



The Committee of the Privy Council have had before them a report, dated 27th November, 1916, from the Minister of Justice, representing that recently upon consideration of the correspondence and circumstances with regard to the requisitioning by His Majesty's Government of the Canadian registered ship "C.A. Jacques", he advised the despatch of a cable message to the Secretary of State for the Colonies to the effect that Your Excellency's Government could not, in his opinion, acquiesce in the exercise as affecting Canadian vessels of the requisitioning power by independent action of His Majesty's Government, or otherwise than by or through Your Excellency's Government.

Upon more deliberate consideration of the matter, the Minister has reached the following conclusions, but he observes that it is not the intention of this submission to question the prerogative or the extent of the prerogative, which is for present purposes assumed to exist, for the taking of ships of British subjects for the defence and protection of the realm, or that the power may be exercised although the place of registry, or the domicile or residence of the owners, be not within the United Kingdom. It is the manner of the exercise of the power rather than the assertion of the power itself which is in question.

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*3 Copies Gov. Genl 31 Jan'y 17
 1. High Commissioners B1 " (Aug 2 Nov 17)
 2 Copies Royal Navy B1 " "
 Hon. Sec. of State B1 " "
 Sec. Genl. B1 " "
 Colonial Affairs. B1 " "
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 9 August, 9 of "*

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The Minister submits that in his view the question to be determined is not one of legal power but of constitutional right. This distinction is well recognized in the Conventions which control the exercise of legislative powers. For example, the Parliament of the United Kingdom has the legal power but not the constitutional right to legislate directly in respect of Canadian affairs and in doing so to repeal pro tanto the British North America Acts. It is submitted that the exercise of His Majesty's prerogative with respect to Canada must be governed by the like considerations. It is the Parliament of Canada alone which constitutionally can determine and prescribe the burdens to be borne by this Dominion or by any of its citizens for the purposes of this or any other war. Similarly when the prerogative of the Crown is to be exercised, ~~the~~ the Minister has no doubt that in respect of all matters which involve a contribution by citizens domiciled in this country, this prerogative must be exercised ~~(and the contribution made)~~ upon the advice of Your Excellency's Ministers and not upon the advice of the Government of the United Kingdom.

A.S.

It is assumed that this proposition will not be controverted in its application to the taking for purposes of defence of property, real or personal, situate within the Dominion; and, although ships constitute a species of property of transitory or shifting ^{physical} location, their owners nevertheless have places of domicile and residence, and the property has a place of registry to one of which its locality should be referred; therefore the Minister apprehends that if a ship be registered and the owners be domiciled and reside within Canada, the compulsory displacing of the ownership or control of the ship in favour of the Crown for any public purpose should independently of the actual location at the time of the ship itself, be likewise a matter for the consideration and sanction of the Government of Canada through...

through the means with which the Government is constitutionally endowed.

The Minister submits, further, that the method of exercising the requisitioning power, or the procedure by which the requisition is to be made effective, does not depend upon solution of the legal question, which may under existing instructions present some difficulty, as to whether Your Excellency is deputed to exercise this particular branch of the prerogative. Necessary executive powers may be delegated, or the exercise of the power may be sanctioned by the Parliament of Canada, or by the Governor General by means of his special legislative authority; wherefore it seems that these powers affecting local interests are not incapable of local execution and therefore that the compulsory requisition for the national service of Canadian owned and registered ships, in circumstances which admit of the competent exercise of the power, should be effected by Your Excellency upon the advice of Your Excellency's advisers; and that independent action for this purpose on the part of His Majesty's Government conflicts with the constitutional autonomy of Canada in the present stage of its development.

It is needless to observe that any representations which His Majesty's Government may submit as to the necessity or advisability of taking over a Canadian ship for the purposes of the war will receive prompt and sympathetic consideration by Your Excellency's Ministers.

The Committee concur in the foregoing, and on the recommendation of the Minister of Justice, advise that Your Excellency may be pleased to communicate a statement of the conclusions of the Minister of Justice as herein set out to the Secretary of State for the Colonies as indicating the views of Your Excellency's Government as to the manner in which the war prerogative of His Majesty to take

Canadian...

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Canadian property for purposes of national defence should
constitutionally be exercised.

All which is respectfully submitted for approval.

R. Baden

approved.

Devonshire

30. Jan. 17

PRIVY COUNCIL

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