

Defence Production Act

the private person access to the courts. It is written into every chapter. I do not like to be silly about it and put in clauses provision for which is amply covered elsewhere. Would any lawyer opposite assert that, if we put a controller into a plant and as a result of his actions the plant went bankrupt, the crown would not be liable? In principle when we put in a controller we practically expropriate the plant.

Mr. Fulton: From the present wording of the section, coupled with the wording of section 27, I think it is arguable. The controller is relieved from liability at law because of any action done in good faith, and section 27 makes him the agent of the owner.

Mr. Howe: This clause has been used a long time. It was drafted and checked by the Department of Justice and I am not prepared to change it.

Mr. Fulton: The minister just asked whether we would be prepared to suggest there was any likelihood that the crown might be exempted from liability. We have suggested there is a likelihood, we have suggested the reason, and so far we have heard no answer to that objection and no reason why the words suggested by the hon. member for Vancouver-Quadra should not be incorporated. That would still preserve the right of action against the crown.

Mr. Macdonnell (Greenwood): The Minister of Justice has not answered my question, either. I am not suggesting that would conclude the matter, but it might help.

Some hon. Members: Carried.

Mr. Green: No; we would like an answer from the Minister of Justice. It is going pretty far when we bring forward reasonable suggestions and cannot even get an answer. There is something wrong if we have reached that state of affairs.

Mr. Garson: Well, I certainly do not want to disappoint my hon. friends. The wording of this section is substantially the same as that of the section in the Department of Reconstruction and Supply Act which was in effect during the whole course of world war II.

Mr. Green: That act did not come into effect until 1947, did it?

Mr. Garson: This last mentioned act and its antecedent legislation. The only difference is that in the one case it applies to investigators and in the present case to a new official being appointed under this act, a controller; but the principle is exactly the same in each case.

Mr. Fulton: But the investigator did not take over a plant.

Mr. Garson: No; there is a difference in that regard. It might be argued that the authority of the controller was somewhat greater than that of the investigator. I was not here myself at the time, but my information is that no cases of injustice or difficulty arose under the previous legislation. If my hon. friends allege that is not the case I would be glad to have them cite examples to the contrary. However, as the Minister of Trade and Commerce has indicated, I do not think there is any disposition on the part of the government in exempting a controller or investigator, very properly, from any personal liability to leave the owner of the plant without any recourse against the government itself.

Mr. Macdonnell (Greenwood): We do not think so either, but why not say so?

Mr. Garson: That is the point I was coming to. I make the suggestion, Mr. Chairman, that I discuss this matter with the draftsman to see whether or not in his judgment that result does not obtain at the present time, and if it does not obtain then what apt language would be required to make it obtain. He is tied up in court this afternoon, but I could see him later and discuss the matter with him. If any amendment is necessary, I could bring it to the house. It is quite probable that none is required, because this other legislation has been in existence and has met all the needs of quite a number of cases. That would seem to indicate that the law as it stands is all right.

Mr. Macdonnell (Greenwood): Will the minister draw to his attention the declaration that the man is an agent?

Mr. Garson: He is probably aware of that because he drafted the bill.

Mr. Green: May I point out to the Minister of Justice that the Department of Reconstruction and Supply Act was never used for the purpose of taking over a man's business.

Mr. Garson: The Department of Reconstruction and Supply Act is the name under which that piece of legislation now goes, but the antecedent of the legislation is the act setting up the department of munitions and supply. As hon. members are aware, most of these sections were carried forward from one statute to the other, so I do not think anything turns on the title.

Mr. Green: But the legislation only applied to an investigator, and not a controller.

Mr. Garson: That is true, but I think my hon. friend will agree that under the War