

Hon. Mr. HUGESSEN: Suppose a trustee is administering the estate—in some cases bankruptcy lasts for years—and continuing the operation of the business, whatever it may be, does this subsection mean that during that period the trustee shall not be required to make returns to the dominion and provincial authorities?

Mr. REILLEY: If the subsection could be interpreted that way.

Hon. Mr. HUGESSEN: That is what I am asking.

Mr. REILLEY: The trustee must naturally bring himself within any laws which apply to the carrying on of the business.

Hon. Mr. HUGESSEN: It may be that in other parts of the bill you do define the duties of the trustee.

Mr. REILLEY: I do not.

Hon. Mr. HUGESSEN: Then I think you have to reconsider that subsection.

Mr. REILLEY: I would be quite agreeable to do so.

It might be well to say a few words in regard to this section. I want to assure the committee as an official of one department of the government I would not want to do anything that would affect another department from carrying out its duties; for instance, the Revenue Department from collecting every cent coming to it in income tax. But you can see the arbitrary nature of this section. It may be that the section is ultra vires. A trustee in bankruptcy is not the legal personal representative of any person. He is an entity created by statute in whom is vested certain assets which at one time belonged to some other person. In other words, he is not the legal personal representative of the debtor in any other respects except as the owner of the vested rights or assets that formerly belonged to the debtor. He is in exactly the same position as a corporation which takes over the assets of a company or individual and issues stock; the corporation is not in any way responsible for anything that the former owner may have done personally.

Hon. Mr. LEGER: Except he would be liable if made so liable by statute.

Mr. REILLEY: Yes.

Hon. Mr. LEGER: The Income War Tax Act makes him liable if it is intra vires.

Mr. REILLEY: I am going to carry the argument a little further. He is in exactly the same position as if a third person came along and bought those assets and paid for them. Those assets are vested in him by operation of law. Is it reasonable to say that parliament could make that third person responsible for supplying income tax returns of the man whose assets he bought? Legally, that is the trustee's position under the well-established principles of bankruptcy law, that he does not represent the debtor but is a legal entity created by operation of law. Consequently if that section is not ultra vires, it is at least open to a good argument that it is.

The ACTING CHAIRMAN: There is just one question on that point Mr. Reilley. I think there is a section in the Income War Tax Act which enables the department to assess for income tax irrespective of whether there is a return made or not. Supposing the department felt there was a liability for tax, but returns had not been made for it, and the department made the assessment, would not the trustee then have to make a return in order to ascertain whether or not there was a debt?

Mr. REILLEY: He could disallow that claim.

The ACTING CHAIRMAN: He could arbitrarily disallow it?

Mr. REILLEY: He could disallow it and it would have to be set up by the court.