

*Criminal Code Amendment*

Mr. GUTHRIE: Well, you have to have a pretty stiff penalty for some of the people engaged in these operations.

Section agreed to.

Section 4 agreed to.

On section 5—Penalty.

Mr. WOODSWORTH: Is the minister referring to a subclause of section 4?

The CHAIRMAN: I am not calling the subclauses, unless it is so desired.

Mr. WOODSWORTH: We are dealing with section 415A?

The CHAIRMAN: On page 2 of Bill No. 73.

Mr. GUTHRIE: Section 5.

Mr. RALSTON: Will the minister advise us as to any advice he has received regarding the constitutionality of this section?

Mr. GUTHRIE: When I introduced the bill I intimated that there was at least doubt about the right of this parliament constitutionally to enact sections 5 and 6 of this measure. I believe I would do well to state those difficulties to the chamber. The law officers of the Department of Justice were asked to examine the proposal, because it arises out of the recommendations of the price spreads commission. In drafting sections 5 and 6 the idea was as closely as possible to conform to those recommendations. In the department we were aware that there was serious doubt in regard to them, and we not only took the opinions of departmental lawyers but we also submitted the bill to two of the leading counsel in Canada, namely, Mr. W. N. Tilley, K.C., and Mr. Aimé Geoffrion in order that we might obtain their views. In the first place I may say that the most we have received by way of advice in the matter is that there is doubt as to the right of this parliament to enact parts of these sections, not because they are absolutely bad in the judgment of counsel, but because they are doubtful. The opinion of the law officers of the crown is that clause 5 presents some difficulties. Paragraphs (a) and (b) purport to make it an indictable offence to employ a person at a rate of wages less than the minimum fixed by law or any competent authority, or to permit an employee to work beyond the maximum hours fixed by law or any competent authority.

Paragraphs (e), (f), (g), and (h) of section 5 are similar in character and would appear to be of very doubtful validity since they seem to be designed to provide penalties or

[Mr. Elliott.]

additional penalties for the enforcement of provincial law. Section 92 (15) of the British North America Act gives to the province exclusive jurisdiction respecting the imposition of punishment by fine, penalty or imprisonment, for enforcing any law of the province. I would think these paragraphs to be of doubtful validity. Section 6 forbids certain unfair trade practices and renders them criminal, and would seem to be valid.

The opinions of counsel whom I have named are summed up in the following statement by Mr. Tilley:

Section 4 is, in my opinion, clearly *intra vires*. Section 5 is also, I think, *intra vires*. Legislation regarding minimum wages and maximum hours of labour must, except in cases where the dominion has a special jurisdiction, be enacted by provincial legislatures, and the legislature may of course create sanctions for the enforcement of its laws; but this does not prevent the dominion from making certain practices, in evasion of provincial law, crimes and of punishing them as such. The result may be an inconvenient exposure to a double liability, but that possibility affords no argument against the right of the dominion to exercise its powers.

Subsection (1) of section 6 is, I think, of very doubtful validity, but sections (2) and (3), are, I think, valid.

Subsection (1) does not prohibit any contract between the seller and the purchaser for the sale of goods. It attaches penal consequences to the seller granting more favourable terms to competitors of the purchaser. It seems to me to be an attempt to interfere with provincial rights and an encroachment on the provincial legislative jurisdiction. There is nothing in the nature of the transactions themselves or in the language of the subsection to indicate that the public interest is being protected or that a wrong against the community is being prevented. The object seems to be to compel traders to sell to all competitors on uniform terms having regard to quantity and quality. It seeks to regulate dealings by a trader with those who are as amongst themselves competitors, and will apply largely to transactions entirely within a province. There is no compulsion to sell to all such competitors who desire to make purchases, but if sales are made and the contracts are not on the prescribed footing, the seller, according to the subsection, commits a crime. No purchaser is obliged to pay what his competitors pay and may secure more favourable terms by purchasing from a seller who has no transactions with his competitors. Accordingly, a seller may commit a crime if he meets the terms offered by one of his competitors. It is somewhat difficult to understand how such an interference with the contractual liberty of a particular trader can genuinely be determined by parliament to be in the public interest. The court is entitled to consider whether parliament has so genuinely determined or has attempted under the guise of criminal law to control the civil rights of persons entering into commercial contracts within the province. The subsection does not prohibit transactions of a class particularly described; indeed all the contracts made with the purchaser and his