Privy Council Appeal No. 32 of 1951

The Attorney-General of Canada and another - - - *Appellants*

v.

Hallet and Carey Limited and another - - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH MAY, 1952

Present at the Hearing:

VISCOUNT SIMON
LORD NORMAND
LORD RADCLIFFE
LORD ASQUITH OF BISHOPSTONE
LORD COHEN

[*Delivered by* LORD RADCLIFFE]

This is an appeal (by special leave) from a judgment of the Supreme Court of Canada dated the 20th of November, 1950. That judgment disposed of appeals in two separate actions which had been started in the Court of Queen's Bench for Manitoba, but the result of each action depends on the answer to the same question, whether an Order of the Governor General in Council, P.C. 1292, made on the 3rd April, 1947, was effective to vest in the appellants the Canadian Wheat Board (hereinafter referred to as " the Board ") the property in 40,000 bushels of barley belonging to the respondent Nolan.

The three Courts in Canada before which this question has come, the Court of Queen's Bench and the Court of Appeal for Manitoba and the Supreme Court of Canada, have all answered this question in the negative, though not always for the same reasons, and in the Supreme Court the opinions of two judges, Kerwin and Estey J.J., were in favour of the Board's claim to title. The Order in Council was made in ostensible exercise of the powers conferred upon the Governor General in Council by the National Emergency Transitional Powers Act, 1945, and there can be no dispute that, if those powers included a power to acquire property compulsorily, the provisions of paragraph 22 of the Order applied to the respondent Nolan's barley and vested it in the Board. The constitutional authority of the Dominion Parliament to enact the National Emergency Transitional Powers Act, 1945 (which, for brevity, will be referred to as " the 1945 Act ") is not challenged, whatever may be the true range and limit of the powers that it gives, and the whole issue, difficult and important as it is to solve, thus comes down to the problem of placing the right construction upon the very general language employed by this 1945 Act.

Any consideration of the 1945 Act must begin with a reference to the War Measures Act, 1914, which had been the main general source of emergency executive authority during the war of 1939-45. This Act is referred to in the 1945 Act, which to some extent continues the operation of its exceptional powers, and it forms a part of the legislative background against which the provisions of the later enactment must be placed. It would be legitimate therefore to interpret the provisions of the later Act in the light of those of the earlier one, if a comparison of the two justified any sound deduction as to the intention of Parliament as expressed in the

words of the later Act. Their Lordships have had to consider in a passage of this opinion whether the particular deductions that have commended themselves to the Court of Appeal for Manitoba and to the majority of the judges of the Supreme Court are well founded for this purpose.

The War Measures Act conferred upon the Governor General in Council very extensive authority. By section 3 it declared that he might do and authorise such acts and things and make from time to time such orders and regulations " as he may, by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada." The section then went on to declare " for greater certainty, but not so as to restrict the generality of the foregoing terms," that the Governor General's powers extended to " all matters coming within the classes of subjects " then enumerated, and there followed a list of subjects, of which " arrest, detention, exclusion and deportation " was one, and " appropriation, control, forfeiture and disposition of property and of the use thereof " was another. Later sections prescribed that all orders and regulations made under section 3 should have the force of law, but only during war, invasion or insurrection, real or apprehended ; and a section, section 7, under the heading of the fasciculus " Procedure," provided that " whenever any property or the use thereof has been appropriated by His Majesty under the provisions of this Act or any order in council, order or regulation made thereunder, and compensation is to be made therefor and has not been agreed upon " the claim was to be referred to and adjudicated upon in the Exchequer Court.

The 1945 Act came into force on 1st January, 1946, and one of its sections declared that on and after the same day the war against Germany and Japan should be deemed no longer to exist, so far as concerned the purposes of the War Measures Act. There was a preamble to the Act the words of which have been much canvassed in some of the judgments delivered in the Courts in Canada, and it is desirable to set out in full the contents of the preamble and of section 2 (1) which conferred new powers upon the Governor in Council:—

> " Whereas the War Measures Act provides that the Governor in Council may do and authorise such acts and things and make from time to time such orders and regulations as he may by reason of the existence of real or apprehended war deem necessary or advisable for the security, defence, peace, order and welfare of Canada ; and whereas during the national emergency arising by reason of the war against Germany and Japan measures have been adopted under the War Measures Act for the military requirements and security of Canada and the maintenance of economic stability ; and whereas the national emergency arising out of the war has continued since the unconditional surrender of Germany and Japan and is still continuing ; and whereas it is essential in the national interest that certain transitional powers continue to be exercisable by the Governor in Council during the continuation of the exceptional conditions brought about by the war and it is preferable that such transitional powers be exercised hereafter under special authority in that behalf conferred by Parliament instead of being exercised under the War Measures Act ; and whereas in the existing circumstances it may be necessary that certain acts and things done and authorised and certain orders and regulations made under the War Measures Act be continued in force and that it is essential that the Governor in Council be authorised to do and authorise such further acts and things and make such further orders and regulations as he may deem necessary or advisable by reason of the emergency and for the purpose of the discontinuance, in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency: Therefore . . .
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> . . . . . .
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> 2.—(1) The Governor in Council may do and authorise such acts and things, and make from time to time such orders and regulations,

as he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of—

(*a*) providing for and maintaining the armed forces of Canada during the occupation of enemy territory and demobilisation and providing for the rehabilitation of members thereof ;

(*b*) facilitating the readjustment of industry and commerce to the requirements of the community in time of peace ;

(*c*) maintaining, controlling and regulating supplies and services, prices, transportation, use and occupation of property, rentals, employment, salaries and wages to ensure economic stability and an orderly transition to conditions of peace ;

(*d*) assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty's Dominions or in foreign countries that are in grave distress as the result of the war ; or

(*e*) continuing or discontinuing in an orderly manner, as the emergency permits, measures adopted during and by reason of the war."

One or two other provisions of the Act may be shortly referred to. Orders and regulations made under it were to have the force of law while the Act was in force: but every Order in Council was to be laid before Parliament within a short space of time after being made and was liable to be annulled by a joint resolution of both Houses, without prejudice however to its previous operation. There was a separate power given to the Governor in Council to continue for the duration of the Act any existing orders and regulations which had been lawfully made under the powers of the War Measures Act. Lastly, the Act was to expire on the 31st December, 1946, subject to extension for a further period up to one year, if each House so requested by address presented to the Governor General and the Governor in Council so ordered. Thus, though the Governor in Council was given far-reaching powers, Parliamentary control over any Order that he might make was retained to an extent that had not been provided for under the War Measures Act. This difference should be kept in mind when arguments are founded on a comparison between the contents of the two Acts.

Since the outbreak of war in 1939 Orders in Council had been made under the authority of the War Measures Act for the purpose of regulating and controlling certain aspects of the general economy of Canada. A Wartime Prices and Trade Board had been set up and that Board issued regulations " to provide safeguards under war conditions against any undue enhancement in the prices of food, fuel and other necessities of life and to insure an adequate supply and equitable distribution of such commodities ". (The judgment of Kerwin J. in the Supreme Court gives this summary of the position : a further statement to the same effect is contained in the judgment of Rand J.) Both oats and barley had been involved in the system of control ; a maximum or ceiling price had been imposed ; a floor or support price had been fixed at which the Board was to buy all oats or barley offered ; and export from Canada was forbidden except under licence. On the 17th of March, 1947, the maximum price for barley was $64\frac{3}{4}$ cents per bushel, with the support price a few cents lower. The Board had formed the decision, in accordance with the policy of the Executive Government, that these prices ought to be raised to a much higher level, since the Canadian controlled prices were much below current world prices, and acting through its powers as an administrator under the Wartime Prices and Trade Board it fixed a new maximum price for barley of 93 cents per bushel as from the 18th March, 1947. The authority for this new maximum was contained in a document entitled " Instructions to Trade No. 59 " which was circulated to the members of the grain trade on the 17th March. This increase in the permitted price of barley did not stand alone. It was accompanied by a new support price based on 90 cents per bushel for No. 1 Feed grade, by increases in the maximum

and support prices of oats, and by the expropriation of Western Canada oats and barley " in commercial positions " at the old maximum prices ruling on the 17th March. The legal authority for the new support prices and the expropriation was contained in the Order of the Governor in Council P.C. 1292 which is now in question, not in " Instructions to Trade " issued by the Board, but their Lordships do not think that any useful purpose is served by a detailed analysis of the respective dates and sources of these various measures, since there is no doubt that each formed part of a single administrative plan. Nor do they think that there is any need to deal with the legal questions involved without taking cognizance of the fact that the Government's announced purpose in making these expropriations was to " avoid the fortuitous profits to commercial holders of oats and barley that would otherwise result from " its action in raising the controlled prices. A copy of the Government announcement formed part of instructions to Trade No. 59, which fixed the new maximum prices ; and in any event it has been referred to in so many of the judgments under review that it cannot but be treated as a relevant part of the case. Consistently with this purpose the Board gave to the expropriated holders an option immediately to repurchase their holdings at the higher prices, in the case of barley at 93 cents per bushel for all grades. Thus holders who decided to exercise the option could recover the ownership of their stocks at the cost of forfeiting so much potential profit as was equivalent to the difference between the old maximum price and the new: the Board acquired no more additional stocks than such as might not be taken back under the options but realised a profit on those taken back at the rate of $28\frac{1}{4}$ cents per bushel. It was required by the Order in Council to pay this profit into the Consolidated Revenue Fund.

Section 22 of the Order in Council provided for the expropriation. It ran as follows:—

> " All oats and barley in commercial positions in Canada, except such oats and barley as were acquired by the owners thereof from the Canadian Wheat Board or from the producers thereof on or after the 18th day of March, 1947, are hereby vested in the Canadian Wheat Board."

The following section required the Board to pay for the expropriated property at the old maximum price. " Oats and barley in commercial positions " were defined as meaning oats and barley which were not the property of the producer and were in store in warehouses, elevators or mills or in other storage or transportation facilities. The terms " oats " and " barley " were themselves confined to oats and barley grown in Western Canada.

The respondent Nolan was an owner of barley affected by this provision. He had been holding 40,000 bushels since 1943. The barley was stored in various Canadian elevators and warehouse receipts covering it were in the hands of his agents, the respondents Hallett & Carey Ltd. From the first he refused to admit that the Governor in Council had any power to make a compulsory acquisition of his barley and the two actions with which this appeal is concerned are the consequence. In one he seeks to obtain possession of the documents of title from his agents: in the other the Board is suing the agents for the documents of title and the warehousemen for the barley itself. During the course of proceedings the barley was sold under the directions of the Court and the dispute now turns on the question which party is entitled to receive the monies that represent its proceeds. The respondents Hallett & Carey Ltd. have not been represented in the appeal before their Lordships.

The validity of the vesting provision of the Order in Council has been attacked on several grounds. It has been said that its " real " purpose was not to carry out any of the purposes specified in the Act of 1945 but to confiscate the profits that would otherwise have been made by a certain class of owners of barley or to exact an impost from them. It has been said that the Order was not in fact necessary for or related to any of the purposes of the Act and was therefore not a valid exercise of any of

the powers which the Act conferred. It has been said that the Order was invalid because it discriminated against some out of the whole body of citizens or of barley owners and that the authority given by the Act did not extend to the making of such discrimination. All these are views that found favour with one or more of the members of the Court of Appeal for Manitoba and they constitute a different class of objection from those which are more properly related to the construction of the enabling Act itself, for, however expressed, they are in reality an attempt by the Court to take over into its own hands the functions which have been entrusted by Parliament to the Governor in Council. This is in their Lordships' view an inadmissible proceeding.

The Orders that are valid under the Act are such orders as the Governor in Council may by reason of the continued existence of the emergency deem necessary or advisable for any of the specified purposes. The preamble of this Order states that it is necessary by reason of the continued existence of the emergency to effect the vesting in the Board of such holdings as are now in question "for the purpose of maintaining, controlling and regulating supplies and prices, to ensure economic stability and an orderly transition to conditions of peace." How then can a Court of Law decide that the vesting was for another and extraneous purpose or hold that what the Govenor in Council has declared to be necessary is not in fact necessary for the purposes he has stated? There is no warrant at all for presenting this as a case in which powers entrusted for one purpose are deliberately used with the design of achieving another, itself unauthorised or actually forbidden. If bad faith of that kind can be established, a Court of law may intervene: see, for instance, *Lower Mainland Dairy Products Board* v. *Turners Dairy Ltd.* 1941 S.C.R. 573. To speak of the "real purpose" of this Order as being that of confiscating profits is to confuse means with ends, for the true question is whether it can be said that the Governor in Council could not have deemed it necessary to take this step as a means incidental to the realisation of the purposes stated in this Order. Clearly he could. Government authority, which had hitherto depressed, was now to raise prices and those responsible might well feel that they must accompany this action with a requisition of some of the profits that they thus created. Nor is this a case in which the Order shows on the face of it a misconstruction of the enabling Act or a failure to comply with the conditions which that Act has prescribed for the exercise of its powers. On the contrary the Order shows on its face compliance with those conditions, and the problem considered by Clauson L.J. in *Rex* v. *Comptroller of Patents* [1941] 2 K.B. at 316 and by Duff C.J. in *Reference as to the Validity of certain Chemical Regulations* 1943 S.C.R. 1 at 13 is not therefore a present problem. This is an Order which not only recites that the Governor in Council regards the making of it as necessary for authorised purposes but which in terms invokes the powers conferred upon him by the 1945 Act. An Order so expressed leaves no ground for a judicial enquiry whether the Governor can have intended to exercise those powers, a kind of enquiry which a Court has sometimes found itself called upon to make in a case where the instrument impugned is itself ambiguous (see, for instance, *Price Bros. & Co. and the Board of Commerce*, 60 S.C.R. 265). In the circumstances prevailing here their Lordships are satisfied that the true answer to any invitation to the Court to investigate the Order in Council on its merits or to ascribe to it a purpose other than that which it professes to serve is given in the words of Duff C.J. in the *Reference* re *Chemical Regulations* 1943 S.C.R. at p.12:—

> "I cannot agree that it is competent to any Court to canvass the considerations which have or may have led him to deem such Regulations necessary or advisable for the transcendent objects set forth. . . . The words are too plain for dispute: the measures authorised are such as the Governor General in Council (not the Courts) deems necessary or advisable."

If then the expropriation which the Order in Council prescribes is to be held invalid in law it must be attacked by showing that the 1945 Act

truly interpreted did not give the Governor the power to carry out what he has purported to achieve. No other line of attack is open. Very wide general considerations have been brought to bear upon this question of interpretation and have been held to limit the range of powers that the Act confers. For instance, the trial Judge in Manitoba interpreted the Act as allowing only the continuance of existing powers and as authorising nothing more to be done than what could be described as " the discontinuance of measures adopted during and by reason of the emergency ". So, too, the Chief Justice in the Court of Appeal: " In no portion of the Act was there any power given to extend the controls ". This imposes a construction that flies in the face of the words of the Act. It was not merely an Act to empower the Governor to continue measures already taken or to undo things already done. It was an Act that recognised that the emergency engendered by the war had brought about a situation in which new purposes might have to be served by new lines of executive action. There were the new problems of the post-war occupation of enemy territory, of the readjustment of men and of industry and commerce to peace-time needs, of securing economic stability in the fluctuating disorders of a post-war world, of restoring and distributing essential supplies in countries overseas that had been left in grave distress by the events of war. The Act itself recites explicitly " . . . whereas in the existing circumstances it may be necessary that certain acts and things done and authorised and certain orders and regulations made under the War Measures Act be continued in force and that it is essential that the Governor in Council be authorised to do and authorise such further acts and things and make such further orders and regulations as he may deem necessary or advisable by reason of the emergency and for the purpose of the discontinuance, in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency ". Plainly, within the scope of its wide range of purposes, the Act is conceived in the most fluid and general terms, conferring deliberately the most extensive discretion. To import into such a measure a precise limitation (if so vague a phrase can itself be said to be precise) that no action can be taken that " extends " a particular control of a particular commodity is, in Their Lordships' view, a radical misunderstanding of the true nature of such legislation.

Nor can they give support to another general proposition about the 1945 Act that has found favour with some of the members of the Supreme Court. This Act, it is said, amounts to a curtailment of the powers that the Governor in Council could exercise during the war under the War Measures Act. It involves an immediate " reduction " of those powers. From this it is argued that, since the War Measures Act, in providing specifically for expropriation, provided also a procedure for judicial assessment of compensation, it is not to be supposed that its successor, which makes no reference either to expropriation or to compensation, has conveyed what would be the more extensive power of effecting an expropriation without compensation. Their Lordships think that a fallacy is involved in submitting the 1945 Act to a measuring rod of this kind. Whether compensation is really a necessary condition of expropriation if made under the War Measures Act must be regarded as itself an open point: it is at least certain that section 7 does not expressly make it so, for it does no more than enact the procedure to be followed when " property . . . has been appropriated . . . and compensation is to be made therefor ". But, that apart, comparisons between the War Measures Act and the 1945 Act are bound to go astray unless, in making them, a clear distinction is observed between " purposes " and " powers ". The purposes for which powers may be exercised under the later Act are undoubtedly different from the purposes that are to be pursued under the earlier Act. In that they are nothing less than " the security, defence, peace, order and welfare of Canada ": in this they are the various sets of purposes enumerated in heads (*a*) to (*e*) of section 2 (1). In that the Governor may act in pursuit of those purposes " by reason of the existence of real or apprehended war, invasion, or insurrection ": in this, his action is to be " by reason of the

continued existence of the national emergency arising out of the war against Germany and Japan ". If it led to any relevant conclusion it might well be said that the purposes to be served under the War Measures Act are " wider " than those to be served under the 1945 Act. It would still be true that the latter are vast and sweeping and relate to an emergency that threatens the national life. Bu the question is not which is the wider set of purposes but whether a kind of action that is expressly permitted in pursuit of " war " purposes is impliedly excluded when the post-war purposes are to be attained. No real light is thrown upon this by contrasting the respective widths of the two ranges of purpose, when each is inherently so wide. All that can be noted is that the things that may be done in pursuit of the permitted purpose are covered by the same words in each Act: the Governor in Council " may do and authorise such acts and things and make from time to time such orders and regulations as he may . . . deem necessary or advisable." They are words that give him the amplest possible discretion in the choice of method.

This distinction between purposes and powers in the analysis of the two Acts prevents their Lordships from drawing any useful deduction from the fact that the later Act does not reproduce the declaration to be found in the earlier Act that the powers of the Governor are to extend to certain classes of subjects, of which class (*f*) is " Appropriation, control, forfeiture and disposition of property and of the use thereof." The fact that the later Act did not include any such specific reference to the subject of appropriation may be said to have formed the determining element in the majority opinion of the Supreme Court. Taschereau J. speaks of the power to appropriate property as having been " deleted " from the 1945 Act and deduces that it was the clear intention of Parliament that such powers were not to exist in the future. The Chief Justice, Rand and Cartwright J.J. make what is in effect the same deduction. But their Lordships think it clear that there is too much difference between the structures of the two Acts for any valid deduction of this sort to be made. Purposes can be compared with purposes; but these sub-heads (*a*) to (*f*) of section 3 of the War Measures Act are not purposes and it is misleading to contrast their contents with the contents of sub-heads (*a*) to (*e*) of section 2 (1) of the 1945 Act and then to conclude that, because expropriation is not included among the purposes listed in those sub-heads (*a*) to (*e*), it is not a power covered by the Governor's authority to do whatever he deems necessary or advisable for those purposes. Sub-head (*c*) does indeed include among the subjects that may be maintained, controlled or regulated " use and occupation of property, rentals "; but no one would suggest that the ownership of property in general has been made a subject for control or regulation. What is suggested is that the maintenance, control and regulation of these subjects that are mentioned in this sub-head may very well involve or necessitate the act of acquiring or changing the ownership of some piece of property. To take a single instance among many that might be offered: if supplies may have to be maintained, controlled or regulated is it reasonable to suppose that the power to acquire any property compulsorily is impliedly withheld? So to hold would threaten the very basis of the Act. Their Lordships think that there is not by now any room for doubt as to the function performed by the list of permitted subjects in section 3 of the War Measures Act. The form adopted is plainly borrowed from section 91 of the British North America Act, 1867. They do not extend the purposes already defined, for they are directed to explaining what can be done, not the object for which things may be done: they do not extend any more than they limit its powers, for all that they permit is already permitted by the general words that precede them (see *Re Gray* 57 S.C.R. 150. *Ref. as to validity of Orders in Council re persons of Japanese race.* 1946 S.C.R. 248 at 269. [1947] A.C. 87 at 105). What they do is to state explicitly certain things that are to be treated as falling within the range of the general powers already conferred. In that sense alone they extend, because they amplify, those powers. But the 1945 Act makes no such declaration and offers no such list. It leaves the general

powers that it confers unexplained by statutory definition. It is not as if it made some new declaration and offered some new list, the form of which might appropriately be compared with the form adopted by its predecessor. In such a case changes might indeed be significant. But where, as here, one term of the comparison is lacking altogether there is no firm ground for the inferences that have been drawn as to the intention of the later Act.

In their Lordships' view there is no better way of approaching the interpretation of this Act than to endeavour to appreciate the general object that it serves and to give its words their natural meaning in the light of that object. There are many so-called rules of construction that Courts of law have resorted to in their interpretation of statutes, but the paramount rule remains that every statute is to be expounded according to its manifest or expressed intention. If the 1945 Act is approached in this way, it is very difficult to see what warrant there is for introducing into it by way of interpretation an implied exclusion of any power in any circumstances to acquire compulsorily any piece of property. For, unless compulsory acquisition is absolutely excluded from the range of things that the Governor may do, any particular exercise of the power is a matter for his discretion and cannot come within the control of the Court.

Yet this is an enactment framed for the purpose of meeting an emergency that imperils the national life: it authorises action over the whole economic field and extends to purposes outside the territory of Canada herself: it embraces purposes such as the maintenance control and regulation of supplies, prices, transportation, the use and occupation of property, rentals, employment, salaries and wages which have no meaning if they do not involve a deliberate and consistent interference with private rights, including private rights of property. And the power of the Executive to pursue these purposes, while the national emergency continues, is conferred by Parliament without express reservation and in the amplest terms that statutory language can employ. There is nothing in the purposes themselves that makes it unlikely or unreasonable that expropriation would ever have to be resorted to. It might be said more truly that some of the purposes are such that expropriation would be a likely incident of their realisation. Yet, if the argument for the respondent Nolan is right, it is the duty of the Court to introduce into the Act a saving that absolutely excludes this particular form of action. Their Lordships have found it impossible so to interpret the Act.

It is fair to say that there is a well-known general principle that statutes which encroach upon the rights of the subject, whether as regards person or property, are subject to a "strict" construction. Most statutes can be shown to achieve such an encroachment in some form or another, and the general principle means no more than that, where the import of some enactment is inconclusive or ambiguous, the Court may properly lean in favour of an interpretation that leaves private rights undisturbed. But in a case such as the present the weight of that principle is too slight to counterbalance the considerations that have already been noticed. For here the words that invest the Governor with power are neither vague nor ambiguous: Parliament has chosen to say explicitly that he shall do whatever things he may deem necessary or advisable. That does not allow him to do whatever he may feel inclined, for what he does must be capable of being related to one of the prescribed purposes and the Court is entitled to read the Act in this way. But then expropriation is altogether capable of being so related. Nor can a Court pause in doubt over the question whether this is an Act by which it is intended to authorise interference with private rights: such subjects as supplies, prices, rentals and wages cannot be controlled without interference on the largest scale. If rights so historic as a man's right to sell his labour where and at what price he pleases or a man's right to use his own property in his own way are avowedly placed under the Governor in Council as subject of control and regulation, what peculiar sanctity can the law give to the ownership of consumable goods, so that this particular form of private

right is to be exempt from any action in pursuit of the authorised purposes? Certainly there is no rule of construction that general words are incapable of interfering with private rights and that such rights can only be trenched upon where express power is given to do so. The general words of the Defence of the Realm (Consolidation) Act 1914 of the United Kingdom were adequate to authorise the internment, without trial, of Mr. Zadig (*R.* v. *Halliday* [1917] A.C. 260). The general words of the War Measures Act were adequate to authorise the conscription of Mr. Gray for military service (Re *Gray*, supra): or to authorise the deportation of British subjects and deprivation of their citizenship, without trial (Re *Japanese Reference* supra). On the other hand, in *A.G.* v. *Wilts United Dairies* 37 T.L.R. 884, the House of Lords refused to hold that the Food Controller acting under the emergency legislation of the 1914-1918 War had authority to impose as a condition of the taking of licences a charge which amounted to the levying of a tax. It is not clear from the abbreviated report that is available whether it would have taken the same view had there existed a Defence Regulation made under the Defence of the Realm Act expressly authorising the imposition of such a charge. What is clear is that the decisions both of the Court of Appeal and of the House of Lords in that case were much influenced by their knowledge of the history of the Parliamentary struggle to prevent the levying or distribution of taxes without the express sanction of Parliament and they were disposed to interpret the Food Controller's powers in the light of that history. But having regard to the other cases just referred to it would be impossible to extract from the decision in the *Wilts United Dairies* case any general principle of construction that made general words in a statute incapable of authorising the gravest possible inroads upon private rights. And, unless there is such a principle, their Lordships can find no sufficient ground for importing into the Act now under consideration an exception of the power to acquire compulsorily the absolute title to property.

For these reasons Their Lordships will humbly advise Her Majesty that these appeals should be allowed and that the Orders of the Supreme Court, the Court of Appeal for Manitoba and the Court of Queen's Bench for Manitoba in both actions should be set aside, except so far as they respectively deal with the costs of those actions and of the appeals therein: in lieu of the orders so set aside there should be judgment dismissing the action commenced by the respondent Nolan, and in the action commenced by the Board judgment should be entered for it against that respondent in the amount of the moneys remaining in Court: the actions should be remitted to the Court of Appeal and the Court of Queen's Bench for Manitoba for an order for the payment out to the Board of the moneys remaining in Court to the joint credit of the actions. Their Lordships' humble advice to Her Majesty that the orders as to the costs of the proceedings in Canada should be left undisturbed is in accordance with the terms upon which the appellants were placed when they obtained special leave to appeal. In further pursuance of those terms the appellants will pay the costs of the respondent Nolan of this appeal.

(15478) Wt. 8096—1 100 6/52 D. L.,PI.3

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