

In the Privy Council.

No. 99 of 1924

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

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*.

CASE FOR THE INTERVENANT THE ATTORNEY-GENERAL FOR ONTARIO.

1. The Attorney-General for Ontario adopts paragraphs 1, 2 and 3 of the Appellants' case; and further with reference to paragraph 3 thereof, states that the Municipal Electric Light, Heat and Power Works managed by the Appellants are owned by and vested in the City of Toronto; and the Appellants in managing the said work do so on behalf of, and in effect as agents for the City of Toronto, which is a municipal corporation.

2. The Attorney-General for Ontario further adopts Paragraphs 4 to 9 inclusive of the Appellants' case.

Record.

p. 6.

3. The Honourable Mr. Justice Orde based his decision upon the following reasons:—

p. 10, l. 17.

(A) That the impugned legislation purports to interfere with the civil rights of employers and employees and also with municipal institutions in the province.

p. 10, l. 31.

(B) That encroachments upon enumerated sub-heads of Section 92 of the British North America Act cannot be justified when the Dominion Parliament is legislating under the residuary power to make laws for the peace, order and good government of Canada.

p. 10, l. 34.

(C) That the penal sections of The Industrial Disputes Investigation Act, 1907, cannot, since the *Board of Commerce case* (1922), 1 A.C., p. 191, be relied upon to buttress legislation which but for such alleged ancillary legislation, would be unquestionably invalid, and such an attempt to interfere with clearly defined provincial rights is not permissible.

p. 11, l. 10.

(D) That the Act in question was not passed to meet a national emergency in the sense in which that term is used in the *Fort Frances case* (1923), A.C., p. 695.

p. 11, l. 47.

(E) That whether or not the case was a proper one for a declaratory judgment there was also an application for an injunction to which the question of the constitutionality of the Act is question was, if raised, properly incidental.

4. The Attorney-General for Ontario further adopts Paragraphs 11 and 12 of the Appellants' case; and in addition thereto states that at the trial evidence was given which purported to show the existence of a national emergency in July and August of 1923, when the Respondents were constituted as a Board under the Act in question, such evidence being tendered to show a state of affairs which should justify the prior enactment of the impugned legislation in 1907—sixteen years before.

p. 168, l. 37.

5. The Honourable Mr. Justice Mowat, although unable to disregard the decision of the Honourable Mr. Justice Orde without the latter's concurrence, indicated that in his view the question of strikes and their prevention was one of national concern, and that the legislation in question was justifiable by an extension of the principle established in the *Fort Frances case*.

p. 171, l. 1.

6. The Chief Justice of Ontario agreed with Ferguson J.A., that the impugned legislation was competent to the Dominion Parliament to enact as being a law for the peace, order and good government of Canada in relation to the regulation of trade and commerce.

7. The judgment of Ferguson J.A., agreed to *in toto* by Smith and Magee J.J.A., was based upon the following grounds :— Record.

(A) That the legislation in question rather than being law in relation to sub-heads 8 (Municipal Institutions) 10 (Local Works), 13 (Property and Civil Rights), or 16 (Matters purely local) of Section 92 of the British North America Act, was in "pith and substance" a provision for investigating industrial disputes which might develop so as to affect the national welfare, peace, order and safety of Canada as a whole. p. 172, l. 34.

10 (B) That except in conditions involving the very safety of the Dominion as a political entity the Parliament of Canada may not trench upon any of the subject matters enumerated in Section 92 unless in pith and substance it is a law in relation to a class enumerated in Section 91 of the British North America Act. p. 175, l. 30.

(c) That the Act in question may be read as being legislation to prevent the shutting down of industries which deal in articles of trade and commerce of national importance ; and it may therefore be regarded as essentially a regulation of trade and commerce within subhead 2 of Section 91. p. 176, l. 28.

20 (D) That the penal provisions of the Act are to be regarded as a valid invocation of the power of the Canadian Parliament to legislate in relation to the criminal law in its widest sense, particularly with respect to the prevention of crimes, the protection of public safety, peace and order. p. 176, l. 38.

8. The Attorney-General for Ontario adopts the synopsis of the dissenting judgment of Hodgins J.A. contained in the latter part of paragraph 13 of the Appellants' case.

9. The Attorney-General for Ontario respectfully submits that the Industrial Disputes Investigation Act, 1907, is *ultra vires* the Parliament of 30 Canada as

(A) Not being legislation upon a subject matter in relation to which the Parliament of Canada can competently make laws under either the enumerated subheads or the residuary power conferred upon it by Section 91, and as

(B) Interfering with classes of subjects upon which the Provinces alone may legislate, notably, Property and Civil Rights (Section 92 (13)) with Municipal Institutions (Section 92 (8)) and with a local work or undertaking (Section 92 (10)).

10. The Attorney-General for Ontario therefore submits that this 40 appeal ought to be allowed for the following among other

REASONS.

1. Because the question of the constitutional validity of the Industrial Disputes Investigation Act, 1907, even if it could not be made the subject of a declaratory judgment in this case, has been properly raised and is determinable in connection with the application for an injunction.
2. Because the impugned legislation interferes with the property and civil rights of the Appellants and of their employees.
3. Because the Appellants as a municipal institution in the Province of Ontario are subject to the exclusive legislative authority of the legislature of that Province by virtue of subhead 8 of Section 92 of the British North America Act.
4. Because the Appellants conduct a local work and undertaking which is subject to the exclusive legislative authority of the Ontario Legislature by virtue of subhead 10 of Section 92 of the British North America Act.
5. Because the Industrial Disputes Investigation Act, 1907, cannot be regarded in pith and substance as legislation upon the subject matters of regulation of trade and commerce (Section 91 (2)) or of the criminal law (Section 91 (27)), nor of any other enumerated subhead of Section 91.
6. Because the Act in question cannot be deemed to have been validly enacted under the residuary power to make laws for the peace, order and good government of Canada, on the ground that it enables the Dominion Government to cope with a situation of national importance, as it does not appear that such a situation existed when the Act itself was enacted in 1907, and the Parliament of Canada has no power so to legislate in anticipation of such a situation and in so doing to interfere with matters committed exclusively to the Provinces.
7. Because the impugned legislation even if lawfully enacted cannot apply to the Appellants.
8. Because the reasons given by Mr. Justice Orde in granting the injunction and by Hodgins J.A., in his dissenting judgment in the Appellate Division are right.

E. BAYLY.

GEOFFREY LAWRENCE.

In the Privy Council.

No. 99 of 1924.

*On Appeal from the Appellate Division of the
Supreme Court of Ontario.*

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

CASE FOR THE INTERVENANT
THE ATTORNEY-GENERAL FOR ONTARIO.

BLAKE & REDDEN,
17, Victoria Street, S.W.1.