

*Foreign Exchange Control*

faith in carrying out such instructions, the plaintiff shall not be entitled to more than nominal damages.

They have extended the freedom of the board by those extra words, so that this board and everyone acting not only under the board but under an inspector is free from prosecution if he is able to say "I did wrong; I am sorry about it, but I did it in good faith because Inspector Jones told me to do it." That is the end of the action so far as the liberty of the subject is concerned. There is the difference.

Mr. ABBOTT: A distinction without a difference.

Mr. DIEFENBAKER: That is why I submit that if the subsection is passed in its present form it simply amounts to this, that you substitute the interpretation, the will or the action of an individual or of the board for a statute passed by parliament. If you pass that subsection in its present form and give those powers to a board uncontrolled and untrammelled, I ask you where is responsible government in this country? Admitting the necessity for a board, admitting the necessity for regulations in respect of routine matters, why should we place the servants of the people above the law of the land, so that each in turn can say, "It was somebody else that led me astray. I got the order from the man immediately above me." To do that is to make a mockery of responsible government.

Yes, you have a servant of the people who is the master of the people, and free from any supervisory jurisdiction by the courts against arbitrary, unlawful and unfair interferences with private rights. There is not an hon. member who can read this section without seeing what it means. I have no objection to the first part of it. An officer must have some protection, but let him have the same protection as has been granted to any officers in the past—that they are acting upon probable cause. Do not let this parliament go to the point that no matter what right is trampled upon, the individual when he goes to court to try to rectify what has been done against him unfairly in the matter of trespass, can be answered by an official who says, "Well, if I did wrong I did it in good faith, because somebody higher than I told me to do it"—the old excuse right from Eden down.

When I first heard the hon. member for Muskoka-Ontario speak about the effect of this provision I asked myself, can it be so? Then I heard the hon. member for St. John-Albert reciting the unfairness which had taken place. You could not touch these officials during the war. They made their

[Mr. Diefenbaker.]

own regulations then. They were honest enough in those regulations to say that you could not do anything but take what you got. This is the wording of the old section:

No person shall have any rights or any remedies against and no action shall lie or be brought against any person in respect of any act or omission of such person on or after the 16th September, 1939, which was required or which he believed in good faith would have been required by this order or by regulations or instructions of the board.

In other words, you did not have any rights. They did not want to put it in that way, so they altered it a bit and used these words to the effect that the defendant is absolved if "he was proceeding under written or verbal instructions" of his superior. I again point out that nothing like this appears in the Customs Act, in the Excise Act, or in any other act I have been able to find. I looked at the statutes my hon. friend mentioned because I thought he would know which one contained such a provision. Are there any other acts I should refer to? I should like to know. I have not been able to find them.

Without regard to the merits or necessity or lack of necessity of this legislation, has the time not come for this parliament to put a stop to the administrative lawlessness which the passage of such an order in council permits? Parliament alone can do it. The individual member of parliament can do it. It is not a matter of any other consideration than a facing of the issue. To-day in this parliament we are asked to do something which we have never been asked to do before—to give a servant, however far down in importance in the work he does in the department, the power to determine for you and for me your rights and my rights. The only appeal is an appeal to the minister—and I will deal with that, when we come to question of appeals, by indicating what a British judge recently said with regard to the impropriety of appeals being to the minister. And we are denied the right to go to the courts, however unfair the action may have been. During the war arbitrary rulings were made by various boards. They had a job to do in war time, and all honour to those who served and did those jobs at that time. Arbitrary rulings were made, and they were accepted, and a man's right of appeal and of recourse to the courts was taken away. But, sir, when you take away all right of recourse to the courts, place uncontrolled power in the hands of any individual or board, you deny freedom and equality and justice to the individual. I therefore wish to move an amendment—

Mr. MACKENZIE: Part of the filibuster.