

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 ATTORNEY-GENERAL OF CANADA,
INTERVENANT.

1. This is an appeal by Special Leave from a judgment of the Appellate Division of the Supreme Court of Ontario, dated 22nd April, 1924, dismissing the action and also allowing an appeal by the Respondents from an interim injunction order of Orde, J., dated 29th August, 1923.

RECORD.
p. 191.
p. 170.
p. 12A.

2. In 1907 the Parliament of Canada passed "An Act to aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries connected with Public Utilities." This Act was amended in 1910, 1918, and 1920, and is cited as "The Industrial Disputes Investigation Act, 1907."

6-7 Ed. VII,
c. 20.
9-10 Ed. VII
cap. 29.
8-9 Geo. V, c. 27.
10-11 Geo. V.
c. 29.

10 3. The Act applies to Mines and agencies of Transportation or Communication or Public Utilities including (except as mentioned) Railways, Steamships, Telegraphs, Telephones, Gas, Electric Light, Water and Power works. Provision is made for the application of the Act to disputes in other industries by consent.

S. 2(c).
S. 63.

RECORD. The Act provides that in the event of "a dispute" as therein defined
6-7 Ed. VII, between "an employer of ten or more persons" and his employees it shall
c. 20. be unlawful for the employer to declare or cause "a lockout" or for any
S. 2. employee "to go on strike" on account of such dispute "prior to or
S. 56 during a reference thereof to a Board of Conciliation and Investigation"
S. 21. under the Act. No dispute can be the subject of a reference when fewer
than ten employees are affected.

S. 15. Application for such a Board can be made to the Minister of Labour
accompanied by a statement of certain facts and a statutory declaration
"that failing an adjustment of the dispute or a reference thereof by the
"Minister to a Board, . . . to the best of the knowledge and belief 10
"of the declarant a lockout or strike . . . will be declared and that
"the necessary authority to declare such lockout or strike has been
Ss. 6-8. "obtained." The Minister, whose decision is final, shall within fifteen
days after receipt of the application establish a Board if satisfied that
the Act applies. The Board is to consist of three members, two of whom
may be recommended by the parties to the dispute.

S. 57. Employers and employees shall give at least thirty days' notice of an
intended change affecting conditions of employment with respect to wages
or hours. 20

Pending proceedings before the Board the conditions of employment
with respect to wages or hours and the relationship between the parties
are to remain unchanged, but the Act is not to be used by either party
to prolong the "*status quo*" "through delay."

Ss. 58-61. Penalties enforceable under Part XV of the *Criminal Code* relating
to summary convictions are imposed for causing a lockout or creating a
strike contrary to the Act.

S. 2(g). A strike is defined as "the cessation of work by a body of employees
acting in combination," or "a concerted refusal" to continue to work, done
as a means of compelling employers "to accept terms of employment." 30

S. 23. The duty of a Board is to "endeavour to bring about a settlement of
"the dispute, and to this end to expeditiously and carefully inquire into
"the dispute and all matters affecting the merits thereof," and to "make
"all suggestions and do all such things as it deems right and proper for
"inducing the parties to come to a fair and amicable settlement of the
"dispute."

S. 25. If a settlement is not arrived at, the Board is to make a full report
to the Minister, with its recommendation for settlement "according to
the merits and substantial justice of the case." For the purpose of its

Ss. 30-38. inquiry the Board is given the same powers of summoning and enforcing 40
the attendance of witnesses and obtaining their evidence on oath and
the production of books and documents as is vested in a court of record
for civil cases; and is authorized to enter and inspect the buildings

S. 61. where the industry is carried on and interrogate persons therein. These
powers are sanctioned by the imposition of a penalty not exceeding \$100.

After the report has been made, provision is made for its free distribu-
tion to the parties and to newspapers and otherwise as the Minister may

consider desirable as a means of securing compliance with the Board's recommendation. For the information of Parliament and the public the Report is to be published without delay in the monthly Gazette and annual Report of the Department. The Report of the Board has no binding effect unless the parties have expressly so agreed, and no Court has power to recognise or enforce it.

RECORD.
6-7 Ed. VII,
c. 20.
Ss. 28-29.
Ss. 62-63.
S. 64.

All expenses of or connected with the Board are paid by the Government. S. 54.

4. By section 91 of the British North America Act, 1867, it is provided that the Parliament of Canada may "make Laws for the Peace, Order
10 " and good Government of Canada in relation to all Matters not coming
" within the Classes of Subjects by this Act assigned exclusively to the
" Legislatures of the Provinces; and for greater Certainty, but not so as to
" restrict the Generality of the foregoing Terms of this Section, it is hereby
" declared that (notwithstanding anything in this Act) the exclusive
" Legislative Authority of the Parliament of Canada extends to all Matters
" coming within the Classes of Subjects next hereinafter enumerated;
" that is to say :—

* * * * *

" 2. The Regulation of Trade and Commerce."

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* * * * *

" 7. Militia, Military and Naval Service, and Defence."

* * * * *

" 27. The Criminal Law, except the Constitution of Courts of
" Criminal Jurisdiction, but including the Procedure in Criminal
" Matters."

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" And any Matter coming within any of the Classes of Subjects
" enumerated in this Section shall not be deemed to come within
" the Class of Matters of a local or private Nature comprised in the
" Enumeration of the Classes of Subjects by this Act assigned
" exclusively to the Legislatures of the Provinces."

5. By section 92 of the last-mentioned Act "in each Province the
" Legislature may exclusively make Laws in relation to Matters coming
" within the Classes of Subjects next hereinafter enumerated; that is
" to say :—

* * * * *

" 8. Municipal Institutions in the Province."

* * * * *

" 13. Property and Civil Rights in the Province.

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" 14. The administration of Justice in the Province including
" the Constitution, Maintenance and Organization of Provincial
" Courts, both of Civil and of Criminal Jurisdiction, and including
" Procedure in Civil Matters in those Courts."

RECORD.

“ 15. The Imposition of Punishment by Fine, Penalty or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.”

“ 16. Generally all Matters of a merely local or private Nature in the Province.”

6. The said sections 91 and 92 are introduced under the general caption “ Distribution of Legislative Powers ”; section 91 is specially entitled “ Powers of the Parliament,” and section 92 “ Exclusive Powers of Provincial Legislatures.”

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p. 3.
pp. 207-209.
p. 225.

7. In July, 1923, upon the application of officials of the Canadian Electrical Trades Union, Toronto Branch, representing certain of the Appellants' employees, alleging a dispute as to wages and working conditions, the Respondents were constituted a Board of Conciliation and Investigation, to which the dispute was referred under “ The Industrial Disputes Investigation Act, 1907.” The regularity of the proceedings and of the appointment is admitted on behalf of the Appellants.

p. 77, l. 28-29.

p. 4, l. 36-43.
p. 5, l. 20-24.

8. The Appellants disputed the validity of the Act, and the authority of the Board; and, upon the issue by the Board of a Notice of Meeting to hear the parties and their statements, evidence and witnesses, the Appellants brought this action, claiming (1) a declaration that the Respondents were acting without lawful authority as a Board under the Act, and (2) an injunction restraining them from proceeding with the investigation of the alleged dispute.

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p. 5, l. 1-6,
p. 231, l. 21 et seq.

pp. 1-2.

p. 3.
p. 7, l. 1-3.
p. 5, l. 30 et seq.

9. The Appellants moved for an interim injunction before Orde, J., and, by his direction, the Intervenants were notified under section 33 of The Ontario Judicature Act that the constitutional validity of The Industrial Disputes Investigation Act, 1907, was brought in question. Pursuant to this notice, the Intervenants appeared by Counsel both at the trial and before the Appellate Division.

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pp. 6-12.
p. 12A,
l. 22-33.

10. On 29th August, 1923, Orde, J., granted an interim injunction, being of opinion that certain of the provisions of “ The Industrial Disputes Investigation Act, 1907 ” were beyond the powers of the Parliament of Canada.

p. 12, l. 10-18.

He said that he had “ come to this conclusion with reluctance,” because “ it seems to be generally recognized that The Industrial Disputes Investigation Act has been a beneficial one, and has facilitated the settlement of numerous disputes,” and that he hoped “ it will be found possible to pass legislation, either Federal or Provincial, or both, which will maintain the efficiency of the scheme of the Act.”

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p. 105, l. 32.
p. 106, l. 27.

11. At the trial of the action before Mowat, J., evidence was given showing that in 1907, when the Act in question was passed the prevention of strikes had become a matter of national concern; that the organization

of labour in Canada is Dominion wide, and that, owing to the relationship of the general executive to the local branches and to "sympathetic" strikes, it may and frequently does happen that an industrial dispute spreads far beyond the particular place or trade in which it originated; and that, when the Board was appointed in this case serious results extending to many parts of the Dominion were feared from a strike. It was also shown that the Act, though originally opposed by Labour, now has its full support, and that its operation has been highly successful. In the sixteen years since the passage of the Act 597 applications had been made and 428 boards appointed. Every application had been accompanied by a sworn statement that the applicants believed that a strike or lockout would occur, yet all but 37 cases had been disposed of without any such result. Many of these cases have touched Dominion-wide interests.

RECORD.
p. 66, l. 14-30.
p. 114, l. 1-29.
p. 67, l. 6-43.
p. 120, l. 32-47.
p. 88, l. 31-
p. 89, l. 24.
p. 115, l. 9-18.
p. 83, l. 36-
p. 85, l. 8.
p. 91, l. 34-46.
p. 75, l. 15-
p. 76, l. 12.
p. 106, l. 42-
p. 107, l. 13.

12. Mowat, J., observed that for more than twenty years there had been a Dominion Department of Labour which "has by common consent of the Provinces been the principal administrative means of dealing with the question of eruptive industrial strikes." He thought that the question of industrial strife was of national concern, and that the Act was within the legislative competence of the Dominion Parliament. Being of opinion, therefore, that the Judgment of Orde, J. was wrong, and of sufficient importance to be considered by a higher Court, he referred the case, under Section 32 of The Ontario Judicature Act, to an Appellate Division of the Supreme Court of Ontario.

pp. 166, 169.
p. 167, l. 3-17.

13. Upon this reference by Mowat, J., the trial was continued before an Appellate Division of the Supreme Court of Ontario (Mulock, C. J. O., and Magee, Hodgins, Ferguson and Smith, JJ. A.) and an appeal by the Respondents from the interim injunction order of Orde, J., was heard at the same time. On 22nd April, 1924, the Appellate Division, by the judgment from which this appeal is brought, set aside the order of Orde, J., and dismissed the action.

p. 13.
p. 170.

14. Mulock, C. J. O., was of opinion that the Act was within the powers of the Parliament of Canada under class 2 of Section 91 of the British North America Act, "The Regulation of Trade and Commerce."

p. 171.

Ferguson, J. A., said:—

"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."

p. 176, l. 30-37.

"It cannot be disputed that to deprive the City of Toronto of electric power on which it depends for light, heat and power is to disturb and hinder the national trade and commerce and to endanger public peace, order and safety."

He therefore considered that the Act fell under "the Regulation of Trade and Commerce." He also thought that it fell under class 27 "The

RECORD. Criminal Law," and that it did not fall under any of the Provincial powers enumerated in section 92. Magee and Smith, J.J. A., concurred.

Hodgins, J. A., said :—

p. 183, l. 29-34.

" It cannot be denied, I think, that labour troubles spring up locally, affect at first local concerns, and can best be dealt with in a spirit of conciliation which in itself involves local action. But they are likely, if not so dealt with, to spread, and so spreading, might reasonably be said to affect the whole industrial fabric of the nation. They do not always do so, but the possibility can be clearly appreciated."

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But he felt himself compelled by authority, though with great reluctance, to hold that the Act was beyond the powers of the Parliament of Canada.

15. This Intervenant humbly submits that this appeal should be dismissed, and that the judgment of the Appellate Division should be affirmed for the reasons stated by Mowat, J. and Mulock, C. J. O., and Ferguson, J. A., and for the following, among other

REASONS :—

1. BECAUSE The Industrial Disputes Investigation Act, 1907, was competently enacted by the Parliament of Canada under class 27 of Section 91, "The Criminal Law"; 20
2. BECAUSE the Act is a Law in relation to the "Regulation of Trade and Commerce";
3. BECAUSE the Act is a Law in relation to Militia, Military and Naval Service, and Defence;
4. BECAUSE the Act is a Law for the Peace, Order and good Government of Canada in relation to a Matter not coming within the Classes of Subjects by the British North America Act assigned exclusively to the Legislatures of the Provinces;
5. BECAUSE the Act is not legislation in relation to a matter of a merely local or private Nature competent to the Provincial Legislatures under any of the Classes of Subjects enumerated in Section 92; 30
6. BECAUSE the Act viewed in its proper aspect and for its proper purpose being incompetent to any Provincial Legislature is therefore competent to the Parliament of Canada;
7. BECAUSE according to its true nature and character and paramount purpose the Act is a Law for the Peace, Order and good Government of Canada in relation to—
 - (a) The prevention and settlement of strikes and lock-outs in industries the effective operation of which is of national concern; 40

- (b) A matter which affects the body politic of Canada, and is unquestionably of Canadian interest and importance; RECORD.
- (c) A problem of statesmanship within the sole competence of the central Government;
8. BECAUSE if the Act trenches at all upon the Provincial legislative power it does so only incidentally and no more than is necessary to give effect to the general legislative project which is competent to the Parliament of Canada.

E. L. NEWCOMBE.

CHRISTOPHER C. ROBINSON.

In the Privy Council.

No. 99 of 1924.

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