

**Hon. Mr. Dupuis:** Do I understand that this amendment was made in committee and was adopted?

**Hon. Mr. Roebuck:** No. I will come to my amendment in a moment.

**Hon. Mr. Haig:** This is what the government wants.

**Hon. Mr. Roebuck:** To make the matter perfectly clear, I shall read now from the bill. Subsection 7 says:

(7) Where the corporation orders the suspension of the licence of a private station under subsection six, the licensee may by leave of a judge of the Exchequer Court of Canada appeal against such order to the said court on any question of law arising out of the making of such order and the said court may stay the operation of such order or suspension pending its final decision and may affirm, alter or rescind the order appealed against.

I have read the whole subsection as it stands in the bill. I might as well read the next next subsection:

(8) The corporation, before making or amending a regulation that affects private stations, shall give notice of such intention in the *Canada Gazette* and shall give private stations a reasonable opportunity to be heard before such regulation or amendment comes into operation.

That provision is not at the moment in question. What is in question is whether, when an appeal is made to a judge of the Exchequer Court, that court in hearing the appeal shall be limited to questions of law.

Let me try as best I can—and not without difficulty—to distinguish between questions of law and questions of fact. Perhaps the best illustration is that of a libel action. A says something about B that B considers to be defamatory, and he brings an action against A. He writes in his statement of claim the words of which he complains, and at the opening of the trial the judge reads the pleadings and rules on whether or not the words complained of are capable of a defamatory meaning. If the judge rules that the words, with the innuendoes that are pleaded, are not capable of a defamatory interpretation, the trial stops right there. If on the other hand he rules that they are, the trial proceeds. Now, that decision is a decision of law, and, the question of law having been determined, the court proceeds to find out whether the words were in fact spoken, whether they were in fact defamatory of the plaintiff, and if so, whether they are justified by any of the defences which have been urged. The occasion may have been privileged. It may be that although the words, if taken literally, mean one thing, in actual fact they mean something different from what they were understood to mean by those to whom the words were spoken. You may remember the *Virginian* in the old novel who said to

somebody who had made a remark, "When you say that, smile". That is to say, you may call one of your friends an "old rascal", or use some expression of that kind, but, if you say it with a smile, it does not carry its literal meaning. That is one defence which may be raised in an action of this kind. The question of whether the words constitute a libel is one of fact.

There is a regulation of the Canadian Broadcasting Corporation that no broadcaster, private or other, shall indulge in attacks upon any religion or race or nationality. Let us assume that the board of the C.B.C. comes to the conclusion that this regulation has been violated in some article published or broadcast by a private station, and makes an order suspending the rights of that station. Notice of the suspension is sent to the Minister of Transport, and he, who under this law is a mere conduit through which the power flows, must notify the licensee that he is out; and the licensee, apart from this possibility of appeal, is finished.

**Hon. Mr. Fogo:** May I point out to the honourable senator the provision that before there is any suspension the party must be notified and have a hearing.

**Hon. Mr. Roebuck:** Oh, no.

**Hon. Mr. Fogo:** Oh, yes.

**Hon. Mr. Roebuck:** With great deference, I think not.

**Hon. Mr. Fogo:** I would refer the honourable senator to subsection (6).

**Hon. Mr. Roebuck:** The words referred to are:

Such order shall not become effective until the expiration of ten days after the making thereof; and any such order shall be forwarded to the Minister of Transport, who shall forthwith communicate the same to the licensee.

So soon as the Minister of Transport gets the order he communicates it to the licensee; and that is that; he has no discretion in the matter.

Supposing, however, that the licensee feels that he has been unjustly treated, that the article complained of does not mean what the C.B.C. and the board thought it did, or that some other of a thousand possible defences are raised. Application is made to appeal. The judge of the Exchequer Court holds that it is reasonable that the case should be heard, and in the public interest he gives leave to appeal. Then what have you? You have an appeal to a court hog-tied in advance by parliament, in that it can hear and determine only questions of law, not questions of fact. Such an appeal is illusory. What are the questions of law that could be raised