

Combines Investigation Act

Mr. Crestohl: Here is the classic clash between the producer and the consumer, and we see in this section the widest form of loophole for the offender to be able to escape through when you enjoin the judge and virtually compel him or suggest to him that he must acquit the offender. I feel that saying to the judge, "You shall not convict the accused" is rather tipping the hand of the government in this classic position between the producer and the consumer, in trying to legislate in a way that would produce the greatest good for the greatest number. This has been Liberal policy and that is why we feel these loopholes should be blocked up.

Mr. Fulton: Would my hon. friend not agree that the offence of blasphemous libel is a serious offence? The section of the code says:

No person shall be convicted of an offence under this section for expressing in good faith and in decent language—

And so on. Would my hon. friend suggest that parliament has tipped its hands to the court in a manner which indicates that parliament is really in favour of blasphemous libel? Nor do we do anything of that sort in the amendment which is now before us.

Mr. Howard: I am afraid I have not been able to follow the amendment of the hon. member for Cartier. Perhaps the Chair would like to read it again.

The Deputy Chairman: The amendment reads:

That the words "shall not convict the accused" in line 6 on page 7 in subsection 2 of section 32 be deleted and be replaced by the words, "may consider it a defence if,"

Mr. Pickersgill: I think the amendment of the hon. member for Cartier illustrates very clearly how difficult it is to draft criminal legislation that does not create offences. To try to define what are not criminal offences is a rather new departure which, of course, I cannot enter into now because the committee has made a decision.

Mr. Fulton: It is not a new departure. I was able to turn up a section of the code without any trouble where this was done before.

Mr. Pickersgill: The minister was referring to mitigating circumstances set out in the Criminal Code. The whole point is that it does not really seem to me that the wording would make very much real difference in this case because it is only enumerating things which are not against the law, anyway. Everybody agrees that these things are not against the law and the courts could not convict because they are not against the law. Perhaps in the circumstances the hon. member for Cartier, having illustrated very well what a confused kind of situation is being created by the

legislation, would feel that he had served his purpose if he did not particularly press the amendment further.

Mr. Crestohl: In the light of the explanation by both the minister and the hon. member for Bonavista-Twillingate, and with the permission of the committee, I should like to withdraw the proposed amendment.

The Deputy Chairman: Does the committee give permission to the hon. member for Cartier to withdraw his amendment?

Some hon. Members: Agreed.

Amendment withdrawn.

The Deputy Chairman: I understand that the minister has an amendment to section 32?

Mr. Fulton: If the discussion on subsections 1, 2 and 3 is finished; if not, we should wait until it is over.

Mr. Howard: I have a few remarks to make on subsection 1 and they relate to the actions of the court or the authority of the court to impose penalties if a person is convicted under this section of conspiring to do certain things. During the discussion on second reading a difficulty arose which I do not think is quite the same problem that we have at the moment. It is contended that if there is a conspiracy to enhance prices the courts would have some authority or discretion to adjust the amount of the fine so that it will bear some relationship to the profit picture of the corporation or corporations involved, and so that the penalty will be imposed for an infraction of the law and so that society will be able to recoup to a degree the additional amount, for argument's sake, that it had to pay during the time that such conspiracy was in existence. Perhaps the best way to get at the point at this stage is to move an amendment which relates to certain words in lines 28 and 29 of subparagraph (d) of the original bill. The amendment reads:

That subsection 1 of section 32 in clause 13 be amended by deleting therefrom the words "is guilty of an indictable offence and is liable to imprisonment for two years" in lines 28 and 29 and substituting therefor the following:

"Is guilty of an indictable offence and liable on conviction to a fine which shall not be less than 5 per cent of the total net profits of his business for the five years immediately preceding the year in which the fine was imposed, or if the conspiracy, combination, agreement or arrangement existed for less than five years the fine shall relate to the lesser period of time, or should such total net profits, if any, not total twenty five thousand dollars, then to a fine in the discretion of the court, or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

That, I should think, sums up pretty well the arguments already put forward in answer to the point raised in objection to the proposal.