

Agricultural Products Act

of this parliament, are *intra vires*, that is, within the jurisdiction of the body which passed them, or whether on the other hand they are *ultra vires*, beyond their jurisdiction, and therefore void. Another function of the courts is to see that the executive, in purporting to act under authority granted by statute, does not go beyond the powers which parliament or the provincial legislatures have granted.

The function of formulating a theory as to a general emergency, 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. It is a judicial function. The constitution of our country is a statute passed by the imperial parliament at Westminster. Our court of last resort for Canada is the imperial court of the privy council at Westminster. By reason of the privy council being our court of last resort, the bulk of our constitutional decisions have come down from the privy council. In other words it is this imperial court interpreting an imperial law which tells this country what is within the powers of the provincial legislatures and what is within the powers of the dominion parliament. That being so, this government could formulate theories as to a general emergency, a specific emergency or any other kind of emergency, as a foundation for its jurisdiction, until it was black in the face—

Mr. Rowe: That is what it is doing.

Mr. Garson: —and still it would have no effect upon the validity of the laws which were passed by invoking these government theories.

In all the discussion which has taken place in this debate, and in the other debates, the members of the Progressive Conservative party have sought to indicate that it was this government that was making some tremendous invasion of the rights of the provinces—

Mr. Fleming: Hear, hear.

Mr. Garson: —or of the Canadian constitution. But let me tell my hon. friend who has just been cheering, the member for Eglinton, that in legal terms that is just kindergarten nonsense.

Mr. Ross (Souris): What about the Manitoba courts? Are they childish too?

Mr. Deputy Speaker: Order.

Mr. Garson: Suppose we formulated, as they accuse us of doing, such a theory or doctrine of general emergency; suppose we proceeded upon the basis of that formulation to bring before parliament this bill or that bill or the next bill, to pass it and have it become the law of the land. Then I sug-

gest to the hon. member for Eglinton and to the leader of His Majesty's Loyal Opposition that the moment such statute came before the courts upon a test as to whether or not it was within the power of parliament to pass it, it would be the courts which would decide whether or not any doctrine formulated by any government was sound.

Mr. Diefenbaker: Will the minister permit a question?

Mr. Garson: I should be glad if my hon. friend would ask his question later. I am in the course of an argument at the moment.

Mr. Diefenbaker: You will allow me to ask it later?

Mr. Garson: Yes. That being so, Mr. Speaker, the question of the validity of the present bill, if it becomes a statute, is something which ultimately must be determined by the courts if any person challenges it. My hon. friend the leader of the opposition is right to this extent, perhaps: that in seeking the passage of this bill we impliedly say to the house that the law officers of the crown are satisfied that what we are asking the house to pass is within the power of parliament. But under our constitution, about which my hon. friend speaks so often, neither the government nor its law officers have the last word on that point. The courts have the last word. If, as he alleged, we presumed to make an attack upon the constitution, which attack was unconstitutional, the courts certainly would affirm that to be the case if it were challenged.

Mr. Diefenbaker: Has the minister reached the point where I may ask a question?

Mr. Garson: If my hon. friend will contain himself, he may ask it in a moment.

That being so, 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. On that score I call on no less a witness than the leader of the opposition himself, who has just finished saying that so far as he is concerned this is an excellent arrangement, these are contracts which should be continued, and he is all in favour of it. I have not heard any member of his party say he is against the substance of the contracts. They are merely against the procedure and question the constitutionality, which under our constitution is left with the courts, which