

Privy Council Appeal No. 91 of 1924.

The Attorney-General of Ontario - - - - - *Appellant*

v.

The Attorney-General of Canada - - - - - *Respondent*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH FEBRUARY, 1925.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD DUNEDIN.

LORD SHAW.

LORD PHILLIMORE.

[*Delivered by* THE LORD CHANCELLOR.]

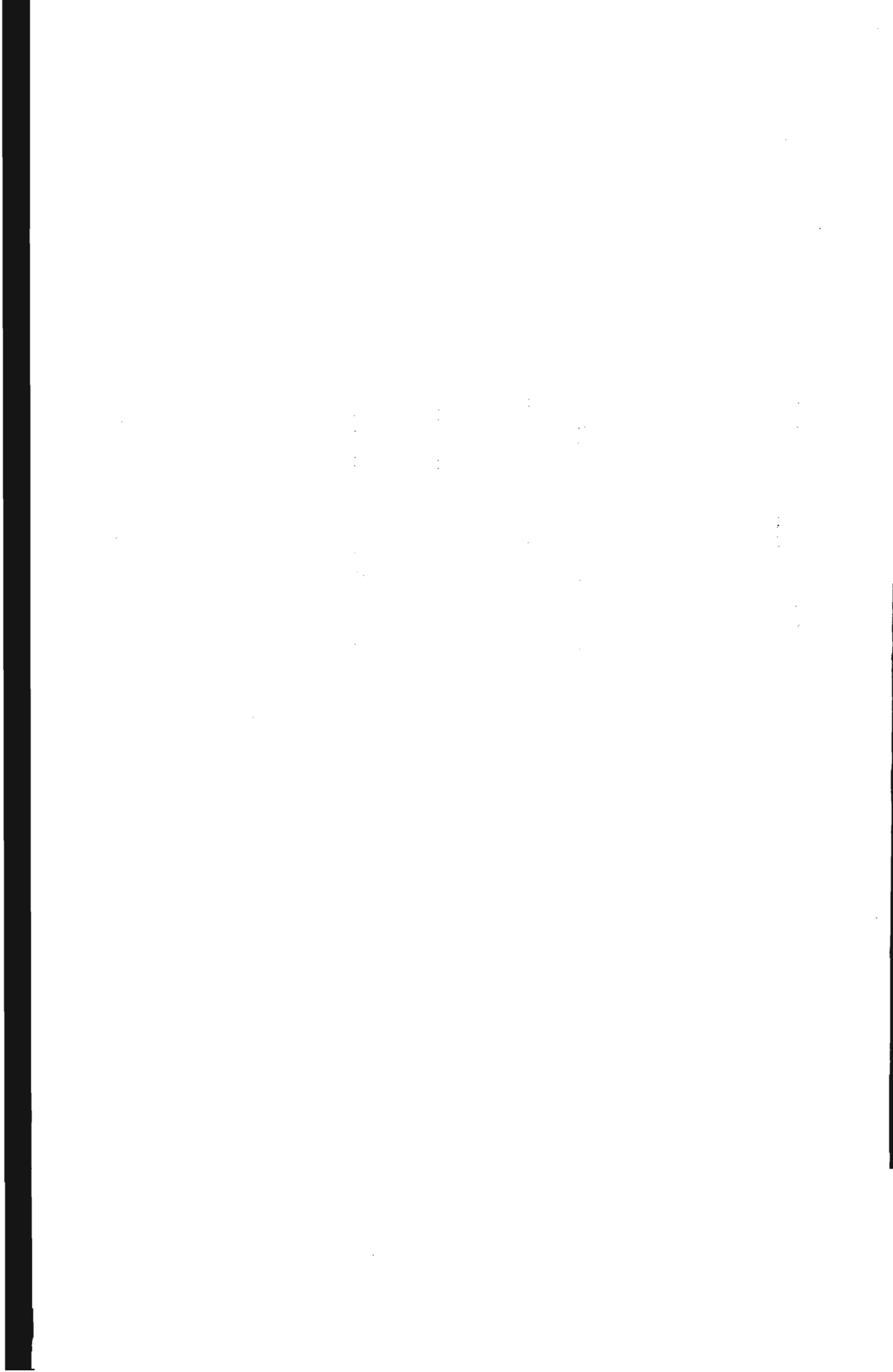
Their Lordships do not see their way to differing from the decision of the Appellate Division in this case.

The question to be determined in these proceedings is whether the Judicature Act passed by the Legislature of Ontario in the year 1924 was within the powers of the legislature ; and for the purpose of deciding that question it is necessary to refer to certain provisions of the British North America Act, 1867. Section 92 of that Act entrusts to the Provincial Legislature the duty of making laws in respect of, among other things, the administration of justice in the Province, including the constitution, maintenance and organisation of the Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those Courts. Section 96 of the same Act provides that the Governor-General shall appoint the Judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick. Section 99 provides that the Judges of the Superior Courts shall hold office during good behaviour, and shall be removable by the Governor-General on addresses from the Senate and House of Commons ; and under section 100, the salaries, allowances and pensions of the Judges are to be fixed and approved by the Parliament of Canada.

By the Judicature Act, 1924, which is the statute to be considered on this appeal, the Legislature of Ontario (putting it shortly) purported to establish in lieu of the existing Supreme Court of the Province a Supreme Court of Ontario which was to consist of 19 Judges to be appointed as provided by the Act of 1867. Under the statute the position of the existing Judges of the Supreme Court was to be safeguarded, but subject to that provision the Judges were to be assigned, some of them to the Appellate Division of the Supreme Court, and the remainder to the High Court Division of the same Court; and under section 2, subsection 5, of the Act the Judges were to be so assigned to those two Divisions by the Lieutenant Governor in Council. Under the same subsection one of the Judges of the Appellate Division was to be designated by the Lieutenant Governor in Council to be the President of the Appellate Division, and was to be called the Chief Justice of Ontario; and under subsection 6 of the same section, one of the Judges of the High Court Division was to be designated by the Lieutenant Governor in Council to be President of that Division, and was to be called the Chief Justice of the High Court Division. Similar provisions are contained in section 4, subsections 1 and 2 of the Act.

What is the effect of those provisions? It can hardly be doubted that the result of them is to authorise the Lieutenant Governor of the Province to assign—that is to say, to appoint—certain Judges of the High Court to be Judges of the Appellate Division of the Supreme Court, and also to designate—that is to say, to appoint—certain Judges to hold the offices of Chief Justice of Ontario and Chief Justice of the High Court Division. If that is the real effect of the statute, as it appears to be, there can be no doubt that the effect of the statute, if valid, would be to transfer the right to appoint the two Chief Justices and the Judges of Appeal from the Governor General of Canada to the Lieutenant Governor of Ontario in Council; and if so, it must follow that the statute is to that extent inconsistent with section 96 of the Act of 1867 and beyond the power of the Legislature of Ontario. This conclusion applies not only to subsections (5) and (6) of section 2, but also to subsections (2), (3) and (4) of the same section, all of which have reference to the void provisions of subsections (5) and (6) as well as to subsections (1) and (2) of section 4. Accordingly their Lordships agree with the Appellate Division in holding that subsections (2) to (6) inclusive of section 1, and subsections (1) and (2) of section 4 of the Act are invalid; but it does not appear to them that any objection can be taken to subsection (3) of section 4.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed, and the order of the Appellate Division confirmed, except so far as it declares subsection (3) of section 4 to be invalid. Their Lordships understand there is no question as to costs.



In the Privy Council.

*

THE ATTORNEY-GENERAL OF ONTARIO

2.

THE ATTORNEY-GENERAL OF CANADA.

DELIVERED BY THE LORD CHANCELLOR.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1925.