

*Establishment of Immigration Appeal Board*

Over the centuries we have conceived under our criminal law some very sound and sensible principles with regard to the rights of individuals, except in cases where the revenue of the state is involved when the situation is reversed. But where the rights and liberties of an individual are involved, under our criminal law we say, first, that the crown must prove its case. The onus is upon the crown to prove its case and that onus can only be discharged by producing evidence which shows beyond a reasonable doubt that the offence has been committed.

It would seem to me that if we are setting up this board to make decisions with regard to matters which are in many respects on the same footing, because they involve the rights and liberties of people, the same type of principle could have been inserted in this legislation without any great harm being done. A provision could have been inserted to the effect that under these proceedings the onus would be upon the government to establish the facts beyond a reasonable doubt and the responsibility would be upon them to initiate the steps to discharge that onus. I think such a provision would meet some of the objections which have been raised by the hon. member for Carleton and others.

Second, there is the right of appeal from a decision of the immigration appeal board. That right of appeal is given to the individual on facts or law, or mixed facts and law, if I am correct. The same right is given to the crown. I believe that the government, having seen fit to appoint as members of the board men in whom they have confidence as to their integrity, knowledge, capacity and depth of human feeling in assessing and evaluating the facts in a given case and reaching a decision, must be assumed to have decided that they will respect their judgment.

I suggest that in cases of appeal the government should be limited to matters of law alone. Once the immigration appeal board has heard a case and come to a decision in favour of the individual, I suggest that the same principle should prevail as prevails with regard to a great many criminal matters and that the right of appeal of the government should be confined to questions of law alone. I do not know whether the minister is open to suggestion; I do not know how flexible he is. We will have an opportunity to find out before this bill is passed. But I hope he will give these suggestions consideration.

[Mr. Baldwin.]

I wish to make only one more point. This bill has been very adequately dealt with and there will be far more suitable opportunities to deal with the various matters involved when we are in committee. I am concerned about the effect of clause 21. I must not deal in detail with this matter but I cannot speak on the principle of this bill on second reading without expressing my repugnance to the principle involved in clause 21. This problem was before us yesterday with respect to another matter.

I know there are cases when the security and safety of the state must be considered. I agree with other hon. members that sometimes this factor is overemphasized. Sometimes there is a tendency to exaggerate its importance, using it as a peg on which to hang the argument of handing over to the government a far greater degree of power than is required. Nevertheless there is a problem in this area. I admit quite frankly and honestly that we cannot apply the same rules in these cases as apply in ordinary cases under criminal law or where the safety of the person or property of an individual is concerned vis-à-vis the state. Nevertheless, to leave this discretion to ministers of the crown is simply repeating the mistakes of the past.

Surely it is not beyond the ingenuity of the government, its law officers and the civil service to devise a means by which cases which are certified to involve security matters can be heard by this board or a special panel of the board sitting in camera if necessary. These people are human beings, as are the two ministers involved. I assume that the members of the board will take certain oaths at the time of their appointment. Surely there is no reason why, with certain limitations and proper safeguards, the immigration appeal board could not entertain these cases.

I know that the government is now waiting for the report of a committee dealing with the whole question of security, but it seems to me to be repugnant to an orderly state of affairs that people who are properly in this country should be subject to orders which affect them and their families without having any idea of the general tenor of the accusations made against them, without the source of the accusations being in any way disclosed and without having the fullest opportunity to answer to accusations.

I assume that the Solicitor General (Mr. Pennell) and the minister will attempt to