I know that since the end of the war this administration has taken short cuts through parliamentary government. I know the experience of the years since the war indicates that it is difficult to restrict or abrogate the powers granted during wartime to those bureaucrats to whose advantage it is to retain them. But when the responsible Minister of Justice argues that it is merely a formal matter for members of this house to make a declaration of emergency and thereby invade the rights of the provinces, he makes a declaration that in effect would make our constitution a shadow and reduce provincial jurisdiction to a point where it would be dependent not upon the British North America Act but upon the whim of the government in power. Indeed, the effect of his argument is that if the time should ever come when a government in this country desired to make changes in our entire economic set-up and being unable to do so because property and civil rights are within the jurisdiction of the provinces, the majority supporting the government could declare an emergency to be existent and with that declaration out the window would go the constitution.

As Minister of Justice he makes a statement the effect of which is that a simple declaration of emergency will circumvent the constitution. As Attorney General it is his duty to assure that the constitution in fact is not circumvented. His duty is either to recommend to the governor in council that unconstitutional provincial legislation be disallowed, or may submit the challenged legislation to the courts to determine its constitutionality.

Now let us review something of what the authorities have decided. The minister says, in effect, that it does not matter whether or not there is an emergency; if parliament declares it, the determination of legality can be left to the courts. But every authority since 1921, in the privy council, the Supreme Court of Canada and recently in the Manitoba court of appeal, has been to the effect that if parliament makes a declaration of an emergency the courts of law should not lightly interfere with it. In the Nolan, Hallet and Carey case Mr. Justice Dysart, referring to the act in question, says:

> The interests of the dominion are to be protected, and it rests with the parliament of the dominion to protect them. What those interests are the parliament of the dominion must be left with considerable freedom to judge, per Lord Wright in Co-operative Committee on Japanese Canadians v Attorney General for Canada, 1947, A.C. 87, at page 101 . . . Lord Wright continues (page 101) . . . "if it be clear that an emergency has not arisen, or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the parliament of the dominion and the parliaments of the provinces comes into power."

Then the judge adds:

> Parliament has declared that the emergency is still continuing. That declaration is peculiarly within the rights of parliament to make. And although the judiciary has the right, in a proper case, to review parliament's decision, and has a duty, upon sufficient evidence, to reverse that decision, still the courts ought not to venture upon a review or reversal unless the need of doing so is clear. The courts have always exercised that right "with reluctance"; per Lord Haldane in In re the Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919, reported in 1922, 1 A.C. 191 at page 200.

The Minister of Justice says, in effect that parliament declaring the existence of an emergency is an informal act. If parliament declares an emergency and thereby invades the jurisdiction of the provinces no harm will be done because the courts will assure that the constitution is maintained, although every legal authority since 1921 is to the effect that if parliament does declare an emergency the courts will not lightly interfere with that conclusion.

What does that add up to? It adds up to this, that if the proposition of the Minister of Justice be accepted the rights of the provinces under section 92 are in the custody of a majority of parliament who at any time, by the simple expedient of declaring an emergency, may in effect destroy the British North America Act because, as Lord Wright said in the case referred to and as Mr. Justice Dysart decided in the Manitoba case, the courts will not lightly interfere with a declaration made by the elected representatives of the people.

That is not merely a technical matter. When parliament declares the existence of an emergency, each member must declare for himself that there is an emergency because the declaration allows the federal parliament to interfere with the constitution, almost without challenge by the courts, and destroy the rights of the provinces in respect of property and civil rights.

As I listened to the Minister of Justice elucidate his views I came to the conclusion that his speech was a landmark on the road taken by this government in invading the constitution. I am sure when the Minister of Justice reads what he said he will take the earliest opportunity to come before the house and explain that he really did not mean what he said. He contended further that this legislation would be good legislation, and that the question whether or not it was within the constitutional power of parliament should be left to the courts. A like argument came before the privy council in 1936, in the case of the Attorney General