

Defence Production Act

some day and say, "Look here; see what you have done to my business." I think all that has saved us is the fact we have always left the business in better shape than we found it; but if we should leave a business in worse shape than we found it I think we would have an action against the crown, and nothing in this clause would interfere with it.

Mr. Fulton: Under ordinary law the crown is responsible for the wrongful acts of its servants or employees within the scope of their employment. Does not this legislation which in effect exempts or absolves a controller from the consequences of his acts at least lead to the danger that the person wronged will have no recourse against the crown? If it is provided here that the employer is not responsible at law I should think it would be at least open to argument that the intention and the effect of the section would be to extend the same exemption to the employer, which in this case would be the crown. The minister has said that is not the intention, but I wonder if this section should not at least stand until that point could be looked into, because it seems to me to open the door to the possibility of complete exemption for any wrongful act or any injury which may be done the person whose plant may be controlled.

Mr. Howe: This clause has been used to protect many officers of the government. It was a standard clause in the wartime prices and trade board act, and we used it in the Department of Munitions and Supply Act. For myself, I certainly would not come to Ottawa and exercise wartime powers unless I had a clause of this kind to protect me personally; and no one else would.

Mr. Fulton: According to my reading of it the munitions and supply act did not have a similar provision. The last one passed during the war, chapter 8 of the statutes of 1943, extended only to investigators, not to controllers, though the minister appointed a number of controllers during the war. As to the wartime prices and trade board, they had no power to take over a business. They had power to set prices, and so on, but not to take over a plant and operate it. So this is an extension of wartime powers now being made applicable to controllers.

Mr. Howe: My hon. friend has asked me a good many questions; now let me ask him one. Does he think we could get many good men to come to Ottawa if all their acts on behalf of the government made them personally liable? What does he think?

Mr. Fulton: Yes, I should think so—

Mr. Howe: I would not want to be one of them.

[Mr. Howe.]

Mr. Fulton: —if you gave them a written undertaking that if they were acting in good faith the government would stand behind them. I should like the point cleared up that in the munitions and supply act this exemption was not given to controllers. As I say, from my reading of section 11 of the act of 1943, the last one passed, it extended this exemption to investigators, but subject to correction I cannot find that it was ever given to controllers by statute.

Mr. Howe: Exemption was given to them in the orders in council appointing them, under the War Measures Act and the munitions and supply act. I can assure my hon. friend that it is a necessary clause. If it were removed we would not be stripped of this power, because we would take it under the Emergency Powers Act; but if that protection were removed I am sure about half my staff would go home tomorrow.

Mr. Macdonnell (Greenwood): It seems to me that we are in agreement as to what should be done. The only question is whether the wording makes it clear. I agree with the minister that these men who come here have to be protected, and I was glad to hear the minister say there was no intention whatever of depriving the owner of the property of whatever may be his right at law. But the legal position seems rather obscured by the fact that in section 27 (2) the controller is declared to be agent of the owner. I am not going to offer any legal opinion, but I would certainly like to know whether the Minister of Justice will say the position is perfectly clear, in view of that declaration of agency of the controller, coupled with section 36. I should think the point we are making could be covered very easily by adding something to section 36 which would provide that while the controller was not responsible, nevertheless his principal, namely the government, was responsible. As it is now it seems to me that a clever lawyer could argue there is no foundation left for action.

Mr. Green: If the intention is as the Minister of Trade and Commerce has expressed it, that while the controller would not be liable the individual would still have a claim against the crown, what objection would there be to making that clear by adding a clause at the end of the section to this effect: "provided that rights against the crown shall not be affected hereby." That would make it clear that this section does not deprive the aggrieved person of his claim against the crown.

Mr. Howe: It has been made abundantly clear that every clause in this bill affords