

# In the Privy Council.

No. 99 of 1924.

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ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ONTARIO.

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BETWEEN

TORONTO ELECTRIC COMMISSIONERS .. (*Plaintiffs*) *Appellants*,

AND

COLIN G. SNIDER, J. G. O'DONOGHUE and  
F. H. McGUIGAN .. .. . (*Defendants*) *Respondents*,

AND

THE ATTORNEY GENERAL OF CANADA and  
THE ATTORNEY GENERAL OF ONTARIO .. *Intervenants*.

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## CASE FOR THE APPELLANTS.

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1. This is an appeal by special leave from the judgment of the Appellate Division of the Supreme Court of Ontario dated the 22nd day of April, 1924, dismissing by a majority of four to one the Appellants' action, on a reference to that Court by the Trial Judge (Mowat J.) under Section 32 of the Judicature Act, R.S.O., Chap. 56, Subsections 3 and 4 which read:—

Record.  
p. 170.

(3) If a Judge deems a decision previously given to be wrong and of sufficient importance to be considered in a higher Court he may refer the case before him to a Divisional Court.

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(4) Where a case is so referred it shall be set down for hearing and notice of hearing shall be given in like manner as in the case of an appeal to a Divisional Court.

2. The question in dispute is whether a Dominion Statute "to aid in the prevention and settlement of strikes and lock-outs in mines and industries connected with Public Utilities" and known as "The Industrial Disputes Investigation Act 1907" 6 & 7 Edward VII. ch. 20 with the amendments thereto (hereinafter referred to as "The Industrial Disputes Act") is within the powers of the Parliament of Canada having regard to the provisions of Sections 91 and 92 of the British North America Act.

20 The Industrial Disputes Act and Sections 91 and 92 of the British North America Act and the Acts constituting the Appellants are printed in the Joint Appendix.

- Record. 3. The Appellants are a Board of Commissioners appointed under the provisions of Sections 16 and 17 of 1 Geo. V. chap. 119 (Ontario) [An Act respecting the City of Toronto] to manage the Municipal Electric Light, Heat and Power Works of the City of Toronto, having the duties and powers of commissioners under The Public Utilities Act, R.S.O. (1914) chap. 204, and by Section 34, Subsection (2) and Section 36, Subsection (1) of the last mentioned Act, the Appellants are a body corporate.
- Appendix, P. 4. The Appellants in managing and operating the said Electric Light, Heat and Power Works of the Municipality of the City of Toronto employ linemen, line foremen, and other mechanics and workmen, said to be members 10 of the Canadian Electrical Trades Union, Toronto Branch.
- p. 207, l. 15. 5. On or about the 22nd day of June, 1923, James T. Gunn and George W. McCollum, describing themselves as Business Manager and Financial Secretary, respectively, of the Canadian Electrical Trades Union, Toronto Branch, and as alleged by them on the authority of a vote of the majority of the members of the said Trades Union Branch, made an application in writing to the Registrar for the appointment of a Board under the Industrial Disputes Act alleging in the said application a dispute between the Appellants and the said Trades Union Branch over the wages and working conditions of the employees. 20
- p. 210. 6. The Deputy Minister of Labour, by letter dated the 25th day of June, 1923, notified the Appellants of the said application and in pursuance of the practice of the Department of Labour, asked the consent of the Appellants to the establishment of a Board so that no question of jurisdiction under the Industrial Disputes Act should arise. After some correspondence between the Appellants and the Minister of Labour or the Department of Labour the Appellants declined to proceed under the Industrial Disputes Act. The Appellants were advised by the Deputy Minister of Labour in a telegram dated the 24th day of July, 1923, that the Minister of Labour had that day formally established a Board of 30 Conciliation and Investigation under the Industrial Disputes Act, and had appointed as a member of the Board on the recommendation of the employees, the Respondent Defendant J. G. O'Donoghue and the Appellants were asked to recommend some person for appointment as a member of the said Board on their behalf. The Appellants declined to make any recommendation and by letter dated the 30th July, 1923, the Deputy Minister of Labour and Registrar informed the Appellants that the Minister acting under Section 8 of the Industrial Disputes Act had appointed the Respondent F. H. McGuigan as a member of the Board on the Appellants' behalf. Finally the Appellants were advised by telegram from the Deputy 40
- p. 224, l. 27. Minister of Labour and Registrar dated the 1st day of August, 1923, that the Minister of Labour had appointed the Respondent Colin G. Snider as Chairman of the Board upon the joint recommendation of the Respondents O'Donoghue and McGuigan. Each of the Respondents accepted his said appointment and the Respondents proceeded to act as a Board under the Industrial Disputes Act.
- p. 228, l. 2. 40
- p. 229, l. 23. 40

7. At the first meeting of the said Board called for and held on the 7th day of August, 1923, the Appellants appeared by Counsel and objected to the establishment of the Board on the ground that the Industrial Disputes Act is not within the powers of the Dominion Parliament and that in any case the Minister of Labour had no jurisdiction to apply the said Act to the Appellants who were managing the property of the Municipality of the City of Toronto in the operation of a public utility of the Municipality namely, the distribution of light, heat and power within that Municipality.

Record.

8. The Board of Conciliation and Investigation at a meeting on the 10 following day, the 8th day of August, adjourned until the 20th day of August for the purpose of communicating with the Department and determining upon the course they should pursue, and on the said last mentioned date the Chairman of the said Board announced that the Board would proceed forthwith under the Industrial Disputes Act, and subsequently upon the same day the Appellants were served with the notice of appointment to proceed.

p. 231, l. 23.

9. On the 21st day of August 1923, the Appellants commenced this action by writ of summons bearing that date and claimed a declaration that the Respondents were acting without lawful authority as a Board under the Industrial Disputes Act and its amendments in respect of the alleged dispute between the Appellants and certain of their employees and an injunction and upon application of the Appellants and notice to the Respondents and the Attorney General of Canada and the Attorney General of Ontario, all parties except the Attorney General for the Dominion of Canada being represented upon the hearing, an interim injunction was granted by the Honourable Mr. Justice Orde on the 29th day of August 1923, restraining the Respondents until the trial or other final disposition of the action from interfering with the business of the Appellants and from entering upon their premises or of examining their works or employees upon their premises and from exercising any of the compulsory powers contained in Sections 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the Industrial Disputes Act or any of the compulsory powers conferred by the said Act or any amendments thereto upon the Respondents as a Board of Conciliation and Investigation under the said Act, and from interfering in any way with the property and civil rights or the Municipal rights of the Appellants.

p. 1.

p. 12a.

10. The Honourable Mr. Justice Orde delivered a considered judgment upon the said application in which he stated that :—

p. 6.

40 The Act in question here, in my judgment, purports to interfere in the most direct and positive manner with the civil rights of employers and employees, and also with the municipal institutions of this Province, both subject matters of legislation exclusively assigned to the Provinces by numbers 8 and 13 of the subjects enumerated in Section 92 (B.N.A. Act). That the operation of an electric lighting, heating and power system for municipal purposes is within the competence of a provincial legislature was held by a Divisional Court in *Smith vs. City of London* (1909) 20 O.L.R. 133, and the system is none the less a municipal one merely because it is operated by a commission having a separate corporate existence, but nevertheless a distinct department of the municipal government of the City of Toronto constituted by special legislation, for that purpose, of the provincial legislature.

p. 10, l. 17.

Record.  
pp. 13, 14, 15,  
16.

11. Pleadings were thereupon delivered in the action the Appellants taking the ground that the Industrial Disputes Act is not within the powers conferred on the Parliament of Canada by the British North America Act because (1) it deals with property and civil rights, one of the classes of subjects (class 13) exclusively assigned to the Provincial Legislature by Section 92 of the British North America Act and (2) it interferes with municipal institutions and is an interference with a local work or undertaking, subjects (classes 8 and 10) exclusively assigned to the Provincial Legislatures by Section 92 of the British North America Act.

p. 166.

12. The action was tried before the Honourable Mr. Justice Mowat on 10 the 19th, 20th, 21st, 29th and 30th days of November 1923, who, after hearing all parties including the Attorney General for Canada and the Attorney General for Ontario reserved judgment and, on account of his differing from the opinion of the Honourable Mr. Justice Orde, on the 15th day of December 1923, referred the action to a Divisional Court of the Appellate Division of the Supreme Court of Ontario in pursuance of Section 32 of the Judicature Act, R.S.O. Chap. 56, Subsecs. 3 and 4.

p. 171.

13. The judgment of Mr. Justice Ferguson, agreed to by the majority of the Court of Appeal was that the Industrial Disputes Act fell within the exclusive jurisdiction given to the Dominion Parliament under 20 (A) Class 2 of Section 91—the regulation of trade and commerce, and (B) Class 27 of Section 91—the Criminal Law except the constitution of Courts of Criminal Jurisdiction. As to the Act in question falling within Class 2 of Section 91 Mr. Justice Ferguson held :—

p. 176, l. 28.

that the "employers" named in ss. (c) of Section 2 of the Industrial Disputes Act are dealers and vendors in articles of trade and commerce as well as producers thereof, and that the legislation here in question may be read as being legislation to prevent the shutting down and the stopping of plants and industries which vend and deal in articles of trade and commerce, which by reason of their very nature are of national importance. 30

As to the Act in question falling within Class 27 of Section 91 Mr. Justice Ferguson held that :—

p. 176, l. 42.

the power to make law in relation to the criminal law in its widest sense, includes power to make laws a paramount purpose of which is the prevention of public wrongs and crime, and the maintenance of public safety, peace and order, and that the power of defining what shall constitute a crime, and providing for punishment is only a part of the power conferred on the Dominion Parliament, by Class 27, Section 91 of the British North America Act.

p. 178.

Mr. Justice Hodgins (dissenting) was of opinion :—

(1) That the Industrial Disputes Act when examined is not based 40 on the existence or apprehension of a state of emergency.

(2) That the Act trenches on the Provincial powers to legislate in regard to "Property and Civil Rights" and "Municipal Institutions."

(3) That the Act cannot be sustained as an exercise of any of the enumerated powers of legislation conferred on the Canadian Parliament by Section 91 of the British North America Act.

(4) That the power of the Dominion to legislate under the provisions as to peace order and good government is to be confined to such matters of Canadian interest and importance as can be dealt with without trenching upon any of the subjects expressly reserved for the Provinces.

14. The Appellants respectfully submit that the Industrial Disputes Act is *ultra vires* of the Parliament of Canada as interfering with property and civil rights (British North America Act, Section 92 (13) ) with municipal institutions (*ib.* Section 92 (8) ) and with a local undertaking (*ib.* Section 92 (10) ), but that in any event the Act, even if lawfully enacted, has no application to the Appellants.

15. The Appellants therefore submit that this appeal ought to be allowed for the following among other

### REASONS.

1. Because the Industrial Disputes Act interferes with the property and civil rights of the Appellants and of their employees.
2. Because the Appellants are a municipal institution in the Province of Ontario within the meaning of Section 92 (8) of the British North America Act and are therefore subject to the exclusive legislative authority of the legislature of that Province.
3. Because the undertaking conducted by the Appellants is a local work or undertaking within the meaning of Section 92 (10) of the British North America Act and is therefore subject to the exclusive legislative authority of the said Province.
4. Because neither Section 91 (2) nor any other provision of the British North America Act authorised the Parliament of Canada to enact the Industrial Disputes Act.
5. Because the Industrial Disputes Act even if lawfully enacted has no application to the Appellants.
6. Because the reasons given by Mr. Justice Orde and by Mr. Justice Hodgins in his dissenting judgment in the Appellate Division are right.

GEO. H. KILMER.  
GEOFFREY LAWRENCE.  
JOHN R. ROBINSON.

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CASE FOR THE APPELLANTS.

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