

Combines Investigation Act

Mr. Woolliams: I should like to hear the last speaker define what he means by "net profit", and what he is to do if no net profit is shown, because net profit is a pretty illusive thing when it comes to a balance sheet. I am not surprised that this should come from the C.C.F. because they are probably not aware what a business balance sheet looks like.

Mr. Argue: You are not so bright.

Mr. Woolliams: I will leave that for the decision of the house, not the leader of the opposition.

Some hon. Members: Oh, oh.

Mr. Fulton: I think I should say a word about this amendment, Mr. Chairman. There is, I admit, an attraction that is more than superficial in an attempt to create a mandatory penalty commensurate with the advantage that may have been achieved as the result of an offence. Unfortunately, however, this is not always possible and certainly not possible within the limitations laid down within the amendment because a combination may well have effects other than an increase in profits. It may well be the intent of those entering into such an arrangement not necessarily to increase their profits but to accomplish other things. Indeed, it is my view and has been uniformly the view of parliament, I think, that combination arrangements are not necessarily more efficient and do not necessarily—indeed, by no means necessarily—result in an increase in profits. They have other effects, all of them undesirable.

In fact, it may well be that as a result of loss of efficiency by the elimination of competition you may have a reduction in profits. There are all sorts of other undesirable effects and results of combinations unrelated entirely to the question of profits. If, therefore, the discretion of the judge with respect to the imposition of the penalty was exclusively limited to the matter of the profits which the company had made over the years, I think you would find that judges' hands would be tied and that activities which should be punished much more severely would have the penalty limited in an undesirable fashion from the point of view of the hon. member for Skeena and, indeed, generally.

Therefore, notwithstanding the criticism which is made of the courts and of the extent of the fines they have been imposing, I think the desirable principle to follow is to leave the punishment in the discretion of the court. Then there is no limitation on the authority of the judge to impose a heavy penalty where he feels there was a deliberate and anti-social—for want of a better expression—anti-social conspiracy on

[Mr. Howard.]

the part of those engaged in industry to do that which the law prohibits. If you start imposing limitations of this sort, what you are actually doing is limiting the capacity of the courts to make the punishment fit the crime.

I know, as I say, that there may be criticisms that in this case or that case judges have not imposed adequate fines. Many of these criticisms arose out of the fact that until recently there was a limitation on the total fine that could be imposed. But even if the criticisms were justified and judges were not yet educated, if you like, to the point where they imposed adequate fines, I do not think the way to cure that evil is by introducing greater restriction. Surely the way to cure that evil, if there be any evil, is by a process of public discussion, education, if you like, and public information as to what it is that parliament and the country desire the courts to do—

Mr. McIlraith: And the hiring of good counsel.

Mr. Fulton: And the hiring of good counsel, yes—in the way of making the punishment fit the crime.

Mr. McIlraith: Mr. Chairman, however desirable the objectives indicated by the hon. member who moved the amendment may be, I think the amendment put forward by him does not achieve those objectives, not only for the reasons indicated by the minister but for another reason. The hon. member would set up a whole new procedure for a trial after conviction to determine the matter of sentence, and there is a great deal of obscurity about the criteria to be used in some of the phrases in his amendment.

It seems to me that we can achieve a much sounder administration of justice if we leave the imposition of penalties to the judges who are charged with the responsibility under our law of imposing such penalties and that the amendment the hon. member for Skeena has put forward might very well defeat the purpose he has in mind. For these reasons, which I admit are purely legal, I feel that for my part at least I will have to oppose the amendment.

Mr. Howard: Mr. Chairman, I think the attitude of both the Minister of Justice and the member for Ottawa West is commendable from the point of view of the expression of their appreciation of the failure of the courts to take into account the full impact of the anti-social, as the minister put it, actions of some of the corporations that have engaged in these illicit practices and have been found guilty and fined. Rather than to insist that wording of this sort be contained in the