

Combines Investigation Act

old British presumption that anything that is not specifically unlawful is lawful in a free country. But our objection to it is not on the ground that it is declaratory. If it were merely declaratory, if it were merely unnecessary verbiage, as the minister implied, in the statute, our attitude might be different. Our objection is that we do think this is apt to result in litigation and its use as a cloak or a screen for activities which are unlawful.

We are not alone in thinking that, even in the house. The hon. member for Greenwood is not here, but his words have been plainly printed in the proceedings of the committee. They have already been referred to by the Leader of the Opposition. But in view of the eminence of the hon. member for Greenwood, of his long experience in business, of his long experience in parliament, of his unhappily rather short experience in government, it does seem to me that the committee would wish to pay special respect to that hon. member's words, and I therefore think they ought to be put on the record again as they were uttered in the committee. They will be found in the proceedings at page 698, as follows:

Mr. Macdonnell: I want to ask a question which, I am afraid, would be mainly a rhetorical question.

Well, the hon. member supports the government; I suppose that is why he put it that way. Perhaps I had better go on and read it:

Mr. Macdonnell: I want to ask a question which, I am afraid, would be mainly a rhetorical question. The more we talk about section 32 the more I am convinced that it is going to be a lawyers' paradise. It is difficult, if things are not gone at directly by retaining the old wording; and I suggest it is difficult to question that the benefit of retaining the old wording is very great. Does there come a time when you pay a penalty for it? Is it possible in this case it might have been approached directly instead of indirectly?

Of course it is a very conservative attitude that we should retain the old wording; that we should stick to something that has on the whole worked pretty satisfactorily; but I come back again to what the hon. member for Greenwood said, namely that he was convinced that this was going to become a lawyers' paradise, sir, if it was used in pleadings, in charges under the main section. I do not think so ill myself of the combines branch, of the director and of the commission, as to think they are going to engage in frivolous prosecutions about any of the matters enumerated in this section, because I understand we were told in evidence that on no occasion had any of those practices which are stated to be perfectly legal ever arisen in connection with any prosecutions. Whether sections 2 and 3 are unnecessary, we think they are apt to prolong proceedings under the act, to make the law less enforceable and possibly to provide a cloak or screen for activities that are not lawful. For that reason

I intend to vote for the amendment moved by the hon. member for Skeena.

Mr. McIlraith: In his remarks on this clause the minister made reference to something he said on second reading of the bill, which is to be found at page 4340 of *Hansard*, where he went on to indicate:

The effect and intention of legislation must be clear, both in order that those who are affected by it may know what their position is, and in order that another very important principle may be maintained, namely that it should not be the government which from day to day determines by private decision what are the rules governing business and society generally, but that the rules governing business and society should be laid down in legislation which speaks clearly and which is capable of fair and immediate application.

I think I am quoting correctly in saying that that is his main defence in bringing forward this clause in the form in which it is found. This is his purpose. Well, I can only say that if this is his purpose it surely is a most indirect and devious route to pursue in achieving this wholly laudable purpose. The form of the new clause 32 is certainly an indirect method of spelling out clearly what is illegal under this particular phase of the legislation.

The minister made some reference to the export provision which he proposes to move later. With deference, I say it has no bearing on the point at issue now being discussed in committee. The export provision could be dealt with under this clause or under two or three other appropriate clauses in the legislation. But the minister also made clear—and indeed it is indicated in the explanatory notes of the bill—that he desired to preserve the existing jurisprudence. Indeed, subclause 1 of the new clause 32 is an attempt to do that, and subject to something I will have to say later as to one small point in clause 32 it does indeed take the former section virtually in toto and attempt to link it up so that we shall have the benefit of existing jurisprudence and many years of experience and administration.

Perhaps hon. members will bear with me for a moment if I seek to go through the section as it now stands to judge the method of approach to this problem. Perhaps you will call it one o'clock, Mr. Chairman, and I shall continue my discussion later.

At one o'clock the committee took recess.

AFTER RECESS

The committee resumed at 2 p.m.

Mr. McIlraith: Mr. Chairman, when the committee rose for the noon adjournment I was seeking to show the dangers in the