

was made, I made that mistake. I am convinced that no mistake was made. As it happens, there could be none, because there was no writ. But, had there been a validly served writ, while I am not called upon to determine that question, I am prepared to say that I would have acted just as I did when there was no writ. But I wish to be perfectly understood as saying that in my opinion it is wise for everybody who has anything to do with the administration of this Act to be absolutely certain that the person whose case is to be decided comes within the Act. and, if there is even a shadow of doubt, it is better to obey any habeas corpus proceedings that may issue and allow the courts to decide. And that is exactly what happened in these thirty-nine cases which were brought before Mr. Chief Justice Hunter. In those cases the Chief Justice decided that the immigration officers were not acting within the Act. I do not wish to say anything that would indicate an opinion on my part as to whether the judge was right or not. The judge pronounced judgment and we submitted to it.

I regret that it has been necessary for me to take up so much time in dealing with this question; but it is perhaps not entirely useless that I should, as clearly as I can, set before the House the view I entertain as to the effect of this legislation. The wisdom or unwisdom we are not here to discuss; the question that arose—and it was an important question—was what the law means and whether it was properly executed. As I have said, in nothing I have said save that in the particular cases there was no validly effective writ, do I claim to be supported by the judgment of the Court of Appeal or of Chief Justice Hunter, nor do I admit that I was in opposition to either, except to the extent I have pointed out as regards the opinion of the Hon. Chief Justice Archambault. The questions remain *res integra*. There has been no authoritative interpretation by the courts of that particular section, and therefore the interpretation is not in any sense settled nor do I pretend that what I have said settles it. But I recognized that, the questions having arisen, and the desire having been expressed to hear my opinion upon them, and in view of the action I felt called upon to take in the Thaw case, it was proper I should meet that desire. For this reason I have endeavoured to put clearly before the House what I do think about the effect of this legislation.

Mr. OLIVER: In case the amended Orders in Council are in force and acted upon, is there any assurance that a judge, let us say at Halifax, will not find some flaw in them such as the judge in Vancouver found in the original orders? And I wish to ask a question based on the answer to this.

Mr. DOHERTY: I am afraid no one can be safely insured against what the courts may decide. We have done the best we can do to make Orders in Council that shall be in absolute conformity with the statute, and we have profited by what Chief Justice Hunter pointed out as being, in his view, objectionable in the others to meet, so far as it seemed to us possible, the objections that he made. Now, whether some ingenious counsel will raise some other objection which will meet the approval of some other learned judge is something against which I would not like to guarantee the public or our officers. I fancy that any one going into that insurance business would have to charge high premiums or he would find himself coming out at the wrong end.

Mr. OLIVER: Now, another question based on that answer: Is there not some means whereby an authoritative opinion can be secured which will absolutely establish that the regulations are good law?

Mr. LEMIEUX: Better abolish the Bar.

Mr. DOHERTY: And the Bench.

Mr. OLIVER: Is it not possible, for instance, to get a decision of the Supreme Court of Canada which would in effect establish the regulation as law beyond question?

Mr. DOHERTY: We might arrive at it, possibly, by making some one of these cases a test case. There are difficulties in the way so long as the proceedings are initiated by writs of habeas corpus. I would not undertake to speak with regard to all the provinces, but I do not think I am mistaken in saying that in some provinces at least, upon a writ of habeas corpus, where the liberation of the party is ordered, there is no appeal effective to continue his detention. The hon. gentleman can understand how far it would go to defeat the purpose for which the habeas corpus exists if the proceedings could be carried from court to court and the individual in whose case the court of first instance had pronounced favourably to him was kept in jail in the meantime. I do not say that that difficulty