

Where a dispute or question arises as to whether property is subject to these regulations, the Custodian may proceed in the Exchequer Court of Canada or in any superior court of record for a declaration as to whether the property is subject to these regulations.

That is a proceeding on the part of the custodian. Then clause (2) of that section reads:—

Any person may, not less than ninety days after giving the Custodian notice of his claim . . .

The time limit is not particularly important because I believe the custodian has never taken advantage of his technical position as to time limit. Clause (2) then reads:—

Any person may, not less than ninety days after giving the Custodian notice of his claim, proceed in the Exchequer Court of Canada for a declaration that he is not an enemy and

- (a) that property held or controlled by the Custodian is not subject to these regulations and he is the owner thereof or of an interest therein; or
- (b) that he was the owner of property or manages any enemy property immediately prior to its vesting in the Custodian under these regulations.

I direct your attention to the fact that right given to the person there to apply to the court is confined to an application for a declaration in the first place. In the second place, it is confined in this way, that he can only apply for a declaration that he is not an enemy. Then, in (a) and (b) it has to be on the basis of his not being an enemy.

The other regulation is 36, and it has to do with recovery by the minister, by the custodian, in the event of any person's failure to pay to the custodian any money payable to him under the regulations and it reads as follows:—

In the event of failure by any person to pay to the Custodian any money payable to him under these regulations the Custodian may take action in the Exchequer Court of Canada or in any superior court of record to recover such money.

I notice there that if the custodian takes action, under section 36, for the recovery of money that he contends is payable to him there is no provision made for any kind of counter-claim where the person who is being sued considers that he has rights which, if the custodian were a private person suing in an ordinary action, he would be entitled to set up by way of counter-claim. It seems to me that while we want to see the custodian clothed with ample power to do everything in the way of taking property under the Act for the protection not only of the state but of the rights of individuals whose rights might otherwise, perhaps, be lost or prejudiced, these regulations do not leave enough right in the person whose property may have been seized or taken in possession by the custodian. Suppose an individual feels that he is not an enemy and that property has been improperly taken from him, what can he do? There is nothing in these regulations to say that the declaration is binding on the custodian. I have no doubt that as a matter of practice the custodian would honour a declaration of the Exchequer Court, but it is only a declaration of the court; it is not a judgment.

Now, take another case where the issue is not simply as to whether a man is or is not an enemy, but he contends that he has an interest in property that has been taken by somebody else. He has not got any right to go to the courts. Now that we are in peace times I think this is the sort of provision that does admit of amendment with a view to restoring more equality toward two individuals in the matter of access to the courts where, at the present time,