Mr. McGregor's Garden - Keep Out!

Eugene Forsey

"You May Go Into the Fields, And Down the Lane,"

But

"Don't Go Into Mr. McGregor's Garden."

ON October 29, 1949, Mr. F. A. McGregor resigned as Commissioner of the Combines Investigation Act. He resigned because the Government had broken the law. He had submitted, December 29, 1948, a report on the flour milling industry. The Act, section 27, (5) said: "Any report of the Commissioner, other than a interim report or a preliminary report under section thirteen of this Act, shall within fifteen days after its receipt by the Minister be made public, unless the Commissioner states in writing to the Minister that he believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, in whole or in part, shall be made public." This report was not an interim report. It was not a preliminary report. The Commissioner did not say he thought it should be withheld. The Minister was therefore under an absolute statutory obligation to publish within fifteen days. Under the law, he had no choice, no discretion, no more right to withhold publication than the ordinary citizen has to withhold his income tax.

What did he do? He broke the law.

The report was dated December 29, 1948. The Minister himself said he received it January 3, 1949. He was legally bound to publish it not later than January 13. He published it on November 7. In flagrant defiance of the law he was sworn to uphold, he suppressed it for almost ten months.

He broke not one law but two: the Combines Act, and another, far more essential, far more venerable; the very bulwark of our liberties, the very foundation of our institutions; a law which generations of British subjects have been taught to hold sacred. Three centuries ago, the English people beheaded one king and drove another into exile to establish the the principle that Government is subject to law, not above it. Two hundred and sixty-three years ago, an English Parliament wrote that principle into the Bill of Rights. By the very first section of that great charter, the Lords and Commons, "for the vindicating and asserting their auntient right and liberties, declare:— That the pretended power of suspending of laws, or the execution of laws, by regall authority without consent of Parliament, is illegal."

The Bill of Rights is part of the law of Canada. But the "suspending power" which it abolished in 1689 the Government of Canada revived in 1949. Without a shadow of right or authority, it "suspended the execution" of section 27 (5)

of the Combines Act. To be sure, it was the Cabinet, not the Crown itself, which thus trampled on the Constitution and overthrew the rule of law. But, as Blake said in 1873, "It makes no difference to a free people whether their rights are invaded by the Crown or by the Cabinet. What is material is that they shall not be invaded at all."

Violation of the law and the Constitution is evil. But far worse are the excuses proffered for it in this case. For they show not the slightest trace even of regret, let alone repentance; not the faintest sign that Ministers were even conscious of the enormity of what they had done. There is not one syllable from the Minister of Justice, the Minister of Trade and Commerce, or the Prime Minister himself, to suggest reformation; on the contrary, there is every indication that the culprits will do the same thing again whenever it suits them.

What were the excuses?

FIRST, that the Government told the millers, during the war, "that the Combines Investigation Act would not be invoked for acts performed during the period of control;" that "the report . . . represented a violation of that Government undertaking;" that "the carrying out of that undertaking" is "a basic responsibility."

This is infinitely worse than no excuse at all. Suppose the Government did give such an undertaking. It was wholly illegal. Is violation of an illegal promise worse than violation of the law and the Constitution? Is fulfilment of an illegal promise a more "basic responsibility" of Government than obedience to an Act of Parliament? If the Government thought it necessary to promise immunity from the Combines Act, it should have asked Parliament at the time to suspend the Act; or it should have come to Parliament later and asked for a retroactive Act of Indemnity protecting the companies from the operation of the Act. Either of those courses would have been perfectly legal and constitutional. But both would have had the fatal disadvantage of bringing the whole thing into the open, for public debate and decision by Parliament.

SECOND, the Government thought Mr. McGregor's facts "incomplete and therefore misleading" and his conclusions wrong. But the Act did not make publication conditional on the Government's opinion about facts or conclusions, or confer on the Minister power to vary the time limit in accordance with such opinion. It left him no discretion at all, unless the Commissioner expressly advised withholding publication. This second excuse is therefore completely irrelevant. If the report had been false from start to finish, if every syllable of the conclusions had been palpable nonsense, it was still the Minister's absolute legal duty to publish within fifteen days.

THIRD, if the Minister had obeyed the law he would have been "challenged" to prosecute the companies. Doubtless he would. But the Act did not say he must prosecute. As to that, he had complete discretion. If he had obeyed the Act, and published the report in January, he could have refused to prosecute. But he would have had to take responsibility for the decision. By delaying publication till November 7, he relieved himself of all responsibility. By that time, it had become impossible to prosecute. The last offence alleged in the report took place September 15, 1947. Under section 1141 of the Criminal Code, action must be begun within two years of the commission of the offence, unless some other period is specified in the Act, or unless the offence is a continuing offence. Neither of these conditions was present in this case. So prosecution would have had to be begun before September 15, 1949. By November 7, the thing was cold. The Government couldn't have prosecuted if it had wanted to.

Mr. Howe, Mr. Garson and Mr. St. Laurent were all extremely voluble about their willingness to "accept responsibility" for publishing or not publishing. They were, equally, extremely careful to say nothing about their responsibility for prose-

cuting or not prosecuting. But the "responsibility" for publishing or not publishing was non-existent. They had, legally, no choice. The Act said they had to publish. To talk about "accepting responsibility" for an action which is supposed to be obligatory, even automatic, is just nonsense. No one offers to "accept responsibility" for breathing. But, up to September 15, 1949, the responsibility for prosecuting was real. So, by delaying publication till after September 15, the Government "accepted" the non-existent responsibility and dodged the real one. (They were, of course, responsible for breaking the law. That action was not obligatory or automatic. It was voluntary, deliberate).

But if they had obeyed the law, and published in January, and refused to prosecute, it would have had fatal disadvantages. They would have had to accept their real responsibility. They would have had to face Parliament then, and the electors in June. They would have run the risk that a provincial Attorney-General or some private person might start proceedings against the companies. In November, they still had to face Parliament, but a Parliament that was virtually powerless, confronted by a *fait accompli*. They had escaped facing the electors. There was no danger of a provincial or private prosecution, because the time had run out.

FOURTH, if the Government had published the report in January, it would have been challenged to prosecute while the law was still "uncertain." Mr. Justice Barlow, in the dental supplies case, had dealt "a body blow" to the Act, a blow which might make it absolutely unworkable. The judgment of the Ontario Court of Appeal was not handed down till February 28, 1949; and it confirmed the Barlow judgment. So publication would have led to "débâcle." So they didn't publish. Q.E.D.! If publication had to be followed by prosecution, yes; but it didn't. So this argument just falls apart.

FIFTH, if the Government had prosecuted, the milling companies could have subpoenaed Mr. Donald Gordon, and Mr. Kenneth Taylor, successive chairmen of the Wartime Prices and Trade Board, to testify that the companies had done only what the Board told them to do; and the prosecution would have collapsed. But, again, there was no obligation to prosecute, and no breach of the law in refusing to prosecute. There was an obligation to publish within fifteen days, and an unmistakable breach of the law in withholding publication for almost ten months. And the law didn't say, "Publish within fifteen days, provided a subsequent prosecution is certain to succeed," or even "likely to succeed." It just said, "Publish within fifteen days." But they didn't.

SIXTH, the Minister of Justice discussed the report with Mr. Howe, who "urged him not to publish it without further investigation." He discussed it with Mr. McGregor. He discussed it with Mr. Gordon. He discussed it with Mr. Taylor. He "took it to the Cabinet for discussion." The Cabinet "considered" it and "decided not to publish until the doubts raised had been cleared up." The Prime Minister himself explicitly concurred. The breach of the law and the Constitution was committed "with the full authority of the whole Cabinet." The actions had been taken "honestly, conscientiously and with great concern as to their nature and effect . . . . It was a most conscientious balancing by the whole Cabinet in several Cabinet meetings of these considerations which I have been endeavouring to lay before the . . . House." "If there was an error in judgment, it was a judgment which was reached after the most careful and heart-searching consideration, and on a perfectly honest basis."

This is the worst yet. What business had the Minister to discuss with anyone whether or not to obey the Act? What business had any colleague to "urge" him to disobey it? What business had the Cabinet to "consider" anything of the kind, let alone "decide" to break the law? What business had the Prime Minister to "concur"? A deliberate, flagrant, persistent breach of the law possibly "an error in judgment!" Have these people

the faintest notion of the rule of law, the slightest inkling of what our Constitution means?

"Careful and heart-searching consideration!" As well might a private citizen brought into court for failure to file his income tax return plead that he had discussed the matter with his family, that his wife had explicitly concurred in what he had done, and that his decision had been "reached after the most careful and heart-searching consideration and on a perfectly honest basis." The private citizen would have the better case; for he is not sworn to uphold and enforce the law, and he would not be violating the Constitution itself.

THE seventh excuse is perhaps the most shameless of all. Mr. Garson, challenged to state "on what authority the Government relied when it made the decision to violate the provisions of section 27 (5) of the Act," replied: "Upon the fact that any democratic Government is answerable to the people of the country for its acts . . . . If an election were held to-morrow, as there will be an election in due course, we would have to go before the free people of this country and answer for our actions . . . . Then the people would decide. As long as that condition exists, I do not think we need worry very much." Not a word about Parliament. Not a syllable to suggest that laws can be set aside only by its action. Just the subversive doctrine Mr. King preached in 1923, and 1926 and most flagrantly of all on January 25, 1940, when he called Parliament together in the afternoon and dissolved it in the evening. When Dr. Manion protested, "With the Parliament of Canada dissolved how can I get any information, without any returns, without any questions being answered? . . . The place to give that information is here in the House of Commons. The place to discuss these matters is here in the House of Commons . . . The rt. hon. gentleman is responsible to the people of this country through the House of Commons," Mr. King replied: "No, by direct appeal to the people themselves, face to face with the problem." When Dr. Manion renewed his protest: "I say that it is the duty of the Prime Minister and his Government to come before Parliament and give an account of their stewardship," Mr. King replied: "No; it is to go before the people of Canada." This is not parliamentary responsible government. It is a thinly disguised system of plebiscites, with Parliament reduced to insignificance. "The people" are brought "face to face" only with such problems as the Government sees fit, when the Government sees fit, and with only so much information as the Government sees fit to give them.

If this theory is accepted, "the free people of this country" will not be free long. How can they make a Government "answer for its actions" if they do not know what the actions are? How can they "decide" if the facts on which they must base their decision are, as in this case, deliberately withheld from them? Besides, elections ordinarily come only about once in four years. What happens in between times? On the King-Garson doctrine, between elections the Government is responsible to no one. The Government can do anything it pleases. It doesn't even have to tell Parliament. The law may say it must, but it can always, "after careful and heart-searching consideration," decide that it would be better to break the law. The answer to every criticism is either, "We won the election" (never mind if it was by deliberate suppression of material facts), or "Wait till the next election" (never mind what we suppress then). In these circumstances, it is just a waster of time and money summoning Parliament at all.

EIGHTH, the report was delivered to the Minister's office in Ottawa on December 29, 1948, while he was still in Winnipeg. He was unavoidably detained there by two by-elections and subsequent illness. He got to Ottawa only on January 3, 1949, with Parliament due to open about three weeks later, and with an enormous mass of urgent business to attend to. Meanwhile, on December 31, Mr. McGregor had sent in a memorandum in which he observed that it was now "out of the question" for the Minister to read the

whole report; that he hoped he might "have an opportunity to run through the concluding chapter;" that a summary, "such as we usually release to the press when the report is made public," would be "prepared shortly;" that section 27 (5) required "that the report be made public within fifteen days after its receipt by the Minister;" that it would "not be possible to have it printed within the fifteen days", but he hoped to have printed copies "before the end of January;" that he would like to "have a word" with the Minister "regarding our practice in printing other similar reports." "Thus," said Mr. Garson, "by the time I got to Ottawa, five out of the fifteen days had already elapsed before I was able to see the report physically, let alone to have any time, in the press of other duties, to read it . . . . There were no other copies available. If I wanted to discuss it with anybody I could not do so until I had read the whole report and had mastered it, so that I could present an intelligent summary; although later on, long after the time for publication had elapsed" (seven lines farther down "long after" turns out to mean eleven days: January 24), "I was furnished with the first draft of a press report, which was a summary . . . . There was nothing I could do after January 13, 1949, to comply with the law regarding publication . . . . I think it is highly probable that the time for publication under the statute had already expired before I ever got to the point of reading the report at all . . . . Mr. McGregor . . . kept a record of the various steps which shows that the first date upon which he and I discussed the matter of publication was January 22, 1949, some nine days after the time limit for publication."

As a result of all this, the Minister felt that, as he couldn't now comply with the Act anyway, he "would like to read the report . . . to get some sort of idea as to what it was that I was publishing." As he had not been in the Cabinet during the period covered by the report, he thought he should take time to consult colleagues who had been. He admitted there was "no provision" in the Act for "reading it, just a provision for publishing." He said he "could have blindly signed the authority for publication and let it go at that "(this is, to say the least, doubtful; Mr. McGregor asked for the Minister's authority to *print* not to publish, and under the Act it would seem that *publication* did not require the Minister's authority). Anyhow, by January 22, "it was no longer possible to comply with the Act." So he went ahead and consulted his colleagues.

It may well be that, by the time the Minister saw the report the fifteen days had run out. Technically, on the morning of January 14, the breach of the Act had occurred. But if, when the Minister saw the report, January 22, or whenever it was, publication had taken place at once, and he had explained the circumstances, no one would have made a song and dance about it, and the technical breach could have been repaired by an Act of Indemnity, declaring that he was not to be deemed to have broken the law.

Besides, "printing" and "making public" are two different things. As Mr. Knowles, M.P., said later: "There were plenty of ways in which the Minister of Justice could have complied with the law by making the McGregor report public when he received it. All he had to do was to call in the press, lay one copy before them, and say, 'Here it is.' The press would have done the rest."

And ' prosecution" and making public" are two different things. It was obviously right, proper and indeed essential that the Minister should read the whole report before he undertook to prosecute. It was certainy right and proper, and probably essential, that he should discuss it with his colleagues before he undertook to prosecute. But it was wholly unnecessary for him to read a word of it before making it public, and wholly wrong and improper for him to consult anyone on the question of whether he should make it public, or to discuss that question with anyone. Making the report public was a mandatory duty imposed on him by statute. He had no more right to "discuss" whether he should perform that duty than a registrar of births has to discuss with the people in his office whether he should or should not register a particular birth.

EXCUSE no. 9 was proffered first by Mr. Garson, later and more fully by the Prime Minister: "The report was not published within fifteen days because neither the Minister nor any member of the Government had been appraised of it . . . . What has been done was done inadvertently by pressure of time . . . The law does not say that if there is inability to comply with the requirements during that period, it shall be done as soon as possible afterwards. The law says it shall be done within fifteen days and it was not done within fifteen days . . . . The statute had not been complied with and could no longer be complied with . . . . The failure to make a report public is not a continuing offence . . . You cannot continue the offence. If a thing has to be done within a certain time, it has to be done within that time. After the time has expired there is no further possibility of going back beyond its expiry and performing the act required."

"The inference," said Mr. Knowles, "is that if they have broken the law by one day it does not matter if they continue to break it by ten months or ten years. Surely the plain meaning of the law cannot be stretched in that way . . . . There is such a thing as punishment; there is judgment which is meted out because they have broken the law. It is not pleasant for us to suggest that . . . the Minister of Justice should spend a year in jail, or that the Minister of Trade and Commerce and the Prime Minister, who conspired with him in this matter, should spend seven years in jail, as set out in the Criminal Code. It is not pleasant for us to suggest that the Minister should resign. But when the Minister . . . and the Prime Minister continually come before us and insist that they had the right to break the law, . . . we have no alternative."

Or, as *Saturday Night* (not usually a severe critic of the Government) put it, in an editorial headed "Law-breaking Ministers": "In the United Kingdom, . . . the unearthing of a situation such as this would lead to the resignation of at least the Minister chiefly concerned. If the political atmosphere of Canada were as healthy. . .—if electors demanded the same standards of their responsible rulers, and if rulers had the same sense of obligation to Parliament and the country—the same result would follow here."

The whole point of excuse no. 9 was that the fifteen days ran out on January 13, 1949, and that on January 14 the law was broken, broken before anybody knew it, and broken irretrievably. The whole point of excuse no. 10 is that the fifteen days didn't run out till November 13, 1949; and the law wasn't broken at all!

The report that was tabled was dated December 29, 1948. On November 4, 1949, the Minister told the House that the date on which the "report on the flour milling industry" was "transmitted" was December 29, 1948. On November 7, 1949, Mr. Howe said: "The report has now been tabled in its original form." But on November 22, Mr. Garson suddenly announced that the report he had tabled was not the report sent to him December 29, 1948, because between then and November 7, 1949, it had had a whole lot of changes. He listed "five separate amendments." "The report which is now before the House was tabled within less than fifteen days from the time I received it from the Commissioner in its final form."

The changes "were made without any instigation or suggestion of any kind by me. I did not suggest them; I did not initiate them; I had nothing to do with them." (In the next column of *Hansard*, however, he modestly admitted that one important change had been made "as a result of discussions which I had with him, based in part upon observations that were made to me by my colleagues in Cabinet Council as to what had taken place during the war period.") The changes "were made by Mr. McGregor . . . . When he made them he told me that it was the practice in these cases to have changes of this character made between the time the report was delivered and the time it was printed. I could understand that, with regard to some of the changes, . . . which are more or less word changes. But one of the changes . . . was a matter of great importance." So "The report which is now the topic of discussion . . . is not the report which was sent to my office on

December 29 . . . . what my hon. friends are talking about is a technical offence under section 27 (5) of the Act . . . . I say there is no offence so far as we are concerned."

When was the last amendment made? "February 13, 1949." Presumably, then, on this argument, the fifteen days would have run out March 10. But the Minister wasn't prepared to admit that the fifteen days started on February 23. "Discussions took place at various times during the spring and summer months in connection with the report . . . I was most anxious that these divergences of opinion at a high civil service level" (between Mr. McGregor on the one hand, and Mr. Donald Gordon and Mr. Taylor on the other) "should be reconciled . . . . I was hopeful until the very end . . . that Mr. McGregor would at least record, in an addendum to the report if not in the report itself, the views of the Wartime Prices and Trade Board officials, Mr. Gordon and Mr. Taylor, which were so inconsistent with his own . . . . The final attempt at reconciliation of these viewpoints took the form of a lengthy three hour meeting held in my office on Saturday, October 22, attended by Mr. McGregor, Mr. Gordon and Mr. Taylor . . . . Mr. Taylor . . . absolutely on his own responsibility . . . . went to Mr. McGregor on October 26 and urged that he should at least insert . . . an additional page or two setting forth clearly the considered explanations and the categorical statements to Mr. McGregor by Mr. Gordon, in the meeting of October 22. I am told Mr. McGregor was reluctant to do this, but he said he would think it over. On Saturday, October 29, Mr. McGregor telephoned Mr. Taylor and said that he was not prepared to make any changes or additions. It was only after this event that it was clear that Mr. McGregor desired to make no further changes, and I tabled the report on Monday, November 7, 1949." It wasn't till October 29, when Mr. McGregor finally balked at any further changes, and resigned, that the Minister "was sure that no more amendments would be offered." So the fifteen days didn't begin till October 29, and didn't run out till November 13. Publication wasn't ten months late. It was six days early! When the Act says, "Any report . . . shall within fifteen days of its receipt by the Minister be made public," it means, "within fifteen days from the time that the Minister is sure that the Commissioner will make no changes in it." When can he be sure of that? When the Commissioner dies or resigns.

"'When *I* use a word,' Humpty-Dumpty said, 'it means just what I choose it to mean.'" Or, to cite an authority which will doubtless carry more weight with the Minister of Justice, the Lord Chancellor in "Iolanthe," "When the fairy' law says, 'If a fairy marry a mortal, she shall die,' it means, 'If a fairy don't marry a mortal, she shall die.'"

THE next excuse was that the Minister didn't want to publish the report till he had got the "divergent opinions" of Mr. McGregor and Mr. Gordon and Mr. Taylor "reconciled in a report wherein there would be no disagreement." The Act was, of course, very clear that if the Commissioner submitted a report with which other high civil servants disagree, it was not to be published till the Minister had made every possible effort to get the disagreement cleared away. It was also very clear that he needn't hurry about it. Hence, of course, the edifying celerity with which the Minister pursued this objective in this case: through winter and spring and summer and fall. Hence also, no doubt, the scrupulous delicacy with which he acted throughout: "Again I want to emphasize that at no time have I ever made the slightest suggestion to Mr. McGregor that he change the report, that he play anything down, that he play anything up, that he add anything to it or that he withdraw. I have not made that suggestion directly and I have taken good care not to make it indirectly . . . . While I was most anxious . . . that these divergences . . . should be reconciled, . . . I did not attempt to suggest to anybody that that should be accomplished in any other way than by the free exercise by Mr. McGregor of the absolute discretion which is vested in him by statute in respect of this report." It was a consuming "anxiety," obviously;

but through all the months of "discussions," we are asked to believe Mr. McGregor never once could have suspected its presence, never once have dreamed that the Minister wanted him to change anything.

NEXT, there was "strong disagreement" in the Cabinet about the report. Some Ministers took "strong exception to Mr. McGregor's contention that the milling companies had been guilty of an infraction of the Combines Investigation Act during the period of wartime control." They said the companies had only obeyed orders from the W.P.T.B. "They felt it was most unfair for one department of the Government to be recommending prosecution of citizens . . . in respect of what they had done to comply with regulations and requirements of another department." So, "I think it would be around the latter part of January or in February," Mr. Garson lent Mr. Howe either the manuscript copy of the original report, or the press summary of it, "I am not sure which," and "in due course" Mr. Howe reported that he had "consulted his officials and they had strongly confirmed his own recollections of the facts."

"Once this cleavage of opinion became apparent and was established it seemed to us we could have done one of three things." The Act was, of course, very clear about this too. If, when a report was submitted to him, the Minister found there was a cleavage of opinion about it in the Cabinet, he might, in his discretion, take any one of three courses. (Humpty-Dumpty and Iolanthe again.) What were the "three things"?

(a) "We could have published the manuscript at once as an official report, without comment, though of course that would not have complied with the Act because the time for publication had already expired." But "it seemed to us that this would not be a proper course," because it "would have implied an endorsation of the report by the Government. This course was particularly unacceptable to the Minister of Trade and Commerce, who insisted on making a statement coincident with the publication of the report repudiating it as far as he personally was concerned." This "obviously . . . would have made prosection difficult if not impossible and, incidentally, would have left the Combines Investigation Commission rather under a cloud. . . I did not feel prepared . . . to have the report publicly condemned in this way until we had a most careful check to determine whether or not the Government should accept it and prosecute on it. . . . I felt my duty was to suppport the report of my officials until it was proved to be incomplete, . . . especially when there was no chance then of complying strictly with the requirement as to publication."

THIS is all nonsense. Publication would not have constituted endorsation. It was a statutory duty, even if every member of the Cabinset disagreed with every line of the report. Publication did not have to be followed by prosecution. As to prosecution, the Government had a real discretion, not just a Humpty-Dumpty one. As for leaving the Combines Investigation Commission "rather under a cloud!" What about what they actually did? No "cloud" there?

" 'I weep for you,' the Walrus said,
" 'I deeply sympathize!'
"With sobs and tears he sorted out
"Those of the largest size,
"Holding his pocket handkerchief
"Before his streaming eyes."

(b) "The second course we could have followed was to publish the report with a statement . . . that the Government was skeptical about certain aspects of it; that we were going to check those aspects and that in due course, when we had finished our checking and had found out what were the true and complete facts, we would publish them and report to the House. If we had made such a disclaimer, does anyone suppose it would have strengthened the hands of the Combines Investigation Commission or added to its prestige? No matter whether our checking had proved the Commissioner in the right, the fact that we had advertised to the world our doubt concerning it and concerning him would have had an adverse effect

upon the Combines Investigation Commission." The course the Government actually followed was, clearly, quite free of any such "adverse effect." So it was really their solicitude for Mr. McGregor that induced them to break the law. At this point in the "explanations," Mr. McGregor must have been tempted to interject:

"Perhaps it was right to dissemble your love,
"But why did you kick me downstairs?"

(c) "The third alternative was the course we actually followed, to delay publication—which had already passed the statutory period of fifteen days—until we could check the facts so that when the report was published the Government would be able to state definitely its position in regard to it. Moreover . . . we were naturally most anxious to adopt a course which all members of Cabinet would feel they could support; and we agreed that the first requisite was to learn whether the full facts . . . would support the views held by some members of Council, or whether they would support the report, in which event we could publish it and prosecute."

This is where we came in.

Then comes this: "If Mr. McGregor meant to change his report in the material particulars in which he did change it, he should not have delivered it to my office in my absence, until he had got it into the form in which it was to be when published." What evidence is there that "Mr. McGregor meant to change his report" at all until the Minister started these "discussions"? This is just an attempt by the accused to put the prosecutor in the dock.

Then something even finer: "This was no routine Combines Investigation Act report at all. The issue here was whether the Government, on the first occasion on which this matter has arisen since the cessation of the war, was going to pillory and indict business men in the milling industry . . . for doing what some members of the Government believed, and what both chairmen of the Wartime Prices and Trade Board believed, that the Government had directed them to do . . . more than it was a question whether we were going to pillory and indict these men blindly without checking the completeness of Mr. McGregor's statement of the facts which he himself, as it now appears, has partially corrected."

The issue was nothing of the sort. It was simply whether the Government would obey the law. In the espionage investigation and trials, there was a great hullabaloo about the wickedness of the Communists' having a "higher loyalty" than their loyalty to Canada. But in this case, the Government of Canada apparently had a higher loyalty than its loyalty to the law and Constitution its members are sworn to uphold.

On December 9, the Minister produced a perfectly fresh "explanation." Mr. McGregor was trying to finish two reports before his resignation took effect. He had asked Mr. Garson whether he would approve of getting out a hundred copies mimeographed. "He said this was the only way in which we could get the report published within the statutory period of fifteen days." Mr. Garson at once saw the golden possibilities of this. Here, surely, was "a happy issue out of all his afflictions." "I asked him, if it was necessary to mimeograph on the present occasion, how it had been possible in the past to comply with the requirement that the reports be published within fiteen days. Mr. McGregor then informed me for the first time that the Combines Investigation Commission, and the Ministers responsible for it in previous years, had had a great deal of trouble in complying with the section, and as a matter of fact had always found that if a printed report was to be published it was mechanically impossible to comply with it."

THE effect of this was just the opposite of what the Minister expected. It raised the worst story yet. "The Minister," said Mr. Drew, "comes in at this late hour, unrepentant, and even taking away any limited measure of regret that he expressed previously. Now he said that Mr. McGregor indicates that it will be necessary to have another report, which Mr. McGregor is completing, mimeographed,

if there is to be compliance with the law requiring publication within fifteen days; that that requirement is something which it has not been practicable to comply with all along. Did the Commissioner say to the Minister of Justice that it takes ten and a half months to do it? Did he say . . . : You should amend the time within which publication takes place and be sure to allow ten months, because that is the time required? Unless that was said, then all this is meaningless . . . The fact is that on the basis of what the Minister says this morning there could have been compliance with the Act. The only requirement is . . . publication. There is not a word about printing."

The whole series of excuses and "explanations" recalls nothing so much as E. O. E. Somerville and Martin Ross's summary of the pleas of the defendant in an Irish magistrate's court:

> "Sweeney began here by saying that the sheep wasn't Darcy's at all. Then he said that his children of eight and nine years of age were too young to set the dog on the sheep. Then, that if the dog hunted here it was no more than she deserved for constant trespass. Then he said that the sheep was so old and blind that she committed suicide in his end of the lake to please herself and to spite him; and last of all, he tells us that he offered to compensate Darcy for her before he came into court at all."

But the Government had one defence Sweeny never thought of. They laughed. Hansard records it, three times. Three times, when accused of a gross breach of the law or the Constitution, they laughed.

Mr. Howe did not laugh. When Mr. Diefenbaker said that not since the days of George III had any Minister dared to contravene a statute passed by Parliament, he just smiled; then asked Mr. Diefenbaker what had happened to another report on this industry, in 1933. Mr. Diefenbaker observed that in 1937 a Liberal Government (Mr. Howe was a member of it) had put into the Act the provision for mandatory publication, "to prevent any Minister . . . from refusing to carry out the recommendation of the men in charge of the administration of the . . . Act." Mr. Howe replied: "Do what R. B. Bennett did. He dropped it in the waste-paper basket."

This from the Minister who seems to have played the leading part in the whole sorry drama: open, arrogant, sneering contempt for Parliament, for the law, for the Constitution. But perhaps even this is not the worst. After all, Mr. Howe is not a lawyer. He is an engineer, a business man, an administrator. Parliament, the law, the Constitution: these are foreign to his habit of mind. But the Cabinet which explicitly approved everything that was done, and accepted responsibility for it, contained no less than twelve lawyers. They cannot plead ignorance. They are all learned in the law. The Prime Minister is one of the greatest constitutional lawyers in Canada. The Minister of Justice, the keeper of the Queen's conscience, is the chief law officer of the Crown, the Minister specially charged with responsibility for maintaining the law and the Constitution. The then Postmaster-General, now a judge of the highest court in Quebec, is the son of the Chief Justice of Canada. The then Solicitor-General, the second law officer of the Crown, is the son of a former very distinguished Minister of Justice. All the rest also are men of standing in their profession, the profession which above all others is supposed to be dedicated to maintaining the rule of law. All of them ought to have had that great principle in their very bones. Yet not one of them rose to assert it. On the contrary, all of them violated it, and two of them rose repeatedly to defend or excuse the violation. These men were, in a peculiar degree, the custodians of a sacred trust, the guardians of a noble heritage; of which they were not worthy.

FREEDOM depends on law. But law which can be set aside whenever the Cabinet sees fit, for as long as it sees fit, without Parliament or the people hearing a word about it, is not law at all. It is a shadow. It leaves the citizen utterly defenceless. Such liberties as he still appears to possess are no longer rights, just favours from the Government in office. What the Government did to section 27 (5) of the Combines Act it can do to any section of any Act; no law is safe; and where no law is safe, no citizen is safe.