

Oil and Petroleum

the superior to prove he was innocent, because once charged he would be presumed guilty.

The onus is on this superior to prove that he exercised all due diligence in advising the employee on the facts of the law, and the employee may not be identified to him. So I submit that this may not be identical to the section in Bill S-10, but there are some similarities. From what I know of the law, it is wrong to have a law which states that a person is guilty unless he proves his innocence. The effect of this provision is that a person is guilty, once charged, unless he can prove his innocence. That is what this clause says.

Even worse than that, the clause says a person is guilty because of the activities of someone in the company subservient to him who may not even be identified. The person accused may not even have the right of cross-examination or of being informed who the individual is who broke the law. In examining the report of the Minister of Justice, it would seem that there is much similarity in terms of the rationale and reasons given by the minister in this regard. I concede to the minister that this clause and the offending clause in Bill S-10 are not identical, but I ask him point blank why he thinks it is right to have a law which states that a person is guilty of an offence unless he proves he used all due diligence in warning an employee who committed the offence, which employee may not be identified to him. I submit that is not right and proper under Canadian law. It is a law which facilitates matters for the law enforcers, but it is abhorrent under the British system of law and it is abhorrent to me. I think the wording of the clause should be amended to make it more in keeping with the traditions of this country.

Mr. Macdonald (Rosedale): Quite the contrary; under the common law, as under the corporate law, the senior officers of a corporation responsible for the conduct of a corporation could be held liable for acts of the corporation falling under their general responsibility if—and this is not an additional responsibility put on him—this defence provided by clause 30 were not in there. So the clause provides a defence in addition to the common law which but for this legislation he would not have.

Mr. Baldwin: I shall not detain the House on this, but I must take exception to the last statement of the minister that the common law really is not applicable to corporations; they are creatures of statutes and the provisions with regard to liability. I accept ungrudgingly that the minister has his legal opinion. He showed us the statement of the Minister of Justice. We may disagree with the statement of the minister, but we cannot challenge it legally in parliament; it would have to be done outside parliament. I refer to someone challenging clause 30 as being an abridgement of the Bill of Rights.

Despite the opinion of the Department of Justice, clause 30 as it reads now is quite unacceptable. To put it in the simplest terms, as I understand it, if employee A should commit an offence, employee B could be charged and all the prosecutor would have to do in respect of employee B would be to show that employee A committed the offence and then the responsibility would fall upon employee B, the one charged, to bring himself outside the scope of the clause by affirmatively establishing that the offence was

committed without his knowledge or consent, and also that he exercised all due diligence in preventing its commission. That, of course, is completely unacceptable.

Without in any way contravening the right of the government to insert clauses which place responsibilities upon the servants, agents or officers of a company, this clause is not acceptable. I therefore move:

That clause 30 of Bill C-32 be amended by deleting all the words in the said clause after the word "accused" in line 24.

I hope, Madam Chairman, you can read my handwriting. At this time of day on a Friday my writing is not what it is on a Monday.

The Assistant Deputy Chairman: Is it the pleasure of the House to adopt the amendment?

Mr. Macdonald (Rosedale): I would just remind the hon. gentleman that what he is doing is taking something away from corporate officers, and that therefore his amendment is making the situation more difficult rather than easier.

The Assistant Deputy Chairman: Is it the pleasure of the committee to adopt the said motion?

● (1420)

Amendment (Mr. Baldwin) negatived: Yeas, 9; nays, 26.

The Assistant Deputy Chairman: Shall clause 30 carry?

Some hon. Members: On division.

Clause agreed to.

The Assistant Deputy Chairman: The committee will now proceed to clause 34 and the amendment proposed by the Minister of Public Works.

On clause 34—*Definitions*.

Mr. Andre: Before one o'clock I was discussing the relationship between the definition of "licensee" as it appears in clause 34 and the interaction with clause 20, which states that all crude oil that at one time might have come in contact with export crude oil or crude oil for sale outside the province of production is affected by this bill. I combine that with clause 43 which states that any person—which might mean corporate person, or individual or, indeed, Her Majesty in right of the provinces—must become a licensee in order to sell oil for consumption outside the province of production. When I presented these arguments earlier, the minister indicated that "licensee", rather than being a general designation, is a licensee for the purpose of the transaction; whereas looking at this definition, one finds a licensee defined as a person who is licensed under this division, "person" meaning individual or corporate person or, as a result of other provisions in the act, Her Majesty in right of the provinces. I wonder whether a more concise definition of "licensee" might not be required in support of the minister's earlier arguments.

Mr. Macdonald (Rosedale): I am not sure whether the hon. member is quoting me correctly, but rather than have doubts on the matter, let me say that it is clear that a licensee could be licensed for more than one transaction.