ACCUSED MUST FURNISH PROOF, IN SANDY BILL

Contentious Clause Stands After Some Rather Violent Assaults

THE RIGHT OF APPEAL

Raney Says Government May Consider This With O.T.A. Infractions

The only really contentious clause in the Sandy Bill stopping the short-circuiting of liquor was that placing the onus of proof on the defendant in court actions, when in came up in Committee of the Whole yesterday in the Legislature. H. H. Dewart, K. K. Homuth, Labor member for South Waterloo, and M. M. MacBride, Labor member for Brantford, complained that when existing and proposed temperance legislation places upon defendants the onus of proof that liquor in their possession was legally shipped to them, and was not for purposes of resale, it violated the basic principles of British justice.

Mr. Homuth moved for the rejection of the clause, but his motion was lost on a vote. Every Farmer member present voted that the clause remain. Labor, with the exception of the two Cabinet Ministers, who were not present, voted for the Homuth motion. Liberals and Conservatives split. The bill will come back to committee again, but it is thought that its next appearance will be but a formality and then it will get third reading.

Grant Right of Appeal.

One important pronouncement was delivered by Attorney-General Raney, when he promised R. L. Brackin (West Kent) that the Government would give serious consideration to his demand that those convicted by a Magistrate for infractions of the O.T.A. should have the right of appeal to a County Judge.

Mr. Homuth opened the discussion when he complained that men were being practically convicted of breaking the O.T.A. before they had been found guilty by a court. "The whole onus of proof," he said, "is on the defense, and that is absolutely wrong." The Labor member said he was prepared to cite cases where men, unable to clearly establish their innocence, were convicted on that ground.

Mr. Dewart expressed himself as in entire sympathy with Mr. Homuth's views. Surely, he thought, with the big staff of liquor officers and the tremendous expenditure incurred in the enforcement of the act, no citizen of the Province should be convicted because, as defendant, he was unable to prove his innocence.

"I should hate to see this House," said Mr. MacBride (Brantford), "so far depart from the basic principle of British justice as to pass any act which shall say a man is guilty unless he proves himself innocent. Surely to goodness all the agencies of the law should be able to obtain sufficient evidence to prove a man guilty if he is guilty."

The Attorney-General defended what he admitted to be somewhat of a departure from the usual principles of justice. The liquor laws of the Province, he declared, were the most difficult of all the laws on the statute books to enforce. He started to say he had received no complaints concerning the deviation from the usual course in respect to the liquor laws of the Province, when Mr. Dewart interrupted with an expression of disbelief.

"Well," said Hon. Mr. Raney, "of course, every rogue who feels the halter drawing makes complaint. But who has heard of any honest man making complaint?"

Honest Men in Majority.

Mr. Dewart protested at the Attorney-General's inference, and Mr. MacBride, Brantford, was on his feet to say that he had found honest men in the majority in the Province. "I evidently have not met as many rogues as the Attorney-General," he declared.

Nor could the opponents of the clause, in the opinion of Hon. Mr. Raney, point out any injustice that had been perpetrated under the Ontario Temperance Act. R. L. Brackin, West Kent, jumped to his feet to cite a case at Erieau, and Mr. Dewart pointed to the numbers of remissions of fines as proof that departmental revision of convictions had unearthed scores of cases of injustice.

"There have been no cases of injustice brought to my attention," insisted Hon. Mr. Raney, to which the member for West Kent retorted: "There would be no use."

"I am not so finicky," said the Attorney-General, "about these matters. I am inclined to think the law for the protection of criminals, for it is really that, has been carried too far."

The Attorney-General scorned to make reply to Mr. MacBride's query as to whether he would apply the principle of a man proving his own innocence in a murder case.

Says Magistrates Prejudiced.

Mr. Brackin attacked the Ontario Temperance Act from a new angle, that of permitting inexperienced and oftentimes prejudiced country Magistrates to convict with no chance of appeal. Many of these Magistrates, utterly opposed to any man having liquor in his possession, legally or illegally, convicted as soon as it was admitted that the defendant had liquor in his cellar. "In nine out of ten cases," he declared, "it is personal prejudice with these Magistrates." Defendants, he contended, should have the right to appeal to the County Judge in his own county.

"The curse of our judicial system," he continued, "is this everlasting concentration of everything down in the city of Toronto."

When Dr. Stevenson, London, interrupted to remark that he didn't know there was any curse attached to the judicial system, the West Kent member agreed that there wasn't outside of London, and he did not believe the curse there was in connection with the judiciary. Mr. Brackin, in quoting injustices of the O.T.A., referred to cases where individuals had sold thousands of cases of liquor and made $4,000 and $5,000, and gladly paid the Government its $1,000 "commission."

Effective After Referendum.

The bill as printed was not quite what was being considered by the committee. Some copies had been revised in pencil, but not all the members had a copy. M. M. MacBride endeavored to get the discussion held over until such time as they had the amendments printed and each member had a copy. G. G. Halcrow moved that the committee rise and report progress until such time as the bill fully printed was before the Committee of the Whole.

Premier Drury dealt effectively with the criticism, and after his explanation Mr. Halcrow withdrew his motion. The Premier pointed out that Committee of the Whole was the place for amendments; how could amendments be printed beforehand, when nobody knew what they would be. The bill would be reprinted after it had passed the committee with all the amendments in.

Discussion then proceeded. The Sandy Bill does not become effective until after the result of the referendum vote, and importation is stopped, if the people so vote. The Conservatives did not continue their fight against this clause which they started when the bill was up before.