In the Priby 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*.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

VACHER—16238.

EXHIBITS.

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.*

RECORD OF PROCEEDINGS.

In the Supreme Court of Ontario.

No. 1.
Writ of Summons, 21st Aug., 1923.

No. 1.

Writ of Summons.

No. 1603. A.D. 1923.

In the Supreme Court of Ontario.

Between :

Toronto Electric Commissioners .. .. Plaintiffs,

and

Colin G. Snider, J. G. O'Donoghue and F. H. McGuigan .. Defendants.

George the Fifth, by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To

Colin G. Snider, of the City of Hamilton, in the County of Wentworth,

and J. G. O'Donoghue and F. H. McGuigan, both of the City of Toronto in the County of York.

In the Supreme Court of Ontario.

No. 1. Writ of Summons, 21st Aug., 1923 —*continued.*

We command you, that within ten days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in this action, and take notice, that in default of your so doing, the Plaintiff may proceed therein and judgment may be given in your absence on the Plaintiffs' own showing, and you may be deemed to have admitted the Plaintiffs' claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

Witness, the Honourable Sir William Ralph Meredith, Knight, Chief Justice of Ontario, at Toronto the 21st day of August, in the year of our Lord 1923.

"E. HARLEY,"
Senior Registrar.

N.B.—This Writ is to be served within 12 calendar months from the date thereof, or, if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

Appearance may be entered at the Central Office at Osgoode Hall, Toronto.

The Plaintiffs' claim is for (1) A declaration that the Defendants are, without lawful authority, acting as a Board of Conciliation and Investigation under The Industrial Disputes Investigation Act 6-7 Ed. VII. (1907), Chapter 20, and amendments thereto, in respect of an alleged dispute between the Plaintiffs and certain of their employees; and (2) For an injunction.

This Writ was issued by Kilmer, Irving & Davis, of the City of Toronto, in the County of York, Solicitors for the said Plaintiffs, who carry on business at the said City of Toronto aforesaid.

We hereby accept service of the within Writ for each of the Defendants therein named, viz., Colin G. Snider, J. G. O'Donoghue and F. H. McGuigan and undertake to enter an appearance thereto for the said Defendants according to the exigency thereof.

"LEWIS DUNCAN."

21st Aug. 1923.

Issued from the Central Office, Osgoode Hall, at the City of Toronto in the Province of Ontario.

"E. HARLEY,"
Senior Registrar.

No. 2.

In the Supreme Court of Ontario.

No. 2. Notice of Motion for Injunction, 21st Aug., 1923.

Notice of Motion for Injunction.

Take Notice that by special leave this Court will be moved before the Hon. Mr. Justice Orde at Osgoode Hall, Toronto, on Wednesday the 22nd day of August, 1923, at the hour of ten o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Plaintiffs for an injunction order restraining the Defendants from commencing or proceeding with an inquiry under The Industrial Disputes Investigation Act, 6-7, Ed. VII. (1907) Chap. 20 (Dom.) and amendments thereto, into an alleged dispute between the Plaintiffs and certain of the Plaintiffs' employees said to be members of the Canadian Electrical Trades Union, Toronto Branch, and from exercising any of the powers of a Board of Conciliation and Investigation under the said Act and amendments, or for such further or other order as may be justified.

And Take Notice that on such motion will be read the affidavit of Edward Montague Ashworth, this day filed, and the Exhibits thereto.

Dated this 21st day of August, 1923.

KILMER, IRVING & DAVIS,
Solicitors for the Plaintiffs.

To :—Colin G. Snider, Esq.,
J. G. O'Donoghue, Esq., and
F. H. McGuigan, Esq.

No. 3.

No. 3. Affidavit of E. M. Ashworth, 21st Aug., 1923.

Affidavit of E. M. Ashworth.

I, Edward Montague Ashworth, of the City of Toronto, Electrical Engineer, make oath and say :—

1. I am the acting General Manager of the Plaintiffs, and as such have a personal knowledge of the matters hereinafter deposed to.

2. The Plaintiffs are a Board of Commissioners appointed under Sec. 16 of an Act of the Legislature of the Province of Ontario entitled an Act Respecting the City of Toronto, passed in the year 1911, and as such manage the Municipal Electric Light Heat and Power Works of the City of Toronto, and perform the duties and exercise the powers conferred upon them by Sec. 17 of the said Act.

3. The Plaintiffs, acting as a Board of Commissioners as aforesaid, and in management of the Electric Light Heat and Power Works of the Municipality of the City of Toronto, employed certain line-men, line-foremen and other mechanics and work-men said to be members of the Canadian Electrical Trades Union, Toronto Branch.

4. 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

In the Supreme Court of Ontario.

No. 3. Affidavit of E. M. Ashworth, 21st Aug., 1923 —*continued.*

Branch, and as alleged by them under the authority of a vote of the majority of the members of the said Trades Union Branch, applied to the Department of Labour for the appointment of a Board of Conciliation and Investigation under the Industrial Disputes Investigation Act, 1907 (6-7, Ed. VII. Ch. 20 Dom.). A copy of the said application received by the Plaintiffs from the said James T. Gunn on or about the 25th day of June, 1923, is marked Exhibit " A " hereto.

5. The Plaintiffs on the 26th day of June, 1923, received from the Deputy Minister of Labour and Registrar, the letter dated the 25th day of June, 1923, marked Exhibit " B " hereto.

6. Between the said 26th day of June, 1923, and the 24th day of July, 1923, certain correspondence and telegrams passed between the Plaintiffs and the Department of Labour at Ottawa which are attached together and marked Exhibit " C " hereto.

7. On the said 24th day of July, 1923, the Plaintiffs received the telegram marked Exhibit " D " hereto advising the Plaintiffs that the Minister of Labour had established a Board of Conciliation and Investigation under the said Industrial Disputes Investigation Act, and had appointed on the recommendation of the applicants, J. G. O'Donoghue of the said City of Toronto, Barrister, one of the above-named Defendants, as a member of the Board under the provisions of Sections 7 and 8 of the said Act.

8. The Plaintiffs did not make any recommendation to the Minister of Labour of a person to be appointed as member of the said Board of Conciliation and Investigation and on the 30th day of July, 1923, the Plaintiffs received notice that the Minister had appointed F. H. McGuigan, one of the above-named Defendants, as a member of the said Board on the Plaintiffs' behalf. The notice of the appointment of the said F. H. McGuigan is marked Exhibit " E " hereto.

9. On the first day of August, 1923, I was notified by the Deputy Minister of Labour and Registrar, that the Minister of Labour on the joint recommendation of the said McGuigan and O'Donoghue had appointed Colin G. Snider Esquire, of the City of Hamilton, retired Judge of the County Court of the County of Wentworth, to the Chairmanship of the said Board. A copy of the telegram from the Deputy Minister of Labour to me notifying me of the said appointment is marked Exhibit " F " hereto.

10. On the 7th day of August, 1923, the Plaintiffs appeared by counsel at the meeting of the said Board called for that date and took formal objection to the establishment of the Board on the ground that the Minister of Labour had no jurisdiction under the said Act to establish a Board of Conciliation and Investigation on the application of the employees of the Plaintiffs, 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 the City of Toronto. Counsel for the Plaintiffs stated to the Board that he appeared for the purpose of taking the said objection only. The Board heard the said James T. Gunn on behalf of the applicants for the Board of Conciliation and Investigation on the 8th day of August and adjourned until the 20th day of August for the purpose of communicating with the Department of Labour and determining upon the course they should pursue.

11. On the 20th day of August, 1923, I attended with counsel for the Plaintiffs before the said Board of Conciliation and Investigation when the Board announced that the Board would immediately issue an appointment to proceed under the said Industrial Disputes and Investigation Act and subsequently the Board caused a Notice of the Appointment to be served upon counsel for the Plaintiffs which is marked Exhibit " G " hereto.

12. Since the objection was taken some years ago it has been the practice of the Department of Labour at Ottawa not to appoint a Board of Conciliation and Investigation concerning any dispute between a Municipality and its employees except when the Municipality consents or requests the same. This practice and the reason for it, namely the absence of jurisdiction, was publicly set forth by the present Minister of Labour in the House of Commons at Ottawa, in reply to a question on the 10th day of April, 1923. The Commissioners formally stated the objection to both the Minister and the Board established by him. I believe from the foregoing that the Minister of Labour and the above Defendants, acting as a Board under his direction, have decided to test the jurisdiction of the Parliament of the Dominion of Canada to apply the said Industrial Disputes Investigation Act to Municipal employees.

13. The Plaintiffs dispute the validity of the said last-mentioned Act, and the jurisdiction of the Dominion Parliament to bring Municipal employees within the provisions of the said Act, and unless the Defendants are enjoined from proceeding with the hearing, it will cause serious injury to the Plaintiffs and the public utility under their control.

Sworn before me at the City of Toronto in the County of York, this 21st day of August, 1923. } E. M. ASHWORTH.

F. B. EAGLESON,
A Commissioner, &c.

No. 4.

Notice of action to Attorney-General of Canada.

Take Notice than an action has been brought by the above-named Plaintiffs in the Supreme Court of Ontario against the above-named Defendants for a declaration that the Defendants are, without lawful authority, acting as a Board of Conciliation and Investigation under the Industrial Disputes Investigation Act, 6-7 Ed. VII. (1907), Chapter 20, and amendments thereto, in respect of an alleged dispute between the Plaintiffs and certain of their employees, on the ground that the Act is not applicable to a dispute between a Municipal Public Utility Commission and its employees, and also on the ground that the Act is ultra vires the Parliament of Canada, the subject-matter thereof being within the exclusive jurisdiction of the Provinces under The British North America Act.

And Further Take Notice than an application by the Plaintiffs for an interim injunction until the trial of the action will be heard before The

In the Supreme Court of Ontario.

No. 4. Notice of action to Attorney-General of Canada, 23rd Aug., 1923 —*continued.*

Honourable Mr. Justice Orde in Court at Osgoode Hall, Toronto, on Monday the 27th day of August, 1923, at the hour of 11 o'clock in the forenoon, or so soon thereafter as Counsel can be heard.

Dated at Toronto this 23rd day of August, 1923.

KILMER, IRVING and DAVIS,
10, Adelaide Street East,
Toronto, Solicitors for
the Plaintiffs.

To the Honourable Sir Lomer Gouin, K.C.M.G., His Majesty's Attorney-General of Canada.

No. 5. Reasons for judgment of Orde J., 29th Aug., 1923.

No. 5.

Reasons for judgment of Orde J.

G. H. Kilmer, K.C., and J. R. Robinson, for the Plaintiffs.
Lewis Duncan, for the Defendants and for the Minister of Labour.
E. Bayly, K.C., for the Attorney-General of Ontario.

No one appearing for the Attorney-General of Canada though notified.

(Motion for an interim injunction before Mr. Justice Orde in Court, Toronto, 22nd, 23rd, and 27th August, 1923.)

Orde J.:

By virtue of Secs. 16 and 17 of 1 Geo. V. ch. 119, and Secs. 34 (2) and 36 (1) of The Public Utilities Act, R.S.O. 1914, ch. 204, the Plaintiffs are a body corporate charged with the duty of managing and operating the municipal electric light, heat and power works of the City of Toronto. That duty calls for the employment of a large number of men.

In June last representatives of certain of the Plaintiffs' employees applied to the Federal Minister of Labour under the provisions of the Dominion Industrial Disputes Investigation Act, 1907, 6-7 Edw. VII. ch. 20, for the appointment of a Board of Conciliation and Investigation. After some correspondence between the interested parties and the Minister, the Minister established a Board, and the Plaintiffs declining to recommend any person for appointment as their nominee upon the Board, the Minister appointed one for them under par. 2 of Sec. 8 of the Act. The present Defendants constitute the Board so appointed.

The Plaintiffs at once took exception to the authority of the Board and to the power of the Minister of Labour under the Act to appoint a Board of Conciliation and Investigation to inquire into matters concerning the operation by the Plaintiffs of a public utility belonging to, or managed as a department of, a municipality, or to interfere with the civil or municipal rights of the Plaintiffs. The Board refused to give effect to the Plaintiffs' protest and issued an appointment to proceed with the inquiry. The Plaintiffs thereupon launched this action, and moved upon notice for an interim injunction, and after notice had been given by my direction to the

Attorney-General of Ontario and the Attorney-General for Canada, pursuant to Sec. 33 of the Ontario Judicature Act, the motion was very fully argued on the 27th instant.

The writ by its endorsement claimed a declaration that the Defendants are acting without lawful authority as a Board under the Industrial Disputes Investigation Act and its amendments in respect of an alleged dispute between the Plaintiffs and certain of their employees, and an injunction.

The points in issue are such that, notwithstanding their importance it is impossible to postpone a decision upon them until the trial of the action. Mr. Duncan declined to consent to the motion being turned into a motion for judgment, but the intention of the Board to proceed immediately with the inquiry, necessitated a decision upon what is substantially the whole question involved, though given upon an interlocutory motion.

The question to be determined is whether or not The Industrial Disputes Investigation Act, 1907, with its amendments, was within the powers of the Parliament of Canada having regard to the provisions of Sections 91 and 92 of the British North America Act which divides the power to legislate between the Parliament of Canada and the Legislatures of the respective provinces.

Counsel for the Defendant does not contend that the subject matter of the Act falls within any of the 29 enumerated classes expressly assigned to the Dominion Parliament by Sec. 91, but he says that it does not come within any of the 16 classes exclusively assigned to the provinces by Sec. 92, and that therefore it falls to the jurisdiction of the Dominion Parliament under the residuary power given by the opening words of Sec. 91, as a law made for the peace order and good government of Canada. And he contends that when so legislating the Parliament of Canada may, as ancillary to the main subject matter of the Act, enact laws which interfere with or over-ride civil and municipal rights within the provinces.

The features of the Act to which objection is taken by the Plaintiffs are to be found in those sections which interfere with civil rights and not in the innocuous sections which provide some means for settling industrial disputes. It is those provisions for conciliation and those alone that Counsel for the Defendants relies upon as falling within the residuary powers under Section 91 and as justifying the ancillary coercive sections.

It may not be amiss to observe parenthetically that it is open to argument that legislation for the appointment of a Board whose sole duty is to endeavour to adjust a dispute but who are clothed with no coercive powers, and whose judgment or award has no binding effect, is not a " law " at all in the sense in which that word is used in Sections 91 and 92 of the B.N.A. Act. The same end might be attained by a mere resolution of the House of Commons or of the Senate. Such a resolution could not affect civil rights, and I can see little practical difference between an Act of Parliament or of a Provincial Legislature merely appointing a body for that purpose, and a resolution passed by any deliberative body of men. A municipal council might do it, or any religious or fraternal body might do it, with as much force of law, as the Act in question when stripped of all those provisions which interfere with civil rights or municipal powers.

In the Supreme Court of Ontario.

No. 5. Reasons for judgment of Orde J., 29th Aug., 1923 —*continued.*

But it is not upon any such construction that my judgment is based. It may be that any Act which the Canadian Parliament or a provincial legislature sees fit to pass is a " law " within the naming of Secs. 91 and 92 of the B.N.A. Act.

The Act in question is entitled " An Act to aid in the prevention and " settlement of Strikes and Lockouts in Mines and Industries connected " with Public Utilities."

The definition of " employers " by par. (c) of Sec. 2 in effect limits the operation of the Act to those employing ten or more persons and who own or operate " any mining property, agency of transportation or communica- " tion, or public service utility, including, except as hereinafter prescribed " railways whether operated by steam, electricity or other motive power, " steamships, telegraph and telephone lines, gas, electric light, water and " power works."

The range of inquiry and investigation is to be found in the definition of " dispute " and " industrial dispute " in par. (e) of Sec. 2.

" (e) ' Dispute ' or ' Industrial dispute ' means any dispute between " an employer and one or more of his employees, as to matters or things " affecting or relating to work done by him or them, or as to the privilege, " rights and duties of employers or employees (not involving any such " violation thereof as constitutes an indictable offence) ; and, without limit- " ing the general nature of the above definition, includes all matters relating " to—(1) the wages allowance or other remuneration of employees, or the " price paid or to be paid in respect of employment ; (2) the hours of " employment, sex, age qualification or status of employees, and the mode, " terms, and conditions of employment ; (3) the employment of children " or any person or persons or class of persons, or the dismissal of or refusal " to employ any particular person or persons or class of persons ; (4) claims " on the part of an employer or an employee as to whether and, if so, " under what circumstances, preference of employment should or should " not be given to one class over another of persons being or not being members " of labour or other organisations, British subjects or aliens ; (5) materials " supplied and alleged to be bad, unfit or unsuitable, or damage alleged to " have been done to work ; (6) any established custom or usage, either " generally or in the particular district affected ; (7) the interpretation of " an agreement or a clause thereof."

It is not necessary to review all the provisions of the Act in detail. Its scheme is very simple. By Sec. 5, whenever any dispute (as defined by Section 2) exists between an employer (as so defined) and any of his employees which the parties cannot adjust, application may be made by either party to the Minister for a Board of Conciliation and Investigation. Then follow provisions for the appointment of the Board and for the procedure before it. The Board's duties are to inquire into the matters in dispute and to " Endeavour to bring about a settlement " and failing a settlement to report (Secs. 23 and 25). The Board is not, however, a body of arbitrators, and its report and the findings and recommendations therein have no binding effect whatever, and cannot be enforced, unless the parties have expressly agreed to that effect (Secs. 62 and 64).

But it is certain coercive features of the Act to which exception especially

is taken by the Plaintiffs. The Board is empowered to summon witnesses including the parties to the dispute, to compel the production of books, papers and other documents, and to enter buildings and other premises for purposes of inspection, and to interrogate persons therein, and these powers are sanctioned by penalties for failure to attend or to give evidence or to permit inspection. (Secs. 30, 32, 33, 36, 37 and 38.)

Sections 56 to 59 contain extremely drastic provisions designed to preserve the *status quo* from the moment the Minister grants the application for a Board until it has made its report. Notwithstanding that the several contracts of employment may have come to an end, or be subject to cancellation for cause, neither the employers on the one hand nor the employees on the other, can exercise their ordinary civil rights of bringing the engagement to an end, or of refusing to renew upon the same terms, if either party sees fit to apply for a Board of Conciliation, without subjecting themselves to serious penalties. Having in view the definition of " dispute " in Sec. 2 (c) which includes, for example, " the interpretation of an agreement or a clause thereof," questions as to materials used, hours of employment, sex and age of employees, and other matters going far beyond the mere question of wages, the far-reaching effect of the prohibitions contained in Secs. 56 to 59 will be appreciated. Once the reference to the Board is made neither the employer nor the employee can put an end to the existing situation. The employee must still be retained in his employment and the employer must still pay the same wages, and the employee may not discontinue his employment, the result being that the civil rights of both parties to the dispute are seriously interfered with. Their hands are tied. They continue to be bound by a bargain which they never made until the Board has made its report. It can hardly be suggested for a moment that these provisions are not a direct interference with the civil rights of the parties. That is particularly the case if the dispute is over " the interpretation of an agreement." An employer or employee who seeks the interpretation of an existing agreement may find that instead of being able to go to the courts for a decision he must await the report of the Board, though that report cannot affect his legal rights in any way whatever. But in the meantime neither party can put an end to the contract on the ground of its alleged breach, or exercise any other civil right given him by the law of the province if it comes within the dispute submitted to the Board.

Mr. Duncan justified all these provisions which interfere with the civil rights of the parties as being merely ancillary to the main purpose and object of the Act, namely the settlement of industrial disputes and the prevention of strikes and lockouts, which as he argues comes within the authority reserved to the Parliament of Canada by Section 91 " to make laws for " the peace, order 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." Assuming that the main purpose or object of the Act falls within the residuary power of Parliament under Section 91, the judgment of the Judicial Committee in *City of Montreal* v. *Montreal Street Railway Co.* (1912) A.C. 333, has made it clear that the provision at the end of Section 91, which limits the provincial powers even in matters exclusively assigned to the provinces, applies only to the 29

In the Supreme Court of Ontario.

No. 5. Reasons for Judgment of Orde J., 29th Aug., 1923 —*continued.*

enumerated classes of subjects assigned by Section 91 to the Parliament of Canada and " that to those matters which are not specified amongst " the enumerated subjects of legislation in Section 91 the exception at its " end has no application, and that in legislating with respect to matters " not so enumerated the Dominion Parliament has no authority to encroach " upon any class of subjects which is exclusively assigned to the Provincial " Legislatures by Section 92 " (p. 343). Mr. Justice Duff, who was one of the three judges whose judgment was ultimately confirmed by the Privy Council in *The Board of Commerce* case (1920), 60 S.C.R. 456, at p. 508, makes this statement :—

" There is no case of which I am aware in which a Dominion " statute not referable to one of the classes of legislation included in the " enumerated heads of Section 91 and being of such a character that " from a provincial point of view, it should be considered legislation " dealing with ' property and civil rights,' has been held competent to " the Dominion under the introductory clause."

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. 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* v. *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, municipal institutions and the provincial power to legislate in respect thereof, are of course subject to encroachment by the exercise of the Federal powers over the 29 subjects enumerated in Section 91, but under the decision in the *Montreal* case, *supra*, no such encroachment can be justified when the Dominion Parliament is legislating under the residuary power.

If it is suggested that the provisions which impose penalties, and which subject both employer and employee to criminal prosecution for failure to observe the prohibitions imposed by the Act, may be justified under the Federal power to pass Criminal laws then I think the judgment of the Privy Council in *The Board of Commerce* case, where a similar contention was made, is applicable. Lord Haldane points out there that the Dominion Parliament cannot pass legislation interfering with provincial rights and attempt to justify it by ancillary provisions creating crimes : *In re The Board of Commerce Act*, 1919, *and The Combines and Fair Prices Act*, 1919 [1922] 1 A.C. 191, at pp. 198 and 199.

The recent judgment of the Judicial Committee delivered on the 25th July last, in the case of *Fort Frances Pulp and Paper Company* v. *Manitoba Free Press Co.*, might lend colour to the suggestion that there may be cases, notwithstanding what was laid down in the *Montreal Street Railway* case, where in a " national emergency " the Parliament of Canada may have

power to pass legislation under the residuary clause infringing upon provincial rights. If that is what is meant, the decision in the *Montreal Street Railway* case must be read with some qualification. Mr. Duncan urged that the prevention of strikes and lockouts was a matter of such national importance as to bring The Industrial Disputes Investigation Act within the principle enunciated by Lord Haldane in the *Fort Frances* case (assuming that it has enunciated a principle which departs from that laid down in the *Montreal Street Railway* case), but whatever the power of Parliament may be to legislate expressly in the event of an existing or threatened nation-wide strike of such proportions as to constitute a national danger, I am unable to see how an Act of general application which may be invoked by 10 employees can be treated as having been passed to meet a " national emergency " in the sense in which the Fort Frances judgment uses that term. That judgment will require careful thought before giving it any application at variance with earlier decisions of the Judicial Committee, and it may be that the Judicial Committee justified the War Measures Act, 1914, as competent to the Dominion " under other powers which may well be implied in the constitution." As the judgment says, " It is clear " that in normal circumstances the Dominion Parliament could not have " so legislated as to set up the machinery of control over the paper manu- " facturers " which was there in question. Here there is nothing abnormal or necessarily of national importance in an industrial dispute or in a threatened strike or lockout, and the desire of the Dominion Parliament to prevent strikes and lockouts, however laudable it may be, and however effective the machinery devised for the purpose might be if Parliament were not hampered by a divided field of legislative power, cannot empower Parliament to invade either directly or indirectly under the guise of ancillary legislation, rights, either given by the civil laws of the Province or existing under the exclusive provincial authority to legislate as to municipal institutions. I have not overlooked the decision in the Province of Quebec, *Montreal Street Railway Co.* v. *Board of Conciliation and Investigation* [1913], Q.R. 44 S.C. 350. The authority of that decision has been so affected by later decisions of the Privy Council that I do not feel that it is binding upon me or that it is now a correct exposition of the law.

Counsel for the Defendants raised the objection that there could be no ground for an interim injunction until the Board took or threatened to take steps to put the coercive provisions of the Act into operation. But when asked if he would undertake on their behalf not to do so he declined. I do not think the Plaintiffs are called upon to wait until the Defendants are about to enter their works and have demanded the production of their books and documents, before coming to the Court. The granting of an interim injunction is, of course, a matter of discretion, but it calls for the exercise of a little common sense. I think the Plaintiffs are entitled to assume that the Board may see fit to exercise or put into force all or any of the coercive powers given to it by the Act, and are not bound to wait until the Defendants are demanding admission at their front door.

Mr. Duncan also raised certain objections to the form of the action urging that it was not a case for a declaratory judgment as claimed by the writ and that no action lay against the Defendants. It will be for the

In the Supreme Court of Ontario.

No. 5. Reasons for Judgment of Orde J., 29th Aug., 1923 —*continued.*

trial judge to deal with the former objection, but I desire to point out that if an action for an injunction lies against these Defendants, it is of little practical importance whether the Plaintiffs ask for a declaratory judgment as to the validity of the Act or not, if in order to determine the right to an injunction or otherwise the Court must pass upon the constitutionality of the Act or of some of its provisions. As to the Defendants being proper parties, if they are claiming to exercise to the detriment of the Plaintiffs powers for which there is no legal sanction, the Plaintiffs are clearly entitled to enforce their rights by injunction.

I ought to add that I have come to this conclusion with reluctance. I am of course merely dealing with the bald question of law which presents itself for consideration under the provisions of the British North America Act. It seems to be generally recognised that the Industrial Disputes Investigation Act has been a beneficial one and has facilitated the settlement of numerous disputes, and it is to be hoped that whatever the ultimate decision as to its constitutionality may be 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.

The Plaintiffs press for an injunction restraining the Defendants from performing any of the functions which they are called upon by the Act to perform on the ground that the whole Act is unconstitutional. I am not prepared upon a mere interlocutory motion to go that far. Whether or not an innocent inquiry as to an industrial dispute not fortified by any coercive power, is beyond the competence of the Canadian Parliament I do not think it necessary at this stage to determine.

The injunction ought to go restraining the Defendants from interfering in any way with the business of the Plaintiffs, and from entering upon the premises of the Plaintiffs for the purpose of examining their works or exercising any of those powers given them by Section 38. They have no power to enforce the attendance of witnesses or the production of books, papers, or other documents either by the Plaintiffs or by anyone else who chooses to withhold them. Of course individual witnesses, not parties to these proceedings, get no technical protection from this judgment. What remains is that the powers of the Board of Conciliation are in my opinion limited to an investigation merely of a voluntary character. I think they have no power to enforce, by the means the Act has provided, any of the provisions which interfere with the liberty of freedom of the parties to contract, or the right to strike or lockout, or to carry on their respective businesses as they may see fit. I do not think Sections 56, 57, 58 and 59 are effective. Those sections have really nothing to do with the immediate subject matter of this interim injunction, because the Conciliation Board does not necessarily enforce them ; they are perhaps enforceable by anyone who chooses to lay an information. The Board is, in my judgment, limited to the innocuous duty of investigating and making a report, but cannot put into force those drastic provisions of the Act which interfere with the civil and municipal rights or the rights of property, of any party to the dispute. The injunction will continue until the trial, the question of costs being reserved to be disposed of by the trial judge.

No. 6.

Order of Orde J. granting Interim Injunction.

In the Supreme Court of Ontario.

No. 6. Order of Orde J. granting *Interim* Injunction, 29th Aug., 1923.

In the Supreme Court of Ontario.

The Honourable Mr. Justice Orde. } Wednesday the 29th day of August, 1923.

Between

Toronto Electric Commissioners .. .. Plaintiffs,

and

Colin G. Snider, J. G. O'Donoghue and F. H. McGuigan .. Defendants.

1. Upon motion made unto this Court on the 24th day of August 1923 by counsel on behalf of the Plaintiffs and upon hearing read the Writ of Summons herein and the Notice of this Motion and the Affidavit of Service thereof and the Affidavit of Edward Montague Ashworth filed, the Notice of this action served on the Attorney-General of Canada and the admission of service thereof by the Deputy Minister of Justice, and upon hearing counsel for the Attorney-General of Ontario and for the Plaintiffs and Defendants after several enlargements and judgment having been reserved until this day; and the Plaintiffs by their Counsel undertaking to abide by any order which this Court may make as to damages in case this Court should hereafter be of opinion that the Defendants have sustained any which the Plaintiffs ought to pay;

2. This Court doth order that the Defendants and each of them are hereby restrained until the trial or other final disposition of this action from in any way interfering with the business of the Plaintiffs and from entering upon the premises of the Plaintiffs or examining the Plaintiffs' works or employees upon the Plaintiffs' 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 Investigation Act, 6-7, Ed. VII. (1907) Chapter 20 (Dominion) or any of the compulsory powers conferred by the said Act or any amendments thereto upon the Defendants 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 Plaintiffs.

3. And upon the application of the Defendants, this Court doth further order that the Plaintiffs shall deliver their Statement of Claim herein on or before the 24th day of September 1923, and the Defendants shall deliver their defence thereto within one week after the delivery of the Statement of Claim and the Plaintiffs shall deliver their reply thereto (if any) within one week after the delivery of the Statement of Defence, and after the close of the pleadings either Plaintiffs or Defendants may enter the action for trial at the present sittings at Toronto for the trial of actions without a jury, and that Notice of Trial shall be given by the party setting down the action for trial within one day thereafter, and the said Notice of Trial

In the Supreme Court of Ontario.

No. 6. Order of Orde J. granting Interim Injunction, 29th Aug., 1923 —*continued.*

and proof of service thereof shall be filed within one day after the action has been set down for trial; and that immediately upon the filing of the Notice of Trial the action shall be placed upon the list of cases for trial and thereafter either party shall be at liberty to apply to expedite or postpone the hearing.

4. And it is further ordered that copies of all pleadings and Notice of Trial shall be served upon the Attorney-General of Ontario.

5. And this Court doth further order that the costs of this application be costs in the cause unless otherwise ordered by the trial Judge.

(Sgd.) D'ARCY HINDS,
Asst. Registrar.

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No. 7.

In the Supreme Court of Ontario.

No. 7. Notice of Appeal, 13th Sept., 1923.

Notice of Appeal.

Take Notice that the Defendants appeal to a Divisional Court from the order of the Honourable Mr. Justice Orde, pronounced the 29th day of August, 1923, granting an interim injunction, upon the following grounds :—

1. The order is against the evidence and the weight of evidence.
2. No legal right of the Plaintiff has been infringed and no such infringement is threatened.
3. The balance of convenience is in favour of the Defendants.
4. Such other and further grounds as counsel may be advised.

And Take Notice that upon such motion will be read the reasons of the learned Judge, the affidavits and other documents filed, and such other and further material as counsel may be advised.

Dated at Toronto this 13th day of September, 1923.

LEWIS DUNCAN,
Solicitor for Defendants.

To KILMER, IRVING and DAVIS,
Solicitors for Plaintiffs.

No. 8.

No. 8. Statement of Claim, 24th Sept., 1923.

Statement of Claim.

1. The Plaintiffs are a Board of Commissioners appointed under the provisions of Sections 16 and 17 of 1 Geo. V., Chapter 119 (Ontario) (an Act respecting the City of Toronto) to manage the Muncipal 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), Chapter 204, and by Section 34, ss. (2) and Section 36, s.s. (1) of the last-mentioned Act, the Plaintiffs are a body corporate.

2. The Plaintiffs 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 of the Canadian Electrical Trades Union, Toronto Branch.

3. 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 Investigation Act (1907), 6-7 Ed. VII., Chapter 20, (Dominion) and amendments thereto, alleging in the said application a dispute between the Plaintiffs and the said Trades Union Branch over the wages and working conditions of the employees.

In the Supreme Court of Ontario.

No. 8. Statement of Claim, 24th Sept., 1923 —*continued.*

4. The Deputy Minister of Labour, by letter dated the 25th day of June, 1923, notified the Plaintiffs of the said application and in pursuance of the practice of the Department of Labour, asked the consent of the Plaintiffs to the establishment of a Board so that no question of jurisdiction under the Act should arise. After some correspondence between the Plaintiffs and the Minister of Labour or the Department of Labour the Plaintiffs declined to proceed under The Industrial Disputes Investigation Act. The Plaintiffs 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 Conciliation and Investigation under the Act, and had appointed as a member of the Board on the recommendation of the employees, the Defendant, J. G. O'Donoghue and asked the Plaintiffs to recommend some person for appointment as a member of the said Board on behalf of the Plaintiffs. The Plaintiffs declined to make any recommendation and by letter dated the 30th July, 1923, the Deputy Minister of Labour and Registrar informed the Plaintiffs that the Minister acting under Section 8 of the Act, had appointed the Defendant F. H. McGuigan as a member of the Board on the Plaintiffs' behalf. Finally the Plaintiffs were advised by telegram from the Deputy Minister of Labour and Registrar dated the 1st day of August, 1923, that the Minister of Labour had appointed the Defendant Colin G. Snider as Chairman of the Board upon the joint recommendation of the Defendants O'Donoghue and McGuigan, and each of the Defendants accepted his said appointment and the Defendants proceeded to act as a Board under the said Act.

5. At the first meeting of the said Board called for and held on the 7th day of August, 1923, the Plaintiffs appeared by counsel and objected to the establishment of the Board under The Industrial Disputes Investigation Act, on the ground that the said Act was 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 Plaintiffs 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.

6. The Board of Conciliation and Investigation at a meeting on the 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 said The Industrial Disputes Investigation Act, and subsequently upon the same day the Plaintiffs were served with the Notice of Appointment to proceed. Thereupon the Plaintiffs caused the Writ of Summons in this action to be issued and upon notice to the Defendants obtained an interim injunction restraining the Defendants until the trial or other final disposition of the action from in any way interfering with the business of the Plaintiffs and from entering upon the premises of the Plaintiffs or from examining the Plaintiffs' works or employees upon the Plaintiffs' premises and from exercising any of the compulsory powers contained in Sections 30, 31, 32, 33, 34, 35, 36, 37 or 38 of The Industrial Disputes Investigation Act, or any of the compulsory powers

conferred by the said Act upon the Defendants as a Board of Conciliation and Investigation under the said Act, and from interfering in any way with the property or civil rights or the Municipal rights of the Plaintiffs.

7. The Industrial Disputes Investigation Act (1907) is not within the powers conferred upon the Parliament of Canada by Section 91 of The British North America Act. On the contrary it deals with property and civil rights, one of the classes of subjects (Class 13) exclusively assigned to Provincial Legislatures by Section 92 of The British North America Act.

8. The Plaintiffs are carrying on the work of a Public Utility for the Municipality of the City of Toronto, and in so far as it is sought to apply The Industrial Disputes Investigation Act (1907) to a Municipality and its employees, it is an interference with Municipal Institutions, one of the classes of subjects exclusively assigned to Provincial Legislatures by Section 92 of The British North America Act (Class 8).

9. Provincial Legislatures have power to establish and carry on electrical works as a local work or undertaking under Section 92 (Class 10) of The British North America Act, and have the right to delegate this power to a Municipal Corporation. The Dominion Parliament has no jurisdiction to interfere by legislation or otherwise with a local undertaking, its management or administration, whether carried on by the Province or by a Municipal Corporation, by virtue of powers delegated to it by the Province.

The Plaintiffs claim :—

1. A declaration that the Defendants are, without lawful authority, acting as a Board of Conciliation and Investigation under the said The Industrial Disputes Investigation Act, and amendments thereto, in respect of an alleged dispute between the Plaintiffs and certain of their employees.

2. An injunction restraining the Defendants and each of them from proceeding with the investigation of the alleged dispute between the Plaintiffs and their employees or a perpetual injunction in the terms of the said interim injunction granted therein.

3. Such further and other relief as may seem just.

4. The costs of the action.

The Plaintiffs propose that this action be tried at the City of Toronto in the County of York.

Delivered this 24th day of September, 1923, by Kilmer, Irving and Davis, 10, Adelaide Street East, Toronto, Solicitors for the Plaintiffs.

No. 9.

No. 9. Statement of Defence, 1st Oct., 1923.

Statement of Defence.

1. The Defendants deny the allegations of fact contained in paragraphs 4 and 6 of the Plaintiffs' Statement of Claim.

2. Save as aforesaid the Defendants admit the allegations of fact in the said Statement of Claim.

In the Supreme Court of Ontario.

No. 9. Statement of Defence, 1st Oct., 1923 —*continued.*

3. The Defendants say with reference to the interim injunction pleaded by the Plaintiffs that if relevant, which is denied, the formal order speaks for itself.

4. In respect of the matters referred to in the said Statement of Claim the Defendants have acted and intend to act under and by virtue of the powers conferred upon them pursuant to The Industrial Disputes Investigation Act, 1907, and amendments thereto, and not otherwise.

5. The Industrial Disputes Investigation Act, 1907, and amendments thereto is legislation competently enacted by the Parliament of Canada and covers all matters in controversy in this action.

6. The application in writing for the appointment of a Board of Conciliation, to which reference is made in the Plaintiffs' Statement of Claim, contained a Statutory Declaration in the words following :—

Canada
Province of Ontario
County of York
To Wit :

I, James Thomas Gunn, of the City of Toronto, in the Province of Ontario, and I, George Wilbur McCollum of the City of Toronto, in the Province of Ontario

Do severally solemnly declare as follows, that is to say :
that, to the best of our knowledge and belief, failing an investigation under the Industrial Disputes Investigation Act, 1907, a strike will be declared and that the necessary authority to declare such strike has been obtained ; or that the dispute has been the subject of negotiations between the committee and the employer, that all efforts to obtain a satisfactory settlement have failed and there is no reasonable hope of securing a settlement by further negotiations.

And each of us makes this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me by the said
James T. Gunn
and
G. W. McCollum

(Signed) JAMES T. GUNN,
GEO. W. MCCOLLUM.

At Toronto in the County of York this 23rd day of June, A.D. 1923.

"GEO. CUFTON"
A Commissioner, etc.,

and the facts set out in the said declaration are true.

7. In 1913 and 1914 disputes occurred between the Toronto Electric Commissioners and their employees, engaged in the distribution of electric power, and applications were made by and on behalf of the Toronto Electric Commissioners and of the Municipal authorities of the City of Toronto for the appointment of Boards of Conciliation under the said Industrial Disputes Investigation Act 1907.

8. The Toronto Electric Commissioners are now the sole distributors of electrical energy in the City of Toronto. The City of Toronto is one of the largest industrial cities in the Dominion of Canada. Electrical energy

No. 9. Statement of Defence, 1st Oct., 1923 —*continued.*

is extensively used in manufacturing in the City of Toronto, and in many manufacturing establishments is the only form of power used.

9. The members of the Canadian Electrical Trades Union, Toronto Branch, employees of the Toronto Electric Commissioners, number about four hundred, and comprise about ninety-eight per cent. of the electrical and mechanical employees of Toronto Electric Commissioners engaged in the distribution of electrical energy in the City of Toronto. A concerted cessation of work by the said members of the Canadian Electrical Trades Union, Toronto Branch, might be expected to deprive manufacturing establishments in the City of Toronto of their supply of electrical energy, disturb trade and commerce, increase unemployment and give occasion for disorder. Further, the affiliations of the Canadian Electrical Trades Union, Toronto Branch, are such that a strike of its members might be expected to involve cessation of work by the employees of the Toronto Transportation Commission engaged in the distribution of electrical energy and by other electrical workers both in Toronto and elsewhere; and to interfere with the export of electrical energy from Canada to the United States, and might result in sympathetic strikes in other provinces.

10. From the passage of the said Act in 1907 to March 31st, 1923, there have been five hundred and ninety-seven applications for the appointment of Boards of Conciliation under the said Act, and following such applications and the action of the Boards appointed pursuant thereto strikes have been averted or terminated in five hundred and sixty of such cases.

Delivered this 1st day of October, 1923, by Lewis Duncan, 85 Richmond Street West, Solicitor for the Defendants.

No. 10.

Joindre of Issue.

No. 10. Joinder of Issue, 9th Oct., 1923.

The Plaintiffs join issue upon the Defendants' Statement of Defence.

Delivered this 9th day of October, 1923, by Kilmer, Irving & Davis, 10 Adelaide Street East, Toronto, Solicitors for the Palintiffs.

No. 11.

Proceedings at Trial—Statement of Counsel.

No. 11. Proceedings at Trial.

Statement of Counsel, 19th Nov., 1923.

Tried before the Honourable Mr. Justice Mowat at the Non-Jury Sittings held at Toronto; commencing on Monday, November 19, A.D. 1923, at eleven o'clock a.m.

Appearances:

G. H. Kilmer, K.C. and J. R. Robinson, Jr.	Counsel for the Plaintiffs.
Lewis Duncan	Counsel for the Defendants.
H. H. Dewart, K.C.	Counsel for the Minister of Justice, Dominion of Canada.
Edward Bayly, K.C.	Counsel for the Attorney-General of Ontario.

His Lordship: I have read the pleadings in this case. The action appears to involve the constitutionality of The Industrial Disputes Investiga-

In the Supreme Court of Ontario.

No. 11. Proceedings at Trial.

Statement of Counsel, 19th Nov., 1923 —*continued.*

tion Act, and before I proceed to try the case I think I should remark that this Act has proved useful in Canada since its enactment sixteen years ago, and if the result of the trial should be to extract the essential parts of the Act which make it useful for its declared purpose, it would be considered by many a misfortune, and I therefore desire to ask a question and to put forward a suggestion:

Are the parties who are behind the action, namely, the Canadian Electrical Trades Union, of the same mind as they were formerly? Do they insist upon these provisions of the Act being carried out?

I suggest that if there is not a strong reason for going on with the case, ancillary or confirmatory legislation should be obtained from the province which would set at rest doubts about the constitutionality of this Act. That has been done in many cases.

If anybody can tell me if that is at all likely, I shall be glad to hear it. The case is different from the case of an ordinary commercial concern in that it is the creation of a provincial government, but if the case were tried and that was a ground for setting it aside, it would destroy the whole Act, I suppose, and leave it inoperative as regards industrial disputes in other public utilities.

For these reasons and for public convenience I make that suggestion, and I shall be glad to hear from anybody who can give me any information.

On the other hand, if it is a clash between the governments of the Dominion and the Province, and it is desired to know the law without any doubt, I suppose I must try the case and start it off on its long career to England.

What do you say, Mr. Kilmer?

Mr. Kilmer: I do not know what the disposition of the Canadian Electrical Trades Union is in the matter, my Lord.

His Lordship: Then as to the suggestion that the case be not tried now, but await another session of the legislature of Ontario?

Perhaps Mr. Bayly is able to answer that question?

Mr. Bayly: I am here, my Lord, really as a kind of constitutional mouthpiece. I have nothing to say about the merits of the case, and as far as I know no representation of that kind has been made to the Attorney-General.

There is not, as far as I know, any clash between the respective governments. It is a matter of an Act of Parliament which has not been previously seriously challenged, not having been found, as Mr. Justice Orde has found, to be constitutionally defective.

I regret I am unable to assist your Lordship further on that particular phase of the matter.

Mr. Dewart: Speaking on behalf of the Dominion Government, my Lord, I may state that it is considered that the issues involved in this case go beyond the limits of the particular dispute between the Toronto Electric Commission and its employees, not only so far as the Government is concerned, but so far as similar matters might arise in other provinces.

I understand it is desired by both sides that there should be a definitive decision as to whether the Act is or is not within the powers of the Dominion Parliament, and if so, to what extent?

There has been no intimation to me by the electrical workers that they would withdraw from the position they took when they demanded a Board of Conciliation, and that being so, they are in no sense behind the case for the Defendants ; it is rather being made by the Department because the Department has been compelled to act under the law. There has been no intimation that they have altered their position.

Your Lordship will see that the question raised here has not been raised by the Defendants or by the electrical workers, but is raised by the Plaintiffs, who challenge the jurisdiction of the Dominion Government, and the right of their employees to have this Board of Conciliation.

His Lordship : My suggestion was—and I cannot press it—that apt legislation could be passed by the Ontario legislature setting at rest doubts as to who should pass this legislation under the British North America Act, and so apt that some exception could be made in the case of a public utility which was appointed under a Statute of the Government, and that if there was not great cause for an immediate disposition of the case, perhaps delay of a few months would not matter.

We have become so accustomed in this country to the use of this Statute that it may be that the Ontario legislature would desire to enact confirmatory legislation. That has been done in several cases where doubt has arisen as to jurisdiction, and there has been concurrent jurisdiction of Parliament and the Legislature, so as to serve public convenience.

Mr. Kilmer : The jurisdiction of the Dominion Government under this Act has never been admitted. Heretofore, in the case of municipalities or public utilities which might be ultra vires the Dominion Government has refrained from attempting to exercise jurisdiction, and in one case they actually withdrew—in respect to this very Commission—a Board of Conciliation which had been appointed, on the ground that they probably had no jurisdiction.

Mr. Dewart : I would not care to make that statement.

Mr. Kilmer : I am making that statement, although not as a matter of evidence. Heretofore no such Board as this has been established in the case of a municipality or public utility except with the consent of the municipality or Commissioners concerned, so that this Act has never been applied to the precise business it is attempted to be applied to now.

His Lordship : Do you think that the public interest would be served by consulting with your respective clients before commencing action here ?

Mr. Kilmer : In reply to your Lordship's suggestion I may say we are quite willing now to consult the Attorney-General of the Province and put your Lordship's suggestion before him with a view to ascertaining the attitude of the provincial government with regard to the matter.

Mr. Dewart : I am afraid that that would not meet the case, and on behalf of the Dominion Government I cannot accept that suggestion. This is a field of legislation that no provincial government has ever attempted to occupy. There has been no suggestion of passing legislation by any provincial government. There are eight other provincial governments, each of which would be affected by this Act. The passing of an Act by the Ontario legislature could not have any finality, because there would be no decision as to what the powers of the province are, and it is

In the Supreme Court of Ontario.

No. 11. Proceedings at Trial.

Statement of Counsel, 19th Nov., 1923 —*continued.*

conceived to be a matter of the utmost importance that there should be a final judicial decision, so that if the Dominion Government is within its powers it may continue to act, and if the provinces have the right to pass either originating or ancillary legislation, they may do so.

Your Lordship will see it is a field that has never been occupied by any provincial legislature.

His Lordship: Naturally so, because only the Dominion Government has erected a Department of Labour, and it is very desirable and convenient, if possible, that all such legislation should be enacted at Ottawa.

Mr. Dewart: The first Minister of Labour was appointed when the late government came into power in 1919.

His Lordship: Was it not 1921?

Mr. Dewart: The so-called Drury Government came into power in 1919, my Lord.

His Lordship: Oh, yes; a Minister of Labour was appointed, but no great Department such as exists at Ottawa was created.

Mr. Dewart: It is a Department of Labour——

His Lordship: Of course, I was not attempting to disparage it.

Mr. Dewart: ——but there has been no suggestion of dealing with this matter by the Department, which undoubtedly existed in this province for over four years.

In answer to Mr. Kilmer's observation that the Dominion Government withdrew a Board on the ground of defective jurisdiction, I would not like to make that admission, but would rather say that, as a matter of conciliation, they withdrew a Board; other Boards dealt with questions relating to public utilities where the provincial authorities gave their consent to the progress of such Board, so that there has been a certain amount of leeway on either side.

I feel the question has reached a stage at which it is very important that it should be finally legally decided.

His Lordship: The only trouble is that if we are here to attend the obsequies of this Act, if the Plaintiffs succeed, then it is not so easy to come to an arrangement as between governments.

Mr. Dewart: Is it a question as to which government can act? Must it not depend on the basic question to be determined in this action, as to which government has the jurisdiction and what that jurisdiction is to be. I trust we are attending the regeneration of the Act rather than its obsequies, my Lord.

His Lordship: We are naturally getting into the way of thinking that if one government has not power under the British North America Act, the other government has.

Mr. Dewart: The Dominion Government desires to know just what powers it has.

His Lordship: It is sometimes better not to know.

Mr. Dewart: If the Dominion Government has not power, then the matter is of such tremendous importance that the proper government should act, and it is therefore important to know what government should act.

His Lordship: It will take two or three years to find that out, and if the

respective governments concurred in holding this useful Act, it might be advisable.

Mr. Dewart: If the question of passing doubtful and ancillary legislation be considered, it could only be accomplished during the coming spring, and it might be impossible to reach a definite decision—so far as legislation is concerned—as soon as a decision here could be reached.

Mr. Duncan: May I refer to a point raised by my learned friend, Mr. Dewart, as to there being an absence of similar legislation on the Statute books of the provinces. I understand there has been a so-called Trades Disputes Act on the Statute book of the Province of Ontario for a number of years, but it has never been applied or invoked, and in this particular dispute application was made this spring to the provincial Minister of Labour, Mr. Rollo, for the appointment of a Board, and he decided that this matter should and did come under the Industrial Disputes Investigation Act.

I am informed that there is a somewhat similar Act to the Trades Disputes Act on the Statute book of the province of Quebec, but there is a decision of the Court of last resort in the province of Quebec upholding the constitutionality of the Lemieux Act.

His Lordship: A number of cases have been decided since that occurred.

Mr. Duncan: The Montreal Street Railway case (44 Quebec Superior Court Reports) to which Mr. Justice Orde referred went before the Quebec Court of Appeal and was carefully considered by that court, which fact seems to have been overlooked by His Lordship, Mr. Justice Orde.

His Lordship: There are other cases. However I cannot prolong this discussion. If there is no desire to consult or obtain fresh instructions, or if it is not thought advisable to bring my remarks to the attention of the governments concerned—other than what Mr. Kilmer has said—we had better proceed.

Mr. Kilmer: With regard to what has been said about the Act and its validity being upheld, that was not in the case of a municipality or public utility operated by a municipality. This is the first case in which the Lemieux Act has been applied to a municipality without the consent of the municipality first being obtained.

His Lordship: I appreciate that the cases are different. It is, as it were, the challenging of the power of a sovereign government to conduct its own affairs. I suppose the essential facts can be admitted?

Mr. Kilmer: The essential facts that the Plaintiffs propose to prove are: the establishment of a Board, the appointment of the members of that Board, and the fact that the members of that Board sat as a Board in the face of this objection.

His Lordship: Those facts will, surely, be admitted?

Mr. Duncan: Yes, my Lord.

Mr. Kilmer: They are expressly denied in the pleadings, my Lord.

His Lordship: Can we amend the pleadings by admitting the allegations of fact in all paragraphs?

Mr. Duncan: The facts to which my learned friend Mr. Kilmer has referred are admitted, my Lord.

Mr. Kilmer: I have them shortly proved, my Lord; they are denied in the pleadings.

In the Supreme Court of Ontario.

No. 12. Plaintiffs' Documentary Evidence, 19th Nov., 1923.

No. 12.

Plaintiffs' Evidence.

His Lordship: You are perfectly justified in bringing the evidence here, but it saves time and is more in keeping with the dignity of the parties if they admit them.

Mr. Kilmer: I have proved these facts, and I will put the proof in, in view of the pleadings, if I think it is necessary to do so. I desire to prove that the Board, in the face of this objection being made, consulted the Department of Labour, and that they determined to proceed with this investigation.

His Lordship: That is admitted. The Defendants are cutting your case down by these admissions.

Mr. Kilmer: If anything turns on these matters, I have the proof here, my Lord.

His Lordship: Yes. In the meantime, these facts are admitted.

Mr. Kilmer: I desire to put in the Order establishing the Board of Conciliation.

His Lordship: Yes.

Mr. Kilmer: The Order is dated July 24, 1923, and reads as follows:—

" Department of Labour, Canada.

" In the Matter of the Industrial Disputes Investigation Act, 1907, and of
" a dispute between
" The Toronto Electric Commissioners .. .. .. (Employer)
and
" Certain of their employees being linemen, groundmen
" and others concerned in the work of power trans-
" mission and distribution and being members of the
" Canadian Electrical Trades Union, Toronto Branch .. (Employees)

" Whereas the employees have duly applied for the appointment of " a Board of Conciliation and Investigation, to which the above dispute " may be referred under the provisions of the Industrial Disputes " Investigation Act, 1907.

" And whereas the Minister of Labour, Canada, hereinafter called the " Minister, is satisfied that the said dispute is one to which the provisions " of the said Act apply, and that the application does not relate to a dispute " which is the subject of a reference under the provisions concerning " Railway Disputes in the Conciliation and Labour Act.

" Now therefore, in pursuance of the provisions of Section 6 of the " Industrial Disputes Investigation Act, 1907, the Minister does hereby " establish a Board of Conciliation and Investigation, to be constituted " as in the said Act provided, to which Board the above dispute shall be " and is hereby referred under the provisions of the said Act.

" In Witness whereof the Minister has hereunto set his hand and " affixed his seal of office at Ottawa on the 24th day of July, A.D. 1923.

" (Seal) " (Sgd.) JAMES MURDOCK,
" Minister of Labour.'

Exhibit No. 1.—Order establishing Board of Conciliation, dated July 24, A.D. 1923.

His Lordship: Have there been any amendments to the Act since 1907?

Mr. Kilmer: I will furnish your Lordship with the important amendments later on.

I put in as Exhibit No. 2 the appointment of Mr. J. G. O'Donoghue, K.C., as one of the members of the Board. It is dated July 24, 1923.

Exhibit No. 2.—Appointment of Mr. J. G. O'Donoghue, K.C., of the City of Toronto, Ontario, dated July 24, A.D. 1923.

I put in as Exhibit No. 3 the appointment of Mr. F. H. McGuigan as a member of the Board, dated July 30, A.D. 1923.

Exhibit No. 3.—Appointment of Mr. F. H. McGuigan, of the City of Toronto, Ontario, dated July 30, A.D. 1923.

I put in as Exhibit No. 4 the appointment of His Honour Judge Colin G. Snider, dated August 1, 1923. I suppose it will be admitted that Judge Snider was appointed Chairman of the Board, although that is not stated in this document?

Mr. Duncan: Yes.

Exhibit No. 4.—Appointment of His Honour Judge Colin G. Snider, of the City of Hamilton, Ontario, dated August 1, A.D. 1923.

I put in as Exhibit No. 5 a letter dated Ottawa, August 6, 1923, from the Honourable James Murdock, Minister of Labour to Judge Colin G. Snider, at Oakville, Ontario. It reads as follows:—

"Department of Labour, Canada.

"Ottawa, August 6, 1923.

"My dear Sir,

"Re Toronto Electric Commission and its Employees.

"Information reaching me would indicate that the employing party "in this case may refuse to take any part in the proceedings before the "Board and it is possible they may press this attitude so far as to decline "to give evidence. The Board is of course, itself, vested with full authority "as to action to be taken in various contingencies and, under the Chairman-"ship of one who like yourself apart from an extensive judicial experience "has had the advantage of many previous inquiries of a similar character, "will not probably be at a loss to deal effectively with any situation which "may arise; and in any case, a Board is not subject to direction in such "matters from the undersigned; you may, however, find it an advantage "to have the view of the Minister responsible for the establishment of "the Board and I beg therefore to state as follows.

"In the first place, I would remark that the records of the Department "show that although in the several hundred inquiries which have taken "place before Boards of Conciliation and Investigation, the employer has "on several occasions protested against the establishment of a Conciliation "Board and has refrained from naming a person for appointment to the "Board, yet when a Board has been duly constituted, the employer has, "I think in every case, lent his efforts to the removal of the differences

In the Supreme Court of Ontario.

No. 12. Plaintiffs' Documentary Evidence, 19th Nov., 1923 —*continued.*

" constituting the dispute, and in the majority of such cases, despite the " unpromising nature of the surrounding circumstances, the inquiry has " resulted satisfactorily either by a working agreement being effected, " or at least by such a measure of improvement in the matters at issue that " danger of a strike has passed away. I am confident that the efforts " of your Board will go far to bring similar results in the present situation.

" It is in my view essential that the Board should make as careful " and full investigation as the conditions may permit. I express no opinion " whatever as to the merits of the claims or arguments advanced by the " one side or the other in the documents which have been submitted to " the Department and of which copies have been forwarded you. It is " for the Board and the Board only to pass upon such matters. The " Hydro Commissioners, however, make it a ground of complaint that " during the past ten years, a period as you will be aware, of violent " fluctuation in wages and prices, and of world-wide unrest of an almost " unprecedented character, there have been as many as five applications " from the employees here concerned for Boards of Conciliation and that " in three cases Conciliation Boards have been granted. On this point " I would but observe that the complaint is one which should not be over- " looked and the Board will no doubt do all that is possible to secure on " the present occasion an adjustment which from its nature may lessen " the friction and unrest from which disputes result.

" You will no doubt secure without difficulty much evidence as to " the existing differences, their origin, and the best means of remedying " the same, and will endeavour, naturally, to hear statements from the " Commission or persons qualified to speak on its behalf, and if the Com- " mission or its officers do not respond to any request which the Board " may make for their presence and assistance during the proceedings, you " will no doubt proceed, under Sec. 30, to duly issue a summons for the " attendance of such persons. My view is that in the event of any person " to whom a summons has been issued, refusing to attend at the proceedings " of the Board, or to give evidence when requested to do so, the Board " should make due note of the circumstances, and should in its findings " as to the matters in dispute include a statement setting forth fully and " completely the action of the Commissioners and their representatives " in connection with the proceedings of the Board.

" Yours faithfully,

" (Sgd.) JAMES MURDOCK,
" Minister of Labour.

" Judge Colin G. Snider,
" Oakville,
Ontario.

" Copy c/o J. G. O'Donoghue, Esq., K.C.,
" Confederation Life Building,
" Toronto."

Exhibit No. 5.—Letter dated August 5, 1923, Murdock-Snider.

Mr. Kilmer: That was after the objection had been taken before the Board.

Mr. Dewart: After what objection had been taken?

Mr. Kilmer: The first meeting of the Board was on August 7, and the letter I have just read is dated August 6, but at that time Mr. Snider and Mr. McGuigan had interviewed Mr. Ashworth, the Assistant Manager of the Plaintiffs, and he had told them several days previously that the Commission would not recognise the Board.

Mr. Dewart: We do not admit that. We do not admit something my learned friend should prove by Mr. Ashworth. If that is the fact, we have no knowledge of it, and I would be sorry to be bound by my learned friend's statement in that regard.

Mr. Kilmer: In that connection I will read from the examination for discovery of Judge Colin G. Snider, taken before Thomas T. Rolph, Special Examiner, 225 Federal Building, Toronto, on November 1, 1923:—

"33. Q. Then I presume you would have received the communication "about August 2nd, which would be the next day after it was written "from Ottawa; do you recall the exact date?—A. I came down to "Toronto on the receipt of a telegram. I knew that I had been appointed "and that the papers were to be sent to Mr. O'Donoghue, and I knew that "Mr. O'Donoghue and Mr. McGuigan were the members of the Board. "I had a telegram from them asking me to come down at once, that they "wanted to proceed—either by telegram or telephone; it might be "telephone—and at my place at Oakville. Mr. O'Donoghue knew that "was where I was. I came down on the 2nd and the papers were here "then; I expected they would be.

"34. Q. That would be August 2nd?—A. August 2nd, and we "had a meeting that day to see what we would do.

"35. Q. That might be called an organisation meeting?—A. Yes; "August 2nd, that is right.

"36. Q. That is the date you met together as a Board, just for "preliminary organisation?—A. To organise—to decide how we would "proceed.

"37. Q. Then the next meeting of the Board, I understand, was "August 7th?—A. Yes.

"44. Q. On August 7th when you met who appeared before you?— "A. That day we saw Mr. Ashworth on the 2nd.

"45. Q. On the 2nd of August?—A. Yes, we did.

"46. Q. In what connection?—A. We understood that the company "did not intend—we had notified them for that date.

"47. Q. August 2nd?—A. August 2nd—they had been notified of "the meeting—and that they were not going on to attend. We had that "information in some way, so the Board asked Mr. McGuigan and me to "see Mr. Ashworth and see what date would suit them if they would attend, "or if they wanted to attend as we were fixing the date and they were not "there. So Mr. McGuigan and I went and saw Mr. Ashworth and had an "interview with him in regard to the matter.

"48. Q. But there were none of the parties before the Board that day, "August 2nd? Neither the men nor the Electric Commissioners were "before the Board on August 2nd? I think you said you just took up

In the Supreme Court of Ontario.

No. 12. Plaintiffs' Documentary Evidence, 19th Nov., 1923 —*continued.*

" matters of procedure and you and Mr. McGuigan went over to see Mr. " Ashworth ?—A. None on behalf of the employers were there.

" 49. Q. And you do not recall whether the men were there or not ?— " A. I think not ; I do not think they were there. I think no one was " there, and we had our interview with Mr. Ashworth.

" 50. Q. You all took your oath of office that day ?—A. Yes, filed " that day. It is among the papers somewhere."

So that it was on the 2nd August that Judge Snider and Mr. McGuigan saw Mr. Ashworth. I had all my questions marked for the purpose of putting them in. If there are any other questions on that point, I would ask your Lordship's permission to read them later.

His Lordship : Certainly.

Mr. Kilmer : These matters were denied in the pleadings, and I took means to prove them.

His Lordship : If by inadvertence you should leave them out, I shall allow you to put them in.

Mr. Kilmer : It further should be admitted by my learned friend that at the first meeting of the Board, which was held on August 7, for the conduct of business or to proceed with the investigation, counsel for the Plaintiffs appeared before the Board and took this very objection that was taken in this action to their proceeding or to their constitution as a Board.

The Board adjourned to the 8th, and Mr. J. T. Gunn, who appeared for the employees, stated his answer on the 8th August.

The Commissioners then adjourned from the 8th to the 20th August for the purpose, as stated by the Chairman, of communicating with the Department of Labour at Ottawa the circumstances, and to obtain instructions with regard to their course.

Mr. Dewart : Had you not better put in the evidence ?

His Lordship : I would prefer to hear this statement by counsel in the meantime, because it is so much more convenient.

Mr. Dewart : I understood that this memorandum from Judge Snider covered that point.

Mr. Kilmer : I will not go beyond what he stated in his examination for discovery.

On the 20th August, counsel for the Plaintiffs appeared before the Board, and Judge Snider, the Chairman, then stated that the Board proposed to proceed with the Inquiry.

By virtue of an understanding had with the Chairman of the Board in the presence of all parties at a prior adjournment, the Board adjourned until the following Friday in order to afford the Plaintiffs an opportunity to apply for an injunction to restrain the proceedings.

That motion was returnable first on the Wednesday succeeding Monday, August 20, and was adjourned until the 27th August, at the request of the Attorney-General of Ontario. It was argued on the 27th August, and on the 29th August Mr. Justice Orde delivered an opinion granting an injunction restraining the Defendants from exercising any compulsory powers under the Act.

His Lordship : What material did Mr. Justice Orde have ?

Mr. Kilmer: He had the affidavit of Edward Montague Ashworth, setting out the facts in somewhat the same way that I have set them out before your Lordship to-day, and also certain correspondence.

His Lordship: What were the terms of the interim injunction order?

Mr. Kilmer: The order is as follows, my Lord:—

"2. This Court doth order that the Defendants and each of them are "hereby restrained until the trial or other final disposition of this action from "in any way interfering with the business of the Plaintiffs and from entering "upon the premises of the Plaintiffs or examining the Plaintiffs' works or "employees upon the Plaintiffs' 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 Investigation Act, 6-7 Ed. VII. (1907) "Chapter 20 (Dominion) or any of the compulsory powers conferred by the "said Act or any amendments thereto upon the Defendants 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 Plaintiffs."

Exhibit 6.—Order of Mr. Justice Orde, dated Aug. 29, 1923.

Mr. Kilmer: On the 29th August the Board of Investigation was attended by the Counsel for the Plaintiffs and for the Defendants (that is the date the injunction order was granted) and they were informed of the granting of the injunction order.

The Board thereafter held one or two sittings, as set out in this examination, but, obeying the injunction order, it exercised none of the compulsory powers of the Act.

The Plaintiffs did not appear before the Board, and in the end the Board adjourned indefinitely, and that is where the matter stands now.

I should say, further, that Judge Snider stated that had the injunction order not been granted, the Board would have proceeded, and would have exercised any of the powers under the Act that were necessary in order to enable the Board to carry out their duties.

His Lordship: Where did he state that?

Mr. Kilmer: I will read further from the examination for discovery of Judge Snider, my Lord:—

"108. Q. On what date would that be?—A. August 30th, and it "restrained——

"109. Q. That is, reasons for judgment had been delivered and the "order had probably not been formally issued, but it was plain the order "had been granted?—Yes.

"110. Q. Restraining you in this action?—A. Yes.

"111. Q. From proceeding?—A. We adjourned. No settlement could "be made, so we adjourned. We decided to hear the statements. The "injunction prevented us from using any of the mandatory powers given "by the Act. The employees were urging us to go on; so we said, 'We will "'go on and hear anything you have got to say; but it is really if you "'want to talk to us, we will hear what you have to say,' so they made a "statement.

"112. Q. On what date would that be, August 30th?—A. August 31st.

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No. 12. Plaintiffs' Documentary Evidence, 19th Nov., 1923 —*continued.*

" 113. Q. You decided then the afternoon before, that is August 30th ? " —A. Yes.

" 114. Q. That the reasons for judgment having disclosed an injunction " so far as the compulsory powers of the Act were concerned ?—A. Yes."

Mr. Dewart: Will you please read 115 ?

Mr. Kilmer: Yes.

" 115. Q. That you would proceed the next day ?—A. But we would " not exercise any of the compulsory powers. We would obey the injunction. " They were anxious for us to hear their case, so we heard them."

Then :—

" 134. Q. If it had not been, Judge Snider, for the interim injunc- " tion which had been granted, you would have proceeded in the ordinary " course under the Act to have your investigation ?—A. Oh, yes, if we " had not been restrained by the interim injunction, we would not have " known any reason to do otherwise ; we would have gone on as I have in a " great many cases."

His Lordship: That is sufficiently clear.

Mr. Dewart: Would you please read number 135, Mr. Kilmer ? I think it would be fair to do so, by way of explanation.

Mr. Kilmer: I will read number 135 and also one or two other questions. Question 135 was in the examination by Mr. Duncan :—

" 135. Q. You were asked what the Board would have done had it " not been restrained by the injunction ?—A. We would have proceeded " in the ordinary way."

His Lordship: That makes it only a little more definite.

Mr. Kilmer: Yes, my Lord : more definite still.

Then :—

" Mr. Davis : I asked if the Board would have proceeded in the ordinary " way and he said yes.

" 136. Q. By that, I suppose you mean, you would have endeavoured " to conciliate and effect an adjustment between the parties ?

"——Mr. Davis objects.

" A. I would have tried all I could.

"——Examiner rules question is not proper in its present form.

" 137. Q. I would ask what you mean by your answer to that ast " question of Mr. Davis' ?—A. I mean I would have done whatever the " circumstances at the time when they arose needed, as required under " the Act. I would have exercised the powers there if I thought it was " necessary—heard people under oath and so on. I cannot tell now what " I would have done, for I do not know what necessity there would have " been. I would have secured a settlement if I could."

His Lordship: That is the answer of an experienced arbitrator. As far as I can see, the conduct of all parties has been perfectly free and above board. If we can prevent any departure from that line of conduct, I shall be very glad.

Mr. Kilmer: There has been no complaint in any way. With these admissions, that is the Plaintiff's case, my Lord.

No. 13.

Statement of Counsel.

Mr. Duncan: It is, perhaps, unnecessary to state to your Lordship that the Defendants have no personal interest in this action, and are merely defending it because this constitutional question has been raised.

In submitting the evidence that will be submitted to your Lordship they are not endorsing any dispute that may exist between the Toronto Electric Commissioners and their employees.

His Lordship: I understand.

Mr. Duncan: I take it that the decision in this case will depend largely upon the facts which will be put in evidence before your Lordship with regard to the conditions existing in Canada, and if I may be permitted to refer your Lordship to one case that went before the Privy Council it may, perhaps, make my point clear.

His Lordship: To what case do you refer?

Mr. Duncan: The case of *The Attorney-General for Ontario* vs. *The Attorney-General for the Dominion of Canada* (1896) Appeal Cases, page 361. This case followed the case of *Russell* vs. *The Queen*, 7 Appeal Cases, p. 829. I read from page 361 of 1896 Appeal Cases:—

"If it were once conceded that the Parliament of Canada has authority "to make laws applicable to the whole Dominion, in relation to matters "which in each province are substantially of local or private interest, "upon the assumption"——

I suggest that "upon the assumption" means without any evidence being given, my Lord——

"that these matters also concern the peace, order, and good government "of the Dominion, there is hardly a subject enumerated in Sec. 92 upon "which it might not legislate, to the exclusion of the provincial legislatures."

Then at page 371:—

"Answer to question 3.—In the absence of conflicting legislation "by the Parliament of Canada, their Lordships are of opinion that the "provincial legislatures would have jurisdiction to that effect if it were "shown that the manufacture was carried on under such circumstances "and conditions as to make its prohibition a merely local matter in the "province."

That is, any question of evidence as to what the situation is, and there the onus appears to be put on the province.

His Lordship: They were the Plaintiffs?

Mr. Duncan: Yes, my Lord, and they are the Plaintiffs in this case. My learned friend has not put forward any evidence on that phase, but in order that there may not be any delay the evidence that will be put forward by the Defendants will cover that matter to a certain extent.

His Lordship: Evidence of what?

Mr. Duncan: Evidence of the conditions in Canada at the time this Act was passed. I will mention now that there was at that time a very serious strike on in the coal mines in Lethbridge, Alberta, which affected not the people in Lethbridge, Alberta, but the people in Saskatchewan.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 13. Statement of Counsel, 19th Nov., 1923 —*continued.*

Winter was coming on, and as the result of the many representations made to Ottawa this Act was passed, and it has since that time been applied to industries and public utilities of that nature.

His Lordship: You are indicating that you are going to proffer here evidence of a condition of affairs in Canada at the time the Act was passed?

Mr. Duncan: Yes, my Lord.

His Lordship: It is admitted by everybody, is it not, that this Act does at times perform a useful service?

Mr. Kilmer: That is not admitted by the Plaintiffs, my Lord.

Mr. Duncan: One other matter, my Lord. The development of the Labour situation in Canada is such, Labour being organised not on a provincial basis but on a Dominion or international basis, that I desire to put in evidence of that fact so that your Lordship will see that if this is an unenumerated subject it falls within the peace, order and good government of Canada clause.

His Lordship: Of what value would that evidence be unless you can show that the fact that they were organised federally or internationally would be likely to create industrial trouble?

Mr. Duncan: Precisely, my Lord; that once a strike occurs in any large section it is impossible to say that it will be confined to that section, and the only government which can, under the British North America Act, act effectively in dealing with such a situation is the central government, and as the subject is not an enumerated subject matter like the drink question, it therefore falls within the peace, order and good government of Canada clause.

His Lordship: Do you suggest that because some wild men in Lethbridge, Alberta, created trouble, the business men of Toronto are likely to do the same thing?

Mr. Duncan: The evidence will deal with that point, my Lord.

No. 14. James T. Gunn. Examination.

No. 14.

Evidence of James T. Gunn.

James Thomas Gunn, Sworn.

Mr. Kilmer: I object to evidence being given along the line outlined by my learned friend, Mr. Duncan, my Lord.

His Lordship: Can you say what that evidence will be? I myself have anticipated that it would be difficult to confine the evidence to facts, but Mr. Duncan explicitly stated that he was going to adduce evidence only as to facts.

Mr. Kilmer: I submit that the evidence of facts that he spoke of, and the nature of the evidence he spoke of, is not admissible in this action.

His Lordship: I will receive evidence of facts. In the case of *Russell* vs. *The Queen*, however, it was held that the Scott Act was within the jurisdiction of the Dominion Parliament, because it was a widespread measure for peace, order, and good government, but no evidence was

adduced in that regard. Therefore, I do not think opinion evidence can be received here, and I anticipate that Mr. Duncan will confine the evidence to questions of fact, although it would be very tempting—with the defence which he has, no doubt, developed—to ask Mr. Gunn his opinion, but I would have to rule that out.

Mr. Duncan: Q. What is your position, Mr. Gunn?—A. I am a member of the Canadian Electrical Trades Union, a member of the local executive body, and a member of the national body. Up until a month ago I was the business manager of the local branch of the Canadian Electrical Trades Union.

Q. You were business manager of the Toronto Branch?—A. Yes. I held that position from September 23, 1920, until thirty days ago.

His Lordship: Q. "The Canadian Electrical Trades Union" embraces electrical workers?—A. Yes, Sir.

Mr. Duncan: Q. Did you hold the position of business manager of the Toronto branch of the Canadian Electrical Trades Union during the dispute which resulted in the application for a Board of Conciliation and Investigation?—A. Yes.

Q. Are you also a member of the Dominion Executive of the Canadian Electrical Trades Union, of which the Toronto branch is a unit?—A. Yes. The Toronto branch is chartered by the Dominion Executive.

Q. What are the names of the various branches of the Canadian Electrical Trades Union?—A. There is a branch at Toronto, a branch at Hamilton, Ontario, a branch at Ottawa, a branch at Niagara Falls, a branch at Brantford, a branch at Regina, Saskatchewan, and a branch at Edmonton, Alberta.

Formerly there were members in a branch at Trenton, but within the last year or so they have been consolidated with the Toronto branch; that is, the members covering the Central Ontario System of the Ontario Hydro Electric Commission.

Q. Does that System embrace other cities in addition to Trenton?—A. Yes.

Q. What cities does the Toronto branch cover?—A. Belleville, Oshawa, Peterboro, Coburg, Campbellford, and so on—all the cities and towns covered by the Central Ontario System of the Ontario Hydro Electric Commission.

His Lordship: Q. That is to say, the workmen who reside in these various towns and cities and are employed on the lines are members of the Toronto branch of the Canadian Electrical Trades Union?—A. Yes.

Q. What is the extent of the membership?—A. I cannot give you the membership accurately, Sir.

Q. Approximately?—A. I think our Secretary-treasurer, Mr. McCollum, is better able to furnish that information.

Mr. Duncan: Q. What is the membership in your Toronto branch employed by the present Plaintiffs?—A. Between 300 and 400—by the Toronto Electric Commissioners solely?

Q. Yes?—A. Between 300 and 400.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination *—continued.*

Q. To what extent are the electrical employees of the Toronto Electric Commissioners organised ?—A. I should judge it would be about 85 per cent. to 90 per cent.

Q. 85 per cent. to 90 per cent. of all electrical employees ?—A. Yes ; as distinct from the clerical staff, and so on.

His Lordship : What do you mean by " organised " ?

Mr. Duncan : Q. By " organised " I mean members of your union ?—A. Yes ; members of our union. A small number are members of the International Brotherhood of Electrical Workers ; about 20 members.

His Lordship : Q. When you say that 85 per cent. to 90 per cent. of all electrical employees of the Toronto Electric Commission are organised, you do not mean that all of the members are loyal to the union ?—A. We believe so, and hope so.

Q. In Great Britain there are unions in which the majority of the members are opposed to the policies of their leaders and yet remain quiescent, and their leaders get into Parliament ?—A. The very reverse appears to have obtained here, my Lord.

Mr. Duncan : Q. On behalf of the electrical employees of the Toronto Electric Commissioners, did you make an application to the Registrar of Boards of Conciliation and Investigation under The Industrial Disputes Investigation Act for the appointment of a Board ?—A. Yes.

Q. What is the date of that Application ?—A. June 22, 1923.

Q. Is this document which I now show you the Application which you forwarded ?—A. Yes.

Q. Are these documents the copies of letters which were attached to that Applicaton at the time it was forwarded ?—A. (Witness examined copies of letters).

His Lordship : Q. Is that union designated by a number ?—A. No ; there is no number. The nomenclature is by the locality rather than numbers ; it is known as the " Branch."

Q. The Toronto branch ?—A. Yes, sir.

Mr. Kilmer : The witness has been asked if these are copies of letters sent with the application.

Witness : Yes.

His Lordship : Do you want the originals ?

Mr. Kilmer : Yes, my Lord.

Mr. Duncan : I am only concerned with showing what came to the attention of the Minister.

His Lordship : Have there not been productions ?

Mr. Kilmer : Yes : but these are letters said to be attached to the application.

Mr. Duncan : Perhaps the witness might be permitted to state what these letters are about.

Mr. Kilmer : Here is a letter supposed to be from Mr. Ashworth to Mr. Gunn and another one from Mr. Gunn to Mr. Ashworth, and another one from Mr. Ashworth to Mr. Gunn.

Mr. Duncan : You have produced all those.

Mr. Kilmer : I do not know that I have. I should have been asked about these letters if the correspondence is going to be put in in this way.

I ask that the admission of that file as proof be confined to the Application. I would be quite willing to look over any correspondence like that later, but I do not want it to go in now as proof.

His Lordship: You may do so.

Mr. Duncan: To what does this correspondence which is attached to the Application relate?

Mr. Kilmer: I object to that question, my Lord.

His Lordship: The letters speak for themselves. Mr. Kilmer will facilitate you by going over what he admits, and the Application will be put in as Exhibit No. 7.

Mr. Kilmer: Exhibit No. 7 will consist of the Application alone, my Lord?

His Lordship: Yes.

Mr. Duncan: Should a number be reserved for these letters?

His Lordship: Mr. Kilmer will read them during the luncheon interim and let you know what letters he admits.

Mr. Duncan: Q. Is that your signature to Exhibit No. 7?—A. Yes, sir.

Q. Do you see there the signature of one George W. McCollum?—A. Yes, sir.

Q. Who is George W. McCollum?—A. He is the Secretary-treasurer of the Toronto branch, and also the Secretary-treasurer of the Dominion body, and a member of the Toronto branch and a member of the National Executive Board, by virtue of his office as Secretary-treasurer.

Q. Do you know that to be his signature?—A. Yes; I was present when it was signed.

Q. Did you take a statutory declaration prior to forwarding this Application for a Board?—A. I did.

Q. And did that declaration state——

Mr. Kilmer: If my learned friend desires, I will agree now to the Application and the proof that went in with the Application to the Minister of Labour.

His Lordship: Yes; you can put it all in as Exhibit No. 7.

Exhibit No. 7:

(A) Form of Application for Appointment of a Board of Conciliation and Investigation, dated Toronto, June 22, 1923.

(B) Copy of letter dated January 22, 1923, from E. M. Ashworth to J. T. Gunn.

(C) Copy of letter dated March 6, 1923, from J. T. Gunn to E. M. Ashworth.

(D) Copy of letter dated March 7, 1923, from E. M. Ashworth to J. T. Gunn.

(E) Copy of letter dated March 28, 1923, from E. M. Ashworth to J. T. Gunn.

(F) Copy of letter dated April 2, 1923, from J. T. Gunn to E. M. Ashworth.

(G) Copy of letter dated April 3, 1923, from E. M. Ashworth to J. T. Gunn.

(H) Copy of letter dated April 7, 1923, from E. M. Ashworth to J. T. Gunn.

(I) Copy of letter dated April 17, 1923, from J. T. Gunn to E. M. Ashworth.

(J) Copy of letter dated April 18, 1923, from E. M. Ashworth to J. T. Gunn.

(K) Copy of letter dated April 23, 1923, from E. M. Ashworth to J. T. Gunn.

(L) Copy of letter dated May 1, 1923, from J. T. Gunn to E. M. Ashworth.

(M) Copy of letter dated May 12, 1923, from E. M. Ashworth to J. T. Gunn.

Mr. Duncan: Q. Did you take this statutory declaration which is part of the Application for the establishment of a Board:—

"Statutory Declaration.

"Canada:
"Province of Ontario
"County of York
To Wit:

I, James Thomas Gunn of the City of Toronto in the Province of Ontario, and I, George Wilbur McCollum of the City of Toronto in the Province of Ontario

"do severally solemnly declare as follows, that is to say:—
"that, to the best of our knowledge and belief, failing an adjustment of "the dispute herein referred to, or a reference thereof by the Minister of "Labour to a Board of Conciliation and Investigation under the Industrial "Disputes Investigation Act, 1907, a strike will be declared, and that the "necessary authority to declare such strike has been obtained?"

A. I did.

Q. Was that true?—A. That is correct.

Q. When was that authority obtained?—A. I am not sure of the date, but it was at a meeting of the union prior to the application being made, some time prior, I should say ten days, possibly; I am not sure of the exact date.

Q. Relate the circumstances leading up to that meeting?—A. They are fairly lengthy. To begin with, about the end of 1922, November or December, after a series of discussions in the union, it was supposed to submit a new wage agreement to the Toronto Electric Commissioners on behalf of the classes of employees described in that Application. Several meetings were held, and correspondence was taken up with Mr. E. M. Ashworth, the acting General Manager of the Toronto Hydro Electric System, and finally a meeting was arranged between the Toronto Electric Commissioners and the Committee representing the men. I think that meeting was held on the 22nd January, 1923.

That meeting lasted for some hours. The proposed new agreement was gone over by the men's committee and the Commissioners, and a discussion took place, and the reply of the Commissioners was that they had heard the men's views and would take the statements of the committee and the proposed agreement into consideration.

Some time after that, a couple of months, I think, no reply having been received from the Toronto Electric Commissioners as to their attitude

to the proposed new agreement, the union instructed me, as recording secretary and business manager, to write to the Commissioners and ask them what they intended to do.

About two weeks after that was done, the Commissioners replied to the effect, I believe, that they felt that while they were reluctant to change the existing rate of wages——

Mr. Kilmer: Is that in the correspondence?

His Lordship: If it is the subject of correspondence, it is far better to put it in.

Mr. Duncan: Then I would ask my learned friend to let me have the correspondence produced in the second affidavit of Mr. Ashworth. That correspondence covers the whole matter, and it can be put in by the defendants.

His Lordship: Is it in convenient form?

Mr. Duncan: Yes, my Lord. Perhaps Mr. Gunn could shortly state the effect of it.

His Lordship: Yes; without prejudice to the written documents.

Mr. Kilmer: I have the correspondence referred to here, my Lord.

Mr. Duncan: Q. Please relate what occurred, referring to the letters from time to time if you desire to do so?—A. Yes.

His Lordship: Are they polite letters?

Mr. Duncan: Yes, my Lord.

Witness: On December 14, 1922, I sent a letter to Mr. Ashworth requesting a new agreement and enclosing a copy of the proposed agreement.

On January 22, 1923, I received a letter from Mr. Ashworth, which reads as follows:—

"January 22, 1923.

"James T. Gunn, Esq.,
"Toronto.

"Dear Sir,

"Your request that a Committee of the men should be heard was "submitted to the Toronto Electric Commissioners at their meeting of "January 19th, and the Commissioners have instructed me to advise you "that they will receive the Committee on Friday morning, January 26th, "at 11 a.m.

"I am, dear sir,
"Yours faithfully,
"(Signed) E. M. Ashworth,
"Acting General Manager."

On March 6, 1923, I wrote to Mr. Ashworth as follows:—

"March 6, 1923.

"Mr. E. M. Ashworth,
"Toronto.

"Dear Mr. Ashworth,

"I am instructed on behalf of the membership of the Canadian Elec- "trical Trades Union employed by the Toronto Hydro Electric System to "request if your Commission will give us an answer as to their attitude

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

" towards the proposed agreement submitted some time ago to a meeting " of the Commission, and which was discussed there by the Commission " and the men's Committee.

" I am further instructed to ask that you kindly forward a reply to " this communication within the next seven days."

" I am,
" Yours faithfully,
" (Signed) JAMES T. GUNN,
" Secretary."

His Lordship: May I note that this correspondence is between Mr. Ashworth and yourself?—A. Principally, sir; I do not think there was any other correspondence.

On March 28, 1923, I received the following letter from Mr. Ashworth:—

" March 28, 1923.

" James T. Gunn, Esq.,
" 4, Alexander Street,
" Toronto.

" Dear Sir,

" Your letter of March 6th was submitted to the Toronto Electric " Commissioners at their meeting of March 16th. The Commissioners " have instructed me to advise you that after careful consideration they " have decided that existing conditions do not justify granting the in- " creased wages and other concessions set forth in the agreement submitted " by the men.

" The Commissioners have instructed me to point out that the existing " wages and conditions were established in the summer of the year 1920 " and were based on the cost of living at a time when the cost of living " was at its peak. It is indisputable that since that time there has been " a material decrease in the cost of living in the City of Toronto. The " Commissioners are, however, reluctant to disturb existing conditions by " putting into immediate effect the corresponding downward revision of " wages which must ultimately follow.

" As regards the conditions set forth in the agreement submitted by " the men, the Commissioners feel that the conditions under which the " men work at the present time, which have been in force for several years " should not be disturbed. The Commissioners and their officials are at " all times willing to consider and adjust legitimate grievances, and it is " their belief that the conditions which at present exist are as satisfactory " to their employees as could reasonably be expected.

" The Commissioners note the clause in the agreement submitted by " the men reading as follows:—

" ' Any employee of the Toronto and Niagara Power Company " ' receiving a lower wage than the rate for similar classes of labor on " ' the Hydro Electric System shall be paid the rate prevailing on the " ' Hydro Electric System, and where any employee of the Toronto " ' and Niagara Power Company receives a higher wage rate than the " ' rate prevailing for similar classes of labor on the Hydro Electric " ' System, he shall retain the higher wage rate during his employment

" ' on the Hydro Electric System. In all cases, the highest rate shall " ' be the rate paid for similar labor between these two Corporations.'

" In commenting upon the above the Commissioners wish to make it quite " clear that they are under no obligation to give employment to the ex- " employees of the Toronto and Niagara Power Company. It is the desire " of the Commissioners to avoid dispensing with their services where it is " feasible to give them employment with the Toronto Hydro Electric " System, and under such conditions, to pay them the System's established " rate for the class of work in which they are engaged ; but the efforts of " the Commissioners in this direction must not be construed as an acknow- " ledgment of an obligation either express or implied, since such obligation " does not exist.

" I am, dear Sir,
" Yours faithfully,
" (Signed) E. M. ASHWORTH.
" Acting General Manager."

His Lordship: That type of reply is not unusual.

Witness: On the 2nd April, 1923, I wrote to Mr. Ashworth as follows:—

" Mr. E. M. Ashworth,
" 229 Yonge Street,
" Toronto.

" Dear Mr. Ashworth,

" I am instructed on behalf of our membership to request if your " Commission can meet our Committee again in view of the decision made " by your Commission on our proposed agreement and contained in your " letter of recent date to me. If you can we will appreciate it very much.

" Trusting you can do so and anticipating an early reply,

" I remain,
" Yours faithfully,
" (Signed) JAMES T. GUNN,
" Secretary."

On April 3, 1923, Mr. Ashworth acknowledged my letter of April 2:—

" April 3, 1923.

" James T. Gunn, Esq.,
" 4 Alexander Street,
" Toronto.

" Dear Sir,

" Your letter of April 2nd has been received and will be submitted to " the Toronto Electric Commissioners at their next meeting.

" I am, dear Sir,
" Yours faithfully,
" (Signed) E. M. ASHWORTH,
" Acting General Manager."

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

On April 7, 1923, I received the following letter from Mr. Ashworth :—

" April 7, 1923.

" James T. Gunn, Esq.,
" Toronto.

" Dear Sir,

" Your letter of April 2nd was submitted to the Toronto Electric " Commissioners at their meeting of April 6th. The Commissioners have " instructed me to point out that while they are desirous that the men " should have every opportunity of expressing their views, the congestion " of business requiring the attention of the Commissioners at the present " time is such that it is difficult to arrange to meet the deputation at a " reasonably early date, and they would therefore be glad if you would be " kind enough to set forth in a letter the views which your deputation wish " to express.

" I am, dear Sir,
" Yours faithfully,
" (Signed) E. M. ASHWORTH,
" Acting General Manager."

On April 17, 1923, I wrote to Mr. Ashworth as follows :—

" 17th April, 1923.

" E. M. Ashworth, Esq.,
" Toronto.

" Dear Sir,

" Your letter of April 7th received respecting a meeting with the Toronto " Electric Commissioners and in answer I am instructed to say, that our " Committee would like to meet your Commissioners at an early date, in " order to place before them additional reasons in support of our proposed " agreement, which they feel would be of some weight with your Com- " mission.

" If you can let me have a reply by April 26th, so that I can place it " before our members stating when your Commission could meet our Com- " mittee for this purpose, I will appreciate it.

" I am,
" Yours faithfully,
" (Signed) JAMES T. GUNN,
" Secretary."

On April 18th, 1923, I received acknowledgment of my letter of April 17 : —

" April 18, 1923.

" James T. Gunn, Esq.,
" Toronto.

" Dear Sir,

" Your letter of April 17th has been received and will be submitted to " the Commissioners at their next meeting.

" I am, dear Sir,
" Yours faithfully,
" (Signed) E. M. ASHWORTH,
" Acting General Manager."

On April 23, 1923, I received the following letter from Mr. Ashworth :—

" James T. Gunn, Esq., " April 23rd, 1923.
" Toronto.

" Dear Sir,

" Your letter of April 17th was received and contents noted. As " I explained to you in my letter of April 7th, the congestion of business " requiring the attention of the Commissioners at the present time is such " that it is difficult to arrange to meet the deputation at an early date and " in view of the Commissioners having already had one conference with " your Committee in regard to this matter, they feel that it is not unreasonable to ask you to set forth in writing the additional reasons in support " of your proposed agreement, to which they will give careful consideration.

" I am, dear Sir,
" Yours faithfully,
" (Signed) E. M. ASHWORTH,
" Acting General Manager."

On May 1, 1923, I wrote to Mr. Ashworth, submitting additional reasons :—

" E. M. Ashworth, Esq., " May 1st, 1923.
" Toronto.

" Dear Mr. Ashworth,

" re Proposed Agreement.

" *In reference to your request that we detail specific reasons why we* " wish to open negotiations again, it is difficult to place them within the " compass of a letter, but we feel that there are several excellent reasons " for our request, among them being the fact that the cost of living is again " on the increase and not declining as intimated recently in a communication " from you to us.

" Secondly, that increases in wages are being given all around us.

" Thirdly, that the wage rate paid for the same classes of labor in " other cities vary from 25% to 50% higher than is paid by your Commission.

" Fourthly, as the equipment of your Commission expands the responsibilities of the individual workman increases.

" And fifthly, together with the expansion is a steady growth of added " life and accident hazard.

" These, in brief, are some of the reasons why we are desirous of meeting " your Commission, but there is also the reason that if your Commission " remains steadfast in its attitude, we desire to be in a position to say that " we endeavoured to secure a settlement of the dispute by negotiation " before resorting to the arbitration of a conciliation board, in the event of " our applying for one.

" Possibly this communication may enable the Commission to grasp " our viewpoint thoroughly and may result in a satisfactory settlement of " the matter.

" I am,
" Yours faithfully,
" (Signed) JAMES T. GUNN,
" Secretary."

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

His Lordship: You state that the hazard of life has increased?—A. Yes.

Q. Has that reference to wages or some new conditions?—A. That has reference to the technical nature of the industry itself.

Q. And that you ought to have high wages?—A. Yes; our belief is that we ought to have high wages.

Q. Is all this discussion a wage discussion?—A. Not altogether; there are conditions also, but so far as the hazard of life is concerned, the point is that our members, being engaged in an extra hazardous occupation, as defined by the insurance companies,——

Q. Should have better opportunity to pay premiums?—Yes, sir.

On May 7 there was a formal reply from Mr. Ashworth, stating that my letter of May 1 would be submitted to the Commissioners at their next meeting.

On May 12, 1923, I received the following letter from Mr. Ashworth:—

"May 12th, 1923.

"James T. Gunn, Esq.,
"Toronto.

"Dear Sir,

"Re your letter of May 1st.

"Your letter of May 1st was received and submitted to the Toronto "Electric Commissioners at their meeting of May 11th.

"According to the best information which the Commissioners can "obtain the cost of living is at present materially lower than in the summer "of 1920, at which time the existing wage schedule was adopted, and while "the Commissioners have carefully considered the points set forth in your "letter they are unable to see therein any valid argument for changing "their attitude as set forth in their letter of March 28th.

"I am, dear Sir,
"Yours faithfully,
"(Signed) E. M. Ashworth,
"Acting General Manager."

In April we made an application to the Provincial Department of Labour for the establishment of a council of conciliation under the Trades Disputes Act of Ontario. The reason for that was that when making application for a Board in 1921 in connection with the Toronto Hydro, the validity of the Dominion legislation had been disputed by the Toronto Hydro and the Minister of Labour had——

His Lordship: Q. In 1921?—A. Yes; it had been then disputed. As a matter of fact, it had been disputed in 1920, in correspondence with the Department.

Q. I heard that there were rumblings, but did not know it had been definitely disputed?—A. It was left in doubt, as it were. The whole thing, so far as they were concerned, as a public utility, was left in doubt, and our position was this, that if we could possibly avoid an open rupture, or secure the arbitrament of a strike by any form of conciliation, we were prepared to accept it.

Owing to this doubt that they had expressed in 1921, we asked the Provincial Department of Labour, through the Minister, Mr. W. R. Rollo, to establish a Council of Conciliation under the Trades Disputes Act, which is an Act on the Statute Book of Ontario that we believe to be cumbrous.

Mr. Rollo replied to the effect that he thought it was rather a matter for the Dominion.

His Lordship: Q. Is Mr. Rollo's letter here?—A. I believe it is.

Mr. Duncan: Q. Kindly read that letter?

Mr. Kilmer: I do not see how this can be evidence against the Plaintiffs in this action.

His Lordship: I do not know what the letter contains, but as a matter of history I will admit it.

Mr. Kilmer: Subject to objection, my Lord.

His Lordship: Yes.

Witness (reads):—

"Department of Labour.
"Minister's Office.
"Toronto, April 18th, 1923.

"Mr. Jas. T. Gunn,
"Secretary, Canadian Electrical Trades Union,
"4 Alexander Street,
"Toronto, Ontario.

"Dear Mr. Gunn,

"I have your letter of the 9th inst. *re* a dispute between the Toronto "Electrical Commissioners and the Canadian Electrical Trades Union, "and asking that a registrar be appointed under the Trades Disputes Act.

"Although this Act has been in existence for a number of years we have "never before had occasion to use it, and consequently have no machinery "immediately available. The matter is, however, receiving careful considera- "tion, although I am still not convinced that it is not a matter which "should be dealt with under the Dominion Industrial Disputes Act.

"Yours truly,
"(Signed) W. R. ROLLO,
"Minister of Labour."

His Lordship: Q. Nobody had ever taken advantage of the provincial law on the subject?—A. Once or twice in the early days, but the Dominion Industrial Disputes Act was much better machinery, we thought, to use.

Q. Mr. Rollo uses the expression: "although I am still not convinced that it is not a matter . . ."?—A. I think he meant that it was a matter, sir.

His Lordship: The provinces have not got the extensive and efficient machinery possessed by the Dominion.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

Mr. Duncan: Q. What followed?—A. Nothing followed. On May 18, 1923, I wrote to the Honourable W. R. Rollo as follows:—

"May 18th, 1923.

"Hon. W. R. Rollo,
"Minister of Labor,
"Queen's Park, Toronto.

"Dear Sir,

"I am directed on behalf of the Canadian Electrical Trades Union to "ask that a dispute at present existing between the Toronto Transportation "Commission and certain employees—members of the Canadian Electrical "Trades Union—will be referred to a joint council of conciliation applied "for on behalf of the members employed on the Hydro Electric System.

"Please confirm receipt of this and oblige.

"Yours faithfully,

"J.T.G./FD."

That was the last of the correspondence. After that the provincial elections came on, and no attention was paid to the matter.

Here are my letters of the 2nd and 9th April, 1923, giving the details of the dispute.

Mr. Kilmer: Are we going into the details of this dispute in this action?

His Lordship: These letters are admitted, subject to your objection, in furtherance of the Witness' statement that he applied to the Ontario Department of Labour.

Witness: On April 12, 1923, I received a letter from J. H. H. Ballantyne, Deputy Minister of Labour, acknowledging copy of file of correspondence in connection with the dispute with the Toronto Electric Commissioners.

On April 9, 1923, I wrote to the Honourable W. R. Rollo, Minister of Labour, Ontario:—

"9th April, 1923.

"Hon. W. D. Rollo,
"Minister of Labour,
"Queen's Park, Toronto.

"Dear Walter,

"As promised you I am submitting full details of the dispute between "the Toronto Electrical Commissioners and the Canadian Electrical Trades "Union.

"Early in the year a proposed agreement of wages and conditions— "a copy of which is enclosed—was submitted to the Toronto Hydro Electric "System with request that the Commissioners give our Committee an "interview at an early date, for the purpose of discussing and negotiating "the proposed agreement.

"On Jan. 22nd a reply was received that the Commissioners would "meet our Committee on Jan. 26th. That meeting took place and after "several hours' discussion between the men's Committee and the Commis- "sioners, the meeting adjourned with the understanding that the Commis-

" sioners would take the proposed agreement into consideration and submit " a reply stating their attitude at an early date. No reply having been " received up until March 6th, I was instructed to write and ask that the " Toronto Electric Commissioners give an answer as to their attitude and " that such answer be forwarded within seven days from that date.

" The answer of the Commissioners was received on March 28th and " the decision reached by the Commissioners was to the effect that existing " conditions did not justify granting the increased wages and other conces- " sions set forth in the agreement submitted by the men, and setting forth " other points affecting the situation, all of which is contained in the copy " enclosed of a letter from the Toronto Electric Commissioners to myself " dated March 28th.

" After receiving instructions at a meeting of the men, I wrote on " April 2nd asking the Commission to meet our Committee again in view " of their decision and a reply was received on April 3rd stating that the " request of the men would be submitted to the Commissioners at their " next meeting.

" According to the views expressed by the men at our last Local Union " Meeting, they do not anticipate that the Commissioners will alter their " decision and they carried, with one dissenting vote, a proposal to ask the " Ontario Government to establish a Council of Conciliation under the " Trades Disputes Act. The entire dispute is over wages and conditions, " and will affect from 250 to 350 employees directly and about 1500 to " 3500 employees of the Toronto Transportation Commission who would be " unable to work in case any serious tie-up occurred through a strike of " Toronto Hydro Electric System employees. In addition of course it is " almost needless for me to point out to you that such a strike would cause " a very bad industrial tie-up throughout the City of Toronto due to the " stoppage of Power distribution to industrial plants and factories.

" I do not anticipate such a strike, however, nor any serious trouble " if it can be avoided in any way, but the employees are of the belief that " the increasing dangers and hazards of the occupation entitle them to " better wages and conditions and for that reason are anxious that the " machinery of your Department, as expressed in the Trades Disputes Act " will be used to settle the dispute now in existence between the Toronto " Electric Commissioners and employees who are members of the Canadian " Electric Trades Union, Toronto Branch.

" I enclose for your information copies of the correspondence passing " between the parties, and I am instructed to ask you to let me have a reply " at an early date.

" Copies of this letter and correspondence are being sent to your Deputy " Minister, Mr. Ballantyne, for his information.

" I am,
" Yours faithfully,
" Secretary."

Mr. Duncan: Q. What occurred after that?—A. Of course, there was a lengthy discussion in the union every week at our meetings as to the progress of our dispute.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

His Lordship: Had you a regular day in each week to meet?—A. Yes; every Thursday.

Q. And you did meet?—A. Yes; every week; and it was my duty as business manager, to submit a detailed report every week to the meeting of my activities during the week, and what business had been done.

Q. What was the average attendance at these weekly meetings?—A. It varied. If there was a subject of interest, for a few weeks the average attendance would run from 70 to 100, and if things were slack, the attendance would run from 40 to 50, and if there was a subject of overwhelming importance, such as a wage dispute, or a dispute over conditions, we have had meetings of 250.

Q. This was a wage dispute, and you say the meetings varied from 70 to 40?—A. It would vary from 50 to 100, but if the subject was of overwhelming interest, such as fixing the details of a new agreement, or to hear the report of a wage dispute, then we would have an attendance from 250 to 300.

Mr. Duncan: Q. What meetings did you have at which this question was discussed?—A. This question came up nearly every meeting night, and we sometimes called special meetings to deal with the matter, as to what we should do. I am not sure of the date, but there was a meeting called after that letter of the 18th May—in the early part of June, I think—at which the whole question of the provincial Act was discussed, and most of us came to the conclusion that nothing was going to be done by the province, so far as the Trades Disputes Act was concerned.

His Lordship: That is enough about the province.

Mr. Duncan: Q. How many were at the meeting called to discuss this particular question?—A. I think there was a really good meeting that night, attended by 150 to 200.

Q. There was another meeting immediately prior to the application for a Board, was there not?—A. Yes.

Q. What was the attendance at that meeting?—A. I think the attendance at that meeting would be from 100 to 150.

Q. What was the decision arrived at at that meeting?—A. I did not catch your question.

Q. What was taken up at that meeting, and what was the decision arrived at?—A. I think the whole question taken up was that the best thing we could do was to apply to the Minister of Labour at Ottawa—to the Registrar, rather—for a Board of Conciliation under the Industrial Disputes Investigation Act.

Q. And it was in consequence of that meeting that you made the application which has been put in as Exhibit No. 7?—A. Yes.

Q. What occurred after the forwarding of the application on June 22?—A. Well, I think I received a letter from the Minister of Labour at Ottawa, enclosing a copy of a letter that he had received from the Toronto Electric Commissioners, or from Mr. Ashworth, in which they suggested that it would be better if the parties to the application would consider making application——

Mr. Dewart: Have you got that letter?

Witness: ——would consider making application to themselves direct,

and the Minister's letter to us was to the effect that under the circumstances he felt the request was reasonable, and that we should take the matter up with them direct.

His Lordship: Q. Mr. Murdock studiously avoided expressing any opinion about it?—A. (No answer.)

Mr. Duncan: My Lord, I find that the Registrar has inadvertently marked the copies of the letters that passed between the witness and the Honourable W. R. Rollo, Minister of Labour, "Exhibit No. 8." The originals of the copies of the letters attached to the application (Exhibit No. 7) should go in as Exhibit No. 8.

Mr. Kilmer: If the letters passing between the witness and Mr. Rollo are put in I object to their going in.

Exhibit No. 8:

(A) Letter dated December 14, 1922, from James T. Gunn to E. M. Ashworth.

(B) Copy of proposed agreement between Toronto Hydro Electric Commission and its employees being members of the Canadian Electrical Trades Union. (8 pages).

(C) Copy of letter dated January 22, 1923, from E. M. Ashworth to J. T. Gunn.

(D) Letter dated March 6, 1923, from James T. Gunn to E. M. Ashworth.

(E) Copy of letter dated March 7, 1923, from E. M. Ashworth to J. T. Gunn.

(F) Copy of letter dated March 28, 1923, from E. M. Ashworth to J. T. Gunn.

(G) Letter dated April 2, 1923, from J. T. Gunn to E. M. Ashworth.

(H) Copy of letter dated April 3, 1923, from E. M. Ashworth to J. T. Gunn.

(I) Copy of letter dated April 7, 1923, from E. M. Ashworth to J. T. Gunn.

(J) Letter dated 17th April, 1923, from J. T. Gunn to E. M. Ashworth.

(K) Copy of letter dated April 18, 1923, from E. M. Ashworth to J. T. Gunn.

(L) Copy of letter dated April 23, 1923, from E. M. Ashworth to J. T. Gunn.

(M) Letter dated May 1, 1923, from J. T. Gunn to E. M. Ashworth.

(N) Copy of letter dated May 7, 1923, from E. M. Ashworth to J. T. Gunn.

(O) Copy of letter dated May 12, 1923, from E. M. Ashworth to J. T. Gunn.

(P) Copy of letter dated July 16, 1923, from J. T. Gunn to the Hon. James Murdock, M.P., Minister of Labour, Ottawa, Ontario. (3 pages).

Exhibit No. 9:

(A) Copy of letter dated April 2, 1923, from J. T. Gunn to Hon. W. D. Rollo.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

(B) Copy of letter dated April 9, 1923, from J. T. Gunn to W. D. Rollo. (2 pages).

(C) Letter dated April 12, 1923, from J. H. H. Ballantyne, Deputy Minister of Labour, to J. T. Gunn.

(D) Letter dated April 18, 1923, from W. R. Rollo to J. T. Gunn.

(E) Letter dated May 18, 1923, J. T. Gunn to W. R. Rollo.

Mr. Duncan: Q. What is this letter I show you?—A. This is a letter dated July 6, 1923, from E. M. Ashworth, to the Honourable James Murdock. Portion of this letter was quoted in the Minister's letter to us of July 7: "... and I am instructed to suggest that if the parties making the application for a Board will communicate with the Commissioners direct, it may be possible to arrive at some form of arbitration mutually acceptable."

His Lordship: Q. Yes?—A. The gist of the Minister's reply was to the effect that the request was reasonable.

His Lordship: Is that letter there?

Mr. Kilmer: My Lord, this is correspondence passing between the Minister and Mr. Gunn, and I submit it is not evidence in this action.

His Lordship: How do you propose to put that in, Mr. Duncan?

Mr. Duncan: On the ground that the decision of the Minister was based on the information then put before him, and if the question of the constitutionality of the Act depends on a particular state of facts or an apprehended danger to the community, the mind of the Minister and that which influenced the Minister's mind should be placed before the court.

His Lordship: That is a good ground.

Mr. Kilmer: Q. What is the date of that letter?—A. The date of Mr. Ashworth's letter to the Minister of Labour is July 6, 1923.

Mr. Bayly: I do not want to take up very much time, my Lord, but how can the minister's mind in 1923 affect the validity of legislation passed in 1907?

His Lordship: Except that it is continuing, and if there was or might be a condition in 1907 which is continuous in 1923, it might be relevant evidence.

Mr. Bayly: The validity of an Act cannot depend upon something that happened after it was passed.

His Lordship: It is not exactly the validity, but a matter of fact as to whether it is valid because of some national or widespread trouble.

Mr. Bayly: I quite understand that, my Lord, but how can anything occurring in 1923 affect the validity of an Act passed prior to that time?

His Lordship: Not the "validity," but it will be argued that this is a question of the peace, order and good government of Canada, and that must depend upon the facts upon which the Conciliation Board was granted.

Mr. Bayly: No, my Lord. Governmental action could depend upon that, but not the Statute. I think I will save the time of the Court by having my objection noted.

His Lordship: Yes. It is a matter of opinion, but they are going to prove what they thought the facts were, and I think I had better admit

that evidence. The mere fact that the Minister thought it was a matter of national concern does not, in my opinion, affect the question from the legal standpoint, but it might affect it very strongly from the departmental standpoint.

Mr. Duncan: The most recent case decided by the Judicial Committee of the Privy Council, namely, *Fort Frances Pulp and Paper Company* vs. *Winnipeg Free Press*, lays down the proposition that some of these matters are matters of statesmanship, and should be decided as matters of statesmanship.

His Lordship: That case was decided under the War Measures Act.

Mr. Duncan: Yes; that it had not been repealed with the other war measures. The argument was made that the war had ceased.

Q. Proceed?—A. On July 7 the Honourable James Murdock wrote to me enclosing a copy of a communication which was being mailed to the Acting General Manager of the Toronto Electric Commissioners, and quoting Mr. Ashworth's suggestion that "if the parties making the application for a Board will communicate with the Commissioners direct, it may be possible to arrive at some form of arbitration mutually acceptable," and indicating that that was a reasonable request. Then on July 17, he wrote to ascertain if anything had been done in the matter.

Mr. Duncan: Q. What was done in that matter?—A. I think what was done is contained in Exhibit No. 8.

Q. Did you see Mr. Ashworth with respect to arbitration?—A. Yes.

Q. After June 22?—A. Yes.

Q. In pursuance of the suggestion of the Commissioners that they would like you to communicate with them direct, and in pursuance of the endorsation of the Minister of Labour of that course?—A. Yes.

Q. What happened at your meeting?—A. With Mr. Ashworth?

Q. Yes?—A. Mr. Ashworth suggested that we should form an outside Board of Arbitration.

Q. Yes?—A. On which we were to appoint one member, the Toronto Electric Commissioners another member, and the two together would select a chairman. Being arbitration, and not conciliation, the award would be binding.

Q. Yes?—A. Certain matters connected with the dispute would be discussed, but not arbitrated. He refused to agree to arbitrate certain matters that were in dispute, such as the relations between the foremen and the men. As a matter of discipline, he felt that that was not a thing that could be arbitrated, but could be discussed.

His Lordship: Q. Was he willing to discuss the wage question?—A. Yes; and some other of the conditions, so far as they concerned wages, overtime rates, hours of work, etc., but questions that he felt were matters of discipline, while they could be discussed before the Board, could not be arbitrated. The cost of such Board was to be borne by us both. That is to say, we would pay our own representative and they would pay theirs.

Mr. Duncan: Q. What would happen under the Industrial Disputes Investigation Act?—A. The cost of the Board is borne by the Government under a fixed schedule of fees.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 14. James T. Gunn. Examination —*continued.*

Q. But in this proposed arbitration, the cost was to be borne by whom ? —A. By the employers and the employees.

Q. Was anything said about the cost or probable cost ?—A. Yes, there was.

His Lordship: I suppose parliament felt that the giving of a very moderate rate of remuneration by the government was better than having the parties employ very expensive arbitrators.

Mr. Kilmer: They went a step farther, and provided that neither party should pay any more, and I understand the result of that legislation compels both sides to employ no one that knows anything about it.

Mr. Duncan: That is a little far-fetched.

Mr. Kilmer: That is the result.

His Lordship: Open-minded arbitrators are desirable.

Mr. Duncan: In the early days, my Lord, many of those who now occupy high positions on the Bench acted as arbitrators without fees.

His Lordship: What ?

Mr. Duncan: I understand that that is the fact, my Lord; they did so as a matter of public service.

Whereupon the court adjourned at 12.45 o'clock p.m. until 2.00 o'clock p.m.

Upon resuming at 2.00 o'clock p.m.

James T. Gunn resumed the stand.

By Mr. Duncan:

Q. I understand you wrote a letter to the Honourable Mr. Murdock, Minister of Labour, after the failure of the discussion on the question of arbitration, in which you set out Mr. Ashworth's reasons why that was not acceptable ?—A. Yes; I think if I were permitted to read the letter it would give Mr. Ashworth's reasons and our reasons for not accepting arbitration.

Q. Is this a copy of the letter, part of Exhibit No. 8 ?—A. Yes. It is dated July 16, 1923, and reads as follows:—

" Copy.
" Canadian Electrical Trades Union,
" Toronto Branch,
" Toronto.

" July 16th, 1923.

" Business Office,
" 4, Alexander Street,
" Telephone North 8792.

" Hon. James Murdock, M.P.,
" Minister of Labour,
" Ottawa, Ont.

" Dear Sir:—

" In accordance with the desire expressed in your recent letter that we " should take up with the Toronto Electric Commissioners the question of " submitting our dispute to a Board of Arbitration mutually acceptable, " I was instructed to interview Mr. E. M. Ashworth, Acting General

" Manager of the Toronto Hydro-Electric System and discuss the whole " question with him. That has been done and an agreement cannot be " reached, due to the fact that the proposals submitted by Mr. Ashworth " on behalf of the Commissioners are not acceptable to us. According to " the point of view expressed by Mr. Ashworth the Toronto Electric Com- " missioners whilst not being opposed to arbitration and conciliation as a " means of settling disputes between themselves and their employees, yet " feel that the machinery of the Industrial Disputes Act administered under " the Department of Labour, does not provide the most satisfactory method " of arbitration, the reasons being that :

" 1. A representative with sufficient technical and executive " ability to represent the Commissioners cannot be persuaded to " accept the position of representative on a Board of Arbitration and " Conciliation, because the remuneration provided by the Act does " not meet the loss in income suffered by such a representative due to " abstention from his own business.

" 2. That the representatives of employers and employees on a " Board of Conciliation under the Industrial Disputes Act knowing " that if they disagree about a Chairman such will be eventually " appointed by the Minister do not take the same interest in selecting " a chairman as they would if they were required to agree upon a " chairman before the Board could function, and the Commissioners " feel that the selection of a chairman is most vital to a Board of " Conciliation and is most satisfactorily done when employees' repre- " sentatives agree upon a third party.

" Mr. Ashworth proposed that a voluntary Board of Conciliation and " arbitration would be set up with our consent and that each party would " pay their own representatives' remuneration and expenses and share half " the cost of the chairman's remuneration and expenses. This they feel " would allow them to secure a representative who would act knowing that " his remuneration and expenses being paid by the Commission he " would receive a much higher per diem allowance than the Industrial " Disputes Act provides. In fact the figure talked of was $50.00 per day.

" In addition it was stated that the Commission did not desire to have " the question of foremen's relations with employees subjected to arbi- " tration and while admitting that it might be discussed ; that the Com- " missioners would refuse to accept any decision on this matter. I pointed " out that while the question of both representatives of a Board agreeing " upon the chairman and the remuneration of the Commissioners' repre- " sentative did not seem to me to be insoluble problems, but rather matters " for the Commissioners to discuss with the Department of Labour, yet I " felt that our members would not agree to a Board except under the " Department for reasons to which I shall refer later on.

" Whilst the question of the Commissioners paying the whole expenses " of a voluntary Board was discussed—although not offered on their behalf " —I pointed out that very grave objections to such procedure existed, " and on presenting the matter to a meeting of our members affected on " Thursday last, July 12th, I was instructed to notify you that the

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No. 14. James T. Gunn. Examination —*continued.*

" propositions submitted on behalf of the Commission were not acceptable " on the following grounds :—

" 1. That there is not the moral authority behind a voluntary " Board of Arbitration such as is proposed as compared to that of a " Board constituted under the Industrial Disputes Act.

" 2. That the machinery in existence under the Labour Depart- " ment facilitates and expedites adjustment of Industrial disputes " much better and quicker than any private Board of Conciliation " could do.

" 3. That payment of each party of their representatives' ex- " penses, etc., would throw a heavy financial burden upon the men " affected, because if the Commission sets a mark of $50 per day for " their representative it is hardly likely that the Chairman and " employees representative could be asked to take less.

" 4. Because payment of the whole expense by the Commissioners " would mean in effect the exercise by them of a dominating influence " upon the personnel of such a proposed Board, and if the matters " included in the application are not a proper subject of arbitration, " it seems to us a waste of time in agreeing to set up a voluntary " Board.

" I am, therefore, directed to ask you to proceed with the establish- " ment of a Board as applied for on 22nd ulto., that will sit as quickly as " possible, as we feel that whilst we would like to agree to any reasonable " propositions the Commissioners may make, yet the suggestions advanced " are so unacceptable to us that there is very little likelihood of the Com- " missioners and ourselves agreeing to a voluntary method of arbitration. " I trust, therefore, that the Department will establish the Board applied " for at a very early date, as the dispute is of long standing and dissatis- " faction and friction is continually accruing due to non-settlement.

" I am sending a copy of this letter to Mr. E. M. Ashworth, for his " information, so that if anything contained herein may have been given " by me inadvertently inaccurate, he will be able to check and correct it " with your Department.

" I am,
" Yours faithfully,
" (Signed) JAS. T. GUNN.
" Secretary."

As a matter of fact, I think I talked the contents of the letter over with Mr. Ashworth, and he agreed that in substance the contents were correct, as to what had transpired between ourselves at the interview.

Q. What happened after that ?—A. Just what is contained in the letter, that it was submitted to our members on July 12, and we were instructed to ask the Minister to go ahead as quickly as possible with the Board of Conciliation applied for on the 22nd June.

Q. What have you to say about that sentence reading : " I trust, " therefore, that the Department will establish the Board applied for at " a very early date, as the dispute is of long standing and dissatisfaction

" and friction is continually accruing due to non-settlement ? "—A. Just this : The feeling was continually growing with our members that they were being tricked, as it were, by the Commissioners. I am not saying that I believe that ; I do not think it is true ; but it was felt that the delay and the obstacles interposed by the Commissioners to an early settlement of the dispute by a Board was merely an excuse to delay the matter still further until a time advantageous to the Commissioners to make a settlement, and consequently a great deal of dissatisfaction was there. We had members there very strongly advocating that we " pull the job " as it were.

Q. What do you mean by " pull the job " ?—A. It is a Labour term for going on strike. We had members pressing for that, and I was rather of the view, as business manager—and the other officials were, too—that we should use all the efforts and all the machinery we could use to get an amicable settlement of the dispute, and at this date the only machinery that seemed to be suitable was the machinery of the Industrial Disputes Act.

There were very grave reasons against accepting a Board of Arbitration. One was that it would be binding, and the majority of labour opinion in Canada, and indeed almost anywhere, is against compulsory arbitration. It is not against compulsory investigation, but it is against compulsory arbitration, and if we accepted beforehand the proposition to be bound by the award of a Board of which we did not know the Chairman, I rather doubt if the officials who had taken that course upon their shoulders would have been supported by their members ; the members would probably have repudiated their action.

Q. What next happened ?—A. After that I think the Board was established.

Q. About what date ?—A. Some time after that ; I think it was some time in July.

Q. July 24 ?—A. Yes. I think that between that date and the 24th July I made a personal appeal to the Minister by telegram, to establish the Board, asking him to establish the Board as quickly as possible, as the members were pressing for strike action. I think there is a copy of that telegram amongst the correspondence.

His Lordship : The Witness' statement will be accepted, but not as evidence, that there was strike action.

Witness : It was not strike action, but it was felt——

His Lordship : Q. There was a likelihood of it occurring ?—A. Yes ; that there was a likelihood of strike action occurring, and I appealed to the Minister to establish the Board and avert a strike.

Mr. Duncan : Q. Was it your opinion——

His Lordship : I will not take opinions as to whether a strike was likely to occur or not. You must give facts.

Mr. Duncan : May I ask the Witness if he came to an opinion, without expressing it ?

His Lordship : No.

Mr. Duncan : Q. Will you give any facts within your knowledge which would indicate whether or not a strike might have taken place had the Board not been established ?

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No. 14, James T. Gunn. Examination, —*continued.*

Mr. Kilmer: I submit that is a rather leading question, my Lord.

His Lordship: During the luncheon hour I looked up some authorities, which I will mention now in case this point comes up again, because apparently the Defendants are going to proffer evidence as to the likelihood of a strike, and evidence of opinion as to the far extension of that strike, I presume, with the view of showing that this was a matter for the peace, order and good government of Canada. The authorities are:—

Taylor on Evidence (1920), p. 972, et sequentibus. Then an opinion of Lord Justice A. L. Smith in *Godd* vs. *The Mayor of Manchester* (Reports of Patent Cases, 530). *Campbell* vs. *Rickards* (1833), 5 Barnwell and Adolphus, 841.

My recollection is that Odgers on Evidence, Canadian edition, p. 196, et sequentibus, also deals with the matter. In the meantime, opinion evidence will not be admitted.

Mr. Duncan: Q. Have you any facts from which an opinion could be drawn as to the probability or otherwise of a strike following the failure to establish a Board?

Mr. Kilmer: I submit that is also objectionable.

His Lordship: "Have you any facts from which an opinion could be drawn. . . ."?—I think you must confine it to: "Are there any facts in connection with a threatened strike. . . ."?"

Mr. Duncan: The reason I put the question as I did, my Lord, was this, that if Mr. Gunn is not allowed to express to the court the opinion he formed on the facts, still I think the question should be put to him in such a way as to enable him to put the court in the position in which he was.

His Lordship: The Witness is a man of high intelligence.

Mr. Duncan: Q. What do you say about any facts within your knowledge?—A. Is the copy of the telegram sent by me to Mr. Murdock a fact?

Q. No. What did you see happening amongst the men, or what representations were made to you by the men, bearing in mind the friction, and so on?—A. It is a fact that the dissatisfaction was continually growing, that the feeling was growing more prevalent that the Commissioners intended to "stall" and delay matters, and that the officials were subjected to a growing amount of criticism because of their attitude against a strike.

Q. You were subjected to that criticism?—A. Oh, yes.

His Lordship: Q. The officials of Labour unions are always subjected to criticism. They cannot get on without it. It is part of their job, and they are kept up to their job in that way, are they not?—A. I do not know. I think sometimes well-founded criticism is a good thing, but ill-founded criticism may be a bad thing.

Mr. Duncan: Q. Was anything said to you about what would happen if the Board was refused?—A. Yes; a large number of men expressed their belief that we ought to go on strike without waiting for the Board any longer.

Q. Without waiting for the Board any longer?—A. Yes.

Mr. Kilmer: These statements were made to Mr. Gunn, my Lord?

His Lordship: Yes. I am not going to take a note of that statement.

Mr. Kilmer: I do not want to object all the time, my Lord.

Mr. Duncan: Q. Is there anything further you desire to say on that point?—A. No. I do not know whether it is within reason to give experiences of any other strikes where this point has come up.

His Lordship: It may be from your standpoint, but not from the standpoint of the Court. You are not a lawyer, so I will endeavour to make clear what I mean: The Court is the tribunal appointed by law to determine questions of this kind, and therefore any experience of yours or others in similar cases may not be given in order that the Court may not be swayed by the opinion of others, but may come to its own conclusion on the facts you have elicited?—A. It was not exactly "opinion" but the actual experience we have gone through, sir.

Q. That is experience in other cases. I must confine you to this case?—A. Yes, sir.

Mr. Duncan: May I suggest the analogy between the evidence of this Witness and that of a physician?

His Lordship: No.

Mr. Duncan: May I make my point clear, my Lord.

His Lordship: Before you do so, let me point out that a physician has knowledge of occult matters, due to long study, which the ordinary layman, including the judge, cannot be so well versed in, and therefore the opinion of a physician is taken in evidence, but this Witness can testify only to his experience of human psychology, of different temperaments of men and the amount of excitement or incitement or disorganisation that occurred in another strike. That is not relevant to this case.

Mr. Duncan: I take it that the basis of the rule for opinion evidence by medical men is, as your Lordship has said, that they possess occult knowledge and knowledge that the ordinary man in the street cannot possess, and it would take too long for a medical person to give to the court or jury, as the case may be, all the facts on which he bases his opinion. I submit that in the case of a person who is dealing with labour men who are members of the community, a person who looks at them in their collective way, the way they think and act, and who knows whether delay and friction causes them to become hasty, he can state what is the composition of this particular trade union, and can say how this instrument reacts—to use the illustration of the locomotive engineer and his engine. A Labour leader who has been for twenty years or more constantly in touch with all the movements in labour, and the feeling of the men from time to time, is, I submit, a man who is an expert in these matters, just as an engineer, a steel engraver, a locksmith—for in the recent celebrated Montreal case a gunsmith testified as to the rifling in a certain revolver—and the rule, I suggest, is pretty wide, and that once you can show a special field of training in a matter that the man in the street is not able to know anything about, you become an expert.

His Lordship: Not "the man in the street"; he is not the tribunal. The court is the tribunal on information furnished, but the admission of information furnished as to what took place in another set of men in another industry on another state of facts, would be very dangerous.

Mr. Duncan: As to the man in the street, I submit that the rule is the same both for the Court and the Jury, as to who is an expert, my Lord.

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His Lordship: The Court here is the jury; when I said "the Court," I included the jury.

Mr. Duncan: Is it not almost necessary, my Lord, if we are to have expert evidence at all, that the person who is to testify is a person whose knowledge is superior to that of the gentlemen of the jury, who are men of the street?

His Lordship: Not "superior" but that he has knowledge that the jury could not have.

Mr. Duncan: Yes, my Lord.

His Lordship: Do you call what took place in other cases "knowledge"?

Mr. Duncan: No; but as to how Labour does react to certain circumstances and situations generally, my Lord.

His Lordship: It depends upon the membership of the particular trade union, and you are aware that a very efficient and very eloquent and very powerful business manager can bring on a strike when another type of business manager could not do so. I am not going to distinguish between these two different classes. You appreciate that all I want to do is try the case properly, and it would be very wrong for me to admit evidence which the Court above would say was wrongfully admitted.

Mr. Duncan: Of course, in this particular case, having in view the Court above, if the evidence is at all doubtful, should not your Lordship admit it subject to objection?

His Lordship: I will not admit opinion evidence on the question of psychology.

Mr. Duncan: Can Mr. Gunn state what, to his knowledge, has happened in and among electrical workers in previous cases?

His Lordship: No; only in this case, and the circumstances surrounding it, and the facts which have arisen since the last dispute, namely, greater risk and increased cost of living. I will accept that evidence, but even that is questionable, because I assume that at the end of your examination it is your aim to show such a state of affairs, due to a strike which might occur, as would constitute a public emergency?

Mr. Duncan: Yes.

Mr. Dewart: Will your Lordship permit me to add an observation, because I would not like your Lordship to make a ruling now which might possibly, in certain circumstances, bring about a mis-trial. It is quite evident from what has transpired that the case is one of such importance that it will probably have to be decided, ultimately, by a higher Court, and having regard to that, I conceive it to be a matter of great importance that all evidence that may fairly be put in should at least be tendered and put in, even if your Lordship may ultimately rule it out, in order that it would be available for the consideration of a higher Court.

His Lordship: I had hoped that you could make a general tender of evidence of that kind.

Mr. Dewart: If the evidence were put forward in that way——

His Lordship: And reasonable time afforded me to enable me to stop it if necessary.

Mr. Dewart: I take it that the definition of an expert witness, as

contained in the judicial decisions, is one that is possessed of special knowledge and skill in respect to the subject upon which he is called to testify. Such special knowledge is required in matters of this kind. I submit that a witness such as Mr. Gunn has proved himself to be is amply qualified as an expert to testify in these matters.

His Lordship: I would not like to say it of this witness, but such a witness is apt to be partisan; he naturally takes the view of his class, as men will. How could you substitute that for the opinion of the Court?

Mr. Dewart: Your Lordship could say, "I cannot attach the same importance to Mr. Gunn's opinion as I would if he were not on one side," but even if he is on one side, I submit that his evidence must have some weight attached to it.

I would refer your Lordship to the case of *John Deere Plow* vs. *Wharton*, reported at [1915] Appeal Cases, p. 339. That was a question of the incorporation of Dominion companies. Lord Haldane here said:—

> "It must be borne in mind in construing the two sections that "matters which in a special aspect and for a particular purpose may "fall within one of them may in a different aspect and for a different "purpose fall within the other. In such cases the nature and scope "of the legislative attempt of the Dominion or the Province, as the "case may be, have to be examined with reference to the actual facts "if it is to be possible to determine under which set of powers it falls "in substance and in reality."

I take it that that relates not merely to the actual facts in connection with the particular inquiry as to which Mr. Gunn may testify, but also as to the actual facts relating, as Lord Haldane here puts it, to where "the "nature and scope of the legislative attempt . . . have to be "examined . . ." so as to determine where the right lies on one side or the other? How otherwise can that be determined except by the consideration of such cases as may shed light upon the whole legislative character of the enactment?

Your Lordship will see that this is an Act which in its very heading shows its character as dealing with certain conditions, and whether this falls within those conditions or not, surely, it is open to us upon this inquiry to show what the conditions are that have existed in other cases which this Act is intended to meet, in order to show whether it is within the legislative authority of the Dominion Parliament.

This Act is not merely, as it is ordinarily called "The Industrial Disputes Investigation Act." Its full title is:—

> "An Act to aid in the prevention and settlement of strikes and "lock-outs in mines and industries connected with public utilities."

If we have to consider whether an Act for the prevention and settlement of strikes and lock-outs is an Act within the Dominion jurisdiction, surely the conditions that have existed with reference to strikes must be passed in review, and if this Witness can state certain conditions existing here and there, and speak of his own first-hand knowledge of those conditions as existing in other cases, I would submit to your Lordship that that is very important evidence towards the question to be decided here.

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His Lordship: It depends on how widely you use the word "conditions." I will allow the Witness to relate facts to which he can swear, but I will not allow him to give his opinion as to what was the feeling of the men, or to judge the feeling of the men in the present case from threatened strikes which occurred before.

Mr. Dewart: Your Lordship might fairly ask that that evidence should be submitted to you so that you would determine as to whether those conditions justified Dominion Government in dealing with this matter as a matter of national importance; it cannot depend on this particular case as to whether this is a matter of national importance or not.

His Lordship: I think so.

Mr. Dewart: This case may come within the purview of the Act, but the real question is: Is this Act constitutional?

His Lordship: And the point raised is whether that question is to be determined by the opinion of the Judge formed on the evidence given rather than upon the opinion of men like this official, who, no doubt, have had great experience. I think the admission of his opinion would be quite unsafe, and that it would be a transgression of the rules of evidence to admit what took place in another case.

Mr. Dewart: How else can the nature and scope be shown?

His Lordship: In no way, except by testifying to the particular facts in the case before the Court.

Mr. Dewart: Would your Lordship say that only the facts in a particular case can come before the Court?

His Lordship: Yes. The question is, how can you properly get before the Court evidence to which the Act can be applied? I cannot allow this Witness, who is manifestly allied with one side, to give his opinion as to what might have taken place here or as to what took place in other strikes.

Mr. Dewart: Would not your Lordship think that such evidence would go to the very nature of the acts that this Statute is intended to meet and to cover?

His Lordship: I think it is very unlikely—so unlikely that I cannot admit it.

Mr. Dewart: I submit that it is only by an historical review of the conditions that existed, so far as industrial disputes are concerned, that your Lordship can form an opinion.

His Lordship: To admit a statement of public opinion among workingmen of a certain class at one time as showing what might happen at another time, would be improper.

Mr. Dewart: No; but as to what happens under certain conditions. This Act deals with a new subject. It deals with industrial disputes of a character that did not exist at the time of Confederation, when the British North America Act was passed, and surely we have to show that in Canada industrial conditions have arisen which make it important that legislation should keep pace with those industrial conditions.

His Lordship: I think the opinion of a Minister or Deputy Minister of the Crown could be given on that aspect of the matter.

Mr. Dewart: Should not your Lordship hear evidence about strikes that took place, and sympathetic strikes that followed, and other matters

of that kind, showing that this is not a matter of merely local character? It is not the application of the Act to this particular case, but the constitutionality of the Dominion Parliament to pass it that is raised in question here, and I submit that under those circumstances there is no other way in which evidence could be given to show what the conditions are. It is not merely a question as to what is the result here. The question is: Is this Act within the jurisdiction of the Dominion Parliament, and if so, is this a case that comes within that Act?

There are two issues, my Lord; not merely the local one with reference to this particular matter. I submit that this Witness is competent to speak as to industrial conditions and facts that have arisen in that connection before, without taking any opinion evidence from him.

His Lordship: I will hear evidence on the industrial conditions at this particular time and in this particular trade.

Mr. Dewart: Is it not a question as to what conditions the Dominion Government is confronted with, and has to meet? This Act is not to establish something or create a certain condition, but to prevent and settle strikes and lock-outs.

His Lordship: There is no question about it that your object, and that of Mr. Duncan, is to show that the Dominion has power under this Act by reason of a national emergency. Now, do you propose to show that because in the opinion of this Witness there might be a strike in the Electrical Workers' Union, that that would spread? Once I allowed that evidence in, I would have to decide the case on the opinion of these people, not on my own opinion. I would not think of forming an opinion without hearing evidence, but the evidence must be evidence of facts.

Mr. Dewart: Not necessarily, in a national emergency, my Lord.

His Lordship: I do not see how you can succeed otherwise.

Mr. Dewart: I do not think your Lordship should rule that it must be a question of national emergency. As it is put by Lord Watson in the Local Prohibition case (Vol. LX., Supreme Court of Canada, p. 469):—

"... in regard to legislation under the peace, order and good "government clause upon matters not enumerated in Sec. 91, must "be unquestionably of Canadian interest and importance ..."

or as it was put in the case of *John Deere Plow* vs. *Wharton* by Lord Haldane:—

"... a question of general interest throughout the Dominion."

How can that be shown except by showing the scope of the Act, and what the conditions were that existed before?

His Lordship: You can show by facts that a strike was threatened, but you cannot show that a strike was imminent by showing what occurred in another case.

Mr. Dewart: No; but you can show conditions of such importance as to be dealt with by the Dominion, and how else could the Act be passed except by showing the conditions?

His Lordship: That must depend on the Act itself.

Mr. Dewart: I press the point, my Lord. Perhaps your Lordship will allow the Witness to speak with reference to other strikes of which he has cognizance.

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His Lordship: No; because he cannot, in my opinion, connect them in any conceivable way with any other strike.

Mr. Dewart: He may show they are of national importance.

His Lordship: No.

Mr. Dewart: I press my argument, my Lord.

His Lordship: I thank you for your argument, Mr. Dewart.

Mr. Duncan: May I refer to the analogy mentioned before, my Lord, that if the question arose as to whether there would be erysipelas in a certain state of facts, would it not be important for medical testimony to say that when a person takes such and such a diet or has such and such a chemical compound administered, it would produce such and such a result in the body—(your Lordship appreciates that I am making the analogy between the human body and the body politic) and a certain condition does occur. Now, if Mr. Gunn can say that, as a matter of fact, where there is irritation and delay and inability to get a settlement, the feeling of the workers does grow to such a point that there may be an outbreak, and that it occurred in the past, may he not relate those facts of industrial history to the Courts?

His Lordship: Any judge knows that strikes are the outcome of irritation.

Mr. Duncan: Then I submit that the Court could receive evidence of that, my Lord.

His Lordship: The Court would be held to have substituted the opinion of others for its own opinion. The Court can be informed of the facts in a particular case.

Mr. Duncan: But not similar occurrences producing similar results?

His Lordship: No; not unless connected so that they could not be distinguished, and, of course, this Witness cannot do that.

Mr. Duncan: I think he can, in this particular case—a dispute between the predecessors of these Plaintiffs, the Toronto Hydro Electric Commission, and the very same employees?

His Lordship: I think that would be too vague, so I will adhere to what I said before.

Mr. Duncan: Q. What took place after the appointment of the Board? —A. After the Board was appointed?

Q. Yes?—A. We waited until the Board sat, until we received word from the Chairman of the Board that it was going to hold its meeting. A committee of the men, of which I was one, attended that meeting of the Board, at which the employer was represented by Mr. Ashworth, and, I think, also by Mr. Kilmer.

Q. I want you to get down to the point where the injunction was granted by the Honourable Mr. Justice Orde and what took place so far as the men were concerned after that?—A. After that, a specially called meeting was held on the Sunday before Labour Day, at which the whole question was threshed out.

Q. September 2?—A. Yes; and discussion took place as to what our attitude would be towards the dispute in view of the injunction granted by Mr. Justice Orde.

Q. Was that meeting well attended?—A. Yes; between 250 and 300 members.

Q. Was that meeting called specially to deal with this particular matter?—A. Yes.

Q. What transpired?—A. We discussed the whole situation there. The thing was, of course, a surprise to us, as members of the Union, that the injunction had been granted, and we resolved, as the result of the discussion, to take advantage of the offer that had been made by Mr. Kilmer on behalf of the Toronto Electric Commissioners before the injunction was applied for—that is, to arbitrate the question.

Q. What courses of action were open to the meeting?—A. I think we arrived at the conclusion that three courses were open: one was to take advantage of the offer made to arbitrate under a private arbitration board; another was to go to the Provincial Government and ask for a Royal Commission to investigate the dispute; the third was to strike.

Q. What was said about each of those three courses?—A. We felt that if we went to the Provincial Government to ask for a Royal Commission it would mean a further long delay, even if they consented to appoint a Royal Commission, and there was a great deal of doubt as to whether they would or not. At all events, even although they did, a long delay would take place, which would still leave the dispute in the realm of things unsettled, with considerably more friction. As a matter of fact, a large section of the meeting were at first in favour of a strike. They felt that Mr. Justice Orde's injunction had left them without any legal penalties.

Q. You mean Mr. Justice Orde's statement as to the constitutionality of the acts of the Board?—A. Yes; that it was impossible for them to be upheld by the law if they caused the community any vital tie-up, and the bulk of the men at the meeting were in favour of going on strike.

Q. What occurred?—A. It was the job of the officials to place before the men the advantages and disadvantages of the various proposals, and as the result of the discussion they resolved to accept private arbitration. We had had a strike some years prior to that, in which the City's transportation was tied up, and a good deal of public odium had been thrown upon the Union and upon the Union officials because of that strike.

Mr. Kilmer: Were these statements made at the meeting? I do not know what the Witness means, and I take objection to all that has been stated here as not being fact.

His Lordship: Nothing could be more favourable to your case than this evidence.

Witness: I am totally unable to give you the exact words of the members that took part in the discussion, but I am trying to give you the gist of what took place. The matter was discussed and the position of the men pointed out, pro and con, and the bulk of the opinion or belief of the men was that if we struck we would be placed in the same position as we were in 1919, that the Press would attack us for tying up the community's services, and that it would be an even worse tie-up than occurred in 1919, because in that case it was merely the street railway and the Toronto Electric Light, while in this case it would be the source of all electric supply coming into Toronto.

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As the result of that discussion, we agreed to accept the offer made by the Commission and by Mr. Kilmer before the injunction was applied for, which was to privately arbitrate as a means of getting the dispute immediately out of the way.

Mr. Duncan: Q. Then what occurred?—A. We did do that. I was instructed to see Mr. Ashworth. I did see him, and we discussed that, and I left with the impression and belief that that was going to be the case, Apparently I was wrong. Mr. Ashworth, I believe, was willing to discuss it, subject, of course, to the advice of counsel, and on the advice of counsel—we saw in the Press report—they decided not to arbitrate pending the settlement of this particular point, the constitutionality of the act. So that no arbitration took place, no private arbitration took place.

Q. Because the Plaintiffs refused to arbitrate as they had offered?—A. They had offered that before, but apparently the injunction and the legal aspect of the whole situation caused them to fear they might prejudice their case.

His Lordship: How can you get any farther on this branch of the case, that it was going to be a widespread, public danger?

Mr. Duncan: Q. What have you to say to that?

His Lordship: He has said it. He said they agreed that rather than offend public opinion at the time, they would not strike.

Mr. Duncan: I take it that that is what happened after the Board was applied for and constituted, and it does not interfere with what Mr. Gunn stated before.

His Lordship: The Board was constituted, and yet they thought it expedient—they may have been right or wrong—I think the right to strike is the greatest weapon that Labour possesses—in deciding not to offend public opinion by striking at the time. How can you get on any farther here in showing that this was a matter of national emergency?

Mr. Duncan: That was what took place after June 14. The critical date, perhaps, is the date of the establishment of the Board, and so far as the Minister was aware, and so far as the matter depends upon the action of the Minister, or on the facts placed before him, there was authority granted to declare a strike.

His Lordship: That was in August.

Mr. Duncan: Yes; and the Board was constituted on the 24th July, my Lord. I am giving to your Lordship what happened after that.

His Lordship: Immediately after they decided not to strike?

Mr. Duncan: Yes.

Q. Due to whose representations did you decide not to strike?—A. Due to general discussion amongst the members.

His Lordship: The Witness cannot tell us what was in the minds of others.

Witness: My mind was——

Mr. Kilmer: My Lord, the Witness persists in answering against your Lordship's ruling.

His Lordship: He is not versed in all these little refinements of your profession, so I will excuse him.

Mr. Kilmer: It is going down on the notes, my Lord.

His Lordship: He is a fair Witness.

Mr. Duncan: Q. Yes?—A. My own position was that we ought to use every effort to avoid a strike.

Q. What did you do? What influence did you exert at the meeting? —A. My position was that we ought to accept the offer to arbitrate.

Q. And why?—A. Because it prevented a strike, and would get the dispute settled.

Q. Did you speak to the men along that line?—A. Yes.

Q. How long did you address them?—A. For three hours.

His Lordship: Q. Surely you did not make a speech of three hours' duration?—A. It took me three hours to go over all the points in the dispute.

Mr. Duncan: Q. Then you were opposed to striking?—A. Yes; if it possibly could be avoided. Perhaps it may make my position clear, your Lordship——

His Lordship: I must ask you to answer the questions put to you by counsel.

Witness: Very well, sir.

Mr. Duncan: Q. What was your position?—A. That there were three alternatives, which we have mentioned, and that that was the best alternative.

His Lordship: Q. The best alternative was to arbitrate?—A. Yes, sir.

Mr. Dewart: Has the letter from Ashworth to the Minister of Labour been filed?

Mr. Duncan: Q. Is this letter which I now show you the letter to which you referred, dated July 6th, 1923, from E. M. Ashworth to the Honourable James Murdock, Minister of Labour?—A. Yes; this is the one in which the proposition is made on behalf of the Commissioners that "if the parties making the application for a Board will communicate with "the Commissioners direct, it may be possible to arrive at some form of "arbitration mutually acceptable."

Q. If the application for a Board had been refused by the Department of Labour, in what direction would you have used your influence with the men?

His Lordship: That is suppostitious.

Mr. Duncan: Your Lordship appeared to consider material the fact that there was no strike declared on the 2nd September. Mr. Gunn has made it clear, and I think the evidence of Mr. McCollum will make it still clearer, that it was largely due to the very strong stand taken by Mr. Gunn who, although there was a motion for a strike at first, explained to the men that, in his opinion they should not strike at this particular time while the matter was in litigation, that the strike was averted.

His Lordship: He says that was the best alternative.

Mr. Duncan: That was his influence, my Lord. If your Lordship is concerned with what would have occurred, and if your Lordship is going to come to a conclusion on that point, surely it is of equal importance that your Lordship should know what Mr. Gunn would have done to sway the men one way or the other?

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His Lordship: I do not know, and he does not know what he would have done. You may ask him what he did do—you have done so. How is it possible for a man to say what he would have done? The position of these business managers is very difficult. They have to deal with a number of dissatisfied men, with whom they have constant fights, and how does this witness know from one minute to another what position he is going to take in order to do his work well?

Mr. Duncan: If he actually came to the conclusion about the 22nd July that he would adopt a certain course in the different eventualities that might arise, I submit that his conclusion and his attitude would be material and can be placed before the Court?

His Lordship: I do not think so.

Mr. Duncan: That was a matter of fact, my Lord.

His Lordship: No doubt you remember the well-known verse about certain men who were inclined to strike, but who, upon coming up to sign, said: "I'll work for the missus and the kiddies—strike! I'm damned if I will!" That verse has gone down in the literature of the day. Men change their minds.

Mr. Duncan: Does your Lordship suggest that the decision on the 2nd September is irrelevant and unimportant with respect to any finding your Lordship may make?

His Lordship: It came out; there was no objection to it. You were giving facts there, and now you are giving something about what he would have done if something had occurred.

Mr. Duncan: May I ask the Witness what his decision was prior to the application for a Board, and prior to the granting of the Board?

His Lordship: I do not think so, unless it was communicated, and some action taken upon it.

Mr. Duncan: Q. Did you communicate any conclusion of yours as to what you would do?

His Lordship: That is very leading.

Mr. Duncan: Yes, my Lord.

His Lordship: However, I will allow you a little latitude.

Mr. Duncan: Q. Prior to the constitution of the Board, did you communicate to any person your decision as to the manner in which your influence would be exerted if the Board was not granted?

Mr. Kilmer: I object to that, my Lord.

His Lordship: It is subjunctive.

Mr. Duncan: Does your Lordship allow the question?

His Lordship: I disallow that question.

Mr. Duncan: Q. What are the affiliations of the Canadian Electrical Trades Union?—A. It is affiliated with the Canadian Federation of Labour.

Q. Have you anything to say about the electrical employees of the Toronto Transportation Commission, in this connection?—A. Simply to say that had there been a strike they would have struck too.

Mr. Kilmer: I object, my Lord.

Mr. Duncan: I did not know the Witness would make that answer, my Lord.

Witness: That is possibly the shortest and briefest way I could put it.

His Lordship: The point is, can I accept it?

Mr. Kilmer: I object to it, my Lord.

Mr. Duncan: Q. Relate the facts upon which you base that last answer?—A. Because the men employed by the Toronto Transportation Commission feel they are under the same employer as the Toronto Electric Commissioners.

His Lordship: The Witness is now speaking for a large body of men.

Mr. Duncan: Q. Give your reasons for that?—A. One reason is that there is an interchange of gangs between the two. The Hydro Electric employees work for the Toronto Transportation Commission, particularly the line gangs. Then our Committee interviewed Mr. Couzens, the Manager of the Toronto Transportation Commission, some time early in the year, about March, in order to get an agreement with the Toronto Transportation Commission which was identical with the proposed Toronto Electric Commissioners' Agreement, and at the same time to take up several grievances of men employed by the Toronto Transportation Commission.

Mr. Couzens stated then that it was the intention of the Toronto Transportation Commissioners to bring all the electrical employees of the Toronto Transportation Commission under the management of the Toronto Electric Commission, and that that would take place sometime during the next month, probably about September. Not very much reason was given for that, except that he thought it would prevent overlapping, and give better co-ordination, and so on. The Toronto Transportation Commission's operators, for example, received power from the Toronto Hydro Electric System. In any case, a strike of the Toronto Electric Commissioners' employees would affect the employees of the Toronto Transportation Commission.

Mr. Kilmer: I object.

His Lordship: I think that is right; it is so obvious. They get all their electricity from this Commission, and if a strike occurred and they pulled the plugs out, the others would be affected.

Mr. Kilmer: As far as the facts are concerned, it is not so, and I can so prove, my Lord. This Witness is merely drifting on in his opinion as to what might happen.

His Lordship: I permitted the Witness to go on.

Witness: I naturally know what men tell me, and the evidence of my own eyes.

His Lordship: It is a different case. So much depends upon what people tell other men.

Witness: I have the evidence of my own eyes, that I saw Toronto Electric Commissioners' employees working on the Toronto Transportation car-barns, doing trolley work.

His Lordship: Q. Were they on the pay-roll of the Toronto Transportation Commission?—A. No.

Q. And yet they were doing work for the Toronto Transportation Commission?—A. Yes. The fact is that Mr. Couzens did tell us that was the intention of the Toronto Transportation Commissioners, to transfer the electrical employees under the management of the Toronto Electric

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Commissioners some time within the next six months, and four or five members were present when that statement was made.

Mr. Duncan: Q. How has that any reference to the dispute?—A. The feeling in the minds of the men was that they were working for one employer in that two of the personnel of the Toronto Transportation Commission were also two of the personnel of the Toronto Electric Commission, Messrs. Ellis and Wright, and the men felt that they were actually working for one employer.

So far as the members who were employed by the Toronto Transportation Commission expressed any views, they were to the effect that they would strike along with the others, because in that case, if a strike did take place with the others, they would be practically unemployed anyway.

Q. Did you hear that expressed?—A. Oh, yes; that was expressed on the floor; that they would make one job of it if a strike was necessary.

Q. Where was that expressed?—A. On the floor of the meeting.

Q. With whom are other members of the Toronto branch of the Canadian Electrical Trades Union employed in and about the City?—A. We have members on the Ontario Hydro Electric System.

Q. Which division?—A. We have members on the Radial Division of the Ontario Hydro Electric System.

Q. On the Radial cars?—A. Yes.

Q. Where else?—A. We have members employed in the stations of the Hydro Electric System.

Q. Yes?—A. We have members employed as linemen on the Ontario Hydro Electric System.

Q. Yes?—A. We have members employed on the Toronto Suburban Railway from Toronto to Guelph, and so on.

His Lordship: Q. If the members of your Union went on strike are there others in those different concerns you have mentioned that could carry on, even under handicaps?—A. Not if the electrical workers went out. The management would be in this position, that they would have to do the best they could with what clerical or engineering staff they had, or import strike-breakers, electrical workers who would act as strike-breakers, to break the strike.

Mr. Kilmer: I submit that is a matter of opinion, too, as to what they would do, my Lord.

Witness: I am saying that if all the electrical workers went out that is what would have to be done. I do not see any other way that it could be done. They would either have to carry on the service as best they could with the clerical and engineering employees, or import other electrical workers, if all the electrical workers went out on strike. I do not see any other way out of it.

Mr. Duncan: Q. Have you any members at Niagara Falls, Ontario?—A. Yes; some.

Q. Employed in what plant?—A. I think they are employed with the Ontario Hydro Electric System at Queenston.

Q. Does that System export any electric power to the United States?—A. I believe it does; it exports it to Syracuse, Rochester and Oswego.

Q. Is there any dissatisfaction over there?—A. Yes; there has been

dissatisfaction over there for eight or nine months. A reduction in wages was made over there that dissatisfied the men, and I do not think it was remedied. I think ten cents per hour was taken from them, and that caused dissatisfaction, not only amongst the members of our Union but amongst the members of other Unions as well, according to statements made by officers of other Unions to myself personally.

Q. Are those workers under contract to work for any certain length of time?—A. Only so much per hour.

Q. They are not tied up for a period of so many years?—A. Not that I know of.

Q. So, so far as you can say, looking at the matter from the point of view of an officer of the Union, there would be no contract which would prevent agitation being made to bring those men out on strike?—A. No; I have never heard of any.

Q. Are there any other dissatisfactions among the members of your Union that you are aware of?—A. There are; but I suppose that dissatisfaction is a normal condition amongst members of unions.

His Lordship: Of what use is a Union unless there is dissatisfaction?—A. There is dissatisfaction amongst the members in the local branches.

Mr. Duncan: Q. Where?—A. There is considerable dissatisfaction among the members of the Central Ontario System of the Hydro Electric. The members there claim that privileges they had were taken away from them and have not been restored.

Q. Anywhere else?—A. Yes; there is dissatisfaction amongst the members at Hamilton.

Q. Anywhere else?—A. Yes; dissatisfaction amongst the members at Ottawa.

Q. Anywhere else?—A. There was dissatisfaction at Edmonton until the City of Edmonton made an agreement with the members at Edmonton.

Q. When was that?—A. I think it was made sometime in the summer, about May or June. The City of Edmonton made an agreement, with the Mayor and City Clerk acting as the representatives of the City, with the branch members in the City of Edmonton. I think they took care of the dissatisfaction in Edmonton.

Q. Has any special pressure been brought to bear upon you or other members of your Union to take drastic action?—A. You mean by our members?

Q. By people such as the "Worker"?—A. We have members who are members of revolutionary organizations, and they take the position that our policy is a milk-sop one that gets us nowhere.

His Lordship: Did you refer to the "Worker"?

Mr. Duncan: Yes, my Lord.

Q. The "Worker" is "sicking" you on?—A. It was seeking to "sick" us on. It expressed its opinion, editorially, that the Lemieux Act was not any good, and that the only thing that would be of any use would be the pressure of strike force.

His Lordship: There is no question that the strike is the most effective weapon possessed by Labour.

Mr. Duncan: Yes, my Lord.

Q. Yes?—A. It was the editorial view, I believe, that methods of conciliation, negotiation and arbitration, were all poppycock; that was the gist of it.

His Lordship: Q. But despite all that, you did not strike?—A. If I may do so, I want to clear away the doubt I see in your Lordship's mind. You referred to the Sunday meeting at which we decided not to strike. Had there been no alternative of private arbitration, I would not say there would not have been a strike declared on that Sunday. Private arbitration was the alternative out of a strike, but had there been only the alternative of either striking or getting a Royal Commission, I am inclined to the belief that the Exhibition Week would have seen a strike in progress, because they thought that was the most advantageous time for them to strike.

His Lordship: I will take a note of that.

Mr. Duncan: Q. Upon what basis is Labour organised in Canada—a provincial or national basis?—A. It is organised mainly, so far as numerical strength is concerned, on an international basis; that is, branches of unions whose headquarters are generally in the United States; numerically, they constitute the biggest number.

Then there is a national movement known as the Canadian Federation of Labour, composed of organisations who believe they ought to be organised upon a national basis.

Then there are a number of independent unions, some of them on a national scale, extending from coast to coast, such as the one-railway organisation is, and a number of independent local unions who have no influence outside the locality.

Then there are unions organised mainly in the Province of Quebec on a religious basis; I think they are almost wholly in the Province of Quebec.

Then there is another movement based upon class unionism in the West claimed 70,000 members in 1919. The last report I saw was in 1922, when they had 5,000 members. That is class unionism—the "One Big Union."

Q. Had a strike taken place, what would have been the effect upon industry in the City of Toronto?

His Lordship: You are proffering Mr. Gunn as a witness in connection with one class of Labour?

Mr. Duncan: Yes; I am speaking of had a strike taken place and the supply of electric power had been cut off, what would have occurred to the Transportation Commission and the street lighting.

His Lordship: The cars would have ceased to move and the lights would have gone out. I will accept that.

Mr. Duncan: Q. What would have happened?

His Lordship: I will accept that. If you are going to force me to rule on that evidence, I will have to rule it out, but I will take judicial notice of the fact that if there had been no supply of electricity the street cars would have stopped and the lights would have gone out, and those who live in Toronto would have been in an unfortunate position.

Mr. Duncan: I suppose your Lordship will take judicial cognizance of the fact that practically the whole of the manufactures of the City of Toronto depend upon electric power supplied by these Plaintiffs.

His Lordship: I have heard so, and I suppose it is so.

By Mr. Dewart:

Q. I think you said, Mr. Gunn, that you were the business manager of the Toronto branch of the Canadian Electrical Trades Union, and also a member of the Dominion Executive of that body—is that right?—A. Yes, sir.

Q. What is the relationship between the branches such as you spoke of in Ontario, Saskatchewan and Alberta, to the general executive of your organisation?—A. The relationship is that the local branches are affiliated together through the Dominion body, and the Dominion body acts for them all in its national convention each year in matters of policy, and lays down laws and amends the Constitution, and lays down principles that they think the local bodies ought to adopt, and they act as a clearing house for protests and grievances, and they encourage the local bodies to take up organisation work and, when they can, perform organisation work for the local branches

Q. So far as industrial disputes, strikes and lock-outs are concerned, what power has the general body, so far as the local branches are concerned?—A. The general body leaves to the local branch the responsibility of determining whether it shall go on strike or not. The local branch may make application to the general body for assistance, for funds, and if, after the circumstances have been explained, the executive body of the Dominion—the Dominion Executive—feel that the strike was justified, it may make an assessment on the entire membership in aid of the strike.

Q. What powers, so far as a strike is concerned, other than a local strike, would the general body have?—A. I do not quite understand.

Q. What power, so far as any strike except a local strike is concerned would the executive of the general body have?—A. (No answer.)

Q. Supposing there were a local strike here?—A. Yes.

Q. What power outside of that would the general body's executive have?—A. It could ask the other branches to support the strike, and if it felt that the strike ought to be won by the local body, it would appeal to the members, or call a special convention to decide whether we should not take strike action in other centres as well as in Toronto.

Q. You mean a sympathetic strike?—A. Yes.

Q. That is a result that you might anticipate from the very character of the organisation?—A. Yes; if they felt that the strike was being lost.

His Lordship: Q. Is it usual to speak of a "sympathetic" strike when they are all in the same body?—A. I mean sympathetic in the sense that they are not affected by the dispute or the original cause of the strike, but they realise that their craft and class interests are menaced.

Mr. Dewart: Q. So that a local matter might develop into a Dominion strike?—A. Yes; it is quite possible under our Constitution for a local body to precipitate a Dominion strike, subject, of course, to a review of the cause of dispute.

His Lordship: Q. You leave it to the option of the local branches?—A. Yes.

Mr. Dewart: Q. Have you any international affiliations, or is there any way in which the international Labour movement touches your organisation here?—A. We have no international affiliations, strictly so-called, except in the sense that we endeavour to be friendly with them.

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Q. Yes?—A. And we accept cards of membership in any international organisation, whether in Australia or elsewhere.

Q. But your money does not go to the United States?—A. No; except to the Central Headquarters.

Q. Please do not answer this question until his Lordship rules upon it: Have you any instances of sympathetic strikes, where difficulties that arose in one country affected another?

His Lordship: I will not admit that.

Mr. Dewart: Q. Have you knowledge of other strikes that have occurred in Canada, and of the conditions that have existed there in previous years?— A. Yes; I have knowledge of other strikes.

Mr. Dewart: Your Lordship rules the evidence out?

His Lordship: Oh, yes; it comes under the general ruling.

Cross-examination.

Cross-examination by Mr. Kilmer.

Q. What is your occupation?—A. At the present time?

Q. Yes?—A. I am editing the "Canadian Trade Unionist," the Canadian Federation of Labour paper.

Q. How long have you been editing that paper?—A. Since December, 1921; but I have not made it my source of livelihood or my vocation until the last thirty days.

Q. Before 1921 what were you employed at?—A. From September, 1920, I was business manager of the Canadian Electrical Trades Union, and from sometime in the early part of 1919 I was business manager of Local No. 353, International Brotherhood of Electrical Workers.

Q. How long were you in those occupations?—A. All the time during the dates I have given you.

Q. I did not get the date that you started to act as secretary of the International Brotherhood?—A. It was in the early part of 1919 that I became business manager of Local Union No. 353 of the International Brotherhood of Electrical Workers, and continued in that capacity as a paid official until September 23, 1920, and from that date until about a month ago I was business manager of the Toronto branch of the Canadian Electrical Trades Union.

Q. And prior to 1919 what was your occupation?—A. I worked as an electrician in various plants in the City of Toronto.

Q. For how long?—A. From 1910 to 1919.

Q. Did you work for the Toronto Hydro—these Plaintiffs?—A. No.

Q. Where did you work?—A. I worked for the William Davies Company and the Harris Abattoir and Lever Brothers, and the Toronto Electric Company—not the Toronto Electric Light—a private contracting concern.

Q. And all that time you were working on electrical work of some kind?—A. Yes.

Q. What was the work you did, chiefly, linemen's work—wiring?—A. No.

Q. What did you work at?—A. Chiefly maintenance work, repairing work, wiring and operating.

Q. What do you mean by "operating"?—A. Operating a sub-station.

Q. Where did you operate a sub-station ?—A. I operated a sub-station for Lever Brothers, who had a rotary converter that was fed by the Toronto Hydro Electric System.

Q. For how long ?—A. The period at Lever Brothers was divided into two parts, first helping to build an electrolytic plant for the production of hydrogen and oxygen gas, for eight or nine months, and for the other eight or nine months, I worked, operating the plant.

Q. That has been your general occupation : Lineman, repairing man, wireman and operating this sub-station for a period of nine months ?—A. Yes.

Q. And from 1919 onward you have been acting as business manager ?—A. Yes.

Q. And as secretary of different Labour organisations ?—A. Yes. Prior to 1910 I worked in the Old Country.

His Lordship : Q. In what cities ?—A. Glasgow and Ayr, and other cities.

Mr. Kilmer : Q. Did you come to Canada in 1910 ?—A. No, in the summer of 1909, and I went to work down in Galt, but not at my trade.

Q. You came to Canada in 1909, and from 1910 onwards you were engaged in the occupations you have related ?—A. Yes.

Q. With regard to the Canadian Electrical Trades Union, you say it is a Dominion organisation ?—A. Yes ; it claims Dominion jurisdiction.

Q. That is, it has branches in two or three of the provinces of Canada ?—A. Yes.

Q. Where is the main number of members situated ?—A. In Ontario.

Q. How many members has the organisation altogether in Canada ?—A. I told His Lordship this morning that I could not tell you the number of members.

Q. Give me the number in round figures ?—A. Mr. McCollum is better able to tell you that.

Q. You can give me the number in round figures ?—A. I was not at the last convention.

Q. Are there 10,000 ?—A. No.

Q. 1,000 ?—A. Yes ; over 1,000.

Q. 1,200 ?—A. I should say so.

Q. Any more ?—A. I think there are more than that.

Q. How many more ?—A. I cannot tell you, because I was not at the last convention.

Q. Are there 1,500 ?—A. Yes ; I should say there were.

Q. Between 1,500 and 2,000 ?—A. Yes ; possibly that number. There are not over 2,000 ; I know that.

Q. There are over 1,500 ?—A. I think so.

Q. And of those, how many have you in Toronto ?—A. Offhand I should say between 600 and 700 ; I do not know how many would be actually in Toronto now.

Q. Between 600 and 700 in Toronto ?—A. Yes ; of all classes, not only those employed by the Toronto Electric Commissioners.

Q. And of those you have between 300 and 400 in the employ of the Plaintiffs ?—A. Yes ; about that number.

Q. How many have you at Niagara Falls ?—A. I could not say.

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Q. You have a separate branch there ?—A. Yes.

Q. Have you any idea of the number at Niagara Falls ?—A. No ; it is not my job to go into that sort of thing ; the secretary-treasurer keeps tab on that.

Q. You do not know the number ?—A. No.

Q. And yet you were the business manager ?—A. Not at Niagara Falls only business manager of the Toronto branch.

Q. Take Trenton, for example. How many have you in Trenton ?—A. I think altogether on that system possibly about 175 to 200.

Q. That is on the Central Ontario System ?—A. Yes ; from Oshawa to Kingston.

Q. All supplied from the Trent River ?—A. Yes.

Q. That, you know, is a work under the provincial government ?—A. Yes ; it is under the Ontario Hydro Electric System.

Q. Managed by them ?—A. Yes.

Q. But owned by the provincial government ?—A. I believe it is; we have always had to deal, so far as our conditions are concerned, with the Provincial Hydro.

Q. You could not tell me how many men you have in Trenton ?—A. Not in the City of Trenton proper, but I know they were fairly well organised on that System.

Q. And they are all now affiliated with Toronto ?—A. Yes.

Q. Coming now to the meeting of your local union that was held just prior to the application for the establishment of a Board of Conciliation some time in June last ?—A. Yes ?

Q. There were between 100 and 150 members in attendance at that meeting ?—A. Yes ; there was a good meeting ; I remember we had to bring in chairs.

Q. What resolution was passed at that meeting with regard to this matter ?—A. The resolution was that we were to apply for a Board of Conciliation, and the necessary order to apply was given.

Q. Is that in a written resolution ?—A. Possibly ; it is probable that the secretary would take it down. No one would hand it in as a written resolution. It would be moved as a verbal resolution from the floor.

Q. But your recollection is that that was the resolution that was moved ?—A. Yes.

Q. Was there any other resolution passed at that meeting with regard to this matter ?—A. I do not remember particularly, although it is possible there may have been resolutions passed.

Q. In the declaration to which you subscribed and swore, or declared to be true, accompanying the Application for a Board of Conciliation, you stated that to the best of your knowledge and belief, failing an adjustment of the dispute herein referred to, or a reference thereof by the Minister of Labour to a Board of Conciliation and Investigation under the Industrial Disputes Act, 1907, a strike will be declared, and the necessary authority to declare such strike has been obtained ; was that obtained ?—A. That is the authority I told you a moment ago was granted.

Q. What is that ?—A. The authority to strike.

Q. You told me a moment ago that the resolution that was passed was a resolution to apply for a Board?—A. And the necessary authority, too, I told you that; that is the authority.

Q. There was an authority obtained at that meeting to strike if you did not obtain a Board?—A. Yes; that is required by the Act.

Q. I am asking you about that meeting. Was there an authority obtained by you from that meeting to strike?—A. So far as the members were concerned—not by me, but so far as the members were concerned.

Q. You mean a resolution to that effect?—A. Yes. I can put it plainer this way.

Q. I want to ask you my way. There was a resolution passed at that meeting to apply for a Board?—A. Will you allow me——

Q. I am asking you now if there was a resolution passed, with the other resolution or otherwise, to strike, as stated in this Declaration?—A. Yes. I told you there was a resolution passed with the necessary authority. May I ask the reporter to look that up?

His Lordship: Q. No; but you mean the necessary authority to strike?—A. Yes; to strike; that goes with the application, any application that is made.

Mr. Kilmer: Q. Never mind any application. Was the resolution passed at that meeting?—A. The necessary authority to apply for a Board of Conciliation, with the necessary authority to strike if the Board was not granted.

Q. And that resolution was taken down in the Minutes?—A. Yes.

Q. And if we get those Minutes from Mr. McCollum, the secretary, we will find the resolution to strike if the Board was not granted?—A. I may say that we are very reluctant to produce our Minutes. Your Lordship can understand the point of view of a Labour Union.

Q. I do not want a speech from you about the reluctance of Labour Unions?—A. You can understand our reluctance to produce our Minutes, because of the fact that we feel the employer thus sees business which we believe should be private.

His Lordship: Just as they might be reluctant to produce their books?—A. Absolutely, sir.

Q. Of course, when they get into ligitation they have to produce their books?—A. That is our point.

Mr. Kilmer: Q. You say now, finally, that there was in that resolution, as part of the resolution, authority to strike?—A. Yes; the necessary authority.

Q. You had an authorisation, so you say, in the statement. In your Application you say that the meeting was held on the 14th June?—A. Yes.

Q. And you were also authorised by a written authorisation of 70 per cent. of the members affected, which was enclosed with the Application?—A. Yes.

Q. You did not enclose that with the Application?—A. Yes; I enclosed the signatures of the men who authorised us to apply for a Board. We went around on the job and collected them, and over 70 per cent. of the staff signed their signatures, and they were enclosed to the Department of Labour.

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Q. Not with the original Application?—A. Not with the original Application; it was sent off later.

Q. The written authorisation of 70 per cent. of your members, you stated, was enclosed with your Application?—A. Yes.

Q. But you did not enclose it with the Application?—A. No.

Q. You sent it on some time subsequently?—A. Yes.

Q. I am asking if the written authorisation which you did send on the 27th June was signed by any of the parties after the meeting and before you swore to it on the 27th June?—A. Yes; I think there were a few days on which we collected the signatures. Understand me, that from the date of the meeting to the date on which the Application was sent, four or five days had elapsed. The Application was not sent off on the night of the meeting, and I think we collected the signatures of the men during the interval, and through my mistake in not enclosing the form of signatures, it was not sent to the Department, but I discovered that omission and sent it off with an explanatory letter some days later.

Q. Was that authorisation signed by any members subsequent to the time that you sent this Application to the Department?—Q. Yes; I think it was.

Q. Were the most of the signatures to the Application signed after the meeting on the 24th June?

Mr. Duncan: The meeting was held on the 14th June.

Witness: Yes.

Mr. Kilmer: Yes.

His Lordship: Where is the document that was signed by 70 per cent. of the members and forwarded to the Department of Labour?

Mr. Kilmer: 70 per cent. of the members of the Local Union, my Lord

His Lordship: Where is that document?

Mr. Dewart: My Lord, I think in the interests of public policy a document of that kind should not be produced.

His Lordship: It was signed by the very people concerned.

Mr. Dewart: Why should the men who signed a document of that kind be placed in a position to be persecuted by their masters?

His Lordship: Oh, no.

Mr. Dewart: I submit it is unfair, my Lord.

His Lordship: I agree that communications with the Government should be confidential, but the people who signed that document had no hesitation about doing so, and it was forwarded to the Government.

Mr. Kilmer: The Plaintiffs here are executing a public trust, and they are a governing body.

His Lordship: Do you say that 70 per cent. does not amount to much?

Mr. Kilmer: I say I do not think the list of signatures contains 70 per cent. of the membership. I would like to see what that 70 per cent. does mean.

His Lordship: Where are their productions?

Mr. Kilmer: The list in question was not in the productions, my Lord. The defendants here are the Board, and the Minister of Labour produces just what he desires to produce.

His Lordship: They are really not parties to the action?

Mr. Kilmer: No; so that if he wants to aid in this investigation, he will produce the documents that are considered necessary.

Mr. Dewart: That is an unnecessary reference. The Minister has to be satisfied with conditions before he grants a Board, and this is a confidential document in that sense. My learned friend's last remark is not justified. If your Lordship desires to see the document in question, I will produce it.

His Lordship: I have not the slightest interest in it.

Mr. Kilmer: I think your Lordship asked that it be produced.

His Lordship: Because I thought it was proper that it should be produced, but privilege is claimed, which is quite right. Governmental business could not be carried on without confidential communications.

Mr. Kilmer: If the Minister of Labour does not choose to produce the document, we cannot press it.

His Lordship: We do not know whether the Minister of Labour chooses to produce it or not, but his Counsel does not choose to produce it.

Mr. Kilmer: Q. I think you said, Mr. Gunn, that at the meeting at which this Board was asked for, in the early part of June, June 14, there were about 100 to 150 members present?—A. Yes.

Q. I am going to call your attention to a letter which you wrote to the Registrar of the Boards of Conciliation, who is practically the Deputy Minister of Labour, at Ottawa, in which you stated that you had inadvertently omitted to forward the signed authorisation of the members, you stated that the number of signatures attached was about 290, and that there were a number of signatures yet to be obtained which should bring up the total number of employees affected to over 380.

Mr. Duncan: 90 per cent of the employees affected.

Witness: I did not get your figures.

Mr. Kilmer: The figures I stated were 290 and 380. You sent 290 signatures?—A. Yes.

Q. And you said "and there are a number of signatures yet to be obtained which should bring the total up to 380"—did you get the subsequent signatures, or did you send them on at all?—A. I do not remember that we sent them on or not; but at all events we felt that 290 signatures was sufficient to show that we had authorisation.

Q. You do not know that you sent any further signatures on?—A. I am not quite sure; we may have done so; it may have been a matter of putting them in an envelope and sending them on; I do not remember that point.

Q. I want to call your attention to the first meeting of the Board of Investigation, about the 7th August, at which I was present on behalf of the Plaintiffs in this action, and at which you were present on behalf of the men?—A. Yes.

Q. You stated that I made an offer on behalf of the Toronto Electric Commissioners there to arbitrate?—A. We took it as that.

Q. Do you remember my making any such offer?—A. I remember you repeating that the Commissioners still had the offer open to arbitrate, and if that is not making an offer, I do not know what is.

Q. I propose to contradict you directly on this point. Do you remember who it was that suggested the arbitration there? Do you remember that

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No. 14. James T. Gunn. Cross-examination —*continued.*

it was the Chairman of the Board ?—A. The Chairman of the Board had been talking it over, but what we were directly interested in was your statement (that had been linked up with the previous offer made by the Commissioners) that the Commissioners had made an offer to arbitrate.

Q. Do you swear that I said the offer was still open ?—A. Yes; that is my distinct impression.

Q. The Chairman made a suggestion to arbitrate, and I said, speaking for myself personally, that an offer of arbitration had been made, and then you immediately stated your views as to why you refused to accept arbitration. Do you swear in the face of that statement that I there made an offer, or that the former offer was repeated ?—A. That is my impression.

Q. You swear to it now ?—A. Yes; that is my impression.

Q. Do you recollect ?—A. I recollect the Chairman of the Board talking about the question of arbitration in order to avoid the trouble in connection with the Conciliation Board altogether, in view of the dispute about it, and asking why we could not settle it, and you said that the offer of arbitration, mutually acceptable, between the men and the employer was made by the Commission, and that that was still open.

Q. You remember my adding the words "still open ?"—A. Yes, that is my impression.

Q. That is your recollection ?—A. Yes.

Q. It is clear enough when you swear to it, now ?—A. I am swearing to it to the best of my belief.

Mr. Bayly: I do not propose to ask the witness any questions, my Lord, although I have the same status as my learned friend, Mr. Dewart.

Mr. Dewart: I understood your Lordship's ruling to be that what happened in 1913 and 1914, so far as strikes in the electrical industry here were concerned, was equally evidence that your Lordship would not accept?

His Lordship: Yes.

Mr. Dewart: I wanted it understood that I had referred to it specifically, if this witness could speak about those matters.

His Lordship: Very well.——Witness withdrew.

No. 15. Hon. James Murdock. Examination

No. 15.

Evidence of Hon. James Murdock.

The Honourable James Murdock, Sworn.

Examined by Mr. Duncan:

Q. Are you the Minister of Labour in the Dominion Government ?—A. I am.

Q. When did you take office as such ?—A. December 29, 1921.

Q. Are you the Minister of the Crown who administers the Industrial Disputes Investigation Act ?—A. I am.

Q. And as such are you familiar with the operations of the Act since you took office ?—A. Yes.

Q. Are you a member of the Brotherhood of Railway Trainmen ? A. Yes.

Q. How long have you been a member of that organisation ?—A. About 31 years.

Q. Have you held any office in that organisation ?—A. Yes ; I was an officer of that organisation for a number of years.

Q. What office did you hold ?—A. I was Vice-president.

Q. Vice-president of the International Brotherhood of Railway Trainmen ?—A. Yes.

Q. Which Vice-president ?—A. There were no distinctions between the Vice-presidents, but I happened to be the only Canadian Vice-president.

Q. What is the membership of that organisation ?—A. About 175,000.

Q. And about how many of that number are in Canada ? A. Between 14,000 and 15,000.

Q. Prior to becoming Minister of the Crown, had you anything to do with the Industrial Disputes Investigation Act, and if so, please state it ? A. Yes ; I was more or less familiar with the legislation ever since its inception. As an officer of a responsible international organisation, I was concerned right from the inception of the Act in seeing that the reasonable and consistent interests of Labour, as represented by the organisation I was working for, were safeguarded.

At first, when the Act was promoted, the organisation to which I belonged, with a number of other equally responsible organisations, took marked exception to the provisions of the Act.

They thought that the Act unduly curtailed the liberties, under certain contingencies, of these organisations, and very many meetings of protest were held. Representations were made to the legislators at Ottawa to the Ministers of the Crown, and so forth, on several occasions, covering a period of a number of years, and in most of such meetings I participated to a greater or less extent.

I also handled, on behalf of the organisation by which I was employed, a number of cases before Boards of Investigation, presenting the claims of the men.

Also, on one occasion I sat as a member of a Board of Investigation, representing the workmen, and in every way, and so far as the duties of my position led me to do so, I undertook to safeguard what appeared to be the rights of the workmen under the legislation to which you have referred.

His Lordship : I understand you to say that at first this Act was not accepted, but that you worked to get it understood and accepted by your people ?—A. Yes. In the first place we took marked exception to the provisions of the Act in its entirety. I think we indicated that we would have none of it, that it curtailed unduly the liberties and rights of Labour.

Q. Your opinion has changed in that regard ?—A. In a marked degree, and that prior to the time I became Minister of Labour.

Mr. Duncan : Q. Is there any particular fact to which you attribute your change of opinion, ? Has it anything to do with public opinion, or anything like that ?—A. Yes. Labour generally, I think, has recognised in the years that have passed, particularly the last ten

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No. 15. Hon. James Murdock. Examination —*continued.*

to twelve years, to a greater extent than ever before, its responsibilities to the public, and that it had no right to expect the right and opportunity to pick its own time to bring on a strike, as Labour had contended beforehand, and as it does in some cases even yet, and with that thought uppermost in the minds of, generally speaking, reputable labour, the provisions of the Act, as they proposed to delay hasty action which might be detrimental to the public interest, were regarded as a consistent check on Labour, and also desirable in the interests of securing, possibly later, by conciliation and straight talks across the board, a settlement that would be equitable to the workmen as well as to the employers, and also to the public.

His Lordship: Q. In other words, the Act, in your opinion, operated favourably?—A. Very much so, in the great majority of cases.

Mr. Duncan: Q. What is the power or sanction behind the Act, so far Labour is concerned?

His Lordship: What is your question?

Mr. Duncan: What is the power which enforced the findings of the Board?

Mr. Kilmer: I think my learned friend should refer to the Act itself.

Mr. Duncan: Q. Has it anything to do with public opinion?

Mr. Kilmer: The sanction of the Act is what is imposed by the Act itself.

His Lordship: The Minister has expressed his views in very definite terms, that Labour's opinion has changed, and that he himself was not of the same opinion as he is now. The Minister has given this Act a very good testimonial. What more do you desire?

Mr. Duncan: Q. You were speaking of responsible Labour organisations, of one of which you are a member. By way of illustrating that, could you mention to His Lordship the amount of funds controlled by the International Brotherhood of Railway Trainmen?—A. More than $8,000,000.

His Lordship: It is interesting to know that, but I do not know that it has anything to do with this case.

Mr. Duncan: Q. Yes, my Lord.

His Lordship: In other words, Labour found they got something out of this Act from time to time as years passed.

Mr. Duncan: Q. What did Labour get out of the Act, particularly?

Mr. Kilmer: Again I take objection, my Lord——

His Lordship: I am afraid it was my question.

Mr. Kilmer: No, my Lord. It may be beneficently intended legislation, but we are not concerned with that.

Mr. Bayly: I have not objected, my Lord, but I would ask what is the relevance of all this evidence? I am prepared to stay here for a week and listen to eloquent witnesses, but what is the relevance of their evidence, supposing the Act is the best Act in the world?

His Lordship: The witness is the present representative of good government.

Mr. Bayly: What has this evidence to do with the Act? I have heard two witnesses now. Three quarters of the evidence of the first witness was absolutely irrelevant, and all of the evidence given by this witness thus far is irrelevant, so far as I can see. It is quite common;—not in your Lordship's case, but in many cases—to find that what we started to prove has been lost

sight of. The Act, so far as we are concerned, is a magnificent Act, and magnificently administered, but what has that to do with this action? I object to the irrelevance of the evidence.

His Lordship: In other words, if your medicine must be administered, you would like it to be administered in an attractive way?

Mr. Duncan: Q. Was an application made to your Department for the appointment of a Board of Conciliation?—A. Yes.

Q. Did you read the affidavit of Messrs. Gunn and McCollum on the Application?—A. I did.

Q. Saying that the authority had been granted?—A. Saying that the necessary authority had been secured to authorise a strike, which strike would likely be declared unless a Board was conceded.

Q. In consequence of the Application for a Board, did you have any correspondence with the plaintiffs?—A. Yes. There was correspondence between the plaintiffs and the Department, and also correspondence between the plaintiffs and myself.

Q. I show you a file of correspondence produced by the plaintiffs. Will you please look through that file and say whether that is part of the correspondence to which you refer?—A. These are various telegrams and letters that passed between either myself or another officer of the Department and the Commission's representatives.

His Lordship: It is not disputed that there was complete good faith in all this correspondence, and that the regular steps were taken.

Mr Kilmer: I am not disputing the regular steps, my Lord.

His Lordship: I do not think His Majesty's Privy Councillors will desire to read this voluminous correspondence.

Mr. Duncan: If my learned friend says there was entire good faith——

Mr. Kilmer: I said I was not disputing the regularity of the proceedings. If the Act is valid, the order establishing the Board is good.

His Lordship: Yes.

Mr. Duncan: If my learned friend does not admit the bona fides here——

Mr. Kilmer: I did not raise the question. I do not see why my learned friend should insist upon a certificate from me.

Mr. Duncan: I think his Lordship raised the question.

His Lordship: I suggested that there was no bad faith, and Mr. Kilmer agreed with my suggestion.

Mr. Dewart: It may be important to have this evidence for reference, my Lord.

His Lordship: You are aware of the impatience with which judges read evidence that is absolutely irrelevant. The suggestion that has been made disposes of any idea of impropriety or lack of good faith.

Mr. Duncan: There are certain facts set out in the letters which may be important, my Lord.

His Lordship: It is unnecessary to put all these letters in unless they indicate something. It can be taken for granted that the Government wrote proper letters, and that there was nothing wrong about them.

Mr. Duncan: There are some of these letters that are important, my Lord.

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His Lordship: You are saying that in a general way, but you do not point out the important ones. Read the letters overnight, and select the important ones.

Mr. Duncan: If I may do that and put them in in the morning, that will be satisfactory my Lord.

Q. What was the date of the Application for the Board?—A. June 22.

Q. When was the Board constituted?—A. July 24.

Q. What occurred between those two dates?—A. In connection with this dispute?

Q. Yes?—A. There was the passage of numerous telegrams and letters between the Department or myself and the representatives of the Hydro Commission or of the employees' organisation for the purpose of ascertaining if points of difference could be clarified to the extent of conducting an arbitration, or reaching a settlement on some other basis.

That was found to be impossible, as the result of the telegrams and letters that passed, and so it appeared essential that the Department would forthwith on July 24 proceed to establish the Board.

Q. You say it seemed to the Department essential that that should be done? Did anything else take place which had any bearing on that decision?—A. Yes; there had been in Canada during the present year (1923) two or three occurrences that had a material bearing on my mind in determining what we must, as a Department, ultimately do unless the parties came together and agreed on some basis of settlement.

His Lordship: That is, other instances of strikes and commotions in other parts of the country? Is there any evidence here to show that this Board would not have been granted in any event? A perfectly bona fide representation was made to the Government that there would be a strike unless a Board was appointed, but surely the Board would have been granted apart from what you desire to bring out? It is my duty to reject anything that is not evidence. The Minister will not say that he would not have granted this Board but for these other occurrences? I suppose you intend to refer to strikes in Nova Scotia?'

Mr. Duncan: Precisely, my Lord.

His Lordship: I conceive it to be my duty to reject that.

Mr. Duncan: Your Lordship has said we are not to state what a person would have done in an event that did not occur.

His Lordship: Yes.

Mr. Duncan: Surely we are entitled to put in evidence of what was present in the mind of the Minister at the time he gave his decision?

His Lordship: I do not think what was in the Minister's mind has anything to do with this case.

Witness: If I may be permitted, I might clear up——

His Lordship: No.

Mr. Duncan: If the decision of the Privy Council in the case of Fort Frances Pulp & Paper vs. Winnipeg Free Press has any bearing at all, it is a question of statesmanship at the particular time the decision was made, and the Court, I submit, is entitled to have those facts put before the Board? In order that your Lordship may appreciate the force of what I desire to

put before you, may I indicate what that evidence will be before it is submitted.

His Lordship: I will assume that the highest statesmanship was exercised in granting this Board.

Mr. Duncan: And that after the application for the Board has been received, a strike occurred among people not covered by the Board, the coal workers of Nova Scotia, and that that strike spread by sympathetic action to various coal mines in Nova Scotia, and from there, also by sympathetic action, to Drumheller, Alberta.

His Lordship: There can be no evidence to show that Drumheller has anything to do with Nova Scotia. You desire to put in evidence that there was a national emergency, but I cannot allow you to do so under the guise of that statement. This Board would have been granted in any event.

Mr. Duncan: That cannot be said, my Lord.

His Lordship: It cannot be said that it would not have been granted.

Witness: I beg your Lordship's pardon?

His Lordship: Q. Do you mean to say you would not have granted a regular application like this in a community of 500,000 unless you had other cases before your mind?—A. I mean to say that had I followed precedent and practice, and the tacit understanding of the Department, I would not have granted this Board over the protest over the Hydro Commissioners.

Q. Because they were a public body?—A. And it was only on account of certain other developments in Canada during the present year that I finally decided we would grant this Board and would find out where the Department of Labour in the Federal Government stood, and I would be glad to state what those circumstances were that caused this definite declaration of intention to grant this Board and find out where the Federal Labour Department stood.

Mr. Duncan: If your Lordship will permit me to put before you one aspect of the evidence which I think is of greatest importance, namely, that after these sympathetic strikes occurred in Nova Scotia and Drumheller the connection between the two places was conclusively demonstrated?

His Lordship: The Drumheller mines are coal mines?

Mr. Duncan: Yes, my Lord, and I wish to show that the trouble spread from the steel workers in Nova Scotia to the coal miners in Alberta. Troops were requisitioned by the local authorities in Nova Scotia.

His Lordship: I hope they were paid for?

Mr. Duncan: Your Lordship knows they are never paid for. Troops were requisitioned by the local municipal authorities in Nova Scotia, and immediately the troops began to be moved, the Dominion Government was bombarded by telegrams from all over the country protesting against the movement of troops, my Lord. All the Federal Government troops were in Nova Scotia at one time, and that was the critical time, when the Exhibition was about to be opened, and an application was before the Minister in this particular matter.

His Lordship: The Board applied for was granted. I realise it is your desire to put in evidence of disturbances in other parts of the country

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in order to create the atmosphere that it was a national emergency, but is that evidence admissible in view of the fact that the application for a Board was granted ?

Mr. Duncan : The application was granted on the 24th July, and I desire to ask the Minister what occurred in various parts of the country leading up to the 24th of July, from the point of view of a statesman who had to take the national aspect into consideration ?

His Lordship : It may be so. If this Minister knew of other facts which might prove to be a source of danger and to create a snowball accumulation of trouble, perhaps his evidence in that regard should be admitted, if this Act is effective as applying to the whole Dominion.

Mr. Bayly : In the case of Fort Frances Pulp & Paper vs. Winnipeg Free Press it was held that the Dominion Parliament, not the Dominion Government, had power under an implied provision of the British North America Act to enact legislation affecting property and civil rights which, had there not been an emergency, they would not have had the right to enact. They went on to say that even although the war had ceased, the Act might continue in force for some time, and the Government might under that Act be justified in certain actions.

In this case, the Act was passed in 1907, and the latest amendment thereto was made in 1920. How can anything that the Government or the Honourable Minister of Labour thought in 1923, no matter how just or right, affect the validity of an Act of Parliament passed in 1907 ?

His Lordship : That is very clear, but the point is : If at any time it appears that it is a matter of national importance that the Dominion Government should exercise its powers under its Statutes for the general good of Canada, for the peace, order and good government of Canada, is not that all that is necessary ?

Mr. Bayly : No, my Lord ; for this reason, that it is Parliament, not the Government, that had the power. That Act is either valid or invalid. It cannot be valid at the time of national emergency, invalid at another time, valid at another time, and invalid at another time. The whole power of Parliament, if they are depending upon the Fort Frances case depends on there having been an emergency that justified not governmental action but legislation by Parliament.

His Lordship : Do you suggest that nothing of an extraordinary nature could be done by Parliament except during the war ?

Mr. Bayly : No, my Lord ; but what is done by Parliament is either valid or invalid. For instance, an Act passed in 1907 to anticipate the war and lying dormant, could not, under the Fort Frances decision suddenly become valid because the Government thought a national emergency had arisen,

His Lordship : I do not see why not. The war was over when the Fort Frances trouble arose.

Mr. Bayly : And all they held was that governmental action under a valid Act in an emergency was good.

His Lordship : Why was it valid ?

Mr. Bayly : I submit that it is not the Government's power but Parliament's power. The British North America Act does not deal with government

His Lordship: The government carries out what Parliament enacts.

Mr. Bayly: If the Act is valid, they have the right to act, and if the Act is invalid they have no right to act, and the fact that the Government, bona fide, think that a national emergency has arisen cannot give effect to an Act that is invalid.

Mr. Dewart: The Fort Frances case is not on all fours with this case. This is not being urged as a case of national emergency, but a matter of general Canadian interest and importance. It is not a sudden emergency such as war. In the Fort Frances case, their Lordships found themselves unable to say that the Dominion Government had no good reason for their action under the War Measures Act, but this is a case in which there is an Act that has never been declared invalid. The Minister of Labour found himself face to face with a certain set of conditions in a specified industry, and surely he has the right to speak as to that condition that moved him, and the reason he thought that this Act should be applied?

His Lordship: What do you say about Mr. Bayly's argument that if the Act was invalid when passed it cannot be made valid later on?

Mr. Dewart: The validity of the Act must depend on its application to the conditions that exist, and if the conditions existing at that time were such as to justify the operation of the Act, then the Minister is the one to say: "I find these conditions, and therefore think this Act should be invoked so far as these parties are concerned."

His Lordship: I am inclined to agree with that statement. It is important, in view of the decisions of the Privy Council, that evidence be given as to whether or not it was a matter of national concern affecting the peace, order and good government of Canada. How can that evidence be obtained except by the word of the responsible Minister who is possessed of that information?

Mr. Kilmer: I submit that the judgment of the responsible Minister must not be substituted for the judgment of the court.

His Lordship: Oh, no. The court cannot know except through the Government.

Mr. Kilmer: Of the exceptional circumstances?

His Lordship: Yes. The Government have knowledge of the conditions in Canada from the Atlantic to the Pacific.

Mr. Kilmer: If the court is entitled to receive that evidence, it is entitled to receive evidence about the condition of the country from anybody who will give it. Perhaps the Minister of Labour is better informed about the conditions than are other people, but he is only speaking from general knowledge.

Mr. Dewart: Oh, no.

His Lordship: The Privy Council came to the conclusion that the Scott Act was a matter of national importance?

Mr. Kilmer: Yes, my Lord.

His Lordship: Why?

Mr. Kilmer: I do not know, my Lord.

His Lordship: Did they come to that conclusion *ex mero motu*, or did they have evidence before them?

Mr. Kilmer: Apparently they had no evidence in the matter, my Lord.

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His Lordship: I do not want to reject any evidence that should be admitted.

Mr. Kilmer: What I do not want to be put down on the record is information that the Minister had that frightened him.

His Lordship: "Frightened him"? He knew the difficulties.

Mr. Kilmer: I think anybody can realise the difficulties, my Lord. After all, the Minister is only a man, and is not different from any other man.

His Lordship: He is the Minister of Labour.

Mr. Kilmer: What might frighten the Minister of Labour might not frighten the Court.

His Lordship: The question is whether or not the Defendants have the right to show that there were disturbances in Canada at that time? How can they prove that, except by this Minister?

Mr. Kilmer: So long as it is confined to the evidence of disturbance, and does not include his opinion, I do not object.

Mr. Bayly: I submit that the distinction made between the Government and Parliament ought to be considered, my Lord. If this Act is valid, the Minister has power to act perpetually, and if it is invalid, no possible emergency can make a government act valid.

His Lordship: What is your view of the case of *Fort Frances Pulp & Paper* vs. *Winnipeg Free Press*?

Mr. Bayly: In the Fort Frances case, it was held that the War Measures Act became valid only because of a great emergency.

His Lordship: It gave Ottawa the power to interfere in provincial matters.

Mr. Bayly: It gave Parliament, not the Government, power, my Lord.

His Lordship: Why should not I accept evidence of a national disturbance which would justify this Act being enforced.

Mr. Bayly: If it was proposed by the Dominion to pass an Act now or an Act was passed at the time the emergency arose and was attacked, I would say evidence of conditions at the time the Act was passed when the emergency arose would be perfectly good, but not an Act passed in 1907, which is either valid or invalid. The difference between the Government and Parliament is so great that Parliament can legislate and the Government cannot. The Government can pass Orders-in-Council.

His Lordship: The Statute is the instrument the Government employs from time to time, and if the Government can show that there were considerations of national disturbance and danger, then under the decisions Parliament can override the rights of the provinces.

Mr. Bayly: Parliament can, but Parliament cannot pass an Act in 1907, hold it in abeyance for years without an emergency, and then suddenly find that the Government is justified in using an otherwise invalid Act, because in the genuine opinion of the Minister—who is well-advised—there was an emergency.

His Lordship: There was no "emergency" in the case of the Scott Act.

Mr. Bayly: In the first place, your Lordship knows the Scott Act has been referred to in public by members of the Privy Council as a decision

that is out of step, and Mr. Benjamin afterwards made a valuable admission to the other side that practically cut the heart out of the Dominion contention.

His Lordship: Mr. Benjamin was counsel, and had no right to make any admission.

Mr. Bayly: The case of *Russell* vs. *The Queen* is admitted to be out of step with the other decisions.

His Lordship: It has been referred to as valid in other decisions. I think the Defendants here ought to be allowed to set up that there was a national emergency, a national crisis or disturbance.

Mr. Bayly: In 1907?

His Lordship: No; in 1923. The best evidence obtainable in that regard is the evidence of a Minister, because he has knowledge that comes from all quarters. I think I will allow that evidence to be given to-morrow morning.

(Whereupon the Court adjourned at 4.30 o'clock p.m. until 10.30 o'clock a.m. on Tuesday, November 20, A.D. 1923.)

(Upon resuming on Tuesday, November 20, A.D. 1923, at 10.30 o'clock a.m.)

Honourable James Murdock resumed the stand.

His Lordship: Yesterday's proceedings concluded with a discussion on the question of the interrogation of the Minister of Labour about other conditions in Canada, and I now rule that the Minister of Labour may testify to other conditions in Canada, in order to keep within the expression used in the case of *Attorney-General of Ontario* vs. *Attorney-General of Canada*, 1896 Appeal Cases, p. 348, which is: "unquestionably of national interest and importance," and also the expression used by Lord Haldane in the *Fort Francis Pulp & Paper* vs. *Winnipeg Free Press*, of "exceptional necessity."

Mr. Duncan: Q. Will you relate to the Court the matters present in your mind at the time the decision was made to establish a Board?

His Lordship: I think I ruled yesterday that what was in the Minister's mind was not admissible. My recent ruling was that the Minister of Labour, in view of the fact that he is probably possessed of full information about the industrial affairs in Canada, may state what the condition was in Canada at the time his decision was made. What was in his mind is not material here.

Mr. Duncan: Q. State what the conditions in Canada were at the time your decision was made?—A. This application for a Board on behalf of the electrical workers in the City of Toronto was made on the 22nd June. At that particular time there was a very tense situation existent in other parts of Canada, so much so that on the 20th June I sent a very long telegram to the Prime Minister of one of the Provinces, indicating that a serious situation, in the view of the Department, was likely to occur, and a situation which it appeared the Federal Department of Labour was not going to be able to materially assist in straightening out, for the reason that the workers in this particular case declined to give any recognition to the provisions of the Act.

The later developments were that on the 28th day of June, a few days after this application on behalf of the electrical workers in Toronto had been received, some 1,700 employees in an admittedly private industry

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No. 15. Hon. James Murdock. Examination —*continued.*

over which the Industrial Disputes Investigation Act has never been held to apply, went out on strike, causing a very serious situation, and a situation which the Department had anticipated in the telegram of the 20th June to the Prime Minister of one of the provinces.

The further result of that strike in that industry was that more than 11,000 miners, to which the Act is generally admitted to apply, went out on strike on the 1st July in sympathy with the aims, claims and efforts of the workers in the private industry referred to, and a few days later, on the 10th or 11th of July, 1,800 additional miners in the same province went out on strike. On the 12th day of July 700 additional miners in another province some 2,000 miles away went out on strike in sympathy with the employees of the private industry that had gone on strike on the 28th June.

His Lordship: Q. Do you not think it would be advisable to give the names of these places?—A. Yes. The 1,700 workers in the private industry referred to were in the steel plant at Sydney, Nova Scotia. They went on strike on the 28th June, and on the 1st July over 11,000 miners went out on strike on Cape Breton Island, and on the 10th or 11th July, some 1,800 miners went out on strike at Pictou, Nova Scotia, and vicinity, in sympathy with the striking steel workers at Sydney, Nova Scotia, and for other alleged reasons, and on the 12th July 700 miners at Drumheller, Alta., went out on strike in sympathy, as they alleged, and as they had warned the Labour Department, with the steel workers at Sydney, Nova Scotia, and to record their resentment against the use of the troops at Sydney, Nova Scotia.

The situation in that way developed to this point, that we had at Sydney, N.S., all of the available troops, regular troops, in Canada; I think they were all there.

His Lordship: Q. The permanent forces?—A. The permanent forces of Canada were in use at Sydney, Nova Scotia, to maintain peace, order and good government in Sydney and vicinity, and I appreciated fully the fact, from the records of the Department and from information of which I had personal knowledge, that at one time these same workers who were making an application in Toronto had brought on a strike in the City of Toronto during or about Exhibition time, and that is a very important time, and when they believed they could secure the best results.

To me it appeared possible, from my experience in these matters——

Mr. Kilmer: My Lord?

His Lordship: The witness may proceed.

Witness: To me it appeared entirely possible that a local strike of the electrical workers in Toronto might reach such dimensions as to involve all of the workers or many of the workers in other industries in Toronto either directly or indirectly. It might affect the Transportation facilities of the City of Toronto. It might entail discord, a riot. I did not think it was exaggerated, to look for such a possibility, and if that had occurred at that immediate time, all of the available permanent forces of Canada were engaged at Sydney, N.S., and there appeared to be necessity for undertaking to do something that had not been done heretofore, something that it was not particularly the desire of the Department or of myself to do, and that was to assume the responsibility of seeing to it, in so far as

we could, that our part would be done, that the Department's part would be done, in bringing about, if possible, conciliation and a settlement of the dispute existent in Toronto.

Those were, briefly, the conditions obtaining that actuated me in deciding to act contrary to past practice and tacit understanding and to assume the responsibility of establishing a Board in order to ensure, so far as we could, that there would be no improper acts committed as the result of the local strike spreading seriously.

Mr. Duncan: Q. You have said that a strike might involve a large number of other employees in Toronto. What do you mean by that?

His Lordship: That is not within the realm of fact. It touches upon his opinion as to how far strikes might extend.

Mr. Duncan: I do not want his answer on opinion so much as his answer on the fact that if the electric power were cut off, practically all the industries in the City of Toronto would have come to a standstill.

His Lordship: Mr. Murdock comes from Ottawa. So long as you keep within the rule I laid down, I will grant a certain amount of latitude. As you put it, he was to infer what, in his opinion, would happen.

Mr. Duncan: I want him to explain the phrase he used, my Lord. He said the strike might involve practically all the employees.

His Lordship: Can we not judge of his meaning without venturing on the very unsafe ground of opinion?

Mr. Duncan: Very well, my Lord.

Q. When was application first made to the Department with respect to the Nova Scotia strike? Was any letter received from the workers?—or any application?—A. We should not be confused here. There were two strikes of the steel workers in Nova Scotia. One of them occurred early in the year and lasted for a few days. At that time an application for a Board of Investigation was made by the steel workers on January 25, 1923. Under Section 63 of the Industrial Disputes Investigation Act, the Minister appears to have the right to recognise such application coming from a private industry, and to ascertain from the employer if the employer will agree to the establishment of a Board, and in that particular case the Department followed that plan and notified the employer that the steel workers had made an application for a Board and asked them if they would concur, and the employers declined to be parties to the formation of a Board, which left the Department entirely helpless under the language and intent of the Act, and no Board was established.

The workers went out on strike, and a settlement was made on some basis shortly thereafter.

Q. Then trouble broke out again and a later strike occurred?—A. Yes. During the later strike in June the steel workers of Sydney, Nova Scotia, made no application for a Board; they had accepted the declaration of the employer in January or February, and decided that it was entirely useless to ask for the assistance of the Department of Labour.

Q. When were troops first moved to Nova Scotia in connection with this strike to which reference has been made?—A. I think they first commenced to move on the 29th July. Possibly someone else would be able to give you more accurate figures as to that.

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No. 15. Hon. James Murdock. Examination —*continued.*

Q. Did the Department receive any representations with respect to the movement of troops?—A. No; the Department of Labour did not.

Q. The application for troops, I understand, under the Militia Act comes from the local authority? A. Yes.

Q. And the Department of Labour had nothing to do with the movement of the troops?—A. None whatever.

Q. After the troops were being moved were any telegrams or letters received by the Government from other labour organisations with respect to the movement of troops?—A. I received several telegrams protesting against the movement of troops, and I understood that other members of the Government did likewise.

His Lordship: That is discontent. Can you go further, and show that that meant anything more than mere grumbling or rumbling?

Mr. Duncan: Q. Did you receive a telegram from W. A. Sherman, President of District No. 18, United Mine Workers of America, protesting against the use of troops?

Mr. Kilmer: What has that to do with this case?

His Lordship: Is Sherman from the National body?

Mr. Duncan: Sherman is from the miners in Alberta, my Lord, and I wish to show the situation from the point of view of the Government. The troops were in motion to the seat of the disturbance, and that was sufficient cause for protests to be sent to the Government from other Labour unions.

Mr. Kilmer: This is what Mr. Sherman thought, my Lord.

His Lordship: Governments are continually being inundated with complaints and thousands of letters which are of no importance.

Mr. Duncan: I think this telegram will explain itself, my Lord.

His Lordship: You may read the telegram, and if it is not proper evidence it will not be admitted.

Mr. Duncan: Did you receive that telegram?—A. Yes.

Q. Please read it?—A. "Calgary, Alta., July 6th, James Murdock, "Minister of Labor, Ottawa, Ont.: On behalf of Miners of District Eighteen "I emphatically protest against the use of armed force intervening "on behalf of coal operators and Empire Steel Corporation of Nova Scotia "in the present industrial dispute existing there. Pressure should be "brought to bear on the parties concerned with view of immediate settle- "ment and withdrawal of troops. Unless action taken immediately to "bring parties together serious situation inevitable in West. (Sgd.) W. A. "Sherman, President District 18, U.M.W.A."

His Lordship: They did not hesitate to give the Government advice.

Mr. Duncan: Q. Did you receive that telegram also?—A. Yes; I replied to the telegram I have just read.

Mr. Kilmer: Subject to the same objection, my Lord.

Witness: "Calgary, Alta. James Murdock, Minister of Labor, Ottawa, "Ont.: Wire received and contents noted stop critical situation is develop- "ing in the coal fields of the West as result of latest developments in Nova "Scotia dispute between British Empire Steel Corpn. and its employees "present indications in our district are that membership will not be con- "trolled by the district officials of this organisation unless immediate steps

"are taken to improve serious situation now existing in Nova Scotia "practically all labor organisations in the West are interesting themselves "in the situation. W. A. Sherman, Pres. Dist. Eighteen, U.M.V.A."

His Lordship: I will receive those telegrams. They indicate moral support from another portion of the country.

Exhibit No. 10:—

(A) Telegram dated July 6th, 1923, from W. A. Sherman to Hon. James Murdock.

(B) Telegram dated July 7th, 1923, from W. A. Sherman to Hon. James Murdock.

Mr. Duncan: Q. Who is Mr. Sherman?—A. President of District Eighteen, United Mine Workers of America,

Q. Did any man in that district go out on strike?—A. Yes; 700 men went out on strike at Drumheller on July 12th.

Q. Five days after these telegrams had been dispatched?—A. Yes.

Q. Were telegrams of a similar nature received from other organisations, or letters of a similar nature, at this time?—A. Yes.

Mr. Kilmer: I do not think that is evidence in this case, my Lord.

His Lordship: I think we can receive the statement about the telegrams.

Mr. Kilmer: They do not seem to be of sufficient consequence to waste time upon.

His Lordship: I will admit that statement; it is unnecessary to put in further telegrams.

Mr. Duncan: Q. Have you anything to say about the existence of class feeling in Canada among the workers?

His Lordship: Please repeat your question.

Mr. Duncan: Q. Have you anything to say about the existence or otherwise of class feeling in Canada among workers?

His Lordship: How can the witness explain the feelings in another man's breast?

Mr. Duncan: As a Labour man, familiar with Labour men, my Lord.

His Lordship: He can tell how it is manifested. It all depends upon the person. One man may be very much alarmed at a certain statement, and think ruin is coming, while others of a more stable mind may ignore, perhaps deliberately ignore, the same condition. I do not like to clog the record with something that is not evidence.

Mr. Duncan: Your Lordship thinks the existence of a certain state of facts should be proved by evidence of what occurred?

His Lordship: Quite so. I will not admit in evidence what the Witness may think existed in the minds of others.

Mr. Duncan: If a condition arose under a certain set of circumstances that might become widespread?

His Lordship: The Witness has shown that 700 miners in the Drumheller coal mines went out on strike. I think that is sufficient.

Mr. Duncan: I want to show the present condition of labour in Canada, and its general attitude towards a strike in any other part of the country.

His Lordship: Is the position of Labour in Canada to-day different from what it was 40 years ago? It may be better organised.

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No. 15. Hon. James Murdock. Examination —*continued.*

Mr. Duncan: This Witness is in a position to testify in that regard, my Lord, because he was, as a matter of fact, Vice-President of one of the largest Labour organisations on this continent. It is because of the existence of certain Labour conditions that one can justify the Industrial Disputes Investigation Act. Labour is organised not on a provincial basis but on a Dominion-wide basis, and I wish to show by this Witness the feeling among the workers, the possibility of concerted action, the danger that always exists that this train of gunpowder may be fired by a spark.

His Lordship: I would not for one moment suggest that all members of Trades Unions are lacking in self-command and can be easily inflamed. There are many sensible men among them, who reserve their right to strike until they feel convinced that they are justified in going on strike.

Mr. Duncan: I would like to show by this Witness the attitude of Labour and what often occurs when strikes do take place.

His Lordship: Are the conditions in 1923 any different from other years?

Mr. Duncan: Yes; there has been a change since the war, my Lord.

His Lordship: The war appears to have been held responsible for a good many conditions.

Mr. Kilmer: It very nearly wrecked the Provincial Constitution, my Lord.

His Lordship: It is a narrow point, too narrow for me to reject this evidence. I will accept the opinion of the Witness in this regard, but I do not thereby concede that my ruling is not generally correct on the question of opinion evidence. If the Witness can say that he knows of the existence of a "gun-powder" element among the workers, I will permit him to do so.

Mr. Kilmer: I suppose we may call evidence to rebut that, my Lord? Your Lordship knows the judicial view of expert evidence?

His Lordship: This Witness is possessed of special knowledge of the Labour movement.

Mr. Duncan: Q. Have you anything to say about the existence or otherwise of class feeling amongst the workers?—A. There is, of course, always a very strong sympathetic feeling generally existent among Labour of all classes.

Q. Yes?—A. And under stress of circumstances that has demonstrated itself.

Q. How do you mean?—A. Very substantially, on numerous occasions, a concrete illustration being the Winnipeg strike of 1919.

Q. Why do you say that that is a concrete illustration?—A. For the reason that in 1919, when I had been Vice-President of the Trainmen's organisation for some 15 years, I could not have believed, prior to what occurred at Winnipeg, that the members of that organisation, law-abiding and adhering to contract, as I had generally known them to be, could be by class feeling or sympathy stampeded into participating in an illegal and absolutely unnecessary and unwarranted strike, as I viewed it, but the fact is that very many members, some of them having been in the organisation for as long as 25 years, were simply by sympathy and class feeling for their fellows stampeded into taking drastic action and going on strike in violation of law and agreement, and suffering the penalties which resulted to the

extent of loss of position—in many cases—loss of membership in the organisation, and all the other misfortunes that arose by reason of that improper demonstration.

The Winnipeg strike occurred as a very ordinary local dispute in the shops of three metal trades employers in Winnipeg, sometime about the middle of May, 1919, and within the next few weeks very many thousands of good, well-intentioned labour members and citizens of Winnipeg believed that the whole structure of Labour's right to organise and negotiate was being assailed, and that they must rally to the assistance of their fellows.

I do not want to be understood as saying that that was all that was involved, but that was what was involved in the minds of a great many well-intentioned and law-abiding citizens, and I can speak with some particular authority, I hope, with regard to our own members, the trainmen and conductors on the Canadian Pacific Railway and the Canadian National Railway at Winnipeg, who had been tried and had proved to be loyal and fair and decent in years gone by, and who were not going to do anything inconsiderate of all interests unless they were thoroughly convinced by sympathetic class feeling that it was absolutely necessary that they do so.

That situation involved practically all the workers of Winnipeg, including the membership of the organisation that I was at the time representing, resulting in it becoming necessary for me to undertake to bring in members of the organisation from elsewhere to try to protect the contract, and resulting later in it being necessary to expel nearly 150 members from the organisation for following the dictates of class feeling and class sympathy.

His Lordship: Q. Of course, class feeling must be restrained by common sense. Having discovered that the Winnipeg strike was largely revolutionary, and having learned that that was their motive, would you say it is likely to occur again? Has the lesson not been learned?—A. I certainly hope that it has, and believe that it has, and that nothing of the dimensions of the Winnipeg situation could, generally, occur again in Canada.

His Lordship: That is very satisfactory.

Mr. Duncan: Q. Did you say that before the Winnipeg strike occurred you did not think it would have been possible for a strike of that magnitude to occur?

His Lordship: As I understood Mr. Murdock, he said that the members of the organisation of which he was Vice-President, who had formerly proved themselves to be law-abiding and had adhered to their contracts, had been swept off their feet.

Witness: That is practically what I said.

Mr. Duncan: Q. How did that come about?

His Lordship: Is it not enough to show that it did come about?

Mr. Duncan: I want to show that when a strike like this begins, the agitator generally gets in his work, too.

His Lordship: You say that the agitator generally gets in his work at the time?

Mr. Duncan: Yes. I want to ask the Minister whether he knew how this strike spread—how it attained the proportions it did attain.

His Lordship: In Winnipeg?

Mr. Duncan: Yes; and elsewhere, my Lord.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 15. Hon. James Murdock. Examination —*continued.*

His Lordship: Does he know?

Mr. Duncan: The witness took part in settling that strike, my Lord.

Witness: I did not reach Winnipeg until the 11th June, when the strike had been in effect almost one month. Then I found an unbelievable situation. During the first four or five hours that I was in Winnipeg I was in a hall with some hundreds of our members, and I found them to be entirely different from the same men I had been used to dealing with, I found them thoroughly convinced by the developments of the then past few weeks that there was a determined effort being made to crush organised Labour out of existence, and to prevent organised Labour from functioning as in pre-war and during war conditions.

I tried, of course, to persuade them that they were entirely mistaken, that they had an altogether improper view, but class feeling, sympathy for Labour, had carried them away in spite of their good judgment and years of experience along other lines.

Now then, that would have been much sooner demonstrated amongst certain organisations or classes that had not had the years of experience and training in organisation methods that these particular men had had.

Mr. Duncan: Q. When the Winnipeg strike broke out, where were you?—A. In Columbus, Ohio.

Q. Did you receive representations about agitations amongst your men and about attempts by people to stop the transportation system of the country?—A. Yes. We received imperative messages that certain things were going to be done forthwith unless action was taken, and quite a few telegrams and letters, as I recall, came in that connection.

Q. What stand did your Executive take on the question of participation in the strike?—A. The only possible stand, which was that there was a contract between the railway concerned and our organisation, and that our members must obey the law and carry out their contract, and must not, under any circumstances, participate in an illegal strike from sympathy or from any other reason until all proper requisites of the law had been complied with.

Q. Was the transportation system interfered with?—A. Later.

Q. How?—A. By several hundred men going on strike.

Q. In spite of your orders?—A. Yes.

Q. What was the result?—A. The result was that we undertook to bring some members in from outside who had a calmer view of the situation, and who had not been carried away by the local sentiment, and got them to help out in some cases in carrying on. They were not, I am sorry to say, very successful, but finally by insistent effort the strike was settled, and then the organisation proceeded against those who had improperly, in violation of law and contract, taken part in the strike.

Q. What do you mean by saying that the organisation proceeded against them?

Mr. Kilmer: I submit this evidence is not relevant, my Lord.

Mr. Duncan: I will ask the question: Q. What effect had this strike on the trade and transportation of this country?—A. I would not be in a position to answer that definitely.

His Lordship: No; I think not.

Mr. Duncan : Q. In what places other than Winnipeg did your organisation have to take action against your members as a consequence of their participation in the strike ?—A. Officers of subordinate lodges were removed from certain other places such as Brandon, Manitoba, and Kamloops, British Columbia, for showing sympathy, demonstrating sympathy with the cause of the situation at Winnipeg.

Q. So places outside Winnipeg were affected ?—A. To that extent, yes.

Q. Would you say that your members were carried away by any revolutionary idea, or was it by the economic idea, the idea that Labour's right to collective bargaining was being attacked ?—A. I could not say positively that some few of them might not have had some foolish revolutionary ideas, but the great majority of them, I am convinced, were actuated entirely by feelings of sympathy for the claims, as they understood them, of organised Labour.

Q. How could they get into that state of mind ?

His Lordship : Oh, no.

Mr. Duncan : I want to ask if the Press had been stopped.

His Lordship : It would be very interesting to hear what Mr. Murdock has to say, but for many years the law has been in a certain condition, and while it is in that condition I must adhere to it.

Mr. Duncan : Q. Coming to your decision to establish a Board on July 24, 1923, what had you in mind——

Mr. Kilmer : I make the same objection, my Lord.

Mr. Duncan : I want to find out if the Witness has anything further to say.

His Lordship : Mr. Duncan finds it hard not to yield to the temptation to make his case a little stronger.

Mr. Kilmer : The evidence is not relevant, my Lord.

His Lordship : The Minister did grant the Board, and we must conclude that he was justified in doing so, unless it is otherwise shown. His state of mind is immaterial. As a responsible Minister of the Crown, the Witness granted the Board. That is sufficient.

Mr. Duncan : Q. Was there any disturbance or threatened disturbance in Montreal among the electrical workers at about this time ? Was any application received ?—A. There was, as I recall, some slight rumblings, but nothing to speak of.

His Lordship : What is that document you are showing to the Witness ?

Mr. Duncan : An application to the Department, my Lord.

His Lordship : The Witness has stated that he heard some slight rumblings in Montreal. Must you not leave it at that ?

Witness : There was an application came in from certain classes of employees in Montreal, including the International Brotherhood of Electrical Workers of the Montreal Light, Heat & Power Company.

Mr. Duncan : Q. What does that company do ?—A. It conducts practically the same class of business, I think, as the Toronto Hydro Electric Commission.

Mr. Kilmer : What was the date of that application ?

Mr. Duncan : The 11th July.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 15. Hon. James Murdock. Cross-examination.

Cross-examination by Mr. Kilmer.

Q. With regard to the situation in Nova Scotia, the strike to which reference has been made occurred in Sydney and Cape Breton, Nova Scotia ? —Yes.

Q. How far from Toronto ? —A. 1,150 miles, I think.

Q. And it was principally among the coal miners, was it not ? —A. No ; it originated with the steel workers.

Q. But principally the coal miners ? —A. Before it was through, the coal miners were in the majority.

Q. Is there any coal brought into Toronto from Sydney or Cape Breton, Nova Scotia ? —A. I think I have heard of an exceptional shipment being made, but not generally.

Q. There is no trade in coal ? —A. No ; I understand not.

His Lordship : Which is a pity.

Mr. Kilmer : Q. Owing to the high freight rates, is it not ? —A. That is an important factor.

Q. It is cheaper to bring Welsh coal to Toronto than to bring Nova Scotia coal to Toronto, is it not ? —A. (No answer.)

Q. How many coal miners are employed in Alberta ? —A. The number would vary according to the number of mines that are worked, but I would say probably 8,000 in what we call District 18, which includes a border of British Columbia, and part of Alberta.

Q. And the Drumheller Mines—is that a large mine ? —A. There are two or three mines there ; it is a rather important coal-mining centre.

Q. Compare the tonnage of the Drumheller Mines with the tonnage of the rest of the mines of Alberta ? You say 700 men went on strike at Drumheller out of about 8,000 miners in that district ? It was not a very important district, compared with the whole of Alberta, was it ? —A. No ; we were not seriously alarmed.

Q. It did not spread very much ? —A. No.

Q. How far are the Alberta mines from Toronto ? —A. About 2,300 to 2,400 miles.

Q. Is there any trade in coal between Alberta and Toronto, with the exception of a few cars ? —A. Just a few cars.

Q. So that, so far as coal strikes are concerned in either of these places, as a matter of trade, or as a matter of creating inconvenience in Toronto, Toronto would not be affected ? —A. Not seriously, in that respect.

Q. And the only result that strikes in those places could have in Toronto would be, perhaps, a reflex action on account of class feeling ? —A. It would have that effect.

Q. Have you found in the City of Toronto Labour Unions unreasonable or revolutionary ? —A. I lived here for about 20 years, and observed them to be about as intelligent and law-abiding and steady as can be found anywhere.

Q. It would take a good deal to move them from their usual conduct ? —A. It would take a real reason.

Q. The Nova Scotia strike itself was in the end settled without bloodshed, was it not ? —A. I think so.

Q. And the coalminers there returned to their duties in obedience to their contract under the direction of their leaders ?—A. Yes.

Q. And in Drumheller did you have any serious revolutions ?—A. No. They went back to work in a couple of days on the instructions of Mr. Sherman and other officers.

Q. You had no special fear for Toronto on account of those two strikes ?—A. There was no undue or serious alarm, as may have been indicated at any time.

Q. In Toronto or in Ontario ?—A. No.

Q. You said all the available permanent forces in Canada were sent to Nova Scotia at the time of the strike. What is the number of the available permanent forces in Canada ?—A. My recollection is that there were 1,067 non-commissioned officers and men and about 84 officers down there ; that is subject to correction by a later witness ; between 1,200 and 1,300 altogether.

Q. And you know there is a Militia in each Province subject to the Dominion Government's orders ?—A. Oh, yes.

Q. And in the case of trouble, I suppose the Provincial Militia could be called out ?

His Lordship : If you could find them.

Witness : And—if I may be permitted to say so—under post-war conditions you could use them when you found them.

Mr. Kilmer : Q. Do you think if the Militia did not turn out when ordered that we have not enough police to make them turn out ?—A. You might have.

Q. The police in Toronto can keep order under all ordinary conditions ?—A. Very effectively, I understand.

Q. And there are Provincial Police, as well ?—A. Yes.

Q. And any wrongful acts would be promptly suppressed ?—A. They would, I hope, be taken care of.

Q. And you think they would be taken care of ?—A. Yes ; I think so.

Q. Do you give the existence of a strike in Nova Scotia and Drumheller as the reason for giving this order for a Board of Conciliation that you would not otherwise have made ?—A. Not altogether ; I have only mentioned that as a part of the conditions that existed at the time.

Q. But those were present at the time, and actuated you in giving the order ?—A. I had to have in mind all these matters.

Q. You did have them in mind ?—A. Yes.

Q. But you say those were not your only reasons ?—A. No.

Q. Then you knew, did you not, immediately after the application for the Board was made, at all events, that the Employer was not going to submit ?—A. No ; not immediately. It took several days of negotiation, and there was considerable delay. If you will look at the record, you will find there was a delay of several weeks before we could get the declination of the Hydro Commissioners to agree to the formation of a Board, as they had done previously, at times.

Q. Did you grant the last Board that was constituted ?—A. No ; that was my predecessor. I had the aftermath when I came into office.

Q. What happened to that order ?—A. The Labour Department beautifully side-stepped the situation, and did not do anything.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 15. Hon. James Murdock. Cross-examination —*continued.*

Q. Why ?—A. That is my recollection, Mr. Kilmer.

His Lordship: Q. Did you say " dutifully " or " beautifully " ?—A. I said " beautifully," sir.

Mr. Kilmer: Q. It was the Toronto Electric Commissioners and the Municipality contended that the Act had no application ?—A. I think that was one of the claims made.

Q. Was not that the reason why the Board was ordered withdrawn ?—A. It may be that you and I are speaking about different things.

Q. I am speaking about the Board that was granted in 1921.

His Lordship: Is all this evidence subject to your objection, Mr. Kilmer ?

Mr. Kilmer: Yes, my Lord. The Witness' opinion has been taken on other things.

Witness: My recollection is now that that Board did file an award, but that the award was never given very serious consideration, and that the workmen continued to press for the application of some of its provisions. I am not sure whether I have the particular case in mind that you are referring to ?

Q. Let me recall the facts to you by reading a letter of the 22nd June, 1921, written by George H. Brown to E. M. Ashworth.

Mr. Dewart: He was not Minister at that time.

Mr. Kilmer: I do not say he was. This letter is: "*Re*—The Industrial Disputes Investigation Act, 1907, and the differences——"

Mr. Dewart: How can this Witness speak to a letter which passed in the time of his predecessor ?

His Lordship: Unless the policy of the Department was continuous.

Mr. Dewart: The Witness has explained that it was not a continuous policy.

Mr. Kilmer: This Witness said he was not there at the time the order was made, but that he had to do with the aftermath, and it is the aftermath I am asking about.

Mr. Dewart: The Witness became Minister of Labour on the 29th December, 1921, and I take it that this letter was in reference to a matter that may have been under what the Witness has definitely stated was a different policy to the policy he has initiated, and is not a letter that should be put in, so far as this particular inquiry is concerned.

His Lordship: It would not be right to join the Ministers of two separate Governments when their respective policies were entirely different.

Mr. Kilmer: The same Department, my Lord.

His Lordship: Does the letter to which you refer deal with office business that might be known by both Ministers ?

Mr. Kilmer: I assumed that this Minister would know of it, because he said he knew the aftermath. How could he know that unless he knew what the circumstances were ? The question I asked the Witness was: Was not the order withdrawn for the reason that objection had been taken to the jurisdiction of the Department ? And he said that was one reason.

His Lordship: He himself said he hesitated to grant the order just because the Employers were of the character they were, namely, semi-provincial. Do you desire to add to that evidence ?

Mr. Kilmer: I was going to ask the Witness if that was not the only reason, on account of the objection of the jurisdiction of the Minister, objection being taken by the Toronto Electric Commissioners.

Mr. Dewart: I object.

Witness: I could not speak as to that. I was not there in June, 1921, and had nothing to do with the withdrawing of it.

Mr. Kilmer: Mr. Dewart objected to that question being answered.

Mr. Dewart: I think the Witness has made a good answer.

Mr. Kilmer: Q. You were Minister of Labour in the Dominion Government of the 10th April, 1923?—A. Yes.

Q. According to the official Hansard report of that date, you were dealing with certain questions under this Act?—A. Yes.

Mr. Dewart: Was he speaking under oath at that time?

Mr. Kilmer: I am going to get it under oath now.

Q. I read to you from the official Hansard Report of the proceedings on April 10th, 1923, at page 1769:—

"Mr. Manion: How many industrial disputes were there in Canada this year as compared with last year and the year before?

"Mr. Murdock: Disputes or strikes?

"Mr. Manion: I really meant strikes?

"Mr. Murdock: Of course, there are many disputes where no "strikes result. There were eighty-five strikes in existence in Canada "in the calendar year 1922, which was fifteen less than in 1921."

Q. Do you say under oath that that answer you gave there is correct?—A. Yes.

Q. You also say, in answer to that question:—

"There were also two large coal strikes which it might be said "were the wings of the main army of coal strikes which commenced "in the central competitive coal fields of the United States last year"?

—A. Yes.

Q. Then:—

"Mr. Manion: That is in Alberta and Cape Breton?

"Mr. Murdock: Alberta and Nova Scotia. The number of "employees affected and the time loss resulting from these disputes if "deducted for the last year would give us a time loss of 169,185 working "days lower than in any year except 1902 and 1915."

You mean that these figures are lower, as a matter of fact?—A. That is quoted from the records of the Department. It means that during the year specified there were 169,185 working days less lost as the result of strikes.

Q. And it means less days lost as the result of strikes than in the previous year?—A. Yes: it was an unfortunate way to put it.

Q. Then:—

"In 1922 there were only seventeen strikes in the building trades, "affecting 1,396 employees and involving a time loss of 28,247 days. "Of these only three caused a time loss of more than five thousand "days. Six of the seventeen lasted less than seven days, and only

"five continued thirty days or more. In 1921 there were thirty-six "strikes in the building trades, affecting 4,004 employees and involving "a time loss of 153,372 days."

Is that right?—A. It is taken from the records of the Department.

Q. So that that condition with regard to strikes in Canada was much better in the year 1922 than it was in the year 1921?—A. We believed so.

Q. And the loss of working days through strikes was lower in that year than in any year except the years 1902 and 1915?—A. That is what the records of the Department show.

Q. So that things are gradually improving in Canada with regard to strikes?—A. We hope so.

Q. Is that not the fact?—A. I think it is, yes, sir.

Mr. Kilmer: Mr. Duncan, have you a telegram from Gunn to the Minister of Labour, dated June 29, 1923?

Mr. Duncan: Yes: I am putting that in. I will admit the copy just now.

Mr. Kilmer: Q. I have here a copy of a telegram, admitted by the counsel for the Defendants, which was received by you from Gunn, dated June 29, 1923. That would be five days after the order was made for the Board of Investigation.

Mr. Duncan: Oh, no; five days after the application for the Board had been received.

Mr. Kilmer: Telegram reads as follows:—

"Toronto, Ont. June 29, 1923.

"Minister of Labour,

"Ottawa, Ontario.

"Toronto Hydro Electric operating officials using coercion on men to "get them to say if they will go on strike Saturday. No strike as yet "been threatened by men. Men feel that coercion is an attempt to make "them drop application for board. Please take up with Hydro Commission "and see if action can be stopped."

"GUNN."

Do you remember that telegram?—A. Yes; I received that telegram.

Exhibit No. 11.—Copy of telegram dated June 29th, 1923, from "Gunn" to the Minister of Labour.

Q. Let me ask you generally whether as the result of that telegram you took up that complaint with the Toronto Electric Commissioners?—A. I referred the matter, as has been stated in the telegram, to the officers of the Hydro Commission.

Q. That matter was enquired into by you, and due protest made?—A. It was enquired into by me? The correspondence speaks for itself. I referred the matter to the Hydro Commission and secured their definite statement, which I anticipated, that nothing of the kind had occurred.

Mr. Kilmer: Have you got the letter of July 25th, 1923?

Mr. Duncan: Yes.

Mr. Kilmer: Q. Is this your signature to this letter?—A. Yes.

Mr. Kilmer: My Lord, this is a letter dated July 25th, 1923, from the Minister of Labour to Mr. E. M. Ashworth, the Acting General Manager of the Toronto Hydro Electric System, Toronto. I will read this letter to your Lordship because it is of some importance:—

"Minister of Labour,
"Canada.
"Ottawa, July, 25th, 1923.

"My dear Sir,

"The Registrar of Boards of Conciliation and Investigation has handed me your letter addressed to him under date of the 23rd instant and received in his office to-day. The Registrar's wire of yesterday advised you that it had been deemed necessary for the reasons stated to establish a Board of Conciliation and Investigation as demanded by the employees. I have gone carefully over your letter and do not find in it any matter which, had it been before me earlier, as I had requested, would have caused me any longer to defer the establishment of a Conciliation Board. Much of the matter contained in your letter would be no doubt properly placed before the Board of Conciliation, the different points being enlarged as conditions might permit or require. The value of many of the statements made and the precise bearing such statements might have on the matters in dispute cannot be determined by the undersigned without an inquiry which might in itself become at least as extensive as that which would take place before a Board of Conciliation, and an inquiry of the kind could be undertaken only in so far as this Department is concerned, by a Conciliation Board.

"In paragraph 6 you remark that the Commissioners' think that the Government, being the trustees of the interests of the country at large and not merely trustees for particular classes, should support them emphatically by refusing the appointment applied for.' I accept entirely your point of view that the Government are 'trustees of the interests of the country at large,' and it is for this reason I feel it altogether necessary that in the present case I should not accept simply representations made by either one of the two parties to the industrial dispute which is under consideration, but should, on the contrary, and as, in my view, the governing statute requires, refer the matter to a tribunal of the class specially designated under the provisions of the Industrial Disputes Investigation Act."

Then comes a paragraph about arbitration, which is not material here, my Lord.

Mr. Dewart: Will you please read that paragraph?

Mr. Kilmer: Yes:—

"Regarding your closing paragraph that you 'are not opposed to the principle of arbitration and have already proposed an arbitration,' etc., I can but remark that, were you and the employees in agreement that the present dispute should be referred to a tribunal other than a Board of Conciliation, then obviously the necessity for the establishment of a Conciliation Board would not have arisen and this correspondence would have been unnecessary."

Then the Minister goes on to say in the last paragraph that if they do agree to arbitrate he would regard ground for further action under the Industrial Disputes Investigation Act as having disappeared.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 15. Hon. James Murdock. Cross-examination —*continued.*

His Lordship: Please read that paragraph.

Mr. Kilmer: It reads:—

"The closing paragraph of the Registrar's message addressed to you on "the 24th instant indicated that the establishment of a Board of Conciliation "would not in any way preclude action on the part of the Commissioners "looking to a settlement of the dispute by direct negotiation with the "workers, and I can but repeat that if, before the Board is fully constituted "and ready to proceed with the inquiry a settlement is arranged and word to "that effect is received from both parties, then I should regard ground for "further action under the Industrial Disputes Investigation Act as having "disappeared."

I should think so, by the very terms of the Act itself, my Lord. The last two paragraphs refer entirely to the question of arbitration.

His Lordship: What is your object in putting in that letter?

Mr. Kilmer: I am going to ask the Minister a question in regard to it, my Lord.

Exhibit No. 12:

Letter dated Ottawa, July 25th, 1923, from the Hon. James Murdock, Minister of Labour, to E. M. Ashworth, Esq.

Q. That letter I have just read gave your reasons for establishing the Board?—A. It gave the reasons that were contained in it.

Q. Tell me why in that letter or in any other communication to these Toronto Electric Commissioners you did not state that the strikes in Nova Scotia and Alberta were having an effect that made it desirable to bring this Industrial Disputes Investigation Act into play?—A. For the reason that I was not at all unduly alarmed myself, and did not want to put something into the record that would indicate I was.

Mr. Kilmer: I should have put in with that letter the wire of the Minister to Mr. Ashworth on the day before announcing the formation of the Board. My learned friend wants me to put all this correspondence in.

Mr. Duncan: I have sorted it all out very carefully, and these documents are rather important, my Lord.

His Lordship: Very well.

Mr. Kilmer: This telegram is also important, and will go in as part of the next exhibit, my Lord.

His Lordship: By sorting out the letters you have eliminated some of them, I suppose?

Mr. Duncan: Yes, my Lord. I will take out the telegram in question from this bundle, my Lord. It reads as follows:—

"Ottawa, Ont. July 24th, 1923.

"E. M. Ashworth,
"General Manager Toronto Hydro Electric System,
"226 Yonge Street, Toronto, Ont.

"Your message twenty third received and has been before Minister stop "Ministers view is information to hand as to increasingly critical aspect of "dispute and as to inadequacy of grounds hitherto urged on behalf com- "mission for stay in procedure do not justify further delay and Minister has

" accordingly to-day formally established Board of Conciliation and " Investigation and has appointed as Board. Member on recommendation " of workmen Mr. J. G. O'Donoghue Barrister Toronto stop Please name " person for appointment as Board member on behalf of Commission stop " Statute names five days as period during which recommendation may be " received but matter having been already subjected at your request to " several weeks delay Ministers view is your Commission will be in position " to make recommendation for appointment forthwith so that your nominee " when formally appointed by Minister and workers nominee may imme- " diately proceed to select chairman stop As you will be aware Statute " requires Minister to make appointment if recommendation not received " within period indicated and Minister will regard period of five days as " terminating at noon Monday thirtieth instant and will be prepared if " recommendation not at that time received immediately to make necessary " appointment stop It is however trusted your Board will act promptly " and avoid necessity of this action on Ministers part stop Establishment of " Board in this way will not I am to state in any way preclude action on part " of Commissioners looking to settlement of dispute by direct negotiations " with workers and if before Board is fully constituted and ready to proceed " with inquiry settlement is arranged and word to that effect is received " from both parties then ground for further action under Industrial Disputes " Investigation Act would be regarded as having disappeared stop Mean- " time any such negotiations will not be regarded as ground for delay in " formal procedure.

" F. A. Acland, Deputy Minister Labour and Registrar."

Exhibit No. 13:

Canadian National Telegram (five sheets) dated July 24th, 1923, from F. A. Acland, Deputy Minister of Labour and Registrar, to E. M. Ashworth, Acting General Manager, Toronto Hydro Electric System.

Mr. Duncan: I desire to put in these documents which were sorted out last night, my Lord.

Mr. Kilmer: Q. Did you say that the Board of Investigation was appointed as the result of that application from Montreal to which you referred during your evidence? I thought you said it was not, but I do not remember?—A. My recollection is that there was a Board appointed, and that it brought about a settlement. That could be verified later, of course, by my Deputy Minister.

Re-examination by Mr. Duncan:

Re-examination.

Q. I show you a file of correspondence, containing a few letters and telegrams that passed between your Department and the plaintiffs in this action. Will you say whether those documents passed between your Department and the plaintiffs?—A. Yes; those are telegrams and letters that passed between the Department and others.

Q. With one exception. I see herein a copy of a letter dated July 7th, 1923, from yourself to Mr. Ashworth, dealing with the matter mentioned by

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 15. Hon. James Murdock. Re-examination —*continued.*

my learned friend in cross-examination, the alleged drastic action that was being taken by the Commissioners against the men ? —That is right.

Q. Is that a copy of the letter that was written at that time ? —A. Yes ; that is a copy of the letter written to me by Mr. Ashworth, indicating that there was nothing in the charge of coercion against the men.

Q. I now show you the original, which has been produced by my learned friend. Is that your letter ? —A. Yes ; that is my letter of July 7, to Mr. Ashworth.

Q. And a copy of the telegram ? —A. That is a copy of the telegram received from Mr. Gunn and transmitted to Mr. Ashworth, with my letter of July 7. This is a copy for the information of Mr. E. M. Ashworth, Acting General Manager, Toronto Hydro Electric System, of the acknowledgment made to Mr. Gunn of his telegram.

Re-cross examination.

Re-cross-examination by Mr. Kilmer.

Q. That is the whole correspondence except the letter and telegram which I took out of the file, between you and the Toronto Hydro Commission ?

His Lordship : It is not quite fair to ask him that.

Mr. Kilmer : I am asking him as a matter of information, my Lord.

His Lordship : I asked Mr. Duncan to put in only such correspondence as is relevant to this action. If there is anything else you would like to put in, please state what it is. The local character of this evidence is somewhat surprising.

Further examination.

Further examination by Mr. Duncan.

Q. My learned friend asked you how it was that you made no reference in your letter of July 25 to Mr. Ashworth of the situation in Nova Scotia and the situation in Drumheller ? —A. I replied that I was not unduly alarmed and did not desire to communicate the impression that I was.

Q. Have you anything further to say about that ? —A. I would have regarded it as totally inappropriate that I should have expressed certain views to the Hydro Commissioners or to anybody else in Toronto about conditions elsewhere in Canada that may have borne some similarity, to make it appear that they actuated me in any way in taking the action I was taking.

His Lordship : The Minister's answer is a perfect one ; it is just what any Minister would do.

Exhibit No. 14 :

(A) Letter dated June 25, 1923, from F. A. Acland to E. M. Ashworth.

(B) Letter dated June 27, 1923, from H. J. MacTavish to F. A. Acland.

(C) Letter dated June 28, 1923, from F. A. Acland to H. J. MacTavish.

(D) Canadian National Telegram (two sheets) dated June 29, 1923, from Hon. James Murdock to H. J. MacTavish.

(E) Canadian National Telegram dated June 29, 1923, from H. J. MacTavish to Hon. Jas. Murdock.

(F) Letter dated June 30, 1923, from H. J. MacTavish to F. A. Acland.

(G) Canadian National Telegram dated July 6, 1923, from F. A. Acland to E. M. Ashworth (two sheets).

(H) Canadian National Telegram dated July 6, 1923, from E. M. Ashworth to F. A. Acland.

(I) Letter (two sheets) dated July 6, 1923, from E. M. Ashworth to Hon. Jas Murdock.

(J) Letter dated July 7, 1923 (three sheets), from Hon. Jas. Murdock to E. M. Ashworth.

(K) Copy of letter dated July 7, 1923, from Hon. Jas. Murdock to Jas. T. Gunn.

(L) Canadian National Telegram dated July 18, 1923 (two sheets), from F. A. Acland to E. M. Ashworth.

(M) Canadian National Telegram dated July 23, 1923, from E. M. Ashworth to E. M. Acland.

(N) Letter dated July 23, 1923 (five sheets), from E. M. Ashworth to F. A. Acland.

(Witness withdrew.)

No. 16.

Evidence of Lieutenant-Colonel Reginald J. Orde.

Lieutenant-Colonel Reginald John Orde, Sworn.

Examined by Mr. Duncan.

Q. What is your business?—A. Judge Advocate General.

Q. In the Department of National Defence?—A. Yes.

His Lordship: Do not ask the Witness what a "Judge Advocate General" is, or he will answer that he is neither a judge nor an advocate nor a general.

Mr. Duncan: Q. Are you familiar with the situation that existed in July of this year?—A. I am.

Q. Will you state what steps were taken by the Department of National Defence in view of the situation existing in Nova Scotia?—A. The District Officer commanding Military District No. 6 at Halifax, which district embraces Cape Breton, Pictou, Sydney and so on, reported that requisition had been received from Judge Finlayson, and that he was complying with that requisition for the use of troops under Sections 80 and 81 of the Militia Act.

Q. What happened after that?—A. Troops were despatched to the affected area, the numbers of troops being reported to Defence Headquarters by the District, pursuant to the King's Regulations.

Q. What do you mean by the "affected area"?—A. The area in which the riot or disturbance had occurred, or was anticipated to occur.

Q. Where was that, geographically?—A. Cape Breton Island.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 16. Lieut.-Col. Reginald J. Orde. Examination —*continued.*

Q. What troops were sent down there?—A. Originally there were troops despatched from the District concerned, that is M.D. No. 6, Province of Nova Scotia.

Subsequently troops were despatched under orders of the Adjutant-General from other military district to Military District No. 6, when they would then come under the command of the officer commanding that District. Until they are within the boundaries of his district they are under the command of their respective commanders, and the O.C. M.D. No. 6 has no administrative authority over them. When they are in that area he has power to dispose of them as he sees fit.

Q. What does Military District No. 6 include, provincially?—A. The whole of the Province of Nova Scotia and Prince Edward Island.

Q. You say troops were despatched. What was going on there?—A. The Department had no official knowledge as to what was the cause of the disturbance. All the requisition stated was that a riot or disturbance had occurred, and was anticipated.

Q. Where did that occur?—A. If my memory serves me right, and I am only speaking from the information I have been able to extract from the Departmental files, it was in the first instance at Sydney, Nova Scotia; Sydney, Cape Breton, we call it.

His Lordship: Q. Did you look into the question of why Judge Finlayson should make that requisition? As a rule the municipal authorities ask for troops if a riot is feared?—A. Judge Finlayson is the County Judge in that locality, and so far as the Department is concerned—at least, so far as the District Officer commanding Military District No. 6 is concerned, we did not go behind Judge Finlayson, and the District Officer commanding Military District No. 6 would not go behind his requisition.

Mr. Duncan: Q. So far as the troops for national defence are concerned, what proportion of those troops ultimately went to the area of disturbance?—A. You mean the troops available for duty in aid of the civil power?

Q. Yes?—A. If I may explain it in my own way it might make it clearer: At the time this strike occurred the summer training of the active Militia, the non-permanent troops, was in progress. Camps were in existence all over the country, and the permanent forces were being used for instructional purposes. They first took troops from the areas or the Districts closest to Nova Scotia, which would be Quebec, Military District No. 5, and by degrees the troops were withdrawn from Montreal, Toronto and so on, as far west as Winnipeg. A proportion of troops had, of necessity, to be left in the various Districts for barrack purposes, maintenance of buildings and so on, and the horses of the permanent forces were not all despatched to the affected area; I mean the establishment of the horses for the troops which were despatched was partly kept in their own Districts, only a limited number of horses being sent. Practically every available man was despatched by orders of the Adjutant-General under the King's Regulations to the District concerned, M.D. No. 6—practically every available man as far west as Winnipeg.

Q. Despatched by the Adjutant-General?—A. Let me explain it in this way: The troops, for example, in Military District No. 2 are not subject to the orders of the District Commander in any other District such as the

Nova Scotia District. The movement of troops from one District to another of necessity must come under the orders or instructions of the superior military authority, Militia Headquarters at Ottawa. It is a matter of interior administration, a matter of routine, as to where troops will be sent. We may decide to transfer a company of the Royal Canadian Regiment from Toronto to Montreal and *vice versa,* which is often done. In this particular instance, the District Officer Commanding at Halifax, Nova Scotia, had to comply with the requisition made to him, and the Act gives him the discretionary power as to the number of troops to be employed, under Section 81 of the Militia Act. He considered that the extent of the disturbance and the locale where the disturbance was taking place required a large number of outlying detachments for the various small towns and settlements existent on Cape Breton Island. The number of permanent troops available in his own District was not sufficient to garrison this locale. Looking at it from his point of view as a soldier, it would be unsound to put a small handful of troops there, and he reported the facts to Headquarters, and the Adjutant-General's branch ordered troops to be despatched down to Nova Scotia from other Districts, when they would at once come under the command of the Officer Commanding Military District No. 6, who could have put them anywhere.

Q. The movement of troops consequent on the original application was purely a military matter?—A. Yes.

Q. After the first requisition had been made by the civil authorities——

His Lordship: Q. Did the G.O.C. M.D. No. 6 requisition the Department?—A. He did not requisition Military Headquarters for troops. He reported that he had got a requisition, but did not requisition on us for troops. All he did was to report the situation, and to say that, in his opinion, the number of troops available in his District was not sufficient to cope with the situation from a tactical and strategical point of view.

Mr. Duncan: Q. And it was from that point of view that troops were sent down?—A. We said "We will make troops available for you so that "you will not have any cause to complain that you have not been able "to fulfil the requirements of the Act."

Q. Was there anything other than the military considerations that influenced you in making the movement of troops—local representations or political considerations?—A. I have no information on that at all. All I know, and all I have seen, are representations from the superior Military Commander at Halifax, that the troops available in his District were not sufficient to look after the situation.

Q. And so far as you have seen, the despatch of troops was consistent with the representations made by the Officer Commanding Military District No. 6?—A. I have no information on that at all.

Q. Since 1900, in how many cases have troops been called out in aid of the civil power?—A. In 35 instances troops have been called out.

Q. And prior to the passing of the Lemieux Act?—A. Prior to the 21st March, 1907?

Q. Yes?—A. Fifteen cases, and 20 cases subsequent thereto. There were 15 cases from July 24, 1900, to November 23, 1906, and 20 cases from July 8, 1909, to June 30, 1923.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 16. Lieut.-Col. Reginald J. Orde. Examination —*continued.*

Q. The Militia Act provides that the municipality shall bear the cost of the troops. Is that cost always repaid ?—A. The Militia Act does not go as far as that. It provides that the municipality shall make certain payments in respect to the troops called out, so much per head per diem for each man, and so much for each horse, forage, and so on. The Act says that the money may be advanced out of the Consolidated Revenue Fund of the Dominion of Canada under the Governor-General's Warrant, there being no Parliamentary appropriation made every year for duty in aid of the civil power; it is the Governor-General's Warrant that provides the funds; that is the advance in the first instance.

Q. So the original cost is always borne by the Dominion Government ? —A. It is really an advance, not the cost.

Q. What about the collection ?—A. That is something rather difficult to say; we do collect in some cases. We always ask the municipality to make payments, but I do not say we always get the money back.

Q. You always ask for it ?—A. Yes.

Q. As a matter of practice, I suppose in a very large percentage of cases, payments are never made ?—A. In a great many cases the amount involved is very small.

His Lordship: Q. You could not maintain 1,000 troops there for a small sum ?—A. The number of cases when 1,000 troops have been used in the past 23 years is very small.

Q. I recollect when the Highlanders were called to Cape Breton 40 years ago, and the Colonel sued the municipality for the maintenance of his troops. Are you aware if he got anything ?—A. That is the case of *Reid* vs. *Cape Breton*. He recovered a judgment against the municipality, at least.

Mr. Duncan: Q. Would you say whether in approximately 75 per cent. of cases the municipalities meet the expense ?—A. Not by any means. I would say a conservative estimate would be 25 per cent. to 30 per cent.

Q. In 25 per cent. to 30 per cent. only does the Dominion Government recover from the municipality ?—A. Yes.

His Lordship: What is the purpose of this evidence ?

Mr. Duncan: To show that once there is disturbance it means money lost to the Dominion, and is then a matter of Dominion concern.

His Lordship: We are not trying the question of the payment of militia troops.

Mr. Duncan: Q. Would you give the number of cases in which troops were called out since 1900 in consequence of strikes ?—A. I am unable to give that information.

Q. Why ?—A. Because the troops are not called out as the result of a strike. The troops are called out on a requisition which states that a riot or disturbance beyond the power of the civil authority to suppress is in existence or is anticipated. The fact that there may be a strike is a mere incident so far as our Department is concerned. I would like to make clear that the Department does not function at all in the matter, it is the District Officer Commanding who is the only authority empowered to call out the troops.

Q. Have you an instance to give of the way in which the procedure operates ?—A. I do not understand that question ?

Q. You say so far as the Department is concerned, it is not aware of whether the original disturbance is a strike or not ?—A. We become aware of it afterwards upon the report which the Officer Commanding the troops sends to Defence Headquarters as required by the King's Regulations; but in the majority of instances the actual calling out of the troops is something which is local, and we only hear about it after the requisition has been sent to the District Officer Commanding.

Q. Yes ?—A. For example, on numerous occasions, a small detachment of troops, non-permanent troops, will be sent to deal with a small riot or disturbance, and it will be only after the troops have been despatched and the requisition has been received that we get any communication from the Officer Commanding the District. In other words, in the time that has elapsed between the despatch of the telegram and our receipt thereof, the troops will be on the spot.

(Witness withdrew.)

No. 17.

Evidence of Frederick A. Acland.

Frederick A. Acland, Sworn.

Examined by Mr. Duncan.

Q. What is your present position ?—A. At present I am King's Printer, Ottawa.

Q. What was your previous position ?—A. For many years I was Deputy Minister of Labour. I entered the service of the Department in March, 1907, as Secretary of the Department of Labour, and the following year I became Deputy Minister of Labour and remained in that position until August 31 of the present year, when I became King's Printer.

Q. When was the Industrial Disputes Investigation Act passed ?—A. It was enacted on March 22, 1907.

Q. So that your connection with the Department of Labour commenced practically with the inception of the Act ?—A. Three or four weeks before the Act was communicated.

Q. What were the circumstances which led up to the passing of the Act ?—A. There was during the summer of 1906 a strike in the coal mines of Lethbridge, Alberta, which caused a shortage of fuel all over the Province of Saskatchewan, and certain parts of Alberta; the mines of Alberta and south-eastern British Columbia had not been developed to the extent they have in later years. The coal of the Lethbridge mines, the Galt mines, was chiefly used in Saskatchewan and there was great trouble and great necessity; the Government of Saskatchewan was greatly perturbed because they foresaw trouble during the coming winter; there was no coal in sight, and they petitioned the Federal Government to take some action looking to the reopening of the coal mines in Lethbridge.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 17. Frederick A. Acland. Examination —*continued.*

Mr. Mackenzie King, the Prime Minister of the present Government, was then Deputy Minister of Labour, and in November, 1906, he was sent by the then Minister of Labour, Mr. Lemieux, to Alberta and to Saskatchewan, to look into the situation, and to take what steps he could to bring the parties together and bring about the resumption of work.

Mr. King dropped off at Winnipeg where I was living at the time, and he asked me to go with him, and I was with him during the negotiations which brought about the resumption of work at the Lethbridge mines.

After a week or so he secured an arrangement which brought about the resumption of work, and the coal was mined shortly afterwards, and the trouble was ended for the time.

Mr. King outlined to me at that time a proposition he had in mind and intended to submit to the Government, looking to the enactment of legislation which he hoped would go far to prevent a renewal of this very serious menace to the public interest, and the legislation outlined was that which a few months later was enacted at Ottawa.

At the request of the Government I went into the service of the Department in March, 1907, and the Act was enacted on the 22nd March, 1907, and some time before the end of the session it received the Royal Assent because of difficult conditions which were again arising in the Fernie mines question which had not been associated with the strike at Lethbridge.

At present all these mines are in what is called District No. 18, but the mines were not then so fully organised.

His Lordship: The Witness indicates that this is a statesman's Act for the purpose of settling trouble, but I cannot accept that any more than I can look at Hansard to ascertain the idea of the members at the time the Act was passed. I must take the Act as it is.

Mr. Duncan: I would not be able to put before your Lordship the official Hansard report of the proceedings, although it contains very valuable statements?

His Lordship: Please do not go further than you have. Mr. Acland's historical account has proved exceedingly interesting, but it is not evidence.

Mr. Duncan: Q. Lethbridge is in what province? —A. In the province of Alberta.

Q. And Fernie is in what province? —A. In British Columbia.

Q. Since the enactment of the Act, have you been able to watch its operation? —A. While I was in the Department nearly every case went through my hands. Mr. King went out of the Department a year later, and I succeeded him as Deputy Minister, and before he went away he was away a great deal on Royal Commissions and otherwise, so practically all cases save one or two, when I was absent, went through my hands.

Q. What have you to say? —A. Altogether during the period I have indicated, from March 22nd, 1907, down to March 31st, 1923, there were 597 cases referred under the terms of the Act, and 428 Boards of Conciliation were established.

The remainder of disputes brought up were not referred to Boards of Conciliation, but were disposed of by other agencies. It does not follow of necessity that a Board is established when an application is received. The officials and the Minister look into the matter, and it might happen quite

frequently that an application does not indicate a very serious dispute. We gradually acquired experience in these matters, and were sometimes able to tell pretty accurately that a dispute was not of a serious nature. We had experienced conciliators, and sometimes we were able to get their assistance in reaching an adjustment without the expense and delay of a Board. We avoided them whenever possible.

In 428 cases Boards were established. Out of 597 disputes referred under the Act, in each of which cases there were sworn statements to the effect that a strike or lockout (although a lockout practically never occurred) would occur to the best of the knowledge and belief of the applicants, all were disposed of without strikes and lockouts with the exception of 37 cases.

37 strikes occurred out of 597 cases, in spite of the efforts of Boards of Conciliation which were appointed, or other efforts made by the Department.

Q. Has the Act in any way contributed to the peace, order and good government of Canada ?

Mr. Kilmer : I object to that question, my Lord.

Mr. Duncan : I submit that the actual operation of the Statute may be of importance. I refer your Lordship to Maxwell on the Interpretation of Statutes, 1920 Edition, p. 53 :—

> " Another class of external circumstances which have, under " peculiar circumstances, been sometimes taken into consideration in " construing a Statute, consists of acts done under it, for usage may " determine the meaning of the language, at all events when the " meaning is not free from ambiguity."

His Lordship : I am not construing this Statute, and there is no ambiguity about it.

Mr. Duncan : I submit that where it is a conflict between two governments as to in which field the Statute lies, the actual operation and effect are important. It is a new point, my Lord, from that point of view, because never before have questions of evidence been gone into to determine the validity or otherwise of a provincial or Dominion Statute. It is an entirely new field, and not like the case of an action between parties where the evidence may be excluded because it will affect the dollars and cents of that particular party. This is a case of divided legislative field, and I would submit to your Lordship that in view of the possibility of the Court of Ultimate Resort being unfamiliar with conditions and without the knowledge possessed by your Lordship, it is important that there should be on the record evidence of the actual operation of the Act.

His Lordship : Where does such a court exist ?—

Mr. Duncan : The Court of Last Resort for all British subjects, my Lord.

His Lordship : That is lese-majeste. His Majesty's Privy Councillors in England are exceedingly well informed about Dominion matters.

Mr. Duncan : Yes, my Lord ; but they are not, I submit, acquainted with the facts within the knowledge of the present Witness and within your Lordship's knowledge. I submit that the evidence can do no harm. It may be necessary to have a ruling on the question, and his Majesty's Privy Councillors may say : " This is not the type of evidence which, in future,

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should be admitted." If, however, the testimony is excluded, a serious injury may be done to the interests of those concerned.

Mr. Dewart: I submit that there is another view in which this evidence can be given. Your Lordship ruled against my learned friend Mr. Duncan yesterday when referring to certain English cases, particularly *Campbell* vs. *Rickards*, as to whether experts might give their opinions on matters of legal or moral obligation, or what would probably have happened had the parties acted in one way instead of another. That is not the point in this case. I submit there is another view in which evidence of what has taken place and the history of strikes and lockouts under this Act becomes of the utmost importance. There is an issue between my learned friends for the Plaintiffs and my learned friend Mr. Duncan for the Defendants and myself for the Minister of Justice. The Plaintiffs say: "This is a matter relating to property and civil rights in a province; that is, the civil rights of our Commission," and we say that the subject matter of the legislation is not property and civil rights, but is the Industrial Disputes which affect Capital and Labour, and touch the larger interests of the whole community. How can this fact be established, and the justification for the legislation established except by evidence showing the industrial conditions that have existed, and were shown by the Honourable Minister of Labour still to exist in 1923, and by showing that these industrial disputes touch the interest of the Dominion as a whole,—its trade and commerce. Further, the character of the strikes and lockouts must be considered to show that they do so affect the interests of the whole Dominion, both directly and indirectly, as to come within Dominion jurisdiction. In that way, by showing those facts and circumstances, and demonstrating that the industrial condition is not a normal condition at any time from the inception of this Act, and as shown not to be a normal condition in 1923, I submit that the evidence Mr. Duncan has submitted to your Lordship with reference to the operation of the Act and the cases of strikes when it became necessary for troops to be called out, and so on, is evidence cognate to the particular issue which your Lordship will finally have to try, namely, whether our interpretation of the subject matter is correct or not.

His Lordship: What is the question, Mr. Reporter?

The Reporter: "Q. Has the Act in any way contributed to the peace, order and good government of Canada?"

His Lordship: No matter what Mr. Acland's standing may be, I have no hesitation in ruling that his opinion cannot be allowed to establish a point of law.

Mr. Duncan: Q. Have you knowledge of the operation of the Act, and its effects upon industrial conditions in general?

His Lordship: I cannot allow that question. The Act speaks for itself, and must be construed according to law.

Mr. Duncan: Q. On what basis is Labour organised in Canada to-day? —A. Labour is organised, of course, in Trades Unions. Here and there may be found a form of provincial organisation, but the organisation begins in practically all cases by what is called a Local Union. In the case of the Carpenters' trade, for instance, the carpenters would be organised in a Local Union, and that Local Union would be attached to a body which has its

headquarters in one place or another. As it happens, by random I selected the trade of Carpenters without particularly intending to do so, but in the case of Carpenters there are some remains of a union having its headquarters in England. The majority of Carpenters, however, are members of a Union having its headquarters in the United States. All these Local Unions exist all over the United States and Canada, and in the United States as in Canada, that particular trade has Unions which are attached to the old headquarters in England, but the great majority are attached to the headquarters in the United States.

Other trades, as a rule, have their Local Unions attached to headquarters in the United States, but there are some Canadian Unions that have no headquarters in the United States.

There are also National Catholic Unions which are practically confined to the province of Quebec, and their headquarters are in that province.

Mr. Duncan: Q. That is a provincial organisation?—A. Yes; it does not exist beyond the confines of the province of Quebec, but it is known as the National Catholic Union.

His Lordship: Yesterday Mr. Gunn referred to their being organised on a "religious" basis. He meant, of course, a sectarian basis.

Mr. Duncan: Q. Have you anything to say about class feeling among the workers, and the possible effect that may ensue from a disturbance in one part or another of the country?

Mr. Kilmer: I object.

His Lordship: Do not answer that question, Witness.

Mr. Duncan: In this particular instance, my Lord, I am asking for direct testimony on questions of fact. If it is a fact that in Canada there is class feeling, no person is in a better position to testify to that fact then Mr. Acland. I do not think anyone will raise any question about his impartiality.

His Lordship: His impartiality is unquestioned, but that is not the point. The point is that the conclusions arrived at by the various judges who will hear this case cannot be based upon the opinion of a Witness.

Mr. Duncan: I have asked the Witness whether class feeling does exist in Canada, and I would like to obtain his answer as fully as I may obtain it.

His Lordship: I will relieve you of the necessity of pressing for an answer by stating that I assume class feeling does exist, but the extent to which it exists is based upon opinion, not upon fact.

Mr. Duncan: Any test must ultimately be a test of opinion, my Lord. If I were to state in evidence that a street car hit John Jones, I would be reporting a fact, but under cross-examination, I might be told it was a matter of opinion.

His Lordship: Yes; but the occurrences to which you testify through your senses are usually spoken of in law as questions of fact. Your question to the Witness, however, would involve his opinion upon the existence of a state of things that are not facts and upon which he would testify not through his senses but by his reasoning powers, and conclusions of that nature can only be arrived at by the Court.

Mr. Duncan: May not the Court be assisted, my Lord?

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His Lordship: The Court desires assistance, but, unfortunately, the rules of law prevent your rendering it in this instance.

Mr. Duncan: It is important that the Court should lay down a ruling that will admit the giving of evidence that is essential in a constitutional case.

His Lordship: Is there any difference between the rules of evidence in a constitutional case and an automobile accident case?

Mr. Duncan: There is no authority on the point, my Lord.

His Lordship: I cannot depart from the rules of evidence, notwithstanding the cogency of your reasoning.

Mr. Duncan: Your Lordship rules that the Witness may testify as to matters of fact, but not to matters of opinion?

His Lordship: Exactly.

Mr. Duncan: May I ask Mr. Acland whether, in taking into consideration his knowledge of the working of the Act, in his opinion the same work could be as effectively done by nine Acts in nine different provinces in Canada?

His Lordship: No.

Mr. Duncan: Your Lordship rules that I may not ask him that question?

His Lordship: You may not. It must be assumed that the provinces of Canada have arrived at a state of adolescence and intelligence which would allow them, if they thought it was proper, to administer this Act. The provinces have emerged from their swaddling clothes, and if the law is a law of expediency under the British North America Act, the courts are not concerned with the expediency of it.

Mr. Duncan: Q. Have Boards of Conciliation been established in the past for the Toronto Electric Commissioners or the Toronto Hydro Electric Commissioners and their employees?—A. Yes.

Q. In connection with disputes between the Hydro Electric Commission and its employees?—A. Yes.

Q. In what years?—A. I think about 1919 or 1920.

Q. Before that?—A. It may be. We did establish a Board on one or two occasions.

Q. And have Boards been established in the past in connection with other disputes in the city of Toronto between electrical employees and other employers?—A. On various occasions Boards have been established, particularly as between the Toronto Electric Railway and its employees, sometimes street railway men and sometimes electrical workers.

Q. And in the city of Montreal?—A. And in Montreal also we have established Boards as between the Montreal Heat, Light & Power Company and its workers; I think three Boards have been established in that case, and on two or three occasions between the Montreal Street Railway and its workers.

Q. So that the number of disputes arising in each year does contain a percentage of disputes definitely allocated to electrical trades or definitely arising in them?—A. Undoubtedly; there have been such cases in many other cities, such as Winnipeg, Vancouver, Ottawa, etc.

By Mr. Dewart:

Q. Have you knowledge of the operation of the Act in question, and the extent to which threatened strikes touch or affect interests outside the city or province in which the industrial dispute occurs?—A. In railway disputes, particularly.

Mr. Kilmer: What is the question?

Mr. Dewart: Q. Have you knowledge of the operation of the Act, and of the extent to which threatened strikes touch or affect interests outside the city or province in which the industrial dispute occurred?—A. I have.

Mr. Kilmer: I do not object to the latter part of the question, but I do object to the first part. My learned friend wants to know the extent to which this Act has been employed in industrial disputes.

Mr. Dewart: Q. What do you say as to whether industrial disputes in which strikes were threatened affected interests outside the city or province in which the dispute occurred? In your experience, have there been many such cases?—A. There have been many such cases.

Q. Did they touch Dominion-wide interests?—A. Frequently.

Q. Have Boards been applied for by employers as well as employees?—A. Very rarely, but there have been cases.

Q. You cannot speak particularly as to the instances now, I take it?—A. Yes.

Q. In any case, was the company a company having Dominion significance, or touching Dominion affairs generally?—A. That is a little more difficult, but I recall one case where the Canadian Pacific Railway in 1915 came to the Department to secure its action under the Industrial Disputes Investigation Act, and there have been other cases.

His Lordship: Are Railways under the Act?

Mr. Dewart: Q. Was that a voluntary submission on the part of the railway in question?—A. Voluntary submission is not required. The Act covers railways, and if one side calls for a Board the other side simply has to accept.

Q. Is there an application at present pending on behalf of the Shipping Federation?—A. I am not in the Department at the present time, but I have learned that there is.

Mr. Kilmer: I object, my Lord.

Mr. Dewart: I will not press that question.

Q. Had you knowledge of the application for a Board in the case of the Electrical Workers of Montreal, which case has been referred to, on the 11th July last?—A. The Electrical Workers employed by the Montreal Heat, Light & Power Company?

Q. Yes?—A. Yes; I recall that Board.

Q. Was a Board established in that case?—A. A Board was established.

Q. And did the report come in before you left office?—A. I do not think it arrived; I know there was no strike resulting.

Q. Perhaps the Shipping Federation is the later matter. Have there been any strikes so far as longshoremen are concerned?—A. One of the first applications under the new Statute was in 1907, April or May. You

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asked a moment ago for a case where employers had applied. The employers put in the application there, but unfortunately the strike had already occurred. The men claimed they had not understood the Act to apply. It was ruled that the Act did apply to longshoremen.

Q. To what extent did that apply to employees ? Where were the employees situated who were affected ?—A. In Montreal.

(Whereupon the Court adjourned at 12.45 o'clock p.m. until 2.00 o'clock p.m.)

Upon resuming at 2.00 o'clock p.m.

Frederick A. Acland resumed the Witness stand.

Mr. Dewart : Will your Lordship permit me to ask another question arising out of my learned friend's cross-examination with reference to the loss of working days, that my learned friend brought out from the official Hansard report ?

His Lordship : Yes.

Mr. Dewart : Q. I did not have before me this morning, Mr. Acland, the Hansard Report of the 10th April, 1923 (page 1769), to which my learned friend Mr. Kilmer referred. I understood my learned friend to bring out from the Minister of Labour that there was a loss of working days of 169,185 lower than in any previous year except 1902 and 1915 :—

" Mr. Manion : That is in Alberta and Cape Breton ?

" Mr. Murdock : Alberta and Nova Scotia. The number of " employees affected and the time loss resulting from these disputes if " deducted for the last year would give us a time loss of 169,185 working " days lower than in any year except 1902 and 1915."

Then Mr. Murdock discusses the building trades. Can you give us the relative figures, so far as 1922 and 1921 are concerned, as to the loss of working days owing to strikes throughout the Dominion ?—A. The total number of working days estimated to have been lost in 1922 from strikes in the Dominion was (this is the printed record) 1,975,276 ; that is for the calendar year. These figures are computed always for the calendar year.

Q. What year ?—A. 1922.

Q. What are the figures for 1921 ?—A. For the calendar year 1921 the figures were 956,461.

Q. So that the loss of working days in 1922 was more than double the loss in 1921 ?—A. Just about double.

Mr. Kilmer : I do not understand the figures that have been given now.

Witness : These are figures printed in the Labour Gazette for March, 1923, and compiled from our best records as for the calendar years of 1922 and 1921.

Mr. Kilmer : May I ask the Witness to repeat the figures he has given ?

Mr. Dewart : 1,975,276 in 1922 as against 956,461 in 1921.

Q. Is that right ?—A. That is right.

Q. That is a little more than double ?—A. About a million more.

Q. Are the figures for 1923 complete, or have you those figures for any portion of the year ?—A. They could not be for the calendar year. They

are made up by calendar years, and it would take a little time after the expiration of the calendar year before they would be completed. In any case, I have not the figures now, because I am not connected with that Department. They would run three months behind, to get accurate figures.

Q. You could not speak with reference to the figures for the first six months of 1923 ?—A. Only in a general way, that they would run a good deal less this year than last year, because in 1922 there was a bad strike in the Alberta coal mines which caused a very large loss of time.

Cross-examination by Mr. Kilmer.

Cross-examination.

Q. You said that boards of investigation had been appointed as between these Plaintiffs and their employees prior to this last Board ?—A. I think there were two cases.

Q. In what years were they appointed ?—A. I said this morning I could not remember which years, but during the last five or six years we have had a good deal of correspondence with the Toronto Electric Commissioners and the Toronto Hydro Electric Commission.

Q. You do not remember the year ?—A. Not at this moment.

Q. Were those Boards established with the consent of the Plaintiffs ?—A. I think with the consent of the Plaintiffs. Of course, I am referring to the Hydro when I say " with the consent of the Plaintiffs."

(Witness withdrew.)

No. 18.

No. 18. Bernard Rose. Examination.

Evidence of Bernard Rose.

Bernard Rose, Sworn.

Examined by Mr. Duncan.

Q. You are from where ?—A. Montreal.

Q. Are you a member of the Bar there ?—A. I am.

Q. And a King's Counsel ?—A. Yes.

Q. And a Bachelor of Civil Law ?—A. Yes ; of the University of King's College.

Q. You got that degree as the result of what ?—A. As the result of writing a thesis on the scope and purpose of Labour Legislation.

Q. Have you been a member of Boards under the Act ?—A. I have ; quite a number.

Q. Acting for whom ?—A. For both employers and employees.

Q. In any other capacity ?—A. I have advised them on the utility of applying for Boards.

Q. Have you therefore a fair knowledge of labour conditions in the country, and conditions of industry ?—A. I have. That knowledge is based on not only actual experience as a member of Boards, but also on a study of conditions in this country.

Q. And what would you say is the organisation of Labour in this country? —A. As a rule, international, and in nearly all cases, national. I might point out in that connection that the Dominion Trades and Labour Congress, which is regarded as the legislative mouthpiece of organised labour in this country, is at the same time affiliated with the American Federation of Labour. At one time they got a subsidy, but I have not the Constitution before me. I know it has the provision that no Local Union of any particular trade or industry will be granted affiliation with the Dominion Trades and Labour Congress if there happens to be an international union. I am not commenting upon that, but that happens to be the case.

Q. Is there any example of a purely local or provincial organisation of Labour? —A. None beyond the National Catholic Unions in the Province of Quebec, which are, as perhaps you know, and as His Lordship remarked this morning, purely sectarian unions. A provision is contained in La Constitution de la Cercle Ouvrieres de Trois Rivieres, or the Circle of Lay Workers of Three Rivers, Quebec, whereby any by-law passed must be submitted to the Bishop of the District. It is a purely provincial organisation.

Q. Provincial because of what? —A. Because of limiting its membership to those of one particular religious persuasion.

Q. Is that in any sense paralleled in industry among the manufacturers? —A. Hardly, because manufacturers are organised on a National basis; that is to say, you have the Canadian Manufacturers' Association, which has branches in every Province of the Dominion of Canada.

Q. Has that fact any reflex in regard to the attitude of the workers? —A. In this sense, that the workers have through their spokesmen on more than one occasion initiated the same principle, that in as much as the manufacturers or employers are affiliated along national lines, they should follow their good example.

Q. What have you to say as to the feeling among the workers as to the injury of one——

Mr. Kilmer: I object.

Mr. Duncan: I submit that is a question of fact, my Lord.

His Lordship: You base it on something more than study or observation, or the writing of a thesis.

Mr. Duncan: Have you, as a matter of experience, had occasion to become acquainted with that doctrine?

His Lordship: "Doctrine?"

Mr. Duncan: Q. What is the motto? —A. The tendency——

His Lordship: Wait one moment, please, Witness. I must exclude tendencies and understandings. I do not regard this case in the same light as the scientific and learned professions, about which Judges and Juries cannot be expected to know. This is without the realm of our jurisprudence, as regards the evidence.

Mr. Duncan: I submit that the "expert" is not confined to merely medical men, my Lord.

His Lordship: There are real estate experts and patent experts.

Mr. Duncan: And why not one in Labour, my Lord?

His Lordship: There never has been. You might as well have one in politics or in religion.

Mr. Dewart: There are a good many expert politicians, my Lord.

Mr. Duncan: If it became a question of proving what the doctrines of a political party were, my Lord?

His Lordship: That would be fact.

Mr. Duncan: Q. What are the doctrines of the Labour organisations?

His Lordship: Have they any doctrines?

Witness: If your Lordship will permit me to answer that by substituting the word "purpose," which I think will serve, the purpose of unions to-day is towards class solidarity; in other words, making the interests of the workers in one community the concern of the community generally throughout the country.

Mr. Duncan: Q. How do you instance that?—A. It might happen, as I believe was properly pointed out here this morning, that where a strike is in progress and the prospects are that through the superior organisation and reserves of the employer there was a likelihood of the strike being lost, aid would be called for, sympathetic as well as financial, from other organisations.

I might illustrate that in this way: there is at present pending an application for a Board of Conciliation on the part of the Shipping Federation of Canada. As a matter of fact, that application was sent to the Department of Labour on Friday, and I happened to be named as the representative of the employers. The head office of the Shipping Federation of Canada is situated in the City of Montreal. When the season of navigation closed in Montreal, the work of loading and unloading vessels is carried on in the Port of St. John, Province of New Brunswick, and in this particular instance the number of men employed will be in the neighbourhood of 1,200. It might possibly happen that if the Shipping Federation refused to countenance the proposals, or to submit to the demands made, the longshoremen of St. John would make representations to the longshoremen of any other port, because the longshoremen in St. John are internationally organised, asking them to come to the aid of themselves, with a view to preventing the loading or unloading of vessels in order to bring the employers, in the term used, "to time."

Q. What companies does the Shipping Federation embrace?—A. I cannot enumerate all the companies, but the Shipping Federation of Canada practically embraces every steamship company that has ships running to and from Canadian ports. The Canadian Pacific Railway Company is not at present a member of the Federation, yet for the purpose of obtaining the Board for which application has been made, the Canadian Pacific Railway Company has joined, and what is still more interesting, perhaps, is the fact that the Canadian Government Merchant Marine is a party to that application.

Q. Is the Cunard Steamship Company a member of the Shipping Federation?—A. The Cunard Line, the White Star Line, the Donaldson Line, and practically every line of steamships running to and from, particularly the ports of Montreal, St. John and Halifax, are members of the Shipping Federation of Canada.

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Defendants' Evidence.

No. 18. Bernard Rose. Examination —*continued.*

Mr. Kilmer: Is this class of evidence to be permitted to go any further, my Lord? What business have we in this action with the Shipping Federation of Canada?

His Lordship: The Witness is showing that the steamship companies are applying.

Mr. Kilmer: What effect has that in this action?

His Lordship: I do not know; but the Witness is now making a statement of fact without regard to his personal opinion. I cannot say what the effect of his evidence will be until I hear all he has to say.

Mr. Duncan: Q. You say you have been a member of Boards?—A. Yes, I have; for the Montreal Light, Heat & Power on three occasions.

Q. What do they do?—A. They supply electricity for illuminating and industrial purposes, and gas for both heating and illuminating purposes.

Q. A position very similar to the Plaintiffs?—A. It has a capital of $75,000,000, and supplies not only the District of Montreal, but a great many suburbs around Montreal.

Q. Has that Company a monopoly there?—A. Almost a monopoly, with the exception that there is another small corporation known as the Public Service Corporation; but the Montreal Light, Heat & Power Company does distribute energy—for instance, it furnishes the arc lights for the City of Montreal, and I am told that it furnishes light to help run the street cars of Montreal, and also a number of industrial establishments, and if I may be permitted to refer to the first Board that sat, I may tell the Court that in 1918 the employees of the Montreal Light, Heat & Power Company asked for an increase in wages. It was refused, and a decision was reached that a strike should be declared. It was pointed out to those who were indignant that the refusal of the Company to concede their demands that it was illegal under the Industrial Disputes Investigation Act, and a Board of Conciliation was applied for and granted, and that at the time undoubtedly stopped the strike, and it stopped it as a very critical period, because these negotiations between the Company and its employees started really in October, 1918, before Armistice had been declared.

His Lordship: Q. Is the object of this Act to stop strikes?—A. It undoubtedly stopped that one. I might say that last year a second Board of Arbitration or rather Conciliation was applied for by the men who objected to a reduction of wages. After negotiations extending for some time, a Board was granted and sat, and the matter was adjusted again without any strike. In the present year, a third Board—no, I am somewhat premature—the employees asked for an increase in wages, which the employers took exception to, and after discussing the matter for some time the Company's conclusion was that it could not and would not grant the increase, and that the men had better apply for a Board of Conciliation, which they did.

Q. And there was no strike?—A. And through that Board of Conciliation, I am very pleased indeed to be able to say, because it really established a precedent in industrial circles, peace has been assured for a period of two years.

Q. Mr. Acland says there have been only 37 failures out of 597 cases?—A. I might likewise tell the Court that I represented the Canadian Marconi Wireless Telegraph Company, I think the year previous to last, and the men

were very bitter, and a strike vote had really been taken. The Board sat several times during two or three weeks. Mr. Justice MacLennan was Chairman of that Board, and we reached a deadlock owing to the Company stating at the time that it could not pay the increased wages demanded, and it was then suggested that we put the facts before the Minister of Labour in order that he might give us the benefit of his counsel. That was done, the Board sitting in the Minister's office in Ottawa, and there through a suggestion he made, the men continuing at work all the time, the matter was satisfactorily adjusted.

Q. You say it is a good Act ?—A. I consider it a good Act for the reason that it tends to prevent disturbance, and brings about better relations between employer and employee.

His Lordship : The question here is as to who is to administer this good Act, the Dominion or the Province ?

Mr. Duncan : Q. Have you anything further to say ?—A. No ; unless you have questions you would like to ask.

(Witness withdrew.)

No. 19.

Evidence of Sedley A. Cudmore.

Sedley Antony Cudmore, Sworn.

Examined by Mr. Duncan.

Q. What is your present position ?—A. I am Chief of the General Statistics Branch in the Dominion Bureau of Statistics, and Editor of the Canada Year Book.

Q. What was your position previous to taking that appointment ?—A. I was for eleven years on the staff of the Department of Political Economy in the University of Toronto.

His Lordship : Q. Were you an assistant professor ?—A. I was an assistant professor at the time I left, sir.

Mr. Duncan : Q. Your training has been in economics and history ?—A. That is right.

Q. And your college at Oxford ?—A. Wadham College.

Q. What is the Canada Year Book ?—A. The Canada Year Book is really the official statistical abstract of the country, an attempt to bring within the compass of one volume in summary form, at all events, all the important official statistics of the country.

Q. What do you mean by " statistics " ?—A. I mean all the important matter relative to the State. The word " statistics " is cognate with the word " state," and is derived from the word " state."

Q. So you do not confine it merely to figures ?—A. No. Statistics are usually considered to be figures. I suppose the majority of statistics are figures, but statistics need not be figures ; they are facts generally, although by no means universally, expressed in figures.

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Defendants' Evidence.

No. 19. Sedley A. Cudmore. Examination *—continued.*

Q. Facts expressed in figures ?—A. Generally expressed in figures.

Q. To what extent are you familiar with labour matters ?—A. To some extent I studied them at Oxford, and during the eleven years of my teaching experience in the University of Toronto, I gave a course of lectures on trade unionism and Labour legislation.

Q. On what basis is Labour organised in Canada ?—A. Predominantly, and more especially in English-speaking Canada, it is organised on an international basis.

Q. Have you studied the question of strikes ?—A. I have.

Q. What would you say about the phenomena of strikes, as to their origin, the way in which they can be confined, and as to the way in which they may spread ?

His Lordship : That question is similar to the one I ruled upon recently.

Mr. Duncan : I submit this Witness is an expert, my Lord.

His Lordship : Yes ; but is this subject one in which, under the rules of evidence, he can be called as an expert ?

Mr. Duncan : It has been held by the Supreme Court of Canada that an expert can introduce the actuarial tables of mortality, and may from those prognosticate and say that the life of a person, basing his opinion on what has been proved in the past, may be so many years.

His Lordship : The subject of actuarial study is one with which a jury could not be expected to be versed in, and witnesses can be called to assist the jury in coming to a conclusion, but how do you put labour observation in the same category ?

Mr. Duncan : The Chief of the Dominion Statistics Branch, who has made this a special study, is certainly more expert in it than the jury.

His Lordship : Yes ; but can he say anything that a jury, or a judge acting as judge and jury, could not form his own conclusion upon after the facts had been submitted to the Court ?

Mr. Duncan : The juror forms his conclusion from the little bits of news he reads in the newspapers, and his small acquaintance with Labour disturbances, my Lord.

His Lordship : You mean to state that this Witness possesses more knowledge than the ordinary reader of newspapers ?

Mr. Duncan : Precisely, my Lord ; he is gathering statistics from all over the Dominion. He watches disturbances breaking out here and closing up there and spreading elsewhere.

His Lordship : That is valuable information for the country to acquire, perhaps, but can you make it legal evidence ?

Mr. Duncan : It is almost impossible to prove this matter in any other way.

His Lordship : I am not troubled with your inability to prove things. There may be difficulties in your way, with which I may sympathise, but I cannot admit what is not evidence under the rules.

Mr. Duncan : I refer your Lordship to Taylor On Evidence, paragraph 1416 :—

" On some particular subjects, positive and direct testimony may " often be unattainable, and, in such cases, a Witness is allowed to " testify as to his belief or opinion. . . ."

In this particular instance it is positive and direct testimony, because Professor Cudmore is in the unique position of being alone able to give your Lordship the facts within his knowledge.

His Lordship: You might be able to submit evidence to show that a man and a woman were engaged to be married as the result of observation of their conduct towards each other, but you would have no direct evidence about it.

Mr. Kilmer: I do not think you could give expert evidence on that matter, my Lord.

His Lordship: Not "expert" evidence, but you could give evidence of actions.

Mr. Kilmer: From which the Court could infer.

His Lordship: Only infer.

Mr. Kilmer: From which the Court might infer.

His Lordship: It is an abstruse subject.

Mr. Kilmer: It is the same as a Professor of Political Economy submitting a book on the subject.

His Lordship: I do not desire to mar the case by admitting statements that are not evidence, and I am quite clear that as a general rule unless it is some abstruse subject with which the ordinary man is not acquainted, such as medicine, no evidence can be substituted for the opinion of the tribunal before which the matter is brought.

Mr. Duncan: I submit there are two matters here, my Lord. First, the question of fact? Can Professor Cudmore report to the Court, what he knows as a matter of fact. Secondly, can he, having given those facts, express to the Court his opinion as to what may occur in certain cases, or what does occur?

His Lordship: No. You may call it expert opinion, but it is not "expertness" which can be admitted in a case of this kind.

Mr. Duncan: Professor Cudmore watches this matter from a certain point of vantage.

His Lordship: He sees certain facts and draws certain inferences, and you ask him to express those inferences. You pass from facts to expressions of opinion, founded on inferences, and that is what the Courts have uniformly declared not to be evidence.

Mr. Duncan: May I ask him what he has seen, my Lord?

His Lordship: You may ask him generally as to facts, but not inferences from facts, or his own opinion. If the Witness could say that an opinion expressed by him is held without any dissension by all the political economists of the world, that might so dignify it that it would come in as a fact, but as a scientific man he would not attempt to do that. He is only expressing his opinion, and to enable him to do that you adduced the history of his very eminent position in the world of economics, but that is not sufficient.

Mr. Duncan: Q. Describe to the Court any facts which you think are important in connection with strikes?

His Lordship: "Facts"?

Mr. Duncan: Yes, my Lord.

His Lordship: Q. Professor Cudmore, have you been in the Court Room throughout this trial?—A. I have.

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Q. You have heard these discussions ?—A. Yes.

Q. Then I will leave it to you as a scholar not to transgress any privilege you may be given, and to express only what you know to be facts, and not to give expression to your inferences from your observation, which would be substituting your judgment for the judgment of the Court ?—A. Yes, my Lord.

Q. Do you think you will be able to do that ?—A. I think so.

Q. If you were to transgress the privilege and express your own opinion, knowing that it might be controverted by another observer, another economist, it would not be evidence.

Mr. Kilmer : If an expert opinion is being given, I ask that it be confined to the facts in this case now before the Court, my Lord.

His Lordship : The case made by the Defendants is that the possibility of this strike was a national danger.

Mr. Kilmer : Your Lordship sees the difficulty about that.

His Lordship : I see the difficulty in your case.

Mr. Kilmer : It is not a difficulty in my case, my Lord. Your Lordship will remember the incident of the cow that kicked over the lamp in Chicago and burned the whole city. We do not want expert evidence as to what you can do with a lighted match, my Lord.

His Lordship : We are getting down to extreme simplicity.

Mr. Kilmer : Let us have expert opinion on what has been proved in this particular dispute.

His Lordship : Do you suggest that in order to prove what might happen as the result of a cow kicking over a lamp, it would be necessary to call a drover ?

Mr. Kilmer : No, my Lord ; nor do I want you to call a man to tell what happened in the first strike in Rome.

His Lordship : The Witness has been instructed to distinguish what he knows from other economists from what are facts. I will trust him to do that.

Mr. Duncan : Q. What have you to say on facts, on matters you know have happened ?—A. I have to say this, that sympathetic strikes frequently take place ; that, for example, the Winnipeg strike was accompanied by sympathetic strikes in Brandon, Manitoba, in Regina, Saskatchewan, in Prince Albert, Calgary, and Edmonton, and in Toronto.

Q. How many provinces of Canada ?—A. In four provinces.

His Lordship : Q. What is a " sympathetic strike " ?—A. A sympathetic strike, I think——

Q. " I think " does not indicate finality. Can you not say finally what a sympathetic strike is ?—A. A sympathetic strike may be of two kinds. First, where other local unions in the same organisation having no grievance of their own strike in order to put pressure upon the employers in the original strike.

Q. That is one ?—A. Yes.

Q. And the second ?—A. Secondly, where employees in organisations other than that in which the strike arose do the same thing.

His Lordship : I asked the Witness that question as an expert, but he has not, in his answer, told us anything that we did not know.

Mr. Duncan: Yes, my Lord?

His Lordship: How is it possible in this case to set aside one man as capable of giving evidence of opinion which other men could not give?

Mr. Duncan: He was giving evidence about the Winnipeg strike, my Lord.

His Lordship: But I asked him what a sympathetic strike was. He is supposed to know more than the ordinary person, but he has told us absolutely nothing that we did not know before.

Mr. Duncan: No doubt he could have furnished a definition of a " sympathetic strike " which would have surprised us all.

His Lordship: I was testing him to see whether he had any knowledge that we have not, and apparently he has not.

Mr. Duncan: On the definition?

His Lordship; I doubt very much whether his observation would go much farther.

Mr. Duncan: Q. Are you acquainted with the economic conditions in Canada?—A. I believe I am.

Q. And in what respect are the economic conditions in Canada to-day different from what they were at the time of Confederation?

His Lordship: You will have to increase the Professor's fee as the result of that question.

Mr. Duncan: If there is anything dependant upon this argument, my Lord, it is that the question of industrial disputes was not mentioned at the time of Confederation.

His Lordship: I appreciate your point, and you may proceed.

Mr. Duncan: Q. What have you to say about the condition of Canada at the time of Confederation?

Mr. Kilmer: The economic condition?

Mr. Duncan: The economic condition.

His Lordship: That is 56 years ago.

Mr. Duncan: Yes.

Q. Yes?—A. Canada in 1867 was mainly an agricultural country. The towns were small, and predominantly commercial rather than industrial, and the industries which did exist at that time were on the whole small scale industries. I may illustrate that by saying that in the census of 1871 a record was made of all the industries in the country, and there were some 40,000 industries, manufacturing plants, according to the definition of manufacturers at that time, and the whole 40,000 had only 180,000 employees; that is, the average Canadian manufacturing industry in the year 1871 had only four and a half employees.

Q. Of what did Canada consist politically at that time?

His Lordship: Oh, Mr. Duncan?

Mr. Duncan: It is very short, my Lord.

Mr. Kilmer: I think there were the same two parties, Liberals and Conservatives.

Mr. Duncan: That is not the question.

Q. Yes?—A. Our trade in 1867 was very small, and there was no rail connection on Canadian soil between the Provinces of Ontario and Quebec, which were more or less frozen up in the winter, and the Maritime Provinces,

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which were not. That, of course, constituted a very great drawback to the growth of industry, and more or less kept us in a backward position industrially.

Q. The then Provinces of Canada were not connected at that time ? —A. Not physically connected by rail transportation.

Q. What has been one of the most remarkable developments since that time in Canadian economic history?—A. I might say that in 1867 strikes were illegal in Canada as conspiracies in restraint of trade.

Q. Have you an instance of that?—A. In the year 1872 there took place in Toronto a rather famous strike in the Printers' Union, and 13 men, among whom was the late E. F. Clarke, later Mayor of Toronto, and John Armstrong, who was later the Secretary of Labour at the Parliament Buildings in Toronto, were arrested for conspiracy in restraint of trade.

Q. Was there any other well-known citizen involved on the other side ?—A. I believe the late George Brown was involved as an employer on the other side.

Q. An employer on a certain newspaper ?—A. Yes. To-day we have in Canada the growth, first, of large scale production. As a matter within my duty, I receive monthly from employers throughout Canada——

His Lordship : Excuse me, Professor, but I do not think the Court can accept this evidence. I am very sorry to interrupt you.

Professor Cudmore has given us a very interesting historical sketch of the changes with the times, but it is quite clear that we were a small country at that time, and more simple in our tastes and in our ways of living. We have not improved. The men of those days were happier than we are, but that has nothing to do with the enactment of this Act, which it is practically admitted contains many good features.

Mr. Duncan : In 1867 the matter was not of such importance that an enumerated head would easily occur to the Fathers of Confederation at the time of the Quebec conference.

His Lordship : There could be no greater classification than property and civil rights.

Mr. Duncan : But this has now attained to such proportions that it is an actual head. It is a matter which, if your Lordship is going to interpret the Constitution as Chief Justice Marshall interpreted the Constitution of the United States, in accordance with the development of the age——

His Lordship : There the conditions were reversed. The reserve of power was given to the States and not to the Federal Government, while in Canada certain powers were given to the Provinces. The idea of Confederation could not have been carried out unless the rights of the Provinces had been very distinctly put in the forefront. Why should not these Labour matters be dealt with by the respective Provinces ? According to your argument it is now attempted to be done almost exclusively by the Dominion, and you want to show that the conditions in 1867 were so different from the conditions existing at the present day that an Act like this would be justified as impinging on the rights of the Provinces then.

Mr. Duncan : No, my Lord ; but because it did not arise then, and is not specifically mentioned, and that now the only department which can effectively deal with it is the central government which surveys the whole

Dominion, Labour being organised on a Dominion basis, as are employers, and I want Professor Cudmore to show the present day conditions as contrasted with the conditions in 1867.

Q. Yes?—A. Some 5,800 firms report to me monthly the numbers on their pay-rolls, and those 5,800 firms employed on the 1st September last 820,000 employees, being an average of about 140, although we have the growth of large scale production.

His Lordship: Q. 820,000 employees in manufacturing concerns now as against 180,000 in 1871. How does the population compare?—A. The population is about two and a half times greater.

Q. Whereas the increase in the number of employees is about four and a half times greater? The proportion is two and a half to four and a half?—A. Yes.

His Lordship: Then you must consider the National Policy. That did a great deal towards transferring men from trade and commerce to manufacturing.

Mr. Duncan: And the cities, my Lord.

Q. What have you to say about the cities?—A. The cities have grown enormously. The population of Toronto in 1871 was 56,000, about one and a half per cent. of the then population of the Dominion. The population of Toronto in the census of 1921 was about six per cent. of the population of the Dominion. I refer to Toronto within its municipal boundaries. If you include the areas immediately on the edge of the Municipality of Toronto, which is geographically part of Toronto, it would be about seven per cent.

Q. What percentage of the manufacturing of the Dominion is done in the City of Toronto?—A. If you measured that by the value of the product, one-seventh of all the manufacturing in Canada is done within the City of Toronto, on the basis of the latest available data.

Q. What about the number of employees?—A. Out of the 685,349 employees engaged in manufactures in Canada in the year 1920, 106,630 were in the City of Toronto.

Q. Can you compare Toronto, from the manufacturing point of view, with any of the Provinces?—A. The manufactures of Toronto in the value of their product were in 1920 about double those of the three Maritime Provinces.

Q. Double of the three together?—A. Of the three together.

Q. Yes?—A. And they were greater than the total of the three Prairie Provinces together, and only a little less than the total of the three Prairie Provinces with British Columbia; in other words, there were nearly as great value of manufactured goods produced in Toronto in 1920 as were produced in the whole of the Dominion west of the Lake of the Woods.

Q. What about the number of employees, and the amounts paid in wages?—A. I think you have approximately the same condition there.

Q. So that changing from the agricultural community of scattered little towns, depending on their surrounding country, would it be fair to say that you now have Canada with two nerve centres in Montreal and Toronto respectively, from the economic point of view?—A. In every country where modern industry exists, certain great centres of manufactures arise. In 1920, Montreal manufactured about one-seventh of the total of

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manufactures produced in Canada, and Toronto about another one-seventh, and it has also to be borne in mind that on account of the specialisation in industry, the goods produced in Montreal and Toronto are linked up with goods produced elsewhere, the finished product of one industry becomes the raw material of another, and when the process of production is stopped at any one point, the results are very widespread upon other industries.

Q. What have you to say about the bank clearings here as indicating the importance from an economic point of view of the City of Toronto ? — A. The bank clearings of Toronto in the year 1922 were over 30 per cent. of the total bank clearings for the Dominion, and for the first nine months of this present year the bank clearings in Toronto have been one-third of the total for the Dominion.

His Lordship : This evidence is directed, I suppose, to the proposition that it is expedient to have this matter dealt with from a Dominion standpoint.

Mr. Duncan : No, my Lord ; that in the development from the agricultural community to the present state of Canada, you commence with a residuum, an unenumerated subject matter, and that if there is any question of doubt one way or the other; if it is a case of the Courts legislating; these figures are important.

His Lordship : Do you mean to say that the Courts should legislate ?

Mr. Duncan : Perhaps I chose an unfortunate expression, my Lord; I meant deciding.

His Lordship : Which had the effect of legislating ?

Mr. Duncan : Yes, my Lord.

His Lordship : Is it not a case for amending the British North America Act to suit the increased importance of the country, rather than to frame these present sections of the British North America Act ? There might be a readjustment, you say, to take local affairs and contracts and commissions between employers and employees out of the Dominion.

Mr. Duncan : Contracts would be purely a matter of property and civil rights, but industrial disturbance is not.

His Lordship : It is not an interference with contract to tie up employers and employees while a Board of Conciliation is working ?

Mr. Duncan : Is it not closer to public wrongs than to private rights; a disturbance which, in this particular instance, might throw out of employment a vast number of employees that are engaged in the City of Toronto ?

His Lordship : Public wrongs are not confined to Dominion jurisdiction. They can be attended to, if they exist, by the Provincial legislatures.

Mr. Duncan : Q. I put before you some statistics which have been compiled by the Department. Will you verify those ?

Mr. Kilmer : I object to those.

His Lordship : Are these statistics in a book ?

Mr. Kilmer : I object to the Witness wandering along and giving statistics as he has.

His Lordship : It has been a most interesting lecture.

Mr. Kilmer : I object to that, and submit that the Witness cannot put it in that shape.

Mr. Duncan: I submit that it is clear on the authorities that this evidence may go in.

His Lordship: This is a collection of statistics, of course.

Mr. Duncan: Yes; taken from the Department's file and proved by Mr. Cudmore. I will ask him to prove it. I may observe that it is really taking the book of a Department that is a party to this evidence.

Mr. Kilmer: How can the book go in, and if the book cannot go in, how can an extract from the book go in?

Mr. Duncan: Section 29 of the Ontario Evidence Act says, my Lord:—

"29. (1) Where a book or other document is of so public a nature as "to be admissible in evidence on its mere production from the proper custody, "a copy thereof or extract therefrom shall be admissible in evidence if it is "proved that it is the examined copy or extract, or that it purports to be "signed and certified as a true copy or extract by the officer to whose custody "the original has been entrusted."

That is taken from Lord Brougham's Evidence Act of 1851.

His Lordship: It is a different class of book altogether. Professor Cudmore says he is the Editor of this book.

Mr. Duncan: This is not taken from a book, my Lord.

His Lordship: I thought you had a book there.

Mr. Duncan: I have the Canada Year Book here.

His Lordship: The Witness is the editor of that book?

Mr. Duncan: Yes, my Lord.

His Lordship: Are the statements of all editors to be received as absolute truth?

Mr. Kilmer: If the Year Book is not evidence, the extract cannot be evidence.

His Lordship: What do you want out of it?

Mr. Duncan: Just the figures, which are important. It has been laid down that a public book within the meaning of Lord Brougham's Act is one to which the public has reference, and it has reference to the Year Book, of course, because it is distributed gratis. It is complied under the Department of Statistics, and is an enumerated head under the British North America Act, and these are the official statistics for Canada.

His Lordship: It appears to be good evidence.

Mr. Kilmer: It is not evidence, my Lord, I submit.

His Lordship: I will admit the Year Book.

Mr. Kilmer: It is not evidence, my Lord. Its production does not prove any of the facts contained in it, nor even that such a thing has been printed.

His Lordship: I never heard it questioned.

Mr. Kilmer: A Year Book or Government return, my Lord.

His Lordship: A Year Book. There is no more reason, of course, for the year book to be admitted than for Mr. Hopkins' book to be admitted.

Mr. Dewart: That is different, my Lord.

His Lordship: One is a little more succinct than another, but I would take Hopkins' book as evidence of current history.

Mr. Kilmer: But not as a matter of law, my Lord.

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His Lordship: No. This book in question is the result, after the Blue Books have been passed.

Mr. Kilmer: If the Blue Books themselves are not evidence, how can an extract therefrom be evidence?

His Lordship: Logically, you are right; but for convenience we have to take these things; we cannot dig them up ourselves.

Mr. Kilmer: It is a question of the relevancy and admissibility of this evidence, my Lord.

His Lordship: I suppose you are right in that regard. I do not think the book referred to in the section you have read is a year book, Mr. Duncan.

Mr. Duncan: Under Lord Brougham's Act it has been held that public books and documents are books of the Post Office, Assessments of Land and Tax, etc.

His Lordship: Collections from different Blue Books?

Mr. Duncan: Yes; books of entries, etc. I read to your Lordship paragraph 1,600 of Taylor on Evidence, 11th Edition, Vol. 2.

"Par. 1,600. Among the public books and documents, the contents "of which, in the absence of the originals, are now provable under the enact- "ment just cited either by examined or by certified copies, may be mentioned "the following:—Parish registers; the deposit and transfer books of the "Bank of England, and of the East India Company; the books of the Customs, "of the Office of Inland Revenue, and of the Post Office; the rolls of Courts "Baron; assessments of Land Tax; Poor Law valuations in Ireland; "the books of entry, records, deeds, instruments, writings, maps, plans, etc. "... books kept by the Court Guard showing the state of the wind and weather "...."

and these documents, my Lord, are the official records of the Dominion Government, Bureau of Statistics, and I submit that they should be admitted.

His Lordship: To what do they refer?

Mr. Duncan: They are statistics showing the industries in the City of Toronto; and bearing on the question of the serious effect on peace, order and good government if these industries are interfered with:— Bread and other bakery products. Biscuits and Confectionery. Meat-packing. Flour and Cereal Mills. Coffee and Spices. Leather. Boots and Shoes, Leather. Rubber Goods. Clothing, Men's factory. Clothing, Men's custom. Clothing, Women's factory. Hats and Caps. Hosiery and Knit Goods. Fur Goods. Furnishing Goods, Men's. Neckwear, Mens'. Cigars and cigarettes. Building and Construction Industries—General Construction; Plumbing, Steam and Gas Fitting, Painting and Glazing, Electrical Contracts. Printing and Publishing. Printing and Bookbinding. Lithographing and Engraving. Stereotyping and Electrotyping. Stationery Goods. Paper. Boxes and Bags, paper. Paper Patterns. Planing Mills. Furniture.

His Lordship: Are you going to incorporate all those statistics in an Appeal Book?

Mr. Duncan: I think they are important, my Lord. They also include the value of the products for the calendar years 1917 to 1920; the capital invested, and the salaries and wages paid, etc.; facts that, I submit, are not in dispute.

His Lordship: What do they show as compared with something else?

Mr. Duncan: Compared with the Maritime Provinces and British Columbia.

His Lordship: It is a comparison of provinces? How does that help the case?

Mr. Duncan: I say that any disturbance which threatens to stop manufacturing in the City of Toronto will have an effect similar to the effect if all the manufacturing was stopped throughout the Maritime Provinces, which no one could contend would be a matter of mere local or private concern, because its reactions would be felt throughout the Dominion.

His Lordship: And you contend that Ottawa and not the Provinces should attend to these matters?

Mr. Duncan: I say if a disturbance is of such a nature that it will have the effect of stopping the manufacturing in three Provinces of Canada, it is no longer a private matter within Section 92, but it is a matter of the peace, order and good government of Canada.

His Lordship: The normal growth of cities changes constitutional law?

Mr. Duncan: I do not say that.

Mr. Kilmer: Or the growth of industries, my Lord.

His Lordship: You have given me the effect of the contents of these documents produced by Professor Cudmore. I do not think you may put them in.

(Witness withdrew.)

No. 20.

Evidence of Roy W. Gifford.

Roy W. Gifford, Sworn.

Examined by Mr. Duncan.

Q. You are appearing under subpœna?—A. Yes, sir.

Q. You are from the Massey Harris Company?—A. Yes, sir.

Q. Is your plant dependent upon electric power, and if so, to what extent?—A. About 90 per cent.

Q. What would be the effect on your business by the interruption of the supply of electric power?—A. Practically all of the plant would have to be closed down immediately.

Q. What effect would that have on the actual manufacturing processes?—A. Naturally, it would put the manufacturing processes out of business. The whole plant, with the exception of two departments, is entirely motorised—speaking of the Toronto works—including all of the

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No. 20. Roy W. Gifford. Examination —*continued.*

elevators, and any shut-off of power, as sometimes occurs, puts the plant out of business.

Q. Have you a foreign trade ?—A. Yes.

Q. Would a shut-off of electric power in any way interfere with your foreign trade ?—A. Naturally.

Q. In what way ?—A. It would naturally shut off all manufacturing and practically all shipping, our warehouses being four and five storeys high.

Q. Yes ?—A. And the effect in a good many cases would be, where we have the tonnage contracted for, to miss the shipping connections, and consequently the foreign markets and seasons.

Q. What about the effect in Canada ?

Mr. Kilmer : Is this witness an expert ? You have already called three.

His Lordship : This witness is called to show that the abstention of buyers from purchasing Massey Harris machinery would be a national calamity.

Mr. Duncan : Q. What is the extent of your business in Canada ?—A. What do you mean by that ?

Q. Do you ship into other provinces of Canada ?—A. Yes, into all provinces.

Q. And might a disturbance such as the shutting off of the electric power have the same effect ?—A. Yes.

Q. What effect would that have on your employees ?—A. Naturally, they would be out of employment.

Cross-examination.

Cross-examination by Mr. Kilmer.

Q. Where is your factory situated ?—A. The Toronto plant is situated on King Street West.

Q. If that plant burned down, I suppose it would stop manufacturing in the same way ?—A. Yes. However, we take all the precautions we can against burning.

Q. To what extent have you been operating in the last three years ?—A. Our factory year closes ordinarily in September.

Q. I will take the year up to the time in last September when your factory closed ?—A. This last factory year—we consider the 1921 factory year as closing in the middle of 1921 to be the normal year, although that is not so great as some of the years before the war, and 1922 was approximately 40 per cent. of 1921.

Q. 40 per cent. of profit ?—A. 40 per cent. of normal. 1923, which has just closed, is about 85 per cent. of normal, taking 1921 as normal.

(Witness withdrew.)

No. 21.

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No. 21. Joseph H. Coffey. Examination.

Evidence of Joseph H. Coffey.

Joseph H. Coffey, Jr., sworn.

Examined by Mr. Duncan.

Q. What is your position?—A. Factory manager. Gutta Percha Rubber Company, Limited.

Q. You are appearing under subpœna?—A. I am.

Q. Is the Gutta Percha Rubber Company, Limited, entirely dependent upon electric power?—A. They are.

Q. What would happen if the supply was interfered with?—A. If the supply was cut off we would be shut down; we have no spare sets at all, and would be entirely dependent upon the continuity of service of power.

Q. Have you any foreign trade?—A. We have.

Q. What would be the effect on that trade?—A. It would all depend upon the duration of the shut-down.

Q. Will you explain?—A. We have warehouses with stocks of goods, and if the duration of the shut-down of electric power was of sufficient length to deplete these stocks, or if we were making up specials for shipment for export orders, it would interfere with the despatch of the goods. Whether it would result in a loss of orders would depend entirely upon the interruption to manufacturing operations.

Q. Do you carry large stocks in your warehouse?—A. In some lines, yes; in other lines, no.

Q. In lines in which you are exporting?—A. We carry a fair stock, but our export business is usually made up, particularly in the footwear industry, of specials that are made to order.

Q. And which are not carried in stock?—A. Not carried in stock.

Q. How many men are employed?—A. An average of 1,000 employees.

Q. What length of interruption would make it necessary for you to lay off your men?—A. One day would necessarily mean the laying off of men.

Q. Will you give an instance of any foreign market to which you send rubber goods and footwear?—A. We ship footwear to practically all countries in the world, particularly to the West Indies, China, Australia, New Zealand and Britain.

Q. Is the competition severe there?—A. Naturally competition is severe in foreign markets.

Q. And any failure to fill orders might have a serious effect?—A. Undoubtedly it would.

Q. What about your business throughout the Dominion?—A. Our business throughout the Dominion is widespread. We have branches from the Atlantic to the Pacific, and we do a steady business in all provinces.

Cross-examination

Cross-examination by Mr. Kilmer.

Q. Do you say that if your power was shut off for a day your employees would be put out of employment?—A. If we were just shut down for one day?

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No. 21. Joseph H. Coffey. Cross-examination —*continued.*

Q. That was the question that was asked you, and I understood you to say that it would put your employees out of work—is that so?—A. Yes; in our industry, the fabricating——

Q. I did not ask for information of that nature. You have 1,000 men employed?—A. No; 1,000 employees.

Q. If the electric power was shut off for one day that 1,000 employees would be out of work?—A. Yes.

Q. If you were shut down in one hour in the working part of the day would those employees be out of work?—A. No.

Q. Two hours?—A. No.

Q. Three hours?—A. If we knew that we were going to be shut down for three hours, we would lay them off.

Q. You would lay off the 1,000 employees?—A. Yes.

Q. Has the power ever been interrupted for three hours?—A. Yes; quite frequently, particularly during the war time.

Q. And due, perhaps, to accident in the supply of power?—A. Yes; there have been considerable interruptions, not extensive during the past year or two, but prior to that they were fairly frequent.

Q. The consequence of a day's shut-off of power would be that your whole manufacturing business would stop for a day?—A. That is if the power was off for a day.

Q. What effect would that have upon your general selling business?—A. A one-day shut-down would not have any material effect on our business.

Q. Would a two-day shut-down have any material effect?—A. I am not sure of that.

Q. How many days' shut-down would it take to have a material effect upon your business?—A. I cannot answer that question.

(Witness withdrew.)

No. 22. John A. Gunn. Examination.

No. 22.

Evidence of John A. Gunn.

John A. Gunn, Sworn.

Examined by Mr. Duncan.

Q. You are the President of Gunn's Limited?—A. I am.

Q. You are appearing under subpœna?—A. Yes.

Q. What have you to say about the effect on your business of the interruption of electric power?—A. We are wholly dependent upon electric power for our killing operations, and they would cease if the electric power was shut off.

Q. Would that have any effect upon your purchases from the farmers?—A. If the stoppage was of long duration it would have, we could not buy because we have no place to carry the cattle or hogs, as the case may be; it is purely a case of how long the stoppage might last.

Q. Would that have any effect on your foreign trade?—A. It would depend on how long it would last; we have a certain amount of meat in cure all the time, and when those are exhausted our foreign trade would suffer; it altogether depends on what we would have on hand for our foreign trade.

Q. Have you had any experience in the operation of the Industrial Disputes Investigation Act?—A. Indirectly; at the time I was G.O.C. of the District, I had.

Q. What about it?—A. I would say it was a good Act. I think it is good, for the peace, order and good government of the Dominion of Canada, just the same as the League of Nations is.

Cross-examination by Mr. Kilmer.

Cross-examination.

Q. If your debtors did not pay you for the goods they bought, or if people who bought goods from you did not pay you, you could not keep on carrying on business?—A. No; it would all depend on how friendly my bankers were.

Q. If they stopped payment your bankers would not give you much credit?—A. That is so.

By Mr. Dewart:

Q. I take it that you have an extensive Canadian business all over the Dominion?—A. Yes.

Q. Extending throughout the provinces?—A. Most of our business is done east of the Great Lakes as far as Prince Edward Island.

(Witness withdrew.)

No. 23.

No. 23.
Francis R. Kortright.
Examination.

Evidence of Francis R. Kortright.

Francis Robert Kortright, Sworn.

Examined by Mr. Duncan.

Q. What is your business?—A. Consulting Industrial Engineer.

Q. In what matters?—A. My business calls for a knowledge of the principles of manufacturing and marketing, with special reference to conditions in Toronto.

Q. Are you familiar with the industrial conditions in Toronto?—A. I am.

Q. Engineering conditions in Toronto?—A. Yes.

Q. What do you say as to the effect on Toronto as a manufacturing centre by the disturbance in the supply of electric power?—A. The effect on the industries?

Q. Yes?—A. The effect on the industries of Toronto and on Toronto could be considered under two heads: The effect on Toronto as a producing centre and the effect on Toronto as a market.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 23. Francis R. Kortright. Examination —*continued.*

Q. What about Toronto as a producing centre?—A. Toronto is a very large producing centre. Toronto produced, quoting the Blue Book statistics, about $11,000,000 a week in 1920, which will give some idea of the volume of business. Toronto's manufactures are distributed across Canada, and amongst Toronto's manufactures can be mentioned a large number of exports, and those businesses would be seriously disorganised, the wholesalers, retailers and consumers distributed throughout Canada would suffer inconvenience and loss by having their source of supply suddenly cut off.

Q. How would it work out under the head of Toronto as a consuming centre?—A. Toronto is a very appreciable market. The population of Toronto has been shown to represent a very large section of the Dominion, and the economic loss that would be suffered in Toronto by the shortage of power and the laying off of labour would reduce buying power throughout Canada.

Q. What percentage of manufactures in Toronto are dependent upon electric power entirely?—A. Of all manufactures? I can only state my opinion in that regard.

Mr. Kilmer: That is objected to. I may at least take the point that this witness makes more than three experts called by the defendants. If my learned friend intended to call more than three experts, he should have obtained the leave of the Court before he commenced his case.

Mr. Dewart: This witness is not an expert.

Mr. Kilmer: I think this witness represents the fifth expert called by the Defendants.

Mr. Duncan: I have endeavoured to qualify certain persons as experts, but his Lordship has invariably ruled that they may not give opinion evidence.

Mr. Kilmer: You can call any number of people here to juggle with figures, although I do not say that this witness is not perfectly honest. This is all opinion evidence. The witness is not a manufacturer.

His Lordship: I must allow the objection that there can be only three experts called. Of course, you might have three in different trades, I suppose.

Mr. Duncan: Three medical experts, my Lord?

His Lordship: You are not going to call medical experts?

Mr. Duncan: No, my Lord.

His Lordship: That is fortunate.

Mr. Duncan: I submit that this witness is the only engineering expert.

Q. What percentage of manufactures in Toronto are dependent upon electric power?—A. Of all manufactures, about 85 per cent., and of manufactures using power, about 95 per cent. By "95 per cent." I mean the very large majority. It is impossible to state exactly how many without a count.

Cross-examination.

Cross-examination by Mr. Kilmer.

Q. All this disaster would follow if the power were suddenly cut off. The power has been suddenly cut off in Toronto, has it not?—A. Yes.

Q. Did all this trouble follow to the uttermost ends of the Dominion?—A. I suppose trouble followed of the same nature.

Q. Did it destroy the buying power of the populace in the end?—A. Naturally it depends upon the duration.

Q. You know the power has been cut off suddenly?—A. Yes.

Q. Did you observe these results that you have been telling us would follow? Did those results occur?—A. I do not know any particular instance, but I know it is axiomatic that if power were cut off for any appreciable duration——

Q. I know it is axiomatic that if you take away power from people using power they cannot use power?—A. Yes.

Q. But you said if the power delivery was disturbed it would result in shutting down the manufactures and destroying the buying power of the populace of Toronto, and I asked you had the power been shut off before suddenly, and you said, "Yes," and now I have asked you if the results you have stated followed?—A. I cannot say.

Q. You were in Toronto when the power was cut off?—A. I can only remember the power being shut off for very short periods of time.

Q. You did not cite any periods of time. Why do you prophesy what would happen when the power was cut off when you cannot say that those results happened when the power was cut off?—A. (No answer.)

Q. How do you account for that?—A. Because I did not qualify my first answer.

Q. Qualify it now?—A. That if the power were cut off, the degree of disaster would depend altogether on the duration of the shortage.

Q. Have you made up your mind from the statistics and other things at your command what time the power would have to be cut off before it would show an appreciable detriment to the manufacturing business?—A. I can only answer that question generally, that it would depend altogether on the nature of the business.

His Lordship: Take, for example, rubber—gutta percha.

Mr. Kilmer: And pork-packing, and the manufacture of agricultural machinery.

Q. Take any one of the three you desire?—A. May I make the classification between perishable and non-perishable?

Q. Yes?—A. If it was a perishable commodity, it would be a shut-down of short duration.

Q. Give me the duration?—A. I do not think I can answer that question.

Q. You cannot answer it?—A. No.

(Witness withdrew.)

No. 24.

Evidence of John G. O'Donoghue.

John G. O'Donoghue, Sworn.

Examined by Mr. Duncan.

Q. You are a member of the Bar?—A. Yes.

Q. And one of His Majesty's counsel?—A. Yes.

Q. And one of the Defendants in this action?—A. Yes.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 24. John G. O'Donoghue. Examination —*continued.*

Q. Is this document I show you the notice that was issued on the 20th August?—A. Yes.

Q. Relative to the sitting of the Board?—A. Yes.

Q. And it was in view of that Notice that the Plaintiffs obtained their interim injunction?—A. I was not at the argument.

Exhibit No. 15:—Notice of sitting of Board of Conciliation, dated August 20, 1923.

Q. What has been your connection with the Labour movement?—A. I have been solicitor for the Trades Congress, which is the head body for Canada—outside of the organised trades such as the Railway Trades—for the last twenty years, and for the local unions pretty generally during that time. I have acted on Boards under this Act for them in a large number of cases, and have attended their conventions, and have lectured on Labour subjects to them and for them, and have acted for the so-called "Reds" professionally. That covers my experience pretty generally.

His Lordship: Q. What did you do for the "Reds"?—A. Acted professionally for them pretty generally.

Mr. Duncan: Q. Are you familiar with the events leading up to the passing of this Act?

His Lordship: Has not that been shown?

Mr. Duncan: It was shown by Mr. Acland, my Lord. I thought it important to get it from a person familiar with Labour.

His Lordship: The Act was passed, and it has to be interpreted by the Courts. Everybody states that, generally speaking, it is a good Act.

Mr. Duncan: I was not seeking a certificate of character for the Act, my Lord, but asking the witness whether he had knowledge of anything of importance which might be put before your Lordship on the constitutional question. I think Mr. O'Donoghue has some suggestions to offer to the Court.

His Lordship: Very well, proceed.

Witness: I looked after legislation at Ottawa for the Trades Congress at the time the Act was proposed, and I am, to a certain extent, familiar with the conditions obtaining then, and the reasons for the passage of the Act. Those reasons were mentioned by the Honourable Mr. Murdock, Labour troubles at the time plus the necessity for——

Q. Did you approve of what he said?—A. He said quite a lot—generally speaking, yes.

Q. Generally speaking, you agree with Mr. Murdock?—A. Yes. There was a necessity from the standpoint of all parties concerned for an Act of the kind at the time, generally, from the national standpoint.

Q. Was there any other Act?—A. There was another Act on the Ontario Statute books.

Q. The Trades Disputes Act?—A. Yes.

Q. Was it ever used?—A. Yes; on one or two occasions, but not generally. I was engaged on the first occasion, myself.

Q. In 1907?—A. Yes.

Mr. Duncan: Q. Had you any knowledge of the dispute between the Toronto Electric Commissioners and the Electrical Employees?—A. Just in a general way.

Q. Did you know the dispute existed prior to the appointment of the Board?—A. Yes.

Q. Have you anything to say about the dispute, as you knew it at that time, and why you accepted office, and so on?—A. Well, I took office for two reasons: First, professionally, and secondly because, as a citizen, I thought affairs were critical, and that I could help them in some way.

Q. Anything else?

His Lordship: Both professionally and personally, the witness believed in it. That is sufficient.

Mr. Duncan: Q. Have you any other testimony to offer?—A. Not unless you want me to explain why I thought it critical.

Q. Yes?—A. Because I knew that if the men went on strike it meant a severe breach in the industrial relations in Toronto, and that it would seriously affect the citizens generally, as well as employers of labour in particular, and the men involved, as well as the workers generally in the city.

His Lordship: I do not think this witness need go farther.

Mr. Duncan: Q. Have you anything further to say?—A. No; except to say "Good day," if you are through with me.

Cross-examination by Mr. Kilmer.

Cross-examination.

Q. I would like a little explanation of the "critical nature" of this dispute, as you call it, between the Plaintiffs and their employees? You say that would involve what?—A. The workers generally, the organised workers.

Q. How would it involve the organised workers, generally?—A. If these men went on strike for a cause that the rest of the organised workers in the city thought was theirs, there is a possibility, if not a probability, that the rest of the workers would become involved, leading up to a situation in a small degree like the Winnipeg case.

Q. About the same way as if the attempt of women to get the franchise were opposed—it would bring all women to the cause?—A. No; not the same way.

Q. That is what you call "sympathetic"?—A. Yes.

Q. Are there two electrical unions in Toronto?—A. Yes.

Q. What are they?—A. The local union that is affiliated with the International Trades Union movement, and this one.

Q. And this one?—A. Yes.

Q. Affiliated with the other Canadian unions?—A. Yes.

Q. How many men in this Canadian union are employed by the Plaintiffs?—A. I do not know.

Q. Have you any idea?—A. The bulk of them, I believe.

Q. The bulk of them?—A. The bulk of the organised electrical workers in the city.

Q. But how many of the electrical workers who are employed by the Plaintiffs?—A. I do not know.

Q. Have you any idea?—A. No; except in the general way that I have stated to you.

Q. What is your idea in a general way of how many employees of the Plaintiffs are members of this union?—A. I do not know.

In the Supreme Court of Ontario.

Defendants' Evidence.

No. 24. John G. O'Donoghue. Cross-examination —*continued.*

Q. You said you could give us a general idea?—A. I know that in a general way the bulk of the organised electrical workers in the Canadian union are employed by the Plaintiffs.

Q. Do you mean more than the majority?—A. Yes.

Q. Where did you get your information from in that regard?—A. I am in touch every day with the organised leaders, and their papers, and their movement generally.

Q. Did the officers of this organisation ever tell you how many men in their union were employed by the Plaintiffs?—A. I cannot say they did.

Q. Or about how many?—A. No; I cannot say they did.

Q. Do you know how many electrical workers in this union are employed by the Plaintiffs?—A. No.

Q. Do you know if a strike of the large majority of the electrical workers of the Plaintiffs would result in shutting off light, heat and power?—A. I could not prophesy as to that.

Q. Do you know whether it would or not?—A. I do not know.

Q. If there was no change it would not affect the trade of the City?—A. If they continued to supply light and power, they would continue to supply light and power.

Q. And there would be no interference with the manufacturing?—A. I do not know.

Q. The interference would not come from the want of supply of light and power?—A. I cannot prophesy as to that.

Q. You do not know anything about it?—A. I would not like to say that. What is it you want to know?

Q. Is what you have given a guess?—A. I think not, judging from my experience in the last twenty odd years.

Q. Have you had any different experience from anybody else?—A. A more intimate experience.

Q. You are still dealing with men and women?—A. I am still dealing with organised men and women.

Q. And the trouble that you think would arise in other trades and in the manufacturing business in the city would come from a want of supply of light and power?—A. In part.

Q. What would be the other part?—A. It might lead to trouble in the rest of the trades, through sympathetic assistance.

Q. Through sympathetic strikes?—A. Yes.

Q. The International Union have a local union here?—A. Yes; they have a local union here.

Q. Are they friendly to the Canadian electrical workers' union, the local branch?—A. They do not believe in organising as Canadian or Catholic or Jews or any other kind of union except internationally, and to that extent they do not approve of Canadian organisations.

Q. They are opposition unions?—A. To a certain extent, yes.

Q. Have you ever known the International Union of Electrical Workers to support a strike of the Canadian Union of Electrical Workers, or a local branch of that union?—A. I could not say how far that has occurred. I have known them to co-operate in other lines.

Q. But not in a strike?—A. I do not recall a case of a strike.

Q. There have been strikes among the electrical workers in Canada ?—A. There was one in this body during Exhibition time a few years ago.

Q. That was a strike of the electrical workers in the employ of the Toronto Railway Company ?—A It stopped the railway, whether it was among their employees or not.

Q. I am asking you simply if that was a strike of the electrical employees of the Toronto Railway Company who were in the Canadian Union ?—A. I have given you the only answer I can, that I know the Toronto Street Railway stopped operations. It was a strike of the electrical workers, but whether they were their employees or not, I do not know.

Q. How long was the street railway stopped on that occasion ?—A. Some hours.

Q. Five hours ?—A. Something like that.

Q. Do you know of any other strike by these electrical workers in Toronto since then ?—A. I do not recall any other.

Q. Would you know of another strike if there had been one ?—A. I fancy I would.

Q. And you do not remember any other ?—A. No ; I do not recall any other strike by that organisation since.

(Witness withdrew.)

No. 25.

Discussion by Counsel.

Mr. Duncan : That is the defence, my Lord.

His Lordship : Have you any reply, Mr. Kilmer ?

Mr. Kilmer : My Lord, it is now 4 o'clock, and as I desire to put in evidence to meet evidence put in to-day by the Defendants in support of matters not referred to in the pleadings, I would ask your Lordship to adjourn now in order to afford me an opportunity to consider the Reply.

His Lordship (Reading from Paragraph 9 of the Statement of Defence) : "A concerted cessation of work by the said members of the Canadian "Electrical Trades Union, Toronto Branch, might be expected to deprive "manufacturing establishments in the City of Toronto of their supply "of electrical energy, disturb trade and commerce, increase unemployment "and give occasion for disorder . . . " ?

Mr. Kilmer : I referred more particularly, my Lord, to the evidence given by the Minister of Labour with regard to calling out all the available troops in the country in connection with the strike in Nova Scotia. I would like to call evidence in reply to what your Lordship has just read, and also as to the general state of the country.

His Lordship : The state of the country, I would have thought, would be one of the principal defences raised by the Defendants.

Mr. Kilmer : The Defendants did not say at the time this Order was made that the state of the country was perilous, and they have not pleaded that there was a national emergency.

In the Supreme Court of Ontario.

No. 25. Discussion by Counsel —*continued.*

His Lordship: They say, generally, that the Dominion Parliament is justified in passing this Act because of the possibility of a Dominion-wide emergency, and they submitted evidence to substantiate that contention. I would have thought you would have that in your mind.

Mr. Kilmer: That is a matter of argument, my Lord.

His Lordship: You must have some evidence in order to argue it.

Mr. Kilmer: My learned friend Mr. Duncan, I understand, takes the position that this Act is an Act passed in order to put within the power of the Dominion executive the right to over-ride provincial laws.

His Lordship: The Dominion Parliament.

Mr. Kilmer: They passed the Act, and it is in existence. Is it to be left to the Dominion executive to determine when a national emergency arises such as would make this Act—for the purpose of dealing with that—*ultra vires* or competent to prevent such national emergency? I do not think that Canada was endangered by the coal strike, and that idea is new to this trial.

His Lordship: Is it not common ground that Parliament, in view of the fact that it meets for only a few months in each year, must entrust the affairs of the country to the Executive?

Mr. Kilmer: That may be, my Lord; but the question is whether Parliament is entrusting to the Executive the decision as to what constitutes a national emergency sufficient to over-ride provincial legislation.

His Lordship: No. The question is whether their opinion that a national emergency had arisen coincides with the opinion of the Court which is asked to interpret the Act.

Mr. Kilmer: I may desire to produce evidence as to the national emergency or lack of one at that time, my Lord.

His Lordship: If you do call evidence of that character it will be very short, I suppose?

Mr. Kilmer: Yes, my Lord.

Mr. Dewart: In answer to my learned friend Mr. Kilmer's reference to the pleadings, I would refer your Lordship to Clause No. 5 of the Statement of Defence:—

"5. The Industrial Disputes Investigation Act (1907) and amendments "thereto is legislation competently enacted by the Parliament of Canada "and covers all matters in controversy in this action."

That disposes of the question as to competency.

His Lordship: I think so. Do counsel intend to argue the case immediately after the evidence is closed?

Mr. Dewart: I am in almost the same position as my learned friend with regard to much of the evidence that has been submitted, my Lord. The case has not been before the Department of Justice, but has been very carefully prepared by my learned friend Mr. Duncan——

His Lordship: Very carefully prepared.

Mr. Dewart: And there is much that I could not anticipate, and in view of the great importance of this case, I would like an opportunity of considering the effect of some of the evidence upon the law as set out in the decisions in our own courts before addressing myself to the argument. If, therefore, your Lordship's engagements will enable you to hear argument

at the latter part of next week, it would permit counsel to present a more considered argument of the case.

I have no objection to my learned friend Mr. Kilmer's desire to postpone his evidence in reply until to-morrow morning.

His Lordship: Very well. I will hear the Argument at Osgoode Hall on Thursday, the 29th instant, at 11.00 o'clock a.m. The Court will now adjourn until 10.30 to-morrow morning.

(Whereupon the Court adjourned at 4.10 o'clock p.m. until 10.30 o'clock a.m. on Wednesday, November 21, A.D. 1923.

Upon resuming on Wednesday, November 21, A.D. 1923, at 10.30 o'clock a.m.

Mr. Duncan: My Lord, yesterday my learned friend Mr. Kilmer objected to the production of certain documentary evidence which was tendered at the time Professor Cudmore was in the witness box, and your Lordship ruled it out.

His Lordship: Yes?

Mr. Duncan: It is considered of very great importance that these documents should be admitted, my Lord. These figures have been very carefully taken from the records of the Dominion Bureau of Statistics, and if your Lordship will permit me I would like to submit reasons for my submission that they should be received in evidence.

His Lordship: If you are very insistent, I will accept your statement that these documents are true copies of the statistics of the Government.

Mr. Kilmer: My Lord, these are compilations from a Government book, and I have submitted that there is no warrant for saying that the book itself is evidence.

His Lordship: The object of the statistics is to show the growth of Canada and the concentration of manufacturing business in certain sections of the country.

Mr. Kilmer: We have heard the evidence of an expert on that question, for whatever it is worth.

His Lordship: These documents are in furtherance of that evidence.

Mr. Kilmer: They are nothing but matters of history. I submit that compilations of that kind can be made by anybody. I do not know, and possibly Professor Cudmore does not know from what sources the information in these compilations has been extracted. He takes a government Blue Book and makes his compilation. I submit that they should not be admitted.

Mr. Duncan: I can furnish your Lordship, very shortly, the authorities, and if your Lordship is in doubt I would ask that these documents be admitted subject to objection and that your Lordship reserve your decision as to their admissibility until the argument is heard. They are not, as my learned friend has suggested, mere matters of history, but are evidence of the importance of the City of Toronto from the Dominion point of view, in that anything that would disturb so great a community of citizens could not be regarded as a local matter under the British North America Act, upon which my learned friend may rely. I submit that these authorities are absolutely conclusive.

In the Supreme Court of Ontario.

No. 25. Discussion by Counsel —*continued.*

His Lordship: I will hear you.

Mr. Duncan: I refer your Lordship to R.S.O., 1914, Ch. 76, Ontario Evidence Act, Sec. 26 and Sec. 29, particularly Sec. 29, which reads:—

"29 (1) Where a book or other document is of so public a nature as "to be admissible in evidence on its mere production from the proper custody, "a copy thereof or extract therefrom shall be admissible in evidence if it "is proved that it is an examined copy or extract, or that it purports to "be signed and certified as a true copy or extract by the officer to whose "custody the original has been entrusted."

Section 26 reads:—

"26.—Where the original record could be received in evidence, a copy "of any official or public document in Ontario, purporting to be certified "under the hand of the proper officer, or the person in whose custody "such official or public document is placed. . . shall be receivable in "evidence. . . ."

I rely upon the words "any official or public document in Ontario," my Lord.

Then I refer your Lordship to a recent case reported in The Times Law Reports, Vol. 39, p. 682 (1923), of *Rex.* vs. *Canadian Northern Railway Company, et al.*, in which the question came up as to whether the words "any statute" in a provincial statute included a Dominion statute:—

"Their Lordships, therefore, are of opinion that in their natural ordinary "sense the words 'any statute' in the proviso would include a Dominion "statute, without raising any implication that it would also include a "statute enacted by some outside authority, with no jurisdiction to legislate "within the province."

His Lordship: Mr. Kilmer's objection is that the documents you desire to put in are merely a compilation of extracts. If the originals were here, they could be received without formal proof.

Mr. Duncan: In that regard, I refer your Lordship to Taylor on Evidence 1920 Edition, para. 1599, which refers to Lord Brougham's Evidence Act of 1851, which is the prototype of Section 29 of the Ontario Evidence Act.

Then I refer your Lordship to para. 1610:—

"Among the public books and documents, the contents of which, in "the absence of the originals, are now provable under the enactment just "cited either by examined or by certified copies may be mentioned the "following: parish registers" (which are documents kept not nearly so carefully as the records of a Government Department, my Lord) "the "deposit and transfer books of the Bank of England—books of the Customs "—Admiralty documents, including the log books and muster books of His "Majesty's ships, and even official letters lodged at the Admiralty. . . ."

That is between parties, my Lord.

His Lordship: What did Professor Cudmore say as to the source of these statistics?

Mr. Duncan: That they were extracted from the records of the Bureau of Statistics, my Lord.

Mr. Kilmer: He said they were taken from this Year Book.

Mr. Duncan: Oh, no.

Then I refer your Lordship to the case of *Doe d. William IV.* vs. *Roberts* (1844), 13 Meeson & Welsby's Reports, p. 532. That was an action between parties, my Lord, and certain documents were tendered to prove certain facts :—

" First, an extract from an ' extent,' or survey of the commott or the " lordship of Denbigh, purporting to be taken by the steward of the lands " of the Crown in the principality of Wales. . . .

" (p. 523) Copies of ministers' accounts, rendered to the Crown by the " ringild or bailiff. . . .

" (p. 525) Another class of evidence consisted of leases by the Crown " of the waste lands, etc. . . .

" Parke, B.—I agree that all the documents were properly received. " These are documents of a public nature, like the Bank or East India " books, and are not to be removed, on ground of the inconvenience that " would be thereby occasioned to the public service ; examined copies of " *them, therefore, are admissible in evidence.*"

Then I refer your Lordship to the case of *Johnson* vs. *Ward* in Reports of Cases by Isaac 'Espinasse, Vol. VI, p. 49 :—

" Assumpsit on a policy of assurance on the ship Elizabeth, from London " to Tonningen, on the Elbe. . . .

" To prove the property on board, consisting of three casks of indigo, " the Plaintiff called a witness, who was a clerk in the Customs House, " which contained an account of the ship's cargo. It was explained by " the officer to be a Paper, which is made under the direction of the Statute, " 12. Car. 2, and is a copy of the official paper, which contains an account " of the cargo, which has been examined by the Searcher : the official papers " go with the ship and the paper produced is kept at the Customs House.

" It was objected by the Defendant's counsel, that this was not " evidence ; upon this ground, that either the Captain should be called to " prove the goods actually on board, or the Searcher who actually searched " the ship, and found and reported such goods on board, and upon whose " report the Paper in question was made out. It was not therefore the " best evidence ; besides which the witness had not copied the Paper him- " self.

" Chambre, Justice, ruled it to be admissible as a paper made by " authority of an Act of Parliament by an officer of the Customs appointed " for the purpose, and lodged there as an official document of the ship's " cargo."

His Lordship : The tendency is to extend these technical rules, and every amendment to the Evidence Act has resulted in admitting further public documents. I think I will admit these documents.

Mr. Kilmer : My Lord, before you admit this evidence I would like your Lordship to hear my argument in answer to the cases cited by my learned friend who, I submit, is proceeding upon an erroneous assumption.

Mr. Duncan : Then I cite to your Lordship the recently reported case of *Kenyon* vs. *Charlottenburg*, 53 O.L.R., p. 23.

His Lordship : That case was tried before me ?

Mr. Duncan : Yes, my Lord.

In the Supreme Court of Ontario.

No. 25. Discussion by Counsel —*continued.*

His Lordship: What was the reference I made to the case of *Sturla* vs. *Freccia*?

Mr. Duncan: "5 Appeal Cases, 623, 624," my Lord. May I read to your Lordship from page 642 and 643 with reference to what a public document is:—

"What a public document is, within that sense, is of course the great "point which we have now to consider. Public documents are admissible, "and I think I can hardly state it better than by quoting what Mr. Baron "Parke said in delivering the opinion of the Judges in the case of *The Irish* "*Society* vs. *The Bishop of Derry*. His Lordship there says, 'The "'fifth exception related to an entry in one of the books of the First Fruits "'Office of the collation and admission of John Freeman to the Rectory "'of Camus. Writs were issued from the Court of Exchequer to the "'bishops to ascertain the value of the first fruits and twentieths, and returns "'were made by the bishops. Search for the writs and returns was made, "'and the book was offered as secondary evidence of returns. We think "'the entry was properly received.' That was the point decided—that "the writs having been issued to the bishop to return the first fruits of his "diocese, and the return of them being presumably lost, as it could not be "found, the entry in the First Fruits Office (the copy of it) was good "secondary evidence of the return. Of course, that involved in it that "the return itself would be evidence. Then His Lordship says, 'The "'writs related to a public matter—the revenue of the Crown; and the "'bishops in making the return discharged a public duty, and faith is "'given that they would perform their duty correctly; the return is there-"'fore admissible on the same principle on which other public documents "'are received. It was contended that the bishop could not be permitted "'to make evidence for himself' (that is one objection which he meets) "'and, therefore, that the entry though admissible between other parties "'was not to be received for the bishop; and the case was compared to an "'entry in the book of a union, of a surgeon's attendance, *Merrick* vs. "'*Wakley*, and the receipt of a certificate in a parish book, *Rex* vs. "'*Debenham*, which might have been rightly held to be inadmissible "'for the surgeon in one case, or the parish keeping the book in the other. "'But neither of these was an entry of a public nature, in the proper sense "'of that word; the former was a memorandum, intended to operate as a "'sort of check to the surgeon, the latter a memorandum for the parish "'officer, concerning merely the particular parish and its rights with "'relation to another.' Then he goes on to say, 'In public documents "'made for the information of the Crown, or all the King's subjects who "'may require the information they contain, the entry by a public officer "'is presumed to be true when it is made, and is for that reason receivable "'in all cases, whether the officer or his successor may be concerned in "'such cases or not.'"

His Lordship: If I were to reserve my ruling until the argument is heard, and you had an opportunity of looking at these documents and comparing them with the original source of information, perhaps they would then be admitted?

Mr. Kilmer: In the meantime I would like to suggest, in answer to the cases cited by my learned friend Mr. Duncan, that he is proceeding under a mistaken idea of this Act, and of the English Act. It was felt that in the case of certain public documents, government records, and matters of that kind, that it was an inconvenience and a danger to bring books and documents of that nature to the court for the purposes of trial, especially at the expense of private parties, and it was for that reason that this Statute was passed.

His Lordship: Was that the only reason? Was it not because of their dignity and importance?

Mr. Kilmer: No, my Lord; it was because of the danger of bringing important official records to the different courts of the country. Take, for example, the books of the Crown Lands Department, they are books of public record, as are those kept in the Registry Office, and means of satisfactory and easy proof by a certified copy made by an independent official was the foundation for this Statute. It was never intended that casual information gathered about a subject such as the Yukon or the Mackenzie River, for instance, should form evidence between parties. Your Lordship understands the extent of the English Blue Books, which are to afford the best information the Government has to publish, but whoever heard of a Government Blue Book printed by the King's Printer being put in as evidence in any action? I say that the evidence compiled by Professor Cudmore is something he has taken from a book printed by the authority of the Dominion Government for the purpose of giving general information to the public.

His Lordship: My view may be influenced by what I know about the excellence of the Canadian Year Book. I have never heard its accuracy questioned.

Mr. Kilmer: There are a great many excellent books that cannot be received in evidence, my Lord.

His Lordship: The Dominion Bureau of Statistics is very different from what it was a few years ago.

Mr. Kilmer: Quite true, my Lord.

His Lordship: The reputation of these gentlemen who prepare these books is at stake, and they would not think of issuing inaccurate books.

Mr. Kilmer: Not intentionally, my Lord; but surely an ordinary book got out by the Government cannot be accepted as evidence? With your Lordship's permission, however, I will answer these authorities when the argument is heard.

His Lordship: I will receive these documents in evidence, with the right to Mr. Kilmer to ascertain if they contain any errors.

Mr. Kilmer: Your Lordship, I understand, will hear argument as to whether these documents are evidence when the case is argued.

His Lordship: Yes.

Mr. Duncan: Your Lordship will remember Exhibit No. 7, the Application made to the Minister of Labour by Mr. J. T. Gunn for a Board of Conciliation?

His Lordship: Yes?

In the Supreme Court of Ontario.

No. 25. Discussion by Counsel —*continued.*

Mr. Duncan: Attached to that Application were certain letters which, according to Mr. Gunn's evidence, had passed between Mr. Gunn and Mr. Ashworth. Mr. Gunn's object in attaching these documents and sending them to the Minister of Labour was to show the nature of the dispute, and its duration. My learned friend Mr. Kilmer objected that he had not had an opportunity of checking this correspondence, so the letters were detached from Exhibit No. 7 to afford my learned friend an opportunity of checking them during the luncheon interval. They have been checked, and I now desire to attach them to Exhibit 7.

Mr. Kilmer: The originals of these copies which were attached to Exhibit No. 7 are already in as Exhibit No. 8.

Mr. Duncan: My learned friend Mr. Kilmer now objects, I understand, on the ground that most of this correspondence is in as part of Exhibit No. 8. If so, I am sorry; but that duplication can be rectified when the Appeal Book is printed.

His Lordship: Yes. These copies may go in as part of Exhibit No. 7.

(See pages 33 and 34 of Evidence of J. T. Gunn.)

Exhibit No. 16:—Statistics (5 sheets) produced by witness Cudmore.

No. 26.

Evidence of Henry H. Couzens.

Henry H. Couzens, Sworn.

Examined by Mr. Kilmer.

Plaintiffs' Evidence in Reply.

No. 26. Henry H. Couzens. Examination.

Q. You are an Electrical Engineer?—A. I am.

Q. And you are the General Manager of the Plaintiff's business in Toronto?—A. Yes; and of the Toronto Transportation Commission. I occupy a dual position.

Q. With regard to the supply of light, heat and power to the city of Toronto, where do you obtain the supply of power that you deliver?—A. From the Hydro Electric Power Commission of Ontario.

Q. And that is delivered to you where?—A. At the terminal stations, either at Strachan Avenue or Davenport Road.

Q. The terminal stations are under whose control?—A. The Hydro Electric Power Commission of Ontario, although there is a certain amount of apparatus in these generating stations under the control of the Toronto Transportation Commission; but the main supply of power is under the control of the Ontario Hydro Electric Commission.

Q. And that power is delivered through those stations direct to your sub-stations?—A. Yes. Well, to be precise, it is delivered to the cables which convey it to the sub-stations.

Q. And from there to the customers?—A. Yes.

His Lordship: This evidence is in answer to the suggestion that the Toronto Transportation Commission got their power from the Plaintiffs?

Mr. Kilmer: Yes, my Lord; and with regard to other matters about which I will ask the Witness.

Q. How many employees have the Plaintiffs of the kind that are referred to in the Application (Exhibit No. 7) for a Board of Conciliation? I will read to you from the Application, from the description given:—

"(ii) Employees: Linemen, line-foremen, groundmen, operators, "station construction mechanics, meter installers, street lighting "employees, stores employees, painters, maintenance mechanics, "machine-shop employees, garage employees, battery-men, under-"ground mechanics, cable jointers, inspectors, trouble men and general "laborers. . . ."

How many employees of that kind have the Plaintiffs?—A. Of course, that reference is in general terms. I think I can put it best in this way, that there are just over 700 men on the weekly payroll in the Toronto Hydro Electric System, and that description covers a very considerable number of those.

Q. Mr. J. T. Gunn, in giving his evidence, stated that there were somewhere between 300 and 400 men of this description, who were members of the Canadian Electrical Trades Union, Toronto Branch. Should 300 to 400——

Mr. Duncan: I object, my Lord, to any question which raises any matter of opinion.

Mr. Kilmer: If I might be allowed to put my question, my learned friend will be given an opportunity to object.

Q. Should between 300 and 400 of the employees of the Plaintiffs of this description strike, suddenly cease work, what effect would that have on the delivery of power to the customers of Toronto?

Mr. Duncan: If it is going to involve any question of opinion, I object and submit that the Witness may not answer that question in view of the ruling your Lordship has made.

His Lordship: Q. Witness, it has been our endeavour to avoid questions of opinion on which men may differ. Are you going to state a question of fact?—A. I would say so, from the point of view—of course, it is something like the definition of "What is Truth?"

His Lordship: The Witness states that his answer will be fact. I will admit that answer.

Witness: We would continue to carry on the service.

Mr. Kilmer: Q. What do you mean by "carry on"? I am asking you with regard to the supply of power to your customers?—A. We would carry on with the service, and it would be continued.

His Lordship: I suppose that really depends on how intense the strike is.

Mr. Kilmer: I am asking the Witness particularly with regard to the number of men, my Lord.

His Lordship: He is optimistic of his powers of carrying on.

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 26. Henry H. Couzens. Examination —*continued.*

Q. What would you say, if there was a general strike, a furious strike with injury done, cables cut, and so on?—A. Is not that unthinkable?

Q. I do not know?—A. The men of the Toronto Hydro Electric System are about as fine a body of men as can be found anywhere, and it is surely unthinkable that they would be guilty of acts of sabotage.

Mr. Kilmer: I left out altogether acts of sabotage.

His Lordship: There might be other sympathetic strikers who would not be influenced by high motives. In any case, in scientific matters the word "unthinkable" should be dropped?—A. Then would not the untechnical regard electric matters as something unsafe to interfere with? A live wire has a habit of biting.

Mr. Kilmer: The question I asked was a limited one.

His Lordship: He says he could carry on.

Mr. Kilmer: I am not making any suggestion to the Witness as to what would happen in a catastrophe.

Mr. Duncan: My learned friend asked a question, and the answer is not really an answer to that question. It has resulted in an opinion being given. I was very careful with my witnesses, and only in one case did the witness say anything transgressing the rule.

His Lordship: The Witness states that they could carry on.

Mr. Duncan: Is not that an ingenious attempt to put before your Lordship——

His Lordship: I do not think the Witness has exercised any ingenuity. He answered the question candidly.

Mr. Duncan: His opinion was that they would be able to carry on, and the next question would naturally be: "How do you reach that conclusion?" He gives the opinion first, and then my learned friend is able to ask him how he reached this conclusion.

His Lordship: It is close to the line.

Mr. Kilmer: The evidence that has been given so far in this connection is to answer what would happen to the export of power to Toronto customers if there were a strike. That is the whole evidence given by my learned friend upon that subject. I am producing exactly the same kind of evidence to show from our standpoint what would happen if these men struck. I submit the evidence is competent.

His Lordship: If the workmen enumerated in Exhibit No. 7 struck they could still carry on, according to the evidence of this Witness.

Cross-examination by Mr. Duncan.

Cross-examination

Q. What is your position?—A. General Manager of the Toronto Hydro Electric System, and also the Toronto Transportation Commission.

Q. When were you appointed General Manager of the Toronto Hydro Electric System?—A. About May, 1913.

Q. A formal appointment?—A. Yes.

Q. Is there any Acting General Manager at the present time?—A. Mr. Ashworth is Acting General Manager.

Q. And you are the General Manager?—A. Yes.

Q. How is Mr. Ashworth the Acting General Manager if you are the General Manager?—A. Two or three commissioners of the Toronto Hydro

Electric Commission are also two of the commissioners of the Toronto Transportation Commission, and their idea was that I should devote the bulk of my time to the matters of the Toronto Transportation Commission, but not sever my connection with the Toronto Hydro Electric System. The bulk of the detailed work——

Q. So that the——

Mr. Kilmer: My Lord, I submit that the Witness should be allowed to complete his answer.

Mr. Duncan: I have got all I want.

Q. Have you been acting as General Manager of the Toronto Hydro Electric System?—A. I have still retained my title and connection of General Manager.

Q. And you have been acting as General Manager in looking after the details of administration?—A. Not in looking after the details.

Q. All you have is the title?—A. No; the position, if you come down to the fine point, is not clearly defined. I was just proceeding to define my position when you interrupted. The point is this, that while the titles in that way are possibly a little misleading, with two Commissioners, common to both Commissions, the title has never been particularly clearly defined. As far as the detailed work and general routine work are concerned, Mr. Ashworth handled it, and I was called in from time to time in connection with various points, and exercised a general supervision.

Q. Mr. Ashworth is the person who is really familiar with the details of the administration of the Plaintiffs' business, rather than you?—A. Yes; but——

Q. Yes——

Mr. Kilmer: Please let the Witness complete his answer.

Mr. Duncan: My learned friend will allow me to conduct my cross-examination.

Mr. Kilmer: The Witness said "Yes; but——" and was interrupted.

His Lordship: If the Witness thought, after he had partly finished his answer, that that really did not answer your question, he should be allowed to complete his answer.

Mr. Duncan: Very well, my Lord.

Q. What have you to say?—A. I was going to say that I kept in general touch with things.

Q. Did you consider the possibility of a strike?—A. Yes.

Q. With Mr. Ashworth?—A. Yes; I have discussed it with Mr. Ashworth.

Q. When did you discuss it?—A. On a number of occasions; I have no actual record of the dates.

Q. Do you remember approximately the time?—A. From time to time during the course of the negotiations.

Q. Any special date?—A. No; I cannot give any special date.

Q. Do you know how many of the electrical employees of the Plaintiffs are actually in this union?—A. No; only the information I have obtained here.

Q. You do not know how well they are organised?—A. I know nothing about the internal organisation of their union.

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 26. Henry H. Couzens. Cross-examination —*continued.*

Q. Do you know how many meetings they held ?—A. No.

Q. Or whether any decision was made to strike or not ?—A. Naturally not ; as I say, I do not know anything about the union.

Q. And you did not know, in your conversations with Mr. Ashworth, anything about the activities of the union ?—A. Nothing more than in a general way.

Q. Then can you give us what you did have in a general way ?—A. Such evidence as has been submitted here generally confirms what I have always understood.

Q. Tell me what you knew, in a general way, in your discussions with Mr. Ashworth ?—A. Simply that the union was organised, including, amongst others, employees of the Toronto Hydro Electric System.

Q. You did not know how many they had ?—A. No.

Q. Nor whether they had any meetings ?—A. No ; except what one sees in the papers.

Q. What did you see in the papers ?—A. From time to time we saw notices of the meetings held.

Q. So even in the press you saw that meetings were being held ?—A. Yes.

Q. How long had this dispute been standing ?—A. For some months.

Q. You are reasonably familiar with Labour matters ?—A. Yes.

Q. I suppose if disputes are not dealt with, there is a likelihood of irritation ?—A. That is so ; but this dispute had been dealt with, was being dealt with all along ; it was the subject of discussion.

Q. Did you see any of the letters that were written by Mr. Ashworth to Mr. Gunn ?—A. Yes.

Q. Did you see them all ?—A. I would say so, in a general way.

Q. And that is what you mean by "being dealt with"—the letters that were written ?—A. I understood from Mr. Ashworth through the various discussions that took place——

Q. Mr. Ashworth is really the person in charge ?—A. Mr. Ashworth was in charge of the negotiations with the men.

Q. And if Mr. Ashworth says on his examination for discovery that he had not made any estimate of the probable number of men who would go out on strike, I suppose you did not possess any more accurate information than that ?—A. No.

Q. So that if Mr. Ashworth could not even say whether 100 would go out on strike, you had not gone any farther than he ?—A. Mr. Kilmer's question to me was based on a certain specific number.

Q. What number ?—A. 300 to 400.

Q. Did you discuss that number ?—No.

Q. Did you discuss any number ?—A. No ; not in actual figures.

Q. What do you say about these answers made by Mr. Ashworth to the questions put to him on his examination for discovery :—

"167. Q. How many employees have you altogether ? "

What is your answer to that question as to the number of employees under the Toronto Electric Commissioners ?—A. Will you define " employees " ?

Q. Define it for me ?—A. I would say that on the total payroll of the Toronto Hydro Electric System there are approximately 1,450 and 1,500 employees.

Q. How else could you define " employees " to reduce or increase that number ?—A. That is the total payroll.

Q. Is that what you mean by " employees " ?—A. That is what I would understand.

Q. In what other way did you think I could understand it ?—A. Frankly, I do not know how to describe it in terms other than what may be considered to a certain extent objectionable—I consider them objectionable—the line of demarcation between staff and so-called workmen.

Q. Mr. Ashworth's answer to question No. 167 was :—

" A. Approximately 1,500."

Then :—

" 168. Q. How many electrical employees ? "

How many would you say ?—A There again, it is a most difficult question to answer, because there is a line of demarcation between electrical and mechanical employees.

Q. What would you say ? You are the General Manager, and Mr. Ashworth is only the Acting General Manager ?—A. I can give you as to certain dates the different men employed in the different grades.

Q. In June and July, 1923 ?—A. I do not happen to have that here, but I can get it for you.

Q. So you did not have it for that critical period ?—A. Of course, we had it.

Q. But not here ?—A. No.

Q. According to your recollection, what would be the number of electrical employees at that time ?—A. I would say roughly 600.

Q. Mr. Ashworth says, in his answer to question 168 :—

" A. Between 500 and 600." ?—A. Yes.

Q. Would you take his opinion rather than your own ?—A. Yes ; because presumably he had the actual figures in front of him.

Q. Then :—

" 169. Q. In your opinion, if a strike should be declared, would " 300 go out on strike ? "

What do you say to that ?—A. I would say I could not say.

Q. You have expressed an opinion that you would be able to carry on the business ?

Mr. Kilmer : The Witness did not say he could carry on the business. He said that if a strike of between 300 and 400 of the kind of employees named in that application occured, he could carry on.

His Lordship : Should not the Witness state that ?

Mr. Duncan : If my learned friend will bolster up the Witness on his re-examination, it will be more in accordance with the usual practice.

Mr. Kilmer : I do not want the evidence of this Witness misrepresented.

Witness : You were asking me whether I knew whether 300 men were affected.

Mr. Duncan : Q. The question was :—

" 169. Q. In your opinion if a strike should be declared, would " 300 go out on strike ? "

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 26. Henry H. Couzens. Cross-examination —*continued.*

What is your answer to that question ?—A. I cannot say.

Q. You could not say ?—A. No.

Q. Did you not take that possibility into consideration ?—A. I naturally took every possibility into consideration, humanly speaking.

Q. But you did not think this was humanly speaking a possibility ?—A. That 300 men would go out on strike ?

Q. Yes ?—A. Nobody could say that ; I question if Mr. Gunn could say that.

Q. So you had not that before you as a possibility when you came to the conclusion that you could carry on ?—A. No ; as a possibility, you might regard everybody going out on strike, the whole institution.

Q. And if they are organised to 95 per cent. they might easily all go out on strike ?—A. Yes.

Q. And you do not know how well they are organised ?—A. I do not know the number of men in the union connected with the System.

Q. And yet you would express an opinion here that if the strike had taken place you could have carried on ?—A. I expressed an opinion here based on the question asked as to whether if a certain number of men went out on strike we could continue to operate.

Q. Your answer was made to that particular question ?—A. Yes.

Q. Now answer this question : Had a strike taken place in June or July, could you have carried on ?—A. I would say in reply to that, that it seems to me that one must get the information as to the number of men that would go out.

Q. I want you to say whether you would have carried on had a strike taken place ?—A. I say we would have.

Q. No matter how many went out ?—A. You merely ask me a question in a general way, and I say that, in my opinion, if a strike had occurred at that time we would have carried on.

Q. And you do not know how many might have gone out ?—A. No.

Q. Mr. Ashworth's answer to question 169 is :—

" A. I am utterly without information on that subject."

Q. Then :—

" 170. Q. Would you think that 100 would go out on strike ? "

What do you say to that ?—A. That I do not know.

Q. Mr. Ashworth's answer to that question is :—

" A. I am without information."

Q. Then :—

" 171. Q. And without any conclusion ? " and Mr. Ashworth's answer is :—

" A. I would hope very few would go out."

Q. What was your attitude ?

His Lordship : That is a mere pious wish.

Mr. Duncan : Q. Then :—

" 173. Q. What do you mean by very few—50 or 20 ? "

What is your answer to that question ?—A. I still continue to say I do not know.

Q. Mr. Ashworth's answer is:—"A. I hope there would be—the smaller the better." So that your evidence is like Mr. Ashworth's as to what you could have done in the event of a strike?—A. On the basis of what you say, yes.

Q. Does the Toronto Hydro Electric System supply electricity to all users of electricity in the city of Toronto?—A. Of light, heat and power.

Q. That is, with the exception of the Monarch Knitting Company?—A. They do not produce their supply; they take it from the Toronto Electric Commission, and supply others from there.

Q. So the Plaintiffs are monopolists of the distribution of electric power in the city of Toronto?—A. With the limitation that a certain amount of power for the Toronto Transportation Commission comes direct from the Hydro Commission of Ontario.

Q. But not enough to enable the Toronto Transportation Commission to carry on?—A. The connections are such that the whole load can be switched to one service or the other.

Q. But if a strike should take place among the electrical employees of the Plaintiffs, could the Toronto Transportation Commission carry on with what they could get directly from Niagara?—A. I would say so.

Q. What about the possibility of a strike among the employees of the Toronto Transportation Commission in sympathy with the electrical workers of the Plaintiffs?—A. That is a question of opinion.

Q. I am asking for your opinion now?—A. I did not fear a general strike among the Toronto Transportation Commission employees.

Q. I am speaking of the electrical workers?—A. Probably a number of them would have gone out.

Q. How many electrical employees are there in the Toronto Transportation Commission?—A. A little less than 130.

His Lordship: Witness, my statement to you as to opinion evidence was intended to convey that opinion evidence could not be elicited by the side that called you, but when you are under cross-examination opinion may be given when asked for.—A. Yes, sir.

Mr. Duncan: Q. There was sufficient dissatisfaction among the electrical employees of the Toronto Transportation Commission to make you think that certain members would go out with the employees of the Plaintiffs?—A. I have not said that there was sufficient dissatisfaction. I said there was a possibility of their going out.

Q. Going out?—A. Is "possibility" limitable?

Q. What was your estimate?—A. Say, if you like, that the whole lot would go out.

Q. Did you contemplate that possibility?—A. In considering every possibility I naturally included that one.

Q. You did consider that in the case of those actually under you?—A. I do not follow you.

Q. I am speaking of the electrical employees of the Toronto Transportation Commission. Did you consider the possibility that they would all go out?—A. Yes.

Q. So the situation was, from your point of view, sufficiently serious

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 26. Henry H. Couzens. Cross-examination —*continued.*

to make you consider it from that point of view?—A. If you care to put it that way.

His Lordship: Q. I suppose everything is serious in your business?—A. Yes, sir.

Mr. Duncan: Q. Had there ever been a previous strike that tied up the Toronto Transportation Commission?—A. There was a strike, but I only have hearsay evidence of that.

Q. When did that take place?—A. During Exhibition time of one particular year.

Q. In 1919?—A. I will take it from you, if you say so.

Mr. Kilmer: That is only hearsay.

Mr. Duncan: He is entitled to take it on cross-examination.

Mr. Kilmer: I think you have gone beyond your limit when you take hearsay evidence.

Mr. Duncan: Q. What is the distribution of electrical energy in the City of Toronto through the Plaintiffs? How many kilowatt-hours per day?—A. I cannot give you the kilowatt-hours offhand, although it can be easily furnished, but I can give you the number of customers and the kilowatts installed for the different classes of customers.

Q. Yes?—A. In round figures?

Q. Yes?—A. In lighting there are 130,500 customers, with an installed capacity of approximately 152,000 kilowatts.

Q. Yes?—A. In power there are 3,700 customers with an installed capacity of 148,000 kilowatts.

Q. Yes?—A. This is on the Toronto Hydro, is it not?

Q. The Toronto Electric Commission?—A. Yes.

Q. The reason you say "Toronto Hydro"——?—A. Is that it is distinct from the Toronto Transportation Commission.

Q. And that it used to be called the "Toronto Hydro" before the purchase of the rights of the Toronto Electric Light Company?—A. The legal, official title of the Commissioners is Toronto Electric Commissioners, but it has never been used in a general way.

His Lordship: "Toronto Hydro System" is the most convenient title?

Mr. Kilmer: Yes.

Mr. Duncan: Q. Yes?—A. Then the Toronto Transportation kilowatt capacity connected to the Toronto Hydro is 15,000.

Q. What does the Toronto Transportation Commission get direct?—A. The maximum demand to date of the Toronto Transportation Commission is 16,000 horse-power from the Toronto Hydro and 27,000 from the Toronto Niagara Power, and I have that on a kilowatt hour basis if you want it. That is a ratio of two to one, and in kilowatt hours it is over three to one, 63,500,000 kilowatt hours from the T.N.P., and approximately 20,000,000 from the Toronto Hydro.

Q. Yes?—A. Then there is the Water Works load, which is approximately 10,000 kilowatts, the Exhibition load of 3,600 kilowatts, and the street lighting of 5,300 kilowatts.

Q. What do you mean by the "Water Works"?—A. The Civic Water Works.

Q. I suppose in case of interruption there would be a certain number of essential customers whose demands you would consider to have priority over the demands of others ?—A. It would be an exceedingly difficult thing to do, because all the sub-stations feed out generally ; it would mean altering connections.

Q. Would you say that practically all the manufactures in the city of Toronto are dependent on your system for electric power ?—A. For all the electric power purchased. A certain number of them have auxiliary steam plants.

Q. These auxiliary plants are usually for process ?—A. Not necessarily. For instance, the T. Eaton Company have a considerable steam plant, and Robert Simpsons and others.

Q. But that figure is negligible as compared with the amount of electricity actually used ?—A. For the whole supply it is very small.

Q. How many miles of line are there in the city ?—A. Of overhead wire ?

Q. Yes ?—A. I could not say offhand. I can readily get you the information.

Q. Have you any approximate idea ?—A. Offhand I prefer not to say.

Q. Some hundreds of miles ?—A. Yes ; I would say so.

Q. And in normal times you do have interruptions in your service ?—A. Yes ; they are liable to occur.

Q. You have emergency squads of men who go out to repair ?—A. Trouble men.

Q. Those are expert men ?—A. They are particularly qualified for that branch of the work.

Q. What percentage of those men is in the trade unions ?—A. I do not know.

Q. Have your Commissioners agreed to Boards in the past to attempt to conciliate ?—A. There were three Boards under what we call the Lemieux Act, and also an arbitration in 1913 outside the Lemieux Act. Then there was a Board applied for by the men in the year 1921, which was not granted.

Q. Because of what ?—A. From the opinion expressed, because there was a doubt as to the constitutionality of the Board.

Q. But from your point of view, why was it not granted ?—Did the Plaintiffs refuse to nominate a member for the Board ?—A. Yes.

Q. And that was the real reason ?—A. It was one of the reasons.

Q. I take it it was the real reason ?—A. I do not know ; I cannot say what was in the mind of the Department at Ottawa.

Q. There have been three cases in the past in which you have nominated a member, and the differences have gone to the Conciliation Board ?—A. Yes.

Q. Is there any particular reason in this case that you can advance why a member was not nominated ?—A. I can only say what my own personal opinion is in connection with the matter, and that is this : If the Board was legal, there could be no objection, but if it was not legal, then the point should be settled.

Q. You understand the operation of the Act ?—A. In a general way, yes.

Q. First, the Board endeavours to bring the parties together to an agreement ?—A. Yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 26. Henry H. Couzens. Cross-examination —*continued.*

Q. And the Board's main duty is that of conciliation ?—A. Or investigation, I would prefer to say.

Q. With the principal view of conciliation ?—A. That is stated to be the view.

Q. I suppose you will endorse what Mr. Ashworth said, that you have no objection to the personnel of the Board ?—A. None at all.

Q. It is appointed with a view to obtaining a settlement, if possible, and if the Board is unable to bring the parties together, the Board then publishes a report ?—Yes; there may be two, of course.

Q. There may be a minority report ?—A. Yes.

Q. And you know, as a matter of fact, that those reports have great weight with the public, do you not ?—A. I could not express an opinion. I think if the public were impressed with the contents of the report, it would carry considerable weight, but if they were not, it would not carry any weight.

Q. As a matter of fact, the public does not go behind the report itself, does it ?

His Lordship : That is speculation.

Witness : My Lord, I would like to make this point : In 1915, a Board was appointed, a majority report was brought in, and a minority report was brought in. A strike was called. It was not effective, because the Commission refused to accept the majority award, and public opinion backed the Commission. His Honour, Judge Coatsworth, was the Chairman ; Fred Bancroft represented the employees, and Mr. Erichsen Brown represented the Commission.

Mr. Duncan : Q. And the majority report was signed by Judge Coatsworth ?—A. And Mr. Bancroft, and the minority report by Mr. Erichsen Brown.

Q. I suppose you will concede that the finding of the Board is likely to have great weight with the public, including Labour generally, if the Board is in a position to hear both sides of the question ?—A. I should assume so, yes.

Q. And if, through the abstention of one of the parties, the Board is only able to give its report on the ex parte statement of the other party to the dispute, that report would have less weight with the public, including Labour generally ?—A. If they had only one side of the case naturally they would want to know the other.

Q. So that if the purpose of the Act is to be carried out, it may be essential that the Board should have the power of compelling both parties to come before it and lay the whole dispute before the Board so that they can make a report ?—A. I cannot express any opinion on that.

Q. Do not you know that the person who caused the strike at Exhibition time in 1919, which caused immense distress in the city of Toronto, was the business manager of the Electrical Employees,—this union ?—A. Which union ?

Q. The Toronto Branch ?—A. Do you refer to Mr. Gunn ?

Q. I do ?—A. I understood he got the abuse arising out of it, anyway.

Q. Did you not consider that in dealing with the interests of a great city there might be a strike take place ?—A. The difference between the strike at Exhibition, to which we referred, and a strike outside is just the

difference between public and private ownership. I do not think the men would take hasty action with public ownership in which they personally are vitally interested in the same way as they would with private ownership. With public ownership, and possibly in some cases with private ownership——

His Lordship: This case allows a lot of propaganda to be circulated.

Witness: The point is this, my Lord——

His Lordship: My remark is not directed to the Witness. Yesterday evidence was given which constituted a good advertisement for Toronto.

Mr. Duncan: Q. You said that the body of employees is a first-class body?—A. Yes.

Q. Would that be any reason for refusing to meet them across the table and endeavour to have the differences adjusted?—A. None at all. The men right from the start have had the right of appeal, first to their foreman, then to the superintendent, and then to the departmental head, right up to the manager and the Commissioners, and have every opportunity for presenting their case.

Q. So you did not think there was any danger of any strike occurring?—A. I am not saying that.

His Lordship: I have allowed individual opinion evidence in the case of this Witness. You will not, of course, repeat that.

(Witness withdrew.)

No. 27.

Evidence of Edward M. Ashworth.

Edward Montague Ashworth, Sworn.

Examined by Mr. Kilmer.

Q. You are an Electrical Engineer?—A. Yes.

Q. Duly qualified?—A. Yes.

Q. And you are the Assistant Manager of what is called the Toronto Hydro System, the Plaintiffs' System?—A. Actually I am Manager and Secretary; my title is "Acting General Manager."

Q. And Secretary?—A. Yes.

Q. You are the gentleman who had the conduct of the negotiations with Mr. Gunn about this Canadian Electrical Trades Union, Toronto Branch?—A. I met Mr. Gunn in connection with it, yes.

Q. And you are familiar with this matter from the standpoint of the Plaintiffs?—A. Yes.

Q. How long have you been in the employment of the Plaintiffs?—A. Since 1910.

Q. Have you heard Mr. Couzens' evidence on the manner in which the current is supplied to the Hydro System, and generally the means of distribution through sub-stations?—A. Yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 27. Edward M. Ashworth. Examination —*continued.*

Q. Is that correct?—A. Yes.

Q. In the application for the appointment of a Board of Conciliation and Investigation (Exhibit No. 7) the Application is made on behalf of the Toronto Branch of the Trades Union mentioned in the last question or so, and the employees applying are stated to consist of linemen, line-foremen, groundmen, and other employees right down to general labourers?—A. Yes.

Q. You heard me read that description to Mr. Couzens?—A. Yes.

Q. My question to you is based upon the statement by Mr. Gunn that there are between 300 and 400 of these employees of yours in that Toronto Branch. Should those 300 or 400 employees I have mentioned strike and cease work, how would that affect the Plaintiffs in the distribution of Light, Heat and Power in Toronto, including the Toronto Transportation Commission?—A. The Plaintiffs would continue the distribution of light, heat and power, including the Toronto Transportation Commission.

Q. Would there be any interruption of the service?—A. There would be no interruption due to the strike.

Mr. Duncan: Is that a question of opinion, my Lord?

His Lordship: I do not know whether it is or not. It is very definitely stated.

Mr. Duncan: I submit it must be an opinion, a guess, my Lord.

His Lordship: If he has calculated that in the event of 300 to 400 employees going out on strike he could enlist the services of 300 or 400 others to take the places of the strikers, or that he could double-up with the others, I suppose that is a matter of fact.

Mr. Duncan: Should he not give your Lordship the facts on which he reaches that conclusion, and not jump to the conclusion? I submit it is trying to get past your Lordship's ruling.

His Lordship: This witness is talking about his own business, and he says, in effect: "If I lost 300 or 400 men by a strike, I know where I could get others to take their places, or I could rearrange the work so as to be able to carry on." I think that is a matter of fact, although, perhaps, based upon opinion; it is not a general opinion. I have endeavoured to exclude statements upon which different men could differ.

Mr. Kilmer: Q. Mr. Ashworth, do you remember appearing before this Board that was constituted in this matter on the 7th August?—A. Yes.

Q. I want to draw your attention particularly to the suggestion made by the Chairman of that Board on that date as to arbitration?—A. Yes.

Q. Just tell me the suggestion he made, and what followed?—A. I cannot remember the exact words, but the subject was that the Chairman, Judge Snider, said that in looking through the correspondence he saw there had been an offer of arbitration, and he suggested that if the men were prepared to go on with an arbitration he would be very glad to withdraw and let them do so.

Q. What further occurred then, if anything?—A. You stated that an arbitration had been offered before the granting of the Board, and my recollection is that Mr. Gunn thereupon stated that an arbitration was not satisfactory to the men.

Q. Did you hear Mr Gunn in the witness box say that I stated on

that occasion that the offer was still open, the offer of arbitration ?—A. I heard him say that, as he remembered it.

Q. Is that correct ? Did I state any such thing ?—A. You did not state it, no.

Cross-examination by Mr. Duncan.

Q. I read to you from your examination for discovery, Mr. Ashworth :—

" 90. Q. I do not know what the men desire ; I am asking you what " would be the result on manufacturing in the City of Toronto, if the result " of a strike were to prevent you distributing power to the manufactories ? " —A. My opinion would be the result would be very serious.

" 91. Q. What do you mean by that ?—A. Cause great loss, dis- " organisation.

" 92. Q. And the same with respect to an interruption in street and " house lighting ?—A. Very serious, yes.

" 93. Q. Have you had any evidence that the men have contemplated " a strike ?—A. No."

Q. How many men did you estimate at that time would go out on strike ?—A. I had not formed an estimate ; I had gathered from the Application and what I had seen in the Statement of Defence that there were not more than 400.

Q. What ?—A. From the Application I had gathered there were not more than 400.

Q. Had you thought that 400 might go out ?—A. No.

Q. You said to me in your examination that you had not got down to the point of determining whether 300 or 3 would go out—is that right ? —A. That is what I said.

Q. Then :—

" 181. Q. Whether 300 went out on strike or not ?—A. Or three.

" 182. Q. Whether 300 or three ?—A. Yes.

" 183. Q. And if 400 went out on strike, you considered that you " would still be able to carry on ?—A. I am afraid I did not work it out in " numbers like that ; I just looked at it from the other aspect.

" 184. Q. What do you mean ' the other aspect ' ?—A. To see the " things that would need to be done, and I have formed the judgment that " they could be, based on experience, judgment, intuition, knowledge of " the labour market."

Q. You thought the intuition you had was more important than forming a judgment as to whether 100 or 50 or 400 would go out ?—A. Well, we have only two means of knowing anything, one by experience, and the other by intuition.

Q. What do you mean by " intuition " in a case like this ?—A. I am afraid I shall have to ask for a dictionary ; I mean in the ordinary use of the word.

Q. But in coming to a judgment on a most important matter—because I suppose you and Mr. Couzens considered this in the careful way that he indicated ?—A. Yes.

Q. In considering a matter that might be of the very greatest impor-

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 27. Edward M. Ashworth. Cross-examination —*continued.*

tance, a dispute of long standing, you say you based your opinion that there would be no strike on intuition?—A. On experience and intuition.

Q. Yes. What do you mean by that?—A. Experience is the things we know.

Q. We had a definition yesterday?—A. Intuition is what we think.

His Lordship: This discussion is becoming philosophical.

Mr. Duncan: Q. I suppose the Toronto Electric Commissioners do not employ any more men than they need?—A. We try not to do so.

Q. How many employees have you got?—A. In the Engineering Department there are between 700 and 800.

Q. That is a greater number than you mentioned in your answer during your examination for discovery, when you said "between 500 and 600"?—A. Perhaps I might explain it. that in the classes referred to in that Application—and I think that was the understanding at the time—we have between 500 and 600.

Q. And your answer is a little more clarified now than it was on your examination for discovery. Would it be fair to assume that your clarification on this matter has been progressive?—A. What was the question on the Examination for Discovery?

His Lordship: When you take an Electrical Engineer into all these little refinements, he loses his bearings.

Mr. Duncan: Q. How many electrical employees are there in the employ of the Plaintiffs?—A. I may make the apparent discrepancy here by explaining that there are two classes of electrical employees. There are engineers, who are men of considerable scientific attainments—if I may say so with all due modesty—and there are workers who have learned their trade in the school of experience. Both classes go to make up the Engineering Department, in which there are between 700 and 800 employees. I understood at the time of the examination for discovery that you were asking me how many men of the class referred to in the Application we had in our employ, and I answered: "Between 500 and 600."

Q. Your answer amounts, substantially, to this, that those employees who are engaged on the electrical side of your business, number about 500 or 600, and you have further on the engineering side people with a certain amount of electrical knowledge, the total being 700?—A. I would prefer to let it stand as I gave it to you. If it is not clear, I can go into it farther, but to re-phrase it would cause difficulty, because the engineering side is the electrical side.

Q. I suppose all of those 700 are well employed?—A. I think so.

Q. They are working most of the time?—A. Yes; productively.

Q. And if 300 or 400 went out on strike, that would rather cripple your service, would it not?—A. No. What do you mean by "would rather cripple it"?

Q. It would cripple it?—A. No; it would not.

Q. Why not?—A. Might explain by an analogy.

Q. I would like an explanation directed to this particular matter?—A. There are 300 or 400 jewellers in the city of Toronto all employed

productively, but if they went out on strike I would not expect my watch to stop. Those stations will run along anyway.

Q. Then you do not need all those employees ?—A. Yes. I do not need a jeweller to keep my watch going, but jewellers are necessary.

Q. Do you mean that the stations run themselves ?—A. In the supply of current to 135,000 customers we require the services of some hundreds of men. Things are arising all the time for which we require the services of those men.

Q. Interruptions occur ?—A. Yes.

Q. And you have to have the men to remedy those troubles ?—A. No ; the interruptions generally do not occur by any fault of the men.

Q. I said you have to have the men to remedy the causes of the interruption ?—A. If we discover the cause, we have to have men to remedy it.

Q. You have not yet answered the puzzle you put forward as to how an institution or a corporation employing 700 men who are all kept busy can carry on just as well when 400 of them go out on strike ?—A. I did not say that we could carry on just as well ; I said we could carry on. In fact, I said that we could continue the supply of light, heat and power to the Toronto Transportation Commission.

Q. By moving men from one department to another ?—A. I do not think it is in the public interest to give information of that kind here.

His Lordship : You are giving your evidence, and I have no doubt Mr. Gunn is in court listening very intently. Perhaps if these proceedings continue long enough you might arrive at a settlement.

Witness : Mr. Couzens and myself are charged with a very important public service, and I respectfully submit that it is not in the public interest for me to say exactly what I would do in the case of a strike.

His Lordship : I agree with you.

Mr. Duncan : On the examination for discovery of Mr. Ashworth the position was taken on behalf of the Defendants, that they were not going to press for actual particulars of whatever plans were in Mr. Ashworth's mind, because they are not taking sides ; but if it is important at all to determine whether there might have been a strike which might have interrupted the supply of electric power to the consumers of Toronto, it is important that Mr. Ashworth should indicate to your Lordship in some way or other whether or not he had reasonable grounds for his belief that the service would not be interrupted.

His Lordship : Mr. Gunn said, in effect, " We do not want to show our Minutes. We may have something in them that will hurt us in case we come to a conflict," and Mr. Ashworth may have a very clear policy as to what to do if an emergency occurs, but he does not desire to say what it is.

Mr. Duncan : Q. I suppose you are reasonably acquainted with Labour matters ?—A. Yes.

Q. And you know, as a matter of fact, that a small disturbance may spread very rapidly ?—A. I have no experience of that.

Q. Have you ever heard of the Lawrence, Massachusetts, strike in 1912 ?—A. No.

Q. The strike that started with some 1,500 organised workers and that

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 27. Edward M. Ashworth. Cross-examination —*continued.*

spread to 30,000 workers in the course of a very few days ?—A. I cannot say that I have heard of that.

Q. Did you ever hear of the great Chicago strike of 1894, which tied up all the railways in this country ?—A. No. I have not heard of the Chicago strike.

Q. Did you know that the Chicago strike of 1894 started among a few employees and spread very quickly ?—A. I do not know a thing about it.

Q. Then when you say you base your judgment on the Labour market and on your knowledge of Labour, you have not taken these well-known facts into consideration ?—A. My consideration of the subject was not academic ; I was basing it on our own experience, including the strike of 1915 when the men went out and no interruption followed.

Q. I am not asking you about the strike of 1915 ?—A. I gathered that you were asking me how I based my idea.

Q. Would you say the strike of 1894 was academic ?—A. As far as I am concerned, it was not.

His Lordship : The Witness says he is not looking at it from any academic viewpoint.

Witness : I did not look at the history of strikes, or the Taff-Vale decision, or anything like that ; I contemplated the job.

Q. Without reference to Labour history ?—A. Without reference to Labour history or economics.

His Lordship : You are bound by the answers of the Witness.

Mr. Duncan : Yes, my Lord.

His Lordship : And if you get an answer that is contrary to what you want, can you bring evidence to contravert that ?

Mr. Duncan : I do not intend to do so, my Lord.

Q. Did you see a copy of the Application for a Board ?—A. Yes.

Q. And that the authority had been granted for a strike ?—A. Yes.

Q. Did you inform the Minister or the Registrar at Ottawa that in your opinion there was no probability of a strike occurring ?—A. I wrote quite a long letter which is among the exhibits here.

Q. Do you remember your answer to me on your examination for discovery, in which you said you did not bring that to the attention of the Minister or the Registrar ?—A. If I said that, it is probably correct ; I have forgotten now. My recollection is that I wrote to the Deputy Minister, first of all suggesting private arbitration.

Q. I asked you whether you wrote to the Minister or the Registrar, informing them that in your opinion the declaration on the Application for a Board set out facts which were not true ?—A. No.

Q. Nor did you bring to their attention the fact that, in your opinion, no strike would take place ?—A. I do not think I did ; I thought they knew more about it than I did.

His Lordship : Probably they did.

Mr. Duncan : I gather that they did.

(Witness withdrew.)

No. 28.

Evidence of Henry C. Don Carlos.

Henry C. Don Carlos, Sworn.

Examined by Mr. Kilmer.

Q. You are an Electrical Engineer?—A. Yes.

Q. In the employ of the Provincial Hydro Electric Commission?—A. Yes.

Q. What is your office in that organisation?—A. "Operating Engineer" is my title. I have charge of the operation and maintenance of all of the generating plants, transmission lines, sub-stations; and, in fact, all of the property pertaining to the generation and distribution of power throughout the province of Ontario.

Q. That would include the generating plants at Niagara Falls?—A. Yes.

Q. Known as the Electrical Development Company's plant?—A. Yes.

Q. The Ontario Power Company's plant?—A. Yes.

Q. And the Chippewa-Queenston plant?—A. Yes.

Q. Also the Trent System?—A. Yes; what we call the Central Ontario System.

Q. From which of these plants, the Niagara plant or any of the others in Ontario, is power exported to the United States?—A. From the Ontario Power Company's plant and the Toronto Power Company's plant—that *the Electrical Development Company's plant. *sic.

Q. At Niagara Falls?—A. Yes.

Q. Is any power exported from the Queenston-Chippewa plant?—A. No, sir.

Q. Have the Provincial Hydro Commission in their employ at Niagara Falls members of the Canadian Electrical Trades Union?—A. Not that I know of, I am not familiar with the employees that the Commission have down there, other than in the Operating Department; but in the Operating Department I do not think they have any. If they do, there is a very very small percentage.

Q. The question I want to ask you is this: It has been suggested here by witnesses—you probably heard the evidence—that in case of a strike of these 300 to 400 members of this union in the employ of the Plaintiffs, that strike might extend so as to affect the export of power from Ontario. I want to ask you if a strike of these employees——

Mr. Duncan: I object, my Lord.

His Lordship: I will not admit that question.

Mr. Kilmer: It was suggested in the evidence and stated in the pleadings that it would prevent the export of power, or might prevent it.

His Lordship: I have tried to exclude opinion evidence. When did I receive opinion evidence as to what might take place among men of different minds?

Mr. Kilmer: I refer your Lordship to paragraph 9 of the Statement of Defence:—

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 28. Henry C. Don Carlos. Examination —*continued.*

"9. The members of the Canadian Electrical Trades Union, Toronto "Branch, employees of the Toronto Electric Commissioners, number about "four hundred, and comprise about ninety-eight per cent. of the electrical "and mechanical employees of Toronto Electric Commissioners engaged in "the distribution of electrical energy in the City of Toronto. A concerted "cessation of work by the said members of the Canadian Electrical Trades "Union, Toronto Branch, might be expected to deprive manufacturing "establishments in the City of Toronto of their supply of electrical energy, "disturb trade and commerce, increase unemployment and give occasion for "disorder. Further, the affiliations of the Canadian Electrical Trades Union, "Toronto Branch, are such that a strike of its members might be expected to "involve cessation of work by the employees of the Toronto Transportation "Commission engaged in the distribution of electrical energy and by other "electrical workers both in Toronto and elsewhere; and to interfere with the "export of electrical energy from Canada to the United States, and might "result in sympathetic strikes in other provinces."

Mr. Carlos is the engineer in charge of the export of electricity from Canada to the United States, my Lord.

His Lordship: The evidence you desire to get in is to meet some statement you say was made?

Mr. Kilmer: To meet a suggestion that was made, my Lord.

His Lordship: The pleadings are not a suggestion, and when that defence was presented here, I said I would not accept the opinion of a witness, no matter how observant he might be, of what might take place in the minds of other men to cause them to go on strike or not, and if such evidence has been inadvertently admitted it will be rejected in my mind, and there is therefore no occasion to ask this witness that question.

Mr. Kilmer: In that view, I will submit this further question:

Q. The occupation of men included in this application (Exhibit No. 7) consists of linemen, foremen and others down to general labourers?—A. Yes.

Q. You have heard the list read?—A. Yes.

Q. Should a strike of your employees at Niagara Falls of that class of men occur, would that prevent or interrupt the export of power?

Mr. Duncan: I would ask my learned friend to explain what he means by "that class of men"?

His Lordship: If they calculated that if they lost all their men they could get other men?

Mr. Kilmer: I mean the classes of men named in this Application, my Lord.

His Lordship: I think that question is admissible.

Mr. Kilmer: Q. Would that interfere with the export of power by the Provincial Hydro Commission?—A. It would not.

Q. Are there any other companies you know of in Ontario exporting power to the United States?—A. Yes; one.

Q. What one is that?—A. The Canadian Niagara Power Company.

Q. How is that power exported, directly by that company?—A. A part of it. I might add to the sources of power which we export, some power which we purchase from the Canadian Niagara Power Company. They also export some power direct themselves.

Q. What is the quantity of power exported by the Provincial Hydro Commission at the present time?—A. Between 90,000 and 95,000 horsepower.

Q. That includes the amount you purchase from the Canadian Niagara Power Company?—A. It does.

Q. Do you know the quantity of power exported by the Canadian Niagara Power Company at the present time outside of the power sold to you?—A. Not accurately, no; I would say it would be approximately 50,000 or 60,000 horsepower.

Cross-examination by Mr. Duncan.

Cross-examination.

Q. Do you know which of the employees of the Provincial Hydro Commission are members of Trades Unions?—A. Not accurately.

Q. Approximately?—A. No.

Q. That is not within your province?—A. I know in a general way only what men are organised, but as to the individual men that belong to the unions, I do not know definitely.

Q. What do you mean?—A. I know that the employees on the Central Ontario System are organised, and part of those men—I think a majority of those men—that belong to a union belong to the Canadian Electrical Trades Union. I know that part of our employees at Niagara Falls belong to unions.

Q. Which unions?—A. Practically all; and a very large percentage of the men at Niagara Falls that belong to any union belong to the International Brotherhood of Electrical Workers.

Q. What are the men at Niagara Falls who are engaged in that portion of the work which has to do with exporting power to the United States?—A. I suppose you mean who are the men?

Q. Yes, perhaps so. Not "who," but what class of men at Niagara Falls? You said you could not give me the individual names, so I want the "class" not "who"?—A. Why, the operators at the plants who supply power—that is, export it—and a few of the electricians and linemen occasionally have to do with the equipment which is utilised in the supplying of that power.

Q. What about the men in the generating plants?—A. I spoke of those; I said "the operators."

Q. That is what you mean by "the operators"?—A. In the generating plants and in the sub-stations.

Q. Are any of those men organised?—A. Some of them are.

Q. Do you know whether any of them are members of the Canadian Electrical Trades Union?—A. I do not think that any of them are.

Q. Do you know?—A. I do not know that, but if there are any of them it is a very small percentage.

Q. Do you know whether any grievances exist there?—A. I know that there are not.

Q. You heard Mr. Gunn's testimony that there were grievances?—Yes.

Q. You do not agree with that?—A. No.

In the Supreme Court of Ontario.

Plaintiffs' Evidence in Reply.

No. 28. Henry C. Don Carlos. Cross-examination —*continued.*

Q. Are there any grievances among the employees who belong to the International Electrical Trades Union ?—A. There are not.

Q. Are there any grievances among your employees on the Central Ontario System ?—A. Not that I know of.

Q. Would you say there are none ?—A. I would say there are none.

Q. You would contradict Mr. Gunn in that ?—A. If he says there are, I would contradict him ; there are no grievances existing at the present time.

Q. Is it a matter of your business to deal with the grievances ?—A. Yes.

Q. They would come to your attention ?—A. Yes.

Q. Is it not the practice of the Executive of the Canadian Electrical Trades Union to take their grievances up direct with the Commission and not through you ?—A. It is not the practice. If they go to the Commission they are referred to me if the matter affects the men in the Operating Department.

Mr. Kilmer : My Lord, there are one or two questions that I should have asked this witness during his examination in chief about the operation. I would like to ask these questions now.

His Lordship : Very well.

Further examination.

Further Examination by Mr. Kilmer.

Q. In connection with your duties at Niagara Falls, I understand your oversight finishes with the transmission lines to the various municipalities ? That is, it covers generating and transmitting ?—A. And the transformation of power.

Q. Then the transmission lines and the delivery to the municipalities in the Niagara and other districts does not fall within your duty ?—A. The transmission lines up to the municipalities come within my jurisdiction, generating, transmission and transformation of power at both the generating end and the receiving end.

His Lordship : Q. By whom are you employed ?—A. The Ontario Hydro Electric Power Commission.

(Witness withdrew.)

Mr. Kilmer : That is the Reply, my Lord.

His Lordship : The argument will be held in the Queen's Bench Court-room at Osgoode Hall, on Thursday, November 29, at 11.00 o'clock a.m. I would like to hear your associate, Mr. Robinson, on that day on the question of the alleged intrusion of this Act upon the municipal affairs of Ontario, Mr. Kilmer.

Mr. Kilmer : Yes, my Lord.

My Lord, my learned friend Mr. Duncan and myself would like to arrange with the Reporter to get copies of the evidence immediately.

His Lordship : Certainly.

The Reporter : My Lord, it will not be possible to get the evidence out by the 29th instant if I attend the Court at Woodstock on Monday next.

Mr. Duncan: If the Reporter can make arrangements to send a substitute to Woodstock, we will undertake to pay the expense involved in that connection.

In the Supreme Court of Ontario.

No. 28. —*continued.*

Whereupon the proceedings were adjourned at 12.25 o'clock p.m. until 11.00 o'clock a.m. on Thursday, November 29, A.D. 1923.

No. 29.

No. 29. Order of Mowat J. referring action to Appellate Division, 15th Dec., 1923.

Order of Mowat J. referring action to Appellate Division.

In the Supreme Court of Ontario.

The Honourable Mr. Justice Mowat. Saturday, the 15th day of December, 1923.

Between

Toronto Electric Commissioners .. .. Plaintiffs.

and

Colin G. Snider, J. G. O'Donoghue, and F. H. McGuigan .. Defendants.

This action coming for trial on the 19th, 20th, 21st, 29th and 30th days of November, 1923, before this Court, at the Sittings holden at Toronto for trial of actions without a jury, in the presence of counsel for all parties, and in the presence of counsel for the Minister of Justice, and for the Attorney-General for Ontario; upon hearing read the pleadings, and hearing the evidence adduced, and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and it appearing that on the application for an interim injunction in this action that a Judge of this Court decided that the Industrial Disputes Investigation Act was ultra vires the Dominion Parliament and it further appearing to this Court, deeming the decision of the said Judge to be wrong, that such decision is of sufficient importance to be considered in a higher Court and the same coming on this day for judgment;

1. This Court doth order that this action be and the same is hereby referred to a Divisional Court;

2. And this Court doth further order that the costs of this action be and the same are hereby referred to a Divisional Court.

Entered 31.12.23.

"E. HARLEY,"
Senior Registrar S.C.O.

O.B. No. 26, pp. 160, 161.
M.D.B.

In the Supreme Court of Ontario.

No. 30.
Reasons for Judgment of Mowat J.

No. 30.

Reasons for Judgment of Mowat J.

Mowat J.—This action is for a declaration that the Defendants have no right to act as a Board of Conciliation and Investigation in respect of an alleged dispute between the Plaintiffs and their employees, and is brought in the main to dispute the constitutional right of the Parliament of Canada to pass the Industrial Disputes Investigation Act (1907) generally, and in particular as it affects the relations between the Toronto Electric Commissioners, who are entrusted by statutes of the Province of Ontario with the powers and duties of producing and controlling electrical power, and their employees.

The Act in question is challenged upon the ground that it interferes with the remitted powers of the Province under Section 92 of the British North America Act, as follows : subsection 8, Municipal institutions in the Province ; subsection 13, Property and civil rights in the Province ; subsection 16, Generally all matters of a merely local or private nature in the Province.

The scheme of the Industrial Disputes Investigation Act is to compel the parties to a threatened strike or lockout to meet together in conference in which both employer and employees may state their cases and differences, with a view that they may be by conciliatory efforts induced to come to a fair and amicable settlement of the dispute, so as to remove tense and disrupted relations, failing which the Board is to make a report giving its information to the public. And it is empowered for this purpose to interfere with contracts in existence between the hirer and the hired, freedom of action while the discussions and proceedings are taking place, and incidentally to enter upon and inspect works and examine books and reports, so that all facts and circumstances may be disclosed.

It may be conceded that the obligatory character of the Act in these respects is an invasion of the field of " property and civil rights," but it is urged on behalf of the Attorney-General for Canada and the Defendants, the members of the Board of Conciliation appointed under the Act, that such requirements are necessary and that the effective or possible determination of industrial strife gives the Dominion Parliament power so to trench upon the subjects mentioned in subsections 8, 13 and 16 of section 92, in order that a law necessary for " the peace, order and good government of Canada " may be effectively administered and enforced.

Having come to the conclusion that the constitutional question raised is the all-important one, I do not here deal with the evidence directed to that feature of the case which deals with the procedure leading up to the appointment of the Board of Conciliation which was made, and the propriety of its appointment. In a general way I find that the requirements of the statute have been complied with.

I therefore pass on to discuss the constitutional point raised.

The question of industrial strife, together with its ramifications and the growth of labour unions, is vastly different from the condition existing at the time of the passing of the British North America Act in 1867, and the

silence of the Act regarding "labour" and the absence of the specific allocation of that subject to the Dominion or the Provinces is thus accounted for. But it may be observed that the question of labour has, for more than twenty years, been appropriated by the Dominion Parliament and Government. There is a Department of Labour with a Minister of Labour in charge; periodical publications dealing with labour questions, the labour market, the current cost of living, and the employment of the military forces of Canada in the protection of property and the public safety where violent eruptions have occurred or may. This Department has, by common consent of the Provinces during this long period, been the principal administrative means of dealing with the question of eruptive industrial strife; and, while the fact of acquiescence does not settle a constitutional point of law, and if there is no authority for the taking over of labour problems by the Dominion, yet a declaration of the Court that all such administrative actions are to cease, and inferentially that all the Governments and their law officers have erred, or slept, should not be arrived at unless the law is clear.

Canada's constitutional problems have all found their way to the Judicial Committee of the Privy Council, whose members have taken enormous pains, from period to period, in their elucidation, and it is by the views of that tribunal that we are to be guided.

The allocation by the British North America Act of subjects to Dominion or Provinces by general heads or titles, means overlapping and impingement, and in *Citizens and Queen Insurance Companies* v. *Parsons* [1881], 7 A.C. 96, Sir Montague Smith says (p. 107):—

"The scheme of this legislation, as expressed in the first branch of "Section 91, is to give to the Dominion Parliament authority to make laws "for the good government of Canada in all matters not coming within the "classes of subjects assigned exclusively to the provincial legislature."

And at pp. 108, 109:—

"It is the duty of the Courts, however difficult it may be, to ascer- "tain in what degree, and to what extent, authority to deal with matters "falling within these classes of subjects exists in each legislature, and "to define in each case before them the limits of their respective powers. "It could not have been the intention that a conflict should exist; and "in order to prevent such a result, the two sections must be read together "and the language of one interpreted, and, where necessary, modified, "by that of the other. In this way, it may, in most cases, be found "possible to arrive at a reasonable and practical construction of the "language of the sections, so as to reconcile the respective powers they "contain, and give effect to all of them."

And per Lord Dunedin in *Grand Trunk Ry. Co.* v. *Attorney-General of Canada* [1907] A.C. 65 ("Contracting Out" Case), at p. 68:—

"First . . . there can be a domain in which provincial and "Dominion legislation may overlap, in which case neither legislation "will be ultra vires, if the field is clear; and, secondly, that if the field "is not clear, and in such a domain the two legislations meet, then the "Dominion legislation must prevail."

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No. 30. Reasons for Judgment of Mowat J. —*continued.*

In *John Deere Plow Co. Limited* v. *Wharton* [1915] A.C. 330 Viscount Haldane said (pp. 338, 339) :—

" The language of these sections (91 and 92) and of the various heads " which they contain obviously cannot be construed as having been " intended to embody the exact disjunction of a perfect logical scheme. " The draftsman had to work on the terms of a political agreement, " terms which were mainly to be sought for in the resolutions passed " at Quebec in October, 1864. To these resolutions and the sections " founded on them, the remark applies . . . if there is at points " obscurity in language, this may be taken to be due, not to uncertainty " about general principles, but to that difficulty in obtaining ready " agreement about phrases which attends the drafting of legislative " measures by large assemblages. It may be added that the form in " which provisions in terms overlapping each other have been placed " side by side shows that those who passed the Confederation Act " intended to leave the working out and interpretation of these provisions " to practice and to judicial decision. . . . In discharging the difficult " duty of arriving at a reasonable and practical construction of the " language of the sections, so as to reconcile the respective powers they " contain and give effect to them all, it is the wise course to decide " each case which arises without entering more largely upon an inter- " pretation of the statute than is necessary, for the decision of the par- " ticular question in hand. The wisdom of adhering to this ruling " appears . . . to be of special importance when putting a construction " on the scope of the words ' civil rights ' in particular cases. An " abstract logical definition of their scope is not only, having regard to " the context of ss. 91 and 92 of the Act, impracticable, but is certain, " if attempted, to cause embarrassment and possibly injustice in future " cases. It must be borne in mind in construing the two sections that " matters which in a special aspect and for a particular purpose may fall " within one of them may in a different aspect and for a different purpose " fall within the other. In such cases the nature and scope of the " legislative attempt of the Dominion or Province, as the case may be, " have to be examined with reference to the actual facts if it is to be " possible to determine under which set of powers it falls in substance " and in reality."

It appears to me that " labour " legislation such as the Industrial Disputes Investigation Act is one of national concern. It is important that a close touch should be kept of the movements and variations of industrial strife and that this can best be done, as such strife existed in 1907 and until the present time, by federal government. A general strike in Winnipeg in 1919 was only brought to an end through the voluntary efforts of the non-industrial citizens to break it and to prevent the misery and under-feeding of children which seemed likely to ensue. All important labour unions in Canada were sympathetically affected by it from ocean to ocean, and if it had spread, as at one time feared, ruinous conditions would have ensued to trade and stable industry. In such a case provincial lines are obliterated, and the Provinces, not having the means of free and instant communication with each other, or for concert, could ill avert Dominion-wide trouble. The

simple local strikes which alone could have been in contemplation of the Fathers in 1864 and 1867 have given place to those of Brotherhoods composed in some instances of hundreds of thousands, and Dominion-wide in their operations and probably beyond the resources of each Province to deal with. As was said by Lord Watson in stating the opinion of the Judicial Committee in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* [1896] A.C. 348, 361 :—

" Some matters, in their origin local and provincial, might attain " such dimensions as to affect the body politic of the Dominion, and to " justify the Canadian Parliament in passing laws for their regulation " or abolition in the interest of the Dominion. But great caution " must be observed in distinguishing between that which is local and " provincial . . . and that which has ceased to be merely local or " provincial, and has become a matter of national concern, in such " sense as to bring it within the jurisdiction of the Parliament of Canada."

In *Russell* v. *The Queen* [1882], 7 A.C. 829, it was held that the restriction of intemperance was a matter of public order and safety, although it infringed on property and civil rights. And this case, although the Attorneys-General were not represented, has been expressly reaffirmed in statements by the Committee.

If such an ill as occasional over-drinking is subject to Dominion legislation, it must follow that the prevention of strikes by conciliation, which conceivably might occasion the starving of the people, should also be.

In the last case on the subject, it was held that regulation of the price of newsprint paper, upon which soothing and uninterrupted information might be written to quiet the nerves of the people racked by the Great War, but which was over when the regulation was passed, was within the powers of the Dominion, the Viscount Haldane saying : " No authority " other than the central Government is in a position to deal with a problem " which is essentially one of statesmanship." *Fort Frances Pulp and Paper Co.* v. *Manitoba Free Press Co.* [1923], A.C. 695, 706.

The elements of " municipal affairs " and " matters of a merely local and private nature " come within the same reasoning.

I note that Mr. Justice Orde in this very case reported 25 O.W.N. 64, heard a motion for an interim injunction upon material which substantially raised the same issue as that raised by the evidence at the trial before me, and gave a considered judgment, reasoned with his usual clearness, coming to a conclusion differing from that to be gathered from what I have here said.

The Ontario Judicature Act, sec. 32, declares that a Judge cannot disregard or depart from a prior known decision of any other judge of co-ordinate authority on any point of law, without his concurrence ; and, as I have not that concurrence, although I have no reason to think it would not be given, I must say with reluctance, but to be formally correct, that I deem his decision to be wrong and the case of sufficient importance to warrant me in referring it, with the record and evidence before me, to one of the Appellate Divisions, together with the costs of action ; and such reference is therefore made.

In the Supreme Court of Ontario (Appellate Division).

No. 31. Formal Judgment, 22nd April 1924.

No. 31.

In the Supreme Court of Ontario.

Tuesday, the 22nd day of April, 1924.

The Honourable the Chief Justice of Ontario.
The Honourable Mr. Justice Magee.
The Honourable Mr. Justice Hodgins.
The Honourable Mr. Justice Ferguson.
The Honourable Mr. Justice Smith.

Between Toronto Electric Commissioners .. .. .. Plaintiffs,

and

Colin G. Snider, J. G. O'Donoghue and F. H. McGuigan .. .. Defendants.

This action coming on for further hearing before this Court on the 29th, 30th and 31st days of January, 1924, and the 1st day of February, 1924, pursuant to an order of reference made by the Honourable Mr. Justice Mowat on the 15th day of December last pursuant to Sec. 32 of the Judicature Act, R.S.O. cap. 56, ss. 3 and 4 and upon motion made unto this Court by the Defendants and heard at the same time by way of appeal from the order made on the application of the Plaintiffs by the Honourable Mr. Justice Orde on the 29th day of August, 1923, restraining the Defendants until the trial or other final disposition of this action from in any way interfering with the business and rights of the Plaintiffs as therein set out, in presence of Counsel for the Plaintiffs and Defendants and of Counsel for the Honourable the Attorney-General of Canada and the Honourable the Attorney-General of Ontario; This Court, upon hearing read the pleadings herein and proceedings and the evidence adduced before the Honourable Mr. Justice Mowat and the Honourable Mr. Justice Orde and what was alleged by Counsel aforesaid, was pleased to direct that this action stand over for judgment, and the same coming on this day for judgment:—

(1) This Court doth order and adjudge that this action be and the same is hereby dismissed.

(2) And this Court doth further order that the Defendants' said appeal from the said order of the Honourable Mr. Justice Orde dated the 29th day of August, 1923, be and the same is hereby allowed and that the said order be vacated and set aside.

(3) And this Court doth further order that the Plaintiffs do pay to the Defendants the Defendants' costs of the said action and appeal and of the said application for injunction forthwith after taxation.

(4) And this Court doth further order that the issue of this judgment be and the same is hereby stayed for a sufficient time to enable the Plaintiffs to appeal therefrom, reserving the right to the Defendants to apply to remove stay if the appeal be not taken and prosecuted to an early hearing.

Judgment signed this 21st day of May, 1924.

"E. HARLEY," Senior Reg., S.C.O.

No. 32.

In the Supreme Court of Ontario. (Appellate Division).

No. 32. Reasons for Judgment, (A) Mulock C.J.

Reasons for Judgment.

(A) Mulock C.J. : I agree with my brother Ferguson that the impugned portion of the legislation in question is legislation within the competency of the Dominion Parliament under its powers to make laws for the peace, order and good government of Canada in relation to the regulation of trade and commerce, and, therefore, think the action should be dismissed with costs.

(B) Ferguson J.A. : Continuation of the trial on a reference to this Court by Mowat J., under section 32 of The Judicature Act, R.S.O., cap. 56, ss. 3 and 4, which read :

(B) Ferguson J.A.

" (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.

" (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."

The Plaintiffs are a Board of Commissioners appointed under sections 16 and 17 of 1 George V, cap. 119 (Ontario), (An Act respecting the City of Toronto), to manage the municipal electric light, etc., of the City of Toronto. They are a body corporate and have the duties and powers of commissioners under the Public Utilities Act, R.S.O. (1914), cap. 104. The Defendants are a Board of Conciliation and Investigation appointed under and pursuant to the Industrial Disputes Investigation Act (1907) with all the powers conferred by that Act, upon commissioners appointed thereunder for the purpose of investigating, reporting upon and bringing about a settlement between the Plaintiffs and their employees. The Attorney-General of Canada and the Attorney-General of Ontario are not parties but appear pursuant to notice served upon them under section 33 of the Judicature Act, which provides that where, in any action or proceeding the constitutional validity of any Act of the Parliament of Canada or the Legislature of Ontario is brought into question, the same shall not be adjudged invalid until after notice has been served upon the Attorney-General for Canada and the Attorney-General for Ontario, also that the Attorney-General for Canada and the Attorney-General for Ontario shall be entitled as of right to be heard either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding.

The Plaintiffs plead that the Industrial Disputes Investigation 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 in the province, subjects (Class 13) exclusively assigned to the Provincial Legislatures by sec. 92 of the British North America Act; (2) it interferes with municipal institutions, one of the classes of subjects (Class 8) exclusively assigned to the Provincial Legislatures by section 92 of the British North America Act; (3) it is an interference with a local work or undertaking, subjects (Class 10) exclusively assigned to Provincial Legislatures by sec. 92 of the British North America Act.

In the Supreme Court of Ontario (Appellate Division).

No. 32. Reasons for Judgment, (B) Ferguson J.A. —*continued.*

The Plaintiffs ask the following relief: (1) a declaration that the Defendants are, without lawful authority, acting as a Board of Conciliation and Investigation into alleged disputes between the Plaintiffs and certain of their employees; (2) an injunction restraining the Defendants and each of them from proceeding with the investigation or in the alternative for a perpetual Injunction in the terms of an interim injunction granted herein by the Hon. Mr. Justice Orde.

Before pleading, the Plaintiffs applied for and obtained from Mr. Justice Orde, sitting in Weekly Court, an interim injunction restraining the Defendants until the trial, from interfering with the business of the Plaintiffs, from entering upon the premises of the Plaintiffs, from examining the Plaintiffs' work or employees upon the Plaintiffs' premises, and from exercising any of the compulsory powers contained in sections 30 to 38 of the Industrial Disputes Act, and from interfering in any way with the property and civil rights or the municipal rights of the Plaintiffs.

The interim injunction was not granted merely because the learned Judge who made the order was of opinion that sufficient had been shown to entitle the Plaintiffs to have the rights of the parties determined by a trial, before the proposed investigation was proceeded with. His reasons for making the order make it clear that after a careful review and consideration of the authorities, he was of opinion that the Industrial Disputes Investigation Act is ultra vires of the Parliament of Canada. The trial Judge being of a different opinion, considered the interim injunction order granted by Mr. Justice Orde and his reasons therefore a decision previously given within the meaning of section 32 of the Judicature Act entitling and requiring him to refer the question raised to the Appellate Division for their decision.

It is not, I think, necessary for the decision of the case at bar, to consider the constitutional validity of any sections or provision in this Act which do not deal with the powers of the Board, and consequently it is not necessary to consider the constitutional validity of sections 56 to 61 which deal with strikes and lock-outs prior to and pending a reference to a Board of Inquiry.

I am of opinion that while sections 30, 36 and 37 of the Act confer on the Board compulsory powers which trench upon property and civil rights, and authorise the Board to inquire into industries that are in some cases local works carried on by municipalities, yet my opinion is that according to its "true nature and effect of the enactment," "its pith and substance," the legislation is not law in relation to "municipal institutions" (8), local works (10), property and civil rights (13), matters purely local (16), as these words are used in sub-secs. 8, 10, 13 and 16 of sec. 92 of the British North America Act, but is legislation to authorise, and provide machinery for conducting, an inquiry and investigation into industrial disputes between certain classes of employers and their employees, which disputes in some cases may, and in other cases will, develop into disputes affecting not merely the immediate parties thereto, but the national welfare, peace, order and safety, and the national trade and business.

The purpose of the inquiry authorised by the Act is, I think, three-fold: (1) the regulation of trade and business by preventing the interruption of

trade and commerce necessarily incident to delaying, hindering, interrupting or stopping the operation of mines or public utilities; (2) the promotion and protection of national public peace, order and safety by (a) confining the dispute to a limited district, or bringing about a settlement, (b) by informing the public in reference to the cause and nature of the dispute, (3) by bringing to bear upon the parties intelligent public opinion, and through that agency preventing the breaking out and spreading of strikes or lock-outs and the disturbances, rioting and breaches of the peace and Criminal law which it is common knowledge frequently follow the stopping, by strike or lock-out, of the operation of mines, agencies of transportation or communication and public service utilities, which furnish such necessities as light, heat and power.

Counsel for the Defendants and the Attorney-General for the Dominion submitted that as according to its "true nature and effect," its "pith and substance," and its title, the Act here in question is legislation in reference to industrial disputes, and as the Imperial Parliament in the Australian Constitution Act (63-64 Vic.) recognised and treated industrial disputes as presenting an aspect of peace, order and good government that required special legislative treatment, (see sec. 51 of The Australian Act), we may and should hold that the legislation does not fall within any of the classes enumerated in sec. 92 of the British North America Act. Basing his argument on the foregoing submission, and on the statement of the Judicial Committee in *Russell* v. *The Queen*, 7 A.C. at p. 836, and another statement in the *Alberta Insurance Case* (1916) 1 A.C. 588 at 595, counsel for the Dominion urges that the legislation here in question is valid because it is a class of legislation not covered by or included in any of the classes enumerated in section 92 of the British North America Act.

The statements of the Judicial Committee relied upon for this proposition, read (*Russell* v. *The Queen*, p. 836):

"The first question to be determined is, whether the Act now in "question falls within any of the classes of subjects enumerated in sec. 92, "and assigned exclusively to the Legislatures of the Provinces. If it does, "then the further question would arise, viz.: whether the subject of "the Act does not also fall within one of the enumerated classes of subjects "in sec. 91, and so does not still belong to the Dominion Parliament. "But if the Act does not fall within any of the classes of subjects in "sec. 92, no further question will remain, for it cannot be contended, "and indeed was not contended at their Lordships' bar, that, if the Act "does not come within one of the classes of subjects assigned to the "Provincial Legislatures, the Parliament of Canada had not by its "general power 'to make laws for the peace, order and good government "of Canada,' full legislative authority to pass it."

(The Alberta Case, p. 595):

"It must be taken to be now settled that the general authority to "make laws for the peace, order and good government of Canada, which "the initial part of s. 91 of the British North America Act confers, "does not, unless the subject-matter of legislation falls within some of

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"the enumerated heads which follow, enable the Dominion Parliament "to trench on the subject-matters entrusted to the provincial Legisla- "tures by the enumeration in s. 92. There is only one case, outside "the heads enumerated in s. 91, in which the Dominion Parliament "can legislate effectively as regards a province, and that is where the " subject-matter lies outside all of the subject-matters enumeratively "entrusted to the province under s. 92. *Russell* v. *The Queen* is an "instance of such a case."

Counsel for the Plaintiffs and the Attorney-General for Ontario submit that the legislation here in question trenches upon the classes of legislation enumerated in sub-secs. 8, 10, 13 and 16 of sec. 92, and that the Dominion Parliament may not trench on any class enumerated in sec. 92 except to legislate in respect of a class enumerated in section 91, and for the latter submission they rely upon the statements quoted by Mr. Justice Orde, from *Montreal* v. *Montreal* (1912) A.C. 333 ; the opinion of Mr. Justice Duff in the *Board of Commerce Case* 60, S.C.R. 456 at 508 ; the statements in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (1896) A.C. 348 at 360, the first sentence I have quoted from the *Alberta Case* (supra). The Plaintiffs and the Attorney-General for Ontario further submit that *Russell* v. *The Queen* is not now regarded as authority for the statement that Dominion legislation which trenches upon any of the classes enumerated in sec. 92 can be supported on the peace, order and good government clause of s. 91 without aid from one or more of the classes enumerated in sec. 91 and in support of this proposition they refer to a statement appearing at p. xix and xx Cameron's Canadian Companies in the Judicial Committee (1922).

Though in the view I have taken it is not necessary to rest my judgment upon the meaning and effect of the authorities cited for and against the proposition stated by counsel for the Defendants and the Attorney-General for the Dominion, I think it proper to say that I am not convinced that the point raised has been yet decided. As I read *Russell* v. *The Queen*, there is much in the reasons for the result in that case to support the view that the right of the Dominion to enact the legislation there in question could be and was supported by reference to and on the power of the Dominion to legislate in reference to public wrongs and Criminal law and trade and commerce rather than on power to legislate in reference to an unenumerated subject. I am also of the opinion that the decision on this point was not necessary to the determination of the *Alberta Insurance Case* (supra), and as I read the *Montreal Case*, it decided only that the power to regulate rates and traffic on connecting provincial lines was not *necessarily incident* to the regulation of rates and traffic on Dominion Railways. In the *Board of Commerce Case*, Mr. Justice Duff's statement does not take the form of a pronouncement on a point necessary to the decision of the case he was considering.

In the *Distillers and Brewers Case* (1896) A.C. at 360, the Committee states the proposition as it is stated by Mr. Justice Duff in the *Board of Commerce Case*, and yet in the same case accepts and treats *Russell* v. *The Queen* as rightly decided.

After a careful perusal of the authorities, I am unable to reconcile the cases or the two propositions in the statement I have quoted from the *Alberta Insurance Case*, unless it be that the legislation in *Russell* v. *The Queen* did not, in the opinion of the Judicial Committee, even trench upon any of the powers conferred upon the provinces by sec. 92, or unless it be that the opinion of the Judicial Committee in *Russell* v. *The Queen*, and in the *Fort Frances Case* (1923) A.C. 695, are founded upon the proposition that where a condition arises in which the peace, order and welfare of the Dominion as a whole is affected and that condition cannot be effectively met, controlled and regulated by provinical legislation, the Dominion Parliament has power to legislate under the peace, order and good government clause of sec. 91 even if in so doing it trenches upon some of the classes enumerated in sec. 92. While there are statements in the reasons for judgments in the *Russell Case* and the *Fort Frances Case* which appear to support the last proposition, it is not, I think, clear that the proposition was necessary to the decision of either case or that it is laid down in either case.

In the absence of clear and binding authority requiring me to do so, I am not prepared to hold that such a wide and far-reaching power must, can or should be implied in order to give effect to the agreement which the Imperial Parliament embodied in the British North America Act. I incline to the view that if the *Russell Case* is not supported by reference to sub-section 27 of sec. 91, criminal law, and sub-sec. 2 trade and commerce, then it must be taken to have been determined on a finding that the legislation did not in fact trench upon any class enumerated in section 92 and that the *Fort Frances Case* is based upon a finding of such an abnormal condition that the necessities of the situation demanded, required and justified the implying of an overriding power to legislate so as to meet, regulate and control an abnormal condition amounting to a great national emergency, in which the safety of the nation as such was threatened.

For these reasons I am of opinion that the weight of authority is in favour of the proposition that except in conditions involving the very safety of the Dominion as a political entity, the Parliament of Canada may not in its legislation trench upon any of the subjects enumerated in sec. 92 unless such legislation according to its pith and substance, is legislation in relation to a class of legislation enumerated in sec. 91 of the British North America Act.

Counsel for the Attorney-General for the Dominion and the Defendants submit that if the legislation cannot be supported as not falling within or trenching upon any of the classes enumerated in sec. 92, it can and should be supported as legislation in respect of one or more of the classes enumerated in section 91 of the British North America Act.

The wording of section 91 of the British North Amercia Act makes clear that legislation which comes within any of the enumerated classes of section 91 is within the power of the Dominion Parliament, and numerous cases, many of which are quoted in the latest pronouncement of the Judicial Committee in *Re Reciprocal Insurance* (1924) 1 D.L.R., 789 at 795, establish

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that the class of legislation is determined by reference to "its true nature and character," " its pith and substance," " its paramount purpose."

I have already expressed my opinion as to " the true nature and character of the legislation," " its pith and substance," " its paramount purpose," and that brings me to the inquiry: Does legislation of that nature fall within any of the enumerated classes of sec. 91 ? In such an inquiry, two classes suggest themselves. They are: (1) The regulation of Trade and Commerce (Sec. 91, class 2); (2) The Criminal law except the constitution of Courts of Criminal jurisdiction (Sec. 91, class 27).

The meaning of " trade and commerce " as used in the section has been considered in a number of cases. These cases are collected and discussed in Cameron's Canadian Constitution, page 75 to 78, and while the scope of this power of the Dominion to regulate trade and commerce is not defined or determined by any of the cases considered, it was said in *Citizens* v. *Parsons*, 7 A.C. 96, that " the words include the political arrangements in regard to " trade requiring the sanction of Parliament, regulation of trade in matters " of Inter-provincial concern, and it may be they would include general " regulation of trade affecting the whole Dominion."

The scope of class 27 was considered in *Attorney-General for Ontario* v. *Hamilton Street Railway*, 1903, A.C. 524, and in that case the Judicial Committee said that the words " Criminal Law " meant " Criminal Law in its widest sense."

While it may be argued that regulations in reference to trade and commerce mean regulations defining how or in what manner articles or commodities shall be dealt or traded in rather than regulations in reference to the production thereof, and that the object of the investigation is to prevent the interruption of production rather than interruption of trading in commodities produced, I am of opinion that the " employers " named in sub-sec. (c) of sec. 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. It cannot be disputed that to deprive the City of Toronto of electric power of 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.

As to Criminal law, it may be argued that Criminal law means only law defining crimes and fixing punishments therefor. It is to be noted that sec. 91 of the British North America Act does not confine the power of the Dominion to making criminal law, but that the power extends to making law *in relation* to the criminal law. My view is that 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, Sec. 91, of the British North America Act.

Industrial disputes are not now regarded as matters concerning only a disputing employer and his employees. It is common knowledge that such disputes are matters of public interest and concern, and frequently of national and international importance. This is so, not because the disputes may result in many plants being shut down, or tens, hundreds and even thousands of employees drawing strike pay instead of wages, but because experience has taught that such disputes not infrequently develop into quarrels wherein or by reason whereof public wrongs are done and crimes are committed, and the safety of the public and the public peace are endangered and broken, and the national trade and commerce is disturbed and hindered by strikes and lockouts extending not only throughout the Dominion but frequently to the United States, where most of our trade unions have their headquarters. Being of opinion that the Act is not one to control or regulate contractual or civil rights but one to authorise an inquiry into conditions or disputes and that the prevention of crimes, the protection of public safety, peace and order and the protection of trade and commerce are of the " pith and substance and paramount purposes " of the Industrial Disputes Act and of the inquiry authorised and directed hereby, I think the legislation may and should be supported on the powers conferred upon the Dominion Parliament by Sec. 91, B.N.A. Act to make laws " *in relation to* " " the regulation of trade and commerce," and to make laws " *in relation to* " " the criminal law " " in its widest sense " even though it does not enact a criminal law or a law defining how or in what manner trade and commerce shall be carried out. See *Russell* v. *The Queen*, 7 A.C. 829, in which the Judicial Committee, referring to the Canada Temperance Act, said (p. 839) :—

" Laws of this nature designed for the promotion of public order, safety, " or morals, and which subject those who contravene them to criminal pro- " cedure and punishment, belong to the subject of public wrongs rather " than to that of civil rights. They are of a nature which fall within " the general authority of Parliament to make laws for the order " and good government of Canada, and have direct relation to criminal " law, which is one of the enumerated classes of subjects assigned " exclusively to the Parliament of Canada. . . . Few, if any laws, " could be made by Parliament for the peace, order and good govern- " ment of Canada which did not in some incidental way affect property " and civil rights, and it could not have been intended when assuring " to the Province exclusive legislative authority on the subject of " property and civil rights, to exclude the Parliament from the exercise of " its general powers whenever any such incidental interference would result " from it. The true nature and character of the legislation in the particular " instance under discussion must always be determined in order to ascertain " the class of subject to which it really belongs."

I would dismiss the action with costs including costs of injunction proceedings but would stay the issue of the judgment and the order dissolving the injunction restraining the Defendant from proceeding with the inquiry for such time as is reasonably necessary to allow an appeal to be taken.

(C) Smith J.A. : I agree. (C) Smith J.A.

(D) Magee J.A. : I agree. (D) Magee J.A.

In the Supreme Court of Ontario (Appellate Division).

No. 32. Reasons for Judgment. (E) Hodgins J.A.

(E) Hodgins J.A.: This matter comes before us in the form, first, of an appeal by the Defendants, members of a Conciliation Board appointed under the Industrial Disputes Investigation Act, 1907, and amendments, from an order of Mr. Justice Orde, and, second, for judgment in the action which was referred to this Court by the Trial Judge, Mr. Justice Mowat, pursuant to sec. 32 of the Judicature Act.

It is to be doubted whether the last mentioned section is applicable as the order of Mr. Justice Orde merely continued an injunction in this action until the trial. It is true that he expressed an opinion upon the Industrial Disputes Investigation Act, from which the Trial Judge differed, but this view was given on an interlocutory application and upon certain facts disclosed in affidavits. This was, in my judgment, not binding upon the Trial Judge at the trial of the action where certain other facts, pro and con, were adduced in evidence, and therefore was not such a decision as would bring the case within that section. But as the appeal from the order, and the argument on the merits of the action, involved the same question as to the constitutionality of the Act referred to and its amendments, it is not necessary to say more on this point.

It was suggested during the argument that as the Act was passed in 1907, it must be viewed and judged in relation to the industrial and social conditions which existed at that date, irrespective of what has happened since. Whether or not the existence of these conditions, either the earlier or the later, prove to be of importance upon the question of constitutionality, it is the fact that the Act was amended in 1910, 1918 and 1920. If, therefore, the question of *intra vires* or *ultra vires* depends in any way upon what was happening or had happened in the Dominion, it would seem reasonable that the action of Parliament in those years should be regarded as an affirmance by it, of the Act of 1907 as applicable to national conditions existing when the amendments were made. This consideration cannot be left out of sight if, as I have said, such earlier or later events are of importance in considering the legal validity of the Act.

It was urged on behalf of the Defendants, and by Counsel for the Attorney-General of Canada, that Parliament could enact statutes, under the general power given to it to be exercised for the " peace, order and good government " of Canada, provided these statutes were not enacted directly " in relation to " civil rights, but in relation to what was called " industrial strife," a subject not mentioned in 1867 and so not attributed by the British North America Act either to the Provinces or to the Dominion. But industrial strife as explained on the argument, is nothing more than the result of the misuse or undesirable use of the civil right to cease work or to cease the operations of various businesses, singly or in concert, with the consequences resulting therefrom which are generally known as strikes or lockouts. This argument is therefore practically an endeavour to define jurisdiction by attempting to invent a new field, which, when examined, is found to be only a department of, or development in, one of those mentioned as exclusively possessed by the Provincial Legislature. But the argument took a wider and more plausible range. It was said that the Act, when examined in the light of the evidence adduced, dealt with a subject which transcended or might easily transcend provincial limits and was in fact one of Dominion

wide aspect. The evidence discloses, what is well known, that strikes and lockouts, while arising in defined localities, are, owing to the highly organised methods of modern labour, likely to spread and have indeed in some instances spread among allied and sympathetic trades and businesses. This, it is said, enlarges the field to be covered by legislation so as to make it imperative to the peace, order and good government of the Dominion, that Parliament should take command of the situation and provide against a probable spread of industrial strife and consequent dislocation of business which might extend throughout the whole country. No one can deny that these consequences may follow from certain labour disputes, nor if they do occur are the disastrous results forecast, to be minimised. Indeed, it is conceivable that there may arise conditions in connection with this subject which might give great force to the contention that the peace, order and good government of the Dominion demanded that Parliament should use the general powers given to it by the British North America Act. It was also urged that these might rise to such a height as to be comparable to other contingencies, such as war, famine, or rebellion, which, as indicated in the *Board of Commerce case*, (1922) 1 A.C. 191, and in the *Fort Frances case*, (1923) A.C. 695, might justify such action.

It is necessary, therefore, to consider whether this Statute can be supported under (1) emergency, (2) as dealing with a matter of general Canadian interest and importance, and (3) whether under any enumerated head of jurisdiction it has been validly enacted. It must be premised that as railways, steamships, telegraph and telephone lines are included in the definition of " employer " what follows is limited to the effect of the Act in relation to the Respondents, a Commission operating locally and formed by Provincial authority.

To deal first with the emergency argument. Evidence in this case does not disclose that such an emergency had arisen in 1907 or in the later years mentioned (though a sympathetic strike in another province is shown), nor that it is to be definitely apprehended at present or at any particular time ; nor is the legislation framed so as to come into operation only when these abnormal conditions have arisen or these consequences are imminent. This form of legislation is said to be convenient and not unusual and to be open to the appropriate legislature—See *Russell* v. *The Queen* (1882) 7 A.C. 829, 835. Reasonable fear that these extraordinary circumstances might arise in this country would seem to indicate that much more drastic and effective legislation than the present would be necessary to cope with them. The present Statute, is not, when examined, based upon either condition, but upon the normal working of industrial relations, which often require time and patience and some restraint, to afford protection against dislocation or disturbance in the usual conduct of business as between employer and employees. It is essentially a sedative measure, and it is not in any way designed to meet serious emergencies. It must be judged upon what it deals with in fact, and upon what is its effect in so dealing. What is referred to as the true nature and character of the legislation has hitherto been sought in the enactment itself and not in the desirability of the end which it is intended to accomplish, considered apart from its actual operation and legal effect. It is what it really does, and the means used to determine whether

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the purpose has been achieved in a constitutional manner. If it passes over the line and invades Provincial jurisdiction, then to that extent it must be invalid unless it comes within one or more of the enumerated matters attributed to the Parliament of Canada or there is shown to have transpired such a Dominion wide condition of affairs as would necessarily compel the conclusion that the peace, order and good government of the whole country requires its enactment in the interest of the whole Dominion. Such a condition was exemplified in the *Board of Commerce* (1922) 1 A.C. 191, and the *Fort Frances case* (1923) A.C. 695, and is discussed in relation to a threatened railway strike in the U.S.A. in *Wilson* v. *New*, 243 U.S. 332, and as to the housing difficulty in *Block* v. *Hirsh*, 256 U.S. 136.

In both the Canadian cases " special circumstances such as those of a great war," " highly exceptional circumstances," " sudden danger to social order," " exceptional cases " (such as war), " special circumstances of national " emergency which concern nothing short of the peace, order and good " government of Canada as a whole " are the phrases used to illustrate the meaning of an emergency such as justifies calling into operation the ultimate power residing in the peace, order and good government clause. The special and exceptional conditions of national emergency do not seem to exist, in fact, and the apprehension that they may and will arise in the future will be better considered under the second head.

This second head needs a more detailed consideration of the Act itself. Its intent is described in the words of the Deputy Minister of Labour in 1902, as " carrying as far as possible the principle of voluntary conciliation " but substituting for a compulsory arbitration, with its coercive penalties, " the principle of compulsory investigation, and its recognition of the " influence of an informed public opinion upon matters of vital concern " to the public itself."

Its legal effect may be said to be the creation of a tribunal with such coercive powers as will enable it to investigate a local industrial dispute and to make a report upon the facts found by such investigation, but without authority to enforce or apply to the parties the recommendations or findings on that report.

Its seems to fall naturally into four main divisions. It defines industrial disputes and the parties thereto ; it enables either party to the dispute to create a Board of Conciliation either by the co-operation of the other party or through the intervention of the Minister of Labour, or by the Minister, without any application, under certain circumstances ; it compels the maintenance of the *status quo* as between employers and employees pending the action of the Board ; and finally it vests in the Board certain coercive powers over the parties to the dispute and their affairs and imposes penalties for disobedience to the Board's exercise of these powers or for disregard of the provisions of the Statute. When the Board has accomplished its work and made its report to the Minister, the legislation carries the matter no further and publicity is the only restraining force set in motion by the carrying out of the Act. The Statute is limited in its operation to certain industries, namely, mines and those connected with public utilities, most of which are usually local and Provincial.

"Dispute" and "industrial dispute" are defined as: "any dispute "or difference between an employer and one or more of his employees, "as to matter or things affecting or relating to work done or to be done by "him or them, or as to the privileges, rights and duties of employers or "employees (not involving any such violation thereof as constitutes an "indictable offence)."

This is amplified by some further definitions so as to include, among other things, disputes as to wages, hours of employment, age, sex, qualification or status of employment and the mode, terms and conditions of employment, the dismissal of or refusal to employ any person or class of persons, as to materials, alleged to be bad or unsuitable, and the interpretation of an agreement or a clause thereof.

Strikes and lockouts are defined as concerted cessation of work by employees or concerted refusal by employers to continue to employ any number of employees, provided, in each case, that this is done as a means of compulsion to accept terms of employment.

It is provided that no dispute shall be referred to a Board where the employees affected are fewer in number than ten (s. 21) and by Sec. 6 the Minister is obliged to establish the Board if satisfied that the provisions of the Act apply. How is he to satisfy himself that there are at least ten persons affected is not stated.

Sec. 30 is as follows:—

"For the purpose of its inquiry the Board shall have all the powers "of summoning before it, and enforcing the attendance of witnesses, of "administering oaths, and of requiring witnesses to give evidence on oath "or on solemn affirmation (if they are persons entitled to affirm in civil "matters) and to produce such books, papers or other documents or things "as the Board deems requisite to the full investigation of the matters "into which it is inquiring, as is vested in any court of record in civil cases.

"2. Any member of the Board may administer an oath, and the Board "may accept, admit and call for such evidence as in equity and good "conscience it thinks fit, whether strictly legal evidence or not."

By Sections 36, 37 and 38, failure to attend and produce books, documents, etc., refusal to give evidence, contempt of or in the face of the Board and the hindering or obstruction of the Board or any person authorised by it in entering premises where work is carried on and in interrogating persons therein are made offences punishable by the imposition of a money penalty to be enforced by proceedings under Part XV of the Criminal Code.

By Section 56, strikes or lockouts are made unlawful prior to or during a reference to the Board.

Section 57 is in part as follows:—"Until the dispute has been finally "dealt with by a Board, and a copy of its report has been delivered through "the Registrar to both the parties affected, neither of those parties shall "alter the conditions of employment with respect to wages or hours, or on "account of the dispute do or be concerned in doing, directly or indirectly, "anything in the nature of a lockout or strike or a suspension or discon-"tinuance of employment or work, but the relationship of employer and "employee shall continue uninterrupted by the dispute, or anything "arising out of the dispute."

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Any violation of these provisions subject the party offending to a fine to be recovered by proceedings under Part XV of the Criminal Code.

The salient features objected to are, therefore, (1) compelling the parties, pending the making of the Report, to abstain from anything altering their conditions of employment with respect to wages or hours or from doing or being concerned in doing anything directly or indirectly in the nature of a lockout or strike or a suspension or discontinuance of employment or work, or in other words compulsion to maintain and not to terminate the relationship of employer and employee and to continue such relationship without any alteration of wages or hours;

(2) Compelling the parties to give evidence on oath and to produce their books, papers and documents in the same way and to the same extent as may be insisted on by any Court of Record in civil cases, and the evidence which the parties may be so compelled to give is not limited to such evidence as is legal evidence by the law of the Province;

(3) Empowering the Board and any persons authorised by them to enter the employer's premises and to inspect and view the work, material or machinery, etc., therein and to interrogate any person therein;

(4) These powers are not limited in their effect to the immediate parties to the dispute which is to be investigated. They deal with parties "affected" by the dispute, though not then actively concerned in it, and by Sections 30, 32, 34, 35, 36, 37, 38 and 60, individuals, who need not be employers or employees, or affected by the dispute, are liable to be summoned, examined by the Board and punished under the Criminal Code for so-called offences against its authority;

(5) The Act, by section 6, prohibits recourse to any Court in the Province, *inter alia*, to restrain the proceedings of the Board;

(6) All the powers of the Board and disobedience to the coercive provisions of the Act, are reinforced by the imposition of penalties which are recoverable under the Criminal Code.

Broadly speaking, the fundamental and I think obvious objection to the sections of the Act which I have mentioned is that they attempt to compel employers and employees in each Province to exercise, or abstain from exercising, their civil rights in the way Parliament desires and to suffer interference with their property and its enjoyment as therein provided, and to submit to inquiry, inspection and compulsion in connection therewith while denied access to the Courts, although power is taken to interpret their agreements and contracts. And those not concerned in the dispute are made liable to be summoned, put on oath, interrogated and punished if necessary. The question is whether regulation and alteration of civil rights, or invasion of property rights, in this way, in order to bring about a uniform and desirable way of dealing with industrial disputes, while admirable in purpose, can be effective notwithstanding that the exercise in the Province of these rights is committed to its care and form part of its enumerated jurisdictions, and whether that control and interference is not in this case extended to those exercising what are really municipal functions.

The Act not being predicated upon unusal industrial conditions or a national emergency, is sought to be justified as involving matters of "general

Canadian interest and importance," an expression borrowed from Lord Watson. It is to be observed that its whole purpose is served if the dispute is suspended and hung up for a short time, till the Board can ascertain the facts and make its report, after which the Act fails to provide for any sort of action in case the suggested consequences ensue. Is it possible, in the face of the views expressed by the Judicial Committee, to hold that this particular statute, which so plainly invades the specified domain of Provincial legislation, yet deals with something so widespread and far reaching as to be a subject constitutionally proper for Dominion legislation as coming within the expression " a still wider and legitimate purpose " which may properly be based on the provision regarding peace, order and good government ?

Looking at the Act as a whole, it is clear, that, in the absence of its compulsory provisions, both these coercive in their character, and those imposing penalties, the working of the Act would be completely ineffectual.

A consideration of the cases decided from 1896 down to the present time leads me to think that if governed literally by what is said in them, the question is not open. But in reality what is raised here has not to my mind been definitely considered in its present aspect and may require further examination.

That question is whether, when a subject is considered and it is found that its nature and characteristics make it desirable, as well as suitable, in the interest of the whole community, that it should be dealt with by some national measure, legislation to that end can be supported under the power to legislate for the peace, order and good government of the Dominion, although apart from the desirability indicated by its character, of having it treated as involving the national interest, it cannot, having regard to its immediate manifestations or the method in which it is proposed to deal with it, be regarded as other than of a local and private nature.

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. Is it, therefore, while " a subject of Canadian interest and importance," one that is barred from action by the Parliament of Canada because it requires in its treatment the invasion of some Provincial jurisdiction ? One cannot but observe that there are many other and diverse subjects that might conceivably thus rise to national importance under certain social or political conditions, as for example, religion, the spread of disease, conservation of natural resources, secret societies, and perhaps others. It is perhaps worthy of mention, as indicating that this subject has been regarded as one of a local and private nature in the Province, that Ontario and several of the other Provinces have on their Statute books, legislation much resembling this in principle and outline.

The case in hand raises the question I have mentioned very clearly, because granting its national importance, the whole success of the operation of the legislation depends upon its being able to seize upon local disputes, local contracts and property, and upon local conditions, and to manage the exercise of civil rights in regard thereto, and subordinate them to the interests

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of the nation. Has the success of the experiment in such circumstances any bearing on the subject as indicating that it is of national importance ?

In considering the cases beginning in 1896, the following seems to throw some light upon this aspect of the subject.

In *Russell* v. *The Queen* (1882) 7 A.C. 829, intemperance and the liquor traffic are likened to dealings in poisonous drugs, explosive substances, diseased meat, and classed with such acts as arson, or cruelty to animals, and the subject matter of the Act there considered being in that view, as it was said, outside Provincial authority, the Act was held not to be one in relation to property or civil rights, but one dealing with public wrongs and so drawn into direct relation with criminal law.

This decision was, in *Attorney-General for Canada* v. *The Attorney-General for Alberta* (1916) 1 A.C. at p. 595, thus referred to :—

" There the Court considered that the particular subject-matter in " question lay outside the provincial powers. What has been said in " subsequent cases before this Board makes it clear that it was on this " ground alone, and not on the ground that the Canada Temperance Act was " considered to be authorized as legislation for the regulation of trade and " commerce, that the Judicial Committee thought that it should be held " that there was constitutional authority for Dominion legislation which " imposed conditions of a prohibitory character on the liquor traffic through- " out the Dominion. No doubt the Canada Temperance Act contemplated " in certain events the use of different licensing boards and regulations in " different districts and to this extent legislated in relation to local institu- " tions. But the Judicial Committee appear to have thought that this " purpose was subordinate to a still wider and legitimate purpose of " establishing a uniform system of legislation for prohibiting the liquor " traffic throughout Canada excepting under restrictive conditions. The " case must therefore be regarded as illustrating the principle which is now " well established, but none the less ought to be applied only with great " caution, that subjects which in one aspect and for one purpose fall within " the jurisdiction of the provincial legislatures may in another aspect and " for another purpose fall within Dominion legislative jurisdiction. There " was a good deal in the Ontario Liquor License Act, and the powers of " regulation which it entrusted to local authorities in the province, which " seems to cover part of the field of legislation recognised as belonging to " the Dominion in *Russell* v. *The Queen*. But in *Hodge* v. *The Queen* the " Judicial Committee had no difficulty in coming to the conclusion that the " local licensing system which the Ontario statute sought to set up was " within provincial powers. It was only the converse of this proposition " to hold, as was done subsequently by this Board, though without giving " reasons, that the Dominion licensing statute, known as the McCarthy " Act, which sought to establish a local licensing system for the liquor traffic " throughout Canada, was beyond the powers conferred on the Dominion " Parliament by s. 91. Their Lordships think that as the result of " these decisions it must now be taken that the authority to legislate for the " regulation of trade and commerce does not extend to the regulation by a " licensing system of a particular trade in which Canadians would other- " wise be free to engage in the provinces. Sec. 4 of the statute under

" consideration cannot, in their opinion, be justified under this head. Nor " do they think that it can be justified for any such reasons as appear to " have prevailed in *Russell* v. *The Queen*. No doubt the business of " insurance is a very important one, which has attained to great dimensions " in Canada. But this is equally true of other highly important and " extensive forms of business in Canada which are to-day freely transacted " under provincial authority. Where the British North America Act " has taken such forms of business out of provincial jurisdiction, as in the " case of banking, it has done so by express words which would have been " unnecessary had the argument for the Dominion Government addressed " to the Board from the Bar been well founded."

That explanation makes it clear that there the subject matter of the legislation, namely intemperance and the liquor traffic, lay outside Provincial authority, and that the use of local institutions was subordinate to the wider purpose of prohibition which was held to be within Dominion legislative jurisdiction. What the *Russell case* insists upon is that a law placing restrictions upon the sale, etc., of intoxicating liquors is a law relating not to property or civil rights but to public order and safety which, it is said, is the primary matter dealt with. It is in that sense alone that it lay outside the Provincial authority which includes property, civil rights and matters of a local and private nature in the Province. The *Alberta case* which dealt with insurance contracts, seems to involve the proposition that the importance of the business of insurance, which had attained to great dimensions in Canada, did not bring it within the scope of the Dominion powers, because the Act dealt only with a widely spread business, but one having no relation, in its operations, to the peace, order and good government of the Dominion. But the explanation of the *Russell case* and that case itself contain certain expressions which seem to justify my conclusion that this particular problem may or may not be intended to be covered by the definite restriction laid down in later cases to which I shall refer. To illustrate, I quote the following. In the *Russell case*, p. 838-9, Sir Montague Smith says :—" What " Parliament is dealing with in legislation of this kind " (*i.e.*, an act restricting the sale or use of liquor as similar to articles dangerous to public safety) " is not a matter in relation to property and its rights, but one relating to " public order and safety."

And again : " Laws of this nature designed for the promotion of public " order, safety, or morals, and which subject those who contravene them to " criminal procedure and punishment, belong to the subject of public wrongs " rather than to that of civil rights. They are of a nature which fall within " the general authority of Parliament to make laws for the order and good " government of Canada, and have direct relation to criminal law, which is " one of the enumerated classes of subjects assigned exclusively to the " Parliament of Canada."

In the later case in (1916) 1 A.C. 588, Lord Haldane, as already quoted, said, p. 596 : " But the Judicial Committee appear to have thought " this purpose " (*i.e.*, the use of local institutions in licensing and regulating) " was subordinate to a still wider and legitimate purpose of establishing a " uniform system of legislation for prohibiting the liquor traffic throughout " Canada except under restrictive conditions."

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If, in the latter quotation the words " for prohibiting strikes and lock-outs throughout Canada except under restrictive conditions " are substituted for those referring to the liquor traffic, the analogy is obvious and something similar may be said about the other extract.

In the case of *Attorney-General for Ontario* v *Attorney-General for Canada* (1896) A.C. 348 these words occur on p. 361 : " Their Lordships do " not doubt that some matters, in their origin local and provincial, might " attain such dimensions as to affect the body politic of the Dominion, and " to justify the Canadian Parliament in passing laws for their regulation or " abolition in the interest of the Dominion. But great caution must be " observed in distinguishing between that which is local and provincial, and " therefore within the jurisdiction of the provincial legislatures, and that " which has ceased to be merely local or provincial, and has become matter " of national concern, in such sense as to bring it within the jurisdiction of " the Parliament of Canada. An Act restricting the right to carry weapons " of offence, or their sale to young persons, within the province would be " within the authority of the provincial legislature. But traffic in arms, or " the possession of them under such circumstances as to raise a suspicion " that they were to be used for seditious purposes, or against a foreign State, " are matters which, their Lordships conceive, might be competently dealt " with by the Parliament of the Dominion."

But while that case suggests that some matters may, though local in their origin, attain dimensions so affecting the body politic of the Dominion as to justify Dominion legislation, it appears to me to lay down conditions which, I think, taken literally must for the present govern this branch of the case. It is there said : " These enactments appear to their Lordships " to indicate that the exercise of legislative power by the Parliament of " Canada, in regard to all matters not enumerated in s. 91, ought to be " strictly confined to such matters as are unquestionably of Canadian interest " and importance and ought not to trench upon provincial legislation with " respect to any of the classes of subjects enumerated in s. 92. To attach " any other construction to the general power which, in supplement of its " enumerated powers, is conferred upon the Parliament of Canada, by s. 91, " would, in their Lordships' opinion, not only be contrary to the intendment " of the Act, but would practically destroy the autonomy of the provinces. " If it were once conceded that the Parliament of Canada has authority to " make laws applicable to the whole Dominion, in relation to matters, which " in each province are substantially of local or private interest, upon the " assumption that these matters also concern the peace, order and good " government of the Dominion, there is hardly a subject enumerated in s. 92 " upon which it might not legislate, to the exclusion of the provincial " legislatures."

That case, while conceding that matters of unquestionable Canadian interest and importance, which would seem to include such a subject as industrial conditions and dangers, as affecting the " public order and safety " lays down as a qualification that legislation regarding such subjects " ought not to trench upon any of the classes specially confided to the Provinces."

In the *City of Montreal* v. *Montreal Street Railway* (1912) A.C. 333, the views quoted from the case in 1896 A.C., were affirmed. It was there

discussed whether, under the Dominion powers as to federal railways, it could exercise control over Provincial railways by compelling the making of traffic arrangements with those under the jurisdiction of Parliament. Lord Atkinson said: "It cannot be held, their Lordships think, that "it is necessarily incidental to the exercise by the Dominion Parliament of "its control over federal railways that provincial railways should be coerced "by its legislation to enter into these agreements in the manner in which it "sought to coerce the Street Railway Company in the present case to enter "into the agreements specified in the order appealed from. . . . . In "their Lordships' view this right and power is not necessarily incidental to "the exercise by the Parliament of Canada of its undoubted jurisdiction and "control over federal lines, and is therefore, they think, an unauthorised "invasion of the rights of the Legislature of the Province of Quebec."

In *Attorney-General for Australia* v. *Colonial Sugar Company* (1914) A.C. p. 252, Lord Haldane sums up the earlier pronouncements in these words:—

"By the 91st section a general power was given to the new Parliament "of Canada to make laws for the peace, order and good government of "Canada without restriction to specific subjects, and excepting only the "subjects specifically and exclusively assigned to the Provincial Legis- "latures by s. 92."

In *Attorney-General for Canada* v. *Attorney-General for Alberta* (ante) the matter was again considered and Lord Haldane said (p. 595):—

"It must be taken to be now settled that the general authority to make "laws for the peace, order and good government of Canada, which the "initial part of s. 91 of the British North America Act confers, does not, "unless the subject-matter of legislation falls within some one of the "enumerated heads which follow, enable the Dominion Parliament to "trench on the subject-matters entrusted to the provincial Legislatures by "the enumeration in s. 92. There is only one case, outside the heads "enumerated in s. 91, in which the Dominion Parliament can legislate "effectively as regards a province, and that is where the subject-matter "lies outside all of the subject-matters enumeratively entrusted to the "province under s. 92. *Russell* v. *The Queen* is an instance of such a "case."

I find these careful pronouncements by Lord Haldane to be reinforced in the *Board of Commerce* and the *Fort Frances* cases (ante).

In *Attorney-General* v. *Manitoba License Holders Association* (1902) A.C. p. 77 Lord Macnaghten points out that Local Legislation is not to be deemed ultra vires because it may have effect outside the limits of the Province, and adds:—

"On the one hand, according to *Russell* v. *Reg.* (ante) it is competent "for the Dominion Legislature to pass an Act for the suppression of "intemperance applicable to all parts of the Dominion and when duly "brought into operation in any particular district deriving its efficacy "from the general authority vested in the Dominion Parliament to make "laws for the peace, order and good government of Canada."

He also says that, "in the opinion of this tribunal matters which are "'substantially of local or of private interest' in a province—matters

In the Supreme Court of Ontario (Appellate Division).

No. 32. Reasons for Judgment. (E) Hodgins J.A. —*continued.*

" which are of a local or private nature ' from a provincial point of view,' " to use expressions to be found in the judgment—are not excluded from " the category of ' matters of a merely local or private nature,' because " legislation dealing with them, however carefully it may be framed, may " or must have an effect outside the limits of the province, and may or " must interfere with the sources of Dominion revenue and the industrial " pursuits of persons licensed under Dominion statutes to carry on parti- " cular trades."

I cannot but regard these decisions as laying down a rule which must, until circumscribed by the Judicial Committee, govern this case; and that rule is to confine the powers of the Dominion Parliament in its action, under the provision as to the peace, order and good government of the Dominion to such matters of Canadian interest and importance as can be dealt with, without trenching upon any of the subjects specially reserved to the Provinces. If it does encroach then it is not to the extent to which it thus offends, competent legislation for the peace, order and good government of Canada.

I do not think the considerations I have mentioned warrant us in departing from this rule of construction, as it is clear and distinct. Nor are the merits of the question in any way enlarged by the fact that persons in more than one Province are or may be affected by the dispute. This is not in itself sufficient to justify Dominion interference, if the operation of the Statute affects property and civil rights in the Province in which the dispute originates or to which it spreads.

So far as appears from the pleadings and evidence, this Act affects the respondent Commission, which only operates in this Province, and is constituted to carry out operations properly belonging to the spheres of municipal action. This forms another and important objection, as the Act interferes with what is in effect the right of the Province to form and control municipal institutions, and appears to trench upon what is of a local and private nature within the Province. The legal remedy sought by this Commission, namely an injunction restraining the members of the Board from certain activities may not involve all the matters referred to as important in considering the scope of the Act. But as the Act must " be scrutinized in its entirety " (*Great West Saddlery Company* v. *The King* (1921) 2 A.C. 117), the considerations I have discussed must be given weight to in determining the real scope and effect of the Act.

We are not called on to determine whether the Dominion jurisdiction as to Railways, other than those under Provincial control, or as to Shipping and Navigation, will preserve this Act in its relation to railway employees or those engaged in such shipping as may be considered a public utility.

It remains to be considered whether, under the powers respecting " trade or commerce," or " criminal law " this Act may be upheld. The case of *Citizens Insurance Company* v. *Parsons* (1881) 7 A.C. 96, at p. 113, shows how wide a definition may be given to " trade and commerce." But even that definition does not touch this case, being limited to (1) political arrangements in regard to trade, requiring Parliamentary sanction; (2) regulation of trade in matters of inter-provincial concern and (3) general regulation of trade affecting the whole Dominion. The relations of employer

and employee, resulting in the production of articles which are the subjects of trade, and the use of property for that purpose, are not what is meant by the enumerated power referred to, which is directed, among other things, to the movement and the interchange of commodities and their purchase and sale, but not to their production or manufacture, or any of the conditions dealt with by this Act, which result in that production.

I should hesitate to hold that jurisdiction could be founded on that expression so as to comprehend whatever makes trade and commerce possible. And this seems to be the effect of including, as arising out of or belonging to the domain of trade or commerce as commonly understood or defined, disputes between owners or operators of mining properties and of electric light, gas, water and power works and any group of persons, etc., acting together and whom the Minister of Labour considers to have interests in common.

Nor can I assent to the view that if the real purpose and intent of an Act is to be found in relation to the peace, order and good government of the Dominion under the general power and it invades Provincial jurisdiction, it can be supported as one whose pith and substance has relation to "trade and commerce." Many acts relating to trade and commerce assist in preserving peace and order and aid in maintaining good government, but their constitutional validity must depend on one or other power, in which case different considerations at once arise according to which power is invoked.

In regard to the criminal law, it was urged in the latest case, *Attorney-General of Ontario* v. *Reciprocal Insurers* [1924] A.C. p. 328, that if the true character of the section, 508 (c), was one regulating the exercise of civil rights, thus infringing the Provincial jurisdiction, yet as the authority of Parliament in regard to criminal law being unlimited, it was valid as creating a crime. This device was rejected by the Judicial Committee on the ground earlier stated by Lord Haldane in the *Board of Commerce* case.

Mr. Justice Duff, in the *Reciprocal Insurance* case, says: "the claim "now advanced is nothing less than this, that the Parliament of Canada "can assume exclusive control over the exercise of any class of civil rights, "within the Provinces, in respect of which exclusive jurisdiction is given "to the provinces under section 92, by the device of declaring those persons "to be guilty of a criminal offence who, in the exercise of such rights, do "not observe the conditions imposed by the Dominion. Obviously the "principle contended for, ascribes to the Dominion the power, in execu-"tion of its authority under Section 91 (27), to promulgate and to enforce "regulations controlling such matters as, for example, the Solemnization "of Marriage, the practice of the learned professions and other occupations, "Municipal Institutions, the operation of Local Works and Undertakings, "the Incorporation of Companies with exclusively provincial objects— "and superseding provincial authority in relation thereto. Indeed, it "would be difficult to assign limits to the measure in which, by procedure "strictly analogous to that followed in this instance, the Dominion might "dictate the working of provincial institutions and circumscribe or super-"sede the legislative and administrative authority of the provinces.

In the Supreme Court of Ontario (Appellate Division).

No. 32. Reasons for Judgment. (E) Hodgins J.A. —*continued.*

"Such a procedure cannot, their Lordships think, be justified, consistently with the governing principles of the Canadian constitution as enunciated and established by the judgments of this Board. The language of sections 91 and 92 (which establish 'interlacing and independent legislative authorities'), *Great West Saddlery* v. *The King* (supra) being popular rather than scientific, the necessity was recognised at an early date of construing words describing a particular subject matter by reference to the other parts of both sections. As Sir Montague Smith observed, in a well-known passage in the judgment in *Citizens Insurance Company* v. *Parsons*, 7 A.C. at p. 109, 'The two sections must be read together and the language of one interpreted and, where necessary, modified by that of the other.' The scope of the powers received by the Dominion under Item 27, Section 91, is not to be ascertained by obliterating the context, in which the words are placed, in disregard to this rule."

If, therefore, this legislation is one substantially in relation to property and civil rights, this case applies and governs here.

I very much regret having to arrive at a conclusion adverse to the validity, in so far as it affects the respondent Commission, of this Act. It has been a successful experiment in warding off industrial difficulties in many cases, all the more to be recognised in view of one of its provisions possibly thought to be unavoidable. Its capacity for service would, in my humble judgment, have been enhanced if it had provided an absolutely independent tribunal, instead of one in which two of the members are almost necessarily imbued with opposing views, and nominated by the contending parties. As its function is delay, consideration and publicity, its present shape practically compels the parties and the public to rely upon one member of the Board who may happen to be chosen by the other two, and whose views may possibly be detached, from the prepossessions of either side.

I think the appeal must be dismissed with costs and judgment entered for the Respondents in the action, in accordance with these reasons, for the relief they seek, with costs.

No. 33.

No. 33.

Certificate of Registrar, 23rd May, 1924.

Not printed)

In the Privy Council.

No. 34.
Order in Council granting special leave to appeal to His Majesty in Council, 25th July, 1924 (extract).

No. 34.

Order in Council granting special leave to appeal to His Majesty in Council (extract).

At the Court at Buckingham Palace.

The 25th day of July, 1924.

Present: The King's Most Excellent Majesty.

* * * * *

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 3rd day of July 1924 in the words following, viz.:—

"Whereas by virtue of His late Majesty King Edward the "Seventh's Order in Council of the 18th day of October 1909 there "was referred unto this Committee a humble Petition of the Toronto "Electric Commissioners in the matter of an appeal from the Appellate "Division of the Supreme Court of Ontario between the Petitioners "Appellants and Colin G. Snider J. G. O'Donoghue and F. H. McGuigan "Respondents and the Attorney-General of Canada and the Attorney-"General of Ontario Intervenants setting forth (among other things)

* * * * *

"The Lords of the Committee in obedience to His late Majesty's "said Order in Council have taken the humble Petition into con-"sideration and having heard Counsel in support thereof and in "opposition thereto their Lordships do this day agree humbly to "report to Your Majesty as their opinion (1) that leave ought to be "granted to the Petitioners to enter and prosecute their Appeal against "the Judgment of the Appellate Division of the Supreme Court of "Ontario dated the 22nd day of April 1924 (2) that the Respondents "having agreed to lodge their printed case by the 30th day of September "1924 the Appellants' printed case ought to be lodged by such date and "if not so lodged (unless due cause is otherwise shown to the satis-"faction of the Registrar) the Appeal ought to stand dismissed with "costs without any further Order of Your Majesty in Council and "(3) that the authenticated copy under seal of the Record produced "by the Petitioners upon the hearing of the Petition ought to be "accepted (subject to any objection that may be taken thereto by the "Respondents) as the Record proper to be laid before Your Majesty "on the hearing of the Appeal."

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Lieutenant-Governor or Officer administering the Government of the Province of Ontario for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

Exhibits.

EXHIBITS.

No. 8 (a). Letter, James T. Gunn to E. M. Ashworth, 14th Dec., 1922.

No. 8 (a)—Letter, James T. Gunn to E. M. Ashworth.

Canadian Electrical Trades Union
Ontario Section.
Toronto, December 14th, 1922.

Mr. E. M. Ashworth,
Manager, Toronto Hydro Electric System,
229, Yonge St.,
Toronto, Ont.

Dear Mr. Ashworth:

I am instructed on behalf of our members who are employed on the Toronto Hydro Electric System and the Toronto and Niagara Power Company to ask if your commission will grant an interview to a committee of representatives of such employees for the purpose of discussing an agreement to be arrived at whereby adjustments can be made between the same classes of labor employed with both Corporations so that uniformity will be reached.

We should like, if possible, if your Commission can receive this committee at an early date so that we can endeavor to wisely work out an agreement satisfactory to your Commission and ourselves.

Please confirm receipt of this letter and oblige.

Yours faithfully,
(Sgd.) JAMES T. GUNN,
Secretary.

No. 8 (b). Proposed Agreement between Toronto Hydro Electric Commission and its employees.

No. 8 (b)—Proposed Agreement between Toronto Hydro Electric Commission and its employees being members of the Canadian Electrical Trades Union.

(1) Shift Employees.

Eight (8) hours shall constitute a normal day's work and forty-eight (48) hours a week's work, and such employee shall be entitled to one day's rest in seven.

(2) Station Operating Division.

That the employees of the operating division shall be granted fourteen (14) working days' sick pay and two weeks holidays with pay.

(A) That all overtime work by employees on operating shifts shall be at two times the Standard Rate.

(B) That the operation of shifts in connection with the work of said employees shall be according to the revolving method so that each man will change hours of shift each week.

(C) All operators in charge of shift to be paid at the same rate of pay.

(D) All second operators to be classified as assistant operators.

(E) All men in charge of shifts shall be paid $42.00 per week.

(F) That all assistant-operators shall be in charge of first operator in each station who shall instruct said assistant-operator in operating of station.

(G) That all additions to staff shall start as junior on seniority list and be paid according to the grade corresponding.

(H) Battery men in stations shall be classified as foremen and receive the regular foreman's rate of pay.

(I) When an Assistant-Operator becomes an Operator he shall receive a commensurate increased rate of wages.

(J) Time served as an Assistant-Operator relieving an Operator shall count in determining promotion as time served as an operator.

(K) When men are working temporarily in the Operating Department on account of holidays or sick-leave, such relief men shall be employed as assistant-operators, and all senior assistant-operators given the opportunity to serve as operators.

Other Employees.

The hours of labor shall be eight (8) hours on every day except Saturday and Sunday and Nationally proclaimed holidays and the following Statutory holidays :—

New Year's Day.
Good Friday.
Victoria Day.
Dominion Day.
Civic Holiday.
Labor Day.
Thanksgiving Day.
Christmas Day.

and four (4) hours on Saturday making a forty-four (44) hour normal week.

(4) Definition of " Journeymen."

" Journeymen " shall mean an employee who has had three years' experience in any one or all branches of the electrical trade. In the case of Station and Garage Mechanics the term shall be four years. In all cases, however, length of service must be coupled with efficiency in order to ensure recognition as a " Journeyman," or in order to qualify for promotion. All " Journeymen " starting on the System shall be rated as " Journeymen " and shall receive the top rate of pay.

(5) All employees who are not rated as " Journeymen " after serving one year shall advance into the next grade and receive the pay corresponding with that grade, and the first six weeks shall be counted as a probationary period for such employee in the new grade, and if he does not show capacity for that grade, he shall revert to former status.

(6) Definition of " Mechanic in Charge."

Shall be one having in Charge under him at least two (2) mechanics, or four (4) men.

(7) The starting time for every day's work shall be 8 a.m. and from 12 noon to 1 p.m. shall be the normal lunch hour, and the stopping time for every day except Saturdays, Sundays and said holidays shall be 5 p.m.

Exhibits.

No. 8 (b). Proposed Agreement between Toronto Hydro Electric Commission and its employees —*continued.*

and all time worked after the normal stopping time shall be counted as overtime.

(8) Vacation.

Two weeks' vacation with pay to be allowed annually to the following grades :—

Operators.
Foremen.
Sub. Foremen.
Troublemen.

One week's vacation with pay to be allowed annually to all other mechanical and electrical employees.

(9) Overtime.

Overtime rates where payable shall be two times the standard rate.

(10) Protection of Men while at Work.

At all times reasonable precaution as far as possible shall be taken to protect workmen on live lines.

When working on wires or apparatus carrying 550 volts or over, special precautions shall be exercised, and wherever the nature of the work or the safety of the employee so requires two or more qualified workmen shall be engaged on the same, together with any other necessary assistance that may be required. Two men shall not work on different phases together on the same pole.

(11) Employees Working in Stations.

That no less than two men be sent to do any work in stations.

(12) Suspension of Employees.

No employee shall be dismissed or suspended from service until proven that cause for dismissal or suspension is justified.

(13) Discrimination between Employees.

There shall be no discrimination against Union employees.

(14) First Aid Instruction.

A course of First Aid instructions will be provided under the direction of a competent instructor who will give instruction in First Aid. These classes will be scheduled at regular intervals after working hours throughout the year and so arranged that all employees will have an opportunity of receiving thorough instruction. Employees will be required to attend these lectures and will receive one hour's standard pay for each lecture attended in accordance with the schedule upon which their name will appear. Employees will have the privilege of attending other lectures up to the capacity of the room in which the lecture is held, but will not be entitled to any compensation while attending same.

(15) First Aid Kits.

All gangs and departments will be provided with First Aid Kits.

(16) Covers for Waggons, Automobiles, etc.

A suitable covering for waggons, automobiles, etc. will be furnished for protection in rough weather for all track drivers, chauffeurs, troublemen, patrollmen, repairmen and linemen. All tools and ladders used by employees must be kept under cover.

(17) Relief Work.

Any employee transferred from one Department to another shall receive in all cases the highest rates and conditions in force for his grade whether in the Department transferred from or Department transferred to.

(18) Sick Pay.

That all employees shall be entitled to fourteen (14) working days sick pay in any one year.

(19) Raise in Salary in Connection with Length of Service.

In the case of employees with less than one year's service, intermittent periods of employment will not be considered when calculating the length of service unless such periods are separated by breaks of less than a week's duration and provided also that such break or breaks in the period are due to a reason that in the opinion of the Management is bona fide. If breaks occur after the completion of the first year of service and are similarly bona fide and are of less than three months duration, they shall not be considered as a cause for recommending the period of employment for the purpose of calculating the wages to be paid. In every sense, however, the actual duration of the time lost from any cause shall in all cases be deducted from the period of employment.

(20) Temporary Foremen, etc.

In the case of men acting as temporary foremen or temporarily taking a higher position where such men are required to act for only a short time, no change shall be made in their rate of pay, but where they are required to act for one day or longer they shall receive for such time as they are acting the foreman's rate of pay, the official or foreman making the temporary appointment should notify at once his next superior officer in writing of such appointment.

(21) The employer will replace all tools owned by their employees that are stolen, lost, destroyed by fire or broken on the job during working or non-working hours or in the legitimate absence of the employee, provided that such loss does not occur through the negligence of the employee.

(22) Employees shall not be asked to work outside in rainy, stormy or zero weather except in cases of absolute necessity, and shall be paid straight time when not working during such weather conditions.

(23) The employer shall furnish each gang with a portable hut to be used for protection against the weather during the lunch hour period.

(24) It is agreed that the employer shall recognize the Canadian Electrical Trades Union as the official party representing the electrical and mechanical employees engaged in the service of the employer.

Exhibits.

No. 8 (b). Proposed Agreement between Toronto Hydro Electric Commission and its employees —*continued.*

(25) Grievance Committee.

Any employee who feels himself aggrieved in any way shall have the right by appointment to interview the General Manager and submit his case. At all times the General Manager will receive a Grievance Committee from any Department. It is also understood that the Business Agent of the Local or General Officer of the Organization may be a member of the said committee if desired by the employee or employees affected.

(26) The System shall deliver to the jobs the material required, except small articles which can be conveniently carried by employees, not to exceed ten pounds.

(27) The employees in any Department shall have the right to select one of their fellow workmen to take up from time to time with the System's representative the question of the welfare of the employees and suggestions that will be beneficial to the System.

(28) Where breaks of employment occur in order to suit the convenience of the Commission, such breaks shall not be deducted from the time served by any employee in the employment of the Commission.

(29) All employees coming under this schedule will be given free transportation to and from work and between different jobs.

(30) Employees notified or called to perform work not continuous with the regular work period shall be paid the regular standard overtime rates for such work and will be allowed a minimum of three (3) hours.

(31) Seniority.

Seniority shall mean that promotions from one grade to another will be made from the senior man in each grade.

(32) Any employee of the Toronto and Niagara Power Company receiving a lower wage than the rate for similar classes of labor on the Hydro Electric System shall be paid the rate prevailing on the Hydro Electric System, and where any employee of the Toronto and Niagara Power Company receives a higher wage rate than the rate prevailing for similar classes of labor on the Hydro Electric System, he shall retain the higher wage rate during his employment on the Hydro Electric System. In all cases, the highest rate shall be the rate paid for similar labor between these two Corporations.

(33) In case of disagreement over the interpretation or carrying out of these conditions, there shall be no secession of work until representatives of both parties have failed to come to an understanding.

(34) There shall be no reduction of wages or existing privileges by the adoption of this agreement.

Wage Schedule.

Overhead Division.

Occupation.	Rate of Wages.
Line Foremen and Troublemen .. .. .. (For the purpose of this agreement all Foremen in Charge of two or more men in the Overhead Division shall be classified as Line Foremen).	$1.00 per hour

	Rate of Wages.
1st Class Lineman	.90 per hour
2nd Class Lineman	$0.12 „ „ increase.

The regular overtime rates shall apply in the case of all Line Foremen. There shall be only two classes of Linemen, 1st and 2nd.

Groundmen	$0.12 per hour increase.

Construction and Maintenance Division.

Foremen	$46.00 per week
Mechanic in charge	.90 per hour
Mechanic, Class A	.90 „ „
Mechanic, Class B	.79 „ „

There shall be only two classes of Mechanics, A and B.

Mechanics' helpers shall receive $.09 per hour increase over the normal rates. The regular overtime rates shall apply in the case of all Foremen.

Underground Division.

Sub. Foremen	$39.00 per week
Jointers	$0.90 per hour
Service Jointers	.90 „ „
Jointers helpers	.70 „ „
Cablemen, Class A	.70 „ „
Cablemen, Class B	.67 „ „

Operating Division.

Station Foremen	$45.00 per week
First Operators	42.00 „ „
Second Operators	36.00 „ „
Battery Foreman	45.00 „ „
Battery Man	.75 per hour

All men waiting on the reserve list for the Operating Division shall receive Second Operators' rate of pay and shall be entitled to all the routine increases given in that Division.

Meter Department.

Meter Foremen	$42.00 per week
First Class Meter Mechanic	.90 per hour

All others to receive $.09 per hour increase.

Rigging Department.

First Class Rigger	.90 „ „

All others to receive $.09 per hour increase

Exhibits.

No. 8 (b). Proposed Agreement between Toronto Hydro Electric Commission and its employees —*continued.*

Wiring Department. Rate of Wages.

Wiremen, 1st Class .. .. .90 per hour.

All others to receive $.09 per hour increase.

Stores Department.

All employees employed in this Department to receive .. ..$125.00 per month

Signed on behalf of Toronto Hydro Electric Commissioners.

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Signed on behalf of Canadian Electrical Trades Union.

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No. 8 (c). Letter, E. M. Ashworth to J. T. Gunn, 22nd Jan., 1923.

No. 8 (c)—Letter, E. M. Ashworth to J. T. Gunn.

January 22, 1923.

James T. Gunn, Esq.,
4, Alexander Street,
Toronto.

Dear Sir,

Your request that a committee of the men should be heard was submitted to the Toronto Electric Commissioners at their meeting of January 19th, and the Commissioners have instructed me to advise you that they will receive the committee on Friday morning, January 26th, at 11 a.m. 20

I am, dear Sir,
Yours faithfully,
(Signed) E. M. ASHWORTH,
Acting General Manager.

No. 8 (d). Letter, J. T. Gunn to E. M. Ashworth, 6th Mar., 1923.

No. 8 (d)—Letter, J. T. Gunn to E. M. Ashworth.

Canadian Electrical Trades Union,
Toronto Branch.

Toronto, March 6th, 1923.

Mr. E. M. Ashworth,
Manager, Toronto Hydro Electric System, 30
229, Yonge Street,
Toronto.

Dear Mr. Ashworth,

I am instructed on behalf of the membership of the Canadian Electrical Trades Union employed by the Toronto Hydro Electric System to request if your Commission will give us an answer as to their attitude towards the

proposed agreement submitted some time ago to a meeting of the Commission, and which was discussed there by the Commission and the Men's Committee.

No. 8 (d). Letter, J. T. Gunn to E. M. Ashworth, 6th Mar., 1923.

I am further instructed to ask that you kindly forward a reply to this communication within the next seven days.

I am,

Yours faithfully,

(Sgd.) JAMES T. GUNN,

Secretary.

No. 8 (e)—Letter, E. M. Ashworth to J. T. Gunn.

No. 8 (e). Letter, E. M. Ashworth to J. T. Gunn, 7th Mar., 1923.

March 7, 1923.

James T. Gunn, Esq.,
4, Alexander Street,
Toronto.

Dear Sir,

Your letter of March 6th has been received and contents noted. This letter will be submitted to the Toronto Electric Commissioners at their next meeting.

I am, dear Sir,

Yours faithfully,

(Signed) E. M. A.,

Acting General Manager.

No. 8 (f)—Letter, E. M. Ashworth to J. T. Gunn.

No. 8 (f). Letter, E. M. Ashworth to J. T. Gunn, 28th Mar., 1923.

March 28th, 1923.

James T. Gunn, Esq.,
4, Alexander Street,
Toronto.

Dear Sir,

Your letter of March 6th was submitted to the Toronto Electric Commissioners at their meeting of March 16th. The Commissioners have instructed me to advise you that after careful consideration they have decided that existing conditions do not justify granting the increased wages and other concessions set forth in the agreement submitted by the men.

The Commissioners have instructed me to point out that the existing wages and conditions were established in the summer of the year 1920 and were based on the cost of living at a time when the cost of living was at its peak. It is indisputable that since that time there has been a material decrease in the cost of living in the City of Toronto. The Commissioners are, however, reluctant to disturb existing conditions by putting into immediate effect the corresponding downward revision of wages which must ultimately follow.

As regards the conditions set forth in the agreement submitted by the men, the Commissioners feel that the conditions under which the men work at the present time, which have been in force for several years should not be disturbed. The Commissioners and their officials are at all times willing

Exhibits.

No. 8 (f). Letter, E. M. Ashworth to J. T. Gunn, 28th Mar., 1923 —*continued.*

to consider and adjust legitimate grievances, and it is their belief that the conditions which at present exist are as satisfactory to their employees as could reasonably be expected.

The Commissioners note the clause in the agreement submitted by the men reading as follows:—

"Any employee of the Toronto and Niagara Power Company "receiving a lower wage than the rate for similar classes of labor on "the Hydro Electric System shall be paid the rate prevailing on the "Hydro Electric System, and where any employee of the Toronto "and Niagara Power Company received a higher wage rate than the "rate prevailing for similar classes of labor on the Hydro Electric "System, he shall retain the higher wage rate during his employment "in the Hydro Electric System. In all cases, the highest rate shall be "the rate paid for similar labor between these two Corporations."

In commenting upon the above the Commissioners wish to make it quite clear that they are under no obligation to give employment to the employees of the Toronto and Niagara Power Company. It is the desire of the Commissioners to avoid dispensing with their services where it is feasible to give them employment with the Toronto Hydro Electric System, and under such conditions, to pay them the System's established rate for the class of work in which they are engaged; but the efforts of the Commissioners in this direction must not be construed as an acknowledgment of an obligation either express or implied, since such obligation does not exist.

I am, dear Sir,
Yours faithfully,

Acting General Manager.

No. 8 (g). Letter, J. T. Gunn to E. M. Ashworth, 2nd April, 1923.

No. 8 (g)—Letter, J. T. Gunn to E. M. Ashworth.

Canadian Electrical Trades Union,
Toronto Branch.

Toronto, 2nd April, 1923.

Mr. E. M. Ashworth,
General Manager, Toronto Hydro Electric Commission,
229, Yonge Street,
Toronto.

Dear Mr. Ashworth,

I am instructed on behalf of our membership to request if your Commission can meet our Committee again in view of the decision made by your Commission on our proposed agreement and contained in your letter of recent date to me. If you can we will appreciate it very much.

Trusting you can do so and anticipating an early reply,

I remain,
Yours faithfully,
(Sgd.) JAS. T GUNN,
Secretary.

Exhibits.

No. 9 (a)—Letter, J. T. Gunn to Hon. W. R. Rollo.

No. 9 (a). Letter, J. T. Gunn to Hon. W. R. Rollo, 2nd April, 1923.

Hon. W. R. Rollo,
Minister of Labour,
Queens Park, Toronto.

2nd April, 1923.

Dear Sir,

I am instructed on behalf of our membership to ask you to appoint a registrar under the Trades Disputes Act of Ontario for the purpose of hearing matters relative to a dispute between the Canadian Electrical Trades Union and the Toronto Electric Commissioners Toronto.

Anticipating an early reply, I remain,

Yours faithfully,

Secretary.

No. 8 (h)—Letter, E. M. Ashworth to J. T. Gunn.

No. 8 (h). Letter, E. M. Ashworth to J. T. Gunn, 3rd April, 1923.

James T. Gunn, Esq.,
4, Alexander Street,
Toronto.

April 3, 1923.

Dear Sir,

Your letter of April 2nd has been received and will be submitted to the Toronto Electric Commissioners at their next meeting.

I am, dear Sir,
Yours faithfully,
(Sgd.) E. M. Ashworth,
Acting General Manager.

No. 8 (i)—Letter, E. M. Ashworth to J. T. Gunn.

No. 8 (i). Letter, E. M. Ashworth to J. T. Gunn, 7th April, 1923.

April 7, 1923.

James T. Gunn, Esq.,
4 Alexander Street,
Toronto.

Dear Sir,

Your letter of April 2nd was submitted to the Toronto Electric Commissioners at their meeting of April 6th. The Commissioners have instructed me to point out that while they are desirous that the men should have every opportunity of expressing their views, the congestion of business requiring the attention of the Commissioners at the present time is such that it is difficult to arrange to meet the deputation at a reasonably early date, and they would therefore be glad if you would be kind enough to set forth in a letter the views which your deputation wish to express.

I am, dear Sir,
Yours faithfully,
(Sgd.) E. M. Ashworth,
Acting General Manager.

Exhibits.

No. 9 (b). Letter, J. T. Gunn to Hon. W. R. Rollo, 9th April, 1923.

No. 9 (b)—Letter, J. T. Gunn to Hon. W. R. Rollo.

9th April, 1923.

Hon. W. R. Rollo,
Minister of Labour,
Queens Park, Toronto.

Dear Walter,

As promised you I am submitting full details of the dispute between the Toronto Electrical Commissioners and the Canadian Electrical Trades Union.

Early in the year a proposed agreement of wages and conditions—a copy of which is enclosed—was submitted to the Toronto Hydro Electric System with request that the Commissioners give our Committee an interview at an early date, for the purpose of discussing and negotiating the proposed agreement.

On Jan. 22nd a reply was received that the Commissioners would meet our Committee on Jan. 26th. That meeting took place and after several hours discussion between the men's committee and the Commissioners, the meeting adjourned with the understanding that the Commissioners would take the proposed agreement into consideration and submit a reply stating their attitude at an early date. No reply having been received up until March 6th, I was instructed to write and ask that the Toronto Electric Commissioners give an answer as to their attitude and that such answer be forwarded within seven days from that date.

The answer of the Commissioners was received on March 28th and the decision reached by the Commissioners was to the effect that existing conditions did not justify granting the increased wages and other concessions set forth in the agreement submitted by the men, and setting forth other points affecting the situation, all of which is contained in the copy enclosed of a letter from the Toronto Electric Commissioners to myself dated March 28th.

After receiving instructions at a meeting of the men, I wrote on April 2nd asking the Commission to meet our Committee again in view of their decision and a reply was received on April 3rd stating that the request of the men would be submitted to the Commissioners at their next meeting.

According to the views expressed by the men at our last Local Union Meeting, they do not anticipate that the Commissioners will alter their decision and they carried, with one dissenting vote, a proposal to ask the Ontario Government to establish a Council of Conciliation under the Trades Dispute Act. The entire dispute is over wages and conditions, and will affect from 250 to 350 employees directly and about 2,500 to 3,500 employees of the Toronto Transportation Commission who would be unable to work in case any serious tie-up occurred through a strike of Toronto Hydro Electric System employees. In addition of course it is almost needless for me to point out to you that such a strike would cause a very bad industrial tie-up throughout the City of Toronto due to the stoppage of Power distribution to industrial plants and factories.

I do not anticipate such a strike, however, nor any serious trouble if it can be avoided in any way, but the employees are of the belief that the

increasing dangers and hazards of the occupation entitle them to better wages and conditions and for that reason are anxious that the machinery of your Department, as expressed in the Trades Dispute Act will be used to settle the dispute now in existence between the Toronto Electric Commissioners and employees who are members of the Canadian Electric Trades Union, Toronto Branch.

I enclose for your information copies of the correspondence passing between the parties, and I am instructed to ask you to let me have a reply at an early date.

Copies of this letter and correspondence are being sent to your Deputy Minister, Mr. Ballantyne, for his information.

I am,

Yours faithfully,

Secretary.

No. 9 (c)—Letter, Deputy Minister of Labour to J. T. Gunn.

Department of Labour,
Office of the Deputy Minister.

April 12, 1923.
Spadina Crescent, Toronto.

Mr. J. T. Gunn,
Canadian Electrical Trades Union,
4 Alexander Street,
Toronto.

Dear Sir,

I have to acknowledge copy of the fyle of correspondence in connection with the dispute with the Toronto Electrical Commissioners.

Yours truly,

(Sgd.) JAS. H. H. BALLANTYNE,
Deputy Minister of Labour.

No. 8 (j)—Letter, J. T. Gunn to E. M. Ashworth.

Canadian Electrical Trades Union,
Toronto Branch.

Toronto, 17th April, 1923.

E. M. Ashworth, Esq.,
General Manager, Toronto Electric Hydro System,
229 Yonge St., Toronto.

Dear Sir,

Your letter of April 7th received, respecting a meeting with the Toronto Electric Commissioners and in answer I am instructed to say that our Committee would like to meet your Commissioners at an early date, in order to

Exhibits.

No. 8 (j). Letter, J. T. Gunn to E. M. Ashworth, 17th April, 1923. —*continued.*

place before them additional reasons in support of our proposed agreement, which they feel would be of some weight with your Commission.

If you can let me have a reply by April 26th, so that I can place it before our members, stating when your Commission could meet our Committee for this purpose, I will appreciate it.

I am,

Yours faithfully,

(Sgd.) JAS. T. GUNN,
Secretary.

No. 8 (k). Letter, E. M. Ashworth to J. T. Gunn, 18th April, 1923.

No. 8 (k)—Letter, E. M. Ashworth to J. T. Gunn.

April 18, 1923.

James T. Gunn, Esq.,
4 Alexander Street,
Toronto.

Dear Sir,

Your letter of April 17th has been received and will be submitted to the Commissioners at their next meeting.

I am, dear Sir,

Yours faithfully,

(Sgd.) E. M. ASHWORTH,
Acting General Manager.

No. 9 (d). Letter, Hon. W. R. Rollo to J. T. Gunn, 18th April, 1923.

No. 9 (d)—Letter, Hon. W. R. Rollo to J. T. Gunn.

Department of Labour.
Minister's Office.
Toronto, April 18th, 1923.

Mr. Jas. T. Gunn,
Secretary, Canadian Electrical Trades Union,
4 Alexander Street,
Toronto, Ont.

Dear Mr. Gunn,

I have your letter of the 9th inst. re a dispute between the Toronto Electrical Commissioners and the Canadian Electrical Trades Union, and asking that a registrar be appointed under the Trades Disputes Act.

Although this Act has been in existence for a number of years we have never before had occasion to use it, and consequently have no machinery immediatcly available. The matter is, however, receiving careful consideration, although I am still not convinced that it is not a matter which should be dealt with under the Dominion Industrial Disputes Act.

Yours truly,

(Sgd.) W. R. ROLLO,
Minister of Labour.

Exhibits.

No. 8 (l)—Letter, E. M. Ashworth to J. T. Gunn.

No. 8 (l). Letter, E. M. Ashworth to J. T. Gunn, 23rd April, 1923.

April 23rd, 1923.

James T. Gunn, Esq.,
4 Alexander Street,
Toronto.

Dear Sir,

Your letter of April 17th was received and contents noted. As I explained to you in my letter of April 7th, the congestion of business requiring the attention of the Commissioners at the present time is such that it is difficult to arrange to meet the deputation at an early date, and in view of the Commissioners having already had one conference with your Committee in regard to this matter, they feel that it is not unreasonable to ask you to set forth in writing the additional reasons in support of your proposed agreement, to which they will give careful consideration.

I am, dear Sir,
Yours faithfully,
(Sgd.) E. M. ASHWORTH,
Acting General Manager.

No. 8 (m)—Letter, J. T. Gunn to E. M. Ashworth.

No. 8 (m). Letter, J. T. Gunn to E. M. Ashworth, 1st May, 1923.

Canadian Electrical Trades Union
Toronto Branch.

Toronto, May 1st, 1923.

E. M. Ashworth, Esq.,
Manager, Toronto Electric System,
229 Yonge St., Toronto.

Dear Mr. Ashworth,

re Proposed Agreement.

In reference to your request that we detail specific reasons why we wish to open negotiations again, it is difficult to place them within the compass of a letter, but we feel that there are several excellent reasons for our request, among them being the fact that the cost of living is again on the increase and not declining as intimated recently in a communication from you to us.

Secondly, that increases in wages are being given all around us.

Thirdly, that the wage rate paid for the same classes of labour in other cities vary from 22 per cent. to 50 per cent. higher than is paid by your Commission.

Fourthly, as the equipment of your Commission expands the responsibilities of the individual workman increases.

And fifthly, together with the expansion is a steady growth of added life and accident hazard.

These, in brief, are some of the reasons why we are desirous of meeting your Commission, but there is also the reason that if your Commission remains steadfast in its attitude, we desire to be in a position to say that

Exhibits.

No. 8 (m). Letter. J. T. Gunn to E. M. Ashworth, 1st May, 1923.

we endeavoured to secure a settlement of the dispute by negotiation before resorting to the arbitration of a conciliation board, in the event of our applying for one.

Possibly this communication may enable the Commission to grasp our view-point thoroughly and may result in a satisfactory settlement of the matter.

I am,

Yours faithfully,

(Sgd.) JAMES T. GUNN.

No. 8 (n). Letter, E. M. Ashworth to J. T. Gunn, 7th May, 1923.

No. 8 (n)—Letter, E. M. Ashworth to J. T. Gunn.

May 7th, 1923.

James T. Gunn, Esq.,
4 Alexander Street,
Toronto.

Dear Sir,

Please accept thanks for your letter of May 1st, contents of which have been noted.

This letter will be submitted to the Commissioners at their next meeting.

I am, dear Sir,

Yours faithfully,

(Sgd.) E. M. A.
Acting General Manager.

No. 8 (o). Letter, E. M. Ashworth to J. T. Gunn, 12th May, 1923.

No. 8 (o)—Letter, E. M. Ashworth to J. T. Gunn.

May 12th, 1923.

James T. Gunn, Esq.,
4 Alexander Street,
Toronto.

Dear Sir,

Re Your Letter of May 1st.

Your letter of May 1st was received and submitted to the Toronto Electric Commissioners at their meeting of May 11th.

According to the best information which the Commissioners can obtain the cost of living is at present materially lower than in the summer of 1920, at which time the existing wage schedule was adopted, and while the Commissioners have carefully considered the points set forth in your letter they are unable to see therein any valid argument for changing their attitude as set forth in their letter of March 28th.

I am, dear Sir,

Yours faithfully,

(Sgd.) E. M. ASHWORTH,
Acting General Manager.

Exhibits.

No. 9 (e). Letter, J. T. Gunn to Hon. W.D.Rollo, 18th May, 1923.

No. 9 (e)—Letter, J. T. Gunn to Hon. W. D. Rollo.

May 18th, 1923.

Hon. W. D. Rollo,
Minister of Labor,
Queens Park, Toronto.

Dear Sir,

I am directed on behalf of the Canadian Electrical Trades Union to ask that a dispute at present existing between the Toronto Transportation Commission and certain employees—members of the Canadian Electrical Trades Union—will be referred to a joint council of conciliation applied for on behalf of the members employed on the Hydro Electric System.

Please confirm receipt of this and oblige,

Yours faithfully,

No. 7. Application for appointment of Board of Conciliation, 22nd June, 1923.

No. 7—Application for appointment of Board of Conciliation.

DEPARTMENT OF LABOUR, CANADA.

THE INDUSTRIAL DISPUTES INVESTIGATION ACT, 1907.

FORM OF APPLICATION FOR APPOINTMENT OF A BOARD OF CONCILIATION AND INVESTIGATION.

Toronto, June 22nd, 1923.

To the Registrar,
Boards of Conciliation and Investigation,
Department of Labour,
Ottawa.

The undersigned hereby make application to the Minister of Labour for the appointment of a Board of Conciliation and Investigation under the Industrial Disputes Investigation Act, 1907, to which a dispute between the parties named in the accompanying statement may be referred under the provisions of the said Act, and submit the statement and statutory declaration prescribed under the Act as necessary in making such application.

(A) Statement

Locality of Dispute—Toronto and vicinity
Trade or industry—Power transmission and distribution.

The Parties to the Dispute

(i) Employer—Toronto Electric Commissioners. Operating the Toronto Hydro Electric System, Mr. E. M. Ashworth, Manager, 229 Yonge Street, Toronto.

(ii) Employees—Linemen, Line-foremen, Ground-men, Operators, Station Construction mechanics, Meter Installers, Street Lighting employees, Stores employees, Painters, Maintenance mechanics, Machine-shop employees, Garage employees, Batterymen, Underground mechanics, Cable jointers, Inspectors, Trouble men and General

Exhibits.

No. 7. Application for Appointment of Board of Conciliation, 22nd June, 1923 —*continued.*

Laborers, members of the Canadian Electrical Trades Union, Toronto Branch.

Approximate estimate of number of employees affected or likely to be affected :—

	Directly.	Indirectly.
Males 21 years or over	400	300
,, under 21 years	12	25
Females	—	—
Total	412	325

(PRINTED MATTER OMITTED)

Nature and cause of dispute, including claims and demands by either party upon the other to which exception is taken : Nature of dispute is over proposed alterations in the wages and working conditions of the employees as contained in a new agreement submitted on behalf of the employees by the Canadian Electrical Trades Union, a copy of which is herewith enclosed. The immediate cause is the refusal of the employer to accede to any of the requests made by the employees ; the attitude of the employer being, as will be seen from a copy of a letter dated March 28th, 1923, herewith enclosed—that no change should be made in the wages or working conditions of the employee and that no responsibility exists on the employers part to adjust the inequalities resulting from the transfer of the Toronto Niagara Power System to the Toronto Hydro Electric System ; the employees attitude is that of considerable unrest and dissatisfaction with the employers refusal to alter the wages and conditions at present prevailing and to adjust the inequalities resulting from the transfer of the properties referred to above. This constitutes the original dispute. Additional causes are contained on supplementary sheet.

Outline of efforts made by parties concerned to adjust the dispute : On January 26th a committee of the men and their representative met the employer and discussed for three hours the proposed agreement at the conclusion of which the employer promised consideration of same. After six weeks no answer was received and on March 6th a letter was sent on behalf of the employees asking that an answer be returned. On March 28th an answer was received stating the employers attitude which was that of refusal to the employees request and on April 2nd an attempt was again made on behalf of the employees to renew negotiations, which was replied to by the employer on April 7th asking the employees to set forth their views in a letter. On April 17th another attempt was made on behalf of the employees to secure the re-opening of negotiations and was replied to on April 23rd by the employer asking that the additional reasons in support of the new agreement be set forth in writing, this was done on behalf of the employees on May 1st, and on May 12th a reply was received from the employer stating they could not reconsider their attitude of March 28th. The employees reasons for that request are contained in the letter dated May 1st, a copy of which is enclosed.

Supplementary to the original dispute—is a large number of individual grievances which are causing great dissatisfaction among the employees

and the feeling that injustices are being done to them in some respects, particularly certain cases alleged to be due to the harsh and arbitrary actions of certain foremen in their relations with the employees under them.

Person recommended as member on Board of Conciliation and Investigation :—

Name in full—John George O'Donoghue, K.C.

Address—Kingsley Mansions, Toronto, Ont.

This application is made on behalf of the employees. Signatures of parties making application :—

Name—James T. Gunn, Business Manager and Receiving Secretary.

Address—4 Alexander Street, Toronto, Ont.

Name—Geo. W. McCollum, Financial Secretary, Treasurer.

Address—4 Alexander Street, Toronto, Ont.

Authority :—By a unanimous vote of a majority of members of the Canadian Electrical Trades Union affected, taken by ballot at a specially called meeting for the purpose, held in the Union rooms, 4 Alexander Street, on June 14th, said meeting having been called on five days' notice, and also by the written authorisation of 70 per cent. of the members affected, which is enclosed with this application.

(PRINTED MATTER OMITTED)

(B) Statutory Declaration.

Canada
Province of Ontario
County of York
To Wit :

I, James Thomas Gunn of the City of Toronto in the Province of Ontario, and I, George Wilbur McCollum of the City of Toronto, in the Province of Ontario.

do severally solemnly declare as follows, that is to say : that, to the best of our knowledge and belief, failing an adjustment of the dispute herein referred to, or a reference thereof by the Minister of Labour to a Board of Conciliation and Investigation under the Industrial Disputes Investigation Act, 1907, a strike will be declared, and that the necessary authority to declare such strike has been obtained ; or (x) that the dispute has been the subject of negotiations between the committee and the employer, that all efforts to obtain a satisfactory settlement have failed and that there is no reasonable hope of securing a settlement by further negotiations.

And each of us makes this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Declared before me
(by the said Jas. T. Gunn
and
Geo. W. McCollum)
before me at Toronto in the County of York this 23rd day of June, A.D. 1923.

Signatures :
JAS. T. GUNN.
GEO. W. MCCOLLUM.

(Sgd.) GEO. C. UPTON,
A Commissioner, etc.

(PRINTED REGULATIONS AND DIRECTIONS HERE OMITTED)

Exhibits.

No. 14 (a). Letter, F. A. Acland to E. M. Ashworth, 25th June, 1923.

No. 14 (a)—Letter, F. A. Acland to E. M. Ashworth.

Department of Labour, Canada.

Ottawa, June 25, 1923.

Sir,

I beg to notify you that an application has been received for the establishment by the Minister of Labour of a Board of Conciliation and Investigation to deal with differences as between the Toronto Electric Commissioners and certain of their employees being linemen, groundmen and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch. You will be probably aware that, where the employer in a dispute with respect to which application is made for the establishment of a Board of Conciliation is a body controlled directly or indirectly by Provincial or Municipal authorities, as is understood to be the case with respect to the present employer, it has been the practice before establishing a Board to endeavour to secure the consent of both employer and workmen concerned so that the Board is established as by mutual concurrence under Section 63 of the statute and no question of jurisdiction therefore arises. Should your Commissioners be agreeable to the establishment in the present case of a Board of Conciliation and Investigation, the Minister will be, I am to state, pleased immediately to establish a Board. I am instructed to add that the Minister realises the extreme inconvenience which might be occasioned to the population of a great city by an interruption of the industry here in question and is of the view that the facilities and machinery of the Industrial Disputes Investigation Act might be with advantage utilised in any further effort to secure a working arrangement with the employees concerned. Should the Commissioners agree in asking that the dispute may be referred to a Board of Conciliation and Investigation, it is requested that they will forward a statement in reply to the application and will at the same time name a person who may be appointed to the proposed Board. You will please not understand this letter as implying that the Minister agrees that the present dispute does not fall within the jurisdiction of the statute, but it has been thought best to proceed with the establishment of a Board if possible by mutual agreement. It is specially requested that your Commissioners will let the Minister have your reply not later than Saturday, the 30th instant, on the points above raised.

I have the honour to be,
Sir,
Your obedient servant,

(Sgd.) F. A. ACLAND,
Deputy Minister of Labour
and Registrar.

E. M. Ashworth, Esq.,
Manager,
Toronto Electric Commissioners,
229 Yonge Street,
Toronto, Ontario.

Exhibits.

No. 14 (b)—Letter, H. J. MacTavish to F. A. Acland.

No. 14 (b). Letter, H. J. MacTavish to F. A. Acland, 27th June, 1923.

Toronto Electric Commissioners
Toronto Hydro Electric System,
226-228 Yonge Street,
Toronto, June 27th, 1923.

F. A. Acland, Esq.,
Deputy Minister of Labour and Registrar,
Department of Labour,
Ottawa, Canada.

Re Application for Board of Conciliation.

Dear Sir,

Your letter of the 25th instant addressed to Mr. E. M. Ashworth has been received in his absence and contents noted.

Mr. Ashworth, who is familiar with all the details of this matter, is, unfortunately, out of the City on the System's business and is not expected to return until July 2nd.

Would you be so kind as to request the Minister of Labour to postpone further action in this matter until Mr. Ashworth's return, when it will be brought to his immediate attention ?

Yours faithfully,
(Sgd.) H. J. MacTavish,
Assistant to the General Manager.

No. 14 (c)—Letter, F. A. Acland to H. J. MacTavish.

No. 14 (c). Letter, F. A. Acland to H. J. MacTavish, 28th June, 1923.

Deputy Minister of Labour,
Canada.
Ottawa, June 28, 1923.

Re dispute between Toronto Electric Commissioners and their electrical workers.

Dear Sir,

I beg to acknowledge yours of the 27th instant, explaining that Mr. Ashworth, Acting General Manager, is absent from Toronto until July 2nd, and asking if the Minister of Labour will postpone action in this matter until Mr. Ashworth's return. In reply I would state that your letter has had the Minister's attention, and the Minister, in view of the circumstances, has agreed to extend the time suggested as a reasonable date for the statement in reply from the employer. The experience of the Minister and the Department goes to show that delay in procedure in these matters is frequently provocative of serious friction, and the Minister trusts, I am to state, that the General Manager will do what is possible to expedite action on his return.

Yours truly,
(Sgd.) F. A. Acland,
Deputy Minister of Labour.

H. J. MacTavish, Esq.,
Assistant to the General Manager,
Toronto Electric Commissioners,
226-228 Yonge Street,
Toronto, Ontario.

Exhibits.

No. 11. Telegram, J. T. Gunn to Minister of Labour, 29th June, 1923.

No. 11—Telegram, J. T. Gunn to Minister of Labour.

Toronto, Ont., June 29, 1923.

Minister of Labour,
Ottawa, Ontario.

Toronto Hydro Electric Operating Officials using coercion on men to get them to say if they will go on strike Saturday. No strike as yet been threatened by men. Men feel that coercion is an attempt to make them drop Application for Board. Please take up with Hydro Commission and see if action can be stopped.

"GUNN."

No. 14 (d). Telegram, Hon. J. Murdock to H. J. MacTavish, 29th June, 1923.

No. 14 (d)—Telegram, Hon. J. Murdock to H. J. MacTavish.

Ottawa Ont 1046 am June 29 1923

H J Mactavish
Assistant to Genl Mgr Toronto Electric Commissioners 226—228 Yonge St.,
Toronto, Ont.

Re dispute between Toronto Electric Commissioners and their electrical workers am in receipt from representative of workers here concerned of message indicating that operating officials of Hydro Electric System are applying coercion to employees apparently to secure an undertaking that workers will not go on strike to-morrow Saturday stop I had yesterday under consideration communication received over your signature by Registrar of Conciliation Boards explaining that owing to absence from Toronto for few days of Manager Ashworth it was difficult to make effective reply to registrars letter addressed to Manager Ashworth in these matters on twenty fifth instant and your letter asked that time suggested as date for receiving reply might be extended until Manager Ashworth's return July second stop I had in circumstances no hesitation in complying with request and you were so notified by Registrar in letter mailed last night Registrar being instructed to intimate further that management would be however expected to do all possible to expedite procedure subsequent to extended date stop Your letter twenty seventh did not intimate situation which could be deemed to be in any way contrary to conciliation methods desirable and customary in procedure under governing statute and I cannot but assume that any action by operating officials on lines now indicated by representative of workers is without knowledge authority or desire of Commissioners and would be contrary to their wishes stop No word has been previously received here suggestive of any contemplated strike to-morrow but receipt of application for Board would rather manifest desire on part of employees to conform entirely to the laws of Canada and to do all possible on their part to secure working agreement and avoid cessation of work stop You will be but too well aware of the severe inconvenience if not actual danger to public interests of your city inevitable as result of interruption of important industry of nature here concerned and I feel confident I need but bring to your attention the information which reaches me to secure

No. 14 (d). Telegram, Hon. J. Murdock to H. J. MacTavish, 29th June, 1923 —*continued.*

prompt attention on your part with view to preventing continuation of any action which may have been taken on lines indicated and which being clearly contrary to practice and to provisions of statute could be in my view the result only of misunderstanding on part of certain officers stop kindly let me have word you will have inquiry made forthwith looking to remedy of alleged grievances if facts are as stated.

James Murdock Minister of Labor.

1155 am

No. 14 (e)—Telegram, H. J. MacTavish to Hon. J. Murdock.

No. 14 (e). Telegram, H. J. MacTavish to Hon. J. Murdock, 29th June, 1923.

1923 Jun 29 pm 4 21

Toronto Ont 29 354 P

Hon James Murdock
Minister of Labour Ottawa Ont.

Acknowledging your wire of June twenty ninth we regret to learn of complaint that any coercion whatever has been exercised by any employee of the Commission as the Commissioners and their officers are opposed to any such methods and will take steps to investigate complaint that has been made to you and upon return of the Acting General Manager the whole situation will be taken up stop We thank you for your letter not yet received but which from your wire we understand you have sent us granting our request for delay until return of the Acting General Manager

H J Mactavish
Toronto Hydro.

No. 14 (f)—Letter, H. J. MacTavish to F. A. Acland.

No. 14 (f). Letter, H. J. MacTavish to F. A. Acland, 30th June, 1923.

Toronto Electric Commissioners
Toronto Hydro-Electric System
226-228 Yonge Street,
Toronto, June 30th, 1923.

F. A. Acland, Esq.,
Deputy Minister of Labour & Registrar,
Department of Labour,
Ottawa, Canada.

Re Application for Board of Conciliation.

Dear Sir,

Please accept my thanks for your letter of the 28th instant advising that the Minister of Labour has granted my request to postpone further action in this matter until Mr. Ashworth's return, when, as stated in my previous letter, the matter will be brought to his immediate attention.

I enclose a copy of my wire to the Minister of Labour in reply to his of the 29th instant, which came to hand before receipt of your letter.

Yours faithfully,
(Sgd.) H. J. MacTavish,
Assistant to the General Manager.

Exhibits.

No. 14 (g). Telegram, F. A. Acland to E. M. Ashworth, 6th July, 1923.

No. 14 (g)—Telegram, F. A. Acland to E. M. Ashworth.

1923 Jul 6 pm 2 13

Ottawa Ont 6/ 158 P

E. M. Ashworth
Acting General Manager Toronto Electric Commrs.
229 Yonge St. Toronto Ont.

Referring to my letter June twenty fifth re dispute between Toronto Electric Commissioners and Electrical workers and subsequent exchange of letters respecting request of your management that date suggested by Minister for receiving reply might be extended until after your return to Toronto on July second several days having now passed since extended date Minister will be pleased to have word if reply from your management may be expected immediately.

F. A. ACLAND,
Dep. Min. Labour and Registrar.

No. 14 (h). Telegram, E. M. Ashworth to F. A. Acland, 6th July, 1923.

No. 14 (h)—Telegram, E. M. Ashworth to F. A. Acland.

1923 Jul 6 pm 4 36

Toronto Ont 6 346 P

F. A. Acland Esq. Deputy Minister of Labor Ottawa Ont.

Your telegram July 6 received stop Toronto Electric Commissioners had meeting to-day and letter is going to you in to-night's mail.

E. M. ASHWORTH.

No. 14 (i). Letter, E. M. Ashworth to Hon. J. Murdock, 6th July, 1923.

No. 14 (i)—Letter, E. M. Ashworth to Hon. J. Murdock.

Toronto Electric Commissioners
Toronto Hydro-Electric System.

226-228 Yonge Street,
Toronto, July 6, 1923.

Hon. James Murdock,
Minister of Labour,
Ottawa, Canada.

Attention—F. A. Acland, Esq., Deputy Minister of Labour.

Dear Sir,

Your letter of June 25th, also your letter of June 28th and your telegram of June 29th were submitted to the Toronto Electric Commissioners at their meeting to-day.

In the first place, the Commissioners have instructed me to assure you that they are strongly opposed to any course of action on the part of their officials that would tend to a breach of the friendly relations which have for many years existed between the Commissioners and the employees of the System, and would not countenance such action. As far as can be judged from preliminary enquiries, the statement that coercion was applied to employees of the System is without justification, but in order that the

matter may be gone into fully, the Commissioners have instructed me to ask that you will be kind enough to transmit the exact details of the nature of the proceedings to which exception was taken in the message upon which your telegram of June 29th was based.

The Commissioners have given careful consideration to the contents of your letter of June 25th, and note that you have received a copy of their letter of March 28th in which their view of the situation is set forth at length. To this letter there is little that can be added at the present time.

The Commissioners are most desirous that amicable relations shall be maintained between the System and its employees at all times. In their capacity as trustees they are actuated, in their decisions with regard to wages and conditions of the System's employees, solely by consideration of the public welfare, their one object being to institute wages and conditions which preserve an equitable balance between the rights of the employees and the rights of the consuming public, and this being the case they are in full accord with the sentiment that disputes should be settled in accordance with the principle of arbitration rather than by resorting to extreme measures of the nature of a strike.

Experience has shown that arbitration under the Industrial Disputes Investigation Act does not always result in an adjustment acceptable to all parties. The Commissioners, as pointed out above, are in accord with the principle of settlement by arbitration, and I am instructed to suggest that if the parties making the application for a board will communicate with the Commissioners direct, it may be possible to arrive at some form of arbitration mutually acceptable.

I am, dear Sir,

Yours faithfully,

(Sgd.) E. M. ASHWORTH,

Acting General Manager.

No. 10 (a)—Telegram, W. A. Sherman to Hon. James Murdock.

1923 Jul 6 p.m. 8 16

Calgary Alta 6 448 P.

James Murdock
Minister of Labour Ottawa Ont.

On behalf of miners of district eighteen I emphatically protest against the use of armed force intervening on behalf of coal operators and empire steel corporation of Nova Scotia in the present industrial dispute existing there. Pressure should be brought to bear on the parties concerned with view of immediate settlement and withdrawal of troops. Unless action taken immediately to bring parties together serious situation inevitable in West.

W. A. SHERMAN President District 18 U.M.W.A.

Exhibits.

No. 10 (b). Telegram, W. A. Sherman to Hon. J. Murdock, 7th July, 1923.

No. 10 (b)—Telegram, W. A. Sherman to Hon. J. Murdock.

1923 Jul 7 p.m. 4 5

James Murdock Calgary Alta 7 215 P
Minister of Labor Ottawa Ont.

Wire received and contents noted stop Critical situation is developing in the coal fields of the West as result of latest developments in Nova Scotia dispute between British Empire Steel Corpn and its employees present indications in our district are that membership will not be controlled by the district officials of this organization unless immediate steps are taken to improve serious situation now existing in Nova Scotia practically all labor organizations in the West are interesting themselves in the situation.

W. A. SHERMAN Pres. Dist. Eighteen U M W A.

No. 14 (j). Letter, Hon. J. Murdock to E. M. Ashworth, 7th July, 1923

No. 14 (j)—Letter, Hon. J. Murdock to E. M. Ashworth.

Minister of Labour
Canada.

Ottawa, July 7, 1923.

Dear Sir,

I have your letter of the 6th instant and have noted carefully its contents. Regarding your reference to my message of June 29th and request for "exact details of the nature of the proceedings to which exception was taken," I would state that the message itself contained all the information which was at hand at the time it was sent and it was in my view desirable to bring this information immediately to your attention. My experience has been that action on the part of particular officers taken at a time of exceptional tension and frequently without instruction or sanction of superior officers tends to precipitate a crisis sometimes of a disastrous character. The prompt reply of your Mr. MacTavish intimating that the Commissioners would "take steps to investigate complaint that has been made" was in the circumstances satisfactory. Subsequently a communication reached me from the representative of the employees which contained the following statement bearing on the subject matter of the telegraphic messages in question, namely:—

> "On Thursday last at our meeting a number of operators com-
> "plained that a Mr. Hutchinson, Assistant to Mr. E. G. Flowers,
> "Operating Engineer for the Toronto Hydro Electric System, had
> "been going around the operating station asking the operators on duty
> "if they were going to go on strike to-day (Saturday) and demanding
> "an answer of 'yes' or 'no' immediately. As there had been no
> "threat by us to strike at this date, a number of men were surprised
> "and did not know the reason of Mr. Hutchinson's action, but felt
> "that it was intended to have the effect, if possible, of giving up the
> "application for a Board and strong protests were made by them at
> "our meeting to that effect."

No further word on this aspect of the matter has been received and presumably the action taken by the Commissioners was adequate.

With regard to the matters generally in dispute at the present time, I have, as Minister of Labour, no view to express, but any statement submitted by the Commissioners would be laid before a Board of Conciliation were a Board to be established. You remark that " experience has shown " that arbitration under the Industrial Disputes Investigation Act does " not always result in an adjustment acceptable to all parties." This is an obvious truth and I have yet to hear of any legislation or system with respect to industrial disputes which does " always result in an adjustment acceptable to all parties." That industrial disputes of all kinds should be preferably settled by conference or arbitration as between the parties directly concerned is wholly in accordance with the spirit and letter of the statute and with the practice pursued in the Department in these matters. It is only when such direct negotiations have failed to produce satisfactory relations that parties to a dispute are justified in having recourse to provisions of the Industrial Disputes Investigation Act. In the present case, according to the statement appearing on page 2 of the application, such negotiations have been proceeding since January 26 and had not at the date of the application produced an agreement.

In view, however, of your closing suggestion looking to the possibility of arranging " some form of arbitration mutually acceptable, if the parties " making the application for a Board will communicate with the Com- " missioners direct," I have had no hesitation in staying procedure looking to the establishment of a Board of Conciliation and Investigation, and am advising the applicants for a Board that it will be in my opinion desirable they should regard favourably the suggestion in question and communicate with the Commissioners direct from the point of view indicated. Should the renewed negotiations produce a working agreement there would obviously be no ground for the establishment of a Board of Conciliation under the provisions of the Industrial Disputes Investigation Act, and on receiving word that an agreement has been achieved on the lines suggested in your communication, all procedure looking to the establishment of a Board of Conciliation would be cancelled.

A copy of this communication is being forwarded for the information of the representative of the employees, together with a covering note, of which a copy is enclosed.

Yours truly,
(Sgd.) JAMES MURDOCK,
Minister of Labour.

E. M. Ashworth, Esq.,
Acting General Manager,
Toronto Electric Commissioners,
226 Yonge Street,
Toronto, Ontario.

Exhibits.

No. 14 (k). Letter, Hon. J. Murdock to J. T. Gunn, 7th July, 1923.

No. 14 (k)—Letter, Hon. J. Murdock to J. T. Gunn.

Copy for the information of Mr. E. M. Ashworth, Acting General Manager, Toronto Electric Commissioners, 229 Yonge St., Toronto, Ontario.

Ottawa, July 7, 1923.

Re dispute between the Toronto Electric Commissioners and their electrical workers.

Dear Sir,

Please find enclosed copy of a communication which is being to-day mailed to the Acting General Manager of the Toronto Electric Commissioners. You will note the suggestion made by Mr. Ashworth that " if the parties making the application for a Board will communicate " with the Commissioners direct, it may be possible to arrive at some form " of arbitration mutually acceptable." I do not think you can, in the circumstances, do less than approach the Commissioners from the point of view indicated, and shall be only too pleased if a satisfactory working agreement is in this way achieved.

Yours truly,
(Sgd.) JAMES MURDOCK,
Minister of Labour.

James T. Gunn, Esq.,
Business Manager, Toronto Branch,
Canadian Electrical Trades Union,
4 Alexander Street,
Toronto, Ontario.

No. 8 (p). Letter, J. T. Gunn to Hon. J. Murdock, 16th July, 1923.

No. 8 (p)—Letter, J. T. Gunn to Hon. J. Murdock.

Canadian Electrical Trades Union,
Toronto Branch,
Toronto, July 16th, 1923.

Hon. James Murdock, M.P.,
Minister of Labour,
Ottawa, Ont.

Dear Sir,

In accordance with the desire expressed in your recent letter that we should take up with the Toronto Electric Commissioners the question of submitting our dispute to a Board of Arbitration mutually acceptable, I was instructed to interview Mr. E. M. Ashworth, Acting General Manager of the Toronto Hydro Electric System and discuss the whole question with him. That has been done and an agreement cannot be reached, due to the fact that the proposals submitted by Mr. Ashworth on behalf of the Commissioners are not acceptable to us. According to the point of view expressed by Mr. Ashworth the Toronto Electric Commissioners whilst not being opposed to arbitration and conciliation as a means of settling disputes between themselves and their employees, yet feel that the machinery of the Industrial Disputes Act administered under the Department of Labour,

does not provide the most satisfactory method of arbitration, the reasons being that:—

1. A representative with sufficient technical and executive ability to represent the Commissioners cannot be persuaded to accept the position of representative on a Board of Arbitration and Conciliation, because the remuneration provided by the Act does not meet the loss in income suffered by such a representative due to abstention from his own business.

2. That the representatives of employers and employees on a Board of Conciliation under the Industrial Disputes Act knowing that if they disagree about a Chairman such will be eventually appointed by the Minister do not take the same interest in selecting a chairman as they would if they were required to agree upon a chairman before the Board could function, and the Commissioners feel that the selection of a chairman is most vital to a Board of Conciliation and is most satisfactorily done when employees representatives agree upon a third party.

Mr. Ashworth proposed that a voluntary Board of Conciliation and Arbitration would be set up with our consent and that each party would pay their own representatives remuneration and expenses and share half the cost of the chairman's remuneration and expenses. This they feel would allow them to secure a representative who would act knowing that his remuneration and expenses being paid by the Commission he would receive a much higher per diem allowance than the Industrial Disputes Act provides. In fact the figure talked of was $50.00 per day.

In addition it was stated that the Commission did not desire to have the question of foremen's relations with employees subjected to arbitration and while admitting that it might be discussed; that the Commissioners would refuse to accept any decision on this matter. I pointed out that while the question of both representatives of a Board agreeing upon the chairman and the remuneration of the Commissioners' representative did not seem to me to be insoluble problems, but rather matters for the Commissioners to discuss with the Department of Labour, yet I felt that our members would not agree to a Board except under the Department for reasons to which I shall refer later on.

Whilst the question of the Commissioners paying the whole expenses of a voluntary Board was discussed—although not offered on their behalf—I pointed out that very grave objections to such procedure existed, and on presenting the matter to a meeting of our members affected on Thursday last, July 12th, I was instructed to notify you that the propositions submitted on behalf of the Commission were not acceptable on the following grounds:—

1. That there is not the moral authority behind a voluntary Board of Arbitration such as is proposed as compared to that of a Board constituted under the Industrial Disputes Act.

2. That the machinery in existence under the Labour Department facilitates and expedites adjustment of Industrial disputes much better and quicker than any private Board of Conciliation could do.

Exhibits.

No. 8 (p). Letter, J. T. Gunn to Hon. J. Murdock, 16th July, 1923 —*continued.*

3. That payment of each party of their representatives expenses, etc., would throw a heavy financial burden upon the men affected, because if the Commission sets a mark of $50 per day for their representative it is hardly likely that the Chairman and employees representative could be asked to take less.

4. Because payment of the whole expense by the Commissioners would mean in effect the exercise by them of a dominating influence upon the personnel of such a proposed Board, and if the matters included in the application are not a proper subject of arbitration, it seems to us a waste of time in agreeing to set up a voluntary Board.

I am, therefore, directed to ask you to proceed with the establishment of a Board as applied for on 22nd ulto., that will sit as quickly as possible, as we feel that whilst we would like to agree to any reasonable propositions the Commissioners may make, yet the suggestions advanced are so unacceptable to us that there is very little likelihood of the Commissioners and ourselves agreeing to a voluntary method of arbitration. I trust, therefore, that the Department will establish the Board applied for at a very early date, as the dispute is of long standing and dissatisfaction and friction is continually accruing due to non-settlement.

I am sending a copy of this letter to Mr. E. M. Ashworth, for his information, so that if anything contained herein may have been given by me inadvertently inaccurate, he will be able to check and correct it with your Department.

I am,

Yours faithfully,

(Signed) JAS. T. GUNN,

Secretary

No. 8 (q). Information re Power sold by Appellants to Toronto Transportation Commission.

No. 8 (q)—Information re Power sold by the Toronto Electric Commissioners to the Toronto Transportation Commission.

The records of the Toronto Hydro Electric System show that 18,424,996 kilowatt hours of electrical energy were sold by the Toronto Electric Commissioners to the Toronto Transportation in the year 1922.

Exhibits.

No. 8 (r). List of previous Boards.

No. 8 (r)—Previous Boards between Toronto Hydro Electric System and its employees, under Industrial Disputes Investigation Act.

System Representative.	Employees Representative.	Chairman.	Date of Appointment.	Date of Award.
F. W. Wegenast	F. Bancroft	C. G. Snider	May 27/14	June 13/14
F. E. Brown	F. Bancroft	Judge Coatsworth	July 2/15	Aug. 12 and 19/15
F. R. Ewart	Louis Braithwaite	Jno. M. Godfrey	May, 1920	July 5/20

To the best of my knowledge the above list is complete.

No. 14 (l). Telegram, F. A. Acland to E. M. Ashworth, 18th July, 1923.

No. 14 (l)—Telegram, F. A. Acland to E. M. Ashworth.

Ottawa Ont. 18.

1923 Jul 18 pm 5 04

E. M. Ashworth,
General Manager Toronto Hydro Electric System,
226 Yonge Street, Toronto, Ont.

With further reference to your letter sixth instant Minister has to-day received communication dated sixteenth instant from representative of employees which indicates that arbitration methods suggested by your Commission in substitution for those created by Industrial Disputes Investigation Act are not regarded by employees as satisfactory and which requests that procedure looking to the establishment of a Conciliation Board may go forward stop It is observed that a copy of Mr. Gunn's letter was forwarded to yourself stop The Minister asks that you will be good enough to state if in your view any further reason exists why the establishment of a Board should not now immediately proceed.

F. A. ACLAND,
Deputy Minister Labour and Registrar.

No. 14 (m). Telegram, F. A. Acland to E. M. Ashworth, 23rd July, 1923.

No. 14 (m)—Telegram, F. A. Acland to E. M. Ashworth.

1923 Jul 23 am 11 35

Ottawa Ont 23 1128 A.

E. M. Ashworth,
Gen Mgr Toronto Hydro Electric System,
226 Yonge St, Toronto, Ont.

Referring to my wire eighteenth instant please say if and when reply to same may be expected.

F. A. ACLAND,
Deputy Minister of Labour and Registrar.

Exhibits.

No. 14 (n). Telegram, E. M. Ashworth to F. A. Acland, 23rd July, 1923.

No. 14 (n)—Telegram, E. M. Ashworth to F. A. Acland.

1923 Jul 23 3 1.

VS Toronto Ont. 23 245 P.

F. A. Acland,
Deputy Minister of Labor and Registrar,
Ottawa, Ont.

Your telegram 18th and 23rd instant received we are preparing reply and hope to mail same Tuesday or Wednesday.

Toronto Hydro Electric System,
E. M. ASHWORTH.

No. 14 (o). Letter, E. M. Ashworth to F. A. Acland, 23rd July, 1923.

No. 14 (o)—Letter, E. M. Ashworth to F. A. Acland.

Toronto Electric Commissioners
Toronto Hydro Electric System,
226-228 Yonge Street,
Toronto, July 23rd, 1923.

F. A. Acland, Esq.,
Deputy Minister of Labour and Registrar,
Department of Labour,
Ottawa, Canada.

Dear Sir,

Your telegram of July 18th was received and submitted to the Toronto Electric Commissioners at their meeting of July 20th.

In response to the Minister's request that the Commissioners should state why the establishment of a Board should not now immediately proceed, the Commissioners have instructed me to advise you as follows :—

(1) Between the 1st of July 1910 and the 1st of July 1920, a period of ten years, no less than nine increases in wages—the most of them being general increases—have been granted to the employees of the System operated by the Commissioners, under which the wages of first-class linemen, e.g., have been raised from 27-7/9 c. per hour to 78 c. per hour, thus making the latter rate 281 per cent. of the initial rate, while the further increase to 90 c. per hour now demanded for the same class of labour would make the rate 324 per cent. of that in force at the beginning of the said period. During this period, many other conditions and privileges have been granted to the employees, with the effect of gradually raising the scale of comfort attached to their working conditions as well as that attached to their family and general social conditions.

(2) Most of the increases and other improved conditions granted as above, have been the result of the voluntary action of the Commissioners and of mutual arrangements between them and their employees, notwithstanding which fact, however, no less than five separate Boards of Conciliation and Investigation have been applied for by the employees during said period. Of these applications, three

were granted, one was dropped, and in one case a Board was granted by the Department of Labour and subsequently withdrawn on the advice of the Department of Justice.

(3) The expense and disorganization laid upon the undertaking conducted by the Commissioners as a consequence of these recurrent applications for the appointment of Boards of Conciliation have been heavy in the extreme. The time of valuable executive officers that has been taken up from time to time in the negotiations antecedent to such applications, in the extraction and preparation of matter required for submission to the Boards, and in the proceedings before the Boards has laid a burden upon the undertaking which it is difficult to explain adequately in temperate terms. It is perhaps sufficient to say that such a recurring burden caused in part by extravagant demands, proved by the difference between the claims advanced and the awards made, greatly diminishes the efficiency of the Executive Management, and it is incompatible with the rights and interests of the consumers at large.

(4) Wages having been increased and other privileges enlarged on the liberal scale indicated as the cost of living rose during the period in question, the demand for still higher rates of wages, now that the cost of living is much lower than in the summer of 1920, when the last increase was granted is, in the opinion of the Commissioners, utterly indefensible. Business is curtailed throughout the Dominion of Canada; prices have fallen heavily; all business, whether of the nature of private ownership or public ownership must be adjusted to these conditions if the country's activities are to be maintained; public utilities, publicly owned, cannot escape the incidence of these conditions; taxation is heavy, and will press for many years to come still more heavily upon the diminished volume of business from which it must be sustained; cheap power and cheap light are vital elements of industry; and world-wide competitive conditions demand imperatively that these elements in the cost of industry be cheapened if the Dominion of Canada is to retain its minimum share in the world's business.

(5) The policy of the Commissioners toward the employees of the System is, and has been from the inception of the undertaking, one of broad and generous treatment. They have established wages and working conditions on a level that could not possibly have been maintained had the undertaking been carried on under ordinary competitive business conditions. The welfare of the employees from the "human" point of view has been ever kept in mind. Permanent employment at the highest justifiable level of compensation, freed from the risks of irregularity and fluctuations that inhere in competitive business at large, has been, and will continue to be the aim of the Commissioners. The record of their administration is an open book that proves every claim advanced herein on their behalf. At the present time, in obedience to inflexible world-wide conditions, the wages paid ought to be reduced. The Commissioners, however, are anxious to avoid reductions until such become absolutely imperative

Exhibits.

No. 14 (o). Letter, E. M. Ashworth to F. A. Acland, 23rd July, 1923 —*continued.*

and inescapable. Increased rates to consumers for light and power have been forced upon the Commissioners, by reason of the increases in wages that have already been given as above set out. A further increase in wages at this time would lead to a further increase in consumers' rates, and an increase in consumers' rates at the present time would be a grotesque and unjustifiable procedure, which could not possibly be imposed upon the community unless it were necessitated by economic conditions beyond the power of the Commissioners to control.

(6) For the reasons, therefore, thus shortly summarized, the Commissioners respectively submit that the Board of Conciliation applied for should not be granted, and they think that the Government, being the trustees of the interests of the country at large, and not merely trustees for particular classes, should support them emphatically by refusing the appointment applied for.

(7) In closing I am instructed by the Commissioners to call your attention to the fact set forth in Mr. Gunn's letter of July 16th to your Department that the Commissioners are not opposed to the principle of arbitration and have already proposed an arbitration with each side selecting a representative of its own, the two representatives to select a third member to act as chairman; the objection of the Commissioners is to procedure under the Industrial Disputes Investigation Act.

Respectfully submitted on behalf of the Commissioners.

(Sgd.) E. M. ASHWORTH,
Acting General Manager.

No. 13. Telegram, F. A. Acland to E. M. Ashworth, 24th July, 1923.

No. 13—Telegram, F. A. Acland to E. M. Ashworth.

1923 Jul 24 a.m.10 39

Ottawa Ont. 24 1005 A

E. M. Ashworth,

Gen Mgr Toronto Hydro Elec System 226 Yonge St. Toronto Ont.

Your message twenty third received and has been before Minister stop Ministers view is information to hand as to increasingly critical aspect of dispute and as to inadequacy of grounds hitherto urged on behalf Commission for stay in procedure do not justify further delay and Minister has accordingly to-day formally established Board of Conciliation and Investigation and has appointed as Board member on recommendation of workmen Mr J G O'Donoghue Barrister Toronto stop Please name person for appointment as Board member on behalf of Commission stop Statute names five days as period during which recommendation may be received but matter having been already subjected at your request to several weeks delay Ministers view is your Commission will be in position to make recommendation for appointment forthwith so that your nominee when formally appointed by Minister and workers nominee may immediately proceed to select Chairman stop As you will be aware statute requires Minister to make appointment if recommendation not received within period indicated

Exhibits.

No. 13. Telegram, F. A. Acland to E. M. Ashworth, 24th July, 1923 —*continued.*

and Minister will regard period of five days as terminating at noon Monday thirtieth instant and will be prepared if recommendation not at that time received immediately to make necessary appointment stop It is however trusted your Board will act promptly and avoid necessity of this action on Ministers part stop Establishment of Board in this way will not I am to state in any way preclude action on part of Commissioners looking to settlement of dispute by direct negotiations with workers and if before Board is fully constituted and ready to proceed with inquiry settlement is arranged and word to that effect is received from both parties then ground for further action under Industrial Disputes Investigation Act would be regarded as having disappeared stop Meantime any such negotiations will not be regarded as ground for delay in formal procedure.

F. A. ACLAND,
Deputy Minister Labour and Registrar.

No. 1—Order establishing Board of Conciliation.

No. 1. Order establishing Board of Conciliation, 24th July, 1923.

Department of Labour.

Canada.

In the Matter of the Industrial Disputes Investigation Act, 1907, and of a dispute between

The Toronto Electric Commissioners .. .. (Employer)

and

Certain of their employees being linemen, groundmen and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch .. .. (Employees)

Whereas the employees have duly applied for the appointment of a Board of Conciliation and Investigation, to which the above dispute may be referred under the provisions of the Industrial Disputes Investigation Act, 1907.

And whereas the Minister of Labour, Canada, hereinafter called the Minister, is satisfied that the said dispute is one to which the provisions of the said Act apply, and that the application does not relate to a dispute which is the subject of a reference under the provisions concerning Railway Disputes in the Conciliation and Labour Act.

Now therefore, in pursuance of the provisions of Section 6 of the Industrial Disputes Investigation Act, 1907, the Minister does hereby establish a Board of Conciliation and Investigation, to be constituted as in the said Act provided, to which Board the above dispute shall be and is hereby referred under the provisions of the said Act.

In witness whereof the Minister has hereunto set his hand and affixed his seal of office at Ottawa on the 24th day of July, A.D. 1923.

(Seal) (Sgd.) JAMES MURDOCK,
Minister of Labour.

Exhibits.

No. 2. Appointment of J. G. O'Donoghue, as member of Board, 24th July, 1923.

No. 2—Appointment of J. G. O'Donoghue as member of Board.

Department of Labour.

Canada.

In the Matter of the Industrial Disputes Investigation Act, 1907 and of a dispute between

The Toronto Electric Commissioners .. .. (Employer)

and

Certain of their employees being linemen, groundmen and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch .. .. (Employees)

On the recommendation of the employees the undersigned, Minister of Labour of Canada, hereby appoints Mr. J. G. O'Donoghue, K.C., of the City of Toronto, in the Province of Ontario, a Member of the Board of Conciliation in this matter.

Witness the hand and Seal of Office of the said Minister at Ottawa, the twenty-fourth day of July, A.D. 1923.

(Seal) (Sgd.) JAMES MURDOCK,
Minister of Labour.

No. 12. Letter, Hon. J. Murdock to E. M. Ashworth, 25th July, 1923.

No. 12—Letter, Hon. J. Murdock to E. M. Ashworth.

Minister of Labour.
Canada.

Ottawa, July 25, 1923.

My dear Sir,

The Registrar of Boards of Conciliation and Investigation has handed me your letter addressed to him under date of the 23rd instant and received in his office to-day. The Registrar's wire of yesterday advised you that it had been deemed necessary for the reasons stated to establish a Board of Conciliation and Investigation as demanded by the employees. I have gone carefully over your letter and do not find in it any matter which, had it been before me earlier, as I had requested, would have caused me any longer to defer the establishment of a Conciliation Board. Much of the matter contained in your letter would be no doubt properly placed before the Board of Conciliation, the different points being enlarged as conditions might permit or require. The value of many of the statements made and the precise bearing such statements might have on the matters in dispute cannot be determined by the undersigned without an inquiry which might in itself become at least as extensive as that which would take place before a Board of Conciliation, and an inquiry of the kind could be undertaken only, in so far as this Department is concerned, by a Conciliation Board.

In paragraph 6 you remark that the Commissioners " think that the " Government, being the trustees of the interests of the country at large " and not merely trustees for particular classes, should support them

No. 12. Letter, Hon. J. Murdock to E. M. Ashworth, 25th July, 1923 —*continued.*

" emphatically by refusing the appointment applied for." I accept entirely your point of view that the Government are " trustees of the interests of the country at large," and it is for this reason I feel it altogether necessary that in the present case I should not accept simply representations made by either one of the two parties to the industrial dispute which is under consideration, but should, on the contrary and as, in my view, the governing statute requires, refer the matter to a tribunal of the class specially designated under the provisions of the Industrial Disputes Investigation Act.

Regarding your closing paragraph that you " are not opposed to the principle of arbitration and have already proposed an arbitration," etc., I can but remark that, were you and the employees in agreement that the present dispute should be referred to a tribunal other than a Board of Conciliation, then obviously the necessity for the establishment of a Conciliation Board would not have arisen and this correspondence would have been unnecessary.

The closing paragraph of the Registrar's message addressed to you on the 24th instant indicated that the establishment of a Board of Conciliation would not in any way preclude action on the part of the Commissioners looking to a settlement of the dispute by direct negotiation with the workers, and I can but repeat that if, before the Board is fully constituted and ready to proceed with the inquiry a settlement is arranged and word to that effect is received from both parties, then I should regard ground for further action under the Industrial Disputes Investigation Act as having disappeared.

Yours truly,

(Sgd.) JAMES MURDOCK,
Minister of Labour.

E. M. Ashworth, Esq.,
Acting General Manager,
Toronto Hydro-Electric System,
226-228, Yonge Street,
Toronto, Ontario.

Exhibit " E " to Affidavit of E. M. Ashworth—Letter, F. A. Acland to E. M. Ashworth.

"E." Letter, F. A. Acland to E. M. Ashworth, 30th July, 1923.

Ottawa, July 30, 1923.

re Industrial Disputes Investigation Act 1907 and re Differences between the Toronto Electric Commissioners and certain of their employees being linemen, groundmen and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch.

Sir,

Referring to my telegram of the 24th instant in this matter, I beg to state that no recommendation having been received from the Commissioners of a person to be appointed a member of the Board of Conciliation and

Exhibits.

"E." Letter, F. A. Acland to E. M. Ashworth, 30th July, 1923 —*continued.*

Investigation established in this matter, the Minister has, as required by the governing statute and acting under Section 8, appointed to the Board as on the Commissioners' behalf Mr. F. H. McGuigan, of Toronto. Messrs. McGuigan and O'Donoghue have been requested to confer looking to securing by joint agreement a third member, who will be chairman. Failing a joint recommendation, the chairman will be appointed by the Minister.

I have the honour to be, Sir,
Your obedient servant,

"F. A. ACLAND,"
Deputy Minister of Labour and Registrar.

E. M. Ashworth, Esq.,
General Manager,
Toronto Hydro Electric System,
226 Yonge Street,
Toronto, Ontario.

No. 3. Appointment of F. H. McGuigan, as member of Board, 30th July, 1923.

No. 3—Appointment of F. H. McGuigan as Member of Board.

Department of Labour.

Canada.

In the Matter of the Industrial Disputes Investigation Act, 1907, and of a dispute between

The Toronto Electric Commissioners .. .. (Employer)

and

Certain of their employees being linemen, groundmen, and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch .. .. (Employees)

In the absence of a recommendation from the employers, the undersigned, Minister of Labour of Canada, hereby appoints Mr. F. H. McGuigan, of the City of Toronto, in the Province of Ontario, a Member of the Board of Conciliation in this matter.

Witness the hand and Seal of Office of the said Minister at Ottawa, the 30th day of July, A.D. 1923.

(Seal)

(Sgd.) JAMES MURDOCK,
Minister of Labour.

No. 4—Appointment of Colin G. Snider as member of Board.

No. 4. Appointment of Colin G. Snider, as member of Board, 1st Aug., 1923.

Department of Labour.

Canada.

In the Matter of the Industrial Disputes Investigation Act, 1907; and of a dispute between

The Toronto Electric Commissioners .. .. (Employer)

and

Certain of their employees being linemen, groundmen and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch .. .. (Employees)

On the recommendation of Mr. F. H. McGuigan, of Toronto, Ontario, and Mr. J. G. O'Donoghue, of Toronto, Ontario, who have been appointed members of the Board of Conciliation and Investigation in this matter, the undersigned, Minister of Labour of Canada, hereby appoints His Honour Judge Colin G. Snider, of the City of Hamilton, in the Province of Ontario, a Member of the said Board.

Witness the hand and seal of office of the said Minister at Ottawa the First day of August, A.D. 1923.

(Seal) (Sgd.) JAMES MURDOCK,
Minister of Labour.

Exhibit "F" to Affidavit of E. M. Ashworth—Telegram, F. A. Acland to E. M. Ashworth.

"F." Telegram, F. A. Acland to E. M. Ashworth, 1st Aug., 1923.

Ottawa Ont 1 1225 P

E M Ashworth

General Mgr Toronto Hydro Electric System 226 Yonge St Toronto Ont.

Further reference to Conciliation Board established as between Toronto Electric Commissioners and electrical workers Minister has been pleased on joint recommendation from Messrs. McGuigan and O'Donoghue to appoint his Honour Judge Snider Hamilton to chairmanship.

F. A. ACLAND,
Deputy Minister Labour and Registrar.

Exhibits.

No. 5. Letter, Hon. J. Murdock to Colin G. Snider, 8th Aug., 1923.

No. 5—Letter, Hon. J. Murdock to Colin G. Snider.

Minister of Labour.

Canada.

Ottawa, August 6, 1923.

My dear Sir,

Re Toronto Electric Commission and its Employees.

Information reaching me would indicate that the employing party in this case may refuse to take any part in the proceedings before the Board and it is possible they may press this attitude so far as to decline to give evidence. The Board is of course, itself, vested with full authority as to action to be taken in various contingencies and, under the Chairmanship of one who like yourself apart from an extensive judicial experience has had the advantage of many previous inquiries of a similar character, will not probably be at a loss to deal effectively with any situation which may arise; and in any case, a Board is not subject to direction in such matters from the undersigned; you may, however, find it an advantage to have the view of the Minister responsible for the establishment of the Board and I beg therefore to state as follows.

In the first place, I would remark that the records of the Department show that although in the several hundred inquiries which have taken place before Boards of Conciliation and Investigation, the employer has on several occasions protested against the establishment of a Conciliation Board and has refrained from naming a person for appointment to the Board, yet when a Board has been duly constituted, the employer has, I think in every case, lent his efforts to the removal of the differences constituting the dispute, and in the majority of such cases, despite the unpromising nature of the surrounding circumstances, the inquiry has resulted satisfactorily either by a working agreement being effected, or at least by such a measure of improvement in the matters at issue that danger of a strike has passed away. I am confident that the efforts of your Board will go far to bring similar results in the present situation.

It is in my view essential that the Board should make as careful and full investigation as the conditions may permit. I express no opinion whatever as to the merits of the claims or arguments advanced by the one side or the other in the documents which have been submitted to the Department and of which copies have been forwarded you. It is for the Board and the Board only to pass upon such matters. The Hydro Commissioners, however, make it a ground of complaint that during the past ten years, a period as you will be aware, of violent fluctuation in wages and prices, and of world-wide unrest of an almost unprecedented character, there have been as many as five applications from the employees here concerned for Boards of Conciliation and that in three cases Conciliation Boards have been granted. On this point I would but observe that the complaint is one which should not be overlooked and the Board will no doubt do all that is possible to secure on the present occasion an adjustment which from its nature may lessen the friction and unrest from which disputes result.

You will no doubt secure without difficulty much evidence as to the existing differences, their origin, and the best means of remedying the same, and will endeavour, naturally, to hear statements from the Commission or persons qualified to speak on its behalf, and if the Commission or its officers do not respond to any request which the Board may make for their presence and assistance during the proceedings, you will no doubt proceed, under Sec. 30, to duly issue a summons for the attendance of such persons. My view is that in the event of any person to whom a summons has been issued, refusing to attend at the proceedings of the Board, or to give evidence when requested to do so, the Board should make due note of the circumstances, and should in its findings as to the matters in dispute include a statement setting forth fully and completely the action of the Commissioners and their representatives in connection with the proceedings of the Board.

Yours faithfully,
(Sgd.) JAMES MURDOCK,
Minister of Labour.

Judge Colin G. Snider,
Oakville, Ontario.

Copy c/o J. G. O'Donoghue, Esq., K.C.,
Confederation Life Bldg., Toronto.

No. 15—Notice of Meeting of Board of Conciliation.

In the matter of the Industrial Disputes Investigation Act, 1907, and of a Dispute between

The Toronto Electric Commission .. .. (Employer)

and

Certain of their employees being linemen, groundmen and others concerned in the work of power transmission and distribution and being members of the Canadian Electrical Trades Union, Toronto Branch .. .. (Employees)

Take notice that the Board of Conciliation appointed in this dispute will meet at Number Ten Adelaide Street East in the City of Toronto on Friday the twenty-fourth day of August, 1923, at Two o'clock in the afternoon to hear the parties and their statements, evidence and witnesses, at which time and place all persons desiring to be heard are requested to attend.

(Sgd.) COLIN G. SNIDER,
Chairman of Board.

August 20th, 1923.

No. 6—Order of Orde J. granting Interim Injunction, 29th August, 1923.

(Printed at page 12A of Record.)

Exhibits.

No. 16. tistics duced by ness A. lmore.

No. 16.—Statistics produced by Witness S. A. Cudmore.

DOMINION BUREAU OF STATISTICS, OTTAWA.

MANUFACTURES.—CALENDAR YEARS 1917—1920.

VALUE OF PRODUCTS.

	1917.	1918.	1919.	1920.
	$	$	$	$
Toronto	456,250,198	507,802,722	511,648,448	588,969,742
Canada	3,015,577,940	3,458,036,975	3,520,731,589	4,024,739,463
Maritime Provinces	244,304,401	234,436,837	247,000,284	283,991,659
Prairie Provinces	235,132,050	277,475,567	307,628,354	347,094,466
Prairie Provinces and British Columbia	406,557,666	493,651,084	547,423,342	606,052,791
	p.c.	p.c.	p.c.	p.c.
Percentage of Toronto total to Canada total	15·13	14·68	14·53	14·63

CAPITAL INVESTED.

	$	$	$	$
Toronto	374,872,238	379,492,078	412,449,242	453,264,134
Canada	2,786,649,727	3,034,301,915	3,230,686,368	3,443,276,053
Maritime Provinces	204,713,399	210,620,190	224,740,148	260,926,496
Prairie Provinces	197,475,107	206,865,352	214,078,920	219,465,084
Prairie Provinces and British Columbia	418,911,207	451,562,593	482,498,201	444,062,561
	p.c.	p.c.	p.c.	p.c.
Percentage of Toronto total to Canada total	13·45	12·51	12·77	13·16

SALARIES AND WAGES.

	$	$	$	$
Toronto	95,691,124	105,920,198	105,000,426	132,917,237
Canada	550,192,069	629,790,644	689,435,709	816,055,139
Maritime Provinces	38,212,766	40,588,433	44,774,761	53,511,436
Prairie Provinces	36,993,503	42,135,320	57,319,324	72,481,034
Prairie Provinces and British Columbia	75,262,869	92,557,483	118,283,596	129,997,449
	p.c.	p.c.	p.c.	p.c.
Percentage of Toronto total to Canada total	17·39	16·82	15·23	16·29

VALUE OF IMPORTS FISCAL YEAR ENDED MARCH 31, 1920—1923.

Ports and Provinces.	1920.	1921.	1922.	1923.
	$	$	$	$
Value of Imports at Port of Toronto	235,437,854	242,909,783	162,017,454	173,509,098
" " of the Dominion	1,064,516,169	1,240,158,882	747,804,332	802,579,244
" " Maritime Provinces	67,942,245	82,011,487	47,108,571	52,407,832
" " Prairie Provinces	90,792,120	110,767,686	58,720,160	59,989,764
" " Prairie Provinces and British Columbia	157,900,443	192,383,974	118,158,327	120,246,846
	p.c.	p.c.	p.c.	p.c.
Percentage of Imports at Port of Toronto to total value Imports for Canada	22·12	19·51	21·67	21·62

DOMINION OF CANADA.

Exhibit No. 16 Statistics produced Witness S. A. Cudmore *continue*

Number of Manufacturing Establishments, 1917—1920.

	1917.	1918.	1919.	1920.
	No.	No.	No.	No.
Toronto	2,388	2,835	3,200	3,383
Canada	34,392	35,797	38,344	43,200
The Maritime Provinces	4,104	3,973	4,227	4,603
The Prairie Provinces	4,082	4,118	4,535	6,301
The Prairie Provinces and British Columbia	5,854	5,904	6,599	9,051
	p.c.	p.c.	p.c.	p.c.
Percentage of Toronto total to Canada total	6·94	7·92	8·35	7·83

Number of Employees engaged in Manufacturing Establishments, 1917—1920.

	1917.	1918.	1919.	1920.
	No.	No.	No.	No.
Toronto	104,480	106,248	98,945	106,630
Canada	674,910	678,337	682,434	685,349
The Maritime Provinces	54,684	50,924	53,958	51,172
The Prairie Provinces	42,404	41,847	49,830	53,664
The Prairie Provinces and British Columbia	82,502	85,886	99,501	94,694
	p.c.	p.c.	p.c.	p.c.
Percentage of Toronto total to Canada total	15·48	15·66	14·50	15·56

Total Value of Field Crops, 1919—1922.

	1919.	1920.	1921.	1922.
	$	$	$	$
Canada	1,537,170,100	1,455,244,050	931,863,670	962,616,200
Maritime Provinces	138,858,800	112,734,250	82,084,770	67,009,200
The Prairie Provinces	680,171,400	609,494,400	370,550,500	489,575,000
Prairie Provinces and British Columbia	704,774,400	636,511,900	390,997,500	507,848,000

No. 16. istics luced by ness L. more ntinued.

PRINCIPAL STATISTICS OF CERTAIN SPECIFIED INDUSTRIES IN THE CITY OF TORONTO IN 1921.

Industries.	Establishments reptg.	Capital Invested.	Employees.	Salaries and Wages.	Cost of Materials.	Value of Products.
	No.	$	No.	$	$	$
Bread and other Bakery Products ..	103	4,561,974	1,785	2,455,435	5,770,340	9,659,278
Biscuits and Confectionery	50	11,180,780	3,614	3,523,477	7,798,813	16,560,623
Meatpacking	12	28,287,462	4,398	6,215,733	57,347,253	76,491,324
Flour and Cereal Mills	8	2,950,913	280	426,281	5,771,839	6,883,855
Coffee and Spices	7	1,415,366	145	212,289	1,373,251	1,902,915
Leather	4	2,627,179	389	540,327	1,279,575	2,661,437
Boots and Shoes, Leather	14	2,198,542	665	903,397	1,355,710	2,947,923
Rubber Goods	6	14,179,471	2,309	2,932,478	4,749,781	10,661,742
Clothing, Men's Factory	39	4,842,308	1,917	2,827,435	4,306,302	9,110,531
Clothing, Men's Custom	144	2,018,559	1,125	1,462,087	1,773,232	4,390,769
Clothing, Women's Factory	99	9,438,065	6,164	7,393,210	13,042,562	24,332,095
Hats and Caps	30	1,531,747	617	850,568	1,545,327	3,105,324
Hosiery and Knit Goods	18	4,208,916	1,814	1,244,570	2,458,294	4,754,742
Fur Goods	59	1,759,548	628	948,828	2,888,374	4,537,250
Furnishing Goods, Men's	16	780,059	568	511,871	1,293,105	2,136,146
Neckwear, Men's	11	1,577,241	583	589,346	1,202,041	2,296,297
Cigars and Cigarettes	6	619,261	229	219,835	404,531	929,490
Building and Construction Industries :—						
General Construction	207	7,308,772	5,576	6,518,106	5,559,331	15,348,934
Plumbing, Steam and Gas Fitting ..	222	1,839,431	982	1,197,684	2,353,223	4,586,674
Painting and Glazing	127	232,751	377	364,129	158,407	1,179,169
Electrical Contracts	52	322,686	227	319,971	482,715	971,679
Printing and Publishing	59	9,997,475	3,250	4,700,983	4,699,240	14,467,089
Printing and Bookbinding	148	8,040,434	2,709	3,752,411	3,899,106	10,732,098
Lithographing and Engraving	27	1,844,919	758	1,350,757	598,824	2,944,816
Stereotyping and Electrotyping	3	291,904	98	171,167	46,324	360,510
Stationery Goods	17	3,425,374	1,125	1,432,906	2,223,977	4,952,711
Paper	4	2,035,211	260	398,034	442,872	965,659
Boxes and Bags, Paper	24	5,251,078	1,323	1,271,405	1,794,967	4,058,660
Paper Patterns	4	596,880	134	120,423	151,923	1,181,878
Planing Mills	28	5,208,025	913	1,324,807	2,807,177	4,976,741
Furniture	40	2,076,302	507	687,232	633,211	1,900,153

Prepared by,

J. C. MACPHERSON,

Chief Industrial Statistics Division.

Memorandum for the Minister of Trade and Commerce.

Exhibits.

No. 16. Statistics produced b Witness S. A. Cudmore —*continued*

Re EXPORTS OF CANADIAN COMMODITIES CLASSIFIED ACCORDING TO DEGREE OF MANUFACTURE.

(Year ended March 31, 1923.)

	Total Exports from Canada.	Exports Classified as—			Percentage of Total Exports as—		
		Raw Materials.	Partly Manufactured.	Fully or Chiefly Manufactured.	Raw Materials.	Partly Manufactured.	Fully or Chiefly Manufactured.
	$	$	$	$	%	%	%
Total Exports (Canadian) ..	931,451,443	416,278,028	150,957,734	364,215,681	44·7	16·2	39·1
Exports to—							
British Empire	439,625,892	241,449,166	25,523,105	172,653,621	54·9	5·8	39·3
Exports to—							
United Kingdom	379,067,445	237,415,271	21,382,268	120,269,906	62·6	5·6	31·8
Australia	18,783,766	180,689	1,804,690	16,798,387	0·9	9·6	89·5
British West Indies ..	9,532,845	473,732	304,348	8,754,765	4·9	3·2	91·9
Newfoundland	8,523,264	2,345,634	60,127	6,117,503	27·5	0·7	71·8
New Zealand	8,286,262	130,993	400,860	7,754,409	1·6	4·8	93·6
British South Africa ..	5,583,390	161,524	260,925	5,160,941	2·9	4·7	92·4
British Guiana	2,082,684	286,010	67,044	1,729,630	13·7	3·2	83·1
British India	2,027,317	10,935	30,838	1,985,544	0·5	1·5	98·0
Hong Kong	1,943,808	39,688	874,042	1,030,078	2·0	45·1	52·9
Ceylon, Straits Settlements, and other British East Indies	836,841	635	187,157	649,049	0·1	22·4	77·5
Other British Empire ..	2,958,270	404,055	150,806	2,403,409	13·6	5·2	81·2
Exports to—							
Foreign Countries ..	491,825,551	174,828,862	125,434,629	191,562,060	35·5	25·5	39·0
Exports to—							
United States	369,080,218	120,092,090	113,466,691	135,521,437	32·5	30·8	36·7
Japan	14,510,133	4,667,099	6,092,367	3,750,667	32·2	41·9	25·9
France	14,118,577	5,307,806	1,956,447	6,854,324	37·6	13·9	48·5
Belgium	12,527,524	10,347,928	157,962	2,021,634	82·6	1·3	16·1
Italy	12,073,332	10,621,423	30,659	1,421,250	87·9	0·3	11·8
Netherlands	10,540,085	8,354,948	26,637	2,158,500	79·2	0·3	20·5
Germany	9,950,877	3,782,389	724,333	5,444,155	38·0	7·3	54·7
Greece	6,595,589	5,363,880	—	1,231,709	81·3	—	18·7
China	5,125,967	996,946	1,804,495	2,324,526	19·5	35·2	45·3
Cuba	5,069,166	1,251,429	58,569	3,759,168	24·7	1·2	74·1
Argentine Republic ..	4,445,041	11,512	617,355	3,816,174	0·3	13·9	85·8
Other Foreign Countries ..	27,789,042	4,031,412	499,114	23,258,516	14·5	1·8	83·7

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.*

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street, S.W. 1.,
For Appellants and Attorney-General of Ontario, Intervenant,

CHARLES RUSSELL & CO.,
37, Norfolk Street, W.C.2,
For Respondents and Attorney-General of Canada, Intervenant.