

Financial Administration

that was the section under which we discussed the matter in the public accounts committee.

Section agreed to.

Section 37 agreed to.

On section 38—*Term of contract that money available.*

Mr. Macdonnell (Greenwood): I wish to raise a question here as to the undesirability of importing into a contract terms which are not written into it and which are merely deemed to be there. This question was raised by the hon. member for Eglinton in the committee, and I propose to read something from his evidence. But first of all I want to meet the point which has been made—and I know it has been quite sincerely made—namely that the intent of this clause is to maintain the control of parliament over expenditures. Having said that, I wish now to read from evidence of the hon. member for Eglinton because I think he has made it clear, and I do not see any reason why the objective of those who framed the act cannot be achieved without running the risk which the hon. member for Eglinton pointed out. This is a quotation from the evidence of the hon. member for Eglinton in the committee:

I can see the desirability for a provision like this from the point of view of maintaining parliamentary control over expenditure, but I am wondering how it is going to affect the rights of private persons contracting with the crown. Now, this seems to say that even though it is not made an express term of a contract entered into by the crown with a private person, nevertheless, by this legislation a term is imported into that contract which might work very seriously to the disadvantage of that person if he did not have the good fortune to be aware of the law. It may not be that that is the intention of the act, but it seems to me that that is a consequence that might flow from it.

Again, from the evidence of the hon. member for Eglinton:

It seems to me there cannot be any objection to that term if it is written into the contract in every case, but I have a very strong aversion toward legislation which simply takes every government contract and says, whether there is a clause in there or not, it will be deemed that this clause is written in there, whether people contracting with the government know anything about it or not.

Before we go any further perhaps I might make this suggestion and it is certainly not said with any disrespect to the parliamentary assistant. This is a legal question and since the hon. member for Eglinton who is a lawyer is not here, and the Minister of Finance who is also a lawyer is not here, perhaps this clause might stand.

Mr. Sinclair: I can give the explanation which the minister gave when he came before the committee two nights ago on this very clause. It has always been a term of

government contracts that there was a condition that a parliamentary appropriation would have to be passed. That is the first question.

Mr. Macdonnell (Greenwood): Does the parliamentary assistant mean an implied term?

Mr. Sinclair: It has been a term as far as practice is concerned. I am quite sure any contractor who consulted his lawyer with regard to the terms of such a contract would learn that since confederation it has been to the knowledge of every contractor doing business with the government that first of all a parliamentary appropriation would have to be passed; and second, there would have to be unencumbered funds in that amount. The first situation which arises is mainly owing to the climatic conditions of this country. Our estimates are brought down during the course of the spring session. They are generally not approved until June or July. Public works in the northern part of the country, if they are not commenced in May or June, are very likely not to be finished before the cold weather arrives. Contractors have been willing to undertake those contracts with the knowledge that if parliament did not approve the appropriation then there would be no money forthcoming. But the minister did point out that since confederation there has never been an occasion like that. The different point that arises of course is one which could have arisen in 1949 where, between the submission of the estimates in the house and their final approval by the house, an election intervened. In that case I think the contractor would be doubly careful not to embark on any contract with respect to which there might be some likelihood of another government coming in and not going ahead with it.

All that this section 38 now contains in statutory form is the practice which has been followed since confederation. The point raised by the hon. member for Eglinton was not that. He went along with that, but he thought that it should be a term written and spelled out in every government contract that this was subject to an appropriation of parliament being voted and being available. It was pointed out at that time that the great bulk of government contracts are not affected by this consideration. It is the contracts which are awarded for work such as those which, because of the short construction season in many parts of Canada, have to be commenced late in the spring if they are to be done at all. And certainly every contractor who puts in a bid for that type of work is well aware that there has been this practice since confederation, of there being a contingency of payment that parliament should pass the appropriation.