because the remarks of the judge indicated that the hon. member should be attempting to change the law and not criticize the courts and, in fact, on every reference that is exactly what the hon. member had been doing. The argument therefore became that they constitute a misrepresentation of the efforts of the hon. member and of the proceedings of the House.

On the other hand, those arguments which would prevail against a finding of privilege are that the courts, like parliament, enjoy privileges that ought to be left to them without interference from us; that the judge was doing nothing more than defending his court in the circumstances; that he did not in any way deny the privileges of members; that in no way have the judge's comments intimidated any member; that they do not constitute an instrument of the court as they easily could have done; and that, finally, the issue is really one of a difference of opinion regarding the interpretation of language.

Regarding the precedents relating to the use of language as a matter of intimidation, I think we have to isolate it to that because rarely—in fact, never—in the precedents which were cited by any of the hon. members who contributed to the discussion, or in our research, could we find a precedent in which language which implied a threat but did not state it had been found to be a matter of privilege. I think that is quite significant.

On one occasion referred to in Erskine May's nineteenth edition at page 150 a letter to a member threatening him with a trial at some future date if he continued a line of questioning was held to be privilege, but that obviously specifically stated a threat of prosecution.

The one Canadian precedent which was of some use was the recent case involving the hon. member for Leeds (Mr. Cossitt) and his complaint against the then president of the Canadian Broadcasting Corporation that the language of the president of the corporation had been intended or calculated to intimidate or influence the hon. member. At that time the ruling said, in part:

> —I must indicate that as a general proposition nothing that anyone says about the conduct or performance, the speech or contribution of any hon. member could in general terms be taken as interference with his right to speak or to operate as a member of the House of Commons. I do not see . . . that his privileges as a member of the House of Commons, his right to appear here and to participate fully as an active member of the House, his right to speak and express his opinions, have in any way been interfered with.

● (1512)

In interpreting the judge's remarks, it seemed to me that, without any dispute about the translation from French into English, there is one statement that would represent the epitome of the arguments in favour of finding privilege, that is, the circumstances in which the judge said:

> In the name of respect for judicial independence, we cannot tolerate the remarks of Mr. Gerald Baldwin, MP who was wondering whether the law had not been well understood or had been wrongfully applied by the judges.

It seems to me that this statement can be interpreted as being offensive to the privileges of the House, for several reasons. First, it is extraordinary for a judge to become involved in any kind of public commentary. I think that all of us, whether lawyers or otherwise, are aware of the fact that only in the most extraordinary circumstances does a judge ever speak out to the public with respect to proceedings in his court. There are several reasons for that respecting the independence and the dignity of the judiciary, but, in addition, there is the obvious reason that a judge has several remedies available to him, the least of which is to make public statements and to get into a public dispute, which has always been unseemly for those who preside over the courts and never seems to be productive. Certainly it does not seem to have been very productive in these circumstances.

Those who argue that it could have been found as a privilege would want to urge also that such remarks by a judge—and not even the trial judge—cannot be looked upon simply as an outburst of temper since they were uttered by a judge acting in the capacity of acting chief judge of the court and, therefore, had special weight and significance, but ought to be taken as more than simply a passing warning in respect of the conduct of the hon. member, ought to be taken as a threat and an intimidation of the hon. member.

Those who argue that it should be taken as a privilege say the judge could have used less offensive words. If he simply wanted to disagree with the hon. member for Peace River he could have easily said that or, if he rejected his proposition, that could have been said as well. Instead, he said "we cannot tolerate", which is much stronger language than necessary simply to disagree.

Finally, one other reason—I think the hon. member for Halifax put it very well—was that, never mind the specific language, the general tone of the remarks should be considered. Why would a judge bother to do that, except for one purpose, that is, to tell the hon. member that he should desist in his criticism of the courts or in his criticism of the proceedings in this particular case, because it was offensive.

On the other hand, a more generous interpretation is equally available, it seems to me. It is perfectly possible to interpret the judge's language as being nothing more than a defence of his court. His court has been criticized, and I think he has said that his court has been criticized unfairly. He might have said, "We are instructed by the law to carry out the trials in this way, therefore we really cannot accept or tolerate this kind of criticism. It is not our fault, we simply obey the law. Therefore, if you want to change it, change the law, do not tell us that the courts are being badly run." That is a reasonable interpretation of the judge's remarks, just as reasonable as the one I have stated previously.

Again I repeat the argument. It is argued that the judge could have used different language. It is equally applicable to both interpretations, for just as it was possible to say it in the other interpretation, in this interpretation it is also possible to say that if the judge had wanted to cite the hon. member for contempt of court, he knew how to do it; if he had wanted to threaten him with a citation for contempt, he knew how to do that too and therefore by avoiding that language he gives