

as being decisions that under a writ of habeas corpus, if one had been issued, and validly served, there was no obligation on the officer to produce the man.

What is decided in both cases is that there was no validly issued writ of habeas corpus. In the Thaw case it was determined that no valid legally effective writ of habeas corpus was served, and that failure to serve made the writ an absolute nullity, binding nobody. In the case of Bhagwan Singh, I have not the text of the judgment before me, but I think the hon. member for Vancouver read it. I have no doubt that the judgment in that particular case was that there was no legally effective writ of habeas corpus. With regard to the reason, I should like to speak subject to correction, but I have very little doubt as to what it was. If my memory serves me right, the reason why Chief Justice Hunter held that there was no valid, legally effective writ of habeas corpus was that the writ had been issued a long time previous to what happened, and the telegram had referred back to that writ of habeas corpus. I think it was held that the writ of habeas corpus was void because it was issued at a time when this man was not detained of his liberty at all, but was out enjoying his freedom on bail. In the very essence of things—in the opinion, at all events, of the learned judge—the first requirement for the issue of a writ of habeas corpus is that the person complaining should be detained of his liberty. In this instance the habeas corpus had been issued on behalf of a man who was walking about the streets of Vancouver or Victoria in the enjoyment of his liberty, and no writ was issued at all against the subsequent taking into custody of that man. What the judge held was that the writ as originally issued was void because there was no cause for its issue—and there was no subsequent issue.

I understand that the hon. member for Rouville expressed some legitimate curiosity as to what the view entertained by the Government or the Minister of Justice was upon the effect of the provisions of the Immigration Act in a case where a writ of habeas corpus would have been issued and validly served while the man was detained.

Mr. LEMIEUX: I think it is an important question.

Mr. DOHERTY: It is a very important question. It is also important, I think—and I am sure my hon. friend will agree with me—not to determine legal questions and absolutely commit oneself until they arise.

Mr. LEMIEUX: They have arisen.

Mr. DOHERTY: In neither of these cases did they arise, because in neither of these cases was there any valid writ of habeas corpus.

Mr. LEMIEUX: If my hon. friend reads the opinion rendered by Chief Justice Archambault he will see that the Chief Justice decided that, in his opinion and in the opinion of the court, if the writ of habeas corpus had been properly served it would have been maintained by the court.

Mr. DOHERTY: The Chief Justice does express an opinion to that effect, but the hon. member for Rouville is a good enough lawyer to know that those things that are said by a judge which are not necessary to the determination of a case itself, and which do not bear upon the questions upon which he determines the case, are obiter dicta, and are not a holding of the court. I do not say that as maintaining that they are not entitled to very great respect; the expression of opinion of any learned judge is entitled to great respect. Speaking of the particular judge in question, I entertain for all of his opinions, whether they be such opinions as would amount to holdings in the case, or whether they be obiter dicta, the very highest respect. I do not question that the learned judge did express the view that if a writ of habeas corpus had been validly issued, to this extent it would have been effective; that it would have made it the duty of the officer to bring the man before the court. But if I understand the hon. Chief Justice aright, he goes on to say that if, the man, being brought before the court, it was shown that he was being deported under the Immigration Act, then the court would not further interfere. The question upon which the hon. Chief Justice expressed that opinion, as I said a moment ago, did not arise, properly speaking. He discussed it, he expressed his opinion, but the question did not arise because his opinion was based upon a hypothetical case. No writ of habeas corpus was issued and served and because there was none there was no obligation on anybody to