

In the Privy Council.

No. 36 of 1931.

BETWEEN

THE ATTORNEY GENERAL OF QUEBEC - - *Appellant*

AND

THE ATTORNEY GENERAL OF CANADA - - *Respondent,*

AND CROSS-APPEAL.

APPENDIX

TO THE CASE OF THE ATTORNEY GENERAL OF ONTARIO, *Intervener.*

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QUEBEC INSURANCE REFERENCE.

APPENDIX.

No. 1.

The British North America Act, 1867. 30 & 31 Victoria, Chapter 3.

* * * * *

No. 1.
The British
North
America
Act, 1867.
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c. 3.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

(Powers of the Parliament.)

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the
10 Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
- 20 5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
- 30 13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

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tinued.*

14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the issue of paper money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights. 10
24. Indians, and Lands reserved for the Indians.
25. Naturalisation and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. 20

And any matter coming within any of the classes of Subjects enumerated in this Section shall not be deemed to come within the class of Matters of a local or private nature comprised in the enumeration of the classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES.

92. In each Province the Legislature may exclusively make laws in relation to Matters coming within the classes of Subjects next hereinafter enumerated; that is to say,—

1. The Amendment from time to time, notwithstanding anything 30
in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and 40
Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes :—
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tinued.*
- A. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province :
- 10 B. Lines of Steam Ships between the Province and any British or Foreign Country :
- C. Such Works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
- 20 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.
- 30 * * * * * * *

AGRICULTURE AND IMMIGRATION.

95. In each Province the Legislature may make laws in relation to Agriculture in the Province, and to Immigration into 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 to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

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Summary of
the Insur-
ance Act of
Canada,
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other
Statutes) in
relation to
Secs. 11, 12,
65 and 66.

No. 2.

**Summary of the Insurance Act of Canada, 1927 (and other Statutes), in
relation to Sections 11, 12, 65 and 66.**

1. Sections 11 and 12 of the Insurance Act of Canada are as follows :

“ 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 10
“ 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 one hundred and twenty-nine 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 license from the Minister granted pursuant
“ to the provisions of this Act.” 1917, c. 29, s. 11; R.S.C. 1927,
c. 101.

“ 12. It shall not be lawful for any British company, or for any 20
“ 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 one hundred and twenty-nine 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, 30
“ action or proceeding, or filing any claim in insolvency relating
“ to such business, unless under a license from the Minister granted
“ pursuant to the provisions of this Act.” 1917, c. 29, s. 12; 1924,
c. 50, s. 1; R.S.C. 1927, c. 101.

2. Sections 65 and 66 embody the substance of Sections 11 and 12,
respectively, in the form of prohibitions, and add thereto penalties for
violation of such prohibitions.

3. The licenses granted, or required, by Sections 11, 12, 65 and 66
are licenses granted pursuant to Section 4.

4. Section 4 (1) of the Insurance Act of Canada is as follows :

“ 4.—(1) It shall be competent to the Minister to grant to any
“ company which shall have complied with the requirements of
“ this Act preliminary to the granting of a license, a license
“ authorizing the company to carry on its business of insurance, 40

“ or any specified part thereof, subject to the provisions of this Act and to the terms of the license,

“ (a) In the case of any Canadian company or any foreign company, throughout Canada or in any part of Canada which may be specified in the license;

“ (b) In the case of any other company, throughout Canada or in any part of Canada comprising more than one province which may be specified in the license.”

1917, c. 29, s. 4; R.S.C. 1927, c. 101, s. 4 *part.*

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continued.

10 5. The various kinds of company referred to throughout the Act are defined in Section 2; the following are material :

“ (g) ‘ British company ’ means a company incorporated under the laws of Great Britain, Ireland, or of any British possession, other than the Dominion and provinces of Canada, for the purpose of carrying on the business of insurance, and having the faculty or capacity under its Act or other instrument of incorporation to carry on such business throughout Canada ; ”

20 “ (i) ‘ Canadian company ’ means a company incorporated under the laws of Canada for the purpose of carrying on the business of insurance, excluding however any British or foreign company which becomes incorporated under the provisions of this Act by reason merely of obtaining a license from the Minister as herein authorized ; ”

“ (n) ‘ company ’ means any corporation incorporated under the laws of Canada or under the laws of Great Britain, Ireland, or of any British possession, other than a province of Canada, or of any foreign country for the purpose of carrying on the business of insurance, and includes any fraternal benefit society as defined by this Act ” ;

30 “ (r) ‘ foreign company ’ means a company incorporated under the laws of any foreign country for the purpose of carrying on the business of insurance, and having the faculty or capacity under its Act, or other instrument of incorporation to carry on such business throughout Canada ; ”

“ (ii) ‘ provincial company ’ means a company incorporated under the laws of any province of Canada for the purpose of carrying on the business of insurance ; ” R.S.C. 1927, c. 101, s. 2.

6. Sections 7 and 8 indicate the character of the licenses which the Act assumes to authorize.

40 “ 7.—(1) The license shall be in such form or forms for the different classes of companies, as may be from time to time determined by the Minister, and shall specify the business to

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“ be carried on by the company, and any limitations or conditions
“ which the Minister may consistently with the provisions of this
“ Act deem proper.

“ (2) The license shall expire on the thirty-first day of March
“ in each year, but may be renewed from year to year, subject,
“ however, to any qualification or limitation which is considered
“ expedient; Provided that such license may be from time to
“ time renewed for any term less than a year.

“ (3) The validity of any license purporting to be issued by
“ the Minister under this Act shall not be called in question on 10
“ behalf or at the instance of any person other than the Minister.”
1917, c. 29, s. 7; R.S.C. 1927, c. 101, s. 7.

“ 8. The license may authorize the transaction of such class
“ or classes of insurance, whether mentioned in this Act or not,
“ as the Minister may deem proper: Provided, however, that subject
“ to the renewal of licenses granted before the passing of this Act,
“ no company shall receive a license for life insurance in combination
“ with any other class of insurance unless it maintains in respect
“ of its business of life insurance separate and distinct funds and
“ securities in the case of a Canadian company, and separate and 20
“ distinct assets in Canada in the case of a British or foreign company,
“ available only for the protection of the holders of its policies of
“ life insurance and not liable for the payment of claims arising
“ from the other class or classes of business which the company
“ transacts.” 1922, c. 28, s. 3; R.S.C. 1927, c. 101, s. 8.

7. The other provisions of the Act (as will hereinafter appear) are of
a regulative character prescribing the form and substance of contracts
of insurance and the manner in which the business of insurance shall be
carried on by licensees. The license prescribed by Sections 11, 12, 65
and 66 is a license which is bound by the conditions and stipulations 30
contained in other sections of the statute. If any of such conditions or
stipulations are broken the license is liable to be cancelled and penalties
for carrying on business without a license are liable to be applied. This
appears from the following provisions of the Act:

“ 46.—(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 40
“ may, in his discretion, withdraw the company's license or may
“ refuse to renew the same or may suspend the same for such time
“ as he may deem proper.” 1917, c. 29, s. 46; R.S.C. 1927, c. 101,
s. 46 *part.*

8. The conditions and stipulations attached to the licenses required by Sections 11 and 12 appear from the following summary of the other provisions of the Act :

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PART I.—GENERAL.

SECTIONS 4 TO 74.

Section 9 deals with the combination of life insurance and disability insurance in the same contract; *Section 10* deals with the combination of life insurance and insurance against death from accident in the same policy; *Section 13* prohibits the combination of life insurance in the same policy with any other class of insurance, except as previously authorized; *Section 14* requires a deposit with the Minister of Finance of securities in specified amounts; *Sections 15 to 21* deal particularly with such deposits; *Sections 22 to 25* prescribe the filing of certain documents by the applicant for a license; *Section 26* deals with service of legal process on the licensee; *Sections 27, 28 and 29* deal with public notices; *Sections 30 to 35* deal with financial statements to be filed and other records to be maintained by licensees and *Section 36* with published statements by the licensee regarding capital and surplus; *Sections 37 to 41* provide for the appointment of an official known as "The Superintendent of Insurance," his duties and powers, deal with the suspension or cancellation of licenses in certain cases, and authorize the Superintendent "to thoroughly inspect and examine into all its (a licensee's) affairs, and to make all such further enquiries as are necessary to ascertain its condition and ability to meet its engagements, and whether it has complied with all the provisions of this Act applicable to its transactions." *Section 42* deals with re-insurance of contracts of insolvent licensees; *Section 43* prescribes standards of insurance reserves for ascertaining solvency and *Sections 44, 45 and 47* for certain examinations and reports by the Superintendent; *Sections 48, 49, 50 and 51* deal with the conduct of the office of the Superintendent and Department of Insurance; *Sections 53 to 63* deal with investments of licensees; *Section 64* imposes penalties for default in prompt filing of the required statements and returns.

Sections 65 and 66—which are specially mentioned in Question One of this Reference, are ancillary to Sections 11 and 12 and prohibit all persons who are required by Sections 11 and 12 to obtain licenses from carrying on any insurance business or doing any act therein specified relating to the insurance business, without having obtained a license and prescribe penalties for so doing.

Section 68 refers to the Annual Report of the Superintendent of Insurance; *Section 74* provides that a licensee may not pay any remuneration to an agent or broker, not approved by the Superintendent and prescribes procedure for dealing with charges of violation of the Act by agents and brokers and withdrawal of approval of the Superintendent.

PART II.—LIFE INSURANCE.

SECTIONS 75 TO 104.

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continued.

Section 75 indicates the character as well as the application of this Part, as follows :

“ 75. This Part applies only to life insurance companies, and
“ to other insurance companies carrying on life and other insurance,
“ in so far only as relates to the life insurance business of such
“ companies.”—1917, c. 29, s. 79; R.S.C. 1927, c. 101, s. 75.

The following sections then prescribe detailed regulations respecting the business of life insurance, including provision for limitation of commissions, allowances and salaries which may be paid to officers and agents, prohibition of estimating profits or rebating commissions, allocation and distribution of profits among policyholders, the form, terms and provisions of life insurance contracts, forfeiture and renewal of licenses of companies ceasing to do business and release of deposits. 10

PART III.—FRATERNAL BENEFIT INSURANCE.

SECTIONS 105 TO 116.

Part III. deals with fraternal benefit societies prescribing standards of valuation of liabilities, re-adjustment of rates, separation of funds and conditions of life insurance policies. 20

PART IV.—FIRE INSURANCE.

SECTIONS 117 TO 129.

Section 117 is as follows :

“ 117. This Part applies only to fire insurance companies,
“ and to other insurance companies carrying on fire insurance, in
“ so far only as relates to the fire insurance business of such
“ companies.”—1917, c. 29, s. 117; R.S.C. 1927, c. 101, s. 117.

Sections 118 to 122 prescribe conditions regarding forfeiture and renewal of licenses, release of deposits in case of companies ceasing to do business; *Section 123* enacts provisions regarding written applications for fire insurance policies, forms of proof of loss to be completed by the insured, and prescribes that no fire insurance policy shall be issued by a licensed company for a period greater than three years. *Section 124* provides regulations as to the reserve liability for unmaturing policies; *Section 125* deals with the impairment of capital and payment of dividends on capital, and *Section 126* deals with the appropriation of profits to surplus in certain cases; *Section 127* deals with rebating of insurance premiums by insurance agents and brokers. *Sections 127, 128 and 129* deal with acts of persons, in general, other than licensed companies, and purport to prescribe regulations and penalties for violation of regulations applicable to citizens and residents of Canada not engaged in the business of insurance. In *Section 129* 30 40

regulations are laid down respecting insurance of property with unlicensed British and foreign insurers, including the requirement of written statements regarding such insurance, and penalties for default. These provisions apply directly to persons insuring their own property, and not to licensed companies.

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PART V.—INSURANCE OTHER THAN LIFE OR FIRE.

SECTIONS 130 TO 135.

Part V. makes certain sections of the fire insurance Part applicable to insurance other than life or fire insurance and contains provisions regarding
10 hail insurance surplus funds, policy conditions to be made part of contracts of accident and sickness insurance, policy conditions for automobile insurance and other provisions regarding automobile insurance policies. *Section 135* is illustrative of the mode in which provisions regarding insurance contracts are made conditions of the licenses granted under Sections 4, 11 and 12. The introductory words of the Section are as follows :—

“ 135. It shall be a condition of the license of every company
“ licensed under this Act to carry on the business of automobile
“ insurance or licensed to carry on any other class or classes of
“ insurance which include the insurance of automobiles whether
20 “ such condition be expressed in the license or not, and for the
“ breach of which the license may be cancelled or withdrawn by
“ the Minister, that no policy of automobile insurance other than
“ an interim receipt or temporary binder covering a risk for a period
“ not exceeding fourteen days shall be delivered in Canada by any
“ such company unless the company has received an application for
“ the policy in writing signed by the insured or by his agent
“ authorized in writing signed by the insured, such application to
“ contain the information and endorsements hereinafter specified;
“ that no such policy shall be delivered in Canada by any such
30 “ company until a copy of the form of such policy has been mailed
“ by prepaid registered letter to the Superintendent; and that
“ every such policy shall contain in substance the following terms,
“ provisions or conditions.”—1923, c. 55, s. 3; R.S.C. 1927, c. 101,
s. 135 *part.*

PART VI.—PROVISIONS APPLICABLE TO CERTAIN COMPANIES.

SECTIONS 136 TO 181.

In addition to provisions applicable to companies incorporated by Dominion Parliament after May 4th 1910, Part VI. includes provisions
40 regarding profits from participating life insurance policies and surrender of life insurance policies.

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PART VII.—PENALTIES.

SECTION 181.

Section 181 prescribes penalties for offences not otherwise provided for.

EXTRACT RESPECTING INSURANCE FROM THE CRIMINAL CODE.
(R.S.C. 1927, CAP. 36, SECTION 507.)

9. The following section is identical in terms with the former Section 508c of the Criminal Code (1917, c. 26, s. 1) held *ultra vires* in the Reciprocal Insurers' Case, 1924 (1924, A.C. 328). The relationship of this enactment to Sections 4, 11, 12, 65, 66 and 129 of the Insurance Act appears immediately upon comparing it with those sections : 10

“ 507. Every one shall be guilty of an indictable offence who,
“ within Canada, except on behalf of or as agent 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 20
“ 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.

“ (2) Any one convicted of any such offence shall for a first
“ offence be liable to a penalty of not more than fifty dollars nor less
“ than twenty dollars, and, in default of payment, to imprisonment
“ with or without hard labour for a term of not more than three 30
“ months nor less than one month, and for a second or any sub-
“ sequent offence to a penalty of not more than one hundred dollars
“ nor less than fifty dollars, and in addition thereto to imprisonment
“ with hard labour for a period of not more than six months nor
“ less than three months.

“ (3) All information or complaints for any of the aforesaid
“ offences shall be laid or made within one year after the commission
“ of the offence.

“ (4) One-half of any pecuniary penalty mentioned in this
“ section shall, when recovered, belong to His Majesty and the other 40
“ half thereof to the informer.

“(5) Nothing in this section contained shall be deemed to prohibit or affect or to impose any penalty for doing any of the acts in this section described

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“(a) by or on behalf of a company incorporated under the laws of any province of Canada for the purpose of carrying on the business of insurance ;

“(b) by or on behalf of any society or association of persons thereunto specially authorised by the Minister of Finance or the Treasury Board ;

“(c) in respect of any policy or risk of life insurance issued or undertaken on or before the thirtieth day of March, one thousand eight hundred and seventy-eight, by or on behalf of any company which has not since the last mentioned date received a license from the Minister of Finance ;

“(d) in respect of any policy of life insurance issued by an unlicensed company to a person not resident in Canada at the time of the issue of such policy ;

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“(e) in respect of the insurance of property situated in Canada with any British or foreign unlicensed insurance company or underwriters, or with persons who reciprocally insure for protection and not for profit, or the inspection of the property so insured, or the adjustment of any loss incurred in respect thereof, if the insurance is effected outside of Canada without any solicitation whatsoever directly or indirectly on the part of the company, underwriters or persons by which or by whom the insurance is made ;

“(f) solely in respect of marine or inland marine insurance ;

30

“(g) in respect of any contract entered into or any certificate of membership or policy of insurance issued, before the twentieth day of July, one thousand eight hundred and eighty-five, by any assessment life insurance company.”
—1917, c. 26, s. 1 ; R.S.C. 1927, c. 36, s. 507.

SECTION 16 OF THE SPECIAL WAR REVENUE ACT.
(R.S.C. 1927, CAP. 179, SECTION 16.)

10. As in the case of Section 507 of the Criminal Code, this section of the Special War Revenue Act enacted in 1922, is dependent for its meaning and effect upon the licensing provisions of The Insurance Act of Canada :

40

“16.—(1) Every person resident in Canada, who insures his property situate in Canada, or any property situate in Canada in which he has an insurable interest, other than that of an insurer of such property, against risks other than marine risks,

“(a) with any British or foreign company or British or foreign underwriter or underwriters, not licensed under

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“ the provisions of the Insurance Act, to transact business in
 “ Canada; or
 “ (b) with any association of persons formed for the
 “ purpose of exchanging reciprocal contracts of indemnity
 “ upon the plan known as inter-insurance and not licensed
 “ under the provisions of the Insurance Act, the chief place of
 “ business of which association or of its principal attorney-in-
 “ fact is situate outside of Canada;
 “ shall on or before the thirty-first day of December in each year
 “ pay to the Minister, in addition to any other tax payable under 10
 “ any existing law or statute, a tax of five per centum of the total
 “ net cost to such person of all such insurance for the preceding
 “ calendar year.
 “ (2) For the purposes of this section every corporation carrying
 “ on business in Canada shall be deemed to be a person resident in
 “ Canada.”—1922, c. 47, s. 1; R.S.C. 1927, c. 179, s. 16.

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Source of
Secs. 11, 12,
65 and 66 of
the Insur-
ance Act of
Canada,
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Statutes.

No. 3.

Source of Sections 11, 12, 65 and 66 of the Insurance Act of Canada, 1927, and related Statutes.

1. In 1910, the key licensing sections of The Insurance Act, 1910 (1910 20
 c. 32), were sections 4 and 70. Section 4 was the section requiring a license
 and section 70 the corresponding penalty section. They read in full text as
 follows :—

“ 4. 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 30
 “ be done by or on behalf of a company or underwriters holding a
 “ license from the Minister.”—1910, c. 32, s. 4.

“ 70. Every person who :—

“ (a) In Canada, for or on behalf of any individual
 “ underwriter or underwriters, or any insurance company not
 “ possessed of a license provided for by this Act in that behalf
 “ and still in force, solicits or accepts any risk, or grants any
 “ annuity or advertises for, or carries on any business of
 “ insurance, or prosecutes or maintains any suit, action or
 “ proceeding, or files any claim in insolvency relating to such 40
 “ insurance, or, acting as an insurance agent, receives directly

“ or indirectly any remuneration from any British or foreign
 “ unlicensed insurance company or underwriters; or, except
 “ as provided for in section 139 of this Act, issues or delivers
 “ any receipt or policy of insurance, or collects or receives any
 “ premium, or inspects any risk, or adjusts any claim; or
 “ (b) except only on policies of life insurance issued to
 “ persons not resident in Canada at the time of issue, collects
 “ any premium in respect of any policy; and
 “ every director, manager, agent or other officer of any assessment
 10 “ life insurance company subject to Part II of this Act, and every
 “ other person transacting business on behalf of any such company,
 “ who circulates or uses any application, policy, circular or advertise-
 “ ment on which the words ‘ Assessment System ’ are not printed
 “ as required by Part II of this Act;
 “ shall, on summary conviction before any two justices of the
 “ peace, or any magistrate having the powers of two justices of the
 “ peace, for a first offence, be liable to a penalty not exceeding
 “ fifty dollars and costs, and not less than twenty dollars and costs,
 “ and in default of payment, to imprisonment with or without hard
 20 “ labour for a term not exceeding three months and not less than
 “ one month; and for a second or any subsequent offence, to im-
 “ prisonment with hard labour for a term not exceeding six months
 “ and not less than three months.”—1910, c. 32, s. 70.

No. 3.
 Source of
 Secs. 11, 12,
 65 and 66 of
 the Insur-
 ance Act of
 Canada,
 1927, and
 related
 Statutes—
continued.

2. In 1916, sections 4 and 70 of The Insurance Act, 1910, were questioned in the Insurance Reference (1916, 1 A.C. 588) and held *ultra vires*.

3. In 1917, The Insurance Act, 1910, was repealed and The Insurance Act, 1917 (1917, c. 29) substituted therefor. Sections 11 and 12 of the Act of 1917 replaced section 4 of the Act of 1910 and section 508c of The Criminal Code (1917, c. 26, s. 1) replaced section 70 of the Act of 1910. These sections
 30 read in full text as follows :

“ 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 one
 “ hundred and twenty-nine of this Act, to inspect any risk or adjust
 40 “ 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 license from the Minister granted pursuant to the provisions of
 “ this Act.”—1917, c. 29, s. 11.

No. 3.
Source of
Secs. 11, 12,
65 and 66 of
the Insur-
ance Act of
Canada,
1927, and
related
Statutes—
continued.

“ 12.—(1) 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 one hundred and twenty-nine of this Act, of inspecting any
“ risk or adjusting any loss, or of carrying on any business of or 10
“ 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 license from the Minister granted
“ pursuant to the provisions of this Act.

“ (2) 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 one of
“ this section.” (1917, c. 29, s. 12.)

“ 508c.—(1) Every one shall be guilty of an indictable offence 20
“ who, within Canada, except on behalf of or as agent 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 30
“ 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.

“ (2) Any one convicted of any such offence shall for a first
“ offence be liable to a penalty of not more than fifty dollars or
“ less than twenty dollars, and, in default of payment, to imprison-
“ ment with or without hard labour for a term of not more than
“ three months or less than one month, and for a second or any
“ subsequent offence to a penalty of not more than one hundred 40
“ dollars or less than fifty dollars, and in addition thereto to
“ imprisonment with hard labour for a period of not more than
“ six months or less than three months.

“ (3) All information or complaints for any of the aforesaid
“ offences shall be laid or made within one year after the commission
“ of the offence.

“(4) One-half of any pecuniary penalty mentioned in this section shall, when recovered, belong to His Majesty and the other half thereof to the informer.

“Provided that nothing in this section contained shall be deemed to prohibit or affect or to impose any penalty for doing any of the acts in this section described,—

No. 3.
Source of
Secs. 11, 12,
65 and 66 of
the Insur-
ance Act of
Canada,
1927, and
related
Statutes—
continued.

10

“(a) by or on behalf of a company incorporated under the laws of any province of Canada for the purpose of carrying on the business of insurance;

“(b) by or on behalf of any society or association of persons thereunto specially authorized by the Minister of Finance or the Treasury Board;

“(c) in respect of any policy or risk of life insurance issued or undertaken on or before the thirtieth day of March, one thousand eight hundred and seventy-eight, by or on behalf of any company which has not since the last mentioned date received a licence from the Minister of Finance;

20

“(d) in respect of any policy of life insurance issued by an unlicensed company to a person not resident in Canada at the time of the issue of such policy;

“(e) in respect of the insurance of property situated in Canada with any British or foreign unlicensed insurance company or underwriters, or with persons who reciprocally insure for protection and not for profit, or the inspection of the property so insured, or the adjustment of any loss incurred in respect thereof, if the insurance is effected outside of Canada without any solicitation whatsoever directly or indirectly on the part of the company, underwriters or persons by which or by whom the insurance is made;

30

“(f) solely in respect of marine or inland marine insurance;

“(g) in respect of any contract entered into or any certificate of membership or policy of insurance issued, before the twentieth day of July, one thousand eight hundred and eighty five, by any assessment life insurance company.” (1917, c. 26, s.1.)

4. In 1922, following the enactment by Ontario of the Reciprocal Insurance Act, 1922 (1922, c. 62; held *intra vires* in the Reciprocal Insurer's Case of 1924; 1924, A.C. 328), subsections 11, 12 and 13 were added to section 5 of The Special War Revenue Act, 1915 (1915, c. 8). These subsections read in full text as follows:—

“(11) Every person resident in Canada who insures, against risks other than marine risks, his property situate in Canada or

No. 3.
Source of
Secs. 11, 12,
65 and 66 of
the Insurance
Act of
Canada,
1927, and
related
Statutes—
continued.

“ any property situate in Canada in which he has an insurable
“ interest, other than that of an insurer of such property, with any
“ British or foreign company or British or foreign underwriter or
“ Underwriters, not licensed under the provisions of *The Insurance*
“ *Act, 1917*, to transact business in Canada, or with any association
“ of persons formed for the purpose of exchanging reciprocal contracts
“ of indemnity upon the plan known as inter-insurance and not
“ licensed under the provisions of *The Insurance Act, 1917*, the
“ chief place of business of which association or of its principal
“ attorney-in-fact is situate outside of Canada, shall on or before 10
“ the thirty-first day of December in each year pay to the Minister
“ for the Consolidated Revenue Fund, in addition to any other
“ tax payable under any existing law or statute, a tax of five per
“ centum of the total net cost to such person of all such insurance
“ for the preceding calendar year, and for the purposes of this
“ section every corporation carrying on business in Canada shall be
“ deemed to be a person resident in Canada.

“ (12) Every person to whom this section applies shall on
“ or before the thirty-first day of December in each year make
“ a return in writing to the Superintendent of Insurance stating 20
“ the names of the companies, societies of underwriters or asso-
“ ciations with whom the insurance was effected by him or on
“ his behalf, the amount of such insurance and the net cost thereof
“ in each case.

“ (13) Every person who fails or neglects to make such return
“ or pay to the Minister within the time limited by subsection
“ eleven hereof the tax hereby imposed, shall incur a penalty of
“ fifty dollars for each and every day during which such default
“ continues.” 1922, c. 47, s. 1 (1).

5. In 1924, subsection 2 of section 12 of *The Insurance Act, 1917*, 30
and section 508c of *The Criminal Code* were expressly held *ultra vires* in
the *Reciprocal Insurer's Case*. [1924], A.C. 328.

6. Later, in 1924, subsection 2 of section 12 of *The Insurance Act*,
1917, was repealed and sections 71 and 71A enacted (1924, c. 50). Section
508c of *The Criminal Code* was not repealed. Sections 71 and 71A read in
full text as follows :

“ 71. Any Canadian company, or any alien, whether a natural
“ person or a foreign company, who, except under a license from
“ the Minister granted pursuant to the provisions of this Act,
“ within Canada, 40

“ (a) solicits or inspects any risk; or

“ (b) issues or delivers any receipt or policy of insurance;

“ or

“ (c) grants in consideration of any premium or payment

“ any annuity on a life or lives; or

“ (d) collects or receives any premiums; or

- No. 3.
Source of
Secs. 11, 12,
65 and 66 of
the Insur-
ance Act of
Canada,
1927, and
related
Statutes—
continued.
- “ (e) except as provided in section one hundred and
“ twenty-nine of this Act, inspects any risk or adjusts any
“ loss; or
“ (f) advertises for or carries on any business of in-
“ surance; or
“ (g) Prosecutes or maintains any suit, action or pro-
“ ceeding, or files any claim in insolvency relating to the
“ business of insurance;
- 10 “ shall be guilty of an offence and liable upon indictment or upon
“ summary conviction, to a penalty not exceeding one hundred
“ dollars; and moreover, in the case of an alien who is a natural
“ person, to imprisonment for any term not exceeding six months :
“ Provided, however, that nothing in this section shall apply to
“ an individual alien acting on behalf of a provincial company
“ which has not obtained a license from the Minister under this
“ Act.” 1924, c. 50, s. 7.
- 20 “ 71A. (1) Any British Company or British subject not resident
“ in Canada who, except under a license from the Minister granted
“ pursuant to the provisions of this Act, immigrates into Canada
“ for the purpose of
“ (a) opening or establishing any agency for the trans-
“ action of any business of or relating to insurance; or
“ (b) soliciting or inspecting any risk or issuing or
“ delivering any interim receipt or policy of insurance; or
“ (c) granting in consideration of any premium or
“ payment any annuity on a life or lives, or
“ (d) collecting or receiving any premium; or
“ (e) except as provided in section one hundred and
30 “ twenty-nine of this Act, inspecting any risk or adjusting
“ any loss, or carrying on any business of or relating to the
“ business of insurance; or
“ (f) prosecuting or maintaining any suit, action or
“ proceeding, or filing any claim in insolvency relating to the
“ business of insurance;
- 40 “ shall be guilty of an offence and liable upon indictment or summary
“ conviction to a penalty not exceeding one hundred dollars; and
“ moreover, in the case of a natural person, to imprisonment for
“ any term not exceeding six months; Provided, however, that
“ nothing in this section shall apply to a British subject acting on
“ behalf of a provincial company which has not obtained a license
“ from the Minister under this Act.
- “ (2) This section shall not come into force until such day as
“ may be appointed by the Governor in Council by proclamation
“ published in the *Canada Gazette*.” 1924, c. 50, s. 7.

No. 3.
Source of
Secs. 11, 12,
65 and 66 of
the Insur-
ance Act of
Canada,
1927, and
related
Statutes—
continued.

7. In 1927, the Statutes of Canada were revised. The Insurance Act, 1917, was re-enacted, with a few minor amendments, as the Insurance Act (R.S.C. 1927, c. 101). Sections 11 and 12 (1) were continued as sections 11 and 12. Sections 71 and 71A were continued as sections 65 and 66. Section 508c of The Criminal Code was continued as section 507 (R.S.C. 1927, c. 36). Subsections 11, 12 and 13 of section 5 of The Special War Revenue Act, 1915, were continued as sections 16, 20 and 21 of the Special War Revenue Act (R.S.C. 1927, c. 179).

8. No amendments material to this appeal have been made since 1927.

No. 4.
Copy of
License
issued to
(a) a British
Company,
and (b) a
Foreign
Company
pursuant
to the
Dominion
Insurance
Acts of 1910,
1917 and
1927.

No. 4.

10

Copy of License issued to (A) a British Company, and (B) a Foreign Company pursuant to the Dominion Insurance Acts of 1910, 1917 and 1927.

(A) *A British Company.*

DEPARTMENT OF INSURANCE.

CANADA INSURANCE LICENSE

under the Insurance Act, 1910,
being 9-10 Edw. VII, Cap. 32.

No. 312.

No. 312.

THIS IS TO CERTIFY THAT

THE PALATINE INSURANCE COMPANY, LIMITED 20
having made the necessary deposit and having otherwise complied with the requirements of the Insurance Act, 1910, is hereby, in pursuance of a minute of the Honourable the Treasury Board dated the eleventh day of March, 1912, licensed to transact in Canada the business of

FIRE INSURANCE.

Dated at the City of Ottawa, this
twenty-seventh day of March, 1912.

W. T. WHITE,
Minister.

(SEAL.)

Certified to be a true copy.
W. FITZGERALD, 30
Superintendent of Insurance.

DEPARTMENT OF INSURANCE, CANADA.

No. 986.

LICENSE.

No. 986.

Under the Insurance Act, 1917.
(7-8 Geo. V, C. 29)

THIS IS TO CERTIFY THAT

THE PALATINE INSURANCE COMPANY, LIMITED
having made the necessary deposit and having otherwise complied with
the requirements of the Insurance Act, 1917, is hereby licensed to transact
in Canada the business of

10 INSURANCE AGAINST DAMAGE TO PROPERTY OF ANY KIND CAUSED
BY THE EXPLOSION OF NATURAL OR OTHER GAS
in addition to FIRE and AUTOMOBILE INSURANCE, for which it is
already licensed.

Dated at the City of Ottawa, this
Fourteenth day of January, 1922.

W. S. FIELDING,
Minister.

(SEAL.)

Certified to be a true copy.
G. D. FINLAYSON,
Superintendent of Insurance.

No. 4.
Copy of
License
issued to
(a) a British
Company,
and (b) a
Foreign
Company,
pursuant
to the
Dominion
Insurance
Acts of 1910,
1917 and
1927—*con-
tinued.*

DEPARTMENT OF INSURANCE, CANADA.

20 No. 1812.

LICENSE.

No. 1812.

Under the Insurance Act
(R.S. 1927, Cap. 101.)

THIS IS TO CERTIFY THAT

THE PALATINE INSURANCE COMPANY, LIMITED
having made the necessary deposit and having otherwise complied with the
requirements of the Insurance Act is hereby licensed to transact in Canada
the business of

30 INSURANCE AGAINST LOSS OF, OR DAMAGE TO, PROPERTY OTHER
THAN GROWING CROPS, BY HAIL,
in addition to FIRE INSURANCE, AUTOMOBILE INSURANCE,
SPRINKLER LEAKAGE INSURANCE, TORNADO INSURANCE, and
INSURANCE AGAINST DAMAGE TO PROPERTY OF ANY KIND CAUSED
BY THE EXPLOSION OF NATURAL OR OTHER GAS, for which it is
already licensed.

Dated at the City of Ottawa, this
Sixth day of December, 1930.

E. B. RYCKMAN,
Acting Minister.

(SEAL.)

Certified a true copy.
G. D. FINLAYSON,
Superintendent of Insurance.

No. 4.
Copy of
License
issued to
(a) a British
Company,
and (b) a
Foreign
Company,
pursuant
to the
Dominion
Insurance
Acts of 1910,
1917 and
1927—con-
tinued.

(B) *A Foreign Company.*
CANADA INSURANCE LICENSE.

Under the Insurance Act, 1910,
being 9-10 Edw. VII, Cap. 32.

No. 265.

No. 265.

THIS IS TO CERTIFY THAT

THE CONTINENTAL INSURANCE COMPANY

having made the necessary deposit and having otherwise complied with the requirements of the Insurance Act, 1910, is hereby in pursuance of a minute of the Honourable the Treasury Board dated the sixteenth day of November, 1910, licensed to transact in Canada the business of

FIRE INSURANCE

on the condition that the Company shall in all its advertisements publications and office signs in Canada make reference to New York as the location of its Head Office.

Dated at the City of Ottawa, this
twenty-fifth day of November, 1910.

W. FITZGERALD,
Superintendent of Insurance.

Certified to be a true copy. 20

W. FITZGERALD,
Superintendent of Insurance.

DEPARTMENT OF INSURANCE, CANADA.

No. 796.

LICENSE.

No. 796.

Under the Insurance Act, 1917.
(7-8 Geo. V, Cap. 29.)

THIS IS TO CERTIFY THAT

THE CONTINENTAL INSURANCE COMPANY

having made the necessary deposit and having otherwise complied with the requirements of the Insurance Act, 1917, is hereby licensed to transact in Canada the business of

EXPLOSION INSURANCE
in addition to FIRE INSURANCE, HAIL INSURANCE and TORNADO
INSURANCE for which it is already licensed.

Dated at the City of Ottawa, this
Twenty-seventh day of May, 1919.

W. T. WHITE,
Minister.

Certified to be a true copy.

G. D. FINLAYSON,
Superintendent of Insurance.

No. 4.
Copy of
License
issued to
(a) a British
Company,
and (b) a
Foreign
Company,
pursuant
to the
Dominion
Insurance
Acts of 1910,
1917 and
1927—*con-
tinued.*

(SEAL.)
10

DEPARTMENT OF INSURANCE, CANADA.

No. 1719.

LICENSE.

No. 1719.

Under the Insurance Act
(R.S. 1927, Cap. 101.)

THIS IS TO CERTIFY THAT

THE CONTINENTAL INSURANCE COMPANY

having made the necessary deposit and having otherwise complied with
the requirements of The Insurance Act is hereby licensed to transact in
Canada the business of

20

HAIL INSURANCE

in addition to FIRE INSURANCE, EXPLOSION INSURANCE, INLAND
TRANSPORTATION INSURANCE, SPRINKLER LEAKAGE INSURANCE,
TORNADO INSURANCE, AUTOMOBILE INSURANCE, excluding insur-
ance against loss by reason of bodily injury to the person, INSUR-
ANCE against loss of, or damage to, property resulting from an
earthquake, and INSURANCE against loss of, or damage to, an
AIRCRAFT, for which it is already licensed.

Dated at the City of Ottawa,
this Fifth day of April, 1930.

CHAS. A. DUNNING,
Minister.

Certified to be a true copy.

G. D. FINLAYSON,
Superintendent of Insurance.

30

(SEAL.)

**Reasons for Judgment of the Appellate Division of the Supreme Court of Ontario in
Re Insurance Contracts (1926) 58 O.L.R. 404.**

[APPELLATE DIVISION.]

1926, Feb. 19.

RE INSURANCE CONTRACTS.

*Constitutional Law—Insurance Legislation—Ontario Insurance Act, 1924, 14 Geo. V. ch. 50, secs. 168, 180—Statutory Conditions in Automobile, Accident, and Sickness Insurance—Intra Vires—Dominion Insurance Act, 1917, 7 & 8 Geo. V. ch. 29, secs. 11, 12(1), 71, 71A, 134, 134A— 10
Amending Acts, 1923, 13 & 14 Geo. V. ch. 55, and 1924, 14 & 15 Geo. V. ch. 50—Ultra Vires—British North America Act, secs. 91, 92—Aliens—Foreign Companies.*

It is within the legislative competence of the Legislature of Ontario to enact such provisions as are contained in secs. 168 and 180 of the Ontario Insurance Act, 1924.

Citizens Insurance Co. v. Parsons (1881), 7 App. Cas. 96, followed.

It is not within the legislative competence of the Parliament of Canada to enact such provisions as are contained in the Dominion Insurance Act, 1917, secs. 11, 12(1), 71, 71A (the two latter as enacted by ch. 50 of 20 the Statutes of Canada 1924), and 134 and 134A (the latter as enacted by ch. 55 of the Statutes of Canada 1923); LATCHFORD, C. J., dissenting and SMITH, J.A., dissenting in part.

Review of the authorities and discussion of provisions of secs. 91 and 92 of the British North America Act.

Case referred to the Appellate Division by the Lieutenant-Governor of Ontario, pursuant to the provisions of the Constitutional Questions Act, R.S.O. 1914, ch. 85.

The questions referred for hearing and consideration were as follows :—

(1) Is it within the legislative competence of the Legislature of 30 Ontario to enact such provisions as are contained in secs. 168 and 180 of the Ontario Insurance Act, 1924 ?

(2) If the answer to the first question is in the affirmative, is it within the legislative competence of the Parliament of Canada to enact such provisions as are contained in secs. 11, 12(1), 71, 71A, and 134 of the Dominion Insurance Act, 1917 (secs. 71 and 71A being as enacted by ch. 50 of the Statutes of Canada 1924) ?

(3) If the answer to the first question is in the affirmative, is it 40 within the legislative competence of the Parliament of Canada to enact such provisions as are contained in secs. 11, 12(1), 71, 71A, and 134A of the Dominion Insurance Act, 1917 (secs. 71 and 71A as enacted by ch. 50 of the Statutes of Canada 1924, and sec. 134A as enacted by ch. 55 of the Statutes of Canada 1923) ?

October 12 and 13, 1925. The case was heard by LATCHFORD, C.J., RIDDELL, MIDDLETON, MASTEN, and SMITH, JJ.A.

Edward Bayly, K.C., and *R. Leighton Foster*, for the Attorney-General for Ontario, argued that secs. 168 and 180 of the Ontario Insurance Act, 1924, were validly enacted, and that secs. 134 and 134A of the Insurance Act, 1917 (Dominion), were *ultra vires* the Dominion Parliament; that the first question should be answered in the affirmative and the second and third in the negative: first, because the subject-matter of the legislation had been decided to be within the exclusive legislative competence of the Province: 10 *Citizens Insurance Co. v. Parsons* (1881), 7 App. Cas. 96. See also *Attorney-General for Ontario v. Reciprocal Insurers*, [1924] A.C. 328. They submitted also that in *Attorney-General for Canada v. Attorney-General for Alberta*, [1916] 1 A.C. 588, the Judicial Committee has decided that the Dominion cannot regulate the business of insurance in such a way as to interfere with civil rights in the Provinces. Secondly, because the words, "The regulation of Trade and Commerce," in sec. 91(2) of the British North America Act, do not comprehend the regulation by legislation of the contracts of a particular trade: *Citizens Insurance Co. v. Parsons*, *supra*; *Attorney-General for Canada v. Attorney-General for Alberta*, *supra*; *In re Board of Commerce Act*, 20 1919, and *Combines and Fair Prices Act*, 1919, [1922] 1 A.C. 191; *Toronto Electric Commissioners v. Snider*, [1925] A.C. 396, at pp. 409 and 410. Thirdly, because the authority of the Parliament of Canada to incorporate companies with other than Provincial objects does not comprehend the regulation of the business of insurance in which those companies may engage or of contracts which they may undertake: *John Deere Plow Co. Ltd. v. Wharton*, [1915] A.C. 330; *Great West Saddlery Co. Ltd. v. The King*, [1921] 2 A.C. 91, at pp. 100 and 120. Fourthly, because the provincial legislation in question does not destroy or interfere with the capacity or status of Dominion incorporated companies; and because, on the other 30 hand, in pith and substance, as well as in form, the Dominion legislation is directed to contracts and not to status or capacity. Fifthly, because this subject-matter is not within sec. 91(25) of the British North America Act, "Naturalization and Aliens," but is an enactment respecting contracts of insurance: *Union Colliery Co. of British Columbia v. Bryden*, [1899] A.C. 580. Sixthly, because the Dominion legislation touching the matter of aliens is not "properly framed" within the meaning of the opinion of the Judicial Committee in *Attorney-General for Ontario v. Reciprocal Insurers*, *supra*. Seventhly, because the Dominion legislation is not an enactment in relation to aliens as such or Dominion companies as such. It is clearly in substance 40 an enactment in regulation of contracts of insurance and the business of insurance as such. Eighthly, because the Parliament of Canada cannot undertake to do indirectly what cannot be done directly: *Great West Saddlery Co. v. The King*, *supra*. Other cases referred to dealing with the questions were: *Attorney-General for Ontario v. Attorney-General for Canada*, [1894] A.C. 189; *Attorney-General for Ontario v. Attorney-General for Canada*, [1912] A.C. 571; *Colonial Building and Investment Association v. Attorney-General for Quebec* (1883), 9 App. Cas. 157; *La Compagnie Hydraulique de*

No. 5.
Reasons for
Judgment
of the
Appellate
Division of
the Supreme
Court of
Ontario in
Re Insurance Contracts (1926)
58 O.L.R.
404—*continued*.

No. 5.
Reasons for
Judgment
of the
Appellate
Division of
the Supreme
Court of
Ontario in
*Re Insur-
ance Con-
tracts* (1926)
58 O.L.R.
404—con-
tinued.

St. François v. Continental Heat and Light Co. [1909] A.C. 194; *Dobie v. Temporalities Board* (1882), 7 App. Cas. 136; *Hodge v. The Queen* (1883), 9 App. Cas. 117; *City of Montreal v. Montreal Street Railway*, [1912] A.C. 333; *Russell v. The Queen* (1882), 7 App. Cas. 829.

F. W. Wegenast, for Reciprocal Insurers, submitted that they were not in the insurance business; they only made contracts with one another. [THE COURT asked what interest the Reciprocal Insurers had in the reference.] *Wegenast* said that what his clients were anxious to have decided was whether a person, for instance, one of his clients, being an alien, would come under this Dominion legislation. [RIDDELL, J.A. :—We have nothing to do with that.] *Wegenast*. Well, if I am not interested in the reference, I am content. If my clients have no place in the reference, they need not take out a Dominion license. 10

V. Evan Gray, for the Canadian Automobile Underwriters' Association and the Canadian Casualty Underwriters' Association, said that he was not taking sides with either the Dominion or the Province, but would like to know under which jurisdiction he was. He agreed, however, for the most part, with the argument of counsel for the Attorney-General for Ontario.

Sir William Hearst, K.C., special counsel appointed by the Court to represent the Dominion, contended that the answers to questions 2 and 3 should be in the affirmative, because the Dominion Act in no way affected any Provincial Company. Then, as to the right of the Dominion to license companies, this power came under "Regulation of Trade and Commerce" and "Naturalization and Aliens:" *Grand Trunk Railway Co. of Canada v. Attorney-General for Canada*, [1907] A.C. 65. Having created a company, the Dominion could say, "You must not do business in a certain way:" *Attorney-General for Ontario v. Reciprocal Insurers*, [1924] A.C. 328, at pp. 346 and 347. The Dominion could not compel a provincial company to take out a Dominion license; but, if the provincial company wanted to do business throughout Canada, it must get a Dominion license. He also contended that the license was revocable if the company did not comply with the conditions imposed. Under "Regulation of Trade and Commerce" and "Naturalization and Aliens," the Dominion had the right to license British and foreign companies. The legislation in question did not trench on civil rights in Ontario, but was directed solely to British and alien persons and companies and the conditions of their entry into Canada; and the conditions imposed upon them were within the rights of the Dominion: *Bonanza Creek Gold Mining Co. Ltd. v. The King*, [1916] 1 A.C. 566. Conceding that as to contracts made within the Province, question 1 may be answered in the affirmative, yet if the legislation professes to give powers outside the Province, it is *ultra vires*. He also referred to *Farmers Mutual Hail Insurance Association v. Whittaker* (1917), 37 D.L.R. 705, and *Rex v. Eastern Terminal Elevator Co.*, [1925] S.C.R. 434. 30

Bayly, K.C., in reply, contended that the Dominion could not tell an alien in the Province that he could not contract, or that he could not deal 40

with lands. The Dominion, in the guise of company legislation, was passing contract legislation, which comes within "Property and Civil Rights." He also referred to *Cunningham v. Tomey Homma*, [1903] A.C. 151.

February 19, 1926. MASTEN, J.A. (after setting out the questions referred to the Court):—I deal first with question 1. Section 168 of the Ontario Insurance Act, 1924, 14 Geo. V. ch. 50, is as follows:—

10 "The conditions set forth in this section shall, subject to the provisions of sections 169 and 170, be deemed to be part of every contract of automobile insurance in force in Ontario and the said conditions shall be printed on every policy under the heading 'Automobile Statutory Conditions.'"

Then follow fifteen statutory conditions referred to in the above section. Conditions 5 and 9 (1) afford fair examples of the nature of these statutory provisions. These two conditions read as follows:—

"5. The insurer shall not be liable under this policy while the automobile, with the knowledge, consent or connivance of the insured is being driven by a person under the age limit fixed by law, or, in any event, under the age of sixteen years, or by an intoxicated person."

20 "9.—(1) Upon the occurrence of any loss of or damage to the insured automobile, the insured shall, if such loss or damage is covered by this policy,

30 "(a) forthwith give notice thereof, in writing, to the insurer, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage; or until the insurer has had a reasonable time to make the examination provided for in subsection 2 of this condition,"

Section 180, referred to in question 1, reads as follows:—

40 "The conditions set forth in this section shall be deemed, subject to the provisions of sections 181 to 185, to be part of every contract of accident and of sickness insurance in force in Ontario, and shall be printed on every policy hereafter issued under the heading 'Statutory Conditions.'"

Then follow twenty-one statutory conditions, referred to in the section as quoted. It will suffice to quote two of these conditions as examples merely of the general character of all these provisions:—

"2. All statements made by the insured upon the application for this policy shall, in the absence of fraud, be deemed representa-

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tions and not warranties, and no such statement shall be used in defence of a claim under this policy unless it is contained in the written application for the policy and unless a copy of the application, or such part thereof as is material to the contract, is endorsed upon or attached to the policy when issued."

"17. All moneys payable under this policy for loss other than that of time on account of disability shall be paid within sixty days after the receipt of proofs of claim."

The provisions of secs. 169 and 170 and the provisions of secs. 181 to 185 do not affect the answers to the questions submitted for the consideration of the Court. 10

This legislation is similar in all relevant aspects to the legislation respecting statutory conditions in contracts of fire insurance which, in the case of *Citizens Insurance Co. v. Parsons*, 7 App. Cas. 96, was held to be within the legislative authority of the Province. It was determined in that case that the legislation there in question fell under that enumerated sub-head of sec. 92 of the British North America Act which entrusts to the Provincial Legislature the subject of "Property and Civil Rights."

In the same case it was determined that in No. 2 of sec. 91 the words "Regulation of Trade and Commerce" do not authorise the regulation by the Dominion Parliament of the contracts of a particular business or trade such as the business of fire insurance in a single Province. For more than forty years the judgment in *Citizens Insurance Co. v. Parsons*, *supra*, has been applied as a basis of decision in all our courts, from the Judicial Committee down, and now forms an essential part of the constitutional law of Canada. The circumstance that the legislation now in question might conflict with possible Dominion legislation relative to Aliens and Dominion companies does not remove it from the competency of the Provincial Legislature, as was determined by the Judicial Committee in the *Reciprocal Insurers'* case, [1924] A.C. 328, at pp. 345, 346, where it is said:— 30

"Nothing in sec. 91 of the British North America Act, in itself, removes either aliens or Dominion companies from the circle of action which the Act has traced out for the Provinces. Provincial statutes of general operation on the subject of civil rights *primâ facie* affect them. It may be assumed that legislation touching the rights and disabilities of aliens or Dominion companies might be validly enacted by the Dominion in some respects conflicting with the Ontario statute, and that in such cases the provisions of the Ontario statute, where inconsistent with the Dominion law, would to that extent become legally ineffective; but this, as their Lordships have before observed, is no ground for holding that the Provincial legislation, relating as it does to a subject-matter within the authority of the Province, is wholly illegal or inoperative: *McColl v. Canadian Pacific Railway Co.*, [1923] A.C. 126, 135." 40

I can find no distinction in principle between the statutory conditions relating to fire insurance and the enactments here in question, and it there-

fore suffices to say that, following the *Citizens Insurance* case, *supra*, the first question submitted must be answered in the affirmative.

10 *Questions 2 and 3.* It having been determined, in answer to question 1, that legislation regulating the statutory conditions in policies of automobile and accident and sickness insurance is insurance legislation within the exclusive authority of the Provincial Legislature, as coming under the head of "Civil Rights," it follows that legislation on the same subject-matter by the Dominion Parliament can be valid only so far as it comes within the principle that subjects which in one aspect and for one purpose fall within
 20 sec. 92 of the British North America Act, may in another aspect and for another purpose fall within sec. 91. But that principle is to be applied only with great caution, as remarked by Viscount Haldane in *Attorney-General for Canada v. Attorney-General for Alberta*, [1916] 1 A.C. 588, at p. 596. I understand it is to that principle that their Lordships refer in the *Reciprocal Insurers* case, *supra*, to which it is now necessary to advert.

Questions 2 and 3 now submitted, though not in form, are yet in principle, supplementary to the questions considered in that case, and the present case cannot be adequately considered without bearing in mind the observations of the Judicial Committee on that appeal and the circumstances there under
 20 consideration. In that case the facts were that the Legislature of Ontario had in 1922 passed an Act, known as the Reciprocal Insurance Act, which authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licenses and other conditions; and it was provided that actions in respect of such contracts might be maintained in the Courts of the Province.

A Dominion Act, passed in 1917, 7 & 8 Geo. V. ch. 26, inserted in the Criminal Code sec. 508C, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a company
 30 or association licensed under the Dominion Act, 1917.

In the *Reciprocal Insurers'* case, the Judicial Committee, in answer to the questions submitted by the Lieutenant-Governor of Ontario, held, first, that the Reciprocal Insurance Act was validly enacted by the Legislature of Ontario, and, second, that the making and carrying out of contracts licensed under the Provincial Act were not rendered illegal or otherwise affected by sec. 508C of the Criminal Code. That section was held invalid because, in substance, although not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion.

40 The third question submitted was as follows: "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?"

In dealing with the question Mr. Justice Duff, who delivered the opinion of the Judicial Committee, says, at pp. 346, 347:—

"In view of the terms of the third question it is necessary to notice a contention of the respondents that sec. 508C can receive a

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limited effect as applying to aliens within the meaning of sec. 11(b) of the Insurance Act, 1917, and to companies and natural persons not aliens immigrating into Canada within the meaning of sec. 12, and a parallel contention as to the effect of secs. 11 and 12.

“The enactment in question being in substance, notwithstanding its form, an enactment in regulation of contracts of insurance and the business of insurance, subjects not within the legislative sphere of the Dominion, and, subject to the proviso which is not here material, being general in its terms, is in their Lordships’ opinion invalid in its entirety. Assuming that it would be competent to the Dominion Parliament, under its jurisdiction over the subject of aliens, to pass legislation expressed in similar terms, but limited in its operation to aliens, their Lordships think it too clear for discussion that sec. 508C is not an enactment on the subject of aliens (just as the Ontario statute of 1922 is not an enactment on that subject); and that the language of the clause in question cannot be so read as to effect by construction such a limitation of its scope. Such a result could only be accomplished by introducing qualifying phrases, indeed, by rewriting the clause and transforming it into one to which the Legislature has not given its assent. 10

“It follows that the third question must be answered in the negative, 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 secs. 11 and 12(1) of the Insurance Act. 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 sec. 12 ascribes an inadmissible meaning to the word ‘immigrate,’ which, if governing the interpretation of subsec. 1, would extend the scope of sec. 12 to matters not obviously not comprised within the subject of immigration; and that subsec. 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 sec. 12 as an enactment passed in exercise of it.” 20 30 40

Bearing in mind the well-recognised rule that in the discussion of questions like the present the Court ought to limit its answers strictly to the questions submitted, the present inquiry is, by the decision in the *Reciprocal Insurers* case, *supra*, narrowed to this question: Is the legislation of the Dominion, referred to in questions 2 and 3, "properly framed" so as to be "competently enacted?"

To warrant an answer in the affirmative to that question it must appear that the legislation here in question does, in its true aspect, its object and purpose, relate in the one case to the incorporation of Dominion companies; and in the others to the admission into Canada and to the licensing of British alien persons (including companies); rather than to the regulation of the business of insurance. In the alternative, if the conclusion is reached that this is in its essence insurance legislation, then it will be valid only if it is ancillary to some of those powers which the Dominion Parliament admittedly possesses under sec. 91, so as to warrant in that way an intrusion by the Dominion on the Provincial field of civil rights. And in either event, if the Dominion legislation is valid, it must override the Provincial enactment.

With these preliminary observations, I proceed to a more detailed consideration of questions 2 and 3, which may be conveniently treated together, as the same considerations apply to each.

On account of their length I refrain from quoting *in extenso* the sections mentioned in these questions, but indicate the substance of the enactment so far as seems necessary for a consideration of its constitutionality.

Section 11 of the Dominion Insurance Act, 1917, 7 & 8 Geo. V. ch. 29, enacts as follows:—

"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 carry on any business of insurance . . . unless under a license from the Minister granted pursuant to the provisions of this Act."

Section 12 makes a similar provision in respect to British companies.

Section 71 (see 14 & 15 Geo. V. ch. 50, sec. 7) provides the penalty to be incurred by any Canadian company or by any alien, whether a natural person or a foreign company, who does insurance business in Canada without a license.

And sec. 71A makes a similar provision with regard to British companies and British subjects.

Section 134A (see 13 & 14 Geo. V. ch. 55, sec. 3), omitting the irrelevant subsections, is as follows:—

"134A (1) It shall be a condition of the license of every company licensed under this Act to carry on the business of automobile insurance or licensed to carry on any other class or classes of insurance which include the insurance of automobiles whether such condition be expressed in the license or not, and for the breach of which the license may be cancelled or withdrawn by the Minister, that no

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policy of automobile insurance other than an interim receipt or temporary binder covering a risk for a period not exceeding fourteen days shall be delivered in Canada by any such company unless the company has received an application for the policy in writing signed by the insured or by his agent authorised in writing signed by the insured, such application to contain the information and endorsements hereinafter specified: that no such policy shall be delivered in Canada by any such company until a copy of the form of such policy has been mailed by prepaid registered letter to the Superintendent; and that every such policy shall contain in substance the following terms, provisions or conditions:—

(Here follow 18 terms, provisions, and conditions.)

Characteristic examples of the conditions enacted under this section are as follows:—

“(a) the name and address of the company, the name and address of the insured, the name of the person or persons to whom the insurance money is payable if other than the insured, the premium for the insurance, the perils or risks insured against, the indemnity for which the company may become liable, the event on the happening of which such liability is to accrue, and the term of the insurance.”

“(j) if the policy insures against accident to persons or damage to property of others than the insured:—

“(i) that upon the occurrence of an accident involving bodily injuries or death, or damage to property of others, the insured shall promptly give written notice thereof to the company, with the fullest information obtainable at the time; that the insured shall give like notice, with full particulars of any claim made on account of such accident, and that every writ, letter, document or advice received by the insured from or on behalf of any claimant shall be immediately forwarded to the company.”

“(ii) that the insured shall not voluntarily assume any liability or settle any claim except at his own cost; that the insured shall not interfere in any negotiations for settlement or in any legal proceedings, but, whenever requested by the company, shall aid in securing information and evidence and the attendance of any witnesses, and shall co-operate with the company, except in a pecuniary way, in all matters which the company deems necessary in the defence of any action or proceeding or in the prosecution of any appeal.”

“134A.—(2) A copy of the application for the policy shall be attached to and form part of the policy when issued and such application shall set forth the insurer's occupation or business, the description of the automobile insured, its purchase-price to the insured,

whether fully paid for or otherwise, whether purchased new or second-hand, particulars of any mortgage, lien or other encumbrance, the use to which it is and will principally be put, the place where it is and will be principally maintained and garaged, the locality where it is and will be principally used, the fact of any accident in which an automobile owned or operated by the insured has been involved, the particulars of any claims made against and by the insured in respect of the ownership or operation of any automobile, whether any company has cancelled any automobile policy of the insured, or refused to issue automobile insurance to the insured and such further information as the company may require.

10

“(3) Notwithstanding anything in this section contained, the policy may be renewed by the delivery of a renewal receipt or a new premium note.

“(4) Upon every such application there shall be printed or stamped in conspicuous type, not less in size than ten point, the following words:—

20

“ ‘ If the applicant knowingly misrepresents or conceals any fact or circumstances required by this application to be made known, the contract of insurance shall be void as to the property or risk undertaken in respect of which the misrepresentation or omission is made.’ ”

“(5) Any such policy may provide for the exclusion from the risks insured against, of losses arising from any hazard or class of hazard expressly stated in the policy.

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“(6) In any case where there has been imperfect compliance with a statutory condition as to the proof of the loss to be given to the insured, or as to any matter or thing to be done or omitted by the insured after the maturity of the contract, and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on any such terms as it may deem just.

“(7) No such company shall issue in Canada a valued policy of automobile insurance.”

Section 134 provides as follows:—

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“ 134.—(1) It shall be a condition of the license of every company licensed under this Act to carry on the business of accident insurance or sickness insurance, or both, whether such conditions be expressed in the license or not, for the breach of which the license may be cancelled or withdrawn by the Minister. . . . ”

(Here follow fourteen terms and provisions relative to contracts of accident insurance and six terms and provisions relative to contracts of sickness insurance. Each and every one of these conditions is similar

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in character to the examples given under sec. 134A, and is directed solely to some detail of the contract of insurance.)

“ 134.—(4) Any of the foregoing terms or provisions which are inconsistent with terms or provisions required to be contained in the policy by the law of the Province in which the policy is issued, shall not, to the extent to which they are so inconsistent, be required to be contained in the policy.”

It thus appears that the legislation in question is limited to three classes of persons (including companies): first, Dominion companies; second, British companies and individuals; third, foreign or alien companies and individuals. The effect of the legislation is that these persons are prohibited from carrying on in Canada the business of insurance without a license, and it is provided that it shall be a condition of such license, whether expressed on the face of it or not, that every policy issued by the licensee shall contain the statutory provisions in question, and the license may be forfeited if the licensee commits a breach of this or any other condition. 10

The constitutional question remains the same in relation to each of the three classes of insurance (automobile, accident, and sickness); but, as applied to Dominion companies, the considerations which govern our conclusion are in some respects different from those which relate to the power of the Dominion to license British and alien persons (including companies). 20

Accordingly I proceed to deal first with the questions:—Does the object and purpose of this legislation relate to the incorporation of Dominion insurance companies, or is it directed to the regulation of insurance business in Ontario? And, in the alternative: Can the legislation in question be justified as ancillary to any of the enumerated powers in sec. 91?

It may be assumed that the Dominion Parliament is competent to grant to a company incorporated by it a status as a Dominion corporation, to confer upon it its capacities, to endow it with powers, and to prescribe limitations on those powers. For example, it might enact that no insurance company incorporated under its authority should possess power to carry on conjointly the business of life insurance and the business of guarantee insurance. It can prescribe the number and mode of election of its board of directors, and detail their powers; generally, it can legislate respecting the internal relations of the members or shareholders and the regulation of the domestic affairs of the company. But the granting of subjective status and powers of the company is one thing, and the regulation of the objective exercise of its powers in a particular Province is quite another thing. 30 40

It seems to me self-evident that the conditions which a Dominion company, after it has been incorporated and organised, chooses to insert in its policies of insurance have nothing whatever to do with its prior incorporation. In other words, the Dominion legislation here in question is not aimed to create or to control or limit the status, powers, or field of

operation of the companies referred to in the statute, but rather to control its subsequent operations by prescribing certain minor details of the contracts into which the citizens of Ontario may enter with such companies and persons, and so to regulate the business of insurance.

Nor can the Dominion invoke the aid of enumerated head 2 of sec. 91 (Regulation of Trade and Commerce) in support of this enactment. Notwithstanding the extension of the ambit of the legislative powers of the Dominion under that head, as indicated by the decisions of the Judicial Committee in *John Deere Plow Co., Ltd. v. Wharton*, [1915] A.C. 330, *Board of Commerce* case, [1922] 1 A.C. 191, and *Toronto Electric Commissioners v. Snider*, [1925] A.C. at p. 409, I think that the *Parsons* case, *supra*, the *Alberta* case, *supra*, and the *Reciprocal Insurers'* case, *supra*, establish firmly that the Dominion Parliament cannot, by virtue of its authority to regulate trade and commerce, pass an enactment in regulation of contracts of insurance and the business of insurance.

If then this legislation does not in its essence relate to the incorporation of a Dominion company and is not authorised by head 2 of sec. 91, it can be pronounced valid only if it is ancillary to legislation under one of these heads. I pause here to observe that the power of the Canadian Parliament to incorporate Dominion companies is derived from the general authority to make laws for "the peace, order, and good government of Canada," and not from any enumerated head of sec. 91. In such a case the power of the Canadian Parliament to pass legislation infringing on enumerated head 13 of sec. 92 (civil rights) will not be readily inferred. See the discussion of this point by Lord Watson in the *Liquor Prohibition Appeal, Attorney-General for Ontario v. Attorney-General for the Dominion*, [1896] A.C. 348, at pp. 359 and 360, and his conclusion at the foot of p. 360, as follows: "These enactments appear to their Lordships to indicate that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in sec. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in sec. 92."

I proceed to deal with the question whether the legislation in question is ancillary to the incorporation of Dominion companies.

In the case of *British Columbia Electric Railway Co. v. Vancouver Victoria and Eastern Railway and Navigation Co.* (1913), 48 Can. S.C.R. 98, at p. 120, Duff, J., suggests a test of what is truly ancillary which seems to me to be applicable and appropriate in the present case. He says: "In every case in which a conflict does arise the point for determination must be whether there exists such a necessity for the power to pass the particular enactment in question as essential to the effective exercise of the Dominion authority as to justify the inference that the power has been conferred;" citing *City of Montreal v. Montreal Street Railway Co.*, [1912] A.C. 333, at pp. 342-345.

It follows that the answer to the question when and to what extent the Dominion Parliament can by legislation ancillary to its powers under

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sec. 91 intrude on the domain of civil rights depends on the surrounding circumstances. The principle is readily stated—the difficulty is in applying it to the facts of each particular case.

Reported cases are of value only so far as they explain and elaborate the principle and afford examples and illustrations of the way in which that principle has been applied in particular cases by eminent Judges, and to that end I refer to a few only of the many cases in which the question has arisen :—

In *Cushing v. Dupuy* (1880), 5 App. Cas. 409, the Dominion Parliament had passed legislation enacting that the judgment of the Court of Queen's Bench in matters of insolvency should be final, so that no appeal to the Privy Council lay as of right. The legislation was held to be competent as a general law relating to bankruptcy, though affecting a civil right, because procedure must necessarily form an essential part of any law dealing with insolvency. 10

In the *Parsons* case, *supra*, one company was incorporated by the Dominion and the other by the Imperial Parliament, and the argument for the Dominion was that the Dominion Act 38 Vict. ch. 30 had imposed certain conditions on companies of this kind upon the performance of which the right to carry on business resulted, and which therefore could not afterwards be hampered or restricted, however locally, by a provincial legislature 20

In dealing with this argument their Lordships of the Judicial Committee (7 App. Cas. at p. 113) say :—

“ It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single Province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the Legislature of Ontario by No. 13 of sec. 92.” 30

The essential quality of such legislation is described in the *Liquor Prohibition Appeal*, [1896] A.C. at pp. 364, 365, as “ necessarily essential.”

The case of *Toronto Corporation v. Canadian Pacific Railway Co.*, [1908] A.C. 54, at p. 58, indicates that the power in such circumstances does not extend further than is reasonably necessary to enable the Dominion Parliament to legislate effectively on the enumerated subjects committed to its jurisdiction by the British North America Act. In that case Toronto was ordered by the Dominion Railway Commission to pay a certain proportion of the expense of maintaining gates and guards at a point in the city where the Canadian Pacific Railway crossed a highway at the level. The Dominion Railway Act authorised the Railway Committee of the Privy Council of Canada to assess a proportion of the cost against the municipal corporation. The city corporation contended that it was *ultra vires* the Dominion to enact legislation under which they could be charged for work 40

either for a railway or a municipal purpose. For the railway company it was contended that the provisions in question were *intra vires* of the Dominion Parliament as being ancillary to through railway legislation, notwithstanding that they affected civil rights. Lord Collins, in delivering the judgment of the Judicial Committee, said (p. 58) :—

10 “ If the precautions ordered are *reasonably necessary*, it is obvious that they must be paid for, and in the view of their Lordships there is nothing *ultra vires* in the ancillary power conferred by the sections on the committee to make an equitable adjustment of the expenses among the persons interested.”

In *City of Montreal v. Montreal Street Railway*, [1912] A.C. 333, at p. 344, their Lordships say that “ the Act and Order ” (of the Railway Commissioners) “ if justified at all must be justified on the ground that they are necessarily incidental to the exercise by the Dominion Parliament of the powers conferred upon it by the enumerated heads of sec. 91 ; ” and (pp. 344, 345) it must be shewn that “ it is necessarily incidental to the exercise of control over the traffic of a federal railway, in respect of its giving an unjust preference to certain classes of its passengers or otherwise, that it should also have power to exercise control over the ‘ through ’
20 traffic of such a purely local thing as a provincial railway properly so called, if only it be connected with a federal railway.”

It was held that such power was not “ necessarily incidental.”

In the latest decision of the Supreme Court of Canada, *Rex v. Eastern Terminal Elevator Co.*, [1925] S.C.R. 434, the question was on the power of the Dominion Parliament, as a part of an Act to control and regulate the trade in grain, to enact that if at the end of any crop year, in any terminal elevator, “ the total surplus of grain is found in excess of one-quarter of one per cent. of the gross amount of the grain received in the elevator during the crop year,” such surplus shall be sold for the benefit
30 of the Board.

This provision was by a majority of the Court held to be *ultra vires* as an infringement on the civil rights entrusted to provincial legislatures and not *necessarily incidental* to the control of the grain trade.

In the light of these cases, applying the test suggested by Duff, J., and quoted above, the point for determination is, whether, in the incorporation of Dominion insurance companies, there exists such a necessity for the power to prescribe the statutory conditions in question, as essential to the effective exercise of the Dominion authority, as to justify the inference that the power has been conferred.

40 The absence of such conditions would not have caused the action of the Federal authority to become a dead letter when incorporating insurance companies. But further, even if such conditions were essential, the need is satisfied by Provincial legislation, so that no necessity for such Dominion legislation now exists. Even assuming that formerly the nature

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of the business necessitated such legislation, the authority for legislation, ancillary to the incorporation of Dominion insurance companies, could not have been shewn to exist unless and until the Provincial Legislatures failed to exercise their own legislative powers to fill the need. That they would so fail is not to be assumed: *City of Montreal v. Montreal Street Railway*, [1912] A.C. at p. 345. I therefore arrive at the conclusion that the legislation in question is not necessarily incidental to the incorporation of Dominion insurance companies.

With respect to British insurance companies, British natural persons, alien insurance companies, and alien persons, seeking to carry on the business of insurance in Canada, the considerations to be observed in reaching a conclusion are for the most part similar to those which obtain in considering the case of Dominion companies, and need not be repeated. Some further points, however, present themselves in that connection. The decision of the Judicial Committee in the case of *Attorney-General for Canada v. Attorney-General for Alberta*, *supra*, determines that the power of restricting in Canada, by a system of licensing, the business of foreign insurance companies, is given to the Dominion by the heads in sec. 91 which refer to the regulation of trade and commerce and to aliens. 10

It may, therefore, be assumed that if a foreign insurance company, empowered by its constating instruments to carry on the business of both life and guarantee insurance, were to apply for a Dominion license to carry on its business in Canada, the Dominion Parliament might permit it to carry on life insurance and decline permission to carry on concurrently guarantee insurance, or might impose a condition that it deposit so many thousands of dollars with the Insurance Department of Canada as a guarantee to its policy-holders. It may also be assumed that any alien, whether a foreign company or a natural person, coming to Canada to carry on the business of insurance, must be licensed by Dominion authority, and only to the extent to which such alien is so licensed and on the conditions prescribed by the Dominion will he or it be legally entitled to commence business; but, when the alien has complied with the conditions prescribed and the license issues, the functions of the Dominion authority are exhausted, and the details of the contracts of insurance which it subsequently makes with the citizens of Ontario does not fall under the head of licensing (though it may be a consequence of the licensing) but under the head of civil rights in whatever Province the licensee carries on business. 20 30

The view just expressed accords with the decision of the Judicial Committee in the case of *Cunningham v. Tomey Homma*, [1903] A.C. 151, and an observation of Lord Halsbury in delivering the judgment of the Committee is pertinent to the present question. The subject there under consideration related to the validity of an Act of the Legislature of British Columbia excluding all Japanese, whether naturalized or not, from exercising the franchise at provincial elections. The contention of the Dominion was that the British Columbia Act was *ultra vires* because it trespassed on the exclusive authority of the Dominion Parliament to legislate respecting 40

aliens and naturalization. At pp. 156, 157, Lord Halsbury, in discussing sec. 91, head 25, says :—

10 “ 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 those depend upon residence, are quite independent of nationality.”

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In the result the Judicial Committee negatives the contention of the Dominion.

Nor, in my opinion, is this enactment “ ancillary,” in the sense of “ necessarily essential,” to Dominion legislation respecting aliens or trade and commerce.

20 The fact that automobile insurance in all its branches and the business of accident and sickness insurance were carried on fairly to the public and with success to the companies for many years before statutory conditions were prescribed by any authority, federal or provincial, seems to establish conclusively that statutory conditions are not “ necessarily essential ” to the conduct of such insurance business. The conditions seem in the main to be devised rather for the purpose of affording adequate protection to the insured than to facilitate the fulfilment by the company of its functions, and are in no sense essential to the exercise by the insurance company of its powers. The same reasoning applies, I think, to the licensing of British insurance companies and natural persons, and that need not be separately discussed.

30 With respect to questions 2 and 3 there is, however, suggested a further question which may be stated as follows :—The Dominion Parliament has power to prohibit the entry into Canada for insurance purposes of British companies and persons and alien companies and persons unless and until they secure from the Dominion a license so to do. It follows that it may condition its grant of a license on any terms whatsoever which it may see fit to impose and revoke the license on breach of a condition on which it was granted. The applicant is under no compulsion to accept the license on the terms prescribed. He may refuse and stay out of Canada, but if he accepts the license on the conditions and terms prescribed by the Dominion,
40 he is bound by such acceptance, and the incorporation of the Dominion statutory conditions in the policies he issues arises from such acceptance and are not imposed by the Dominion statute. Hence it is argued that the legislation in question does not trench on civil rights in Ontario but is directed solely to legislation respecting British and alien persons (including companies) and the conditions of their entry into Canada, and that consequently the discretion of the Dominion regarding the conditions it chooses

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to impose on applicants for licenses cannot be in any way questioned or controlled.

I agree, subject to one exception, viz., that where the condition sought to be imposed by the Dominion has the effect of trenching on any of the enumerated powers which are exclusively entrusted to the Provincial Legislature by sec. 92, the right to impose and enforce such a legislative condition must as to its constitutional validity be considered and tested by the same principles as those which are applicable to direct legislation, for it is well established that the Dominion Parliament cannot do indirectly what it cannot do directly.

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

“A statute must be judged by its natural and reasonable effect.” This statement was made by the Supreme Court of the United States in adjudicating upon the constitutionality of an Act of Congress, and is reported in *Hammer v. Dagenhart* (1918), 247 U.S. 251, 275. It is quoted with approval in the judgment of the Judicial Committee in the case respecting *Reciprocal Insurers* [1924] A.C. at p. 339.

Now the natural and reasonable effect of the legislation in question is to deprive the citizens of Ontario of the civil rights which they previously enjoyed.

Apart from such legislation as is here in question, any insurance company, foreign or domestic, and any natural person (not an enemy), might under the rules of comity enter Canada and carry on the business of insurance. Apart from this legislation, the citizens of Ontario could contract with British and with alien insurance companies without let or hindrance, and their contracts would be valid and enforceable in accordance with the statutory conditions prescribed by Ontario law. But if and so far as the legislation in question has validity, the citizens of Ontario cannot any longer contract insurance with British or alien companies on the conditions and terms prescribed by the laws of Ontario, but only on the terms prescribed by this legislation. Thus the natural and reasonable effect of the legislation in question is to interfere with civil rights of the citizens of Ontario.

I, therefore, conclude that the legislation in question is, not only in substance but also in form, directed to the regulation of the conduct in Ontario of the business of insurance, and that in its object and scope it fails to come within any power or combination of powers confided to the Dominion Parliament by sec. 91.

For these reasons I am of opinion that the legislation in question is not properly framed so as to come within the competence of the Dominion Parliament.

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I would answer the first question "Yes" and the second and third questions "No."

MIDDLETON, J. A. :—I concur.

RIDDELL, J.A. :—While I am not wholly free from doubt, the inclination of my opinion is to agree with my brother Masten. In view of the probability that the case will go further, I do not think I should be justified in holding up the judgment in the expectation of increasing or wholly removing my doubt. I concur.

LATCHFORD, C.J. :—I have had the advantage of perusing the opinion
10 written in this case by my learned brother Masten, and desire to express
my concurrence in his answer to the first question. The *Parsons* case seems
to me conclusive on this point.

The second and third questions are not so easily answered.

Counsel for the Province of Ontario contend that, if the answer to the first question is in the affirmative, sec. 134 of the Dominion Insurance Act of 1917, and sec. 134A, as enacted in 1923, are *ultra vires* of the Parliament of Canada.

These sections are sufficiently quoted in the opinion of my learned
brother, and it is unnecessary to repeat them. They purport to affect
20 certain companies licensed or seeking a license under sec. 4 of the Act of
1917, which empowers the Minister to grant a license to any company
which shall have complied with the requirements of the Act, which include
inter alia conditions to be inserted in the policies differing in certain respects
from conditions imposed by the Ontario Insurance Act. They do not
affect the business of insurance carried on in Ontario or any particular
Province by other than such licensees. The companies affected are any
Canadian company or any foreign company intending to carry on the
business of insurance throughout Canada, or in any part of Canada, which
may be specified in the license and any other company carrying on such
30 business throughout Canada or in more than one Province. British com-
panies can stand in no higher position than "foreign" companies with
regard to licensing.

For nonconformity with the conditions so imposed a Dominion license may be withheld by the Minister, or, if issued, withdrawn or cancelled.

Section 69 of the Ontario Insurance Act, R.S.O. 1914, ch. 183, provides for the registration under that Act of a company so licensed and for the suspension or cancellation of the registry of a company, the license of which has been suspended or cancelled under the provisions of the Dominion Insurance Act.

40 The power of the Canadian Parliament to enact laws for the incorporation of companies to carry on the business of insurance in more than one Province of the Dominion, and for the licensing of such companies and of British and foreign companies and persons, is not, in my opinion, open to

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question. Each Province has the exclusive power, under head 11 of sec. 92 of the British North America Act, to make laws in relation to the incorporation of "companies with Provincial objects."

"It follows," said Sir Montague Smith in the *Parsons* case, 7 App. Cas. at p. 117, "that the incorporation of companies for objects other than Provincial falls within the general powers of the Parliament of Canada." The *John Deere Plow Co.* case [1915], A. C. 330, also determines that the power of legislating with reference to the incorporation of companies with other than Provincial objects belongs exclusively to the Dominion, as a matter "not coming exclusively within the classes of subjects assigned to the Legislatures of the Provinces." The Board at the same time was careful to declare that because the status of a Dominion company confers on it civil rights to some extent, the power does not enable it to trench on the exclusive jurisdiction of the Provincial Legislature for civil rights *in general*. The expression "civil rights" must be construed consistently with various powers conferred by secs. 91 and 92 which restrict its literal scope. 10

The Province of British Columbia was declared in that case incompetent to "legislate so as to deprive a Dominion company of its status and powers:" *per* Haldane, L.C., at p. 341. In so far as the status and corporate capacity of a Dominion company carries with it powers conferred by the Parliament of Canada to do business in every part of the Dominion, the Provincial Legislature cannot interfere. 20

This decision is far-reaching in its consequences. As I understand it, while the Dominion cannot interfere *generally* with civil rights, it may do so in particular cases.

In *Great West Saddlery Co. v. The King*, [1921] 2 A.C. 91, the implications in the *John Deere Plow Co.* case were invoked to determine that a Provincial Legislature cannot validly enact sections which would sterilise and destroy the capacities and powers validly conferred by the Dominion Parliament.

In *Attorney-General for Canada v. Attorney-General for Alberta*, [1916] A.C. 588, it was held to be competent for the Parliament of Canada, under sec. 91, heads 2 and 25, to prohibit, by legislation properly framed, a foreign insurance company from carrying on business even in a single Province of Canada without a license from the Minister in charge of the Department of Insurance. 30

In *Attorney-General for Ontario v. Reciprocal Insurers*, [1924] A.C. 328, at p. 347, their Lordships, while declining to express an opinion on the competency of the Dominion Parliament to legislate by virtue of its authority in relation to aliens and to trade and commerce, "recalls" the observation of Lord Haldane in *Attorney-General for Canada v. Attorney-General for Alberta, supra*, "to the effect that legislation, if properly framed, requiring aliens, whether natural persons or foreign companies, to become licensed," might be competently enacted by Parliament (an observation which, it may be added, applies also to Dominion companies). No dissent is expressed from the observation so recalled, though the Board refrained 40

from giving its opinion on the point. The statement of Lord Haldane, even if *obiter*, is of great weight, and must, in my opinion, be regarded as expressing the law.

The legislation requiring Dominion corporations and aliens, whether persons or corporations, intending to do business in more than one Province, to become licensed, was, I think, properly framed and within the competence of the Dominion Parliament. It is not general in its application but is confined — sec. 11 — to “any Canadian company, or any alien, whether a natural person or a foreign company.”

10 As the Parliament of Canada has the power to create corporations with other than Provincial objects and possesses also the power of licensing such corporations and aliens and foreign persons for the purpose of doing business in Canada, it seems to me to follow as necessarily ancillary to the exercise of such a power that the Dominion could validly prescribe the conditions under which that particular business should be carried on. I am not deterred from this conclusion by a full realisation of the principles laid down recently in the Privy Council by Duff, J., when he said that the true nature of an enactment in question must be considered, its pith and character, and its substance, rather than its form. It is obviously desirable that all persons
20 or companies authorised to carry on the business of insurance under the Insurance Act of 1917 should conform to identical conditions, and that is in substance and effect what the legislation now in question purports to require.

I therefore think questions 2 and 3 should be answered in the affirmative.

SMITH, J. A. :—I agree with my brother Masten in answering the first question in the affirmative, for the reasons stated by him.

As to the remaining questions, while I am in general agreement with my brother Masten, I am of opinion that, as to natural persons and companies that the Dominion Parliament has authority to prohibit from carrying
30 on business without a license, the Parliament has the power to grant and revoke such license on any condition it sees fit to impose, and therefore has power to enact that there shall be conditions as provided in sec. 134, subsecs. 1, 2, 3, 4. If the form of policy submitted does not conform to the requirements, there would be the right to refuse a license. If after the issue of the license the licensee refuses or neglects to comply with the requirements by putting the stipulated terms and conditions in its policies the license may be cancelled. As to this I am at variance with my brother Masten where he says that “when the alien has complied with the conditions prescribed and
40 the license issues, the functions of the Dominion authority are exhausted.” In my view the license may be for a limited time and renewable and may be made revocable on failure to comply with certain conditions.

Complying with the conditions by the licensee is not an interference with civil rights, because, when these terms and provisions are inserted in a policy, they affect civil rights not by virtue of the Dominion Act but by

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virtue of their having become part of the contract between the parties. Any Province may enact that all or part of such terms and conditions shall have no effect within the Province. They have effect on civil rights within each Province as terms of the contract only to the extent to which they are not in conflict with the law of the Province. Subsection 4 of sec. 134 so provides, though in my view this would be the case without this subsection. I would therefore, to the extent indicated, answer questions 2 and 3 in the affirmative.

Questions answered as stated by MASTEN, J.A. (LATCHFORD, C.J., and SMITH, J.A., *dissenting in part*).

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1931, January 26th.

ATTORNEY-GENERAL OF ONTARIO *v.* ATTORNEY-GENERAL OF CANADA.

Constitutional Law—Powers of Parliament—Insurance Contracts—Validity of Dominion Legislation—Jurisdiction of Ontario Court to Entertain Action for Declaration that Dominion Statutes Invalid.

In an action in which either the Attorney-General of Canada or the Attorney-General of Ontario is a party plaintiff and the other a party defendant, the Ontario Court has jurisdiction to make a declaration as to the validity of any statute of the Ontario Legislature or any statute of the Parliament of Canada which purports to have force in Ontario, though no further relief be sought : sec. 19 of the Judicature Act, as enacted in 1930 by 20 Geo. V. ch. 23 (Ont.).

Sections 4, 11, 12, 65, 66, 91, 123, and 135 of the Dominion Insurance Act, R.S.C. 1927, ch. 101, are *ultra vires* the Dominion Parliament; sec. 134 is *intra vires*; and so is sec. 16 of the Special War Revenue Act, R.S.C. 1927, ch. 179.

Re Insurance Contracts (1926), 58 O.L.R. 404, and *Re Reference as to the Validity of Certain Sections of Dominion Statutes* (1930), Q.R. 49 K.B. 236, followed.

Matthew v. Guardian Insurance Co. (1918), 58 Can. S.C.R. 47, and *Ottawa Separate Schools Trustees v. Ottawa Corporation*, [1917] A.C. 76, distinguished.

Section 507 of the Criminal Code, R.S.C. 1927, ch. 36, has been already declared *ultra vires*: see *Attorney-General for Ontario v. Reciprocal Insurers*, [1924] A.C. 328.

In this action the plaintiff, the Attorney-General of Ontario, asked for a declaration to the effect that the Dominion Insurance secs. 4, 11, 12, 65, 66, 134, and 135 of the said Act are *ultra vires* of the Parliament of

Canada, or, alternatively, a declaration that ^{the Act (except part b thereof) is} ~~secs. 4, 11, 12, 65, 66, 101, and 195 of the said Act are~~ *ultra vires*; also a declaration that sec. 507 of the Criminal Code, R.S.C. 1927, ch. 36, and sec. 16 of the Special War Revenue Act, R.S.C. 1927, ch. 179, are likewise *ultra vires*.

By amendment to the statement of claim he also asks an injunction restraining the defendants the Minister of Finance and George D. Finlayson from acting under or enforcing any of the provisions of the Dominion Insurance Act or such of them as may be declared invalid, or a declaration that they are not, nor is either of them, entitled so to act under or enforce
10 any of such provisions.

The action was tried before GARROW, J., without a jury, at a Toronto sittings.

W. N. Tilley, K.C., R. Leighton Foster, and C. F. H. Carson, for the plaintiff.

R. S. Robertson, K.C., and J. T. Garrow, for the defendants.

January 26. GARROW, J.:—The plaintiff alleges in his statement of claim that for upwards of 50 years the Province of Ontario has maintained a Department of Insurance, of which he is now and has been for some time the head. During the same period, it is alleged, the Dominion of Canada
20 has maintained an insurance department under the provisions of the Insurance Act, now R.S.C. 1927, ch. 101. The Minister of Finance presides over this Department and there is provision also for the appointment of a superintendent of insurance, who is the defendant Finlayson.

The statement of claim goes on to indicate in a general way what the Insurance Act purports to deal with, and it may be convenient here to state in general terms the scope of the Act. By sec. 4, Part I., of the Act, there is provision made for the granting to Dominion, provincial, British, and foreign companies of licences to carry on insurance business throughout Canada or in specified parts thereof, and secs. 11 and 12 prohibit unlicensed
30 companies and persons from carrying on business in Canada and from immigrating into Canada for the purpose of commencing insurance business. Penalties for doing business without a licence are imposed by secs. 65 and 66; deposits of money or securities prior to obtaining a licence must be made and additional sums deposited if the company's Canadian liabilities exceed its Canadian assets. Annual returns by companies so licensed and inspection thereof are provided for, and, on a report by the Superintendent of Insurance that the assets of a company so licensed are insufficient to justify its continuance in business, the licence may be cancelled or suspended or a modified or conditional licence may be issued.

40 Part II. of the Act deals with life insurance, the amalgamation of companies, the commissions, allowances, and salaries that may be paid to agents and officers, the giving of estimates, the distribution of surpluses, the form of policies, and the terms and conditions which must be included in all contracts of life insurance; Part III. deals with fraternal benefit societies and the terms and provisions of their contracts; Part IV. deals with fire insurance and the conditions of fire insurance contracts; and

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Part V. with insurance other than fire or life and the regulation of such contracts. There is provision in the statute that, as a condition of the granting of the licences, the contracts of insurance to be thereafter entered into shall contain certain prescribed terms and provisions.

The plaintiff also sets up as part of his case that other Dominion statutes contain provisions designed to compel the taking out of licences under the Insurance Act: for example, the Criminal Code, R.S.C. 1927, ch. 36, by sec. 507 makes it an indictable offence to solicit or accept risks without a licence, except as provided in the section; and the Special War Revenue Act, R.S.C. 1927, ch. 179, by sec. 16 imposes on every person in Canada who insures his Canadian property against risks, other than marine risks, with any unlicensed British or foreign company or underwriter, or with any unlicensed association of persons formed for the purpose of exchanging reciprocal contracts of indemnity on the plan known as inter-insurance, a special annual tax, in addition to all other taxes, of 5 per cent. of the total net cost to him of all such insurance for the preceding year. It is the contention of the plaintiff that this is not a *bonâ fide* tax statute, designed for revenue purposes, but an attempt on the part of the Dominion authorities to compel the taking out of a licence under the Insurance Act of Canada. 10

The defendant the Attorney-General of Canada alleges in his statement of defence that the plaintiff is not entitled to maintain this action for any of the declarations claimed, and that he is not a proper party defendant to the action in any event; that the Court has no jurisdiction to make any of the declarations claimed; that the Insurance Act of Canada was duly enacted by the Parliament of Canada and is within the powers of such Parliament; that the plaintiff has not accurately set forth in his statement of claim the provisions of the Act; and he denies also that the plaintiff has suffered any embarrassment as Minister in charge of the administration of the Ontario Insurance Department, and alleges that if any such embarrassment exists it arises from the claim unnecessarily and gratuitously made by the plaintiff that the Insurance Act is invalid in whole or in part. This defendant, also, maintains that sec. 16 of the Special War Revenue Act is within the legislative competence of the Parliament of Canada. 20 30

The other two defendants, the Minister of Finance and George D. Finlayson, also file separate defences, in which, however, each alleges practically the same matter, namely, that the action as framed will not lie; that the Court has no jurisdiction to make any of the declarations claimed; that the Insurance Act is within the powers and jurisdiction of the Parliament of Canada; that the Court will not in any event by injunction interfere with the exercise by these defendants of the administration of their respective offices; that the Insurance Act provides for the enforcement of its provisions by way of proceedings before Courts of competent jurisdiction, not only in the Province of Ontario, but throughout the Dominion of Canada; and this Court should not by injunction interfere with the proceedings in such Courts. 40

The foregoing is a reasonably full statement of the allegations contained in the pleadings filed in the action. The action as originally begun was against the Attorney-General for Canada alone; subsequently by amendment the other two defendants were added and appropriate amendments were made to the statement of claim and a prayer added for relief by way of injunction.

The allegation that no such cause of action as the plaintiff asserts here lies, and that the Court has no jurisdiction in the matter, was very strenuously argued by counsel for the defendants, their contention being in fact that the action was of such a novel character as to make the question of jurisdiction almost as important as the question of the merits themselves.

Counsel for the plaintiff, in maintaining his right to sue in the present form and for the relief claimed, contend that the class of legislation in question here is legislation that sets up a department of Government under which certain persons, the Minister and Superintendent, are given certain rights and certain powers of control, the exercise of which interferes directly with the carrying on of the Insurance Department of Ontario under the Ontario Insurance Act. It sets up, they claim, a rival department which assumes to exercise the very same kind of control although perhaps not on the same terms as the provincial authority, and the plaintiff says that this is a wrongful exercise of legislative authority, and that he, as the official in charge of the Insurance Department of Ontario, is prejudiced and embarrassed in the exercise of his legal rights.

Mr. Tilley maintains that this position taken by the plaintiff brings him within the authority of the very well-known and often cited case of *Dyson v. Attorney-General*, [1911] 1 K.B. 410.

Counsel for the defendants, on the other hand, maintain with great force that the Court is quite without jurisdiction and that such an action as the present does not lie; that the plaintiff is not a proper plaintiff and that the defendants are not proper defendants; that, if there is any embarrassment at all, which he denies, it is not for the plaintiff to complain nor is it he who is embarrassed; and that the *Dyson* case has no application; and they refer to such cases as *In re Clay*, [1919] 1 Ch. 66, as indicating the limitation of the application of the principle of the *Dyson* case. They contend that all the Court is asked to do here is to make a declaration upon a pure question of law, and that no rights in the proper sense of the word are actually being determined at all.

I do not propose, although the question is an interesting and important one, to spend much time discussing it, because it seems to me that the matter is settled, so far as I am concerned, by an amendment made to the Judicature Act assented to on the 3rd April, 1930, and appearing as ch. 23 of the statutes of 1930 (Ontario). This amendment which I think was not referred to on the argument, repeals sec. 19 of the Judicature Act, R.S.O. 1927, ch. 88, and substitutes the following therefor:—

“19.—(1) In any action in which the Attorney-General of Canada or the Attorney-General of Ontario is a party plaintiff

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and the other Attorney-General is a party defendant, the court shall be deemed to have had and shall have jurisdiction to make a declaration as to the validity in whole or in part of any statute of this Legislature or any statute of the Parliament of Canada, which, by its terms, purports to have force in Ontario though no further relief be prayed or sought.

“(2) The judgment in any such action shall be subject to appeal as in ordinary cases.”

Whether this amendment was enacted for the very purpose of overcoming the point raised by the defendants, I do not know; but it seems to be applicable to the case in hand, and it not only purports to give to the Court jurisdiction to make a declaration as to the validity in whole or in part of any statute of the Legislature or of the Parliament of Canada which by its terms purports to have force in Ontario, in any action in which either Attorney-General is a party plaintiff and the other is a party defendant, but it also declares that the Court shall be deemed to have had jurisdiction to make such declaration. In my opinion, the statute is quite explicit; and, if there was any doubt about the jurisdiction, it would appear to have been set at rest by the amendment referred to (unless and until perhaps its validity is to be questioned); and I therefore conclude that the jurisdiction exists and must be held to have existed at the time the action began, and I proceed to deal with the merits of the case itself. 10 20

As indicating the difficulties created, as the plaintiff says, by having two rival Departments of Insurance, the evidence of H. B. Armstrong, Deputy Superintendent of Insurance for the Province of Ontario, was taken. The Superintendent and his deputy are appointed under the authority of the Ontario Insurance Act, R.S.O. 1927, ch. 222, sec. 3, and the Superintendent is thereby given general supervision over the business of insurance in Ontario and he is required to see that the laws relating to the conduct thereof are enforced and obeyed. He, Armstrong, illustrates his difficulties by giving an instance, which he says frequently occurs, of a foreign company desiring to commence insurance business in the Province of Ontario applying for permission to do so to the Provincial authorities, and the latter, while holding the view that the foreign company could properly be licensed directly by the local authority, are yet obliged to tell the applicant that, if it commences operation without a Dominion licence, it will probably be in immediate difficulties with the Dominion authorities. 30

He also referred to instances of a company organised under the laws of another Province subsequently obtaining a licence from Ottawa and then applying for a licence to do business in Ontario, and as a consequence, so he contends, the provincial authorities are embarrassed in not knowing whether to apply the requirements of the Ontario laws as to a company coming from another Province to Ontario, or the law as to a Dominion company coming into Ontario. 40

The witness also referred to what he contends is a conflict of provisions between the Ontario statute and the Dominion statute as to the conditions

to be attached to policies written in regard to accident and sickness insurance, and he pointed out that, while provincially licensed companies adopt, as they are required to do, the statutory conditions imposed by the Ontario law, Dominion licensed companies, doing business in Ontario, adopt the red ink variation contained in, for example, exhibit 2, in order to comply with the requirements of the Dominion statute as to statutory conditions. As to this ground of embarrassment it should be pointed out that subsec. 4 of sec. 134 of the Dominion statute, which in its earlier subsections provides for a lengthy series of statutory terms and conditions to be contained in 10 policies issued in respect of bodily injury or death, provides that any of those conditions which are inconsistent with terms or provisions required to be contained in the policy by the laws of the Province in which the policy is issued, shall not, to that extent, be required to be contained in the policy. No similar provision is to be found in the Dominion statute as to the subjects dealt with by sec. 91 (life insurance), 123 (fire insurance), or 135 (automobile insurance).

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Several other instances or illustrations of what is meant by the embarrassment referred to in the statement of claim were given. I do not think I need refer to them at greater length than I have done. If, apart from the 20 amendment of 1930 already referred to, it might have been regarded as necessary to give this evidence, I do not now think that it was, in view of the amendment. Nor, of course, does mere embarrassment, of the kind described by the witness, assist in determining the validity of the legislation, which must be determined upon established principles as laid down in the decided cases and not upon any question of embarrassment or difficulty in administering the law in question.

Reference was made at length by counsel on both sides to the case reported in (1926) 58 O.L.R. 404, under the name of *Re Insurance Contracts*. That was a decision of the Second Divisional Court of the Appellate Division 30 upon a case referred thereto, pursuant to the Constitutional Questions Act, as to the validity or otherwise of secs. 168 and 180 of the Ontario Insurance Act, and as to whether, if they were held to be validly enacted, it was within the legislative competence of the Parliament of Canada to enact such provisions as are contained in certain specified sections of the Dominion Insurance Act, those sections as they now appear in the Revision of 1927 being secs. 11, 12 (1), 65, 66, and 135.

By a majority of the Court it was held that it was within the competence of the Legislature to enact the provisions of the Ontario Insurance Act referred to, and that it was not within the legislative competence of the 40 Parliament of Canada to enact the provisions of the Dominion Insurance Act referred to. Masten, J.A., delivered the judgment on behalf of the majority of the Court; Middleton, J.A., assented thereto, as likewise did Riddell, J.A., with some doubt; while Latchford, C.J., and Smith, J.A., dissented in part.

The Minister of Justice was notified, in the usual manner, of the hearing before the Appellate Division, but did not appoint counsel to attend, and the Court directed that Sir William Hearst argue the matter from the point

No. 6. of view of the Dominion authorities. After argument, and as the result of a suggestion made by the Court, the order in council submitting the questions was enlarged and amended, and it was thereby provided that it should be understood that the questions submitted and argued should be the questions contained in the amended order in council. Of this amended order in council the Minister of Justice received no express notice, and the contention is that the binding authority of the decision is thereby weakened, if not destroyed, and that I should not be obliged to follow it. I do not follow this argument. Even if I were inclined to a different view from that expressed by Masten, J.A., which I am not, I should still, I think, be obliged to accept the opinion expressed by him and assented to by Riddell and Middleton, J.J.A.; and, to the extent at least to which that case goes, I think I must follow it. 10

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supra
p. 34, l. 29.

In the judgment of Masten, J.A., the authorities are fully referred to, and I do not think it at all necessary, if it would not be an impertinence on my part, to cover the same ground again, and I content myself with pointing out what appear to me to be the particularly important portions of the judgment. It was assumed by Masten, J.A. (p. 416), "that the Dominion Parliament is competent to grant to a company incorporated by it a status as a Dominion corporation, to confer upon it its capacities, to endow it with powers, and to prescribe limitations on those powers," but he goes on to say that "the granting of subjective status and powers of the company is one thing, and the regulation of the objective exercise of its powers in a particular Province is quite another thing." 20

supra
p. 34, l. 42.

Further, on pp. 416 and 417, of 58 O.L.R. :—

"It seems to me self-evident that the conditions which a Dominion company, after it has been incorporated and organised, chooses to insert in its policies of insurance have nothing whatever to do with its prior incorporation. In other words, the Dominion legislation here in question is not aimed to create or to control or limit the status, powers or field of operation of the companies referred to in the statute, but rather to control its subsequent operations by prescribing certain minor details of the contracts into which the citizens of Ontario may enter with such companies and persons, and so to regulate the business of insurance." 30

supra
p. 38, l. 9.

Again, at p. 420 :—

"With respect to British insurance companies, British natural persons, alien insurance companies, and alien persons, seeking to carry on the business of insurance in Canada, the considerations to be observed in reaching a conclusion are for the most part similar to those which obtain in considering the case of Dominion companies, and need not be repeated. Some further points, however, present themselves in that connection. The decision of the Judicial Committee in the case of *Attorney-General for Canada v. Attorney-General for Alberta*, [1916] 1 A.C. 588, determines that the power of restricting in Canada, by a system of licensing, the business of foreign insurance companies, is given to the Dominion by the heads in sec. 91 " (of the 40

British North America Act) " which refer to the regulation of trade and commerce and to aliens."

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10 "It may, therefore, be assumed that if a foreign insurance
company, empowered by its constating instruments to carry on
the business of both life and guarantee insurance, were to apply for a
Dominion licence to carry on its business in Canada, the Dominion
Parliament might permit it to carry on life insurance, and decline
permission to carry on concurrently guarantee insurance, or might
impose a condition that it deposit so many thousands of dollars with
the Insurance Department of Canada as a guarantee to its policy-
holders. It may also be assumed that any alien, whether a foreign
company or a natural person, coming to Canada to carry on the
business of insurance, must be licensed by Dominion authority, and
only to the extent to which such alien is so licensed and on the
conditions prescribed by the Dominion will he or it be legally entitled
to commence business; but, when the alien has complied with the
conditions prescribed and the licence issues, the functions of the
Dominion authority are exhausted, and the details of the contracts
of insurance which it subsequently makes with the citizens of Ontario
do not fall under the head of licensing (though they may be a conse-
quence of the licensing) but under the head of civil rights in what-
ever Province the licensee carries on business.

* * * * *

"Nor, in my opinion, is this enactment 'ancillary,' in the sense
of 'necessarily essential,' to Dominion legislation respecting aliens
or trade and commerce."

Further, at p. 422, Mr. Justice Masten intimated "that where the
condition sought to be imposed by the Dominion has the effect of trenching
on any of the enumerated powers which are exclusively entrusted to the
Provincial Legislature by sec. 92, the right to impose and enforce such a
legislative condition must as to its constitutional validity be considered and
tested by the same principles as those which are applicable to direct legisla-
tion, for it is well established that the Dominion Parliament cannot do
indirectly what it cannot do directly."

supra
p. 40, l. 3.

Towards the end of his judgment (at p. 422) he concludes that "the
legislation in question is an attempt by this indirect method to regulate the
business of insurance in the Provinces of Canada so far as it is conducted by
the classes of companies and persons above named, and that its form is
adopted under the guise of legislation respecting trade and commerce and
respecting aliens in order to cloak a regulation of the business of insurance."

supra
p. 40, l. 12.

And at p. 423: "Apart from such legislation as is here in question, any
insurance company, foreign or domestic, and any natural person (not an
enemy), might under the rules of comity enter Canada and carry on the
business of insurance. Apart from this legislation the citizens of Ontario
could contract with British and with alien insurance companies without let
or hindrance, and their contracts would be valid and enforceable in accord-

supra
p. 40, l. 28.

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ance with the statutory conditions prescribed by Ontario law. But if and so far as the legislation in question has validity, the citizens of Ontario cannot any longer contract insurance with British or alien companies on the conditions and terms prescribed by the laws of Ontario, but only on the terms prescribed by this legislation.”

Counsel for the defendants rely strongly upon the case of *Matthew v. Guardian Insurance Co.* (1918), 58 Can. S.C.R. 47, a decision apparently not referred to either by counsel or the Court in the *Insurance Contracts* case, *supra*. In that case, Matthew, as prospective attorney of the Guardian Fire Insurance Company of Utah, made application for a licence under the British Columbia Fire Insurance Act. The Guardian Assurance Company, a British Company, brought an action to restrain Matthew from applying for the licence and its action was dismissed. Between the trial and the hearing of the appeal in the Court of Appeal of British Columbia, the statute 7 & 8 Geo. V. ch. 29 (Canada), amending the Insurance Act (Canada), was passed, and secs. 4 and 11, as so amended, provided that a foreign insurance company could not carry on its business in Canada unless and until it had obtained a licence from the Minister of Finance. It was held in the Supreme Court of Canada that the Court of Appeal should have taken judicial notice of the amendments, and that, since the Utah company was not able, through the issue of a provincial licence alone, to transact business in British Columbia before having obtained a Dominion licence, the proceedings by way of injunction were premature. 10 20

Several of the Judges of the Supreme Court of Canada in delivering judgment referred to the history of the legislation in question, but it is clear, I think, that its constitutional validity as legislation was not an issue in the action nor upon the appeal. It is assumed, and is not, I think, seriously disputed by any one, that the Dominion Parliament is empowered to insist upon a foreign company, which proposes to come into Canada, obtaining a licence before commencing operations, but the conditions attached to the licence and the question whether those conditions would or do conflict with provincial rights were not considered, and I am unable to agree that the decision in this case is necessarily opposed to that in the *Insurance Contracts* case. 30

The vice of the legislation in question appears to be that the Dominion Parliament seeks to impose, upon those obtaining licences, obligations as to the terms and conditions upon which insured and insurer shall do business and enter into contracts, matters which, as I read the authorities, are expressly for the Provincial Legislature. Section 4, for instance, provides that it shall be competent for the Minister to grant a licence authorising the licensee to carry on business *subject to the provisions of this Act and to the terms of the licence*, and secs. 91, 123, 134, and 135 deal in minute detail with the terms and provisions that are to be inserted in the policy to be issued by the licensee and provide that it shall be a condition of the licence that these conditions shall be set out in the policy, or in default the licence may be cancelled. As already mentioned, the sections last referred to deal respectively with companies proposing to take out licences in respect of 40

life (91), fire (123), accident and sickness (134), and automobile insurance (135), and only in regard to sec. 134 does the Act provide (subsec. 4) that, in so far as the conditions imposed by that section are inconsistent with the conditions required by the law of the Province, they need not be observed. Why this distinction is made I do not know, but it seems clear that in regard to all other classes of insurance dealt with by the Act a licensor under the Act must insert these terms in its policy whether they agree or not with the requirements of the Provincial Act. One would have thought it would have been quite sufficient to impose as a condition of obtaining and continuing to hold its licence that a company should be required to insert in its policies such requirements, terms and conditions as might be necessary by the law of the Province in which its policies were from time to time issued, and if some such provision as that were contained in the sections referred to, I for my part can see no great objection to them in other respects.

10

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Again, sec. 11 makes it unlawful for any Canadian company or any alien, whether a natural person or a foreign company within Canada, among other things, to solicit or accept any risk, issue or deliver any policy, receive any premium, inspect any risk, or adjust any loss, unless under a licence issued under the Act; and sec. 12 makes it unlawful for any British company or for any British subject not resident in Canada to immigrate into Canada for the purpose of transacting the business of insurance unless under a similar licence granted pursuant to the Act.

30

Recently in the Province of Quebec a question as to the validity of secs. 11, 12, 65, and 66 of the Insurance Act of Canada and of sections 16, 20, and 21 of the Special War Revenue Act, R.S.C. 1927, ch. 179, was submitted to the Court of King's Bench (appeal side) of that Province, and I have read the judgments of the Court upon the questions submitted: *Re Reference as to the Validity of Certain Sections of Dominion Statutes* (1930), Q.R. 49 K.B. 236. The members of the Court were not by any means unanimous except in regard to the sections of the War Revenue Act, as to which all agreed that those sections were within the competence of Parliament.

The specific question asked as to the Insurance Act was the following:—

“ 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 be subject to sections 11, 12, 65, and 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer ? ”

Mr. Justice Allard held these sections to be constitutional. Mr. Justice
40 Tellier held that they were unconstitutional. Mr. Justice Howard held that they were constitutional as to foreign companies, but was doubtful as to their constitutionality as to British subjects. Mr. Justice Bernier held that the sections were unconstitutional. Mr. Justice Bond held that they were constitutional as to foreign companies and unconstitutional as to British. As to the British insurer, therefore, it appears that the majority of the Court clearly held these sections to be unconstitutional.

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Counsel for the plaintiff contends in the present case, primarily, that the whole statute should be declared *ultra vires* and he refers to the case of *Ottawa Separate Schools Trustees v. Ottawa Corporation*, [1917] A.C. 76, as authority for the view that, where it is impossible to separate the good from the bad in a statute of questionable validity, and where it is impossible to ascertain whether, if the invalid sections had never been enacted, those that remain would have been, the whole should be declared bad.

Whether that case is authority for the proposition stated I do not know, but in my opinion it does not apply here. Many of the sections of the statute are of undoubted validity. As already pointed out, it is, I think, 10
conceded that Parliament has the right to license on proper terms and conditions and has undoubtedly the right to control companies of its own creation. Mr. Tilley himself concedes that Parliament may set up an insurance department and appoint a superintendent of insurance and provide for what he may do, but it is really the compulsory features of the statute that are particularly objected to, and the sections which impose, as conditions upon which the licence shall issue, limitations upon the freedom of contract as between the insurer and the insured.

I do not propose to refer at any length to the authorities relied upon by Mr. Justice Masten. It has been held in the case of *Citizens Insurance Co. of Canada v. Parsons* (1881), 7 App. Cas. 96, that the Province has the right to enact statutory conditions as to insurance and that the authority vested in Parliament to legislate in respect of trade and commerce does not apply to the regulation of the business of fire insurance in a single Province. It has also been held in *Attorney-General for Canada v. Attorney-General for Alberta*, [1916] 1 A.C. 588, that the power to legislate as to 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 Province, although it was also held in the same case that the Dominion Parliament has power by properly framed legislation to 20
require a foreign company to take out a licence from the Dominion authorities even in a case where the company desires to carry on business within a single Province. 30

It was also held in *Attorney-General for Ontario v. Reciprocal Insurers*, [1924] A.C. 328, that sec. 508 (c) of the Criminal Code, a section which makes it an indictable offence for any one within Canada, except on behalf of or as agent for a company 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 Lloyds, or of an association of persons formed for the purpose of interim insurance, to solicit or accept any insurance risk, issue or deliver any interim receipt or policy of insurance, or grant in 40
consideration of any premium or payment any annuity on a life or lives, or collect or receive any premium for insurance, etc., etc., was void as beyond the competence of Parliament, because although Parliament undoubtedly has the exclusive right to legislate in respect of criminal law, yet the enactment in question was in substance one relating to the regulation of contracts of insurance, subjects not within the legislative sphere of the Dominion.

Notwithstanding this decision, the section in the Code still remains unrepealed.

My conclusions, therefore, on the whole case, are as follows :—

In my view sec. 4 is invalid, not because it purports to give the Minister power to grant a licence, but because it attaches to the granting of the licence terms and conditions which appear to me to be not within the competence of Parliament.

I am also of opinion that secs. 11 and 12 of the Act are likewise *ultra vires*.

10 Sections 65 and 66 are the sections in the Act relating to penalties. They have already been held invalid by Masten, J.A., and I come to the same conclusion.

The sections which impose the statutory conditions to be inserted in the policies as a condition of the granting of the licence have already been referred to. These sections are 91, 123, 134, and 135. For the reason that sec. 134 does not make it compulsory to insert these conditions where they conflict with provincial conditions, I would hold that that section is *intra vires*, but the others I would hold to be *ultra vires*.

20 As to sec. 16 of the Special War Revenue Act, R.S.C. 1927, ch. 179, I am inclined to the view adopted unanimously by the Quebec Court that that section should not be declared to be *ultra vires*. The section is as follows :—

“ Every person resident in Canada, who insures his property situate in Canada, or any property situate in Canada in which he has an insurable interest, other than that of insurer of such property, against risks other than marine risks,

30 “ (a) with any British or foreign company or British or foreign underwriter or underwriters not licensed under the provisions of the Insurance Act to transact business in Canada : or

“ (b) with any association of persons formed for the purpose of exchanging reciprocal contracts of indemnity upon the plan known as inter-insurance and not licensed under the provisions of the Insurance Act, the chief place of business of which association, or of its principal attorney-in-fact is situate outside of Canada,

40 “ shall on or before the 31st day of December in each year pay to the Minister, in addition to any other tax payable under any existing law or statute, a tax of five per centum of the total net cost of such person of all such insurance for the preceding calendar year.”

The argument is, of course, that in its pith and substance this is not a tax, in the proper sense of the word, for the purpose of raising revenue, but is in fact an indirect method adopted by Parliament of compelling insurers to come within the Dominion fold in regard to insurance matters. I confess

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it has that appearance, but undoubtedly Parliament has the right to tax and to select and determine its method of taxation, and it would be, I think, very dangerous for Courts to interfere except in the plainest possible case with that right.

As to the section of the Criminal Code referred to, which, notwithstanding the decision as to its invalidity, still stands unrepealed, I think it unnecessary that I should do anything more than note the fact that the section has been already declared to be unconstitutional.

My judgment, therefore, will be in accordance with the foregoing.

The plaintiff is entitled to his costs of the action.

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No. 7.

Text of Judgment of the Supreme Court of Ontario signed the Fifth day of March, 1931, in *Attorney-General of Ontario vs. Attorney-General of Canada et al* (1931), O.R. 4.

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice Garrow.

Monday the 26th day
of January, 1931.

Between

ATTORNEY-GENERAL OF ONTARIO - - - - - *Plaintiff*

and

ATTORNEY-GENERAL OF CANADA, THE MINISTER OF FINANCE,
AND GEORGE D. FINLAYSON - - - - - *Defendants.*

20

1. This action coming on for trial on the 18th and 19th days of September, 1930, at the sittings holden at Toronto for trial of actions without a jury in the presence of counsel for all parties, upon hearing read the pleadings and the evidence adduced and what was alleged by counsel aforesaid, this court was pleased to direct this action to stand over for judgment and the same coming on this day for judgment.

2. THIS COURT DOTH DECLARE that sections 4, 11, 12, 65, 66, 91, 123 and 135 of the Dominion Insurance Act, R.S.C. 1927, chapter 101 are ultra vires the Parliament of Canada and doth order and adjudge the same accordingly. 30

3. AND THIS COURT DOTH FURTHER DECLARE that the defendants the Minister of Finance and George D. Finlayson are not nor is either of them entitled to act under or enforce any of the said sections of the said Act and doth order and adjudge the same accordingly.

4. AND THIS COURT DOTH ORDER AND ADJUDGE that save as aforesaid this action be and the same is hereby dismissed.

5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendants do pay to the plaintiff his costs of this action forthwith after taxation thereof.

Judgment signed this 5th day of March, 1931.

“ E. HARLEY,”
Senior Registrar, S.C.O.

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Entered J. B. 44 pages 587-8.
10 March 5th, 1931.
“ L.G.”

No. 8.

Copy of License issued to (A) a British Company, and (B) a Foreign Company subsequent to Order of Supreme Court of Ontario, dated March 5th, 1931, printed in the Appendix.

(A) *A British Company.*

DEPARTMENT OF INSURANCE, CANADA.

No. 8.
Copy of
License
issued to
(a) a British
Company
and (b) a
Foreign
Company
subsequent
to Order of
Supreme
Court of
Ontario,
dated
5th March
1931.

No. 1905.

LICENSE.

No. 1905.

Under the Insurance Act

(R.S. 1927, Cap. 101 and Amendments thereto).

20

THIS IS TO CERTIFY THAT

THE EAGLE, STAR AND BRITISH DOMINIONS INSURANCE
COMPANY, LIMITED

having made the necessary deposit and having otherwise complied with the requirements of The Insurance Act is hereby licensed to transact in Canada the business of

FIRE INSURANCE, PLATE GLASS INSURANCE, SPRINKLER LEAKAGE
INSURANCE, TORNADO INSURANCE, INSURANCE AGAINST DAMAGE
TO PROPERTY OF ANY KIND CAUSED BY THE EXPLOSION OF NATURAL
OR OTHER GAS,

30

and

INSURANCE AGAINST LOSS OF, OR DAMAGE TO, PROPERTY OTHER
THAN GROWING CROPS, BY HAIL.

Dated at the City of Ottawa,
this Tenth day of April, 1931.

R: B. BENNETT,
Minister.

(SEAL.)

Certified to be a true copy.
G. D. FINLAYSON,
Superintendent of Insurance.

No. 8.
Copy of
License
issued to
(a) a British
Company
and (b) a
Foreign
Company
subsequent
to Order of
Supreme
Court of
Ontario,
dated
5th March
1931—con-
tinued.

No. 1907.

(B) *A Foreign Company.*

DEPARTMENT OF INSURANCE, CANADA.

LICENSE.

No. 1907.

Under the Insurance Act

(R.S. 1927, Cap. 101 and Amendments thereto).

THIS IS TO CERTIFY THAT

THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD,
CONNECTICUT

having made the necessary deposit and having otherwise complied with
the requirements of The Insurance Act is hereby licensed to transact in 10
Canada the business of

FIRE INSURANCE, SPRINKLER LEAKAGE INSURANCE, TORNADO
INSURANCE, INSURANCE AGAINST DAMAGE TO PROPERTY OF ANY
KIND CAUSED BY THE EXPLOSION OF NATURAL OR OTHER GAS,
INLAND TRANSPORTATION INSURANCE,

and

INSURANCE AGAINST INTENTIONAL OR OTHER DAMAGE TO, OR
LOSS OF, PROPERTY OF ANY KIND, REAL OR PERSONAL.

Dated at the City of Ottawa, this
Fifteenth day of April, 1931.

20

R. B. BENNETT,
Minister.

Certified to be a true copy.

G. D. FINLAYSON,
Superintendent of Insurance.

(SEAL.)



In the Privy Council.

No. 36 of 1931.

BETWEEN
THE ATTORNEY GENERAL OF QUEBEC
Appellant
AND
THE ATTORNEY GENERAL OF CANADA
Respondent
(AND CROSS-APPEAL).

APPENDIX
TO THE CASE OF THE ATTORNEY GENERAL OF
ONTARIO, *Intervener.*

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