

IN THE PRIVY COUNCIL

COUNCIL CHAMBER, WHITEHALL, S.W.1.
Monday, 20th July, 1931.

Present :

VISCOUNT DUNEDIN,
LORD BLANESBURGH,
LORD ATKIN,
LORD RUSSELL OF KILLOWEN,
LORD MACMILLAN.

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;
THE ATTORNEY GENERAL OF ONTARIO; and THE ATTORNEY
GENERAL OF BRITISH COLUMBIA. 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;
THE ATTORNEY GENERAL OF ONTARIO; and THE ATTORNEY
GENERAL OF BRITISH COLUMBIA. Interveners.

) (Transcript of the Shorthand Notes of Marten, Meredith & Co.,
8, New Court, Carey Street, London, W.C.2.)

F I R S T D A Y

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**Counsel for the Interveners (Belding-Corticelli, Limited and
other Companies):** MR. V. EVAN GRAY (of the Canadian Bar)
instructed by Messrs. Lawrence Jones & Co.

MR GEOPFRION: May it please your Lordships. I appear for the Appellant, the Attorney General of Quebec, with my learned friends Mr. Lanctot and Mr. Alexander. I shall be heard alone in that interest, because there are several parties representing the same interest. I should say I am the Appellant, because the Lieutenant-Governor of the Province of Quebec referred certain questions to the Court of King's Bench (Appeal Side) for the Province of Quebec, in respect of a certain Dominion Insurance Act and a Dominion taxation statute. The Dominion Government was represented and heard. There is an appeal by the Province of Quebec, and there is a cross-appeal by the Dominion Government. During the same time the Ontario Government had some litigation with regard to Dominion insurance raising similar questions, if not the same, substantially the same, and that litigation was before the Ontario Courts. There were Answers given partly similar and partly different from those in Quebec, so there is not harmony in the Courts of the two Provinces. The Attorney General for Ontario intervenes to support the Province of Quebec, and my learned friend Mr. Tilley will therefore follow me as representing the Attorney General for Ontario. Mr. Tilley is appearing, with my learned friends Mr. Bayly and Mr. Foster, and Mr. Tilley will argue alone for that interest. Then we have a third interest of a very peculiar nature, a group of Canadian Companies in Ontario and Quebec who insure under a peculiar sort of mutual system with a group of American Companies known as the New England Mutuals. It is under a peculiar system that apparently cannot fit in with the Dominion Insurance Act. and cannot fit in with provincial Acts, so that they stand in this position, that they must give up that system of insurance, which they like, for reasons which will be explained. On these appeals they have been allowed to intervene by this Board, for the purpose of being heard so as to explain how the thing works. Inasmuch

as part of our argument is that this is what we call colourable legislation, designed to have an effect other than would appear on the face of the statute, the way the thing works is important. An explanation by somebody familiar with it will be useful, and the Board recently allowed this group of Companies to intervene. They will be represented by Mr. V. Evan Gray, of the Toronto Bar. British Columbia also supports Ontario and Quebec, and is represented by my learned friend Mr. Lanotot; but they, I understand, I will not add anything; so that your Lordships will only be troubled with three arguments on this question. Mr. St. Laurent and Mr. Flaxton appear for the Dominion on the main appeal and cross appeal and on the interventions.

The appeal before your Lordships is the appeal from the Quebec Judgment, although other matters are involved, and it is an appeal on the Answers given to certain Questions. Your Lordships will find the Questions on page 5 of the Record.

VISCOUNT DUNEDIN: I had a general look at the Record, and I thought the most convenient place was page 24, where it gives the Questions and the Answers.

MR GEOFFRION: Yes, my Lord. The two Questions are so essentially different that I will trouble your Lordships first with only the first Question. The first Question is: "Is a foreign or British insurer, who holds a licence 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?" The Answers might be summarised very briefly. As regards the British -- "British" means British and Canadian, to be absolutely accurate, but it is British other than the Canadian British -- the Answer is in favour of the Provinces by a majority of four Judges to one. I do not need to go into the details of

it, I will do that when I read the Answers. As regards the foreign, the Court was divided by three to two, three in favour of the Dominion and two in favour of the Province.

Your Lordship will find the sections on pages 64 and 65.

VISCOUNT DUNEDIN: I had noted them thus, it will not take long, and perhaps you would say if it is quite right. Taking Mr. Justice Allard first, he says all the sections are good.

MR. GEOFFRION: There is a confusion there. He says, all the sections are good as to the aliens.

LORD RUSSELL: As to all, I think. There is a difference in the Cases there. One gives a different answer of Mr. Justice Allard than in the other Cases.

MR. GEOFFRION: I may be wrong, but I was under that impression on reading his judgment through. They divided the Question in two parts, from the point of view of foreign and British.

VISCOUNT DUNEDIN: I am only taking the first Question. The Question is put in the form of an alternative, is he obliged to observe or are those sections unconstitutional; in which case he is not obliged to observe. Mr. Justice Allard says to the first Question: Yes; that is to say, he is obliged to observe. Then, are those sections unconstitutional? He says: No; therefore he is obliged to observe.

MR. GEOFFRION: May I suggest, and I think when I come to read the reasons later on I have some support for the view, that they divided that question in a different manner?

VISCOUNT DUNEDIN: He could not have put it plainer than he himself puts it in two lines on page 25: "A la premiere partie de la question No. 1: Je reponds Oui. A la seconde partie de cette meme question: Je reponds Non". That is plain enough, surely.

MR. GEOFFRION: Subject to finding something else, I will assume it for the present. I have construed the reasons of the judgment differently, but I will assume it on that basis

VISCOUNT DUNEDIN: You may say he has given bad reasons for it.

You, in your Case, say he said the answer to the first part is partly Yes and partly No. The Attorney General for the Dominion says he said Yes.

MR GEOFFRION: I am willing to assume it the other way, because my argument will be the same, whether it is against me or for me.

VISCOUNT DUNEDIN: Mr. Justice Tellier says, all the sections are bad. Then Mr. Justice Howard says, good for aliens, I am in doubt about British. Mr. Justice Bernier says, all bad; and Mr. Justice Bond says, good for aliens, bad for British. The result, when you add them all up together, is that the sections are bad for the British, but are good for aliens.

MR. GEOFFRION: On the judgments there is no doubt about that: the majority say it is bad for the British and good for the aliens.

VISCOUNT DUNEDIN: I think we have now got very clearly what we have to decide on this appeal. The judgment of the majority of the court is that these sections are all right for aliens, but are quite bad for the British.

MR. GEOFFRION: Absolutely, my Lord. The sections are printed at length on pages 64 and 65. On page 64 you will find section 11: "It shall not be lawful for, (a) any Canadian Company; or, (b) any alien, whether a natural person or a foreign company, within Canada to solicit or accept any risk, or to issue or deliver any receipt or policy of insurance, or to grant, in consideration of any premium or payment, any annuity on a life or lives, or to collect or receive any premium, or, except as provided in section ¹²⁹ 12 of this Act, to inspect any risk or adjust any loss, or to advertise for or carry on any business of insurance, or to prosecute or maintain any suit, action or proceeding, or to file any claim in

insolvency relating to such business, unless under a licence from the Minister granted pursuant to the provisions of this Act". That is stating you shall not do any business in any form if you are a Canadian Company or an alien unless you have a licence.

LORD ATKIN: What is section 129? You have not printed that.

MR. GEOFFRION: My learned friend Mr. Flaxton has copies of the whole Insurance Act. We have a sufficient number to distribute among your Lordships. I shall have to refer to the general character of the Act, and I think it will be more convenient to do so from that little book.

LORD RUSSELL: That section is in the Case for the Attorney General of the Dominion.

MR. GEOFFRION: Section 129 is on page 70 of the little book now before your Lordships.

LORD ATKIN: That permits insurance to be done outside Canada in respect of Canadian property.

MR. GEOFFRION: It is an exception, permitting certain people to insure with British or foreign companies, providing everything is done outside Canada, except inspecting the risk and so on.

LORD ATKIN: The actual section applies whether the property is or is not within Canada, does it not?

MR. GEOFFRION: Yes, my Lord. I will read it, although it is not yet material, because the licensing section stands or falls, whether the exception is in or not. "Notwithstanding anything in this Act contained any person may insure his property". It would be better, I think, if I read section 12 before I read section 129, because this is an exception to both sections 11 and 12. Section 12 says: "It shall not be lawful for any British company or for any British subject not resident in Canada, to immigrate into Canada for the purpose of opening or establishing any office or agency for the transaction of any business of or relating to insurance,

or of soliciting or accepting any risk or issuing or delivering any interim receipt or policy of insurance, or granting, in consideration of any premium or payment, any annuity on a life or lives, or of collecting or receiving any premium, or, except as provided in section 129 of this Act, of inspecting any risk or adjusting any loss, or of carrying on any business of or relating to insurance, or of prosecuting or maintaining any suit, action or proceeding, or filing any claim in insolvency relating to such business, unless under a licence from the Minister granted pursuant to the provisions of this Act".

LORD BLANESBURGH: Section 12, except for a difference in phraseology, is almost identical with section 11 if you get away from line 3. Why is it that in section 12 the words "to advertise for" are omitted? They are in section 11. Is there any special reason for that?

MR. GEOFFRION: I do not know.

LORD BLANESBURGH: Except for that, there is no difference.

MR. GEOFFRION: No, my Lord.

LORD BLANESBURGH: I wondered whether it was accidental or deliberate.

MR. GEOFFRION: The parties were not sure about whether both could stand. Then comes section 129. It is an exception to both these sections. It is not material yet. I will discuss it later. You will find it on page 70 of this book: "Notwithstanding anything in this Act contained, any person may insure his property, or any property in which he has an insurable interest, situated in Canada with any British or foreign unlicensed insurance company or underwriters, and may also insure with persons who reciprocally insure for protection only and not for profit; and any property insured or to

be insured under the provisions of this section may be inspected and any loss incurred in respect thereof adjusted: Provided such insurance is effected outside of Canada and without any solicitation whatsoever directly or indirectly on the part of such company, underwriters or persons by which or whom the insurance is made; and provided further that no such company, underwriters or persons shall within Canada advertise their business in any newspaper or other publication or by circular mailed in Canada or elsewhere, or maintain an office or agency therein for the receipt of applications or the transaction of any act, matter or thing relating in any way to their said business". It is an exception for insurance entered into out of Canada from the general prohibition under which a licence must be obtained, or the business is not allowed, and an exception allowing the inspection of adjustment of loss.

VISCOUNT DUNEDIN: I do not think much turns upon that.

Obviously, the legislation in section 12 is against people doing business. Section 129 says, if a private individual chooses to go to London to insure his property, he may do it.

MR. GEOFFRION: At all events, I do not attach the slightest importance to section 129 myself. I thought I would give it to your Lordships, as it was referred to. I suggest the validity or invalidity of these two provisos forbidding doing business in Canada by British or foreign underwriters except under licence must depend on the character of the Act generally, because the licence is nothing but a means of enforcing the Act. Section 46 of the Act is the one to which I want to refer principally in that connection.

LORD BLANESBURGH: You have a prohibition against a Canadian company as well.

MR. GEOFFRION: Yes, but this will have to be discussed indirectly. It is not directly submitted to your Lordships.

Section 46 says: "For the purpose of carrying out the provisions of this Act, the Superintendent is hereby authorized and empowered to address any enquiries to any insurance company licensed under this Act, or to the president, manager, actuary or secretary thereof, in relation to its assets, investments, liabilities, doings, or condition, or any other matter connected with its business or transactions, and it shall be the duty of any company so addressed to promptly reply in writing to any such enquiries. The Superintendent may in his discretion embody in his annual report to the Minister the enquiries made by him under this subsection and the answers thereto. (2) In the case of any violation of any of the provisions of this Act by a company licensed thereunder to carry on business within Canada, or in the case of failure to comply with any of the provisions of its charter or Act of incorporation by any Canadian company so licensed, it shall be the duty of the Superintendent to report the same to the Minister, and thereupon the Minister may, in his discretion, withdraw the company's licence or may refuse to renew the same or may suspend the same for such time as he may deem proper". Then section 6, page 7, provides for annual licences.

LORD ATKIN: Does that mean, I do not know how it is construed, that upon the report, if the superintendent comes to the conclusion that there has been some violation of the provision, the Minister can withdraw the company's licence without hearing the company about it?

MR. GEOFFRION: Strictly speaking, I suppose he would hear the company as a matter of fairness, but he is not bound to under the statute. I do not suggest that they would not do it. At all events, probably the right thing would be they would be heard before the superintendent on the ordinary practice. I would suggest they would be heard before the superintendent, but there is no suggestion that they must be heard. I admit, in practice, they will be heard. I point out to your Lordships that the licence is nothing but a means of seeing that companies are forced to comply with all the provisions of the Act. The licence is annually and renewal is discretionary. This compels us to go into a consideration of the whole Act.

VISCOUNT DUNEDIN: Does not it come to this, that what we have to consider are sections 11 and 12? 65 and 66 are only ways of making good what they have said must be done or must not be done under sections 11 and 12.

MR. GEOFFRION: That is why I did not trouble your Lordships by reading 65 and 66; they follow the others. I read 46 to your Lordships to indicate that the licence will be given and renewed, or will not be renewed and will be cancelled if the company in any respect does not comply with the provisions of the Act; so the licence is only machinery. The question is, can the Dominion compel these people to respect the Insurance Act? This compels me to take your Lordships through that Act. There are many sections of it; but before I take that question up it would be extremely useful to your Lordships if I tell the history of to your Lordships

Its history began in 1914. It has been twice before this

Board, and one judgment was given in 1916. It is a long-standing battle between the Dominion and the Provinces. The Board gave judgment in 1916, and the Dominion made some amendments to its laws in a supposed effort to comply with the first judgment. A new reference took place in Ontario, and it came before the Board again in 1924. That judgment, again, was adverse to the Dominion. The Dominion made this third attempt, and I want to argue that these are three attempts to achieve exactly the same thing. I really believe that the best way for your Lordships to be made familiar with the situation is for me to read the 1916 judgment first. It is in 1916, 1, Appeal Cases, page 588. In Cameron it is page 63 of Volume 2. It was an appeal by the Attorney General for Canada, and the Respondents were the Attorney General for the Province of Alberta and others. I know Quebec was in it; that is why I was in it; and Ontario was in it. Those who argued for all Respondents were Sir Robert Finlay, and a little bit myself. My work was light with Sir Robert Finlay leading me. I will read the judgment, my Lords, which commences on page 593.

(Adjourned for a short time)

VISCOUNT DUNEDIN: You were dealing with the insurance case of 1916.

MR. GEOFFAION: Yes, my Lord. The judgment begins on page 593: "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 sections 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 section 4 of the Insurance Act, 1910, operate to prohibit an insurance company incorporated by a foreign

State from carrying on the business of insurance with^m 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? Section 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 underwriters holding a licence from the Minister.' The Minister is defined in the Act to mean the Minister of Finance of the Dominion". Your Lordships will appreciate that is the same clause, except, instead of being limited to Dominion companies, aliens and Britishers, it is general. "Section 70 is an ancillary section which imposes a penalty on every person who attempts to contravene the provisions of the above and other sections. Section 3 provides that the provisions of the Act shall not apply to any contract of marine insurance effected in Canada by any company authorized 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. Section 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. Section 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 section 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". The Bonanza judgment I need not read to your Lordships. It was decided, under the power to incorporate companies with provincial objects, that the province could create companies, or, rather, under the power of the Lieutenant-Governor to incorporate companies by Royal prerogative, the province could incorporate such companies, and such companies had full power in the province. His Lordship then proceeds: "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 Section 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 section 92. There is only one case, outside the heads enumerated in section 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 section 92. Russell v. The Queen 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 the Dominion legislation which imposed conditions of a prohibitory character on the liquor traffic throughout the Dominion". Russell v. The Queen was a case where the validity of a temperance Act was upheld, an Act which allows a local county to vote itself into prohibition. "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."

I do not know, my Lords, if, in the previous case before your Lordships, the way Russell v. The Queen was construed later has been referred to, but in nearly every other case it seems to be referred to in some way or other. Later on it was said the evil of intemperance must have been so intense that it must have been a national emergency, and it was put on national grounds. "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 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 section 91⁷. I do not know if your Lordships' attention has been called to the fact that the McCarthy Act judgment has not been reported. It is a judgment of this Board with no reasons.

LORD ATKIN: There are no reasons given. This Board has

consulted the Record more than once on that, but I think without enlightenment as to what was the view taken by the Board.

VISCOUNT DUNEDIN: This sentence is practically the key of the whole judgment.

MR. GEOFFRION: "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. Section 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 today 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" -----

VISCOUNT DUNEDIN: With great deference to Lord Haldane, that expression is not really accurate. It is not that section 4 cannot be justified under this head, but it is that it is struck at by these decisions. It is made bad under these decisions.

MR. GEOFFRION: Far from being justified, it is condemned.

LORD ATKIN: I think "cannot be justified under this head", is the head "Regulation of trade and commerce".

MR. GEOFFRION: Yes, I think that is right. The justification of it under the head of "Regulation of trade and commerce" is condemned, would probably be an accurate statement of

the position. "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 John Deere Plow Company v. Wharton". There it was said when the Dominion incorporates a company its status and powers cannot be stopped by any provincial legislation. "But if 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 those 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 ~~made~~ framed legislation, to impose such a restriction. It appears to them that such a power is given by the heads in section 91, which refer to the regulation of trade and commerce and to aliens. This question also is therefore

answered in the affirmative." Your Lordships will see the question is whether we are now properly framing legislation as to aliens. The question is totally different from the British who immigrate.

LORD ATKIN: As Lord Dunedin said, the substance of that case is 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, and it treats general insurance as a particular trade.

MR GEOFFRION: He does not exactly say so because there is an argument upon that point. There is a suggestion of it, though perhaps not an express decision. All he said was that trade being a trade anywhere, you could not take a particular trade and control it by subjecting it to discretionary licences. I perhaps should have read to your Lordships, I did not do so, the Parsons case. That must be a judgment with which your Lordships are very familiar. The judgment is a very long judgment, and an early one. It is reported in 7, Appeal Cases, at page 96. It is also in the First Volume of Cameron, at page 267. I will not read it, it is a very long judgment. I can summarise the essential parts of it in a few words. In the Parsons case, the question arose as to the validity of an Ontario statute providing for what we know as statutory conditions, I do not know whether they are familiar to the legislation of this country, the conditions which the Legislature says must be, as against the insuring company, part of every contract. The question was raised whether this was regulation of trade and commerce, or property and civil rights in the province. They decided there that, even if insurance was a trade (they expressed some doubts about that) this would not be regulation of trade and commerce, and that the words in section 92 giving to the province property and civil rights gave the province full

jurisdiction to make laws respecting insurance as well as any other contract. It had been suggested that property and civil rights did not include contract rights. They said, like any other proposal, it is a matter of contract, and contracts are included in property and civil rights. It was there said insurance might be assimilated to the sale of dry goods and everything else, and was purely provincial.

It becomes important that I should note the changes in the legislation which followed. It is rather interesting. Your Lordships will see the distinction made was this: You, the Federal, cannot assume full control by licensing a system of insurance as regards provincial companies that want to do business out of the provinces or as regards individuals who want insurance in the province and elsewhere; you could, however, by properly framing ^{ed} legislation, require a licence from alien companies under aliens and trade and commerce.

The changes are illustrated, my Lords, in page 13 of the Companies' Case. There you have cross-wise on the page, in a fairly convenient form, an analysis of the situation of the law at various dates. Your Lordships have seen the law in 1910. Section 4 is the section which was read in full in the judgement of Lord Haldane. Section 70 is the penalty section. That need not be read. Then 1917 represents the new legislation, and it is very interesting from the point of view of this case, passed by the Dominion Parliament, I will suggest with great deference to Parliament, not as an effort to comply, but as an effort to cope, with the decision that has just been rendered. Section 11 becomes practically what it is to-day, Canadian companies and aliens. I can say that, in respect of section 129 of 1917, it is substantially, if not exactly, in force to-day. It eliminates the general character of the requirement of a licence under penalties. Then, of course, section 12, on the other side of the page,

comes in, introducing a third class. You have, therefore, a prohibition to do insurance business.

LORD BLANESBURGH: Is a Canadian company ⁱⁿ a section 11 of the 1917 Act a company that owes its incorporation to the Dominion?

MR. GEOFFRION: Yes, my Lord; I think you will find the definition on page 2.

LORD ATKIN: In the print of the case, Mr. Gray, has not something been left out on page 14? It says: "12(1) It shall not be lawful for any British company or for any British subject not resident in Canada;" then ought not the words "to immigrate" be there?

MR. GRAY: I have not found that until this moment.

LORD ATKIN: That is right, is it not? Will you look at it and see?

MR. GEOFFRION: It must be.

LORD ATKIN: I want to know what the words were exactly.

MR. GRAY: Your Lordship is quite right, these words have been omitted, "to immigrate into Canada."

LORD ATKIN: Then it goes on "for the purpose of".

MR. GEOFFRION: Yes, my Lord. Your Lordship has detected a mistake, but, with the correction which is made, the first paragraph is the present. Then it gives something new, which is very interesting, that is, paragraph 2 of section 12, at the foot of page 14: "A company shall be deemed to immigrate into Canada within the meaning of this section if it sends into Canada any document appointing or otherwise appoints any person in Canada its agent for any of the purposes mentioned in subsection (1) of this section." Then, my Lord, I will not deal with the amendments that follow the second reference. Then comes the endeavour to meet the judgment by an amendment of the Criminal Code. They introduced two sections to the Criminal Code, on pages 15 and 16. These sections tried to get round the judgment in

1916 by calling the fact of doing insurance without a licence by anybody a crime. They introduced what was in the general Insurance Act into the Criminal Code, trying to justify it under the head of Criminal Law. On page 15 the section reads as follows: "508(e) Everyone" -- not only the three classes -- "shall be guilty of an indictable offence who, within Canada, except on behalf of or as agents for a company, thereunto duly licensed by the Minister of Finance, or on behalf of or as agent for or as a member of an association of individuals formed upon the plan known as Lloyd's or of an association of persons formed for the purpose of inter-insurance and so licensed, solicits or accepts any insurance risk, or issues or delivers any interim receipt or policy of insurance, or grants in consideration of any premium or payment any annuity on a life or lives, or collects or receives any premium for insurance, or carries on any business of insurance, or inspects any risk or adjusts any loss, or prosecutes or maintains any suit, action or proceeding, or files any claim in insolvency relating to such business, or receives directly or indirectly any remuneration for doing any of the aforesaid acts."

LORD ATKIN: It is exactly the same thing.

MR. GEOFFRION: Exactly the same thing. Then comes the punishment, and then the proviso that one-half belongs to the informer and one-half to His Majesty.

LORD BLANESBURGH: What they took out of the Insurance Act they put into the Criminal Code.

MR. GEOFFRION: They made one effort to keep all the ground they had lost by calling it a crime, and a second effort to keep British Companies by defining "immigration" in a certain way, and a third effort to keep aliens and Dominion Companies together. Then, to make the thing complete, your Lordships will see subsection (5) of 1917 is the introduction to the

Criminal Code of what was formerly in the Insurance Act containing exceptions; in other words, the moment they made this a general crime, they had to insert in the Criminal Code the exceptions to the general proviso that was formerly in the Insurance Act. They transferred purely and simply these sections, declaring it unlawful, from the Insurance Act to the Criminal Code.

LORD BLANESBURGH: Ought not there, in the print here at the top of page 15, to be "Criminal Code" in the middle column?

MR. GRAY: Yes, my Lord; on the previous page that has been put in, but it should be repeated. Care would have to be taken in that case to notice that the left-hand column is still the Insurance Act.

MR. GEOFFRION: Your Lordships will appreciate the last and not very important change was the penalising provision of the Insurance Act disappeared, the special penalising section, section 70, because the Criminal Code was doing the penalising. Also, it would not make much difference, because there remained in the Insurance Act a general penalising proviso.

Now may I gather in the practical effect. First, that which had been condemned as invalid by the judgment of the Privy Council in the Insurance Act was transferred to the Criminal Code. Secondly, an independent effort was made to hold down the British Companies by saying, all British Companies who immigrate must take licences, and defining "immigration" as your Lordships have seen. Thirdly, there was another independent effort, too, by having a special section in the Insurance Act with regard to the licence in respect of aliens and Dominion Companies.

Then there comes the second judgment, in 1924, Appeal Cases, page 328. The judgment of the Board is delivered by Mr. Justice Duff, and begins at page 331. It is a lengthy

judgment. I think it will be better than my argument as an opening of the situation: "Availing himself of the provisions of the provincial statute," and so on, "the Lieutenant-Governor of Ontario on May 10, 1922, referred to the Appellate Division of the Supreme Court of Ontario three separate questions in the following terms: Question 1: Is it within the legislative competence of the Legislature of the Province of Ontario to regulate or license the making of reciprocal contracts by such legislation as that embodied in the Reciprocal Insurance Act, 1922?" I will try to explain briefly what is reciprocal insurance. Without incorporation, certain businesses or people insured each other cross-wise, and there is a good deal of that insurance going on across the frontier. Generally the agent resides, he may be anybody, a Chinaman, an Englishman or a Canadian, in the United States, because the majority of the subscribers to the arrangement are there. The Ontario Legislature has passed a statute to take care of that proviso, which cannot be taken care of in the Dominion statute, as will be explained, on account of the joint deposits, reserves and so on. I give your Lordships an idea of it, I am not able to go very fully into the details of that. The first question asked by Ontario was: "Is it within the legislative competence of the Legislature of the Province of Ontario to regulate or license the making of reciprocal contracts by such legislation as that embodied in the Reciprocal Insurance Act, 1922?" The second question was: "Would the making or carrying out of reciprocal insurance contracts licensed pursuant to the Reciprocal Insurance Act, 1922, be rendered illegal or otherwise affected by the provisions of sections 508(c) and 508(d) of the Criminal Code as enacted by chapter 26 of the Statutes of Canada, 7 & 8, George V, in the absence of a license from the Minister of Finance issued pursuant to section 4 of the Insurance Act of Canada?" That was a question about the validity

5. of this endeavour to call the thing a new scheme and save its validity thereby. The third question was: "Would the answers to questions one or two be affected, and if so how, if one or more of the persons subscribing to such reciprocal insurance contracts is: (A) A British subject not resident in Canada immigrating into Canada? (B) An Alien?" Therefore you have here the endeavour to have the same question tested restricted to the immigration. The judgment then proceeds: "The two Dominion statutes mentioned in the second of these queries were passed on the same day, September 20, 1917 (7 & 8 George V, Chapter 29), one entitled the Insurance Act, 1917, and the other (7 & 8, George V, Chapter 26), entitled an Act to Amend the Criminal Code respecting insurance. The question whether the first section of the last-mentioned of them, a section professing to bring into force an amendment of the Criminal Code designated as section 508(c), was competently enacted, is the most important question with which their Lordships are concerned on this appeal, and it will be convenient to discuss that question first. It was answered in the affirmative by the Appellate Division. 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 in Attorney General for Canada v. Attorney General for Alberta was pronounced ultra vires of the Dominion Parliament. The Insurance Act of 1917" -- I think I should read this, because the present Insurance Act is the same, practically -- "empowers the Minister of Finance to grant licenses to companies, authorising them to carry on in Canada the business of insurance, except maritime insurance, subject to the provisions of the statute and to the terms of the license. Any company, other than a company already incorporated under the authority

6. of the Dominion Parliament, when licensed under the statute, becomes, and is deemed to be, a company incorporated under the laws of Canada. The Minister is also authorized to grant licenses to associations of individuals formed upon the plan known as Lloyd's and to associations formed for the purpose of exchanging reciprocal contracts of indemnity upon the plan known as inter-insurance; and in such cases all the provisions and requirements of the statute regulating the business of licensed companies are deemed, so far as applicable, to be terms and conditions of the license. No provision is made by the statute for licensing individuals or for licensing firms or unincorporated associations other than those falling within the two classes just mentioned." I think I can state the law of to-day is the same in that respect. "The enactments of the statute include provisions touching the requirements with which applicants for licenses must comply, the terms of licenses, the conditions of their cancellation and suspension, and a comprehensive system of regulations controlling licensees in relation to the form and terms of contracts of insurance and the business of insurance generally, including (inter alia) regulations governing the salaries, allowances and commissions of directors and agents, and the investment, and the investment of the funds of such companies; to all of which provisions, in so far as applicable, unincorporated associations of the two classes above mentioned, that have received licenses, are subject." So far, also, the summary is the same as the present law. "In the Insurance Act itself there is no enactment of general application requiring persons carrying on the business of insurance to become licensed under it. Provisions of limited application upon the subject are found in sections 11 and 12. By section 11 it is declared to be unlawful for any Dominion company or for any alien, whether a natural person or foreign

company, to solicit or accept any risk, to issue or deliver any receipt or policy of insurance" -----

LORD ATKIN: We have the sections, fortunately, in this form.

Do not you come to page 336?

VISCOUNT DUNEDIN: I was going to say the only application of this case, which has to do with something quite different, reciprocal insurance, is, ^{it} held that, where the thing itself was bad or good, as the case may be, you could not get round the corner by professing to put it under the criminal law.

MR. GEOFFRION: That is it, my Lord.

VISCOUNT DUNEDIN: If I may summarise what I think to be the law up to this point, because really I cannot help thinking the question in this case, although there seems to be a great deal about it, is one in a narrow compass, the history seems to be this. It was held that the Dominion had a perfect right to create a person, namely, incorporate a company, with power to do business all over Canada. Then it was held that, although the Dominion had a right to do that and so to create the status, it was for the province to lay down what were the conditions upon which that business should be carried on, the way in which it should be carried on, and that that was not ultra vires of the province. Well, then the Dominion next made a try to say: We shall say that no insurance company is to be carried on in any province unless we grant a licence. That was upset by the case in 1916. Then, at the same time, there was the rider at the end, that in such a case it would be within the power of Parliament, by properly framed legislation, to impose such a restriction, that is, on foreign companies. That case seems to have settled the question as regards companies within the province, and now all that remains is to see whether these sections that are before us are properly framed legislation. It is rather difficult to say, I will listen to what can be said, that it is bad as regards aliens, after what Lord Haldane has

said. When you come to the question of Britishers it is different, because he takes in the aliens along with trade and commerce, and he brings them in under trade and commerce because of the alien being there; but I agree, when you have to do with the Britisher, you cannot get that help from the term "alien", and the question therefore is whether you can bring the Britisher under the trade and commerce section.

MR. GEOFFRION: I take it I will have to argue on the alien aspect. If you can require a licence from aliens by properly framed legislation, the question which arises, and an extremely important one, is the method in which the alien can do business in Canada of that character. Business is a matter for the Dominion or the province, and there are other decisions before the Board to which I want to refer upon that. I would ask your Lordships to listen a little to what I have to say, because the question is whether the jurisdiction requiring a licence from aliens allows the attaching to that licence of the conditions which are attached by this present Act; because, if so, I will point out then the law for aliens, the whole property and civil rights field as respects aliens when dealing with Canadians and not with each other, can be covered by the Dominion; and that is a very fundamental question. I start from this. The question is: Is this properly framed legislation? Mr. Justice Duff is careful to say in that judgment of 1924 that he does not say whether this particular statute is or is not. That might be the only passage that is useful to read in this case. It is page 347 of 1924, Appeal Cases. "It follows that the third question must be answered in the negative." I ought to read question 3: "Would the answers to questions 1 or 2 be affected, and if so how, if one or more of the persons subscribing to such reciprocal insurance contracts is: (A) A British subject not resident in Canada immigrating into

Canada? (B) An Alien?" That must be answered in the negative. Then comes the qualification: "But with this qualification, that, in so answering it, their Lordships do not express any opinion as to the competence of the Dominion Parliament, by virtue of its authority in relation to aliens and to trade and commerce, to enact sections 11 and 12, subsection (1) of the Insurance Act."

VISCOUNT DUNEDIN: These are our sections, are they not?

MR GECFFRION: Yes, my Lord, they are the same. "This, although referred to on the argument before their Lordships' Board, was not fully discussed, and since it is not directly raised by the question submitted, their Lordships, as they then intimated, consider it inadvisable to express any opinion upon it. Their Lordships think it sufficient to recall the observation of Lord Haldane, in delivering the judgment of the Board in Attorney General for Canada v. Attorney General for Alberta, to the effect that legislation, if properly framed, requiring aliens, whether natural persons or foreign companies, to become licensed, as a condition of carrying on the business of insurance in Canada, might be competently enacted by Parliament (an observation which, it may be added, applies also to Dominion companies), and to remark that the second subsection of section 12 ascribes an inadmissible meaning to the word 'immigrate,' which, if governing the interpretation of subsection (1), would extend the scope of section 12 to matters obviously not comprised within the subject of immigration; and that subsection (2) is therefore not competently enacted under the authority of the Dominion in relation to that subject. Their Lordships do not think it proper to discuss the limits of that authority, or to intimate any opinion upon the point whether any, or, if any, what effect can be given to the first subsection of section 12 as an enactment passed in exercise of it". We say, your

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attempt to transfer this to the Criminal Code is not good, and your attempt to define "immigration" in that special way is not good. I will deal with that more with reference to what the British North America Act says on the subject. It is in a narrow compass, but may I spend a little time in trying to make it narrower? The British North America Act, section 91, paragraph (25), gives "naturalisation and aliens." Your Lordships know that paragraph (2) gives "The regulation of trade and commerce." These are the material provisos in section 91. Section 92 gives "Property and civil rights." Then comes another section, which probably has not been pointed out to your Lordships, which explains the effort to get British companies under "immigration." It is section 95: "In each province the legislature may make laws in relation to agriculture in the province, and to immigration in the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province relative to agriculture or immigration shall have effect in and for the province as long as and as far only as it is not repugnant to any Act of the Parliament of Canada." For practical purposes you have immigration in both sections 92 and 91.

LORD ATKIN: Is it not rather a strained use of the word "immigration" to apply it to a corporation at all?

MR GOSPRION: I will discuss that later on. I was going to discuss the point, because they are trying to use the word "immigration" in an admissible manner.

LORD ATKIN: Suppose a British Company, let us take an insurance company, wants to start business in Canada. There may be some provision; has it to have a registered office in Canada? Does the Canadian Companies Act apply to it?

MR GEOFFRION: No, my Lord.

LORD ATKIN: It must have a place of business.

MR GEOFFRION: That would be a matter for provincial law.

LORD ATKIN: What it would do would be, it could give instructions by writing to Canadians, natives of the province, to open up an office; it would appoint them officers of the company, and give them contracts, certificates and so forth and so on, and the company would then be carrying on business in the province -----

MR GEOFFRION: And not immigrating.

LORD ATKIN: -- at this office, and have a regular place of business there. What immigrates? Does the corporation motionally cross the seas and come over? At what time does it immigrate, and at what port does it enter, and is it subject to quarantine laws?

LORD BLANESBURGH: May I ask a question with regard to an individual who appoints an agent in Canada? Does he immigrate?

MR GEOFFRION: My submission as to the question is, the Dominion tried to get bound that by that famous definition I have read: "A company shall be deemed to immigrate into Canada within the meaning of this section if it sends into Canada any document appointing or otherwise appoints, any person in Canada its agent for any of the purposes mentioned in subsection (1) of this section."

LORD BLANESBURGH: I suppose it is the document which immigrated there, and not the corporation. That does not prevent you from appointing your agent by a document which you do not send to Canada.

LORD MACMILLAN: Or by telephone.

MR GEOFFRION: That definition has been declared invalid by the Privy Council in 1924 as being an inadmissible meaning of the word "immigration," and it has since been repealed.

LORD MACMILLAN: It is deemed to immigrate if it sends into

2. Canada any document appointing or otherwise appoints any person in Canada. So that the document is not an essential part of it.

MR GEOFFRION: Having an agent in Canada is immigrating into Canada.

LORD MACMILLAN: If it in any way appoints a person an agent, it is deemed to immigrate.

MR GEOFFRION: I have endeavoured to find a meaning of a company immigrating, and I can find only one possible one, which is if it changes its head office. I wondered if that would not be immigrating.

VISCOUNT DUNEDIN: From the Dominion point of view, because it is they who made this statute, why did they put the word "immigrate" instead of the simple word "come"?

MR GEOFFRION: Because section 95 gives them jurisdiction over immigration. The bulk of the business in Canada is by British companies.

VISCOUNT DUNEDIN: 95 allows the province to make laws as to immigration.

MR GEOFFRION: Yes. This is clearly an effort to get in those who has the bulk of the Canadian business, the British people.

LORD ATKIN: Is that the principle upon which the majority of the Court decided in favour of the British Companies that a British company could not be an immigrant?

MR GEOFFRION: They say there is no immigration there. They treated it rather disdainfully; they said there is nothing in that point. I will give your Lordships the reasons more in detail.

LORD ATKIN: That is the point upon which the Court went, or one of the reasons, at any rate.

MR GEOFFRION: One of the reasons.

LORD BLANESBURGH: Under what power of the Dominion could an

Act be made referred to in section 95 with regard to which the provincial power of stopping immigration is not to be inconsistent? What power of the Dominion would enable them to pass such acts?

MR GEOFFRION: It is in section 95, "and it is hereby declared that the Parliament of Canada may from time to time make laws."

LORD BLANESBURGH: But it says "to any Act of the Parliament of Canada." That must be an Act of the Parliament of Canada, I think, under section 91.

MR GEOFFRION: I would like it, but I am not quite convinced. The jurisdiction is give by this section.

LORD BLANESBURGH: Yes; I had missed that.

LORD ATKIN: You are not troubled by this, because this is in your favour as far as British companies are concerned. You are only dealing with alien companies.

MR GEOFFRION: The only way I can conceive of a British company immigrating into Canada would be by moving its head

office. That would be a sort of immigration, perhaps.

I do not know even if that would be immigration; I doubt it;

but appointing an agency is not immigration. At all events,

my trouble here is aliens.

LORD ATKIN: What is said is that the legislation as to aliens entitles the Dominion Parliament to say that an alien may not come into this country if he is going to carry on a particular business.

MR. GEOFFRION: In a certain manner; in other words: We will admit you if you promise to do that, and we will expel you if you do not do it. In my submission, it must be that; in other words, the direct issue is on the meaning of the word "aliens" because it must be the same meaning as regards other aliens than underwriting aliens.

VISCOUNT DUNEDIN: It really comes surely to you saying what was the true meaning of that last bit of the Judgment of 1916, and you say the second question is: Whether the Dominion Parliament has jurisdiction to require a foreign Company to take out a licence -- it is only dealing with the question of taking out the licence -- : AS to this Question their Lordships reply 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 as to make them take out a licence as a condition of practising. That seems an absolute determination that it is within the Power of the Parliament of Canada to keep out the aliens unless they take out a licence.

MR. GEOFFRION: I concede that, my Lord.

VISCOUNT DUNEDIN: Wherein is this legislation so far as it is concerned with aliens -- and I am only dealing with that at present -- improperly framed?

MR. GEOFFRION: My suggestion to that is this: I must first remind your Lordships of what I said at the beginning of my opening that this licence is tied to the rest of the Act; it is the conditions imposed by the rest of the Act that I am coming to in a Minute, to the continuance of the licence, that makes

this Act an improperly framed one in our view. Our submission is that there are conditions in this Insurance Act attached to the alien being allowed to settle in Canada once he is there, which compel him to do business in a certain way, which is really the regulation of property and civil rights. The question is left open; that is clearly shown by the Judgment of 1924. The question is to what extent when the alien enters can he be operated by the Dominion, and when must he be let loose to come in under the laws of the Province.

LORD BLANESBURGH: Is it within the competence of the Dominion to impose upon aliens within the Province any conditions in relation to property and civil rights?

MR. GEOFFRION: It is more than that my Lord. When I bring your Lordships to the Statute you will see they dictate what contracts they shall make. There is a minute regulation as to the way they should do business and the way they shall contract.

LORD BLANESBURGH: Does not it come to this with regard to property and civil rights within the Province that it is within the competence of the Provincial legislature whether the person concerned be an alien or not.

MR. GEOFFRION: Yes, my Lord.

LORD BLANESBURGH: An alien citizen, whoever it may be, that is within the competence of the Province?

MR. GEOFFRION: Yes.

VISCOUNT DUNEDIN: If that is so, what is the meaning of what Lord Haldane says as to the Judgment of the Board. It seems to me that you could always say that a licence interferes with property and civil rights. You must give some meaning to that.

MR. GEOFFRION: I will give a meaning to it. I am going to say

this: What was first suggested there was that the particular statute under consideration was not properly framed. I do not say it was definitely suggested. It is possible by properly framed legislation.

VISCOUNT DUNEDIN: You mean properly framed by a statute preserving Provincial rights ?

MR. GEOFFRION: Yes, my Lord.

LORD RUSSELL: Supposing Section 11 simply provided that before an alien could transact insurance business he must have a licence, and that there were no conditions attached to the licence. Would not that be good under the meaning of what this Committee said in 1916 ? I want to go by steps.

MR. GEOFFRION: It would have been an almost inconceivable statute.

LORD RUSSELL: No, I can conceive it.

MR. GEOFFRION: A most unlikely statute, because it would have left it entirely to the caprice of a certain particular officer. An alien can have the door closed to him by the Dominion unquestionably, and an alien can be turned out by the Dominion unquestionably, but I say while he is in he cannot be compelled to do business and to make contracts in a way at variance with the Provincial statute. Your Lordships will see the tremendous importance of that statute, because you would have two civil laws side by side in the Province.

VISCOUNT DUNEDIN: Where are those conditions ?

MR. GEOFFRION: I am coming to them in a moment, my Lord. I am trying first to make my submission that the point is open to me.

LORD RUSSELL: You say you can exclude him undoubtedly, or you can admit him, but when you admit him you must admit him unconditionally.

LORD BLANESBURGH: Or subject to Provincial conditions ?

MR. GEOFFRION: And subject to Dominion conditions provided in

section 91, for instance, Banking. I wish again, to respectfully draw your Lordships' attention to the fact that when the two passages of the Judgments of 1916 and of 1924 are read, your Lordships will see that it is not concluded against me that this statute once restricted to aliens is properly framed legislation.

LORD BLANESBURGH: If the door was open and closed in 1916, it is re-opened a certain bit in 1924.

MR. GEOFFRION: Yes, my Lord. I would suggest that the words saying you could do that by properly framed legislation does not mean the statute before us, if applicable only to you, would be good, but meaning at least the statute would have to be different. It may mean the statute would have to be different, and not that this statute is good as to you. There is no more severable statute. I heard a good deal in the Aviation argument about severability. There is no more severable statute than this one. They could have said this statute is bad as to Provincial Companies or bad as to immigrants, but it is good as to aliens. They do not say that this is good as to aliens. They say you may require a licence by a properly framed statute. The Question says: "We do not say in 1924 if this Statute is properly framed."

LORD ATKIN: I wish you would just help me about the question asked in the 1916 case. It is in reference to section 4 which we have before us. The first Question asked whether section 4 was ultra vires, and the Board held that it was; that is how they answered it the first Question, in the affirmative. Then they went on to say: "Does section 4 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 under the said Act, and if such

business is confined to one Province?" They answered that in the affirmative; they said: Yes.

MR. GEOFFRION: Yes, my Lord, there is a difference there.

LORD ATKIN: They meant it was operative. Did they sever it or what did they do. Did they mean that on the proper construction of it they were, or what did they mean by answering both Questions in the affirmative?

MR. GEOFFRION: There is that difficulty, but I suggest the difficulty is cleared up by the subsequent Judgment in 1924. I think what was meant was that it would be in a properly framed statute. But they did say: Yes. At all events, I am saved from that trouble by asking your Lordships to read what was said in 1924.

LORD RUSSELL: In 1916 Lord Haldane refers to the second Question as being: "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?" He interprets the Question in a particular way.

MR. GEOFFRION: Yes, my Lord, that probably is the explanation. He answers the Question as he has himself framed it. I think that must be it. Otherwise there is only a contradiction. At all events whichever is the way it is put, the 1924 Judgment takes care of me and gets me out of a difficulty by stating that that question which I am now arguing is open. It is the same statute and it says: We do not say whether or not it is a good statute. I would like to put my point, and then refer to the statute.

VISCOUNT DUNEDIN: I should like exactly to understand what Mr. Justice Duff is saying with regard to the subsections of section 12.

LORD RUSSELL: What they did decide as to that was, in substance,

that is not immigration within the meaning of section 95.

MR GEOFFRION: Yes, my Lord, that is all.

LORD BLANESBURGH: And it is not open to this legislation to put a fancy meaning on that word.

MR GEOFFRION: The British North America Act uses the word without defining it, and the Dominion Parliament cannot enlarge their jurisdiction by changing the dictionary.

LORD ATKIN: You are accepting that view about that. That is the cross appeal. You have to deal with aliens.

MR GEOFFRION: Yes, my Lord.

LORD MACMILLAN: He wants to pick out the whole legislation to be had both for Canadians and British.

LORD BLANESBURGH: Is it assumed the legislation is good with regard to a Canadian Company and for the reason that the Canadian Company being the creature of Parliament, Parliament might with reference to that Company impose any restriction upon it that it likes?

MR GEOFFRION: The reason is this: it has been decided by this Board that when the Dominion creates a Company to do business which is Provincial -- dry goods or insurance -- it can endow it with statutory powers which the Province cannot take away, but it must submit to the Provincial legislation.

LORD BLANESBURGH: And prevent them carrying on business in the Province at all.

MR GEOFFRION: No, the Province cannot do that.

LORD BLANESBURGH: No, the Dominion could do that.

MR GEOFFRION: Yes, they could destroy a Company or refuse to create it.

LORD BLANESBURGH: Or limit it to such an extent that it would be innocuous.

MR GEOFFRION: Once a Dominion Company enters it cannot be

thrown out, but beyond that, the Province can do almost anything under its Provincial rights. Thus it has been held definitely under the Mortmain laws, and it has been held recently in a Manitoba case that it cannot prevent them from selling shares because it cannot get along without capital; that is the essential function to find money.

LORD BLANESBURGH: The province cannot.

MR GEOFFRION: Yes, the Province cannot.

LORD ATKIN: That is the legislation on the question that people should be licensed to issue shares.

MR GEOFFRION: Yes. The two questions of aliens and Dominion Companies are so close to each other that I will be dragged into it from time to time, but it is not directly before your Lordships, and your Lordships do not need to decide it. My only trouble it appears is aliens, although I crave liberty to break the ordinary rules by the very brief remarks I have to make with regard to immigration. I shall be recalled to Canada by Wednesday, and I will not reply, and unless something happens otherwise, I shall have to leave my reply, with perfect confidence, to my friend Mr. Tilley. So that on that account if your Lordships will allow me, I will say something on that.

VISCOUNT DUNEDIN: I want to be done with the aliens first. They have nothing to do with immigration. I think Lord Russell put to you the point. Supposing this statute had simply said: an alien shall not practice without a license, would that be good?

MR GEOFFRION: I think so; at first sight.

VISCOUNT DUNEDIN: It seems to me that in order to show that the decision is wrong, you have to show what these conditions are which are, first of all, wrong, and make the legislation improperly framed. We have not had the conditions yet.

MR GEOFFRION: I was trying to endeavour to show that the question

was open. In that respect it requires a cursory examination of the Insurance Act. However, my Lords, it is useful to remember what I read to your Lordships of the summary of the 1917 Act from the Judgment of Mr. Justice Duff. It is a fairly accurate summary, and your Lordships will find it in 1924 Appeal Cases, at page 332; he says: "The Insurance Act of 1917 empowers the Minister of Finance to grant licenses to companies, authorising them to carry on in Canada the business of insurance, except marine insurance, subject to the provisions of the statute and to the terms of the license. Any Company, other than a company already incorporated under the authority of the Dominion Parliament, when licensed under the statute, becomes, and is deemed to be, a company incorporated under the laws of Canada. The Minister is also authorised to grant licenses to associations of individuals formed upon the plan known as Lloyds and to associations formed for the purpose of exchanging reciprocal contracts of indemnity upon the plan known as inter-insurance; and in such cases all the provisions and requirements of the statute regulating the business of licensed companies are deemed, so far as applicable, to be terms and conditions of the license. No provision is made by the statute for licensing individuals or for licensing firms or unincorporated associations other than those falling within the two classes just mentioned. The enactments of the statute include provisions touching the requirements with which applicants for licenses must comply, the terms of licenses, the conditions of their cancellation and suspension, and a comprehensive system of regulations controlling licenses in relation to the form and terms of contracts of insurance and the business of insurance generally, including (inter alia) regulations governing the salaries, allowances and commissions of directors and agents, and the investment of the funds of such companies; to all of which provisions, in so far as applicable, unincorporated associations of the two classes above mentioned, that have received licenses, are subject". In other words, broadly speaking, the conditions of the Act cover two fields of regulation in the way they do business and contracts.

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LORD BLANESBURGH: Assume for the moment, without prejudice, that Lord Russell's question has to be answered in the affirmative, that it would be within the competence of the Parliament of Canada to say that no aliens shall carry on the business of insurance without licenses. Do you say that might not be done? What you do say is that when you gather in this Statute what it is a license connotes, namely, the restriction on the activities with reference to what would be within the Provincial legislation, that is beyond the Parliament of Canada?

MR GEOFFRION: Yes, my Lord; I suppose the Dominion could grant any jurisdiction to keep them out and turn them out.

LORD BLANESBURGH: If the prohibition, so to speak, of the alien, by virtue of this license which he gets, is one which would be solely within the competence of the Province to impose, that then is beyond the power of the Dominion Parliament?

MR. GEOFFRION: Yes.

VISCOUNT DUNEDIN: You would say there would be no conditions at all.

MR GEOFFRION: No, my Lord; some conditions.

VISCOUNT DUNEDIN: According to you his license is a thing just like a postal order and for money you just get it.

MR GEOFFRION: No, my Lord, I suggest that his license can be refused at the discretion of the Dominion. The Dominion can turn them out; it will let them in and it will let them out. They do with emigrants and aliens what they like. Under the decision I was going to give the Board as to what is the meaning of the word "alien", once they let them in they can only legislate in respect of the way they will do their business within Section 91 of the British North America Act. Elsewhere than there, as regards Section 92, the legislation

will be with the Dominion.

Now, my Lords, it might be advisable if I pointed out that I have authority from the Board on the point of the definition of the word "aliens". I was intending to come to that later, and to give your Lordships the Insurance Act, but in the meantime there is the case of Cunningham and Attorney-General for British Columbia v. Tomoy Honma and Attorney-General for the Dominion of Canada, reported in 1903 Appeal Cases, page 151. It is one of the three decisions dealing with the meaning of the word "aliens". I will take the second case, because possibly it helps me most, but at all events I will refer to the others. This was a case of a naturalized Japanese who wanted to be placed upon the list of voters for Provincial purposes. Under Section 92 of the British North America Act the Province is given jurisdiction over the amendment from time to time of its Constitution. Its jurisdiction in that respect is of the same character obviously as its jurisdiction over property and civil rights, and the question is whether this gentleman had been naturalized by the Dominion, which has the same jurisdiction over naturalization as it has over aliens in the same paragraph, although not in the same Section. The Province could refuse him the right to vote. I will read to your Lordships from the bottom of page 156 of the Report in 1903 Appeal Cases, and the bottom of page 598 in Cameron. "Could it be suggested that the province of British Columbia could not exclude an alien from the franchise in that province? Yet, if the mere mention of alienage in the enactment could make the law ultra vires, such a construction of Section 91, subsection 25, would involve that absurdity. The truth is that the language of that section does not purport to deal with the consequences of either alienage or

naturalization. It undoubtedly reserves these subjects for the exclusive jurisdiction of the Dominion -- that is to say, it is for the Dominion to determine what shall constitute either the one or the other, but the question as to what consequences shall follow from either is not touched. The right of protection and the obligations of allegiance are necessarily involved in the nationality conferred by naturalization; but the privileges attached to it, where these depend upon residence are quite independent of nationality. This, indeed, seems to have been the opinion of the learned judges below; but they were under the impression that they were precluded from acting on their own judgment by the decision of this Board in the case of Union Colliery Company v Bryden. That case depended upon totally different grounds. This Board, dealing with the particular facts of that case, came to the conclusion that the regulations there impeached were not really aimed at the regulation of coal mines at all, but were in truth devised to deprive the Chinese, naturalized or not, of the ordinary rights of the inhabitants of British Columbia and, in effect, to prohibit their continued residence in that province, since it prohibited their earning their living in that province. It is obvious that such a decision can have no relation to the question whether any naturalized person has an inherent right to the suffrage within the province in which he resides."

Now, my Lords, I want to comment upon this. It is a definition of the Judgment in the Union Colliery Company v Bryden case. It might not seem obvious, to me at least, on reading the Judgment in the Bryden case, but it is a definition and has been adopted much later in the third naturalized alien case. This case simply provided that a Chinaman could not work in coal mines. Without going into details, it simply said that the Province cannot say that

This decision comes afterwards and says all that meant was that apparently the only way Chinamen could earn their living was by working there, and that was in fact expelling them from the Province. I would just like to read that passage again. "That case depended upon totally different grounds. This Board, dealing with the particular facts of that case, came to the conclusion that the regulations there impeached were not really aimed at the regulation of coal mines at all, but were in truth devised to deprive the Chinese, naturalised or not, of the ordinary rights of the inhabitants of British Columbia, and, in effect, to prohibit their continued residence in that province, since it prohibited their earning their living in that province." Now, my Lords, whatever may be the construction one would put on the Bryden case, reading it alone, we have it comparatively construed by two subsequent decisions in the sense I indicated.

LORD BLANESBURGH: Supposing that some Statute -- I will not say for the moment whether it is Dominion or Provincial -- said that no alien should hold real estate. Would that be within the power of the Parliament of Canada?

MR. GEOFFRION: I say no.

LORD BLANESBURGH: Would it be within the power of the Province?

MR. GEOFFRION: Yes, my Lord. I will illustrate that by pointing out that that has been expressly described as Dominion Companies.

LORD BLANESBURGH: I am talking of the individual, the alien.

MR. GEOFFRION: I was emphasizing the distinction which is going to be made.

LORD BLANESBURGH: The Dominion could keep him out, but as soon as he ever comes in it would be for the Province to say whether he could hold it.

MR. GEOFFRION: I am indicating what has been decided as to mortmain laws as regards Dominion Companies.

LORD ATKIN: I thought you said it might be made a condition of admitting an alien that he was not to hold land ?

MR. GEOFFRION: It might be that Parliament might say nothing at all, and an arbitrary officer might turn him out without any reasons. I cannot help that.

LORD ATKIN: Can you, when you are admitting an alien into the country, admit him on the terms that he shall not carry on certain specified activities ?

MR. GEOFFRION: I must say no; otherwise they have control. The whole thing goes one way or the other. You cannot find a middle course. I am not suggesting I have been trying to find a middle course. If you allow them to put the conditions they like, then they have the absolute control.

LORD ATKIN: ~~Will~~ you admit an alien upon the terms not that he must refrain from doing certain work, but that he must, in fact, get work; that he must refrain from being idle ?

MR. GEOFFRION: No, my Lord, but I have no doubt that if the Dominion officer can expel him for saying he is idle--there your Lordship is bringing me into a field where I am a little embarrassed.

VISCOUNT DUNEDIN: Surely it is to be decided entirely on the view that franchise is a privilege, and, therefore, franchise is quite different from ordinary and necessary consequences!

LORD ATKIN: I should have thought so, but in this last case they say that aliens and naturalization, when they are included in a specific subject, in Section 91 are only dealing with particular Statutes and do not deal with the consequences of alienization. The trouble there is to distinguish between the power to work in a coal mine as a consequence, and the power of voting as a consequence.

MR. GEOFFRION: May I make two remarks in respect of what my Lord Dunedin just said, or two respectful answers to it ? First, as drafted that is not what the Judgment said, if I may

say so with due deference. Secondly, the power for franchise is the same as the power for Provincial rights. If your Lordships take Section 92, your Lordships will see that the power to amend the Constitution of the Province from time to time is in paragraph 1. The other is paragraph 13, "Property and Civil Rights". My suggestion is, first, that there is no reason to distinguish between the various Provincial powers. They are on the same footing. Your Lordships remember section 29 of 91, which says that 91 prevails over 92, has been held over and over again to prevail over the whole of 92, and, therefore, I submit with due deference that there is no distinction between one jurisdiction of the Province and another jurisdiction of the Province. Secondly, with regard to the remarks on the Toney Homma case, in that particular case the question depended upon the peculiar nature of the jurisdiction the Province was there exercising. I will not trouble your Lordship by reading it again. My comment is that that clearly taken, without saying naturalization and aliens, only carries the declaration and does not carry with it the consequences.

LORD BLANESBURGH: And the consequences may be different in different Provinces ?

MR. GEOFFRION: Yes, my Lord. They justify Bryden's case, apparently by saying that Chinamen could earn their living in British Columbia in coalmines.

LORD MACMILLAN: The Province must not stultify the legislation. In British Columbia you can live without a vote, but you cannot live without a vote if you are a Chinaman. No doubt in British Columbia after the Dominion has passed legislation applicable, to the admission of aliens -- which is a very important matter to British Columbia -- the British Columbia legislature then proceeded to say: Aliens admitted under

Dominion legislation shall neither eat nor drink in British Columbia. If they did that, that would simply stultify the whole thing.

MR. GEOFFRION: Yes, my Lord. Your Lordships will notice how close we are to the Dominion Company distinction. If so, the Dominion can only incorporate a Company, and then give it status and powers. The Province can do almost anything to it except strike at its status and powers. Your Lordships will see while we are not directly concerned with the Dominion Company Judgments, they will throw some light on where the distinction should be drawn, what the Dominion can do and what the Province can do. Tomey Honma's case is an illustration of that. In that case it was a man, and, therefore, it was a question of his being able to eat, but apparently here it is ability of a Company to sell its shares, or to sue or to contract.

VISCOUNT DUNEDIN: I should like to bring you back again to what my Lord Russell said. You have admitted originally that it would be quite good legislation to say that an alien should not practice insurance without a license .

MR. GEOFFRION: Yes, my Lord.

VISCOUNT DUNEDIN: Then the next question is: How shall the licence be granted ? Then I put the next question this way: Is the only licence that it is permissible to give something that shall simply be given you in return for a small payment, similarly to the postal order, as I put it before, or is it permissible to put certain conditions for a licence ?

MR. GEOFFRION: My submission is that it could not be similar to a postal order, because it can be refused or given. With regard to the postal order, as a general rule, they do not refuse you.

VISCOUNT DUNEDIN: They have no rights to refuse. I tender my

is. I get my postal order; they cannot say no. But there are many other classes of licences. With almost every class of licence, when one goes in to get the licence you must comply with certain conditions. Take, for instance, the last case we were dealing with here, which you were in; you do not get a licence for flying unless you pass a very strict examination. Take what is commonly known as the Licensing Act, where you have a licence to sell beer and spirits. There are a good many conditions appropriate to that. Can you say that this licence is different from all those, and that there is no condition adhibited? If you cannot say that, then you have to say these particular conditions which are here put are so bad as in fact to be improperly framed legislation.

LORD MACMILLAN: Surely that is so, Mr. Geoffrion. It must be.

Supposing you attach a condition such as this: A licence shall endure for a certain term of years, one or more; that is a condition which is appropriate; or, it shall be applied for in writing, let us say; or, it must be applied for at particular offices open for the purpose and so on. On the other hand, I can conceive conditions imposed which would be such as really to take away with one hand what had been given with the other. Supposing it is something which purport to give you the liberty of engaging in insurance, but which, on the other hand, makes it entirely certain that you shall not do it effectively.

VISCOUNT DUNEDIN: That is not exactly the point I was putting.

I want to have yes or no ^{to} the question whether the licence can have certain conditions which are made binding on the applicant, as, for instance, as I have just put it, in the flying case, or in the public house case, there are certain conditions which the applicant must comply with. If you say that no such licence is possible, that is one answer. If, on the other hand, you have to admit that this licence like

licences in general may have conditions applicable to the applicant, then you have to say that these particular conditions are so bad as to make this particular legislation improperly framed.

MR. GEOFFRION: May I be permitted to postpone the answer yes or no at present? I will try to do that by and by. I suggest, but I do not want to be taken as a final answer -- that the licence can be refused.

LORD ATKIN: Are we dealing with aliens?

MR. GEOFFRION: Yes, my Lord.

LORD ATKIN: Then I want to point out to you that this legislation has nothing to do with aliens entering the country. The legislation, in fact, simply says that an alien may not carry on the business. The alien might have been in the country for thirty or forty years. It is only a question of whether or not the Dominion under its authority to deal with aliens can at any time state what civil rights the alien shall have in the country. That is the real point, is it not? That is on the hypothesis that an alien has got or only will have such civil rights as the Dominion Parliament choose to leave him. It looks as though the Dominion Parliament might say on this view: You shall have restricted civil rights, and that, of course, would cover this case. But if, in fact, the Dominion Parliament cannot do that, and it is confined to merely saying upon what conditions you, the alien, shall come into this country, then you have an entirely different position.

MR. GEOFFRION: My Lord, I would like to answer the questions in order without conflicting with the first ones.

LORD ATKIN: I only want you to bear that in mind when you are answering the questions.

MR. GEOFFRION: I am going to try and give my general answer, but

I may correct it, because a division between the two views is difficult to draw in all these cases. My present suggestion is this: I am quite certain, first, as regards entering, that they can say: You will not enter; next, they can ask or impose whatever conditions they like on the person entering; they can say: We will not let you in because we do not like the colour of your hair; or: We will not let you in because you are a Communist and you do not believe in property; or: We will not let you in because you have no money. Then they can expel them, even those who have been fifty years in the country. If the law does not dictate conditions, I cannot see how we can prevent the Dominion passing an arbitrary law saying: We appoint some officer to admit whom he likes and turn out whom he likes, and without giving reasons why. It may be because he does not go to the right Church, or does not go in for the right sort of politics. There will be no remedy. One of the difficult questions is: Can the Dominion create laws under the Acts imposing conditions on remaining there, and prescribe a civil code for them and for those who will deal with them?

VISCOUNT DUNEDIN: There comes in my illustration on the law as to liquor. The ordinary licence in this country of a person to sell beer or spirits contains very stringent conditions as to how he is to carry on his business, and that, to use your phrase, prescribes to him what he is to do while he remains there -- while he is in possession of the licence. Of course, I grant this at once, to show you that I am not unmindful of it -- we have no difficulty here about Federal legislation, and it may very well be that this is quite good here and as a matter of fact would be bad there, because it would go athwart the Provinces.

MR. GEOFFRION: Is not your Lordship overlooking the fact that licensing for liquor is entirely Provincial, so that it cannot

arise as regards liquor licensing ?

LORD BLANESBURGH: I have an example which you may be able to answer one way or the other. Supposing the licence said: The holder of this licence while he is in Canada should not be able to hold real estate.

MR. GEOFFRION: I suggest that would be wrong.

LORD ATKIN: I do not quite see why it depends upon a licence, if, in fact, you can say that an alien must be licensed before he is, for example, a baker, and you can impose restrictions upon that licence. I suppose you could say without licence no alien shall be a baker?

MR. GEOFFRION: Yes, exactly my Lord.

LORD ATKIN: That is the point, whether you can say that.

MR. GEOFFRION: Yes. You cannot by executing a licence under certain conditions get control of the subject-matter. You are doing indirectly what you cannot do directly.

LORD BLANESBURGH: I shall endeavour to look at something absolutely Provincial.

MR. GEOFFRION: There is one end where the licence is entirely good and one end which is bad, and we shall have to find out where we are.

LORD RUSSELL: What we have been saying has nothing to do with Section 11. Section 11 has nothing to do with immigration at all. ?

MR. GEOFFRION: No, my Lord, but I say he can be turned out.

LORD RUSSELL: I want to go back to the admission that you made before under what Lord Maldane said in delivering the Judgment in 1916. He said that the Dominion Parliament had jurisdiction to require a foreign company to take out a licence as a condition precedent to carrying on insurance business in Canada. I thought you agreed that that was so.

MR. GEOFFRION: So far, my Lord.

LORD RUSSELL: That the Dominion Parliament can admit an alien to insurance business or exclude. I thought your point was this, that it could not once having admitted him, impose as a term of his continuing to do this business conditions which clashed with property and civil rights in the Province.

MR. GEOFFRION: That is my point. Then I am going to try to show by the Statute that they cannot do it, and then try to show that they have done it.

LORD ATKIN: The question is whether or not the Dominion has an exclusive right, at any rate, a paramount right, which is sufficient in this case, to define what the civil rights of an alien shall be in Canada in the Province. If they have power to do that, then they can do it by licence or by direct prohibition, but if they have not that power to do it, they cannot do it by licence ?

MR. GEOFFRION: Yes. It was in that respect that I was reading to your Lordships the dictum in the Tomey Honma case. Would your Lordships take Section 91 of the British North America Act? If they can invade property and civil rights of an alien -----

LORD ATKIN: They can do it with a naturalized person in the same way.

MR. GEOFFRION: In Section 91 they have control over militia -- over soldiers, for example. Let us take Indians, naturalized people or aliens.

LORD ATKIN: Naturalization is not precisely the same thing. Having formulated the conditions under which a person can be naturalized, can they legislate afterwards and say that a naturalized person shall have restricted civil rights ?

MR. GEOFFRION: And be compelled to make contracts with certain parties -- to be limited in their contracting capacity? If so, why not in their testamentary capacity ? Once you start, you

cannot stop. There are two parties to these matters. Your Lordships will see the possibility of there being a civil code for dealings between Canadians by one Provincial legislation and another Civil code as to soldiers, naturalized British subjects or aliens on one side, and Canadians on the other.

LORD BLANESBURGH: And I suppose between aliens on both sides ?

MR. GEOFFRION: Yes. My argument is that they are legislating not for the rights of the alien; they are dealing with the civil rights of the Canadian who is dealing with him.

LORD BLANESBURGH: How far do you carry Lord Haldane's Judgment in your favour ? Does it stop short at the shore the moment he arrives ?

MR. GEOFFRION: With the tremendous power to turn him out.

LORD BLANESBURGH: As long as he is there, he must be like other people and subject to Provincial legislation ?

MR. GEOFFRION: Yes, and subject to the rights of the Dominion as under Section 91. I say that is the inevitable effect.

LORD BLANESBURGH: You say that Lord Haldane almost goes as far as that ?

MR. GEOFFRION: I will read it again. "Could it be suggested that the Province of British Columbia could not exclude an alien from the franchise in the Province ? Yet, if the mere mention of alienage in the enactment would make the law ultra vires, such a Construction of Section 91, subsection 25, would involve that absurdity. The truth is that the language of that section does not purport to deal with the consequences of either alienage or naturalization."

LORD BLANESBURGH: That is a strong sentence for you.

MR. GEOFFRION: Yes, my Lord. "It undoubtedly reserves these subjects for the exclusive jurisdiction of the Dominion -- that is to say, it is for the Dominion to determine what shall constitute either the one or the other, but the question as to

what consequences shall follow from either is not touched. The right of protection and the obligations of allegiance are necessarily involved in the nationality conferred by naturalization; but the privileges attached to it, where these depend upon residence, are quite independent of nationality." Then he goes on explaining Bryden's case. Then, my Lords, Lord Cave confirmed that later on.

VISCOUNT DUNEDIN: I want to carry on what you have been saying, which is this. We have come now to this, that the whole objection to this Section is not that the alien is subjected to a licence, but that he is subjected to a licence from the Minister "granted pursuant to the provisions of this Act." You then turn to the provisions of the Act, and you find in the Act there are a great many provisions of all sorts; and following what my noble friend has said, you say these are bad because they go athwart the civil rights; but, you know, if you carried that to the full extent, the whole Act would be bad, because nobody can carry on insurance except in a Province.

MR. GEOFFRION: Your Lordships have declared the Act bad.

VISCOUNT DUNEDIN: Is it not the fact that the reason this Act is not bad altogether is that it is authorised under subsection 2 of Section 91, which cuts down anything, being one of the enumerated Sections, in civil rights and all the rest of it under Section 92 ?

MR. GEOFFRION: That is trade and commerce.

VISCOUNT DUNEDIN: Yes; otherwise unless it was trade and commerce, the Insurance Act would be bad altogether. Nobody can carry on insurance business even in that place which belongs, according to Mr. Tilley, to the Dominion, the air space. It has to carry on business on the land, and if he is on the land he is in the Province, or generally would be, at any rate.

MR. GEOFFRION: I was going to deal with trade and commerce after

aliens; but I can illustrate my answer to that. The regulation of trade and commerce would not be more than regulation of trade and commerce, because it deals more with aliens than it deals with British or foreign companies. A New York Company that opens a branch near Montreal is not more outside trade and commerce than a British Company that opens a branch in Montreal or a Toronto Company that opens a branch in Montreal.

VISCOUNT DUNEDIN: I do not see that that is an answer to my question. I will put the question quite straight: Do you say the Insurance Act is a good Act or a bad Act altogether?

MR. GEOFFRION: Our case is that it is a bad Act altogether.

LORD ATKIN: It is not sought to be enforced against the Canadian Companies at the present moment at all, is it ?

MR. GEOFFRION: I say it is at least a bad Act for the British Companies and the aliens; I suggest it is also bad for the others, but that is not before your Lordships.

LORD ATKIN: I thought as against a foreign or immigrant company, it was sought to be defended on the special powers dealing with immigrants and aliens ?

MR. GEOFFRION: Yes, that is it, my Lord; licensing and trade and commerce equally, I say, and the 1916 decision saves me.

LORD RUSSELL: You do not say it is bad if Section 11 did not in terms incorporate the other parts of the Act?

MR. GEOFFRION: No, I do not say that, in face of what Lord Haldane said in 1916, it is because it incorporates the other proceedings. Your Lordships will remember I referred to Section 46, which says that licenses will last as long as the whole Act is observed. Your Lordships have the point in mind and its bearing on the case. If that Act had stopped at Section 11, and sent us to gaol or hanged us for doing it, and had said nothing else, we could say nothing. The point is it is meant only as a means of enforcing the Act. The same thing as if the Act said directly: This is what you

will do, or we will expel you; you will register or we will throw you out the day you do this, that or the other. There are all these clauses by which the Government can turn out or let in; or they can turn out when once in or refuse to enter. If it is its guardian at the time and can follow it step by step in the Provincial jurisdiction, while they are there, imposing its own laws, we Canadians are as much interested as they are, because they are given the jurisdiction over alienation.

LORD ATKIN: Let us assume for the moment that you are right in that the provisions as to aliens would not authorise this special legislation in reference to aliens. If that is so, the question would still arise whether or not aliens were not in precisely the same position as Canadians, and the question would then arise whether or not this Act is valid as to Canadians.

MR. GEOFFRION: That is settled by the 1916 Judgment against the Dominion. It is a bad Act as regards Canadians.

LORD ATKIN: Because it interferes with the exercise of a particular trade within the Province ?

MR. GEOFFRION: Yes, my Lord.

LORD ATKIN: Therefore, they have, according to you -- I am not expressing any opinion, but I understand your argument is they have to define these special clauses in relation to British Companies as immigrants and foreign Companies as aliens?

MR. GEOFFRION: Yes, my Lord, certainly.

LORD RUSSELL: The question of the Canadian Companies is not raised at all.

MR. GEOFFRION: No, my Lord, my reference to the Canadian Companies is only because we are driven into it by the analogy between the two; but they are not directly before your Lordships.

LORD BLANESBURGH: As a Canadian purely and simply, you say the whole legislation is bad.

MR. GEOFFRION: Yes; in fact, it does not apply to them.

(Adjourned till to-morrow morning at 10.30).