

IN THE MATTER OF

PRICE BROTHERS AND COMPANY

AND

THE BOARD OF COMMERCE OF CANADA.

1920

*Mar 17.
18, 19.

*Apr. 6.

*Constitutional law—Parliament—Order-in-Council—Newsprint—
“Necessary of life”—Measures necessitated in real war—“War
Measures Act, 1914”—“The Board of Commerce Act,” 9 & 10 Geo.
V., c. 37—“The Combines and Fair Prices Act, 1919,” 9 & 10 Geo.
V., c. 45, 9 & 10 Geo. V., c. 63.*

The appellant appeals from an order of the Board of Commerce of Canada dated 6th of February, 1920. The Board, after declaring newsprint to be “a necessary of life”, by clause 1 prohibits the appellant from taking any price exceeding \$80 per ton for newsprint, and declares that any price in excess of that sum “shall be deemed to include unfair profit;” by clause 2, it forbids the appellant accumulating and withholding from sale any quantity of newsprint beyond an amount reasonably required for the ordinary purposes of its business; and by clause 4, the appellant is required by the Board to furnish at certain times and at fixed prices defined quantities of newsprint to designated purchasers.

Held, Brodeur J. expressing no opinion, that clauses 1 and 2 of the order had not been made by the Board in the exercise of jurisdiction conferred on it by “The Combines and Fair Prices Act,” as newsprint could not be deemed to be “a necessary of life.” *Ejusdem generis* rule applied.

Per Brodeur J.—“The Combines and Fair Prices Act” is *ultra vires* of the Parliament of Canada.

Held also, that clause 4 of the order could not have been deemed necessary “by reason of the existence of real * * * war * * * for the security, defence, peace, order and welfare of Canada,” and that an order-in-council purporting to confer on the Paper Controller jurisdiction to make it therefore, transcended the power vested in the Governor-in-Council by s. 6 of the “War Measures Act, 1914.” Mignault J. dissenting.

PRESENT:—Sir Louis Davies C.J., and Idington, Duff, Anglin, Brodeur and Mignault JJ.

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Per Idington J.—The control of newsprint has to do neither with “trading, exportation, importation, production and manufacture,” nor with the “appropriation, control, forfeiture and disposition of property and of the use thereof,” and is therefore not within the ambit of s. 6 of the “War Measures Act, 1914.” “Pulp and Paper Control” was improperly reserved from the repeal, on December 20th, 1919, of orders-in-council passed under that statute.

Per Anglin J.—While the statute 9 & 10 Geo. V., c. 63, purports to confirm certain orders-in-council therein recited, it neither vests, nor authorizes to be vested, in the Paper Controller for future exercise, powers wider than might be conferred under the “War Measures Act, 1914.”

APPEAL by the appellant, Price Brothers and Company, Limited, from an Order of the Board of Commerce, dated the 6th of February, 1920, by leave of Mr. Justice Anglin in Chambers granted under s. 41 (2) of “The Board of Commerce Act,” 9 & 10 Geo.V., c. 37. The Order purports to have been made by the Board in the exercise of jurisdiction conferred on it by “The Board of Commerce Act” and “The Combines and Fair Prices Act,” and also of jurisdiction formerly exercised by Mr. R. A. Pringle K.C., as Paper Controller, which the Governor-in-Council purported to vest, in a modified and extended form, in the Board of Commerce, by Order-in-Council dated the 29th of January, 1920.

Lafleur K.C. and *Geoffrion K.C.* for the appellant, The Order is beyond the powers of the Dominion Parliament to make or authorize and alternatively the Parliament has not in fact authorized the making of such order.

Biggar, K.C. for the Attorney General of Canada. The Dominion Government is competent, in war or in peace, to regulate the channels through which a

particular commodity shall move and to fix the price at which it is to be dealt in.

THE CHIEF JUSTICE.—I take no part in this judgment, having been sworn in as Administrator of the Government during the argument.

IDINGTON J.—This appeal is launched pursuant to an order of my brother Anglin under and by virtue of section 41, ss. 2, of "The Board of Commerce Act," against an order of said board dated 6th February, 1920, which ordered and declared as follows:—

1. That any price on the sale of roll newsprint exceeding eighty dollars per ton car lots shall be deemed to include an unfair profit and the said company is hereby, and until the further order of this board, restrained and prohibited from the making or taking of unfair profits for or upon the holding or disposition of said necessary of life, to wit, newsprint; that is to say at any price which is to be deemed as aforesaid to include an unfair profit.

2. That the said company be and it is hereby restrained and prohibited from accumulating and withholding from sale as aforesaid any quantity beyond amounts aforesaid of the said necessary of life, namely, newsprint.

And further specifically directed the appellant forthwith not later than the 10th February, 1920, to ship free on board cars one car standard newsprint as described consigned to the Montreal Star newspaper at Montreal, at the price of \$80 a ton, and thereafter weekly as prescribed; and each of two other publishing companies in Montreal, quantities of paper as described at same price and on same terms.

The order recites as follows:—

That Price Brothers and Company, Limited, hereinafter called the company, are under obligation to supply newsprint to Canadian publishers at the rate of eleven thousand two hundred and fifty tons per annum at prices heretofore lawfully fixed:

And that the company is now supplying newsprint to Canadian publishers at the rate of approximately two thousand five hundred

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tons per annum, but has not delivered further supplies in Canada under its said obligation;

And that newsprint is a necessary of life under "The Combines and Fair Prices Act,"

And that the said company is accumulating and withholding from sale the said necessary of life beyond an amount thereof reasonably required for the ordinary purpose of the business of the said company;

And the undersigned deeming it expedient in exercise of the powers and authority of the Board of Commerce under "The Board of Commerce Act" and under "The Combines and Fair Prices Act," and under and by virtue of the order of His Excellency the Governor General in Council concerning paper control dated 29th January, 1920, and numbered P.C. 230 to order and declare as herein set forth.

The said order in council dated 29th January, 1920, is as follows:—

His Excellency the Governor in Council, on the recommendation of the Minister of Finance, is pleased to order and it is hereby ordered that until the publication of a Proclamation by the Governor General in Council under the Authority of the "War Measures act, 1914," declaring that war no longer exists the Board of Commerce of Canada, shall—

(a) have, exercise and perform all powers, jurisdiction, authority and duties which were heretofore or are exercisable by the Commissioner and Controller of Paper, provided that the Orders of said Board with respect to newsprint paper, sulphate and sulphide, shall be effective and have the force of law as and when made and shall not require confirmation by Order in Council, nor shall the exercise by said Board of any of said powers or the performance by said Board of any of said duties, be subject to appeal except as by the Board of Commerce Act provided;

(b) be appointed such Commissioner and Controller of Paper;

(c) have jurisdiction, power and authority to direct, require and compel shipment by manufacturers of newsprint paper of such quantities of newsprint paper as, in the opinion of the Board, are necessary and can be provided from any paper mill or persons, place or places in Canada;

(d) shall have power and jurisdiction to order and direct that the breach or non-observance by any person or corporation of any order or direction which the said Board may make or give under authority of this Order shall entail the same consequences and liability for the same penalties as are provided by section 20, subsection (2) of the Combines and Fair Prices Act, including the cumulative responsibilities of co-directors and associate directors and officers of companies and corporations, and that all other provisions of law as to the jurisdiction of courts and otherwise as to procedure to enforce orders as set forth in the said Acts shall apply to all matters hereunder; and shall have all

powers and authority to continue and carry on to completion all business and proceedings now pending in the office of the Commissioner and Controller of paper.

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The "War Measures Act" of 1914 was assented to on the 22nd August, 1914, and the only war then in existence and to which it doubtless related, was that which shortly before that time had begun with Germany and Austria.

Practically that ended with the Armistice of 11th November, 1918, but it must be held in law to have existed until the signing of the Treaty of Peace.

That was declared by an Imperial Proclamation to have taken place on the 29th of June, 1919. The assent of Germany had been given the day before, and later that of Austria was given on the 10th day of September, 1919.

The 6th section of the "War Measures Act" is that which enabled the Governor in Council to

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.

and that specifically assigns a number of subject matters as within the classes of subjects intended to be comprehended therein.

True the section provides for and anticipates a possibly wider range of subjects, but for the present purpose I have not heard of any such having arisen.

That which we have to deal with, if by any reasonable possibility at all within the operative ambit of the Act, I think must fall within subsection (e) which reads as follows:—

(e) trading, exportation, importation, production and manufacture;

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It certainly is not covered by either "exportation" or "importation." Nor can it fall within such "trading" as conceivably within the range of what a war measure often has to deal with and forbid or enforce if reason is at all applicable as I hold it must be to deal sensibly with the madness of war and all implied therein.

I have much difficulty in seeing how anything in subsec. (e) can apply to the mere direction of selling newsprint paper by a manufacturer thereof to a person wishing to use it. Indeed, after much consideration, I cannot think how that purely business transaction of a very ordinary type can be said to have any relevancy to the matters therein specified of possibly vital importance in many ways conceivable in a state of war.

Subsection (f): appropriation, control, forfeiture and disposition of property and of the use thereof,

clearly extends only to the taking and using of private property in such a way as the authorities concerned may require to meet the exigencies of the case.

The entire item certainly does not cover anything comprehended in what we have to consider in way of regulating the private dealings between parties carrying on their respective businesses.

Indeed the argument of counsel referred only to the possibilities of mystery and secrecy which might arise and could not reasonably ever be disclosed, but in fact the time therefor has ceased and it is hard to conceive that it ever existed in relation to what is here in question. Nothing forbidding the disclosure in a free country would seem to have existed in that which is involved herein.

Then, from the point of view of the "War Measures Act," we come to the order in council of 20th December, 1919, which I submit recognizes to the fullest extent the termination of the war, yet strangely excepts from the general operation of all such orders and regulations as needed therefor and are to be repealed, the item of "pulp and paper control"—with eight other items.

I can conceive of problems in way of liquidation, as it were, of such items, as "internment operations" and "trading with the enemy," requiring a reservation, but I am quite unable to conceive how the item of "Pulp and Paper control" can fall therein or thereunder.

Each transaction relative thereto had been already liquidated by the delivery of paper and payment therefor.

In the last desperate resort, as it were, the justification for the order is rested upon "The Combines and Fair Prices Act," and the powers of the Board of Commerce thereunder.

Section 16 of said Act reads as follows:—

16. For the purposes of this part of this Act, the expression "necessary of life" means a staple and ordinary article of food (whether fresh, preserved, canned, or otherwise treated) clothing and fuel, including the products, materials and ingredients from or of which any thereof are in whole or in part manufactured, composed, derived or made, and such articles of any description as the Board may from time to time by special regulation prescribe.

I am unable to understand how newsprint can under such a definition of "necessaries of life" fall thereunder, or anything the Board of Commerce by any due observance of the *ejusdem generis* rule, which must be adhered to, in the interpretation and construction thereof, may see fit to include within the definition, can be held as falling thereunder.

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I am, therefore, of the opinion that the order in council now in question cannot be properly maintained and hence that this appeal should be allowed with costs.

DUFF J.—A careful review of all the considerations presented on the argument has only confirmed my opinion that the fourth paragraph of the Order impeached on the appeal cannot be sustained as emanating from any authority given by the "War Measures Act, 1914."

In this connection the sole point requiring examination is that which arises out of Mr. Biggar's contention in his admirable argument that orders-in-council made by the Governor-General in Council professedly under the authority of section 6 of that Act are not judicially revisable. I think such orders are reviewable, in this sense that when in a proper proceeding the validity of them is called into question, it is the duty of a court of justice to consider and decide whether the conditions of jurisdiction are fulfilled and if they are not being fulfilled, to pronounce the sentence of the law upon the illegal order.

One of the conditions of jurisdiction is, in my judgment, that the Governor in Council shall decide that the particular measure in question is necessary or advisable for reasons which have some relation to the perils actual or possible of real or apprehended war—(I leave the case of insurrection out of view as having no relevancy) or as having some relation to the prosecution of the war or the objects of it.

The recitals of the order of the 20th December are I think in themselves sufficient to constrain any court to the conclusion that the Order of the 29th January

was not preceded or accompanied by any such decision.

As to the first and second paragraphs of the order of the Board of Commerce, I adhere without any doubt whatever to the opinion expressed in the course of the argument that the classes of articles which the Board is authorized to bring by regulation within the category "necessaries of life" do not comprehend articles which are not necessarily by reason of their value required for some purposes connected with the physical life of the individual.

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ANGLIN J.—Price Bros. & Co., Limited, appeal from an order of the Board of Commerce, dated the 6th of February, 1920, by leave of a judge of this court granted under s. 41 (2) of "The Board of Commerce Act," 9 & 10 Geo. V., c. 37. The order purports to have been made by the Board in the exercise of jurisdiction conferred on it by "The Board of Commerce Act" and "The Combines and Fair Prices Act." (9 & 10 Geo. V., c. 45) and also of jurisdiction formerly exercised by Mr. R. A. Pringle, K.C., as Paper Controller, which His Excellency the Governor-in-Council purported to vest, in a modified and extended form, in the Board of Commerce by order-in-council dated the 29th of January, 1920.

While several questions are formulated in the petition on which leave to appeal was obtained, they all seem to resolve themselves into one—the power of the Board to make the impugned order. Three clauses of it—Nos. 1, 2 and 4—are especially challenged. Clause No. 1 prohibits the appellant from taking any price exceeding \$80 per ton for newsprint, declaring that any price in excess of that sum "shall be deemed to include unfair profit." Clause No. 2

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forbids the appellant accumulating and withholding from sale any quantity of newsprint beyond an amount reasonably required for the ordinary purposes of its business. These two clauses are upheld by counsel representing the Attorney General of Canada on the ground that newsprint was rightly declared by the Board to be "a necessary of life" within s. 16 of "The Combines and Fair Prices Act," and that as such the Board was empowered to deal with it as it did in those clauses.

The argument covered a wide field, the constitutionality of both statutes involved being challenged and various questions discussed as to the construction and sufficiency of the findings of fact in the order. In the view I take of the matter, however, it seems necessary only to consider on this branch of the case whether the finding or declaration that newsprint is a necessary of life within s. 16 of "The Combines and Fair Prices Act" can be upheld. If it cannot, the jurisdiction of the Board to make clauses 1 and 2 of its order cannot be maintained under that Act and "The Board of Commerce Act"; so far as they may be supported under any powers vested in the Board as Paper Controller they may be more conveniently considered with clause 4, which, it is common ground, can be supported only under the latter powers.

By clause 4 the appellant is required to furnish at certain times to named purchasers and at fixed prices defined quantities of newsprint. The appellant challenges the power of Parliament to confer jurisdiction to make such an order on the ground that it involves an undoubted invasion of the field of "property and civil rights" assigned by the B.N.A. Act to the legislative jurisdiction of the provinces; and it also maintains

that the orders-in-council under which the Board has acted were not authorized by the "War Measures Act, 1914," (5 Geo. V., c. 2) under which they purport to have been made. I find it unnecessary to pass upon the alleged invasion of provincial rights and therefore refrain from any expression of opinion upon it. *Citizens Ins. Co. v. Parsons* (1).

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By sec. 5 of the "War Measures Act, 1914," it is enacted that war (by which, I take it, is meant the "real war" during which, only, under sec. 3, s. 6 is in force) declared to have existed since the 4th day of August, 1914,

shall be deemed to exist until the Governor-in-Council by proclamation published in the *Canada Gazette* declares that it no longer exists.

It is common ground that such a proclamation has not yet been made or published. Therefore "real war" is still existing for the purposes of s. 3; and s. 6 is consequently still in force.

Now s. 6 empowers the Governor-in-Council to make 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;

and in particular in regard to

trading, exportation, importation, production and manufacture

and

appropriation, control, forfeiture and disposition of property and of the use thereof,

Assuming the validity of this legislation both as being restricted to a field within s. 91 of the B.N.A. Act and as not involving a delegation of powers beyond

(1) 7 App. Cas. p. 96, at p. 109.

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the competence of Parliament, whether the orders-in-council on which the Board must rely to justify the exercise of the powers which it asserts as Paper Controller are within its purview must still be considered.

In view of the provisions of the statute, 9 & 10 Geo. V., c. 63, I think the validity of the orders-in-council therein recited is probably not now open to question on the ground that they transcend the jurisdiction which the "War Measures Act, 1914," purports to confer on the Governor-in-Council; and it may also perhaps be assumed that Parliament thereby recognized the office of "Commissioner and Controller of Paper" as one not personal to Mr. Pringle but as an office which would continue, should he resign or be removed therefrom, and might thereupon be filled by appointment of the Governor-in-Council. But, having regard to the apparent purpose of that statute, to its title and recital and to the use in s. 1 of the past participle "begun" and the omission of any such future perfect adjectival phrase as "which shall have been begun," I cannot think it was intended thereby to enlarge the scope of the jurisdiction intended to be conferred on the Governor-in-Council by the "War Measures Act, 1914," or to enable the Paper Controller to exercise powers greater or more extended than under that Act the Governor-in-Council is authorized to vest in him, or to extend his powers further than might be necessary to carry to completion and final disposition work begun by him within powers for conferring which the "War Measures Act, 1914," rightly construed may be invoked as authority. In particular, I cannot regard the statute of 1919 (c. 63) as repealing or dispensing with the condition expressed in s. 6 of the "War Measures Act" that

orders and regulations made thereunder must be such as the Governor-in-Council

may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, or welfare of Canada.

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If that Act was designed to authorize the Paper Controller, whether directly or through the medium of an order-in-council, to interfere with property and civil rights, as the Board purports to do by the order appealed from, its constitutionality would certainly call for very grave consideration.

Passing over as not material several intervening orders-in-council—one of the 7th of July, 1919, one of the 1st of December, 1919, one of the 15th December, 1919, and two of the 5th of January, 1920, providing means for making orders of the Paper Controller effective, one of the 30th of December, 1919, approving orders of the Controller fixing prices on newsprint from the 1st of January to the 1st of July, 1920, two of the 22nd of January, 1920, accepting Mr. Pringle's resignation and appointing Mr. W. R. Breadner in his stead and one of the 29th of January accepting Mr. Breadner's resignation, we come to the vitally important order-in-council—that of the 29th of January, 1920, appointing the Board of Commerce as Paper Controller with extended powers and jurisdiction. The approval of the Governor-in-Council, therefore required before orders of the Paper Controller became effective, was thereby dispensed with, and the appeal to the Paper Controller Tribunal, established under order-in-council of the 16th of September, 1918, was abolished. In lieu thereof the orders and acts of the Board as Paper Controller were made subject to

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appeal only as provided by "The Board of Commerce Act," under which the present appeal is brought. In addition to

all powers, jurisdiction, authorities and duties * * * heretofore exercisable by the Commissioner and Controller of Paper.

Anglin J. the Board was expressly vested with

jurisdiction, power and authority to direct, require and compel shipment by manufacturers of newsprint paper of such quantities of newsprint paper as, in the opinion of the Board, are necessary and can be provided from any paper mill or persons, place or places in Canada.

I shall assume that the terms of this order-in-council, if valid, are wide enough to clothe the Board with power to make its order of the 6th of February, now appealed from. To support that order, so far as it depends on the Board's jurisdiction as Paper Controller, it is essential that the order-in-council now under consideration should be maintained. In so far as it provides for the appointment of the Board as Paper Controller and purports to confer on it powers necessary to carry to completion matters begun by the Paper Controller before the 7th of July, 1919, (when c. 63 of the statutes of that year was assented to) its validity may be assumed. But the Board's order of the 6th of February is not restricted to such matters. On the contrary it deals with distinctly new matters—matters not theretofore begun—the fixing of the price of newsprint and its accumulation by Price Bros. from the date of the order until the 15th of March and the supply of that commodity by Price Bros. in fixed quantities and at fixed prices to certain consumers for future periods. Can the validity of an order-in-council passed on the 20th of January, 1920, under the "War Measures Act, 1914," conferring power to make such an order be maintained?

The common knowledge possessed by every man on the street, of which courts of justice cannot divest themselves, makes it impossible to believe that the Governor-in-Council on the 29th of January, 1920, deemed it

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necessary or advisable for the security, defence, peace, order, or welfare of Canada * * * by reason of the existence of real or apprehended war, invasion or insurrection.

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to confer on the Paper Controller such powers as the Board has purported to exercise by its order now in appeal. Advisability or necessity, however great, arising out of post-war conditions is not the same thing as, and should not be confounded with advisability or necessity

by reason of the existence of real or apprehended war.

Real war had long since ceased, although, in a fictitious sense, the continued existence of it for some purposes is provided for by s. 5 of the "War Measures Act, 1914." That in passing the order-in-council of the 29th of January, 1920, the Governor-in-Council was actuated by any apprehension of war, invasion or insurrection is not suggested.

If further evidence were needed that the Governor-in-Council was apprised that emergency legislation by orders-in-council was no longer necessary or advisable by reason of the existence of war, it is furnished by his own order-in-council of the 20th of December, 1919, which recites that "so far as affects the question under consideration" (i.e., the duration of emergency legislation by orders-in-council) the provisions of the Defence of the Realm Act (Con.), 1914, of the United Kingdom (5 & 6 Geo. V., c. 8) and of the "War Measures Act,

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1914," while varying considerably, "were enacted for the same purposes"—that a legal committee appointed in England by His Majesty's Government had reported that the legislative powers conferred on the Government by the former Act

can be exercised only during the war and that the orders and regulations made by the Government under the statute could not have any valid operation after the termination of the war,

and also that

the powers are given by reason of the national emergency and vest the Executive with an authority so wide that we think it must have been intended only to exist during the existence of the emergency.

The order-in-council of the 20th of December further recites that:

It must be realized that although no proclamation has yet been issued declaring that the war no longer exists actual war conditions have in fact long ago ceased to exist, and consequently existence of war cannot longer be urged as a reason in fact for maintaining these extraordinary regulations as necessary or advisable for the security, defence, peace, order, and welfare of Canada.

It is true that, while many orders-in-council passed under the "War Measures Act, 1914," were repealed by the order-in-council containing these recitals, the orders-in-council respecting "Pulp and Paper Control" were directed to remain in force, as were those respecting some eight other subjects; but this may have been—probably was—because, as in the case of "Internment Operations" for instance, it was necessary to carry to completion and wind up work and undertakings begun during the war and still unfinished.

In view of the foregoing facts, however, in my opinion it cannot be suggested, without imputing bad faith to

the Governor-in-Council, that in making the order-in-Council of the 29th of January, 1920, he professed to do something which he

deemed necessary or advisable for the * * * security, defence, peace, order and welfare of Canada by reason of the existence of real or apprehended war, invasion or insurrection.

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It is noteworthy that, under the opening paragraph of that order-in-council, the powers which it purports to confer on the Board are to be exercised not so long as the Governor-in-Council deems necessary for the security, etc., of Canada by reason of the existence of war, but

until the publication of a proclamation by the Governor-in-Council under the authority of the "War Measures Act, 1914," declaring that the war no longer exists.

A very strong indication is thus afforded that the Governor-in-Council must have acted in January, 1920, under the erroneous impression—I say it with all respect—that until the actual publication of a peace proclamation in the Canada Gazette his legislative powers under s. 6 of the "War Measures Act" were absolute and unqualified and were not subject to the condition that their exercise must be deemed by him

necessary or advisable for the security, etc. of Canada by reason of the existence of real or apprehended war, invasion or insurrection.

Confronted with the alternatives of an imputation of bad faith or of finding that there has been an attempted exercise of power through overlooking, or under a mistaken view as to the effect of, a condition requisite for its exercise imposed by the Act conferring it, I have no hesitation in choosing the latter.

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I am therefore of the opinion that the order appealed from exceeds any powers which it was competent for the Governor-in-Council on the 29th of January, 1920, to confer on the Paper Controller, and cannot be supported under the Board's jurisdiction to discharge the duties of that office.

On the other branch of the case I am of the opinion that the Board erred in declaring newsprint to be a "necessary of life" under s. 16 of "The Combines and Fair Prices Act" and that it therefore exceeded its jurisdiction as administrator of that Act in making the order appealed from. Sec. 16 is as follows:—

16. For the purposes of this part of this Act the expression "Necessary of life" means a staple and ordinary article of food (whether fresh, preserved, canned or otherwise treated), clothing and (*sic*) fuel, including the products, materials and ingredients from or of which any part thereof are in whole or in part manufactured, composed, derived or made, and such other articles of any description as the Board may from time to time by special regulation prescribe.

The following three rules of construction are so well known that it seems almost pedantic to re-state them; but their co-ordination and relations *inter se* are perhaps not always equally well understood.

Lord Wensleydale's golden rule, that the grammatical and ordinary sense of words is to be adhered to unless that would lead to some absurdity, repugnance or inconsistency so great as to convince the court that the intention could not have been to use them in that ordinary signification, applies to general words, as to other words. *Generalia verba sunt generaliter intelligenda*, 3 Inst. c. 21, p. 76; *Attorney General v. Mercer* (1).

On the other hand general words must be restricted to the fitness of the subject matter (Bacon's Maxims, No. 10) and to the actual apparent objects of the Act (*River Wear Commissioners v. Adamson* (1), following the intent of the Legislature to be "gathered from the necessity of the matter and according to that which is consonant to reason and good discretion." *Stradling v. Morgan* (2); *Cox v. Hakes* (3).

Where general words are found, especially in a statute, following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof their construction should be restricted to things of that class or category (*Reg. v. Edmundston* (4), unless it is reasonably clear from the context or the general scope and purview of the Act that Parliament intended that they should be given a broader signification.

Recent applications of the rule last stated, and usually known as the *ejusdem generis* rule, are to be found in the judgments in the House of Lords in *Stott (Baltic) Steamers, Ltd., v. Marten* (5), and the judgment of Sankey J. in *Attorney General v. Brown* (6).

At first blush the words "of any description" appended to the general words "other articles" would almost seem to have been inserted to indicate an intention to exclude the application to this section of the *ejusdem generis* rule, and to require that the general words "other articles" should here be given their ordinary general construction. Yet, although no authority has been cited where that rule has been

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(1) Q.B.D. 546; 2 App. Cas.
743, at pp. 750-1, 757-8.

(2) Plowden 199.

(3) 15 App. Cas. 506, at pp. 517-8.

(4) 28 L.J.M.C. 213.

(5) [1916] 1 A.C. 304.

(6) 36 Times L.R. 165.

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applied notwithstanding the addition of the words "of any description" to such general words as "other articles," it has frequently been acted on where the equally comprehensive word "whatsoever" (see Stroud's Judicial Dictionary, 2 ed., p. 223) has been appended to similar general words, such as "other persons." Thus, in construing the phrase "no tradesman, artificer, workman, labourer, or other person whatsoever" of the Sunday Observance Act of 1677 it has been held that a farmer (*Reg. v. Cleworth* (1)), a barber (*Palmer v. Snow*) (2) and a coach proprietor (*Sandiman v. Breach*) (3) are not within its purview. In *Fish v. Jesson* (4), a devise of "all debts, accounts, reckonings and demands whatsoever," made to a servant, was held not to include a trunk belonging to the testator in his hands at the date of the will and at the death of the testator which contained jewels, medals, etc. Again in *Harrison v. Blackburn* (5), the description in a bill of sale—

all the household goods, furniture, stock-in-trade, and other household effects * * * in and about the dwelling-house and all other personal estate whatsoever.

of the assignor—was held not to carry his term or interest in the house. In *Ystradfydwg & Pontypridd Main Sewerage Board v. Bensted* (6), Lord Halsbury referred to

a very familiar canon of construction that, where you have a word which may have a general meaning wider than that which was intended by the legislature, when you find it associated with other words which shew the category within which it is to come, it is cut down and overridden according to the general proposition which is familiarly described as the *ejusdem generis* principle.

(1) 4 B. & S. 927.

(2) [1900] 1 Q.B. 725.

(3) 7 B. & C. 96.

(4) 2 Vern.; 114.

(5) 34 L.J.C.P., 109.

(6) [1907] A.C. 264, at p. 268.

In the present case far from indicating that an application of the restrictive rule would probably defeat the object of the statute or that there is good reason for believing that the legislature intended the general words it has used to bear a more extended meaning than if restricted to things similar in kind to those by the enumeration of which they are preceded, consideration of the character of the Act and of the context as a whole rather leads to the contrary view—that Parliament cannot have meant that words the “other articles” should bear their ordinary broad signification. In the first place, if they did, the enumeration of articles of food, clothing and fuel was quite unnecessary and the restriction to articles “staple and ordinary,” the careful particularization of

the products, materials and ingredients from or of which any thereof are in whole or in part manufactured, composed, derived or made

and the specification, in the case of food,

whether fresh, preserved, canned or otherwise treated,

serve no purpose. If the words “other articles of any description” mean “anything whatsoever,” the section may be paraphrased thus: “Necessary of life” means any article of any description which the Board of Commerce may from time to time by special regulation declare to be such. Can it be that that is what Parliament intended? *Re Stockport Ragged, Industrial and Reformatory Schools* (1).

Moreover, if s. 17, taken with s. 28, should be regarded as an enactment in the nature of criminal law—as counsel representing the Attorney General contended, and I incline to think rightly—the Board would thus be enabled by its mere declaration to

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(1) [1898] 2 Ch. 687, at p. 696.

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render criminal the accumulation or withholding from sale, to the extent stated in s. 17, of any article whatever, however little likely to be regarded as a necessary of life as that term is ordinarily understood. It is to me inconceivable that Parliament meant to confer such wide and unheard of powers. I rather think that no one would be more surprised and shocked than the legislators themselves were they informed that they had done so. I am therefore satisfied that Parliament must have intended that the words "other articles of any description" in sec. 16, notwithstanding their obvious and emphasized generality, should receive a much more restricted construction; and no other restriction that can be put upon them occurs to me which has so much to commend it, as being probably that which Parliament had in mind, as that embodied in the well-known maxim *noscuntur a sociis*. Parliament was dealing with articles of food, clothing and fuel. It had these present to its mind. It must be taken to have been fully cognizant of the legal maxim just quoted and of its embodiment in the *ejusdem generis* rule of construction so frequently acted on by the courts. What more natural than that it should have meant "other articles" to comprise only things which like food, clothing and fuel are requisite to maintain the physical health and vitality of the human body? Medicines have been suggested as falling within such a category; and there are, no doubt, some few other things essential to the life, health and sustenance of the body which are not strictly articles of food, clothing or fuel for which Parliament thought it well to provide, I cannot conceive of any genus or category that would include newsprint with articles of food, clothing and fuel.

Nor, in my opinion, had there been no definition whatever of the term "necessary of life," would the Board have been justified in treating newsprint as such.

Even restricted as I think it should be, the discretion vested in the Board by its mere declaration to constitute criminal offences in regard to matters not specified by Parliament may seem open to some objection. But it is certainly much less objectionable than the unlimited and unqualified power for which counsel representing the Attorney General contended.

I am for these reasons of the opinion that the order appealed from cannot be sustained either under the jurisdiction of the Board of Commerce as administrator of the Combines and Fair Prices Act or under that which it may lawfully exercise as Paper Controller.

The appeal should be allowed with costs.

BRODEUR J.—This is an appeal by Price Brothers & Co. from an order of the Board of Commerce passed on the 6th of February, 1920, by which they were restrained from accumulating newsprint and were ordered to sell their goods to three Montreal publishers.

This order was made under the provisions of the "War Measures Act" of 1914 and under "The Board of Commerce Act" and "The Combines and Fair Prices Act of 1914.

It is contended on the part of the appellants that the Board was without jurisdiction for making such an order and that it was beyond the powers of the Dominion Parliament to make or authorize it.

The Attorney General upholds the legality and the validity of the order and claims that the power of the Federal Parliament to look after the defence of the country rendered valid any legislation passed for

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the purpose of regulating the channels through which a particular commodity should move and the price at which it could be sold. He would consider that the Federal Parliament could then secure to newspapers an adequate supply of paper, and that such legislation would be a measure of defence.

The "War Measures Act" of 1914 on which the order in question is based was very wide. But it never contemplated that the price at which newspapers would be supplied with their raw material should be fixed by the Government or by some other authority.

The Act contemplated measures that would be rendered necessary for the defence of the country, as the censorship of the news, the arrest, detention and deportation of undesirable persons or of enemy subjects, the levy of an army, the control of the transport by land, air and water, the control of the food for war purposes and maintaining the forces. But it seems to me that it requires a great deal of imagination to include in those war measures the supply of newsprint to the press, and especially the exact price at which the newspapers should be supplied with paper.

It is certainly not what Parliament intended to authorize when they gave the Governor-in-Council the power to pass orders-in-council of the nature of defensive measures.

Besides these powers could be exercised only during the war. We have in the record proclamations stating formally that in the opinion of the Government the state of war has ceased to exist. The order which is attacked being posterior to the declarations made that the war is at an end, it was passed at a time when the power, if it ever legally existed, had ceased to have force and effect.

It is contended by the Attorney General that the Federal Parliament, in view of its power to regulate trade and commerce, could pass the legislation embodied in the Acts in question.

The words "regulation of trade and commerce" may cover a very large field of possible legislation and there has been much discussion as to their limits. They were first considered in the *Parsons Case* (1) in 1881; and there it was stated that these words in their unlimited sense would include every regulation of trade ranging from commercial treaties with foreign governments down to minute rules for regulating particular trades, but a consideration of the context and of other parts shews that these words should not be used in their unlimited sense. The collocation of the regulation of Trade and Commerce with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of those who framed the "British North America Act".

Views to the same effect have been expressed by the Privy Council in *Bank of Toronto v. Lambe* (2) and in *City of Montreal v. Montreal Street Railway* (3).

The last case where this power of regulating trade and commerce has been considered by the Privy Council, is *Attorney General for Canada v. Attorney General of Alberta (Insurance Reference)* (4); and it was held there that

the regulation of Trade and Commerce does not extend to the regulation of a particular trade.

In "The Combines and Fair Prices Act," there is an attempt to regulate the trade of those who are engaged in (the trade of necessities of life, as there was an

1) 7 App. Cas. 96.

(3) [1912] A.C. 333.

(2) 12 App. Cas. 575.

(4) [1916] A.C. 588.

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attempt in the Insurance Legislation to regulate the trade of those engaged in the business of insurance.

That power cannot, in view of the above decisions, be exercised by the Federal Parliament.

On the whole, I have come to the conclusion that the Board of Commerce has no jurisdiction to pass the order of the 6th of February, 1920, and that the appeal should be allowed with costs.

MIGNAULT J. (dissenting).—This is an appeal, by leave of a judge of this court, on certain questions as to the jurisdiction of the Board of Commerce of Canada to make the order complained of by the appellant. The Attorney General of Canada appeared to defend the order, and the questions of jurisdiction submitted were exhaustively argued.

The main provisions of this order are preceded by a kind of preamble stating that the appellant is under obligation to supply newsprint to Canadian publishers at the rate of 11,250 tons per annum at prices heretofore lawfully fixed, but is now supplying it at the rate approximately of 2,500 tons per annum, and has not delivered further supplies in Canada; that newsprint is a necessary of life under "The Combines and Fair Prices Act;" that the appellant is accumulating and withholding the said necessary of life beyond an amount thereof reasonably required for the ordinary purposes of its business; and it is declared that the Board of Commerce deems it expedient, in the exercise of its powers and authority under "The Board of Commerce Act," and "The Combines and Fair Prices Act" and under and by virtue of the Order-in-Council of the Governor General-in-Council concerning paper control, dated 29th January, 1920, and numbered P.C. 230, to order and declare as follows:

1. That any price on the sale of roll newsprint exceeding eighty dollars per ton car lots shall be deemed to include an unfair profit and the said Company is hereby, and until the further order of this Board, restrained and prohibited from the making or taking of unfair profits for or upon the holding or disposition of said necessary of life, to wit, newsprint, that is to say at any price which is to be deemed as aforesaid to include an unfair profit.

2. That the said Company be and it is hereby restrained and prohibited from accumulating and withholding from sale as aforesaid any quantity beyond amounts aforesaid of the said necessary of life, namely, newsprint.

3. The clauses above numbered 1 and 2, are to be deemed interim provisions and are to remain in force until the fifteenth day of March, 1920, with leave to the Company to move to rescind them and to any other person concerned to renew and extend the said provisions.

4. Under the special authority vested in the undersigned by virtue of said Order in Council and otherwise existing under the said Acts the undersigned direct that the said Price Brothers and Company Limited, do—

(a) Forthwith and not later than the tenth day of February, 1920, ship Free on Board cars on the railway at or near by a mill of the said Company one car standard newsprint 32 lb. basis, 72 inch rolls, 33 inches diameter, pulpwood cores with metal ends consigned to the publishers of The Montreal Star newspaper at Montreal, Quebec, freight charges collect, at the price of eighty dollars per ton, bill of lading to be attached to bill of exchange, and that the said Company do thereafter in each and every period of seven days computed from time to time from and including the said tenth day of February make such shipments of the like commodity to the said consignee in the same manner and on the same terms in all respects so that the said publishers shall receive in all 93 tons of said newsprint in each and every consecutive period of seven days so computed until further order; the carload first herein mentioned is to be included in computing the first week's shipment of 93 tons.

(b) Forthwith and not later than the tenth day of February, 1920, ship Free on Board Cars on the railway at or near by a mill of the said Company one car standard newsprint 32 lbs. basis, consisting of 30 rolls, 16½ inches, and the balance of the said cars in rolls 33½ inch all of said rolls to be from 30 to 32 inches in diameter, 3 inch iron cores consigned to The Herald Publishing Company, Limited, Montreal, Quebec, freight charges collect at the price of eighty dollars per ton, bill of lading to be attached to bill of exchange, and that the said Company do thereafter in each and every period of ten days from and including said tenth day of February make such shipments of the like commodity to the said consignee in the same manner and on the same terms, so that the said The Herald Publishing Company, Limited, shall receive one car load composed as aforesaid of said newsprint

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in each and every consecutive period of ten days computed from said tenth day of February, until further order.

(c) That the said Company do forthwith ship from a mill as aforesaid consigned to Poirier, Bessette and Cie, 129-133 Rue Cadieux, Montreal, one car load standard newsprint 32 lb. basis, consisting of 29 inch rolls, diameter from 30 to 33 inches, with paper cores from 3 to 4 inches, the price and terms and means of shipment and payment to be as aforesaid, and each month hereafter on or before tenth day thereof the said Price Brothers and Company, Limited, shall make a like shipment to said consignees in the same manner and on the same terms.

The petition for leave to appeal submits seven questions which, in so far as they involve the jurisdiction of the Board, can be reduced to two:

1. Was the order in question authorized by the Dominion Parliament? and

2. Had the Dominion Parliament power to authorize it?

If the answer to either question be in the negative, the Board must be held to have acted without jurisdiction, and if a negative answer be given to the first question, it will be unnecessary to reply to the second.

Paragraphs 1 and 2 of the order involve the question whether newsprint is a necessary of life under "The Combines and Fair Prices Act," 1919, (9 & 10 Geo. V., ch. 45). It is so declared in the order appealed from.

The definition of "necessary of life" is given by section 16 of the statute in the following terms:

For the purposes of this part of this Act, the expression 'necessary of life', means a staple and ordinary article of food (whether fresh, preserved, canned, or otherwise treated), clothing and fuel, including the products, materials and ingredients from or of which any thereof are in whole or in part manufactured, composed, derived or made, and such other articles of any description as the Board may from time to time by special regulation prescribe.

It is obvious from this definition that in the contemplation of Parliament necessities of life are primarily articles necessary to sustain life, as distinguished from

luxuries. Being necessities of life, and the requirements of human life being of infinite variety, they cannot be confined to staple and ordinary articles of food, clothing and fuel, and as it was impossible to enumerate them, the Board was given the power from time to time to declare "such other articles of any description" as it might from time to time by special regulation prescribe, to be necessities of life. It is argued that the *ejusdem generis* rule should be applied here and that the defining power of the Board should be restricted to articles of the same kind as staple and ordinary articles of food, clothing and fuel. But to so hold would defeat the will of Parliament, for, as I have said, the requirements of human life vary *ad infinitum*, and it would not be difficult to enumerate articles useful or necessary for the purposes of human life which are neither food, nor clothing, nor fuel, such as medicine for the sick, crutches for the lame and eye glasses for persons with defective eyesight. I think the intention of Parliament to exclude the *ejusdem generis*, or *noscitur a sociis* rules is sufficiently shewn here by the words "such other articles of any description" (see *Larsen v. Sylvester* (1), where the House of Lords held that the *ejusdem generis* rule was excluded by the words, "frosts, floods, strikes and any other unavoidable accidents or hindrances of what kind soever"), and the general scheme of the Act is to entrust to the Board of Commerce the power of defining what articles, other than food, clothing and fuel, are necessities of life, any complete or exclusive enumeration being impossible. I would not therefore cut down the generality of the terms of section 16 by resorting to the

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(1) [1908] A.C. 295.

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rule, undoubtedly very useful in many cases, that general terms following special ones are to be restricted to the kind of things specially enumerated. Moreover, if the *ejusdem generis* or *noscitur a sociis* rules apply, the powers of definition conferred upon the Board are entirely meaningless, for the enumerated articles alone could be considered necessities of life.

This does not mean, however, that this power of definition must not be exercised reasonably, in other words that the articles which the Board declares to be necessities of life should not have some relation to the requirements of human life, varied and difficult to define *a priori* though they may be. And I must say that I fail to discover any possible connection between the requirements of human life and newsprint paper. It even appears almost an abuse of language to call it a necessity of life. Whatever place newspapers may occupy in modern society, and it is no doubt a very important one, and however indispensable newsprint may be for educational and other like purposes, it certainly does not proximately or even remotely come within the class of things that can be used for the requirements of human life. I therefore am of opinion that the Board acted without jurisdiction in declaring it a necessary of life.

This conclusion shews that paragraphs 1 and 2 of the order complained of cannot be supported under the authority of "The Board of Commerce Act" or "The Combines and Fair Prices Act, 1919," and these paragraphs therefore were not authorized by Parliament. This being so, it is unnecessary to determine in this case whether Parliament could validly pass these two Acts.

Paragraph 4 of the order is based on different considerations and the authority of the Board of Commerce

to order the supply of newsprint to the consumers therein mentioned can only be supported under the authority vested in the Board as Commissioner and Controller of Paper by virtue of the Order in Council of the 29th January, 1920, and the Orders in Council that preceded it.

It may be remarked that the office of Paper Controller was created at the height of the war by various Orders in Council adopted by the Governor General in Council, whereby the powers of the Controller were defined and gradually, as occasion required, increased. The powers, jurisdiction and authority of the Paper Controller were recognized and confirmed by the Dominion statute, 9 & 10 Geo. V., ch. 63, assented to on July 7th, 1919, and were continued until the publication in the Canada Gazette of a proclamation by the Governor in Council declaring that the war which commenced on the 4th August, 1914, no longer exists.

The Orders in Council concerning the Paper Controller and paper control were made by the Governor General in Council under the authority of the "War Measures Act, 1914," and were recognized as having been so made by the statute of 1919 above mentioned. This is a direct confirmation by Parliament of the authority exercised by the Governor General in Council under the "War Measures Act, 1914," and in so far as the Orders in Council mentioned in the statute are concerned, certainly precludes any question whether in making them the Governor General in Council acted within the authority conferred by the "War Measures Act, 1914." It is to be noted that the statute of 1919 was passed several months after the Armistice of the 11th November, 1918, had put an end to active military operations, and after the treaty of peace with Germany was signed, although before its ratification.

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Inasmuch however as the Governor General in Council made important orders after the passing of the statute of 1919 concerning paper control, among them that of the 29th January, 1920, on which paragraph 4 of the order in question is based, I will briefly examine whether the authority of the Governor General in Council can be sustained under the "War Measures Act, 1914."

Much stress is laid on the words of section 6 of the Act empowering the Governor in Council to 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. And it is argued that these powers can be exercised only during the existence of real or apprehended war and that no such condition now exists.

It appears sufficient to answer that by section 3 of the Act, the provisions of section 6 are only in force during war, invasion, or insurrection, real or apprehended; that by section 4, the issue of a proclamation by His Majesty, or under the authority of the Governor in Council, is conclusive evidence that war, invasion or insurrection, real or apprehended, exists and has existed for any period therein stated, and of its continuance until, by the issue of a further proclamation it is declared that it no longer exists; that by section 5 it is declared that war has continuously existed since the 4th day of August, 1914, *and shall be deemed to exist* until the Governor in Council by proclamation published in the Canada Gazette declares that it no longer exists; and that no such proclamation has yet been published. This, I take it, precludes us from holding that war having ceased, the jurisdiction of the Governor

in Council under the War Measures Act can no longer be exercised.

The appellant also relies on the Order-in-Council of the 20th December, 1919. This Order in Council recites that a report from the Minister of Justice has been laid before the Governor General in Council,

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directing attention to the present situation with regard to the Government Orders and Regulations which were sanctioned under the authority of the War Measures Act, 1914, and which still remain in operation.

The report refers to the terms by which authority is conferred upon the Governor in Council by section 6 of the "War Measures Act, 1914," and to the report made by the legal committee appointed in England to consider and report upon the interpretation of the term "period of war," which report states that

in our opinion the true construction of the section is that the regulations so issued can operate only during the continuance of the war. The purpose expressed is for securing the public safety and the defence of the realm, which we think mean the public safety so far as threatened by our enemies in the present war and the defence of the realm against these enemies. The powers are given by reason of the national emergency and vest the Executive with an authority so wide that we think it must have been intended only to exist during the existence of the emergency.

The Minister of Justice observes that the provisions of the Defence of the Realm (Con.) Act, 1914, of the United Kingdom, and of the "War Measures Act, 1914" of Canada, vary considerably, but so far as affects the question under consideration they were enacted for the same purpose, and the considerations upon which the opinion of the Committee proceeds are very pertinent to the question as to the operation of the Canadian Orders and Regulations. He adds:

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It must be realized that although no proclamation has yet been issued declaring that war no longer exists, actual war conditions have in fact long ago ceased to exist, and consequently the existence of war cannot longer be urged as a reason in fact for maintaining these extraordinary regulations as necessary or advisable for the security, defence, peace, order and welfare of Canada.

The Armistice which concluded hostilities became effective on the 11th November, 1918, the expeditionary force has since been withdrawn and demobilized and the country generally is devoting its energies to re-establishment in the ordinary avocations of peace.

In these circumstances the Minister considers that the time has arrived when the emergency Government legislation should cease to operate.

The report of the Minister of Justice apparently recommended the repeal of the emergency Government legislation generally, but it evidently was not acted upon in this wide sense, as is shewn by the enacting clause of the Order in Council which reads as follows:

Therefore His Excellency the Governor General-in-Council on the recommendation of the Minister of Justice, is pleased to repeal all Orders and Regulations of the Governor-in-Council which depend for their sanction upon section 6 of the War Measures Act, 1914, and the same are hereby repealed as from the first day of January, 1920, *with the exception of the Orders and Regulations enumerated and included in the annexed schedule, which latter Orders and Regulations shall continue in force until the last day of the next session of Parliament.*

The schedule enumerates nine subjects as to which the Orders in Council and regulations of the Governor in-Council are to remain in force, among them, and the first in the list, "pulp and paper control."

I think therefore that the appellant can found no argument on this Order in Council of the 20th December, 1919. It obviously must be taken as a whole, and the report of the Minister of Justice must be read either as being subject to the exceptions made by the Order in Council, or as not having been adopted as to these exceptions. In other words, as to the excepted orders and regulations, the considerations expressed by the Minister do not apply. Even if the Order in Council

could be given the absolute and sweeping effect contemplated for, it cannot, in so far as paper control is concerned, prevail against the express provisions of the statute of 1919.

Nor can this Order in Council be held to be, as was somewhat timidly suggested, the peace proclamation referred to in section 5 of the "War Measures Act, 1914," and in the statute of 1919.

It would be a singular process of reasoning, if I may say so with deference, to apply an Order in Council with specific exceptions as if it had contained no such exceptions. This is not construing the Order in Council, it is striking out and disregarding some of its most material provisions.

The situation consequently is this; no peace proclamation as provided in the "War Measures Act, 1914," and the statute of 1919 has been published and therefore, in so far as concerns paper control and the powers of the Paper Controller, the legal presumption of the existence of war, which I take to be *juris et de jure*, cannot be rebutted. That this legal presumption may be contrary to existing facts is a matter for the consideration of Parliament that enacted it, but not for a court of law which is bound by it. The anomaly of such a situation calls for action by Parliament or by the Governor in Council to bring it to an end, but no such action appears to me to be open to this court.

I may add that a considerable number of Orders in Council are printed in the appeal book, notably one of the 3rd November, 1917, mentioned in the statute of 1919, and by which the Paper Controller was authorized to fix the price and distribution of newsprint paper. It cannot be said that any real departure from these Orders in Council is made by the Order in

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Council of the 29th January, 1920, but the same policy, as a measure adopted under the War Measures Act, 1914, has been continued, and the resistance of the appellant to this policy has led to the making of the order here in question.

The appellant cited two proclamations of His Majesty the King, published in the London Gazette of the 1st of July, 1919.

The first proclamation refers to the signing of the peace treaty with Germany, and orders that upon the exchange of the ratifications thereof, the said treaty of peace be inviolably observed.

The second proclamation states that whereas it has pleased Almighty God to bring to a close the late widespread and sanguinary war in which His Majesty was engaged with Germany and her allies, therefore His Majesty commands that a general thanksgiving to Almighty God for His manifold and great mercies be observed throughout His Majesty's Dominions on Sunday the sixth day of July then instant.

Surely these proclamations cannot do away with the necessity of the proclamation of peace, required by the "War Measures Act, 1914," and the statute of 1919. And it may further be added that by an Order of His Majesty the King in Council, dated the 9th day of February, 1920, and published in an extra of the Canada Gazette of March 29th, 1920, the war is declared terminated on the 10th day of January, 1920, only as to Germany and not as to the other belligerents. This shows that the proclamations published in the London Gazette on July 1st, 1919, cannot be given the effect contended for by the appellant.

It cannot be successfully contended that the "War Measures Act, 1914," transcends the powers of Parlia-

ment. It must therefore be given full effect and until it is repealed or until the peace proclamation is published, the authority of the Governor-in-Council to make these Orders in Council cannot be disputed. No question of encroachment on provincial powers of legislation under these circumstances can arise.

It has been argued that paper control has no connection with the purposes mentioned in the "War Measures Act, 1914," as justifying the Governor-in-Council in making the orders and regulations therein authorized. It seems to me that unless I am ready to impute bad faith to the Crown, I should not take upon myself to determine whether its orders are necessary or advisable for the security, defence, peace, order and welfare of Canada. It is indeed conceivable that paper control may be very important in the national interest in the case of an emergency like war. I would, however, consider it sufficient to say in this case that no reason has been shown why this court should undertake to revise and set aside the discretion exercised by the Governor-in-Council under the "War Measures Act, 1914," in relation to the control of paper which discretion received the approval of Parliament, as shown by the statute of 1919.

My opinion consequently in that paragraph 4 of the Order in Council complained of is of binding force. I would however, for the reasons above stated, strike out paragraphs 1 and 2, allowing the appeal to that extent, with costs.

Appeal allowed with costs.

Solicitors for the appellant:

Geoffrion, Geoffrion & Prud'homme.

Solicitor for the Attorney-General of Canada:

O. M. Biggar.

1920
IN RE
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AND
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OF CANADA.
Mignault J.