

by means of taxation a fund, it by no means follows (that any legislation which disposes of it is necessarily within dominion competence.)

It may still be legislation affecting the classes of subjects enumerated in section 92, and, if so, would be *ultra vires*. In other words, dominion legislation, even though it deals with dominion property, may yet be so framed as to invade civil rights within the province; or encroach upon the classes of subjects which are reserved to provincial competence.

I am sure that hon. members will respect the opinion of Mr. Cahan, former secretary of state, who gave these ideas on this case on March 1, 1937:

I should like to ask the Minister of Finance whether his department, in association with the officials of the Department of Justice, have considered the full bearing of a recent opinion of the judicial committee of the privy council, with regard to a matter such as this. As I read that opinion the privy council have declared it illegal for this parliament to make any appropriation of funds derived from taxation for subject matters over which parliament has not legislative jurisdiction under section 91 of the British North America Act.

All of the matters legislated for in this bill or imposed by it deal with the matter of child welfare, on matters of social service organization and within the competence of the provinces. Then Mr. Cahan says:

That is a wide and sweeping declaration of the judicial committee of the privy council which I believe applies not only to pensions for old age but also to pensions for the blind, and a number of other appropriations aggregating tens of millions of dollars which are annually voted by parliament. In view of that opinion I think the government should take into serious consideration the question whether in voting these tens of millions we are not committing illegal acts which are *ultra vires* of the parliament of Canada.

That is one opinion. I quote now an opinion from Mr. Brooke Claxton, as he then was, and Mr. L. M. Gouin, as he then was, now a member of the other place. I read from page 20 of the report entitled "Legislative Expedients and Devices Adopted by the Dominion and the Provinces, 1939" I see my time is rapidly coming to an end; therefore I cannot read this quotation at any length. Let me read one portion of it in which Mr. Claxton and Mr. Gouin, dealing with the question of old age pensions, which is analogous to the payment of allowances to children, the only difference being the matter of age, said this:

It can hardly be doubted that the subject of old age pensions falls under the provincial jurisdiction to legislate respecting property and civil rights. That was the opinion given by the Department of Justice and it does not seem to have been challenged.

After quoting from the speech of Lord Atkin before the privy council, they added:

If this is a correct statement of the law, the dominion old age pensions act will be invalid

if that act is in itself legislation "affecting the classes of subjects enumerated in section 92" or if the act is "so framed as to invade civil rights within the province; or encroach upon the classes of subjects which are reserved to provincial competence."

Then after dealing with this and others, he said:

For this reason, the holding in the reference justifies Mr. Cahan's apprehension with respect to this act at least, and the act and any similar legislation might be held *ultra vires* if the question is ever raised.

I cannot go into the various house references of the Prime Minister during the years, particularly in 1926, 1935 and 1936, except to say that on January 21, 1935, at page 49 of *Hansard*, the right hon. gentleman was explaining why much of the reform legislation which had been referred to in the book "Industry and Humanity" had not been brought in, and went on to use these significant words:

In that view of things will be seen the foundation of Liberal policy on social legislation as well as much else; and if the Liberal party in the federal field, during the time I had the honour to be Prime Minister, did not introduce more in the way of so-called social legislation than it did, it was in the main for two reasons, one of which I have already indicated, namely, that up to the present time, until within the last few weeks, it has been understood that practically all legislation of a social character came exclusively within the jurisdiction of the provinces, the other reason being that we did not know where we should obtain the wherewithal to carry out these policies until we got rid of the cumulative deficits which we had inherited when we assumed office.

The only altered opinion in connection with the legislative competence of parliament was expressed by Mr. Bennett, who said parliament had that power under the treaty obligations of this country.

I should like to give one other reference to support my contention that this legislation should be placed before the supreme court, under the power contained in the Supreme Court Act, before the coming election, so that no one in this country may be deluded by false hopes. In 1935 the Prime Minister made a similar request to mine to-day. He asked that the legislation then introduced be taken before that court, pointing out his reasons for this request; and those reasons apply to-day just as they did then. In stating his reasons for submitting an amendment providing that the question of the validity of the legislation should be submitted to the Supreme Court of Canada, at page 1086 of *Hansard* for 1935 the right hon. gentleman said:

My reason for submitting the amendment is this: While the Prime Minister has intimated