

Combines Investigation Act

language in use in the law of our land, in the Criminal Code and in criminal matters. I therefore move:

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," etc.

The section would then read:

—The courts may consider it a defence if the conspiracy, combination, agreement or arrangement relates only to one or more of the following—

The Minister of Justice is familiar with the terminology customarily used in statutes and should, I think, support a motion that removes a command of this kind. A command not to convict is an unusual command to give in our jurisprudence.

Mr. Fulton: Mr. Chairman, I am afraid I cannot accept or agree with the point of view of the hon. member who moved this amendment when he says that the effect of these words is unusual. The desirable feature of all legislation of this type is to make it clear what is the offence on the one hand and to make it clear what actions do not constitute an offence and will not result in conviction on the other. I therefore do not agree with the hon. member's interpretation when he says that these are unusual words. May I refer the hon. gentleman to one example that I have been able to turn up quickly, subsection 3 of section 246 of the Criminal Code, which reads:

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

And so on. I am unable to see any difference in effect and hardly any in detail between those words and the words we use here, "the court shall not convict," so my hon. friend's point is not well taken in the first place.

In the second place the effect of his amendment I think, would be to establish a principle that no one would want to follow and that is the principle of saying in effect that the court can consider only this one defence. In other words, you would be depriving an accused person of all other defences because you would have said in effect that in a charge under the combination section "the court shall consider it a defence if the accused establishes so and so". That, it seems to me, would certainly open the danger that the courts would say, "Well, since parliament has provided for just one defence then by necessary implication there are no other defences", and the effect of this would be to make a change in the law and in the principles with regard to trial that I certainly would not be able to accept.

Mr. Crestohl: If my amendment did nothing else but draw to the minister's attention that

[Mr. Crestohl.]

only one defence might be open to an accused, and if he thinks he can remedy that, I see no reason why the minister, if he cannot accept the amendment, should not express his appreciation for having had drawn to his attention a loophole which he may be able to plug even though he rejects the amendment.

Mr. Fulton: I do not think that point follows at all because it is not the minister who has established the defence. The courts have entertained defences to charges under the combines legislation on the basis of their interpretation of the statutes. What you would be doing would not be preserving the existing jurisprudence as we have all agreed it would be desirable to do, but with respect to the defence side of it you would be narrowing down all the jurisprudence in one fell swoop to just one possible defence.

Mr. Crestohl: But does the minister not appreciate the fact that if the court hearing the evidence finds there is room for defence its hands are completely tied notwithstanding subsection 3 of the act? The court may find any one of the offences listed in the other sections of the act that are brought before it. As long as any of the items enumerated in subsection 2 are proved then it must acquit even though there may have been proof before it than an offence had been committed.

Mr. Fulton: That, Mr. Chairman, is a complete misconception of the effect of our amendment. I do not know how many times we are going to have to cover the same ground. Our amendment does not say the court must acquit if the accused establishes any one of these points. The amendment taken as a whole says that the court shall not convict if the accused shows that the arrangement related only to one of these points; and it goes on to say that notwithstanding that the accused was able to show that his arrangement embraced one of these points if in fact the arrangement went further than that and amounted to the creation of a combination having these disadvantageous effects then there might still be a conviction despite the fact that one of the incidental features was one of the purposes enumerated in subsection 2.

I am afraid that the trouble with my hon. friends opposite, Mr. Chairman, is that they have persisted in their misconception of the whole scheme upon which these amendments have been founded.

Mr. Crestohl: I point out that it is not a misconception.

Mr. Fulton: It certainly is.