No. 100 of 1936.

In the Privy Council.

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, BRITISH COLUMBIA, MANITOBA, ALBERTA AND SASKATCHEWAN - - - - - *Respondents.*

Case

FOR THE ATTORNEY-GENERAL OF BRITISH COLUMBIA.

RECORD.

1. By Order in Council, P.C. 3454, the Governor General referred to the Supreme Court of Canada the following questions :— p. 1, l. 6.

"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 ? p. 2, ll. 18-26.

"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 provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada ? "

2. The scope of these Acts may be summarised as follows :

The Weekly Rest in Industrial Undertakings Act and The Limitation of Hours of Work Act comprise " Industrial Undertakings " as therein defined of the widest character.

The first of these provides that an employer shall grant to the whole of his staff in every seven days a rest of twenty-four consecutive hours.

The second, that no person shall employ any person for hours in excess of eight in the day and of forty-eight in the week.

The Minimum Wages Act provides an elaborate machinery for fixing minimum rates of wages in trades declared to be " specified rateable trades " and any employers paying less than such minimum rates are liable to a penalty not exceeding $5,000.

p. 67, l. 37 to p. 68, l. 19.

3. The Preamble in each Act is as follows :

" Whereas the Dominion of Canada is a signatory, as Part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919 ; and whereas the said Treaty of Peace was confirmed by the Treaty of Peace Act, 1919 ; and whereas by Article 23 of the said Treaty the signatories thereto each agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty it was declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme importance ; and whereas a Draft Convention respecting the application of the weekly rest in industrial undertakings was agreed upon at a General Conference of the International Labour Organization of the League of Nations, in accordance with the relevant Articles of the said Treaty, which said Convention has been ratified by Canada ; and whereas it is advisable to enact the necessary legislation to enable Canada to discharge the obligations assumed under the provisions of the said Treaty and the said Convention, and to provide for the application of the weekly rest in industrial undertakings, in accordance with the general provisions of the said Convention, and to assist in the

maintenance on equitable terms of interprovincial and international trade : Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :— "

4. In answer to the questions submitted the Supreme Court were equally divided : His Lordship The Chief Justice was of the opinion that the Legislation was within the competence of the Federal Parliament. Justices Davis and Kerwin concurred in this opinion. Justices Rinfret, Cannon and Crocket were of the opinion that the Legislation was ultra vires. p. 92, ll. 31-40. pp. 93-115 pp. 115-142.

5. The section of the B.N.A. Act distributing powers between the Dominion and the Provinces are Sections 91 and 92. In addition section 132 confers powers on the Dominion " as may be 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."

6. It is submitted that the subject matters of the Legislation in the enactments under consideration come within Section 92 enumerated divisions 13 and 16, and do not come within any of the enumerated divisions of Section 91 or within the general powers thereof relating to peace, order and good government.

7. In this connection reference is made to the following cases :—

Citizens vs. *Parsons* (1881) 7 App. Cas. 109 ;

Attorney-General for Ontario vs. *Attorney-General for the Dominion, and Distillers and Brewers Association of Ontario* (1896) A.C. 348 ;

City of Montreal vs. *Montreal Street Railway* (1912) A.C. 333 ;

Attorney-General for Canada vs. *Attorney-General for Alberta* (1916) A.C. 558 ;

The Toronto Electric Commissioners vs. *Snider* (1925) A.C. 396.

8. It is submitted that the legislation cannot be supported as a treaty obligation either under the provisions of Section 132 or as an obligation of an international nature, which though not within the terms of Section 132 is included under the general words of Section 91, for the following reasons :—

9. *First :* The convention as ratified by the Dominion Government does not come within Section 132 of the B.N.A. Act. The *obligation* of Canada thereunder does not arise under a Treaty between the Empire and a foreign country as *part of the British Empire.*

It is true provision for the convention is made by the Treaty of Versailles, but Section 406 provides :—

> "Any convention so ratified shall be registered by the Secretary-General of the League of Nations but shall only be binding upon the members which ratify it."

10. *Second :* The convention as entered into by the Government is not a treaty but at most only an agreement between Governments. The treaty making prerogative is vested in His Majesty and has not been delegated to the Governor-General, either by Statute or in his Commission, or by practice.

11. The following authorities are referred to :—

In Re The Regulation and Control of Aeronautics in Canada (1932) A.C. 52 ;

Attorney-General for B.C. vs. *Attorney-General for Canada*, 63, S.C.R. 293 (1924) A.C. 203 ;

The King vs. *Stuart* (1925) 1 D.L.R. 12 ;

In re Regulation and Control of Radio Communication in Canada (1932) A.C. ;

Attorney-General vs. *DeKeysers Royal Hotel* (1920) A.C. 508, 526-7 ;

British Coal Corporation vs. *The King* (1935) A.C. 500 ;

Bonanza Creek Gold Mining Co. vs. *The King* (1916) 1 A.C. 567, *Camerons Cases*, Vol. II, p. 76 ;

Halsburys Laws of England, Vol. 6, 2nd Ed., pp. 503, 520 ;

Keiths Responsible Government in the Dominions, 2nd Ed., Vol. II, p. 842.

12. It is submitted that while Constitutional practices or conventions have greatly extended the powers of the Dominion and of the Federal Government by the acquisition of powers formerly exercised at Westminster or Downing Street there has been and can be no encroachment by this process on the powers vested in the Provinces by the British North America Act.

13. It is submitted that the powers of the Dominion to enter into agreements between Governments is limited to subject matters otherwise within Federal competence, or at most that its power to implement agreements of this nature by Legislation is limited to such subject matters.

14. *Third :* It is submitted that there has not been a ratification of the draft conventions within the provisions of Section 405 of the Versailles Treaty.

15. *One :* The draft conventions were not brought before " the authority or authorities within whose competence the matter lies within one year at most from the closing of the Session of the conference, or, if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months *from the closing of the Session of the Conference.*"

The Session of the International Labour Conference was held in 1919. No action was taken by the Dominion Government or the Federal Parliament until 1935—sixteen years later.

16. *Two :* The obligation of the Dominion was not to enact legislation but to bring the draft conventions before the Provinces for their consent. See Section 405 of the Treaty. This the Dominion did not do.

See : *In the Matter of Legislative Jurisdiction over Hours of Labour* (1925) S.C.R. 505.

17. *Three :* The subject matters of the Legislation not only fall within Section 92 of the B.N.A. Act but they are subjects upon which the Provinces can legislate effectively. There is no necessity for Federal Legislation. Illustrative of this assertion the Legislation existing in British Columbia goes much further and is more within the spirit of Section 23 of the Treaty than is the Federal enactment.

Cessante ratione legis cessat lex ipsa.

18. *Four :* Section 405 of the Treaty provides :—

> " In the case of a Federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case."

p. 78, ll. 12-16.

It is submitted that Canada is a Federal State " the power of which to enter into conventions on labour matters is limited." The Treaty expressly provided for such cases and Canada's only obligation was to treat the draft convention as a recommendation.

19. It is submitted that the questions submitted should be answered to indicate that the three Acts in question are wholly *ultra vires* of the Parliament of Canada for the following amongst other

REASONS.

(1) THE subject matter of the Legislation comes within Section 92 of the British North America Act, and not within any of the enumerated headings of Section 91 or within the general words of the Section relating to Peace, order and good Government.

(2) THE legislation cannot be supported under the provisions of Section 132 of the B.N.A. Act as the obligations of Canada under the Conventions do not arise as an obligation of Canada as part of the British Empire.

(3) THERE has been no Treaty obligation created.

(4) WHATEVER powers Canada may have acquired by Constitutional Conventions to enter into international obligations by agreements these powers have not been extended and cannot be extended so as to invade the powers conferred on the Provinces by Section 92 of the B.N.A. Act.

(5) THERE has been no ratification of the draft conventions within the terms of Article 405 of the Treaty of Versailles

(6) AS the draft conventions were not referred to the competent authorities within eighteen months from the closing of the Session of the International Labour Conference they ceased to have any effect.

(7) THERE was no obligation or necessity resting on the Dominion to enact the Legislation as the Provinces had full power to effectively legislate for the purposes of the Treaty and to meet the requirements of the Conventions.

(8) CANADA, being a Federal State whose powers to enter into such Conventions was limited, was under no obligation under the provisions of the Treaty save to treat the draft Conventions as recommendations.

J. W. DE B. FARRIS.

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GARD, LYELL & CO.,
47 Gresham Street,
London, E.C.2.

The Solicitors' Law Stationery Society, Ltd., Law & Parliamentary Printers,
29 Wallbrook, E.C.4. CL9503B-32508