1950

*Jan. 30, 31
*Feb. 1, 2
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IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE WARTIME LEASEHOLD REGULATIONS, P.C. 9029.

Constitutional Law—Power of Parliament in National Emergency to enact legislation involving Property and Civil Rights—Whether Wartime Leasehold Regulations made under the authority of War Measures Act, continued in force under The National Emergency Transitional Powers Act, 1945, and The Continuation of Transitional Measures Act, 1947, ultra vires—War Measures Act, R.S.C., 1927, c. 206—The National Emergency Powers Act, 1945, S. of C., 1945, c. 25 and amendment, 1946, c. 60—The Continuation of Transitional Measures Act, 1947, S. of C., 1947, c. 16 and amendments, 1948, c. 5 and 1949, c. 3.

The Wartime Leasehold Regulations were made in 1941 under the authority of the *War Measures Act* and continued in force since the end of the war in all the provinces of Canada, other than Newfoundland, under the provisions of *The National Emergency Transitional Powers Act, 1945* and *The Continuation of Transitional Measures Act, 1947* and amendments thereto and certain Orders in Council authorized by those statutes.

* PRESENT:—Rinfret C.J. and Kerwin, Taschereau, Rand, Kellock, Estey and Locke JJ.

The following question referred by the Governor General in Council under s. 55 of *The Supreme Court Act* to this Court: "Are the Wartime Leasehold Regulations *ultra vires* either in whole or in part and if so in what particulars and to what extent?"—was answered in the negative.

Held, that Parliament, under powers implied in the Constitution may, for the peace, order and good government of Canada as a whole, in time of national emergency, assume jurisdiction over property and civil rights which under normal conditions are matters within the exclusive jurisdiction of the provincial legislatures.

When Parliament has enacted legislation declaring that a national emergency continues to exist and that it is necessary that certain regulations be continued in force temporarily in order to ensure an orderly transition from war to peace, unless the contrary is very clear, which in this case it was not, there is nothing to justify a contrary finding by the Court.

Fort Frances Pulp & Power Co. v. *Manitoba Free Press Co.* [*1923*] A.C. 695; *Co-Operative Committee on Japanese Canadians* v. *Attorney General for Canada* [*1947*] A.C. 87, followed.

REFERENCE by His Excellency the Governor General in Council, pursuant to the authority of s. 55 of the *Supreme Court Act* R.S.C., 1927, c. 35), to the Supreme Court of Canada, for hearing and consideration of the question cited in full at the beginning of the reasons for judgment of the Chief Justice of this Court.

F. P. Varcoe, K.C., *D. W. Mundell* and *A. J. MacLeod* for the Attorney-General for Canada.

The Hon. Dana Porter, K.C., and *C. R. Magone,* K.C., for the Attorney-General for Ontario.

L. E. Beaulieu, K.C., for the Attorney-General for Quebec.

J. J. Robinette, K.C., for the Tenants within Canada.

O. F. Howe, K.C., for The Canadian Legion of the British Empire Service League.

R. M. W. Chitty, K.C., for the Canadian Federation of Property Owners Association.

M. W. Wright for the Canadian Congress of Labour.

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REFERENCE AS TO THE VALIDITY OF THE WARTIME LEASEHOLD REGULATIONS

Rinfret C.J.

The CHIEF JUSTICE: The question referred by the Governor in Council to the Court is:—

Are The Wartime Leasehold Regulations *ultra vires* either in whole or in part and, if so, in what particulars or to what extent?

After having heard arguments on behalf of the Attorney-General of Canada, the Attorney-General of Ontario, the Attorney-General of Quebec, The Tenants within Canada, The Property Owners' Association, The Dominion Command of the British Empire Service League and The Canadian Congress of Labour, I am of opinion that the question should be answered in the negative.

These references, under Section 55 of *The Supreme Court Act,* merely call for the opinion of the Court on the questions of law or fact submitted by the Governor in Council and the answers given by the Court are only opinions. It has invariably been declared that they are not judgments either binding on the government, on parliament, on individuals, and even on the Court itself, although, of course, this should be qualified by saying that, in a contested case where the same questions would arise, they would no doubt be followed. But precisely on account of their character the opinions are supposed to be given on the material which appears in the Order of Reference and the Court is not expected to look to outside evidence. It is clear that the Court may take into consideration any fact which is of common, or public, knowledge, or of which it could ordinarily take judicial notice. Otherwise, however, excepting very exceptional cases, which it would be quite impossible to enumerate and in respect of which the present Reference is not concerned, the Court is limited to the statements of fact contained in the Order of Reference. I would venture to say that this has been the constant practice of this Court on References submitted under Section 55 of *The Supreme Court Act.*

As to the first proposition, it was pointed out by the Lord Chancellor, Earl Loreburn, in *Attorney-General for Ontario* v. *Attorney-General for Canada* (1), that the opinions provoked by such questions "are only advisory and would have no more effect than the opinions of the law officers", to which Duff J. (as he then was) in *Reference re Waters and Water-Powers* (2), after having quoted the statement of Earl Loreburn, observed that "when a con-

(1) [1912] A.C. 571 at 589. (2) [1929] S.C.R. 200 at 228.

crete case is presented for the practical application of the principles discussed, it may be found necessary, under the light derived from a survey of the facts, to modify the statement of such views as are herein expressed". As a matter of fact, in the *Water-Powers Reference,* following an objection raised by Mr. Tilley, K.C., representing the Attorney-General for Ontario, to certain material which had been included in the appendix of the factum of the Attorney-General for Canada, the Court ordered two hundred and forty pages stricken from the appendix and made the following observation:—

> It must be obvious that any statements of facts, upon which answers to the questions must be based, should form part of the Case submitted, and it would be highly inconvenient and most dangerous to receive documents such as these in question as part of the Case, unless with the full consent and concurrence of all parties.

In that case, Smith J., concurring with Duff J., but writing separately, at p. 233 of the Report, thought that he would explain certain references made in his judgment to a situation which did not appear in the record by saying:—

> We might, perhaps, take judicial notice of some of the facts, and might gather others from statutory enactments * * * I have gone beyond the record, not to obtain material as a basis for answering the questions, but merely to emphasize what my brother Duff has said as to the impracticability of giving full and definite answers to all the questions that would have general application, regardless of particular circumstances capable of proof but not established or admitted in the record.

No doubt anybody attacking parliament's legislation as colourable would have to introduce evidence of certain facts to support the contention, for it can hardly be expected that the Order of Reference would contain material of a nature to induce the Court to conclude as to the colourability of the legislation. It may be that it would be so apparent that the Court could come to that conclusion without extraneous evidence, and an example of that situation might be found *In the Matter of a reference as to the validity of Section 16 of The Special War Revenue Act* (1), where Sir Lyman Duff C.J., delivering the judgment of the Court, found, at p. 434, that the section was *ultra vires* in its entirety on the ground that, under the guise of legislation affecting British and Foreign Companies and extra Canadian exchanges, the enactments were really

(1) [1942] S.C.R. 429.

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adopted in relation to the business of insurance within the provinces and could not be upheld as alien legislation in the proper sense.

But it would seem that the constitutionality of legislation disputed on the ground of colourability should really be brought before the Courts not on a Reference, but in an ordinary case. It is no doubt in that sense that we must understand the dictum of Lord Maugham in *Attorney-General for Alberta* v. *Attorney-General for Canada* (1):—

> The next step in a case of difficulty will be to examine the effect of the legislation; *Union Colliery Co. of British Columbia, Ld.* v. *Bryden* (2). For that purpose the Court must take into account any public general knowledge of which the Court would take judicial notice, and may in a proper case require to be informed by evidence as to what the effect of the legislation will be. Clearly, the Acts passed by the Provincial Legislature may be considered, for it is often impossible to determine the effect of the Act under examination without taking into account any other Act operating, or intended to operate, or recently operating in the Province.

And again at p. 131:—

> Matters of which the Court would take judicial notice must be borne in mind, and other evidence in a case which calls for it.

In these quotations the words used by the noble Lord are "in a proper case" and "in a case which calls for it". He does not say "on a Reference", and I cannot see how two *obiter dicta* of that character can be invoked as meaning that outside evidence may be called on a Reference.

The Fort Frances Pulp & Power Co. Ltd. v. *Manitoba Free Press Co. Ltd. et al* (3), was such an ordinary case between two private litigants, and in delivering the judgment of the Judicial Committee in that case Viscount Haldane, at p. 706, expressed the view:—

> No authority other than the central Government is in a position to deal with a problem which is essentially one of statesmanship. It may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes *ultra vires* when it is no longer called for. In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of *ultra vires* which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite. In saying what is almost obvious, their

(1) [1939] A.C. 117 at 130.
(2) [1899] A.C. 580.
(3) [1923] A.C. 695.

Lordships observe themselves to be in accord with the view taken under analogous circumstances by the Supreme Court of the United States, and expressed in such decisions as that in October, 1919, in *Hamilton* v. *Kentucky Distilleries Co.* (1).

Some allusion was made to the same point *In the Matter of a Reference as to the jurisdiction of Parliament to regulate and control radio communication* (2). A mere glance at the Order-in-Council reproduced at that and the following pages is sufficient to show to what extent the facts in that matter were there stated. It is to be noted that the opinion of Newcombe J., p. 548, starts by saying:

> My trouble with this case is to know the facts. Although the narrative of the order of reference and the printed statement of principles were not at the hearing seriously disputed, one is apt to suspect that the knowledge of the art of radio, which we have derived from the submissions and what was said in the course of argument, is still incomplete and, perhaps, in some particulars, not free from error; that some accepted theories are still experimental or tentative, and that there may be possibilities of development and use, not only in the Dominion but also in a provincial field, which have not yet been fully ascertained or tested.

It is obvious that if Newcombe J., whose experience in these matters cannot be disputed, had thought that he was entitled to hear outside evidence on a Reference, he would have availed himself of the opportunity. It is true that in that Reference an article compiled by J. W. Bain, a radio engineer of the Marine Department, was printed in the case, but, as stated by Smith J. at p. 569:—

> This document is inserted for the convenience of the court, and it is stated that its accuracy may be verified by reference to the various standard text-books on the subject. Its general accuracy was, I think, not controverted, and I therefore resort to this document for a brief general description of how radio communication is effected.

Radio communication was, of course, of a highly technical nature and it was felt necessary that the Court should at least be informed of how it worked.

In the Matter of a Reference as to whether the term "Indians" in Head 24 of Section 91 of The British North America Act, 1867, includes Eskimo Inhabitants of the Province of Quebec (3), in the order fixing the date for hearing Sir Lyman Duff, C.J., appointed the Registrar of the Court to hear and take all evidence, oral and documentary, which the Attorney-General of Canada or any other interested parties desired to submit, or adduce, in

(1) 251 U.S. 146.
(2) [1931] S.C.R. 541.
(3) [1939] S.C.R. 104.

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relation to the question referred to the Court. He ordered further that all the evidence so adduced and submitted on behalf of each of the interested parties be included *quantum valeat* and subject to all just exceptions in the case, and printed in such groups and order as the interested parties might agree upon, subject to the approval of the Registrar. It is to be noted that all interested parties, including, of course, the Attorney-General of Canada, were given the opportunity to submit relevant evidence and particularly that such evidence was incorporated in and formed part of the case.

I must say, therefore, that, for the purpose of my answer, I am limiting myself strictly to the situation disclosed in the Order of Reference and the different declarations which appear in the successive Acts adopted by Parliament. Thus limiting my consideration of the Reference and the extent of my answer, I have very few remarks to make.

There is no doubt that under normal conditions the subject matter of rents belongs to the provincial jurisdiction under the Head of Property and Civil Rights, in Section 92 of *The British North America Act*. There is equally no doubt that under abnormal conditions, such as the existence of war, parliament may competently assume jurisdiction over rents. The fact is that, as a consequence of the last war, 1939-1945, parliament has taken over the control of rents. *The Fort Frances case supra* is authority for the proposition that, notwithstanding the cessation of hostilities, parliament is empowered to continue the control of rents for the purpose of concluding matters then pending, and of its discontinuance in an orderly manner, as the emergency permits, of measures adopted during and by reason of the emergency. It follows from the different Orders-in-Council and Acts of Parliament, recited in the Order of Reference, that the exceptional conditions brought about by war, which made The Wartime Leasehold Regulations necessary, are still continuing, that the orderly transition from war to peace has not yet been completed, and that, in such circumstances, parliament is entitled and empowered to maintain such control as it finds necessary to ensure the orderly transition from war to peace. The judgments of the Judicial Committee of the

Privy Council in the *Fort Frances Case supra* and in *Co-operative Committee on Japanese Canadians* v. *Attorney-General for Canada* (1), are conclusive on this point.

In the *Reference as to the Validity of the Regulations in relation to Chemicals* (2), Sir Lyman Duff, C.J., stated at p. 12:—

> As in respect of any other measure which the Executive Government may be called upon to consider, the duty rests upon it to decide, whether, in the conditions confronting it, it deems it necessary or advisable for the safety of the state to appoint such subordinate agencies and to determine what their powers shall be.
>
> There is always, of course, some risk of abuse when wide powers are committed in general terms to any body of men. Under the *War Measures Act* the final responsibility for the acts of the Executive rests upon Parliament. Parliament abandons none of its powers, none of its control over the Executive, legal or constitutional.
>
> The enactment is, of course, of the highest political nature. It is the attribution to the Executive Government of powers legislative in their character, described in terms implying nothing less than a plenary discretion, for securing the safety of the country in time of war. Subject only to the fundamental conditions explained above, (and the specific provisions enumerated), when Regulations have been passed by the Governor General in Council in professed fulfilment of his statutory duty, I cannot agree that it is competent to any court to canvass the considerations which have, or may have, led him to deem such Regulations necessary or advisable for the transcendent objects set forth. The authority and the duty of passing on that question are committed to those who are responsible for the security of the country—the Executive Government itself, under, I repeat, its responsibility to Parliament. The words are too plain for dispute: the measures authorized are such as the Governor General in Council (not the courts) deems necessary or advisable.

In this instance, Parliament has decided that The Wartime Leasehold Regulations should be kept in force to a limited extent and to that extent, where necessary or advisable, to ensure an orderly transition from war to peace; and that, if they were abandoned abruptly and suddenly, unnecessary disruption would result.

There is nothing in the facts in the Order of Reference which would justify this Court in deciding otherwise and thus supersede the opinion of Parliament; and, in the circumstances, this Court may not doubt that Parliament may competently maintain the Regulations it has adopted to meet the emergency and its continuance. Therefore, The Wartime Leasehold Regulations are not *ultra vires* either in whole or in part.

(1) [1947] A.C. 87. (2) [1943] S.C.R. 1.

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Kerwin J.

KERWIN J.:—The question referred by the Governor in Council to the Court for hearing and consideration is:—

Are The Wartime Leasehold Regulations *ultra vires* either in whole or in part and, if so, in what particulars or to what extent?

The Regulations were originally made by order of the Governor in Council P.C. 2029 of November 21, 1941, under the *War Measures Act*, R.S.C. 1927, c. 206, and a number of amendments to the Regulations were also made by Orders in Council under the same Act, which continued in force until December 31, 1945. By *The National Emergency Transitional Powers Act, 1945* (chapter 25 of the Statutes of 1945), which came into force on and after January 1, 1946, it was provided that "on and after that date the war against Germany and Japan shall for the purpose of the *War Measures Act* be deemed no longer to exist." The effect of this provision was to terminate the operation of the *War Measures Act*.

However, the 1945 statute also provided that the Governor in Council might order that the orders and regulations lawfully made under the *War Measures Act* or pursuant to authority granted under that Act, in force immediately before the Act of 1945 came into force should, while the latter Act was in force, continue in full force and effect, subject to amendment or revocation under the latter Act. Accordingly, by P.C. 7414, of December 28, 1945, the Governor in Council so provided. The effect of this Order in Council was to continue the Regulations in force.

The Act of 1945 provided that it should expire on December 31, 1946, if Parliament met during November or December, 1946, but, if Parliament did not so meet, that it should expire on the fifteenth day after Parliament first met during the year 1947. It was also provided that if at any time while the Act was in force, addresses were presented to the Governor General by the Senate and House of Commons, praying that it should be continued in force for a further period, not in any case exceeding one year from the time at which it would ordinarily expire, and the Governor in Council so ordered, the Act should continue in force for the further period. What has been stated in the two preceding sentences is the substance of section 6 of the Act of 1945. This section 6 was repealed and a new one enacted by chapter 60 of the 1945 Statutes

and by virtue thereof and of Order in Council P.C. 1112 of March 25, 1947, made pursuant to addresses to the Governor General by the Senate and House of Commons, the Act of 1945 was continued in force until May 15, 1947.

The Continuation of Transitional Measures Act, 1947, being chapter 16 of the Statutes of that year, came into force immediately on the expiry of the 1945 Act. The recital in the 1947 statute reads as follows:—

> Whereas Parliament, in view of the continuation of the national emergency arising out of the war, by *The National Emergency Transitional Powers Act, 1945,* conferred upon the Governor in Council certain transitional powers, pursuant to which the Governor in Council has continued in force certain orders and regulations made under the *War Measures Act* and has made other orders and regulations; And whereas the national emergency arising out of the war, in certain aspects, has continued since the unconditional surrender of Germany and Japan and is still continuing; And whereas provision is made for the expiry of *The National Emergency Transitional Powers Act, 1945;* And whereas it is necessary by reason of the existing national emergency that certain orders and regulations of the Governor in Council made under the *War Measures Act* and *The National Emergency Transitional Powers Act, 1945,* be continued in force temporarily notwithstanding the expiry of *The National Emergency Transitional Powers Act, 1945,* in order to ensure an orderly transition from war to peace:

The statute provides that the orders and regulations of the Governor in Council specified in the Schedule shall, notwithstanding the expiry of the 1945 Act, continue and be in force while the 1947 statute is in force, subject to the revocation by the Governor in Council in whole or in part of any such order or regulation. The Wartime Leasehold Regulations, that is, P.C. 2029 of 1941 and all the orders in council amending it, are listed in the schedule.

The Continuation of Transitional Measures Act, 1947, also provided in section 7 that it should expire on December 31, 1947, if Parliament met during November or December, 1947, but if Parliament did not so meet it should expire on the sixtieth day after Parliament first met during 1948 or on March 31, 1948, whichever date was earlier. If, however, while the Act was in force addresses were presented to the Governor General by the Senate and House of Commons praying that the Act should be continued in force for a further period not in any case exceeding one year from the time it would otherwise expire and the Governor in Council so ordered, the Act should continue in force for that further period. The Act was

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continued in force by Order in Council P.C. 5304 of December 13, 1947, made pursuant to a joint address. It has subsequently been continued in force by chapter 5 of the Statutes of Canada, 1948, and chapter 3 of the Statutes of Canada 1949 (Vol. 1). These statutes amended section 7 of the Act to extend its duration and that section at present reads as follows:—

> 7. Subject as hereinafter provided, this Act shall expire on the sixtieth day after Parliament first meets during the year one thousand nine hundred and fifty or on the thirty-first day of March, one thousand nine hundred and fifty, whichever date is the earlier; Provided that, if at any time while this Act is in force, Addresses are presented to the Governor General by the Senate and House of Commons, respectively, praying that this Act should be continued in force for a further period, not in any case exceeding one year, from the time at which it would otherwise expire and the Governor in Council so orders, this Act shall continue in force for that further period.

Chapter 3, Statutes of 1949, also restricted the authority of the Wartime Prices and Trade Board to the control of goods and services under control at the time of the enactment of that statute. The provisions of section 7 of the 1949 Act, set forth above, show when the regulations, if varied, may cease to operate.

It is apparent from the documents of which we are entitled to take judicial knowledge that the leasehold regulations were originally part only of various controls of enterprise and services, etc., and that this control was loosened in various respects from time to time until it now appears that very few controls are being exercised. So far as the leasehold regulations are concerned, steps were taken from time to time to limit the interference with what would otherwise be the ordinary rights of landlords and tenants until, by Order 813 of the Wartime Prices Board, dated December 15, 1949, as amended by Order 818, provision was made for increases in the maximum rental that might be charged for self-contained dwellings and lodgings and making provision for the termination of leases in certain circumstances. Board Order 814 makes further provision for the securing of possession of premises by landlords.

Notwithstanding the argument to the contrary, the answer to be given to the question submitted to the Court is indicated by the judgment of the Judicial Committee in

Fort Frances Pulp and Power Co. v. *Manitoba Free Press Co.* (1). That, it should be noted, was a decision *inter partes* and not an answer to a question submitted by the Governor in Council. Where a war emergency has existed and Parliament has enacted legislation declaring that the national emergency arising out of war, in certain aspects, has continued and is continuing, the subject matter of the legislation must be left to Parliament if it decides that the interests of the Dominion are to be protected. "No authority other than the central government is in a position to deal with the problem which is essentially one of statesmanship"; the *Fort Frances case* at page 706. Only "very clear evidence" or "clear and unmistakable evidence" that the Government is in error in thinking that the matter is of inherent national concern would justify a Court in so deciding: *idem* p. 706: *Cooperative Committee on Japanese Canadians* (2), at pp. 101 and 108. These two decisions dispose of the matter, and the answer to the question must be in the negative.

TASCHEREAU J.:—His Excellency the Governor in Council has referred to this Court the following question:—

Are The Wartime Leasehold Regulations *ultra vires* either in whole or in part and if so in what particulars or to what extent?

The *War Measures Act* (R.S.C. 1927, ch. 206) was brought into operation by a Proclamation dated September 1, 1939, and on September 11, 1940, by Order in Council P.C. 4616, The Wartime Prices and Trade Board Regulations, made under the *War Measures Act,* were extended to rentals and housing accommodation. In November, 1941, consolidated regulations respecting leasehold, and entitled *The Wartime Leasehold Regulations* were established, and on January 1, 1946, an Act of Parliament entitled *The National Emergency Transitional Powers Act* was enacted, and at the same time, all the Orders in Council respecting rentals, passed under the *War Measures Act,* were continued in force.

The preamble of this Statute recalls that during the national emergency that arose by reason of the war against Germany and Japan, measures have been adopted under the *War Measures Act* for the military requirements and the security of Canada and the maintenance of economic

(1) [1923] A.C. 695. (2) [1947] A.C. 87.

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stability; it also stated that this national emergency has continued and is still continuing, and that it is essential in the national interest that certain transitional powers continue to be exercised by the Governor General in Council during the continuation of the exceptional conditions brought about by the war, but that it is preferable that such transitional powers be exercised under specific authority conferred by Parliament, instead of being exercised under the *War Measures Act*. The preamble further says that it is necessary that certain acts and things done and authorized, and certain orders and regulations made under the *War Measures Act* be continued in force, and that the Governor General in Council be authorized to do, and authorize such further acts and things, and make such further orders and regulations deemed advisable by reason of the emergency, and also for the purpose of discontinuance in an *orderly manner,* as the *emergency permits,* of measures adopted during and by reason of the emergency.

Subsection 1 of section 2 of *The National Emergency Transitional Powers Act, 1945,* sets out the powers of the Governor General in Council in part as follows:—

> 2. (1) The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of
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> (*a*) providing for and maintaining the armed forces of Canada during the occupation of enemy territory and demobilization and providing for the rehabilitation of members thereof,
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> (*b*) facilitating the readjustment of industry and commerce to the requirements of the community in time of peace,
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> (*c*) maintaining, controlling and regulating supplies and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages to ensure economic stability and an orderly transition to conditions of peace;
>
> (*d*) . . .
>
> (*e*) continuing or *discontinuing in an orderly manner,* as the emergency permits, measures adopted during *and by reason of the war.*

This Act was continued in force until May 15, 1947, and on that date, an Act entitled *The Continuation of Transitional Measures Act, 1947,* came into force, and the preamble of this new Act recalls that in view of the continuation of the national emergency Parliament has in 1945, conferred upon the Governor General in Council

certain transitional powers, that the Governor General in Council has continued in force certain orders and regulations made under the *War Measures Act* and has made other orders and regulations; it also states that the national emergency arising out of the war, in certain aspects, has continued since the unconditional surrender of Germany and Japan and is still continuing; that it is necessary by reason of this emergency, in order to ensure an orderly transition from war to peace, to enact *The Continuation of Transitional Measures Act,* so that certain orders or regulations of the Governor General in Council be continued in force temporarily, notwithstanding the expiry of *The National Emergency Transitional Powers Act.*

Section 2 of *The Continuation of Transitional Measures Act, 1947,* provides as follows:—

> 2. (1) Subject to section 4 of this Act the orders and regulations of the Governor in Council specified in the Schedule to this Act shall, notwithstanding the expiry of *The National Emergency Transitional Powers Act, 1945,* continue and be in force while this Act is in force.

In the Schedule of this Act is *Order in Council P.C. 9029, Wartime Leasehold Regulations,* and by section 4 of the Act, the Governor in Council is authorized to revoke in whole or in part any order or regulation continued in force by or made under the Act. The Act has been continued from year to year and will expire on the 31st of March, 1950.

It has to be decided if the Wartime Leasehold Regulations made by Orders in Council are *ultra vires* either in whole or in part and if so in what particulars or to what extent.

The Attorney General of Canada, the Attorney General for Ontario, the Canadian Legion of the British Empire Service League, and the Canadian Congress of Labour, have submitted that these regulations are valid *in toto,* but the Attorney General for the Province of Quebec and the Canadian Federation of Property Owners Associations, on behalf of itself, its member associations and all the property owners of Canada, contend that they are *ultra vires* the powers of the Dominion. The submission of the Attorney General of Canada and of the others who have supported his views, is that those regulations were valid under the *War Measures Act,* as well as under *The National Emergency Transitional Powers Act,* and that they were validly

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continued in force by *The Continuation of Transitional Measures Act of 1947*, (*a*) as legislation in relation to the emergency arising out of the war, and (*b*) as legislation providing for the withdrawal in an orderly way of measures adopted to meet the war emergency.

It is now settled law, and this question has now passed the stage of serious controversy, that regulations passed under the *War Measures Act*, in times of emergency arising out of the war, and continued in force under *The National Emergency Transitional Powers Act*, are unchallengeable. *Vide*: *Fort Frances Pulp & Power Co.* v. *Manitoba Free Press Co.* (1); *In re Gray* (2); *Reference re Chemicals* (3); *The Co-operative Committee on Japanese Canadians* v. *Attorney General of Canada* (4).

A short reference to some of these cases will conclusively show that certain matters that normally belong to the provincial domain, become of federal concern, when by reason of abnormal circumstances a national emergency arises, which in order to be adequately dealt with, requires the total efforts of the country as a whole.

In *Fort Frances Pulp & Power Co.* v. *Manitoba Free Press* (5), Viscount Haldane speaking for the Judicial Committee said at page 703:—

> It is clear that in normal circumstances the Dominion Parliament could not have so legislated as to set up the machinery of control over the paper manufacturers which is now in question. The recent decision of the Judicial Committee in the *Board of Commerce Case* (6), as well as earlier decisions, show that as the Dominion Parliament cannot ordinarily legislate so as to interfere with property and civil rights in the Provinces, it could not have done what the two statutes under consideration purport to do had the situation been normal. But it does not follow that in a very different case, such as that of sudden danger to social order arising from the outbreak of a great war, the Parliament of the Dominion cannot act under other powers which may well be implied in the constitution. The reasons given in the *Board of Commerce Case* recognize exceptional cases where such a power may be implied.
>
> In the event of war, when the national life may require for its preservation the employment of very exceptional means, the provision of peace, order and good government for the country as a whole may involve effort on behalf of the whole nation, in which the interests of individuals may have to be subordinated to that of the community in a fashion which requires s. 91 to be interpreted as providing for such an emergency. The general control of property and civil rights for normal purposes remains with the Provincial Legislatures. But questions may

(1) [1923] A.C. 695.
(2) (1918) 57 Can. S.C.R. 150.
(3) [1943] S.C.R. 1.
(4) [1947] A.C. 87.
(5) [1923] A.C. 695.
(6) [1922] 1 A.C. 191.

arise by reason of the special circumstances of the national emergency which concern nothing short of the peace, order and good government of Canada as a whole.

In the *Reference as to the Validity of the Regulations in relation to Chemicals* (1), Sir Lyman Duff said:—

The *War Measures Act* came before this Court for consideration in 1918 in *re Gray* (2), and a point of capital importance touching its effect was settled by the decision in that case. It was decided there that the authority vested in the Governor General in Council is legislative in its character and an order in council which had the effect of radically amending the *Military Service Act, 1917,* was held to be valid. The decision involved the principle, which must be taken in this Court to be settled, that an order in council in conformity with the conditions prescribed by, and the provisions of, the *War Measures Act* may have the effect of an Act of Parliament.

Not only are the regulations made under the *War Measures Act,* valid, in case of emergency, but also must be held to be within the powers of the Central Government, regulations to avoid economic and other disturbances occasioned originally by the war. In the case cited *supra,* (*Fort Frances Pulp & Power Co.* v. *Manitoba Free Press*) it was held:—

Held, accordingly, that the Canadian War Measures Act, 1914, and Orders in Council made thereunder during the war for controlling throughout Canada the supply of newsprint paper by manufacturers and its price, also a Dominion Act passed after the cessation of hostilities for continuing the control until the proclamation of peace, with power to conclude matters then pending, were *intra vires.*

Judgment of the Appellate Division affirmed on a different ground.

The more recent case of *Co-operative Committee on Japanese Canadians* v. *Attorney General for Canada* (3) is very much to the point. In that case, this Court decided that three Orders in Council passed in 1945, after the cessation of hostilities, under the authority of the *War Measures Act,* and continued in force by Order in Council pursuant to section four of *The National Emergency Transitional Powers Act,* authorizing the deportation of certain Japanese, were valid. Delivering the judgment of the Judicial Committee, which upheld this Court, Lord Wright said at page 101:—

On certain general matters of principle there is not, since the decision in *Fort Frances Pulp & Power Co.* v. *Manitoba Free Press Co.* (4), any room for dispute. Under the British North America Act property and civil rights in the several Provinces are committed to the Provincial

(1) [1943] S.C.R. 1.
(2) (1918) 57 Can. S.C.R. 150.
(3) [1947] A.C. 88.
(4) [1923] A.C. 695.

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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.

These binding judicial pronouncements clearly hold that regulations made under the *War Measures Act* and under subsequent statutes, when there is still an emergency arising out of the war, must be held valid. This legislation may, of course, incidentally affect provincial rights, but as long as it is legislation directed to meet the continuing national emergency, it is not legislation in relation to provincial rights, but in "pith and substance", in relation to a matter upon which the Central authority may competently legislate. *Attorney General for Ontario* v. *Reciprocal Insurers* (1); *Attorney General for Canada* v. *Attorney General for Quebec et al.* (2).

Under "Property and Civil Rights", rentals are normally of provincial concern, but as the result of an emergency, the existing provincial laws on the matter become inoperative. The rights of the provinces are not of course permanently suppressed, and their jurisdiction temporarily suspended during the federal invasion, flows afresh when the field is finally abandoned. It is only during the period of occupation that the provincial jurisdiction is overridden. This is the reason that may justify the Dominion Government to offer to some or to all of the provinces to legislate on rentals, and to exercise anew their constitutional rights.

In order however to vest in the Federal Parliament the necessary authority to deal with such matters, there must be an emergency. There is no doubt that such an emergency existed during the war, and that during that period, the jurisdiction of Parliament could not be impugned. But the time that an emergency lasts is not limited to the period of actual hostilities. War is the cause of many social and economic disturbances and its aftermath brings unstable conditions which are settled only after a period of necessary readjustment, during which the emergency may very well persist. As Viscount Haldane said in the *Fort Frances* case:—

> At what date did the disturbed state of Canada which the war had produced so entirely pass away that the legislative measures relied on in the present case became *ultra vires*?

(1) [1924] A.C. 328 at 337. (2) [1947] A.C. 33 at 44.

The preambles of *The National Emergency Transitional Powers Act, 1945,* and of *The Continuation of Transitional Measures Act, 1947,* and the Order in Council submitting this Reference to this Court, clearly declare that the *emergency* still exists as a result of the war, and that by reason of that emergency and in order to *decontrol in an orderly manner,* it is imperative that the Governor General in Council be authorized to enact the necessary regulations.

Of course, these statements are not conclusive and do not close the door to all judicial investigations, but it is only with great caution that the courts will intervene and disregard these declarations of Parliament and of the Governor General in Council. As Viscount Haldane said in the *Fort Frances* case:—

> In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. *But very clear evidence that the crisis had wholly passed away* would be required to justify the judiciary, even when the question raised was one of *ultra vires* which it had to decide, in overruling the decision of the Government that *exceptional measures were still requisite.*

And further, also at page 707:—

> It is enough to say that there is no *clear and unmistakable* evidence that the Government was in error in thinking that the necessity was still in existence at the dates on which the action in question was taken by the Paper Control Tribunal.

In the *Co-operative Committee on Japanese Canadians* v. *Attorney General for Canada* (1), at page 101, Lord Wright expressed his views as follows:—

> 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 collorary 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.

(1) [1947] A.C. 87.

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In the present instance, no evidence of any kind has been submitted to show that the emergency has disappeared and that normal conditions are now prevailing. On the contrary, common knowledge, to which it is surely permissible to appeal in a case of this kind, and the very valuable exhibits in the record which I have usefully consulted, to test the accuracy of the statements, lead me to the irresistible conclusion that an emergency still exists as an aftermath of the war. *Vide*: *The Attorney General for Ontario* v. *Reciprocal Insurers*, (1); *Attorney General for Alberta* v. *Attorney General for Canada*, (2); *Lower Mainland Dairy Products Board* v. *Turners Dairy Ltd.* (3).

The case of *Russell* v. *The Queen* (4) has been referred to during the argument. This case which is very frequently cited has no application. Moreover, it has not the meaning that has been attributed to it, as a result of the dictum of Viscount Haldane in *Toronto Electric Commissioners* v. *Snider* (5). In *Attorney General for Canada* v. *Canada Temperance Federation* (6), Viscount Simon has definitely settled the matter and removed all possible doubts. Speaking for the Judicial Committee, he held that the *Scott Act* was a permanent law and not a law, the validity of which was justified by an emergency. It is not the existence of abnormal and transitory conditions that justified its validity.

The present case must also be distinguished from the Reference submitted to this Court as to the validity of the *Dairy Industry Act*. *The Margarine Case*, (7). In that case, amongst other submissions, it was contended that there was an emergency that justified the Parliament of Canada under the "Peace, Order and good Government" clause of section 91 of the *B.N.A. Act* to enact the legislation, but this Court held that an emergency did not exist, particularly in view of the allegation in the Order in Council, that margarine was not obnoxious to health, and that therefore the matter was of provincial concern.

It follows that if there is unmistakable evidence to make it clear that there is no emergency, the courts are duty bound to intervene. Otherwise, we would reach a con-

(1) [1924] A.C. 328 at 337.
(2) [1939] A.C. 118 at 130.
(3) [1941] S.C.R. 583.
(4) (1882) 7 A.C. 829.
(5) [1925] A.C. 396.
(6) [1946] A.C. 193.
(7) [1949] S.C.R. 1.

clusion that is not justified by the *B.N.A. Act*. Under the guise of "Peace, Order and good Government", it would be possible for the Parliament of Canada to enact colourable legislation, and wrongly assume powers that belong to the provincial legislatures. Confederation has been erected on more solid foundations.

But such is not the case. The war has created an emergency that justified the Governor General in Council to bring the *War Measures Act* in operation and pass regulations to meet such an emergency. Parliament then enacted *The National Emergency Transitional Powers Act, 1945*, and *The Continuation of Transitional Measures Act, 1947*, because in its opinion the emergency that arose out of the war was still existing, and for the express purpose of decontrolling, and to complete the orderly transition from abnormal to normal conditions. The regulations that were passed to reach that aim are essentially of a temporary character, and the laws from which they derive their validity are in no way permanent. They will come to an end with the emergency.

My answer to the interrogatory is therefore in the negative.

RAND J.: The Governor in Council has referred to this Court the following question:—

Are The Wartime Leasehold Regulations *ultra vires* either in whole or in part and if so in what particulars or to what extent?

These are part of the general regulations made under the authority of *The War Measures Act* which applied to virtually the entire economic organization of the country, and which no one has seriously suggested were not valid up to the end of actual hostilities, assuming that stage to have been reached before say 1947. The contention before us that sought to end their force at that moment was that of Mr. Beaulieu on behalf of the Province of Quebec. His contention was this: once the war, as distinguished from its aftermath, had ended, the "emergency" by which the regulations were justified had come to an end and it was necessary to their continued validity that the state of things immediately following should constitute, in effect, a new emergency; the latter would be a peace-time emergency, and would necessarily be considered apart

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from its cause. In that view, it would be obligatory upon those supporting the continuance of the central power to show the existence of such a state of things, which had not been done.

In the sense so used, the word "emergency" carries the objectionable insufficiency which prompted the remarks of Viscount Simon in the Temperance litigation reported in [1946] A.C. 193 at p. 206: as he there observed, an emergency may be the occasion which calls for the legislation, but it is the nature of the legislation itself, and not the existence of emergency, that must determine whether it is valid or not. It is the conditions brought about by war that justify the regulation here; and the narrow question is whether the regulation can continue while the conditions remain.

In considering the situation at the war's end, it must be kept in mind that the regulations themselves have played an effective part in producing it. If, at that moment, all restrictions were to be abandoned, no one could doubt that serious disturbances and hardship would follow, and it would not be sufficient to say that they would become the responsibility of the provinces.

That circumstance was emphasized in the case of *Dawson* v. *The Commonwealth* (1), in which Leatham, C.J. at p. 176 says:—

> The defence power does not cease instantaneously to be available as a source of legislative authority with the termination of actual hostilities or even with the end of the war * * * The fact that the Regulations have been in operation itself creates an economic condition which may reasonably be thought to require that continued operation for some further period in order to bring about a gradual return to what might be called more normal conditions, instead of exposing the community to the consequences of a sudden and abrupt creation of what may be a legislative vacuum.

It seems to me to be a legitimate consideration that persons who might directly or indirectly be affected by such drastic action would naturally look to the government originally responsible to take or continue reasonable measures to effect transition with as little injury to them as is consistent with regard to others.

There is direct authority on the question asked of us. It is now settled that for the emergency of war, on which the validity of the regulations is rested, and within con-

(1) (1946) 73 C.L.R. 157.

stitutional procedure, there is virtually no limitation to the scope of legislative action which Parliament, considering it necessary, may take for the defence of the country: *Japanese Reference* (1). That means, among other things, the preservation of the constitutional structure itself whose internal organization governs the ordinary peacetime life of the country. To suggest that the constitutional legislative position of the provinces presents impediments and limitations to the overriding necessity of maintaining the foundation upon which it rests indicates a somewhat inadequate appreciation of the realities of organized society in the world of these times, as well as of the constitutional statute.

In *Fort Frances Pulp & Power Co.* v. *Winnipeg Free Press* (2), the Judicial Committee, speaking through Viscount Haldane, held that an order issued in 1920 by the Paper Controller fixing prices which the Pulp Company should charge the Free Press for a period up to December 31, 1919, was within the authority of Parliament under the power to legislate for the peace, order and good government of the Dominion; and in the course of the reasons, at p. 706, this language is used:—

> At what date did the disturbed condition of Canada which the war had produced so entirely pass away that the legislative measures relied on in the present case became *ultra vires*?

And at p. 707:—

> Their Lordships find themselves unable to say that the Dominion Government had no good reason for thus temporarily continuing the paper control after actual war had ceased, but while the effects of war conditions might still be operative.

Viscount Haldane does not consider the question whether the regulations could be justified by the power of the Dominion to legislate for defence, on which the Australian legislation was upheld, but with that it is not necessary now to deal.

By what means, then, is it to be determined that economic disturbances caused by the war have not yet "entirely" disappeared? A conclusion of this sort is to be gathered from an appreciation of conditions throughout the country. Evidence of that is furnished to Parliament by the representatives in both the Houses: it is gathered by the agencies of the Dominion government charged

(1) [1947] A.C. 87. (2) [1923] A.C. 695.

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with country-wide enquiry, which are at the same time receiving centres of complaints and communications from all districts. There is also the common knowledge of which the Court can take judicial notice.

Of matters of that sort we have the following. In the latest legislative enactment, that of *The Continuation of the Transitional Measures Act, 1947,* these recitals appear:—

> Whereas Parliament, in view of the continuation of the national emergency arising out of the war, by *The National Emergency Transitional Powers Act, 1945,* conferred upon the Governor in Council certain transitional powers * * *
>
> And whereas the national emergency arising out of the war, in certain aspects, has continued since the unconditional surrender of Germany and Japan and is still continuing; * * *
>
> And whereas it is necessary by reason of the existing national emergency that certain orders and regulations * * * be continued in force temporarily * * * in order to ensure an orderly transition from war to peace;

They were followed in 1948 by an address of both Houses of Parliament provided for by the Act, by which its life was extended for a further year; and a similar address in 1949 for the same purpose. These are express and implied affirmations by the two legislative bodies to the effect that the abnormal conditions attributable to the war are still to some extent present, and that in the opinion of Parliament an appropriate degree of regulation is still required for the surrender, without too great shock or violence, of segments of the country's economy to the normal operation of economic forces. With those declarations and the matters of general public knowledge, at least not inconsistent with them, before us, and with nothing seriously challenging them, it would be quite impossible for this Court to find that the war conditions had in fact entirely disappeared, that the declarations of Parliament were not made in good faith, and that its legislation, for some purpose other than that of an orderly accommodation of the regulations to the last stages of the economic derangement, was a colourable device for dealing with matters beyond its jurisdiction.

My answer to the question is, therefore, that the regulations are not, in whole or part, *ultra vires.*

KELLOCK J.:—By s. 3 of the *War Measures Act,* R.S.C., 1927, c. 206, brought into operation by proclamation on September 1, 1939, "the Governor-in-Council may do and

authorize such acts and things and make from time to time such orders and regulations as he may by reason of the existence of real or apprehended war * * * deem necessary or advisable for the security, defence, peace and welfare of Canada". While the section goes on to provide that this authority shall extend to certain enumerated classes of subjects, it is expressly enacted that this enumeration is merely for greater certainty and not so as to restrict the generality of the earlier language; *Co-operative Committee on Japanese Canadians* v. *Attorney-General for Canada* (1).

Under the authority of this statute wartime economic controls, including measures respecting prices and rents, were by Order-in-Council introduced in Canada gradually during the earlier years of the war. Those earlier controls were directed to the meeting of specific difficulties of supply resulting from conditions brought about by the war.

Later, and toward the end of 1941, when a broad inflationary rise in prices generally began to develop, more comprehensive measures designed to maintain economic stability were put into effect, including the establishment of a general price "ceiling". Limitation of rents was also extended so as to include all real property, with the exception of farms. In the great majority of cases rents in effect in October, 1941, were "frozen". Control of wages and salaries also, which, up to that time, had been limited to "war industries", was extended to all industries. By the end of 1942 a fairly complete and integrated system of economic controls had been established and this continued with little change until the summer of 1945.

Following cessation of active hostilities with Germany, these controls began to be eased in the summer of 1945, the first steps being with respect to the use of metals and other materials no longer required for active war purposes. By the end of the year 1946, controls over these particular materials had disappeared. During 1946 wage controls were at first relaxed and later abolished and in that year also there began the easing of the control of prices generally, which continued at an accelerated rate during 1947 and 1948, while rationing of consumers came to an end during 1947.

(1) [1947] A.C. 87 at 105.

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The respondents accept the accuracy of the statement placed before the court on behalf of the federal government that:

> Both price controls and subsidies were withdrawn in steps and stages, with a view to easing the Canadian price structure up toward the world price level in an orderly manner. At times it was necessary to slow down the process of decontrol and occasionally to retrace a few steps when, for example, a long series of protracted industrial disputes in 1946 interrupted the improvement of supplies, and late in 1947 when severe exchange conservation measures required the reimposition of price controls on certain fruits and vegetables. But there was a steady and progressive contraction of the area under control.
>
> The pace of rent decontrol has been slower for a variety of reasons. The effect of demobilization of the members of the Armed Forces accentuated the already existing shortage of houses. Demobilized persons again took up family residences. Many of them married to form new families. Thus the end of hostilities did not, as in the case of other controls, immediately change the conditions that led to the application of controls to accommodation but in fact for the time being intensified these conditions.
>
> Again wartime conditions brought about a significant change in the balance between the demand and supply for houses in Canada. Wartime economic activities increased the demand for housing because of higher incomes which have continued after the war. On the other hand, increases in the supply of houses which might have been expected in these circumstances was cut down by restrictions on civilian construction to release materials and labour for war purposes. This lack of balance between demand and supply takes longer to adjust than in the case of the supply of other goods or services.

As to the nature of the controls affecting real property, the Wartime Prices and Trade Board had been authorized, in addition to the fixing of maximum rents, from time to time, to prescribe the manner in which rentals should be ascertained and what should constitute or be included in any rental. The Board was also authorized to prescribe the grounds on which and the manner in which leases might be terminated and to prohibit termination of leases or eviction otherwise. Every order made in pursuance of the regulations was to apply throughout Canada unless the contrary was specified therein but might be localized to an area or areas or to a class or classes of persons or to types of property.

On the 18th of December, 1945, 9-10 Geo. VI, c. 25, which came into force on January 1, 1946, was passed. By s. 5 it was provided that on and after that day the war against Germany and Japan should, for the purposes of the *War Measures Act*, be deemed no longer to exist.

By s. 4 it was provided that the Governor-in-Council might order that orders and regulations lawfully made under the *War Measures Act,* or pursuant to authority created under that Act, in force immediately before the statute came into force, should, while it remained in force, continue in full force and effect, subject to amendment or revocation under its provisions. By s. 6 the statute was to expire on December 31, 1946, if Parliament should meet during November or December of that year, and if not, then on the fifteenth day after Parliament should first meet in 1947. The section also provided that upon addresses presented to the Governor General by the Senate and the House of Commons at any time while the statute remained in force, praying that the Act should be continued in force for a further period not exceeding in any case one year, it should so continue.

By P.C. 7414 of December 28, 1945, the power conferred by s. 4 was exercised with respect to all orders and regulations lawfully made under the *War Measures Act,* or pursuant to authority created under that Act and in force immediately before the Act of 1945 came into force. Section 12 of the *Interpretation Act* made this Order-in-Council effective.

By 10 Geo. VI, c. 60, assented to on the 31st of August, 1946, a new section 6 was enacted and provision was made for the continuation of the statute until the 31st day of December, 1946, on essentially the same terms as had been provided by the original section. Further, by P.C. 1112 of the 25th of March, 1947, which recited that addresses of the Senate and House of Commons had been presented praying for the continuation of the 1945 statute until the 15th day of May, 1947, it was provided that the Act should remain in force until that date.

By 11 Geo. VI, c. 16, assented to on the 14th of May, 1947, which, by s. 6, was to come into force immediately after the expiry of the 1945 statute, certain Orders-in-Council, including the Wartime Leasehold Regulations, were to continue in force during the term of the new statute subject to revocation in whole or in part by the Governor-in-Council. Provision for the continuation of the Act was also made by s. 7 in terms similar to s. 6 of the

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earlier statute. By P.C. 5304 of December 30, 1947, the 1947 statute was continued in force to March 31, 1948, addresses for the purpose by the Senate and House of Commons having been presented. This legislation has been continued in force by 11-12 Geo. VI, c. 5 and 13 Geo. VI, c. 3. Unless further extended it will expire on March 31, 1950.

It was not suggested by anyone on the argument that conditions did not exist justifying the bringing into force of the *War Measures Act*, nor that under its provisions regulations could not properly have been enacted which would affect landlords and tenants. But it was contended that the conditions which constituted the basis for the continued exercise of this legislative jurisdiction by the federal authority had either passed away or that the particular regulations which are here in question had never been enacted in relation to that jurisdiction but had been at all times enactments purely in relation to property and civil rights in the provinces and therefore at all times beyond the jurisdiction of Parliament.

As will be seen from the above summary of its terms, the legislation outlined above is temporary legislation, having its inception in the extraordinary conditions consequent upon the magnitude of the war which commenced in September, 1939. As has been frequently laid down, subjects which would normally belong exclusively to provincial jurisdiction under classes of subjects specifically assigned by s. 92 of the *British North America Act* may, in time of war, assume a significance of paramount importance and of dimensions that give rise to a standard of necessity calling for the exercise of powers vested only in the federal authority. In such circumstances it is, as Viscount Haldane pointed out in the *Fort Frances* case (1), that:

> It is proprietary and civil rights in new relations, which they do not present in normal times, that have to be dealt with; and these relations, which affect Canada as an entirety, fall within s. 91, because in their fullness they extend beyond what s. 92 can really cover. The kind of power adequate for dealing with them is only to be found in that part of the constitution which establishes power in the State as a whole. For it is not one that can be reliably provided for by depending on collective action of the Legislatures of the individual Provinces agreeing for the purpose.

(1) [1923] A.C. 695 at 704.

Dealing first with the question as to whether the conditions which justified the initial legislation by Parliament have now completely passed away so as no longer to justify the particular regulations here in question, it was pointed out in the *Fort Frances* case that the question as to the extent to which provision for such circumstances may have to be continued is one on which a court of law is loath to enter. It may be, as their Lordships said in that case, that it has become "clear" that the crisis which arose is "wholly" at an end and that there is "no" justification for the continued exercise of an exceptional interference which becomes *ultra vires* when no longer called for, but very clear evidence that the crisis has "wholly" passed away would be required to justify a court in overruling the decision of the government that exceptional measures were still requisite.

Their Lordships asked the question as to when, in the case before them, it was to be said that the necessity "altogether" ceased for maintaining the exceptional measure of control there in question. At what date did the disturbed state of Canada which the war had produced so "entirely" pass away that the legislative measures in question became *ultra vires?* Their Lordships found that there was "no clear and unmistakable evidence" in that case that the government was in error in "thinking" that the necessity was still in existence and they found themselves unable to say that the Dominion Government had "no good reason" for temporarily continuing the control after actual war had ceased, but while the effects of war conditions might still be operative.

In the Japanese reference *ubi cit,* the Judicial Committee reaffirmed the principles laid down in the *Fort Frances* case. The statute there in question provided by s. 2 that the Governor-in-Council might do and authorize such acts and things, and make from time to time such orders and regulations, as he might, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of

> (c) maintaining, controlling and regulating * * * prices * * * use and occupation of property, rentals * * * to ensure economic stability and an orderly transition to conditions of peace;

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(e) continuing or discontinuing in an orderly manner, as the emergency permits, measures adopted during and by reason of the war.

In the Japanese Canadian reference it was contended that at the date of the passing of the Act of 1945 there did not exist any such emergency as justified Parliament in empowering the Governor-in-Council to pass the orders there in question, as the emergency which had dictated their making—namely, active hostilities, had come to an end. It was said that a new emergency justifying exceptional measures might 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 Parliament at the time of the passing of the Act. This contention however, was rejected by the Privy Council as it had been by this court. After pointing out that the statute in its preamble clearly stated the view of Parliament as to the necessity of imposing the powers which were exercised, Lord Wright, who delivered the judgment, added:

> 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.* (1) and accepted by their Lordships earlier in this opinion.

In the preamble to the statute of 1947 which is still in force, it is recited that:

> * * * the national emergency arising out of the war, in certain aspects, has continued since the unconditional surrender of Germany and Japan and is still continuing * * * And whereas it is necessary by reason of the existing national emergency that certain orders and regulations of the Governor in Council made under the *War Measures Act* and *The National Emergency Transitional Powers Act, 1945,* be continued in force temporarily notwithstanding the expiry of *The National Emergency Transitional Powers Act, 1945,* in order to ensure an orderly transition from war to peace * * *

While a recital in an act of Parliament cannot be conclusive on a question such as is here involved, it at least furnishes evidence that, in the mind of Parliament, legislation was directed to a continuing condition. There is no suggestion in the present case of bad faith on the part of Parliament.

(1) [1923] A.C. 695.

In my opinion the undoubted legislative power of Parliament in respect of conditions arising out of an emergency such as that created by a war of the proportions of the late war, as established by the authorities referred to, includes, not only the power to prosecute the war and to do everything necessary to that end, but also the power to effect the restoration of conditions of peace by gradual process if that is thought wise and "not necessarily immediately by the crude process of immediate abandonment of all Federal control", to borrow language used by Latham C.J. in *Dawson* v. *The Commonwealth* (1), at 176. The fact that certain conditions have been created by the exercise of the defence power is itself a fact which is relevant to the validity of a continued exercise of that power.

The former Chief Justice of Canada, Sir Lyman Duff, (with whom the present Chief Justice concurred) expressed the same idea in other language in *The King* v. *Eastern Terminal Elevator Co.* (2), at 443, where he said:

> Regarded as legislation essential to prevent such a financial crisis as would be not unlikely to ensue upon the relinquishment, voluntary or forced, of Dominion control over the grain trade, the Canada Grain Act might well withstand the test of validity suggested in the *Board of Commerce* (3), the *Fort Frances* (4) and the *Lemieux Act* (5) cases.

Applying the above principles, it is, in my opinion, clear that the court is not in a position, any more than it was in the case of the 1947 Reference, to overrule the decision of Parliament expressed as late as the 25th of March, 1949, that the rental regulations here in question are still necessary to meet conditions initially arising out of war but still continuing. The kind of evidence necessary to establish that the emergency calling for the exercise of the federal power has "entirely" passed away, is wholly lacking.

The only matter relied upon by the respondents as evidence to that end, was the statement in the Order of Reference that on October 23, 1948, the Minister of Finance had advised the premiers of each of the provincial governments that the Dominion government

> was prepared to vacate the field to any province which might decide to undertake rent control.

(1) (1946) 73 C.L.R. 157.
(2) [1925] S.C.R. 434.
(3) [1922] 1 A.C. 191.
(4) [1923] A.C. 695.
(5) [1925] A.C. 396.

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This, however, is not to be taken alone, as it is immediately followed by the statement that:

> In offering to vacate the field to the provinces a year ago the federal government was not seeking to relieve itself of responsibility for rent control. It was motivated solely by concern for the situation that would arise should rent control be held to be beyond the constitutional powers of the federal authorities. It believed at that time that the sudden end of rent control would result in unnecessary disruption and hardship, and it offered to put the matter beyond doubt by giving the provinces an opportunity to introduce legislation that could not be successfully challenged in the courts.

At the time of the above "offer" there was in effect Dominion-wide legislation designed to deal with a Dominion-wide problem. If it had developed that that problem could have been dealt with by common action agreed upon by the provinces, it might have been that any further justification for the exercise of federal legislative jurisdiction would have ceased. On the contrary, however, "none of the then existing provinces was prepared to undertake rent control" and the problem did not become one that could be "reliably provided for by depending on collective action of the legislatures of the individual provinces agreeing for that purpose", to quote again from the *Fort Frances* case at 704. As the provinces could not in fact agree, the Dominion considered it necessary that this legislation should remain. I do not think that, in the existing circumstances, had one or more of the provinces undertaken to exercise "rent control" within their respective limits so as adequately to form the necessary links with Dominion legislation elsewhere in the country wide system of control, the powers of the Dominion Government to maintain its legislation would have been affected.

If clear evidence had been adduced of the disappearance of any conditions justifying the continued operation of the federal legislation, it would, of course, be not only within the power but the duty of the court to declare the legislation invalid, but in the present case there is nothing of the kind. Such facts as are common knowledge, and of which the court may take judicial notice, indicate the contrary. To this may be added what is obvious, namely, that in such circumstances it is not for the court to consider the wisdom or propriety of the particular policy embodied in the residual emergency legislation. That is matter exclusively for Parliament.

With respect to the second objection to the validity of the regulations, namely, the contention that, from a perusal of the Orders-in-Council, the court could say that their provisions were not enacted with relation to the Dominion field of legislative jurisdiction in time of war, but purely in relation to property and civil rights, in my opinion this contention cannot be sustained. I think it is sufficiently clear that the measures here in question were enacted from the point of view of what was considered called for in the conditions then prevailing. In that view they are valid. Their continuing validity I have already dealt with.

My answer, therefore, to the question referred, is that the Wartime Leasehold Regulations are *intra vires*.

ESTEY J.:—His Excellency the Governor General in Council under s. 55 of *The Supreme Court Act* referred to this Court the question:

> Are The Wartime Leasehold Regulations *ultra vires* either in whole or in part and if so in what particulars or to what extent?

The Wartime Leasehold Regulations were enacted by Order in Council P.C. 9029, November 21, 1941, under the authority of the *War Measures Act*, R.S.C. 1927, c. 206. In 1945 Parliament, after the conclusion of actual hostilities, deemed it desirable that legislation in respect to the emergency arising out of the war should be dealt with under special authority and as a result *The National Emergency Transitional Powers Act*, S. of C. 1945, c. 25, was enacted which continued these Wartime Leasehold Regulations in force. This statute remained in force until May 15, 1947, when *The Continuation of Transitional Measures Act*, S. of C. 1947, c. 16, became effective and continued in force such of these Wartime Leasehold Regulations as had not been repealed.

The validity of the *War Measures Act* was upheld in *Fort Frances Pulp* v. *Manitoba Free Press* (1), and *The National Emergency Transitional Powers Act, 1945*, in *The Co-operative Committee on Japanese Canadians* v. *The Attorney-General of Canada* (2). The power of the Governor in Council to legislate under the *War Measures Act* by Order in Council was upheld in *In re Gray* (3), and *Reference re Chemicals*, (4).

(1) [1923] A.C. 695.
(2) [1947] A.C. 87.
(3) (1918) 57 Can. S.C.R. 150.
(4) [1943] S.C.R. 1.

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The National Emergency Transitional Powers Act, 1945, was held to be valid Dominion legislation in the *Japanese Reference, supra,* and in the course of the judgment of their Lordships of the Privy Council, Lord Wright at p. 101 stated:

> 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.

The recital and the provisions of *The Continuation of Transitional Measures Act* set forth that the emergency arising out of the war still continued but only "in certain aspects" and that certain orders and regulations then existing should "be continued in force temporarily * * * in order to ensure an orderly transition from war to peace". Of even greater significance is that by s. 4 the power vested in the Governor in Council is restricted to the revocation either in whole or in part of any existing order or regulation. Parliament here indicates a clear intention that this legislation is of a temporary character, which is further emphasized by the amendments made in 1948 (S. of C. 1948, c. 5) and in 1949 (S. of C. 1949, c. 3). In the latter amendment sec. 7 reads:

> 7. Subject as hereinafter provided, this Act shall expire on the sixtieth day after Parliament first meets during the year one thousand nine hundred and fifty or on the thirty-first day of March, one thousand nine hundred and fifty, whichever date is the earlier: Provided that, if at any time while this Act is in force, Addresses are presented to the Governor General by the Senate and House of Commons, respectively, praying that this Act should be continued in force for a further period, not in any case exceeding one year, from the time at which it would otherwise expire and the Governor in Council so orders, this Act shall continue in force for that further period.

The true nature and character of *The Continuation of Transitional Measures Act, 1947,* is that those orders and regulations necessary because of the continuation of the emergency arising out of the war should, so far as it may be necessary, be continued but that they might gradually and in an orderly manner be repealed as the conditions of emergency continue to diminish. It is in principle legis-

lation similar to *The National Emergency Transitional Powers Act* and valid under the authority of the *Japanese Reference, supra.*

The Attorney-General of Canada submitted that The Wartime Leasehold Regulations as continued in the Schedule of *The Continuation of Transitional Measures Act, 1947,* were valid legislation in relation to the emergency arising out of the war and for the withdrawal in an orderly manner of measures adopted to meet the emergency. In this he was supported by counsel for the respective parties appearing in support of these regulations.

In this submission the essential question is, therefore, does the emergency arising out of the war still exist. This is primarily a matter that the representatives of the people in Parliament must determine. They are not only familiar with the conditions that obtain throughout the various parts of the Dominion, but they have available to them the records and statistics upon which such a question may be determined. The position of the Courts in the consideration of this question is indicated by Viscount Haldane in the *Fort Frances* case, *supra,* at p. 706:

* * * the effect of the economic and other disturbance occasioned originally by the war may thus continue for some time after it is terminated. The question of the extent to which provision for circumstances such as these may have to be maintained is one on which a Court of law is loath to enter. No authority other than the central Government is in a position to deal with a problem which is essentially one of statesmanship * * * But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of *ultra vires* which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite.

Parliament in 1947 by the recital and provisions contained in *The Continuation of Transitional Measures Act* and the inclusion of The Wartime Leasehold Regulations in the Schedule thereto declared that the emergency in relation to which the regulations were passed still continued. It was clear, however, from the provisions of that statute that the conditions were changing to the point that no longer was it necessary that the Governor in Council should be authorized to pass new orders and regulations. In fact many of these Leasehold Regulations had already been repealed and at the time of this reference only housing and shared accommodation were subject thereto. All this indicates that the Dominion has been pursuing

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a course of gradual decontrol and when the emergency no longer exists its legislation will be completely repealed. It was no doubt in appreciation of these facts that the Province of Ontario supported the submission on behalf of the Dominion and stated "Parliament must be left with a reasonable time (which has not yet expired) to decontrol in an orderly manner" and "which is being done as rapidly as circumstances warrant". This position was also supported by all of counsel appearing in support of the validity of these regulations.

It was contended that the statement of the Minister of Finance in 1948 embodied and made a part of Order in Council P.C. 5840 submitting this reference should be construed to mean "that the circumstances were such that it was no longer essential for Canada as a whole for the Dominion to continue to deal with the landlord and tenant relationship". This submission does not, except by implication, contend that the emergency no longer exists. As already intimated, the Dominion so long as the emergency continues possesses the authority to legislate in relation thereto and how far it should do so is a matter of statesmanship, in regard to which the following is pertinent:

> It is enough to say that there is no clear and unmistakable evidence that the Government was in error in thinking that the necessity was still in existence at the dates on which the action in question was taken by the Paper Control Tribunal. Viscount Haldane in the *Fort Frances* case, *supra,* at p. 706.

The Minister made the statement because the constitutional validity of these Leasehold Regulations had been challenged in the Courts and because in his opinion the emergency still continued. He was, in these circumstances, concerned that should the Courts declare these regulations invalid that the provinces would be prepared to deal with the problem of rent control and by way of assistance and on behalf of the Government he offered to each province its records, information, experience, staff and "subject to Parliament's approval, to pay the cost of any provincial rental administration for one year". Emphasis was placed upon that portion of the statement intimating that the Federal Government was "ready at any time to vacate the field of rent control to any province which makes a formal request to that effect". This portion must be read and construed as part of the statement as a whole. When so

read it indicates that the emergency still continues and is consistent with the position taken throughout by the Dominion that as the scope of the emergency narrows its legislation will be repealed. It can mean no more than that while the emergency still exists, it has so far eased or narrowed that if a province "makes a formal request" the Dominion will not prevent it operating "in the field of rent control". The Minister's statement does not support either a conclusion that the emergency no longer continues or that it is within the authorities no longer essential for the Dominion to deal therewith.

In considering some of the other objections to the validity of these regulations, it is important to keep in mind that the emergency arising out of the war with Germany and Japan was of such magnitude and extent that it imperilled the existence of the Dominion as a nation; that within the terms of the *B.N.A.* Act the Dominion is authorized to deal effectively with this emergency and in that aspect to legislate in relation thereto. That such legislation may involve provisions that under normal circumstances would be classified as in relation to matters which under s. 92 are assigned exclusively to the provinces does not impair its validity. That as enacted it may affect property and civil rights or other matters enumerated under s. 92 must be admitted. If, however, it be legislation in relation to the emergency, so long as that emergency may continue it must be held to override or suspend the provincial legislation, and, indeed, any Dominion legislation with which it may be in conflict. *In re Gray, supra.*

It is unnecessary to set forth the scope and far reaching effects of the national effort. It is sufficient to observe, and it was not contended otherwise, as part thereof it was necessary that as large a measure of economic stability as possible should be maintained. Legislation toward the attainment of that end was unquestionably legislation in relation to the emergency and therefore competent on the part of the Dominion. Neither this nor the fact that such involved legislation for the control of prices, wages, salaries and industry was contested. Any suggestion that this did not include the control of rent cannot be accepted. Rent, in an important respect, is but the price of building and housing accommodation. When prices, wages and

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salaries are controlled the omission to control rent would at least in part nullify the effectiveness of these controls in the attainment of economic stability. Indeed, these Leasehold Regulations cannot be considered separate and apart from but rather as a part of that body of legislation enacted toward the attainment of economic stability which included prices and trade regulations, control of industries, wages and salaries.

It is equally important toward the attainment of this end that building and housing accommodation should be utilized to the best possible advantage and security of tenure made possible. It was therefore not only necessary that rents be fixed but the termination of the leases should also be subject to control. In this regard it is only necessary to recall that building materials during the period of combat had to be largely directed to other than the construction of commercial and housing accommodation and that this made the situation particularly difficult at those points where population had to be concentrated. Any suggestion therefore that these Leasehold Regulations as originally enacted were not in relation to the emergency arising out of the war cannot be maintained.

That the conditions of the emergency arising out of the war continue after cessation of actual combat has been recognized in both the *Fort Frances* case, *supra,* and the *Japanese Reference, supra.* It was submitted, however, on behalf of the Province of Quebec that under the authorities legislation in relation to the emergency, once the actual combat has ceased, must be confined to the completion of that which had been commenced during the period of hostilities. It was suggested that the *Fort Frances* case supported that view. The statute there in question was S. of C. 1919, 9 & 10 Geo. V, c. 63. This statute does not appear to justify so limited a construction. The Order in Council was passed July 8, 1920. Viscount Haldane stated at p. 707:

> It will be observed that this Order in Council deals only with the results following from the cessation of actual war conditions. It excepts from repeal certain measures concerned with consequential conditions arising out of war, which may obviously continue to produce effects remaining in operation after war itself is over.

In the *Japanese Reference, supra,* the Orders in Council were made originally on December 15, 1945, under *The*

War Measures Act. They were continued as valid legislation in relation to the emergency which still continued under *The National Emergency Transitional Powers Act* which came into force January 1, 1945. These Orders in Council were therefore enacted in the first instance after actual combat had ceased and were held to be valid legislation in relation to the emergency.

Neither of these cases support the limited view here contended for but rather indicate that their Lordships in the Privy Council rested their decisions on the broad basis that Parliament has authority to deal adequately with the emergency so long as it may continue after actual combat has ceased.

It was also submitted on behalf of the Province of Quebec that "the dislocations in changing from a wartime economy to conditions of peace are not by themselves sufficient to justify the invasion by the Dominion Parliament of the exclusive field of competency assigned to the provinces." Support for this submission was sought in the *Board of Commerce* case (1), in which the validity of two statutes enacted by the Parliament of Canada—*The Board of Commerce Act* and *The Combines and Fair Prices Act* (respectively 9 & 10 Geo. V, c. 37 and c. 45) was in question. These statutes were enacted in the postwar period but whether they arose out of dislocations in changing from a wartime to a peacetime economy need not be determined. They were not in relation to any emergency arising out of the First Great War but rather were enacted in respect of other matters and as permanent Dominion legislation. Because they were statutes in relation to matters upon which, under s. 92, the provinces have exclusive power to legislate, they were held to be invalid. It is quite conceivable that dislocations in the postwar period may exist which are not in any proper sense part of the emergency arising out of the war. The jurisdiction, however, of the Dominion is restricted to legislating in relation to the emergency arising out of the war as discussed in the *Fort Frances* case. It is significant that the *Fort Frances* case was decided in the year following the *Board of Commerce* case and Viscount Haldane, Lord Buckmaster and Lord Phillimore were members of the

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Judicial Committee in both cases and Viscount Haldane wrote both judgments. As already stated, in the former the Judicial Committee was dealing with legislation that was not, while in the latter it was dealing with legislation that was in relation to the emergency.

It was also contended that these Leasehold Regulations were as originally enacted invalid because the *War Measures Act* did not "authorize the exercise of the power of delegation in the case of the matters dealt with by P.C. 9029 and the Rental Regulations." In support of this it was contended that the delegated powers had to be found in sub-paragraphs (*a*) to (*f*) of subsection 3 of the *War Measures Act*. This submission is contrary to the express words of the section in which, after providing in clear and comprehensive terms that the Governor in Council may within the terms thereof do whatever he deems "necessary or advisable for the security, defence, peace, order and welfare of Canada," continues "and for greater certainty, but not so as to restrict the generality of the foregoing terms," and then sets out sub-paragraphs (*a*) to (*f*). This section was formerly s. 6 and the foregoing submission was rejected in *In re Gray, supra*. In that case at p. 168 it is pointed out that the enumerated portions instead of qualifying the general terms of the section "emphasizes the comprehensive character of it and pointedly suggests the intention that the words are to be comprehensively interpreted and applied".

The contention that P.C. 9029 "ceased to be valid as soon as Parliament declared the *War Measures Act* as no longer the statute upon which authority therefor was based" is completely answered in the *Japanese Reference, supra*. If that contention had been correct the decision in the *Japanese* case would have been otherwise.

In my opinion The Wartime Leasehold Regulations neither in whole nor in part are *ultra vires* .

LOCKE J.:—By s. 3 of the *War Measures Act*, 1914 (2nd Session, c. 2) it is provided, *inter alia*, that the Governor in Council may do and authorize such acts and things and make from time to time such orders and regulations as he may, by reason of the existence of real or apprehended war, invasion or insurrection, deem necessary or advisable for the security, defence, peace, order and welfare of Canada.

Without restricting the generality of this language, the section further declares that the powers of the Governor in Council shall extend to all matters coming within certain enumerated classes of subjects which include the appropriation, control, forfeiture and disposition of property and of the use thereof. Under these powers a great variety of regulations were made during the second World War, virtually taking charge of and directing the economic life of Canada, and various boards set up to administer them. These included the Wartime Prices and Trade Regulations, the Wartime Industries Control Board Regulations, the Wartime Wages Control Order, the Wartime Salaries Order, the Mobilization Regulations and the Selective Service Regulations, in addition to the Wartime Leasehold Regulations. The necessity for measures such as these in time of war is apparent and the Leasehold Regulations were merely part of the general control which it was considered necessary to exercise in the interest of the country as a whole.

The *War Measures Act* continued in effect until December 31, 1945. On January 1, 1946, *The National Emergency Transitional Powers Act, 1945,* came into force. That statute contained a declaration that as of the last mentioned date the war against Germany and Japan should for the purposes of the *War Measures Act* be deemed no longer to exist. The preamble to the statute, after reciting the powers vested in the Governor in Council by the *War Measures Act* to make orders and regulations deemed necessary or advisable for the security, defence, order and welfare of Canada, recited in part that:—

> Whereas during the national emergency arising by reason of the war against Germany and Japan measures have been adopted under the *War Measures Act* for the military requirements and security of Canada and the maintenance of economic stability; And whereas the national emergency arising out of the war has continued since the unconditional surrender of Germany and Japan and is still continuing; And whereas it is essential in the national interest that certain transitional powers continue to be exercisable by the Governor in Council during the continuation of the exceptional conditions brought about by the war * * *

By s. 2 the Governor in Council was authorized to make such orders and regulations "as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or

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advisable for the purpose of continuing or discontinuing in an orderly manner, as the emergency permits, measures adopted during and by reason of the war".

By Order-in-Council of December 28, 1945, all orders and regulations lawfully made under the *War Measures Act* and in effect on December 31, 1945, were continued in force, subject to amendment or revocation under *The National Emergency Transition Powers Act, 1945*. The last mentioned statute which by its terms was stated to expire on December 31, 1946, was continued in force until May 15, 1947, pursuant to c. 50 of the Statutes of Canada 1946. *The Continuation of Transitional Measures Act, 1947* continued the Leasehold Regulations in force for a further period.

The preamble to that Act, after reciting the circumstances under which the 1945 statute had been passed, recited that the national emergency rising out of the war in certain aspects had continued and was still continuing and that it was necessary "by reason of the existing national emergency" that certain orders and regulations of the Governor in Council made under the *War Measures Act* and the 1945 Act should be continued in force temporarily, notwithstanding the expiry of *The National Emergency Transitional Powers Act, 1945,* in order to ensure an orderly transition from war to peace. These included the Wartime Leasehold Regulations then in effect. By c. 25, Statutes of 1948, and c. 3, Statutes of 1949, the 1947 Act was amended and continued in force so that, as matters now stand, it will expire on the sixtieth day after Parliament first meets during the present year or on March 31, whichever date is the earlier, provided that if at any time while the Act is in effect addresses are presented to the Governor General by the Senate and House of Commons respectively, praying that the Act should be continued in force for a further period not in any case exceeding one year, and the Governor in Council so orders, it shall continue in force for such further period.

By the order of reference, we are informed that the exceptional conditions brought about by the war which made the Wartime Leasehold Regulations necessary are still continuing and that the orderly transition from war to peace had not yet been completed. In addition to this

information there is included in the order an announcement made in the House of Commons by the Minister of Finance on November 3, 1949, stating that the purpose of the Government was to proceed in an orderly way towards the eventual withdrawal of all wartime controls. We are further informed that the controls imposed by orders made under the authority of the *War Measures Act* and the Acts of 1945 and 1947 have been largely rescinded or relaxed. In the case of the Wartime Leasehold Regulations, the orders now in effect apply to the rentals for and the leasing of housing accommodation and shared accommodation only.

That the *War Measures Act* was *intra vires* Parliament has been long since settled (*Fort Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* (1)). Counsel for the Canadian Federation of Property Owners' Associations contends, however, that the Rental Regulations were outside of the powers vested in the Governor in Council by that statute. As to this, it is my opinion that these regulations fell clearly within the general language of the opening clause of s. 3 as well as within the enumeration in clause (*f*) as dealing with the appropriation, disposition and use of property.

The main ground of objection to the present regulations is that it is said that they trench upon the powers of the Legislatures of the Provinces to exclusively make laws in relation to property and civil rights within their boundaries. That these regulations affect property and civil rights in all of the provinces of Canada, other than Newfoundland, is not open to doubt. For those who attack their validity, it is said that, whatever justification there may have been for the making of the regulations during the period of the war, no present justification exists for their continuance.

While the question we are required to determine is as to whether the Wartime Leasehold Regulations are *ultra vires*, either in whole or in part, since it is not contended that these are not authorized by *The Continuation of Transitional Measures Act, 1947* as amended, the matter involves also the question as to whether that statute and the amending Acts are within the powers of Parliament. It is of importance to note at the outset that the statute

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is temporary in its nature, a fact which is made clear from the language of the preamble. This distinguishes the legislation from that which was considered in *Re The Board of Commerce Act* (1), where, as pointed out in the judgment of Viscount Haldane, the Act was not confined to any temporary purpose but was to continue without limit of time. We are to inquire into and determine what is the true nature and character of this legislation and it is, of course, true that in considering this question the matter is not determined by the language used in the preamble or elsewhere in the statute (*Attorney-General for Ontario* v. *Reciprocal Insurers* (2), *Attorney-General for Manitoba* v. *Attorney-General for Canada* (3). There is, however, in the present case no suggestion that the legislation is colourable in the sense that Parliament might be said under the guise of legislation to authorize measures deemed necessary for the peace, order and good government of Canada as a whole, of attempting to usurp provincial powers in respect of property and civil rights, or that the regulations are continued in force with any such object. There is nothing here to suggest that the recital in the Act that the national emergency arising out of the war in certain aspects has continued and still continues, making it necessary to continue the regulations in force temporarily, is not the considered opinion of Parliament, and the statement in the order of reference that the exceptional conditions brought about the war which made the Wartime Leasehold Regulations necessary are still continuing must, on a reference of this nature, be accepted as expressing the opinion of the Executive Government. This is not to say that, in other circumstances, regulations enacted to cope with a situation resulting from a lengthy war under a temporary statute of this nature might not, in the course of time, be found to be beyond the powers of Parliament, but it would be necessary that it should be very clear that the condition of emergency which necessitated their maintenance had passed away before the Court could properly be asked to overrule the decision of the Government that these exceptional measures were still necessary: *Fort Frances Pulp and Power Company* v. *Manitoba Free Press* (4).

(1) [1922] 1 A.C. 191.
(2) [1924] A.C. 328 at 337.
(3) [1925] A.C. 561 at 566.
(4) [1923] A.C. 695 at 706.

In my opinion, upon the material before us in the present matter, the question submitted is determined in favour of the validity of *The Continuation of Transitional Measures Act, 1947* as amended and of the regulations by the decisions of the Judicial Committee in the *Fort Frances* case and in *Co-Operative Committee on Japanese Canadians* v. *Attorney-General for Canada* (1).

My answer to the question, therefore, is:—The Wartime Leasehold Regulations are not *ultra vires,* either in whole or in part.

Solicitor for the Attorney-General of Canada: *F. P. Varcoe.*

Solicitor for the Attorney-General of Ontario: *C. R. Magone.*

Solicitor for the Attorney-General of Quebec: *L. E. Beaulieu.*

Solicitor for the Tenants within Canada: *J. J. Robinette.*

Solicitors for the Canadian Legion of the British Empire Service League: *Howe & McKenna.*

Solicitors for the Canadian Federation of Property Owners Associations: *Chitty, McMurty, Ganong & Keith.*

Solicitor for the Canadian Congress of Labour: *M. W. Wright.*

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(1) [1947] A.C. 87 at 101, 102.