

*Foreign Exchange Control*

think my hon. friend intended to imply this, but if the penal provisions are enforced and an individual is fined or sentenced to imprisonment there would be an appeal in the ordinary way. There is no suggestion that that form of appeal is taken away under the bill.

With the exceptions which I have mentioned, the three cases where appeal to the courts is provided, the decisions of the board would concern principally the granting or refusing of applications for permits and the like; in other words, the exercise of discretionary power. No one knows better than my hon. friend that where a person is given discretion, whether it be a minister or a municipal council, to issue permits, the courts do not interfere with the exercise of that discretion unless it is shown it was not exercised in a bona fide manner or was influenced by improper motives. That is a well recognized principle.

Mostly the matters in which these discretions are exercised have to do with administration. In cases where the liberty of the subject is involved, in cases where there is a question of fact such as the fair value of property, in cases where the board has made a prohibition under section 49 to deal with property or where currency has been forfeited, there is an appeal, first to the board, then to the minister and finally to the courts. In these discretionary and administrative matters the appeal is from the authorized agent in the first place, if it is a customs officer or a bank, to the board and then from the board to the minister.

I do not agree with my hon. friend that appeals to the minister in cases of this kind are futile. I have had a few personal experiences of this kind; I know that there is opportunity for the minister to review administrative decisions, and on occasion they have been overruled. I suppose it is only fair to say that in the vast majority of cases the minister would confirm the exercise of discretion by the board. That would probably be because he agreed that it was wisely exercised.

Mr. DIEFENBAKER: How many appeals were there in the last three years, and in how many cases did the minister reverse the order made?

Mr. ABBOTT: I am told by the secretary of the board that there were no appeals from the board to the minister.

Mr. HACKETT: Have not those appeals been given up since the Pioneer Laundry case?

Mr. ABBOTT: That was a question as to the exercise of a discretion. It has been a [Mr. Abbott.]

well-recognized legal principle for years that the courts do not interfere with the proper exercise of discretion.

Mr. HACKETT: That is quite true, but the minister will recall that the privy council held in the Pioneer case—

Mr. ABBOTT: I am familiar with that case.

Mr. HACKETT:—that that was a judicial discretion and that the discretion should be exercised only for legal and judicial reasons; that the arbitrary exercise of discretion was illegal.

Mr. ABBOTT: That is true. As I said once in this house when referring to the Pioneer Laundry case, the mistake made by the commissioner of income tax was in giving his reasons.

Mr. HACKETT: He attempted to give them in a subsequent case, and you know what the court of appeal in British Columbia did to that?

Section agreed to.

On section 28 (2)—Board may prohibit, or impose conditions on transfers between non-residents.

The CHAIRMAN: Hon. members will recall that section 28 (2) was allowed to stand until we considered section 35. Is it agreeable that we carry section 28 (2)?

Subsection agreed to on division.

Section 28 agreed to.

Sections 38 to 47 inclusive agreed to.

Section 48 agreed to on division.

Sections 49 to 53 inclusive agreed to.

On section 54—No action until one month after notice.

Mr. DIEFENBAKER: I referred to this section a while ago, and I am not going to repeat what I said. This is the section that absolves and frees a person from any action, however illegal, however unjustified and however tyrannical it may be, who is able to say that a member of the board or an inspector, had instructed him whether verbally or in writing, so to act. I looked up every act and every regulation I could find, and never before has the government asked that a person who acts beyond the powers of a law, who diminishes or destroys the rights of an individual, shall be able to offer as a defence that somebody his senior instructed him so to act. Apparently the minister had not read the Excise Act, or the Customs Act, or he was following the advice of advisers who had not read those