In the Priby Council.

No. 100 of 1936.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada 1935.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA ... ... *Appellant,*

AND

THE ATTORNEYS-GENERAL OF THE PROVINCES OF ONTARIO, QUEBEC, NEW BRUNSWICK, MANITOBA, BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN ... ... *Respondents.*

CASE FOR THE ATTORNEY-GENERAL OF THE PROVINCE OF NEW BRUNSWICK.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada, dated 17th of June, 1936, answering questions referred to the Court for hearing and consideration by order of His Excellency the Governor-General in Council, dated the 5th November, 1935, pursuant to the provisions of Section 55 of the Supreme Court Act, concerning the constitutional validity of the Weekly Rest in Industrial Undertakings Act, The Minimum Wages Act and The Limitation of Hours of Work Act, being respectively Chapters 14, 44 and 63 of the Statutes of Canada, 1935.

Record.
p. 91.
p. 1.

Vacher.—38833.

Record.
p. 2, l. 18.

2. The questions so referred were :—

" 1. Is The Weekly Rest in Industrial Undertakings Act, or any " of the provisions thereof and in what particular or particulars or to " what extent, *ultra vires* of the Parliament of Canada ?

" 2. Is The Minimum Wages Act, or any of the provisions thereof " and in what particular or particulars or to what extent, *ultra vires* " of the Parliament of Canada ?

" 3. Is The Limitation of Hours of Work Act, or any of the pro- " visions thereof and in what particular or particulars or to what " extent, *ultra vires* of the Parliament of Canada ? "

p. 92, l. 31.

3. The Court was unanimously of opinion that Section 6 of The Minimum Wages Act was *ultra vires* the Parliament of Canada. The Right Honourable
p. 93, l. 3. the Chief Justice of Canada (Sir Lyman P. Duff), in whose judgment the Honourable Justices Davis and Kerwin concurred, were of opinion that otherwise the three Acts were *intra vires* of the Parliament of Canada. The Honourable Justices Rinfret, Cannon and Crocket were of opinion that the three Acts were wholly *ultra vires* of the Parliament of Canada.

p. 71, l. 17-
p. 73, l. 29;
p. 75, l. 26.

4. The British North America Act, 1867, provides in Sections 91, 92 and 132 (which are printed in full in the factum of the Attorney-General of Quebec) as follows :—

" 91. It shall be lawful for the Queen, by and with the Advice " and Consent of the Senate and House of Commons, 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 ; and for " greater Certainty, but not so as to restrict the Generality of the fore- " going Terms of this Section, it is hereby declared that (notwith- " standing anything in this Act) the exclusive Legislative Authority of " the Parliament of Canada extends to all Matters coming within the " Classes of Subjects next hereinafter enumerated ; that is to say :—

* * * * * * *

" (2) The Regulation of Trade and Commerce.

* * * * * * *

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

* * * * * * *

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

" 92. In each Province the Legislature may exclusively make " Laws in relation to Matters coming within the Classes of Subjects " next hereinafter enumerated ; that is to say :— Record.

* * * * * * *

" (13) Property and Civil Rights in the Province.

* * * * * * *

" (16) Generally all Matters of a merely local or private " Nature in the Province.

* * * * * * *

" 132. The Parliament and Government of Canada shall have all " Powers necessary or proper for performing the Obligations of Canada " or of any Province thereof, as Part of the British Empire, towards " Foreign Countries arising under Treaties between the Empire and " such Foreign Countries."

5. Each of the three Acts mentioned in the questions referred recited in a preamble that the Dominion of Canada was a signatory, as part of the British Empire, to the Treaty of Versailles ; that the treaty was confirmed by Statute ; that by Article 23 of the Treaty the signatories agreed to endeavour to secure and maintain fair and humane conditions of labour in their own countries and all countries to which their commercial and industrial relations extend ; that by Article 427 of the Treaty the well-being of industrial wage-earners was declared to be of supreme importance ; that a draft convention (specifying the convention relevant to the particular Act), subsequently ratified by Canada had been adopted by the general conference of the International Labour Organisation of the League of Nations ; and that legislation was advisable to enable Canada to discharge the obligations so assumed, to provide (according to the recitals of the Weekly Rest in Industrial Undertakings Act) for the application of the weekly rest in accordance with the general provisions of the convention, or (according to the recitals of the Minimum Wages Act) for minimum wages in accordance with the provisions of the convention, or (according to the recitals of the Limitation of Hours of Work Act) for the limitation of hours of work in industrial undertakings in accordance with the general provisions of the convention, and to assist in the maintenance on equitable terms of interprovincial and international trade.

6. The relevant provisions of the Treaty of Versailles are printed in the factum of the Attorney-General of Quebec. The procedure for giving effect to the general principles laid down in Articles 23 and 427, mentioned in the preambles to the Acts, is largely contained in Article 405 which provides for draft international conventions for the ratification of members. The obligation placed on members is to bring a draft convention which has been adopted by a general conference of the International Labour Organisation before the authority or authorities within whose competence the p. 75, l. 33-p. 79, l. 29. p. 76, l. 1 ; p. 78, l. 30. p. 77, l. 13. p. 77, ll. 34-41.

Record. matter lies, for the enactment of legislation or other action. This obligation is to be discharged within the period of one year at most from the closing of the session of the Conference adopting the draft convention, or if exceptionable circumstances make that impossible, at the earliest possible moment and in no case later than eighteen months from the closing of the session. Article 405 further provides that if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies no further obligation shall rest upon the member. In the case of a federal state the power of which to enter into conventions on labour matters is subject to limitations, the government may treat a draft convention as a recommendation only.

p. 77, l. 34.
p. 78, l. 9.
p. 78, l. 12.

7. The Treaty of Versailles was confirmed by the Treaties of Peace Act, 1919, which is printed in the Record. The Act empowered the Governor-in-Council to make such appointments, establish such offices, make such orders-in-council and do such things as appear to him necessary for carrying out the Treaty and giving effect to its provisions.

p. 144.

8. Each of the draft conventions mentioned in the recitals of the Acts provided that the convention should be binding only on members ratifying it and registering their ratifications with the Secretariat of the League of Nations; and that the convention should not come into force until the ratification of two members had been registered by the Secretary-General of the League of Nations in the case of the convention for a weekly rest; until twelve months after the registration of two ratifications in the case of the convention for minimum wage fixing machinery, and until issue by the Secretary-General of notice that two members had ratified the convention in the case of the convention limiting hours of work. Each convention was expressed to come into force for any member ratifying at a later date on the date when such member's ratification was registered with the Secretariat.

p. 148, l. 17; p. 155, l. 29; p. 168, l. 9.
p. 148, l. 14.
p. 155, l. 31. p. 168, ll. 2-7.
p. 148, l. 19; p. 155, l. 34; p. 167, l. 10.

9. The Government of Canada duly called the attention of the provincial Governments to the draft conventions, but took no other action to give effect to any of the conventions until shortly before the legislation now in question was introduced into Parliament. The conferences drafting the conventions closed respectively on the 19th November, 1921, the 16th June, 1928, and the 29th November, 1919, and under Article 405 any action necessary had to be taken at the very latest within eighteen months of these respective dates. This Respondent respectfully submits that the only obligation of Canada was fully performed in calling the conventions to the attention of the provincial Governments.

p. 80, l. 41.
p. 149, l. 24; p. 156, l. 23. p. 161, l. 33.

10. This submission is supported by the opinion of the Supreme Court of Canada on a reference *In the matter of Legislative Jurisdiction over Hours of Labour* reported in (1925) Supreme Court Reports, page 505. The Court were of opinion that the obligation under Article 405 was " simply in the " nature of an undertaking to bring the recommendation or draft conven- " tion before the authority or authorities within whose competence the

p. 79, l. 42- p. 80, l. 20.
p. 80, l. 24.

" matter lies, for the enactment of legislation or other action." The Court also held that such matters as hours of labour are generally within the competence of the legislatures of the Provinces, but within the exclusive authority of the Parliament of Canada in those parts of Canada not within any Province, and in respect of servants of the Dominion Government. Record. p. 80, ll. 29-40.

11. Two of the draft conventions also contained time limits. Each member ratifying the conventions agreed to bring the chief provisions of the convention for a weekly rest into operation not later than the 1st January, 1924, and the convention limiting hours of work into operation not later than the 1st July, 1921, although later dates were permitted in the cases of Greece and Roumania, and certain provisions were not necessarily to be brought into operation in Japan until 1922, 1923 or 1925. p. 148, l. 29. p. 168, l. 14. p. 166, ll. 8-25; p. 167, l. 17. p. 165, ll. 29-34.

12. By reason of the necessary ratifications being registered by India and Finland, by Germany and the United Kingdom, and by Greece and Roumania, and the necessary notifications having been given, and the necessary time having elapsed the three draft conventions came into force respectively on the 19th June, 1923, the 14th June, 1930, and the 13th June, 1921. Canada purported to ratify the conventions by instruments dated respectively the 1st March, 1935 (deposited with the Secretariat of the League of Nations on the 21st March), the 12th April, 1935 (deposited on the 25th April), and the 1st March, 1935 (deposited the 21st March). p. 149, p. 150, p. 157, p. 158, p. 169. p. 151, l. 18. p. 159, l. 28 p. 170, l. 30. p. 152, p. 153. p. 160. p. 161, p. 171, p. 172.

13. The draft convention for a weekly rest gave a wide definition of the term " industrial undertakings." The definition was subject to special national exceptions and to the right of each member to define the line of division which separates industry from commerce and agriculture. The convention also empowered members to authorise total or partial exceptions from the provision for a weekly rest. The Weekly Rest in Industrial Undertakings Act adopted the definition in the convention of " industrial undertaking." The provision for the weekly rest was stated not to apply in the case of persons holding positions of supervision or management nor to persons employed in a confidential capacity. Total or partial exceptions were not otherwise made by the Act but power was given to the Governor-in-Council to authorise such exceptions by regulations. pp. 146-149. p. 146, ll. 21-38. p. 146, l. 39; p. 147, l. 1. p. 147, ll. 14-29.

14. The convention for the creating of machinery for fixing minimum wages provided that ratifying members should create or maintain machinery to fix minimum rates of wages in certain trades or parts of trades in which (A) no arrangements exist for the effective regulation of wages by collective agreement or otherwise and (B) wages are exceptionally low. Each member, however, was left free to decide in which trades or parts of trades the machinery should be applied, and to decide the nature and form of the machinery and its methods of operation provided that employers and workers must be consulted before the machinery was applied and must be associated in equal numbers and on equal terms in the operation of the machinery. The Minimum Wages Act although defining the trades or parts of trades to which the Act was to apply in terms of the convention, by Section 5 Subsection 1 empowered the Governor-in-Council by regula- pp. 153-156. p. 154, l. 12. p. 154, l. 21. p. 154, l. 27.

Record. tion to declare what trades or parts of trades came within the definition, and by Section 6 empowered the Governor-in-Council by regulation to fix minimum wages or to fix fair and suitable rates of wages in circumstances not necessarily within the convention. Section 6 also empowered the Governor-in-Council to provide or indicate all necessary machinery for enforcing observance and punishing non-observance of regulations made under the section.

pp. 161-168. p. 162, ll. 10-32. p. 161, l. 31. p. 162, l. 42. p. 163, l. 7. p. 163, l. 27. p. 163, l. 35. p. 164, l. 5.

15. The draft convention for limiting hours of work defined " industrial undertaking," the competent authority in each country being left to define the line of division which separates industry from commerce and agriculture. The Limitation of Hours of Work Act follows the general framework of the draft convention. Where the convention provides that by sanction of the competent public authority or by agreement between employers' and workers' organisations or representatives, the limit of eight hours a day may in certain circumstances be exceeded, the Act, however, by Section 5 specifies the Governor-in-Council as the competent public authority ; where the convention provides, that in exceptional cases where the general limitation cannot be applied, agreements between workers' and employers' organisations concerning the daily limit of work may be given the force of regulations if the government to which these agreements are submitted so decides ; the Act by Section 9 empowers the Governor-in-Council, irrespective of the government, if any, to which agreements are submitted, to give effect to such agreements ; and where the convention provides for permanent and temporary exceptions by regulations made, after consultation with organisations of the employers and workers concerned, by public authority the Act in Section 10 specifies the Governor-in-Council as the public authority. The Act, unlike the convention, requires the regulations governing these latter exceptions to provide " so that fair and humane conditions " of labour with relation to hours of work, shall prevail in such excepted " employment." In such cases the Act also differed from the convention in providing that the regulations, required by the convention to fix the maximum of additional hours in each instance with overtime pay of at least one and one-quarter times the regular rate, should do so whenever it is practicable.

16. In the circumstances above set out this Respondent respectfully makes the following submissions :—

(i) That the general provisions of the Treaty of Versailles did not impose on Canada or on any Province thereof any obligation for the performance of which legislation by the Parliament of Canada was necessary or proper.

(ii) That any obligation of Canada under the Treaty in respect of the above-mentioned draft conventions was fully performed by the Government of Canada calling the attention of the Provincial Governments to the conventions.

(iii) That none of the conventions, either before or after ratification, was a treaty within the meaning of and as specified in Section 132 of the British North America Act.

(iv) That each of the conventions by its express terms bound only the countries which ratified it, and ratification could not effectively take place except within the time limits imposed by the treaty or at such a date that the convention had, at the date of ratification, become incapable of being performed according to its terms. Record.

(v) That in any event in so far as a convention was permissive, the exercise of the permissive power by the Parliament of Canada cannot be justified by Section 132 of the British North America Act.

(vi) That, subject to the effect of Section 132, the whole subject-matter of each of the Acts the validity of which is in question in this appeal, is not within the classes of subjects by the British North America Act specifically assigned to the Parliament of Canada but is clearly within those assigned exclusively to the legislatures of the Provinces.

17. The Supreme Court heard argument on the questions referred to it on the 23rd, 24th, 27th, 29th, 30th and 31st January, 1936, and delivered judgment on the 17th June, 1936. p. 92, l. 7. pp. 91-92.

18. In his reasons for judgment the Right Honourable the Chief Justice of Canada dealt first with the Minimum Wages Act. After referring to the relevant convention and its ratification, and the recital of the Act, he propounded the question as being whether the Act was constitutionally effective, without the assent of the Provinces, to alter their laws to conform with the convention, the subject-matter being, *ex hypothesi*, normally within the exclusive competence of the provincial legislatures. The Chief Justice then dealt with the development of Dominion status within the British Empire as it affects Canada, and examined the argument that the treaty-making prerogative has never been delegated to the Governor-General or any Canadian authority. This argument is, in his opinion, negatived by constitutional usage having the force of law, and recognised by the Judicial Committee of the Privy Council in the *Radio Reference* reported in [1932] Appeal Cases, page 304. In the present case ratification was professedly effected pursuant to an obligation under the Treaty of Versailles, in respect of which the Dominion Parliament was *prima facie* invested with authority by Section 132 of the British North America Act. The Treaties of Peace Act enacted pursuant to Section 132, made the Governor-in-Council the proper authority for authorising ratification of conventions under Article 405 of the treaty ; and Section 132 itself invests the Government as well as the Parliament of Canada with powers. The Chief Justice therefore thought the authority of the Governor-in-Council to authorise ratification, *prima facie* to be indisputable. Such matters as the regulation of wages, hours of labour and days of rest are not, in his opinion, excluded from the scope of the treaty-making power and the Treaty of Versailles shows them to be proper subjects for international agreements. The contention that matters ordinarily falling within Section 92 are excluded from Dominion authority under Section 132 would, the Chief Justice held, run counter to practice and authority, particularly the *Aeronautics Reference* reported in [1932] Appeal Cases, page 54, and the pp. 93-115. p. 93, ll. 4-40. p. 93, l. 41 ; p. 94, l. 3. p. 94, l. 24 ; p. 96, l. 20. p. 96, l. 21. p. 96, l. 38 ; p. 18. p. 97, l. 19. p. 98, l. 2. p. 98, ll. 3-22. p. 98, l. 22- p. 99, l. 19. p. 99, l. 23- p. 100, l. 27. p. 100, l. 28- p. 102, l. 4. p. 102, l. 5- p. 104, l. 16.

Record.

p. 104, l. 17-p. 105, l. 17.

p. 105, ll. 18-30.

Radio Reference. These cases in his view exclude from Section 92 not only strict treaty obligations but also obligations under conventions between Governments not falling within Section 132, which therefore are within the exclusive jurisdiction of the Dominion Parliament, notwithstanding previous opinion to the contrary. The Statutes under discussion do not deal with any matter excluded from Dominion jurisdiction as a fundamental term of the arrangement upon which the British North America Act was formed.

p. 105, l. 31-p. 106, l. 33.

p. 106, l. 34-p. 109, l. 13.

p. 109, l. 14-p. 110, l. 15.

p. 110, ll. 16-28.

p. 110, ll. 29-33.

p. 110, l. 34-p. 115, l. 9.

19. The Chief Justice then considered Article 405 of the Treaty of Versailles, first holding that the conduct of external affairs was in the control of the Dominion executive and Parliament. The procedure of ratification by Canada was usual and proper, notwithstanding paragraphs 5 and 7 of Article 405, because the Dominion Government and Parliament are the authorities designated by these paragraphs, and the provincial legislatures are not. The Chief Justice, however, upheld the validity of the legislation on a ground which made it unnecessary to decide whether the assent of the provincial legislatures had to be obtained, namely the responsibility which the Treaties of Peace Act, 1919, put upon the Governor-in-Council of passing the orders and doing the acts necessary to give effect to the Treaty of Versailles. The *Hours of Labour Reference* reported in [1925] Supreme Court Reports, page 505, was not systematically examined by the Chief Justice as the *Aeronautics* and *Radio References* in his opinion required the Court to consider afresh the question of the competence of provincial legislatures. The Chief Justice, therefore, held the Minimum Wages Act to be valid; and the other two Acts were also valid for the same reasons. The Chief Justice then summarised his opinion and held that each question should be answered in the negative.

p. 93, l. 3.

p. 92, ll. 28-33.

20. Neither Mr. Justice Davis nor Mr. Justice Kerwin gave separate reasons but they concurred in the reasons of the Chief Justice. These reasons do not specifically consider Section 6 of the Minimum Wages Act, and indicate an unqualified negative as the answer to each question. The opinion of the Court as certified to the Governor-General in Council shows, however, that the Chief Justice and the concurring Judges considered Section 6 to be *ultra vires.*

pp. 115-123.

p. 115, ll. 10-23.

p. 115, ll. 38-40.

p. 115, l. 41-p. 116, l. 4.

p. 116, ll. 5-10.

21. Mr. Justice Rinfret, in his reasons for judgment, held that apart from the intention to carry out obligations under draft conventions the subject-matter of the Acts was undoubtedly one in relation to which the legislature in each Province may exclusively make laws, and that therefore the Appellant, to support the Acts, must show a transfer of jurisdiction to the Parliament of Canada. The contention of the Appellant that the subject-matter of the Acts is criminal law was not pressed in argument, and the contention that the Acts can be supported under the general power of Section 91 or as the regulation of trade and commerce was disposed of in the *Natural Products Marketing Act Reference* (now under appeal to His Majesty in Council). Accordingly it was only necessary to examine the argument that the legislation was necessary or proper for performing the obligations of Canada or any Province thereof. The learned Judge then

referred to Part XIII of the Treaty of Versailles and pointed out that during the sixteen years which elapsed (notwithstanding the provision for ratification within eighteen months at latest) before the Dominion Government and Parliament took action an Order-in-Council of the 6th November, 1920, passed on the report of the Minister of Justice recorded the Minister's opinion that the Dominion was under no obligation to enact into law draft conventions but was merely bound to bring the conventions before the competent authority, and that except in so far as Dominion works and undertakings are affected, the provisions of the draft convention limiting the hours of work in industrial undertakings were within the powers of the provincial legislatures. This opinion was, in substance, confirmed by the opinion of the Supreme Court in the *Hours of Labour Reference* reported in [1925] Supreme Court Reports, page 505, which bound the Supreme Court except in so far as it may have been superseded by the *Aeronautics* and *Radio References* reported in [1932] Appeal Cases at pages 54 and 304. The learned Judge could not distinguish between the Acts, and he held that Section 132 in terms does not apply to the conventions. After showing that the latter References did not govern the present case, the learned Judge drew a distinction between the power to create an international obligation and the power to perform it when it had been created. The *Aeronautics* and *Radio References* were concerned with the latter power, not with the power to create obligations, on which the only relevant decision is the *Hours of Labour Reference*. While the performance of international obligations must be left exclusively to the Dominion Parliament the spirit of the British North America Act, in his opinion, was that if the effect of undertaking an obligation was to transfer a subject of legislation from exclusive provincial jurisdiction the obligation should not be created before the Provinces had given their consent; and in 1925 Article 405 was so interpreted. The Dominion Parliament cannot appropriate a civil right or a subject such as education for the purpose of dealing with it internationally without the previous consent of the Provinces, nor can this be done by exercise of the treaty-making prerogative. The learned Judge therefore concluded that the draft conventions had not been properly ratified and could not be so ratified without the consent of each Province. Consequently the Acts were *ultra vires* of the Parliament of Canada.

Record.
p. 116, l. 11-p. 117, l. 46.
p. 117, l. 47-p. 118, l. 7.
p. 118, l. 8-p. 119, l. 30.
p. 119, ll. 31-36.
p. 119, ll. 37-48.
p. 120, ll. 1-42.
p. 120, l. 43-p. 122, l. 9.
p. 122, ll. 10-42.
p. 122, l. 43-p. 123, l. 15.
p. 123, ll. 16-25.

22. Mr. Justice Cannon in his reasons for judgment emphasised the federal nature of the Canadian Constitution and the impossibility of the Dominion Parliament attaining a prohibited end by the pretended exercise of powers given to it. The only direct legislative authority expressly given to the Dominion concerning foreign affairs is in Section 132 of the British North America Act, for the protection of Imperial interests. But legislation affecting the Provinces, to ratify a treaty or agreement made by Canada alone with a foreign Power, required previous consultation with the Provinces. Legislation on a subject within the natural and obvious meaning of Section 92 must *prima facie* be *ultra vires* of the Dominion. Provision for emergency cases and changes required to face new situations or to cope with Canada's importance as a nation should be made by Imperial legislation and not by judgments or commentaries. The labour conventions binding Canada independently of the rest of the Empire were not within

pp. 123-130.
p. 123, l. 35-p. 127, l. 37.
p. 127, ll. 44-50.
p. 127, l. 50-p. 128, l. 7.
p. 128, ll. 8-14.
p. 128, ll. 15-28.
p. 128, ll. 34-36.

Record.
p. 128, ll. 36-46. Section 132. Radio and Aeronautics, as matters not existing in 1867, were outside the enumerated subjects of Sections 91 and 92, but wages, weekly rest and hours of work were well-known subjects in 1867 and were
p. 129, ll. 1-14. reserved to the Provinces. Therefore the failure to comply with Article 405 of the Treaty of Versailles invalidated the ratifications. Canada cannot
p. 129, ll. 15-45. appropriate powers exclusively provincial by ratifying a labour convention. Such interference if *intra vires* would alter the Constitution in a way contrary to the intention of its framers and of the Privy Council in the *Radio* and *Aeronautics* cases, and in a way which only Imperial legislation is competent
p. 130, ll. 1-9. to achieve. In the Treaty of Versailles the King's prerogative had not been
p. 130, ll. 10-37. used to destroy statutory rights. Under the federal structure of the Canadian Constitution neither the Governor-General in Council, nor Parliament can, by agreement with a foreign Power or otherwise, take away from the Provinces their competency to deal exclusively with the enumerated
p. 130, l. 38. subjects of Section 92. The learned Judge, therefore, held the Acts to be *ultra vires* of the Parliament of Canada.

pp. 130-142. **23.** In his reasons for Judgment Mr. Justice Crocket said that the
p. 130, l. 40- p. 131, l. 2. Acts were dealing with civil rights in all the Provinces, and the fundamental question therefore was whether the British North America Act contained any authority for the exercise of such legislative power by the Parliament
p. 131, ll. 3-46. of Canada. None of the conventions come within Section 132, which does not embrace obligations under any form of convention or agreement entered into by the Government of Canada or which is not truly a treaty. The
p. 131, l. 46- p. 132, l. 8. *Radio* case decisively settled this. The Treaty of Versailles, if, contrary
p. 132, ll. 9-17. to the learned Judge's opinion, it was a treaty to which Section 132 applied, imposed no obligation for the performance of which legislation was
p. 132, ll. 17-21. authorised by Section 132. The obligation arose from a convention purporting to have been ratified by Canada as a distinct Government—an idea incompatible with the conception of the Dominion as constituted by the
p. 132, l. 22- p. 133, l. 44. British North America Act. The residuary clause of Section 91 could only be invoked where the real subject matter does not fall within the classes of subjects of Section 92 and the argument that the Dominion Parliament had authority over subjects of legislation of such importance as to affect the body politic of the Dominion as a whole is unsound for the reasons given by the Chief Justice in the *Natural Products Marketing Act Reference*
p. 133, l. 45- p. 134, l. 12. (now under appeal to His Majesty in Council). No decision warrants the conclusion that, once it appears that the purpose and effect of a Dominion enactment is to interfere with private and civil rights in the Provinces, the
p. 134, ll. 13-28. enactment can be justified under the residuary clause of Section 91. Legislation necessary to meet some outstanding national peril is outside the purview of Section 92, but otherwise the double aspect principle is not
p. 134, ll. 29-39. recognised, and nothing in the *Aeronautics* case detracts from the *Combines* case, reported in [1922] 1 Appeal Cases, page 191, and *Snider's* case, reported
p. 134, l. 40- p. 135, l. 2. in [1925] Appeal Cases, page 396. The draft conventions themselves imposed no obligation, and ratification itself cannot have the effect of vesting in the Parliament of Canada legislative jurisdiction which otherwise it would not possess. The learned Judge then examined the *Aero-*
p. 135, l. 3- p. 140, l. 3. *nautics* and *Radio* cases to show that they laid down no such principle.
p. 140, ll. 4-26. He agreed with the Chief Justice that the Government of Canada is the

proper medium for concluding international conventions, but this fact does not alter the distribution of legislative power. If in its normal aspect the real subject matter of legislation relates to subjects exclusively assigned to the provincial legislatures, the learned Judge found it impossible to accept the proposition that because it became the subject of international convention it thereby ceases to have any relationship to the subjects so exclusively assigned. The fact that Section 92 does not mention international conventions cannot place a subject in the ambit of the residuary clause. So to hold would be contrary to the plain wording of the sections, and would undermine the whole structure of the confederation compact as expressed in the British North America Act. The Parliament of Canada would not have ventured to pass the Acts but for the draft conventions which admittedly the Government of Canada were not bound to ratify. The conventions were not approved by the Government of Canada until several years after time fixed by Article 405 of the Treaty of Versailles. The language of the Article is mandatory and under it the ratifications are null and void. It is, however, the terms of the British North America Act which govern the answers to the questions submitted. In the learned Judge's opinion the Acts are wholly *ultra vires* of the Parliament of Canada.

Record.
p. 140, l. 27-p. 141, l. 14.
p. 141, ll. 15-46.
p. 142, ll. 1-6.
p. 142, ll. 6-15.
p. 142, ll. 16-21.

24. This Respondent respectfully submits that the reasons given by Mr. Justice Rinfret, by Mr. Justice Cannon, and by Mr. Justice Crocket are to be preferred to the reasons of the other members of the Court, and that the proper answer to each question referred is that the Act mentioned in such question is wholly *ultra vires* of the Parliament of Canada. This Respondent makes this submission for the following amongst other

REASONS

1. Because the subject matter of each of the Acts is by Section 92 of the British North America Act within the exclusive legislative competence of the provincial legislatures.
2. Because none of the subject matter of the Acts is within the legislative authority conferred on the Parliament of Canada by Section 91 and Section 132 of the British North America Act.
3. Because the Dominion Government cannot by making an international agreement affect the distribution of legislative powers established by the British North America Act.
4. Because none of the international conventions upon which the Acts were based was validly ratified by Canada.
5. For the other reasons given by Mr. Justice Rinfret, Mr. Justice Cannon and Mr. Justice Crocket.

JOHN B. McNAIR.
FRANK GAHAN.

In the Privy Council.

No. 100 of 1936.

On Appeal from the Supreme Court of Canada.

IN THE MATTER of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada 1935 ; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada 1935 ; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada 1935.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA *Appellant,*

AND

THE ATTORNEYS-GENERAL OF THE PROVINCES OF ONTARIO, QUEBEC, NEW BRUNSWICK, MANITOBA, BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN ... ... *Respondents.*

CASE FOR THE ATTORNEY-GENERAL OF THE PROVINCE OF NEW BRUNSWICK

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