

*Defence Production Act*

tactful. They did not in any way hide their authority. They preferred to use their naked powers and prerogatives to legislate. This was one of the main complaints leading to the redress of grievances petition of 1610. It is not inappropriate to record what was said so long ago about the exercise of powers of this kind. I quote from the petition for the redress of grievances of that day:

It is apparent both that proclamations have been of late years much more frequent than heretofore, and that they are extended not only to the liberties but also to the goods, inheritances and livelihood of men . . . by reason whereof there is a general fear conceived and spread among Your Majesty's people that proclamations will by degrees grow up and increase to the strength and nature of laws.

That was in days we would regard as comparatively unenlightened from the point of view of general public information. Yet as long ago as 1610 the petition of grievances pointed out the dangers in laws of this kind. There they dealt not only with the danger to the person; they said that there was danger to the goods, inheritances and livelihood of men. What would they have done under an act of this kind? There was no act at that time that went nearly as far as the act now before us. And as the hon. member for Spadina has pointed out, it caused some fairly severe repercussions.

The concern about the overriding of parliament by provisions of this kind has extended on into the eighteenth and nineteenth centuries. But because of the earlier experiences—perhaps because of what happened to Charles I—governments were a little reluctant to go too far in the matter of delegated authority. One of the rare instances of this kind of delegation in the eighteenth century was the mutiny act of 1717. The first mutiny act of 1689 had provided for the discipline of the army overseas, but the 1717 act was the first to give the crown express authority "to make and constitute, under the signed manual, laws for the better government of His Majesty's forces while within the kingdoms of Great Britain and Ireland and beyond the seas, and inflicting pains and penalties to be proceeded upon to sentence or judgment in courts-martial." This act was, of course, one to deal with general discipline in the army. Ultimately a much more modified form of discipline was carried into the army act and the delegated power of this kind disappeared.

Perhaps more in line with the historical course of delegated legislation was an act of 1710. In this case, of a plague in the Baltic, Queen Anne had issued a proclamation ordering a quarantine of all ships and persons coming thence, but in order to enforce the proclamation it was necessary to pass an act

providing penalties, since at this date it had come to be held that a proclamation could not and must not in itself create a new offence. In 1710 it had become clearly established that no proclamation must be permitted to create a new offence. Accordingly the act gave the queen power to make new regulations about quarantine, but it defined the powers and stated that she might be able to deal with similar situations in the future in a more expeditious manner than at that time could be done in the ordinary methods of the law. In large measure that act was the parent of modern delegated legislation.

Then we come to the nineteenth and twentieth centuries. One of the earliest of the acts that can be regarded as a reasonably modern act of delegated authority was in 1832. It originated also in the serious outbreak of disease. That act recited in the preamble:

Whereas it has pleased Almighty God to visit the United Kingdom with the Disease called the Cholera or Spasmodic or Indian Cholera: And whereas, with a view to prevent, as far as may be possible, by the Divine Blessing, the spreading of the said Disease, it may be necessary that Rules and Regulations should from Time to Time be established within Cities, Towns, or Districts affected with or which may be threatened by the said Disease; but it may be impossible to establish such Rules and Regulations by the Authority of Parliament with sufficient Promptitude to meet the Exigency of any such Case as it may occur:

Even then, in 1832, it was regarded as necessary that it be declared that there was an emergency which made it impossible for parliament to meet and deal with the subject. Even then it was considered necessary to set out the general scope of the rules which could be enacted in this way. That act became the pattern of subsequent delegated legislation. There was a similar act, the contagious diseases of animals act of 1848, and the vaccination act of 1858, and the act of 1877 against the Colorado beetle.

These are acts which have left upon our statute books corresponding acts today. Those are the kind of acts where delegated authority within a defined field and for a specific purpose has been regarded as acceptable so long as it was administered under rules that stated the purpose with sufficient exactitude. The reform act of 1832 also gave power to appoint certain days and times in substitution for those specified in the act, but even there again you had the recognition that parliament must not give up its authority. That act provided that the substituted days and times should conform with certain established rules.

As the century progressed the practice of delegated authority naturally became more and more frequent. That is inevitable as a result of the complicated machinery of