

Canadian Commercial Corporation

seeks to exercise power to pass an order in council for which there is no legislative authority.

The phrase which I have already mentioned runs through all five of these orders in council: P.C. 859 of March 2, 1948; P.C. 938 of March 6, 1948; P.C. 1051, of March 16, 1948; P.C. 1101 of March 16, 1948; and P.C. 1186 of March 23, 1948. I may say that all five of them were passed by the governor in council on the recommendation of the Minister of Trade and Commerce who, of course, is the present minister. I believe he assumed that position in the month of January, 1948.

It is possible that a case could be made for the desirability of changing our practice so that advance payments of this nature could be made; but that change has not been made, and the Auditor General has done a service to this parliament, and indeed a service to the government, in calling attention to this irregularity.

May I take just a moment to read a few quotations regarding the exercise of legislative power by the executive branch of the government? I have in my hand a well-known volume dealing with these matters, *Law of the Constitution*, by A. V. Dicey. On pages 50 and 51, and on a few additional pages, this matter is discussed. I find, for example, that in the year 1539, in the reign of Henry VIII, an act was passed giving the crown power to legislate by means of proclamation. Dicey says:

This enactment marks the highest point of legal authority ever reached by the crown, and, probably because of its inconsistency with the whole tenor of English law, was repealed in the reign of Edward the Sixth.

Dicey admits that some difficulties have arisen in modern times, and that probably the executive branch should have a little more authority than we give to it; but whether such is desirable or not, it is not the case. Executive legislative authority simply does not exist. Dicey says, for example:

For the repeal of 31 Henry VIII, rendered governmental legislation, with all its defects and merits, impossible, and left to proclamations only such weight as they might possess at common law.

I submit, Mr. Speaker, that the practice in our parliamentary way of doing things is very clear. The government can do by order in council such things as acts passed by this parliament give them power to do. When they exercise those powers they will get no criticism from me; but when they exercise, by order in council, powers not accorded to them in legislation I intend to raise my voice in protest.

May I read another sentence or two from this work by Dicey, which is found on pages 326 and 327:

The minister or servant of the crown who thus takes part in giving expression to the royal will is legally responsible for the act in which he is concerned, and he cannot get rid of his liability by pleading that he acted in obedience to royal orders. Now supposing that the act done is illegal, the minister concerned in it becomes at once liable to criminal or civil proceedings in a court of law.

I myself will not endeavour to take the minister to court. Rather I am raising the case in this high court of parliament, and I suggest strongly to the government that they should not pass off too lightly the criticisms made by the Auditor General, but that they should be very careful as to the powers they exercise by order in council.

It is not so very long ago, Mr. Speaker, since we had another example of this, in which the same minister was involved. I refer to the Aeronautics Act, and to certain changes which were made in it in 1946. At that time this act had certain provisions in it. Some of us discovered that these provisions had been circumvented. When I asked the minister why, his reply was that it had been done by order in council. When we pressed the point that surely it was not possible to amend an act of this parliament by order in council, another answer was given; but in the end the whole intent of the act of parliament was circumvented by still another means. This was done by the same minister. I repeat, Mr. Speaker, from this group there is no objection to the government using the powers which are accorded to them by legislation, but I submit that they should stay within the legislation passed by this parliament. And while as I indicated at the beginning of my remarks I support the measure before the house and the idea behind the Canadian Commercial Corporation, I hope that those in charge of it will hew a little closer to the line.

Mr. Gordon B. Isnor (Halifax): Mr. Speaker, I rise, not to support the thought expressed by the hon. member for Winnipeg North Centre (Mr. Knowles) in regard to bringing the Minister of Trade and Commerce (Mr. Howe) into court in connection with what the hon. member has termed irregularities with respect to these amounts, but rather to express some of my views in the matter, and to answer from a common-sense point of view the observations made by the hon. member who has just taken his seat.

Mr. Knowles: Answer the Auditor General at the same time.

Mr. Isnor: And in doing so I feel I am making a proper approach to dealing with a