Privy Council Appeal No. 99 of 1924.

The Toronto Electric Commissioners - - - - *Appellants*

v.

Colin G. Snider and others - - - - - - *Respondents*

AND

The Attorney-General of Canada and The Attorney-General of Ontario *Interveners*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JANUARY, 1925.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD ATKINSON.
LORD WRENBURY.
LORD SALVESEN.

[*Delivered by* VISCOUNT HALDANE.]

It is always with reluctance that their Lordships come to a conclusion adverse to the constitutional validity of any Canadian statute that has been before the public for years as having been validly enacted, but the duty incumbent on the Judicial Committee, now as always, is simply to interpret the British North America Act and to decide whether the statute in question has been within the competence of the Dominion Parliament under the terms of section 91 of that Act. In this case the Judicial Committee have come to the conclusion that it was not. To that conclusion they find themselves compelled, alike by the structure of section 91 and by the interpretation of its terms that has now been established by a series of authorities. They have had the

advantage not only of hearing full arguments on the question, but of having before them judgments in the Courts of Ontario, from which this appeal to the Sovereign in Council came directly. Some of these judgments are against the view which they themselves take, others are in favour of it, but all of them are of a high degree of thoroughness and ability.

The particular exercise of legislative power with which their Lordships are concerned is contained in a well-known Act, passed by the Dominion Parliament in 1907, and known as The Industrial Disputes Investigation Act. As it now stands it has been amended by subsequent Acts, but nothing turns, for the purposes of the question now raised, on any of the amendments that have been introduced.

The primary object of the Act was to enable industrial disputes between any employer in Canada and any one or more of his employees, as to "matters 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)," relating to wages or remuneration, or hours of employment; sex, age or qualifications of employees, and the mode, terms and conditions of employment; the employment of children or any person, or classes of persons; claims as to whether preference of employment should be given to members of labour or other organisations; materials supplied or damage done to work; customs or usages, either general or in particular districts; and the interpretation of agreements. Either of the parties to any such dispute was empowered by the Act to apply to the Minister of Labour for the Dominion for the appointment of a Board of Conciliation and Investigation, to which Board the dispute might be referred. The Act enabled the Governor in Council to appoint a Registrar of such Boards, with the duty of dealing with all applications for reference, bringing them to the notice of the Minister, and conducting the correspondence necessary for the constitution of the Boards. The Minister was empowered to establish a Board when he thought fit, and no question was to be raised in any Court interfering with his decision. Each Board was to consist of three members, to be appointed by the Minister, one on the recommendation of the employer, one on that of the employees, and the third, who was to be Chairman, on the recommendation of the members so chosen. If any of them failed in this duty the Minister was to make the appointment. The department of the Minister of Labour was to provide the staffs required. The application for a Board was to be accompanied by a statutory declaration showing that, failing adjustment, a lock-out or strike would probably occur.

The Board so constituted was to make inquiry and to endeavour to effect a settlement. If the parties came to a settlement the Board was to embody it in a memorandum of recommendation

which, if the parties had agreed to it in writing, was to have the effect of an award on a reference to arbitration or one made under the order of a Court of record. In such a case the recommendation could be constituted a rule of Court and enforced accordingly. If no such settlement was arrived at, then the Board was to make a full report and a recommendation for settlement to the Minister. who was to make it public.

The Boards set up were given powers to summon and to enforce the attendance of witnesses, to administer oaths and to call for business books and other documents, and also to order into custody or subject to fine, in case of disobedience or contempt. The Board was also empowered to enter any premises where anything was taking place which was the subject of the reference and to inspect. This power was also enforceable by penalty. The parties were to be represented before the Board, but no counsel or solicitors were to appear excepting by consent and subject to the sanction of the Board itself. The proceedings were normally to take place in public.

By section 56 of the Act, in the event of a reference to a Board, it was made unlawful for the employer to lock-out or for the employees to strike on account of any dispute prior to or pending the reference, and any breach of this provision was made punishable by fine. By section 57, employers and employed were both bound to give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours. In the event of a dispute arising over the intended change, until the dispute had been finally dealt with by a Board and a report had been made, neither employers nor employed were to alter the conditions, or lock-out or strike, or suspend employment or work, and the relationship of employer and employee was to continue uninterrupted. If, in the opinion of the Board, either party were to use this or any other provision of the Act for the purpose of unjustly maintaining a given condition of affairs through delay, and the Board were so to report to the Minister, such party was to be guilty of an offence and liable to penalties.

By section 63 (*a*), where a strike or lock-out had occurred or was threatened, the Minister was empowered, although neither of the parties to the dispute had applied for one, to set up a Board. He might also, under the next section, without any application, institute an inquiry.

Whatever else may be the effect of this enactment, it is clear that it is one which could have been passed, so far as any Province was concerned, by the provincial legislature under the powers conferred by section 92 of the British North America Act. For its provisions were concerned directly with the civil rights of both employers and employed in the Province. It set up a Board of Inquiry which could summon them before it, administer to them oaths, call for their papers and enter their premises.

It did no more than what a provincial legislature could have done under head 15 of section 92, when it imposed punishment by way of penalty in order to enforce the new restrictions on civil rights. It interfered further with civil rights when, by section 56, it suspended liberty to lock-out or strike during a reference to a Board. It does not appear that there is anything in the Dominon Act which could not have been enacted by the Legislature of Ontario, excepting one provision. The field for the operation of the Act was made the whole of Canada.

In 1914 the Legislature of the Province of Ontario passed a Trade Disputes Act which substantially covered the whole of these matters, so far as Ontario was concerned, excepting in certain minor particulars. One of these was the interference in the Dominion Act with the right to lock-out or strike during an inquiry. This was not reproduced in the Ontario Act. Another difference was the necessary one that the operation of the Ontario Act was confined to that Province, instead of extending to other parts of Canada. It was, of course, open to the legislatures of the other Provinces to enact similar provisions, and some of them appear to have done so.

Subject to variations such as these there is, in the Ontario Act, little alteration in substance of the provisions of the Dominion statute. The Lieutenant-Governor of the Province, instead of the Minister of Labour, appoints the Registrar. There are to be set up two different kinds of statutory Council, one of Conciliation, the four members of which are to be nominated by the parties, the other a Council of Arbitration, consisting of three members, two of whom are to be appointed by the Lieutenant-Governor of the Province on the recommendation of the parties, and the third, the Chairman, to be nominated by the Lieutenant-Governor on failure of the parties to agree and name. The Mayor of any city or town in the Province, on being notified that a strike or lock-out is impending, may inform the Registrar of the fact, and a Council of Arbitration may then be empowered to inquire and to mediate. Unless there is an agreement by one or both of the parties, in which case the award of the Council may be enforced as on an arbitration, there is no power given to suspend the right to strike or lock-out.

It is clear that this enactment was one which was competent to the Legislature of a Province under section 92. In the present case the substance of it was possibly competent, not merely under the head of property and civil rights in the Province, but also under that of municipal institutions in the Province. For the appellants are incorporated, by the Province, a Public Utility Commission within the definition in chapter 204 of the Revised Statutes of Ontario, 1914, relating to the constitution and operation of works for supplying public utilities by municipal corporations and companies, and are employers within the meaning of the Ontario Trade Disputes Act already referred to.

Their function is to manage the Municipal Electric Light, Heat, and Power Works of the City of Toronto.

The primary respondents in this appeal are the Members of a Board of Conciliation appointed by the Dominion Minister of Labour under the Act first referred to. There was a dispute in 1923 between the appellants and a number of the men whom they employed, which dispute was referred to the first respondents, who proceeded to exercise the powers given by the Dominion Act. The appellants then commenced an action in the Supreme Court of Ontario for an injunction to restrain these proceedings, on the allegation that the Dominion Act was *ultra vires*. The Attorneys-General of Canada and of Ontario were notified and made parties as intervenants.

There was a motion for an interim injunction, which was heard by Orde J., who, after argument, granted an injunction till the trial. The action was tried by Mowat J., who intimated his dissent from the view of the British North America Act, taken by Orde J. who was co-ordinate in authority with him, according to which view the Dominion Act was *ultra vires*. He, therefore, as he had power by the Provincial Judicature Act to do, directed the action to be heard by a Divisional Court, and it was ultimately heard by the Appellate Division of the Supreme Court of Ontario (Mulock C.J., Magee, Hodgins, Ferguson and Smith JJ.A.). The result was that by the majority (Hodgins J.A. dissenting) the action of the appellants was dismissed.

The broad grounds of the judgment of the majority, which will be referred to later on, was that the Dominion Act was not a law relating to matters as to which section 92 conferred exclusive jurisdiction, but was a law within the competence of the Dominion Parliament, inasmuch as it was directed to the regulation of trade and commerce throughout Canada, and to the protection of the national peace, order and good government, by reason of (*a*) confining, within limits, a dispute which might spread over all the Provinces ; (*b*) informing the general public in Canada of the nature of the dispute ; and (*c*) bringing public opinion to bear on it. The power of the Dominion Parliament to legislate in relation to criminal law, under head 27 of section 91, was also considered to apply.

Before referring to these grounds of judgment their Lordships, without repeating at length what has been laid down by them in earlier cases, desire to refer briefly to the construction which, in their opinion, has been authoritatively put on sections 91 and 92 by the more recent decisions of the Judicial Committee. The Dominion Parliament has, under the initial words of section 91, a general power to make laws for Canada. But these laws are not to relate to the classes of subjects assigned to the Provinces by section 92, unless their enactment falls under heads specifically assigned to the Dominion Parliament by the enumeration in section 91. When there is a question as to which legislative authority

has the power to pass an Act, the first question must therefore be whether the subject falls within section 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in section 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads, then the Dominion may have power to legislate under the general words at the beginning of section 91.

Applying this principle, does the subject of the legislation in controversy fall fully within section 92 ? For the reasons already given their Lordships think that it clearly does. If so, is the exclusive power *prima facie* conferred on the Province trenched on by any of the over-riding powers set out specifically in section 91 ? It was, among other things, contended in the argument that the Dominion Act now challenged was authorised under head 27, " the Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters." It was further suggested in the argument that the power so conferred is aided by the power conferred on the Parliament of Canada to establish additional Courts for the better administration of the laws of Canada.

But their Lordships are unable to accede to these contentions. They think that they cannot now be maintained successfully, in view of a series of decisions in which this Board has laid down the interpretation of section 91 (27) in the British North America Act on the point. In the most recent of these cases, that of the *Reciprocal Insurers* ([1924] A.C. 328, at p. 342), Mr. Justice Duff stated definitely the true interpretation, in delivering the judgment of the Judicial Committee. Summing up the effect of the series of previous decisions relating to the point, he said :

> " In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under section 91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid."

In the earlier *Board of Commerce* case ([1922] A.C. 191) the principle to be applied was laid down in the same way. It was pointed out that the Dominion had exclusive legislative power to create new crimes " where the subject matter is one which, by its very nature, belongs to the domain of criminal jurisprudence." But " it is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the provincial legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law, which require a title to so interfere as the basis of their application."

Their Lordships are of opinion that, on authority as well as on principle, they are to-day precluded from accepting the argu-

ments that the Dominion Act in controversy can be justified as being an exercise of the Dominion power under section 91 in relation to criminal law. What the Industrial Disputes Investigation Act, which the Dominion Parliament passed in 1907, aimed at accomplishing was to enable the Dominion Government to appoint anywhere in Canada a Board of Conciliation and Investigation to which the dispute between an employer and his employees might be referred. The Board was to have power to enforce the attendance of witnesses and to compel the production of documents. It could under the Act enter premises, interrogate the persons there, and inspect the work. It rendered it unlawful for an employer to lock-out or for a workman to strike, on account of the dispute, prior to or during the reference, and imposed an obligation on employees and employers to give thirty days' notice of any intended change affecting wages or hours. Until the reference was concluded neither were to alter the conditions with respect to these. It is obvious that these provisions dealt with civil rights, and it was not within the power of the Dominion Parliament to make this otherwise by imposing merely ancillary penalties. The penalties for breach of the restrictions did not render the statute the less an interference with civil rights in its pith and substance. The Act is not one which aims at making striking generally a new crime. Moreover, the employer retains under the general common law a right to lock-out, only slightly interfered with by the penalty. In this connection their Lordships are therefore of opinion that the validity of the Act cannot be sustained.

The point was also put in a somewhat different form. It was said that the criminal law of Canada was in its foundation the criminal law of England as at 17th September, 1792; that, according to the criminal law of England as at that date, a strike was indictable as a conspiracy; that, consequently, strikes were within the ambit of the criminal law; and that, as a law either declaring strikes illegal as at common law, or making them illegal would be a proper enactment of the criminal law, so, though this is rather a *non sequitur*, it was only a branch of that law to enact provisions which should have the effect of preventing strikes coming into existence.

It is not necessary to investigate or determine whether a strike is *per se* a crime according to the law of England in 1792. A great deal has been said on the subject and contrary opinions expressed. Let it be assumed that it was. It certainly was so only on the ground of conspiracy. But there is no conspiracy involved in a lock-out: and the statute under discussion deals with lock-outs *pari ratione* as with strikes. It would be impossible, even if it were desirable, to separate the provisions as to strikes from those as to lock-outs so as to make the one fall under the criminal law while the other remained outside it; and, therefore, in their Lordships' opinion this argument also fails.

Nor does the invocation of the specific power in section 91 to regulate trade and commerce assist the Dominion contention. In *Citizens Insurance Company* v. *Parsons* (7 A.C., at p. 112) it was laid down that the collocation of this head (No. 2 of section 91), with classes of subjects enumerated of national and general concern, indicates that what was in the mind of the Imperial Legislature when this power was conferred in 1867 was regulation relating to *general* trade and commerce. Any other construction would, it was pointed out, have rendered unnecessary the specific mention of certain other heads dealing with banking, bills of exchange and promissory notes, as to which it had been significantly deemed necessary to insert a specific mention. The contracts of a particular trade or business could not, therefore, be dealt with by Dominion legislation so as to conflict with the powers assigned to the Provinces over property and civil rights relating to the regulation of trade and commerce. The Dominion power has a really definite effect when applied in aid of what the Dominion Government are specifically enabled to do independently of the general regulation of trade and commerce, for instance, in the creation of Dominion companies with power to trade throughout the whole of Canada. This was shown in the decision in *John Deere Plow Company* v. *Wharton* ([1915] A.C., at p. 340). The same thing is true of the exercise of an emergency power required as on the occasion of war, in the interest of Canada as a whole, a power which may operate outside the specific enumerations in both sections 91 and 92. And it was observed in the *Alberta* case, in reference to attempted Dominion legislation about insurance, that it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation, for instance, by a licensing system, of a particular trade in which Canadians would otherwise be free to engage in the Provinces (*see* [1916] 1 A.C., at p. 596). It is, in their Lordships' opinion, now clear that, excepting so far as the power can be invoked in aid of capacity conferred independently under other words in section 91, the power to regulate trade and commerce cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the Provinces.

A more difficult question arises with reference to the initial words of section 91, which enable the Parliament of Canada to make laws for the peace, order and good government of Canada in matters falling outside the provincial powers specifically conferred by section 92. For *Russell* v. *The Queen* (7 A.C., 829) was a decision in which the Judicial Committee said that it was within the competency of the Dominion Parliament to establish a uniform system for prohibiting the liquor traffic throughout Canada excepting under restrictive conditions. It has been observed subsequently by this Committee that it is now clear that it was on the ground that the subject matter lay outside provincial powers, and not on the ground that it was authorised as legislation for the regulation of trade and commerce, that the Canada Temperance

Act was sustained (*see* the *Alberta* case, [1916] 1 A.C., at p. 595). But even on this footing it is not easy to reconcile the decision in *Russell* v. *The Queen* with the subsequent decision in *Hodge* v. *The Queen* (9 A.C., 117) that the Ontario Liquor Licence Act, with the powers of regulation which it entrusted to local authorities in the Province, was *intra vires* of the Ontario Legislature. Still more difficult is it to reconcile *Russell* v. *The Queen* with the decision given later by the Judicial Committee that the Dominion licensing statute, known as the McCarthy Act, which sought to establish a local licensing system for the liquor traffic throughout the Dominion, was *ultra vires* of the Dominion Parliament. As to this last decision it is not without significance that the strong Board which delivered it abstained from giving any reasons for their conclusion. They did not in terms dissent from the reasons given in *Russell* v. *The Queen*. They may have thought that the case was binding on them as deciding that the particular Canada Temperance Act of 1886 had been conclusively held valid, on the ground of fact that at the period of the passing of the Act the circumstances of the time required it in an emergency affecting Canada as a whole. The McCarthy Act, already referred to, which was decided to have been *ultra vires* of the Dominion Parliament, was dealt with in the end of 1885. Ten years subsequently another powerful Board decided the case of *Attorney-General for Ontario* v. *Attorney-General for the Dominion* and the Distillers' and Brewers' Association ([1896] A.C., 348). Lord Herschell and Lord Davey, who had been the leading counsel in the McCarthy case, sat on that Board, along with Lord Halsbury, who had presided at it. In delivering the judgment, Lord Watson used in the latter case significant language :—

> " The judgment of this Board in *Russell* v. *Reginam*, has relieved their Lordships from the difficult duty of considering whether the Canada Temperance Act of 1886 relates to the peace, order and good government of Canada in such a sense as to bring its provisions within the competency of the Canadian Parliament."

That decision, he said, must be accepted as an authority to the extent to which it goes, namely, that

> " the restrictive provisions of the Act of 1886, when they have been duly brought into operation in any provincial area within the Dominion, must receive effect as valid enactments relating to the peace, order and good government of Canada."

The Board held that, on that occasion, they could, not inconsistently with *Russell* v. *The Queen*, declare a statute of the Ontario Legislature establishing provincial liquor prohibitions, to be within the competence of a provincial legislature, provided that the locality had not already adopted the provisions of the Dominion Act of 1886.

It appears to their Lordships that it is not now open to them to treat *Russell* v. *The Queen* as having established the general principle that the mere fact that Dominion legislation is for

the general advantage of Canada or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in section 91. Unless this is so, if the subject-matter falls within any of the enumerated heads in section 92, such legislation belongs exclusively to provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive provincial competency. Such cases may be dealt with under the words at the commencement of section 91, conferring general powers in relation to peace, order and good government, simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in the *Fort Frances Pulp* case ([1923] A.C. 695), are highly exceptional. Their Lordships think that the decision in *Russell* v. *The Queen* can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked of the general words at the beginning of section 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell* v. *The Queen*, that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analogous. It is plain from the decision in the *Board of Commerce* case that the evil of profiteering could not have been so invoked, for provincial powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell* v. *The Queen* as more than a decision of this order upon facts, considered to have been established at its date rather than upon general law.

The judgments in the Courts below express differing views. Orde J. granted an interim injunction, restraining the first respondents from interfering with the business of the appellants and from entering on their premises, or examining their works or employees, and from exercising their compulsory powers as a Board of Conciliation and Investigation under the Dominion Act, and from interfering with the property and civil or municipal rights of the appellants. He held that the Dominion legislation interfered with provincial rights under section 92 in a fashion which could not be supported under any of the enumerated heads in section 91, and therefore could not be sustained by invoking the general words with which that section commences. The decision in the *Fort Frances Pulp* case (*ubi supra*) afforded no analogy on which such a contention as this last could be based.

Mowat J., dissenting from this reasoning, referred the trial of the action to a Divisional Court. He thought that the legislation in question was a matter of national importance, dealing with a subject which affected the body politic of the Dominion, as in *Russell* v. *The Queen* (*ubi supra*).

In the Appellate Division, Mulock, C.J., Smith, J.A., and Magee, J.A., concurred in the judgment delivered by Ferguson, J.A. That learned Judge held that the Act in question was not, "in its pith and substance," an Act relating to merely provincial matters falling within section 92, but related to industrial disputes which might develop into disputes affecting, not only the immediate parties, but the national welfare, peace, order and safety. He cited the analogy of the Australian Constitution Act, which, by section 51, placed such disputes within the competence of the Australian Parliament when they extended beyond the limits of any single state. He was of opinion that, even if the Dominion legislation actually interfered with provincial powers, it might be supported if necessary as dealing with the interests of the peace, order and good government of Canada, but he thought that it was not necessary to go further in point of principle than to treat *Russell* v. *The Queen* (*ubi supra*) as showing that, where an abnormal condition in a great emergency demanded it, the Parliament of Canada might legislate for such a case without even trenching on the powers allocated to the Provinces under section 92. He also thought that the Act was not one to control or regulate contractual or civil rights, but that its object was to authorise 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, were of its pith and substance and paramount purpose. The Act could also be supported as Dominion legislation under the overriding enumerated heads of section 91, as being legislation in relation to the regulation of trade and commerce, and also to the criminal law.

Hodgins J.A. dissented. In his view, industrial strife was nothing more than the result of an undesirable use of the civil right to cease work in the operation of various businesses. The argument in support of the Act was practically an endeavour to invent a new field, which was only a department or development of one of those exclusively possessed by provincial legislatures. Nor was the matter made better by the contention that the Act, when examined in the light of the evidence adduced, dealt with a subject which transcended provincial limits and was of Dominion importance. It was, no doubt, true that owing to the highly organised methods of modern labour, strikes might spread and extend to other businesses. This might happen, and the state of things might conceivably reach a height in which it became comparable to war, famine or rebellion, and justify Dominion action. But on the only facts proved, in the learned Judge's view, this Act could not be supported as dealing with a case of (1) emergency,

or (2) general Canadian interest and importance, or (3) with a power conferred under any of the enumerated heads in section 91. No great national emergency was shown to have existed when the statute was enacted in 1907, or to have occurred since, and the statute was not framed so as to come into operation only when such emergency arose. The statute was further not framed so as to confer the drastic powers that would be necessary in such a case, but was based on the normal working of industrial relations which often required time and patience and some restraint, if dislocation was to be avoided. It was essentially a relative measure. The special and exceptional conditions of emergency required by the judgments in the *Board of Commerce* and *Fort Frances Pulp* cases (*ubi supra*) did not appear to him to have existed in point of fact. So far as anticipations of changes in the future were concerned, Hodgins J.A. thought that the question was whether regulation of civil rights or invasion of property rights in the fashion provided by the Act, in order to bring about a uniform and desirable method of dealing with industrial disputes, admirable as its purpose might be, could be valid in view of the exercise of the powers given to the Provinces. That the Provinces had such powers, as complete as those in this Act given to the Dominion, he entertained no doubt. Several Provinces had on their statute books legislation of much the same kind. Even granting the national importance of the question, the whole success of this method of dealing with it depended on the capacity to seize on local disputes and their conditions, and to manage the exercise of civil rights in relation to them. The circumstance that the dispute might spread to other Provinces was not enough in itself to justify Dominion interference, if such interference affected property and civil rights. The Province in the present case was simply the scene of municipal action. As the result of his consideration of the principles laid down for the interpretation of the British North America Act, the learned Judge was of opinion that the Act could not stand.

Their Lordships have examined the evidence produced at the trial. They concur in the view taken of it by Hodgins J.A. They are of opinion that it does not prove any emergency putting the national life of Canada in unanticipated peril such as the Board which decided *Russell* v. *The Queen* may be considered to have had before their minds.

As the result of consideration, their Lordships have come to the conclusion that they ought humbly to advise the Sovereign that the appeal should be allowed, and that judgment should be entered for the appellants for the declaration and injunction claimed. There should be no costs, either of this appeal or in the Courts below, and any costs paid under the judgment of the Appellate Division of the Supreme Court ought to be repaid.

In the Privy Council.

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