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2nd SESSION, 18th PARLIAMENT, 1 GEORGE VI, 1937

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL 41, AN ACT TO AMEND AND CONSOLIDATE THE COMBINES INVESTIGATION ACT AND AMENDING ACT

No. 1

The Honourable Frank B. Black, Chairman

WITNESS:

The Honourable Norman McL. Rogers, P.C., M.P., Minister of Labour.

MEMORANDUM

From the Parliamentary Counsel of the Senate.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1937

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable FRANK B. BLACK, Chairman

The Honourable Senators:

Aylesworth, Sir Allen	Little
Ballantyne	Lynch-Staunton
Beaubien	McGuire
Black	McLennan
Blondin	McMeans
Brown	McRae
Casgrain	Meighen
Côté	Michener
Dandurand	Parent
Dennis	Raymond
Donnelly	Rhodes
Gordon	Riley
Graham	Sharpe
Griesbach	Sinclair
Hardy	Smith (Wentworth)
Horsey	Tanner
Hughes	Taylor
King	Webster
Laird	White
Lemieux	Wilson (Rockcliffe)
L'Esperance	Wilson (Sorel)

MINUTES OF EVIDENCE

THE SENATE,

THURSDAY, April 8, 1937.

The Standing Committee on Banking and Commerce, to whom was referred Bill 41, an Act to amend and consolidate the Combines Investigation Act and amending Act, met this day at 11 a.m.

Hon. F. B. Black in the Chair.

The CHAIRMAN: Is it the pleasure of the Committee to take up the consideration of the Bill? There is a document in the hands of the leader of the Senate, Senator Meighen and myself, prepared by the Law Clerk.

Right Hon. Mr. MEIGHEN: I think it should be read.

Hon. Mr. DANDURAND: It consists of two parts. One bears on the danger of invading provincial jurisdiction; the other bears on possible amendments that could be made to certain clauses.

Right Hon. Mr. MEIGHEN: Consistent with its present purposes.

Hon. Mr. DANDURAND: So I would suspend the reading of the first part, which covers the whole constitutional issue, and as we are going to examine the Bill clause by clause, we could examine into any suggestion Mr. O'Connor has for the improvement of the Bill.

Right Hon. Mr. MEIGHEN: I do not agree. Mr. O'Connor's attack on the Bill is not on this clause or that.

Hon. Mr. DANDURAND: I am speaking of the second part.

Right Hon. Mr. MEIGHEN: He says do what you will as to the second part you are still unconstitutional. He says the whole Bill in its objects and substance is in violation of the constitution. I do not think there is much use going into amendments that will still leave the Bill vulnerable, if he is right.

Hon. Mr. COTÉ: Why in the name of goodness should we be deprived of hearing an opinion as to whether this law is constitutional or not?

Hon. Mr. DANDURAND: The approach from that angle does not destroy the Bill. It affects a certain number of clauses.

Hon. Mr. MORAUD: I move that the Chairman read the opinion.

The CHAIRMAN: I think this is fair material for the members of the Committee. I think, with due deference, that they ought to know what is in the first part of the memorandum.

Hon. Mr. COTÉ: After it is read I think it ought to be circulated so that we can read it and come to our own opinion.

The CHAIRMAN: Is it the pleasure of the Committee that I read this comment furnished by the Law Clerk?

Some Hon. SENATORS: Carried.

The CHAIRMAN: This is the memorandum supplied to the Committee by the Law Clerk of the Senate, Mr. O'Connor, and it is addressed to Senator Dandurand, Senator Meighen and myself.

The LAW CLERK: Being a documentary opinion it is supplied by me in my capacity as Parliamentary Counsel. As Law Clerk I take directions.

The CLERK OF THE COMMITTEE (reading):—

This Bill is unique in that although purporting in terms to serve "the interests of the public" it has been bitterly assailed in the other Chamber as an assault upon the liberties of the public.

If the charge laid against the Bill be assumed to be seriously made and possibly true then it is necessarily the most important Bill of the session.

It certainly goes very far beyond the provisions of the present or any previous Combines legislation. In places, the existing section of the Act is used just as a skeleton about which to wrap new repressive provisions, different in nature from those which now exist.

The explanatory notes are not to be depended upon in all respects.

In these circumstances it is my duty to advise as to the character and constitutionality of the Bill.

I have to advise that in my opinion the Bill, as a whole, amounts to an invasion of personal anl property rights of citizens of the provinces who, being, at the time of the invasion, according to the theory of the legislation (which is that it is purely investigatory), not merely innocent but not even alleged to be otherwise than innocent, do not fall within the Dominion power "the criminal law" in such a sense as to enable treatment of them as if they were guilty, or more severely than if they were guilty, of crime.

Under the proposed legislation, necessarily, everybody concerned is a mere witness or a suspected, but unaccused, person. He is necessarily a resident of a province, protected under the laws of the province, trustee of Magna Charta and following charters of liberty, as to his person and his property unless he has so contravened the law of his country that it may be justly said, in the interest of the public, that, qua his offence he has lost these rights. The Dominion, to have the right to invade these provincial rights to the security of the person and property of the subject, must found its right upon some Dominion legislative power of the B.N.A. Act. If it defines a crime and brings the subject under it it can trench upon these provincial rights, but not otherwise. True, Bill 41 defines a crime but it is a crime for which nobody is answerable until all of the machinery of the Bill has been resorted to, exercised and executed,—that machinery being designed and supported on the ground that it is necessary to discover whether any crime exists at all. Then why, it may be asked, did the Judicial Committee support the power of the Dominion to enact the legislation of 1923? The answer is that it was established in the Privy Council only that the Dominion had power to enact that defined matters constituted crime and that the 1923 legislation did not contain the invasions of provincial rights which this Bill presents. The Bill now proposed is, as a whole, different in principle from that which was sustained in the P.A.T.A. case. This Bill is, throughout, "raid and seizure" legislation. Suppose the raid and seizure provisions of the Bill to have been enacted separately could they be supported? No. If added to a Bill the pith and substance whereof fell within the Dominion powers they could be supported (so far as bare legality is concerned) if they were necessarily ancillary to the completion of a well rounded Act designed to achieve a lawful purpose. But, apart from investigatory provisions the Bill contains only one clause (32) about which the now assailed provisions can be wrapped, if at all. That clause (32) as pointed out in the P.A.T.A. case, is one that is (per clause 31) only brought into operation after the investigation provisions are spent. The investigatory provisions of this Bill are essentially different (in the sense already explained) from those of the Act of 1923. Parliament, it may be held (if this Bill be enacted) had improperly sought to assume to itself, under the guise of "criminal law" legislation, powers which it could not lawfully assume otherwise, to invade the personal and property rights of everybody in the provinces. The Criminal Code contains machinery for preliminary examination of persons accused of crime, with incidental rights, by way of search warrants, to be had from denom-

inated courts, to seize and take away property. I shall refer later on to the extraordinary, indeed the shocking provisions of Bill 41, proposed to be exercised against unaccused persons, as compared with those of the Criminal Code, exercisable against accused persons.

Dominion jurisdiction over Combines hangs, and always has hung, by a hair. The P.A.T.A. case was not decided until about eight months after it was argued. This delay in decision does not indicate that the Judicial Committee found it easy to reach a decision. In my opinion, if the Dominion desires to retain its jurisdiction over combines the Act as it stands should not be repealed, as is proposed by clause 42.

The most important of many alterations of the existing law which are proposed by the Bill I now proceed to disclose in the form of suggestions for consideration. They are annexed hereto.

I am not proposing any amendments to the Bill. I think that nothing that I could propose by way of amendment could save this from being an invalid Bill unless I should propose amendments involving a reversal of the policy of the Bill. This would be beyond my province.

April 7th, 1937.

W. F. O'CONNOR,
L. C. & P. C. Senate.

First Suggestion (Clause 2)

Re page 1, line 18 of the Bill.

The words "a common cost of storage or transportation,—or" have been dropped. This materially weakens the Act. The explanatory notes err in stating that what has been dropped has been "already covered". Fixation of a common price or common costs is dealt with only in subparagraph (iii) itself.

Second Suggestion (Clause 7)

Re page 4, line 4, of the Bill.

I suggest consideration of the substitution of "nineteen" for "seventeen". Clauses 17 and 18 originated as part of the Cost of Living Regulations of 1916. They are designed (note the words "from time to time" in clause 17) to provide authority for compelling continuous reporting in answer to written questionnaires, sent out to many persons (doing business as, say, bakers or coal dealers) not because they are suspected "combinesters" but to ascertain what are prevailing costs or prices. Such a system, while it can be satisfactorily operated from Ottawa by the Commissioner himself, seems to be inapplicable to "special commissioners" who are out upon a special investigation of a particular suspected combine. These special commissioners are on the ground. They can expeditiously call before them the person whose evidence is desired. Why should they write for it, and be bound by clause 18 to wait for an answer, instead of proceeding at once, as they may under section 19? A special commissioner will not have been appointed at all unless the Commissioner "believes" that the person concerned may be a party or privy to a combine, and other persons, unsuspected and unnamed, ought not to be subjected to investigation at all.

Third Suggestion (Clause 18)

Page 6, line 3 and page 6, line 28 of the Bill.

Consider the substitution of "proper officer" for "officer or servant" in line 3 and the substitution of "or officer" for "officer or servant" in line 28.

No servant is compellable, at law, in manner proposed by the Bill. See Halsbury's Laws of England, Vol. 13 of 2nd Edition, page 738, and section 35 of the Canada Evidence Act.

In reading this clause 17 note that the required disclosure of the contents of documents is not production of the documents and that Clause 35 of the Bill enables the investigated person to protect himself against answers or disclosures to which privilege attaches.

Fourth Suggestion (Clause 19)

Consider whether the distinction, which clause 19 introduces, between offences against the Combines Act and other offences, is intended. The clause, as proposed in the Bill greatly alters its equivalent in the existing Act.

An explanatory note states, in error, that the clause is one that "clarifies the power to obtain books and records." The existing Act contains no such power.

The clause as written immensely extends, against the liberty of the subject, the provisions of section 629 of the Criminal Code, concerning search warrants.

If the crime involved were conspiracy to murder, instead of, say, conspiracy to raise the price of a commodity, and, say, the Attorney General of a province, who administers justice in his province, desired a search warrant to search for, say, explosive bombs, he could secure the warrant only upon proceedings in court under oath, before a justice, whom he must satisfy that there is reasonable ground for believing that indicated evidence of the specified crime exists and can be found in a particular building or place.

Compare the provisions of Clause 19. The Commissioner (or special commissioner) need merely believe (there is no requirement of reasonable grounds) that any person "may be a party or privy, etc.," whereupon he may enter, seize and take away anything that he finds if he believes that it may contain information as to an offence. This authorizes the seizure of every book and paper of the person concerned, whether or not in fact relevant to the enquiry. It is "raid" legislation. To condescend to examination before seizure under it, would be foolish. Why take the trouble? Thus, entire innocence demonstrable upon examination before seizure, is made neither protection nor defence against a real wrong. Can this be intended? The existing clause merely authorizes entry and examination. It does not authorize even the copying of documents.

Fifth Suggestion (Clause 22)

Clause 22 of the Bill is the same as that which was rejected by the Senate in 1935 and again in 1936.

The Clause as proposed in the Bill is in conflict with all English and Canadian legislation relating to evidence. It is also in conflict with the common law of England. I have a brief which contains the text of such legislation and common law. No such provision as that proposed by Clause 22 has ever been enacted in Canada or in England.

The issue between the Senate and the Commons has been as hereunder stated—

1. The House of Commons has enacted that when a witness at an investigation claims his common law privilege of (*a*) refusing to answer a question or (*b*) refusing to produce a document, which may criminate him that he should nevertheless be compelled by statute to answer the question and to produce the document. The Senate has agreed.

2. The House of Commons has enacted that the witness so compelled by statute to answer and or produce documents should have with relation to his answers, so compelled, the same protection from their use against him on a criminal prosecution as he would have had, if compelled to answer at common law. The Senate has agreed.

3. The House of Commons, however, has enacted that the witness (who, but for statute to the contrary, would have, with relation to his documents produced under compulsion, the like protection, if claimed, from their use

against him on a subsequent criminal prosecution) on such subsequent prosecution should not be protected against his written documents produced. The Senate has disagreed with this, deeming that every reason in support of protection of the witness against his sworn oral evidence given is, at least, as cogent a reason for protection of him against his unsworn documentary evidence produced.

It has been stated in the House of Commons on a number of occasions, and again during this present session, that all that is desired is to secure that the same conditions shall exist under the Combines Investigation Act as exist under the Inquiries Act by virtue of the provisions of the Canada Evidence Act.

This purpose would be very simply achieved by the entire omission of section 22 from the Bill. Then the Canada Evidence Act would apply, as it does to all Canadian legislation unless the latter is taken out of the operation of the Evidence Act.

But the Canada Evidence Act applies only to answers to questions. It does not purport to compel production of documents. It leaves production of documents, along with and as part of the vast body of law known as "the law of evidence," except to the extent of its impairment by the Act, to the operation of the common law. (See section 35 of that Act.) At common law production of a document which tends to criminate a witness cannot be enforced at all.

I think that if the existing section of the Act (sec. 24) is amended at all that the amendment should take the following shape:—

1. Wholly repeal section 24 of the present Act. This will bring into effect section 5 of the Canada Evidence Act (see sec. 2 of that Act) which applies to answers to questions.

2. Enact in place of the repealed section the following, which for over thirty years has been in the Railway Act as section 65. That Act adopts the now recommended device, viz it suffers the Canada Evidence Act to apply as to questions and answers and provides of itself concerning the production of documents.

Now proposed new Clause 22 of the Bill.

" 22. No person shall be excused from attending and producing books, papers, contracts, agreements and documents, in obedience to the subpoena or order of the Commissioner or of any person authorized to hold any investigation under this Act, or in any cause or proceeding based upon or arising out of any alleged violation of this Act, on the ground that the documentary evidence required of him may tend to criminate or subject him to any proceeding or penalty; but no such book, paper, contract, agreement or document so produced shall be used or receivable against such person in any criminal proceeding thereafter instituted against him, or other than a prosecution for perjury in giving evidence upon such investigation, cause or proceeding."

Sixth Suggestion (Clause 26).

I suggest consideration as to whether the proposed new clause 26, which alters the existing law, sufficiently cares for the interests or necessities of owners of, say, books of account, records and shares of companies, &c. Also should there not be some provision as to ultimate actual return of records and documents to their owners?

Seventh Suggestion (Clause 35 (2)) Page 14, line 1.

If suggestion No. 3, which relates to clause 17, is adopted then subsection (2) of section 35 should be amended to conform, as follows:—

Strike out of line 1 the words " officer or servant " and substitute " the proper officer ".

Eighth Suggestion.

Part of subsection 4 of section 2 of the existing Act is omitted from Bill 41. The subsection is one dealing with monopolies. The omitted part reads as follows:—

"This subsection shall not be construed or applied so as to limit or impair any right or interest derived under the Patent Act, 1935, or under any other statute of Canada."

As the essence of a patent is monopoly and as Dominion statutes have and may again constitute a monopoly for a public purpose I suggest that the necessity of restoration of the omitted words be considered.

Ninth Suggestion.

Section 28 of the Combines Investigation Act Amendment Act, 1935, is also omitted from Bill 41. It is that section, added in 1935, which prevents multiple convictions of an accused person on the same set of facts.

As the Senate has in the case of all other Bills coming before it, within my experience, provided so that multiple conviction should not be possible, I direct attention to this omission and to the fact that it will imply Parliamentary approval of a former practice, under the Combines Act, of asking and getting double convictions on the same facts.

Hon. Mr. SINCLAIR: This criticism of the Bill was not asked for.

The CHAIRMAN: You are wrong, senator.

Hon. Mr. COTÉ: I understand it is the duty of Parliamentary Counsel to report on Bills. Mr. O'Connor, as Parliamentary Counsel, is in duty bound when he discovers in a Bill what, in his opinion, is a flaw or a constitutional weakness or a defect to so report to this House.

Hon. Mr. SINCLAIR: To the House, not to the committee.

Hon. Mr. COTÉ: To the committee.

Hon. Mr. SINCLAIR: He cannot report to the two.

Hon. Mr. COTÉ: Of course he cannot report to the House; he reports to the committee.

The CHAIRMAN: I want to say to the senator from Prince Edward Island that practically every Bill which has been before this committee this session—

Hon. Mr. SINCLAIR: Is referred to us by the Senate.

The CHAIRMAN: —has been reported on—and I have read almost every report—by the Law Clerk, Mr. O'Connor. When I was first chairman of the committee the same procedure was followed by Mr. Creighton. It is the duty of the Law Clerk to advise us of the nature of legislation.

Hon. Mr. SINCLAIR: Am I to understand the Law Clerk is a free agent?

Hon. Mr. CASGRAIN: I will tell you if you will only listen.

Hon. Mr. SINCLAIR: I have the floor.

Hon. Mr. CASGRAIN: Then stand up and say what you want to say.

The CHAIRMAN: It is an authority that has been exercised ever since I have been in the Senate.

Hon. Mr. CASGRAIN: I was Chairman of the Railway Committee for four years, and that was the procedure followed by the then Law Clerk, the late Mr. Creighton. The Law Clerk is hired and paid to say what he thinks about the Bills that come before us. Any senator can go to him and ask for the law. I used to go to Mr. Creighton all the time. Great legal minds—I could give the names of those lawyers; there were no better in Canada—always referred Bills in which they were interested to Mr. Creighton for his opinion. He had been Law Clerk for many years and was well versed in the parliamentary rules and constitutional law. I repeat, any member of the Senate can go to the Law Clerk for his opinion on legislation. If the Law Clerk would not give his opinion, then we should have to get another gentleman in his place. That is all.

The CHAIRMAN: This opinion seems to be regarded as an attack on the Bill. It is not. It is simply an opinion on the question of constitutionality.

Hon. Mr. SINCLAIR: I am not questioning the submission, I want to know the position.

Hon. Mr. LYNCH-STAUNTON: Should we be left in ignorance?

Hon. Mr. SINCLAIR: No.

Hon. Mr. DANDURAND: I think we should ask the Minister upon what he bases the Bill.

The CHAIRMAN: Is the senator satisfied, or does he want to be referred to the rule?

Hon. Mr. SINCLAIR: That is what I want to get at.

Hon. Mr. MORAUD: Mr. O'Connor refers to the P.A.T.A. case. I understand there is a distinction between that case and the present case. There the Privy Council found there was no infringement of the administration of justice in the provinces. In this case you claim there is?

The LAW CLERK: No.

Hon. Mr. MORAUD: What is it?

The LAW CLERK: Previous to the P.A.T.A. case it was doubtful whether the Dominion could by enactment create a new crime, something that was not criminal in its nature. Whether, for instance, the Dominion could say that taking a drink from the town pump constituted a crime. The P.A.T.A. case decides that that is wrong. The objection to the old Combines Act of 1922 was that it attempted to make a crime out of something that had not been previously a crime—out of a contract between two parties. The Judicial Committee held that that could be done. That is the P.A.T.A. case.

The Judicial Committee of the Privy Council, however, in deciding that case had, as always, to review the Act. The question was whether the Act was constitutional. They reviewed the Act to see whether it invaded the provincial power of administration of justice. They said no, it does not invade that provincial power, for the reason that it only provides for administrative acts performable by Government servants in the nature of acts such as are performed by excise and customs officers respectively under the Excise and Customs Acts; that is, normal administrative acts of Government departments. That is the whole P.A.T.A. case.

I draw a distinction in this case. For example, I take one section. This section for the first time enables an officer, without warrant, without resort to a court, without oath, without any single one of all the safeguards that have been built up for the protection of persons and property in the history of English law, to walk into anybody's premises, whether he is a combinester or not, whether or not he is a witness, or proposes to be a witness, whether or not it involves commodities, and that officer can take not merely papers but anything he likes that he finds in that house and carry them away. I say that is not the P.A.T.A. case.

The CHAIRMAN: The Minister would like to make some comment on that.

Hon. Mr. ROGERS: What I am about to say is subject to the more considered study that will be given to the memorandum submitted by Mr. O'Connor. I have only had an opportunity to see it this morning. That is true also, I understand, of all members of the committee. I think I owe it to the committee nevertheless to point out that in conformity with established practice this Combines Bill was submitted to and has been approved by the law officers of the Crown.

Mr. O'Connor has expressed an opinion as to the constitutionality of the Bill. Upon that point I do not feel I am competent to give an opinion at the present time. It would be merely an opinion and nothing more. And it is not the duty of the Minister of Labour to give opinions upon constitutional questions; that function belongs rather to the Minister of Justice.

I think I ought perhaps to place on the record the opinion of the Privy Council in the case referred to by Mr. O'Connor. That is, the P.A.T.A. case, the case involving the Proprietary Articles Trade Association. It was that case which determined the constitutional validity of the Act of 1923.

Hon. Mr. COTÉ: What is the reference to that case?

Hon. Mr. ROGERS: It is 1931 Appeal Cases. I quote from the judgment:—

> In their Lordships' opinion Section 498 of the Criminal Code and the greater part of the provisions of the Combines Investigation Act fall within the power of the Dominion Parliament to legislate as to matters falling within the class of subjects, "the Criminal Law including the Procedure in Criminal Matters" (Section 91, 27). The substance of the Act is by Section 2 to define, and by Section 32 to make criminal, combines which the legislature in the public interest intends to prohibit. The definition is wide, and may cover activities which have not hereto been considered to be criminal. But only those combines are affected "which have operated or are likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others"; and if Parliament genuinely determines that commercial activities which can be so described are to be suppressed in the public interest, their Lordships see no reason why Parliament should not make them crimes. "Criminal law" means "the criminal law in its widest sense" (Attorney General for Ontario v. Hamilton Street Railway (1903), A.C. 524). It certainly is not confined to what was criminal by the law of England or of any province in 1867. The power must extend to legislation to make new crimes. Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State.

Hon. Mr. MORAUD: That is all right for determining the crime. What about the procedure?

Hon. Mr. ROGERS: I am coming to that. As I understand Mr. O'Connor's opinion, he lays it down that the present Act is unconstitutional. Surely in view of the opinion of the Privy Council the unconstitutionality which he alleges could not relate to the definition of the crime. It must be confined solely to what might be termed a matter of procedure. In other words, the manner in which the Commissioner, as set up under this Act, conducts his investigation. I might say that that particular phase of the question did receive very considerable attention in the House of Commons when the Bill was before it in committee, and I believe some of the amendments made at that time—of which Mr. O'Connor seems to be unaware; at least I gather so from one of references —improve the position and to that extent remove some of the objections which appear in this brief. I am far from suggesting that some further improvements may not be possible, but I think the committee ought to understand that when Mr. O'Connor states this Bill is unconstitutional, he cannot mean, and obviously does not mean, that substantively a Bill which relates to crime is not constitutional. That point was settled by the Judicial Committee of the Privy Council. I quote again from the judgment:—

> —if the main object be intra vires the enforcement of orders genuinely authorized and genuinely made to secure that object are not open to attack.

That further quotation from the judgment may have some bearing upon certain further references made by Mr. O'Connor in his memorandum.

It is alleged by Mr. O'Connor that the proposed legislation is a very serious violation of the liberty of the subject. I would agree with Mr. O'Connor that this is unique legislation. It is unique legislation because it is designed to deal with what might be termed almost a unique situation.

Hon. Mr. LYNCH-STAUNTON: You say it is unique legislation?

Hon. Mr. ROGERS: That is what Mr. O'Connor says.

Hon. Mr. LYNCH-STAUNTON: Do you say that yourself?

Hon. Mr. ROGERS: I say that if it is unique legislation—

Hon. Mr. LYNCH-STAUNTON: I thought you said it was.

Hon. Mr. ROGERS: If it is, it is such because it is designed to deal with an exceptional situation.

Right Hon. Mr. MEIGHEN: Why exceptional? Have they not the same problem in England, for example?

Hon. Mr. LYNCH-STAUNTON: Unique legislation is unprecedented, is it not?

Hon. Mr. ROGERS: I should not say it is unprecedented. I should prefer rather to qualify that word. It is exceptional legislation, designed to deal with an exceptional situation. However, in respect of some of the procedural matters mentioned by Mr. O'Connor in his memorandum, it does not differ materially from other legislation which is designed to protect consumers. It has been found necessary, in order to give sufficient protection to consumers, to provide officers of the Government with powers which they did not possess hitherto. I am not going into the detail of this now. Perhaps it would be better to deal with that phase of it at a later time. Some reference was made in the other House to procedure under the Precious Metals Marking Act and the Pure Foods and Drug Act, which does give an officer of the Government rather extraordinary powers, in order to secure evidence upon which subsequent criminal proceedings may be based.

Hon. Mr. LYNCH-STAUNTON: Does this go further than that legislation?

Hon. Mr. ROGERS: Yes, somewhat further. But I was speaking on the point that you find in this legislation an invasion of civil liberty. I do not think it would be unfair to say that a great deal of our law can be described in just those terms.

Right Hon. Mr. MEIGHEN: Far too much of it.

Hon. Mr. ROGERS: The whole purpose of law, I take it, is to restrict the liberty of the few for the benefit of the many, if the liberty of the many may be abused to the detriment of the community at large.

Hon. Mr. COTÉ: It is the liberty of all for the benefit of all.

Hon. Mr. ROGERS: There may come a time, I submit, when liberty is converted into licence—

Hon. Mr. LYNCH-STAUNTON: Then it is not liberty.

Hon. Mr. ROGERS: —and when the interest of the community requires that there shall be some restriction. There is not, to my knowledge, any such thing as absolute liberty. As we all know, when Peel's factory Acts were brought down in England, they were objected to by the employers of that day on precisely that ground, that they operated as an invasion of liberty.

Hon. Mr. LYNCH-STAUNTON: What troubles me about this procedure is that it is an irritating practice, not restrictive legislation at all. It is not penal legislation; it is legislation giving certain people power to invade a man's castle, which should never be done. It is the practice that is obnoxious.

Hon. Mr. ROGERS: Mr. Chairman, certainly I cannot complain about that objection. It is a fair objection, which I can understand being made. Our position is this, that public policy requires that there shall be an effective investigation of the operations of the various types of business organization set out in the definitions clause of this Bill. Pursuant to that effective investigation, we believe it is necessary that the Commissioner shall have what may be described as extraordinary powers, in order to secure evidence upon which subsequent criminal proceedings may be based.

Hon. Mr. LYNCH-STAUNTON: Has any legislature in the British Empire ever given such powers as you ask here?

Hon. Mr. ROGERS: I should say that the Parliament of Canada in earlier legislation has given powers which, while perhaps not quite as wide as these—

Right Hon. Mr. MEIGHEN: No, nothing like as wide.

Hon. Mr. LYNCH-STAUNTON: Are there any such powers in England?

Hon. Mr. ROGERS: I am not able to answer that question.

Right Hon. Mr. MEIGHEN: It is important, because their problem must be much bigger than ours.

Hon. Mr. ROGERS: I think we proceeded with combines legislation before they proceeded in that direction in England. In the United States, of course, the Sherman Act and the Clayton Act followed ours by a few years.

Right Hon. Mr. MEIGHEN: Those Acts do not do what you seek to do here.

Hon. Mr. ROGERS: Perhaps on this particular question of procedure and the powers of the Commisisoner in carrying out investigations, we should make better progress if we dealt with these questions when the clauses are before the Committee. I thought that I might deal with this more general question, having read Mr. O'Connor's memorandum.

The CHAIRMAN: Shall we proceed with the Bill clause by clause?

Right Hon. Mr. GRAHAM: What are we members who do not know anything about law to do as regards this constitutional question?

Hon. Mr. DANDURAND: I would answer that question in this way. It has been my experience in this Committee and others that when a similar problem was before us we have been guided by the opinion of the law officers of the Crown, who say that we have jurisdiction.

Hon. Mr. LAIRD: Rightly or wrongly?

Hon. Mr. DANDURAND: Well, it is not for us to refuse to pass legislation just because we may have a doubt as to our powers, when the law officers of the Crown declare to us that we are within the four corners of our Constitution. The practice has been in such cases that we accept the opinion of the law officers.

Hon. Mr. COTÉ: I recollect, though, that when some constitutional questions arose in the Senate the present leader of the Government moved and forcibly presented a motion to have the questions referred to the Supreme Court of Canada for opinion as to whether the proposed legislation was within our powers. We voted against his motion, and since then we have seen that a great deal of the legislation which we passed at that time has been declared by the Privy Council to be ultra vires. Fortunately most of those Acts had not been put into effect.

Hon. Mr. LYNCH-STAUNTON: Some were.

Hon. Mr. COTÉ: What a great deal of expense and inconvenience would have been entailed if all those laws had been put into effective operation. Now, in the present case there is some doubt as to our powers. Are we going to put this measure on the Statute Book and invoke against citizens a law which later may be declared ultra vires? I wonder if the leader of the Government has contemplated making a proposal to have this question referred to the Supreme Court.

Hon. Mr. DANDURAND: I confess that I read with some degree of pride the judgments of the Privy Council on the legislation referred to by my honourable friend, because it seemed to me I could find in those judgments some of the very affirmations I made, and in exactly the same terms as I made them, as to the validity of the legislation. However, we have already had a judgment of the Privy Council as to the validity of the Combines Act.

Hon. Mr. MORAUD: Not this one.

Hon. Mr. DANDURAND: No, but the Combines Act of 1923. Now we are dealing with the authority of Parliament to organize a system of investigation leading to action which has been declared to be within our jurisdiction. As there have been considerable amendments made in the House of Commons to many of these clauses, I think we can at all events go through the Bill and meet the difficulty whenever it appears.

Hon. Mr. LYNCH-STAUNTON: Mr. Chairman, I agree with the suggestion made by Senator Coté. When Mr. Dandurand raised the question on the old Bill I thought he was right, and voted with him, and I think the argument is just as cogent to-day as it was then. When it comes to making such drastic invasions of personal rights—I do not know whether that is the right term, because we may not have any rights at all; but what we have always thought were our rights and privileges and exemptions—I think that before we put ourselves in the position of allowing the law officers to invade what we have always thought were our rights we should be sure, and should have a decision of the Privy Council.

Hon. Mr. DANDURAND: I would ask my honourable friends this. Should we not first find out what are the rights that we claim, or that the Government claim, or the Minister of Labour claim under this Act?

Hon. Mr. LYNCH-STAUNTON: I intended to say also that we should have the opinion of the law officers of the Crown who are responsible, and should not go forward with this Bill when our own Law Officer condemns it. The law officers of the Crown should give their deliberate and fair opinion uninfluenced by the Government or anyone else.

I do not express my guess on it at all, but I regard it as a very, very serious Bill. To my mind it is unprecedented in British legislation, and I think we should have all the rights on it we can get before we put it through.

Hon. Mr. DANDURAND: I do not know whether the Minister has in his record the opinion of the law officers of the Crown. If he has not, I will ask that they give us their opinion, which will be practically an opinion on the opinion of our own solicitor, because they will have it. If they have not yet given their opinion they can give it by to-morrow, and they will have before them the opinion of Mr. O'Connor.

Hon. Mr. MORAUD: They must have given their opinion.

Hon. Mr. ROGERS: Not on the particular point raised by Mr. O'Connor.

Hon. Mr. MORAUD: On the whole Bill.

Hon. Mr. ROGERS: The Bill as introduced was approved by the Department of Justice.

Hon. Mr. MORAUD: Could we not get that opinion now? It must be in writing.

Right Hon. Mr. MEIGHEN: I do not suppose they have expressed any opinion. I do not suppose they have given a written opinion.

Hon. Mr. ROGERS: I think that is right.

Right Hon. Mr. MEIGHEN: I do not rise to discuss the Insurance Act or the Hours of Labour Act and all that they involve. I am quite ready to accord to the leader of the Government the satisfaction he must feel in having his opinions supported by the Privy Council judgment. I did not receive it with the same satisfaction. I had no right to. I received it with utter despair. I think we are now tied in a knot which is disastrous—it is a catastrophe.

Now we are faced with the task of addressing ourselves to a constitutional question. The same law officers that the Minister wants to appeal to now are the law officers who supported the previous legislation, and who were found to be wrong. In my judgment they were not wrong, but we have to accept the

judgment which said they were. The fact that they gave that opinion and came to our Committee and supported it did not affect the stand of my honourable friend.

Hon. Mr. DANDURAND: It was based on the two judgments of the Privy Council which I discussed.

Right Hon. Mr. MEIGHEN: He did not accept it. He had his vindication. He said, "Do not go ahead with this until we get a judgment of the Privy Council, for if we do it will mean the establishment of an expensive organization and a great loss of money."

Hon. Mr. DANDURAND: Millions of dollars.

Right Hon. Mr. MEIGHEN: What is going to be the result if this Bill is wrong? This Bill repeals the old Act. If it passes this House the old Act is gone, and all the protection that the Minister says is so essential goes by the board. Further, this Bill takes certain sections of the Trade and Industry Act and puts them in here. It takes away the jurisdiction of the administrator of that Act, who has been a judge of one of our supreme courts, and places it in the hands of an officer of the Labour Department. If this Bill passes, and is found to be unconstitutional, that officer—who I am given to understand very directly is well pleased with what he is able to accomplish under the Trade and Industry Act—will be stripped of his power, and we will be left bare and exposed to all these sinister attacks on the rights of the consumer.

I am not complaining of the representation the Minister made; but the very reasoning of the leader of the Government in the other case applies with double force here: If this is not good, we have nothing at all. Even if we have to wait for the Privy Council judgment, would it not be better to submit this first? We have at least the Trade and Industry Act.

Right Hon. Mr. GRAHAM: Would you submit it to the Supreme Court?

Right Hon. Mr. MEIGHEN: I think we would have to. Why is it so vital? One would think we had nothing. We have had the Combines Investigation Act, since, I think, 1908.

Hon. Mr. ROGERS: 1910.

Right Hon. Mr. MEIGHEN: We have been amending it time and again. We virtually re-wrote it in 1923. In addition, we have the Trade and Industry Act. I venture to say we have more now, certainly, than Britain has, because I have read one article at least on the British method; and I think we have more than any other country. We are not in any great peril. If there is a cry for further inquisitions and third degrees, I have never heard it, it has been nothing but political propaganda by those who desire to aggrandize themselves by creating class feeling. That is one of the curses of the country.

Hon. Mr. LYNCH-STAUNTON: It ruined the Conservative party.

Right Hon. Mr. MEIGHEN: We are well protected now. If we cannot give to men accused of forming a combine the same protection the law gives in the Criminal Code to a man accused of crime, I would vastly sooner surrender to them the tremendous instrument they have to-day than dream of passing this legislation.

I regard the constitutional feature as very important for the reasons I have advanced, but it is not the main feature. The main feature is that the progress of this class of legislation just makes life not worth while at all. There are parts of this country to-day that are not fit to live in. This legislation is putting into the hands of government officers powers which by the very text of the constitution should rest in the courts of law. We are waving the courts off the scene, and are telling them, "No, you are not to decide on the rights of our citizens; we are going to appoint an officer to do that." We are doing it here, there and everywhere—I am not referring to the federal field—and we are doing

it quite unconstitutionally. Has the Minister any appreciation of where we are going to land? We are going to land in such a position that the failure of democracy will be so catastrophic that it will resound throughout the world.

Hon. Mr. DANDURAND: Would you allow the Minister, whose child is before us, to defend or justify it?

The CHAIRMAN: Certainly.

Hon. Mr. ROGERS: I have no desire to take up the time of the Committee, and I am a little doubtful as to whether I should speak except at the request of the Committee.

I think we must all be impressed with some of the dangers referred to by Mr. Meighen. I can only say that in the consideration of this legislation before the House of Commons he will find nothing in what was said by me, as Minister of Labour, or by others supporting it which was either designed or calculated to produce class antagonism.

Right Hon. Mr. MEIGHEN: I did not suggest that, but what the Minister asks to-day is that we should yield to this kind of thing, and not stand up boldly, the way they have in Britain and everywhere else, to resist it.

Hon. Mr. ROGERS: There I am bound to express a difference of opinion. That is to say, I believe that if in these days there are such undercurrents of opinion as are working to-day, it is a duty resting upon governments to see to it that every proper precaution is taken to prevent the possibility of abuse by those who hold special privileges or exercise extraordinary powers.

Right Hon. Mr. MEIGHEN: What is the special privilege of doing business?

Hon. Mr. ROGERS: There is nothing in this Bill which condemns any type of business structure as such. All it does is to define certain types of business structures—most of them of comparatively recent development; most of them having large scale operations—and to say that if those particular types of organization operate in such a way as to be contrary to public interest they shall come under the fines and penalties.

Hon. Mr. LYNCH-STAUNTON: Have you left anybody out of this?

Right Hon. Mr. MEIGHEN: Yes, the labour unions are out.

Hon. Mr. LYNCH-STAUNTON: Have you left out the labour unions? I think this definition includes labour unions.

Hon. Mr. ROGERS: There is a specific clause.

An Hon. SENATOR: They have more votes than the rest of the public.

Hon. Mr. ROGERS: I think I ought, perhaps, to say that in the actual administration of the Combines Act in previous years there has been nothing to suggest inquisition by design.

Right Hon. Mr. MEIGHEN: I think there is, and not under your Government at all.

Hon. Mr. ROGERS: I know that many of the investigations have proved the existence of conditions which I am sure no member of this Committee would believe ought to exist. In fact, if they did exist, I think you would tend rather to give greater strength to the—

Hon. Mr. LYNCH-STAUNTON: Has anything been done since as a result of the Customs Investigation or the Price Spread Inquiry?

Hon. Mr. BALLANTYNE: Yes. The Conservatives lost the election.

Some Hon. SENATORS: Oh, oh.

The CHAIRMAN: Shall we take up the Bill section by section?

Some Hon. SENATORS: Yes.

On section 2—definitions. "Combines."

The CHAIRMAN: I will read section 2, subsection 1.

Hon. Mr. BALLANTYNE: Will the Minister explain what is meant by the definitions?

The CHAIRMAN: Who is to decide whether or not any of these actions are likely to operate to the detriment or against the interests of the public, whether consumers, producers or others?

Hon. Mr. ROGERS: That, in the final analysis, is really determined by the courts. What is set out here is a list of actions which do create the presumption that the particular type of business organization has been operating to the public detriment. But unless it is decided by the courts that the operation has been to the detriment of the public no action would lie.

Hon. Mr. MORAUD: Before the Commissioner can give his report there is an investigation, which amounts to a trial.

Hon. Mr. ROGERS: I submit it is not a trial in the legal sense, because it does not eventuate either in a fine or other penalty.

Hon. Mr. COTÉ: Perhaps the Minister would say it is not a trial but an inquisition?

Hon. Mr. ROGERS: I should not care to agree with that statement.

Hon. Mr. BEAUBIEN: Your officer could go into any business and create a great deal of trouble.

Hon. Mr. ROGERS: No investigation can take place under the provisions of the Bill except at the instance of the Minister or upon the application of six persons, residents of Canada, who have taken an oath that to their knowledge and belief a combine does exist. That is to say, the Commissioner of his own volition cannot conduct an investigation under the Act.

Right Hon. Mr. MEIGHEN: Suppose there is a grist mill supplying flour for a certain district. Somebody gets mad and induces five other men to join him in making an application under the Act. Then the owner of the grist mill is going to be put to thousands of dollars of expense.

Hon. Mr. ROGERS: There is provision for a preliminary inquiry.

Right Hon. Mr. MEIGHEN: That will cost a lot of money.

Hon. Mr. ROGERS: The preliminary inquiry is provided rather to prevent what you might term frivolous or vexatious complaints of the kind which Senator Meighen has referred to. Actually in the administration of the Act these preliminary inquiries have resulted in reports by the registrar or the commissioner which suggested there was not any basis for going further. So in a preliminary inquiry no one against whom a complaint is made is put to expense.

Hon. Mr. LYNCH-STAUNTON: I consider this section dealing with definitions is the most important part of the Bill. Is this the same as the old definition or is it new?

Right Hon. Mr. MEIGHEN: Oh, yes.

Hon. Mr. ROGERS: It is substantially the same as the definition in the 1935 Act. The only difference is as regards merger, trust or monopoly under subsection 1 of section 2. Under the present wording of subsection 1 merger, trust or monopoly can be held to apply to a service instead of to an article or commodity. That is the only material distinction as between the definition in this Bill and the definition in the Act of 1935.

Right Hon. Mr. MEIGHEN: Why should it apply to a service?

Hon. Mr. ROGERS: It is only designed to provide possible protection against the operation of a monopoly which might control a very essential service over the entire country. I would not say it was vital, but at the same time we felt it desirable that it should be included.

Hon. Mr. MORAUD: What is the definition of a trust?

Hon. Mr. ROGERS: It is defined in subsection 7, just across the page.

Hon. Mr. BALLANTYNE: Would it not work out something like this, Mr. Minister? A large corporation—call it a trust, if you like; there are many of them in Canada very beneficial to the consumer who buys and uses their products—has among its staff six disgruntled men. They can make application to the Commission. Then the organization finds itself in the hands of one commissioner. He may decide that the business is detrimental to the interests of the consumer or buyer of its particular articles. The commissioner will be able to enter the company's premises, take whatever documents he likes, summon officials and cause a general upheaval, and yet there may not be anything very substantial in the original charge. I object to all the business interests of this country being placed in the hands and judgment of one man, the commissioner, as to whether the complaint lodged by six persons shall be proceeded with. Those six men may be of no substance at all, they may be discharged employees and may feel aggrieved. This would not only very seriously disturb business but involve business men in great expense.

Hon. Mr. LYNCH-STAUNTON: These are the concluding words of subsection 1:—

> And which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interests of the public, whether consumers, producers or others.

If I establish a business in a town it certainly will operate contrary to the interests of all those there who are engaged in the same line of business. It does seem to me we ought very seriously to consider this definition.

Hon. Mr. DANDURAND: That is the old definition.

Hon. Mr. LYNCH-STAUNTON: That may be, but we are now starting with a new Bill, and we may have learned more than we knew when the Act was first put into force. I do not think this language will cover the case where one man is in business and another man sets up a competitive business. That innocent competitor might be proceeded against under this Bill.

Hon. Mr. DANDURAND: This is intended to maintain competition, not to destroy it.

Hon. Mr. LYNCH-STAUNTON: I do not want to take factitious opposition to the Bill, but I wish to be satisfied that where a man engages in a legitimate business in competition with another man already established, and whose business will certainly be hurt, this proposed legislation could not be invoked against him.

Hon. Mr. DANDURAND: It would not apply.

Hon. Mr. LYNCH-STAUNTON: Does this definition cover the case I have mentioned?

Hon. Mr. ROGERS: I would say it does not.

Hon. Mr. LITTLE: The subsection does not read exactly as the senator has stated.

Hon. Mr. LYNCH-STAUNTON: The subsection contains the words "or is likely to operate to the detriment or against the interests of." Certainly an opposition business would operate to the detriment of an existing business.

Hon. Mr. ROGERS: To the detriment or against the interests of the public.

Hon. Mr. LYNCH-STAUNTON: It does not say so.

Hon. Mr. ROGERS: It says "to the detriment or against the interests of the public."

Hon. Mr. LYNCH-STAUNTON: This seems to me to be a sort of dragnet section. Does this definition cover that case?

Hon. Mr. ROGERS: I should say no, Senator Lynch-Staunton.

Hon. Mr. LYNCH-STAUNTON: I should like you to explain to me why it does not. If I am satisfied as to that, I will not object.

Hon. Mr. LITTLE: Mr. Chairman, the clause does not read exactly as Senator Lynch-Staunton suggests.

Hon. Mr. LYNCH-STAUNTON: It says, "is likely to operate to the detriment" of an existing business.

Hon. Mr. ROGERS: "—of the public."

Hon. Mr. LYNCH-STAUNTON: Of the public or of anybody.

Hon. Mr. ROGERS: Oh, no.

Hon. Mr. LYNCH-STAUNTON: The words "or others" are at the end of the clause. This seems to me to be a dragnet section. "Interest of the public" is a very vague thing. I thought I had a rudimentary idea of the meaning of the English language. When you put in the words "or others," does that not include any opposition that may be made to any business?

Hon. Mr. ROGERS: Mr. Chairman, my understanding would be that the case described by Senator Lynch-Staunton would not fall within the prohibitions of the measure. The whole purpose of the Act is to maintain competition, not to detroy it. It does not apply to a single unit of business, except such as comes under the definition of trust, merger or monopoly. Apart from that, it is necessary to establish a combine; there must be an agreement as among several different units of business.

Right Hon. Mr. MEIGHEN: A monopoly may be a single person.

Hon. Mr. ROGERS: Yes.

Hon. Mr. LYNCH-STAUNTON: But is not a "combine" defined by this section to be any business—

Hon. Mr. ROGERS: It means "a combination of two or more persons," and so on, as defined in subsection 1.

Hon. Mr. LYNCH-STAUNTON: Subsection 1 says:—

> "combine" means a combination of two or more persons by way of actual or tacit contract, agreement or arrangement having relation to any article or commodity which may be a subject of trade or commerce. . .

This is disjunctive, not conjunctive, because of the use of the word "or." And it goes on:—

> . . . or a merger, trust or monopoly, and which has or is designed to have the effect of

And so on. This language, it seems to me, makes the definition illimitable. It ignores a man's intention. A business man may have done something which he considered perfectly honourable and just, but if it has a certain effect he is liable. No law that I ever heard of made a person liable to punishment unless he had certain intent. I am making an objection which is not technical at all. Under this section, if I had not the slightest intent of wronging my neighbour or of doing anything illegitimate, I should be liable if my action had the effect of doing the things specified here.

Hon. Mr. BALLANTYNE: May I cite a concrete, bona fide case to the Minister? I am familiar with this case. Two large manufacturers are engaged in producing an article that is universally used from one end of the country to the other. They had a friendly understanding as to price, but one of them, for reasons of his own, broke away. To-day the article is being manufactured and sold at a disastrous loss to both manufacturers.

Hon. Mr. DANDURAND: By themselves?

Hon. Mr. BALLANTYNE: Yes. The friendly understanding which they had regarding price, I presume, would be a crime under this section.

Hon. Mr. ROGERS: Not necessarily.

Hon. Mr. BALLANTYNE: If it could be proven to be against public interest. Now, both manufacturing concerns are losing heavily to-day.

Hon. Mr. DANDURAND: Because of a reduction in price?

Hon. Mr. BALLANTYNE: Yes. Now, suppose one of or both those manufacturers got tired of this fight and came to another friendly understanding, agreed upon what they considered a fair price. The price of the article would then necessarily be raised. Well, if six persons sent an application to Ottawa and applied for investigation, would the Minister or the Commissioner interpret the friendly agreement of these two companies as something detrimental to the interest of the public? The companies have been selling at a disastrous loss. What would the official view be if they decided to discontinue this fight and sell at a fair price?

Hon. Mr. ROGERS: I doubt if that is a question I ought to answer.

Right Hon. Mr. MEIGHEN: I do not see how you could help but hold that that would be against the interest of the consumer.

Hon. Mr. ROGERS: There again it is a question of whether or not it is "to the detriment or against the interest of the public, whether consumers, producers or others."

Hon. Mr. BALLANTYNE: If these companies stopped losing money the public would have to pay more. That would be detrimental to the interest of the public, would it not?

Hon. Mr. ROGERS: There have been a whole series of decisions by the courts in which that phrase "to the detriment of the public" has received judicial interpretation; and there has also been very careful consideration of that phrase "has operated or is likely to operate." It does not seem to me that I should express an opinion in advance as to whether or not there would be a combine in the actual case cited by Senator Ballantyne. That is not a function which the Minister is called upon to exercise; that is a function which can be exercised only after the most careful investigation.

Hon. Mr. BALLANTYNE: How would the Commissioner interpret that situation, if this Bill were passed?

Hon. Mr. ROGERS: I should think he would inquire very carefully into the facts that have been cited by Senator Ballantyne, including the operations by the two companies at a loss prior to the making of the agreement. Then he would have to consider the question as to whether the price appreciation which resulted from the understanding was such as to be detrimental to the public interest.

Hon. Mr. LYNCH-STAUNTON: Two provincial governments had to step in and stop what was being done in the pulp business. The governments insisted on those firms fixing a price which would be "detrimental to the public" under this Bill.

Hon. Mr. ROGERS: There has been no investigation under this Act of the newsprint industry.

Right Hon. Mr. MEIGHEN: I should think not. The industry was ruined, and Canada was pretty nearly ruined as well, just because there was no possibility of doing what this Act forbids. So the two provincial governments got together and arranged to have something done which would be illegal under this Act.

Hon. Mr. ROGERS: There is, of course, in the Dominion Trade and Industry Act a provision which might meet a situation of that kind. But I do not think that under the Combines Act any case arose or could arise in that particular industry.

Hon. Mr. DANDURAND: In that case the provincial governments of Ontario and Quebec felt that the raw material, the use of which they were permitting under licence, should not be sacrificed, that it was not in the interest of the public to sacrifice it.

Right Hon. Mr. MEIGHEN: Exactly.

Hon. Mr. MORAUD: They were party to a combine, too.

Hon. Mr. COTÉ: May I ask the Minister if he can refer me to decisions of the courts which interpret the words "is likely to operate?"

Hon. Mr. ROGERS: Perhaps Mr. McGregor could give you the references after we rise?

Hon. Mr. COTÉ: All right. Candidly, these words bother me. The six persons who may swear out an affidavit to the Commissioner asking for an investigation are not required to be persons of legal training. I am not familiar with the wording of the declaration that must be made, but I presume the effect of it will be that the applicants believe that a combine is operating or is likely to operate. In the first place they should have some knowledge as to the meaning of "combine" as defined in the Act. I can understand how a person who is familiar with that definition might be able to swear that he believes a combine is operating. But it is beyond me to understand how anyone can swear that a combine "is likely to operate to the detriment or against the interest of the public."

Right Hon. Mr. MEIGHEN: Some people would have no difficulty about that.

Hon. Mr. COTÉ: Well, they should.

Right Hon. Mr. MEIGHEN: Yes, they should.

Hon. Mr. COTÉ: Suppose in a certain district there are two grist mills and that they merge. I think the Minister has explained in the other House that such action in itself is not illegal.

Hon. Mr. ROGERS: No.

Hon. Mr. COTÉ: Well, let us suppose they merge to make economies in management and operation and so on. Then they start to operate. Now, once there is only one unit it is quite easy for the management to enhance the price of that unit's product. In such a case would there be grounds for saying that a combine is likely to operate to the detriment of the public? Is that the meaning, that if there is a possibility there is a likelihood?

Hon. Mr. ROGERS: I should think that a likelihood would rather indicate a reasonably probable consequence. I am thinking of the interpretation the courts have placed upon this point.

Hon. Mr. LYNCH-STAUNTON: You do not give that definition in the Bill.

Hon. Mr. COTÉ: Surely criminal proceedings should not be based on a possibility. Surely that cannot be right.

Hon. Mr. ROGERS: I do not think it would be, because "likely" involves probability, not possibility.

Hon. Mr. COTÉ: Why not make it clear on the Statute Book of the country what a crime is? I am not moving any amendment just now; we have not reached that stage; but I suggest to the Minister that he consider the clarification of these words so that by reading the statute which creates the crime we may know what the crime is. Other clauses of the Criminal Code are clear. Why should citizens who have businesses and who want to join for good and valid reasons be faced with the uncertainty of words like that in coming to a conclusion as to whether they are doing something illegal or not?

Hon. Mr. ROGERS: I may say in answer to that that section 498 of the Criminal Code refers to certain operations which unduly and unreasonably—

Hon. Mr. COTÉ: That is different.

Hon. Mr. ROGERS: Surely it touches the point. That is to say, one would not know in advance of the investigation whether the price enhancement had been undue or unreasonable.

Hon. Mr. COTÉ: If there is an uncertainty, why not clarify it? Personally I think that what the law probably should have in mind would be a conspiracy on the part of the combination; that they have done some overt act; that they are about to commit a crime. We can make a crime of that, but I say that the words "likely to operate" are very unsatisfactory and dangerous.

Hon. Mr. MORAUD: I think Senator Coté is quite right. Those words "unduly" and "likely" have been before our courts time after time, and I do not see why we should not give a correct definition of those words. Here are two people who get together and reach an agreement which is perfectly legal. They do not enhance prices by that agreement, but the agreement may at some future time enable them to enhance prices, and what they have done becomes a crime, and a civil employee can investigate and report. If it was just a private investigation, as heretofore, it would not be as bad. But as the law is now, if these people make an agreement which in future would enable them to enhance prices, they become criminals. If they were tried before a court, legally, it would not be half as bad; but a commissioner, an officer of the department, is given the right to enter into their premises and seize anything he may find whether it is necessary for the inquiry or not. The inquiry is made public. There is an injustice done to these two people that nothing can repair, and in the end it may be found that there is nothing against them at all. It may be that the agreement would in future years have the consequence of enhancing prices, but prices have not been enhanced.

Hon. Mr. LYNCH-STAUNTON: And they do not intend to enhance them.

Hon. Mr. MORAUD: But it would "likely" have that effect—

Hon. Mr. LYNCH-STAUNTON: Whether they want to or not.

Hon. Mr. MORAUD: Exactly. Why should these people be treated as criminals, and why should they be tried before an officer of the department?

Hon. Mr. DANDURAND: The word "tried" is not the one to use.

Mr. MORAUD: I use it purposely. It is an investigation. Previously the investigation was a private investigation; even the report was not supposed to be made public. Now the investigation may be public. The officer of the department can go into the premises of these individuals, take anything he wants, publish anything he likes in the way of private documents, and when the damage is done there is no remedy just because these men have made an agreement that might affect the public in future years. That is why I am of the opinion of Senator Coté, that we should have not only in the Act but in the Criminal Code a definition of those words "likely" and "unduly."

The CHAIRMAN: I am informed that Mr. Macdonnell, representing the Canadian Manufacturers' Association, is here and would like to be heard.

Some Hon. SENATORS: Carried.

Mr. H. W. MACDONNELL, Secretary, Law Department, Canadian Manufacturers' Association: Mr. Chairman and gentlemen, I shall be very brief, because the point I intended to speak upon has been pretty fully covered in the discussion which has taken place.

I would call attention to the words "or is likely to operate" and would respectfully submit that, at the very least, those words should be deleted. As Senator Lynch-Staunton said, this Act creates crimes without it being necessary for anyone to have a guilty intention. Obviously, as anyone knows, the ordinary idea and essence of a crime is that there must be a *mens rea*—a guilty intent. This measure says there shall be a crime without guilty intent. In other words, men shall be guilty of a crime if the effect is so and so.

But worse than that. So long as those words are retained a man is guilty of a crime even though the effect, which he never intended, never comes. He is a criminal if a judge and jury say that in their opinion the act he committed was likely to produce an effect.

Hon. Mr. LYNCH-STAUNTON: Fifty years from now.

Mr. MACDONNELL: That is the point.

I may say that language has been used in at least one case tried under the old Combines Act—which contained the same definition—which suggested that the judge's point of view was that all he had to do was to find that there was a combination as described in the early part of the section. He did not have to find that it had operated, but the minute he found there was a combination of people doing these things he said, "Everyone knows a combination of that kind is likely to operate in that way." He had the old idea that once a combination had been formed, *ipso facto* it had that effect. That being so, my submission is that the Committee should seriously consider whether these words "or is likely to operate" should not be deleted, so that when a person or a group of persons is accused of forming a combine it should at least be necessary to show that what they have done has had a certain effect; and it should not be left to a judge to say, "They got together to raise the re-sale price, and that is enough. We know what is likely from that."

Hon. Mr. CASGRAIN: If the effect is good, nobody is hurt.

Mr. MACDONNELL: I say that particularly in view of the fact that the penalties are so substantial. Section 32 says that anyone found guilty of forming a combine which some judge thinks is likely to operate in a certain way is liable to a fine of $25,000 or to imprisonment for two years, or both; or, if it is a corporation, it is liable to a penalty of $1,000,000.

Hon. Mr. BEAUBIEN: Does it mean that under this legislation there may be no criminal intent—no crime, but a criminal?

Mr. MACDONNELL: Yes, exactly.

The CHAIRMAN: Shall we go on?

Hon. Mr. MORAUD: Shall we suspend the clause in case someone wants to move an amendment?

The CHAIRMAN: We are still on clause 2.

Right Hon. Mr. MEIGHEN: Subsection 4 is entirely new, as I understand it.

Hon. Mr. ROGERS: It is changed. It is not entirely new.

Right Hon. Mr. MEIGHEN: A merger may consist of only one company.

Hon. Mr. ROGERS: That was in the 1935 Act. The merger results from; but in itself it may consist of one company.

Hon. Mr. BEAUBIEN: What is the meaning of "control over the demand"?

Hon. Mr. ROGERS: That would refer rather to the relationship between the combining units and the producers who might supply them that raw material. You did have, for example, a situation of that kind as between the tobacco companies and those who supplied them with leaf tobacco. It was alleged that the tobacco companies had a combine which enabled them to prevent the producers of tobacco in Western Ontario from obtaining a fair price for leaf tobacco.

Hon. Mr. BEAUBIEN: The buyers would agree not to buy a certain commodity?

Hon. Mr. LYNCH-STAUNTON: No, they agreed to pay only a certain price.

Hon. Mr. ROGERS: Yes. There was a complaint alleging a combine, but there was no finding that it was a combine.

Hon. Mr. LYNCH-STAUNTON: If a person makes up his mind that he cannot afford more than a certain price, and then he meets another buyer and tells him, "I have made up my mind that I cannot afford to pay more than a certain price," and then the other man agrees with him, would that be a conspiracy?

Hon. Mr. ROGERS: That, I take it, would be a matter to be determined following the legislation. For example, a complaint of that character was made

with respect to tobacco companies operating in Western Ontario. On investigation under the Combines Act it was found that a combine detrimental to the public interest did not exist, and the case went no further.

Hon. Mr. DANDURAND: The situation as disclosed by some evidence seemed to me to be very ugly. If you have two or three persons who represent 95 per cent of the purchasers of an article like tobacco, for instance, and they decide they will bring down the price so low that the producers will be simply working for them as slaves, getting no profit, that the purchasers may increase their dividends, I think that would well fall under the Act.

Hon. Mr. LYNCH-STAUNTON: That, Mr. Leader, would of course be a fine inflammatory address to make to a jury of farmers. But the point I make is that the buyers may know conditions are such that they cannot afford to pay more than, we will say, 6 cents a pound. One buyer persuades the others, and they all agree that they will not pay more than that figure. In short, one man knows his business better than his fellows and he says to them, "Boys, you cannot afford to give more than 6 cents a pound, and I will give you my reasons why." He satisfies them that they cannot afford to pay more. That is assumed to be an honest case. But under this Bill those fellows would be called before a jury and after such an address as you have just given they would go to Kingston sure.

Hon. Mr. DANDURAND: But the case does not reach the court until investigation has been made under the Act.

Hon. Mr. LYNCH-STAUNTON: But it does reach the court. Those men, acting fairly and honestly may carry out what they think is a fair and honest deal, but they cannot plead mens rea, as one honourable gentleman has just told us. Now, as a lawyer, I cannot conceive of anything more unjust than to eliminate intent from criminal practice. No jury would believe those men if they heard an address like the honourable leader of the Senate has just made to me. It is exactly the kind of address made by a prosecutor in every court in the world. You know what a terrible prejudice there is against business people, you know every producer is claiming he is not getting enough for his goods, that some middle man is robbing him. So the whole setting is against the unfortunate business man. I think it is a crime to eliminate intent from the criminal law.

The CHAIRMAN: Shall section 2 carry?

Some Hon. SENATORS: Stand.

The CHAIRMAN: All right. Section 2 stands.

We will sit again after the Senate rises this afternoon.

The Committee adjourned to sit again after the Senate rises this afternoon.

EVENING SITTING

The Standing Committee on Banking and Commerce, to whom was referred the Bill 41, an Act to amend and consolidate the Combines Investigation Act and amending Act, resumed this day at 8.30 p.m.

Hon. Mr. DANDURAND: Mr. Chairman, I think we are perhaps imagining that there are formidable difficulties in this Bill. I have the impression that if we would address ourselves to what is presently before us as proposed modifications to the Act—which is a law of our own making—we could perhaps go through the Bill more rapidly. I confess that I was somewhat of an optimist, for I was in hopes that we should prorogue this week, and that I should be able to shake off the dust of Ottawa and go back to my home in Montreal. But I understand that the House of Commons will await the findings of the Senate—

Right Hon. Mr. MEIGHEN: On this Bill?

Hon. Mr. DANDURAND: Yes, and that it will adjourn from day to day until we return this Bill to it. We have the whole of next week, so we are not being pressed. But I wonder if we could not examine the Bill between now and to-morrow night, giving it all our time, and see what progress we could make. We will sit Saturday and Monday and Tuesday, if necessary. I understand from Mr. Rogers, that the House of Commons disposed of this Bill in three sittings of Committee of the Whole. Perhaps fifty of that House's 245 members are interested in this work and were inclined to make speeches, but, as I say, they disposed of it in only three sittings. I wonder if we cannot go through all the modifications—for the Act is in existence and its principle is law. It may be said that the Act can be left as it is. Of course, if the Bill is not passed, the Act will remain as it is. But there is in the Bill a principle which the Government considers important, the transfer of the administration of this Act to the Department of Labour. And the Government believes that this measure is of sufficient importance for the House of Commons to await our good pleasure with respect to it.

Hon. Mr. COTÉ: Speaking as a private member, I think that is very accommodating of the House of Commons and I appreciate it a good deal. It should not deter us, however, from giving to this Bill the attention which we otherwise would. I appreciate their favour in not bringing on prorogation until we are through with this Bill. But if we are sitting here from hour to hour and day to day, we shall not have any opportunity of studying the Bill properly—looking up the law, for instance. This morning I asked Mr. McGregor to give me some authorities. No doubt he will. I should like to look them up. They bear on an important question which I raised this morning, one arising out of the very first part of the Bill, the definition of "combine," and particularly as to the meaning of "is likely to operate." In order to qualify myself to give an intelligent verdict on this clause, I should like not only to look up those authorities but to follow through the statutes and the history of the use of those words. I cannot do that while sitting on this Committee.

Hon. Mr. DANDURAND: We will hold over that clause.

Hon. Mr. COTÉ: I think it would be a very good idea if some time were given to members to make a little study of their own. After we finish to-night we could adjourn until Monday. By making haste slowly we shall move quickly. That is really the very best method. I am not making the motion now, but I may make one later on, that when we adjourn to-night we meet again Monday. That would give us to-morrow for making our own study of the Bill.

Hon. Mr. DANDURAND: Could we not work on the various clauses of the Bill now?

Hon. Mr. COTÉ: Some of us on the Committee want to look up the legal interpretations, the cases. There is a constitutional aspect. One very important point is as to the meaning of "is likely to operate." That goes to the very essence of this Bill. I submit the Committee should not deny me nor any other member who want to study this question an opportunity to study it.

Hon. Mr. DANDURAND: Then, I make this suggestion, that we go through the Bill—

Hon. Mr. COTÉ: I should be inclined to move, when we rise to-night, that we adjourn until Monday night.

Hon. Mr. DANDURAND: I should not be disposed to accept that. I should be disposed to accept this alternative suggestion, that we work on this Bill this evening and to-morrow and pass the clauses which are not contentious.

Right Hon. Mr. MEIGHEN: The whole Bill is contentious.

Hon. Mr. COTÉ: The whole Bill is a structure. You cannot segregate one clause from another.

Right Hon. Mr. MEIGHEN: It has hardly a family resemblance to the old Act.

Hon. Mr. DANDURAND: What do you say to that idea, Mr. Rogers, that there remains hardly any resemblance to the old Act?

Hon. Mr. ROGERS: I should hope certainly, that there is a family resemblance. How close the resemblance is, is probably a matter of opinion. It was suggested at the Committee meeting this afternoon that clause 2 should stand for further consideration. Senator Coté expressed a wish to have some citations with regard to the legal interpretation of the words "is likely to operate." We are prepared to give him those citations as soon as possible. Beyond that I think it will be quite apparent from the explanatory notes that many of the sections are precisely the same as in the 1935 Act, and that as far as others are concerned, the difference consists of the substitution of the word "commissioner" for "commission."

Right Hon. Mr. MEIGHEN: Oh, your Bill takes the whole operation out of the quasi judicial place where it is to-day and makes it the job of an official of a minister. That is vital, and of gigantic consequence. That is the main purpose. It not only does that, but it clothes this official with a power that the quasi judicial man never had at all.

Hon. Mr. ROGERS: May I suggest that in neither the Dominion Trade and Industry Commission Act or the Tariff Board Act is there any requirement that the Chairman should be a member of the Bar.

Right Hon. Mr. MEIGHEN: No, but the Premier gave assurance that he would be—and he is.

Hon. Mr. ROGERS: But there is nothing in the Act.

Right Hon. Mr. MEIGHEN: The Bill was passed on that understanding. There is a tremendous difference.

Hon. Mr. ROGERS: On the other hand, if for any reason Judge Sedgewick should find it necessary to resign, there is absolutely nothing in the requirement in the Act; and I would suggest that the commissioner appointed under this Bill is appointed, after all, subject to certain duties imposed upon him, and there is no security in the tenure of his office which would enable him to carry out his duties in an oppressive way. If he did, undoubtedly there would be strong pressure upon the Government to have him removed.

Right Hon. Mr. MEIGHEN: Why take a man that is—

Hon. Mr. ROGERS: The Dominion Trade and Industry Commission was set up in a way which did not distinguish it, so far as personnel is concerned, from the Tariff Board of Canada. Actually the Tariff Board has before it now a sufficient number of references to keep it fully occupied. I doubt very much if the Tariff Board in its capacity as an industrial and trade commission would be able to give the attention required.

Right Hon. Mr. MEIGHEN: Has the Chairman intimated that his Board is not able to discharge its duties?

Hon. Mr. ROGERS: The Chairman was not asked specifically to give that opinion when this Bill was before the Commons in committee. All I can say is that the Tariff Board has been fully occupied.

Right Hon. Mr. MEIGHEN: If he has not, I do not know why the Government should assume that he cannot discharge the duties.

Hon. Mr. LYNCH-STAUNTON: May I make a suggestion brought about by the suggestion of the leader, Mr. Dandurand? I have written down a phrase here which is not meant to be inflammatory but to give an idea of what I am going to suggest. I say that there is no Criminal Code in the civilized world which makes a human being liable to be found guilty of a criminal offence and subject to fine or imprisonment without proof of criminal intent, or of such recklessness of the consequences of his act as amounts to criminality.

In my opinion this legislation, as it stands, shocks the conscience of civilized man. It would make this Bill more palatable if we began by amending section 32 so as to allow the innocent—the admittedly innocent—to escape the result of a prosecution. I want to protect the admittedly innocent, and I think that would be accomplished by amending section 32 in this way:—

> Strike out all the words in section 32 after the words "one hundred thousand dollars," and substitute the words "who is a party or privy to or assists in the operation of a combine which to his knowledge is against the public interest."

Now, if those words were added in the Act, and produced the results I anticipate they would produce, it would just mean this: that the commissioner or the person in charge could go into all the things provided in the Act as now drawn. He could make all the investigation; he could do anything which the Bill provides he may do, and he could follow the practice entirely as laid down here on such investigation. But in the result nobody is brought before the criminal court unless he is a party to or privy to an act, or assist in the operation of a combine which to his knowledge is against public interest.

I do not think anybody wants to see an admittedly innocent man indicted; but they could investigate all the innocent men in Canada, all the combinations of every nature and kind. The object of the Bill is to stop what the Government thinks are improper combines, and to put an end to them. It is not to dragnet the community for the purpose of finding a man to indict, because indicting anybody or punishing anybody does not stop crime. We know that. It may check it.

Right Hon. Mr. GRAHAM: Not even hanging?

Hon. Mr. LYNCH-STAUNTON: No.

Hon. Mr. GRIESBACH: It stops the man hanged.

Hon. Mr. LYNCH-STAUNTON: The point I am trying to make is that we should not be able to prosecute an admittedly innocent man. We can investigate to our heart's content, but the consequence of our investigation, or the knowledge which we get by it, should not permit an admittedly innocent man to be indicted; and if the innocent man were indicted he could not be convicted. I think that is only civilized justice. It is only proper that the innocent should never be in danger, and this would prevent our indicting people who, under this Bill, could be indicted and who are as innocent as any man possibly could be.

The definition of "conspiracy" is not a definition at all. It is an essay. A definition is language which precisely defines something. "Definition" is a dictionary word, and the dictionary says that to make a definition we must use as precise language as we can. If we are defining an act for which a man can be indicted, we should be as precise as we can be.

The Bill makes a man guilty of a conspiracy who has done nothing illegal, who has done nothing in the world for which he could be held responsible in any criminal court. It is not the purpose of the Bill to discover crime. If it were, it would be unanswerable, or might be if we adopted the continental mode or the New York method of the third degree. If we think that is desirable, it can be done here. But unless using this third degree Act, we find out he has knowingly done something against the public interest, we should not be able to indict him. I suggest that if we consider that section first and amend it as I propose, we would be freer to allow what is called the definition of a combine to pass, and I think we would avoid many of the evil consequences which would arise from the enactment of this provision. I certainly would never agree to pass that definition of a combine as long as the penalty section remains.

Right Hon. Mr. MEIGHEN: I want to say a word on the general conduct of the whole matter. When I realized what the Bill was this morning, when it

came to us for the first time, I made the statement to the committee that I was of the view that it was little less than outrageous to ask us to deal with it just as the session was drawing to a close—believing, as I did, and as the leader opposite did, that we would close this week. The leader said that in any event he thought we ought to give our time to it for the rest of the week, and thus give an evidence that we would do the best we could. To that I agreed. But now an entirely new attitude has developed on the part of the Government, and we are notified that the House of Commons is going to sit until we are through with this Bill. If so, I want to study the debate in the other House, and I want also to study this measure from several angles. We are only wasting time as far as I am concerned until I have had an opportunity of doing that.

I do not ask time for any leisurely study. I am ready to work as hard as anybody, but I do not consider coming here and talking is necessarily working. I want to work at the Bill intelligently, and then give such time as we can to getting along with it here.

I have taken quite a number of lectures from the leader of the present Government on the terrible vice of bringing down legislation in the last days of the session. There never was an instance of this vice so conspicuous, so shocking as this instance. That does not mean that I cannot deal with the Bill. I will deal with it the best I can. But I do protest against going on morning, noon and night with this clause and that clause. We are just looking at the trees; we have not seen the woods. I am ready to come back next week. I have arranged everything otherwise, but I cannot help it, I shall just have to do the best I can. We are sitting here in the morning, afternoon and evening, and we are not fit to work, that is, to do anything that is really of value.

The CHAIRMAN: Have you a motion to put, Senator Meighen.

Right Hon. Mr. MEIGHEN: I am not putting a motion. I do not think it would be quite right to ask the leader of the Government not to sit to-morrow, but if we do sit to-morrow we should not sit on Saturday. We should come back Monday and get to work. It is amazing to me that the Government, intending to conclude the session this week, should put a Bill of this kind before us and expect us to deal with it adequately in the short space of time now available.

Hon. Mr. DANDURAND: We must take the necessary time.

Right Hon. Mr. MEIGHEN: If we handle this Bill as thoroughly as we handled the Insurance and other Bills we could never get through next week. Of course, we can work harder than we worked on those measures, but we worked pretty steadily on those occasions. The Government cannot wait past next week. You would think the country will be in a terrible state unless this Bill goes through right now. We have been passing a Bill of this kind every session, certainly the session before last. It seem to me that the work is now in the hands of what is undoubtedly as competent a court as you can get without its being constituted under the B.N.A. Act by provincial authority, and that you cannot ask for. But the Government is in a great hurry to get the work out of the hands of the court and into the hands of its officials. Where is it now?

Hon. Mr. ROGERS: In the President of the Privy Council.

Right Hon. Mr. MEIGHEN: Why should it not stay there under the Prime Minister as Minister, but in the hands of officials in whom undoubtedly the public has confidence?

Hon. Mr. ROGERS: That is not material. We have not yet come to section 2. When we do I am prepared to discuss that.

Hon. Mr. LYNCH-STAUNTON: I should not be satisfied to leave this to the best judge on earth in the shape it is now.

Right Hon. Mr. MEIGHEN: I do not see any value in going on to-night if we are to stay here until we get through this Bill as well as we are able to.

Hon. Mr. ROGERS: I should like to say that on two occasions to my recollection we postponed discussion of the Bill in Committee of the Whole in order to meet the convenience of Mr. Cahan, who is very much interested and wished to speak upon it. I mention that simply to show the delay has not been entirely due to the Government.

Right Hon. Mr. MEIGHEN: Those things always do occur. But you have never heard the public interested in this Bill, you have never had a committee on it. We always do that here if anyone wants to be heard. I do not know of a single exception.

Hon. Mr. ROGERS: As far as the underlying principle of the Bill is concerned, I have tried to point out before to the committee that it is not new. I also gave extracts from the judgment of the Privy Council in the P.A.T.A. case in 1921, which I should have thought set at rest any question as to the validity of the substantive portions of the legislation now before the committee.

Right Hon. Mr. MEIGHEN: As to the power to create a crime unless the creation of it is for another purpose.

Hon. Mr. ROGERS: The Privy Council said:—

> But if the main object be intra vires the enforcement of orders genuinely authorized and genuinely made to secure that object are not open to attack.

Right Hon. Mr. MEIGHEN: That is not the beginning nor the end of the question at all.

Hon. Mr. ROGERS: I quite agree it is not the end of the question, but at all events I think that observation does indicate there is much to be said in support of the provisions which relate to the carrying on of the investigation. Naturally the Government is very anxious to have this Bill given the best possible consideration before it is enacted. So far as the present sitting is concerned, that is entirely beyond my power, even by way of suggestion. I am here, I take it, at the invitation of the Committee of the Senate to answer such questions as you desire to put to me.

Hon. Mr. HAIG: How long was this in the House of Commons?

Hon. Mr. ROGERS: It came down some weeks ago and was printed and available, I think I might say, to members of the Senate as well as of the House of Commons in the form in which it was originally introduced.

Right Hon. Mr. MEIGHEN: We had other work here. We cannot anticipate Bills.

Hon. Mr. ROGERS: I have no doubt that is true, but it does seem to me that when a Bill comes to the House of Commons it may be expected to come to the Senate. The changes in the Commons were not, I submit, of a very drastic character.

Right Hon. Mr. MEIGHEN: Is it your argument that we should start to study a Bill as soon as it is brought down in the House of Commons? I should like you to present that to your leader. It would be a new doctrine to him.

Hon. Mr. ROGERS: No. I am simply submitting that I am entirely in the hands of the committee. I am, of course, ready to be here when it will suit the convenience of the committee, despite the fact—I take it it is not of importance here—that there are estimates of the Department of Labour which have been delayed in consequence and might otherwise have been brought before the Commons. We are anxious naturally to have the Bill proceeded with as soon as it can be done properly and decently. I assume it is for the committee here to decide how best that end can be achieved. But I do think I am entitled to point out the underlying principle of the Bill is not new—I repeat that now—and that many of the sections are substantially, even exactly, the same as they were in the 1930 Act which received approval of the Senate.

Hon. Mr. DANDURAND: What is the principal change?

Hon. Mr. ROGERS: It is in the transfer of the administration from the President of the Privy Council to the Minster of Labour.

Hon. Mr. LYNCH-STAUNTON: Is not the definition of a combine absolutely new?

Hon. Mr. ROGERS: Oh, no, not at all.

Right Hon. Mr. MEIGHEN: It is new in a very important feature. If that is all you can say, it is a good deal. You are taking all the investigational provisions out of the Trade and Industry Commission, which administers the Act, and transferring them to a Government officer. You say that is the same principle as the other?

Hon. Mr. ROGERS: Prior to 1935 these powers of administration were vested in the—

Right Hon. Mr. MEIGHEN: They were not the same powers as those in the Trade and Industry Commission Act.

Hon. Mr. ROGERS: They were the same.

Right Hon. Mr. MEIGHEN: But they were not as extensive.

Hon. Mr. ROGERS: I thought we might proceed with the Bill, particularly with those clauses which do not represent a change from the previous legislation. That, of course, is a matter for the committee to determine.

Right Hon. Mr. MEIGHEN: We ought to get a look at the Bill.

The CHAIRMAN: I would make this suggestion. This is a Bill which essentially must be analysed by those trained in the law. Most of the lawyers of this committee do not seem to be sufficiently acquainted with the Bill even to take it up clause by clause. Until they know the nature of the Bill would it not be better to adjourn until not only the lawyers but the other members of the committee have an opportunity to study and become better acquainted with the Bill?

Hon. Mr. BEAUBIEN: And are ready to go on.

Right Hon. Mr. MEIGHEN: I think I can get an intelligent view of the Bill by to-morrow afternoon, but I have none now.

The CHAIRMAN: We are not getting anywhere in advancing the Bill. Had we not better adjourn until after the House meets to-morrow afternoon?

Right Hon. Mr. MEIGHEN: Give us to-morrow morning to really study the Bill.

Hon. Mr. DANDURAND: I draw your attention to this situation. We are offered this Bill as part of the Government's program. I do not know whether it was announced in the Speech from the Throne.

Hon. Mr. ROGERS: Oh, yes, it was.

Hon. Mr. DANDURAND: It was announced in the Speech from the Throne as the policy of the present Government to transfer the administration of the Act from the Board to which it had been given in 1935, only two years ago, to the Department of Labour. That is one of the important principles.

Right Hon. Mr. MEIGHEN: I do not think anybody would object to that as long as you maintain the machinery of administration as it is now.

Hon. Mr. DANDURAND: I want to put this question. From the remarks of my right honourable friend I assumed that he was totally adverse to the idea of transferring the administration of the Act to the Department of Labour under the form indicated in the Bill.

Right Hon. Mr. MEIGHEN: No, no. I do not mind the Minister being substituted for the President of the Privy Council, but I do think it is an exceed-

ingly serious step to transfer the powers which are now vested in and the duties that are now administered by a board presided over by a Supreme Court. Judge to an official of the Department. That is a different thing.

Hon. Mr. DANDURAND: That is a most important change from the Act.

Right Hon. Mr. MEIGHEN: A very important change.

Hon. Mr. DANDURAND: Yes. But if this committee decided against that change, it would be for the Minister of Labour to decide if it was worth while continuing examination of the Bill. It seems to me there are vital questions which may divide us, and which would settle and stop our work. That is why I wonder whether we should not proceed. If the Senate takes a directly opposite view to that of the Commons, then it will be for the Minister of Labour to report to his colleagues and decide as to what should be the fate of the Bill.

Right Hon. Mr. MEIGHEN: I could form an intelligent opinion much more rapidly if I could read the Bill carefully first and the debate in the Commons. I have not been able to read more than one page of that debate, and I should say there are forty or fifty pages of it on my desk. When am I going to do it?

Hon. Mr. DANDURAND: When do you think you will be ready?

Right Hon. Mr. MEIGHEN: I think I can get it up to the point where I should be ready to have a detailed discussion here, say, to-morrow afternoon.

Hon. Mr. DANDURAND: After the sitting of the Senate?

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. MORAUD: Then we would carry on on Saturday? It would not be much use sitting to-morrow afternoon and then adjourning to Monday.

Hon. Mr. DANDURAND: It depends. My right honourable friend and other members of the Senate will have time to study the Bill and make up their minds as to what will be their attitude after, say, four o'clock to-morrow. We may sit from four to six and again in the evening, and if we found we could wrestle with the principal difficulties which are being offered, we might decide to sit on Saturday. I suppose a number of our colleagues would be quite happy to leave here on Saturday, although I am not suggesting they should hurry. I shall be on the job myself next week.

The CHAIRMAN: Does it meet with the approval of the Committee that we adjourn now and resume after the Senate rises to-morrow?

Right Hon. Mr. MEIGHEN: I am quite agreeable to that. But I do not want to agree to meet Saturday. We are not time servers here. During the session, of course, we should do what we can to expedite the work before us. But, expecting that the Session would be over—and, as the honourable senator opposite knows, having good reason for expecting that—I arranged definite work for Monday and Tuesday. To impose a little of my private difficulty on the Committee, I will say this. I have arranged no fewer than six directors' meetings for those two days, including two annual meetings, and not of companies of which I just happen to be a director, for such do not exist, but of companies for which I am mainly responsible. Even under these circumstances it is too much to ask that we shall not sit on Monday and Tuesday. But I do not know how in the world I can arrange about these meetings unless I can have Saturday to try to make some arrangement.

Hon. Mr. DANDURAND: I may scandalize some of my colleagues by what I am about to say, but perhaps the press will not report this. We could proceed to-morrow afternoon and evening and Saturday, and we could give a few hours to the drafting of our conclusions on Sunday. There are more profane things that we often do. I am suggesting that course, in order that my right honourable friend might feel we are not forcing him to come back next week. I am absolutely in the hands of the Senate.

Right Hon. Mr. MEIGHEN: If the Government has decided that we have to get through with this Bill and report it next week, if that is in the nature of an ultimatum, we shall have to sit through next Monday and Tuesday, no matter what our engagements are.

Hon. Mr. DANDURAND: We can decide to-morrow what we shall do on Saturday.

The CHAIRMAN: Is it the pleasure of the Committee to adjourn now and reassemble after the House rises to-morrow afternoon?

Hon. Mr. DANDURAND: I am sorry that I did not move this afternoon to have the Senate meet to-morrow morning. Then I could have got through with an item that stands in my name on the Order Paper.

Hon. Mr. COTÉ: If we are free to-morrow morning we shall have time to study this Bill, to look up judicial decisions, and so on.

The CHAIRMAN: Is it your pleasure that we adjourn now and reassemble after the Senate rises to-morrow afternoon?

Some. Hon. SENATORS: Carried.

The Committee adjourned at 9.20 p.m. to meet after the Senate rises to-morrow afternoon.

2nd SESSION, 18th PARLIAMENT, 1 GEORGE VI, 1937

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL 41, AN ACT TO AMEND AND CONSOLIDATE THE COMBINES INVESTIGATION ACT AND AMENDING ACT

No. 2

The Honourable Frank B. Black, Chairman

WITNESSES:

The Honourable Norman McL. Rogers, P.C., M.P., Minister of Labour.

Mr. F. A. McGregor, Registrar, Combines Investigation Act.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1937

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable FRANK B. BLACK, Chairman

The Honourable Senators:

Aylesworth, Sir Allen
Ballantyne
Beaubien
Black
Blondin
Brown
Casgrain
Côté
Dandurand
Dennis
Donnelly
Gordon
Graham
Griesbach
Hardy
Horsey
Hughes
King
Laird
Lemieux
L'Esperance
Little
Lynch-Staunton
McGuire
McLennan
McMeans
McRae
Meighen
Michener
Parent
Raymond
Rhodes
Riley
Sharpe
Sinclair
Smith (Wentworth)
Tanner
Taylor
Webster
White
Wilson (Rockcliffe)
Wilson (Sorel)

MINUTES OF EVIDENCE

THE SENATE,

FRIDAY, April 9, 1937.

The Standing Committee on Banking and Commerce, to whom was referred Bill 41, intituled "An Act to amend and consolidate the Combines Investigation Act and amending Act," met this day at 8.30 p.m.

Hon. Mr. BLACK, Chairman.

The CHAIRMAN: Gentlemen, we will proceed with the Bill.

Hon. Mr. DANDURAND: Mr. Chairman, last night I felt it would take a number of sittings for us to deal with the various amendments to the Combines Investigation Act and amending Act contained in this Bill, and that we would have to be here a good part of next week. It occurred to me early this morning —it is extraordinary how alert my brain is when I work at 4 a.m.—that we could perhaps keep pace with the Commons for prorogation to-morrow evening, so I called up my colleague, Mr. Rogers.

Right Hon. Mr. GRAHAM: Not at 4 o'clock!

Hon. Mr. Dandurand: No, at half-past eight. To my surprise he had left for his office.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. DANDURAND: I suggested to him that he limit the Bill to two matters: accept the Act of 1935 and amend it simply to transfer its administration from the Prime Minister to the Minister of Labour. True, in a way the Tariff Board administers the Act, but over that Board there is a Minister to whom reports are made. He is the Prime Minister in his capacity of Minister of External Affairs. Then, as a consequential change, we should substitute the Commissioner of the Combines Investigation Act for the Tariff Board or the Dominion Trade and Industry Commission. The second amendment would bear on the admissibility of documents. We are all aware of the discussion over the question last session. We declared in our amendment to the Bill on that occasion that a party in an investigation would be called upon to produce correspondence or documents, but that any such correspondence or documents which he might file could not be used against him. I may say that the Minister of Justice and that very high-class legal mind, the Right Hon. R. B. Bennett, agreed that we were wrong; but we stood to our guns, and we were asked to please reconsider our decision. So I notified my right honourable friend, Senator Meighen, at 3 o'clock, that I thought we should have the Committee meet this evening for decision before 10 o'clock of two questions represented by the amendments which I will suggest.

Mr. MacNeill of the Department of Justice has prepared amendments which would carry out the desire of the Minister to have these two changes. When I speak of two changes, I may say there are three or four pages of consequential amendments. I will ask Mr. O'Connor to look at these amendments which, I am told, effect the purpose intended.

The LAW CLERK: There is one that I disagree with entirely.

Hon. Mr. DANDURAND: As to form or matter?

The LAW CLERK: The one as to what is right or what is wrong on the documents.

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Hon. Mr. DANDURAND: Well, you will let that pass under protest.

The LAW CLERK: That is a legal question.

Hon. Mr. DANDURAND: That is a legal question. I think Senator Meighen said yesterday—I mention this because everything was taken in writing—that if Mr. Rogers or the department needed that provision as to the admissibility of evidence he was ready to forego his stand of last session. Under those conditions I will ask that we take up the proposed amendments to Bill 41, an Act to amend and consolidate the Combines Investigation Act, not the Bill which previously was before us.

The Bill before us will be amended in such a way that but one clause will be affected, namely, the first one. If you look at Bill 41, clause 1, the short title, you will see "This Act may be cited as the Combines Act."

Right Hon. Mr. MEIGHEN: Why do you take out the word "Investigation"? It is really an Investigation Act, not a Combines Act—or it should be.

The LAW CLERK: We retained three words of the original short title, and added to them, so it is now called the Combines Act.

Hon. Mr. DANDURAND: The short title is changed by deleting therefrom the word "Act" and substituting therefor the words "Investigation Act Amendment Act, 1937." All that follows is new. Clauses 2 to 42—I think that goes to the end—

Hon. Mr. GRIESBACH: Yes.

Hon. Mr. DANDURAND: Clauses 2 to 42, both inclusive, are deleted and the following substituted therefor:—

2. (1) Subsection two of section two of the Combines Investigation Act, chapter twenty-six of the Revised Statutes of Canada, 1927, as enacted by section two of chapter fifty-four fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:—

"(2) 'Commissioner' means the Commissioner of the Combines Investigation Act appointed as hereinafter provided."

(2) Subsection five of section two of the said Act, as enacted by section two of chapter of the statutes of 1935, is repealed and the following is substituted therefore:—

"(5) 'Minister' means the Minister of Labour."

Right Hon. Mr. MEIGHEN: What was in the old Act?

Hon. Mr. DANDURAND: It says "Minister means the President of the King's Privy Council for Canada."

Right Hon. Mr. MEIGHEN: That is all right.

Hon. Mr. DANDURAND (reading):

(3) Section two of the said Act, as enacted by section two of chapter fifty-four of the statutes of 1935, is further amended by adding at the end of the said section the following:—

"(6) 'Special commissioner' means a temporary commissioner appointed as hereinafter provided for the purpose of conducting an investigation."

3. The said Act is further amended by adding thereto as sections five, six, seven, eight and nine, the following:—

"5. (1) The Governor in Council may appoint an officer to be known as the Commissioner of the Combines Investigation Act.

Right Hon. Mr. MEIGHEN: Are there no sections 5, 6, 7, 8 and 9 now?

The LAW CLERK: No. They were dropped in 1935. They were in the Act previous to 1935.

Hon. Mr. DANDURAND: You see, as Mr. O'Connor has said, in the consolidated Act sections 5 to 9 were repealed. They are now revived.

The LAW CLERK: They are now reinserted.

Hon. Mr. DANDURAND (reading):

(2) The Commissioner shall perform the duties and exercise the powers conferred upon him under this Act and shall report directly to the Minister as required by this Act.

(3) The Commissioner shall, before entering upon his duties, take and subscribe before the Clerk of the Privy Council, and shall file in the office of the said Clerk, an oath of office in the following form:—

'I do solemnly swear that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of the Combines Investigation Act. So help me God.'

(4) The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

"6. (1) An Assistant Commissioner of the Combines Investigation Act may be appointed in the manner authorized by law.

(2) When the Commissioner is absent or unable to act, or when so authorized by the Commissioner with respect to any investigation or matter, the Assistant Commissioner, or, if he also is at the same time absent or unable to act, another officer designated by the Minister, may and shall exercise the powers and perform the duties of the Commissioner.

"7. (1) The Governor in Council may appoint, from time to time, one or more persons to be special commissioners under this Act.

(2) It shall be the duty of a special commissioner to conduct an investigation into and concerning any alleged combine indicated in the Order in Council signifying his appointment.

(3) Every special commissioner shall have, with respect to and for the duration of the investigation which he is appointed to conduct, the powers which are conferred on the Commissioner in sections fourteen to twenty-four, both inclusive, of this Act; and wherever the word 'Commissioner' occurs in sections fourteen to twenty-four, both inclusive, and thirty-three to thirty-six, both inclusive, of this Act, it shall be deemed to include the words 'special commissioner.'

The LAW CLERK: When Mr. MacNeill and I revised the clauses a few moments ago, I pointed out that 14 and 15 were provisions which could only be operated properly from Ottawa. They deal with correspondence and questionnaires sent out, sometimes covering a period of time, and they are quite unsuited to be operated by a special commissioner who is sent out on the ground. He cannot be sitting down and writing letters and holding off proceedings until the person answers. Under the very next section he can go right in on him. Fourteen and fifteen should not appear there. They are quite fittted for the operation from Ottawa, but not for operation by these peregrinating commissioners who are out on the ground.

Hon. Mr. DANDURAND: Who can express an opinion on that?

Right Hon. Mr. MEIGHEN: You say it should be 16 to 24.

The LAW CLERK: No one would know better than Mr. McGregor himself.

Hon. Mr. ROGERS: It does seem to me that there is no necessary distinction between the functions to be exercised by a commissioner to be appointed under the Act, as provided here, and the special commissioners. They should be performing the same duties, and I do not see why a special commissioner should not have and exercise the same powers as the ordinary commissioner.

The LAW CLERK: The Act provides that an order may be made for making returns. I wrote those words myself in 1916, when I was Cost of Living Commissioner. They were to provide for a questionnaire system with regard to the discovery not of crime but of costs.

Hon. Mr. DANDURAND: It does not vitally affect the Act. It is surplusage.

The LAW CLERK: This would result in a big nuisance to the business community, if there is a flock of persons writing and requiring returns to be sent in.

Hon. Mr. DANDURAND: This matter can be looked into.

Mr. MCGREGOR: This has proved very useful. When a matter is turned over to the special commissioner, he undertakes it and perhaps finds it necessary to call on companies throughout the country to file answers to the questionnaire. In the recent Coal Inquiry, Dr. Tory sent questionnaires to a great many coal merchants in a number of provinces. Very useful information on that inquiry was obtained throughout other than our office. In other inquiries the ad hoc commissioner has done the same thing, has taken it upon himself to get the kind of information that he wants. This simply gives him authority to require answers to such inquiries.

Hon. Mr. DANDURAND: I think that Mr. MacNeill, Mr. O'Connor and Mr. McGregor can put this into shape.

The LAW CLERK: It is not a matter for us to put into shape, Senator. It is a question of whether these two operations have to go on. And there is no question of election here.

Hon. Mr. DANDURAND: This bears on but one point—

Right Hon. Mr. MEIGHEN: Whether the word " fourteen " should be changed to " sixteen," or not.

Hon. Mr. DANDURAND: In order that we may understand the matter with which we are dealing, I will read this clause 3:

> Every special commissioner shall have, with respect to and for the duration of the investigation which he is appointed to conduct, the powers which are conferred on the Commissioner in sections fourteen to twenty-four, both inclusive, of this Act; and wherever the word " Commissionner " occurs in sections fourteen to twenty-four, both inclusive, and thirty-three to thirty-six, both inclusive, of this Act, it shall be deemed to include the words " special commissioner."

Do you follow the point that our Law Clerk has been making, Mr. Rogers?

Hon. Mr. ROGERS: I should judge from what Mr. O'Connor has said that this essentially is a matter of policy and not a matter of law. In other words, it is a question of whether or not the powers indicated here would bring about a better degree of information for special commissioners. I think, perhaps, it ought to be emphasized that every special commissioner will be acting in a particular inquiry with all the powers of the Commissioner under the Combines Investigation Act. So we feel it desirable that with respect to his inquiry the special commissioner shall have just as wide powers as the commissioner has.

Right Hon. Mr. MEIGHEN: The Law Clerk says that you should not send out the special commissioner until you have the information which is obtainable under sections 14 and 15.

Hon. Mr. ROGERS: Would it not be conceivable, Senator Meighen, that a special commissioner might not know definitely what information he requires until he has actually been on the scene and conducted a preliminary examination?

Right Hon. Mr. MEIGHEN: I really do not know as to that.

Hon. Mr. COTÉ: Before a special commissioner is appointed, is there not a preliminary inquiry?

Hon. Mr. ROGERS: Not necessarily.

Hon. Mr. DANDURAND: Now I will read the further proposed amendments:

(4) The exercise of any of the powers herein conferred upon special commissioners shall not be held to limit or qualify the powers by this Act conferred upon the Commissioner.

"8. (1) The Commissioner may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out the provisions of this Act.

(2) Any technical or special assistant or other qualified person employed under this Act shall, when so authorized or deputed by the Commissioner, inquire into any matter within the scope of this Act as may be directed by the Commissioner.

"9. (1) Any special commissioner and any temporary, technical and special assistants employed by the Commisioner shall be paid for their services and expenses as may be determined by the Governor in Council.

(2) The remuneration and expenses of the Commissioner and of any special commissioner and of the temporary, technical and special assistants employed by the Commissioner, and of any counsel instructed by the Minister of Justice under this Act, shall be paid out of such appropriations as are provided by Parliament to defray the cost of administering this Act.

(3) The *Civil Service Act* and other Acts relating to the Civil Service, insofar as applicable, shall, except as otherwise provided in section five of this Act, apply to the Commissioner and to all other permanent employees under this Act."

4. Wherever in sections ten, eleven, thirteen, fourteen, sixteen, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four, twenty-six, twenty-seven, thirty-one, thirty-three to thirty-six, both inclusive, and forty-one of the said Act, as enacted by chapter fifty-four of the statutes of 1935, the words "Commission" or "Commission or any Commissioner" appear there shall be substituted therefor the word "Commissioner", and whenever in the said sections the words "they", "it" or "its", referring to the Commission, appear, the word "he" shall be substituted for the words "they" and "it", and the word "his" shall be substituted for the word "its".

5. Section twelve of the said Act, as enacted by section six of chapter fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:

"12. The Commissioner shall on application made under the last preceding section, or on direction by the Minister, cause an inquiry to be made into all such matters with respect to the said alleged combine as he shall consider necessary to enquire into with the view of determining whether a combine exists or is being formed."

6. Subsections two and three of section thirteen of the said Act, as enacted by section seven of chapter fifty-four of the statutes of 1935, are repealed and the following is substituted therefor:

"(2) The Commissioner shall thereupon make a report in writing to the Minister showing the inquiry made, the information obtained and his conclusions.

(3) On written request of the applicants or on his own motion, the Minister may review the decision of the Commissioner under this section, and may, if in his opinion the circumstances warrant, instruct the Commissioner to make further investigation."

7. Subsection four of section twenty-two of the said Act, as enacted by section fifteen of chapter fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:

"(4) The Minister may issue commissions to take evidence in another country, and may make all proper orders for the purpose and for the return and use of the evidence so obtained."

8. Section twenty-four of the said Act, as enacted by section seventeen of chapter fifty-four of the statutes of 1935, is amended by dealing in the sixth line thereof the words "evidence or documents" and substituting therefor the words "oral evidence".

9. Section twenty-seven of the said Act, as enacted by section twenty of chapter fifty-four of the statutes of 1935, is amended by adding at the end thereof the following:

"(3) Every special commissioner at the conclusion of the investigation which he conducts shall make a report in writing which he shall sign and transmit to the Commissioner, together with the evidence taken at the investigation, certified by the special commissioner, and all documents and papers relating to the investigation remaining in his custody; and the Commissioner shall without delay transmit the report to the Minister.

(4) The Minister may call for an interim report at any time, and it shall be the duty of the Commissioner or special commissioner, as the case may be, whenever thereunto required by the Minister, to render an interim report setting out the action taken, the evidence obtained and any conclusions reached at the date thereof.

(5) Any report of the Commissioner or of a special commissioner, other than an interim report or a report of a preliminary inquiry under section thirteen of this Act, shall within fifteen days after its receipt by the Minister be made public, unless the Commissioner states in writing to the Minister that he believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public."

10. The said Act is further amended by adding thereto as section twenty-eight the following:

"28. The Minister may publish and supply copies of any report in such manner and upon such terms as he deems proper."

11. (1) Subsection one of section thirty-one of the said Act as enacted by section twenty-two of chapter fifty-four of the statutes of 1935 is amended by striking out paragraph (b) thereof and substituting the following:

"(b) the evidence taken on any investigation by the Commissioner or by any special commissioner and the report of the Commissioner or special commissioner"

(2) Subsection two of section thirty-one of the said Act, and subsection two of section thirty-two of the said Act, are amended by deleting the words "Solicitor General" wherever they appear in the said subsections and by substituting therefor the words "Attorney General".

(3) Subsection three of section thirty-one of the said Act is repealed and the following is substituted therefor:

"(3) The Minister of Justice may instruct counsel to attend on behalf of the Minister at all proceedings consequent on any information being so laid."

12. Section fifteen of the said Act, as enacted by section nine of chapter fifty-four of the statutes of 1935, section thirty of the said Act, and sections thirteen and fourteen of chapter fifty-nine of the statutes of 1935, are repealed.

Right Hon. Mr. MEIGHEN: Mr. Chairman, when we met last night I referred to the impossibility of getting a broad view of the problem before us so as really to appreciate its significance and its bearings, and I undertook to be ready to go on as soon as the Senate adjourned to-day. I did everything anyone could do to be prepared. I studied carefully the measure and all the explanations given, also several communications I had received—some of them from persons wanting to be heard—and I also started to study the debates in the other House. Yesterday I told the committee I thought it ran to thirty pages. I have read a good many more, but I was not a quarter through when 3 o'clock came to-day. However, I know a lot more about this than I did.

What the leader of the Government has said about the conversation between us is entirely correct. I did say to him to-day, though, this, and I will refer to it here because I consider it the most important feature of all.

There are just two things I want to mention as indicative of my own view. First, as to transferring the operation of the Act to the Minister of Labour, I have no objection at all. But when it comes to re-vesting these powers in an officer of the Department, I do take exception. Extraordinary powers were given under the 1935 Act—quite extraordinary, for the reason that the undertaking of the Administration was to place in office a non-removable official, that is, non-removable within a certain time anyway, and a man of standing not only at the Bar but on the Bench. When you have exercise of functions by a tribunal of that kind the situation is different, for reasons I shall advance in a minute, and which I consider of tremendous importance. And as I do so I do not want anybody to get the impression that I have any lack of confidence either in the Minister of Labour or the Commissioner. I do not know either very well, but I have no reason to lack confidence in them. I have, however, very grave misgivings about granting to any Government Department these extraordinary functions which can be exercised, to the harassment of business, to the penalizing of any special business or section of business, subjecting it to tremendous expense, and attaching to it a degree of obloquy which is even more serious than the expense; I say I have very grave misgivings about granting these extraordinary functions to any Government Department without the supervision of something in the nature of a judicial tribunal.

We will assume they are men of another character, but of a character we have often seen, members of government and men that we can easily contemplate might be in office before very many years. What could they do? They could use this Act as the biggest engine of blackmail that could possibly be imagined, for any kind of extortion, any kind of political punishment whatever. They could put any institution on the gridiron and subject it to the third degree for as long as they like. You know what an institution would do to avoid that, however innocent it may be.

I do not shut my eyes to the fact that similar powers have been given before; but they were not the same, not as great, and the justification for them was the standing of the tribunal that was to exercise the powers. With that tribunal removed, I have serious apprehension about the wisdom and the consequence of placing these powers in the hands of a Minister of a Department and his officials; and, further, as will be observed by the Bill—I suppose necessarily so—in the hands of anybody who may be appointed to act, under of course the Minister.

In this respect I am most anxious to meet the Government to-day as I was yesterday. I have not been able to consult other members in respect of this, and I do not know how they feel. They may not be willing to go as far as I will, because I may confidentially say to the leader of the Government, as a conciliator and compromiser I am considered a total failure. But, for myself, I would be ready to do this: if there can be devised some method of having this work done as they want it done, but with some supervision exercised over, first, the launching of an investigation, and, second, over the exercise of these extra-

ordinary powers of raid and seizure, some of which are in the original Act; not nearly so many as were proposed in the Bill of yesterday, but nevertheless some.

Hon. Mr. DANDURAND: The Act of 1935?

Right Hon. Mr. MEIGHEN: Yes. There are some still. Those could be justified perhaps because of the prestige and known accountability and stability of the tribunal.

Hon. Mr. DANDURAND: But were they not in the preceding Act of 1923?

Right Hon. Mr. MEIGHEN: I do not know, I have not had time to go into the legislation. For the present I am ready to admit they were, but I do not know anything about it. I know there were powers in the preceding Acts exercisable as they were that should not have been there, and which in this day and generation are far more dangerous than they were in that day and generation, just because of the pressure on Ministers and because of the psychology which prevails. If any man is enterprising, energetic, industrious, courageous, goes ahead and does something, he is prima facie a public enemy to-day. That is the psychology abroad at the present time. If, on the contrary, he does nothing, goes to sleep in the arms of the state, is on relief or, better still, if he is in jail, then he is the object of infinite solicitude.

I have sought to define the difference between this day and the previous day.

Some Hon. SENATORS: Hear, hear.

Right Hon. Mr. MEIGHEN: We have to recognize that that is the fact. There is no crime to-day quite so heinous as success.

Hon. Mr. BEAUBIEN: That is right.

Right Hon. Mr. MEIGHEN: It is true. If you go ahead and fail you are a criminal too, but if you go ahead and succeed you are still worse.

Now, on account of that psychology it is exceedingly serious to place such an engine in the hands of an official of the Government answerable to those public whims, necessarily so because he is in public life, and surely the function of this House is to see that there is some protection given in these cases. If not, why in the world is the Senate in existence? I do not know any reason for its existence.

These remarks are more or less general, but they are meant to emphasize there is more need to-day than there was—and I say that admitting even under the conditions in previous days the powers should not have been given—for some system of judicial supervision.

Right Hon. Mr. DANDURAND: I would draw your attention, Mr. Meighen, to this other side of the picture, the various manifestations of activities in the country tending to hand power to a small group of men in order to reduce cost, if you will, and at the same time increase profits. There is on objection to increasing profits if it is done without injury to the consumers, the public. Is there not this new feature that must be taken into consideration?

Right Hon. Mr. MEIGHEN: I do not dispute at all the fundamental reason for the legislation. I mean the real need of some legislation of this kind going as far in the exercise of federal jurisdiction as we can. I do not doubt at all that the more the great enterprises of the country become huge units of mechanized business, the more need there is of public supervision. What I am emphasizing is that to the utmost we should see that powers to harass and penalize with expense have a measure of judicial supervision. That is all.

It is really laughable to read some of the provisions of the old Act as of this Bill. If they summon a man to appear as a witness they pay him $1.25 a day and his travelling expenses. We are very careful to see the poor fellow gets that. But there is someone to accompany, to supply all manner of information—information I venture to say, in some cases that would cost thousands of dollars, and yet there is no provision to pay him a nickel. You pay him for stepping out of his office, but not for employing a score of clerks to do a tre-

mendous job, and you make him swear to the correctness of every detail. This is very expensive. In the Bill as it stood the commissioner could go into an office and seize the books, take them into his own custody and padlock them; after he has the books, if they are applied for, he is at liberty to say, "I am sorry you cannot get your books. You can make a copy." Imagine being told that you can make a copy of books of entry, the copying of which would take I do not know how long. I have known of books being tied up for a whole summer, even after the investigation was over and the report had been made. The whole business is utterly paralyzed. But when we want a man to give evidence we give him $1.25 a day.

These features are laughable, but they are aside, perhaps from the things I am trying to drive in. Let us try to have as much judicial review of extraordinary functions as we can. That done and I will agree to the proposal.

Now, as to section 22, about the documents being used in evidence in any subsequent proceedings. I have not changed my mind one whit, and from what I have heard from Mr. O'Connor, he is of the same view in regard to it. In fact, I knew he was. I have read all that has been said the other way, but, as I said yesterday, if we can come to an agreement by yielding a point, I am ready to yield it, so there is no use arguing it further. But I do think that if it is to be done, and documents are to be made usable in subsequent proceedings, they should be used only to the extent needed by this Act—that is to say, in any subsequent proceeding for the violation of this Act. We are surely not going to legislate to say that notwithstanding the law they can be used for some criminal proceeding that has nothing to do with this Act at all. With that qualification I will stand by what I said and be prepared to yield the point.

I do not think there is anything else of consequence. I followed the reading as well as I could, and if the principles I sought to bring out are embodied in this I will agree to it. I am certainly pleased to see the leader of the Government take the position he does. We never could have done justice to the Bill as it was, even if we sat a week. I feel, indeed, quite incompetent to satisfy myself that this is o.k., because I have not read a vast amount of the criticism that has been made of this measure. Nevertheless, we have this situation—that however bad things are we have had them before; and if we see to it that these precautions which seem to me to be sound sense are looked after, I am ready to accept the Government's proposal. I know that some honourable gentlemen are not of that view, but I have expressed my own view.

The CHAIRMAN: Would the committee like to have time to consider the new Bill?

Hon. Mr. DANDURAND: It is not so much a new Bill—

Right Hon. Mr. MEIGHEN: It is an amendment to the Bill, and the work seems to have been well done.

Hon. Mr. DANDURAND: The Bill effects, I think, what I have tried to state.

Right Hon. Mr. MEIGHEN: It does.

Hon. Mr. DANDURAND: We are transferring the administration to the Minister of Labour, to the commissioner to be appointed, and making consequential amendments of the clause as to the admissibility of evidence.

I can see fairly well the view expressed by Senator Meighen, but I do not see, under the Act of 1935, of which this document is but an amendment—and I do not think Senator Meighen sees it clearly himself—the concrete form of the amendment he would propose.

Right Hon. Mr. MEIGHEN: My idea is this: to have some provision for the fiat of a judge or, if not a judge, of the Tariff Commissioner who had it in hand before, and who could not possibly have operated because the Bill has been before the Privy Council and only came out of their hands a few weeks ago—to have a fiat for the investigation and for the infliction of any punishments that now may be in the hands of the commissioner, or any extraordinary action such

as forcible entry of premises. If that can be done, well and good. I have no desire that it shall be in any formal way. But if a fellow has a right to be heard before a man of that character, in respect of these extraordinary functions, I am satisfied.

Hon. Mr. DANDURAND: That refers to the commissioner, the one who has the administration of the Act, instead of the commission. At present it is the commission. which is composed of three members—Judge Sedgewick—

Right Hon. Mr. MEIGHEN: I just mean the one, the chairman of the commission. If his fiat is necessary before the harassment is launched, O.K., let the other man go ahead.

Hon. Mr. LYNCH-STAUNTON: Put a man over the commissioner for this purpose.

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. DANDURAND: I think Mr. Rogers will tell you, as he has told me, that he does not see how it can be done. Further, I draw the attention of the Committee to this fact, that since the inception of he Act — When was that?

Hon. Mr. ROGERS: 1910 — before that.

The LAW CLERK: 1919 was the beginning.

Hon. Mr. ROGERS: The Trade and Commerce Act.

Hon. Mr. DANDURAND: We have had the administration of the Act since 1923, so we have the same background. We have the new Act of 1935. Could the Minister or Mr. McGregor tell us what happened during those years in the administration, and why it is believed we should refer to the Minister of Labour?

Right Hon. Mr. MEIGHEN: I am not objecting to that at all. I just want some sort of non-political supervision of the launching of the process, some authority for it, and the person who authorizes it should be convinced that there is a case for it, that it is not done in answer to some whim or to gain votes.

Hon. Mr. LYNCH-STAUNTON: In the exercise of certain powers he shall have the fiat of Judge Sedgewick.

Right Hon. Mr MEIGHEN: I should like to know whether Mr. O'Connor thinks what I suggest is feasible in the exercise of the Act.

The LAW CLERK: My experience as a draftsman is that anything that is wanted can be reduced to understandable words.

Right Hon. Mr. MEIGHEN: That is not the point. My point is this. Is it feasible and practicable to insist by legislation that before one of these proceedings is launched the Chief Commissioner of the Trade and Industry Commission shall authorize it.

The LAW CLERK: That is a very familiar principle. If I want to sue, ordinarily I can sue—

Right Hon. Mr. MEIGHEN: If you sue you take the risk. But they do not take any risk on earth. They get some money into the hands of their lawyer friends, and so on.

Hon. Mr. DANDURAND: I would ask the Minister to express his views.

Hon. Mr. COTÉ: Before he does, may I say that this is not a new principle in the administration of justice. There are many offences under the Criminal Code which cannot be prosecuted without the consent of the Attorney-General. After all, what Mr. Meighen suggests is simply this, that before the commissioner proceeds an application shall be made by six persons, and the commissioner shall obtain the fiat of so and so.

The LAW CLERK: Under the 1919 legislation there was a provision that no prosecution should take place under section 498 of the Code, or resulting from the 1919 act, without the consent of — I think it was the Attorney-General of Canada.

Hon. Mr. LYNCH-STAUNTON: That is the idea.

Right Hon. Mr. MEIGHEN: It is very simple.

The LAW CLERK: I think I can relieve all of Mr. Meighen's doubts with regard to the provisions of the legislation as now proposed. It has been very well done indeed, and I should like to highly compliment Mr. MacNeill on his production, because I understand it is wholly his. I have examined every reference and every section referred to, and there is nothing extraordinary about it. Everything seems to be quite necessary except the one familiar section as to which my opinion is well known.

Hon. Mr. ROGERS: Perhaps I should say at once that the draft before the Committee is an expression of our desire to go as far as possible in meeting the objections raised by the Committee and during the discussion yesterday. Naturally, we wish to preserve all the essential principles of the legislation which received the approval of the House of Commons.

Hon. Mr. DANDURAND: And of Parliament in 1935.

Hon. Mr. ROGERS: And of Parliament in 1935.

Hon. Mr. COTÉ: Not all.

Right Hon. Mr. MEIGHEN: If you were preserving all, I would be satisfied.

Hon. Mr. ROGERS: I was thinking particularly of the features referred to by Senator Dandurand in presenting the draft.

I can appreciate the reason advanced by Mr. Meighen in support of having some judicial supervision of the investigations to be conducted under this Act; at the same time I should like to point out to members of the Committee that what is contemplated here is not a judicial proceeding but an investigation which will proceed on judicial—

Right Hon. Mr. MEIGHEN: But it has the penalties of a judicial proceeding.

Hon. Mr. ROGERS: The Minister has no power to impose any penalty.

Right Hon. Mr. MEIGHEN: The investigation itself is a penalty.

Hon. Mr. ROGERS: Senator Meighen, very properly, I think, referred to the change in the sentiment of people in this and other countries in recent years. There is no doubt at all that there has been a change of sentiment, and to some extent there has grown up a suspicion of large-scale business operations—a feeling that the very fact that they are conducted on a large scale is a presumption that they will be used to exploit the public. Such rumours surely ought to be confirmed or disproved.

Right Hon. Mr. MEIGHEN: Every investigation, even though necessary, adds to those rumours and confirms that attitude.

Hon. Mr. DANDURAND: Are not those investigations made privately?

Hon. Mr. MORAUD: No, not now.

Hon. Mr. ROGERS: There is the provision for the preliminary inquiry.

Hon. Mr. MORAUD: The report may be made public.

Hon. Mr. ROGERS: Yes, the report may be made public. That I think is a salutary provision. That is my opinion. But surely it is to the advantage of business, if these rumours persist, that there should be machinery through which they may be removed if groundless; and I suggest that in the past there have been not a few inquiries under the Combines Investigation Act which have very definitely removed misgivings upon the part of a certain section of the Canadian people that combines which were to the detriment of the public did exist in a particular field of industry. If you go over the list of inquiries conducted you will find that in many cases they show there was no basis for further proceedings.

Right Hon. Mr. MEIGHEN: I admit that, but why not have some supervision.

Hon. Mr. ROGERS: May I point out again that the Dominion Trade and Industry Commission Act did not of itself provide that there should be a man of experience at the Bar, or of previous judicial experience as charman of that commission. Not only that, but under the Act of 1935 provision was made whereby any one member of that commission might conduct an investigation. It so happens that only one member of the commission is a judge.

Right Hon. Mr. MEIGHEN: But they are under him; he can supervise them.

Hon. Mr. ROGERS: But any one of the members may conduct the investigation.

Right Hon. Mr. MEIGHEN: But you can depend upon it that while he was there there was no investigation launched without his authority.

Hon. Mr. ROGERS: As a matter of fact there were no investigations because of the reasons stated to the Committee.

There is also provision subsequently whereby an inquiry may be instituted by a single commissioner, so an investigation may be taken by a single commissioner.

Hon. Mr. LYNCH-STAUNTON: How would it embarrass the Department to obtain a fiat such as Senator Meighen suggests?

Hon. Mr. ROGERS: It seems to me that one of two things would follow. I think the Commissioner in such a case would make a proper investigation on the evidence to determine whether or not an inquiry should take place, or the fiat would be a mere matter of formality and fulfil no useful purpose.

Hon. Mr. LYNCH-STAUNTON: But the commissioner has to make up his mind on the evidence before him, prior to launching an investigation.

Right Hon. Mr. MEIGHEN: Similar considerations would apply to cases where the Attorney General's consent is necessary. The provision for that will be found in many places in the Code.

Hon. Mr. ROGERS: But in that case there is a criminal information laid. Here there is nothing of the kind; this is rather the machinery of investigation to determine whether or not there is evidence upon which a criminal proceeding may follow.

Hon. Mr. COTÉ: What you say is not quite correct. Here there have to be declarations by six good citizens that they believe a combine is operating or is likely to operate against the public interest. My recollection of the section is that they must state the grounds upon which their belief is founded.

Hon. Mr. ROGERS: That is correct.

Hon. Mr. COTÉ: If that material is complete, why should not a judicial person pass on the sufficiency of it?

Right Hon. Mr. MEIGHEN: And especially after the preliminary hearing and before the launching of a big public investigation, with the newspapers full of this, that and the other thing, alleged to have been done by certain people.

Hon. Mr. DANDURAND: At what point should it be necessary to have the question passed upon by a judge?

Right Hon. Mr. MEIGHEN: I am not clear as to whether the consent should be necessary for the preliminary inquiry or not. What is the nature of that?

Hon. Mr. DANDURAND: I have never attended any of these inquiries. I wonder at what time the judge would be in a position to say whether the evidence was sufficient to warrant further inquiry.

Hon. Mr. LYNCH-STAUNTON: If a man is charged with a criminal offence, he goes before a magistrate and a grand jury.

Hon. Mr. DANDURAND: But nobody is charged here.

Hon. Mr. LYNCH-STAUNTON: Before a man is put on trial there is an ex parte inquiry made by the Crown, and that has to be submitted to the Grand Jury. The Grand Jury then decides whether he shall or shall not be proceeded

against. The Government has followed that practice to some extent here. It says that before an investigation is made there shall be a preliminary inquiry. Then the evidence on this preliminary inquiry has to be submitted to the commissioner. Now, the suggestion here is that the evidence taken on that preliminary inquiry should be submitted to a judge, who should act like the Grand Jury does in a criminal trial, and decide whether the matter is to proceed further or not, whether there shall be an investigation or not.

Hon. Mr. MORAUD: This matter is provided for in the Combines Investigation Act of 1935, section 4:—

> It Shall be the duty of the Commission
> (*a*) to receive and register, and, subject to the provisions of this Act, to deal with applications for investigation of alleged combines;
> (*b*) to bring at once to the Minister's attention every such application;
> (*c*) to conduct such correspondence with the applicants and all other persons as may be necessary;
> (*d*) to call for such returns and to make such inquiries as it may consider to be necessary in order that it may thoroughly examine into the matter brought to its attention by any application for an investigation;
> (*e*) to make reports from time to time to the Minister;

The Commission there received the complaints, and decided whether there should be an investigation. We had there the judicial machinery that my right honourable friend was speaking about.

Then, section 7 says:—

> (1) If, after such preliminary inquiry as the Commission deems the circumstances warrant, the Commission is of the opinion that the application is frivolous or vexatious, or does not justify further inquiry, the Commission may decide that no further inquiry is justified and shall inform the applicant of the decision giving the grounds therefor.

So there the judicial body, the Commission, decided first whether the complaint was reasonable or not, and made a preliminary inquiry if it believed one to be warranted. Then, after that preliminary inquiry was made, the Commission decided whether there was sufficient grounds to proceed further. Is there any objection to retaining such machinery here?

Hon. Mr. DANDURAND: I think the same machinery is transferred to the Minister of Labour and the Commissioner who is to be appointed.

Hon. Mr. MORAUD: But that is a transfer to an officer of a department, whereas under the 1935 Act the decisions were made by that tribunal, the Commission. That is the difference. In the 1935 Act the public was protected by a tribunal. But in this case the investigating is done by a departmental officer, and his report can be made public.

Hon. Mr. COTÉ: Not only that, but under the old Act there was a commissioner, whereas now we are to have a series of special commissioners to be appointed by Order in Council.

Hon. Mr. ROGERS: If necessary.

Hon. Mr. COTÉ: Yes. I suppose we can contemplate the appointment of some, if we provide for them.

Hon. Mr. DANDURAND: If need be.

Hon. Mr. COTÉ: If the work is too much for one man. I suppose that is what is meant.

Hon. Mr. ROGERS: Yes.

Hon. Mr. COTÉ: So we may have not only one man, the commissioner, who is experienced in these matters, but a number of brand new commissioners. I do not know whether the special commissioners are given power to conduct a preliminary investigation or not.

Right Hon. Mr. GRAHAM: What does the preliminary investigation consist of?

Right Hon. Mr. MEIGHEN: Do you think the authority of a judge should be necessary for the preliminary inquiry, Senator Cote? I hardly think so.

Hon. Mr. COTÉ: Candidly, I do not think so. I do not think that the judicial fiat should intervene between the complaint and the preliminary inquiry.

Hon. Mr. BEAUBIEN: What does the preliminary inquiry consist of?

Hon. Mr. BALLANTYNE: We should like to know that.

Hon. Mr. DANDURAND: We will ask Mr. McGregor, who has twenty years in this work

Hon. Mr. COTÉ: I shall reserve my further remarks until we hear his explanation.

Right Hon. Mr. GRAHAM: Tell us what the preliminary inquiry consists of and how far it can go.

Mr. MCGREGOR: In the 1923 legislation provision was made for the registrar to make inquiries under the Combines Act of that day. It was not referred to as a preliminary inquiry. It was the function of the registrar to determine, first of all, whether there was justification for a more extensive inquiry. He was authorized to carry through to the completion of the preliminary inquiry, at which point a special commissioner, an ad hoc commissioner, might be appointed to make a further investigation.

Hon. Mr. DANDURAND: How did the registrar become seized of the complaint?

Mr. MCGREGOR: He proceeded, under that legislation, on the complaint of any six persons who made oath alleging that a combine existed and filed with the registrar the evidence upon which they based their belief.

Right Hon. Mr. MEIGHEN: The oath was only that they believed it to exist?

Mr. MCGREGOR: No; they were required to say whom they believed to be parties to the combine.

Right Hon. Mr. MEIGHEN: They never took any chance on that oath, because they only said what they believed.

Mr. MCGREGOR: They were required to produce evidence.

Hon. Mr. DANDURAND: They had to give evidence with their complaint?

Mr. MCGREGOR: In cases where they did not produce evidence to justify proceeding, we did not proceed.

Right Hon. Mr. MEIGHEN: But my point is that in the oath as you described it, there was nothing to prevent them from swearing to allegations of any kind. If they swore to something that was contrary to the facts, they would not suffer.

Hon. Mr. DANDURAND: That is to say, they could not be prosecuted for perjury?

Right Hon. Mr. MEIGHEN: No.

Mr. MCGREGOR: Section 5 of the Combines Investigation Act of 1923 provided:

> Any six persons, British subjects, resident in Canada, of the full age of twenty-one years, who are of the opinion that a combine exists, or is being formed, may apply in writing to the Registrar for an investigation of such alleged combine, and shall place before the Registrar the evidence on which such opinion is based. The application shall be accompanied by a statement in the form of a solemn or statutory declaration showing (*a*) the names and addresses of the applicants, and at their election the name and address of any one of their number or of any attorney, solicitor or counsel whom they may for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them; (*b*) the

nature of the alleged combine and the names of the persons believed to be concerned therein and privy thereto; (*c*) the manner in which, and where possible the extent to which, the alleged combine is believed to operate or to be about to operate to the detriment of or against the interest of the public whether consumers, producers or others.

Right Hon. Mr. MEIGHEN: That is an affidavit of belief.

Mr. MCGREGOR: Then the registrar proceeded, on the application of the six persons, or whenever he had reason to believe that a combine existed or was being formed, or whenever directed by the Minister. The provision that the registrar shall proceed whenever he has reason to believe that a combine exists or is being formed does not appear in the amendments as proposed here. A change made in the House of Commons provided that the Commissioner should proceed only when an application is received from six persons or upon direction by the Minister.

Hon. Mr. DANDURAND: That was 1923.

Hon. Mr. BALLANTYNE: After you got the evidence from the six men, and the Minister told you to proceed, what did you do?

Mr. MCGREGOR: I proceeded in an informal way to consult the members of the alleged combines. First of all perhaps we would collect what information we could in the Department from our records and find out what questions to ask those alleged to be parties to the combines. Then we approached them in quite an informal way to size up the situation and see if there was justification for going further.

Hon. Mr. MORAUD: Could you not go into their premises and take all documents?

Mr. MCGREGOR: We could, but that is not the method we have used in any of our preliminary inquiries. It was always an approach to a particular man in his office to get a sizing up of the situation.

Hon. Mr. BALLANTYNE: You are consulting them now. As a result of the consultation you have held you are satisfied the allegation is serious. What is your next move?

Right Hon. Mr. MEIGHEN: You did not put them under oath?

Mr. MCGREGOR: In some instances we did.

Hon. Mr. BEAUBIEN: On your first approach?

Mr. MCGREGOR: No. It is really an informal inquiry to satisfy the mind of the registrar, as he then was, that there was something which would justify further proceedings. Then in the period from 1923 to 1930 the registrar reported back to the Minister that in his opinion there was justification for the further inquiry.

Hon. Mr. GRIESBACH: That is the end of the preliminary inquiry. Do you call that a stage?

Mr. MCGREGOR: There was no direct line of demarcation between the preliminary and the fuller inquiry.

Hon. Mr. GRIESBACH: We are looking to see where this judicial authority might come in advantageously.

Hon. Mr. BALLANTYNE: Wait a moment, please, Mr. McGregor, you have gone so far. Then suppose the evidence convinces you there is justification for further inquiry, what do you do?

Mr. MCGREGOR: In the period from 1923 to 1930 recommendation was made to the Minister if in the opinion of the registrar there was occasion to go further. Out of perhaps 450 cases we have dealt with in the last dozen years, I think we have perhaps gone forward with more important inquiries in from twenty to twenty-five cases at the most.

Hon. Mr. DANDURAND: Did you report to your Minister after that inquiry in writing?

Mr. McGREGOR: I am required under the Act to report in writing at the conclusion of every inquiry.

Right Hon. Mr. MEIGHEN: Every preliminary inquiry?

Mr. McGREGOR: No, every inquiry.

Right Hon. Mr. MEIGHEN: I gather from what you say there is no dividing line between the preliminary and the main inquiry.

Mr. McGREGOR: There has not been.

Hon. Mr. DANDURAND: What took place afterwards if you reported there was matter for further inquiry?

Mr. McGREGOR: Then it was the Governor in Council decided whether they would appoint the Commissioner to proceed with the further inquiry.

Hon. Mr. BALLANTYNE: We will assume it is very serious all the way through. I am still anxious to know how you proceed. Suppose you go right on with it, what do you do after the preliminary inquiry?

Mr. McGREGOR: We would apply to the Minister of Justice for counsel to assist the Commissioner or the registrar in the inquiry. That is what we have done in the Coal case of 1932-33. We asked the Minister of Justice to appoint counsel, we asked the Governor in Council to authorize the appointment of accountants, and then we held the more formal hearings, at which all the evidence was taken under oath.

Hon. Mr. BALLANTYNE: You ask for certain documents and you get them. Then you are going to seize more documents?

Mr. McGREGOR: If we find there are other documents that we believe contain information which relates to the alleged combine, we call upon them to produce the documents.

Hon. Mr. MORAUD: In some cases don't you seize the documents right off?

Mr. McGREGOR: We have asked for the documents. None of our representatives has ever gone in and seized them. We have asked that they be produced.

Hon. Mr. HAIG: Are you conducting the Patent case investigation in the West?

Mr. McGREGOR: No. I believe the complaint was made to the Trade and Industry Commission.

Hon. Mr. BALLANTYNE: Suppose it has been proven that a very large corporation is a combine to the detriment of the public.

Mr. McGREGOR: Proven, you mean, to the satisfaction of the registrar?

Hon. Mr. DANDURAND: No, it is not proven to the registrar.

Hon. Mr. BALLANTYNE: Suppose it is proven to be a combine to the detriment of the public, and the corporation is fined $100,000?

Mr. McGREGOR: Not under the amendment.

Hon. Mr. BALLANTYNE: What is the penalty, then?

Mr. McGREGOR: $10,000 is the maximum penalty for an individual. It can be anything from $10,000 down to $1. In some cases it was $100, in others $1,000. For a company the maximum is $25,000 in the Act as it is at present.

Hon. Mr. BALLANTYNE: Does that include the directors? I am thinking of Senators Dandurand and myself. The other Act took in the directors too, because they were blamed for having a knowledge of the combine. Are they still included?

Mr. McGREGOR: There is no change in that respect in section 32 of the Act of 1935.

Hon. Mr. BALLANTYNE: Which includes directors?

Mr. McGREGOR: I will read the section:

> Every one is guilty of an indictable offence and liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years, or to both fine and imprisonment, or if a corporation to a fine not exceeding one hundred thousand dollars, who is a party or privy to or kowingly assists in the formation or operation of a combine within the meaning of this Act.

Hon. Mr. BALLANTYNE: That takes the Board of Directors in if they know?

Mr. McGREGOR: If they assist in the promotion or operation of a combine.

Right Hon. Mr. MEIGHEN: That is in the law to-day. This is what we are trying to get at. As it is now, it is your decision or your Minister's as to whether you start an investigation under oath, call for all sorts of reports and documents. Now then, what is the difficulty about making the decision part of it subject to the approval of a man in a judicial position? That is all I am speaking of, the decision part.

Hon. Mr. DANDURAND: Will you allow me to put this question, so we may know where it comes in. The registrar who is carrying on a preliminary inquiry reaches the point when he thinks there is cause for a formal inquiry. Then I suppose he makes a report to his Minister; is that it?

Mr. McGREGOR: That is it.

Hon. Mr. DANDURAND: Then his Minister goes to the Governor in Council for authority to proceed?

Mr. McGREGOR: No. Ordinarily we would need assistance if we go to the further stage. We have been charged on the one hand with having too modest a staff; on the other hand we have been charged with going too far. There are occasions when we do need a fairly substantial organization of four or five men to proceed with an inquiry, but we would not need them throughtout the year.

Right Hon. Mr. MEIGHEN: I understand that. That is not the point at all. Just take an election campaign. Passions are aroused, the determination to win is perhaps never equalled in any other sphere. By some means an intimation will be given to a big organization, "Now you had better do something." The organization may be given such information that they have a pretty good hint of why "they had better do something." If they do not do something, after the election there is a department with an assistant to the department, which that organization knows can visit punishment on it without anybody else ever knowing anything about it.

Mr. McGREGOR: The commissioner under this Act is not required to proceed with a complete inquiry.

Right Hon. Mr. MEIGHEN: You do not seem to get my point at all.

Hon. Mr. ROGERS: May I answer the question, Senator Meighen? I think I understand the point. It is, I take it, the Act might be used as an instrument of persecution.

Hon. Mr. DANDURAND: Or blackmail.

Hon. Mr. ROGERS: Political blackmail?

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. ROGERS: Surely nothing of that nature can operate unless there is some basis of fear upon the person who is blackmailed. No penalty can be imposed if everything is all right.

Right Hon. Mr. MEIGHEN: There is something you overlook entirely, and you must overlook it, I think, because you are new upon the scene.

Hon. Mr. LYNCH-STAUNTON: You don't know the tricks of the trade.

Right Hon. Mr. MEIGHEN: The investigation itself is one of the severest punishments that can be visited on business. Do you think I don't know? The investigation itself, I tell you, is one of the severest penalties that can be visited on business. The most upright organization in the world is subject to blackmail, no matter how it may come out when it gets to court.

Hon. Mr. DANDURAND: By blackmail you mean injury?

Right Hon. Mr. MEIGHEN: Blackmail comes before injury. It is subject to injury.

Hon. Mr. DANDURAND: I confess it has never entered my mind in the last twenty-five years that the Act could be used for such a purpose.

Right Hon. Mr. MEIGHEN: I am not saying there is an instance, but I am not sure there has not been. I know it is as easily done as anything in the world can be done. I certainly can say it has been threatened to be done. Whether it ever was done I am not saying.

Hon. Mr. ROGERS: Could it not be done by royal commission under the Inquiries Act at any time?

Right Hon. Mr. MEIGHEN: Yes. That is a pretty mighty instrument. But the royal commissioner is usually a judge. He may be a good or a bad one, he may have forgotten his past or he may not, but there is at least that protection. Here there is nothing at all, if you have your way. It is just the Minister and his officials, and they are in a position to visit severe punishment on any industry. I do not think they should be allowed to do it unless they are able to convince a judge they have reasonable cause. At the preliminary inquiry there might be a stage defined, before the investigation goes to the length of certain sections, those that call for examination under oath, for all these returns and the like; there should be a stage defined when that authority should be given. All you have to show is that there is reasonable ground to proceed. Having shown that you get your authority. What is the difficulty?

Mr. MCGREGOR: There is just one point. In the twelve years' experience I have had in this work there has been no political pressure brought to bear upon me to make any kind of inquiry.

Right Hon. Mr. MEIGHEN: How do you know what your Minister had in mind? If I were the Minister you would never know.

Mr. MCGREGOR: I can say the same on the other side, as far as any influence being brought to bear by industrial corporations is concerned.

Right Hon. Mr. MEIGHEN: They would not exert any improper influence. But what is your difficulty? Here is your evidence. What is to hinder you going only a few hundred yards to convince someone that you are acting in good faith?

Hon. Mr. ROGERS: The commissioner is appointed by Governor in Council, and any government having a sense of responsibility would seek to have a man of responsibility. There is nothing to prevent a lawyer or a judge being a commissioner. On the other hand, there is nothing I can see in the Act that would prevent the commissioner from carrying out his duties in precisely the same way that one with judicial or legal experience would do.

Right Hon. Mr. MEIGHEN: Why have judges at all? Why put them in the position they are in if you can always depend on a government official? Why, it is the very essence of British institutions. If you are looking for election, and this man is under you, and you say there is no reason for having a judge as the official, we do not need a judge at all.

Hon. Mr. LYNCH-STAUNTON: We are trying to persuade the Minister to adopt this view—that there is nobody in whom the people generally repose greater confidence than our judges. In every country of the British Empire they have the confidence of the people. There are plenty of people who think evil of their political opponents, who believe they will descend to anything, but they have confidence in the judges. If I were the Minister I should like to have the fiat of a judge for what I did, for not only would it show the best of faith, but the public would have confidence that there was no political trickery. They might say that a minister, being a politician, would do anything. So, to keep his own skirts clear, I think the Minister would be well advised to submit this to a judge before making the investigation.

This would be a great protection to you, Mr. Minister, and I ask this gentleman here wherein it would embarrass him, or you, to get that fiat. It seems to me it would be your shield and protection against the opinion of the public to be able to say, "I launched this proceeding with the approval of a judge of the high court," or "a judicial officer who has no axe to grind."

I think you should consider the matter from that point of view. Certainly, in my present frame of mind, I would adopt it greedily.

Hon. Mr. MORAUD: So far we have heard objections against the application of the Act by an officer of the department. I should like to hear the objections to the procedure as indicated in the Act of 1935. Are there any serious objections to that procedure?

Hon. Mr. ROGERS: I thought I dealt with that the first day. The Dominion Trade and Industry Commission is actually the Tariff Board acting in another capacity. That is to say, the members of the commission are members for the time being of the Tariff Board; the chairman of the commission is for the time being Chairman of the Tariff Board. There is nothing in the Tariff Board Act or in the Trade and Industry Commission Act which requires the chairman to be a judge; but the Tariff Board as at present constituted has quite enough to do within its own functions without assuming any additional duties.

Right Hon. Mr. MEIGHEN: What is your authority for that statement?

Hon. Mr. ROGERS: The authority for it is that the Tariff Board was set up in its present form to carry out functions which have been exercised steadily since that date, and I do know—I have made inquiries—that certain references have been very much in arrears because the Tariff Board has not been able to keep up with its work.

The Trade and Industry Commission functioned as a commission, except so far as a single commissioner might conduct an inquiry. You had, not a judge but a commission of three, and the voice of the judge was of no greater weight than that of any other member of that commission. I doubt if it would be possible to carry out the suggestion before the committee and ask for the approval of the Chairman of the Trade and Industry Commission.

Right Hon. Mr. MEIGHEN: Why?

Hon. Mr. HOWE: So far as it has functioned, in the past, it has functioned as a board of three.

Right Hon. Mr. MEIGHEN: Oh, pshaw.

Hon. Mr. HAIG: What is the answer to Senator Lynch-Staunton's question?

Hon. Mr. ROGERS: My answer would simply be this, that under the Act as it now stands, for the initiation of investigation either by the application of six persons—

Hon. Mr. LYNCH-STAUNTON: What embarrassment would it be to you?

Hon. Mr. ROGERS: May I represent it in my own way, sir? These investigations may be initiated either by the application of six residents of Canada who take oath that they think a combine exists, or by the Minister. So far as the application of the six persons is concerned, that goes forward without the

intervention of the Minister, and I think it is very wise that that should be so. So far as the inquiries initiated by the Minister are concerned, they are undertaken on his own responsibility. But in either case—and I submit that this is a material distinction—you are assuming responsibility not for a criminal proceeding, not an inquisition, but for an investigation.

Hon. Mr. MORAUD: It amounts to a criminal investigation and has the same consequences for the people who are investigated.

Hon. Mr. ROGERS: Only if they are guilty.

Hon. Mr. MORAUD: Not at all. Your report is made public.

Hon. Mr. COTÉ: In other words, you would not call a criminal trial a criminal trial if the man were found innocent?

Hon. Mr. ROGERS: The report is made public, and that, I should think, would be the advantage of the business if it disclosed that there was no basis for the investigation.

Hon. Mr. LYNCH-STAUNTON: What is the embarrassment to you or to the commissioner by reason of being obliged to obtain a fiat of a judge?

Hon. Mr. ROGERS: I would say further, there is this question. When is the Chairman of the Dominion Trade and Industry Commission going to intervene? When is he going to issue his fiat? If it is done simply upon the application of six persons, or a letter sent to the Minister, then the fiat becomes a mere formality; if it means that, surely it means that the Chairman of the Trade and Industry Commission himself must examine the evidence.

Hon. Mr. LYNCH-STAUNTON: Or have someone do it for him.

Hon. Mr. ROGERS: But if he is going to do that under the Act as a judge he must do it himself.

Right Hon. Mr. MEIGHEN: Why shouldn't he?

Hon. Mr. ROGERS: The evidence is often obtained at a remote place, Vancouver or Halifax.

Hon. Mr. LYNCH-STAUNTON: You should go before him with the evidence, like a man who goes to a magistrate when he wants a search warrant.

Hon. Mr. ROGERS: If the commissioner, having made inquiries, decides there is some basis for going further, I do not see why he should go back and get a fiat.

Right Hon. Mr. MEIGHEN: Just because he is going to do something that in itself imposes a penalty, and a severe one, and he should lay before someone of judicial mind or legal experience something to show whether or not he has got cause to do it.

Hon. Mr. DANDURAND: I draw attention to this situation. A complaint is signed by six individuals, and is sworn to. The registrar or the commissioner receives it. It is supported by some kind of evidence. The names of the accused, or of the people supposed to form that merger are mentioned. Will that be sufficient to be brought to the judge to ask him to allow them to proceed, or should there not—I am discussing the value of approaching the judge for his fiat—should there not be a preliminary inquiry which would result in a report indicating to the judge what has been found so far when asking for authorization to proceed in the regular way by summoning witnesses and so forth? I do not know when you would apply to the judge. If you apply only at the very inception, when the complaint is made with six names, he will simply have to look at the document and see if the law authorizes him to give instructions to proceed. I do not see at the moment that he would have sufficient in his hands to satisfy him as to the position he will take with respect to allowing the commissioner to proceed.

Hon. Mr. LYNCH-STAUNTON: You are a lawyer, and a good one, I believe.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. LYNCH-STAUNTON: The applicant in this case is the commissioner. He would go to you and would lay before you facts that he thought were sufficient to satisfy you. You would say, "I think you must have a little more. Go and get something more."

An Hon SENATOR: That is after the preliminary investigation.

Hon. Mr. LYNCH-STAUNTON: No. He would go to the judge and would say, "I have this evidence—

Hon. Mr. DANDURAND: Outside of the other complaint?

Hon. Mr. LYNCH-STAUNTON: He would go before him with anything he chose—with the petition signed by the six men and such other evidence as he chose to produce—and would say he thought he had a prima facie case, and the judge would say to him, "I do not think you have a case. You will have to get a little more to satisfy me." Then he would go away and get more if he could, and would come back and try to satisfy the judge. He could do this several times until the judge was satisfied he should have his fiat.

If a man came to you in your own private capacity and made charges against anybody, you would say, "I do not think you have a real case to charge or to investigate that man," or, "I do think you have a case." If he had not you would ask him if he could get anything more, and he would say whether he could or not. It would be just like a grand jury. There is no defence before a grand jury. The Crown submits what it thinks is enough to make out a prima facie face to put the man on trial. Now, here the judge would be like the Grand Jury, and he would require sufficient evidence before ordering that an investigation be made. That is all. I cannot see how that would embarrass the Minister or the customer.

Hon. Mr. MORAUD: The Combines Investigation Act of 1935 provided, in section 5:—

> Any six persons, British subjects, resident in Canada, of the full age of twenty-one years, who are of the opinion that a combine exists, may apply in writing to the Commission for an investigation of such alleged combine, and shall place before the Commission the evidence on which such opinion is based.

The next section says:—

> The Commission shall on application made under the last preceding section or on its own motion whenever it has reason to believe that a combine exists cause an inquiry to be made into all such matters, whether of fact or of law, with respect to the said alleged combine as it shall consider necessary to inquire into with the view of determining whether a combine exists.

We have there the whole machinery.

Hon. Mr. GRIESBACH: Mr. Chairman, Senator Meighen has laid down the broad principle that this machinery should operate only after the authority of a judge has been given. The difficulty that presents itself to my mind is to know when the judge should intervene, and for how long a time.

Right Hon. Mr. MEIGHEN: That is the only difficulty.

Hon. Mr. GRIESBACH: Mr. McGregor has described the procedure. It seems to me a procedure of starts and stops. A judge might intervene here, there and somewhere else—he might be required to intervene three times. It would appear that, if Senator Meighen's contention is sound, there should be an official something like a king's proctor to advise the Minister whether to go forward with an investigation or not.

Right Hon. Mr. MEIGHEN: No, I would not suggest that.

Hon. Mr. GRIESBACH: I think some point should be designated where the judge has to intervene. Because unless that is settled, we cannot know how often and just at what time there might be judicial intervention.

Right Hon. Mr. MEIGHEN: That is the only difficulty, but I do not think it is a great one. Mr. McGregor has told us about the preliminary examination he makes by consulting the business men and looking over the ground, and so on. I do not see any necessity for judicial intervention there. But before he proceeds to make an examination of witnesses on oath, and produces a record that goes out to the public, he should have a fiat from the judge. I am ready to leave it to the counsel of the Committee, or to the Minister himself, to tell us at just what point that intervention should be made.

Hon. Mr. GRIESBACH: Is it in intended to deprive the Minister of his ministerial responsibility and to place that upon a judge? At the moment the Minister is responsible for the administration of this Act. If we require that a judge shall determine whether or not an investigation is to be made, we must put all the responsibility upon the judge.

Hon. Mr. CALDER: I am not quite clear as to whether when Senator Meighen suggests a reference to a judge he has Judge Sedgewick in mind.

Right Hon. Mr. MEIGHEN: Not necessarily.

Hon. Mr. CALDER: Any judge of any Superior or Supreme Court anywhere in Canada?

Right Hon. Mr. MEIGHEN: Yes.

Hon. Mr. CALDER: Your idea is, simply, that there should be an application made to a judge of a superior court for a fiat?

Right Hon. Mr. MEIGHEN: That is right.

Hon. Mr. KING: Who would conduct the investigation?

Right Hon. Mr. MEIGHEN: I am willing to have it conducted as the Minister wishes, if he gets the fiat.

Hon. Mr. COPP: It seems to me that is we are going to have a judge's fiat, the time should be after the registrar makes his preliminary investigation and reports to the Minister. If the Minister is then of the opinion that there should be a further investigation, then he refers the report and the evidence to a superior court judge and the application for permission to investigate is approved or rejected.

Right Hon. Mr. MEIGHEN: That is it, exactly.

The CHAIRMAN: Had we not better have the Minister's reaction to that suggestion now?

Hon. Mr. COTÉ: Before we come to that, may I refer to section 14 of the Bill:—

> The Commissioner shall on application made under the last preceding section, or on direction by the Minister, cause a preliminary inquiry to be made into and concerning such matters as he deems the circumstances warrant.

Can the Minister tell me whether, in the making of this preliminary inquiry provided for by section 14—I must candidly admit I do not know what clauses of the Bill have been eliminated—the commissioner was clothed with any extraordinary powers, to call witnesses and compel evidence, or whether it would be simply an inquiry made from his own office as could be made by any man without special authority?

Hon. Mr. ROGERS: He had all powers necessary to carry out a preliminary inquiry. That is, he could resort to the taking of evidence on oath and getting documents, but normally he would not do that, he would just make an investigation informally.

Hon. Mr. COTÉ: If he had the powers, the preliminary inquiry might become an investigation on a large scale. Is it necessary for the commissioner to have such powers, for a preliminary inquiry? Should his powers not be restricted to checking up on the complaints? He could communicate with the parties concerned, and form his opinion as to whether the answers he received were well founded or not, before recommending anything to the Minister. If he has the powers provided here, he would have to exercise a judicial discretion. That is to say, this official of the Department would be doing what a judge would do if called upon to say whether there was sufficient evidence to warrant the larger investigation. And if the judge gave a fiat, the larger investigation would then be carried on, under the Minister's authority, as provided for in the Bill.

Right Hon. Mr. MEIGHEN: It would be hardly a fiat; it would be approval.

Hon. Mr. BEAUBIEN: Mr. McGregor, do I understand that in seven or eight years you investigated about 400 concerns?

Hon. Mr. DANDURAND: Not concerns.

Hon. Mr. BEAUBIEN: Complaints.

Mr. MCGREGOR: Complaints of one kind and another have been received to about that number. Some of them have resulted in very little more than an exchange of a few letters. In many cases, on approaching the companies we have found there was no justification for going any further. In some cases there have been only complaints from individuals, and we have discouraged the filing of a formal application.

Hon. Mr. BEAUBIEN: I understand that you proceeded to investigate in only about 20 or 25 cases.

Mr. MCGREGOR: What we regard as important investigations would number probably about 25.

Hon. Mr. BEAUBIEN: As to the others, those that you did not investigate so fully as you did in the 25 cases, how many did you investigate to the extent of calling witnesses and having documents produced, and that kind of thing?

Mr. MCGREGOR: I should judge that in perhaps another 50 cases we have made some investigation.

Hon. Mr. BEAUBIEN: Do I understand that in those 50 cases you proceeded to make investigations and had witnesses examined under oath?

Mr. MCGREGOR: No.

Hon. Mr. BEAUBIEN: Did you have them produce their books and investigate their books?

Mr. MCGREGOR: Not in an informal procedure. In most of those 50 cases that I speak of the inquiries were still of an informal character.

Hon. Mr. BEAUBIEN: What would such an inquiry consist of?

Mr. MCGREGOR: Conferences with the heads of the concerns who were charged.

Hon. Mr. BEAUBIEN: Any production of documents?

Mr. MCGREGOR: We asked them to produce documents.

Hon. Mr. BEAUBIEN: In those documents were there books?

Mr. MCGREGOR: Yes.

Hon. Mr. BEAUBIEN: You investigated their books?

Mr. MCGREGOR: In their offices.

Hon. Mr. BEAUBIEN: Did you have any of their employees put under oath?

Mr. MCGREGOR: In some cases, yes.

Hon. Mr. BEAUBIEN: And you proceeded with an investigation in their offices?

Mr. MCGREGOR: In their offices, sometimes in a central place.

Hon. Mr. BEAUBIEN: That is going to produce fear.

Hon. Mr. GRIESBACH: Mr. Chairman, we have been milling around for two hours—

The CHAIRMAN: Is there not a proposition before the Minister now?

Hon. Mr. GRIESBACH: I am going to refer to that. We have been milling around for a couple of hours trying to get somewhere. Senator Copp has made a suggestion. I think if he would put that to the Minister as he put it to us a few moments ago we could have the Minister's reaction to it, and then perhaps have the proper officers prepare the necessary amendments.

Hon. Mr. COPP: My suggestion, Mr. Chairman, was that if the committee decided we should have this reference made to a judge, and have a fiat at some stage in the proceedings, it should be after the preliminary investigation. The registrar having conducted his preliminary inquiry into the charges made by six persons reports to his Minister. I suggest that if the Minister thought on a review of the evidence it justified further investigation, and if we are to have a judge conduct that investigation, then the Minister should refer the case to a judge of a superior court for approval.

Hon. Mr. GRIESBACH: That is the whole case.

Hon. Mr. LYNCH-STAUNTON: Yes.

Hon. Mr. MORAUD: I would suggest, following Senator Copp's statement, that the leader on our side, the Minister and the legal officers get together and draft the necessary amendment.

The CHAIRMAN: I suggest, gentlemen, that we first have the opinion of the Minister.

Hon. Mr. ROGERS: Gentlemen, I do not want to appear stubborn in the matter, and certainly I have no desire to be unreasonable. I quite understand it is the function of the Senate to improve legislation—if on rare occasions it requires improvement as it comes from the Commons. But it does seem to me that this represents a complete departure from the procedure we have followed in past years. That is why I am hesitant. This has come to me for the first time now, and I want to see my way through it. It is not only a complete departure, it may mean dilatory procedure. Take, for instance, the position of a judge or the Chairman of the Dominion Trade and Commerce Commission who is asked to give approval of an investigation. He might very well say, "There is some uncertainty about this, the evidence is not complete. I ought to hear the parties on both sides." That might be a matter of days; conceivably it might be a matter of weeks. It would be in the nature of a preliminary hearing by a judge as to whether or not there was evidence to suggest that a combine existed.

Hon. Mr. LYNCH-STAUNTON: No, a prima facie case.

Right Hon. Mr. MEIGHEN: A reasonable case for investigation.

Hon. Mr. ROGERS: In the past that point has been determined, if you will, by the application of six residents of Canada, an application based on affidavits, or by the Minister.

Right Hon. Mr. MEIGHEN: By the Minister, precisely. That is just as it was under the Act passed in 1935, and that is the sound practice, that the Minister does not decide it at that point. That is the point where the damage starts.

Hon. Mr. COTÉ: Make it an ex parte application to the judge. Then the answer to your last argument is: If the evidence is not good enough for the judge, it should not be good enough for you to start an investigation.

Hon. Mr. ROGERS: It depends on what we are to do. If we are to take it before the Chairman of the Tariff Board, I submit he may object that the Tariff Board has already enough to do in carrying out its normal functions.

Right Hon. Mr. MEIGHEN: The proposal would give the Board hardly any work at all. You have had very few inquiries of a formal nature in the past. You really want approval before you go on with that limited number.

Hon. Mr. ROGERS: The judge who assumes official responsibility would have to be quite certain that a prima facie case was established.

Right Hon. Mr. MEIGHEN: A reasonable case. What do you do now?

Hon. Mr. ROGERS: We leave it in effect to the commissioner to determine whether or not the investigation should go forward.

Right Hon. Mr. MEIGHEN: Suppose, Mr. Rogers, you notify a company that within a couple of days there will be an army of accountants, just as many as you want, sent in to examine its records. Every member of the company's staff will know about it, and within a minute or two it is all over the country that the company is under investigation. Then in the eyes of the public the company is probably regarded as a criminal. That is the punishment, and it is terrific. Surely there should not be resistance to the request that there shall be reasonable cause shown before a judge before you go ahead. It is the most reasonable thing in the world.

Right Hon. Mr. GRAHAM: Gentlemen, would it meet the views of the committee if we were to say that nothing beyond the preliminary investigation should be proceeded with without the approval of the Justice Department?

Right Hon. Mr. MEIGHEN: There is just this difference, Senator Graham. The Minister of Justice, it is true, has judicial experience.

Right Hon. Mr. GRAHAM: And he has a staff.

Right Hon. Mr. MEIGHEN: But still the proposal is subject to the same objection I raised first. He is a member of the Government, he is still in public life. He has not the attributes so well described by Senator Lynch-Staunton: he has nothing to fear, he has no interests to serve, and he has only his reputation to sustain. That is all it means to him. If he says the inquiry should go ahead, all right. It should not be left to any members of the Government, who have other interests to serve, other influences upon them, who are not surrounded by the same atmosphere at all, to decide a step that means so much to a business organization. I assure you, whatever side may be in power I shall adopt the same attitude.

Hon. Mr. LYNCH-STAUNTON: It is the general practice in all tribunals.

Hon. Mr. GRIESBACH: Mr. Chairman, I have some sympathy with the Minister in his hesitation to adopt this proposal off-hand. It has been well stated by Senator Copp, and I think we are quite clear on that point. It is now five minutes to eleven, and I do not think we should press the Minister for an immediate answer.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. GRIESBACH: I think he should be given an opportunity to think it over. Perhaps on reflection he may find the difficulties are by no means so great as they were.

Right Hon. Mr. MEIGHEN: If my suggestion as to section 22 is accepted, and I know that is all the Minister wants, then there is only one thing to decide as far as I am concerned. If that can be covered our work is done, and there can be no difficulty in putting the Bill in form for this session.

Hon. Mr. DANDURAND: The two Houses will meet at 11 o'clock to-morrow morning. I think we shall be through in the Senate in half an hour. I suggest we meet again to-morrow morning after the Senate adjourns.

The CHAIRMAN: Very well.

The Committee adjourned, to resume to-morrow morning after the Senate rises.

2nd SESSION, 18th PARLIAMENT, 1 GEORGE VI, 1937

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL 41, AN ACT TO AMEND AND CONSOLIDATE THE COMBINES INVESTIGATION ACT AND AMENDING ACT

No. 3

The Honourable Frank B. Black, Chairman

WITNESS:

The Honourable Norman McL. Rogers, P.C., M.P., Minister of Labour.

REPORT

Amendments made to the Bill by the Committee.

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1937

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable FRANK B. BLACK, Chairman

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Wilson (Sorel)

MINUTES OF EVIDENCE

THE SENATE,

SATURDAY, April 10, 1937.

The Standing Committee on Banking and Commerce, to whom was referred Bill 41, an Act to amend and consolidate the Combines Investigation Act and amending Act, met this day at 11.30 a.m.

Hon. F. B. Black in the Chair.

Hon. Mr. DANDURAND: Mr. Chairman, following the discussion which took place in the committee last night, the Minister has called together his technical advisers and now begs to submit certain safeguards which he believes would result in the Act working satisfactorily. The opinion has been expressed that the Bill would clothe the commissioner with powers that are greater than he should be able to exercise without what is considered sufficient control. The answer to that was that, after making his preliminary inquiry, if he concludes that a real investigation is necessary he has to make a report to that effect to his Minister, and it is for the Minister to determine whether the investigation should proceed. It has been suggested that perhaps the Minister might at times be in a frame of mind to permit an investigation to go forward without sufficient regard for the business interests, which would be jeopardized. Well, with that in mind, the Minister suggests the following safeguard. Section 6 of the amended Bill, as distributed to members, read as follows:—

> Subsections two and three of section thirdteen of the said Act, as enacted by section seven of chapter fifty-four of the statutes of 1935, are repealed and the following is substituted therefor:—
>
> (2) The Commissioner shall thereupon make a report in writing to the Minister showing the inquiry made, the information obtained and his conclusions.
>
> (3) On written request of the applicants or on his own motion, the Minister may review the decision of the Commissioner under this section, and may, if in his opinion the circumstances warrant, instruct the Commissioner to make further investigation.

The Minister suggests that the following be added, as a safeguard:—

> (4) If on making a preliminary inquiry the Commissioner decides that further investigation should be made, he shall proceed with such further investigation upon obtaining a fiat therefor from the Minister of Justice.

Then there is this proposed amendment:—

> (9) The said Act is amended by adding thereto as section twenty-five the following:—
>
> 25. The proceedings before the Commissioner and any special commissioner shall be conducted in private, but the Commissioner may order that all or any portion of the proceedings shall be conducted in public.

Then the words "Solicitor General of Canada" are added to the proposed subsection 2 of section 12, and at the end of that subsection the words "Attorney General" are changed to read "Attorney General of Canada." With these changes, this subsection would read as follows:—

> (2) Subsection two of section thirty-one of the said Act, and subsection two of section thirty-two of the said Act, are amended by delet-

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ing the words "Solicitor General" and "Solicitor General of Canada" wherever they appear in the said subsections and by substituting therefor the words "Attorney General of Canada."

I would ask the Minister to explain what effect these amendments would have upon the making of an investigation.

Hon. Mr. LYNCH-STAUNTON: There is no provision in this Bill allowing the person being investigated to have counsel. The Government has counsel; the persecuted has none.

Hon. Mr. DANDURAND: I wonder at what stage of the procedure you are bringing up that question.

Hon. Mr. LYNCH-STAUNTON: When the regular investigation takes place.

Hon. Mr. DANDURAND: We are not now at that point. We are now, if I am not mistaken, at the stage where the complaint has been received. The commissioner starts a preliminary investigation to see whether there is merit in the complaint. That is what I would term the preparatory work. This data he would present to his Minister before being allowed to proceed to an official examination, appointing of counsel, and so on—holding a court, so to speak. Up to that moment he would be looking for information to satisfy him there is a prima facie case. Up to that point the Department of Justice furnishes no counsel. The commissioner is carrying on a preliminary investigation, which may bring one of these results: he would report there is nothing in the complaint; or, that he believes he has found sufficient evidence to justify the Minister to order an official examination. Then practically he is holding court.

Hon. Mr. COTE: At that stage of the proceedings when the commissioner is making his preliminary inquiry, will he have power to call witnesses and examine them under oath; to exact production of documents; and on non-production to impose such penalties as he may think proper? Is the answer to my question in the affirmative?

Hon. Mr. MORAUD: The answer is in the amendments suggested yesterday. In those amendments we revise section 15 and the following sections of chapter 54. We clothe that commissioner with the power which the commission presided over by a judge had according to that statute. One of the powers is contained in section 22:—

> The Commissioner may order that any person resident or present in Canada be examined upon oath before, or make production of books, papers, records or articles to, the Commissioner or before or to any other person named for the purpose by the order of the Commissioner and may make such orders as seem to the Commissioner to be proper for securing the attendance of such witness and his examination, and the production by him of books, papers, records or articles, and the use of evidence so obtained, and may otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment of disobedience thereof.

In other words, we are giving to an officer of the Department the power that only a court of justice can exercise.

Right Hon. Mr. MEIGHEN: A superior court.

Hon. Mr. MORAUD: I am quite satisfied that that is ultra vires. There is no doubt in my mind the Federal Parliament can create crimes; but it has no jurisdiction whatever over the investigation and punishment of crimes. Those powers can only be exercised by courts of justice in each province. By the amendments suggested last night we are, I think, going further than in the original Bill, and we are giving to a Federal Department powers that under the Act of 1935 can only be exercised by a superior court of justice.

The LAW CLERK: I might mention that the point Senator Moraud has brought up was touched upon by Mr. Justice Idington in a case before the Supreme Court. He said that undoubtedly the Dominion, and only the Dominion, can enact legislation concerning crimes or the procedure of the criminal law; but it can no more administer criminal law procedure than it can administer criminal law.

Right Hon. Mr. MEIGHEN: In that respect, then, the Act of 1935 was invalid.

The LAW CLERK: Not necessarily the whole Act, but sections of it might have been invalid. That has never been passed upon, but if you admit the Dominion cannot administer criminal law, the very term criminal law including criminal law procedure, I have not any doubt that Mr. Justice Idington was right.

Hon. Mr. COTE: My question to Senator Dandurand was not directed to the constitutionality of these Acts. Mr. O'Connor may be quite right. But the point I want to make, following the answer to my question, which I think is in the affirmative, is that the commissioner when making the preliminary inquiry will be clothed with all these powers of obtaining documents and taking evidence under oath. It follows, I submit, that under the title of preliminary inquiry he can conduct an inquiry as wide as he wants to.

Hon. Mr. MORAUD: There is no doubt about it.

Hon. Mr. COTÉ: Then it would be futile for us, after he has conducted a preliminary inquiry, which may be as wide as any formal inquiry, for us to add safeguards and say that we are going to ask him to submit to the decision of the Minister whether there shall be a further inquiry.

Right Hon. Mr. MEIGHEN: If the first inquiry is big enough he would not need another at all.

Hon. Mr. COTÉ: No.

Hon. Mr. BEAUBIEN: In order to ascertain to what extent a preliminary investigation can be carried by the commissioner we have only to look backward. Under the law of 1935, with the safeguard that the commission was then presided over by a judge, what happened? The commissioner made some four hundred or four hundred and fifty investigations.

Right Hon. Mr. MEIGHEN: Not under the 1935 law.

Hon. Mr. BEAUBIEN: In the years that preceded.

Hon. Mr. DANDURAND: From 1923.

Hon. Mr. BEAUBIEN: Under the earlier Act. But yesterday Mr. McGregor said he carried on some four hundred and fifty preliminary investigations. Twenty-five of those were carried to the end, they were, what I might term official investigations. Fifty were carried to the point where all the documents and witnsses required were examined by the commissioner, and then he found there was nothing at all and abandoned his investigation. The position under the law as it will be now will give absolutely free rein, so to speak, to the commissioner. He can go in and practically make the whole investigation, call for production of every document, and, if he wants to, he can make that a public investigation or a private investigation. What will be the consequence? You have an organization perfectly innocent of any wrong-doing, but the commissioner is given to understand that the business carried on is likely later to become a combine. He goes on to make his investigation, causes an infinite amount of trouble to that organization, cites it before the public as an organization violating the law or attempting to do so. He puts the organization to tremendous trouble and expense and humiliation before the public, and afterwards he says, "There is nothing at all that is wrong with it." It seems to me that that shows how very much more necessary it is to have a fiat.

Hon. Mr. DANDURAND: At what moment would you have a fiat?

Hon. Mr. BEAUBIEN: At the very beginning. When those people come before you they must have not only affidavits but evidence. That is how the law was, when the commission head was a judge and asked for the investigation. All that goes by the board now. The judge is not there any longer.

Hon. Mr. MORAUD: They are transferring the powers given the judge to an officer of the Department.

Hon. Mr. BEAUBIEN: It seems to me very much more necessary now than it was then, particularly as the commissioner is clothed with the powers of a judge, that there must be a *prima facie* case made out before you inflict all this trouble and punishment in the eyes of the public upon any citizen of Canada.

Hon. Mr. DANDURAND: You say there should be a *prima facie* case *ab initio*?

Hon. Mr. BEAUBIEN: Yes, at the beginning.

Hon. Mr. DANDURAND: But at the beginning there is a complaint by six citizens, supported by whatever evidence they can offer.

Hon. Mr. BEAUBIEN: Yes.

Hon. Mr. DANDURAND: You say at that moment it should be a judge who should decide if there is to be an investigation.

Hon. Mr. BEAUBIEN: Yes.

Hon. Mr. DANDURAND: Based simply on the complaint and whatever evidence the complainant will attach to his complaint?

Hon. Mr. BEAUBIEN: I say so, Mr. Chairman, because otherwise you open an investigation and there is no limit to it.

The CHAIRMAN: It is a fact, too, that the party under investigation has no counsel—has no right to counsel.

Hon. Mr. BEAUBIEN: Therefore, Mr. Chairman, it seems to me that when these affidavits come to the commissioner there is no reason why he should not go to a judge of the Exchequer Court, for instance, and ask for a fiat. This is practically a search warrant.

Hon. Mr. MORAUD: It is more than that.

Hon. Mr. BEAUBIEN: And the commissioner could go in and get whatever he likes, and put these people to an infinite amount of trouble if they are at Vancouver, Halifax, or Winnipeg, by forcing them to bring their books to Ottawa. That is a terrible thing. That is the case when there is a complaint. It is much worse when there is no complaint at all and when the commissioner decides.

Right Hon. Mr. MEIGHEN: That is the Minister, of course.

Hon. Mr. BEAUBIEN: Yes. It seems to me that the time when the commissioner should lay the evidence before the judge is when he opens an investigation. To-day there is no limit.

Hon. Mr. KING: I have to take a train to-day, and I wonder if my honourable friend would allow me to speak.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. BEAUBIEN: Certainly. I shall be delighted to give my honourable friend the right of way.

Hon. Mr. KING: There has grown up in this country and every other country, by reason of the way business is conducted to-day, a certain procedure with respect to the investigation of the activities of large corporations. To contend that six citizens could prepare a case against such organizations, and come before a court in the expectation of winning, is absolutely futile.

Hon. Mr. BEAUBIEN: They do not win.

Hon. Mr. KING: You could not get six men to do it.

Hon. Mr. BEAUBIEN: I am not contending that. They get a fiat—that is, permission to go on.

Hon. Mr. KING: It is the duty of the Government to investigate. You want them to bring their evidence to a judge. Their duty is to investigate and see if there is a case. That is the ground accepted in this country and in the United States. Then the procedure should go on from that. Heretofore the matter has been referred to the Minister, and he has given the direction. I might refer to the Nash investigation, where it was found an American combine was operating in Canada, and a fine of $100,000 was imposed. I know also of another inquiry in the matter of newsprint, where it was found there was no combine, and where no further investigation was made.

Surely, if six responsible citizens—and I think they must be responsible—come before the commissioner and make the claim that there is a combine, the commissioner, representing the Government, should then make his investigation. And heretofore we have been satisfied to have his report to the Minister, and to have the Minister decide. It was suggested last night that this should be taken out of the hands of the Minister, and that the commissioner should go before a Supreme Court judge, on the consent of his Minister. I see no objection to that. But my honourable friend—

Hon. Mr. LYNCH-STAUNTON: May I say this? I think if we were to take subsection 4 of section 6 on page 4 of the memorandum—

The CHAIRMAN: The new memorandum?

Hon. Mr. LYNCH-STAUNTON: The new one. Remember this is preliminary investigation which we are talking about; and I submit that it would not be unfair or embarrassing if that section were amended in this way:

> If on making a preliminary inquiry, which shall not be in public, the Commissioner decides—

etc., then a man would not be exposed to all the obloquy he would be exposed to by a preliminary investigation in public.

Hon. Mr. MORAUD: Would you give the power at that stage for the commissioner to order the production of documents?

Hon. Mr. LYNCH-STAUNTON: That is a matter with which I am not dealing at the moment.

Hon. Mr. ROGERS: I would have no objection to that proposal at all.

Hon. Mr. LYNCH-STAUNTON: The inquiry should be in private, like an inquiry before a grand jury.

Hon. Mr. ROGERS: That has been the practice.

Right Hon. Mr. MEIGHEN: I am sorry to say that it would not meet the situation. I am going to state what I think would be fair in this matter. I know the difficulty. To require the approval of the judge at every point is difficult and combersome, and I am not myself at all convinced that it is necessary for a time. I know I am expressing something which is not the view of very many at this table. I feel that the place the judge should come in is before essential court processes are taken. The Commissioner stated yesterday that in nearly every case when making the preliminary inquiry he went to see the people charged and made inquiries from them. He said, "I got all the information I could from the office of the Labour Department"—and no doubt from the Statistical Department, about prices and so on—"and from those inquiries I made up my mind whether we should have an investigation." I do not think there is any need of a judge for that. But before he starts to act in the way that really only a judge can act, before he summons witnesses even in private—why, he could compel a man to bring his marriage certificate, or anything at all, and send him to jail if he did not, even though the inquiry were private—before he exercises compulsory powers, summoning witnesses, compell-

ing returns under oath, and so forth, the Minister should get the approval—I do not like the word "fiat," which means "let justice be done," and they are simply making an investigation—he should get the approval of the chairman, say, of the Trade and Industry Commission, so long as he is a barrister of ten years' standing, or of the president of the Exchequer Court.

Hon. Mr. LYNCH-STAUNTON: That is the one.

Right Hon. Mr. MEIGHEN: There is no need to go out of Ottawa for that, because the Minister gets the approval, and he is here. All he has to do is to lay the report of the commissioner before the judge, and the Act should read that the judge should be convinced that there was reasonable cause to believe that a combine existed and that an investigation should be ordered. Then they go on from there.

Hon. Mr. DANDURAND: What is the expression?

Right Hon. Mr. MEIGHEN: Reasonable grounds.

Hon. Mr. DANDURAND: A prima facie case?

Right Hon. Mr. MEIGHEN: If I were the Minister I think I would object to that. You are not making a case. He should not be called upon to make a prima facie case, but he should give evidence to show that there are reasonable grounds to fear such a combination.

The LAW CLERK: Reasonable grounds to proceed.

Hon. Mr. COTÉ: Reasonable and proper grounds.

Right Hon. Mr. MEIGHEN: I was putting it as lightly as I could—"reasonable grounds to believe that such a combine exists."

The commissioner goes on, and at another stage I think the judge should come in. The commissioner may be in Vancouver; but before he exercises processes such as penalizing, he certainly should have the authority of a judge. He should submit the matter to a judge and let him penalize. There is not a member sitting around this table who thinks that any body of legislators should commit to Mr. McGregor, say, who has had no training whatever in law, the powers of a Supreme Court judge. He may be ordering something which is not right at all, and if he does some poor devil goes to jail. It all depends on the propriety of the thing. Before exercising these extraordinary powers—if they are necessary at all, and they may be—he should get a judge's authority. If he is in Quebec he can get it there; if in Nova Scotia he can get it there. That is the extent to which I think we should go, and I do not feel that we are justified in going further.

Hon. Mr. ROGERS: I should like to say that following our session last night I gathered the distinct impression that it was the feeling of the Committee that some change should be made in our original proposals which would prevent the machinery of this Act being used as an instrument of persecution.

Right Hon. Mr. MEIGHEN: Yes, an instrument of harassment.

Hon. Mr. LYNCH-STAUNTON: Conscious or unconscious.

Hon. Mr. ROGERS: It is with that in mind that we have proposed the changes.

Right Hon. Mr. MEIGHEN: You are still keeping the power in the Government. I would not agree to that at all. You will not go to a judge.

Hon. Mr. ROGERS: If I may continue—

Right Hon. Mr. MEIGHEN: Certainly.

Hon. Mr. ROGERS: We had to consider which of the several means suggested here last night might be adopted with the least impairment of effective investigation and the investigatory provisions of the legislation; and it was because we believed that the approval coming from the Minister of Justice would at least provide a further safeguard against the investigation being pursued in a

vexatious way, and would at the same time obviate delays which might very probably, I think, result from a reference to a Supreme Court judge, that we have made the amendment now before the Committee.

I should like to say just a word on the proposal made by Senator Coté which, as I understand it, was that the commissioner ought not to be able to exercise any of those powers of taking evidence under oath.

Hon. Mr. COTÉ: No. Compulsory power. He might take affidavits.

Hon. Mr. ROGERS: I should think the only result of that would be that the commissioner would be obliged to pursue a full inquiry from the beginning, and I wonder if that would be in the interests of the firms or corporations investigated. Would they want to have a full inquiry from the beginning?

That has been entirely contrary to the practice in past years. The preliminary inquiry is rather to prevent undue publicity when there is a reasonable assumption that the complaint has been vexatious, and I think that would be in the interest of business generally.

Right Hon. Mr. MEIGHEN: I agree with that, but I do not know why he should extend his preliminary inquiry just because he has to go to the judge before exercising these extraordinary powers. The judge is here.

Hon. Mr. ROGERS: My point is this, that it is desirable there should be full scope for a preliminary inquiry. I take it there is no dissent on that score. If the Commissioner reports that as a result of a preliminary inquiry there is no evidence that a combine exists the matter ends there, unless the Minister on a review of the report asks him to make a further investigation. I suggest that the Commissioner on making a preliminary inquiry ought to have powers to make all reasonable investigation. On complaint there would have to be a full inquiry at the very beginning, if the matter were referred to a judge, and that, as I understand it, would be contravening the very point that was emphasized here yesterday, that publicity is undesirable because in itself it is a kind of penalty, that a company when under investigation is to a certain extent prejudiced in the eyes of the public.

Right Hon. Mr. MEIGHEN: Why should the commissioner have all these powers?

Hon. Mr. ROGERS: If I may say so, the powers exercised by the commissioner and referred to a moment ago by Senator Meighen are in no important sense different from the powers exercised by the registrar in an inquiry under the Act of 1923. And I know of no case in actual administration of the Act of 1923 where any business investigated had reason to complain that the registrar was using his authority in any unreasonable way.

Right Hon. Mr. MEIGHEN: I have heard very bitter complaints.

Hon. Mr. ROGERS: I do not think that I, as Minister responsible for administration of the Act, can accept the suggestion that approval or a fiat should be obtained from a Supreme Court judge or a judge of the Exchequer Court. As I said, I recognize the desirability of avoiding any vexatious use of this machinery of investigation. I would point out that in asking for approval of the Minister of Justice before the public investigation is instituted we are asking for an additional safeguard, in this sense, that the Minister of Justice does now, under existing legislation and constitutional practice, exercise quasi judicial powers. He does that, for instance, with respect to clemency. I doubt if anyone has ever suggested that that power, exercised by the Minister of Justice, has ever been used in a political way.

Right Hon. Mr. MEIGHEN: It could not be, very well.

Hon. Mr. MORAUD: It is not the Minister of Justice who exercises that power, it is the Governor in Council.

Hon. Mr. ROGERS: But it is a matter of practice that these cases are reviewed by the Minister of Justice.

Right Hon. Mr. MEIGHEN: That, though, does not lend itself to political harrassment as this Combines legislation does. May I ask you this, Mr. Rogers? Why would you rather walk over to the office of the Minister of Justice than to the office of the President of the Exchequer Court? Why do you prefer one to the other?

Hon. Mr. ROGERS: My point, which I have not sought to conceal, is this. I fear that the requirement of approval by a Supreme Court judge would in practice become a dilatory procedure. It has been suggested that the judge must satisfy himself that there is a reasonable—

Right Hon. Mr. MEIGHEN: Cause for investigation.

Hon. Mr. ROGERS: Yes. In other words, he has to satisfy himself that evidence for an investigation—

Right Hon. Mr. MEIGHEN: That does not necessarily follow. What would you submit to the Minister of Justice?

Hon. Mr. ROGERS: The evidence given by the six persons who made the complaint, the prima facie case.

Right Hon. Mr. MEIGHEN: But after the preliminary investigation has been made and before you go on with a full investigation, what would you submit to the Minister of Justice in applying for his approval to make a full investigation? I am only suggesting that whatever it is you would submit to the Minister of Justice should be submitted to the judge.

Hon. Mr. ROGERS: As I suggested yesterday, it seems to me that one of two things would follow. Either this application before the judge would be a mere formality or there would be an actual examination of the evidence, with something of the nature of a judicial weighing of documents and evidence in order to determine whether or not a combine exists.

Right Hon. Mr. MEIGHEN: The procedure would have to be whatever the Act says. If the Act says that it is only necessary to convince the President of the Exchequer Court, let us say, that there is reasonable cause to go ahead with an investigation, then the only point that the judge has to decide is whether there is that reasonable cause. And that is the very point you are willing to let the Minister of Justice decide.

Hon. Mr. ROGERS: In the case of the Minister of Justice, it would be an administrative decision, while in the other case it would be a judicial decision.

Right Hon. Mr. MEIGHEN: I do not think the Minister of Justice would consider the matter automatically, and I know the President of the Exchequer Court would not do so.

Hon. Mr. ROGERS: I take it that one would have to be particularly careful in the wording of the section.

Right Hon. Mr. MEIGHEN: I agree with that. There is no reason why we should not do so.

Hon. Mr. ROGERS: I can conceive it is quite possible that one judge might require a great deal more information than another. One judge might say, "This is not enough; you must prove these documents and get additional evidence."

Right Hon. Mr. MEIGHEN: Judge Sedgewick knows the purpose of this Act as well as we do, and so does Judge Maclean. They know this Act is a necessary one. They are not going to say that it is necessary to have proof just as there would be in a case of sending a man to jail.

Hon. Mr. GRIESBACH: Have you any other objection, Mr. Rogers, except that you think the procedure would be dilatory?

Hon. Mr. ROGERS: I think that would express my whole objection.

Hon. Mr. DANDURAND: And the transfer of ministerial responsibility.

Hon. Mr. ROGERS: Yes. Personally I do not object to assuming the responsibility that has been assumed by the Minister of Labour before.

Right Hon. Mr. MEIGHEN: And which was transferred to a quasi court in 1935.

Hon. Mr. ROGERS: There is nothing in the Act which makes it a quasi court.

Right Hon. Mr. MEIGHEN: It is inconceivable that we should clothe any such man with the powers given in that Act, unless he were a judge or a lawyer of many years' standing.

Hon. Mr. ROGERS: I received a telegram this morning based on the news report that the approval of a Supreme Court judge would be necessary before an investigation could be made. You will tell me, Mr. Chairman, if it is not proper for me to refer to this matter. I do not intend to read the entire telegram, unless it is thought necessary. The substantial portion of it is this:—

> Monopolies or combines with their highly paid corporation counsel can block and make it almost impossible for small companies not centrally located to have investigation started as their funds are tied up in their business which is in jeopardy before complaint is laid.

I simply state that as an objection made not by a consumer nor a consumers' association, but an objection which came to me from small companies, which do really fear that if approval of a judge is made necessary the procedure eventually will develop into the hearing of counsel on both sides, with disadvantage to small companies.

Right Hon. Mr. MEIGHEN: I have not suggested that at all.

Hon. Mr. COTÉ: Suppose we state that the investigation shall not be made without the approval of a judge of the Exchequer Court or of the Chairman of the Dominion Trade and Industry Commission, provided he is a judge or a lawyer of ten years' standing, on an *ex parte* application. If that were done, no counsel would be required.

Hon. Mr. DANDURAND: I can move the adoption of the amendment which was presented to the committee this morning, to provide a safeguard in the form of requiring approval of the Minister of Justice. If Senator Meighen or any other senator has a substitute motion, to require approval of a judge, that can be moved now.

Right Hon. Mr. MEIGHEN: I would suggest that we arrive at the opinion of the Committee as we usually do, in this way. I would move that counsel be instructed to draft an amendment to the amendment, to this effect:—

> That, before investigation involving compulsory attendance of witnesses and compulsory production of documents is gone on with, the approval first be obtained by the Minister of the Chairman of the Dominion Trade and Industry Commission so long as that Chairman is a lawyer of ten years' standing at the bar of any province of Canada; or the approval of the President of the Exchequer Court in any event—such approval to be obtained on ex parte application, the approval to be valid if ex parte, but with the judge having the power to request further evidence or any further hearing he wishes. If he does not think it necessary, he does not need to do it. And that before the power of commitment or penalizing is exercised, the approval of any superior court judge be first obtained.

That would allow the preliminary investigation to go on in just the way that Mr. McGregor has said he has conducted it all along. He could even take affidavits, but he could not act as a judge and launch an extensive and harassing investigation merely on his own and his Minister's decision.

Hon. Mr. DANDURAND: My amendment would simply be the adoption of what I previously read this morning, the new clause 4 of section 6:—

> If on making a preliminary inquiry the Commissioner decides that further investigation should be made, he shall proceed with such further investigation upon obtaining a fiat therefor from the Minister of Justice.

The word "fiat" could be changed, of course. I am simply desirous of having the idea underlying this clause adopted.

The CHAIRMAN: Gentlemen, the amendment to the amendment is that the reference be either to the chairman of the commission, if he be a lawyer of ten years' standing, or, failing that, to the judge of the Exchequer Court of Canada.

Hon. Mr. DANDURAND: That is the amendment to my amendment suggesting the Minister of Justice?

Hon. Mr. LYNCH-STAUNTON: But he can go to either tribunal.

The CHAIRMAN: Yes.

The amendment to the amendment was agreed to: Contents 14; Non-contents 7.

Hon. Mr. DANDURAND: I have read three amendments which will be affected by this decision of the committee. Of course, they will have to be reviewed by our expert, Mr. O'Connor, and by the representative of the Department of Justice.

I think we might adjourn until half past two.

The committee adjourned until 2.30 this afternoon.

AFTERNOON SITTING

The committee resumed at 2.30 p.m.

Hon. Mr. DANDURAND: I draw the attention of my right honourable friend to the fact that it is the will of the majority with regard to the commissioner going forward that we turn not to the Minister of Labour, who supervises the administration of this Act, or the Minister of Justice, but to the judge. We justify the judge in saying, "You may proceed." We do so in an ex parte form— and my right honourable friend used the expression— and when the judge is seized of the ex parte request of the Minister of Labour, he has whatever evidence the Minister of Labour has brought to him. Now, as I understood, the judge may grant the order to proceed on what I will call the official investigation with compulsory and other powers, or, he may withhold his signature and say, "I will require greater substantiation of the evidence," or, "more evidence." That statement will be qualified by the fact that it is an ex parte proposal or submission, and I did not see anything contrary to my understanding in Mr. Meighen's statement, which was, "Such approval to be obtained on ex parte application, the approval to be valid if ex parte, but with the judge having the power to request further evidence or any further hearing he wishes."

Now, would you read to me what you have added?

Right Hon. Mr. MEIGHEN: What has been transcribed is a faithful drafting into the Act of what was voted for, except in one particular, and I know with respect to that it was not intended to make a departure. There was a transcript made of what I said. Necessarily what I said was said without previous verbal composition.

> That before investigation involving compulsory attendance of witnesses and compulsory production of documents is gone on with, the

approval first to be obtained by the Minister of the Chairman of the Dominion Trade and Industry Commission so long as that Chairman is a lawyer of ten years' standing at the Bar of any province of Canada; or the approval of the President of the Exchequer Court, in any event—such approval to be obtained on ex parte application, the approval to be valid if ex parte, but with the judge having the power to request further evidence or any further hearing he wishes. If he does not think it necessary he does not need to do it. And that before the power of committing or penalizing is exercised the approval of any Superior Court judge be first obtained.

It is absolutely correct, except that it does not enable anyone but the judge to hear anybody. I think it is pretty plain that that is the meeting of what I said, especially when you look at this. It is provided exactly, except the judge is not enabled to have a further hearing. If that is the interpretation, the words "If he does not think it is necessary he does not need to do it" have no meaning at all.

Hon. Mr. DANDURAND: What did you read?

Right Hon. Mr. MEIGHEN: To carry that out it was drafted in this way. I will read it all:

Notwithstanding anything in this Act neither the Commissioner nor any special commissioner nor any other person shall have power to compel the attendance of any witness or the production of any book, paper, records or article, or the examination of any person under oath, or have power to exercise for the enforcement of any order made by such Commissioner, special commissioner or person, or for punishment on account of disobedience of such order, the powers that are exercised by superior courts for the enforcement of subpoenas to witnesses or punishment of disobedience thereof, unless and until on the application of the Minister (which shall be heard ex parte) either the President of the Exchequer Court of Canada or the Chairman of the Dominion Trade and Industry Commission shall have certified, as either of them may, that it is fit and proper that the action mentioned in the application should be taken;—

I think those words are all right. I had suggested "reasonable grounds," but I think those words are all right.

Provided that when any investigation under this Act is proceeding in any province and the Commissioner or special commissioner is desirous of exercising power to commit to prison or otherwise penalize pursuant to this Act any person whether for contempt or otherwise, the application may be made by the Commissioner or special commissioner upon reasonable notice to the person concerned, to a judge of the Supreme or Superior Court of the province who shall for the purposes of the application have the powers which by this section are conferred upon the President of the Exchequer Court and the Chairman of the Dominion Trade and Industry Commission.

(2) The provisions of this section which relate to the Chairman of the Dominion Trade and Industry Commission shall apply only whilst such Chairman is a barrister of one of the provinces of Canada of at least ten years standing.

(3) Such President, Chairman and judge, respectively, may, before granting such certificate, require the applicant to secure and subsequently produce to him any further evidence or proof of relevant circumstances as he shall deem to be necessary.

Hon. Mr. DANDURAND: What are the words you add?

Right Hon. Mr. MEIGHEN: At the point where the brackets occur, inside the bracket, "unless the presiding official as hereinafter defined otherwise orders." I am not trying to emphasize the importance of that.

Hon. Mr. BEAUBIEN: I think it is very important.

Hon. Mr. MORAUD: It is very important because of the use of the word "shall."

Hon. Mr. DANDURAND: "Upon the application of the Minister which shall be heard ex parte."

Right Hon. Mr. MEIGHEN: The words inside the brackets are, "which, unless the presiding official as herein defined otherwise orders, shall be heard and determined ex parte."

Hon. Mr. DANDURAND: I am not ready to accept this amendment of my right honourable friend. It is not in accordance with what was drafted by our Law Clerk and Mr. McNeill, who were asked to draft an amendment in accordance with what was adopted by this committee.

Right Hon. Mr. MEIGHEN: If it is not in accordance with that, I have no right to ask for it at all. I submit it is.

Hon. Mr. DANDURAND: That is where I humbly differ. What the committee voted in favour of was this:—

> That, before investigation involving compulsory attendance of witnesses and compulsory production of documents is gone on with, the approval first be obtained by the Minister of the Chairman of the Dominion Trade and Industry Commission so long as that Chairman is a lawyer of ten years' standing at the bar of any province of Canada; or the approval of the President of the Exchequer Court in any event—such approval to be obtained on ex parte application, the approval to be valid if ex parte, but with the judge having the power to request further evidence or any further hearing he wishes. If he does not think it necessary, he does not need to do it. And that before the power of commitment or penalizing is exercised, the approval of any superior court judge be first obtained.

I took it for granted that the committee was rejecting the proposal to require approval of the Minister of Justice before a full investigation could be made. My understanding was that the committee favoured the submission of evidence, as adduced on preliminary inquiry, to the Chairman of the Dominion Trade and Industry Commission or the President of the Exchequer Court, for authority to proceed with examination of witnesses under oath and to compel production of documents. Now, all that was predicted upon the free action of the commissioner or the Minister of Labour upon the evidence adduced. My right honourable friend now says that the power given to the judge to request any further hearing he wishes, means that the judge could require the parties to be investigated to appear before him. Well, if that is so, the judge would appropriate unto himself the whole matter. A judge might, then, permit a merger or trust to be represented by counsel, who would submit that the inquiry should not be further pursued. This is not in accordance with the letter, nor do I believe it is in accordance with the spirit, of the Act. This committee has decided that the commissioner, when making a preliminary inquiry, shall not have power to compel attendance of witnesses or production of documents, and that before he can have such power, for the purposes of a further investigation, he must receive approval of a judge. I know it has been discussed, but not in this committee, that at that moment the judge would take away from the commissioner the whole procedure and clothe himself with the authority of carrying on the whole inquiry. Because it would mean that. I can see where it would lead us to. I cannot accept for the Minister this decision by the committee.

I did not take a note of my right honourable friend's statement, but I accept it as it comes from our shorthand writer:—

> —such approval to be obtained on ex parte application, the approval to be valid if ex parte, but with the judge having the power to request further evidence or any further hearing he wishes.

I took it for granted that that was an ex parte application where further evidence would be asked for. I am convinced that this would simply eliminate the whole machinery which is in the amendments before us by giving the judge the right to open the inquiry and conduct the trial. Surely this is what the committee had in mind: to have the judge examine the evidence produced with the complaint and declare whether he was satisfied with it or needed further evidence, which would be furnished by the commissioner or the complaint would not be allowed.

Therefore I say this vitiates the whole principle contained in the Act, which allows the commissioner to preside on a preliminary inquiry, but deprives him of the powers of a judge to examine witnesses under oath and compulsorily have them produce documents. Now we are asked to empower the judge to take the whole record, go into the case, and decide for himself. I never understood the proposal that way. I doubt very much whether the committee so understood it. I took it for granted that all the judge had a right to do on that ex parte presentation was to require further evidence from the Minister of Labour or the commissioner. It is a totally different thing to allow the judge to open the investigation and call in the parties to the alleged combine to defend themselves before him. If that is the will of the committee, it will have to be stated plainly, but I am quite sure it will not be accepted by the commissioner.

The CHAIRMAN: Are you prepared, Senator Dandurand, on behalf of the Government to accept this amendment as submitted by the two law officers, one from the Senate and the other from the Justice Department, without this other amendment?

Hon. Mr. DANDURAND: Yes, I am ready to accept the amendment and to state to the Senate that, although it does not appear to the Minister that it will be possible for the Department to apply this legislation satisfactorily, the Government will bow to the opinion expressed by the Senate and see how the amendment will work out.

But we are not prepared to go one step further and allow the judge, when he is seized of the prima facie evidence, to tell the Minister, "Well, I am not quite satisfied, I need to be satisfied on this or that," and so transform the inquiry into a trial. That is not right.

Right Hon. Mr. MEIGHEN: With much of what the senator says I am in agreement. The subject of the judge having power to hear the other side was not argued at all. As to my intention, there is no question in the world, and I think it is pretty clear from the statement. But I do not think it is important enough to fight over. We did argue for a long while on the point of giving the determination of the evidence to the judge rather than to the Minister. I know the leader of the Government was absolutely frank and honest in his interpretation of that, and I know Mr. O'Connor interpreted it the way he did. I am not going to stand here and insist that it must be interpreted in the way I intended, although I did intend it that way.

Hon. Mr. DANDURAND: Then we agree; and with this understanding, that between now and next session the statute will be administered with these amendments, and then we may hear from the Government or from members of this or the other Chamber and make whatever amendments may be considered proper.

Hon. Mr. KING: I do not want to intrude at all if the leaders accept the amendment. Last night I thought Senator Meighen's suggestion was a solution

of the difficulty. He suggested that a judge of the Supreme Court would be seen, and he would say, "Go ahead," or "Do not go ahead." I understand that is the solution we have arrived at.

Right Hon. Mr. MEIGHEN: That is right.

Hon. Mr. KING: I am prepared to accept that but I intended to say that the Minister who is responsible for the administration of the Act did try to meet the situation this morning when he said, "I am prepared to go to the Justice Department." I think he made a proper concession. As to the discussion that took place this morning and the suggestion from our honourable friend from Hamilton that the Minister could get behind a judge, I ask, would he be relieved of responsibility We know that cannot happen. This is a public Act and the Minister and the Government must be responsible. As our honourable leader has said, if the Act does not work satisfactorily between now and next session, it can then be again amended. Personally I prefer to see the Government accept the full responsibility for administration, and not get behind the judiciary, and in that way possibly bring the judiciary into the matter.

Hon. Mr. COTÉ: I quite appreciate what Senator King says, but throughout the course of our discussion, notwithstanding the fact that Senator Meighen dictated in general terms what he thought was the summary at the time, I thought it was the opinion of the majority of the members of this Committee, first, that in the making of the preliminary inquiry referred to in the Act the commissioner should not exercise the compulsory powers vested in him by the Act—

Hon. Mr. SHARPE: Why do you want to bring that up again

Hon. Mr. COTÉ: That is a principle that is accepted.

Some Hon. SENATORS: Carried.

Hon. Mr. SHARPE: We are tired sitting here and listening to the lawyers.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: Order, please.

Hon. Mr. DANDURAND: You have got in wrong.

Hon. Mr. COTÉ: If I get in wrong it will be for good reasons. The reason has not arisen yet.

There was another principle that we agreed to, namely that the preliminary inquiry should not be held in public. That is not in this legislation. Under this amendment—

Right Hon. Mr. MEIGHEN: I guess I missed that.

Some Hon. SENATORS: Dispense.

The CHAIRMAN: Order, please.

Hon. Mr. COTÉ: Under this proposed amendment the commissioner goes to a judge and obtains the right to examine witnesses, and there will be absolutely nothing in the Act to prevent him doing that in public. So to that extent the amendment does not cover the opinion of the Committee.

I may be a nuisance, but these are things that we have agreed upon, and they should be incorporated in the amendments.

Right Hon. Mr. MEIGHEN: They will accept that.

Hon. Mr. COTÉ: I am willing to abide by the decision of the Committee. I am not going to argue that there should be a hearing before the judge.

Then I come to the words "fit and proper," which refer to what the judge considers fit and proper. We must remember that now we are going not to an officer who is in charge of the administration of the Act, not to a ministerial officer who is going to exercise ministerial discretion, but to a judge, and we are asking him to exercise judicial discretion. Any judge who is asked to exercise judicial discretion must be given a line of conduct; there must be some-

thing indicated in the commission of that judge upon which he can pass judgment, and I say the words "fit and proper" do not relate to anything at all.

Right Hon. Mr. MEIGHEN: How would you word it?

Hon. Mr. COTÉ: I would say the judge should not act unless he believes there is reasonable ground, or, that there is reasonable ground to believe that a combine as defined by this Act exists.

Some Hon. SENATORS: Oh, no.

Right Hon. Mr. MEIGHEN: Reasonable ground to believe the investigation is justified.

Hon. Mr. DANDURAND: We had the Minister here this morning. He gave us his views on the suggested amendments. The Right Hon. Senator Meighen moved in his presence an amendment which was carried. I saw the Minister afterwards. I asked, "Shall I demur in your name," to which he replied, "You may explain that I am not sure as to the way the Act will work under this system, but I will accept it." He asked me if he should be here this afternoon to see to the carrying of that resolution into the Act. We confided it to our Law Officer and the representative of the Department of Justice, and they have introduced it into the Act. Mr. Meighen says, "I would have added one clause, but if the Government accepts this situation as the Committee has met it, then I accept the action of the parties to whom we confided the responsibility of carrying the amendment into the Bill. That being so it seems to me that we owe it to the Government represented by the Minister to stand by the position that was taken.

Some Hon. SENATORS: Hear, hear.

Hon. Mr. COTÉ: But still—

Some Hon. SENATORS: Question! Carried!

Hon. Mr. COTÉ: I will put it up to the mover of the amendment himself as to whether, without disturbing the amendment we should not by further amendment give effect to the two principles upon which we agree, namely that the preliminary inquiry should not be held in public—that is not a technical point—

Hon. Mr. DANDURAND: It goes without saying that it is not to be held in public, because there is no court sitting.

Hon. Mr. COTÉ: That is not correct.

Hon. Mr. DANDURAND: He simply makes a preliminary inquiry, and you know very well he cannot carry—

Hon. Mr. COTÉ: The other point is that in the making of the preliminary inquiry the commissioner shall not exercise the compulsory powers vested in him by the Act. I leave it to Mr. Meighen. Whatever he says will satisfy me.

Right Hon. Mr. MEIGHEN: As far as the resolution as I stated it is concerned, there is nothing mentioned about it being private or public. Undoubtedly we had practically agreed that it be private, and the Government accepted that.

Hon. Mr. HAIG: Mr. Chairman—

Some Hon. SENATORS: Carried!

The CHAIRMAN: The Law Clerk says it is accepted that the preliminary inquiry will be private.

Hon. Mr. DANDURAND: I am told that Mr. Rogers accepted that principle. There is no objection to that.

Some Hon. SENATORS: Carried.

The LAW CLERK: Clause 9 of the present Bill reads:—

> The said Act is amended by adding thereto as section 25 the following:—
>
> 25. The proceedings before the Commissioner and any special commissioner shall be conducted in private, but the Commissioner may order that all or any portion of the proceedings shall be conducted in public.

If you wish, you can just say, " All preliminary investigations shall be conducted in private."

The CHAIRMAN: Is it the pleasure of the Committee that the Bill be so amended?

Some Hon. SENATORS: Carried.

The proposed amendment was agreed to.

The LAW CLERK: As the clause was different in the preliminary stage of the discussion, the words:—

> If on making a preliminary inquiry the Commissioner decides that further investigation should be made, he shall proceed with such further investigation upon obtaining a fiat therefor from the Minister of Justice,

should come out.

Hon. Mr. DANDURAND: Yes.

The LAW CLERK: And as we could not give the Bill the scrutiny it deserves in the time at our disposal, we started with what the lawyers call a " non obstante " clause—notwithstanding anything in the Act.

Hon. Mr. DANDURAND: No, no. That goes contrary to the Bill.

The LAW CLERK: The motion would be that subsection 4 of section 6 be struck out.

The CHAIRMAN: The motion now is that subsection 4 of section 6 of the revised Bill be stricken out.

The motion was agreed to.

The CHAIRMAN: Now, shall this amendment which was read by Senator Dandurand, and which has been prepared by the law officials—one of the Senate and one of the Justice Department—carry?

The proposed amendment was agreed to.

The CHAIRMAN: Without going over the Bill further, clause by clause, shall we report it?

Hon. Mr. COTÉ: Not yet, Mr. Chairman.

Right Hon. Mr. MEIGHEN: There is another point which is not incorporated in this and which I intended should be. That is, that when we agree that documents can be used, that clause should be amended to provide that the documents which may be compulsorily produced, may be used against the person producing them only in respect of a trial for an offence against the Act.

Hon. Mr. COTÉ: And section 498 of the Criminal Code.

Right Hon. Mr. MEIGHEN: Yes. We are not going to pass special legislation this time to apply to something with which a man may be charged years afterwards. All that Mr. Justice Sedgewick had in mind was that a man should not be protected if afterwards he was charged with the violation of the Act or the corresponding section of the Code.

Mr. MACNEILL: All that is required is that these documents be used under the section or under 498 of the Code.

Hon. Mr. DANDURAND: Then, this amendment can be drafted by Mr. O'Connor?

Right Hon. Mr. MEIGHEN: Yes.

The CHAIRMAN: An amendment was made to the title of the Bill when the title was read, to strike out the words " and consolidate," so that the title would read, " An Act to amend the Combines Investigation Act and amending Act." That, I think, was agreed to in discussion, but we did not carry it then.

Right Hon. Mr. MEIGHEN: Yes. It is not a consolidation.

The CHAIRMAN: Shall we so amend the title?

The title, as amended, was agreed to.

The CHAIRMAN: Shall I report the Bill, as amended?

Carried.

The Committee adjourned at 3.50 p.m.

REPORT OF THE COMMITTEE

SATURDAY, 10th April, 1937.

The Standing Committee on Banking and Commerce to whom was referred the Bill (41 from the House of Commons) intituled: "An Act to amend and consolidate the Combines Investigation Act and amending Act," have in obedience to the order of reference of 7th April 1937, examined the said Bill and now beg leave to report the same with the following amendments, viz:—

1. Page 1, line 4. After the word *"Combines"* strike out the word "Act" and substitute the following therefor:—

"Investigation Act Amendment Act, 1937."

2. Page 1, line 6 to page 16, line 25, inclusive. Strike out clauses two to forty-two, both inclusive, and substitute the following therefor:—

"2. (1) Subsection two of section two of the Combines Investigation Act, chapter twenty-six of the Revised Statutes of Canada, 1927, as enacted by section two of chapter fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:—

"(2) 'Commissioner' means the Commissioner of the Combines Investigation Act appointed as hereinafter provided."

(2) Subsection five of section two of the said Act, as enacted by section two of chapter fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:—

"(5) 'Minister' means the Minister of Labour."

(3) Section two of the said Act, as enacted by section two of chapter fifty-four of the statutes of 1935, is further amended by adding at the end of the said section the following:—

"(6) 'Special commissioner' means a temporary commissioner appointed as hereinafter provided for the purpose of conducting an investigation."

3. The said Act is further amended by adding thereto as sections five, six, seven, eight and nine the following:—

"5. (1) The Governor in Council may appoint an officer to be known as the Commissioner of the Combines Investigation Act.

(2) The Commissioner shall perform the duties and exercise the powers conferred upon him under this Act and shall report directly to the Minister as required by this Act.

(3) The Commissioner shall, before entering upon his duties, take and subscribe before the Clerk of the Privy Council, and shall file in the office of the said Clerk, an oath of office in the following form:—

'I do solemnly swear that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of the Combines Investigation Act. So help me God.'

(4) The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

"6. (1) An Assistant Commissioner of the Combines Investigation Act may be appointed in the manner authorized by law.

(2) When the Commissioner is absent or unable to act, or when so authorized by the Commissioner with respect to any investigation or matter, the Assistant Commissioner, or, if he also is at the same time absent or unable to act, another officer designated by the Minister, may and shall exercise the powers and perform the duties of the Commissioner.

"7. (1) The Governor in Council may appoint, from time to time, one or more persons to be special commissioners under this Act.

(2) It shall be the duty of a special commissioner to conduct an investigation into and concerning any alleged combine indicated in the Order in Council signifying his appointment.

(3) Every special commissioner shall have, with respect to and for the duration of the investigation which he is appointed to conduct, the powers which are conferred on the Commissioner in sections fourteen to twenty-four, both inclusive, of this Act; and wherever the word 'Commissioner' occurs in sections fourteen to twenty-four, both inclusive, and thirty-three to thirty-six, both inclusive, of this Act, it shall be deemed to include the words 'special commissioner.'

(4) The exercise of any of the powers herein conferred upon special commissioners shall not be held to limit or qualify the powers by this Act conferred upon the Commissioner.

"8. (1) The Commissioner may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out the provisions of this Act.

(2) Any technical or special assistant or other qualified person employed under this Act shall, when so authorized or deputed by the Commissioner, inquire into any matter within the scope of this Act as may be directed by the Commissioner.

"9. (1) Any special commissioner and any temporary, technical and special assistants employed by the Commissioner shall be paid for their services and expenses as may be determined by the Governor in Council.

(2) The remuneration and expenses of the Commissioner and of any special commissioner and of the temporary, technical and special assistants employed by the Commissioner, and of any counsel instructed by the Minister of Justice under this Act, shall be paid out of such appropriations as are provided by Parliament to defray the cost of administering this Act.

(3) The *Civil Service Act* and other Acts relating to the Civil Service, in so far as applicable, shall, except as otherwise provided in section five of this Act, apply to the Commissioner and to all other permanent employees under this Act."

4. Wherever in sections ten, eleven, thirteen, fourteen, sixteen, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four, twenty-six, twenty-seven, thirty-one, thirty-three to thirty-six, both inclusive, and forty-one of the

said Act, as enacted by chapter fifty-four of the statutes of 1935, the words "Commission" or "Commission or any Commissioner" appear there shall be substituted therefor the word "Commissioner," and whenever in the said sections the words "they," "it" or "its" referring to the Commission, appear, the word "he" shall be substituted for the words "they" and "it," and the word "his" shall be substituted for the word "its."

5. Section twelve of the said Act, as enacted by section six of chapter fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:—

"12. The Commissioner shall on application made under the last preceding section, or on direction by the Minister, cause an inquiry to be made into all such matters with respect to the said alleged combine as he shall consider necessary to inquire into with the view of determining whether a combine exists or is being formed."

6. Subsections two and three of section thirteen of the said Act, as enacted by section seven of chapter fifty-four of the statutes of 1935, are repealed and the following is substituted therefor:—

"(2) The Commissioner shall thereupon make a report in writing to the Minister showing the inquiry made, the information obtained and his conclusions.

(3) On written request of the applicants or on his own motion, the Minister may review the decision of the Commissioner under this section, and may, if in his opinion the circumstances warrant, instruct the Commissioner to make further investigation.

7. Subsection four of section twenty-two of the said Act, as enacted by section fifteen of chapter fifty-four of the statutes of 1935, is repealed and the following is substituted therefor:—

"(4) The Minister may issue commissions to take evidence in another country, and may make all proper orders for the purpose and for the return and use of the evidence so obtained."

8. Section twenty-four of the said Act, as enacted by section seventeen of chapter fifty-four of the statutes of 1935, is amended by deleting in the sixth line thereof the words "evidence or documents" and substituting therefor the words "oral evidence" and by adding to the said section at the end thereof the following:—

"Nor shall any such documents be used or receivable in any criminal proceedings except proceedings under this Act or under section four hundred and ninety-eight of the *Criminal Code*."

9. The said Act is amended by adding thereto as section twenty-five the following:—

"25. The proceedings before the Commissioner and any special commissioner shall be conducted in private, but the Commissioner may order that all or any portion of the proceedings shall be conducted in public. All preliminary investigations shall be conducted in private."

10. Section twenty-seven of the said Act, as enacted by section twenty of chapter fifty-four of the statutes of 1935, is amended by adding at the end thereof the following:—

"(3) Every special commissioner at the conclusion of the investigation which he conducts shall make a report in writing which he shall sign and transmit to the Commissioner, together with the evidence taken at the investigation, certified by the special commissioner, and all documents and papers relating to the investigation remaining in his custody; and the Commissioner shall without delay transmit the report to the Minister.

(4) The Minister may call for an interim report at any time, and it shall be the duty of the Commissioner or special commissioner, as the case may be,

whenever thereunto required by the Minister, to render an interim report setting out the action taken, the evidence obtained and any conclusions reached at the date thereof.

(5) Any report of the Commissioner or of a special commissioner, other than an interim report or a report of a preliminary inquiry under section thirteen of this Act, shall within fifteen days after its receipt by the Minister be made public, unless the Commissioner states in writing to the Minister that he believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public."

11. The said Act is further amended by adding thereto as section twenty-eight the following:—

"28. The Minister may publish and supply copies of any report in such manner and upon such terms as he deems proper."

12. (1) Subsection one of section thirty-one of the said Act as enacted by section twenty-two of chapter fifty-four of the statutes of 1935 is amended by striking out paragraph (*b*) thereof and substituting the following:—

"(*b*) the evidence taken on any investigation by the Commissioner or by any special commissioner and the report of the Commissioner or special commissioner."

(2) Subsection two of section thirty-one of the said Act, and subsection two of section thirty-two of the said Act, are amended by deleting the words "Solicitor General" and "Solicitor General of Canada" wherever they appear in the said subsections and by substituting therefor the words "Attorney General of Canada".

(3) Subsection three of section thirty-one of the said Act is repealed and the following is substituted therefor:—

"(3) The Minister of Justice may instruct counsel to attend on behalf of the Minister at all proceedings consequent on any information being so laid."

13. Section fifteen of the said Act, as enacted by section nine of chapter fifty-four of the statutes of 1935, section thirty of the said Act, and sections thirteen and fourteen of chapter fifty-nine of the statutes of 1935, are repealed.

14. The said Act is further amended by adding at the end as Section A the following:—

"A" Notwithstanding anything in this Act, neither the Commissioner nor any special commissioner nor any other person shall have power to compel the attendance of any witness or the production of any book, paper, records or article, or the examination of any person under oath, or have power to exercise for the enforcement of any order made by such Commissioner, special commissioner or person or for punishment on account of disobedience of such order the powers that are exercised by superior courts for the enforcement of subpoenas to witnesses or punishment of disobedience thereof, unless and until on the application of the Minister (which shall be heard and determined *ex parte*) either the President of the Exchequer Court of Canada or the Chairman of the Dominion Trade and Industry Commission shall have certified, as either of them may, that it is fit and proper that the action mentioned in the application should be taken: Provided that when any investigation under this Act is proceeding in any province and the Commissioner or special commissioner is desirous of exercising power to commit to prison or otherwise penalize pursuant to this Act any person whether for contempt or otherwise, the application may be made by the Commissioner or special commissioner upon reasonable notice to the person concerned to a judge of the Supreme or Superior Court of the Province, who shall for the purposes of the application have the powers which by this section are conferred upon the President of the Exchequer Court and the Chairman of the Dominion Trade and Industry Commission.

(2) The provisions of this section which relate to the Chairman of the Dominion Trade and Industry Commission shall apply only whilst such Chairman is a barrister of one of the provinces of Canada of at least ten years standing.

(3) Such President, Chairman and judge, respectively, may, before granting such certificate, require the applicant to secure and subsequently produce to him any further evidence or proof of relevant circumstances as he shall deem to be necessary."

In the Title

Leave out the words "and consolidate".

All which is respectfully submitted.

F. B. BLACK,
Chairman,

EXTRACT from the Senate Minutes of Proceedings of 10th April, 1937.

The said amendments were concurred in, and—

With leave of the Senate,

The said Bill, as amended, was then read the third time.

The question was put whether this Bill, as amended, shall pass.

It was resolved in the affirmative.

Ordered, That the Clerk do go down to the House of Commons and acquaint that House that the Senate have passed this Bill with several amendments, to which they desire their concurrence.

EXTRACT from the House of Commons Votes and Proceedings of 10th April, 1937.

On motion of Mr. Rogers, the said amendments were taken into consideration and severally agreed to.