

*Emergency Powers Act*

There are additional considerations which weighed on the government. The conditions being different from those which have at previous times led to the proclamation of the War Measures Act, the government feels it is preferable that there should be a departure from the normal constitutional distribution of powers, and that a decision as to the emergency should not be made merely on the judgment of the governor in council as to the present situation, but should rest with the people's representatives in this parliament. In view of the possibility that the state of emergency may be of an indeterminate length, the government considers that all the powers transferred by the War Measures Act to the governor in council need not be available immediately. These powers are far-reaching, and they include the capacity to affect not only the ordinary property and civil rights of Canadian citizens, but their personal rights as well. Hon. members know that under the terms of the War Measures Act a proclamation would give the governor in council power to do such things as he might by reason of the existing international emergency deem necessary or advisable for the security, defence, peace, order and welfare of Canada. The courts have had to deal with that language, and have decided that these general terms have their full meaning; that although there is, as an example, an enumeration of things that the governor in council may do, that enumeration is not restrictive; and that the only measure of what he may do is what he thinks is desirable, by reason of the existing emergency, for the security, defence, peace, order and welfare of Canada.

As this resolution indicates, it will provide for restrictions on this general power. While providing adequate powers to deal with the type of situation that may be expected to arise, the government has endeavoured to avoid taking powers of the grave character which no democratic government wishes to have, as a government, unless those powers are really necessary for the safety of the state. I have indicated that the emergency powers sought by this legislation will mean, as does the War Measures Act whenever it is in force, a potential departure from the normal distribution of powers under our federal constitution to the extent that that departure may be deemed necessary for the safety of the state.

There can be no doubt at this time as to the constitutionality of such an action. The courts have even decided that it is the governor in council, when he proclaims the War Measures Act, who is the judge of the emergency; and, when we had the transitional powers provided by legislation after

[Mr. St. Laurent.]

the war, that it was parliament that was the judge as to whether there was an emergency that justified that temporary transfer of jurisdiction from provincial legislatures to the central authority. I reiterate that the constitutionality of the War Measures Act has been repeatedly upheld. The more limited grants of power have also been upheld, from time to time, under the National Emergency Transitional Powers Act of 1945 and the Continuation of Transitional Measures Act of 1947.

The leader of the opposition in his remarks on the defence bill during the last session, made reference to the constitutional consequences of such an emergency, and suggested that there should be a declaration of emergency before even the quite limited powers that we sought under the Essential Materials (Defence) Act were given to the government by legislation of this parliament. Under that act it was felt that the jurisdiction could be justified, without recourse to the emergency doctrine, as being something necessarily incidental to the exercise of jurisdiction for the proper defence of Canada. Hon. members know that section 91 of the British North America Act provides that parliament shall have exclusive jurisdiction with respect to the matters therein set out and enumerated, and that even if, in the exercise of their jurisdiction in that respect, their legislation clashes with something done by the provinces under the provisions of section 92, the federal legislation prevails. The courts have held that anything that is necessarily incidental to the exercise of the powers enumerated in section 91 may also be done and will prevail over provincial legislation.

It was our feeling at that time that it was necessary, for the proper organization of the defence of Canada, to acquire supplies from the production of commodities in this country, and that it was also incidental to the exercise of that power that shortages might be brought about and that allocations or other measures might be required to counteract the effect upon the economy of the creation by the defence requirements of those shortages. But the situation has not improved since that time; and many of us feel, as do these representatives of organized labour in Canada, that the best we can hope for is long years of heavy defence expenditures and the diversion of a large proportion of our manpower and resources from productive work to a great effort for sheer survival. That effort is having consequences on the economy of the country.

The purpose of the delegation which waited upon the government this morning was to