

It has also been urged that such wide powers are open to abuse. This argument has often been presented, and as often rejected by the courts as affording no sufficient reason for holding that powers, however wide, if conferred in language admitting of no doubt as to the purpose and intent of the Legislature, should be restricted. In this connection reference may be made with advantage to the observations of their Lordships in delivering the judgment of the House of Lords in the *King v. Halliday*, 1917, A.C. 260. As Lord Dunedin there said: "The danger of abuse is theoretically present; practically, as things exist, it is, in my opinion, absent."

As Lord Atkinson observed: "However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment—namely, national success in the war, or escape from national plunder or enslavement. It is not contended in this case that the personal liberty of the subject can be invaded arbitrarily at the mere whim of the executive. What is contended is that the executive has been empowered during the war, for paramount objects of State, to invade, by legislative enactment, that liberty in certain states of fact."

(6) It may be open to doubt whether Parliament had in mind, when enacting the War Measures Act, that legislative enactments such as those now under consideration should be passed by the Governor-in-Council acting under it, while Parliament itself should be actually in session. We can only determine the intention of Parliament, however, by the language in which it has been expressed. The terms of s. 6 of the War Measures Act are certainly wide enough to cover orders in Council made while Parliament is in session, as well as when it stands prorogued. The fact that in the present instance a resolution was adopted by both Houses of Parliament approving of the orders in Council, while it does not add anything to their legal force as enactments, makes it abundantly clear that no attempt was made in this instance to take advantage of the powers conferred by s. 6 of the War Measures Act to pass legislation without the concurrence and approval of Parliament.

For the foregoing reasons I am of the opinion that the motion for *habeas corpus* must be refused. But having regard to the fact that this has been made a test case, and to its criminal character, there should, in my opinion, be no order as to costs.