

Combines Investigation Act

opinion that it has been committed. Let us consider that an offence is being committed and suppose there were no reference in here to the present tense, then I think that would throw an entirely different light on the situation because then the action that the six citizens will take will be based on their opinion of the circumstances at that moment. After it gets out of their hands to the director, for the sake of argument, then the situation is normal.

The other point is that no initiative or direction is required of the director under this section 7, but after he starts his inquiry of the alleged offence then he can talk about an offence that has been committed or is about to be committed. He can talk in terms of that nature. The director may not be in a position to talk about an offence being committed because by the time it has been brought to his attention it has been committed, and it is in the past tense that he deals with it. I believe that under this section 7, at least, the minister would be well advised to arrange to have these words "is being" put back in the clause so that any six citizens, if they are of the opinion that at that moment an offence is being committed, they can act. Although I admit that by the time it gets to the director it is in the past.

Mr. Fulton: This same problem will arise in three sections of the act, if the amendment carries, section 7, section 8 and section 15. I suppose we had better settle it one way or the other now. I do not believe the point I made is destroyed in the least by the arguments of the hon. member for Skeena. If six people in this House of Commons came to the conclusion that an offence is being committed and they walked to the door of the chamber to pick up the telephone to communicate with the director, by the time they got to the door that instant of time in which they formed the opinion is past. If there were an offence being committed at that time, then by the time they got to the door and were in communication with the director, the offence would have been committed. It is just an absurdity to say that the section refers to the time when they first formed the opinion. This contemplates the six people getting in touch with the director. They get in touch with the director on the basis of the opinion that they formed. They cannot instantly get in touch with the director. By the time they get in touch with the director, the offence has been committed. If the situation is not covered by that phrase, then obviously it is an offence that is about to be committed, but it is covered by the other words.

There is not, therefore, the slightest necessity to cover this situation by the use of the words "is being". As I say, it is going to occur three times and if my friend wants to put unnecessary words into the statute three times it would probably be in the nature of an economy for the country to put them back in rather than take time here.

Mr. McIlraith: With deference to the minister, I think he has not been careful in looking at this section. Six persons may hold the opinion that an offence is being committed. If they do hold that opinion then the director under the bill now submitted to us, may throw their request away and is not obligated to do anything with the request which comes before him if in fact the opinion they hold at the time they submit the request is that an offence is being committed. In other words, there is a gap there and that is what I am concerned about. I want the director to be obligated to act if the six persons, complying with this section, apply to him, and the minister has only covered two of the circumstances. But as I say, if the six persons hold the opinion that an offence is in the course of being committed, then the director can throw their application away.

Mr. Pickersgill: If you look at it as an ordinary grammatical problem, the subject of the verb is "an offence". I would say that if at the time the six persons formed the opinion that an offence has not been completed and is still going on, then it is not an offence which has been completed, nor is it an offence which is about to be completed.

Mr. Fulton: The hon. member does not understand the principles of criminal law. If there is a contravention of the act now, there is a contravention of the act and an offence is committed. Two minutes from now the offence becomes one which has been committed.

Mr. Pickersgill: I admit that I am not a criminal lawyer and have never pretended to have any knowledge of criminal law; but I do have a little knowledge of English grammar and I cannot believe the minister would say that a murder had been committed until the man died, notwithstanding the fact that he might be in the process of being murdered at the time someone formed an opinion that this murderous act was being carried on.

Mr. Fulton: But the hon. member forgets that we are dealing here with mergers, monopolies and combinations, not murders.