

*Family Allowances*

for Lake Centre the following day. If the hon. gentleman will look at page 5350 and following of *Hansard* of Tuesday, July 25, he will find that I discussed the matter there quite fully. The Chief Justice and Mr. Justice Davis of the supreme court had held that the legislation being considered was in pith and substance taxation and outside the federal authority, but the majority in the supreme court held that though it did provide for the imposition of taxation and provide for the disposal of property, nevertheless in pith and substance it was legislation to insert conditions in contracts of employment between employers and employees and that in that aspect it was an invasion of provincial jurisdiction.

I also cited on Tuesday—*Hansard*, page 5351—the language of Mr. Justice Kerwin in which he stated:

As to the latter point, it is evident that the dominion may grant sums of money to individuals or organizations and that the gift may be accompanied by such restrictions and conditions as parliament may see fit to enact. It would then be open to the proposed recipient to decline the gift or to accept it subject to such conditions.

But the supreme court, Mr. Justice Kerwin and three of his colleagues, found that that was not what the legislation did. The legislation purported to impose obligations as a consequence of a contract of employment and because it purported to do that it was an invasion of provincial jurisdiction. It was in dealing with that judgment and in confirming the judgment of the majority of the supreme court that my lord Atkin said:

That the dominion may impose taxation for the purpose of creating a fund for special purposes and may apply that fund for making contributions in the public interest to individuals, corporations or public authorities could not as a general proposition be denied.

But because that could not as a general proposition be denied, it could not be used as a cloak to do something which involved an invasion of the field of provincial jurisdiction.

Mr. HANSON (York-Sunbury): It was not a parallel case then.

Mr. ST. LAURENT: It was not a parallel case because there it was found that the legislation invaded provincial jurisdiction inasmuch as it attached obligations to a contract of employment and created rights within the contract of employment, whilst it was fully recognized that if parliament merely created a fund and applied it for making contributions in the public interest to individuals, corporations or public authorities, that as a

[Mr. St. Laurent.]

general proposition was something which was quite within its jurisdiction. His lordship went on to say:

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.

Having created this fund and purporting to apply it in a certain way there is a further fact to be ascertained: Are you doing that as a cloak for the invasion of provincial jurisdiction by dealing with property and civil rights within the province? As to that I must say that there has been no case in which it has been challenged or affirmed or disaffirmed or disallowed—

Mr. HANSON (York-Sunbury): Or even raised.

Mr. ST. LAURENT: —or even raised. What was raised was that under the pretence of doing that thing, parliament was endeavouring to legislate in respect of the consequences of a contract of employment.

Mr. HANSON (York-Sunbury): In other words, parliament was attempting to do indirectly what it could not do directly?

Mr. ST. LAURENT: Yes. As to the measures that have been adopted up to this time, and the comparison between them and the measure before the house, I do not propose to express any opinion. Parliament at one time, when the provinces were asserting that it was their responsibility and their obligation to look after the aged, refused to recognize that it was its obligation. The resolution of the British Columbia legislature had been to the effect, that such was its obligation. The resolution was one adopted on December 18, 1924. Because of the importance of the question it might be as well to have this resolution on *Hansard*, as the background of the situation upon which Mr. Edwards was then basing his opinion. It was in the following terms:

Whereas it is the announced policy of the federal Liberal party in Canada that an "adequate system of insurance against dependence in old age be provided in so far as practical and having regard to Canada's financial position";

And whereas it is accepted as between the dominion and the provincial government that the dominion has jurisdiction in respect of questions having to do with health insurance, unemployment and old age pensions, and the province in respect of such other social legislation as may be in the public interest;

And whereas the government of the province of British Columbia passed the Mothers' Pension Act in the year 1920, and has since been administering it at a cost of approximately five hundred thousand dollars per annum;