

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Attorney-General for the Province of Ontario v. The Hamilton Street Railway Company, the Metropolitan Railway Company, the Grand Trunk Railway Company of Canada, the Niagara Navigation Company, the Willson Carbide Company of St. Catherine's Limited, Walter Barwick, the Ontario Lord's Day Alliance, and the Attorney-General for the Dominion of Canada, and on certain Cross-appeals from the Court of Appeal for Ontario ; delivered the 14th July 1903.*

Present :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by the Lord Chancellor.*]

THEIR Lordships are of opinion that the Act in question, Revised Statutes of Ontario, 1897, cap. 246, intituled "An Act to prevent the Profanation of the Lord's Day," treated as a whole, was beyond the competency of the Ontario Legislature to enact, and they are accordingly of opinion that the first question which was referred to the Court of Appeal for Ontario by the Lieutenant-Governor, pursuant to cap. 84 of the Revised Statutes of Ontario, 1897, ought to be answered in the negative.

The question turns upon a very simple consideration. The reservation of the criminal law for the Dominion of Canada is given in clear

and intelligible words which must be construed according to their natural and ordinary signification. Those words seem to their Lordships to require, and indeed to admit, of no plainer exposition than the language itself affords. Section 91 (27) of the British North America Act, 1867, reserves for the exclusive legislative authority of the Parliament of Canada "the Criminal Law, except the Constitution of Courts of Criminal Jurisdiction." It is, therefore, the criminal law in its widest sense that is reserved, and it is impossible, notwithstanding the very protracted argument to which their Lordships have listened, to doubt that an infraction of the Act which in its original form, without the amendment afterwards introduced, was in operation at the time of Confederation, is an offence against the criminal law. The fact that from the criminal law generally there is one exception, viz., "the Constitution of Courts of Criminal Jurisdiction," renders it more clear, if anything were necessary to render it more clear, that with that exception (which obviously does not include what has been contended for in this case) the criminal law, in its widest sense, is reserved for the exclusive authority of the Dominion Parliament.

Their Lordships' opinion on the first question renders it unnecessary to answer the second.

With regard to the remaining questions, which it has been suggested should be reserved for further argument, their Lordships are of opinion that it would be inexpedient and contrary to the established practice of this Board, to attempt to give any judicial opinion upon those questions. They are questions proper to be considered in concrete cases only; and opinions expressed upon the operation of the sections referred to, and the extent to which they are applicable, would be worthless for many reasons. They would be worthless as being speculative

opinions on hypothetical questions. It would be contrary to principle, inconvenient, and inexpedient, that opinions should be given upon such questions at all. When they arise, they must arise in concrete cases, involving private rights; and it would be extremely unwise for any judicial tribunal to attempt beforehand to exhaust all possible cases and facts which might occur to qualify, cut down, and override the operation of particular words when the concrete case is not before it.

Their Lordships will therefore humbly advise His Majesty that the first question ought to be answered in the negative, and that no answers ought to be given to the questions 3 to 7 inclusive. There will be no Order as to the costs of these Appeals.

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