Co-Operative Committee on Japanese Canadians v. Canada (Attorney General)

Between Co-Operative Committee on Japanese Canadians and another, appellants, and Attorney General for Canada and another, respondents

[1946] J.C.J. No. 3

[1947] 1 D.L.R. 577

Judicial Committee of the Privy Council London, England

Viscount Simon, Lord Wright, Lord Porter, Lord Uthwatt and Sir Lyman Duff

Heard: July 16 - 19, 1946. Judgment: December 2, 1946.

The judgment of the Board was delivered by

1 LORD WRIGHT stated the terms of the Orders in Council and the provisions of the relevant legislation as set out above, and said that it was convenient first to deal with the question raised as to the effect of the Naturalization legislation of the Dominion on the topic of the adoption of the British Nationality and Status of Aliens Act. His Lordship continued: The contention of the appellants was that the Parliament of Canada did "adopt" Part II of the Imperial Act in the sense in which that word was used in the Imperial Act, and that in consequence Part II formed part of the law of the United Kingdom extending to the Dominion. The contention of the respondents was that the Canadian Statutes are only parallel legislation. In arriving at a conclusion as to the advice their Lordships think it right to tender to His Majesty they find it unnecessary to express an opinion as to the correctness or otherwise of the contention of the appellants. Their Lordships will assume that the appellants are right in their contention, but they do not express any opinion one way or another on it.

2 There was a considerable diversity of opinion between the members of the Supreme Court on some of the points which fell for decision under the reference. In one important respect at least - the invalidity of sub s. 4 of s. 2 of P.C. 7355 - the views of the majority of the Court were adverse to the respondents. No cross-appeal was lodged. This in the circumstances was only the absence of a formality. A determination on the legal effect of the orders as a whole is necessary to arrive at a conclusion on the matters in respect of which the appellants appealed. The whole matter was fully debated before their Lordships and their Lordships accordingly propose to deal with the orders in their entirety. Their Lordships now turn to the question at issue. On certain general matters of principle

there is not, since the decision in Fort Frances Pulp & Power Co. v. Manitoba Free Press Co., [1923] A.C. 695, any room for dispute. Under the British North America Act property and civil rights in the several Provinces are committed to the Provincial legislatures, but the Parliament of the Dominion in a sufficiently great emergency, such as that arising out of war, has power to deal adequately with that emergency for the safety of the Dominion as a whole. 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. Again, 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 Parliaments of the Dominion and the Parliaments of the Provinces comes into play. But very clear evidence that an emergency has not arisen, or that the emergency no longer exists, is required to justify the judiciary, even though the question is one of ultra vires, in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required. To this may be added as a corollary that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation. Determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers. Lastly, it should be observed that the judiciary are not concerned when considering a question of ultra vires with the question whether the executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of the Dominion either directly or indirectly has made. It is unnecessary, therefore, for their Lordships to take into review or even to recount the particular circumstances obtaining within the Dominion that led to the Orders in question or the arrangements made with a view to their execution.

3 The validity of the War Measures Act was not attacked before their Lordships, and, consistently with the principles stated, was not open to attack. The validity of the orders was challenged on many grounds. Their Lordships have considered not only the points put forward on behalf of the appellants, but whether the orders were susceptible of criticism for reasons not put forward. Their Lordships are satisfied that all possible grounds of criticism were in one form or another included in the grounds on which the appellants relied. For the validity of the orders it is necessary first, that on the true construction of the War Measures Act, they fall within the ambit of the powers duly conferred by the Act on the Governor in Council, second, that, assuming the orders were within the terms of the War Measures Act, they were not for some reason in law invalid. The points taken were, first, that the War Measures Act did not on its true construction authorize orders for deportation to be made as respects British subjects or Canadian nationals, and that it should in certain respects receive a limited construction: second, that if the Act purported on its construction to authorize the making of such orders, yet the orders made would be contrary to the Imperial Statute, British Nationality and Status of Aliens Act, and therefore to that extent invalid: third, that the provision contained in s. 2, sub-s. 4, of P.C. 7355 (relating to the wives and children of persons in respect of whom an order for deportation had been made) was for a specific reason invalid: fourth, that in any event the order made under the National Emergency Transitional Powers Act continuing the former orders of the Governor in Council was invalid.

4 The first point raises questions of construction with which their Lordships must now deal. The language of the War Measures Act is in general terms, but it was argued that certain limitations were as a matter of construction of the Act to be implied and that to the extent to which any order purporting to be made under the Act fell outside its proper ambit, the order would of necessity be

invalid. The first suggested limitation was based on the Colonial Laws Validity Act, 1865. At the date when the War Measures Act came into force legislation made by the Parliament was in its effect subject to the provisions as to repugnancy contained in the Act of 1865, and it was argued that the War Measures Act should be construed as confined in its possible ambit to the making of orders which would, consistently with the Colonial Laws Validity Act, 1865, then be valid as law within the Dominion. If that was so the orders were not authorized by the War Measures Act in so far as they were repugnant to the British Nationality and Status of Aliens Act, 1914-18, which was an Act of the Imperial Parliament and in the appellants' contention extended to the Dominion as part of the law of the United Kingdom. Their Lordships are unable to accept this contention. The effect of the Colonial Laws Validity Act, 1865, was only that Canadian legislation repugnant to the statutory law of the United Kingdom applying to the Dominion was inoperative. The only conclusion to be drawn from a consideration of the Colonial Laws Validity Act is that the War Measures Act did not on its true construction confer a power beyond the extent to which it might at the date of its use be validly exercised. The statutory law of the United Kingdom is not static and, in their Lordships' opinion, there is no justification for the imputation that the Parliament of Canada legislated on the footing that it is static. The effectiveness of legislation of the Parliament of the Dominion at the date when those delegated powers are exercised, not the limitation on that legislation at the date when the War Measure Act was passed, is, so far as the Act of 1865 is concerned, the relevant matter.

5 Secondly, it was argued that, as a matter of construction, the War Measures Act did not authorize the making of orders having an extra-territorial operation. This point was relevant by reason that the orders in question in terms authorized "deportation." This point may be shortly disposed of. Extra-territorial constraint is incident to the exercise of the power of deportation (Attorney General for Canada v. Cain, [1906] A.C. 542), and was, therefore, in contemplation. Any lingering doubts as to the validity in law of an Act which for its effectiveness requires extraterritorial application were, it may be added, set at rest by the Canadian Statute, the Extra-Territorial Act, 1933.

6 Thirdly, it was argued that the War Measures Act should be construed as authorizing only such orders as are consistent with the accepted principles of international law, and that the forcible removal to a foreign country of British subjects was contrary to the accepted rules of international law. The Act therefore as a matter of construction did not, it was said, purport to authorize orders providing for such removal. It may be true that in construing legislation some weight ought, in an appropriate case, to be given to a consideration of the accepted principles of international law (cf. Croft v. Dunphy, [1933] A.C. 158), but the nature of the legislation in any particular case has to be considered in determining to what extent, if at all, it is right on a question of construction of the War Measures Act. The Act is directed to the exercise by the Governor in Council of powers vested in the Parliament of the Dominion at a time when war, invasion, or insurrection or their apprehension exists. The accepted rules of international law applicable in times of peace can hardly have been in contemplation, and the inference cannot be drawn that the Parliament of the Dominion impliedly imposed the limitation suggested.

7 The next question of construction arising under the Act has more substance. It was said that there was inherent in the word "deportation" as part of its meaning the necessity that the person to be deported was - as respects the State exercising the power - an alien. The express power given to expel persons from Canada was therefore limited to aliens, i.e., persons who were not Canadian nationals. It was not permissible to treat as authorized by the general power a power to make orders for deportation in relation to a class of persons impliedly excluded from deportation by the terms of

the specific power. There was therefore an implied prohibition against the deportation of Canadian nationals. On this argument it may be conceded that commonly it is only aliens who are made liable to deportation, and that in consequence, where reference is made to deportation, there is often imported the suggestion that aliens are under immediate consideration. The dictionaries, as might be expected, do not altogether agree as to the meaning of deportation, but the Oxford English Dictionary gives as its definition "The action of carrying away: "forcible removal, especially into exile: transportation." As a matter of language, their Lordships take the view that "deportation" is not a word which is misused when applied to persons not aliens. Whether or not the word "deportation" is in its application to be confined to aliens or not remains therefore open as a matter of construction of the particular statute in which it is found. In the present case the Act is directed to dealing with emergencies; throughout it is in sweeping terms, and the word is found in the combination "arrest, detention, exclusion and deportation." As regards the first three of these words, nationality is obviously not a relevant consideration. The general nature of the Act and the collocation in which the word is found, establish, in their Lordships' view, that in this statute the word "deportation" is used in a general sense and as an action applicable to all persons irrespective of nationality. This being in their Lordships' judgment the true construction of the Act, it must apply to all persons who are at the time subject to the laws of Canada. They may be so subject by the mere fact of being in Canada, whether they are aliens or British subjects or Canadian nationals. Nationality per se is not a relevant consideration. An order relating to deportation would not be unauthorized by reason that it related to Canadian nationals or British subjects. Even if this were not the case, the same result may be reached by another route. The general power given to the Governor in Council in the opening part of s. 3 of the Act is not in this statute limited by reference to the acts particularly enumerated, and their Lordships see no reason for differing from the view expressed by Rinfret C.J. that the order was justifiable under that general power (see King-Emperor v. Sibnath Banerji, (1945), L.R. 72 I.A. 241).

8 There remains one further question of construction of The War Measures Act, namely, whether it authorized the making of an order which provided that deported persons should cease to be either British subjects or Canadian nationals. That matter must be considered in the light of views which their Lordships have already expressed as to the construction of the Act. They see no reason for excluding from the scope of the matters covered by the general power contained in s. 3 a power to take from persons who have in fact under an order for deportation left Canada their status under the law of Canada as British subjects and Canadian nationals.

9 The result is that on its true construction the War Measures Act authorized the making of orders for deportation of any person whatever be his nationality, and the deprivation, so far as the law of Canada was concerned, of his status under that law as a British subject or Canadian national.

10 The next question is whether The Colonial Laws Validity Act, 1865, applies to the orders of the Governor in Council. If it does, then in so far as they are repugnant to the British Nationality and Status of Aliens Act (which their Lordships are assuming to be an Act of the Imperial Parliament extending to Canada) they are invalid unless the provisions of the Statute of Westminster can be relied on. The contention of the appellants was that the orders, though law made after the date of the Statute of Westminster, were not law made after that date by the Parliament of the Dominion. The activities of Parliament in the matter in question had, it was said, ceased in 1927. The orders were not of its making. The passing by the Parliament of the National Emergency Transitional Powers Act, 1945, was, for the purpose in hand, immaterial, for the reason that s. 4 empowered the Governor in Council to order the continuance only of orders and regulations "lawfully" made under

the War Measures Act. Their Lordships agree that in considering this particular matter the National Emergency Transitional Powers Act, 1945, cannot be prayed in aid of the validity of the orders, but in their opinion the orders in question were made "after the passing of this Act [i.e., the Statute of Westminster] by the Parliament of the Dominion" as that phrase is used in the Statute of Westminster. This, again, is a question of construction. Both in sub-ss. 1 and 2 of s. 2 of the Statute of Westminster the matter which is dealt with is "law," and that is a general term which includes not only statutes but also orders and regulations made under statutes. Undoubtedly, the law as embodied in an order or regulation is made at the date when the power conferred by the Parliament of the Dominion is exercised. Is it made after that date by the Parliament of the Dominion? That Parliament is the only legislative authority for the Dominion as a whole and it has chosen to make the law through machinery set up and continued by it for that purpose. The Governor in Council has no independent status as a law-making body. The legislative activity of Parliament is still present at the time when the orders are made, and these orders are "law." In their Lordships' opinion they are law made by the Parliament at the date of their promulgation. A contrary conclusion would, in their Lordships' view, place an artificial and narrow construction on wide terms used in an Act of Parliament the subject-matter of which demands that a liberal construction should be put on the language used. In the result, therefore, the Colonial Laws Validity Act, 1865, affords no ground for questioning the validity of the orders.

11 The next matter arises on sub-s. (4) of s. 2 of P.C. 7355. Under that provision an order for deportation may be made as respects the wives and children (not over the age of sixteen years) of persons with respect to whom an order for deportation has been made. The case sought to be made runs as follows: The recitals in the order relate only to the desirability of making provision for the deportation of persons referred to in sub-ss. 1, 2 and 3 of s. 2 of the order. In the case of the classes of persons referred to in sub-ss 1, 2 and 3 (leaving aside detainees) request for repatriation was at some stage necessary; a request was considered by the Governor in Council to be a substantive matter, but no such request is required as respects the persons mentioned in sub-s. 4, and the only apparent reason for subjecting them to liability for deportation is that an order for deportation has been made as respects the husband or father. The order, therefore, not only does not show that by reason of the existence of real or apprehended war it was thought necessary for the security, peace, order, defence or welfare of Canada to make provision for their deportation but, when considered in substance, shows that these matters were not taken into consideration. A deportation of the family consequential on the deportation of the father might, indeed, be thought desirable on grounds other than those requisite for a due execution of the powers given and, it is contended, it is apparent that it is grounds not set out in the statute which alone have here been taken into consideration. The incompleteness of the recital is, in their Lordships' view, of no moment. It is the substance of the matter that has to be considered. Their Lordships do not doubt the proposition that an exercise of the power for an unauthorized purpose would be invalid, and the only question is whether there is apparent any matter which justifies the judiciary in coming to the conclusion that the power was in fact exercised for an unauthorized purpose. In their Lordships' opinion there is not. The first three sub-sections of s. 2 no doubt deal with the matter which primarily engaged the attention of the Governor in Council, but it is not in their Lordships' view a proper inference from the terms of those subsections that the Governor in Council did not also deem it necessary or advisable for the security, defence, peace, order and welfare of Canada that the wives and children under sixteen of deportees should against their will also be liable to deportation. The making of a deportation order as respects the husband or father might create a situation with which, with a view to forwarding this specified purpose, it was proper to deal. Beyond that it is not necessary to go.

12 The last matter of substance arises on the National Emergency Transitional Powers Act, 1946. It was contended by the appellants that at the date of the passing of this Act there did not exist any such emergency as justified the Parliament of Canada in empowering the Governor in Council to continue the orders in question. The emergency which had dictated their making - namely, active hostilities - had come to an end. A new emergency justifying exceptional measures may, indeed, have arisen, but it was by no means the case that measures taken to deal with the emergency which led to the Proclamation bringing the War Measures Act into force were demanded by the emergency which faced the Parliament of Canada when passing the Transitional Act. The order under the Act continuing the orders in question was therefore prima facie invalid. This contention found no favour in the Supreme Court of Canada, and their Lordships do not accept it. The preamble to the Transitional Act states clearly the view of the Parliament of the Dominion as to the necessity of imposing the powers which were exercised. The argument under consideration invites their Lordships, on speculative grounds alone, to overrule either the considered decision of Parliament to confer the powers or the decision of the Governor in Council to exercise them. So to do would be contrary to the principles laid down in Fort Frances Pulp & Power Co. v. Manitoba Free Press Co., [1923] A.C. 695 and accepted by their Lordships earlier in this opinion.

13 One remaining matter relied on by the appellants should be mentioned. First it was said that the words "of the Japanese race" were so vague as to be incapable of application to ascertained persons. It is sufficient to say that in their Lordships' opinion they are not. All that can be said is that questions may arise as to the true construction of the phrase and as to its applicability to any particular person, but difficulties of construction do not affect the validity of the Orders.

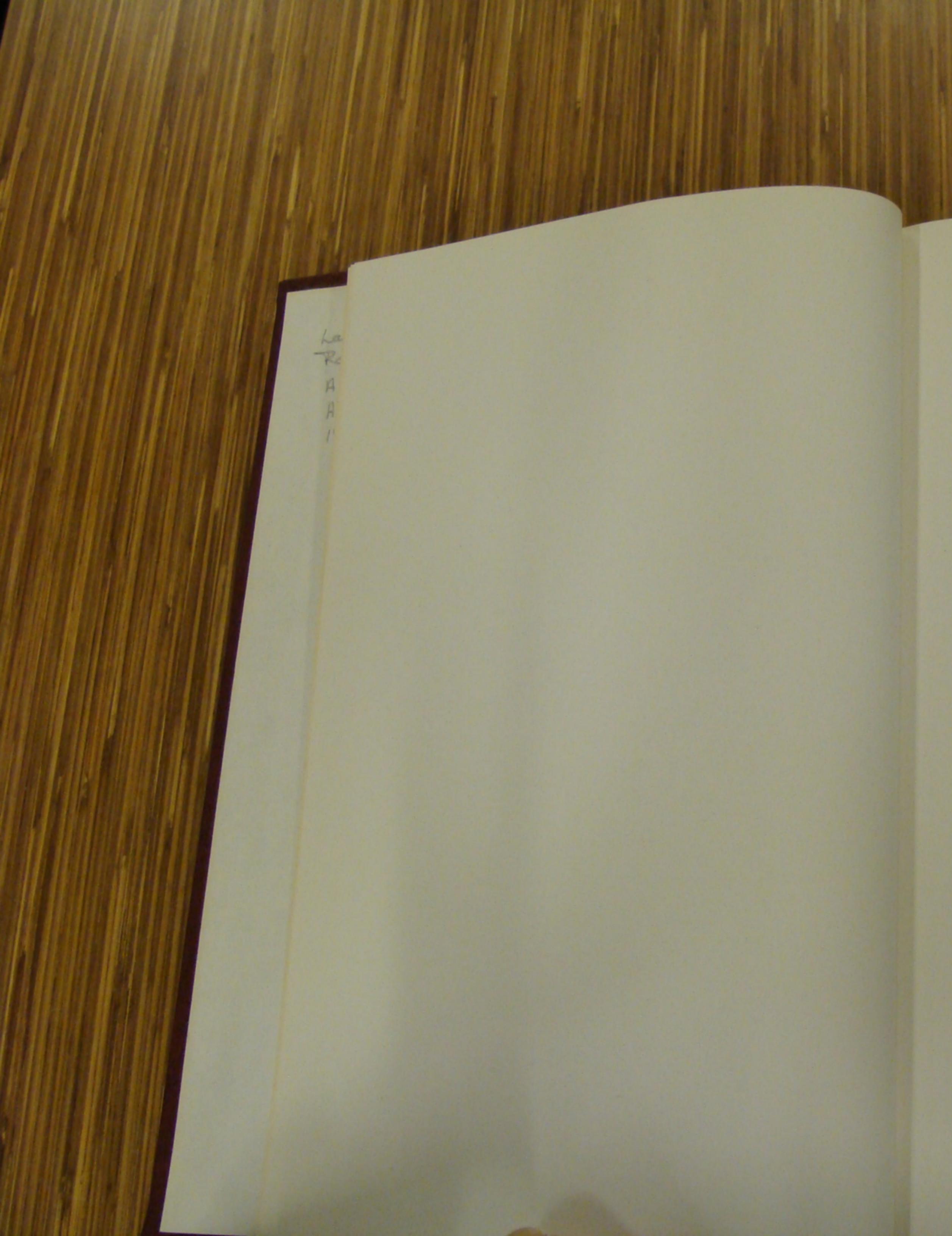
14 In the result, their Lordships find themselves in agreement with the conclusion at which Rinfret C.J. and Kerwin and Taschereau JJ. arrived, and for the reasons they have expressed will humbly advise His Majesty that none of the Orders in Council is in any respect ultra vires and that the appeal should be dismissed. There will be no order as to costs.

Solicitors for both appellants: Lawrence Jones & Co.

Solicitors for Attorney General for Canada: Charles Russell & Co.

Solicitors for Attorney General for British Columbia: Gard, Lyell & Co.





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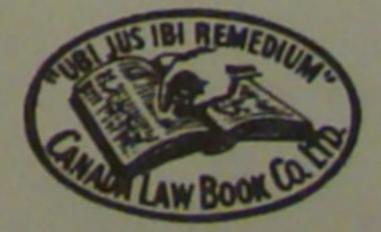
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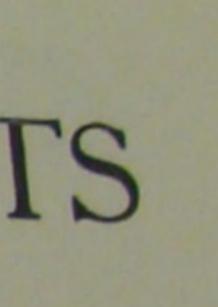
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Can. ----Ex. Ct. ----J. F. M. STEWART & Co.

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-----O'Connor J.

s. 19A.

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Then on the redemption of the shares a tax of 4% is imposed to the extent that the redeemable shares represent the undistributed income.

There must be an issue of redeemable shares in the transaction to come within the section. In this case, however, an issue of no-par common shares was given in consideration of the assets, and the vendor company was then wound up. Eight years later some of the no-par common shares were converted into redeemable preference shares and these were subsequently redeemed.

DOMINION LAW REPORTS. [[1947] 1 D.L.R.

cellation of the 650 no-par common shares does not come within

Clearly in this transaction it was an issue of common shares Clearly in a company that incorporated the undistributed Can. of the Ontario company. The conversion of some of the income into redeemable shares eight years after the of the income of the redeemable shares eight years after the Ontario Ex. Ct. common had been wound up, did not incorporate the Ontario company income of the Ontario company because that undis--J. F. M. company had been done of the Ontario company because that had altributed done eight years before. STEWABT & Co. eady been done of the section does not, in my opinion, reach MINISTER OF NAT'L this transaction. REVENUE. For the reasons given the assessment appealed from with costs, O'Connor J. For the result that the assessment appealed from will be set aside.

CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS et al. V. ATTORNEY-GENERAL OF CANADA et al.

Judicial Committee of the Privy Council, Viscount Simon, Lords Wright, Porter, Uthwatt and Sir Lyman P. Duff. December 2, 1946.

1945 and passed under the War Measures Act, R.S.C. 1927, c. 206 (and continued in effect under the authority of s. 4 of the Na-(and continued Transitional Powers Act, 1945 (Can.), c. 25), tional Emergency for: provide respectively for: (1) The deportation to Japan of (a) Japanese nationals resident in Canada who have since December 8, 1941, made requests for repatriation or who were detained, under special authority, as at midnight of September 1, 1945; (b) naturalized British subjects of the Japanese race resident in Canada who have made requests for repatriation not revoked in writing prior to midnight September 1, 1945; (c) natural born British subjects of the Japanese race who have made requests for repatriation not revoked in writing prior to the making of a deportation order; and (d) the wives and children under 16 years of age of persons in any of the above classes (by their inclusion in any order of deportation of such persons); (2) the loss of status of a British subject or of a Canadian national, as of the date on which he leaves Canada, by any deported person who was naturalized under the Naturalization Act, R.S.C. 1927, c. 138; and (3) the inquiry by a commission into the activities of Japanese nationals and naturalized persons of the Japanese race in Canada with a view to recommending whether they should be deported. Held, the three Orders are valid in toto. They fall within the ambit of authority conferred by the War Measures Act which must be deemed to have contemplated extra-territorial constraint in relation to deportation. Further, the Act, both in the general power granted by the opening 37-[1947] 1 D.L.B.

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Appeal allowed

Aliens I-War II F-Constitutional Law I-Orders providing for deportation of Japanese and for denaturalization-Classes of Japanese affected-Validity of Orders under War Measures Act (Can.)-Colonial Laws Validity Act (Imp.)-Statute of Westminster (Imp.)-

Orders in Council P.C. 7355, 7356 and 7357, dated December 15,

Imp. -----P.C.

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Imp. -P.C. ----CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS 17. A.-G. CAN.

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part of s. 3 and in the specific reference to "deportation", part of s. 3 and in the spectral of Orders for the deportation" in a g(b) authorizes the making of Orders for the law of Canad. of 3(b) not other than aliens. And so far as the law of Canad. of part of S. of the making And so far as the law of Canadian a. 3(b) authorizes the making And so far as the law of Canadian a. persons other than aliens. And so far as the law of Canada of Canada of Canada of Canada and Canada of Canada and Ca 3(b) authorized than allens. A second of a deported person's of Canada of persons other than allens. deprivation of a deported person's Canada of concerned, it authorizes deprivation national. The Colonial is concerned, it subject or Canadian national. The Colonial is status persons other it authorizes deprived in national. The Colonia status concerned, it authorizes or Canadian national. The Colonia status as a British subject or Canadian national. The Colonia status as a British subject or Canadian national. The Colonia status as a British subject or Canadian national. The Colonia status as a British subject or Canadian national. The Colonia status as a British subject or Canadian national. The Colonia status as a British subject or Canadian national to render to render to the extent of their repugnancy to the status concerned, it subject of Cannot be invoked to colonial status as a British subject (Imp.), c. 63 cannot be invoked to render Laws Validity Act, 1865 (Imp.), c. 63 cannot be invoked to render Laws Validity Act, 1865 (Imp.), c. 63 cannot be invoked to render the as a British 565 (Imp.), c. of their repugnancy to render Laws Validity Act, 1865 (Imp.), c. 1865 the extent of their repugnancy to the British Orders invalid to the extent of Aliens Act, 1914 (Imp.), c. 17, (assume Nationality and Status of Aliens Act extending to Canada) because Nationality be an Imperial Act extending of the Statute of The British Orders invalid and Status of Act extending to Canada), c. 17, (assume the Nationality and Imperial Act extending of the Statute of Westmin. ing it to be an Imperial Act and are covered by s. 2 the Westmin the Nationality of Imperial Act assing of the Statute of Westman. ing it to be an Imperial the passing of the Statute of Westmanse the Orders were made after the passing of the Statute of Westminster Orders were made after the passing of the Statute of Westminster ing it to be made after the part of westminster. We stminster the Orders were made after the War Measures Act on which thereof, and it 1931, 1931-32 (Imp.), c. 4, and are covered by s. 2 thereof, and it is noterial that the War Measures of Westminster. No Orders were (Imp.), c. 4, and Measures Act on which they are of, and it 1931, 1931-32 (Imp.), the War Measures Act on which they are based it is immaterial that the Statute of Westminster. No are based 1931, 1931 that the war include of Westminster. No are based is immaterial that the Statute of Westminster. No attack based was enacted before the Orders in so far as they provide for the can was enacted before the orders in so far as they provide for attack can be made upon the Orders and children of a person liable to deportant dewas ende upon the Orders children of a person liable to deportation of the wife and children of a person liable to deportation

Constitutional Law II - Dominion "emergency" power - Position of indiciary-

Under the B.N.A. Act legislative power in relation to rights in Under the B.N.A. Act and the provincial Legislatures in the several provinces is committed to the provincial Legislatures. the several provinces is Canada in a sufficiently great emergency. but the Parliament of Canada in a sufficiently great emergency. but the Parliament of war has power to deal adequately emergency such as that arising out of war has power to deal adequately with such as that arising out of the safety of the Dominion as a whole, that emergency for the Dominion are to be protected and it rest. that emergency for the Dominion are to be protected and it rests whole. The interests of the Dominion to protect them. What there with The interests of the Dominion to protect them. What those with the Parliament of the Dominion must be left the Parliament of the Dominion must be left with terests are the freedom to judge. considerable freedom to judge.

If it be clear that an emergency has not arisen or no longer If it be clear that an justification for the exercise or continued exists, there can be no justification for the rule of law as induced exists, there can be no particulated powers. The rule of law as to the exercise of the exceptional powers between the Parliaments of the Down the exercise of the exception between the Parliaments of the Dominion distribution of powers between the Provinces comes into play. But distribution of powers of the Provinces comes into play. But very and the Legislatures of the emergency has not arisen or the very and the Legislatures on emergency has not arisen or that very clear evidence that an emergency has not arisen or that the clear evidence that and emergency no longer exists is required to justify the judiciary, emergency no longer exists one of ultra vires, in overrulin emergency no longer is one of ultra vires, in overruling the even though the Question is one of ultra vires, in overruling the even though the Queen of the Dominion that exceptional meas-decision of the Parliament of the Dominion that exceptional measdecision of the rannal meas. ures were required or were still required. It is not for the juures were required the wisdom or propriety of the particular bu-diciary to consider the wisdom or propriety of the particular Dolicy diciary to consider the legislation. Nor are the judiciary policy embodied in emergency legislation of ultra vires with the conembodied in charge a question of ultra vires, with the question whether the executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of Canada has directly or indirectly (by Order in Council) made.

Cases Judicially Noted: Fort Frances P. & P. Co. v. Manitoba Free Press, [1923], 3 D.L.R. 629, A.C. 695, 25 O.W.N. 60, refd to.

Constitutional Law I-Dominion Orders or Regulations repugnant to British legislation applicable to Canada-Colonial Laws Validity Act (Imp.)-Statute of Westminster (Imp.)-

Section 2 of the Statute of Westminster, 1931, 1931-32 (Imp.), c. 4, which frees the exercise of legislative power by the Parliament of Canada from the strictures of the Colonial Laws Validity Act, 1865 (Imp.), c. 63, covers not only statutes but orders and regulations made in pursuance of statutes, and such orders and regulations are, for the purpose of s. 2 aforesaid, "law" made by the Parliament at the date of their promulgation.

DOMINION LAW REPORTS. [[1947] 1 D.L.R.

EDITORIAL NOTE: One could cavil at the rather careless refer-EDITOR case that "under the B.N.A. Act property and civil rights ence in this canonices are committed to the provincial Legislatures", in the several the property have been said that "legislatures", whereas it should properly have been said that "legislatures", whereas it is given to the provincial Legislative power in relation to" etc., is given to the provincial Legislatures. But this in relation to ignored in light of the Judicial Committee's But this detail may be ignored in light of the Judicial Committee's inexplicable detail may be nemergency" language of the Fort Frances [[1923], relapse into the "emergency" language of the Fort Frances [[1923], elapse into the [1923], elapse into the face of the startling volte face of the prances [[1923], D.L.R. 629, A.C. 695, 25 O.W.N. 60] and Snider [[1925], 2 D.L.R. D.L.R. 625, D.L.R. 625, 2 D.L.R. A.C. 396] cases after its rather startling volte face on emergency in A.C. 396] cases after its rather startling volte face on emergency in 5, A.C. 396] Temperance Federation case, [1946], 2 D.L.R. 1, A.C. 193, the Canada Temperance Such vacillation, without explanation in A.C. 193, the Canada C.C. 225. Such vacillation, without explanation, in a Court 85 Can. C.C. 225. Such vacillation, without explanation, in a Court 85 Can. C.C. indicates a want of appreciation of the important of the impo having includes a want of appreciation of the important stake a federal state, have in understanding what scope for legislation rethat Canadian constitutional Legislatures respectively. It reflects a sides in the about constitutional power in Canada that is the more casualness because exhibited by a tribunal, the membership of which, irritating becaking, does not have to live with the results of its own pronouncements. In reverting to the "emergency" doctrine as of old, the Judicial

Committee has added something which appears to be new. It speaks committee "very clear evidence that an emergency has not arisen of requiring the decision of the Parliament of the Dominion that exceptional measures were required". Shades of the Dominion Commerce case! [60 D.L.R. 513, [1922] 1 A.C. 191]. It may be too much to hope, however, that this self-denying attitude to "emerbe too indication carries with it any promise of enlargement of the categories of emergency beyond the single instance of war.

[1947] 1 D.L.R.] DOMINION LAW REPORTS.

Constitutional Law I-Vague words in Order in Council-Effect on

The validity of an Order in Council (and, semble, of a statute) The validity by the fact that some of its terms, c.g. the statute) is not affected by the fact that some of its terms, c.g. the phrase is not affected by the may give rise to difficulties of construction Co-operative rol meaning and application to any particular person.

as to mean of legislation conferring "war" powers Principles of international law not relevant_ In construing legislation such as the War Measures Act, R.S.C.

In construints weight is to be given to the accepted principles of 1927, c. 206, no weight is indicating any limitation on the power of 1927, c. 206, no as indicating any limitation on the powers con-international law as indicating any limitation on the powers conferred by the legislation.

ferred by Considered: Orders in Council P.C. 7355 ([1945] 4 S.O.R. Statutes ([1945] 4 S.O.R. 368); 7357 ([1945] 4 S.O.R. 2000 Statutes ([1945] Statutes ([1945] 4 S.O.R. 2000 Statutes ([1945] Statute Statutes ([1945] 4 S.O.R. 368); 7357 ([1945] 4 S.O.R. (1945] 4 S.O.R. 365); 7356 ([1945], C. 206; National Emergency Trans. War 365); 7356 ([15], R.S.C. 1927, c. 206; National Emergency Transitional Measures Act, 1945 (Can.), c. 25; British Nationality and Status of Innal

Measures Act, 1945 (Can.), c. 25; British Nationality and Status of Aliens Newers Act, 1945 (Can.), c. 17; Colonial Laws Validity Act, 1865 (Imp.), c. 1914 (Imp.), c. 17; Colonial Laws Validity Act, 1865 (Imp.), c. Act, statute of Westminster, 1931, 1931-32 (Imp.), c. 4. Act, 1914 (Imp.), c. 4. 63; Statute of Westminster, 1931, 1931-32 (Imp.), c. 4.

APPEAL from a judgment of the Supreme Court of Canada, [1946] 3 D.L.R. 321, on a reference as to the validity of certain Orders in Council providing for the deportation of certain classes of Japanese persons resident in Canada. Affirmed.

Hugh E. O'Donnell, K.C., Frank Gahan and W. R. Jackett. for A.-G. Can.; Hon. R. L. Maitland, K.C., Attorney-General of British Columbia; F. A. Brewin and C. Shawcross, for Co-operative Committee on Japanese Canadians.

The judgment of their Lordships was delivered by

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COMMITTEE NO JAPANESE

CANADIANS A.-G. CAN.

-----Lord Wright.



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LORD WRIGHT:-These are appeals by special leave brought LORD WRIGHT: Committee on Japanese Canadians and the by the Co-operative Committee on from the opinion certie, the by the Co-operative Comments and the by the Co-operative Comments and the Attorney-General of Saskatchewan from the opinion certified on Attorney-General of Saskatchewan from the Court of Canada [[1040 on P.C. Attorney-General of Saskutcher Court of Canada [[1946] on Attorney 20, 1946, by the Supreme Court of Canada [[1946] 3 CONSITTEE D.L.R. 321] upon a reference ordered by the Governor-General CONSITTEE D.L.R. 321] upon a reference for hearing and CO-OPERITE D.L.R. 321] upon a referred for hearing and consideration 1927 ON JAPANESE CANADIANS CANADIANS

A.G. CAN. as follows: s follows: "Are the Orders-in-Council dated the 15th December, 1945

A.G. CAN. "Are the Orders-In Control ultra vires of the Governor-in-Count Lord Wright. being P.C. 7355, 7356, 7357 ultra vires of in what particul being P.C. 7355, 7355, 7356, 76577, 76577, 7657, 7657, 7657, 7657, 7657, 7657, 7657, 7657, particulars, and to what extent?" particulars, and to under in Council which it is sought to The recitals to the Orders in Council which it is sought to impeach show that they purport to have been made under the impeach show that the War Measures Act. That Act was first

impeach show that they measures Act. That Act was first passed authority of the War Measures Act. That Act was first passed authority of the france of Canada in 1914 and is now c. 206 of the by the Parliament of Canada 1927. Section 2 provides of the by the Parliament of Canada 1927. Section 2 provides that the Revised Statutes of Canada 1927. Section 2 provides that the Revised Statutes of one by His Majesty or under the authority issue of a proclamation by His Malesty or under the authority issue of a proclamation of shall be conclusive evidence authority of the Governor-in-Council shall or apprehended exist of the Governormic of the insurrection real or apprehended exists and of war, invasion or insurrection real of a further proclam of of war, invasion of and of its continuance until by the issue of a further proclamation it its continuance until by the issue of a further proclamation it its continuance until invasion or insurrection no longer exists. is declared that they called for by this section was duly made. The proclamation first called for by this section was duly made The proclamation that the war no longer existed has been made.

The relevant sections of this Act are as follows:

The relevant sector in Council may do and authorize such acts and things and make from time to time such orders and reguand things and may by reason of the existence of real or appre-lations, as he may by reason of the existence of real or apprelations, as no may or insurrection deem necessary or advis. able for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:-

"(a) Censorship and the control and suppression of publica. tions, writings, maps, plans, photographs, communications and means of communication;

"(b) Arrest, detention, exclusion and deportation;

"(c) Control of the harbours, ports and territorial waters of Canada and the movements of vessels; "(d) Transportation by land, air, or water and the control

of the transport of persons and things;

DOMINION LAW REPORTS. [[1947] 1 D.L.R.

manufacture; have the force of law."

otherwise;

The first Order (s. 2, (1), (2), (3) and (4)) then authorizes the Minister of Labour to make orders for deportation "to Japan'' of the following persons.

(1) Every person of 16 years of age or over, other than a Can-(1) Determinational, who is a national of Japan resident in Canada adian national, who is a national of Japan resident in Canada adian match and since December 8, 1941 (the date of the declara-and who, had since December 8, 1941 (the date of the declaraand who, a declara-tion of war by the Dominion against Japan) made a request for repatriation or who had been detained under certain regulations and was so detained on September 1, 1945.

(2) Every naturalized British subject of the Japanese race of 16 years of age or over resident in Canada who had made request for repatriation provided that such request had not been revoked in writing before midnight on September 1, 1945.

(3) Natural born British subjects of the Japanese race of 16 vears of age or over resident in Canada, who made a request for repatriation and did not revoke it in writing before the Minister had made an Order for "deportation." Subsection (4) of s. 2 provided as follows:

(4) The wife and children under sixteen years of age of any person for whom the Minister makes an order for deportation to

[1947] 1 D.L.R.] DOMINION LAW REPORTS. $(19^{419}, 19^{419})$ Trading, exportation, importation, production and

anufacture; anufacture; anufacture; anufacture; anufacture; anufacture; anufacture; and disposition of anufacture; and of the use thereof. property and of the use thereof.

roperty all orders and regulations made under this section shall COMMITTEE

ave the provisions of the three sections last preceding shall JAPANESE ...6. The provisions war, invasion or insurrection shall CANADIANS ...6. The provide during war, invasion or insurrection, real or A.G. CANADIANS only be in force during war, invasion or insurrection, real or A.G. CAN.

945. The preamble to the first Order (P.C. 7355 [[1945] 4 S.O.R. 365]) contains the following recitals:

65]) contains during the course of the war with Japan certain Japanese nationals manifested their sympathy with or support Japanese having making requests for repatriation to Japan and of Japan

herwise; ... And whereas other persons of the Japanese race have requested or may request that they be sent to Japanese

"And whereas it is deemed desirable that provisions be made to deport the classes of persons referred to above;

· And whereas it is considered necessary by reason of the war, for the security, defence, peace, order and welfare of Canada, that provision be made accordingly."

CO-OPERATIVE JAPANESE.

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P.C.

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Japan may be included in such order and deported with such pan may be pan may be erson." The remaining provisions of this Order are of an ancillary of The remaining nature. (R.C. 7356 [[1945] 4 SOR person."

CO-OFERATIVE administrative nature. P.C. The remains nature. CO-OFERATIVE administrative nature. CO-OFERATIVE administr JAPANESE JAPANESE CANADIANS W. A.G.CAN. A.G.CAN. JAPANESE Under the Naturalization under the provisions of P.C. 7355, who is de. ported from Canada under the provisions of P.C. 7355, shall as and from the date upon which he leaves Canada in the course as and from the date upon which he leaves Canada in the course A.G. CAN. as and from the date upon to be either a British subject of such deportation, cease to be either a British subject or a Lord Wright of such deportational. Canadian national. anadian national. anadian national. The third Order (P.C. 7357 [[1945] 4 S.O.R. 369]) provides The third Order of a Commission to make inquiry con-

The third Order (11.0. commission to make inquiry provides for the appointment of a Commission to make inquiry concern. ing the activities, loyalties and extent of co-operation with the ing the activities, loyand during the war, of Japanese nationals Government of Canada during the Japanese race in cases Government of Canada of the Japanese race in cases hationals and naturalized persons of the Commission by the Miniand naturalized person to the Commission by the Minister where their names are referred to the view to recommendation with a v their names are released with a view to recommendation whether of Labour for investigations of any such case, such persons at whether Labour for investigation of any such case, such persons should be in the circumstances of any such case, such persons should be in the circumstances was also at the request of the be deported. The Commission was also at the request of the Min. deported. The Communication of the Min. ister of Labour to inquire into the case of any naturalized Brit. ister of Labour to inquine race who had made a request Brit. ish subject of the Japanese race who had made a request Brit. ish subject of the only recommendations. It was then provided repatriation, and make recommendations. It was then provided repatriation, and internation approves and the provided that any person of the Japanese race who was recommended by that any person for deportation, should be deemed to be that any person of the portation, should be deemed to be a by the Commission for deportation under the provisions of P.C. 7255 Per. the Commission for under the provisions of P.C. 7355, and son subject to deportation which he left Canada in the son subject to depoint on which he left Canada in the course of as and from the date upon which he left Canada in the course of as and from the date of deportation, he should cease to be either a British subject or a Canadian national.

nadian national. There is one further Act of the Parliament of the Dominion There is one further to refer — the National E to which it is necessary to refer — the National Emergency to which it is necessary dct 1945 (Can.), c. 25. This Art to which it is nevers Act, 1945 (Can.), c. 25. This Act was as. Transitional Powers 18, 1945. It was to come interview as as. sented to on December 18, 1945. It was to come into force on sented to on Dece on and and after that day the war against Germany and Japan was for the purposes of the War Measures Act to be deemed no longer to exist. The Act was to continue in force until December 31, 1946, or if Parliament were not then sitting until a date determined by the sitting of Parliament. The Act recites the War Measures Act and the continuance of a national emergency arising out of the war since the un.

conditional surrender of Germany and Japan, and the neces. sity that the Governor in Council should exercise certain transitional powers during the continuation of the exceptional conditions brought about by the war and the necessity that certain acts and things done and authorized, and certain orders and

DOMINION LAW REPORTS. [[1947] 1 D.L.R.

[1947] 1 D.L.R.] DOMINION LAW REPORTS. (1947) 5 regulations made under the War Measures Act be continued in Imp. regulations made it was essential that the Governor in Council in force and to do and authorize such further acts, and be regulation and that he and authorize such further acts, and make force and to do and authorize such further acts, and make authorized to orders and regulations as he might deep force and to do us and regulations as he might deem make P.C. authorized for orders and regulations as he might deem neces. Co-openative such further advisable by reason of the emergency and for the DUR CONTRACTIVE auth further of discontinuance in an orderly manner as the emergency of discontinuance adopted during and h such or advisable by sary or advisable in an orderly manner as the emergency Committee sary of discontinuance in an orderly manner as the emergency ON pose of measures adopted during and by reason of the emer. sary of discontinues adopted during and by reason of the emer. CANADIANS

ency. By S. 2 of the Act the Governor in Council was given power A.G.C. A.-G. CAN By S. 2 of the regulations as he might, by reason of the Lord Wright. to make ordered existence of the national emergency, arising out of the continued existence of the national Japan, deem necessary out of to the war against Germany and Japan, deem necessary or advisthe war again purposes set out therein. Those purposes do able for certain purposes set out therein. Those purposes do able for certainest, detention, deportation, or exclusion but do not include under s-s. (e) "continuing or discontinuing in an order-include under as the emergency permits, measures adout 1 include under the emergency permits, measures adopted during in an order-ly manner, as the war." Subsection (3) of a 2 measures ly manner, as of the war." Subsection (3) of s. 2 provides for and by reason of the mar." Subsection (3) of s. 2 provides for and by reason of the Council passed under the Act, being laid before every out and being annulled upon resolution of the Council before every Order and being annulled upon resolution of the Senate or Parliament and Commons. Section 4 provides as follows and foll Parliament of Commons. Section 4 provides as follows: "Withthe House of any other power conferred by this Act, the out prejudice to any order that the orders and out prejudiced out of the Mar Measures Act on regulations Governor made under the War Measures Act or pursuant to lawfully made under the said Act in force in the lawfully meeted under the said Act in force immediately beauthority day this Act comes into force shall, while this Act is in fore the day this full force and effect subject t force, continue in full force and effect subject to amendment or revocation under this Act."

On December 28, 1945 the Governor in Council passed Order in Council P.C. 7414 [[1946] S.O.R. 5], pursuant to s. 4 of the in Council Emergency Transitional Powers Act, providing that National Emergency and lawfully made and reviding that National National Negulations lawfully made under the War Meas-all Orders and Regulations to authority greated and the War Measall order or pursuant to authority created under the said Act in force immediately before the day the National Emergency In Intergency Transitional Powers Act, should come into force, should, while the latter Act is in force, continue in full force and effect subject to amendment or revocation under the latter Act. The result of this legislation is that the Orders in Council are now in force, if at all, by virtue of the National Emergency Transitional Powers Act. In connection with the question raised by this case, three Acts of the Imperial Parliament are relevant. The first of these is the Colonial Laws Validity Act, 1865

(Imp.), c. 63.

Sections 2 and 3 of that Act run as follows:

"2. Any colonial law which is or shall be in any respect re-

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DOMINION LAW REPORTS. [[1947] 1 D.L.R. pugnant to the provisions of any Act of Parliament extending pugnant to which such law may relate, or repugnant extending pugnant to the provisions have may relate, or repugnant extending to the colony to which such law may relate, or repugnant extending order or regulation made under authority of such Act of any order or regulation in the colony the force and effect of any part P.C. order or regulation made order or regulation made order or regulation made order or regulation and of such Act, order, or regulation and of par. CO-OFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony, but not otherwise and all to any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony, but not otherwise and all to any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony, but not otherwise and all to any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the colony the force and effect of such any co-oFERATIVE liament, or having in the co-oFERATIVE liament and all the force and effect of such any co-oFERATIVE liament and subject to such any co-oFERATIVE liament and all the force and effect of such any co-oFERATIVE liament and all the force and the force and effect of such any co-oFERATIVE liament and the force and CO-OPERATIVE liament, or having in the such Act, order, or regulation, and such and such and inoperative O-OPERATIVE Hamen be read subject to but not otherwise, and such Act, ON MITTEE shall be read subject to but not otherwise, and Act, ON to the extent of such repugnancy, but not otherwise, be and shall, JAPANESE to the extent of such repugnancy. be deemed to be and he CANADIANS main absolutely void and inoperative.

A.G.CAN. Lord Wright or inoperative on the ground is the same shall be repugnant to the law of Eng. some such Act of Parliament, order, or regulation as aforesaid of some such Act of Parliament, of Westminster, 1932 (Can) and, under Act of Parliament, of Westminster, 1932 (Can.) as aforesaid. some such Act of Parliament, of Westminster, 1932 (Can.), 1932 (Can.), 1932 (Can.), 1932 (Can.), 1932 (Can.), 1932 (Can.), 1933 aforesaid. The second is the year 1931 which was duly adopted by the Parlia. passed in the year 1931 which was duly adopted by the Parlia. ment of Canada. Section 2 of that Act is in the following terms: ment of Canada. Section 2 of that Act, 1865, shall not terms: assed in the following terms in the following terms: ment of Canada. Section 2 of third field is in the following terms: "2(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the to any law made after the commencement of this by the Parliament of a Dominion. arliament of a Dominic of a provision of any law made after the (2) No law and no provision of any law made after the (2) No law and this Act by the Parliament of a Dominic the

"(2) No law and not he parliament of a Dominion commencement of this Act by the Parliament of a Dominion commencement or inoperative on the ground that it is repu commencement of this on the ground that it is repugnant shall be void or inoperative on the provisions of any eviction shall be void of monthly or to the provisions of any existing or to the law of England, or to the United Kingdom, or the of Parliament of the United Kingdom, or the or to the law of England, of the United Kingdom, or to any future Act of Parliament of the United Kingdom, or to any future Act of Failland made under any such Act, or to any order, rule or regulation made Dominion shall include the order, rule or regulation of a Dominion shall include the and the powers of the Parliament of a Act, order, rule or regulation powers of the Farmanne power such Act, order, rule or regulation in to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion." far as the same is per and Status of Aliens The third Act is the British Nationality and Status of Aliens

The third Act is that I of that Act relates to Maliens Act, 1914 (Imp.), c. 17. Part I of that Act relates to Natural Act, 1914 (Subjects Part II relates to the Naturalian Subjects Part II relates Part II relates to the Naturalian Subjects Part II relates to the Naturalian Subjects Part II relates Part II relates to the Naturalian Subjects Part II relates to the Natu Act, 1914 (Imp.), of Natural Source of Natural born British Subjects. Part II relates to the Naturalization of born British Subjective that Part II shall not nor shall any Aliens and s. 9 provides that Part II shall not nor shall any Aliens and S. o provide any small any certificate of naturalization granted thereunder have effect with. in any of the Dominions specified in the Schedule (which in. in any of the Dominich in. cludes Canada) unless the Legislature of the Dominion adopts eludes Canada) adopts Part II. The Act of the Imperial Parliament was subsequently Darliement of Canada by the Naturali amended. The Parliament of Canada by the Naturalization Act. amended. The Internation Act, 1914 (Can.), c. 44, did not in terms "adopt" the Imperial Act, 1914 (Can.), c. 44, did not in terms "adopt" the Imperial Act of 1914, but passed almost identical legislation. In 1914 the Parliament of Canada amended the Naturalization Act so as to introduce the amendments that had been made by the Parlia. ment of Great Britain in Part II of the British Nationality and Status of Aliens Act, 1914. That Act [1914 (Can. 2nd Sess.) c. 7] contained a recital to the effect that the Dominion had adopted Part II of the British Act. It is convenient at this stage to deal with the question raised

as to the effect of this legislation of the Dominion on this topic. to the effect of the appellants was that the Parliament of the did "adopt" Part II of the Imperial Act in the "The contention 'adopt' Part II of the Imperial Act in the sense Canada did 'adopt' Was used in the Imperial Act in the sense Canada did word was used in the Imperial Act in the sense P.C. Canada that word was used in the Imperial Act and that in Co-operative in which that II formed part of the law of the United King Coverative in which that if formed part of the law of the United King. COMMETTER in when extending to the Dominion. The contention of the United King. COMMITTEE consequence responsion of the respondom extending the Canadian statutes are only parallel legisla- CANADIANS dents was that the Canadian statutes are only parallel legisla- CANADIANS dents was that the accordusion as to the advice their Lord-tion. think it right to tender to His Majesty they find it up. A.G. CAN. tion. In an right to tender to His Majesty they find it unships think it is a opinion as to the correctness or otherwise A.G. CAN. necessary to express an opinion as to the correctness or otherwise Lord Wright necessary to contention of the appellants. Their Lordships will asof the content appellants are right in their contention, but las-sume that the appellants one way or another upon it. sume that the any opinion one way or another upon it.

o not express a considerable diversity of opinion between the There was a considerable Court on some of the point. There was of the Supreme Court on some of the points which fell members of the reference. In one important members of under the reference. In one important respect at least for decision under the reference. In one important respect at least for decision decision of s-s. (4) of s. 2 of P.C. 7355_the views of the the invalidity of s-s. (4) of s. 2 of P.C. 7355_the views of the the invalue of the Court were adverse to the respondents. No majority of was lodged. This in the circumstances was only the cross-appeal was lodged. A determination upon the logged only the cross-appear of a formality. A determination upon the legal effect absence of a whole is necessary in order to arrive at a of the orders as a whole is necessary in order to arrive at a of the order upon the matters in respect of which the appellants appealed. The whole matter was fully debated before their appealed. Lordships and their Lordships accordingly propose to deal with the Orders in their entirety. Their Lordships now turn to the question at issue.

Upon certain general matters of principle there is not since the decision in Fort Frances P. d. P. Co. v. Manitoba Free Press the decision Free Press Co., [1923], 3 D.L.R. 629, A.C. 695, 25 O.W.N. 60, any room for dispute. Under the B.N.A. Act property and civil rights in the several Provinces are committed to the provincial Legislathe several Degista-tures, but the Parliament of the Dominion in a sufficiently great emergency such as that arising out of war has power to deal adequately with that emergency for the safety of the Dominion as a whole. 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.

Again 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 Parliaments of the Dominion and the Parliaments of the Provinces comes into play. But very clear evidence that an emergency has not arisen or

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DOMINION LAW REPORTS. [[1947] 1 D.L.R. that the emergency no longer exists is required to justify the that the emergency no longer exists is one of ultra vires, justify the judiciary even though the Parliament of the Dominion the vires, in over, judiciary the decision of the Parliament or were still required the the that the ended the quality of the Dominion vires, in the judiciary even though the Parliament of the Dominion the over, in over, ruling the decision of the required or were still required that ex. P.C. ruling the decision of required or were still required the Dominion the coveres, in the coveres of the co P.C. ruling measures new measures and required that it is not pertinent ex. CO-OFERATIVE ceptional measures added as a corollary that it is not pertinent ex. CO-OFERATIVE To this may be added as a corollary that it is not pertinent to consider the wisdom or the propriety between the indiciary to consider the wisdom or the propriety to consider the second terms of the propriety to consider the the propriety to constant the propriety

CO-OFERATIVE cepture to this may be added the wisdom or the is not pertinent to COMMITTEE To this may be added the wisdom or the propriety pertinent to ON the judiciary to consider the embodied in the emergency of the DAFANESE particular policy which is embodied to be followed in the emergency lead the JAPANESE JAPANESE CANADIANS CANADIANS TO the judiciary to consider the embodied in the emergency of the particular policy which is embodied in the emergency of the particular policy which is embodied in the emergency of the particular policy which is embodied in the emergency legisla. JAPANESE the policy which the policy to be followed is exclusively of the particular policy which of the policy to be followed is exclusively of the tion. Determination of the Dominion and those to the particular policy which a matter for the Parliament of the Dominion and those to the policy of the policy of the policy of the policy of the particular policy of the policy of the policy of the parliament of the policy of the particular policy of the policy of t in tion. Determination of the Dominion and those to whom a matter for the Parliament of the Dominion and those to whom Lord Wright it has delegated its powers. has delegated its point has delegated its point Lastly it should be observed that the judiciary are not Lastly it should be observed that the *ultra vires* with the hon considering a question of *ultra vires* with the hon considering a question of *ultra vires* with the

Lastly it should be observed of *ultra vires* with the not con. cerned when considering a question of *ultra vires* with the question whether the executive will in fact be able to carry into question whether the emergency provisions which the Parlianen fective operation the emergency or indirectly has mad fective operation either directly or indirectly has made the Dominion entities for their Lordships to take into made. It is unnecessary therefore for their Lordships to take into made. It is unnecessary then particular circumstances obtaining view or even to recount the particular circumstances obtaining. view or even to recount led to the Orders in question obtaining within the Dominion that led to their execution. arrangements made with a view to their execution. rangements made with *War Measures Act* was not attacked beiore. The validity of the War Measures with the principles store

The validity of the main onsistently with the principles stated before their Lordships and consistently of the Orders was chall was their Lordships and the validity of the Orders was challenged not open to attack. Their Lordships have considered by mas not open to attack. Their Lordships have considered not challenged on many grounds. Their Lordships have considered not only on many grounds. the points put forward on behalf of the appellants but whether the points put forward on behalf of criticism for reasons the orders were susceptible of criticism for reasons not put the Orders were susceptible are satisfied that all possible of put the Orders were such as a satisfied that all possible not put forward. Their Lordships are satisfied that all possible grounds forward. Then how one form or another included in the grounds of criticism were in one form or another included in the grounds on which the appellants relied.

which the appendix of the Orders it is necessary first, that upon For the validity of the War Measures Act, they follow For the value, that upon the true construction of the War Measures Act, they fall within the true construction of the Mar Measures Act, they fall within the ambit of the powers duly conferred by the Act on the Gov. the ambit of the Founcil: second that, assuming the Orders Were ernor-General in Council: second that, assuming the Orders were within the terms of the War Measures Act, they were not for some reason in law invalid.

The points taken were, first, that the War Measures Act did not on its true construction authorize Orders for deportation to be made as respects British subjects or Canadian nationals and that it should in certain respects receive a limited construction: second, that if the Act purported on its construction to author. ize the making of such Orders, yet the Orders made would be contrary to the Imperial statute British Nationality and Status of Aliens Act and therefore to that extent invalid: third, that the provision contained in s. 2(4) of P.C. 7355 (relating to the wives and children of persons in respect of whom an Order for

deportation had been made) was for a specific reason invalid; deportation that in any event the Order made under the Walid; 587 deportation in any event the Order made under the National fourth, that in any event the Order shade under the National fourth, transitional Powers Act continuing the formational fourth, that in ansitional Powers Act continuing the National fourth, that Transitional Powers Act continuing the National Emergency Governor in Council was invalid. Imp. Emergence ders of the Governor in Council was invalid. Sector Sector Sector P.C. ers of the construction with raises questions of construction with which Const ----CO-OPERATIVE their Lordships must now deal. COMMITTEE the language of the War Measures Act is in general terms JAPANESE

The language that certain limitations were as a matter of A.G. CANADIANS but it was argued the Act to be implied and that to the extent of A.G. CAN. but it was argued the Act to be implied and that to the extent to A.G. CAN. construction of the Act to be made under the Act fell out. construction order purporting to be made under the Act fell out. which any which any side its proper ambit, the Order would of necessity be invalid. de its prope The first suggested limitation was based on the Colonial Laws

The first sugged. The first sugged of the date when the War Measures Laws validity Act, 1865. At the date when the War Measures Act validity determined legislation made by the Parliament was in its came into the provisions as to repugnancy contained in effect subject to the provisions as to repugnancy contained in effect subject and it was argued that the War Measures Act the Act of measures Act should be construed as confined in its possible ambit to the makshould be deter which would consistently with the Colonial Laws ing of Orders, then be valid as law within the Dominion. If Valuary So the Orders were not authorized by the War Measures that was of ar as they were repugnant to the British Nationality and Status of Aliens Act, 1914-18, which was an Act of the Imperial Parliament and in the appellants' contention extended to the Dominion as part of the law of the United Kingdom.

Their Lordships are unable to accept this contention. The effect of the Colonial Laws Validity Act, was only that Canadian legislation repugnant to the statutory law of the United Kingdom applying to the Dominion was inoperative. The only conclusion to be drawn from a consideration of the Colonial Laws Validity Act is that the War Measures Act did not on its true construction confer a power beyond the extent to which it might at the date of its use be validly exercised. The statutory law of the United Kingdom is not static and in their Lordships' opinion there is no justification for the imputation that the Parliament of Canada legislated upon the footing that it is static. The effectiveness of legislation of the Parliament of the Dominion at the date when those delegated powers are exercised, not the limitation on that legislation at the date when the War Measures Act was passed, is, so far as the Act of 1865 is concerned, the relevant matter. Secondly, it was argued that, as a matter of construction, the War Measures Act did not authorize the making of Orders having an extra-territorial operation. This point was relevant by

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power of the power of deport
and was, therefore
tationCO-OFERATIVE
COMMITTEE
ONstraint is incident to the exercise of the power of deportation
(A.-G. Can. v. Cain, [1906] A.C. 542) and was, therefore
to the validity of th OMMITTEE (A.-G. Can. V. Can, Ingering doubts as to the was, therefore at ion ON Any lingering doubts as to the validity in the set at main extration ON JAPANESE contemplation. Any ingetting JAPANESE contemplation. Any ingetting CANADIANS of an act which for its effectiveness requires extra-tervitorial contemplation were, it may be added, set at rest by the canada condication were, it may be added, set at rest by the Canada ANADIANS of an act which for its be added, set at rest by the extra-territorial *v*. *A.G. CAN.* application were, it may be added, set at rest by the Canadian *A.G. CAN.* Statute the *Extra-territorial Act*, 1932-33 (Can.), c. 39. Statute the *Extra-territorial Act* are *War Measure*

tute the Extra-terrated that the War Measures Act should be Thirdly, it was argued that the Orders as are consistent be Thirdly, it was argued that construed as authorizing only such Orders as are consistent with construed principles of international law and that the forwith construed as authorizing on ternational law and that the consistent with the accepted principles of international law and that the foreible the accepted principles of a country of British subjects was the foreible removal to a foreign country of international law. The Act the foreible removal to a foreign country, or another and the sources was contrary to the accepted rules of international law. The Act therefore as a matter of construction did not, it was said, purport therefore as a matter of construction for such removal.

It may be true that in construing legislation some weight It may appropriate case to be given to consideration of It may be true that case to be given to consideration some weight ought in an appropriate case to be given to consideration of the domain of the source of ought in an appropriate the international law (cf. Croft v. Dunght the accepted principles of international law (cf. Croft v. Dunght, but a) accepted principles of his accepted principles of his formation of the state of the [1933], 1 D.L.R. 220, in any particular case has to be the na. ture of the legislation in any particular case has to be consid. ture of the legislation what extent, if at all, it is right on a ered in determining to advert to those principles I on a ered in determining to advert to those principles. In the question of construction to advert to those principles. In the construction the second seco question of construction principles find no place in the construction of the the construction of the const Lordships view those provide Act. The Act is directed to the construe. tion of the War Measures Act. The Act is directed to the exer. tion of the War includes in Council of powers vested in the exer. cise by the Governor in Council of powers vested in the Parlia. eise by the Governor at a time when war, invasion or insuration at a time when war, invasion or insuration ment of the Dominion at a time when war, invasion or insuration or insuration. ment of the Domination exists. The accepted rules of insurree. tion or their apprehension exists. The accepted rules of inter. tion or their apprend in times of peace can hardly have been national law applicable in times of peace cannot be drawn the national law appreciation and the inference cannot be drawn that the inference cannot be drawn that the n contemplation and the Dominion impliedly imposed the limitation

The next question of construction arising under the Act has more substance. It was said that there was inherent in the word "deportation" as part of its meaning the necessity that the person to be deported was—as respects the State exercising the power-an alien. The express power given to expel persons from Canada was therefore limited to aliens *i.e.*, persons who were not Canadian nationals. It was not permissible to treat as authorized by the general power a power to make Orders for deportation in relation to a class of persons impliedly excluded from deportation by the terms of the specific power. There was therefore an implied prohibition against the deportation of Canadian nationals.

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Upon this argument it may be conceded that commonly it is 589 Upon this and are made liable to deportation and that commonly it is only aliens where reference is made to deportation, there is conseonly aliens where reference is made to deportation and that in conse-quence, where suggestion that aliens are under immediated the Imp. only at where retreation that aliens are under immediate con. CO-OPERATIVE sideration.

deration. deration aries as might be expected do not altogether agree JAPANESE The dictionaries of deportation but the New English Diction COMMETTEE The dictionant of deportation but the New English Diction- JAPANESE as to the meaning of definition "The action of carrying away formily CANADIANS as to the meaning of the action of carrying away: forcible A.G. CANADIANS ary gives as its definition exile: transportation." ary gives us especially into exile: transportation." As a matter of language their Lordships take the view that Lord Wright

to persons not deportation to be confined to aliens or not remains thereis in its applied a matter of construction of the particular statute fore open as a matter of construction of the particular statute in which it is found. In the present case the Act is directed to dealing with emer-In the proughout it is in sweeping terms; and the word is gencies: throughout it is in arrest, detention, exclusion gencies: the combination "arrest, detention, exclusion and de-found in the combination the first of these words. found in the As regard the first of these words nationality is portation in the collocation in which the word in f obviously not the collocation in which the word is found establish the Act and the collocation in this statute the the Act and establish in their Lordships' view that in this statute the word "deporin their is used in a general sense and as an action applicable to tation ' is used in a general sense and as an action applicable to tation is irrespective of nationality. This being in their all persons indement the true construction of the true in their all persons in the true construction of the Act, it must apply to all persons who are at the time subject to the laws apply to an They may be so subject by the mere fact of being of Canada. They may be so subject by the mere fact of being of Canada, whether they are aliens or British subjects or Canain Canadian Nationality per se is not a relevant consideration. An Order relating to deportation would not be unauthortion. It reason that it related to Canadian nationals or British

subjects. Even if this were not the case the same result may be reached by another route. The general power given to the Governor in Council in the opening part of s. 3 of the Act is not in this statute limited by reference to the acts particularly enumerated and their Lordships see no reason for differing from the view expressed by Rinfret C.J.C. that the Order was justifiable under that general power (See King-Emperor v. Sibnath Banerji (1945), L.R. 72 Ind. App. 241 at p. 247).

There remains one further question of construction of the War Measures Act, namely, whether it authorized the making of an Order which provided that deported persons should cease to be either British subjects or Canadian nationals. That matter must

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As a matter is not a word which is mis-used when applied "deportation" is not aliens. Whether or not the word "deportation applied "deportation to persons not aliens. Whether or not the word "deportation"



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DOMINION LAW REPORTS. [[1947] 1 D.L.R. be considered in light of the views which their Lordships have be considered as to the construction of the Act. Then have be considered in light of the construction of the Act. They have already expressed as to the construction of the matters con see be considered as to the matters all the matters have already expressed as to the matters of the matters covered no reason for excluding from the scope of the matters covered no reason for excluding from the scope of the matters covered P.C. no reason for excluding contained in s. 3 a power to take see covered by the general power contained in S. 3 a power to take from CO-OFERATIVE by the general power to take from CO-OFERATIVE by the general power in fact under an Order for deportation the COMMITTEE persons who have in fact under the Law of Canada as British left ON Canada their status under the Law of Canada as British sub. CANADIANS jects and Canadian nationals. JAPANESE JAPANESE Jects and Canadian jects

The result is that upon of Orders for deportation of any per. G. CAN. Act authorized the making of Orders for deportation of any per. A.G. CAN. Lord Wright Act authorized the making of any per. Lord Wright son whatever be his nationality and the deprivation so far as son whatever be his national of his status under that law the law of Canada was concerned of his status under that law as a British subject or Canadian national.

as a British subject of the Colonial Laws Validity Act, The next question is whether the Governor in Council. If it Act, applies to the Orders of the Governor to the British National applies to the Orders are repugnant to the British Nationality, then in so far as they are repugnant to their Lordships are then in so far as they and Status of Aliens Act (which their Lordships are assuming and Status of the Imperial Parliament extending to G and Status of Anends Imperial Parliament extending to Canadal to be an Act of the Imperial Parliament of the Statute Canadal to be an Act of the line the provisions of the Statute of West, they are invalid unless the provisions of the Statute of West. minster can be relied upon. inster can be relice appellants was that the Orders, though The contention of the appellants was that the Orders, though

The contention of the date of the Statute of Westminster, were not law made after that date by the Parliament of the Day of law made after that date by the Parliament of the Dominion law made after that date in the matter in question law made after that in the matter in question bominion. The activities of Parliament in the Orders were not of its The activities of 1927. The Orders were not of its making, it was said, ceased in 1927. The Parliament of the National E. was said, ceased in Parliament of the National Emergency. The passing by the Parliament of the purpose in hand i The passing by Transitional Powers Act, was for the purpose in hand imma. Transitional Fourth I back that s. 4 empowered the Governor in Countinuance only of Orders and P. cil to order the continuance only of Orders and Regulations "lawfully" made under the War Measures Act.

Their Lordships agree that in considering this particular mat. ter the National Emergency Transitional Powers Act, cannot be prayed in aid of the validity of the Orders, but in their opinion the Orders in question were made "after the passing of this Act (i.e., the Statute of Westminster) by the Parliament of the Dominion" as that phrase is used in the Statute of West. minster. This again is a question of construction.

Both in s-ss. (1) and (2) of s. 2 of the Statute of Westminster the matter which is dealt with is "law", and that is a general term which includes not only statutes but also Orders and Regulations made under statutes. Undoubtedly the law as embodied in an Order or Regulation is made at the date when the power conferred by the Parliament of the Dominion is exercised. Is it made after that date by the Parliament of the Dominion? That Parliament is the only legislative authority for the Do-

[¹⁹ minion as a whole and it has chosen to make the law through 591 minion as a up and continued by it for that purpose. The machinery set up Machin Inip. machine in Counter activity of Parliament is still present Co-operative Governor in legislative activity of Parliament is still present Co-operative body. time when the Orders are made and these Orders are Covernative body. time when the Orders are made and these Orders are CO-OPERATIVE at the in their Lordships' opinion they are law made by it. body. the time when Lordships' opinion they are law made by the ON at the in their Lordships' view allow the ON JAPANESE at the in their date of their promulgation. A contrary con- CANADIANS Parliament at the under Lordships' view place an artificial and CANADIANS Parliam would in their Lordships' view place an artificial and CANADIANS clusion would in their Lordships' view place an artificial and CANADIANS clusion construction on wide terms used in an Act of Parliament A.G. CAN. elusion would in an wide terms used in an Act of Parliament A.G.C. narrow constructor of which demands that a liberal construction A.-G. CAN. narrow bject-matter of which demands that a liberal construction Lord Wright the subject of the language used. In the result therefore the Colonial Laws Validity Act, af-

In the result of questioning the validity of the Orders, fords no ground for questioning the validity of the Orders. ords no ground arises on s-s. (4) of s. 2 of P.C. 7355. Under The next matter arises on for deportation may be and Under The next man order for deportation may be made as rethat provision and children (not over the age of 16 years) spects the with respect to whom an order for deportation has heen made. The case sought to be made runs as follows:

The recitals in the Order relate only to the desirability of The rectruining for the deportation of persons referred to in making provision for the deportation of persons referred to in making provide and (3) of s. 2 of the Order. In the case of the s-ss. (1), (2) and (3) of s. 2 of the Order. In the case of the s-ss. (1), (2) and the case of the classes of persons referred to in s-ss. (1), (2) and (3) (leaving classes of persons) request for repatriation was at our (3) (leaving classes of period (leaving aside detainees) request for repatriation was at some stage necesaside detailed stage neces-sary; a request was considered by the Governor in Council to be sary; a required matter, but no such request is required as respects a substantial mentioned in s-s. (4) and the only apparent reason the persons mentioned in s-s. (4) and the only apparent reason the personne them to liability for deportation is that an order for subject the has been made as respects the husband or father. for deporter, therefore, not only does not show that by reason of The Order, therefore, or apprehended monit the existence of real or apprehended war it was thought necesthe existence of the security, peace, order, defence or welfare of Canada to make provision for their deportation but, when considered in substance, shows that these matters were not taken into consideration. A deportation of the family consequential on the deportation of the father might indeed be thought desirable on grounds other than those requisite for a due execution of the powers given and. it is contended, it is apparent that it is grounds not set out in the statute which alone have here been taken into consideration. The incompleteness of the recital is in their Lordships' view

of no moment. It is the substance of the matter that has to be considered. Their Lordships do not doubt the proposition that an exercise of the power for an unauthorized purpose would

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be invalid and the only question is whether there is apparent **D.L.R.** any matter which justifies the judiciary in coming to apparent the power was in fact exercised for an upper the state of the second any matter which justified in fact exercised for an unauthor elusion that the power was in fact exercised for an unauthor clusion that the ir Lordships' opinion there is not unauthor P.C. clusion that the power discussion of the counter is not. The construct of the the construct of the country of the countr CO-OFERATIVE purpose. In their Borten doubt deal with the mot. The for CO-OFERATIVE purpose. In their Borten of s. 2 no doubt deal with the mot. The The for COMMITTEE three subsections of s. 2 no doubt deal with the matter for committee three subsections of s. 2 no doubt deal with the matter for committee three subsections of s. 2 no doubt deal with the matter for CO-OFERATIONE three subsections of the attention of the Governor in Council ON JAPANESE it is not in their Lordships' view a proper inference of the Governor inference of the council ON Primarily engaged the devices of view a proper inference from the Council, but is not in their Lordships' view a proper inference from the CANADIANS it is not in their council or advisable for the source in Council on the source of the s JAPANESE it is not in their Lorenty that the Governor in Council, but *CANADIANS* it is not in their Lorenty that the Governor in Council, but *terms of those subsections that the Governor in Council, but A.G. CAN.* also deem it necessary or advisable for the security defence hot ANESE it is not in the unsections that the dioternor in Council, did the terms of those subsections that the vives and children in the also deem it necessary or advisable for the security defence has also deem it necessary or advisable for the security defence has order and welfare of Canada that the wives and children under order and welfare of Canada their will also be liable to defence to deportees should against their will also be liable to defence tation. The making of a deportation Order as respects the has ind or father might create a situation which, with a view tation. The making of a dep tation. The making of a dep band or father might create a situation which, with a wie has band or father might purpose, it was proper to deal. Be forwarding this specified purpose.

at it is not necessar. The last matter of substance arises on the National Emergency The last matter of Act. Transitional Powers Act.

ansitional Powers It was contended by the appellants that at the date of the It was contended by the did not exist any such emerges the It was contended by and not exist any such emergency as passing of this Act there did not exist any such emergency as passing of this Act that of Canada in empowering the Genergency as justified the Parliament of Canada in question. The Gover. justified the Parnametric the Orders in question. The Gover. nor in Council to continue their making—namely active to the emer. nor in Council to dictated their making-namely active here. gency which had dictated their making-namely active hostili. ties-had come to an end.

A new emergency justifying exceptional measures may indeed But it was by no means the case that a indeed A new emergence, a max by no means the case that measured have arisen. But it was by no means the case that measured have arisen. But the emergency which led to the Proclamation taken to deal with the emergency which led to the Proclamation taken to deal with Measures Act into force were demanded by bringing the War Measures the Parliament of Canada at the bringing the which faced the Parliament of Canada at the bringing the weight of the parliament of Canada at the bringing the weight of the parliament of Canada at the bringing the weight of the parliament of the parlia bringing the way in the brance of Canada when by the emergency which faced the Parliament of Canada when passthe emergency which Emergency Transitional Powers Act. The ing the National Emergency Transitional Powers Act. The ing the National Act continuing the Orders in question The Order under the Act continuing the Orders in question was

This contention found no favour in the Supreme Court of Canada and their Lordships do not accept it. The preamble to the National Emergency Transitional Powers Act states clearly the view of the Parliament of the Dominion as to the necessity of imposing the powers which were exercised. The argument under consideration invites their Lordships on speculative grounds alone to overrule either the considered decision of Par. liament to confer the powers or the decision of the Governor in Council to exercise it. So to do would be contrary to the principles laid down in Fort Frances P. & P. Co. v. Manitoba Free Press Co., [1923] 3 D.L.R. 629 and accepted by their Lord. ships earlier in this opinion. One remaining matter relied upon by the appellants should

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be mentioned. First it was said that the words "of the Jap. be mentioned, were so vague as to be incapable of application to anese race persons. It is sufficient to say that in their Lord. ascertained permised are not. All that can be said is their Lord. P.C. ships' opinion they are not. All that can be said is that ques- CO-OPERATIVE ships' opinion arise as to the true construction of the phrase and COMMITTEE tions may arrive to any particular person. But difficulties ON ON as to its applicability to affect the validity of the Orders as to its approved as the second person. But diffice of construction do not affect the validity of the Orders. construction de Lordships find themselves in agreement CANADIANS In the result their Lordships find themselves in agreement A.G. CANADIANS In the conclusion at which Rinfret C.J.C. and Kerwin and A.G.CAN with the conclusion at and for the reasons they have and Kerwin and with the concentrate and for the reasons they have expressed Lord Wright Taschereau of advise His Majesty that none of the Orders in will humbly any respect ultra vires and that the

will humory council is in any respect ultra vires and that the appeal should be dismissed. There will be no order as to costs.

A solicitor, acting in that capacity, who was also general manager of a Trust Company, consulted in 1934 with an elderly doctor ager of a wife concerning their wills and advised them of the advantages of having a trust company handle their affairs and act as executor of their estates. By the beginning of 1935 he had established himself in the couple's confidence qua solicitor and Trust Company manager, and they decided (the doctor's health being bad) to turn over their affairs to the Trust Company and to act on the solicitor's advice in making their wills. Contemporaneously the solicitor entered into a contract with the doctor for the sale to him of a block of speculative common stock of the Trust Company and this transaction required the conversion of more than half of the doctor's assets which were in the form of high-class securities. In 1938, after the doctor's death, the Trust Company procured a direction from the widow and other beneficiaries of the doctor's estate authorizing it, as executor, to continue to hold the Trust Company's stock as an asset of the estate. In an action brought by the beneficiaries in 1945 to set aside the stock transaction, held, plaintiffs were entitled to have the sale set aside, and further the Trust Company should be removed as executor of the estate. The relations between the deceased doctor and the Trust Company were such as to require the company to prove that he had entered into the transaction after having been given all reasonable advice against the company that would have been given to him as against a like investment in another company. This onus was not discharged, especially in light of the fact that the solicitor overstated the true position of the company's shares. It was immaterial, in the circumstances, that the price paid for the shares was that paid by other purchasers at the time, and 38-[1947] 1 D.L.B.

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Appeal dismissed

BROWN et al. v. PREMIER TRUST CO. et al.

Ontario High Court, McRuer C.J.H.C. January 8, 1947.

Trusts & Trustees II B-Contracts III A-Undue influence-Confidential relationship between Trust Company manager and client -Sale to client of Trust Company stock-Impeachment of transaction after client's death-Trust Company executor of estate-Laches and acquiescence-

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