

*Emergency Powers Act*

In the course of his remarks this afternoon the Minister of Justice stated that the Emergency Powers Act was, in some respects, superior to the War Measures Act because under the War Measures Act there is no obligation to place before the House of Commons the orders in council which may be passed. In order that his words may be given with accuracy, I will quote from page 2081 of *Hansard* where we find the following:

Moreover the War Measures Act does not require that the orders in council passed under it shall be tabled in parliament, nor does it provide that such orders in council shall be open to annulment proceedings by parliament.

I should like to deal first with the second part of that quotation. The Emergency Powers Act does provide for the annulment of those orders in council if it is the opinion of parliament that that should be done; and it is so stated, of course, in section 1, subsection 5. But it is quite obvious that nothing would be annulled, or it is quite unlikely that anything would be annulled by the House of Commons unless that was the purpose of the government. I therefore do not think there is much weight in that particular argument, in distinguishing the powers within the War Measures Act and the powers within the Emergency Powers Act.

The other matter is what really engaged my attention originally, where the minister says the War Measures Act does not require that the orders in council passed under it shall be tabled in parliament. I presume he gets his authority for that statement from that extremely wide section in the War Measures Act, namely section 3, which confers upon the governor in council almost everything that is desired. But I suggest to the Minister of Justice that it would be interesting to hear from him under what authority he bases the statement that orders in council need not be tabled in the House of Commons.

In the second place, I would draw his attention to custom; and custom and usage play a great part in parliament. We have our rules by which we govern proceedings here; but there are many unwritten rules or customs which determine the course of our proceedings. If at any time the government decided not to table orders in council in the House of Commons, whether under the War Measures Act or otherwise, it would certainly be called into question, and it would be running counter to custom established over many years.

I was interested to note what had been done during the recent war. In looking through the *Journals* of the House of Commons I found that in 1939 the emergency orders in council passed just prior to the war

were promptly tabled in the House of Commons by the then prime minister. If you look at *Hansard* for 1939, covering the period September 7 to September 13—that is the special war session of the eighteenth parliament—on page 1 you will find a report dealing with the European war and the prime minister saying as follows:

Right Hon. W. L. Mackenzie King (Prime Minister): With the consent of the house I desire to lay on the table documents relating to the outbreak of war, September, 1939, copies of which, in English and French, are being distributed this afternoon.

I desire also to lay on the table copies of emergency orders in council passed since August 25, 1939, to date.

Then follows, of course, on page 2, a list of these emergency orders that had been passed. Then on page 3 you have this question:

Mr. Manion: Am I right in understanding that this is a complete list of the emergency orders in council?

Mr. Mackenzie King: Yes.

Mr. Manion: My right hon. friend has read a complete list?

Mr. Mackenzie King: Yes. Of course, there have been many other orders passed in the last week; but these are the orders which refer to the emergency situation.

Mr. Manion: The ones my right hon. friend has read?

Mr. Mackenzie King: Yes.

Then in checking the *Journals* for subsequent sessions of parliament I found that in 1940, on January 25, copies of these emergency orders in council passed under the provisions of the War Measures Act were tabled in the house covering the period September 12, 1939 to January 17, 1940.

Throughout the war years the same practice was followed. I checked the *Journals*, volume 81—it covers the period 1940, 1941 and 1942—and under the War Measures Act orders in council for the period from July 23, 1940 to January 13, 1942 were tabled in the house. In the 1942-43 session of parliament there were six occasions when orders in council under the War Measures Act were tabled. Similarly in 1943-44 there were four sessional papers, being orders in council under the War Measures Act, tabled in the house covering the period January 6 to June 30, 1943. Again in 1944 to 1945 the same practice was followed. In 1945 again the orders in council were tabled. That is, in 1945, the first session of the twentieth parliament met on September 6; on the following day, September 7, copies of orders in council passed under the War Measures Act for the period March 1 to June 30, 1945, were laid before the House of Commons.

I suggest that the custom of this house is to give to members of the House of Commons