charge should not be sufficient.

Hon. Mr. LYNCH-STANTON: Will the honourable gentleman permit this to stand in order that I may draft a clause to submit?

Hon. Mr. DANDURAND: Yes.

Hon. Mr. McLENNAN: Before we leave the section, I desire to point out that it would be better to substitute another word for "either" in the first line. It should read:

Where a charge is laid under any of the paragraphs (a), (b), (d) or (e) of section four of this Act....

"Either" refers to only two.

Section 14 stands.

On section 15—burden of proof on pleas of medicinal purposes or medical treatment:

Hon. Mr. DANDURAND: There is no alteration, except that this was section 10 of the old Act, and it is broadened to include medical men, dentists, and veterinary surgeons, who will have to justify themselves.

Section 15 was agreed to.

On section 16—burden of proof on charge of unlawful possession against persons occupying or in possession of premises, etc., where drug is found:

Hon. Mr. McMEANS: I think that is reasonable. If the person pleads he has a license, he has to prove that he has.

Hon. Mr. FOWLER: That is all right.

Section 16 was agreed to.

On section 17—certificate of Dominion Analyst evidence of content of drug:

Hon. Mr. DANDURAND: The words "or Provincial Analyst" are added.

Hon. Mr. FOWLER: Should the section not say "a duly qualified Provincial Analyst"? He might be an analyst in blood tests, or something of that kind.

Hon. Mr. LYNCH-STANTON: Of course you would have to prove that he is qualified.

Hon. Mr. FOWLER: No, you would not.

Hon. Mr. DANDURAND: I would draw the attention of my honourable friend to the interpretation clause, subsection (i):

"Provincial Analyst" means any analyst appointed by the Government of any province and having authority to make any analysis for any public purpose.