

Correspondence on Surcharges

be, and it seems to me that any hon. member who votes on such a motion should feel perfectly free to do his duty as a member of the House of Commons and to vote for the supremacy of the House of Commons as opposed to the government, without any fear that his action would disturb the occupants of the ministerial benches. This is not a vote of confidence or want of confidence. It is merely a very proper attempt by my hon. friend from Essex East to assert the supremacy of the House of Commons in matters of taxation.

Mr. Bell (Saint John-Albert): May I ask the hon. member a question? Does the hon. member not admit that if this motion were passed it would be a binding precedent with respect to all similar motions in the future asking for legal opinions?

Mr. Pickersgill: I do not. I think the point is important and I should like to deal with it very briefly. This is a motion to produce a paper. While it may be used as a basis of argument when another such motion is under consideration, it does not alter the rules of the house or the procedure which normally applies to privileged documents. My hon. friend from Essex East and I have been careful to indicate that we regard this case as unique. It is true that if we wanted another legal opinion about whether the government could do something which would ordinarily be done by legislation it would be an important precedent, but it would not be a precedent for the production of all or any opinions submitted by civil servants. This is confined to a legal opinion dealing with the delegated legislative power of the governor in council in the particular area of taxation.

Mr. H. E. Smith (Simcoe North): I should like to direct my remarks to the completely indefensible and misleading propositions put forward by the hon. member for Essex East and the hon. member for Bonavista-Twillin-gate under the guise of precedents.

One of the delights and amazements I have experienced in this house in the last five years has been the ability of the hon. member for Essex East in the course of a single speech to talk eloquently on all sides of the subject without giving his listeners a clue as to precisely what proposition he was supporting. His efforts in this direction were no different today.

An hon. Member: Talk it out.

Mr. Smith (Simcoe North): I am not talking it out. I hesitate to discuss the question of precedents, but in spite of the fact that the hon. member for Essex East is virtually the Liberal dean of the House of Commons and

[Mr. Pickersgill.]

has been a lawyer in Ontario for almost 30 years and holds more law degrees than any of us, it seems obvious he does not understand what "precedent" means. To me, a precedent means what was done on another occasion—what was done on another occasion in this house, for instance, or in a court of law. I think this is so elementary that it should not need to be stated again. However, having regard to the argument of the hon. member for Essex East last week, perhaps repetition will be helpful. Precedents are not what the hon. member for Eglinton said in the house ten years ago or what the hon. member for Prince Albert said, however illustrious those hon. members are now: it is what was done on a previous occasion. That is what "precedent" means.

The hon. member for Essex East cited and misused three precedents last week. I found that two of his quotations in this house were very selective; but his reading was obviously very wide, because as I went through the various *Hansards* I found notes and other indications which made it apparent that he had done some very wide reading on the subject. I think I should like to deal with them in chronological order. The first quotation he used was the minister of Justice in 1935, as appears at page 1427 of current *Hansard*, where the hon. member for Essex East said:

Not only did he give without any prodding the opinion of the law officers of the crown but as well he volunteered opinions on the very point in issue which had been tendered by two eminent counsel, namely Mr. W. N. Tilley, K.C. and Mr. Aime Geoffrion, on the very point. Those opinions are now to be found in *Hansard* for 1935, volume III, at page 3166.

Mr. Speaker, the opinion of the law officers of the crown on that occasion was not given. There was no request for it. All that was done was that Mr. Guthrie, as reported at page 3166 of volume III of *Hansard* for 1935 said:

The opinion of the law officers of the crown is that clause 5 presents some difficulties.

Then a little further on he said:

The opinions of counsel who I have named are summed up in the following statement by Mr. Tilley:

Then he reads Mr. Tilley's opinion.

Then on page 3167 of the same volume Mr. Ralston is reported as saying:

That is the opinion of Mr. Tilley?

Mr. Guthrie replied, yes. Then a little later on the same page he went on:

I am sorry that I did not bring Mr. Geoffrion's opinion; I brought two of Mr. Tilley's, but Mr. Geoffrion's opinion is to the same effect.

An hon. Member: What did Mr. Tilley say?