

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Wednesday, July 24, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A-5, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. CAMPBELL (Acting Chairman) in the Chair.

The ACTING CHAIRMAN: Gentlemen, Mr. McEntyre of the Department of National Revenue is here to make some representations with respect to the Bankruptcy Bill, and I will call upon him now.

Mr. J. G. McEntyre, Legal Assistant, Department of National Revenue (Taxation): Mr. Chairman, Honourable Senators, in the administration of the income tax we have occasion to study the Bankruptcy Act and procedure, and when this bill was introduced in the Senate we considered it and found in it two provisions which we think conflict with provisions in the Income War Tax Act. I prepared one memorandum dealing with each of the provisions which we think conflict. Copies of these memoranda were sent to the Minister of Justice, the Minister of Finance, the Secretary of the Committee and Mr. Reilley, the Superintendent of Bankruptcy. I think perhaps the simplest procedure would be for me to read the memoranda. The first one deals with section 126 of the bill, with respect to priority of claims. Our particular interest in that is the claim for tax deductions made at the source by an employer from the salaries and wages paid to his employees.

Under section 126 of the bill the claim for income taxes deducted at source would appear to rank with the last of the prior claims at paragraph (j) of subsection (1).

Section 92, subsection (2) of the Income War Tax Act requires employers to make deductions from the salaries and wages paid to their employees and remit these moneys to the Receiver General of Canada. In the determination of the employees' income tax liability at the end of the year, credit is given for the amounts so deducted. In this way the employer becomes the fiduciary agent of the Crown in the collection of income tax on a "pay as you earn" basis.

In order to protect the Crown against the event that the employer should fail to remit the amount of taxes deducted at source, it is provided at section 92, subsection (7A):

Every person who deducts or withholds an amount under this section is liable to pay to His Majesty on the day fixed by or pursuant to subsection two of this section an amount equal to the amount so deducted or withheld and such liability shall constitute a first charge on the assets of such person and shall, notwithstanding the Bank Act, the Bankruptcy Act or any other statute or law, rank for payment in priority to all other claims, either of His Majesty in right of a province of Canada or any other person, of whatsoever kind heretofore or hereafter arising, save and except only the judicial costs, fees and lawful expenses of an assignee or other public officer charged with the administration or distribution of such assets.

Hon. Mr. LEGER: I do not think the draftsman meant that those taxes would be a claim of the Crown. They are property of the Crown.