

The trial itself did nothing to remove the danger that the case had exposed. One by one the charges against the three defendants were dropped without the necessity of court decision. Finally, only one charge remained, that of "counselling the publication of a defamatory libel", and that against Cooke alone. The court acquitted the *New Liberty* publisher of this charge in April 1948, to end the case. The weakness in the law itself was removed on June 30 of the same year when a federal Bill to amend the Criminal Code received Royal Assent. The amendment required that a person charged with defamatory libel or *conspiracy to publish* defamatory libel must be dealt with—indicted, tried and punished—in the province where he lives or in which the newspaper is published.

A longer-lasting threat to press freedom was to be found in Quebec's Padlock Law. Its true origin was the Winnipeg Strike of 1919. That stormy event led to the passage of Sect. 98 of the Criminal Code, an enactment carrying stiff penalties against persons convicted of unlawful association, sedition and the publishing of seditious material. Strong efforts to repeal the freedom-restricting law were carried on from 1921 until they were successful in 1936. Mr. Duplessis, elected Premier of Quebec in that year, took the view that the Criminal Code amendment left the country dangerously exposed to Communist propaganda and he introduced a piece of legislation designed to take the place of Sect. 98. This was "An Act to Protect the Province Against Communist Propaganda"—the so-called Padlock Law. The Act empowered the Attorney-General of the province to close for twelve months any establishment suspected of harbouring Communist activities. It also made unlawful the printing, publishing or distributing in the province of "any newspaper, periodical, pamphlet, circular, document, or writing whatsoever propagating or tending to propagate communism or bolshevism". Penalty for violating the latter regulation was "an imprisonment of not less than three months, in addition to the costs of prosecution, and in default of payment of such costs, . . . an additional imprisonment of one month".

Persons concerned with freedom of the individual protested vigorously against the Padlock Law. They characterized it as itself a denial of law. They pointed out that, without defining what Communism or Bolshevism is, it permitted the State to declare persons to be Communists or Bolsheviks, it gave the accused no chance to refute such charges, and it did not require the courts to make a case against those so charged. The contention was that under such conditions the Attorney-General became "policeman, prosecutor, judge, sheriff and hangman".

Despite such protests, Mr. Duplessis invoked the Padlock Law on several occasions. Up until the Union Nationale Government's defeat in 1939 the law was applied at least thirteen times. After Mr. Duplessis' return to power in 1944, it was again enforced, as in February 1948 when not only *Le Combat*, an admittedly labour paper, was closed but also *Le Progrès de Villeray*, the non-Communist newspaper in whose plant *Le Combat* had been printed, and in January 1950 when the Attorney-General padlocked the premises occupied by the Jewish People's Order of Montreal.

What made removal of the law from the statute books difficult was the fact that victims of the Padlock Law could not sue the Quebec Government without its *fiat* or consent. The Quebec Government refused to grant *fiats*. However, as a result of an unusual circumstance, the Padlock Law did come before the law courts. On Dec. 29, 1947, Freda Elbling rented her Montreal Park Avenue apartment to Max Bailey. The lease carried the right to sublet. Accordingly, on Dec. 23, 1948, Bailey sublet the Elbling premises to John Switzman who was, by his own admission, a Communist at that time. On Jan. 27, 1949, the Attorney-General of Quebec ordered the apartment padlocked. This was done and the papers therein were seized. Immediately Freda Elbling sought in court to annul the lease and recover damages from Switzman. Switzman defended himself on the grounds that the Padlock Law was *ultra vires* of the province, or unconstitutional, and that he should never have been molested. In this way the Padlock Law was taken into court without any *fiat* being needed.