

diffidence in the expression of any opinion as to its interpretation. I expressed this opinion only because I know that perfectly legitimate curiosity has been expressed as to the views of the Minister of Justice. That is why I have given my impression of the effect of that Act.

Take the case of Thaw. The way that case went out to the public and what the real situation was, were different in some very material respects; in the very substantial respect for instance that the public thought a writ of habeas corpus had been served, but it had not. More than that. Mr. Thaw appealed to the court for a writ of habeas corpus. Simultaneously with his appeal to the court he appealed to the minister. If he passed out of the control of the men in whose hands he was and came under the control of the minister it was by his own action, on his own appeal. He went to the courts for habeas corpus and he came to the minister with his appeal. The minister had no alternative but to determine that appeal. The law lays his duty down perfectly clearly. It puts on him the determining of such an appeal and then goes on to say if that appeal be dismissed the appellant shall forthwith be deported. There was a writ of habeas corpus addressed to certain officers down in Coaticook, and an appeal by Mr. Thaw to the minister. The law stated what the minister had to do, and there was no shadow of pretence that any proceeding whatsoever had been instituted against or affecting the minister who was brought into this case by Thaw himself by means of his appeal. The minister's duty was prescribed for him clearly and unquestionably. There has been some suggestion that the minister was open to criticism because he undertook to decide his own rights and because he sought to assert a right without letting the court pass upon it. The minister was not in the slightest degree concerned with any right on his part. The minister was faced with the question what was his duty. The law spoke directly to the minister and said, there is your duty, deport that man forthwith. Let us assume that the minister knew there was a valid writ of habeas corpus ordering the gentlemen who had constituted the court from whose decision the appellant appealed to the minister that they must produce his body before the King's Bench. Was the minister justified in refusing to perform his perfectly clear statutory duty because there was a proceeding directed against the officer who had held the man down there? I may say that I did not

[Mr. Doherty.]

have to decide that question for the reason that the writ was not served. There was moreover no writ because the judge who issued the writ had no jurisdiction under the Habeas Corpus Act to issue it. I submit however that if that had been the most valid writ of habeas corpus ever issued so far as its form was concerned, the minister would have been not merely within his rights in carrying out that statute but in the simple performance of his duty. I realize how scandalizing that proposition may be to the average lawyer. It was very scandalizing to myself at first. But let us look for a moment at the situation dealt with by that statute. The laws as a rule deal with people in the country, the authority the courts exercise over people in the country. This law deals with the people who are knocking at the door. Mr. Thaw was not in Canada in the eye of the law. he was standing knocking at the door. and the parliament of Canada had said: The Minister of the Interior shall be my porter; he shall stand at the door and he shall say whether the people who knock shall be permitted to enter, and the courts shall not have anything to say about it. That is what the law said, and that is the situation that was dealt with; and it is well to bear that in mind when people get a little hysterical about this involving danger to our liberty. In the first place, the provision has no application to citizens of Canada. There is, of course, the question of deportation of a man who, having come into Canada, has committed some crime; but that is a different branch of the question and I am not going into that. We are dealing now with the case of a man who had not come into Canada and had no right to come in till he passed the scrutiny of the officer, and who this law provides has no right to the protection of the Canadian court. It might have been wiser for Canada to say: The courts shall determine who has the right to come into Canada. But that is not what Parliament said; it appointed the Minister of the Interior, through his officers and with proper machinery, to decide these matters, the courts being denied any power in regard to them. That being the law, it is the duty of the minister in charge to carry that law into effect. I point this out in order that the matter may be understood by those who say that the action in the Thaw case is a menace to our liberty. What was done in the Thaw case was done quietly, calmly and considerately, and with full sense of responsibility. If any mistake