

desirable for the purposes of the inquiry. Then the investigator is empowered to authorize any Royal Canadian Mounted Police officer or constable to enter and search, if necessary by force, any building, receptacle or place where books, records and so on are kept. That right I am not going to challenge. That right, I believe, in the interests of an investigation, while it goes a long way, might very well be necessary. I come to paragraph 5:

5. Any such investigator is hereby empowered to conduct the said inquiry in such manner as he, in his absolute discretion, may deem proper, and in particular, without limiting the generality of the foregoing, from time to time to determine the extent, if any, to which counsel and/or any other person shall be permitted to be or to remain present at or to participate in the said inquiry.

I say that any order in council which goes to the extent of empowering an investigator to carry on any investigation that he deems proper, whether relevant or not, and denies those brought before that commissioner the right to have counsel, is the most retrogressive step ever made in any order in council. This is not the first case. I might mention that in a judgment on appeal within the last three weeks in the province of Saskatchewan, Mr. Justice Taylor on an appeal by the Minister of Justice decided that, when counsel is excluded, from then on any proceedings are illegal, improper, unfair and unjustifiable.

If we in this parliament allow this invasion of private rights to go on unchallenged, we simply open the door for the widening, on an ever-increasing scale, of the powers of investigators, so that they may investigate any matter and summon before them any person, and not only deny that person counsel, but deny him protection under the Canada Evidence Act.

Mr. HOMUTH: The Minister of Justice says, no, but it is true.

Mr. DIEFENBAKER: I say it is. I am sure the hon. member for Waterloo South misinterpreted the nod of the Minister of Justice.

Mr. HOMUTH: He did not say, yes.

Mr. DIEFENBAKER: I repeat that Mr. Justice Taylor in this judgment held that it was unfair that under the Excise Act a man suspected should be brought before a member of the mounted police and denied the opportunity to have counsel, and also denied the privilege of asking for protection under the Canada Evidence Act.

[Mr. Diefenbaker.]

A like situation is embalmed in an order in council. I am willing to admit the necessity for wide powers in an investigation, but I must ask the minister this question: On what basis, and upon what ground or justification can he stand up in parliament and say that a man brought before an investigator possessing absolute power should be denied not only the right of protection but also the opportunity of being represented there by counsel?

This is not a matter which affects only legal traditions in this country. It is one which affects every individual. It is the thing against which, in the days of Charles I, the strongest possible condemnation was made. It is a restoration in 1945 of powers in Canada which have never been successfully introduced in a period of at least one hundred years, or, to be exact, since 1834.

Mr. HOMUTH: I am not surprised at that.

Mr. DIEFENBAKER: No matter what the investigator does; no matter how unlawful his conduct may be; no matter in what high-handed a way he may conduct his investigation; no matter whether it be within the law or without the law, by section 8 he is protected from any responsibility whatsoever.

These are the words in section 8:

No such investigator shall be responsible at law for anything done by him in good faith in the performance or purported performance of his duties as such investigator, and no action shall be taken against any such investigator in respect to the performance or purported performance or non-performance of his duties as such investigator.

In other words, there is granted to an investigator a power that would be challenged in every court of this country; he is given power to act legally or illegally either within or without the law, and then he is bolstered up by a section in an order in council which reads that for illegal acts he will not be liable at law.

I say this to you, sir, that when the right of appeal to a court is denied in this country, the opportunity for and the privilege of justice ends. In order to deny any person justice although unfairly taken advantage of under these provisions, section 10 was added as follows:

No proceedings by way of injunction, mandatory order, mandamus prohibition, certiorari or otherwise shall be instituted against any such investigator or any other person for or in respect of any act or omission of himself or any other person . . .