

acts when he said that they conferred similar unlimited terms. They do not. I agree that a defendant acting on probable cause should be protected, but I cannot see how anyone could justify a situation wherein a defendant who has proceeded unfairly may defend himself by citing to the judge that he was acting on behalf of some one superior to him. It opens the door to the interference with private rights, and it gives a sense of security to offending officials which I submit is not justified. You might just as well go as far as regulation 39 did during the war and say that there is no right of action at all. However, that would have been too direct and too startling. Instead of saving that, provision is made that a person while technically having the right of recourse to the courts, has in reality no rights against a wrongdoer. I want to see the law enforced, but I do not want to see administrative officers becoming the masters of the people because of the reliance they will be able to place on a section such as this, which gives them unlimited and unrestricted power to interfere with private rights. I appeal to the minister—I will do no more than that—to consent to an amendment deleting that portion of subsection 2 beginning with the word “or” and ending with the word “instructions”, so that the subsection would read:

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, the plaintiff shall not be entitled to more than nominal 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 proceedings on account thereof.

The effect of the amendment would be to make the section the same as it is in the Customs Act and in the Excise Act. The minister felt it was the same until I brought it to his attention this afternoon. Apparently he had been so instructed. I appeal to him that parliament should not go further in giving that immunity to public officials which the subsection in its present form will confer.

Mr. ABBOTT: I am sympathetic to my hon. friend's amendment, but perhaps I should tell him why these words were put in the bill. The board acts, as he knows, in large measure through the managers of branch banks. The banks act as agents for the board, and it was felt that to afford reasonable protection to the branch banks, which act merely as agents for the board, these words should be put in. I do not think it really adds to the protection which is afforded under the Customs Act. Under the Customs Act the officers

are all government employees, but in the administration of the affairs of the board we have to have a good many outside agents. Every chartered bank and its branches are agents for the purpose of issuing or refusing permits, and so on. I do not think this is an arbitrary or excessive power, and I should be reluctant to strike it out of the bill, for the reason which I have given.

Mr. DIEFENBAKER: Will the minister let the subsection stand and give consideration to the amendment?

Mr. ABBOTT: I shall be very glad to do that.

Mr. HACKETT: My very brief observations will have to do with the following section, and I am going to ask the minister if he would be willing to consider my suggestion also at the same time. Section 55 gives immunity to any officer who has attempted to effect a seizure of the property and has found out after making the attempt that there was no property there to seize. Has the minister considered whether it lies within the power of this parliament to impinge to the extent that the section seems to impinge upon property and civil rights? If I have been damaged by a person, he is liable to me for those damages and the rule in the province in which the minister practices is that a person can only disinculpate himself if he can establish that he has exercised reasonable care; the mere instructions of a senior officer are not sufficient to give immunity to the police officer who arrests a person without reason. I am going to ask the minister, when he is considering the suggestion made by the hon. member for Lake Centre, to consider and advise the committee whether the powers of parliament have not been exceeded in the enactment of the following section 55.

Mr. ABBOTT: I am advised not. This section is in effect the same as section 162 of the Customs Act, which has been in that act for a great many years. I am satisfied that it is within the legislative competence of parliament. My hon. friend's point is slightly different from the one raised by the hon. member for Lake Centre, although it resembles it.

Subsection 1 of section 54 agreed to.

Subsection 2 stands.

Section stands.

Sections 55 to 57 inclusive agreed to.