

In the Privy Council.

No. 36 of 1931.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

IN THE MATTER of a Reference by His Honour the Lieutenant-Governor in Council as to the validity of certain sections of The Insurance Act of Canada.

BETWEEN

THE ATTORNEY-GENERAL OF QUEBEC *Appellant,*

AND

THE ATTORNEY-GENERAL OF CANADA *Respondent,*

AND

BELDING-CORTICELLI, LIMITED; THE MASSEY-HARRIS COMPANY OF CANADA, LIMITED; THE ABITIBI POWER AND PAPER COMPANY, LIMITED; THE MONARCH KNITTING COMPANY, LIMITED; MOORE CORPORATION, LIMITED; and THE ATTORNEY-GENERAL OF ONTARIO *Interveners.*

AND BETWEEN

THE ATTORNEY-GENERAL OF CANADA *Appellant,*

AND

THE ATTORNEY-GENERAL OF QUEBEC *Respondent,*

AND

BELDING-CORTICELLI, LIMITED; THE MASSEY-HARRIS COMPANY OF CANADA, LIMITED; THE ABITIBI POWER AND PAPER COMPANY, LIMITED; THE MONARCH KNITTING COMPANY, LIMITED; MOORE CORPORATION, LIMITED; and THE ATTORNEY-GENERAL OF ONTARIO *Interveners.*

CASE OF THE ATTORNEY-GENERAL OF THE
PROVINCE OF ONTARIO,
INTERVENER.

Record,
pp. 4-5.

pp. 64, 65,
66, 67.

1. This appeal arises out of a Reference by His Honour the Lieutenant-Governor of Quebec to the Court of King's Bench (Appeal Side) pursuant to Chapter 7 of the Revised Statutes of Quebec, 1925, of certain questions for hearing and consideration involving the validity of Sections 11, 12, 65 and 66 of the Insurance Act and Sections 16, 20 and 21 of the Special War Revenue Act, both of Canada.

2. The questions referred are as follows :—

p. 5.

“ 1. Is a foreign or British insurer, who holds a license under the Quebec Insurance Act to carry on business within the province, obliged to observe and subject to Sections 11, 12, 65 and 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer ?

2. Are Sections 16, 20 and 21 of the Special War Revenue Act within the legislative competence of the Parliament of Canada ?

Would there be any difference between the case of an insurer who has obtained, or is bound to obtain under the provincial law, a license to carry on business in the province and any other case ? ”

1922, c. 62
(Ont.).
1917, c. 26,
s. 1.

[1924], A.C.
328.

R.S.C. 1927,
c. 36.

3. In 1922 His Honour the Lieutenant-Governor of Ontario referred to the Appellate Division of the Supreme Court of Ontario, pursuant to Chapter 85 of the Revised Statutes of Ontario, 1914, certain questions for hearing and consideration relating to the Reciprocal Insurance Act, 1922, and involving the validity *inter alia* of Section 508c of the Criminal Code of Canada. On appeal, Section 508c was declared *ultra vires* by the Order of His Majesty in Council in the *Reciprocal Insurers Case*. Notwithstanding this Order, Section 508c was not repealed until 1927 and then it was re-enacted by the Parliament of Canada *verbatim et literatim* as Section 507 of the Criminal Code.

Appendix,
p. 24.

4. In 1925 His Honour the Lieutenant-Governor of Ontario referred to the Appellate Division of the Supreme Court of Ontario, pursuant to Chapter 85 of the Revised Statutes of Ontario, 1914, certain questions for hearing and consideration involving the validity of Sections 11, 12, 65 and 66 of the Insurance Act of Canada now in question on this Appeal. These sections (at that time numbered 11, 12 (1), 71 and 71a) and others were held *ultra vires* the Dominion Parliament. The Dominion has not appealed from this decision. The opinions of the Ontario Judges are printed in the Appendix.

5. In 1929 the Attorney-General of Ontario entered an action in the Supreme Court of Ontario against the Attorney-General of Canada, the Minister of Finance and George D. Finlayson (Superintendent of Insurance appointed under the Insurance Act of Canada) *inter alia*, for a declaration that the Insurance Act of Canada was *ultra vires*. In that action Sections 4, 11, 12, 65, 66, 91, 123 and 135 were held *ultra vires* the Dominion Parliament and the defendants declared not entitled to act under or enforce the said sections. The formal judgment of the Supreme Court of Ontario and the reasons therefor are printed in the Appendix. The defendants have not
10 appealed from this judgment and they are continuing to act under and enforce the said sections as is evidenced by the copies of licenses dated 10th April and 15th April, 1931, printed in the Appendix.
6. The Attorney-General of Ontario accordingly intervenes in this appeal to support the case of the Attorney-General of Quebec and to endeavour to maintain authoritatively the effect of these orders and decisions.
7. The Province of Ontario has for upwards of fifty years maintained a Department called the Insurance Department, for the purpose of regulating contracts of insurance and the business of insurance under enactments of its Legislature now embodied in the Insurance Act.
8. The Dominion of Canada has during the same period maintained an
20 Insurance Department under enactments of the Parliament of Canada now embodied in the Insurance Act.
9. The Dominion Insurance Act purports to exercise a broad jurisdiction over the business of insurance in Canada requiring companies and persons engaged in the business to take out licenses and making the continuance of the license conditional on the observance of the provisions of the Act. A Summary of the Act in relation to Sections 11, 12, 65 and 66 is printed in the Appendix.
10. Other Dominion statutes contain provisions designed to compel
30 the taking out of licenses. The Criminal Code, by Section 507, makes it an indictable offence to solicit or accept risks without a license except as provided in the section. And the Special War Revenue Act, by Section 16, imposes on every person in Canada who insures his property situate in Canada against risks, other than marine risks, with any unlicensed British or foreign company or underwriter, or with any unlicensed association of persons formed for the purpose of exchanging reciprocal contracts of indemnity on the plan known as inter-insurance, a special annual tax, additional to all other taxes, of 5 per cent. of the total net cost to him of all such insurance for the preceding year. The text of these provisions and
40 their relation to Sections 11, 12, 65 and 66 of the Insurance Act is included in the Appendix.
11. The Ontario Insurance Act deals with the same subject matter as the Dominion Insurance Act. Thereunder all insurers carrying on business

Record.
A.G. of
Ontario v.
A.G. of
Canada
(1931),
O.R. 4.

Appendix,
pp. 44 & 56.

Appendix,
pp. 57-58.

R.S.O. 1927,
c. 222.

R.S.C. 1927,
c. 101.

Appendix,
p. 6.

R.S.C. 1927,
c. 36.

R.S.C. 1927,
c. 179.

Appendix,
p. 12.

R.S.O. 1927,
c. 222.

Record, within the province, including Dominion, provincial, British and foreign companies and underwriters, are licensed and required to observe its provisions respecting the transaction of insurance within the province. All the features of the Dominion Insurance Act relating to the regulation and supervision of the business of insurance and contracts of insurance in Ontario and other aspects of the business are dealt with in the Ontario Insurance Act.

R.S.C. 1927, c. 101. **12.** The provisions of the Dominion Insurance Act conflict with the provisions of the Ontario Insurance Act in numerous material respects. This conflict of legislation has occasioned serious public inconvenience through the confusion in policy forms resulting from an attempt to reconcile the inconsistent provisions, through the uncertainty of the legal rights of the parties to contracts of insurance, and through the embarrassment resulting from the assertion of a dual legislative authority respecting the same subject matter. 10

Insurance Ref. [1916], 1 A.C. 588, Reciprocal Insurers Case [1924], A.C. 328. Appendix, p. 14.

13. Questions have arisen from time to time as to the validity of various provisions of Dominion legislation respecting insurance, and some of the questions have reached the Judicial Committee, resulting in certain important provisions of Dominion Acts being declared *ultra vires*. Following such decisions the form of the Dominion legislation was modified in an effort to retain complete legislative control by the Dominion over the business of insurance in the provinces of Canada. The course of these changes and the source of Sections 11, 12, 65 and 66 of the Dominion Insurance Act and related statutes are indicated in the Appendix. 20

Appendix, p. 20.

14. Notwithstanding these decisions of the Judicial Committee and the subsequent changes in the form of the Dominion legislation, the substance of the Dominion legislation has remained unchanged. This is illustrated by the character of the licences issued thereunder from time to time. There are included in the Appendix copies of licenses issued to (a) a British company and (b) a foreign company, pursuant to the Dominion Insurance Acts of 1910, 1917 and 1927. 30

Appendix, p. 24.

Record, pp. 64, 65. Appendix, p. 31.

[1924], A.C. 328.

15. In the Ontario Reference of 1925, referred to in paragraph 4 *supra* Mr. Justice Masten, expressing the opinion of the majority of the Court, and dealing with the legislative competence of the Parliament of Canada to enact such provisions as are contained in Sections 11, 12, 65 and 66 of the Dominion Insurance Act, observed (at page 412) that " Bearing in mind "the well-recognised rule that in the discussion of questions like the present "the Court ought to limit its answers strictly to the questions submitted "the present inquiry is, by the decision in the *Reciprocal Insurers Case, supra*, "narrowed to this question :—Is the legislation of the Dominion, referred "to in questions 2 and 3, 'properly framed' so as to be 'competently "enacted' ? " 40

Later (at page 415), the learned Judge pointed out " It thus appears "that the legislation in question is limited to three classes of persons " (including companies): First, Dominion companies; second, British

“companies and individuals; third, foreign or alien companies and individuals.” Record.

As to Dominion companies, after pointing out that it might be assumed that the Dominion Parliament was competent to grant to a company incorporated by it a status as a Dominion company, to endow it with powers etc., the learned Judge said (at page 416) “But the granting of subjective status and powers of the Company is one thing, and the regulation of the objective exercise of its powers in a particular Province is quite another thing. It seems to me self-evident that the conditions which a Dominion company, after it has been incorporated and organised, chooses to insert in its policies of insurance have nothing whatever to do with its prior incorporation. In other words, the Dominion legislation here in question is not aimed to create or to control or limit the status, powers, or field of operation of the companies referred to in the statute, but rather to control its subsequent operations by prescribing certain minor details of the contracts into which the citizens of Ontario may enter with such companies and persons, and so to regulate the business of insurance.”

With respect to the second and third classes of persons (including companies), *i.e.*, British and foreign companies and individuals, the learned Judge said (at page 420): “With respect to British insurance companies, British natural persons, alien insurance companies, and alien persons, seeking to carry on the business of insurance in Canada, the considerations to be observed in reaching a conclusion are for the most part similar to those which obtain in considering the case of Dominion companies, and need not be repeated.”

In conclusion the learned Judge said (at page 422): “Considering the history of the constitutional controversy between the Dominion and Provincial authorities respecting insurance legislation, I am driven to the conclusion that the legislation in question is an attempt by this indirect method to regulate the business of insurance in the Provinces of Canada so far as it is conducted by the classes of companies and persons above named, and that its form is adopted under the guise of legislation respecting trade and commerce and respecting aliens in order to cloak a regulation of the business of insurance.”

And (at page 423): “I, therefore, conclude that the legislation in question is not only in substance, but also in form, directed to the regulation of the conduct in Ontario of the business of insurance, and that in its object and scope it fails to come within any power or combination of powers confided to the Dominion Parliament by Section 91.”

16. In the recent Ontario case, referred to in paragraph 5, *supra*, Mr. Justice Garrow said (at page 11): “Even if I were inclined to a different view from that expressed by Masten J.A., which I am not, I would still, I think, be obliged to accept the opinion expressed by him and assented to by Riddell and Middleton J.J.A.; and to the extent at least to which that case goes, I think I must follow it.” Appendix,
p. 50, l. 9.

Later (at page 14) the learned Judge said: “The vice of the legislation in question appears to be that the Dominion Parliament seeks to impose, p. 52, l. 35.

Record. “ upon those obtaining licences, obligations as to the terms and conditions
 “ upon which insured and insurer shall do business and enter into contracts,
 “ matters which, as I read the authorities, are expressly for the Provincial
 “ Legislature.”

[1924],
 A.C. 328.

17. Notwithstanding the decision in the *Reciprocal Insurers Case*, residents of Ontario (called subscribers), who exchange with each other and with subscribers in other provinces and in the United States, reciprocal contracts of indemnity or inter-insurance as contemplated and authorised by the Reciprocal Insurance Act, 1922 (Ontario), are required by the Dominion to be or become licensed as insurance companies under the Insurance Act of Canada. The nature of these reciprocal contracts of insurance is fully described in the *Reciprocal Insurers Case* commencing at the bottom of page 344. Upon failure so to do, subscribers in Canada are required to pay the premium tax imposed by Clause (b) of Section 16 of the Special War Revenue Act or incur the penalty of fifty dollars for each and every day during which the default continues. 10

Record,
 p. 66.

Furthermore, subsequent to the decision in the *Reciprocal Insurers Case*, such subscribers as had complied with the Insurance Act of Canada (by depositing securities with the Minister of Finance and otherwise) and obtained a license as required by Section 508c of the Criminal Code, permitted such licenses to expire and applied for the return of their securities so deposited. Although several years have elapsed, the petition of these subscribers for the return of their securities has not been allowed. 20

Record,
 p. 5.
 pp. 64-66.

18. The Attorney-General of Ontario respectfully submits, as regards question Number 1 of the present Reference, that Sections 11, 12, 65 and 66 of the Insurance Act of Canada are *ultra vires* and therefore not binding upon foreign or British insurers licensed to carry on business within the province.

The named sections are the foundation sections upon which the Dominion has erected a comprehensive system of regulation and supervision of the business of insurance and contracts of insurance in the provinces of Canada. They do not stand alone and their validity cannot be considered apart from the remainder of the Act which embodies provisions compliance with which is expressly declared to be a condition of the licenses issued thereunder. 30

Insurance
 Reference
 [1916],
 1 A.C. 588
 at 596.

The exempting of provincial companies from the compulsory application of the provisions of the Insurance Act does not change the general character of the legislation. In its practical aspects legislation as to Dominion companies, British companies and foreign companies comprises almost the whole field of insurance as transacted in Canada. The Dominion, therefore, has undertaken to do what has been expressly held to be *ultra vires* Dominion authority, namely, to regulate by a licensing system a particular trade in which Canadians would otherwise be free to engage in the provinces. 40

[1916],
 1 A.C. 588.

The nature and scope of this legislative attempt is therefore the same in substance as the nature and scope of the Insurance Act of 1910, which was held *ultra vires* the Dominion in the Insurance Reference of 1916.

The regulation of a particular trade, as well as the subject matter of insurance contracts, has been held to be a matter of "Property and Civil Rights in the Province" and as such within the exclusive legislative power of the Provinces. This subject may only be trespassed upon by Dominion legislation in so far as is necessarily incidental to the exercise of the powers enumerated in Section 91 of the British North America Act, 1867.

Citizens Ins. Co. vs. Parsons [1881], 7 A.C. 96, Reciprocal Insurers Case [1924], A.C. 328.

In so far as British companies are concerned, it is submitted that no enumeration is found in Section 91 which authorises the Dominion so to trench upon "Property and Civil Rights in the Province" and to pass an enactment in regulation of the contracts of insurance and the business of such companies in the Provinces of Canada. The legislation in question obviously extends to matters not comprised within the subject of "Immigration" as mentioned in Section 95.

City of Montreal v. Montreal Street Rlwy. [1912], A.C. 333 at 344.

In so far as Dominion companies are concerned, it has been made clear by decisions of the Judicial Committee that provincial statutes of general operation on the subject of civil rights *prima facie* affect them; further, that the enumeration "Regulation of Trade and Commerce," notwithstanding the extension of the ambit of the legislative powers of the Dominion under that head does not authorise the Dominion Parliament so to extend its authority over Dominion companies and pass an enactment in regulation of contracts of insurance and the business of insurance, in derogation of the general provincial law.

Reciprocal Insurers Case [1924], A.C. 328 at 345.

There remains for consideration, therefore, only the matter of Dominion authority respecting foreign companies.

In the Insurance Reference of 1916, it was held that it would be within the power of the Dominion Parliament to require, by properly framed legislation, a foreign company to take out a license from the Dominion Minister, under the heads "Regulation of Trade and Commerce" and "Aliens." It was made clear, however, that the legislation must be "properly framed" and valid when tested by the rules laid down in other cases, that is to say: such legislation must be in its true nature and scope, and in its pith and substance, truly legislation respecting aliens; furthermore, that the exercise of this power may only trench upon property and civil rights within the province, in the degree to which that encroachment is necessarily incidental to the exercise of the legislative plan respecting aliens. Examined in the light of these and other rules, the legislation in question in this Reference is invalid and *ultra vires*: first, because it is revealed to be legislation respecting insurance as such, and not legislation respecting aliens, as such; and secondly, because the general provisions of the Act cannot be regarded in any sense as necessarily incidental to legislation respecting aliens.

[1916], 1 A.C. 588 at 597.

The first of these submissions appears from the fact that there is no distinction in the application of the provisions of the Act between aliens and British subjects. Legislation which makes no discrimination between British subjects and aliens cannot be regarded as an enactment the subject-matter of which is aliens. Evidence in corroboration of this is found in the form of license issued to British and foreign companies, copies of which are printed in the Appendix.

Appendix, pp. 20-23.

Record.

The whole body and substance of the provisions of the Act is found to be the regulation of the business and contracts of insurance, as such, quite irrespective of the status of the person or licensee to whom the regulation is applied; Parts II., IV. and V. of the Act, the application of which is indicated by the introductory Sections 75, 117 and 130, make this very clear. Such provisions are not necessarily incidental to the exercise of the legislative power of the Dominion respecting aliens.

The provisions of the Ontario Insurance Act apply generally to insurers of all kinds undertaking the business of insurance within the province. It is inconsistent with the distribution of powers under the British North 10 America Act, 1867, that the Dominion should be able to assume authority in such a field in conflict with provincial legislation by the mere device of designating such legislation as applicable to aliens or foreign companies.

[1899],
A.C. 580.
[1903],
A.C. 151.

It is submitted that the decisions of the Judicial Committee in the cases of *Union Colliery v. Bryden* and *Cunningham v. Tommey Homma* require that legislation which purports to deal with aliens must be examined in its entirety to ascertain whether, in reality, the legislation is legislation respecting aliens or whether, under this guise, the legislation, in reality, deals with some subject matter of exclusive provincial jurisdiction.

In this case when the legislation is examined it is found to be legislation 20 respecting insurance, as such, and not legislation respecting aliens, as such.

Record,
p. 5.
pp. 66-67.

19. The Attorney-General of Ontario respectfully submits as regards Question Number 2 of the present Reference that Sections 16, 20 and 21 of the Special War Revenue Act are *ultra vires*.

The purpose and effect of the sections of the Special War Revenue Act in question is to give compulsory force to the regulative measures of the Insurance Act.

Reciprocal
Insurers
Case [1924],
A.C. 328.

Paragraph (b) of Section 16 of the Special War Revenue Act relates to reciprocal insurance. It is *ultra vires* the Dominion Parliament because the subject matter of reciprocal insurance has been expressly held to be 30 *ultra vires* the Dominion Parliament.

The application of paragraph (b) of Section 16 of the Special War Revenue Act is illustrative of the purpose and effect of the legislation. This provision purports to require persons resident in Canada who exchange reciprocal contracts of indemnity or inter-insurance with each other and with residents of the United States through the agency of an attorney-in-fact who is situated outside of Canada, to pay a certain tax, unless a licence for such insurance has been obtained, pursuant to the provisions of the Insurance Act of Canada. Although no question of alien, foreign company or British company is raised in the application of this legislation, and it is 40 beyond the authority of Parliament to require licenses in such cases, nevertheless, Section 16 purports to distinguish between cases in which such licenses have been obtained and cases in which such licenses have not been obtained.

The purpose and effect of the section is to induce such persons to obtain licenses under the Dominion Insurance Act and thereby subject themselves

to all the conditions prescribed by that Act in regulation of contracts of reciprocal insurance.

Record.

It is *ultra vires* the Dominion Parliament to give effect to an *ultra vires* statute in such a manner, upon the principle that what cannot be done directly cannot be done indirectly.

The provisions of Paragraph (a) of Section 16, as they relate to British and foreign companies, are similar in their purpose and effect to paragraph (b) and are likewise *ultra vires* the Dominion Parliament.

The effect of the judgment of the Supreme Court of Ontario, referred to in paragraph 5 and printed in the Appendix, is that the Minister of Finance may not issue the licenses which Sections 4, 11, 12, 65 and 66 of the Dominion Insurance Act purport to authorise. Such licenses are, therefore, invalid and of no legal effect. It is *ultra vires* the Dominion Parliament to legislate in another statute so as to discriminate between those persons who apply for and obtain such invalid and *ultra vires* licenses and persons who do not obtain such licenses. In both cases, the persons in question have the same status and rights at law. Section 16 of the Special War Revenue Act is, therefore, *ultra vires* the Dominion Parliament, as an effort to legislate by way of distinction between these classes of persons.

Appendix,
p. 44.

The words "not licensed under the Insurance Act" which appear in paragraphs (a) and (b) of Section 16 are *ultra vires* the Dominion Parliament. The consequence of the invalidity of these words is to make the section invalid in its entirety. These words are not severable from the remainder of the section.

Because no valid insurance license may be issued under the Insurance Act, Section 16 of the Special War Revenue Act would, if valid, impose a tax upon all insurance with British and foreign underwriters and reciprocal insurers, including that large volume of insurance presently licensed under the Insurance Act and not now taxed. This effect was not intended by Parliament. To hold the Act valid would therefore result in imposing taxation in a manner not authorised by Parliament. Section 16 of the Special War Revenue Act should, therefore, be held inseverable from the Insurance Act of Canada and therefore *ultra vires*.

If Section 16 of the Special War Revenue Act were held valid and *intra vires* the Dominion Parliament, it would place power within the authority of Parliament to invade any provincial field by enacting legislation respecting any subject matters within the exclusive authority of the province and then giving effective sanction to such legislation by imposing taxation, sufficient in its rate or amount, to induce compliance with such *ultra vires* legislation.

If the questioned provisions of the Special War Revenue Act which impose a 5 per cent. tax are *intra vires* a higher rate of tax would likewise be *intra vires*, and, if a sufficiently large tax were imposed, no person resident in Canada could afford to insure his property with a British or foreign company or underwriter not licensed under the Insurance Act of Canada.

If it is within the legislative competence of the Parliament of Canada to enact such provisions as are contained in the Special War Revenue Act,

Record. the supervision and regulation presently exercised by the Dominion under the Insurance Act of Canada over contracts of insurance and the business of insurance in the provinces of Canada, may be continued without change in practical effect even if Sections 11, 12, 65 and 66 of the Insurance Act are held *ultra vires*.

[1924],
A.C. 328.

As was said in the *Reciprocal Insurers Case* (at page 332) when comparing Section 508c of the Criminal Code with the Insurance Act, 1917: "These two statutes which are complementary parts of a single legislative plan, are admittedly an attempt to produce by a different legislative procedure the results aimed at by the authors of the Insurance Act of 1910, which 10 in *Attorney-General of Canada v. Attorney-General for Alberta* [1916], 1, A.C. 588, was pronounced *ultra vires* the Dominion Parliament."

As in the *Reciprocal Insurers Case* the Privy Council found it necessary to examine the purpose and effect of Section 508c of the Criminal Code in order to ascertain if the Dominion was not, under the guise of the criminal law, encroaching upon subject matters belonging exclusively to the provinces, so in this case of taxation legislation, it is necessary to examine the purpose and effect of the questioned sections of the Special War Revenue Act in order to ascertain if the Dominion is not, under the guise of taxation, endeavouring to give sanctions to legislation otherwise *ultra vires* the 20 Dominion Parliament.

20. The Attorney-General of Ontario, therefore, submits that question No. 1 should be answered, as to the first part, in the negative, and, as to the second part, in the affirmative, and that question No. 2 should be answered, as to the first part, in the negative, and, as to the second part, in the negative, for the following, among other,

REASONS

1. Because the subject matter of the legislation in question is assigned exclusively to the provinces under enumeration 13 (Property and Civil Rights in the Province) of Section 92 30 of the *British North America Act, 1867*.
2. Because it has been decided in the *Insurance Reference* of 1916 that it is not competent to the Dominion to regulate generally the business of insurance in such a way as to interfere with the exercise of civil rights in the province.
3. Because it has been decided in the *Reciprocal Insurers Case* that "the regulation of contracts of insurance and the "business of insurance are subjects not within the "legislative sphere of the Dominion" but "are subjects 40 "peculiarly within the sphere of provincial control," and the sections mentioned in this Reference are the foundation of a system of *ultra vires* regulation of contracts of insurance and the business of insurance in the provinces of Canada.

[1916],
1 A.C. 588.

[1924],
A.C. 328
at 345, 346.

4. Because the Act of 1927, like the Act of 1917, is in substance and effect the same as the Insurance Act of 1910, held *ultra vires* by the Judicial Committee in the *Insurance Reference* of 1916. Record.
[1916],
1 A.C. 588.
5. Because the subject matter of the legislation in question is not within the meaning of enumeration 25 (Naturalisation and Aliens) of Section 91 of the *British North America Act, 1867*.
- 10 6. Because the subject matter of the legislation "scrutinised in its entirety" and with reference to its "true nature and character," its "pith and substance," is not an enactment on the subject of aliens but is an enactment respecting contracts of insurance. [1924],
A.C. 328
at 337.
7. Because the Dominion legislation touching the matter of aliens is not "properly framed" within the meaning of the opinion of the Judicial Committee in the *Insurance Reference* of 1916. [1916],
1 A.C. 588
at 597.
- 20 8. Because the Dominion legislation in question is not an enactment in relation to aliens, as such, but is clearly in substance an enactment in regulation of contracts of insurance and the business of insurance, as such.
9. Because the subject matter of the Dominion legislation in question is not within the meaning of Section 95 of the *British North America Act, 1867*, respecting "Immigration."
- 30 10. Because the Parliament of Canada cannot, by enacting ancillary legislation designated as taxation, impose penalties for failure to obtain a license under the provisions of the Insurance Act and thereby claim a legislative authority, not otherwise possessed, to interfere with a class of subjects committed exclusively to the provincial legislatures.
11. Because it is *ultra vires* the Parliament of Canada to distinguish, in taxation legislation, between persons who have obtained an invalid license under an *ultra vires* statute and persons who have not obtained such a license.
- 40 12. Because Section 16 of the Special War Revenue Act is dependent, for its meaning and effect, upon the licensing provisions of the Insurance Act, which licensing provisions are *ultra vires*.

W. N. TILLEY.

E. BAYLY.

R. LEIGHTON FOSTER.

In the Privy Council.

No. 36 of 1931.

*On Appeal from the Court of King's Bench for
the Province of Quebec (Appeal Side).*

IN THE MATTER of a Reference by His Honour the Lieutenant-Governor in Council as to the validity of certain sections of the Insurance Act of Canada,

BETWEEN

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

AND

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

AND

BELDING - CORTICELLI, LIMITED; THE MASSEY-HARRIS COMPANY OF CANADA, LIMITED; THE ABITIBI POWER AND PAPER COMPANY, LIMITED; THE MONARCH KNITTING COMPANY, LIMITED; MOORE CORPORATION, LIMITED; and THE ATTORNEY-GENERAL OF ONTARIO *Interveners.*

AND BETWEEN

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

AND

THE ATTORNEY-GENERAL OF QUEBEC ... *Respondent,*

AND

BELDING - CORTICELLI, LIMITED; THE MASSEY-HARRIS COMPANY OF CANADA, LIMITED; THE ABITIBI POWER AND PAPER COMPANY, LIMITED; THE MONARCH KNITTING COMPANY, LIMITED; MOORE CORPORATION, LIMITED; and THE ATTORNEY-GENERAL OF ONTARIO *Interveners.*

CASE OF THE ATTORNEY-GENERAL
OF THE PROVINCE OF ONTARIO,
INTERVENER.

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