Privy Council Appeal No. 58 *of* 1946

The Co-operative Committee on Japanese Canadians and another - - - - - - - - - *Appellants*

v.

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

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER, 1946

Present at the Hearing:

VISCOUNT SIMON
LORD WRIGHT
LORD PORTER
LORD UTHWATT
SIR LYMAN DUFF

[*Delivered by* LORD WRIGHT]

These are appeals by special leave brought by the Co-operative Committee on Japanese Canadians and the A-G of Saskatchewan from the opinion certified on the 20th February, 1946, by the Supreme Court of Canada upon a reference ordered by the Governor General in Council under Section 55 of the Supreme Court Act, Revised Statutes of Canada 1927, cap 35. The question referred for hearing and consideration was as follows:

"Are the Orders-in-Council dated the 15th December, 1945, being P.C. 7355, 7356, 7357 *ultra vires* of the Governor-in-Council either in whole or in part and if so in what particular or particulars, and to what extent?"

The recitals to the Orders-in-Council which it is sought to impeach show that they purport to have been made under the authority of The War Measures Act. That Act was first passed by the Parliament of Canada in 1914 and is now chap. 206 of The Revised Statutes of Canada 1927. Section 2 provides that the issue of a proclamation by His Majesty or under the authority of the Governor-in-Council shall be conclusive evidence that war, invasion or insurrection real or apprehended exists and of its continuance until by the issue of a further proclamation it is declared that war, invasion or insurrection no longer exists. The proclamation first called for by this section was duly made but no proclamation that the war no longer existed has been made.

The relevant sections of this Act are as follow:—

"3. The Governor-in-Council may do and authorize 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; and for greater certainty but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor-in-Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:—

(*a*) Censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;

(*b*) Arrest, detention, exclusion and deportation;

(*c*) Control of the harbours, ports and territorial waters of Canada and the movement of vessels;

(*d*) Transportation by land, air or water and the control of the transport of persons and things;

(*e*) Trading, exportation, importation, production and manufacture;

(*f*) Appropriation, control, forfeiture and disposition of property and of the use thereof.

(2) All orders and regulations made under this section shall have the force of law. . . ."

" 6. The provisions of the three sections last preceding, shall only be in force during war, invasion or insurrection, real or apprehended."

The three Orders-in-Council were all made on the 15th December, 1945.

The preamble to the first Order (P.C. 7355) contains the following recitals:—

Whereas during the course of the war with Japan certain Japanese Nationals manifested their sympathy with or support of Japan by making requests for repatriation to Japan and otherwise;

And whereas other persons of the Japanese race have requested or may request that they be sent to Japan;

And whereas it is deemed desirable that provisions be made to deport the classes of persons referred to above;

And whereas it is considered necessary for the security defence peace order and welfare of Canada that provision be made accordingly.

The first Order (Section 2, subsections 1, 2, 3 and 4) then authorizes the Minister of Labour to make orders for deportation " to Japan " of the following persons.

(1) Every person of 16 years of age or over, other than a Canadian national, who is a national of Japan resident in Canada and who had since the 8th December, 1941 (the date of the declaration of war by the Dominion against Japan) made a request for repatriation or who had been detained under certain regulations and was so detained on 1st September, 1945.

(2) Every naturalized British Subject of the Japanese Race of 16 years of age or over resident in Canada who had made request for repatriation provided that such request had not been revoked in writing before midnight on 1st September, 1945.

(3) Natural born British Subjects of the Japanese Race of 16 years of age or over resident in Canada, who made a request for repatriation and did not revoke it in writing before the Minister had made an Order for " deportation."

Subsection 4 of Section 2 provided as follows:—

(4) The wife and children under 16 years of age of any person for whom the Minister makes an order for deportation to Japan may be included in such order and deported with such person.

The remaining provisions of this Order are of an ancillary or administrative nature.

The second Order (P.C. 7356) provides that any person being a British Subject by naturalization under the Naturalization Act, cap. 138, R.S.C. 1927, who is deported from Canada under the provisions of P.C. 7355, shall as and from the date upon which he leaves Canada in the course of such deportation, cease to be either a British Subject or a Canadian National.

The third Order (P.C. 7357) provides for the appointment of a Commission to make inquiry concerning the activities, loyalties and extent of co-operation with the government of Canada during the war, of Japanese Nationals and naturalized persons of the Japanese race in cases where their names are referred to the Commission by the Minister of Labour for

investigation with a view to recommendation whether in the circumstances of any such case, such persons should be deported. The Commission was also at the request of the Minister of Labour to inquire into the case of any naturalized British Subject of the Japanese Race who had made a request for repatriation, and make recommendations. It was then provided that any person of the Japanese Race who was recommended by the Commission for deportation, should be deemed to be a person subject to deportation under the provisions of P.C. 7355, and as and from the date upon which he left Canada in the course of deportation, he should cease to be either a British Subject or a Canadian National.

There is one further Act of the Parliament of the Dominion to which it is necessary to refer—the National Emergency Transitional Powers Act 1945. This Act was assented to on the 18th December, 1945. It was to come into force on the 1st January, 1946, and on and after that day the war against Germany and Japan was for the purposes of the War Measures Act to be deemed no longer to exist. The Act was to continue in force until the 31st December, 1946, or if Parliament were not then sitting until a date determined by the sitting of Parliament.

The Act recites the War Measures Act and the continuance of a national emergency arising out of the war since the unconditional surrender of Germany and Japan, and the necessity that the Governor-in-Council should exercise certain transitional powers during the continuation of the exceptional conditions brought about by the war and the necessity that certain acts and things done and authorized, and certain orders and regulations made under the War Measures Act be continued in force, and that it was essential that the Governor-in-Council be authorized to do and authorize such further acts, and make such further orders and regulations as he might deem necessary or advisable by reason of the emergency and for the purpose of discontinuance in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency.

By Section 2 of the Act the Governor-in-Council was given power to make orders and regulations as he might, by reason of the continued existence of the National emergency, arising out of the war against Germany and Japan, deem necessary or advisable for certain purposes set out therein. Those purposes do not include arrest, detention, deportation, or exclusion but do include under subsection (e)

"Continuing or discontinuing in an orderly manner as the emergency permits, measures adopted during and by reason of the war." Subsection 3 of Section 2 provides for every Order-in-Council passed under the Act, being laid before Parliament and being annulled upon resolution of the Senate or the House of Commons. Section 4 provides as follows:

"Without prejudice to any other power conferred by this Act, the Governor-in-Council may order that the Orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day this Act comes into force shall, while this Act is in force, continue in full force and effect subject to amendment or revocation under this Act."

On 28th December, 1945 the Governor-in-Council passed Order-in-Council P.C. 7414, pursuant to Section 4 of the National Emergency Transitional Powers Act, 1945 providing that all orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day the National Emergency Transitional Powers Act, 1945, should come into force, should, while the latter Act is in force, continue in full force and effect subject to amendment or revocation under the latter Act.

The result of this legislation is that the Orders-in-Council are now in force, if at all, by virtue of the Transitional Act.

In connection with the question raised by this case, three Acts of the Imperial Parliament are relevant.

The first of these is the Colonial Laws Validity Act, 1865.

Sections 2 and 3 of that Act run as follows:—

> " 2. Any Colonial Law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.
>
> 3. No Colonial Law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, Order or Regulation as aforesaid."

The second is the Statute of Westminster passed in the year 1931 which was duly adopted by the Parliament of Canada. Section 2 of that Act is in the following terms:—

> " 2.—(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.
>
> (2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."

The third Act is the British Nationality and Status of Aliens Act, 1914. Part I of that Act relates to Natural Born British Subjects. Part II relates to the Naturalization of Aliens and Section 9 provides that Part II shall not nor shall any certificate of naturalization granted thereunder have effect within any of the Dominions specified in the Schedule (which includes Canada) unless the legislature of the Dominion adopts Part II. The Act of the Imperial Parliament was subsequently amended. The Parliament of Canada by the Naturalization Act, 1914 did not in terms " adopt " the Imperial Act of 1914, but passed almost identical legislation. In 1915 the Parliament of Canada amended the Naturalization Act so as to introduce the amendments that had been made by the Parliament of Great Britain in Part II of the British Nationality and Status of Aliens Act, 1914. That Act of 1915 contained a recital to the effect that the Dominion had adopted Part II of the British Act.

It is convenient at this stage to deal with the question raised as to the effect of this legislation of the Dominion on this topic.

The contention of the Appellants was that the Parliament of Canada did " adopt " Part II of The Imperial Act in the sense in which that word was used in the Imperial Act and that in consequence Part II formed part of the law of the United Kingdom extending to the Dominion. The contention of the Respondents was that the Canadian Statutes are only parallel legislation. In arriving at a conclusion as to the advice their Lordships think it right to tender to His Majesty they find it unnecessary to express an opinion as to the correctness or otherwise of the contention of the Appellants. Their Lordships will assume that the Appellants are right in their contention, but they do not express any opinion one way or another upon it.

There was a considerable diversity of opinion between the members of the Supreme Court on some of the points which fell for decision under the reference. In one important respect at least—the invalidity of sub-section (4) of Section 2 of P.C. 7355—the views of the majority of the Court

were adverse to the respondents. No cross appeal was lodged. This in the circumstances was only the absence of a formality. A determination upon the legal effect of the orders as a whole is necessary in order to arrive at a conclusion upon the matters in respect of which the appellants appealed. The whole matter was fully debated before their Lordships and their Lordships accordingly propose to deal with the orders in their entirety.

Their Lordships now turn to the question at issue.

Upon certain general matters of principle there is not since the decision in *Fort Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* [1923] A.C. 695, any room for dispute. Under the British North America Act property and civil rights in the several provinces are committed to the Provincial Legislatures, but the Parliament of the Dominion in a sufficiently great emergency such as that arising out of war has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected and it rests with the Parliament of the Dominion to protect them. What those interests are the Parliament of the Dominion must be left with considerable freedom to judge.

Again if it be clear that an emergency has not arisen or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliaments of the Dominion and the Parliaments of the provinces comes into play. But very clear evidence that an emergency has not arisen or that the emergency no longer exists is required to justify the judiciary even though the question is one of *ultra vires*, in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required.

To this may be added as a corollary that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation. Determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers.

Lastly it should be observed that the judiciary are not concerned when considering a question of *ultra vires* with the question whether the Executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of the Dominion either directly or indirectly has made.

It is unnecessary therefore for their Lordships to take into review or even to recount the particular circumstances obtaining within the Dominion that led to the Orders in question or the arrangements made with a view to their execution.

The validity of the War Measures Act was not attacked before their Lordships and consistently with the principles stated was not open to attack. The validity of the Orders was challenged on many grounds. Their Lordships have considered not only the points put forward on behalf of the Appellants but whether the orders were susceptible of criticism for reasons not put forward. Their Lordships are satisfied that all possible grounds of criticism were in one form or another included in the grounds on which the Appellants relied.

For the validity of the orders it is necessary *First* that upon the true construction of the War Measures Act, they fall within the ambit of the powers duly conferred by the Act on the Governor General in Council *Second* that, assuming the orders were within the terms of the War Measures Act, they were not for some reason in law invalid.

The points taken were, first, that the War Measures Act did not on its true construction authorise orders for deportation to be made as respects British subjects or Canadian Nationals and that it should in certain respects receive a limited construction: second, that if the Act

purported on its construction to authorise the making of such orders, yet the orders made would be contrary to the Imperial Statute British Nationality and Status of Aliens Act and therefore to that extent invalid: third, that the provision contained in para. 2 (4) of P.C. 7355 (relating to the wives and children of persons in respect of whom an order for deportation had been made) was for a specific reason invalid: fourth, that in any event the order made under the National Emergency Transitional Powers Act continuing the former orders of the Governor-in-Council was invalid.

The first point raises questions of construction with which their Lordships must now deal.

The language of the War Measures Act is in general terms but it was argued that certain limitations were as a matter of construction of the Act to be implied and that to the extent to which any order purporting to be made under the Act fell outside its proper ambit, the order would of necessity be invalid.

The first suggested limitation was based on the Colonial Laws Validity Act, 1865. At the date when the War Measures Act came into force legislation made by the Parliament was in its effect subject to the provisions as to repugnancy contained in the Act of 1865 and it was argued that the War Measures Act should be construed as confined in its possible ambit to the making of orders which would consistently with the Colonial Laws Validity Act, 1865, then be valid as law within the Dominion. If that was so the orders were not authorised by the War Measures Act in so far as they were repugnant to the British Nationality and Status of Aliens Act, 1914-18, which was an Act of the Imperial Parliament and in the appellants' contention extended to the Dominion as part of the law of the United Kingdom.

Their Lordships are unable to accept this contention. The effect of the Colonial Laws Validity Act, 1865, was only that Canadian legislation repugnant to the statutory law of the United Kingdom applying to the Dominion was inoperative. The only conclusion to be drawn from a consideration of the Colonial Laws Validity Act is that the War Measures Act did not on its true construction confer a power beyond the extent to which it might at the date of its use be validly exercised. The statutory law of the United Kingdom is not static and in their Lordships' opinion there is no justification for the imputation that the Parliament of Canada legislated upon the footing that it is static. The effectiveness of legislation of the Parliament of the Dominion at the date when those delegated powers are exercised, not the limitation on that legislation at the date when the War Measures Act was passed, is, so far as the Act of 1865 is concerned, the relevant matter.

Secondly, it was argued that, as a matter of construction, the War Measures Act did not authorise the making of orders having an extra territorial operation. This point was relevant by reason that the orders in question in terms authorised " deportation."

This point may be shortly disposed of. Extra-territorial constraint is incident to the exercise of the power of deportation (*A.G. for Canada* v. *Cain* [1906] A.C. 542) and was, therefore in contemplation. Any lingering doubts as to the validity in law of an Act which for its effectiveness requires extra-territorial application were, it may be added, set at rest by the Canadian Statute the Extra-Territorial Act, 1933.

Thirdly, it was argued that the War Measures Act should be construed as authorising only such orders as are consistent with the accepted principles of International Law and that the forcible removal to a foreign country of British subjects was contrary to the accepted rules of International Law. The Act therefore as a matter of construction did not, it was said, purport to authorise orders providing for such removal.

It may be true that in construing legislation some weight ought in an appropriate case to be given to a consideration of the accepted principles of International Law (cf. *Croft* v. *Dunphy* [1933] A.C. 156), but the nature of the legislation in any particular case has to be considered

in determining to what extent, if at all, it is right on a question of construction to advert to those principles. In their Lordships' view those principles find no place in the construction of the War Measures Act. The Act is directed to the exercise by the Governor-in-Council of powers vested in the Parliament of the Dominion at a time when war, invasion or insurrection or their apprehension exists. The accepted rules of International Law applicable in times of peace can hardly have been in contemplation and the inference cannot be drawn that the Parliament of the Dominion impliedly imposed the limitation suggested.

The next question of construction arising under the Act has more substance. It was said that there was inherent in the word " deportation " as part of its meaning the necessity that the person to be deported was—as respects the State exercising the power—an alien. The express power given to expel persons from Canada was therefore limited to aliens i.e., persons who were not Canadian Nationals. It was not permissible to treat as authorised by the general power a power to make orders for deportation in relation to a class of persons impliedly excluded from deportation by the terms of the specific power. There was therefore an implied prohibition against the deportation of Canadian Nationals.

Upon this argument it may be conceded that commonly it is only aliens who are made liable to deportation and that in consequence, where reference is made to deportation, there is often imported the suggestion that aliens are under immediate consideration.

The dictionaries as might be expected do not altogether agree as to the meaning of deportation but the New English Dictionary gives as its definition " The action of carrying away: forcible removal especially into exile: transportation."

As a matter of language their Lordships take the view that " deportation " is not a word which is mis-used when applied to persons not aliens. Whether or not the word " deportation " is in its application to be confined to aliens or not remains therefore open as a matter of construction of the particular statute in which it is found.

In the present case the Act is directed to dealing with emergencies: throughout it is in sweeping terms; and the word is found in the combination " arrest, detention, exclusion and deportation." As regard the first three of these words nationality is obviously not a relevant consideration. The general nature of the Act and the collocation in which the word is found establish in their Lordships' view that in this statute the word " deportation " is used in a general sense and as an action applicable to all persons irrespective of nationality. This being in their Lordships' judgment the true construction of the Act, it must apply to all persons who are at the time subject to the laws of Canada. They may be so subject by the mere fact of being in Canada, whether they are aliens or British subjects or Canadian Nationals. Nationality *per se* is not a relevant consideration. An order relating to deportation would not be unauthorised by reason that it related to Canadian Nationals or British subjects.

Even if this were not the case the same result may be reached by another route. The general power given to the Governor-in-Council in the opening part of Section 3 of the Act is not in this statute limited by reference to the acts particularly enumerated and their Lordships see no reason for differing from the view expressed by Rinfret C.J.C. that the order was justifiable under that general power (See *King Emperor* v. *Sibnath Banerji* [1945] L.R. 72 I.A. 247).

There remains one further question of construction of The War Measures Act, namely, whether it authorised the making of an order which provided that deported persons should cease to be either British subjects or Canadian Nationals. That matter must be considered in light of the views which their Lordships have already expressed as to the construction of the Act. They see no reason for excluding from the scope of the matters covered by the general power contained in Section 3 a power to take from persons who have in fact under an order for deportation left Canada their status under the Law of Canada as British subjects and Canadian Nationals.

The result is that upon its true construction The War Measures Act authorised the making of orders for deportation of any person whatever be his nationality and the deprivation so far as the law of Canada was concerned of his status under that law as a British subject or Canadian National.

The next question is whether The Colonial Laws Validity Act, 1865 applies to the Orders of the Governor-in-Council. If it does, then in so far as they are repugnant to The British Nationality and Status of Aliens Act (which their Lordships are assuming to be an Act of the Imperial Parliament extending to Canada) they are invalid unless the provisions of the Statute of Westminster can be relied upon.

The contention of the Appellants was that the orders, though law made after the date of the Statute of Westminster, were not law made after that date by the Parliament of the Dominion. The activities of Parliament in the matter in question had, it was said, ceased in 1927. The orders were not of its making. The passing by the Parliament of The National Emergency Transitional Powers Act, 1945 was for the purpose in hand immaterial, for the reason that Section 4 empowered the Governor-in-Council to order the continuance only of orders and regulations " lawfully " made under the War Measures Act.

Their Lordships agree that in considering this particular matter the National Emergency Transitional Powers Act, 1945 cannot be prayed in aid of the validity of the orders, but in their opinion the orders in question were made " after the passing of this Act (i.e., the Statute of Westminster) by the Parliament of the Dominion " as that phrase is used in the Statute of Westminster. This again is a question of construction.

Both in sub-sections 1 and 2 of Section (2) of the Statute of Westminster the matter which is dealt with is " law ", and that is a general term which includes not only statutes but also orders and regulations made under statutes. Undoubtedly the law as embodied in an order or regulation is made at the date when the power conferred by the Parliament of the Dominion is exercised.

Is it made after that date by the Parliament of the Dominion? That Parliament is the only legislative authority for the Dominion as a whole and it has chosen to make the law through machinery set up and continued by it for that purpose. The Governor-in-Council has no independent status as a law-making body. The legislative activity of Parliament is still present at the time when the orders are made and these orders are " law ". In their Lordships' opinion they are law made by the Parliament at the date of their promulgation. A contrary conclusion would in their Lordships' view place an artificial and narrow construction on wide terms used in an Act of Parliament the subject matter of which demands that a liberal construction should be put upon the language used.

In the result therefore the Colonial Laws Validity Act, 1865, affords no ground for questioning the validity of the orders.

The next matter arises on sub-para. (4) of para. (2) of P.C. 7355. Under that provision an order for deportation may be made as respects the wives and children (not over the age of 16 years) of persons with respect to whom an order for deportation has been made.

The case sought to be made runs as follows:

The recitals in the order relate only to the desirability of making provision for the deportation of persons referred to in sub-paras. 1, 2 and 3 of para. (2) of the order. In the case of the classes of persons referred to in sub-paras. 1, 2 and 3 (leaving aside detainees) request for repatriation was at some stage necessary; a request was considered by the Governor-in-Council to be a substantive matter, but no such request is required as respects the persons mentioned in sub-para. 4 and the only apparent reason for subjecting them to liability for deportation is that an order for deportation has been made as respects the husband or father. The order, therefore, not only does not show that by reason of the

existence of real or apprehended war it was thought necessary for the security, peace, order, defence or welfare of Canada to make provision for their deportation but, when considered in substance, shows that these matters were not taken into consideration. A deportation of the family consequential on the deportation of the father might indeed be thought desirable on grounds other than those requisite for a due execution of the powers given and, it is contended, it is apparent that it is grounds not set out in the statute which alone have here been taken into consideration.

The incompleteness of the recital is in their Lordships' view of no moment. It is the substance of the matter that has to be considered. Their Lordships do not doubt the proposition that an exercise of the power for an unauthorised purpose would be invalid and the only question is whether there is apparent any matter which justifies the judiciary in coming to the conclusion that the power was in fact exercised for an unauthorised purpose. In their Lordships' opinion there is not. The first three sub-paragraphs of paragraph 2 no doubt deal with the matter which primarily engaged the attention of the Governor-in-Council, but it is not in their Lordships' view a proper inference from the terms of those sub-paragraphs that the Governor-in-Council did not also deem it necessary or advisable for the security defence peace order and welfare of Canada that the wives and children under 16 of deportees should against their will also be liable to deportation. The making of a deportation order as respects the husband or father might create a situation with which, with a view to forwarding this specified purpose, it was proper to deal. Beyond that it is not necessary to go.

The last matter of substance arises on the National Emergency Transitional Powers Act, 1946.

It was contended by the Appellants that at the date of the passing of this Act there did not exist any such emergency as justified the Parliament of Canada in empowering the Governor-in-Council to continue the orders in question. The emergency which had dictated their making—namely active hostilities—had come to an end.

A new emergency justifying exceptional measures may indeed have arisen. But it was by no means the case that measures taken to deal with the emergency which led to the Proclamation bringing the War Measures Act into force were demanded by the emergency which faced the Parliament of Canada when passing the Transitional Act. The order under the Act continuing the orders in question was therefore *prima facie* invalid.

This contention found no favour in the Supreme Court of Canada and their Lordships do not accept it. The Preamble to the Transitional Act states clearly the view of the Parliament of the Dominion as to the necessity of imposing the powers which were exercised. The argument under consideration invites their Lordships on speculative grounds alone to overrule either the considered decision of Parliament to confer the powers or the decision of the Governor-in-Council to exercise it. So to do would be contrary to the principles laid down in *Fort Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* (*ubi supra*) and accepted by their Lordships earlier in this opinion.

One remaining matter relied upon by the Appellants should be mentioned. First it was said that the words " of the Japanese race " were so vague as to be incapable of application to ascertained persons. It is sufficient to say that in their Lordships' opinion they are not. All that can be said is that questions may arise as to the true construction of the phrase and as to its applicability to any particular person. But difficulties of construction do not affect the validity of the Orders.

In the result their Lordships find themselves in agreement with the conclusion at which Rinfret C.J.C. and Kerwin and Taschereau J.J. arrived and for the reasons they have expressed will humbly advise His Majesty that none of the Orders-in-Council is in any respect *ultra vires* and that the Appeal should be dismissed. There will be no order as to costs.

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In the Privy Council

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Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1946