

*Combines Investigation Act*

Under the terms of the present legislation, I do not think it is essential for the government to go through that process of referring the bill to the Supreme Court should any doubt arise with respect to its constitutionality.

As a matter of fact, it has happened several times in the past that bills dealing with combines, for instance the Board of Commerce Act of 1919 as well as the Combines Act of 1928 were referred to the Supreme Court for consideration of questions of fact and law relating to those bills. In either case the Supreme Court did recognize the constitutionality of the bills and held that they fitted perfectly well within the prerogatives of Parliament.

The proposed amendment as it stands would give rise to a doubt with respect to the constitutionality of the bill as we are debating it.

Now, Mr. Speaker, you know for a fact that any bill introduced in the House of Commons is presumed to be constitutional; in other words, when a bill is referred to a court, it is considered as having been adopted pursuant to the powers of Parliament, and as coming within the jurisdiction of Parliament or of the Legislative Assembly which have adopted it.

The proposed amendment would have the effect of casting a doubt on the constitutionality of the bill, and therefore of the powers of Parliament to legislate with respect to combines.

Mr. Speaker, I do not think there is any need at this time to refer that bill to the Supreme Court.

As a matter of fact, the government has, I believe three good reasons for rejecting the amendment. First, experience has shown that any abstract question put to the courts of justice leads to an abstract answer, which is very often of little use in solving practical cases.

Second, the reference procedure historically stemmed from the lack of any right of appeal on the part of the private individual. Now, it is clearly provided in this bill that any individual or corporation that might be affected by any of the provisions has a right to appeal to the board, and may exercise that right and the board is required to give him an opportunity to be heard. The right of appeal is therefore explicitly recognized in the legislation, and no individual is now deprived of his right of appeal before an impartial court.

Finally, Mr. Speaker, we must mention that traditionally the reference procedure has been used in cases where individuals could not afford to defend their rights, or where there were conflicts between the provinces and the federal government.

● (2020)

The hon. minister who appeared before the parliamentary committee made it quite clear that contacts and exchanges had taken place between his department and the departments of the main provinces interested in the bill and that there was no disagreement which would warrant the government at this stage to question the constitutionality of the bill and refer it to the Supreme Court of Canada. Consequently, Mr. Speaker, for reasons of law, for reasons of the amendment as worded now being out of order when it should have been tagged to clause 31 and not to clause 12, and also for reasons of policy where

[Mr. Joyal.]

the government at this stage has no reason to question the constitutionality of the bill I say, Mr. Speaker, that in my opinion this amendment should be ruled out of order and turned down in its present form.

**Mr. Lambert (Edmonton West):** I want to ask the hon. member a question, Mr. Speaker. Since the hon. member actually questioned the position of the amendment, could he enlighten us on the matter? Under clause 12 of Bill C-2 we have paragraph 31 of the Combines Investigation Act, and it is precisely at the end of clause 12 of Bill C-2 that my colleague puts his amendment relating to clause 31. So I wonder where else one would put such an amendment because clauses 12 and 31 refer to two different statutes.

**Mr. Joyal:** I think, Mr. Speaker, with your permission, that there is some confusion in the wording of the amendment. Indeed it is right to argue, as the hon. member for Edmonton West (Mr. Lambert) suggests, that the amendment relates to clause 31 of the combines bill, a clause being amended under clause 12. But if the very content of the amendment of the hon. member for York-Simcoe (Mr. Stevens) is to be the coming into force of the bill to one condition, namely the decision of the Supreme Court on the constitutionality of the bill, that condition should rather be tagged to clause 31 which ties the coming into force of the bill to certain conditions which are defined under that clause 31. I think the amendment as worded now, should be turned down on a simple matter of procedure within a formulation and not as such within the content of the constitutionality of the bill.

My first argument, Mr. Speaker, is purely a procedural one, and is not a legal argument as such. It is a purely procedural argument. According to our administrative procedure, and Beauchesne and May have made it clear, if an amendment is not directly related to the clause of the bill that defines its contents, it must be declared out of order. Yet, in this case, the content of clause 31.1 of the Combines Bill is included in clause 12 while the content of the clauses concerning the coming into force of the bill is also included in clause 31 of the bill. This is why I think there is some confusion as concerns the texts, Mr. Speaker.

[English]

**Mr. Speaker:** Order, please. If there are no other hon. members who are anxious to participate in this very interesting discussion the Chair is left very much with the conclusion it had come to at the beginning of the discussion.

[Translation]

I wish to thank the hon. member for Maisonneuve-Rosemont (Mr. Joyal) for his very interesting and well-prepared speech.

[English]

I also thank the hon. member for Edmonton West (Mr. Lambert) for his very spirited intervention on behalf of his colleague and the procedural regularity of this motion.

The fact is, and this seems inescapable, that the motion would exceed the scope of the bill in several relevant particulars, not the least of which is that it does indeed appear to use the words, "notwithstanding section 31 of the act" whereas in fact the statute before us does not propose to amend section 31. Further, the proposed motion