

There is one small recourse. Ordinarily when you are treated arbitrarily and trespass has been committed against you, you could go to the courts. That is all over now. If my rights are interfered with, all the defendant has to do, if I sue him, is to say that he was proceeding under written or verbal instructions of the board or of an inspector and was acting in good faith in carrying out those instructions. In other words I go to the courts for the purpose of establishing my rights against these unfair and discriminatory orders. Trespass has been committed against me.

Mr. ABBOTT: How do you trespass against the foreign exchange control board?

Mr. DIEFENBAKER: Look at the rights which the inspectors have. If they do not amount to trespass, I do not know what does. I am sure that my hon. friend was speaking jocularly, as he answers many questions in the house. He did not mean that seriously. Because trespass is exactly what that action is—an unfair interference with my rights.

What happens? I go to the courts. All that the defendant has to do is to say that an inspector told him to do that verbally—not even in writing—and my rights disappear. All I can get is nominal damages, and no costs for having brought the matter to court. Such a section has never before been enacted in this country. I pause to give my hon. friend the opportunity to say what he said last night and two or three times yesterday, that such a section appears in the Excise Act and in the Customs Act. Never before has that section been incorporated in our statutes to deny the rights of individuals. It is neither in the Excise Act nor in the Customs Act.

Mr. ABBOTT: Will my hon. friend look at sections 157-160 of the Customs Act?

Mr. DIEFENBAKER: Yes, I have them here.

Mr. ABBOTT: I have them too.

Mr. DIEFENBAKER: All right; we will read them together, and that will show that my hon. friend has not read them because such a section is not in the Customs Act.

Mr. ABBOTT: Suppose you read them before you make assertions. Read section 157, under the heading, "Protection of officers."

Mr. DIEFENBAKER: Section 157 reads:  
No action, suit or proceeding shall be commenced—  
and so on.

Mr. CLEAVER: Read it.

Mr. DIEFENBAKER: Yes, I will read it for my legal friend from Halton.

No action, suit or proceeding shall be commenced, and no writ shall be sued out against, or copy of any process served upon any officer—  
And so on.

Mr. CLEAVER: Read it.

Mr. DIEFENBAKER: I am not leaving out any material part.

Mr. ABBOTT (reading):

—or person employed for the prevention of smuggling, for anything done in the exercise of his office, or duty—

Mr. DIEFENBAKER: All right; let us get back to what I am saying.

Mr. ABBOTT: As Mr. Gladstone used to say, read on.

Mr. DIEFENBAKER: The laughter indicates that my hon. friend the minister is not the only one who has not read this section. Section 157, subsection 1, provides that no action against an officer shall be taken while a proceeding is pending nor until one month after notice. Subsection 2 sets out what the notice shall state. Subsection 3 sets out what the evidence shall be. Section 158 sets out in subsection 1 that the defendant may tender amends; subsection 2 deals with what may be done if the amends are sufficient. Subsection 3 deals with costs and subsection 4 with payment into court. Section 159 deals with the limitation of time. Then I come to section 160, and that is different from the section to which I have been referring. Section 160 says:

If, in any such action, suit or proceedings, the court or judge before whom the trial takes place certifies that the defendant acted upon probable cause, the plaintiff shall not be entitled to more than twenty cents damages nor to any costs of suit, nor in case of a seizure, shall the person who made the seizure be liable to any civil or criminal suit or proceedings on account thereof.

The section in the Customs Act and the section in the Excise Act provide that if the defendant carrying out a public duty does so on probable cause, then in that case he is absolved from damages. But the board was not satisfied with that section. The board thought that it did not give them sufficient protection, and so here is the section which they now place before parliament. This is subsection 2 of section 54:

If in any action, suit or proceeding to which this section applies the court or judge before whom the trial takes place certifies that the defendant acted upon probable cause—

It is the same up to that point, but then these words are added:

—or, if the defendant was proceeding under written or verbal instructions of the board or an inspector, that the defendant acted in good