

*Succession Duty Act*

that the principle of estoppel does not operate against the crown. There ought to be some finality about these matters. It is false doctrine that the principle of estoppel does not operate against the crown. That doctrine goes back to the days of the divine right of kings and the theory that the king can do no wrong. We know now that the king, the crown, the government, operate through individuals, and the crown should be bound by the acts of its individual servants. I should like to see some limitation put on this section. As it stands now, it is capable of great abuse, not at the hands of the present minister or the commissioner—I make that plural—but without just saying it in so many words this is a terrible power to give to officialdom, bureaucracy, if they want to use it. Surely there should be some limitation of time. That is the only suggestion I make with regard to this section, that an estate shall not be opened after a certain period of time, that the doctrine of estoppel should apply against the crown. That, in brief, is my submission on this section.

Mr. ILSLEY: I do not think this is a question of estoppel. The reason why the crown want the power to reassess is that they may get more information, information that was kept from them.

Mr. HANSON (York-Sunbury): I agree that they should have that, but this is unlimited. It says, "may at any time."

Mr. ILSLEY: Those are the income tax sections. That point has, I know, been raised by taxpayers; it has annoyed income tax payers very much that the crown got wind, a good many years afterwards, of some income, which they had not said anything about, and went back at them for it. I myself, however, do not have very much sympathy with them. I think they should have said something about it.

Mr. HANSON (York-Sunbury): That is a case of fraud.

Mr. GIBSON: Or accident.

Mr. HANSON (York-Sunbury): I suggest that fraud vitiates everything.

Mr. GIBSON: It might be accident.

Mr. HANSON (York-Sunbury): Yes; but that is not fraud. If it occurs through inadvertence, that is another matter. I agree with the minister that in cases of fraud the matter should be reopened. Fraud should vitiate everything; it does, in law; and I would not ask protection for anybody in cases of that kind. If, however, as the Minister of National Revenue suggests, the matter is one

[Mr. R. B. Hanson.]

of inadvertence, arising after a period of years, when all the estate has been distributed, and perhaps redistributed—such things have happened—a grave case of hardship is created. My suggestion is that the minister put in a limitation of time, except for fraud. To my mind that is fair as between the crown and the taxpayer. Make the time ten years, if you want to, or five years; I do not know which should be adopted. But I do not like this wide open provision, because I understand it has been subject to great abuse.

Mr. ROSS (Calgary East): Suppose that some years later property turns up about which the executor or administrator knew nothing.

Mr. HANSON (York-Sunbury): He should report it, of course, and he will, in the case of a trust company.

Mr. ROSS (Calgary East): Not if the estate is closed.

Mr. ILSLEY: But a limitation would prevent it from being dutiable.

Mr. HANSON (York-Sunbury): Well, say six years. We bar common law debts after six years. It is not a violation of any principle to bar a debt. We have had statutes of limitation for years and years. Men of honourable character do not take advantage of the statute of limitations. I recall, however, that in defending a case against the crown in the exchequer court, I raised the statute of limitations—twenty years in the case of real property—and when counsel for the plaintiff attacked me for doing so, the judge on the bench upheld me and said that the crown did it regularly. I did not know that at the time, but it was a defence open to me, and I took it. I do not see why the same provision should not apply here. I am not, however, going to labour the point.

Mr. SLAGHT: My suggestion is along similar lines, that beyond ten years there should be discharge in full of an estate except for fraud. I suggest that the minister might consider inserting at line 8, on page 13 of the bill, after the words "may at any time", the words, "within ten years, if in his opinion any fraud has previously prevailed", assess, re-assess, and so forth. That would give a ten-year limitation and would confine opening up to a case of fraud. It would not, of course, cover cases of accident which, one could conceive, might happen.

Mr. WHITE: Later in the bill, section 35 provides for a certificate of discharge; it states that if the certificate is given, the person named therein is not liable for any further duty. Under section 23, are we to