

Defence Production Act

in which a controller can do. Therefore the fact that an investigator was exempt from responsibility for his acts done in good faith has no bearing on the question of the exemption of the controller from that responsibility.

The fact that the munitions and supply act itself is conspicuous in that it did not contain the word "controller" in a clause similar to this, but only "investigator", is a strong argument in support of the proposition that if it was not necessary to give controllers that same protection under the munitions and supply act, there is no case made out as to why they must be given this protection under this legislation.

Mr. Fournier (Hull): Why not move an amendment if you are not satisfied?

Mr. Macdonnell (Greenwood): We have one.

Mr. Fulton: Let the Minister of Public Works be patient.

Mr. Fournier (Hull): I generally am.

Mr. Howe: This is getting very repetitious.

Mr. Fulton: The Minister of Trade and Commerce says that it is getting very repetitious. There is a simple way in which the repetition, if it be that, can be avoided, and that is by answering the arguments which are advanced. We have had no answer to those arguments. The opposition's only recourse is to state the position clearly and then to move an amendment which would incorporate in the bill these things which we state in our arguments should be there.

Section 27 appoints the controller and makes the controller the agent of the owner. Section 36 exempts the controller from the responsibility of anything done by him in the performance of his power. It is therefore arguable, and very easily arguable, that if a case were to come before the courts as a result of some injury done to the person whose plant had been taken over, and the injured person sought to apply the ordinary law that the master, in this case the crown, is responsible for the wrongful acts of his servants, the courts, looking at these two sections together, would say: Well, the intention of parliament in this case was to provide that there was no wrong, and that you must accept whatever the controller does in the course of exercising his powers, provided that he does it in good faith; and that therefore the effect of that section is to provide that, by virtue of the emergency, parliament has declared that the former owner of the plant cannot be wronged by any act which the controller does. That is an argument which could not be dismissed lightly, because there is no limitation or qualification on the power of the controller, and there is no limitation or qualification on

[Mr. Fulton.]

his exemption from the consequence of his act. I do not think it is proper for this parliament, if it can preserve the workability of the act, to place the owner in that position. Therefore, what is desired surely is an amendment which would make it clear that the controller does not himself have to pay for any damage he may do, provided that he acts in good faith, but at the same time the right of action against the crown is preserved. I think that that could be done simply by making provision that—

Nothing in this section or in this act shall limit or remove the right of any person to recover against the crown for any wrongful act done by such controller or investigator.

That, substantially, would be the subject of an amendment. It hardly seems possible—

Mr. Howe: Move it.

Mr. Fulton: It hardly seems possible to see how that would limit the effect of the act. What is the opinion of the Minister of Justice in this connection?

Mr. Garson: My opinion is this: Let my hon. friend move the amendment.

Mr. Green: I shall move it. I move:

That section 36 be amended by adding thereto the following words:

"Nothing herein contained shall limit the right of any person to recover against the crown for any wrongful act of such controller or investigator."

The Minister of Justice has already told us that he proposes to have this section considered by his officials after the six o'clock recess. He says he cannot reach them in the meantime, and that is understandable. But then he has gone on to make a suggestion with regard to procedure which is entirely unfair to us, and to the House of Commons. His suggestion is that, although this is to be considered at six o'clock, and although there is a possibility of an amendment being made by the government, still he wants to have the section passed at this time. The result is that if the government does not decide to bring down the amendment, there can be no further discussion and the subject is closed.

The practice followed ever since I have been here, in circumstances like these, has been to let the section stand. Already two other sections are standing, and no one is going to be hurt if this one is permitted to stand with those two. But for the government to take the attitude that the section must be carried now, whether or not at a later time it decides to make a change in it, is most unfair.

I would urge that the Minister of Justice permit the section to stand, and the matter could be dealt with briefly when it comes up this evening with the other two sections