

Succession Duty Act

lost some revenue because of the non-disclosure. Under this amendment, by merely showing non-disclosure of an amount you could impose the one hundred per cent penalty. If it was half a million dollars it would ruin an individual executor. The department may say to him: "We are not prepared to show to a court"—or they impose the penalty without going to a court—"we are not prepared to show that you knowingly left this out, but we are going to put upon you the burden of proof that you did not knowingly leave it out." Sometimes, as we all know, the fact as to where the burden of proof rests makes all the difference between success or failure on the part of a person who is sued. Where there has been no loss, it seems to me you ought to be able to show, before you impose a penalty upon a man, that he knowingly omitted to disclose something. I suggest that the amendment ought to be withdrawn, that the draftsman who prepared the section in its present form had a better sense of proportion than the proposed amendment discloses.

Mr. HANSON (York-Sunbury): I am in entire agreement with the hon. member for Parry Sound. He has stated the position much better than I could. This rather shocks one's sense of propriety and justice. It is on a par with the principles that underlie the liquor acts in this country; a man is guilty until he proves his innocence. I cannot see that in the ordinary course of business a man acting in a representative capacity would profit by non-disclosure. His duty is clear. He does it to the best of his ability. If he omits anything, the onus should be on the crown to prove intent. As the hon. member for Parry Sound has said, where a penalty is imposed, clearly it is the duty of the crown to assume the onus of proof.

I do not like this type of legislation; it is not British justice. Of course it is making it easier for the officers of the crown to administer the law.

Mr. ILSLEY: I disagree with the leader of the opposition and the hon. member for Parry Sound. I can hardly conceive of a case where the crown would be in a position to prove knowing omission. There might possibly be some cases in which the crown could prove a state of mind. If the crown is in a position to prove that the existence of property was brought to the attention of the executor and nevertheless was not disclosed, it would be possible for the crown to prove that state of mind. My hon. friend talks about British justice, and shock to our feelings, and that sort of thing, but we must recognize

[Mr. Slaght.]

the fact that in a great many statutes where the means of knowledge are with the accused, not with the crown—

Mr. JACKMAN: All criminal law is that way.

Mr. ILSLEY: Oh, no.

Mr. SLAGHT: This is not criminal law.

Mr. ILSLEY: Where the means of knowledge are with the accused, the crown establishes the facts that point to an offence, and then the accused comes forward and says "Yes, it is true that property is left out, but I did not know anything about it". If he shows that, he is free. But the section will be almost meaningless so far as executors are concerned. I do not think there would ever be a prosecution against an executor if the burden is cast on the crown of proving that there was an intentional omission. There is complete protection to the executor. All he needs to do is to say, and to swear in such a way that he is believed, that he did not know about it, and submit himself to cross-examination. In most criminal law the situation is entirely different. There you have to prove the offence.

Mr. HANSON (York-Sunbury): *Mens rea*.

Mr. ILSLEY: Well, *mens rea* is apparent in most crime. If someone walks off with your property and has it, you show that you missed it and found it in his possession; *mens rea* is shown by that. Here *mens rea* would not be assumed from omission to make disclosure. All the crown can do to protect itself is to say that property was left out, that the return shows \$50,000 worth of property while there is actually a million dollars' worth. If there is no explanation, the individual is prosecuted, and if he gives a satisfactory explanation in court he may be acquitted. I think it is a case where the burden should be on him.

Mr. HANSON (York-Sunbury): I do not agree. A man making a statement of that kind will have to swear to it, will he not, under the forms that are proposed?

Mr. ILSLEY: I do not know.

Mr. HANSON (York-Sunbury): They do in the provinces.

Mr. SLAGHT: Yes; the executor's oath.

Mr. HANSON (York-Sunbury): It is all under oath as far as the executor is concerned, and under provincial legislation he is the only one who has to file a statement.

Mr. ILSLEY: I do not think any oath is required under this act. There is no oath in the income tax returns.