

committee, and that is subsection 2, which is on page 2 of the bill. The marginal note says "mandatory orders", and the section reads:

The board may order and require any air carrier to do, forthwith . . . any act, matter or thing which such air carrier is or may be required to do under this part or any regulation, order or direction made thereunder by the board—

And so on. It seems to me, though I may be wrong about this, that before the board orders an air carrier to do or to refrain from doing a certain thing the air carrier should receive some notice from the board of its intention and have an opportunity to be heard by the board if it so desires. Just to hand out an order by the board to an air carrier that "you have to do this and you have to do that" without giving them the opportunity to be heard is not fair to the air carriers. They should, it seems to me, be given notice of the board's intention and have an opportunity to be heard before the order is put into effect.

Mr. HOWE: This clause is precisely the same as a similar section in the Railway Act. Obviously the procedure would be that the board might order a certain action taken and the air carrier would have the right to enter an appeal after the event but they could hardly delay the action pending the filing of the appeal and the hearing of the appeal. It is to get immediate action in case such action is taken.

Mr. HAZEN: Is there provision for an appeal, and if so in what section?

Mr. HOWE: Section 18 of the Aeronautics Act provides for an appeal:

(1) An appeal shall lie from the board to the Supreme Court of Canada upon a question of jurisdiction or a question of law, or both, upon leave therefor being obtained from a judge of the said court upon application made within one month after the making of the order, decision, rule or regulation sought to be appealed from or within such further time as the judge under special circumstances shall allow, and upon notice to the parties and the board, and the cost of such application shall be in the discretion of the judge.

Mr. HAZEN: I should like to ask the minister's assistant if under that section an appeal can be taken on a question of fact.

Mr. HOWE: Yes, it says so.

Mr. FLEMING: A question of fact cannot now be appealed from the board of transport commissioners.

Mr. HOWE: No, but it can from the air transport board.

[Mr. Hazen.]

Mr. FLEMING: You can get a mixed question of law and fact before the court on appeal but not a question of fact.

Mr. HOWE: It is provided that appeals shall lie from the board to the Supreme Court of Canada upon a question of jurisdiction, or upon a question of law, or both.

Mr. FLEMING: But not a question of fact.

Mr. HOWE: No, not a question of fact, but a question of law.

Mr. HAZEN: I do not think you could appeal on a question of fact. If you cannot appeal upon a question of fact and the board makes an order on a question of fact, the air carrier has no redress. He receives no notice of what your order is going to be; he has no opportunity of being heard by the board before the order is made, and first thing he knows he gets an order. He should have an opportunity to be heard before the order is made against him.

Mr. FLEMING: I thought the minister would make a statement on the point raised by my hon. friend, which is one of great importance. The board of transport commissioners is a highly respected body. It has been fair in all its dealing, and even those who at the outset may have had some misgivings about being brought under regulation by that board would not to-day have it otherwise. One of the reasons why that board has been so highly respected is that it has not at any time proceeded in an arbitrary manner, but with due notice to persons involved, and it has always been generous in its hearings. As a matter of fact there is provision for rehearings on application of parties to the board, and the board frequently directs rehearings where some party has complained about not having had ample notice.

When you come to the air transport board you are faced with a problem. I do not raise this point out of any selfish regard for the legal profession. The board of transport commissioners has always had not fewer than three members—I believe that is the rule—who have been members of the legal profession, so that it has always had among its personnel persons well acquainted with legal processes and who have been always anxious to see that those appearing before the board are given all the protection which the courts ordinarily afford to litigants. I do not reflect on the personnel of the present air transport board. They may be eminent men in their respective fields, but there is no one on the board at the present time who has had legal experience, or who has been accustomed to