

Supply—Justice

Justice has put before this committee clear evidence, I respectfully submit, which shows that Spencer was the author of his own identification.

Now I come to the question of the dismissal. Once there had been a decision on the part of the law officers not to prosecute, then it became a collective responsibility of the executive to decide whether or not he should continue in employment. It is a trite observation on my part to say that when you consider a dismissal by an employer, and this now becomes a matter of employer-employee relationship, you have to consider evidence other than that which would be admissible in a court of law, and I am only talking about a criminal court. It was incumbent upon the executive then to look at all the evidence strictly in a manner that would apply in the civil courts. Many hon. members in this house have had this experience. If the committee will permit me, Mr. Chairman, I will draw upon an experience when I defended certain people charged with theft from their employers. They were acquitted of the charge. They decided to go on with this matter and brought an action in the civil court for wrongful dismissal. Evidence that could not be admitted in a criminal court was heard in the civil court. Their application for reinstatement was rejected. There was a duty resting upon the government to consider all the evidence.

I come now to section 50 of the Civil Service Act. I do not want to re-traverse all this ground. I see that the right hon. Leader of the Opposition is not in his place. I say that with the passage of the Bill of Rights he forever set his seal upon the administration of justice in this country, I acknowledge that it stands as a great landmark in the relentless and unremitting struggle between the individual and the authority of the state. That was in 1960. In 1961 we amended the Civil Service Act. Whether we did it in different words or, as has been suggested, we merely re-enacted section 52, none the less this house introduced section 50.

What is the significance of section 50? Some hon. members may smile, but I ask what is the significance of section 50? I suggest it is that this house clearly contemplated that there would be those rare and exceptional cases of misconduct on the part of a civil servant which would be of such a type that it deserved to be condemned and punished by invoking section 50, that is by dismissal without appeal. For what other

[Mr. Pennell.]

reason would this house have put it on the statute books?

I draw upon other evidence which I am sure will receive the support of every hon. member of this house. I refer now to the report of the Privy Councillors of Great Britain in 1956, consisting of the Right Hon. Herbert Morrison, Lord Jowett, the Secretary of State for the Home Office and the Lord Chancellor. I shall read just one salient and very instructive sentence:

The conference is of the opinion that in deciding these difficult and often borderline cases, it is right to continue the practice of tilting the balance in favour of offering greater protection to the security of the state rather than in the direction of safeguarding the rights of the individual.

They went on to say:

The conference recognize that some of the measures which the state is driven to take to protect its security are in some respects alien to our traditional practices. Thus, in order not to imperil sources of information, decisions have sometimes to be taken without revealing full details of the supporting evidence.

● (3:30 p.m.)

Clearly, I submit, in matters of security the government, the executive, must be the final arbiter. This is their responsibility and they cannot divest themselves of this responsibility. They cannot abdicate the duty they owe to the people in connection with Canadian security. Clearly it was never contemplated that every case of security should go to the courts. So in this case what did we do? The government looked at all the evidence, they weighed it carefully, closely, conscientiously, and reached a decision that the misconduct in this case brought it within section 50 and they acted accordingly.

[Translation]

Mr. Grégoire: Mr. Chairman, one has to admit that we are getting from both sides of the house arguments that are certainly not without value. We cannot remain indifferent to the appeals of some members of the opposition who want Mr. Spencer to be given all the freedom he is entitled to as a Canadian citizen. On the other hand, we cannot help but be struck by the appeals made, for the sake of national security, by ministers who are surely conscious of their responsibilities.

I have been re-reading one of Pascal's thoughts that I find perfectly suited to the situation we are going through. Here it is:

When one is reaching for all virtues to the extreme, here and there vices start creeping in imperceptibly as they slowly make their way toward the small infinite; and a multitude of vices also appear along the road to the great infinite,