

I see subsection 2 provides:

If, after such notice to the Commissioner as the judge may require, it is made to appear to the satisfaction of such judge,

(a) that the claimant is innocent of any complicity in the offence resulting in such seizure or of any collusion with the offender in relation thereto and

(b) that he exercised all reasonable care in the choice of the person permitted to obtain the possession of such horses, vehicles, vessels or other appliances to satisfy himself that they were not likely to be used contrary to the provisions of this Act or, if a mortgagee or lien-holder, that the vendor to the mortgagor or lien-giver exercised such care; he shall be entitled to an order that his interest be not affected by such seizure.

Could the right honourable gentleman tell the House what he would deem to be the "reasonable care" that should be exercised by the person selling or having a lien on the property?

Right Hon. Mr. MEIGHEN: In order that this may be understandable to honourable members who were not on the committee, perhaps I had better lay a foundation. Section 169 originally provided that anyone who had in his possession, or who removed from any distillery, bonded warehouse or bonded manufactory, spirits or liquors upon which duty or excise had not been paid, was guilty of an offence and liable to punishment according to the provisions of the section. It further provided that all horses, vehicles, vessels or other appliances used in the removal of such liquors should be forfeited to the Crown. It was felt, however, that this probably referred only to removal from distilleries, bonded warehouses and bonded manufactories; so the section was amended in the House of Commons to include vehicles and so forth used in the transport of such liquor to any place, maybe weeks afterwards, or purely by accident.

In that form the section met with the criticism—which I take the responsibility of having initiated—that frequently persons other than the alleged offender were interested in the vehicle used. The vehicle mainly used now is the automobile. It may be that a man lends his car to some person who lends it to someone else; or it is possible that, quite honestly, he hires it out. Nevertheless, entirely aside from his guilt or innocence, the car would be forfeited to the Crown. Further it was pointed out that very often automobiles are sold on what is called the instalment system; that automobile manufacturers make use of finance companies for the collection of instalments, and that such companies purchase the instalment papers and become the

mortgagees of the property. The practice has been to forfeit that property to the Crown, irrespective of the interest of the pledgee, and regardless of the fact that he is innocent of any offence.

It was urged before the committee on behalf of the department that the law had to be very stringent and severe, even to the extent of confiscating property of people in no way participating in the offence. Because of the difficulty of enforcing the Act there grew up a doctrine of applying the wording of the Act to the automobile. In fact, the statement appears in the judgment of one of the judges of a higher court that the law contemplates the guilt of the machine, and consequently its forfeiture. I presume that doctrine had to be deduced in order to describe the conduct of Parliament in imposing forfeiture and punishment on people who were obeying the law, and in fact doing everything that good citizens are called upon to do.

It was recognized in the committee that in order to enable the officers of the law to enforce this very difficult statute we ought to go as far as possible without making it absolutely necessary that property of people innocent of any offence should be seized as forfeited to the Crown. Consequently this amendment was adopted. It provides that any person other than the offender is entitled to protection if he claims to be the owner, pledgee, mortgagee, or lien-holder, and can furnish proof that he is innocent of any complicity in the offence or of collusion with the offender, and also—and this is a very unusual onus to put on a man who is merely seeking to regain his own property—that he took reasonable care to make certain that the permission given by him for the use of his vehicle was not illegal; or that the vendor whose lien he has purchased exercised such care. If the man who claims the return of his property discharges that onus he is entitled to the property.

Hon. Mr. CASGRAIN: I do not see why an automobile should be seized any more than a house in which contraband liquor is found.

Right Hon. Mr. MEIGHEN: I admit that in point of logic there is no distinction.

Hon. Mr. DANDURAND: Under the present Act a railway train could be seized.

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. HUGHES: Honourable members, the remarks of the right honourable leader of the House bring us to the consideration of