

The Address—Mr. Diefenbaker

it shall not be departed from either in the guise of the emergency doctrine, which was used for quite a while to permit the government to infringe upon provincial jurisdiction, or for any other reason. Now with the passing into desuetude of that doctrine the Prime Minister claims that the federal authority can infringe upon provincial jurisdiction as long as what is done has to do with the defence of this dominion.

That theory is capable of infinite interpretation and expansion. If that doctrine be true, if all the world stands in peril internationally, then the government, having vacated the emergency doctrine, can now embark upon a new doctrine that is capable of infinite expansion in invading the field of provincial rights. I will continue to read the report of what Mr. Macdonald said, as follows:

We have sometimes been told that provincial rights are meaningless unless you have adequate revenues to carry out the responsibilities. I agree that there is more than one way to get the revenue and I am not sure that we have gone about it the right way in this country. I believe we should divide the field of responsibility between the dominion and the provinces and then you should decide—and I believe it can be done—what each political unit should have and give to it those sources and fields of revenue which would be adequate to enable it to discharge its proper constitutional responsibilities.

In epitome, it is largely the view that was expressed the other day by the leader of the opposition.

I do not know whether it was under the emergency doctrine that allowed this government to circumvent and then amend a statute of this parliament, the Immigration Act, by an order in council passed in September last. I thought that the days of orders in council that were not made public until they were pried loose ended in the fall of 1946. That order in council carries into the days of peace the conduct of this government in the days of war when statutes passed by the representatives of the people were amended, suspended or abrogated.

I can give another example. The Minister of National Health and Welfare (Mr. Martin) will remember what was done in connection with the building of a hospital at Moose bay in the north country.

Mr. Garson: Which province was that in?

Mr. Diefenbaker: You will have to look at the order in council. It provides for the expenditure of approximately \$1,500,000 when as a matter of fact the expenditure had been passed by parliament year after year from 1945 on. Under order in council the government rushed in and awarded a contract to a Windsor firm, after consultation with other contractors, at five per cent upon cost. There

is another example of the use of orders in council by the government contrary to the rights of parliamentary government. There was no reason for haste in February of 1948 to hire a contractor by order in council when the moneys had been available over a period of several years.

I have mentioned the emergency doctrine whereby the government for a long time during and after the war placed the dominion in the position of a landlord having the power to vacate the provinces from any field of legislation that it desired and putting the provinces in the position of tenants at will of their legislative powers.

The Prime Minister now extends it to the defence doctrine. He complains that he has been misrepresented regarding the rights of minorities and the meaning of the constitution. The reason he finds himself in his present difficulty, in so far as section 133 is concerned, is that in the legislation which was introduced in 1946 there was given to the representatives of the people the power to pass an address by a simple majority and thereby to amend that portion of the constitution.

In taking that position he has departed from the experience of the years since 1867, and in particular from the declarations of the Right Hon. Mr. Lapointe, one of his predecessors as Minister of Justice. I remember well his dealing, on the 6th June, 1946, with placing in the hands of a majority in parliament the right to amend the constitution of our country. That course is a danger to the rights of minorities—and we are all minorities in this country—and particularly to the rights guaranteed under section 133 of the British North America Act. I had the honour to follow him when he introduced the resolution in this house. At that time I used words which were applicable then, and the experience of the past three years has borne out how dangerous it is to the spirit of Canadian confederation to accept the doctrine of amending serious and definitive portions of the constitution without consultation with the provinces. I said this:

Parliament is being asked to change one of the sections—not a section thirty-one years old, but one going back to confederation itself—upon which confederation was based. The Conservative party, and the Progressive Conservative party, since confederation has believed in change based upon experience; but it believes that the constitution is the bedrock of the rights of minorities and will resist changes in that constitution, without consultation with the provinces, under which the rights of the provinces will be affected or under which minorities may be affected. Parliament is being asked to pass an address which tomorrow will become a precedent which may be used to destroy the rights of minorities if in this house there should be a majority desiring to do so. This is an example of the dangers inherent in not requiring consultation with