

Emergency Powers Act

Foreign Exchange Control Act, the government's attitude was to allow the citizen to appeal to the courts where he has been illegally treated; but if he succeeded, no matter what damage he had suffered, he was to be restricted to nominal damages, not over \$1 that would be, and without costs of action.

The minister says, "Trust us". I think of the hidden order in council that came to light after months of secrecy. I think of the power under the Defence Production Act and the orders in council that can be passed under it that under no circumstances have to be brought before parliament. I think of another order in council when the minister says, "Trust us". The Eldorado order in council made provision only for the holding of an investigation and denied to any individual there the right to have counsel, and indeed provided that if the actions of the commissioner in the investigation were illegal the individual had no right of recourse to the courts.

I think of the orders in council under the Excise Act and I could go on indefinitely.

Mr. Garson: Will the hon. gentleman permit a question?

Mr. Diefenbaker: Yes.

Mr. Garson: The order to which he is referring as having denied counsel was passed under the War Measures Act, was it not?

Mr. Diefenbaker: I care not whether it was passed under the War Measures Act, because the powers given to the government to pass orders under this legislation in so far as that particular type of thing is concerned are subject to no restriction. That is why I am making this appeal to the minister. If there is to be such a restriction, let him place it in the statute.

Mr. Garson: Read the act.

Mr. Diefenbaker: I have read and re-read the act.

Mr. Garson: It is a good idea before you make a speech on it.

Mr. Diefenbaker: It is a good idea, and the minister speaks with authority when he says that.

Mr. Garson: Look at section 2, subsection 2, paragraph (a); that is where you will find it.

Mr. Diefenbaker: Yes.

Mr. Garson: Read it.

Mr. Diefenbaker:

Notwithstanding anything contained therein, the powers conferred on the governor in council by subsection one do not include power to make orders or regulations in relation to:

(a) arrest, except as incidental to proceedings under section three, detention, exclusion or deportation of any person.

Mr. Garson: Right. Has not that some bearing on what you are talking about?

Mr. Diefenbaker: Mr. Chairman,—

Mr. Martin: Oh, yes, it has.

Mr. Diefenbaker: My hon. friends protest. Their main contribution is a cacophony of noise in answer to a serious discussion, Mr. Chairman. That section has no relationship whatever to what I have been referring to. I have been referring to investigations that deny the individual the right of an appeal to the courts, and the subsection to which my hon. friend refers has to do with arrest beyond and above the provisions for infringement of section 3 of the act.

I suggest that, in order to protect the rights of the individual against a repetition of that kind of thing, a change in the law is much overdue. Otherwise, the individual is in a position, now that the Nolan case has been decided by the privy council, of having a right of appeal to the courts; but in reality it will be ineffectual as the appeal will be denied, however outrageous the action of the government is, so long as what is done purports to have been done in an emergency. There is the abiding danger in legislation such as this.

I sum up this phase of my argument, and then I shall refer to some other acts of members of the government. This measure places in the hands of the cabinet powers so sweeping that the cabinet is transformed, for the period of the emergency, into a position of master of the Canadian people rather than servant. The ministers of the crown will be constituted as omnipotent masters with the power to control the economic life of this country. Amongst the ministers in the house on this occasion I point out one who never during the years used these powers, and I refer to the Minister of Agriculture (Mr. Gardiner). Other ministers have used these dangerous powers, powers that ought not now to be abdicated by a free parliament to any government, however benign or however benevolent. This measure conveys to the cabinet absolute power, without challenge in the courts, so long as the preamble contains words that aver the existence of an emergency. This legislation places the edicts of the government above challenge in the courts, and it grants to the state despotic powers over every business and indeed over every citizen in this country if the government so chooses. These are dangerous powers to place in the hands of any government at any time.