

Combines Investigation Act

Mr. Fulton: I think there may have been some uncertainty as a result of what I said in the committee on this point. On reflection I am of the opinion that the governor in council must find some specific authority to interfere with the ordinary rates of customs tariffs. The ordinary situation is that they can only be changed by parliament and therefore, unless there is this specific authority, the governor in council would not have the right to change them.

Mr. Howard: That clears up that point. Anybody who argues that this can be done is not arguing correctly.

Mr. Fulton: That is my view, it could not be done without this section.

Clause agreed to.

On clause 12—*Prohibitions*.

Mr. Pickersgill: Mr. Chairman, I intend to move an amendment on clause 12. I will read it now and move it after I have concluded my remarks. The amendment is a very substantial one indeed and reads as follows:

That subsection 2 of section 31 in clause 12 be amended as follows:

That the words "has done" in line 24 and the words "or continuation" in line 27 and all the words to the end of the subsection after the word "offence" in line 29 be deleted.

It will readily be seen that the basic purpose of this amendment which I intend to move is to remove this alternative procedure to criminal proceedings in the case of something that has been done. It does appear to us to be quite wrong to provide that only a civil action needs be taken after an offence has been committed, and it also seems to us that the Attorney General of Canada should not be substituted for the courts in determining whether an offence has been committed. We submit that this is very objectionable in its basic principle, that if an offence has been committed under this act or if the Attorney General of Canada has sufficient reason to believe that an offence has been committed and is of the opinion that proceedings should be taken, then proceedings should be taken in the courts by prosecution and the offence should be established.

We have no objection to the injunction procedure. On the contrary, there is a great deal to be said for the injunction procedure in cases where there is a good deal of evidence and the Attorney General of Canada has grounds to believe that an offence is about to be committed. In some of these offences, as the minister and all of us know, it takes a long time to get a conviction, and an injunction does no harm to anyone. It

only tells the person that he cannot go on doing something which is against the law. But surely if someone has committed an offence it should not be possible merely to say that he is not to go offending. It should be essential to prosecute.

As it does appear that this would be an alternative procedure and as, of course, injunction proceedings would be possible in any event if there was any reason to think that the offence might be repeated by someone who would have already committed it, it does not seem to be necessary, for the purpose of enjoining someone who might be about to commit an offence, to put in those words. Therefore we think that on the grounds of treating all offenders alike, which of course is a basic principle of our law, especially of our criminal law, the words "has done" and "or continuation" should not be in the section. I omitted to move the motion and I will do so now.

I move:

That subsection 2 of section 31 in clause 12 be amended as follows:

That the words "has done" in line 24 and the words "or continuation" in line 27 and all the words to the end of the subsection after the word "offence" in line 29 be deleted.

Mr. Fulton: This, of course, completely deletes the amendment in the bill, except that it would leave the change in the cross reference referring to Part V instead of the numbered sections which were used before. I cannot accept the amendment, and I cannot accept it in large part because in addition to destroying the amendment in the bill, it is based on a misconception. My hon. friend has said that it seems to him wrong to authorize a court to make an order against the continuation of a situation arising out of a past contravention except on the requirement of the strictest proof. What he fails to appreciate is that there will be the requirement of the strictest proof that an offence actually was committed. May I refer to the opening words of the new subsection. I shall have to read the subsection, I think, completely:

Where it appears to a superior court of criminal jurisdiction—

The first thing to remember is that this is a court of criminal jurisdiction. It will therefore be required that before it does make an order the facts, as alleged, will have to be proved to the court under the ordinary laws of evidence applicable in criminal proceedings. This paragraph says:

Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about