

*Oil and Petroleum*

We have had occasion in the House and in committees to study the impact of clauses of this kind and I feel, as a matter of practice and of caution, that this should not be done. This applies not only to members of the opposition but to private members on the government side. I spoke to some of my colleagues who sit with me on the joint statutory instruments committee who have seen at first-hand precisely what certain officials do. I am not referring to elected branches of government, although I will have something to say about them from time to time. I am referring here to members of the bureaucracy and the civil service who, probably with the best intentions in the world, twist, torture and pursue clauses such as this one to ends which were never designed by the legislation to be dealt with.

I believe that when we are giving to the government a great deal of power which it in turn will be delegating to a number of people and a number of boards, the minister should put on record the government's and his views. In this case he should state his views on what is contemplated under clause 18(b). It is simply one of these suspender-belt, safety-pin kind of clauses where the government says, "I may have missed something here and therefore I will put in a clause to cover it"? If that is the case, I do not like it and I am prepared to object to it. If the minister has a valid reason for putting it in, perhaps he would give it to us.

**Mr. Macdonald (Rosedale):** As is the case under our legislative practice, we do not attempt to set out in advance all the possible circumstances under which a modification might be necessary by the administration in the application of a particular statute. We recognize that it is difficult to predict all the circumstances which might arise, particularly in a commercial statute which is sought to apply to the infinitely various combinations of fact which arise in a particular community. Therefore, as much for the benefit of a particular taxpayer as for the benefit of the administration, it is wise to have residual power, which this one indeed is, so as to make certain that if a situation arises that is not covered by the exact terminology here, the governor in council may act by way of regulation for the purpose of setting that situation right.

I take it that that was inherent in the decision of the House in earlier years to set up the statutory instruments procedure. The basic assumption is made that in order to have flexibility in administration, powers of a more general kind will be required, but that the desirable arrangement we have made within the confines of the House is to have a statutory instruments committee which may study not only the formulation of these instruments from time to time but may go into some detail in the manner in which they are carried out. Recognizing that the administration will need this much flexibility from time to time, we also recognize that those using it should be under the potential scrutiny of the committee so that any excess of power or misapplication of this authority would then be subject to examination and possibly, in due course, criticism in the House.

To strike out this part of the clause may indeed make it difficult for the government to administer this part of the act. Also, it may be doing an injustice to an individual or a firm in the case of an export which will be impossible to

[Mr. Baldwin.]

correct, for legal reasons, without coming back here for legislation. It is desirable to have this kind of residual power if close scrutiny is applied to the manner in which it is exercised.

**Mr. Baldwin:** I am glad to say that the minister and I have progressed to the stage where I can say frankly that I do not doubt his bona fides in making that statement. In so far as he personally is concerned, he probably feels that; but he will not be in the same portfolio forever. In fact, I have a feeling that in a year or so he will not be there. Perhaps this is a pious hope, but the fact is that another person may be in his position. The minister's good intentions and his bona fides now will not necessarily be binding upon his successor.

I would like to give an illustration of the dangers of a clause of this kind, and when I have finished I will ask the minister to give us certain assurances in this regard. I am glad to see the Solicitor General here because this is something which he probably does not know and it affects his department. I am using this illustration as an analogy to show the dangers of this clause. There is regulatory power under the Penitentiary Act that under certain circumstances punitive action and sanctions may be taken against people who are serving sentences in penitentiaries, and by way of punishment the statutory right to limitation of the time they are serving can be denied them.

It happened, as a matter of fact, through something brought to our attention this morning, that despite the fact that the statute provides that this shall only be done by way of a trial in the penitentiary under the authority of the Penitentiary Service people, it has been done time and time again without the protection which the statute provides. In other words, there have been obvious abuses of the regulatory power which has been granted. That is one aspect of which many members of the House are well aware. Another aspect is that it is now possible, despite the Statutory Instruments Act, to so define the orders in council which may be passed that they need not be published. I notice that the words "governor in council may, by regulation" appear. If in fact the government takes that regulation under the Statutory Instruments Act, then as a regulation it must be published. But we have the same problem that I spoke of just a few minutes ago. We found there were a number of administrative directives issued which had all the effect and force of an order in council in many respects, as they affect the liberties of a great many people, but because they were called directives they were not published. They did not have to be published. No one knows what they contain. The committee cannot find out what they contain, and I think this is a danger we always face.

● (1530)

If the minister thinks, I have made an adequate case, and that when the word "regulation" is used here it is being used under the terms of the Statutory Instruments Act and regulations passed under this clause would be brought to the attention of the people involved, then I will be a great deal more relieved than I am now.

**Mr. Macdonald (Rosedale):** Mr. Chairman, the regulation as used here, I am advised—and it seems to be well