

Correspondence on Surcharges

to be of such importance as to make it advisable to protect it even by the concealment of matter without the discovery of which the truth cannot be ascertained.

These quotations are most apropos, and so logical that I commend them to hon. members; not, as I say, because they are binding, but the principles set out there are those which this house should have in mind when it comes to making a decision on this particular motion. Let there be no mistake about it, Mr. Speaker, this is a simple issue before us and all the forced eloquence and all the purple prose about the bill of rights, and all the red herrings dragged across the path cannot obscure the fact that we are dealing with an attempt by the hon. member for Essex East in this motion to violate a very sound and very sensible rule of practice.

Hon. J. W. Pickersgill (Bonavista-Twillin-gate): Mr. Speaker, I have more regard for the hon. member for Peace River as a lawyer than I have for anyone else on the other side of the house. I must say that my regard for him is not diminished by the fact that the principal authority he quotes in support of his, I think very unconvincing, argument, is myself. He did me the honour of quoting me twice with evident approval as well as with relish, and I may say I agree completely with the quotations he gave. I take back nothing of what I said, that in the relations between civil servants and their political masters, civil servants are entitled to be protected at all times from being dragged into the arena of political controversy. I do hope that some time when the hon. member for Peace River has time to have a little seminar and can get the attention of his political leader, who is not in the house at the moment, he will remind him that the greatest affront to that principle occurred on January 20, 1958 and was perpetrated by the right hon. gentleman who is now the Prime Minister of Canada and who was the prime minister then. I am therefore somewhat astonished that any of his followers would be able to hold up their heads when using an argument such as the hon. gentleman used today.

But what I think the hon. gentleman failed to appreciate was that a legal opinion as to the validity of an order in council under a statute is not at all a question of the relationship between a civil servant and his political master in the administration of the affairs of the country. In any event, in any circumstances, in the interpretation of any statute, it is produceable at the will of the government whenever the government sees fit to do so.

[Mr. Baldwin.]

I admit that normally it is not produced, but I call Your Honour's attention to two particular circumstances in this case which make it abnormal. The first is that in this particular case the government was seeking not merely to legislate but to tax by order in council, and one would have assumed that the government of its own motion would have reinforced its claim by producing the opinion, as has been done in many other cases, as my hon. friend from Essex East showed in his original argument, and there is no need for me to repeat them. It was done by Mr. Guthrie, it was done by Mr. Bennett, it was done by Mr. St. Laurent; and I do not think anyone would argue that any more eminent lawyers, except possibly Mr. Blake, ever sat in this house than Mr. St. Laurent and Mr. Bennett. If they could see fit to do that sort of thing, it surely would not be very hard for the distinguished Minister of Justice (Mr. Fleming) to do the same.

What the government has done here, when parliament was not sitting, is to impose taxation by the use of two statutes—not merely of one—by what many eminent lawyers commenting on it outside the house, as well as many hon. members of the house, have suggested was at the very least a strained interpretation of those statutes. There is no more reason why this opinion should not have been produced than the opinions that were cited by my hon. friend from Essex East the other day. The suggestion that it would in any way drag the deputy minister of justice into the political arena is quite ridiculous. If the deputy minister of justice was offering advice to the government about an administrative course, if it was the deputy minister who suggested to the government this method of dealing with this problem, then I think they might wish to protect him. But I assume that the Minister of Justice, who was then minister of finance, was advised as to the policy, in so far as it was not generated in his own head, by the deputy minister of finance, by the governor of the Bank of Canada, by the deputy minister of national revenue and the other officers who would have had some competence in the field of policy. I would not for a moment support any motion to have their advice produced in this house, for the very reasons I gave and which were recited by the hon. member for Peace River.

This is an entirely different thing. All the deputy minister of justice was asked was, "In your opinion, as the legal adviser of the government, have we the power to do this without parliament? Have we the power to tax by order in council?" That was all he could have been asked. If any minister who