conscientious objection

Repeal the Act **Source 7**

THE DEFENCE

THE DEFENDANT : My Lord Mayor, I do not propose to call any witnesses, as there is no dispute in regard to the facts. The facts are plain, and are admitted. I wish to suggest to your consideration that this case raises an issue of very considerable importance in regard to the legal limits of political agitation at the present time. We have been repeatedly assured in Parliament that political agitation against conscription is not illegal. But if such a leaflet as this which is before you to-day is to be held contrary to the Defence of the Realm Act, it is not easy to see how any political agitation can possibly be carried on. It would seem to follow, if this view is upheld, that although we may state as a bare fact that we are not in favour of conscription, we shall be precluded from stating any of the grounds upon which that opinion rests, and I submit to you, my Lord, that an opinion in favour of which it is illegal to state any arguments is rendered impotent ; and, in fact, if the view is upheld the supposed political liberty becomes a farce.

The legal position in regard to prosecutions of this nature under the Defence of the Realm Act—the legal position as it appears to the Government—was explained recently in the House of Commons by Mr. Herbert Samuel, in a debate which took place on the 1st June, in connection with a case analagous to the present case, a case which has been alluded to by the prosecution. Mr. Samuel first repeated a previous answer which he had given in the House. I have here the official Report of Parliamentary Debates. He said:

> "It is one thing to advocate repeal of the compulsory Military Service Act. It is another thing to advocate resistance to its provisions."

That, he said, " is the essential difference."

In view of that answer, everything turns upon the question, What is considered to be advocacy of resistance? Is a conscientious objector advocating resistance if he says, "I intend not to perform military service, even if the tribunals should fail to grant me exemption "? Or if, having failed to obtain exemption, he states that he as a conscientious objector cannot conform to that decision? Is he in saying that advocating resistance? I do not think that that view can be held, and I should like, my Lord, to dwell for one moment upon the nature of that conscientious objection

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which is recognised by the Act of Parliament. The Act of Parliament provided that those who have a genuine conscientious objection to the undertaking of combatant service should be able to plead that objection before the tribunals.

Now, a conscientious objection is by its very nature one which cannot be overridden by any decision of the Court of Law. And I think it was the recognition of that fact by Parliament which induced it to insert a conscience clause; for, as we know, the enormous majority of the House of Commons are very strongly opposed to conscientious objectors. Nevertheless they recognised the conscientious objector's claim to exemption, because they realised, as I think every thoughtful man has recognised, that it is not open to a man who has a genuine conscientious objection to submit himself to the decision of no matter what tribunal, if that decision goes against what he believes to be the dictates of his conscience. It is on that account that Parliament considered it necessary to provide the machinery for the exemption of conscientious objectors. Now, therefore, it cannot be said that a man is advocating resistance (I refer again to Mr. Samuel's answer) by a mere statement that he himself does not propose to perform military service, even if he should fail to obtain exemption. I think some such statement he is bound by law to make when he comes before the tribunals, because if he were willing to obey the decision he would not be a genuine objector, and would not be entitled to the exemption of the Act. The exemption is only open to a man who will not obey. I put that point before you—the position of such a man, and the undesirability of such a situation arising.

Now I should like to take a step further. If a man has a right to state that he himself cannot obey the law under certain contingencies, and that right is accorded by the conscience clause, it cannot surely be against the law to state on behalf of other people that there are such men? That is a relevant fact in the situation. It is a fact taken account of by the Legislature, and is a fact which should be known. The mere statement of that fact, I submit, cannot itself constitute an illegality. It cannot be construed as advocacy of resistance to state what is, after all, a patent fact, that resistance is occurring, and will continue to occur as long as the present system is persisted in. If indeed it were illegal to state the fact that there are men who are conscientiously resisting the law, not lightly, but in obedience to the dictates of conscience—if that were against the law, I submit that Mr.

Herbert Samuel infringed his own regulation. He said in his speech :

> "I can understand the individual conscientious objector saying as an individual 'Whatever happens to me I do not care. I hold certain doctrines, and no human power can ever compel me to form a part of a military organisation.' Such a man (he continued) can be respected."

Those are Mr. Samuel's words. But, my Lord, it is the very thing which I said in this leaflet, in effect the same sentiments. I said in effect, "Ernest F. Everett, an individual conscientious objector, said, and proved by his actions, that no human power would ever compel him to form part of a military organisation ; such a man can be respected." That is the gist of this pamphlet—merely adding the particular circumstances