

in relation to them, but until parliament so legislated the primary authority of the provincial legislatures in relation to the subject matter would remain unimpaired and unrestricted.

(2) The parliament of Canada has exclusive legislative jurisdiction to provide for the establishment of any compulsory system of family allowances in favour of the officers, servants or employees of the dominion; and

(3) The parliament of Canada possesses exclusive legislative authority to establish any such system for the benefit of employees employed in those parts of Canada which are not within the boundaries of a province.

Yours faithfully,

W. Stuart Edwards,
Deputy Minister of Justice.

Those are the only opinions on the subject matter that it has been possible to find of record in the department since 1924.

Mr. HANSON (York-Sunbury): And there is no legal decision.

Mr. St. LAURENT: There is no decision of the courts.

Mr. GRAYDON: If that point of law were to be accepted as the minister has suggested to-day, then that still leaves unanswered the question asked by the hon. member for Yale. His point was that if a person happens to be seventy years of age, you cannot do anything for him without doing it through the province, but if some one is ten years of age you can do it without the consent of the province. I think that leaves the whole matter completely in the air. If my hon. friend's contention about the law is correct, then there does not seem to be any reason why the dominion parliament is not perfectly competent to deal with old age pensions without reference to the provinces at all.

Mr. ST. LAURENT: [As appears from the first opinion I read, the Department of Justice said in 1925 in unequivocal terms that if it were to be a voluntary system of old age pensions to be provided out of the revenues of the Dominion of Canada, there could be no constitutional objection to its being done.]

Mr. HANSON (York-Sunbury): I do not think it says that at all.

Mr. ST. LAURENT: I will read it again:

I do not mean to suggest that parliament has not the power to legislate upon the subject so as to assist the provinces or to establish an independent voluntary scheme, provided that in either case the legislation does not trench upon the subject matter of property and civil rights in the provinces, for example by obligating any province or person to contribute to the scheme.

Mr. HANSON (York-Sunbury): It was on the basis of that opinion that the federal government had to decide not to have a

national scheme. There was no doubt about that in my mind. [I wonder if the Minister of Justice has considered the judgment in the appeal case of 1937 that was cited here the other day by the hon. member for Lake Centre, in which Lord Atkin indicated very clearly that while there was no question about the federal authority having complete jurisdiction to raise money for any specific purposes by any form of taxation whatever, direct or indirect, it was quite another question whether the federal authority had the right to apply these moneys in a jurisdiction or field of human endeavour which was, by the terms of section 92, exclusively within the jurisdiction of the province.] I do submit that there is nothing in Mr. Stuart Edwards' letter to Mr. Raymond in 1925 that indicated affirmatively that he was of the opinion that the federal authority could set up a national system. All he did say was that he did not want any inference to be drawn to that effect in the course of his giving that opinion, and never affirmatively did he say that in his opinion the federal authority had the right not only to tax but also to spend independently of the province. That was clearly indicated by the hon. member for Yale in the comparison he gave with respect to the failure to grant a pension to a man of seventy because of constitutional difficulties. And now we are giving it to a lad of ten without regard to constitutional difficulties at all.

The constitutional position is not clear; there is no doubt about that, and it ought to be made clear. I believe that the government should take steps to ascertain in the proper way just what the constitutional position is—give the whole story to the courts and let them decide so that the public mind will be reassured one way or the other. That, I think, is the proper course to pursue. That is the course that was urged by gentlemen opposite when they sat here with respect to the very democratic measures brought in by the government after 1930. That is the course that I think the people of Canada will expect this government to pursue, inasmuch as there is, at least in the minds of those who have given some study to the matter, the gravest doubt as to the constitutional authority for the government to set up a national scheme, and that doubt is based, I might say, upon the doubt that existed in the minds of my right hon. friend and his legal advisers when they set up an old age pension system as a contributory system and not as a national system.

Mr. ST. LAURENT: I am not sure whether the hon. gentleman was here on Tuesday last when I cited the opinion of Lord Atkin in the case to which the hon. gentleman has referred, and which was also cited by the hon. member