

The LAW CLERK: I might mention that the point Senator Moraud has brought up was touched upon by Mr. Justice Idington in a case before the Supreme Court. He said that undoubtedly the Dominion, and only the Dominion, can enact legislation concerning crimes or the procedure of the criminal law; but it can no more administer criminal law procedure than it can administer criminal law.

Right Hon. Mr. MEIGHEN: In that respect, then, the Act of 1935 was invalid.

The LAW CLERK: Not necessarily the whole Act, but sections of it might have been invalid. That has never been passed upon, but if you admit the Dominion cannot administer criminal law, the very term criminal law including criminal law procedure, I have not any doubt that Mr. Justice Idington was right.

Hon. Mr. COTE: My question to Senator Dandurand was not directed to the constitutionality of these Acts. Mr. O'Connor may be quite right. But the point I want to make, following the answer to my question, which I think is in the affirmative, is that the commissioner when making the preliminary inquiry will be clothed with all these powers of obtaining documents and taking evidence under oath. It follows, I submit, that under the title of preliminary inquiry he can conduct an inquiry as wide as he wants to.

Hon. Mr. MORAUD: There is no doubt about it.

Hon. Mr. COTÉ: Then it would be futile for us, after he has conducted a preliminary inquiry, which may be as wide as any formal inquiry, for us to add safeguards and say that we are going to ask him to submit to the decision of the Minister whether there shall be a further inquiry.

Right Hon. Mr. MEIGHEN: If the first inquiry is big enough he would not need another at all.

Hon. Mr. COTÉ: No.

Hon. Mr. BEAUBIEN: In order to ascertain to what extent a preliminary investigation can be carried by the commissioner we have only to look backward. Under the law of 1935, with the safeguard that the commission was then presided over by a judge, what happened? The commissioner made some four hundred or four hundred and fifty investigations.

Right Hon. Mr. MEIGHEN: Not under the 1935 law.

Hon. Mr. BEAUBIEN: In the years that preceded.

Hon. Mr. DANDURAND: From 1923.

Hon. Mr. BEAUBIEN: Under the earlier Act. But yesterday Mr. McGregor said he carried on some four hundred and fifty preliminary investigations. Twenty-five of those were carried to the end, they were, what I might term official investigations. Fifty were carried to the point where all the documents and witnesses required were examined by the commissioner, and then he found there was nothing at all and abandoned his investigation. The position under the law as it will be now will give absolutely free rein, so to speak, to the commissioner. He can go in and practically make the whole investigation, call for production of every document, and, if he wants to, he can make that a public investigation or a private investigation. What will be the consequence? You have an organization perfectly innocent of any wrong-doing, but the commissioner is given to understand that the business carried on is likely later to become a combine. He goes on to make his investigation, causes an infinite amount of trouble to that organization, cites it before the public as an organization violating the law or attempting to do so. He puts the organization to tremendous trouble and expense and humiliation before the public, and afterwards he says, "There is nothing at all that is wrong with it." It seems to me that that shows how very much more necessary it is to have a fiat.

Hon. Mr. DANDURAND: At what moment would you have a fiat?