

In the Privy Council.

Fos. 29.

ON APPEAL

FROM THE SUPREME COURT OF CANADA

IN THE MATTER of a reference by his Excellency the Governor General in Council to the Supreme Court of Canada, pursuant to Section 60. of the Supreme Court Act of certain questions for hearing and consideration as to the respective legislative powers under the British North America Acts of the Dominion of Canada and the Provinces of Canada in relation to the incorporation of companies and as to the other particulars therein stated.

BETWEEN

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO

THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC

THE ATTORNEY-GENERAL FOR THE PROVINCE OF NOVA SCOTIA

THE ATTORNEY-GENERAL FOR THE PROVINCE OF NEW BRUNSWICK

THE ATTORNEY-GENERAL FOR THE PROVINCE OF MANITOBA

THE ATTORNEY-GENERAL FOR THE PROVINCE OF PRINCE EDWARD ISLAND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA

Appellants

AND

THE ATTORNEY-GENERAL FOR CANADA *Respondent*

AND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA *Respondent*

Case of the Respondent.

THE ATTORNEY-GENERAL OF CANADA.

1. This is an Appeal against a Judgment of the Supreme Court of Canada, given on the 11th day of October, 1910, dis-

RECORD.

RESPONDENTS CASE.

RECORD. missing a Motion to strike the inscription of this and two other References from the list upon the ground, of want of jurisdiction.

p.p. 3, 4, & 5. 2. This Reference is made by the Governor General in Council to the Supreme Court of Canada for hearing and consideration of certain questions of law in relation to the incorporation of Companies and as to the other particulars therein stated. It is printed in full in the Record on pages 3, 4, 5, and 6.

3. The said References were made under the authority of Section 60 of the Supreme Court Act, Revised Statutes of Canada, 1906, Ch. 139, which is as follows :— 10

“ 60. Important questions of law or fact touching,—

“ (a) the interpretation of The British North America Acts, 1867 to 1886 ; or

“ (b) the constitutionality or interpretation of any Dominion or provincial legislation ; or,

“ (c) the appellate jurisdiction as to educational matters, by the British North America Act, 1867, or by any other Act or law vested in the Governor in Council ; or,

“ (d) the powers of the Parliament of Canada, or 20 of the legislatures of the Provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be executed ; or,

“ (e) any other matter, whether or not in the opinion of the Court ejusdem generis with the foregoing enumerations, with reference to which the Governor in Council sees fit to submit any such question ;

“ may be referred by the Governor in Council to the 30 Supreme Court for hearing and consideration ; and any question touching any of the matters aforesaid, so

“ referred by the Governor in Council, shall be
“ conclusively deemed to be an important question.

10 “ 2. When any such reference is made to the Court
“ it shall be the duty of the Court to hear and consider it,
“ and to answer each question so referred; and the Court
“ shall certify to the Governor in Council, for his in-
“ formation, its opinion upon each such question, with the
“ reasons for each such answer; and such opinion shall be
“ pronounced in like manner as in the case of a judgment
“ upon an appeal to the Court; and any Judge who differs
“ from the opinion of the majority shall in like manner
“ certify his opinion and his reasons.

20 “ 3. In case any such question relates to the consti-
“ tutional validity of any Act which has heretofore been
“ or shall hereafter be passed by the legislature of any
“ province, or of any provision in any such Act, or in
“ case, for any reason, the government of any province
“ has any special interest in any such question the Attorney
“ General of such province, shall be notified of the
“ hearing, in order that he may be heard if he thinks fit.

“ 4. The Court shall have power to direct that any
“ person interested or where there is a class of persons
“ interested, any one or more persons as representatives of
“ such class, shall be notified of the hearing upon any
“ reference under this section, and such persons shall be
“ entitled to be heard thereon.

30 “ 5. The Court may, in its discretion, request any
“ Counsel to argue the case as to any interest which is
“ affected and as to which Counsel does not appear, and
“ the reasonable expenses thereby occasioned may be paid
“ by the Minister of Finance out of any moneys appropri-
“ ated by Parliament for expenses of litigation.

“ 6. The opinion of the Court upon any such refer-
“ ence, although advisory only, shall, for all purposes

RECORD.

“ of appeal to His Majesty in Council, be treated as a
 “ final judgment of the said Court between parties.
 “ 54-55 V., c.25, s.4; 6 E.VII, c.50, s.2.”

p. 7.

4. The Attorney General of each of the Provinces was notified of the hearing of this Reference pursuant to an Order of Mr. Justice Idington of the Supreme Court.

p. 7.

5. On the 11th day of October, 1910, Counsel on behalf of certain of the appellants moved that the inscription of the said References be stricken from the list. Notice of the said motion is printed in the Record at page 7.

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p. 14.

6. The said Motion was heard before Sir Charles Fitzpatrick C.J., and Girouard, Davis, Idington, Duff and Anglin, J.J., and judgment was thereupon delivered whereby the Court declared that it had jurisdiction to hear the references and dismissed the Motion.

7. The present appeal is only against the judgment in the first of the said References mentioned in the said Notice of Motion, namely, the Reference as to the respective legislative powers under the British North America Act of the Dominion of Canada and the Provinces of Canada in relation to the incorporation of companies and as to the other particulars therein stated.

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8. Each of the Judges of the Supreme Court before whom the Motion was heard delivered Reasons for Judgment.

p. 15.

9. The Chief Justice was of opinion that the Court should entertain the Reference and answer the questions on the grounds; (a) That precedent had been established therefore by the numerous previous cases in which the Court had answered such questions in the past, some of the answers to which had been appealed to the Judicial Committee of the Privy Council which assumed that it had jurisdiction to deal with them; (b) That independently of precedent it was the duty of the Judges of the Supreme Court 30 of Canada to advise the Executive Government in analogy to

the procedure by which the Judges in England have often been called to give their opinions on points of law; that this was sufficiently provided for by Section 3 of the Supreme Court Act by which the Court was established by the Parliament of Canada "as a general Court of Appeal for Canada and as an additional "Court for the better administration of the laws of Canada," and that, quoting the words of the Chief Justice, "we are asked to "answer certain questions submitted to us by the Executive "for the express purpose of obtaining information which may
 10 "assist in the administration of the fundamental law of the "Canadian Constitution, the British North America Act;"

(c) That as to the constitutionality of the provisions of the Supreme Court Act under which the References were made, Parliament had the necessary legislative jurisdiction under Section 91 of the British North America Act, 1867, which provides that the Parliament of Canada may from time to time make laws for the peace, order and good government of Canada in relation to all matters not coming within the class of subjects assigned exclusively to the legislation of the Provinces; and that if
 20 Parliament possess the power, that power is vested in the Executive.

Mr. Justice DAVIES was of opinion:—(a) That Section 60 of the Supreme Court Act was not in conflict with paragraph 14 of Section 92 of the British North America Act, 1867, which assigns to the legislatures of the Provinces: "The administration of "justice in the province, including the constitution, maintenance "and organization of provincial Courts, both of civil and of criminal "jurisdiction, and including procedure in civil matters in those "Courts;" (b) That the answers of the Judges to the questions asked are advisory only and do not bind the Governor in Council
 30 or even the Court itself; (c) That even if there were conflict between Section 60 of the Supreme Court Act and paragraph 14 of Section 92 of the British North America Act, 1867, the References would still be authorized under the proper construction of Section 101 of the British North America Act, 1867, authorizing Parliament "Notwithstanding anything in the Act"

RECORD. to constitute a general Court of Appeal for Canada, and also additional Courts for the better administration of the laws of Canada, and the legislation of Parliament under it; (d) That in any case the legislation challenged by the Motion comes clearly within the power of legislating for the peace, order and good government of Canada, because it is in accordance with British precedent and practice, and is not in conflict with any of the powers exclusively assigned to the legislatures of the Provinces.

p. 35 & 37.
p. 21.

The opinions of Duff and Anglin J.J., were to the same effect.

Girouard J., in what is said to be a dissenting opinion, stated 10 that "As to the Motion to quash, I would prefer to wait for "judgment till the matter is discussed on the merits," and his opinion that certain questions can be referred by the Governor-General, and that others cannot, involves consideration of the questions now referred.

p. 25.

Idington J., in his dissenting opinion, agrees that the Court has jurisdiction to answer some of the questions submitted, and his objection to the References as a whole appears to proceed largely upon the ground of inconvenience. He also thinks that questions touching the Constitution of Canada are to be determined largely 20 by reference to and comparisons with questions which have arisen in the United States of America under the constitution of that country.

10. The Respondent, the Attorney-General of Canada, submits that the judgment appealed from is right and should be affirmed for the reasons stated by the Chief Justice and by Davies, Duff and Anglin, J.J., and for the following among other

REASONS.

1. The said Section 60 of the Supreme Court Act is within the legislative authority of the Parliament of 30 Canada, either under Section 91 or Section 101 of the British North America Act, 1867.

2. There is no conflict between the powers conferred by the said Section 60 of the Supreme Court Act and the powers and rights reserved exclusively to the provincial legislatures by Section 92 of the British North America Act, 1867.
- 10 3. Legislation of the Parliament of Canada authorizing the reference of questions by the Governor-in-Council to the Supreme Court for hearing or consideration has been in force ever since the constitution of the Supreme Court in 1875 (38 Vic., Cap. 11, Sec. 52). The power so conferred has been acted upon in many cases, and there is a long series of precedents for the answering of such questions, not only by the Supreme Court of Canada, but also on appeal by this Honourable Board. It is therefore to be presumed that this reference is competently authorized.
- 20 4. If the said Section 60 of the Supreme Court Act be within the legislative powers of the Parliament of Canada, the questions have been stated by the proper authority, and it is the duty of the Supreme Court to hear and consider the questions so submitted in execution of the statutory power.
- 30 5. There is no inconvenience in the practice of the Judges giving advisory opinions, but on the contrary it is a proceeding of utility, if not a necessity, in the determination of the various constitutional difficulties arising in the construction of the British North America Acts. Moreover no question of convenience arises upon this appeal, since the Judges of the Supreme Court have not heard or considered argument of the questions referred.

E. L. NEWCOMBE.

In the Privy Council.

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Scotia, New Brunswick, Manitoba,
Prince Edward Island and Alberta
Appellants

AND

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CANADA *Respondent*

AND

THE ATTORNEY-GENERAL for the
Province of BRITISH COLUMBIA
Respondent

Case of the Respondent

THE ATTORNEY-GENERAL OF CANADA

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