

*Emergency Powers Act*

**Mr. Garson:** By the way, the one the hon. member just referred to was also a revocation.

**Mr. Diefenbaker:** It was a revocation?

**Mr. Garson:** Yes.

**Mr. Diefenbaker:** I ask the minister whether those orders in council which were revocations could not have been passed under the prerogative rights of the crown without having all these extraordinary powers?

**Mr. Garson:** My hon. friend raises a rather interesting legal point which I say again is not particularly relevant to the matter we have under discussion. However, I have no objection to commenting upon it. Where an order in council has been passed under the Emergency Powers Act and that act is still subsisting I am sure that my hon. friend would agree that it would be desirable to invoke the same powers to revoke that order as were invoked to pass it in the first place.

**Mr. Diefenbaker:** But they could have been passed by the crown without passing them under this act.

**Mr. Garson:** That is quite a tricky question which my hon. friend has raised and I must say I do not like to give an opinion on it offhand. But when the extraordinary powers under the Emergency Powers Act have been invoked to pass an order in council in the first instance I would not think that it could be changed under ordinary executive powers.

But there is one point on which I regret I have not been able to secure the assent of my hon. friends of the opposition. While this legislation may have been used during the past year for the passage of five orders in council, perhaps only one of which could be said to be regarded as related to the emergency, surely the need for emergency powers under a notorious state of emergency will not be denied by reasonable people.

The only real question with which we are concerned is whether we should act in this existing emergency under the powers of the War Measures Act, which are very wide and which do not provide either for tabling of orders in council, or for bringing such orders in council passed under that act before parliament for discussion, as they can be if passed under the more limited powers of the Emergency Powers Act.

**Mr. Diefenbaker:** Or under the prerogative right of the crown.

**Mr. Garson:** I see what my hon. friend is driving at. He is raising the point that one or two of these orders in council which were passed during the past year under the Emergency Powers Act could have been passed

[Mr. Diefenbaker.]

under the prerogative powers of the crown. But the real point here is that if some event took place in Korea tomorrow morning, or on the Elbe in Germany or in some other part of the world which created a serious necessity for quick action in respect to a matter which would otherwise have to go before parliament, I am perfectly certain that the ordinary prerogative powers of the crown would not be sufficient to support an order in council authorizing such action. Otherwise where would there be the necessity for the War Measures Act. I take it that my hon. friend agrees with that.

**Mr. Diefenbaker:** I do not say that I agree with that. I will agree with part of it, but I cannot agree with all of it.

**Mr. Garson:** I take it then that my hon. friend does not disagree.

**Mr. Diefenbaker:** I disagree with part.

**Mr. Garson:** The position is really a simple one. In 1914 Sir Robert Borden put upon the statute books of this country the War Measures Act with very wide powers which included, among other things, the power of arbitrary arrest, detention, deportation and exclusion. As my hon. friend said—wrongly in my judgment in relation to the Emergency Powers Act because these powers are expressly excluded in that act—if the government has the power of arbitrary arrest, detention, exclusion and deportation it is in a position to take actions under which there might not be very much left of the civil liberties of the subject. When parliament was asked to give us the powers contained in the Emergency Powers Act it had the privilege of considering whether it would give those powers. One group of powers was expressly excluded from the beginning as making possible an abrogation of civil liberties. But if we were to invoke the War Measures Act we would invoke all of these powers without reference to parliament at all.

I think some hon. members of the opposition will recall that when the emergency powers bill was before parliament in 1951 we asked in the first instance that the power to arrest should be included. The reason for that was that we wanted to have some way of enforcing orders in council which were passed under the Emergency Powers Act. That was the only arrest that was necessary or that we had in mind. We did not ask to include arbitrary arrest as authorized in the War Measures Act. This question was the subject of an extended debate in which members of the official opposition took part. Finally we agreed upon the words which are now in the Emergency Powers Act. A number of the colleagues of