

rely upon; the principle has in fact been made effective only with relation to the Canada Temperance Act, notwithstanding that it was afterwards advocated in several cases where the subject of the enactment in question was held to remain provincial, although not lacking in growth, magnitude or general importance. Therefore I do not think that the dimensions doctrine can be successfully invoked to reconstitute the compulsory powers which were possessed by the Wheat Board.

It is clear that so long as a subject matter of legislation finds place within the enumerations of provincial powers it does not belong to the Dominion under its general authority to make laws for the peace, order and good government of Canada. It is certain that the essential compulsory powers of the Wheat Board are *prima facie* included in the provincial enumeration of property and civil rights or local matters in the provinces. In my opinion these powers do not lie within the field which may be occupied by the execution of the Dominion power to regulate trade and commerce, as that power has been expounded in successive decisions by the ultimate tribunal of appeal; and I think it may be affirmed without uncertainty that the necessary reconstructive powers are not comprehended in any other of the Dominion enumerations. While I do not suggest a doubt that conditions of export from the Dominion and foreign trade relations may be regulated by Parliament, I am impressed with the view that these powers cannot be made a cover for legislation which denies the freedom of contract, capacity to buy and sell and the maintenance and exercise of proprietary rights which exist under the provincial laws. The powers of criminal legislation which belong exclusively to the Dominion are in their application to this case of an ancillary character and cannot as such be invoked to afford a sanction for measures in themselves *ultra vires*. Consequently it is my opinion that the reconstruction of the Wheat Board in the present circumstances with the powers conferred thereon by the Order in Council is a project constitutionally incompetent to the Parliament of Canada.

E. L. NEWCOMBE.

I concur,

Sir LOMER GOUIN.

D. D. MCKENZIE.

APPENDIX "B"

REPORT OF SUB-COMMITTEE

Composed of Mr. R. M. Johnson, Chairman, Hon. S. F. Tolmie and Mr. A. R. McMaster, to Agricultural Committee.

Your Committee begs respectfully to report:

1. That your Committee were appointed on the 24th day of April, 1922, "with authority to confer with the law officers of the Crown and experts in the grain business, including Messrs. James Stewart and F. W. Riddell, and such others as it may deem advisable to ascertain to what extent the Canada Wheat Board or other national wheat marketing system, compulsory or otherwise, may be established by this Parliament, with or without supplementary provincial legislation, and to report their findings to this Committee".

2. That your Committee submitted to the Deputy Minister of Justice the following questions:

1. Is it possible from a legislative standpoint through legislation passed by the Federal Power and by the several provinces of the Dominion to create a Canadian Wheat Board with powers identical with that created in 1919?

2. What powers must be given to such a Board from the Federal Power, and what from the Provinces?

3. What would the extent of such powers be, territorially?