

Agricultural Products Act

Mr. Fleming: I may save the hon. gentleman the trouble. I may say to him that his conception of what are points of privilege is just as accurate as his conception of what is the essence of the constitution. I will save the minister the trouble and tell him what he said:

—I suggest hon. members here are not concerned with the constitution in the way the members of the Progressive Conservative party have been arguing from time to time, because that is a matter which can safely be left to the only branch of government capable of dealing with it; that is, the courts. What we are concerned with here is the substance, the merits, the prudence, the wisdom of the measure we have before us.

Mr. Garson: Continue, finish the statement.

Mr. Fleming: Very well, I shall quote another statement the hon. gentleman made this morning.

In view of that fact the whole function of formulating a theory as to a general emergency, or as to a specific emergency, or as to any other basis for constitutional authority, is not a legislative function, and is not an executive function.

Mr. Speaker, could anything be clearer than that? It is not a legislative function. Those are not my words, thank goodness. I do not have to answer for words like those. Those are the words of the Minister of Justice uttered in this house today.

May I say a word, sir, about the courts. In the face of the statement made by the Minister of Justice and in the face of the conduct of this government—not just now but in relation to its search for excuses for retaining these extraordinary and arbitrary powers on many occasions and in many aspects, as we have seen in our debates upon a variety of measures—we ought to be very thankful that there are courts and that it is the function of the courts to say that measures passed by parliament which are ultra vires are, in fact, ultra vires.

We ought to be very thankful that the courts have that function and that power. But, sir, is that to absolve parliament of its responsibility with respect to the constitution? Is that to absolve parliament from its responsibility for reviewing every measure brought before it? I say it does not absolve parliament of any responsibility with respect to the constitutionality of measures parliament is called upon to enact. Would this not be a fine example of a parliament, sir, if it simply adhered to the formula laid down by the Minister of Justice and said: "The question of constitutionality is no concern of ours; we will leave that to the courts. We will go blithely forward and legislate without regard to constitutionality because we will leave that to the courts; that is not our concern."

[Mr. Garson.]

Can you imagine what chaos would result from following a course like that? It is unthinkable. It would have been unthinkable, at least, until the Minister of Justice put forward the proposition today. With all the respect we have for the courts, sir, is it fair to cast this burden upon them? We know very well, as the house was reminded by the member for Lake Centre (Mr. Diefenbaker) in his very powerful speech this afternoon, that it takes time to get these questions before the courts. Of the thousands and perhaps millions of citizens affected by measures passed by parliament in excess of its authority, how many are there who are in a position to carry their challenge to such legislation into the courts and to make their challenge effective by carrying appeals to the court of last resort? I say that sort of proposition represents the rankest kind of discrimination against the people of small means who are affected by ultra vires legislation just as much as the people of ample means who may be able to carry such a question to the courts and who may be able to carry their challenge through to the court of last resort.

All such litigation takes time. And what is the result when the courts do make a declaration that legislation enacted by parliament is ultra vires? Immediately, you have a vacuum. Parliament may not be in session. It takes time to deal with these situations which arise suddenly and which, in many cases, give rise to chaos. That is the headlong course upon which the Minister of Justice invites this parliament to embark. I hope this parliament, I am sure this parliament, with its experience, will not accept that invitation to commit suicide.

There are so many aspects of this question, sir, as you well know. Inevitably, ultra vires legislation by parliament involves trenching upon the constitutional rights of the provinces; rights which the provinces are bound to assert on their behalf if there is to be any respect held for the constitution of this country. So long as this government is going to lay down a doctrine of this kind; so long as this government is going to go on insisting on the existence of a national emergency that gives the federal authority the complete constitutional power to trespass upon the normal legislative jurisdiction of the provinces with reference to property and civil rights; so long as they consider it expedient with regard to any item of legislation to do so; then inevitably turmoil and conflict will distinguish the relationships between the dominion and the provinces.

On an earlier occasion, with regard to a kindred subject, I said that this government