

*Combines Investigation Act*

has never been used before; this is the one case in which it has been used, and according to the arguments which come from one of the unions, at least, the companies are definitely taking advantage of the duty under the present situation. As long as this power is a permissive one and not a mandatory one there will always be a tendency on the part of the firms to continue a practice which is, in effect, a conspiracy, until their bluff is finally called. Making a reduction of tariff mandatory would serve as a stiff warning to the companies. There was a situation where a conviction took place several years ago. There were fines. Now the minister is proceeding. If he had been aware that this lowering of the tariff duty was mandatory and not permissive I think action would have been taken long ago and we would not have the situation which exists at the present time. Therefore I should like to move:

That clause 11 be amended by deleting in line 40 the word "may" and substituting therefor the word "shall".

**Mr. Fulton:** What the hon. member for Port Arthur says is interesting in the light of some of the opinions he expressed in the committee when we were discussing this matter. One cannot just say: "Let us make a reduction in tariffs mandatory in this section" and leave it there. If that were done it would be necessary to write in a whole schedule of tariff reductions and a table by which to measure the seriousness of offences so as to determine how far they would lower rates. Unless the hon. member is going to say that any application of this section will result in complete elimination of the tariff, that would be the situation. He will realize that the only remedy, in accordance with his proposal, would be the complete elimination of the tariff on the whole industry.

If the hon. member does not intend to go as far as that he will have to write in a schedule providing that an offence of a certain extent will result in the reduction by 1 per cent, or something of that nature. That is quite impossible. Therefore, the only way we can make this section applicable is to make the reduction discretionary with the governor in council, which means that the extent of its application and the extent to which the tariff will be reduced has to be decided bearing in mind all the factors that are relevant, and there are many factors that are relevant. There is the question of the industry itself and, of course, the welfare of those who are dependent on the industry and who are not in any way party to the offences that have been complained about. All such things have to be taken into account by the governor in council in deciding whether to take action and to what extent.

**Mr. Fisher:** Would the minister permit a question?

**Mr. Fulton:** I have not quite finished. If a reduction of tariff were made mandatory these factors could not be taken into account, and in that case it would not be possible for any representatives of the men working in the industry to make representations to the government or to anyone else because the tariff reduction would be automatic. If the hon. member does not want representatives, say, of the employees in an industry to have the opportunity of making representations that notwithstanding any offence the tariff should not be reduced, if he takes the position that there should be an automatic reduction and that no one should have any power to stop it, that would be the effect of his amendment.

For all these reasons—and I think I could go on to point out others as well—it seems to me this is one of those cases where action against somebody, not imposed by a court, must be left to the discretion of the governor in council.

**Mr. Fisher:** Before you come to the word "shall" in line 40 there are such phrases as "it appears to the satisfaction of the governor in council" at line 31. The words are:

—it appears to the satisfaction of the governor in council that with regard to any article there has existed any conspiracy, combination, agreement, arrangement, merger or monopoly to promote unduly the advantage of manufacturers or dealers at the expense of the public—

The point I am making is that there are qualifications which leave a great deal of initiative to the governor in council in determining the situation. I call attention also to the phrase "it appears to the satisfaction of the governor in council".

**Mr. Pickersgill:** I wonder if I might be permitted to say a few words to explain why, as a privy councillor who hopes to be employed again instead of being unemployed, I cannot possibly support the amendment which the hon. member has moved. This is a matter for which we have to hold the government accountable under our doctrine of responsible government, but it is not something about which we could legislate in this kind of way at all. Further, if this legislation, amended in the way the hon. member proposes, purports to upset the balance of ways and means I would suggest, Mr. Chairman, that the amendment may be out of order, although I am not advancing that as a serious argument.

We are not here imposing a penalty on someone after he has been convicted. We are suggesting that the government, in order to facilitate the purposes of this act, should use the discretion invested in the governor in