

Combines Investigation Act

them and to leave it for the minister to make some reference in subsection 3 which would, if necessary, bring its provisions into accord with those of subsection 1. The main point is that there should be some relationship between the two subsections.

Mr. Fulton: I must say that the wording of the proposed amendment seems to be following the policy of chasing your tail, because in the light of the amendment suggested subsections 2 and 3 would not only have no purpose but would have no meaning by way of clarification or otherwise. The effect of the amendment is to do indirectly exactly what was suggested directly by the hon. member a little earlier, namely, to delete subsections 2 and 3.

I really cannot say much in amplification of what I said in explanation of the scheme upon which the present section was drawn. This is a clarification proposal based first on the retention of the present jurisprudence under subsection 1. Second, if it is a delineation of those courses of conduct which, if followed exclusively and not amounting to a combination as defined, can be followed without fear of prosecution and conviction. Third, subsection 3, provides further explanation, if you like, in order to make it perfectly clear what it is that parliament intends the combination section to cover so that those who read it may know what it is they may do and what it is they may not do. No one in the committee, in the debate on second reading, or here, has been able to suggest to me any way in which the amplification in subsection 3 of what is meant by a combination in restraint of trade is incomplete or defective in any way. That was the purpose of subsection 3.

To include the words of the hon. member for Skeena would make subsections 2 and 3 of no effect; they might as well not be there at all, because they would accomplish nothing by way of clarification. So I am not able to accept the amendment.

Mr. Howard: I feel that despite the explanation given by the minister that the purpose of these subsections is to add clarification, the provisions are designed to have a somewhat different effect. The minister said that some of the corporations were doubtful as to whether they had the right to engage in any agreement to define standards, exchange information and so on, and they did not want to do so because they felt they might run foul of the law as expressed in the provision set out in subsection 1. This was the purpose as stated by the minister on second reading.

If it is for any other purpose, that purpose is something which the minister did not indicate, and I think, perhaps, that what the minister and the government desire to do is to inject the principle of specific detriment into this section. That is why the minister wants to retain these apparently innocuous phrases such as prices, quantity and quality of the product, and so on. I suggest that the purpose is not simply that of defining the intent so that there should be no contravention of the legislation set out in subsection 1. I submit that in a roundabout way the hon. gentleman is hoping that the argument as to specific detriment can be used in the courts in connection with this legislation. When he used the words "specific detriment" in Bill No. C-59 last year it was developed as an argument which the courts consistently rejected, an argument which counsel for defending corporations has consistently maintained should be allowed. By rejecting this proposal the minister is now dragging in this matter of specific detriment in one way or another.

Amendment (Mr. Howard) negatived: Yeas, 19; nays, 50.

Mr. Crestohl: Mr. Chairman, I wish to address myself to subsection 2 and draw the attention of the committee to the words "shall not convict the accused". I find this language strange and somewhat offensive. We are now giving a judge sitting in a case a command—indeed almost a royal command—that he shall not convict. This does not allow the judge the latitude of discretion that is customarily allowed to a judge in finding whether there are grounds for defence leading to an acquittal or allowing for the benefit of the doubt. The words presently read "shall not convict the accused if" and I feel it would be more considerate language and more in line with the practice before the courts if the language read:

—the court may consider it a defence if the conspiracy, combination, agreement or arrangement relates—

And so on. The minister has a keen legal mind. I anticipate that he can appreciate the difference in that language. I have rarely seen any section of the Criminal Code or any statute that contains a command to the judge that he shall—and I emphasize the word "shall"—convict. In the present form the wording does not allow the judge the customary discretion as to whether he should convict or consider that there is a defence if certain things are done. The language I suggest would be more consistent with the