WE MAKE LAWS AT OTTAWA WITHOUT PROVISION FOR THEIR ENFORCEMENT

The Member for South York Raises an Interesting Discussion in Connection With Tariff and All Federal Legislation—In the United States All Federal Laws Are Put in Effect By Federal Machinery—In Canada We Rely on the Provinces, Hence the "Nullification" Status.

Ottawa, Jan. 10.—In the commons today the new customs tariff was
up for discussion. Hon. Mr. Fielding was guiding the bill thru the
house. W. F. Maclean raised an important issue as to who was responsible for the enforcement of the
clauses of the act against imports or
manufacturers or both conspiring to
ephance prices against the public of
goods or products covered by the tarin law. And here is the official de-

On Section 11—
Mr. Fielding: Section 11 deals with
the procedure in relation to the establishing of a charge of conspiracy,
combination, etc. The clause as it reads

department of justice, we to strike out the words

those proceedings?

Mr. Fielding: In this case they will be proceedings that hight be instituted by anybody. It deals with disclosures that might be made in the ordinary courts of justice.

Mr. W. F. Maclean: Is there any instruction in the act to the attorney general of Canada to proceed in these cases on his own motion?

Be governed by the judgment of the court. Mr. Bourassa: It will not be necessary to take special proceedings?

Mr. W. F. Maclean: I think we are entitled to have a statement by the minister of justice (Mr. Aylesworth) and I shall call it 6 o'clock.

At 6 o'clock committee took recess. Committee resumed at 8 o'clock.

The attorney general of Canada hereby required to enforce this

but in connection with the rails sion of unfair combinations to put the way act. The responsibility ought to prices of goods that come within the be on the government of Canada, meaning of this tariff act. and it ought to be especially on the should not be left to the private litigant, who may or may not care to prosecute. And, furthermore, I believe the expense of enforcing an act of this kind should be borne by the public exchequer of Canada, and not left to the private litigant. Perhaps the minister will give that matter consideration, because I propose to bring that up. The real trouble in Canada to-day in regard to such acts for the protection of the public is that the enprocess. It is no part of the duty of the attorney general of Canada, so far as I am aware (except in cases where it is specially made his duty by statute) to engage in the administration to the control of the public is that the enprotection of the public is that the enprovinces. protection of the public is that the enforcement of them must remain in the hands of some private party, who may be a poor man, but a new doctrine has been laid down in the United any time it becomes the duty of the control of the laid to be a poor man, but a new doctrine has been laid down in the United any time it becomes the duty of the control of the laid to enforce this states, and I believe it is a good doctrine. It is in the interstate commerce bill, and it is in other laws so long as I have charge of that which they have in the United States department, that duty will be discovered as special provision explicitly stating that: The attorney general of the United States is hereby required to do this and to do that, to enforce that this and to do that, to enforce that prosecuting not only violations of the law, and I say this law against comtaring law, but of other Dominion laws,

Mr. Fielding: Of course; this is so much a question of law that I do not !. care to offer any opinion of my own. The criticism that naturally arises in my mind is that the administration of tent placed in the hands of provincial authorities, the attorney general special cases general of C special ada the party in control. I only make that remark, however, as it is a matter for the consideration of the attorney general, and I shall leave it to

Mr. W. F. Maclean: The same conditions exist in the United States. The state governments largely administer the law, but in regard to the railway act, and, I believe, the tariff act, the I will not vouch for that at this moment, but in the railway act of the United States the protection of the public against frauds in connection with that act is expressly placed up-on the attorney general of that coun-try. I say that the same thing ought to be the law in regard to the rail-way act in this country, and in reup this matter in connection with the tariff act in the United States.

Mr. Bourassa: I do not think this should pass without consideration being given to the point raised by the hon, member for South York (Mr. W. F. Maclean). There is no doubt that if we mean to make this operative we should not load those who are interested in breaking such combines with too large an expenditure. Under the laws existing under the previous tariff there was a great deal of difficulty in this respect. The minister of the United States on this matter, and the law of the United States on this matter, and the law of the United States on this matter, and the law of the United States on this matter, and the law of the United States on this matter, and the law of the United States on this matter, and the law of the United States on this matter, and the law of the United States on this matter, and the law of the United States o culty in this respect. The minister of the United States is sometimes worth finance (Mr. Fielding) may remember copying by us, as is evidenced by the by the amendment brought down. I are taken from the interstate com-do not mean the amendment of to-day, merce law of the neighboring repub-but the clause brought in by the min-ister, that difficulty of inquiry into these combines will simply be rendered 3, page 3202, the act of August 27th, greater, because the people interested 1894: will undoubtedly hesitate a great deal before they go to any amount of personal expense to find out the evidence as to these combines. As the minister knows, when there is such a combine the parties interested take great care not to let the public know circumstances and the terms of their combine. The present minister of marine and fisheries (Mr. Brodeur), who was at the time minister of inland revenue, knows himself what difficulty he had to find out the particulars of the combine arranged the American Tobacco Company. had to act in a very energetic and I

Mr. Brodeur: This gives more facilities than formerly existed. Under this new legislation, when a contract comes before the court, and it is combination, etc. The clause as it reads says:

That whenever from or as a result of proceedings in any court of justice, it appears to the satisfaction of the governor in council, etc.

The suggestion is offered that the expression "any court of justice" is too broad, I think my hon, friend, the leader of the opposition, suggested that we might consider whether other words could not be used of a more combination exists, then if, by the judgment of the court, it is found that there is a combination, the government will be guided by that judgment, and will reduce the duties imposed upon the article in question; so that, instead of it being more difficult for these parties to secure enforcement, this provides another means of bringing the question before the court.

Mr. Bourassa: What kind of proceedings will be instituted? claimed by one of the parties that a

could not be used of a more ings will be instituted?

Mr. Brodeur: If before the courts department of justice, we strike out the words of justice," and to insert brings a contract before the court and "any court of justice," and to insert instead thereof "the supreme court, or exchequer court of Canada, or in any superior court or county court in Canada." That confines it to the court in the court, it is found there is a combination, then if by the judgment of the court, it is found there is a combination the government will be governed by the judgment of the court.

truction in the act to the attorney theral of Canada to proceed in these ages on his own motion?

Mr. Fielding: No.

Mr. W. F. Maclean: Why should it to be the law?

Mr. Fielding: We have another produce in another court.

At 6 o'clock committee took recess.

Committee resumed at 8 o'clock.

Mr. W. F. Maclean: Just before 6 o'clock I directed the attention of the government to clause 11 and sub-section 2 of that clause which provide with reference to violations of the law in proceed. with reference to violations of the law in regard to combinations to unfairly enhance prices to the public. I asked the minister of customs, and intend to elaborate the argument a little later—I say that the law should read this way that in these two clauses, as to the prosecution of persons guilty of such improper combinations. I repeat that question. I ask the attorney general for the Dominion to explain if there is any other law than is to be found in these two clauses for the suppres-Not only in connection with this, in these two clauses for the suppression of unfair combinations to put the

Mr. Aylesworth: I presume the

11. That whenever from or as a result of proceedings in any court of justice, it appears the satisfactions. faction of the governor in council that with regard to any article of commerce there exists any conspiracy, combination, agreement or arrangement of any kind among manufacturers of such articles or dealers therein, to unduly promote the advantage of the manufacof the consumers, the governor council may admit the article free of duty, or so reduce the duty thereon as to give to the public benefit of reasonable competition in the article, if it appears to governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article.

2. That whenever the governor in council deems it to be public interest to enquire into any conspiracy, combination, ment or arrangement, alleged t exist among manufacturers or dealers in any article of commerce to unduly promote the advantage of the manufacturers or dealers consumers, the governor in council may commission or empower any judge of the supreme court or exchequer court of Canada, or of any superior court in any pro-vince of Canada, to enquire in a the governor in council conspiracy, combination,

connection with the enquiry into fact that in the labor legislation just the paper combine, and I think that introduced here many of its clauses

> Every combination, conspiracy, trust, agreement or contract is hereby declared to be contrary to public policy, illegal and void when the same is made by or between two or more persons or corporaforeign country into the United tion, conspiracy, trust, agreement or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the mark-

States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such any manufacture into which such imported articles shall enter or is intended to enter; every person who is or shall hereafter be engaged in the importation of goods or of any commodity from any foreign country in violation of this section of the act, or shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such persons shall be fined in a in any court of the United States such persons shall be fined in a sum no less than \$100 and not exceeding \$5000, and shall be further punished by imprisonment in the discretion of the court for a term not less than three months and not exceeding twelve months.

There is the law of the United State which says that everybody who shall

There is the law of the United States which says that everybody who shall make a combination in respect of any article imported under the tariff law of the United States shall be guity of a misdemeanor, and shall be subject to a fine and may be sent to jail for twelve months. Section 74 of this United States act says:

The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violation of section 78 of this act, and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the attorney general, to institute proceedings in equity to prevent and restrain such violations. It is imposed upon the attorney general to the United States upon the attorney general to the United States in their respective districts, under the direction of the attorney general to institute proceedings in equity to prevent and restrain such violations. It is imposed upon the attorney general to the United States are the training that the United States are the training the United States are the training that the united States are the t ly institute proceedings which will restrain these unlawful combinations. He is charged with the duty, and it is expected that he will take out injunctions and immediately restrain any combinations in connection with the

this and to go that, to efforce that law, and I say this law against combines ought to be in that condition in this country. The responsibility of with the position of the United States of the responsibility of with the position of the United States in that respect. Clause II and sub-section 2 of that clause in our tariff act the minister of finance (Mr. Pielding) has just told him that that did not apply to the customs law.

I ask if the parties were punished underlying the stronger of the country. The autorney-gen-

the newspapermen and succeeded in Mr. W. F. Maclean: What I said may demonstrating that there was a combihave conveyed that impression, but I nation, did not intend it. What I say is that Mr. W. F. Maclean: And where was there is no punishment for combina-tions under the law of Canada in con-nection with the duty, but, in the Unit-for whom he is responsible at that ed States, there is the punishment of a fine with the possibility of imprison-ment, and the attorney-general of the duty.

States is required to enforce Mr. W. F. Maclean: Did he do his that law. But there is something further. At page 602, volume 4, of the United States compiled statutes, I find clause 106 as follows:

Mr. W. F. Maclean: Did he do his duty?

Mr. Brodeur: Why did not the hon. gentleman (Mr. W. F. Maclean) lodge a complaint—

Real Regulation. That for the enforcement of the provisions of the act entitled "An Act to Regulate Commerce," approved Feb. 4, 1887, and all acts amendatory thereof or supplement-ary thereto, and of the act entiti-"An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," approved July 2, 1890, and all acts amendatory thereof or supplementary there-to, and sections 78, 74, 75 and 76 of Taxation, to Provide Revenue for the Government, and Other Purposes," approved Aug. 27, 1894, the sum of \$500,000, to be immediately available. Is hereby appropriated out of any money in the treasury not heretofore appropriated to be not heretofore appropriated, to expended under the direction of the attorney-general in the employment of special counsel and agents of the department of justice to conduct proceedings, suits and prosecutions under said acts in the counts of the United States.

Now, here we are trying to deal with combinations in restraint of trade, combinations that injure the consumers. And we propose to put these combinations down by certain clauses under this tariff act. But these clauses are so weak that they cannot have the desired effect. Further, as I have pointed out, there is no provision for the enforces.

Sir Wilfrid Laurier: Not so much as Sir Wilfrid Laurier: Hear, hear. my hon. friend (Mr. W. F. Maclean)

does. Mr. W. F. Maclean: Well, yesterday. one of the right hon, gentleman's col- happened to be a friend of

among certain manufacturers of this ers. Well was there a prosecution uncountry to put up prices.

Mr. Brodeur: If there be a combination in restraint of frade, cannot the parties to it be punished under the Tobacco Trust.

did not apply to the customs law.

Mr. Fielding: No. The hon, member der the criminal law, the attorney-gen(Mr. W. F. Maclean) said that the only punishment in such a case was in the reduction of the duty. That is not the Mr. Aylesworth: I was counsel for

Mr. W. F. Maclean: Let the hon. minister sit down. I have the floorand he wishes to make my speech. And we are told that a tobacco trust was proven to exist. Perhaps the minister (Mr. Brodeur), who was minister of inland revenue, can tell us what was done in that case. There was a combination there. Was there any enforcement of the criminal law against this tobacco trust and the oil trust and all these others? No. Why? Because we have not in our law that mandatory state-ment which says it shall be the duty of the attorney-general of the Do-minion and of any attorneys he may have at his disposal—and I imagine the crown attorneys of every province are at his disposal.

. Aylesworth: Not at all. Mr. W. F. Maclean; Then the hon. gentleman confesses that he has no attorneys at his disposal.

Mr. Aylesworth: Will the hon, gentieman allow me to correct him? If he will refer to the provisions of the Bri- be the duty of the district attorneys

effect. Further, as I have pointed out, there is no provision for the enforcement of the law and the punishment of the guilty parties by the attorney-general of the exposures of corrupt acts confesses also, that in connection with the united States—and I hope the prime minister pays some respect to the laws of the United States—

And the attorney-general of the United States is authorized and directed, whenever he has reasonable grounds to believe that any person corporation or company has knowingly received or acc ed any sum of money or other valuinstitute. in any court of the United States of competent jurisdiction, civil action to recover such

On the next page I find the follow-

It shall be the duty of the several district attorneys of the Unit-States, whenever the attorney-general shall direct, either of his own motion or on the request of the interstate commission, to institute and prosecute such proceedings as are provided by this act, and such proceedings shall not preclude the bringing of suits for damages by any of the parties injured.

Then, at page 41: It is hereby made the duty of the attorneys of the United States by proper proceedings, to prevent any inlawful interference with rights and equities of the United hereinbefore mentioned.

And again:

It shall be the duty of the interstate commerce commission to in-form the attorney general of all such cases of neglect or recusal, and it shall be the duty of the attorney-general to proceed at once to judicially enforce the forfeitures hereinbefore provided. Thus, in that great act-somewhat

similar to ours but much more drastic and much more in the interests of the people—there continually mandate, namely, it shall be the duty of the attorney-general of the United States to enforce the act and it shall

to do certain things in the way of reducing the tariff, but there is nothing which declares it shall be the duty of Mr. W. F. Maclean: But did the administration to enforce the crithe previous attorney-general, who minal law in connection with it. Then happened to be a final law in connection with it. Then I say—and I am not holding this govone of the right hon, gentleman's colleagues introduced a bill which is taken from this same Interstate Commerce this administration, enforce it? He did not. He said: I am not a constable. Act—practically a transfer from their statute book to ours. I say that we have no provision in this tariff law and that is all we get in connection against these combinations. In the with these combines in restraint of connection with the tariff or the rail-

United States they have a law under which punishment is provided. This enterpression of the United States is charged with the enforcement of that low, every district actionize in the United States is charged with the enforcement of that low, every district actionize in the United States is charged with that duty while the sum of Molofolis appropriated for that work. And the attorneys in the United States is charged with that duty while the sum of Molofolis appropriated for that work. And the attorneys in the United States is charged with that duty while the sum of Molofolis appropriated for that work. And the attorneys work and all the district attorneys under him are bound to see that punishment is meter what and all the district attorneys and the suppose—If the funds were at the suppose the suppose in t minister of justice of this house of commons confesses that he does not conceive it to be his duty to enforce the laws of the Dominion, that, as he says, they are to be left under the British North America Act to the provinces to enforce, where have we landed? We are in the midst of anarchy the court of Canadhave the supreme court of Canadhave the exchequer court of Canadhave the supreme court of Can institute proceedings which will research the combinations. He is charged with the duty, and it is the Tariff. Act now. My hon. Itiend (Mr. W. F. Maclean) says that no combinations in connection with the triff ight of the United States. The case of no 1 say:

These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment. These proceedings may be by way of me or imprisonment of the triff ight of the United States. The latting is not in the Tariff Act that that should be done. But it is nothing. Well, it seems to make a shall be enjoined of shall have been duly notified of such petition the court shall proceed as soon as may be to the hearing and determination of the case, and pending such petition and before final decree the court may at any time make such temporary restraint order or prohibition and before final decree the court may at any time make such temporary restraint order or prohibition as shall be deemed just in the pro-mises.

I always to the propose of read two or three extracts from the interstate comercians and the purities of the provision of the propose of the propose to read two or three extracts of the United States, and now being enforced. To day the action of the purities of the propose of t

three cases at least—in the case of the object or tring-council sees fit.

Mr. Fleiding: That is not in the criminal law.

Mr. W. F. Maclean: I speak of the criminal law relating to combinations and restraint of trade.

Mr. W. F. Maclean: The prime may have been fined and restraint of trade.

Mr. W. F. Maclean: The prime in the case of the tother with I cannot now recall. We go further now and provide that if it of the duty.

Mr. W. F. Maclean: There is no reference in it to the duty.

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Mr. J. M. W. F. Maclean: There is no reference in it to the duty.

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Mr. W. F. Maclean: There is no reference in the cooperage Trust. High officials of railways have been fined and statement of trade, and the following in the compliant of trade, and the following in the complete the duty.

Mr. B. The compliant of trade, and the following in the complete the complete the duty in the criminal code.

Mr. B. The complete the co

(Mr. W. F. Maclean) I know is a close reader of American history; anybody who reads The Toronto World can see taken by the hon, member for who reads The Toronto World can see that, because The Toronto World is a good copy of some other worlds on the other side of the line. But I am afraid my hon, friend is not as good a reader of American books as he ought to be. My hon, friend remembers that when the Canadian confederation was costablished the American constitution. when the Canadian confederation was established, the American constitution was under trial and a civil war had just concluded. He knows also that one of the reasons of that war was said at the time to be too great power given to the state. The authors of the Canadian constitution, thought they Canadian constitution thought they selves of that power and put a la would proceed differently, and one of the statute-book to see that the the differences between our constitu-tion and the American constitution is the provision with regard to the ad-ministration of justice. In the United States they have a system of federal courts and of state courts. The state courts are entrusted with the administration of state laws, and the federal courts are entrusted with the administration of federal laws. This is something which my hon friend has alsomething which my hon, friend has always forgotten whenever he has bround has arrived to exercise that power. to our attention the dispositions of the have a court of federal jurisdiction and the duty of the exchequer court. Could not partie

the administration not only of provincial laws, but of federal laws. This is something which my hon. friend should not forget. He asks: Must we submit to the humiliation of the laws with no power to the case of the Grand should not forget. He asks: Must two submit to the humiliation of having laws with no power to erforce them? We have the power to erforce them, the power is vested in the provinces. And when my hon, friend directs his diatribes against my hon. I friend the minister of justice, and charges him with a failure to enforce tu federal laws, I would ask my hon. I friend to address himself to the attorney-general of the Province of Quebec. He said a moment ago that when the Grand Trunk Railway was given a charter fifty years ago, one of the conditions was that the company should carry passengers for two cents a mile, and provide a third-class car. He says that this has not been done, and true it has not. He says: Why don't you enforce the law? Well, Mr. Chairman, he has only to apply to Mr. Foy. the attorney-general of the Province of Ontario, who is the party entrusted under our constitution to look after this matter so far as it concerns the Province of Ontario. At the party entrusted under our constitution to look after this matter so far as it concerns the Province of Ontario, who is the party entrusted under our constitution to look after this matter so far as it concerns the Province of Ontario. It is not sufficient for my hon, friend to read American newspapers, let him look at section 92 of the British North America Act, and he will find therein provided that. cok at section 92 of the British North railways are within the America Act, and he will find therein the government of Canada. I sh provided that:

Mr. Foy that, and I shall tell.

The Remedy-So Called. In each province the legislature may exclusively make laws in rela-

Sir Wilfrid Laurier: My hon. friend ment can insist upon them being carried out. That is the position that understand my hon, friend has taken and I think we have power to pass such

Sir Wilfrid Laurier: The pos

the attorney-general of the United States to enforce American laws. But in our country we have a different constitution. We have no federal courts. We have federal laws, but we have no federal courts. We have provincial courts, and these are entrusted with the districtions of the laws of the l

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