

Combines Investigation Act

accomplish what the minister has accomplished in his proposed changes to section 32.

Mr. Fulton: All I can say is it probably could be done either way. This way it is perfectly clear and satisfactory and in accordance with the act as it now is. Therefore I see no reason why I should take the time of the committee to give more explanation than I already have.

Amendment (Mr. Howard) negatived: Yeas, 3; nays, 62.

The Deputy Chairman: Shall the clause as amended carry?

Clause as amended agreed to.

On clause 2—*Application for inquiry.*

Mr. McIlraith: I should like to raise one question. In dealing with section 7 of the act, as it appears in line 5 of clause 2 of the bill, we find that it provides that six persons who are of the opinion that an offence has been committed may apply to the director for an inquiry, and so on. My point is this: The section of the act from which this clause is taken provided for persons having an opinion that offence has been or is being committed, that is the past and present tense. The bill now before us provides for a situation where the six persons are of the opinion that an offence has been or is about to be committed, the past tense and the future tense. The present tense has been dropped from the act by this amendment.

Mr. Fulton: This was discussed in the banking and commerce committee at some length. I shall see if I can reproduce the explanation within a short compass. The phrase was at one time "has been or is being committed", and I believe elsewhere in the act the words used are, "has been, is being or is about to be". We considered that carefully as a drafting matter and came to the conclusion that it was not necessary to put in all three tenses, "has been, is being or is about to be", because one of them is redundant.

If you think of a situation where an offence is being committed, then remember the act says, "are of the opinion that an offence has been or is about to be committed", the persons who are of that opinion may apply to the director for an inquiry. They have to do so by writing him a letter; they have to take the prescribed action with respect to the situation about which they have this opinion. If the offence is being committed, that may be their present opinion, but by the time they get into communication with the director the offence has been committed. If it is not covered by the words "has been",

[Mr. Howard.]

at that point of time, then it would be covered by the words, "is about to be committed".

When you realize that, first of all, you have to have an opinion as to the existence of a set of facts, then you have to take some action with respect to that opinion by way of bringing it to the attention of the director, then the words "is being" do seem to be redundant because if the situation is not covered then by the words "has been", it would certainly be covered by the words "is about to be". It might be less trouble to put the words "is being" back in than to spend a lot of time discussing it. I am convinced, however, it would be a wrong step because we are satisfied that the words are not necessary and I think it is a great pity to retain in a statute words which are clearly not necessary.

Mr. Pickersgill: This strange exercise in basic English is very interesting, but the words were in the statute before. There does seem to me to be need for a present tense, a past tense and a progressive present tense in the English language in order to express all those nuances of meaning we want to express. Even the British North America Act contains the words "for greater certainty", and it does seem to me, in all these circumstances, it would be advisable to put the words "is being" back in the act.

Mr. Howard: It is true, as the minister said, that we did have a discussion in committee about the words "is being", "has been", or "is about to be". Why the present tense has been omitted I do not understand. Perhaps I should draw the attention of the minister to the fact that our discussion about the use of these words in committee was not related to the proposed section 7 of the act but to another proposed section which dealt with the activities of the director after it had been brought to his attention that an offence had been committed. The minister's argument, perhaps, in that light, if he wanted to stick to the point, would be valid.

Perhaps, for the sake of argument, we might go to section 15 of the act which states that the director may return any evidence or discontinue an action, for consideration as to whether an offence has been committed against any of the provisions of this act or is about to be committed. This would be after the director had cognizance of the alleged offence. In so far as section 7 is concerned, I think that here at least we should return to the present tense and put in the words "is being". Under this section the six people have to form an opinion and they cannot be of the opinion that an offence is presently being committed as well as being of the