

request of Mr. Spencer. If he has any doubt about my telegram, let him make his own inquiries.

[*Translation*]

Mr. Marchand: Then, I do not have to answer the question.

I conclude by saying simply that in cases of this sort, the Spencer case, the human element is important. There are also group interests, party interests, and that is quite normal. I think you will find such influences at work everywhere, but above that there remains the fundamental institutions which we must represent here.

I do not know how the house will finally deal with the Spencer case but section 50 and the whole question of the relations between the government, security agencies and those who negotiate on behalf of employees are involved here. It is not simply a case we can isolate, but I feel that this goes against what the house has already endorsed unanimously.

[*English*]

Mr. Pennell: Mr. Chairman, I propose to inflict myself upon the committee for but a few minutes. The issue here is the ancient one of freedom and security. There is no need for me to say that we must never use security as an instrument to impair freedom, but let us not forget that there can be no freedom without security.

The issue, as I see it, divides itself into two parts, the question of the dismissal and the decision not to prosecute. I propose to deal with the last point first. Under our constitution as I understand it the decision whether or not to prosecute is not the concern of the government but the concern of the law officers of the crown. I call as my witness Sir Hartley Shawcross, one of the most distinguished occupants of the attorney generalship in Great Britain in the years 1945 to 1951. With the leave of the committee I would quote his words as found in the Official Report of Parliamentary Debates, volume 460, where Sir Hartley Shawcross said:

I have always understood the position of the Attorney General to be that he is solely responsible for the decision in any case which comes to him. He must inform himself of all relevant matters. Matters of policy may be relevant. If he thinks that they are, it is for him to inform himself of the views of his colleagues, and not for his colleagues to volunteer those views to him. If, when he has informed himself of those views he thinks it desirable—and it is a matter for him—he attaches such weight to them as he thinks right, but the decision is solely and exclusively for him. That was laid down in a number of cases. Lord Birkenhead

Supply—Justice

made it clear in a well-remembered letter to "The Times," and I think it has been generally accepted since that time.

Under our constitution as I understand it the law officers have a double character. On the one hand they have a political capacity and on the other a quasi-judicial capacity, each of which imposes upon them a separate and a special obligation. I am here to bear testimony to the fact that the Minister of Justice at all times has kept the two roles distinct and separate throughout this case.

Some hon. Members: Hear, hear.

Mr. Pennell: It is a time-honoured principle laid down in the very homestead of freedom at Westminster that there ought not to be a prosecution if the law officer of the Crown feels in his own heart that the evidence would not justify a conviction. I speak out of a deep and intimate knowledge of this case and know that the Minister of Justice resolved this matter in his mind a great deal before coming to a decision.

Let us not forget that the rules of evidence in a criminal court are extremely rigid. For instance—and I am now speaking generally—you cannot put the accused man into the witness box to testify if he does not wish to go there. The question uppermost in the mind of the law officer at all times is this: Would it be in the interest of justice, would it be in the public interest to carry out a prosecution in a given case?

In this case the Minister of Justice consulted his legal advisers who have been in the department for many years. They informed him of all the relevant matters and then, having concluded that on the grounds of evidentiary difficulties it was highly unlikely that there would be a successful prosecution, I submit there was no course open to him, by his oath of office and the spirit of the law, but to refuse to sanction a prosecution. Therefore, Mr. Chairman, when I hear hon. members talk about sending this matter to another judicial body to determine whether there should or should not be a prosecution I can only say there has been a complete misconception of the spirit of the law in this country.

I propose to say just a word about the dismissal. I purposely avoid the question about the identification of the civil servant in question. I only say to you that the Minister of Justice, if my memory does not belie me, publicly announced that there would be no prosecution before there had been identification of Spencer in this case. The Minister of