

*Postal Service*

defraud or intend to defraud, but I do believe this parliament must take cognizance of the risk involved when the sort of thing is done that is complained of here.

**Hon. Stuart S. Garson (Minister of Justice):**

In view of the statement just made by the hon. member for Rosetown-Biggart (Mr. Coldwell), perhaps I should say a few words on this matter. With all deference I do not think a single argument has been developed this afternoon that is not fully covered by the statements made the other day by my colleague the Acting Postmaster General (Mr. Lapointe) and myself; so that in replying I am a little afraid I may offend the rule of the house which prohibits tedious repetition.

**Mr. Coldwell:** We will excuse that this afternoon.

**Mr. Garson:** There are one or two points which deserve to be clarified, I think. One is the statement that any action against offending stockbrokers, to take the present case, should be taken under the law. I want to make it as clear as I possibly can that the action taken in the present instance came squarely under a law passed by this parliament. It is not a new law, an innovation, but a law which has been upon the statute books of this country since 1889, and which has been invoked in case after case with beneficial results in preventing the mails from being used for the distribution of obscene literature, lottery tickets and fraudulent material. The suggestion that in what has been done there is anything outside the law, or contrary to British tradition, is quite incorrect.

The suggestion has been made this afternoon that when the Postmaster General invokes this section 7, subsection (d), of the Post Office Act, he can act arbitrarily, and if he does so he is immune from any process of the courts. Such a suggestion flows from an inaccurate conception of the law. The law, as I apprehend it, is that when a statute clothes an official with certain powers conditional upon there being a set of circumstances in relation to which those powers are to be exercised, he cannot give himself power which he does not have under the statute by arbitrarily or capriciously deciding that the set of circumstances exists, when in fact it does not. In relation to this case, therefore, and in relation to every one of those orders which have been issued, if there had been any arbitrary action on the part of the Postmaster General under which he issued an order without reasonable ground for suspecting that there was fraud, that action on his part, which in a true and a legal sense would be arbitrary, could be challenged in the courts and his order successfully attacked.

The member for Lake Centre (Mr. Diefenbaker) shakes his head, but I would refer him to a decision of the British Columbia court of appeal that was cited to us by Mr. McTague when he made representations on behalf of the broker dealers association. It was pointed out in the letter to me that he—the deputy postmaster general—

—does not seem to realize that the court in that case simply held that there was a right to exercise a discretion under the statute and the discretion having been duly and properly exercised, the courts would not review it.

**Mr. Diefenbaker:** What is the case?

**Mr. Garson:** It is the Literary Recreations case, which is to be found in 58 Canadian Criminal Cases, 385.

**Mr. Diefenbaker:** What was the nature of the application?

**Mr. Garson:** The nature of the application was that an order had been made upon grounds which the person offended contended to be arbitrary. An action for damages was brought against the official who made the order.

**Mr. Diefenbaker:** What was the nature of the order, if I might ask the minister?

**Mr. Garson:** I think it was an order of the same character as the one made here.

**Mr. Diefenbaker:** Under the postal act?

**Mr. Garson:** I think it was, but at any rate it was an order of the same statutory character, an order made by an official under statutory powers which he could exercise only if a certain set of facts existed. He found that that set of facts existed, and made the order. The persons who were affected by it brought an action against him for damages, alleging that he had acted arbitrarily and that there were no real grounds in fact for the exercise of his statutory jurisdiction.

In that case the court of appeal of British Columbia held, first of all, that where a proper set of circumstances could be shown in a case of that sort the person offended would have an action for damages, but on the facts of that case the court thought the official had exercised a reasonable discretion, and the claim was not allowed. If the Postmaster General had acted arbitrarily in any one of these cases that are under discussion, and had presumed to make an order under section 7, subsection (d), when there were no reasonable grounds for suspecting the mails were being used for fraudulent purposes, then his action, in the true sense arbitrary because it would be beyond the jurisdiction which parliament purported to