

*Oil and Petroleum*

export trade—Mr. Macdonald (Rosedale)—Mrs. Morin in the chair.

**The Assistant Deputy Chairman:** When the committee rose at one o'clock, clause 34, with an amendment proposed by the Minister of Public Works, was being considered.

**Mr. Macdonald (Rosedale):** Madam Chairman, I am in the hands of the committee, but I am now in a better position to respond in respect of clause 30 than I was before lunch. If the committee would revert to that clause, I can deal with it, or we can carry on with our consideration of clause 34.

**The Assistant Deputy Chairman:** Is it agreed that we revert to clause 30?

**Mr. Baldwin:** Yes.

On clause 30—*Proof of offence.*

**Mr. Macdonald (Rosedale):** Madam Chairman, I have had a chance to consult with the Department of Justice on the point raised by the hon. member for Peace River. As he said, the minister did have occasion to deliver a report to the House of Commons pursuant to section 3 of the Canadian Bill of Rights in respect of Bill S-10, to amend the Feeds Act. It was passed by the Senate on March 6, 1975, and returned to the House of Commons.

I think it is important in this regard to have regard to the terms of Bill S-10. It will be apparent, I suggest, that the provision we are dealing with here is not the same as the one dealt with in that bill. I think it might be useful to quote the opinion of the Minister of Justice, as undoubtedly the question will be raised again and again in our proceedings and it might be worth while to have it on the record. The Minister of Justice said:

Properly construed and applied, the said subsection 10(1.2) could deprive persons of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of their rights and obligations, in that a conviction recorded against a corporation, in proceedings against the corporation to which the chief executive officer of the corporation was not a party, would cause the chief executive officer to be presumed by law to be guilty of the offence of which the corporation was convicted, although the conviction recorded against the corporation could not subsequently be questioned by the chief executive officer in proceedings that would lead to his own conviction if he were unable to establish that the act giving rise to the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

In referring to the terms of Bill S-10—and I will take the liberty of abbreviating the terms of the clause—there is provision that where a corporation has been convicted of an offence, the chief executive officer is to be presumed to be guilty of an offence unless he has established that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission. I maintain that we have a rather different situation here. This is not a situation where once a conviction is obtained against a corporation, the officer will be presumed to be guilty unless he establishes these things. In the bill before us, we have a situation where the officer in question himself would have to be the subject of prosecution in the courts, in which case he would have the full right to make his defence.

[Mr. Sharp.]

The defences he could raise on the matter would not only be a defence against the substance of the offence, but also the defence that he did not know of the offence and took all appropriate steps to prevent it; in other words, he did not know the offence had been committed by another officer or agent of the corporation and for that reason should not be found guilty. That is, there is no presumption against him, as there was in Bill S-10, and in that respect the two provisions are different.

I take it this is the reason the Minister of Justice was able to certify to the House of Commons, with regard to Bill C-32, that all the requirements had been met under the Canadian Bill of Rights. I think there have been some discussions between the hon. member for Calgary Centre and the table and the hon. member has had an opportunity of examining the draft copy of Bill C-32 as transmitted by the Department of Justice to the Clerk of the House, bearing on the face of it the stamp that it has been examined and certified in accordance with the Bill of Rights.

On that basis I would argue that clause 30 is different from the provision referred to in Bill S-10. Clause 30 is the same as a provision that may be found in a number of other statutes—for example, the Oil and Gas Production Bill, which is chapter 0-4 of the Revised Statutes of Canada, and the Arctic Waters Pollution Prevention Act, which is chapter 2 of the 1970-71 statutes, which has a similar provision in section 20(1). In other words, the procedure has been before parliament previously. Also, this clause has been certified by the Department of Justice, pursuant to the Bill of Rights, as being not contrary to the provisions of the Bill of Rights. What I am suggesting to the committee, therefore, is that there is legal authority for the provision in clause 30, and for that reason I would seek the support of the committee.

**Mr. Andre:** Madam Chairman, we recognize that clause 30 is not identical to the clause in Bill S-10 which the Minister of Justice correctly ruled as being in violation of the Bill of Rights; but there are certain similarities. The minister has based his argument primarily on the fact that the provisions are not identical. We have not claimed they are identical, but that there are similarities and that the principle is similar.

● (1410)

Clause 30 of Bill C-32 reads:

In a prosecution for an offence under this division, it is sufficient proof of the offence to show that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

So, far from that passage providing a means by which someone who might be charged under this bill could put forth an argument in his defence, it can be read—and indeed states—that circumstances are possible where an employee acting in a way that is in violation of the legislation could do this on his own without the knowledge of his superior, and on this basis the superior of the employee, presumably an officer of the company, could be charged under this act. In such case the onus would be on