

the wheat to any purchaser named by the board on such terms as the board might direct, and it was provided that any such order of the board should pass to the purchaser the property in the wheat therein described.

The board was also empowered to prohibit the export out of Canada, or the importation into Canada, of any wheat or wheat products otherwise than in accordance with the orders or regulations of the board, and to prescribe penalties for contravention of the orders or regulations of the board.

There were some other powers conferred by these orders, of a subordinate or incidental character, which need not be more fully set out because the foregoing statement indicates sufficiently for present purposes the objects of the board and the scope and character of its powers.

It will be perceived that these powers naturally group themselves under two heads; there are enabling or facultative provisions, and there are compulsory provisions. As to those of the former class, I apprehend that Parliament has undoubted authority to constitute a board for the purpose of buying and selling, and to enable it to contract and to exercise such powers as are necessary or incidental to a voluntary undertaking.

The board is, however, invested with compulsory powers, and for the purpose of considering the authority of Parliament to constitute a commission clothed with these powers, it is well to mention some of them separately. They include (a) the fixing of maximum prices or margins of profit at which flour may be sold by the millers; (b) the compulsory taking of wheat in store or in transit subject to compensation fixed by the board, including power by order of the board to transfer the property in any wheat so stored or in transit to such purchaser, and upon such terms, as the board may nominate and prescribe; (c) prohibition of buying and selling wheat in Canada upon commission or otherwise, and the operating of elevators or warehouses for wheat, except by license of the board; (d) authority to require delivery to the board of all wheat sold or purchased in Canada; (e) regulation by the board of the dealings of its licensees.

These coercive powers would be exercisable by the reconstructed board in the provinces, and they directly affect property and the exercise of civil rights in the provinces; they enable the board generally, not only to have a monopoly of the trade in wheat, but also to regulate the price of flour manufactured in a province, even from wheat grown in that province; they may be exercised to forbid trading in the provinces except by Dominion license. They are therefore powers of the character described by the British North America Act 1867 as relating to matters coming within "property and civil rights in the province," or "matters of a merely local or private nature in the province." Consequently, upon well established principles or interpretation, the reconstruction of the board with these powers is competent to the Parliament of Canada only if the necessary enacting authority be found in the enumerated Dominion powers of legislation, in which case the *prima facie* provincial powers are overborne.

Comprehensive authority is conferred upon the Parliament of Canada to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the provinces, and moreover there are enumerated subjects as to which the authority of Parliament is exclusive; one of these is the class of subjects described as "militia, military and naval service and defence," including the necessary or incidental powers exercisable in time of war for the defence of the country. No question is suggested as to the authority of Parliament, or of the Governor in Council under the War Measures Act and the confirming Acts, to give effect to the Orders in Council under which the former Wheat Board was established and exercised the powers expressed to be conferred upon it. The temporary nature of these powers is evidenced, not only by the Orders in Council themselves, but also by chapter 5 of 1921, whereby the Orders in Council