

The Chairman: It is moved by Senator Roblin, seconded by Senator Macdonald:

That Bill C-42 be amended by striking out lines 3 to 9 at page 17 and substituting the following:

"fied in the regulations."

All those in favour of the motion please rise.

All those against the motion please rise.

The Clerk of the Senate: Yeas 8. Nays 17.

The Chairman: I declare the motion lost.

Senator Forsey: I wonder if I might ask the minister a question about paragraph (k) of clause 20.

Paragraph (k) empowers the board to make regulations "notwithstanding any provision of the Bank Act, authorizing and empowering" the banks to do certain things.

I am wondering whether he thinks that is effective by itself or whether it should not include also the word "requiring," because it is difficult to see where in the clause the power would come to require the banks to do anything simply by authorizing and empowering them to do something. I am wondering whether there is not an inadvertent omission there.

Hon. Mr. Gillespie: Senator Forsey, my understanding is that the banks were fully consulted with respect to this particular provision and the indication is that they are willing to go along with it. We have no reason to believe that additional words would be required.

Senator Flynn: I want to put on the record my view that this provision is destined to have the banks operate part of the rationing system by having them burn the coupons. The consumer would stick his coupon to a sheet, and the banks would have the duty to burn those coupons.

During the last war I had occasion to be counsel for the eastern part of Quebec for the Wartime Prices and Trade Board and the other administrative body, and I had the rather sad duty of suing a bank employee who, instead of burning the coupons, was reselling them.

Senator Perrault: Recycling them.

The Chairman: Shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: Part III, General and Administration.

Shall clause 21 carry?

Senator Roblin: Madam Chairman, I have a question of the minister in connection with paragraph (a) of subclause 21(3). Subclause (3) outlines what constitutes a good defence against something which the board has compelled someone to do, and paragraph (a) reads:

arising out of a delay or a failure to provide, sell or offer for sale or exchange any product—

But there is another part of the transaction that might be included here, and that is to take. For example, it is easily conceivable that there might be some regulation of the board which prevents someone from taking a product that they were

[Senator Roblin.]

under contract to take, and this should be a transaction that ought to be included under subclause 21(3)(a) in order to make sure that all aspects of the matter are covered.

I am wondering whether the minister has run across this point.

Hon. Mr. Gillespie: Senator Roblin, I have consulted my legal adviser on this, and he tells me that it is the view of the drafters of the bill that this subclause should be sufficient as it stands. If you would like to put forward a further view, I would be pleased to consider it.

Senator Roblin: I will not have to administer the act, so I am not going to worry about it any more. All I can say is that you have been warned.

The Chairman: Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 22 carry?

Senator Roblin: Madam Chairman, this is one of the most unsatisfactory clauses in what is generally a rather unsatisfactory bill. It provides, as honourable senators know, for a special tribunal that the Governor in Council may provide for. The job of this tribunal will be to hear and determine complaints of deprivation of property occasioned by any regulation under this proposed act.

I entirely approve of a special tribunal to deal with problems that arise. My regret, however, is that this one is so limited in almost all its particulars. First of all, it is not mandatory. The minister may say that the government is going to do it, but I would feel very much better if it read "shall" rather than "may." I intend to propose that it be amended to read "shall."

In view of the tremendous powers that we have discussed today and the enormous scope of regulation-making and sub-delegation and the overriding of statutes, and all these other things that we have been worrying about today, the fact that the special tribunal is not a mandatory one strikes me as being incongruous. It ought to read "shall," and if it cannot read that way by amendment, I would certainly appreciate the minister's assurance that in fact such a tribunal will be set up.

Even if he does tell me that he is going to do it, that will help only to a certain extent. I find it extraordinary that the scope of this tribunal is so limited. It speaks of the hearing and determination of complaints of deprivation of property. I don't know what "hearing and determination" happens to mean in this connection. Does it mean that awards can be given if some right of property has been trespassed upon? If that is the case, I certainly think we ought to instruct this tribunal that the awards should be just and equitable in the circumstances.

As we related to this chamber the other day, we cannot be at all satisfied that boards of this nature will grant equity in terms of their relief. We have seen that it is not part of their instruction, and our experience with other boards indicates that you do not always get equity unless you make sure it is included in the law. The lawyers will have a fine time with this if it is not.