

haps further discussion may be unnecessary. Since six o'clock I have looked into it, but I am not yet prepared to draft a clause which would meet the case. If we are dealing with the subject we should make it applicable, not only to traders, but to any other one who is guilty of the fraud. There is no definition of 'trader' in the Criminal Code.

Mr. FITZPATRICK. Nor anywhere else.

Mr. LANCASTER. In administering the Criminal Code everything must be held to be in favour of the accused, and a much stricter construction might possibly be put on the word 'trader' in a criminal case than in a civil case. If we mean that everybody dealing with another person who becomes a debtor should be subject to this clause we ought to say so, and not limit it to a 'trader.' I do not entirely disagree with the principle of the measure, but I want to help to make it sensible. The word 'trader' will not include every fraudulent debtor. The professional man is not a 'trader'; the courts of Ontario have held that a farmer is not a trader unless he is indicated in a special statute as such. Why should the professional classes be allowed to go scot-free, if they perpetuate fraud, and why should a special class of the community be punished? We have no criminal definition of the word 'trader.'

Mr. FITZPATRICK. Nor civil either.

Mr. LANCASTER. It is the criminal aspect that we are dealing with here. Suppose you prove that a man has done acts in contravention of this section, you would have to prove that he is a trader before punishing him, and there might be some difficulty in that, the jury would take its own view.

Mr. FITZPATRICK. I am not in any way responsible for the drafting of this Bill, but I cannot understand the nature of my hon. friend's trouble about the word 'trader.' It is not an unusual word; it is used in the Insolvency Act and in the Abandonment of Property Act, Ontario, and no one has ever attempted to define it. It is a term which has received judicial construction; it was construed as far back as 1832 in the Meiklejohn case, and I do not know that the difficulty which my hon. friend has suggested has ever occurred to any one before. The Insolvency Act of 1864 says that the Act shall apply to traders only, and the same words are in the Abandonment of Property Act, Ontario.

Mr. R. L. BORDEN. I thought it was defined in the English Bankruptcy Act.

Mr. FITZPATRICK. I do not know, but I have our own legislation here, and it is not defined.

Mr. LANCASTER. Was it not defined in the old Insolvency Act?

Mr. LANCASTER.

Mr. FITZPATRICK No.

Mr. LANCASTER. I was only a student when that Act went out of operation, but I remember we used to have a lot of discussion as to what was a trader, and I think it was defined.

Mr. FITZPATRICK. My experience is that it is rather a doubtful expedient to define words unnecessarily in legislation.

Mr. LANCASTER. This is criminal legislation.

Mr. FITZPATRICK. In criminal legislation or any other. I have practised for twenty odd years as Crown prosecutor and defender of criminals, and it has not been my experience that the code defines very particularly the class of offences to which it applies. My experience is that it is better to allow elastic terms to be used, and have the courts construe them.

Mr. LANCASTER. As this clause stands we would exclude from its operation many a man who would perpetrate just as great a fraud as the trader who would be punished.

Mr. FITZPATRICK. That would be adopting imprisonment for debt which has disappeared from our land and which I do not wish to see revived. This legislation is intended to be applied to a special class known as traders, and there are reasons why it should be applied to that class. It is part of their calling to get credit; credit is the essence of their business. They carry on their business largely because of the credit they are able to obtain. The object of this legislation as promoted by the boards of trade, in our province at all events, is to provide that those who are obliged to trade with the men who trade upon credit, or do trade with them should be in a position to ascertain whether they deal honestly with that which they get upon their credit. That is the object and it seems to me it is a most desirable object.

Mr. LANCASTER. I quite concur that we should hesitate before we pass any legislation which creates imprisonment for debt, but that is what is here being done with certain people of the country but not with all people. The hon. gentleman says they obtain credit by making representations. Every man whether a trader or not, obtains credit before he becomes in debt and does so more or less by his standing in the community, and by the representations he made before getting into debt on his credit. The objection I have to the Bill is that it seeks to impose imprisonment for debt on certain classes of the community without defining those classes with a certain definition of traders, and at the same time to allow other people equally guilty to go scot-free. The effect of the Bill is to provide