

in-Council by the War Measures Act. By s.s. 5 of s. 13 of the Military Service Act it is provided that nothing in this Act contained "shall be held to limit or affect the powers of the Governor-in-Council under the War Measures Act of 1914."

The very presence of this sub-section in the Military Service Act, 1917, imported that under the power conferred on the Governor-in-Council by the War Measures Act, orders and regulation might be made, with the validity of which, but for it, some provisions of the Military Service Act might be deemed to interfere. It carries confirmation of the view that the scope of the powers conferred by the War Measures Act was wide enough to embrace matters dealt with by the Military Service Act, and it puts beyond question, in my opinion, the purpose of Parliament to enable the Governor-in-Council, in cases of emergency, as defined, to exercise the powers granted by s. 6 of the War Measures Act, even to the extent of modifying or repealing, at least in part, the Military Service Act itself. The immediate juxtaposition of sub-section 4 to sub-section 5 of section 13, as was pointed out by Mr. Newcombe, served to emphasize the significance of the latter, and make it certain that its purview and operation did not escape the notice of Parliament.

The provision of sub-section 2 of section 6 of the War Measures Act was also relied upon as affording an indication that Parliament did not mean to confer upon the Governor-in-Council power to repeal statutes in whole or in part. Sub-section 2 is probably only declaratory of what would have been the law applicable had it not been so expressed. Parliament, however, thought it necessary to express such powers in regard to its control over its own statute. (Secs. 18 and 19 of the Interpretation Act, R.S.C., c. 1.) I fail to find in the presence of this clause anything warranting a court in cutting down such clear and unambiguous language as is found in the first paragraph of s. 6 of the War Measures Act.

Again it is contended that should s. 6 of the War Measures Act be construed as urged by counsel for the Crown, the powers conferred by it are so wide that they involve serious danger to our parliamentary institutions. With such a matter of policy we are not concerned. The exercise of legislative functions such as those here in question by the Governor-in-Council rather than by Parliament is no doubt something to be avoided as far as possible. But we are living in war times, which necessitate the taking of extraordinary measures. At all events, all we, as a court of justice, are concerned with is to satisfy ourselves what powers Parliament intended to confer, and that it possessed the legislative jurisdiction requisite to confer them. Upon both these points, after giving to them such consideration as has been possible, I entertain no doubt, and, but for the respect which is due to the contrary opinion held by the majority of the learned judges of the Supreme Court of Alberta, I should add that there is, in my opinion, no room for doubt.