

*Family Allowances*

of the legislation is not to raise a fund and dispose of it but to impinge upon the exclusive legislative jurisdiction of the province. That is the last word we have had from the courts as to the proper construction of this distribution of powers as between the federal parliament and the provincial legislatures.

Then he adds these significant words:

I am not for the moment discussing all the details of this bill, but in principle it is a bill to allocate to every child maintained by a parent, up to the age of sixteen years, a certain monthly benefit, the only condition attached being that the person to whom the money is paid shall apply it for the maintenance and better upbringing of that child.

I should like to ask the minister in that connection whether he is prepared to state that in his opinion two particular sections which I shall refer to him first are within the legislative competence of parliament.

The first is section 5, which reads as follows:

5. The allowance shall be applied by the person receiving the same exclusively towards the maintenance, care, training, education and advancement of the child, and, if the minister or such officer as is authorized by regulations in that behalf is satisfied that the allowance is not being so applied, payment thereof shall be discontinued or made to some other person or agency.

I ask him whether or not this section does not come into conflict with the powers of parliament as determined in the decision on the reference in 1938 to the supreme court with respect to the authority to perform functions vested by the Adoption Act, the Children's Protection Act, the Children of Unmarried Persons Act, and so on.

So far as the next section is concerned, the setting up of a tribunal to adjudicate on this matter, does the minister suggest that this parliament has the power to constitute a tribunal, when the power to do so comes under the provincial powers as set out in section 92? It is of interest that, in spite of the fact that the Prime Minister in 1931 stated in this house that an amendment to the British North America Act would be necessary if there was to be brought into effect a national system of old age pensions whereby the dominion would pay one hundred per cent of the pensions—and in spite of the statements made by the parliamentary assistant to the Prime Minister in the brief in connection with the Sirois Commission to which I referred the other day, the government declares that this act is constitutional. Mr. Chairman, where is there any difference between paying individuals under five years of age, between the ages of five and eight, and between eight and eleven, and between eleven and sixteen a certain amount per month and paying an amount to persons of

[Mr. Diefenbaker.]

seventy years of age? It is only a matter of age; there is no difference so far as principle is concerned.

I remember hearing the Prime Minister, speaking in Prince Albert in the election of 1930 in regard to this question, point out how impossible it was for the government of Canada to take over the entire old age pension administration and pay one hundred per cent, because, in order to do that, there would have to be an amendment to the British North America Act. Was what the Prime Minister said in 1930, and again in 1935, in this house stated with a full knowledge of all the circumstances, with a full knowledge of the opinion that has now been produced, and which was given by the deputy minister in 1930? In order that there may be no doubt as to what the Prime Minister said, I will refer to *Hansard* of February 12, 1935, wherein the Prime Minister is reported on this question which was then before the house. He was dealing with some of the Bennett reform legislation, and at page 750 he said:

I pointed out the desirability of a national scheme in dealing with old age pensions as a part of a social insurance scheme . . . we believe old age pensions should be a part of the social insurance scheme of this country, but we think it should be a national scheme; it should be administered nationally, 100 per cent of the money raised, and the entire scheme administered by the federal government.

We as Liberals were not seeking to be rid of an obligation in connection with a national insurance scheme; we were claiming that as with the case of old age pensions this parliament should be placed in a position to take it over.

We say that the present government ought immediately to take steps to have the British North America Act amended so as to make possible federal administration, so that when the time comes to pay the old age pensions 100 per cent, we shall not be met with any constitutional obstacle to the administration of the scheme in its entirety by the federal government.

I pause to say this. The only reason given why it was necessary that the federal government pay only a portion and not the entire pension was the fact that the British North America Act would not permit this parliament to administer a one hundred per cent federal old age pension scheme. In *Hansard* of June 2, 1931, at page 2266, the Prime Minister is reported as follows:

I say the British North America Act should be amended so as to make it possible for the federal government to undertake the administration of that scheme.

That was the old age pensions scheme. If the act had been amended in that regard an amendment could have been secured easily with regard to unemployment insurance as well.

. . . the time has come when the federal parliament should seek to have the British North