

And whereas state responsibility in the matter of the proper maintenance of aged citizens has been recognized by Great Britain, Australia, New Zealand, and a number of the nations of the continent of Europe;

Therefore be it resolved that this house puts itself on record as approving the principle of old age pensions and as being favourable to the enactment of legislation by the dominion government bringing the same into effect in Canada at an early date.

And be it further resolved that an humble address be presented to his honour the lieutenant governor praying that he will cause to be conveyed to the Secretary of State for Canada the foregoing preamble and resolutions.

That was forwarded to the Secretary of State for Canada by the minister for labour of British Columbia, Hon. A. M. Manson:

Ministry of Labour,
Victoria,
February 5, 1925.

Honourable James Murdock,
Minister of Labour,
Ottawa.

Re: Old Age Pensions

Dear Sir:

Referring to your letter of the 28th of October last, I beg to say that the report of the special committee of the House of Commons which inquired into this matter has been carefully considered by the government and also by the provincial legislature at its last session, and the consensus of opinion is that the matter of old age pensions is one entirely in the sphere of the federal parliament, and this government does not concur in the suggestion made by the committee that a portion of the cost of such pensions be borne by the provincial crown.

A copy of the resolution unanimously approved by the provincial legislature at its last session in this connection is enclosed herewith for the information of yourself and your colleagues.

To that there was a rather long reply by Hon. James Murdock, the minister of labour, and a further rejoinder by Mr. Manson. I do not know that I should take up the time of the committee to read those further communications. They will be available to any hon. gentleman who may be interested in going further into the matter.

Mr. GRAYDON: They are to be tabled, I suppose?

Mr. ST. LAURENT: I shall be glad to table them if I have leave of the committee to do so. I will table the whole correspondence and the material attached to it.

Mr. HANSON (York-Sunbury): Perhaps I can boil the discussion down, in my own mind at least, to a very narrow compass. In recent years the test of the constitutionality of legislation of either the provinces or the dominion government has been this; what is its pith and substance? That was not always the test which was applied by the privy council. I am reminded of a judgment given by

Lord Haldane at one time when, I think, he was Lord Chancellor, in which another test was applied as being fundamental. But in the trend of judicial opinion in recent years, and especially on the so-called "new deal" legislation of 1935, the privy council repudiated the power of parliament to pass certain legislation under the treaty-making provisions of the statute because in substance the legislation was not an exercise of the treaty-making power but was in pith and substance something within the purview of the provincial legislatures, and on that ground they ruled out certain of the legislation. The Minister of Justice argued most manfully against that proposal in 1937—just as manfully as he has argued the same position in this connection on Tuesday last; unsuccessfully in the court and, I should hope, unsuccessfully here. But that is beside the point. The test of this legislation is, not that this legislation is the setting up of a system of taxation to do a certain thing—because this bill is silent as to the system of taxation that is to be set up; the moneys are to be found from the consolidated revenue fund, under other legislation already established—the test is the destination of the fund. The inferences of Lord Atkin's decision are just the reverse of those which the Minister of Justice would have you take, because in the quotation from the judgment which is found on page 5351 of *Hansard* he says:

But assuming that the dominion has collected by means of taxation a fund, it by no means follows that any legislation which disposes of it is necessarily within dominion competence.

So that we are left exactly where we were when we come to consider what is the pith and substance of this legislation, and my submission is that there is a fair inference—it does not do to be dogmatic on these things—there is a fair ground for saying that this is a matter of property and civil rights and therefore within the jurisdiction of the provinces, and the matter should be referred to the courts for settlement.

Mr. DIEFENBAKER: There are few references which I intend to make in answer to the argument that has just been advanced by the minister. In reading over his opinion given in this chamber on July 25 last, it appears to me that the minister himself is not or was not then as certain as to the constitutionality of this measure as he appears to be to-day. As reported at page 5351 of *Hansard*, he used these words, after referring to the 1937 case between the attorney general of Canada and the provinces:

If the legislation which disposes of the fund is in reality legislation regulating matters which are within provincial control, then the object