

The first principle has to do with the temporary distribution of the legislative powers as between parliament and the provincial legislatures. The second principle deals with the distribution of legislative functions as between parliament and the governor in council in connection with temporary emergency conditions. These are two quite different questions, but both fall to be decided as a consequence of the view which it may be proper to take of the same set of facts. Are we still in a condition of national emergency?

The legal principles which have to be applied are very clearly stated by the authoritative decision of the privy council in the Fort Frances case. Perhaps I may be permitted to call the attention of hon. members to some short sentences from that decision. Hon. members will remember that it was a decision rendered in 1923 in connection with the powers of a paper controller—

Mr. COLDWELL: Is that the case known as the Free Press case?

Mr. ST. LAURENT: Yes—Fort Frances Pulp and Paper Company v. The Manitoba Free Press Company:

In the event of war, when the national life may require for its preservation the employment of very exceptional means, the provision of peace, order and good government for the country as a whole may involve effort on behalf of the whole nation, in which the interests of individuals may have to be subordinated to that of the community in a fashion which requires section 91 to be interpreted as providing for such an emergency. The general control of property and civil rights for normal purposes remains with the provincial legislatures. But questions may arise by reason of the special circumstances of the national emergency which concern nothing short of the peace, order and good government of Canada as a whole.

And a little further down:

It may be, for example, impossible to deal adequately with the new questions which arise without the imposition of special regulations on trade and commerce of a kind that only the situation created by the emergency places within the competency of the dominion parliament. It is proprietary and civil rights in new relations which they do not present in normal times, that have to be dealt with.

And again:

The kind of power adequate for dealing with them is only to be found in that part of the constitution which establishes power in the state as a whole. For it is not one that can be reliably provided for by depending on collective action of the legislatures of the individual provinces agreeing for the purpose.

And again:

Where an exact line of demarcation will lie in such cases it may not be easy to lay down *a priori*, nor is it necessary. For in the solution of the problem regard must be had to the broadened field covered, in case of exceptional neces-

sity, by the language of section 91, in which the interests of the dominion generally are protected. As to these interests the dominion government, which in its parliament represents the people as a whole, must be deemed to be left with considerable freedom to judge.

The other point which arises is whether such exceptional necessity as must be taken to have existed when the war broke out, and almost of necessity for some period subsequent to its outbreak, continued through the whole of the time within which the questions in the present case arose.

When war has broken out it may be requisite to make special provision to ensure the maintenance of law and order in a country, even when it is in no immediate danger of invasion. Steps may have to be taken to ensure supplies and to avoid shortage, and the effect of the economic and other disturbance occasioned originally by the war may thus continue for some time after it is terminated. The question of the extent to which provision for circumstances such as these may have to be maintained is one on which a court of law is loath to enter. No authority other than the central government—

And of course here it means the government which in its parliament represents the people as a whole.

—is in a position to deal with a problem which is essentially one of statesmanship.

It is that problem of statesmanship which is before the house at this time. I submit to you, Mr. Speaker, that it is not a problem of a party or of partisanship, though every time the necessity arises to do something of this kind, no matter which party is in power, is always an occasion for the parties opposed to the government to reaffirm in the strongest possible terms their attachment to the constitutional processes of parliament. I think it is quite proper that they should be affirmed. No one deplores more than I do that at times there should be occasions when it is necessary and inevitable to ask parliament to delegate some of its legislative powers to a government in which it is willing to express and to maintain its confidence. It is unfortunate that that should be so, but it is nevertheless a fact; and it is, when the circumstances arise, a question of statesmanship as to whether or not that shall be done, whether or not the circumstances are such that it is requisite for the safety of the state as a whole that it be done.

As I said before, the matter was the subject of extended debate when the resolution of the Minister of Finance (Mr. Ilsley) appropriating in bulk \$1,365 million was being discussed at the end of September and early in October, and that was a similar occasion. It is not in accord with traditional constitutional practice that moneys should be placed in bulk by parliament at the disposal of the executive without specific appropriation in a schedule of estimates called and individually considered.