

Agricultural Products Act

sibility to see that the procedure which was being followed and the material which was being submitted was in accordance with the decisions of the courts of law, which means, to see that the bill being submitted is constitutional before it comes in here, in so far as the law officers of the government or the private member sponsoring it can discover; and having thus submitted the bill to the house, I said that he could be taken to have discharged his responsibility for sponsoring that bill. Then I went on to say that if the members of the house—that is, the ones to whom the bill is presented for consideration—acting in good faith and on the basis of their legal ideas—and I cited as an example the hon. member for Eglinton (Mr. Fleming) and the hon. member for Lake Centre (Mr. Diefenbaker) in, as I believe, their incorrect legal ideas—want to oppose it upon constitutional grounds or support it upon constitutional grounds, that is their proper function as members of the house. In other words, I said that the man or the government who introduces the bill should, before the bill is introduced, see that it is in accordance with the decisions of the courts, and that the members of the house who receive it and consider it should address themselves also to that point. But after such consideration and after such sponsoring, once the bill has become law, then it is only the courts and no other body but the courts that can have the last word as to whether that law is constitutional or not.

Now, the real point to this matter is this: It is perfectly apparent that my hon. friends for political reasons, which no doubt seem to them to be quite well warranted, would like to tag this government with invasion of provincial rights, in order to support their political campaigns in certain provinces of this country. That being so, it suits their purpose also to attribute to this government under our constitution powers which only courts of law in this country possess. Because it is the courts of law in Canada which determine whether any law that we pass here in the last analysis is within our powers, or beyond our powers. And under our constitution, as the hon. member for Eglinton (Mr. Fleming) and the leader of the opposition (Mr. Drew) well know, no government upon matters of large issues like this, where the question of an impecunious litigant does not come into the picture at all—no government, no legislature can usurp powers; for the good reason that, if it attempts to do so, its action which results will be declared unconstitutional by the courts.

And my hon. friend from Eglinton, in one of the few accurate statements in his last effort tonight, is correct when he says that it

[Mr. Garson.]

is for the courts to protect the rights of Canadian citizens. I agree entirely with him in that. But what I object to is that he will not recognize any of the implications of that statement.

If it be correct that we do have courts to declare whether a law is constitutional or unconstitutional, then the immediate implication of that remark is that it is impossible for a provincial legislature, or for this parliament, or for a provincial executive, or for the governor in council acting pursuant to an act of this parliament, in any way to exceed its power. Because either the law of the legislature or the act of the executive will be declared by the courts to be unconstitutional; and it is only by the courts that it can be so declared.

Mr. Hackett: Would the minister permit a question?

Mr. Garson: Yes.

Mr. Hackett: Does the hon. gentleman argue that the jurisdiction of the courts limits or restricts the duties of an official opposition?

Mr. Garson: Not at all. And, Mr. Speaker, I am very glad the hon. member raised that point—very glad indeed. Of course it is the function, as I made very clear in my remarks today—and I leave it to any member at this time to say whether I did or did not do so—I made it very clear that the man or the government who brought a bill into parliament was under the obligation to examine the law, as the law officers of this government have done before any of these bills we have introduced were brought in.

It was his duty to examine the law. I also said—indeed I spelled it out so there would be no possibility of my hon. friend from Eglinton (Mr. Fleming) misunderstanding it—that it was the duty of the members of this House of Commons to vote according to their views upon any of the constitutional issues that were involved. I agree entirely with the implications of the interjections made by the hon. member for Stanstead (Mr. Hackett), that certainly it is the duty of the official opposition, or of any other opposition, to raise questions as to the constitutionality of these laws.

But all that I say is that, agreeing with all these points—and in many respects paying my meed of respect to the argument put forward by the official opposition, I do not believe that they should associate with these arguments the suggestion that the government can in any official or binding way formulate any emergent theory which will hold water. Because the truth is that no matter what theory the government has with regard to the emergency theory, or any other basis