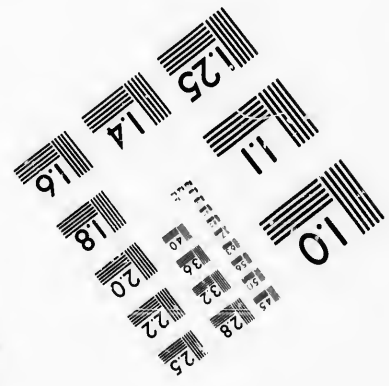
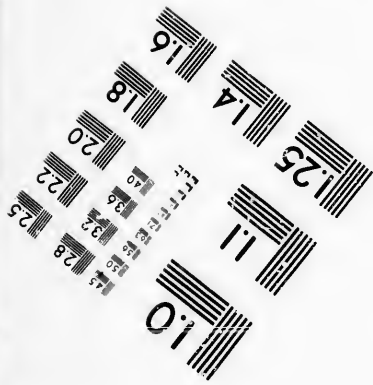
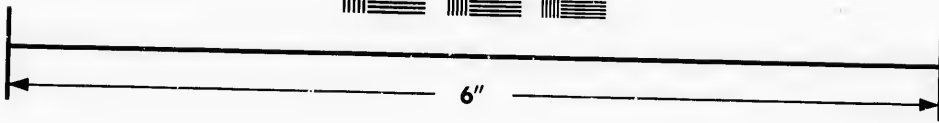
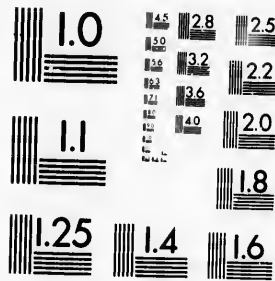


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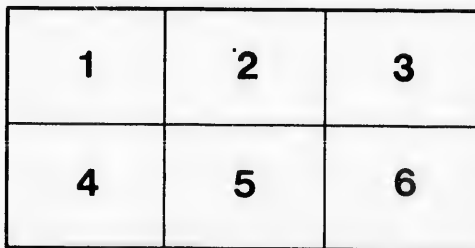
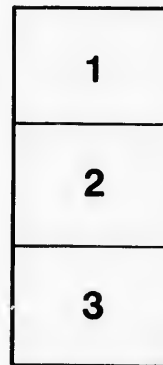
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House of Commons Debates

FOURTH SESSION—SIXTH PARLIAMENT.

SPEECHES OF HON. EDWARD BLAKE, M.P.,

ON THE

CRIMINAL LAW AMENDMENT BILL.

TUESDAY, 15TH APRIL, 1890.

INCEST CLAUSE.

On section 6,

Mr. BLAKE. I must confess I have some apprehension that this is hardly likely to efficiently serve the purpose which I suggested for the consideration of the hon. Minister. I suggested the case in which a female of tender years—and it is upon such that this offence is committed—who had succumbed under the influence of fear, would be exposed to the penalties of the criminal law. I am not, however, at the moment, prepared to propose any more adequate remedy than the one proposed by the hon. gentleman, but I confess my objections are not completely removed.

Mr. BLAKE. I would submit for the consideration of the Committee, and especially of the Minister, that we have to deal with the balance of conveniences and inconveniences, and with the balance of difficulties on one side or the other. In the great bulk of cases, I think it will be admitted, that you have but one criminal, and, if the chance of bringing that criminal to justice in the great bulk of the cases is going to be diminished by a law which makes the other party, who is not substantially criminal, liable to fourteen years' imprisonment, are we not, for the sake of the exceptional case to which the hon. gentleman has alluded, and in regard to which the observation of my hon. friend (Mr. Laurier) is of cogency, that this must have commenced by the criminality of the male, taking away our chances of punishing the criminals in the vast majority of cases?

Mr. BLAKE. It is possible that we may be drawing an Act here which will defeat itself in the great bulk of cases. What is going to be done when you are indicting one or other of these two persons? First, you indict the man, who is generally the principal offender. The woman will not be bound to criminate herself; it would be extremely unlikely that she would run the risk of doing so. My hon. friend says she would be held not guilty.

Mr. BLAKE. But we are dealing with the probability of advancing justice, of securing the condemnation of the really guilty party, and when the woman is liable to be placed in the dock on account of the commission of this outrage on herself, by her own relative, it may be, you cannot impress upon her a calculation of chances that by giving her evidence, though proving herself guilty, she may yet be making a door of escape.

Mr. BLAKE. I suggest to the hon. member for Northumberland (Mr. Mitchell), that his motion would be inconclusive; but he should wait until the Committee report, and move his motion with the Speaker in the Chair. We have already divided once on this provision in the Committee.

TRADE COMBINATIONS CONSPIRACY.

On section 18,

Mr. BLAKE. My opinion is, that the revision of the statutes has effected a very serious and prejudicial alteration of the law, in respect to the particular class of transactions to which this law was devoted. For my part, I was apprehensive, when I saw the clause in the shape in which the hon. gentleman proposed it, and heard the reasons which he gave, that the diminished efficiency which the law has, under the Revised Statutes, would be altogether removed. I am, therefore, very glad to see that, whatever be the prefatory changes, the hon. gentleman has, at any rate, resolved to leave that diminished efficiency intact. My own impression is that the original efficiency ought not to have been impaired; that the reference to that particular class of offences with which the Revised Statutes deal, and which was originally dealt with by prior legislation, to which I shall refer, should remain, and that the whole end and entire vigor of the exception which was made as to statutable crimes should be preserved. In order that the position which I take on this subject may be apprehended, I will have to trouble the House with a brief reference to the statutes as they stood. The earliest statute which we have on this subject is 35 Victoria,

chapter 31, passed in 1872, which was a law with reference to threats, violence and molestations. It provided as to certain defined acts, which were the acts it was thought expedient to make punishable specifically—certain defined acts arising in the connection of workmen with one another, and maybe, of employers with one another—and it made these acts punishable by imprisonment, with or without hard labor, for not more than three months. There were provisions in that statute for the prosecution, under the procedure for summary prosecutions, by justices of the peace out of sessions; and a power to appeal was given. There was, also, a very proper provision that the master, or the relative, or connection of the master, should not sit as a justice of the peace in such prosecutions. That Act was not found satisfactory, and in 1875, by 38 Victoria, chapter 39, that law was repealed and other specific provision was made, which, however, in itself was unsatisfactory. In the following year, 39 Victoria, chapter 37 (1876) was passed, for which, being at that time Minister of Justice, I happened to be responsible. Now, by the first section of that Act, the Act of the previous year was repealed, and by its second section the repeal of the first section of the original Act, 35 Victoria, was continued, and for it was substituted a more satisfactory section, as I conceived, and as Parliament approved. That new section dealt with the matter as affecting the relations of men generally, and not of particular classes of men, and it applied to these relations certain conditions which were constituted into crimes. Certain particular kinds of offences, now often called boycotting, and particular cases of a marked and defined offensive character, relating to intimidation by threat or otherwise, were specified. They were made offences, and it was provided that they should be punishable by the alternative of fine or imprisonment, summarily; but that, instead of there being an appeal, if the accused party objected to being tried before the summary tribunal, the case should forthwith be treated as an indictable offence and prosecuted as such accordingly. Then the fourth section established for the first time the law as it stood until the Revised Statutes, with reference to this particular subject of conspiracy, and its provision is that to which I particularly wish to draw the attention of the Committee and the Minister of Justice. The fourth section provided:

“That no prosecution shall be maintainable against a person for conspiracy to do any act, or to cause any act to be done, for the purpose of a trade combination, unless such act is an offence indictable by statute, or is punishable under the provisions of the Act hereby amended; nor shall any person who is convicted under any such prosecution, be liable to any greater punishment than is provided by such statute, or by the said Act as hereby amended, for the act of which he may have been convicted as aforesaid.”

The statute then defines what a trade combination is. Now mark that the law of conspiracy was thus swept out of all operation in connection with acts done for the purpose of a trade combination, except in two classes of cases: unless the act done was an offence indictable by statute, or unless it was an offence punishable under this particular Act, in which case, though not necessarily, an indictable offence, it was an offence of that particular character and defined in that particular way by the very Act itself, as I have described a moment ago. Therefore, the law of conspiracy was abro-

gated, as to trade combinations, except in this particular class of offences defined, and in all cases of such graver offences, as are offences indictable by statute. Any conspiracy, then, for purposes of a trade combination, to do an act punishable only at common law, or punishable by statute under summary procedure, was no longer criminal and remained no longer capable of being prosecuted under the law of conspiracy. If it were one of these minor offences, not raised to the gravity of an offence indictable by statute, if it were a minor offence punishable summarily, it was swept out of the law of conspiracy altogether, if done in concert for the purpose of a trade combination. Such was the law, and so it stood and gave satisfaction until the Revised Statute passed; but in the Revised Statute, I find, an alteration was made, and it reads thus:

“No prosecution shall be maintainable against any person for conspiracy to do any act, or to cause any act to be done, for the purposes of a trade combination, unless such act is an offence punishable by statute.”

So that you no longer have the protection, as to the gravity of the excepted offence, which existed up to that moment. All offences which are punishable by statute, even though of the most trivial character, and punishable in the lightest way and by the most summary procedure, are once more, by the Revised Statute, drawn within the wide net of conspiracy, even though they are things done for the purposes of a trade combination. This is a distinct enlargement of the exception, certainly not contemplated by me when I proposed the legislation, or by the Houses of Parliament which passed it at that day; and you will readily perceive that, having had a special interest in this legislation, I was surprised when I found that that diminished protection which was still awarded by the Revised Statute it was proposed further to inquire by substituting offences punishable by law “for offences punishable by statute.” I am glad we are going back thus far, but I hope we shall go back still further; I hope that all the protection which was given, and advisedly given, against the effects of this obnoxious law of conspiracy by the Act of 1876, will be restored by Parliament, and that the attempt—I do not know with what design—for all I know, it may not be a designed attempt to diminish that protection and to enlarge the exception, will not, now that the attention of Parliament is called to it, be persisted in, but that we shall find Parliament disposed to restore in its full vigor and efficiency the Act of 1876. Now, Sir, this law of conspiracy is a very wide law. I declare that the alteration which has taken place renders it impossible to say how small a matter may not now be punishable as a criminal conspiracy, and introduces lamentable uncertainty into the operations of trade combinations. I have extracted a statement made by a very eminent legal authority, an ex-Lord Chancellor of England, in one of the very latest debates in the House of Lords, upon the subject of the law of conspiracy, and I will trouble the House by a perusal of it, inasmuch as it shows how wide is that net which the law of conspiracy spreads in order to catch the subject. Lord Herschell said this:

“I think exaggerated importance has been attached to the expression, ‘criminal conspiracy.’ Many most excellent people have been guilty of criminal conspiracy without being deserving censure. The law of conspiracy is a

wide net spread by the law of our country. An agreement between two people to commit a trespass is a criminal conspiracy, for it is to do an unlawful act. An agreement between husband and wife to smuggle goods into this country would make them guilty of criminal conspiracy, for it would be an agreement to do an illegal act. When I come to this subject, I get a little uncomfortable, for I am not sure that when I visited the United States I was not guilty of criminal conspiracy myself. It has been held that my combination to avoid the United Prohibitory Liquor Law is criminal conspiracy. I have a recollection of going to a watering place where the prohibitory law was enforced. The landlord of the hotel was not allowed to supply spirits for payment, but promised to obtain them for his customers. There was an item in my bill under the head of "sundries" which covered the cost of the spirits, and I am afraid the innkeeper and I were guilty of criminal conspiracy. Any noble lord who has length to which the law of criminal conspiracy has been carried. I am not prepared to say that any agreement to do an illegal act, or to do a legal act by illegal means, is not a criminal conspiracy. There is a case which is an apt illustration of my contention that there may be criminal conspiracy, even to boycotting, without much moral blame. There is a case now pending * * * in which it has been held that an agreement to boycott was an illegal conspiracy; and I apprehend that every illegal conspiracy is a criminal conspiracy, because it comes clearly within the definition. That is the case of a contract between highly respectable steamship companies to refrain from trading in a certain manner and so effect their trade. Although these companies may be guilty of criminal conspiracy, I am sure they will not feel themselves morally to blame."

Now, Sir, what I want to press is this: that, as the law stood as the Parliament of 1876 passed it, we abstracted altogether from the operation of the law of conspiracy, all acts done in pursuance of trade combinations, which did not fall within one of these two categories: first, that the act was indictable by statute, and so in its nature a grave offence, and, second, that the act was one of the offences specified in the statute itself, and which were particularly germane to the question of trade combinations. For anything outside of these, that the parties combined to do, they were free from being prosecuted for conspiracy. The revision of the law has changed that, to the detriment of the efficiency of that protection, by substituting the phrase "punishable by statute" for the phrase "indictable by statute," and has, therefore, permitted the application of the law of criminal conspiracy to acts, trivial and minor acts, done in pursuance of a trade combination, though those acts be not either indictable by statute or within the range of the specified crimes enumerated in the Act itself. What I ask the Committee and the Minister is that the efficiency of the protection which was given in 1876 shall be restored, and that a form of words shall be adopted which will accomplish that result.

Sir JOHN THOMPSON. We are dealing with a class of offences in respect of which labor organisations, or, as they are known by statute, trade combinations, feel apprehensive of inefficient protection under the laws which allow them to be formed. The legislation is restricted entirely to such trade combinations. The particular case in respect of which the apprehensions of these trade combinations exist, as I stated to the Committee a few moments ago, is the indictment for refusing to work with or for any employer or workman. In respect of that, the amendment which I propose completely covers the case. It declares that they shall not be liable for refusing to work with or for any employer or workman. On reviewing the clause which I had drafted for that purpose, but

which was not as wide as the one I propose, the labor organisations passed resolutions and memorialised privately, by circular, members of the House, asking that the Bill should be amended in the direction in which I have framed this amendment. They were willing to accept the provision in the Bill, provided I substituted the word "statute" for the word "law" in the last line of section 18. But I have gone a step further, and, in order that their request be satisfied, I propose to declare that in no case shall they be prosecuted for refusing to work with or for any employer or workman. It seems to me that in doing that I meet the practical difficulty which has arisen, and I comply with the request of those who have considered this question fully for the last few years, and who are most concerned in it, the trade organisations themselves; and I may say to the House that they have not merely considered it from their own point of view and their own knowledge of the law, but they have been carefully advised as to every question which might arise out of it. Under these circumstances, I hope the hon. member for West Durham, after having stated the views he has expressed, and having explained what his view is as to the distinction in the law prior to the revision of the statutes and now, will not press the Committee to widen the provision which I state to the House; and the House will be already aware, from the requests they have had from the labor organisations, meets every practical emergency which has been suggested, and meets to the fullest extent the requests made.

Mr. BLAKE. Well, I retain my very strong opinion that a very important protection to the labor organisations in the exercise of their power of combination has been removed, and that their position is extremely impaired; but after the hon. gentleman's statement that he has had communications from the labor organisations, and that they have informed him that they are perfectly satisfied with this legislation, I shall not now be wiser for them than they are for themselves.

Mr. LAURIER. It seems to me that the labor organisations scarcely apprehend the distinction which has just been proposed by my hon. friend from West Durham. It is certainly a very important difference, though technical, and probably on that account overlooked by the organisation; and if the attention of the organisation had been called to it, they would have only been too glad to avail themselves of the more stringent protection suggested by my hon. friend.

Sir JOHN THOMPSON. The very section which is now proposed—and I ought to have mentioned it sooner, out of deference to the hon. member for West Elgin—is the proposition he submitted to the House last year. I think he did so at the request of the labor organisation. I know, that after the Bill was introduced by him, delegates from the labor organisation waited upon almost every member of the House and requested their support for the Bill. But the Bill was not introduced early enough to reach all its stages. Delegates from a number of these labor organisations met members at the beginning of this Session, and requested that some such clause should be adopted. I proposed the clause which is in the Bill, and they distinctly agreed to that as sufficient for all their purposes. Since the Bill was intro-

duced, they have issued a circular, to which the hon. member for Montreal (Mr. Curran) drew my attention yesterday, and a copy of which I received this morning. That circular contains the following resolution :

" Be it resolved, that we ask that Sir John Thompson's Bill to further amend the criminal law be amended by inserting the word 'statute' in place of 'law.' "

In addition to that, some eight or ten delegates, representing all the trade and labor organisations, waited upon the First Minister, the Minister of Agriculture, the Minister of Marine and myself, the other day, and made the request that the simple change should be made in my Bill of inserting the word "statute" for "law." I think the section I have proposed will be an improvement, and gives them further protection even than that; but considering, as the hon. member for West Durham has said, that it meets the request put forward by these organisations, and, as far as I can see, meets all the practical difficulties, it would be well to rest content with that much for the present, at any rate, unless a practical case is put forward calling for a change.

Mr. CURRAN. Judging by the observations of the hon. member for West Durham (Mr. Blake), it would appear as if there will not be as much protection as formerly. What we must also take into consideration is the fact that these organisations are advised by legal gentlemen outside, whose views are very different to those expressed by hon. gentlemen here. I have often myself, when conversing with these people, found that points which appeared very clear to me, were taken exception to by them, under advice given them elsewhere. The hon. the Minister of Justice has met the request of these people on their own ground, and, perhaps, to some extent improved upon it. It is probably well to give them what they ask.

Mr. BLAKE. When I was called upon to legislate on this subject, I gave what I thought was right.

Sir JOHN THOMPSON. I have given, not only what I thought was right, but more than they asked, and do not propose to give any more.

Mr. WILSON (Elgin). I am to a certain extent satisfied with the clause introduced by the Minister of Justice, for I feel it is going in the direction of granting the relief which the labor organisations require; but I would call the attention of the Minister of Justice to the fact that in the report, Mr. Elliott, the president of that organisation, in referring to the clause introduced by me last Session, stated that clause was introduced so late and the clause was so crudely drawn that it would not meet the acceptance of the labor organisations. The Minister of Justice, however, has accepted the clause, as I introduced it last Session, which the president of the organisation said would not suit their purpose, and he ought to remove the crudity with which it is encumbered. I would further recommend him to have communication with Mr. Elliott, so that he may get the approval and endorsement of Mr. Elliott. If the clause was so crude and unsatisfactory when it emanated from my hands and appeared upon the Order paper in my name, I cannot understand how it could have improved so very much by emanating from the hands of the Minister of Justice. I suppose the organisations of trade and labor are very honest and sincere and candid, and I should judge the Minister would do well to reconsider the matter, and see whether the clause merits the approval of Mr. Elliott.

Mr. BLAKE. I read that correspondence, and I must say I formed the conclusion that the real opinion of Mr. Elliott was that it was not the clause that was crude, but the hon. member for Elgin.

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