

were continued in force merely for the necessary and convenient purpose of winding up and concluding the unsettled business of the board, and thus it is plain that the provisions affecting the former board were sanctioned only as war measures.

The present inquiry is concerned with the question as to whether Parliament may in the existing circumstances reconstruct the board with its former powers, and it does not appear whether it be proposed to reconstruct upon a permanent or a temporary footing; that consideration, however, becomes immaterial if, as I think, the board cannot now be reconstituted as a war measure.

It might have been suggested that the exclusive power of Parliament with regard to "the regulation of trade and commerce" would extend to regulation of the wheat trade in the manner provided by the Orders in Council, but this power, comprehensive enough in its mere statement, has been limited by judicial interpretation; and, compatibly with the decisions, it does not comprise the powers which would be necessary for the reconstruction of the Wheat Board.

The insurance trade was regulated by means of a system of licenses under the provisions of a series of statutes enacted by the Parliament of Canada from the time of the Union until 1910, but when the Consolidated Act of that year came to be reviewed by the courts it was held, both by the Supreme Court of Canada and by the Judicial Committee of the Privy Council, that the legislation was *ultra vires*, and their lordships of the Judicial Committee in pronouncing the judgment held that, as a result of the decisions, "it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage in the provinces." *Attorney General for Canada vs. Attorney General for Alberta*, 1916 Appeal Cases, at page 596.

Similarly in the recent case with regard to the Board of Commerce Act, and the Combines and Fair Prices Act, although the judges of the Supreme Court of Canada were equally divided in opinion, it was held by the Judicial Committee that the legislation, which was designed to prohibit the hoarding of the necessaries of life and to require the sale of them at fair prices, could not be upheld under the power to regulate trade and commerce.

It may be observed that the wheat trade is in some of its aspects not merely local within the province of production. The greater part of the crop in the wheat growing provinces is exported, not only from the province of growth, but from the Dominion, and the trade thus assumes an interprovincial or foreign character; it is also a trade of great dimensions and importance affecting the interests of the whole Dominion; but in like manner the insurance trade in itself was not the less interprovincial or extra local; and moreover the fair distribution of the necessaries of life at reasonable prices, which seems to have been the dominant motive of the Board of Commerce and Fair Prices legislation, was a project of general importance and of common interest, potentially affecting the whole body politic.

In the Prohibition Case, 1896 Appeal Cases, at page 361, their lordships of the Judicial Committee expressed their conviction that "some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interests of the Dominion"; and apparently their lordships upheld the Canada Temperance Act, which was then under consideration, upon the ground that the dimensions of the liquor trade were such as to withdraw the particular subject matter of that Act from provincial powers. We are told, however, that the principle enunciated by the Prohibition Case is to be applied with great caution, and with reluctance, and that its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal. A constitutional power which is beset by these conditions, and which moreover depends upon the dimensions of its subject matter, is not a very safe one to