

Combines Investigation Act

The situation is quite different. For an offence to be committed there has at some time to be a merger in process.

Mr. Pickersgill: The merger may just be emerging.

Mr. Fulton: If people are engaged in activities under a merger or a combination, or if they are conspiring to do the things which the combination section covers to the point where six persons form the opinion now that an offence is taking place, then there is a contravention of the act.

Mr. Benidickson: Has been committed or is about to be.

Mr. Fulton: No. The hon. member is worried because the words "is being" are not in here, but they are not necessary. If they form the opinion now that an offence is being committed, by the time they physically get in touch with the director that situation is covered by the fact that the offence has been committed. So you do not need the words "is being" either here or in clauses 8 or 15.

Mr. McIlraith: If that is so, then in the merger provisions where the minister by this bill is now taking the right to proceed by way of a mandatory restraining order rather than by criminal prosecution, if an offence has not been committed and someone finds out in the course of the process of the merger operation going on that it is going on, then the offence is stopped by the restraining order and no complaint could ever be made under this section, because how can you prove that an offence was about to be committed? All you would know is that it was in the course of being committed. The director in that circumstance would be in the position that he would never have to conduct an inquiry at the request of six persons. The minister, in the other words, addressed his reply a moment ago only to those cases where an offence was committed.

Mr. Fulton: No.

Mr. McIlraith: I want to ask the minister to address his mind to the problem which arises in merger cases where the civil proceedings only are taken by way of the order on information.

Mr. Fulton: What clause is the hon. member referring to?

Mr. McIlraith: Clause 2. I want to have the minister address his mind to that problem as opposed to those cases where a criminal prosecution is going to be taken; in other words, the type of case which stops upon proceedings by the crown short of criminal proceedings, and therefore a criminal offence is not committed.

[Mr. Fulton.]

Mr. Fulton: We are not talking of prosecution here; we are talking about an inquiry under this section. That is why I asked the hon. member what clause he referred to. Here we are dealing with the case where six persons form the opinion that an offence under part V has been or is about to be committed and then get in touch with the director, and in accordance with the requirements of the act make a statement to him setting out the reasons for their opinion. It is obvious that this will take some time. Some time must pass between the moment they form their opinion and the moment they get in touch with the director, so that if they were of the opinion at that time that an offence was being committed, by the time they get in touch with the director that point of time has passed, and therefore the opinion then is that an offence had been committed. Or, as I say, if it is not covered by that it is then covered by the words "is about to be committed".

Mr. McIlraith: Let me put this situation to the minister. A merger is an operation which takes some time. Companies have to merge. If six persons know that the merging operation is going on and they believe the director and the Minister of Justice will interfere to prevent the merger if they draw it to the attention of the director under this clause—that means those six persons believe an offence will never be committed under part V—then holding that view the offence is not committed, they cannot avail themselves of the past tense and they cannot avail themselves of the future tense in making the request, they must rely on the present tense.

Mr. Fulton: No. Under the circumstances the hon. member has outlined they would avail themselves of the words in the future tense, that the offence was about to be committed, and they would say to the director that it had been in the newspapers or had come to their attention otherwise, that company A and company B are discussing an exchange of shares, and there is going to be a merger. That is an offence about to be committed and they are perfectly well covered by those words.

Mr. McIlraith: But is that offence about to be committed if they believe that the Minister of Justice will interfere and prevent it from being committed?

Mr. Fulton: Yes. They will say to the director, "We are of the opinion that the offence of merger is about to be committed because of the plans the companies have disclosed", and they will make a formal submission to him in the way required and the director will have to initiate an inquiry to see if an offence is about to be committed.