

cal questions that have to be considered as to why we should get the commission, the character of the evidence to be given, and so on. Such section 4 provides:

The minister may issue commissions to take evidence in another country, and may make all proper orders for the purpose and for the return and use of the evidence so obtained.

That is the minister; that follows with respect to what has gone before. Then subsection 5 provides:

Orders to witnesses and all other orders, process or proceedings, except such as are provided for in the last preceding subsection, shall be signed by the commissioner.

This country has power to appoint judges, but also it has imposed a limitation upon the kind of people it can appoint to the bench. That person must be a lawyer and he must have had a certain experience. As this reads now, however, we are conferring judicial powers upon a person who is without statutory qualifications. I wonder if that is a valid exercise of the federal power. Can we do that? He is a judge. The fact that a man is called a judge does not have anything to do with it, but the fact that he acts as a judge is all-important. Here he acts as a judge, discharging, as I think the Minister of Justice will agree, very difficult functions. I recall one particular commission in which I was engaged when I was younger, and I know the difficulties in connection with the whole question of obtaining a commission, the affidavits that have to be made and what has to be disclosed. Leaving that out, however, it provides that he shall have all the powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment for disobedience thereof. Surely that means a judge. Those of us who have followed with particularity that noted decision with respect to contempt will realize that to confer upon a commissioner of this type the power to deal with contempt is going a very long way. I think there was a case in Manitoba some years ago of some importance along that line. Contempt in the presence of the court is distinguished from contempt in not obeying a subpoena, and the punishment is sometimes a fine and sometimes imprisonment. Now we are conferring upon this person the right to punish for disobedience, which is a power to fine and to imprison.

As a matter of fact, Mr. Chairman, in no country in the world are they so particular about it as they are in England, where it is difficult to avoid a fine for non-attendance to a subpoena. There have been cases, of course, as legal members of the committee know, in which even more severe treatment

has been meted out. But let us look at what we are asking parliament to do. Parliament is saying that Mr. A, without legal qualification as far as the statute is concerned, shall exercise the powers of a judge of the superior court and punish for disobedience, which is the highest judicial quality that a judge has to exercise. He has to have that untrammeled, unrestricted, and without any limitations further than those stated. I do suggest that the proper course is to say that in section 20 we will reenact the provisions of the criminal code with respect to search warrants. With respect to witnesses, non-attendance in giving evidence would be prejudicial to the case of the man affected. Then everything is presumed against him. But when we talk about punishment and the granting of a subpoena—under whose name will the subpoena be issued?

Mr. THORSON: It is called an order, is it not?

Mr. BENNETT: It has the same power as a subpoena. I think there is not a member of the committee who does not regard this as a usurpation of authority under a statute, placing judicial functions upon a non-judicial person.

Mr. ROGERS: I wonder if the leader of the opposition has placed side by side these provisions and those under the Inquiries Act, because there is no material difference between them.

Mr. BENNETT: Oh, yes.

Mr. ROGERS: We understand certainly that in connection with the appointment of commissioners under the Inquiries Act there is no requirement that a person so appointed shall be learned in the law.

Mr. BENNETT: No.

Mr. ROGERS: For some investigations it is desirable that we have a commissioner with legal training, but there are other investigations including, I submit, the type contemplated under this measure, which do not of necessity require legal training. Much has been said yesterday and to-day about the disadvantage under which a commissioner would labour if he did not possess wide legal knowledge. I am one who fully appreciates the advantages of legal training. On the other hand—

Mr. BENNETT: For a judge.

Mr. ROGERS: On the other hand, I also remember that Ramsay MacDonald once said that the most profound philosopher he had known was a shepherd in the highlands of