Privy Council Appeal No. 10 *of* 1914.

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 relating to the Insurance Act, 1910.

The Attorney-General for the Dominion of Canada - - - - - - *Appellant,*

v.

The Attorneys-General for the Provinces of Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan, the Canadian Insurance Federation and the Manufacturers' Association of Canada - *Respondents,*

AND

The Attorney-General for the Province of British Columbia - - - - - *Intervener,*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH FEBRUARY, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD PARKER OF WADDINGTON.
LORD SUMNER.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of Canada answering certain questions put to the Judges by a reference from the Government of the Dominion. The questions so referred were as follows:—

1. Are sects. 4 and 70 of the Insurance Act, 1910, or any and what part or parts of the said sections, *ultra vires* of the Parliament of Canada?

2. Does sect. 4 of the Insurance Act, 1910, operate to prohibit an insurance company incorporated by a foreign State from carrying on the business of insurance within Canada, if such company does not hold a licence from the Minister under

the said Act, and if such carrying on of the business is confined to a single province ?

Sect. 4 is in these terms :—

" In Canada, except as otherwise provided by this Act, no company or " underwriters or other person shall solicit or accept any risk, or issue or " deliver any receipt or policy of insurance, or grant any annuity on a life " or lives, or collect or receive any premium, or inspect any risk, or adjust " any loss, or carry on any business of insurance, or prosecute or maintain " any suit, action, or proceeding, or file any claim in insolvency relating to " such business, unless it be done by or on behalf of a company or under- " writers holding a licence from the Minister."

The Minister is defined in the Act to mean the Minister of Finance of the Dominion.

Sect. 70 is an ancillary section which imposes a penalty on every person who contravenes or attempts to contravene the provisions of the above and other sections. Sect. 3 provides that the provisions of the Act shall not apply to any contract of marine insurance effected in Canada by any company authorised to carry on such business within Canada, nor to any company incorporated by an Act of the late province of Canada, or by an Act of the legislature of any province now forming part of Canada, which carries on the business of insurance wholly within the limits of the province by the legislature of which it was incorporated, and which is within the exclusive control of the legislature of such province. Sect. 3 also provides that any such company as is last described may, by leave of the Governor-in-Council, avail itself of the provisions of this Act on complying with the provisions thereof, and that if it so avails itself these provisions shall then apply to it, and such company shall thereafter have the power of transacting its business of insurance throughout Canada. Sect. 12 enacts that no licence shall be granted to any individual underwriter or underwriters to carry on any kind of insurance business, excepting in the case of associations of individuals formed upon the plan known as Lloyd's, under which each associate underwriter becomes liable for a proportionate part of the whole amount insured by a policy. The Act contains other restrictive and regulative provisions.

It will be observed that sect. 4 deprives private individuals of their liberty to carry on the business of insurance, even when that business is confined within the limits of a province. It will also be observed that even a provincial company operating within the limits of the province where it has been incorporated cannot, notwithstanding that it may obtain permission from the authorities of another province, operate within that other province without the licence of the Dominion Minister. In other words, the capacity is interfered with which, according to the judgment just delivered by their Lordships in the case of the Bonanza Company, such a company possesses to take advantage of powers and rights

proffered to it by authorities outside the provincial limits. Such an interference with its status appears to their Lordships to interfere with its civil rights within the province of incorporation, as well as with the power of the legislature of every other province to confer civil rights upon it. Private individuals are likewise deprived of civil rights within their provinces.

It must be taken to be now settled that the general authority to make laws for the peace, order, and good government of Canada, which the initial part of sect. 91 of the British North America Act confers, does not, unless the subject-matter of legislation falls within some one of the enumerated heads which follow, enable the Dominion Parliament to trench on the subject-matters entrusted to the provincial legislatures by the enumeration in sect. 92. There is only one case, outside the heads enumerated in sect. 91, in which the Dominion Parliament can legislate effectively as regards a province, and that is where the subject-matter lies outside all of the subject-matters enumeratively entrusted to the province under sect. 92. *Russell* v. *the Queen* (7 A.C., 829) is an instance of such a case. There the Court considered that the particular subject-matter in question lay outside the provincial powers. What has been said in subsequent cases before this Board makes it clear that it was on this ground alone, and not on the ground that the Canada Temperance Act was considered to be authorised as legislation for the regulation of trade and commerce, that the Judicial Committee thought that it should be held that there was constitutional authority for Dominion legislation which imposed conditions of a prohibitory character on the liquor traffic throughout the Dominion. No doubt the Canada Temperance Act contemplated in certain events the use of different licensing boards and regulations in different districts, and to this extent legislated in relation to local institutions. But the Judicial Committee appear to have thought that this purpose was subordinate to a still wider and legitimate purpose of establishing a uniform system of legislation for prohibiting the liquor traffic throughout Canada, excepting under restrictive conditions. The case must therefore be regarded as illustrating the principle which is now well established, but none the less ought to be applied only with great caution, that subjects which in one aspect and for one purpose fall within the jurisdiction of the provincial legislatures may in another aspect and for another purpose fall within Dominion legislative jurisdiction. There was a good deal in the Ontario Liquor Licence Act and the powers of regulation which it entrusted to local authorities in the province, which seems to cover part of the field of legislation recognised as belonging to the Dominion in *Russell* v. *The Queen.* But in *Hodge* v. *The Queen* (9 A.C., 117) the Judicial Committee had no difficulty in

coming to the conclusion that the local licensing system which the Ontario statute sought to set up was within provincial powers. It was only the converse of this proposition to hold, as was done subsequently by this Board, though without giving reasons, that the Dominion licensing statute, known as the McCarthy Act, which sought to establish a local licensing system for the liquor traffic throughout Canada, was beyond the powers conferred on the Dominion Parliament by sect. 91. Their Lordships think that as the result of these decisions it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage in the provinces. Sect. 4 of the statute under consideration cannot, in their opinion, be justified under this head. Nor do they think that it can be justified for any such reasons as appear to have prevailed in *Russell* v. *The Queen*. No doubt the business of insurance is a very important one, which has attained to great dimensions in Canada. But this is equally true of other highly important and extensive forms of business in Canada, which are to-day freely transacted under provincial authority. Where the British North America Act has taken such forms of business out of provincial jurisdiction, as in the case of banking, it has done so by express words which would have been unnecessary had the argument for the Dominion Government addressed to the Board from the Bar been well-founded. Where a company is incorporated to carry on the business of insurance throughout Canada, and desires to possess rights and powers to that effect operative apart from further authority, the Dominion Government can incorporate it with such rights and powers, to the full extent explained by the decision in the case of the John Deere Plow Company (1915, A.C., 330). But if such a company seeks only provincial rights and powers, and is content to trust for the extension of these in other provinces to the Governments of these provinces, it can at least derive capacity to accept such rights and powers in other provinces from the province of its incorporation, as has been explained in the case of the Bonanza Company.

Their Lordships are therefore of opinion that the majority in the Supreme Court were right in answering the first of the two questions referred to them in the affirmative.

The second question is, in substance, whether the Dominion Parliament has jurisdiction to require a foreign company to take out a licence from the Dominion Minister, even in a case where the company desires to carry on its business only within the limits of a single province. To this question their Lordships' reply is that in such a case it would be within the power of the Parliament of Canada, by properly framed legislation, to impose such a restriction. It appears to them that such a power is given by the heads in sect. 91,

which refer to the regulation of trade and commerce and to aliens. This question also is therefore answered in the affirmative.

Their Lordships will accordingly humbly advise His Majesty that the questions referred to should be answered as now indicated. Following the usual practice, there will be no order as to costs.

In the Privy Council.

(No. 10 of 1914.)

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA

v.

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA AND OTHERS

INSURANCE REFERENCE.

DELIVERED BY VISCOUNT HALDANE.

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