

*Appropriation Act No. 8*

tariffs to the general tariff. The second part of the order in council utilizes the Financial Administration Act to relieve individuals in the country from the operation of the first part of the order in council.

Does anybody, Mr. Speaker, in his right mind believe that the statutes on which this order in council is founded were intended to allow a government to take extraordinary and sweeping action to avert a further depletion of Canada's reserves? The hon. member for Winnipeg North Centre (Mr. Knowles) very properly questioned yesterday the legality of this order in council. I am not a lawyer and I certainly do not intend to argue the legality or the illegality of the order in council. But I will say that the government was certainly straining very hard when it chose these two statutes upon which to base this particular sweeping measure. We have had very impressive legal advice suggesting that this order in council is indeed illegal, and that all the regulations and activities carried on under the order in council are consequently illegal.

We proved our point in the subsequent election, Mr. Chairman, because in 1963 we defeated the then sitting government.

I now wish to refer to the hon. member for Essex East in connection with the debate on this matter, a man I hold in highest regard, a man alongside whom it was a pleasure to discuss the legality of the government's action at that time because for some months he had a motion on the order paper asking for the production of papers with respect to that action.

On October 9, 1962, as recorded at page 322 of *Hansard* for that date, the hon. member for Essex East had this to say:

I say that section 4(1) of the Customs Tariff and section 22 of the Financial Administration Act do not contain authority from parliament to the governor in council enabling the governor in council to make the two orders which make up the surcharge on imports order. The Minister of Justice did not even allow for the possibility of difference of opinion in this regard. In that modest, humane way of his he simply said, "There is no doubt about the legality of what the government has done, take it from me". The minister of finance of another day, the present Minister of Justice, said, "Accept my word that there is no doubt about the legal basis of the action the government has taken."

Further on he said:

I ask the Minister of Justice to produce, as indeed his leader asked the minister of finance of the day in 1947, the opinion of the law officers of the crown which states that section 4(1) gives this government the authority to impose surcharges as it did when parliament was not in session and when indeed as the government of this country it occupied an extremely tenuous position with only a minority support in this house.

With regard to section 22 of the other act, namely the Financial Administration Act, on which the minister and the government base their case, may I observe that the statute was enacted by parliament in order to give authority to the governor in council to deal with a comparatively few special

cases involving a comparatively few individual importers and a comparatively small range of imported goods for a comparatively few special purposes, as stated in the act. If parliament had intended to delegate broad powers of extensive application to customs duties on imported goods, it would have done so in the Customs Tariff and the Customs Act. However, that was not done.

So I say that section 22 of the Financial Administration Act, on which the government relies as one of the two supporting measures, was not intended by parliament to delegate to the governor in council authority over a large portion of the customs tariff involving a large range of goods and all importers of those goods in a single case, which is not essentially one of the customs tariff itself but is a case of balance of payments.

Now I make the same statement with regard to the use of this vote 15 in the estimates of the Department of Finance, to be found on page 119 in the blue book which we all have before us. I say that those contingencies were not passed or granted by this parliament in order to meet salaries and wages in departments for which supply had not yet been voted.

But leaving that aside for a moment, Mr. Maxwell continues in his letter:

Your second question concerns the payment of amounts in respect of departments which have received only a certain amount by way of interim supply. As I understand it, these departments have sufficient unencumbered balances as a result of the enactment of the Appropriation Acts No. 3, No. 5 and No. 7, 1966 in appropriate estimates items out of which salaries may be paid to cover payment to the employees therein of their mid-month salaries. I see no legal impediment to payment in this case, subject to any applicable provision of the Financial Administration Act being complied with.

I wonder if Mr. Maxwell has read clause 3 of these interim supply bills which says "may be paid or applied only for the purposes and subject to any terms and conditions specified in the item, and the payment or application of any amount pursuant to the item has such operation and effect as may be stated or described therein."

Then Mr. Maxwell continues:

Your third question concerns the remaining departments wherein the items, out of which salaries may be paid and for which Parliament has provided interim but not full supply by the Appropriation Acts No. 3, No. 5 and No. 7, 1966, do not now contain sufficient remaining moneys from such interim supply to meet the mid-month salary payments. It would be proper, in my view—

Mr. Maxwell hedges. This is the view of one man, the opinion of Mr. Maxwell. He says "in my view." We do not have to accept a single