

Privilege—Mr. Baldwin

Mr. Diefenbaker: Yes if you can't stand the heat, then leave the kitchen.

The doctrine as enunciated a few minutes ago by the Minister of Justice is the antithesis of jurisprudence and of freedom. I have appeared before many judges over the years. I am a member of my own bar of Saskatchewan, the bars of Alberta, British Columbia and Ontario, and an honorary bencher of Gray's Inn, and I have had some experience. I have known some judges who fully place themselves in the position, and I believe the Minister of Justice now occupies the same, that "there but for the grace of God goes God". That is the attitude that dictates.

There was nothing in what the hon. member for Peace River (Mr. Baldwin) said that in any way casts aspersions at the judge himself. The judge should not have rushed into print, and he should not have made the statements he did. In doing so, he departed from the independence of the bench which is expected of judges everywhere within our country.

As far as the hon. member for Peace River is concerned, I have listened to him over the years and the expression of his views, and they are singularly objective at all times. If I had been in his position I could not have restrained myself to the extent that he did, because in the law the pathways of today become the highways of tomorrow.

My mind goes back to 1945, the time of the Gouzenko investigation, when every principle of jurisprudence—the right of individuals to freedom under law,—habeas corpus was ended—was swept aside. When I raised this with the distinguished former president of the Canadian Bar and subsequent prime minister, Mr. St. Laurent, who was president of the Canadian Bar when I was one of the vice-presidents, I said, "You have abolished habeas corpus", and he said, "We haven't." The section that abolished it was simply this; that no one imprisoned could challenge his imprisonment. With that section man after man was imprisoned, night and day with lights on to keep them awake. Of those individuals, two or three were convicted and the rest were acquitted. At that time we said this has all the earmarks of the Star Chamber to the "nth" degree, and it had.

What has been said here, if the judge is permitted to regard what he says as the basis for the interpretation of parliament, would mean you cannot say anything about anything that happens in the courts. As the hon. member for Peace River said, in the courts he has appeared in on appeals the language is far stronger than anything used here. Indeed, this is remarkable for its clarity and simplicity when you go into a court of appeal and say, "This judge was wrong on this, this and this." There is no complaint surely in the supreme court at Ottawa, parliament, that the denial of the right of members of parliament to point out what they believe to have been wrong and unjust is something intolerable, something that cannot be accepted.

Parliament is supreme. Members are responsible. If they go beyond the field of responsibility they become liable. There was nothing in what the hon. member for Peace River said that went beyond responsibility and reasonable comment. It is

[Mr. Paproski.]

the judge who should be apologizing to parliament for having intruded his immodest view that because he is now a judge any mention concerning a trial that took place before him should not be made in parliament.

● (1532)

As a matter of fact, the Official Secrets Act is wrong in many of its sections. It permits tyranny to be enthroned. Changes must be made, but that is not the problem today. The problem here is, did a judge not himself exceed those realms of responsible observation that, in the case of judges, should always be silence?

Some hon. Members: Hear, hear!

Mr. Ray Hnatyshyn (Saskatoon-Biggar): Mr. Speaker, the eloquence we have just heard has, I think, put in perspective precisely what is the issue. I want to make a modest contribution with respect to the statement made by the judge about the activities of my colleague, the hon. member for Peace River (Mr. Baldwin), regarding the Peter Treu case.

I think it is important for us to recall, as the right hon. member for Prince Albert (Mr. Diefenbaker) pointed out, that we have had many trials in Canada under the Official Secrets Act. Some of the trials referred to were precipitated by the disclosures of Igor Gouzenko. The hon. member for Peace River has pointed out, in questions in the House of Commons and references outside this House, the aspect of secrecy in this particular instance. It is interesting to recall that in the Gouzenko trials, as important as those were occurring immediately after the second world war when there was great concern about Russian activity in Canada and about spy activities, that each and every trial that arose out of those disclosures was open to the public, and every trial was heard and understood by every person in Canada interested in following the proceedings. That is an important consideration when we think of the way the law is and of ways in which it should be changed.

I was incredulous when the Minister of Justice (Mr. Basford), who in the parliamentary tradition is the chief legal officer in the executive, stood up and put forward what I consider to be a misinterpretation of what the hon. member for Peace River has done in the course of his questioning of the particular trial proceedings. After listening carefully to what he has put on the record, and after reading what has happened over the last few weeks, it is evident that there has never been any suggestion of a personal attack on the competence of the judge in any way. It has clearly and simply been a question of the inadequacy of the law as it stands, and a plea for some changes that are long overdue in the Official Secrets Act.

I think it would be helpful to Your Honour to recall your own decision in the case that was raised with respect to the House of Commons and Chief Justice Evans. He made comments outside the House with respect to deliberations going on concerning the uranium cartel. If Your Honour looks back at your own remarks in that instance, I think you will be reinforced in taking a strong stand on behalf of parliament with