

Defence Production Act

faith, and if so then I presume there is no way that decision can be brought before a court for review?

Mr. Howe: I would not like to hire my hon. friend, because there is nothing in the clause that says the minister has to decide. It is a matter for the courts to decide.

Mr. White (Hastings-Peterborough): I asked the minister who makes the decision as to whether or not a controller or investigator acted in good faith. If the minister makes the decision would it follow that there is no way in which that decision can be brought before any court.

Mr. Howe: Well, of course, the court makes the decision.

Mr. White (Hastings-Peterborough): No. I would ask the minister to consult his colleague, the Minister of Justice, and explain how the matter gets before the court, because he can only get before the court when he acts in bad faith.

Mr. Garson: Well, my hon. friend, being himself a lawyer, will, I think, be in a better position to appreciate what would happen in a case of this kind. Would he not agree with me that this is what would happen? Some gentleman, we will say Mr. John Doe, whose plant has been taken over by a controller and not properly administered—in general it is known then that he has a good claim against the controller because of his actions—consults his solicitor. His solicitor takes down the statutes and looks up this particular act. He comes on section 36. He thereupon concludes, after listening to the set of facts which his client has told him, that in this particular case the controller has not acted in good faith, and he launches an action against the controller, and the question as to whether the controller has acted in good faith would be decided by the judge. In order to get the case before the judge and under the provisions of this section of the bill, Mr. John Doe, who is the plaintiff, would have to show that the controller in this particular case did not in fact act in good faith. If he were able to prove that fact then clause 36 would no longer apply; and in that process the Minister of Trade and Commerce would be sitting by as a perfectly disinterested—

Mr. Howe: Spectator.

Mr. Garson: Yes.

Mr. Fulton: Is the minister going to let the clause stand?

Mr. Garson: I do not think it will interfere in the slightest degree with the undertaking that has been given.

Mr. Green: We think it would.

Mr. Garson: We said we would bring down any necessary amendment there might be, and it will be added to the proper section of the bill. I think nothing turns upon whether it stands or is passed, and we might as well dispose of it while we are at it, and we will consider this other matter and I will report back to the house.

Mr. Fulton: It is a peculiar thing, Mr. Chairman, that when we had two other sections about which there was some doubt they were allowed to stand. Surely that is the proper procedure, because, as I understand the rules of the house, the only time at which an amendment to a clause can be moved is at this stage in committee. I am not aware of any rule under which at a later stage, during third reading, this bill can be amended in detail by having one of the clauses amended unless the whole bill were to be opened up again or a new bill submitted. I do not think therefore that any other interpretation can be placed on the minister's proposal—that this should carry and that perhaps if they thought it necessary they would amend it in particular at some later time—than that they do not intend to improve this clause, but that they want to get it through so that it cannot be reopened; because there is no way in which it can be opened again.

The minister has still not dealt with the points that have been made. Let us assume that no one wants to see controllers personally embarrassed for actions they do in good faith, or made personally responsible. Let us assume for the purpose of argument that the section does not go too far even in that respect in relieving them of liability; in order to try to work out an acceptable amendment, let us say that there is agreement on that point. It is desired to exempt the controller from any attempt to make him personally liable for acts done in good faith, even though they injure the person who is the victim of the act. What is also desired is to provide that the crown shall be liable for the wrongful acts of its servants. The position is simply this. Provisions similar to clause 36 have not been in any previous statute. There has been in a previous statute a provision that an investigator is not responsible for any act or thing done by him in good faith. But, Mr. Chairman, under these statutes no investigator has ever been clothed with the powers which are now given under this bill to a controller, powers to take over a person's business and run it, not only in compliance with the directions of the minister but to run it as agent of the owner; no investigator ever had that power. No investigator could ever injure the property and rights of a citizen in the way