

Defence Production Act

In other words, when this parliament is legislating under the head of defence it has overriding powers regardless of such matters as property and civil rights in the provinces. The decision as to whether legislation passed under this head was *intra vires* of course would be a matter for the courts. Any suggestion that the constitution is being violated by this legislation and that the courts are being superseded is of course fantastic. For example, if the government takes any action in this regard by stating that certain prices shall be charged for certain essential defence materials, and the courts saw the situation as such that the class of goods for which the government was purporting to fix prices was not such as to bring the action definitely within section 91, they would say so and the action would be set aside. In other words the courts will still be supreme with regard to any action taken under this legislation. Furthermore, if a situation of great emergency were to arise the very declaration of the state of emergency would make this section operative.

What harm then is in it? Why should the official opposition, who have been crying out for years, demanding that parliament be asked to write the different rules and regulations into the statutes, find fault with the fact that this is now to be done, by an act of parliament instead of by an order in council?

Mr. Diefenbaker: Is this not made under an order in council by the governor in council?

Mr. Tucker: If the order in council is passed under this head and it is not within the powers of Canada, due to the fact that conditions as they exist at the time it is passed are not such as to warrant the exercise of that right, the courts will unhesitatingly set it aside. Undoubtedly circumstances could arise, and I do not think my distinguished and learned friends across the way, and I include the Leader of the Opposition and the whole group, will say that conceivably circumstances could not arise within the next 12 months, under which an order in council passed by virtue of this section would not be held by the courts to be completely within the powers of this parliament.

The same thing applies to the section providing for relief from obligations. Is the strength of a nation to be dissipated by a shortage of essential supplies of some particular article and the country held up for ransom because of that shortage, and then parliament, speaking for the whole of Canada, not to have the right to protect the people of Canada against something like that? I submit that the fathers of confederation, in

[Mr. Tucker.]

drawing up our constitution, were not ready to put our parliament in such a helpless position to protect the new nation they were bringing into existence. These powers are there to be used in certain circumstances.

The hon. member for Prince Albert said that investigators could be appointed to look into any defence contract or anything of that nature. That may be done only if it is deemed necessary, for example if it is clear that a person had made an exorbitant profit which he otherwise could be asked to return to the country. I wonder whether the opposition are against the government having that right to protect the taxpayers who find it so hard to pay their taxes and provide for the defence of themselves, their homes and their country. Do they really seriously contend that some large private industry should, if it manages to make an exorbitant profit, be able to say to the government, "Yes, we have done so, but there is nothing you can do about it". I take it from their speeches that they would like the government to be in that helpless position. If they would not like it to be in that helpless position they would support this bill.

The hon. member for Prince Albert drew attention to the section which provides that if a person is being investigated he might have counsel, but if a charge was laid he had the right to have counsel. I was interested to hear what he had to say in that regard. I have here the Inquiries Act which has been in force for a long time. I do not know what the stripe of government was which originally introduced it into parliament. It is chapter 154 of the Revised Statutes of Canada, 1952. It refers back to the previous revised statutes. I find that the section which the hon. member for Prince Albert drew attention to is exactly the same as the section in the Inquiries Act which has been in the law of our country for years and years. In other words, the provision in the Defence Production Act does not give the government any greater powers than it already has, in regard to investigating under the Inquiries Act. I should like to read the section to indicate to the house that that is true.

Mr. Fleming: Will the hon. member permit a question?

Mr. Tucker: Yes.

Mr. Fleming: Will he not agree that there are no powers derived in respect of investigation under the Inquiries Act in favour of the Department of Defence Production unless they are conferred by the Defence Production Act?