It will be seen that in this case we are conferring, not upon the government but upon an individual, certain undefined and general powers over the whole economy and over the daily lives of all our people, then giving to that minister the right without reference to the government, let alone to parliament, to allow controllers and administrators to do certain things, and finally creating certain penalties in relation to what the controllers may do. That is entirely different.

The section to which the hon. member referred in the Companies Act applied only to a very limited situation where it would be obvious that there must be knowledge on the part of the individual. That, at any rate, is the basis of the presumption. I shall concede that in all these cases it is debatable and I shall repeat what I said before, that I do not like the principle of the removal of the presumption of innocence in any case. How different it is when you delegate first of all undefined and unlimited powers beyond a government to an individual minister, and then give to that minister the right to delegate again to any individual with no knowledge of the law.

Even in the time of Magna Carta they said that people to whom responsibilities were delegated should know the law. In this case even that is not suggested. Being delegated to them, those powers take the form of law; and, if not complied with, not only is the company guilty but an individual associated with that company is presumed guilty until his innocence is established. That, I submit, is reason to refuse to accept this amendment, if there were no other reason in this whole bill.

Mr. Speaker, there has been a slight diversion from my main line of argument because of this reference to the Companies Act. I shall return to the reference I wished to make, on the presumption of innocence, in the *Law Times*. This article refers to the very problem, the combination of the administrative or delegated law and the presumption of innocence. It is written particularly from the point of view of a comparison of the French law and the English law. This deals with the administrative law from a very sympathetic point of view, but does emphasize the differences. This is what it says:

> There are certain popular misconceptions which seem to persist merely because nobody has ever taken the trouble to investigate and denounce them. One of the most stubborn of these is the opinion that, while in this country the rights of the individual have always been safeguarded by what is termed the "presumption of innocence", a person accused of a crime in France or other continental countries is obliged to prove that he is innocent of the accusations levelled against him. So widespread is this fallacy that it has found credence even among the legal profession, nay, judges have been known to propound it on the bench as an illustration, by contrast, of the fairness of the English Law. This short paper is written in order to dispel a notion which Frenchmen and others have long regarded as a highly offensive and unjustified imputation.

[Mr. Drew.]

May I intervene at this point in my own words. I emphasize the following words because they need emphasis, having regard to the attitude of the members to these extremely wide powers. I go on with the quotation:

> In fact, no civilized country would nowadays entertain a general rule so barbaric as to impose upon every individual the obviously impossible burden of establishing that he is not guilty of any criminal charges which may be raised against him. The expression "presumption of innocence" appears to be of comparatively recent date; it is not to be found in that great work of the eighteenth century, Blackstone's Commentaries. But its modern meaning is perfectly clear: it is used as a synonym for the general principle that, before a man can be convicted of a criminal offence, it is the task of the prosecution so to convince the court of his guilt that no reasonable doubt is left. Consequently, unless a statute provides to the contrary, the burden of proving every fact and circumstance necessary to make out the offence falls upon the prosecution.
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> This general principle is by no means peculiar to English law; indeed, it seems to have been known already to Roman law. Ammianus Marcellinus tells of a reply given by the Emperor Julian to a prosecutor who complained, when his charge was about to be dismissed for want of evidence:

He then set forth, in Latin, the declaration that every man is innocent until proved guilty.

> Whatever the defects of early criminal procedure on the continent, the fundamental rule that the accused must be proved guilty by legal evidence or discharged, has been recognized at least since the sixteenth century. Thus the first attempt to provide a criminal law for the whole empire of Charles V, the Constitutio Criminalis Carolina of 1532, provided by article 22: "Nobody is to be sentenced to criminal punishment on the basis of suspicion or denunciation, but only if he confess or be proven guilty." The Bavarian criminal code of 1813 drafted by Feuerbach stated even more definitely: "Nobody can be convicted unless certainty of his guilt has been established by positive proof." In German present-day criminal trials governed by the code of criminal procedure of 1877 the whole burden of proof devolves upon the prosecution, since in every case the *non liquet* operates in favour of the accused, and a verdict of not guilty must be returned if the evidence adduced by the prosecutor has not convinced the court. It was only under fascism and nazism that this principle was temporarily threatened. "The accused does not enjoy," the Italian lawyer Casabianca wrote in 1929, "the presumption of innocence; the verdict will attest whether he is guilty or innocent; until then he is simply an accused." He was propounding, there is no doubt, a revolutionary, novel doctrine.

There is precisely what we do not want incorporated as part of the permanent law of Canada. As this writer in the *Law Times*