

Senator Phillips (Rigaud): Mr. Phillips, if you are saying that that suggestion was made by me, I draw your attention to the fact that I did not make such a suggestion.

Mr. Phillips: I am sorry. I am just talking in the general sense. . .

Senator Phillips (Rigaud): With all respect, sir, you are placing in the mouths of some of the senators here alleged suggestions.

Mr. Phillips: I am sorry. If I could rephrase it and indicate, with respect, that it was pointed out to me yesterday, or in this committee, that it was not made clear in section 3 that there were three conditions and therefore we should change the bill. And now I am pointing out that in section 5 there was a point made clear and it suggested that you can do these things by an indirect means, "so don't make it clear". This is my interpretation, correctly or incorrectly.

The Chairman: May I tell you, Mr. Phillips, that in anything I have said or anything I have heard members of this committee say there has been no suggestion of the kind that in some indirect way the minister may do this, that or the other thing. The statute says that the minister "may" pay. That means there is a discretion. Then the bill also provides that there "shall be minimum and maximum amounts", and you have indicated that the likely basis would be about 80 per cent of the market value. The minister has a discretion, in the first place as to whether he will pay or not and in the second as to the amount which he will pay. He can weigh and reflect in just the same way as a court in determining the amount, if he decides he is going to pay. If the farmer will not wash the carrots, the minister will decide that the farmer is entitled to less. That is not suggesting any indirect way.

Mr. Phillips: I am sorry, Mr. Chairman. I apologize, if I left any wrong impression.

Senator Connolly (Ottawa West): I do not think anybody expects you to feel that way, Mr. Phillips.

Mr. Chairman, Mr. Phillips has not said this, but it is implicit in what has gone on; it seems to me that his concern is for the fact that there is a policy question here as to a decision the Government has taken that they would go so far. Perhaps his difficulty arises from the fact that we want to go farther than that policy suggests, and we think it improves the bill by so doing.

The Chairman: What is the policy point to which you are addressing your remarks?

Senator Connolly (Ottawa West): The question of subrogation. We think we are improving it.

The Chairman: Subrogation is in the bill as an added provision that the minister might take. But this is an observation that stands without our amendment. If the minister told the farmer to go ahead and sue the manufacturer on the basis that, if he did not sue, he would not get any money, that situation would not be good. So we took that out but we left the subrogation part of it in. We said that was enough.

Senator Connolly (Ottawa West): Yes, that is right.

Mr. Phillips: That to me was an important point. That is, that you have taken it out. The way it is written under the redraft, I admit that if the minister deems it necessary he must get the subrogation before he will pay any compensation, but, if it were a clear-cut case and, to use an example that someone else suggested, if it were a very large farmer who had money and background, it would not be the intent that the Government should do it on his behalf. He would do it himself.

This implies that you would have to pay, unless the positive action is taken of deeming it necessary to get subrogation. This is a fine point.

Senator Connolly (Ottawa West): I think Senator Phillips' point about the use of "maybe" may get you off the hook. Now I may be in a somewhat querulous frame of mind this morning, but taxed costs are one thing and counsel fees are another. We may be adding to the impost by saying that if there is subrogation and the minister takes the action that ultimately it may cost the exchequer a little money in the way of counsel fees.

The Chairman: Senator Connolly, as you know there are two scales of costs; one is on the party and party basis and the other is on the solicitor and client basis. When you go to court as a plaintiff and get a judgment, you get an award and some of these have costs taxed on a party and party basis which is a lower basis than the solicitor and client basis and the counsel fees are part of the taxed costs and it is done by an independent taxing officer who does the taxing on the party and party basis.