

Agricultural Products Act

for constitutionality, it is not the government under our constitution, it is the courts that have the ultimate disposition of the question.

Mr. George A. Drew (Leader of the Opposition): Mr. Speaker, the Minister of Justice (Mr. Garson) has completely missed the point. It is not the government that has the responsibility; it is not the courts that determine the rights of the government; it is parliament. And what the Minister of Justice is doing now is to indicate a point of view of this government, and to display an attitude of the government which is that it is the government which deals with the matter, without letting parliament accept its responsibility.

All the way through the speech of the Minister of Justice the reference was to what the government can do. What was being put forward in this house by men with quite as much experience in constitutional matters, and a great deal more than the Minister of Justice has, was the proposition—

Mr. Garson: Mr. Speaker—

Mr. Drew: I am on my feet—was the proposition that parliament is making a finding of fact whenever it brings about a vote in regard to the existence of an emergency. And the Minister of Justice is aware that the leading cases on this subject, particularly the case of *Fort Frances Pulp and Paper Co. versus Manitoba Free Press*, make it clear that parliament does accept a responsibility; and that decision is regarded by the courts as a finding of fact which they will disturb only upon the very strongest possible evidence of a complete disregard of every other consideration. That is a declaration that was followed in the case decided only three weeks ago in Manitoba, by unanimous decision of the supreme court of that province, on appeal.

The Minister of Justice is trying to create the impression that the courts have the whole responsibility. The courts have the responsibility of seeing whether or not there has been a complete disregard of all the considerations that should guide parliament in making its decision, or the government in acting by order in council under any law that has been passed.

But the cases leave no parliament the responsibility of determining whether there is in fact an emergency, or whether there is not an emergency. And when the Minister of Justice seeks to convey the impression that the arguments that are being put forward are being put forward for political purposes, he invites comment upon the statements he has been making outside of this house for some time in regard to dominion-provincial relations, and the statements he has been making for political purposes com-

pletely misrepresenting the nature of the discussions which did take place at the time the governments of this country met to try to find a solution of their constitutional difficulties.

According to him, anyone who seeks to stand by the constitution as it has been clearly defined for years is trying to prevent advantages being gained by a particular province. And if any man in this house has sought to misinterpret and has sought to convey impressions as to the actions of particular provinces, that man is the Minister of Justice himself, in his interpretations of what has already taken place.

We are discussing this upon the straight basis of the constitution itself, and the kind of emergency which permits parliament—not the government—to make a decision under the broad reference to peace, order and good government.

Throughout all the years since confederation it has been perfectly clear—and the judgments are clear in this respect—that only an emergency in the nature of war, or a major national threat of that kind, is an emergency which justifies the abandonment of the ordinary division of power and authority as between the dominion and provincial governments, and permits the dominion government to go into what is strictly a provincial field, through resort to the broad provision in the general clause of section 91 of the *British North America Act*.

Today the Minister of Agriculture (Mr. Gardiner), in a perfectly fair interpretation of the problems that are before him in relation to certain contracts, indicated what he conceived to be the kind of emergency which would justify the government acting in this case. He pictured the difficulties with which the people of Britain are confronted at this time and the need for this country, through its government and parliament, to take such steps as might be necessary to meet their requirements under the contracts which have been made under this act.

But the point which was made and the point which should be borne in mind is that an emergency outside of Canada, no matter how much every hon. member of this house may feel that such an emergency should be dealt with by us in every way that we can, is not an emergency such as permits the parliament of Canada to declare that it abandons its ordinary constitutional position. There are ways of dealing with that problem. The way to deal with that problem is by joint action of the different governments who between them have the full authority.

No one here seeks to put anything in the way of a fulfilment of the contracts which will supply the necessary food to the people