In the Privy Council.

No. 36 of 1931.

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

IN THE MATTER OF A REFERENCE BY HIS HONOUR THE LIEUTENANT GOVERNOR IN COUNCIL AS TO THE VALIDITY OF CERTAIN SECTIONS OF THE INSURANCE ACT OF CANADA.

BETWEEN

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

AND

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

AND BETWEEN

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

AND

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

RECORD OF PROCEEDINGS.

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In the Privy Council.

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AND

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

RECORD OF PROCEEDINGS.

In the Court of King's Bench.

No. 1.
Petition of the Attorney-General of Quebec for inscription and copy Report of Executive Council attached, 20th May 1929.

No. 1.

Petition of The Attorney-General of Quebec for inscription and copy Report of Executive Council attached.

CANADA.

PROVINCE OF QUEBEC.
DISTRICT OF QUEBEC.

IN THE COURT OF KING'S BENCH.
(Appeal side.)

TO THIS HONOURABLE COURT.

The Petition of the Honourable L. Alexandre Taschereau, His Majesty's Attorney-General for the Province of Quebec.

RESPECTFULLY SHOWS:

1. That under the provisions of Chapter 7 of the Revised Statutes of Quebec, 1925, the Lieutenant Governor in Council may refer to the Court

In the Court of King's Bench.

No. 1. Petition of the Attorney-General of Quebec for inscription and copy Report of Executive Council attached, 20th May 1929—*continued.*

of King's Bench (Appeal Side), for hearing and consideration, any question which he deems expedient.

2. That several foreign or British insurance companies have obtained from the Treasurer of the Province a license under The Quebec Insurance Act, Revised Statutes of Quebec, 1925, Chapter 243.

That the Department of Insurance of the Dominion is endeavouring to force these companies to obtain a license under sections 11 and 12 of the Insurance Act of Canada, Revised Statutes of Canada, 1927, Chapter 101, and without prejudice to the penalties for violation of these provisions; also seeks to recover from persons who insure with these insurers the tax imposed by sections 16, 20 and 21 of the Special War Revenue Act, Revised Statutes of Canada, 1927, chapter 179.

And that with a view to ascertaining whether these insurers and their customers are subject to the above provisions as to license and to the special tax and whether these provisions are valid, the Lieutenant Governor has by an Order in Council, dated the 11th day of May, 1929, copy whereof is hereunto annexed, referred to this Honourable Court the questions therein set forth.

YOUR PETITIONER therefore prays that this Honourable Court will direct the inscription of the matter for hearing and consideration, and give such further directions as may be deemed necessary.

Quebec, May 20th, 1929.

CHARLES LANCTÔT,
Deputy Attorney-General for the Province of Quebec.
Attorney for Petitioner.

COPIE DU RAPPORT D'UN COMITE DE L'HONORABLE CONSEIL EXECUTIF EN DATE DU 8 mai 1929, APPROVE PAR LE LIEUTENANT GOUVERNEUR, le 11 mai 1929.

Concerning the reference to the Court of King's Bench (Appeal Side) of questions as to the validity of certain sections of the Insurance Act of Canada

The Honourable the Attorney-General, in a memo dated the 8th May, sets forth :

That several foreign or British Insurance companies have obtained from the Treasurer of the Province a license under The Quebec Insurance Act, Revised Statutes of Quebec, 1925, chapter 243;

That the Department of Insurance of the Dominion is endeavouring to force these companies to obtain a license under sections 11 and 12 of the Insurance Act of Canada, Revised Statutes of Canada, 1927, Chapter 101, and without prejudice to the penalties for violation of these provisions;

No. 1. Petition of the Attorney-General of Quebec for inscription and copy Report of Executive Council attached, 20th May 1929—*continued.*

also seeks to recover from persons who insure with these insurers, the tax imposed by sections 16, 20 and 21 of the Special War Revenue Act, Revised Statutes of Canada, 1927, chapter 179;

That it is necessary to have an opinion of the Court on the question whether the insurers and their customers are subject to the above provisions as to license and to the special tax, and further, whether these provisions are valid.

The Honourable Attorney-General accordingly recommends that the following questions be referred by His Honour in Council to the Court of King's Bench (Appeal Side) for hearing and consideration pursuant to the authority of Chapter 7 of the Revised Statutes of Quebec, 1925;

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

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

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

Certifie
A. MORISSET,
Greffier Conseil, Exécutif.

No. 2.

Order on Petition for inscription.

No. 2. Order on Petition for inscription, 23rd May 1929.

CANADA.
PROVINCE OF QUEBEC.

COURT OF KING'S BENCH.
(Appeal Side.)

Montreal, Thursday, the 23rd day of May, 1929.

PRESENT:

The Honorable Mr. Justice GUERIN.
" " " HOWARD.
" " " BERNIER.
" " " LÉTOURNEAU.
" " " BOND.

IN THE MATTER of Reference to the Court of King's Bench (Appeal Side) of questions as to the validity of certain sections of the Insurance Act of Canada.

THE COURT, having heard the petition of the Honourable L. Alexandre Taschereau, His Majesty's Attorney General for the Province of Quebec,

In the Court of King's Bench.

No. 2. Order on Petition for inscription, 23rd May 1929—*continued.*

setting forth that under the provisions of Chapter 7 of the Revised Statutes of Quebec, 1925, the Lieutenant Governor in Council may refer to the Court of King's Bench, Appeal Side, any question, for hearing and consideration, which he deems expedient; that several foreign or British Insurance companies have obtained from the Treasurer of the Province a license under the Quebec Insurance Act, R.S.Q., 1925, Chapter 243; that the Department of Insurance of Canada is endeavouring to force these companies to obtain a license under sections 11 and 12 of the Insurance Act of Canada, R.S.C. 1927, Chapter 101, and to recover from persons who insure with these insurers the tax imposed by sections 16, 20 and 21 of the Special War Revenue Act, Revised Statutes of Canada, 1927, Chapter 179; that with a view of ascertaining whether these insurers and their customers are subject to the above provisions as to license and to the special tax, and whether these provisions are valid, the Lieutenant Governor has, by an Order in Council, dated the 11th of May, 1929, referred to the Court of King's Bench, Appeal Side, the question herein set forth, and the Petitioner in consequence prays that this Court may direct the inscription of the matter for hearing and consideration, and give such further direction as may be deemed necessary, and having deliberated:

DOTH GRANT said petition and direct the inscription of the matter for hearing and consideration, on Saturday, the first day of June, 1929, at the opening of the June Term, of the Court of King's Bench, Appeal Side, sitting in Quebec, or upon such other day as the Court of Appeal sitting in Quebec may deem expedient.

E. GUERIN,
J.K.B.

No. 3. Notice to the Attorney-General of Canada as to Reference and date for hearing same, 23rd May 1929.

No. 3.

Notice to the Attorney-General of Canada as to Reference and date for hearing same.

PROVINCE OF QUEBEC.
DISTRICT OF MONTREAL.

IN THE COURT OF KING'S BENCH.
(Appeal Side.)

IN THE MATTER of a Reference to the Court of King's Bench (Appeal Side) of questions as to the validity of certain sections of the Insurance Act of Canada.

NOTICE is hereby given to the Attorney General of The Dominion of Canada that by an Order in Council, dated the 11th of May, 1929, the Lieutenant Governor of the Province of Quebec in Council referred to the Court of King's Bench (Appeal Side) the following questions:

1. Is a foreign or British Insurer, who holds a license under the Quebec Insurance Act to carry on business within the Province, obliged to

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

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

3. Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the Provincial Law a license to carry on business in the Province and any other case?

AND FURTHER take Notice that the Court of King's Bench (Appeal side) has, by an Order dated the 23rd day of May, 1929, fixed the hearing of argument on the said Reference for the 4th day of June, 1929.

Quebec, this 23rd day of May, 1929.

(Signed) J. A. HUDON,
Acting Deputy Attorney General of Quebec.

To the Honourable
The Attorney General of the Dominion of Canada,
Ottawa, Ont.

In the Court of King's Bench.

No. 3. Notice to the Attorney-General of Canada as to Reference and date for hearing same, 23rd May 1929—*continued.*

No. 4.

Appearance by The Attorney-General of Canada.

No. 4. Appearance by the Attorney-General of Canada, 4th June 1929.

IN THE COURT OF KING'S BENCH.
(Appeal Side.)
QUEBEC.
No.

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

The Honourable the Attorney General of the Dominion of Canada.
Respondent.

I appear for the Honourable the Attorney General of the Dominion of Canada.

Quebec, June 4th, 1929.

LOUIS ST. LAURENT.

In the Court of King's Bench.

No. 5.
Factum of the Attorney-General of Quebec.

No. 5.

Factum of the Attorney-General of Quebec.

PART 1.

CONSTITUTIONALITY of sections 11, 12, 65 and 66 of the Insurance Act (R.S.C. 1927, ch. 101).

Section 11 of the Act makes it unlawful for any alien, whether a natural person or a foreign company, within Canada, to solicit or accept risks, issue or deliver receipts or policies of insurance, collect or receive premiums, inspect risks or adjust losses, advertise for or carry on any insurance business, etc. unless under a licence from the Minister, granted pursuant to the provisions of the Act.

Section 12 of the same Act enacts that 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 an office or agency for the transaction of any business relating to insurance, etc., unless under a licence from the Minister granted pursuant to the provisions of the Act.

Sections 65 and 66 provide penal sanctions for the violation of sections 11 and 12, making such violation an offence liable, upon indictment or upon summary conviction, to a penalty or imprisonment.

The question involved in this reference has been twice dealt with, though not expressly decided, by the Privy Council. *In re Attorney-General of Canada* vs. *Attorney-General of Alberta* [1916], 1 A.C. 588, Lord Haldane, in delivering the judgment of the Board declaring unconstitutional the then existing Canadian Insurance Act, stated that legislation, if properly framed, requiring aliens, whether natural persons or foreign companies, to become licensed as a condition of carrying on their business in Canada might be competently enacted by the Parliament of Canada.

This observation was referred to by Mr. Justice Duff delivering the judgment of the Board *in re Reciprocal Insurance Reference* [1924], A.C., 328, as follows :—

> " Their Lordships do not express any opinion as to the competence of the Dominion Parliament, by virtue of its authority in relation to aliens and to trade and commerce, to enact sections 11 and 12 (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 of Canada* vs. *Attorney-General of Alberta*, supra, 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."

Since that judgment the question has been squarely presented to the Court of Appeals of Ontario in a case referred to the Court of Appeals by the Lieutenant Governor of Ontario pursuant to the Constitutional Questions Act, R.S.O., 1914, c. 85, in which one of the questions submitted was whether sections 11 and 12 of the Dominion Insurance Act were *ultra vires* of the Parliament of Canada. The judgment of the Ontario Court of Appeal is reported in 1926, 2 D.L.R. 204, and in substance held, that Dominion legislation having for its object the regulation of insurance contracts within a province under the guise of legislating for the regulation of trade and commerce and under its power of control over aliens is *ultra vires*, where the provisions in regard to the regulation of such contracts, in the form of conditions precedent to the issue of a licence to Dominion and British and foreign companies and aliens, are not necessarily incidental to its powers to regulate trade and commerce and over aliens. Masten, J. A., with whom concurred Middleton, J. A., and Riddell, J. A., the latter with some hesitation, held that section 11 of the Insurance Act above referred to was beyond the powers of the Canadian Parliament, on account of the conditions attached to the licence by the Statute and that this law could not be looked upon as a law respecting aliens. Latchford, C. J., dissented. Smith, J. A. also dissented, but for somewhat different reasons.

It is submitted on behalf of the Attorney General of Quebec that the judgment of the majority of the Court of Appeals for Ontario is well founded and that while the Dominion Parliament can pass legislation requiring from foreigners, as a condition of their doing business in Canada, that they should take a licence and that, among other conditions, for the obtaining of that licence, they should make and maintain a deposit of moneys, or securities, nevertheless the legislation now existing in that respect is not, to use the expression of Lord Haldane, properly framed, and is therefore invalid. In other words, it is not a statute passed with respect to the disabilities of all aliens which would prevent them from doing business generally in Canada without a licence, but is an obvious attempt on the part of the Dominion Parliament to intrude into the business of insurance which is committed to the legislative jurisdiction of the province under section 92 of the B.N.A. Act.

Previous to 1917, the Canadian Parliament had exercised practically entire control over the subject of insurance, leaving only a few minor aspects of it to the Provinces.

By the judgment of the Privy Council *in re Attorney-General of Canada* vs. *Attorney-General of Alberta* [1916], 1 A.C. 588, it was decided that the subject of insurance is a Provincial subject and the observations of Lord Haldane quoted above were made. There is a suggestion in these observations that, in the opinion of the Board, the then existing legislation was not properly framed. Nevertheless, the present legislation is practically a repetition of it, with the elimination of certain classes of underwriters, that is, of natural persons who are British subjects and live in Canada, and partnerships and associations of a similar character and provincial companies. There is still the endeavour to apply practically the same legislation

In the Court of King's Bench.

No. 5. Factum of the Attorney-General of Quebec—*continued.*

to Dominion companies, Britishers who are not Canadians, and all foreigners. Further, at the same time as this new Statute was passed, in an endeavour to meet the decision of the Privy Council by restricting the application of the Act as above mentioned, the Dominion Parliament passed another Act, inserting in the Criminal Code the provisions which had been declared, when part of the Dominion Insurance Act, to be unconstitutional, the obvious attempt of the Dominion Parliament being to keep full control over the whole subject.

The many aspects of the insurance problem, with which the Statute deals, and the complete assimilation by its provisions of Canadian companies, aliens and all non-Canadian Britishers, further show that legislating respecting aliens was not the real purpose of Parliament.

It is submitted that if the conditions imposed by Parliament in order that the licence be obtained or preserved are void, then the section requiring that the licence be taken must also be void. It cannot be successfully contended that the Act is severable in that respect. The necessity of the licence and of the conditions thereof depend on each other and it is doubtful if Parliament would have passed the law requiring the licence without the requirements as to the conditions.

Nor is the case of the Dominion advanced by the contention that the legislation creating penal sanctions is within the legislative competence of the Dominion under section 91 (27) of the B.N.A. Act. As Mr. Justice Duff said in rendering judgment in the Privy Council in *re Reciprocal Insurance Reference*, [1924] A. C. 328, " In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under Section 91 (27), appropriate to itself, exclusively, a field of jurisdiction, in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid."

Part 2.

Constitutionality of Section 1 of the Special War Revenue Act 1915 (12-13 Geo. V, ch. 47).

This Statute imposes a tax on persons resident in Canada who insure property situate in Canada in British or foreign companies not licensed as required by the Dominion Insurance Act.

As to the construction of this Statute, it obviously applies to Canadians who insure with foreign underwriters provided with a provincial licence, but not with a Dominion licence.

There is no doubt as to the power of the Dominion Parliament to impose a tax in any manner whatsoever within the limits of Canada, but the question which presents itself is whether this Statute can really be severed from the licensing sections of the Insurance Act.

It is submitted that the purpose of this Statute is not really to raise revenue for the purposes of the Dominion, but is an indirect attempt to prevent British and foreign companies from doing business in Canada, although sections 11 and 12 of the Insurance Act may be pronounced to be unconstitutional. Such legislation, it is submitted, is colourable legislation really directed, not against the subject who is taxed, but against the insurance companies which are really aimed at by the enactment.

Quebec, May 27th, 1929.

E. LAFLEUR.
CHARLES LANCTOT.
AIMÉ GEOFFRION.

No. 6.

Factum of the Attorney General of Canada.

The first question in this reference has to do with the validity of the provision of the Insurance Act requiring British and Foreign insurers to obtain a licence from the Minister of Finance before transacting insurance business in Canada even within a single Province.

As this provision of the Act goes back to the first Insurance Act of the Dominion, chapter 48 of the Statutes of 1868, it is interesting to examine the status of such companies after Confederation.

Status before Confederation :

The earliest legislation in Canada dealing with British and Foreign companies is Chapter XLV of the Statutes of the Legislature of New Brunswick of 1856 entitled, " An Act relating to Insurance Companies not incorporated by Act of Assembly in this Province."

Sub-section 1 of this Act is in part as follows :—

" I. It shall not be lawful for any Insurance Company or Association not incorporated by the Legislature of this Province to establish or continue any Branch or Agency within this Province, or directly or indirectly to take any risk, or transact any business of insurance in the same, after the day fixed for this Act to come into operation unless a statement subscribed by the President, Secretary or principal Manager of such Company or Association, shall be first filed in the Provincial Secretary's office in this Province, ..."

This Act also provides for a certificate of filing being furnished by the Provincial Secretary to an authorized Agent of the Company resident in the Province, and declares that for the purpose of commencing any action or suit at law, service of process on such agent shall be good service of process on the Company.

Section 7 of the Act provides a penalty for violation of two hundred and fifty pounds.

In the Court of King's Bench.

No. 6. Factum of the Attorney-General of Canada—*continued.*

The only other legislation of the Provinces dealing with these companies is an Act of the late Province of Canada Chapter XXXIII of the Statutes of 1860. This Act was similar to the New Brunswick Act of 1856, except that it provided for a deposit of $50,000 before a license could be obtained in the Province. This Act was amended in 1863 to provide that the Act should be extended to unincorporated societies and associations as well as to incorporated insurers.

At this time there were in operation in both Upper and Lower Canada many Mutual Fire Insurance Companies insuring farm risks. These have been incorporated under legislation passed in lower Canada in 1834 and in Upper Canada in 1836. So far as is known, however, none of the other Provinces of Canada had legislated to deal with companies incorporated outside of Canada.

Section 129 of the British North America Act provided that all laws in force at the time of the union in the Provinces should continue in the Provinces respectively, as if the union had not been made, subject, however :

> " *to be repealed, abolished or altered by the Parliament of Canada or by the Legislature of the respective Provinces according to the authority of the Parliament or of that Legislature under this Act.*"

Status after Confederation :

It may be also of interest to see what action was taken by the Dominion and the Provinces under section 129 above referred to.

The first Insurance Act of the Dominion was that of 1868, 31, Vic. Cap. 48.

Section 2 of this Act provides that, excepting Ocean Marine companies, no insurance company shall transact its business in Canada without first obtaining a license from the Minister of Finance. Consistently, however, with the view contended for here, as to the distribution of legislative powers, section 25 provides that the provisions of the Act as to deposit and issue of licenses shall not apply to any provincially incorporated insurance company so long as it did not carry on its business beyond its own Province. Section 24 of the said Act repealed the New Brunswick and Province of Canada Insurance Acts relating to British and Foreign Companies.

The foregoing adequately illustrates the view of the Dominion Parliament. What was the view of the provincial Legislature? In 1876 the Legislature of the Province of Ontario passed the Act 39, Vic. Cap. 23, an Act respecting insurance. Section 1 of this Act is as follows :—

> " This Act shall not apply to any company licensed under Act of the Parliament of Canada to transact the business of insurance in Canada, nor to any company incorporated by Act of the Parliament of Canada nor to any Mutual Fire Insurance Company which does not receive cash premiums in lieu of premium notes, but acts exclusively on the mutual principle."

In view of the fact that the Dominion Act of 1868 provided for the licensing of all companies other than provincially incorporated companies, it is clear that this provincial Act is limited in its application to provincially incorporated companies, and that British and Foreign companies are recognized as within the legislative authority of the Dominion.

This view is confirmed by the treatment of the pre-Confederation Acts in the Revised Statutes of the Provinces.

The first consolidation of the New Brunswick Statutes in 1877 omits altogether chapter XLV of 1856, but there is no reason given for the omission.

The first Ontario consolidation in 1877 similarly omits chapter XXXIII of 1860 and chapter XLV of 1863, but in this case the reason therefor is clearly stated.

In an explanatory note at the end of Volume II of the Revised Statutes the work of the Commission is described in part as follows :

> " to examine, revise, consolidate and classify such of the public general statutes passed by the Parliament of the Province of Canada and applying to Ontario, *as were within the legislative authority of the Legislature of Ontario.*" . . . (Page 2467).

There are also included in Volume II three appendices described as follows :

> " Appendix ' A '—A list of the Acts contained in the Consolidated Statutes for Canada and Upper Canada published in 1859, and also of all the Acts passed since that date by the Parliament of the Province of Canada and by the Legislature of Ontario, showing to what extent those which are of a public general nature and within the legislative authority of the Legislature of Ontario remain in force, and how they have been dealt with in the revision of the Statutes." (Page 2296)

In this appendix there is found the following item on page 2304;

> " Acts of the Late Province of Canada 23 Vic.,
> —1860 Chap. 33. Fire Insurance Companies not within the Province of Canada. DOM. Rep. 31 V, c. 4 ss. 21, 24, (D) "

and by referring to page 2295 it is found that;

> " DOM. means subject to the exclusive legislative authority of the Parliament of Canada, Rep. means repealed, (D) means Act of the Parliament of the Dominion.
>
> Other Acts similarly annotated are as follows :
>
> " Chap. 15. Currency. DOM. Rep. 31 V. c. 45 s. 5, (D) and 34 V. c. 4, s, 11 (D)

In the Court of King's Bench.

No. 6. Factum of the Attorney-General of Canada—*continued.*

Chap. 17.	Custom Duties and collection of	DOM. Rep. 31 V. c. 6. s. 138, (D)
Chap. 21.	Bank Notes, duty on	DOM. Sup. 34. V. c. 5, s. 15 (D)
Chap. 36.	Lands for Military Defence	DOM. See 40 V. c. 8. (D)
Chap. 56.	Saving Banks	DOM. Rep. 34 V. c. 7, s. 1 (D) "

Appendix " B " to the Revised Statutes on page 2385 contains a list of the Acts and parts of Acts consolidated. Chapter 33 of 1860 and Chapter 26 of 1863 are not included.

Appendix " C " on page 2454 is headed as follows :

> " Acts and parts of Acts of a public general nature which affect Ontario and have relation to matters not within the legislative authority of the Legislature of Ontario, or in respect of which the power of legislation is doubtful, or has been doubted, and most of which have, in consequence, not been consolidated, and also Acts of a public general nature in force in Ontario which have not been, for other reasons, considered proper Acts to be consolidated."

In this Appendix the aforementioned Acts of 1860 and 1863 are not included.

There appears to have been no legislation affecting such companies passed by, or applying to the Province of Lower Canada, and the revision of the Statutes of the Province of Quebec in 1888 throws no additional light on the subject.

In 1876 the Legislature of the Province of Ontario passed the Act 39 Vic. Cap. 24, an Act to secure uniform conditions in policies of Fire Insurance. This Act embodied the conditions which have since come to be known as statutory conditions for Fire Insurance policies, and similar legislation has since been adopted by nearly all the Provinces of Canada.

The Act applied to all companies doing business in Canada, wherever and however incorporated.

Citizens' Insurance Company of Canada v. *Parsons.*
Queen Insurance Company v. *Parsons* (7 Appeal Cases 96).

In 1878 two actions arose out of a fire on property owned by one Parsons and insured by the Citizens' Insurance Company of Canada and the Queen Insurance Company, the first company incorporated by the Parliament of Canada, and the second incorporated in England.

The defence of the companies to the plaintiff's claim was non-compliance with the statutory conditions, and the plaintiff claimed that the conditions were ineffective as applying to the companies in question, since the legislation under which the conditions were imposed trespassed on the grounds of exclusive Dominion jurisdiction. The case went ultimately to the Privy Council. The Dominion Government was not a party to nor an intervenant

in the action. The decision has little bearing on the constitutional question at present before the Courts. The Judicial Committee decided that the legislation in question was within the authority of the Provincial Legislature, and that the power to so legislate was not inconsistent with the power resident in the Dominion Parliament to enact a general law requiring insurance companies to obtain a license from the Minister of Finance.

> " But it by no means follows . . . that because the Dominion Parliament has alone the right to create a corporation to carry on business throughout the Dominion that it alone has the right to regulate its contracts in each of the Provinces . . . " (Page 285.)
>
> . . . . . .
>
> " The Statute of the Dominion Parliament enacts a general law applicable to the whole Dominion requiring all insurance companies, whether incorporated by Foreign, Dominion, or Provincial authority to obtain a license from the Minister of Finance, to be granted only upon compliance with the conditions prescribed by the Act. Assuming this Act to be within the competency of the Dominion Parliament as a general law applicable to foreign and domestic corporations, it in no way interferes with the authority of the legislature of the Province of Ontario to legislate in relation to the contracts which corporations may enter into in that Province." (Page 283.)

This decision recognizes the disjunction between two distinct questions. One the regulation of the contracts of insurance companies, and the other the supervision of the companies by way of license and examination.

The Dominion has, ever since this time, recognized the right of the Provinces to legislate with respect to insurance contracts. The Provinces have not, however, shown the same disposition with regard to the claim to require companies incorporated outside of Canada to obtain a license from the Minister of Finance.

The right of the Provinces to take this action was called into question and decided in *the Insurance Case* in 1916. Two questions were then submitted.

> " 1. Are SS. 4 and 70 of the Insurance Act, 1910, or any and what part or parts of the said sections, *ultra vires* of the Parliament of Canada ? "
>
> " 2. Does S. 4 of the Insurance Act, 1910, operate to prohibit an insurance company incorporated by a foreign State from carrying on the business of insurance within Canada, if such Company does not hold a license from the Minister under the said Act and if such carrying on of the business is confined to a single Province ? "

The decision said with respect to the application of the said sections to Provincially incorporated companies;

" Where a Company is incorporated to carry on the business of insurance throughout Canada, and desires to possess rights and powers to that effect

In the Court of King's Bench.

No. 6. Factum of the Attorney-General of Canada— *continued.*

operative apart from futher authority, the Dominion Government can incorporate it with such rights and powers, to the full extent explained by the decision in the case of *John Deere Plow Co.* v. *Wharton*, [1915] A. C. 330. But if a company seeks only provincial rights and powers, and is content to trust for the extension of these in other provinces to the Governments of those provinces, it can at least derive capacity to accept such rights and powers in other provinces from the province of its incorporation, as has been explained in the case of *the Bonanza Company*, [1916] A. C. 566."

In answer to the second question the Committee said :

> " The second question is, in substance, whether the Dominion Parliament has jurisdiction to require a foreign company to take out a license from the Dominion Minister, even in a case where the company desires to carry on its business only within the limits of a single province. To this question their Lordships' reply is that in such a case it would be within the power of the Parliament of Canada, by properly framed legislation, to impose such a restriction. It appears to them that such a power is given by the heads in s. 91, which refer to the regulation of trade and commerce and to aliens. This question also is therefore answered in the affirmative."

It is to be noted that the answer to the last question states that it is within the power of the Parliament of Canada, by properly framed legislation, to impose the requirement of a Dominion license upon Foreign Companies.

Following this judgment the Dominion Parliament in 1917, enacted the Insurance Act 1917, 7–8 Geo. V, Cap. 29. The definition of company contained in section 2 paragraph (d) excludes the company incorporated by a Province of Canada, section 4, sub-section 4, however, gives the Minister the right to grant to a Provincial company a licence, on application being made therefor, and on such licence being granted the Provincial company becomes a company within the meaning of the Act.

The corresponding sections of the 1910 Act apply also to individual insurers, but the 1917 Act applies only to companies or associations of individuals.

The question then arises, is the Act of 1917 properly framed legislation within the meaning of the decision in *the Insurance Case ?*

Farmers Mutual Hail Insurance Association v. *Whittaker :* (37 D.L.R. 705).

This question came up for the decision of the Alberta Supreme Court in the above mentioned case. The company in question was incorporated in the State of Iowa, and held a license under the Alberta Insurance Act, but was not licensed under the Insurance Act of the Dominion. The company had taken action against a policy holder in the Province for the recovery of a premium, and by a unanimous decision the Supreme Court held that the company could not recover, because of the fact that the company was not properly authorized to transact business within Canada. This decision reviews the decision of the Judicial Committee in the Insurance Case, and concludes that even the Act of 1910 which was in force when the

action was commenced was effective insofar as it was *intra vires*. The decision states:

> " . . . . It may be noted that the first question is one which cannot be satisfactorily answered with a simple " yes " and that consequently the declaration of the judgment of the Privy Counoil that it is properly answered in the affirmative does not in itself declare whether the section is wholly or only partly *ultra vires*, but inasmuch as the answer to the second question declares that parliament has the power to prohibit foreign companies from doing business without a license it seems to follow that the section which in terms includes such companies is not *ultra vires* in applying to such companies."

and therefore,

> " It appears . . . that . . . the section was not necessarily invalid *in toto*, and that it had some operation. If that view is correct, it seems reasonable that it should have effect to the extent to which it is *intra vires*. This is exactly the view this Court adopted *in Re Cust.* 21 D. L. R. 366; 8, A. L. R. 308, where the section, in terms, included something beyond the powers of the legislature, and it seems to be within the terms of the Colonial Laws Validity Act, 28 and 29 Vict. c. 63, s. 2, which provides that any colonial law which is repugnant to any Imperial Act applying to the colony " shall to the extent of such repugnancy, *but not otherwise*, be and remain absolutely void and inoperative."
>
> " I am of opinion, therefore, that whether the judgment of the Privy Council should be deemed to be an answer in the affirmative to the full question as submitted or not, it should not be deemed impliedly an answer in the negative but rather an omission to answer the question in full and that for the reasons I have stated the section is operative as against the plaintiff."

Matthew v. *Guardian Assurance Company* (45 D. L. R. 33; 58 S. C. R. 47). *Guardian Assurance Company* v. *Garrett* (40 D. L. R. 455).

The question next came before the Courts in this case which reached the Supreme Court of Canada. The Company in question was incorporated by the State of Utah and had applied for a license from the Province of British Columbia, although not holding a license from the Dominion. Action was taken by the Guardian Assurance Company of England, which, for many years, had been licensed in Canada, to prevent the application being granted by the Province of British Columbia. The Court of Appeal for British Columbia (40 D. L. R. 455) had sustained the plaintiff's contention, but on the ground that names of the two companies were similar. There was, however, a dissenting judgment by McPhillips, J.A., which is reported as follows;

> " The respondent Matthew has applied to the superintendent of insurance acting under the British Columbia Fire Insurance Act for

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the issuance of a license under the British Columbia Insurance Act for a company which was incorporated in the State of Utah, one of the United States of America, under the corporate name of the Guardian Fire Insurance Company. This latter Company is without a license to do business under the Insurance Act, 1910, (Can.) (see s. 4). That a license to do business under the Insurance Act, 1910 (Can.) is a pre-requisite to the doing of any insurance business in Canada or any province thereof by any company incorporated by a foreign state cannot in my opinion be gainsaid (see *Re Insurance Cos. & Attorney General for Canada* v. *Attorney General for Alberta* (Insurance case), [1916] 1. A.C. 588, 26 D.L.R. 288; and *Farmers Mutual Hail Insurance Ass'n* v. *Whittaker*, 37 D.L.R. 705)."

On the appeal to the Supreme Court of Canada it was held, on December 9th, 1918, that the Court of Appeal should have taken judicial notice of the Insurance Act 1917, and that, as the company could not transact any business by the issue of a Provincial license, the proceedings, by way of injunction, were premature. The following quotations will illustrate the views of the Judges.

Chief Justice Davies,

" The main and substantial question before us is the meaning and effect of the Dominion Insurance Act, 1917, which came into force September, 20, 1917. The appeal from the trial judge to the Court of Appeal of British Columbia was argued November, 1917, and the Act was, therefore, in force at that time.

" It should in my judgment, have been taken judicial notice of by the Court of Appeal and, if it had been, it would have appeared, which was common ground on the argument at bar, that no foreign insurance company can carry on its activities in the business it is authorized to deal in anywhere in Canada unless and until it first obtains the license from the Dominion Minister provided for in s. 4 of the statute.

" The obtaining of a Provincial license such as that applied for in British Columbia by the Appellant, Matthew, to the Superintendent of Insurance in British Columbia would not operate to permit of the company carrying on any of its activities in that province. It would not affect the prohibitions prescribed in section 11 of the Dominion Act against the company doing any kind of insurance business unless and until it has first obtained a Dominion license. The provincial license was, therefore, useless, innocuous and impotent in itself in any way to injure, hurt or damage the plaintiff company. . . . .

" The power to determine whether, under circumstances and facts as disclosed in this case, or whether in any case such a license should be granted to any company, is now vested in the Minister of Finance, and neither this Court nor any other Court, I take it, can interfere with the exercise of his statutory discretion."

Mr. Justice Idington.

" An appeal was taken from the judgment of this Court (1913) 15 D. L. R. 251; 48 Can. S. C. R. 260, to the Judicial Committee of the Privy Council, which was argued in December, 1915, and judgment given there in the following February, 25, D. L. R. 288, [1916] 1. A. C. 588.

" I hardly think anyone ever supposed that if the said section had been framed to deal only with foreign corporations, that there could be a question of the power of the Dominion Parliament in that regard.

" For my part I felt bound to so limit the effect of my answer to the second question submitted, as to avoid all appearance of questioning that power so far as regards the foreign insurance companies.

" The Judicial Committee, in giving an affirmative answer, seemed to feel bound to express clearly its opinion that as regards foreign corporations the Dominion Parliament had the power if expressed in 'properly framed legislation' . . . .

" I need not continue on the lines of thought I indicate. I am clear the judgment of the learned trial judge should not have been reversed and an injunction granted in light of the clear enactment existing when the judgment appealed from was pronounced."

Mr. Justice Anglin.

" Whatever ground the decision of the Judicial Committee, 26 D. L. R. 288, [1916] 1. A. C. 588, 597 (see however *Farmers Mutual Fire Ins. Co.* v. *Whittaker* (1917) 37 D. L. R. 705, in regard to the validity of s. 4 (*et seq.*) of the Dominion Insurance Act, 1910, ch. 32), may have given the present plaintiff to apprehend injury from the granting of a British Columbia license to the Utah company since the enactment of the new Dominion Insurance Act of 1917 (c. 29, ss. 4–11) it seems abundantly clear that the granting of a provincial license (assuming the legislation providing for it to be within the ambit of provincial legislative jurisdiction as defined in *John Deere Plow Co.* v. *Wharton*, 18 D. L. R. 353, annotated, (1915) A. C. 330) would not enable the Utah company to solicit or transact any business in British Columbia until it should obtain a licence from the Dominion authorities. So essential is the Dominion licence that without it the transaction of any business by the company is prohibited, (7 & 8 Geo. V. (D) c. 29, s. 11) and upon its being granted the right to a provincial licence on payment of the prescribed fee is indisputable (R. S. B. C. 1911, c. 113, s. 7) . . . .

" The Dominion Act of 1917 was in force when this case was heard by the British Columbia Court of Appeal and should have been taken account of by that Court. Since, therefore, in view of that legislation a British Columbia licence, if granted to the Utah Company, would be impotent to enable it to transact any business

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to the prejudice of the plaintiff, I am, with respect, of the opinion that when this action came before the Court of Appeal a case for the granting of the injunction asked did not exist and that it should have been refused."

Mr. Justice Brodeur :

" I concur in the opinion of the Chief Justice."

Mr. Justice Cassels, ad. hoc. :

" At the time the appeal was taken to the Court of Appeal in British Columbia the Utah Company had not obtained a license under the British Columbia Act. . . . Had the Minister of Finance issued the license no legislation in British Columbia preventing them from carrying on business would have been valid. . . . . The forum to determine the question whether a licence should be granted or not was the Minister of Finance for the Dominion, and I fail to see what jurisdiction the Courts would have for interfering with the express statutory power which is given him to grant or refuse."

The next decision bearing on the constitutionality of the Act is, the *Reciprocal Insurance Case* [1924], A.C. 328.

This decision has little bearing on the question now before the Courts for the reason that the questions submitted related wholly to the regulation of the contracts of reciprocal insurance. They do not refer in any way to the authority necessary to admit an alien reciprocal exchange to Canada, which is here the whole question at issue.

The decision naturally confirms the decision in the *Citizens' Case,* but it penetrates to the real question involved here in the following extract :

" 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 Sections 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 of Canada* v. *Attorney General of Alberta* (*supra*), 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)."

So far, therefore, as the issue involved in the present reference is concerned, the *Reciprocal Insurance Case* leaves the question where it was left by the *Insurance Case* of 1916.

Re Insurance Contracts 58, *O. L. R.* 404.

The decision upon which the Province may mainly rely is the above mentioned decision which arose out of the reference to the Appellate Division of the Supreme Court of Ontario by the Attorney General of that Province in 1925.

The notice of this Reference was communicated to the Attorney General for Canada in the following form.

Toronto, Feb. 14, 1925.

Dear Sir,

The Lieutenant Governor-in-Council pursuant to the provisions of the Constitutional Questions Act (R. S. O. 1914, Chap. 85) has submitted to the Appellate Division of the Supreme Court of Ontario the three questions set out in the Order in Council, a copy of which is enclosed. Upon a motion to the Court yesterday for directions after some discussion it was adjourned, in order to ascertain from your Department whether the Attorney General for Canada would be represented by counsel before the Court when the Reference comes on for argument.

Will you please advise me as soon as possible as to whether the Attorney General for Canada will desire to be heard on the argument of this Reference.

Yours faithfully,
(Signed) E. BAYLY.

W. Stuart Edwards, Esq., K.C.,
Deputy Minister of Justice, Ottawa, Ont.

Copy of an Order-in-Council approved by His Honour the Lieutenant Governor dated the 14th day of January, A. D. 1925.

Upon the recommendation of the Honourable the Attorney General, the Committee of Council advise that pursuant to the provisions of the Constitutional Questions Act (R. S. O. 1914, Chapter 85) the following Questions be submitted to the Appellate Division of the Supreme Court of Ontario.

QUESTION 1.—Is it within the legislative competence of the Legislature of Ontario to enact such provisions as are contained in Sections 168 and 180 of The Ontario Insurance Act, 1924?

QUESTION 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 Section 134 of The Insurance Act 1917?

QUESTION 3.—If the answer to the first question is in the affirmative, is it within the legislative competence of the Parliament of

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Canada to enact such provisions as are contained in Section 134A of The Insurance Act 1917 as enacted by Chapter 55 of the Statutes of Canada 1923?

Certified.

(Signed) C. H. BULMER,
Clerk, Executive Council.

The reply given to this letter by the Deputy Minister of Justice was to the effect that the Dominion did not desire to be represented at the hearing.

No progress apparently was made with the Reference until the autumn of 1925, when a hearing was given, and it was apparently decided to enlarge the scope of the Reference to include the licensing and penalty sections of the Insurance Act 1917. No notice of this enlargement of the Reference was given to the Dominion authorities and they were not represented thereat, and no further argument was heard after the amendment of the Order-in-Council making the Reference.

The Reference made to the Court was apparently made under the provisions of R. S. O. 1914, Cap. 85 (Now, R. S. O. 1927, Cap. 117) Section 3 of this Act provides that:

> "Where the matter of the Reference relates to the constitutional validity of any Act of this Legislature, the Attorney General for Canada shall be notified of the hearing."

In this case the original Reference involved the question of the validity of the Provincial Act. The extension of the Reference, however, was concerned only with the validity of certain sections of the Dominion Act, and it was, therefore, apparently assumed that no notice, to the Attorney General for Canada, of the extension of the Reference was necessary.

Section 33 of the Judicature Act R. S. O. 1914, Cap. 56 (now R. S. O. 1927, Cap. 88, s. 32) however, provides as follows:

> "(1) Where in any action or other proceeding, the constitutional validity of any Act or enactment of the Parliament of Canada or of this Legislature is brought in question, the same shall not be adjudged to be invalid after notice has been given to the Attorney General for Canada, and the Attorney General of Ontario."
>
> "(2) The notice shall state what Act or part of an Act is in question, and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.
>
> "(3) Subject to the Rules, the notice shall be served six days before the day named for the argument."

It is to be noted that this section requires notice to be given to the Attorney General for Canada in cases in which the validity of a Dominion Act is questioned as well as that of a Provincial Act.

It will be submitted that this decision arose from a Reference that did not comply with the requirements of the Judicature Act of the Province of Ontario, and moreover, that it is wrong in point of law.

It will also be submitted that this is legislation properly framed to require both Canadian Companies over which the Dominion Parliament has exclusive control (*John Deere Plow Case*, [1915], A. C. 330; *Insurance Case*, [1916], A. C. 588; *Great West Saddlery Case*, [1921], A. C. 91) and aliens, whether natural persons or foreign companies to become licensed as a condition of carrying on the business of insurance in Canada.

As to sections 16, 20 and 21, of the Special War Revenue Act, it will be submitted that they are expressly authorized under the third heading of the enumerated powers of Parliament in section 91 of the B. N. A. ACT.

The purchase of insurance outside of Canada against a risk in Canada is as fitting an occasion for a tax as the importation into Canada of any other commodity produced outside of Canada.

It is therefore submitted that the first part of Question 1 should be answered in the affirmative and the second part in the negative; also that the first part of question 2 should be answered in the affirmative, and the second part in the negative.

Quebec, Que., this 29th of October, 1929.

LOUIS S. ST-LAURENT,
Counsel for the Attorney General of Canada.

No. 7.

Formal Judgment.

No. 7. Formal Judgment, 28th June 1930.

CANADA.
PROVINCE DE QUEBEC.
DISTRICT DE MONTREAL.

COUR DU BANC DU ROI.
(En Appel.)

Montreal, samedi, le vingt-huitième jour du mois de juin, mil neuf cent trente.

Presents : Les honorables juges { ALLARD. TELLIER. HOWARD. BERNIER. BOND.

CONCERNANT la soumission à la Cour du Banc du Roi, Juridiction d'appel, des questions relatives à la validité de certains articles de la loi des Assurances du Canada, et de la validité de l'article 1er. du chapitre 47 des Statuts du Canada, 1922, imposant une taxe sur toute personne résidant au Canada qui fait assurer ses biens situés au Canada par une Compagnie Britannique ou étrangère non autorisée, en vertu des dispositions de la Loi des Assurances.

LA COUR, saisie par voie de référé en vertu de la Loi des renvois à la Cour du Banc du Roi (S.R. Q. 1925, Ch. 7), de certaines questions relatives

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No. 7. Formal Judgment, 28th June 1930—*continued.*

à la validité, de certains articles de la dite Loi des Assurances du Canada, et de la validité de l'article 1er. Chapitre 47 des Statuts du Canada de 1922, suivant arrêté en conseil en date du 11 mai 1929, ayant entendu le Procureur Général de la Province par ses avocats, Mtres. Charles Lanctôt, Lafleur et Geoffrion, et le Procureur Général du Canada, par Mtre. Louis St. Laurent, aussi avocat de cette province,

REPOND aux dites questions comme ci-dessous dit :—

A la première question qui se lit comme suit :

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

A la première partie de la susdite question, l'honorable juge Allard répond dans l'affirmative, et dans la négative quant la dernière partie de cette première question.

L'honorable juge Tellier répond que les articles 11, 12, 65 et 66 de la Loi des Assurances du Canada, sont inconstitutionnels, et qu'en conséquence, ils n'obligent personne.

L'honorable juge Howard, quant aux compagnies étrangères, répond dans l'affirmative, et exprime des doutes quant aux assurances britanniques.

L'honorable juge Bernier répond dans la négative et considère les dites sections 11, 12, 65 et 66 comme inconstitutionnelles.

L'honorable juge Bond est d'avis que, quant aux compagnies étrangères, la dite loi est constitutionnelle, et inconstitutionnelle quant aux compagnies britanniques.

A la seconde question qui nous a été soumise en même temps que celle ci-dessus, et qui se lit comme suit :

> 2° Are sections 16, 20 and 21 of the Special War Revenue Act within the Legislative competence of the Parliament of Canada ? Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the Provincial Law a license to carry on business in the Province and any other case ?

A la première partie de cette seconde question, l'honorable juge Allard répond dans l'affirmative, et dans la négative quant à la seconde partie.

L'honorable juge Tellier répond que les dits articles 16, 20 et 21 sont de la compétence du Parlement du Canada, et qu'en conséquence, ils font loi à l'égard de l'assureur qui a obtenu, ou qui est tenu d'obtenir un permis en vertu de la Loi des Assurances de Québec, comme à l'égard de tout le monde.

L'honorable juge Howard répond dans l'affirmative pour la première partie, et dans la négative pour la seconde.

L'honorable juge Bernier répond dans l'affirmative pour la première partie, et dans la négative pour la seconde partie.

L'honorable juge Bond divise sa réponse comme suit : A la première partie, il répond dans l'affirmative, et à la seconde partie, il répond dans la négative.

VICTOR ALLARD,
J.C.B.R.,
Président du Tribunal.

No. 7.
Formal Judgment, 28th June 1930—*continued.*

No. 8.

No. 8.
Answers given by Allard, J.

Answers given by Allard J.

A la première partie de la question No. 1 : Je réponds Oui.
A la seconde partie de cette même question : Je réponds Non.
A la première partie de la question No. 2 : Je réponds Oui.
A la seconde partie de la même question : Je réponds Non.

VICTOR ALLARD,
J.C.B.R.

No. 9.

No. 9.
Reasons for Judgment of Allard, J.

Reasons for Judgment of Allard J.

ALLARD, J. :—L'honorable procureur général du Gouvernement de cette province, dans un mémoire en date du 8 mai, 1929, allègue : Que plusieurs compagnies d'assurance anglaises et étrangères ont obtenu du Trésorier de cette Province, une license émise sous l'acte des Assurances de Québec, Statuts Revisés de Québec, 1926, chapitre 243.—Que le département des Assurances du Dominion du Canada cherche à forcer ces compagnies à obtenir une license sous les articles 11 et 12 de l'acte des assurances du Canada, Statuts Revisés du Canada, 1927, chapitre 101, et sans préjudice aux pénalités imposées pour la violation de ces articles, cherche aussi à recouvrer des personnes qui font assurer leurs biens par et avec les dites compagnies, la taxe imposée par les articles 16, 20 et 21 de l'acte spécial du revenu de guerre, Statuts Revisés du Canada, 1927, chapitre 179; qu'il est nécessaire d'obtenir l'opinion de la dite Cour du Banc du Roi, en appel, sur la question de savoir si les assureurs et leurs assurés sont affectés par les dits articles, sont tenus d'obtenir du Gouvernement du Canada, la license y prescrite, et de payer la dite taxe spéciale, et de plus, si ces articles sont valides.

L'honorable Procureur Général a, en conséquence, recommandé que les questions suivantes soient référées par Son Honneur le Lieutenant Gouverneur en Conseil à la dite Cour du Banc du Roi, en appel, pour

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audition et considération sous l'autorité du Chapitre 7 des Statuts Revisés de Québec.

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

" 2o. Are sections 16, 20 and 21 of the Special War Revenue Act within the Legislative competence of the Parliament of Canada ?

" 3o. Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the provincial law a license to carry on business in the province and any other case "—ainsi qu'il appert au certificat de M. A. Morriset, greffier du Conseil produit au dossier.

Le 23 mai 1929, la Cour du Banc du Roi présidée par les honorables juges Guerin, Howard, Bernier, Létourneau et Bond, sur présentation de la dite requête de l'honorable Procureur Général de cette Province, a accordé la dite requête, a ordonné l'inscription de la dite cause pour audition et considération, le samedi, 1er juin, 1929, à l'ouverture du terme de la dite cour, devant être tenu ce jour à Québec, ou tout autre jour qu'il plaira à cette cour de fixer.

Le 23 mai 1929, le bureau du Procureur Général à Québec, a donné au Procureur Général du Gouvernement du Canada, avis que, par un ordre en conseil, en date du 11 mai, 1929, son Honneur le Lieutenant Gouverneur en conseil de la Province de Québec référait à la dite cour du Banc du Roi, en appel, les questions ci-dessus transcrites, et de plus, que l'audition sur la dite reférence avait été fixée par la Cour, au 4 juin 1929.

Le Procureur Général était représenté à cette audition par Mtre. Charles Lanctôt, Assistant procureur général, et par Mtres. Lafleur et Geoffrion, avocats et C.R., et le procureur Général du Canada, par Mtre. Louis St. Laurent, avocat, C.R. et bâtonnier Général du Barreau de cette Province.

Les divers articles des deux chapitres qui sont soumis à notre considération, et sur lesquels on sollicite notre opinion, sont redigés dans les termes suivants : (Je substitue au texte même, le résumé qu'en fait l'honorable procureur général de la province, dans son factum) :

" Section 11 of the Act makes it unlawful for any alien, whether a natural person or a foreign company, within Canada, to solicit or accept risks, issue or deliver receipts or policies of insurance, collect or receive premiums, inspect risks or adjust losses, advertise for or carry on any insurance business, etc., unless under a license from the Minister, granted pursuant to the provisions of the Act.

" Section 12 of the same Act enacts that 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 an

office or agency for the transaction of any business relating to insurance etc., unless under a licence from the Minister granted pursuant to the provisions of the Act.

" Sections 65 and 66 provide penal sanctions for the violation of sections 11 and 12, making such violation and offence liable, upon indictment or upon summary conviction, to a penalty or imprisonment."

Et quant aux articles 16–20 et 21, je les reproduis textuellement du chapitre 179 des Statuts Revisés du Canada, 1927.

" **16.** 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 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 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.

" **20.** Every person to whom section sixteen of this Act applies shall on or before the thirty-first day of December, in each year, make a return in writing to the Superintendent stating the names of the companies, societies of underwriters or associations 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.

" **21.** Every person who fails or neglects to make the return required by the last preceding section, or pay to the Minister within the time limited by section sixteen hereof the tax thereby imposed, shall incur a penalty of fifty dollars for each and every day during which such default continues."

L'honorable Procureur général de la province, par ses procureurs soumet dans son factum, comme première proposition, que la question que nous avons à décider a été discutée deux fois, quoique non décidée

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No. 9. Reasons for Judgment of Allard, J.— *continued.*

formellement par le Conseil Privé, re : *Attorney General of Canada* vs. *Attorney General of Alberta* [1916], 1 A.C. 588. Lord Haldane rendant le jugement déclarant inconstitutionnelle la loi des assurances du Canada, alors en force, loi de 1910, dit : " That legislation, if properly framed, " requiring aliens whether natural persons or foreign companies to become " licensed as a condition of carrying on their business in Canada, might " be competently enacted by the Parliament of Canada."

Sa Seigneurie, l'honorable juge Duff de la Cour Suprême, l'un des membres du Comité du Conseil Privé, qui avait a décider l'appel dans la cause de *Reciprocal Insurance Reference* [1924], A.C. 328, commentant la décision du Conseil Privé, re : *Attorney General of Canada*, rapportée [1916], 1 A.C. 588, et les remarques de Lord Haldane, disait (p. 347) :

> " Their Lordships do not express any opinion as to the competence of the Dominion Parliament by virtue of its authority in relation to aliens and to trade and commerce, to enact sections 11 and 12, subsection 1 of the Insurance Act. 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 of Canada* vs. *Attorney General of Alberta, supra*, 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."

Je crois qu'il est bon de rapporter les questions soumises à la Cour Suprême du Canada re *Attorney General of Canada* vs. *Attorney General of Alberta*, le jugement de cette dernière cour, et celui du Conseil Privé siègeant en appel du jugement de la Cour Suprême, voir 26, D.L.R. p. 289, et 1916–1 A.C. 588.

Lord Haldane, rendant le jugement du Conseil Privé, expose les grandes lignes du jugement de la Cour Suprême du Canada, rapporte les questions qui leur étaient référées, et formulées, comme suit :

> " 1. Are secs. 4 and 70 of the Insurance Act (ch. 32), 1910, or any or what part or parts of the said sections, *ultra vires* of the Parliament of Canada ?
>
> " 2. Does sec. 4 of the Insurance Act, 1910, operate to prohibit an Insurance Company incorporated by a foreign State from carrying on the business of insurance within Canada, if such company does not hold a license from the Minister under the said Act, and if such carrying on of the business is confined to a single province,"

indique la réponse à chacune de ces deux questions par la dite Cour Suprême, à savoir que, sur la première question, la Cour Suprême, par une majorité de ses juges, a répondu que les deux sections 4 et 70 étaient *ultra vires* et quant à la seconde, a répondu : " Yes, if *intra vires*," et prononçant sur

l'appel porté contre le dit jugement de la Cour Suprême, adjuge que le jugement de cette dernière cour est bien fondé quant à la première réponse. Et, quant à la deuxième question, voici la réponse du Conseil Privé :

> " To this question their Lordships' reply is that in such a case, it would be within the power of the Parliament of Canada, by properly framed legislation, to impose such a restriction. It appears to them that such a power is given by the heads in sect, 91, which refer to the regulation of Trade and Commerce and to aliens. This question also is therefore answered in the affirmative."

Ainsi de ce jugement du Conseil Privé, il appert qu'en principe le Parlement du Canada a le pouvoir de légiférer en imposant aux compagnies affectées par les dites sections, les restrictions que nous y trouvons pourvu qu'il le fasse dans, et par un acte convenablement redigé (properly framed).

Le Procureur Général de cette province nous a cité aussi un jugement de la majorité de la Cour d'appel d'Ontario, sur une référence à cette honorable cour par le Lieutenant Gouverneur d'Ontario concernant la constitutionnalité de l'acte R.S.O., 1914, C. 85, dans laquelle reférence une des questions soumises était de savoir si les sects. 11 et 12 de l'acte des Assurances du Canada est *ultra vires* des pouvoirs du Parlement du Canada.

D'après le rapport de ce jugement, 1926, 2, D.L.R. p. 204, les savants juges de la Cour d'appel d'Ontario, se sont divisés comme suit : Masten J.A., Middleton, J.A. et Riddell, J.A. ce dernier avec hésitation, ont décidé que la section 11 va au-delà des pouvoirs du Parlement, à cause des conditions attachées à la licence par le Statut, et que cette loi ne doit pas être considérée comme loi concernant les étrangers; Latchford, J.A. et Smith, J.A. étaient dissidents.

A la fin de leur factum sur cette première question, les savants avocats du Procureur Général de Québec, discutent la rédaction de l'acte d'assurance attaqué comme inconstitutionnel, considèrent qu'il n'est pas redigé plus convenablement que l'était l'acte de 1910, et terminent leur mémoire par quelques remarques sur la question deuxième.

Il n'y a aucun doute, disent les savants procureurs, que le Parlement a droit d'imposer une taxe de quelque manière que ce soit, dans les limites du Canada, mais la question qui se présente est celle de savoir si ce Statut 12 et 13 George V, ch. 47, peut valablement et réellement être séparé des sections du dit Acte d'assurance qui impose des licences.

Le Procureur Général soumet à l'appui de sa proposition que le but du Statut n'est pas réellement de retirer des revenus, mais une tentative indirecte d'empêcher les dites compagnies étrangères de faire affaires au pays.

J'ai exposé aussi correctement que j'ai pu le faire, les prétentions du Procureur Général de Québec, et les autorités citées à l'appui. J'en ferai autant pour l'autre partie, et finalement, je tirerai les conclusions que je crois devoir tirer sur les deux questions.

In the Court of King's Bench.

No. 9.
Reasons for Judgment of Allard, J.—*continued.*

De la part du Gouvernement du Canada, Mtre. Louis St. Laurent, avocat du Procureur Général du Canada, soutient que les lois et les diverses sections d'icelles qui sont soumises à la considération de cette cour, sont valides et *ultra vires* des pouvoirs du Parlement du Canada, et à l'appui de cette proposition, soumet entre'autres considérations, les suivantes qu'il appuie de certaines décisions des plus hauts tribunaux du Canada et de l'Empire.

En 1876, dit-il, la Législature d'Ontario a passé l'acte 39 Vic. ch. 24, acte pour assurer des conditions uniformes dans les polices d'assurance sur le feu.

En 1878, un incendie détruisit les propriétés d'un nommé Parsons, assurées dans deux compagnies; la Citizen's Insurance Co. of Canada et la Queen Insurance Co. (7 Appeal cases, 96).

Cet incendie a donné naissance à deux actions qui ont été finalement décidées par le Conseil Privé.

Sur la question soulevée dans ces causes que la Législature provinciale n'avait pas juridiction pour legiférer comme elle l'avait fait, et que, ce pouvoir qu'elle avait exercé appartenait au Parlement, il a été décidé: "But it by no means follows . . . that because the Dominion Parliament has alone the right to create a corporation to carry on business throughout the Dominion, that it alone has the right to regulate its contracts in each of the Provinces," p. 116; et "The Statute of the Dominion Parliament enacts a general law applicable to the whole Dominion requiring all insurance companies, whether incorporated by Foreign, Dominion or Provincial authority, to obtain a license from the Minister of Finance, to be granted only upon compliance with the conditions prescribed by the act. Assuming this act to be within the competency of the Dominion Parliament as a general law applicable to foreign and domestic corporations, it in no way interferes with the authority of the Legislature of the Province of Ontario to legislate in relation to the contracts which corporations may enter into in that province," p. 114.

Comme on le voit, cette décision distingue entre le pouvoir de réglémenter les contrats des compagnies et le pouvoir de surveillance.

Depuis cette décision, le parlement a reconnu le droit des provinces de légiférer en rapport avec les contrats d'assurance. Les provinces ont refusé toutefois de reconnaître le droit du Parlement d'exiger une licence des compagnies incorporées hors du Canada, une licence pour opérer dans les limites du Canada.

Et pour régler le différend entre le pouvoir fédéral et les législatures, on a soumis les questions dont j'ai parlé plus haut au Conseil Privé qui a finalement décidé dans le sens plus haut indiqué.

L'acte de 1917, a suivi le jugement du Conseil Privé dans l'affaire ci-dessus immédiatement rapportée.

Si notre législation de 1917 est convenablement rédigée, la question me paraît réglée par le jugement du Conseil Privé.

Le savant procureur du procureur général du Canada, nous cite, dans son factum, un jugement de la Cour Suprême de l'Alberta, 37, D.L.R., p. 705 :

" It is within Dominion legislative powers under sec. 91 of the B.N.A. Act, as to the regulation of commerce and aliens, to prohibit foreign Insurance Companies from carrying on business without a Federal license, even within the limits of a single Province; to such extent section 4 of the Dominion Insurance Act, 1910, is *intra vires.*"

Dans les causes de *Matthew & Guardian Ass. Co.*, 58, C. Sup., p. 47, et dans celle de *Guardian Ass. Co. & Garrett*, 40, D.L.R. 455, la Cour Suprême du Canada a décidé dans le même sens que la Cour Suprême de l'Alberta.

Je cite, des notes de l'honorable juge en chef actuel de la Cour Suprême du Canada, les remarques suivantes, p. 62 :

" So essential is the Dominion license that without it, the transaction of any business by the company is prohibited (7 and 8 Geo. V (D), ch. 29, s. 11) and upon its being granted, the right to a provincial license on payment of the prescribed fee is indisputable (R.S., B.C., 1911, ch. 113, s. 7)."

Après cet exposé des diverses décisions des Tribunaux de notre pays, et du Conseil Privé de sa Majesté, et suivant les plans que je me suis tracés, il est temps maintenant de répondre aux questions qui nous sont soumises.

Je, crois, comme je le dis plus haut, que le Conseil Privé a décidé en principe la validité et la constitutionnalité des clauses de l'acte des assurances de 1917 qui nous sont soumises.

L'acte de 1910, sect. 4, que le Conseil Privé a été appelé à décider, contenait les mêmes prohibitions à l'égard des compagnies d'assurances étrangères que les sects. 11 et 12 de l'acte de 1917.

Suivant le Conseil Privé, le Parlement du Canada a le pouvoir d'imposer les restrictions qui apparaissent aux dites sections 11 et 12 de l'acte de 1917, *by properly framed legislation.*

La Cour Suprême du Canada comme la Cour d'appel de l'Alberta ont décidé dans le même sens, c'est à dire, qu'en principe, nos tribunaux ont reconnu au Parlement Fédéral le droit et le pouvoir de légiférer comme il l'a fait, dans les dites sections. Et, qu'on remarque bien, que notre acte de 1917, a été passé après le jugement du Conseil Privé qui reconnaissait les pouvoirs du Parlement Fédéral de décréter et voter semblables restrictions, pourvu que ce fut *by properly framed legislation.*

Je serais plus à l'aise pour accepter la prétention des savants procureurs du Procureur Général de cette Province, si, dans leur mémoire écrit, comme à l'argument, ils nous avaient indiqué en quoi la rédaction de cette loi pèche contre les articles 11 et 12, en quoi elle est vicieuse, illégale et inconstitutionnelle. Car enfin, du moment que le principe est admis, du moment que l'on reconnaît au Parlement Fédéral le pouvoir de voter la loi édictée dans les dits articles 11 et 12, il ne s'agit plus que de la forme, et avant de décider que les officiers en loi qui ont préparé cet acte de 1917 n'ont pas compris la lettre et l'esprit du jugement du Conseil Privé, j'aimerais à ce qu'il me serait suggéré en quoi, encore une fois, cette législation pèche dans sa forme.

In the Court of King's Bench.

No. 9. Reasons for Judgment of Allard, J.— *continued.*

Car enfin, *le frame*, je dirais l'encadrement du principe admis et reconnu du pouvoir du Parlement du Canada dans un article d'un statut, c'est une manière de forme qui peut causer préjudice, c'est vrai, mais à laquelle il peut être remédié facilement.

Quant à la constitutionnalité de l'acte " Special War Act," Revised Statutes of Canada, de 1927, ch. 179, étant donné l'opinion que j'émets sur la constitutionnalité des sections 11 et 12 de l'acte d'Assurance du Canada actuel, je crois que le Parlement du Canada avait le pouvoir de le passer et voter.

Je serais tenté d'ajouter quelques autres considérations, mais comme je suis convaincu que la Cour Suprême du Canada, et le Conseil Privé, probablement, seront appelés à décider des questions soumises, je coupe court à mes remarques, et je réponds comme suit :

A la première partie de la question No. 1, je réponds : Oui ;
A la seconde partie de cette même question, je réponds : Non ;
A la première partie de la question No. 2, je réponds : Oui ;
A la seconde partie de cette même question, je réponds : Non.

VICTOR ALLARD,
J. C. B. R.

No. 10. Answers given by Tellier, J.

No. 10.

Answers given by Tellier J.

REPONSE À LA QUESTION 1 : Les articles 11, 12, 65 et 66 de la Loi des Assurances du Canada sont inconstitutionnels ; et conséquemment, ils n'obligent personne.

REPONSE À LA QUESTION 2 : Les articles 16, 20 et 21 de la Loi Spéciale des Revenus de Guerre, sont de la compétence du Parlement du Canada. Conséquemment, ils font loi, à l'égard de l'assureur qui a obtenu, ou qui est tenu d'obtenir un permis en vertu de la Loi des assurances de Québec, comme à l'égard de tout le monde.

J. M. TELLIER,
J. C. B. R.

No. 11. Reasons for Judgment of Tellier, J.

No. 11.

Reasons for Judgment of Tellier J.

TELLIER, J. : Je commence par traduire en français les questions qui nous sont soumises, vu que c'est en français que j'entends y répondre—

1. L'Assureur étranger ou britannique qui a déjà un permis en vertu de la Loi des Assurances de Québec, pour faire des affaires dans la province, est-il sujet aux dispositions des articles 11, 12, 65 et 66 de la Loi des Assurances du Canada ? ou bien, ces articles-là sont-ils inconstitutionnels, quant à lui ?

2. Les articles 16, 20 et 21 de la Loi Spéciale des Revenus de Guerre, sont-ils de la compétence législative du Parlement du Canada ?

Le cas de l'assureur qui a obtenu ou qui est tenu d'obtenir un permis en vertu de la loi provinciale, pour faire des affaires dans la province, diffère-t-il de tout autre cas ?

Voyons d'abord ce que sont ces articles de la Loi des Assurances du Canada et de la Loi Spéciale des Revenus de Guerre, dont la constitutionnalité est mise en question (S.R.C. 1927, C.C. 101, 179).

L'article 11 de la loi des Assurances du Canada défend à toute compagnie canadienne et à tout aubain, que ce soit un simple particulier, ou une compagnie étrangère, de faire des affaires d'assurances au Canada, et particulièrement de solliciter ou accepter des risques, d'émettre des reçus ou des polices, d'accorder des rentes viagères moyennant considération, de percevoir ou accepter des primes et, sauf suivant que pourvu à l'article 129 de la dite loi, de faire l'inspection d'un risque, de régler une perte, de s'annoncer comme assureur, de poursuivre en justice, ou de réclamer d'une faillite, pour des affaires d'assurance, à moins que ce ne soit avec un permis du ministre des Finances, accordé conformément à la dite loi.

On appelle compagnie canadienne, dans cette loi, toute compagnie constituée en corporation pour des fins d'assurance, en vertu des lois du Canada. La compagnie britannique ou étrangère qui a obtenu le permis du Ministre ne devient pas, de ce fait, une compagnie canadienne.

La " Compagnie étrangère " est celle qui a été constituée en corporation pour des fins d'assurance, en vertu des lois d'un pays étranger et qui possède, en vertu de sa charte ou des lois qui la régissent, la capacité voulue pour faire des affaires d'assurance au Canada (art. 3).

L'" aubain " est celui qui n'est pas sujet britannique (S.R.C., 1927, c. 138, art 2).

L'article 12 de la Loi des Assurances du Canada défend à toute compagnie britannique et à tout sujet britannique qui ne réside pas au Canada, d'immigrer au Canada, dans le but d'ouvrir ou établir un bureau, ou une agence pour faire des affaires d'assurance, ou quelque chose s'y rattachant, ou particulièrement, pour solliciter, ou accepter des risques, émettre des reçus ou des polices, accorder des rentes viagères moyennant considération, percevoir ou accepter des primes, ou, sauf suivant que pourvu à l'article 129 de la dite loi, faire l'inspection d'un risque, régler une perte, s'annoncer comme assureur, pour suivre en justice ou réclamer d'une faillite, pour des affaires d'assurance, à moins que ce ne soit avec un permis du Ministre des Finances, accordé conformément à la dite loi.

La " compagnie britannique " est celle qui a été constituée en corporation pour des fins d'assurance, en vertu des lois de la Grande Bretagne, de l'Irlande, ou d'une possession britannique quelconque, qui n'est pas le Canada, ni une province du Canada (art. 2).

Les articles 65 et 66 de la Loi des Assurances du Canada déclarent coupable d'une offense et assujettie à une pénalité, toute personne qui contrevient d'une manière quelconque aux dispositions des articles 11 ou 12 de la dite loi.

In the Court of King's Bench.

No. 11.
Reasons for Judgment of Tellier, J.—*continued.*

L'article 16 de la loi spéciale des revenus de guerre impose sur toute personne—simple particulier ou corporation—qui, résidant au Canada et ayant dans un bien situé au Canada, un intérêt assurable autre que celui d'un assureur, fait assurer ce bien contre un risque quelconque, à part celui de la mer, par un assureur qui n'a pas de permis en vertu de la Loi des Assurances de Québec,—que cet assureur soit : (*a*) une compagnie britannique ou étrangère, ou un "underwriter" britannique ou étranger, ou (*b*) une association faisant ce que l'on appelle de l'inter-assurance, dont le siège principal n'est pas au Canada, et dont l'agent principal n'a pas non plus son bureau au Canada—une taxe de cinq pour cent par année sur le coût net de son assurance, en sus de toute autre taxe qu'elle peut devoir.

L'article 20 de la même loi oblige toute personne à qui le dit article 16 s'applique, de faire rapport au surintendant des assurances, chaque année, le 31 décembre, du coût net de son assurance.

L'article 21 édicte une pénalité contre toute personne qui manque ou néglige de faire son rapport au surintendant des assurances, ou de payer au Ministre des Finances la taxe qu'il doit en vertu du dit article 16.

Voilà, en substance, les dispositions des articles de la Loi des assurances du Canada, et de la loi spéciale des revenus de guerre, dont la constitutionnalité est présentement mise en question par le Gouvernement de la Province de Québec.

De la part de ce gouvernement ou, si l'on veut, du Procureur Général qui le représente, on prétend que les dites dispositions sont inconstitutionnelles, en ce qu'elles excèdent les pouvoirs du Parlement du Canada, et qu'elles constituent un empiètement sur les attributions de la Législature provinciale.

Prenons d'abord l'article 11 de la Loi des Assurances du Canada, qui, comme nous l'avons vu, interdit les affaires d'assurances, au Canada, sauf suivant que pourvu à l'article 129, à toute compagnie canadienne et à tout aubain, que ce soit un simple particulier ou une corporation, sans un permis du Ministre des Finances du Canada, accordé conformément à la dite loi.

Il est incontestable que le Parlement du Canada a le pouvoir législatif voulu pour interdire à toute compagnie dépendant de lui et à tout aubain, que ce soit un simple particulier ou une corporation étrangère, de faire ou d'entreprendre, au Canada, des affaires d'assurance, ou quoique ce soit s'y rattachant, si ce n'est avec un permis du Gouvernement du Canada, ou de quelqu'un qui le représente.

La raison en est bien simple : les compagnies canadiennes, c'est-à-dire celles auxquelles le Parlement du Canada donne naissance, ou qui sont constituées en vertu de ses lois, dépendent nécessairement de lui. Il peut les constituer comme il l'entend, étendre ou restreindre leurs pouvoirs et leur champ d'action, au gré de ses lois ; et, selon qu'il lui plait, les assujettir à des conditions, leur imposer des obligations, ou leur accorder des droits, du moins, dans les choses qui sont de son domaine. Et quant aux aubains, ils dépendent également de lui, du moment qu'ils veulent entrer au pays, soit pour s'y établir, soit simplement pour y faire des affaires (A. A. B.N. 1867), art. 91 par. 25, art. 95).

Cet article 11 ne prêterait pas à difficulté, si le permis qu'il prescrit n'était assujetti, par d'autres articles de la même loi, à certaines conditions qui concernent le contrat d'assurance et ses effets.

Ainsi, les articles 91, 123, 134 et 135—pour n'en citer que quelques uns—réglent et déterminent à la fois ce que seront, tant les conditions du permis que celles des polices ou contrat d'assurance. Les articles 80 et suivants concernent aussi les contrats d'assurance.

Evidemment, il y a là, empiètement sur le domaine de la législature provinciale. Le contrat d'assurance et tout ce qui en dépend, sont exclusivement du ressort de la Législature. Le Parlement du Canada, sous aucun prétexte ne peut s'y immiscer (A. A. B.N. 1867, art. 92, par. 13;) *Citizens Ins. Co. & Queen Ins.* vs. *Parsons* L. R. 8, A.C. 96;—*Attorney General Canada* vs. *Attorney General Alberta, & B. C.* [1916], 1 A.C. 588; décision de la Cour d'appel d'Ontario, 1926, 2 D. L. R. 204).

Sans entrer dans plus de détails, je conclus que le dit article 11 est inconstitutionnel, et qu'en conséquence, il n'oblige personne.

L'article 12 est évidemment atteint du même défaut. Il doit donc avoir le même sort que l'article 11.

J'en dis autant des articles 65 et 66. Ils ne peuvent exister seuls, puis qu'ils ne sont que les accessoires des articles 11 et 12.

Que faut-il penser de l'article 16 de la Loi spéciale des revenus de guerre ?

Il est assez évident qu'il n'a guère été mis, là où il se trouve, que comme une espèce de sanction additionnelle aux dispositions des articles 11 et 12 de la Loi des assurances de Québec. Sans aucun doute, le permis dont il est question, est bien celui des dits articles 11 et 12.

Cependant, le Parlement du Canada, possède en matière de taxation, un pouvoir aussi absolu qu'illimité (A. A. B. N. 1867, art. 91, par. 3). Le motif qui l'a fait agir importe peu, dans l'espèce, du moment que sa loi est de sa compétence législative. Or, le dit article 16 est de sa compétence législative.

Naturellement, il n'en saurait être autrement, des articles 20 et 21 de la même loi.

En somme, je répondrais comme suit aux questions qui nous sont soumises :

REPONSE À LA QUESTION 1 : Les articles 11, 12, 65 et 66 de la Loi des Assurances du Canada sont inconstitutionnels; et conséquemment ils n'obligent personne.

REPONSE À LA QUESTION 2 : Les articles 16, 20 et 21 de la Loi Spéciale des Revenus de Guerre sont de la compétence du Parlement du Canada. Conséquemment, ils font loi, à l'égard de l'assureur qui a obtenu ou qui est tenu d'obtenir un permis en vertu de la Loi des Assurances de Québec, comme à l'égard de tout le monde.

J. M. TELLIER,
J. C. B. R.

In the Court of King's Bench.

No. 12. Answers given by Bernier, J.

No. 12.

Answers given by Bernier J.

A la première question qui nous est soumise, je réponds dans la négative; je considère que les sections 11, 12, 65 et 66 constituent un excès de pouvoir du Parlement Fédéral et sont inconstitutionnels.

A la deuxième question, je réponds, quant à la première partie, dans l'affirmative; et quant à la seconde partie, dans la négative.

ALPHONSE BERNIER,
J. C. B. R.

No. 13. Reasons for Judgment of Bernier, J.

No. 13.

Reasons for Judgment of Bernier J.

BERNIER, J. :—Les questions qui sont soumises à ce tribunal sont les suivantes :

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

2°. Are sections 16, 20 and 21 of the Special War Revenue Act within the Legislative competence of the Parliament of Canada ?

Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the Provincial Law a license to carry on business in the Province and any other case ?

Il est certain que depuis la date de la mise en force de l'Acte de l'Amérique Britannique du Nord jusqu'en 1910, il semblait entendu que le pouvoir d'édicter une loi sur le commerce d'assurance, destinée à réglementer les rapports non seulement entre les assurés et les compagnies d'assurances provinciales, mais aussi, entre les assurés et les compagnies d'assurances étrangères, était du domaine et de la compétence des législatures provinciales. Le commerce d'assurance, en étant un qui tombe sous le contrôle des Législatures provinciales, peu importait semblait-il, que ce commerce se fît avec des aubains, ou avec des compagnies incorporées à l'étranger, ou en Angleterre.

En 1910, le Parlement Fédéral passa une loi d'assurance qui obligeait toutes les compagnies d'assurance qui, voulant faire affaires au Canada, quelles fussent incorporées par le Parlement Fédéral, ou par les Législatures provinciales, ou sous l'autorité d'un pays étranger, à prendre une licence des autorités fédérales.

A diverses reprises et devant plusieurs de nos tribunaux, tout comme devant le Conseil Privé, cette loi fût attaquée, dans plusieurs de ses

dispositions, comme inconstitutionnelle. Elle le fût par le Conseil Privé sur plusieurs de ces points importants.

Avec des modifications se rapportant au pouvoir des législatures de régir, dans les limites d'une province, le commerce d'assurance, le Parlement Fédéral a passé une nouvelle loi, en 1917, obligeant les assureurs étrangers faisant actuellement, ou devant faire à l'avenir, ce commerce dans notre province, à s'adresser aux autorités fédérales pour obtenir un permis pour faire ou continuer de faire ce commerce; à défaut de s'y conformer, les assureurs étrangers commettront une infraction punissable par diverses peines.

La loi fédérale dont il s'agit est venue en force le 20 septembre, 1917; à plusieurs reprises, comme je viens de le dire, elle a été soumise à l'appréciation des divers tribunaux de notre pays, et même à celle du Conseil Privé.

Aucune décision cependant n'a été encore donnée par le plus Haut Tribunal de l'Empire sur les deux questions qui nous sont actuellement soumises : le Conseil Privé y a fait une forte allusion dans la cause du *Procureur Général du Canada* et *le Procureur Général de la Province d'Alberta* (L. R. [1916], 1 A.C. p. 588).

J'extrais du jugement qui fût rendu à cette occasion, les paroles suivantes de Lord Haldane :

> " The second question is, in substance, whether the Dominion Parliament has jurisdiction to require a foreign company to take out a license from the Dominion Minister, even in a case where the company desires to carry on its business only within the limits of a single province. To this question their Lordships' reply is that in such a case it would be within the power of the Parliament of Canada, *by properly framed legislation*, to impose such a restriction. It appears to them that such a power is given by the heads in s. 91, which refer to the regulation of trade and commerce and to aliens. This question also is therefore answered in the affirmative."

Il s'agissait, dans le cause, de la constitutionnalité de la clause 4 de la Loi Fédérale sur les assurances de 1910; cette clause était la suivante :

> " 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 be done by or on behalf of a company or underwriters holding a license from the Minister."

Voici le dispositif du jugement :

> " *Held* that the above legislation was *ultra vires* of the Parliament of Canada, since the authority conferred by the British North America Act, 1867, s. 91, head (2), to legislate as to ' the regulation

In the Court of King's Bench.

No. 13. Reasons for Judgment of Bernier, J. —*continued.*

of trade and commerce ' does not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage in the provinces, and since it could not be enacted under the general power conferred by s. 91 to legislate for the peace, order, and good government of Canada as it trenched upon the legislative authority conferred on the provinces by s. 92, head (13), to make laws as to ' civil rights in the province '. "

" The principle illustrated by *Russell* vs. *The Queen* [1882] 7 App. Cas. 829, that subjects which in one aspect come within the authority of the Provincial Legislatures may in another aspect fall within the authority of the Dominion Legislature, is well established, but ought to be applied with great caution."

Dans la cause de *Matthew & Guardian Assurance Company* (45 D.L.R. p. 32 & s.), la Cour Suprême du Canada, par chacun de ses juges, a exprimé l'opinion que la Cour d'appel de la Colombie Anglaise, aurait dû, dans le jugement qu'elle devait rendre et qu'elle a effectivement rendu, prendre connaissance de la loi fédérale de 1917, qui avait alors remplacé la loi de 1910. Quoique la constitutionnalité de la loi de 1917 ne fût pas, en principe, mise en cause, et qu'il ne s'y agissait que d'un bref d'injonction pour défendre aux autorités provinciales d'accorder une licence à une compagnie étrangère, les savants juges de la Cour Suprême ont déclaré, au cours de leurs notes, que la disposition de loi fédérale sur la matière, était impérative.

Dans la cause de *Farmers Mutual Life Ins. Co.* vs. *Whittaker* (37, D.L.R., p. 705) jugée le 15 novembre, 1917, la Cour Suprême de la Province d'Alberta a déclaré valide et constitutionnelle la section 4 de la loi fédérale de 1910; je cite le jugement :

" It is within the Dominion legislative powers, under section 91, of the B.N.A. Act, as to the regulation of commerce and aliens, to prohibit foreign insurance companies from carrying on business without a federal license, even within the limits of a single province; to such extent, sec. 4 of the Dominion Insurance Act, 1910, is *intra vires*: [*Re Insurance Act*, 26 D.L.R. 288, (1916), 1 A.C. 588, explained and followed : see also Annotation, 26 D.L.R. 295]."

D'un autre côté, la Cour Suprême de la Province d'Ontario a été appelée à se prononcer sur la constitutionnalité des sections 11 et 12, et les sections 65 et 66, aujourd'hui, de la présente loi fédérale; elle l'a fait sur une référence du Lieutenant-Gouverneur de la Province d'Ontario; le Gouvernement du Canada était représenté, devant la Cour, par un avocat nommé d'office par celle-ci, vu que le Gouvernement fédéral n'avait pas jugé à propos d'en déléguer lui-même.

Il s'agissait dans la cause de décider, 1° si la loi provinciale des assurances d'Ontario, se rapportant à l'assurance des automobiles dans la province, était constitutionnelle; et 2°, de décider si la loi fédérale sur le même sujet, était inconstitutionnelle, quant aux dites sections 11 et 12, 65 et 66.

Le jugement sur les deux points, fût favorable à la province.

Voici le jugement qui fût rendu :

" A province has the power to enact that all automobile and accident and sickness insurance policies in force in the Province issued by any person or company, shall be subject to and shall contain certain statutory conditions (*Citizens Ins. Co.* v. *Parsons*, 1881, 7, App. Cas. 96, followed).

" Dominion legislation having for its object the regulation of insurance contracts within a province under the guise of legislating for the regulation of trade and commerce, and under its power to control over aliens, is *ultra vires*, where the provisions in regard to the regulation of such contracts, in the form of conditions precedent to the issue of a license to Dominion and British and foreign companies and aliens, are not necessary incidental to its powers to regulate trade and commerce and over aliens." 1926, 2 D.L.R., p. 204.

Ce jugement, en date du 19 février 1926, fût rendu par une majorité des juges de la Cour d'appel, et il ne semble pas y avoir eu d'appel ; il ne s'agissait donc pas seulement de faire décider si les susdits articles étaient *ultra vires* des pouvoirs du Parlement Fédéral, mais il s'agissait aussi de faire décider si les dispositions de la loi provinciale d'assurance, aux sections 168 et 180, étaient *intra vires*.

Dans le présente référence, on nous demande, en réalité, de décider si les mêmes articles de la loi fédérale sont *ultra vires*, sans faire allusion aux dispositions de notre loi provinciale ; on nous demande simplement de décider si les aubains, les compagnies anglaises et étrangères qui auraient obtenu une licence provinciale, seraient encore obligés d'en obtenir une des autorités fédérales.

Je crois qu'il est bon de faire mention ici de quelques unes des dispositions de la loi Des Assurances de Québec, ch. 243, S.R.Q.

" 109. Nulle compagnie d'assurance, société de secours mutuels ou société charitable, ne peut transiger des affaires dans cette province, si elle n'est pas enrégistrée chez le Trésorier de la province, conformément aux dispositions de la présente section."

" Dans la présente loi, hormis que le contexte ne s'y oppose, les mots : ' faire affaires ' ou ' transiger des affaires ' comprennent le fait d'annoncer ou de solliciter, d'offrir d'entreprendre ou d'effectuer de la part d'une compagnie, ou d'une société, un contrat d'assurance quelconque dans une compagnie, et le fait de percevoir, ou de tenter de percevoir des primes, des cotisations sur des billets de dépôt, ou toutes autres redevances au sujet de tel contrat . . . ."

" 112. Les compagnies d'assurance ou sociétés de secours mutuels ou charitables, porteurs d'un permis de la Puissance du Canada, peuvent, sur preuve que leur permis est encore en vigueur, être enrégistrées dans les régistres tenus pour les fins de l'enrégistrement au bureau du Trésorier de la Province."

" 2. Pour les fins de la présente loi, toute compagnie d'assurance porteur d'un permis en vertu de la loi des assurances du Canada,

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est censée être une corporation qui peut être enrégistrée chez le Trésorier de la Province."

" 3. Si une compagnie autorisée en vertu des articles 106 à 116 de la Loi des Assurances du Canada, 1917, est enrégistrée d'après la présente loi, chaque police et chaque certificat émis et en usage dans la province, doivent être conformes et sujets aux dispositions des dits articles, et toute infraction aux dits articles rend la compagnie passible de la suspension ou de l'annulation de son enrégistrement en vertu de la présente loi."

" 5. Les corporations, compagnies ou assureurs au sens de l'article 3 ou du paragraphe 5 de l'article 20 de la loi des assurances du Canada, 1917, peuvent, sur demande faite régulièrement, être admis à l'enrégistrement comme s'ils étaient porteurs d'un permis en vertu de la dite loi."

" 113. Avant l'émission d'un permis ou d'un certificat d'enrégistrement en faveur d'une compagnie ou d'une société ayant son principal bureau d'affaires *ailleurs que dans cette province*, cette compagnie ou société doit produire au bureau du Trésorier de la province, les documents mentionnés dans les trois paragraphes suivants, savoir :

" 1. Une copie de sa charte ou de ses Lettres-Patentes ;

" 2. Une procuration donnée par la compagnie à son principal officier dans la province, etc. . . .

" 3. Pour les compagnies ou sociétés non autorisées en vertu de la loi des assurance du Canada, un état sous telle forme que peut exiger le Trésorier de la province, etc."

Non seulement la province de Québec possède sa Loi d'assurance, mais elle possède également son Code Civil ; nous référons aux dispositions des articles 2468 ets., jusqu'à l'article 2491 de ce code.

Il s'en suit, comme je l'ai dit, qu'il fût toujours compris dans cette province que, tant en vertu de la loi provinciale qu'en vertu de notre code civil, toute compagnie d'assurance ; étrangère, compagnie d'assurance anglaise, sujet britannique ou étranger, pouvait en s'adressant aux autorités provinciales, obtenir un permis pour faire le commerce d'assurance *dans la province de Québec* ; ce pouvoir lui était attribué en vertu de l'article 92 de l'Acte de l'Amérique Britannique du Nord. Le Conseil Privé a déjà décidé d'une manière formelle que le commerce d'assurance est une matière qui entre dans les droits civils de chaque province ; il a également défini le sens et la signification des mots The regulation of Trade and Commerce, mentionnés à la section 2 de l'article 91 de l'Acte ; je n'ai pas à appuyer sur le sens et la signification de ces mots ; il n'y a plus à y revenir.

En vertu de la section 91 de l'Acte de l'Amérique du Nord, le Parlement Fédéral a juridiction sur certaines matières commerciales, comme les banques, les Lettres de change, les billets promissoires et la faillite.

Ces quatre matières touchent, certes aux droits civils des provinces sur lesquels cependant celles-ci ont le pouvoir de légiférer, en vertu de la section 92 du même acte.

Cependant, il convenait qu'il en fût ainsi, non seulement en raison de l'intérêt qu'auraient les citoyens de chacune des Provinces du Dominion d'avoir une législation uniforme sur ces matières, mais aussi en raison de leurs rapports commerciaux avec l'étranger dont il importait de lui accorder les mêmes droits, mais aussi de le soumettre aux mêmes obligations que pourraient avoir nos concitoyens; il y avait donc nécessité et un intérêt supérieur et d'ordre public à ce que le Parlement Fédéral possédât le contrôle, et partant, la juridiction, sur ces matières de commerce général.

En est-il ainsi pour un commerce particulier, celui de l'assurance, que des compagnies étrangères voudraient opérer dans une seule province du Dominion ?

Peut-on soutenir qu'il y a ici nécessité de contrôle fédéral, ou nécessité d'ordre public, pour le Parlement du Canada d'intervenir dans ce commerce particulier, et de dire à ces compagnies : " vous n'opérerez dans la province de Québec, que sur un permis fédéral, que je n'accorderai que sous de certaines conditions que je vous imposerai " ?

Si l'on doit répondre dans l'affirmative, il faut en trouver la compétence du Parlement Fédéral dans la section 91 de l'Acte, et particulièrement aux articles 2 et 25 de cette section.

On a pu, en effet, prévoir qu'il pourrait arriver que dans l'intérêt général du Dominion, il ne fût pas avantageux que les nationaux d'un pays étranger fissent le commerce d'assurance au Canada, dans aucune de ses provinces, ou encore qu'elles ne le fissent qu'après un permis de l'autorité centrale; pour me servir des termes même de cette section 12 de la Loi Fédérale que nous avons à étudier, il pourrait convenir de leur interdire d'immigrer au Canada pour y faire ce commerce, excepté sous son contrôle.

Telle aurait été l'opinion de Lord Haldane, parlant au nom du Conseil Privé dans la cause de la Province d'Alberta, alors qu'il a déclaré qu'un tel contrôle pourrait être exercé par le Parlement Fédéral dans une loi *properly framed*; lors de l'audition de cette cause, devant le Conseil Privé, il s'agissait de la constitutionnalité de la Loi Fédérale de 1910.

Admettant qu'un tel contrôle sur les assureurs étrangers, ou sur les compagnies étrangères ou anglaises, doive et puisse être exercé par le Parlement Fédéral, la question qui se pose est celle de savoir : en quoi doit consister et comment doit s'exercer ce contrôle; il s'agit d'en définir les éléments, mais surtout d'en fixer les limites.

En effet, le contrôle et son exercice sur les compagnies étrangères, sont une chose; mais, autre chose serait l'application aux compagnies d'assurances étrangères de toute la législation fédérale en matière d'assurance, malgré que la province de Québec possède également une Législation complète à cet effet, et que c'est dans cette seule province que voudraient faire affaires les étrangers.

Le contrôle consisterait, dans mon opinion, dans un examen des actes d'incorporation de ces compagnies, d'un examen de leurs ressources

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financières, d'une garantie qu'on pourrait les forcer à donner, et encore, dans une prise en considération des relations de notre pays avec celui de ces compagnies étrangères; si les autorités fédérales étaient satisfaites après ces examens, un permis leur serait accordé et alors, ces compagnies pourraient faire le commerce d'assurance dans la province de Québec, en se conformant aux stipulations de la législation provinciale.

Mais pourrait-il, ou peut-il en être ainsi, avec la nouvelle loi d'assurance fédérale de 1917 ? je dois répondre non.

Je base mon opinion sur les conditions et stipulations que la loi fédérale exige de l'étranger pour obtenir le permis fédéral requis.

Quelles sont ces conditions ? je refère particulièrement aux sections 91, 123, 134 et 135 de la loi fédérale, et qui se rapportent aux assurances sur la vie, le feu, aux accidents et à la maladie, et à l'assurance sur les automobiles; toutes ces dispositions commencent par les mots :

> " It shall be a condition of the license of every company licensed under this Act to carry on the business of . . . insurance, 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," etc. . . .

puis, suit l'énumération de ces conditions et stipulations. Elles se rapportent à la forme et aux conditions des polices, à la substance des contrats, aux déchéances des recours des assurés, au paiement des primes et des indemnités des assurés, aux avis à être donnés après les pertes, aux époques pendant lesquelles des procédures devront être prises, à l'âge des assurés, aux prêts sur la police, à la preuve des pertes, etc., etc.

La plupart de ces conditions sont matières de droits civils, qu'il appartient à la province de Québec de stipuler dans les contrats que peuvent faire des assureurs, qu'ils soient étrangers ou non.

Il est vrai qu'en vertu du paragraphe 4, de la section 134, il est dit que nulles conditions ou dispositions qui seraient incompatibles avec les conditions ou dispositions dont l'énoncé dans la police est exigé par la Loi de la Province ou là police est émise, ne doit, dans la mesure ou elle est ainsi incompatible, être nécessairement introduite dans la police.

Toutefois, cette réserve ne concerne que ce qui est mentionné dans l'article 134; il n'y a aucune réserve quant aux stipulations mentionnées aux articles 91, 123 et 135.

Il en est de même encore de certaines dispositions de la loi fédérale touchant l'administration générale des affaires des compagnies étrangères, auxquelles dispositions les assureurs étrangers se trouveraient soumis.

Ces conditions et stipulations, imposées par la nouvelle loi de 1917, sont-elles nécessaires et essentielles pour l'exercice d'un contrôle efficace ? Sont-elles inérantes à l'exercice d'un contrôle par le Parlement Fédéral ?

Je réponds dans la négative; la disposition de l'article 25 de la section 91 de l'Acte ne peut s'entendre et se comprendre comme devant exiger cela.

En effet, il ne s'agit pas dans la présente loi fédérale sur les assurances, d'une loi générale concernant le commerce des étrangers, " aliens "; du reste, nous avons déjà une loi concernant les immigrants étrangers.

Je résume : dans mon opinion, cette loi, en ce qui concerne les compagnies d'assurance anglaises, étrangères, ou les assureurs étrangers, n'est pas, quant à eux, une loi *properly framed*, pas plus que ne l'était la loi de 1910.

Je crois bien traduire cette expression de Lord Haldane, en disant qu'elle est mal construite, mal charpentée quant aux assureurs étrangers.

A la première question qui nous est soumise, je réponds dans la négative : je considère que les sections 11, 12, 65 et 66 constituent un excès de pouvoir du Parlement Fédéral et sont inconstitutionnelles.

A la deuxième question, je réponds, quant à la première partie dans l'affirmative; et quant à la seconde partie, dans la négative.

ALPHONSE BERNIER,
J.C.B.R.

No. 14.

Answers given by Howard J.

TO THE FIRST QUESTION :

As to Foreign Insurers, Yes.

As to British Insurers, I am in doubt but am inclined to answer in the affirmative.

TO THE SECOND QUESTION :

To the first part, Yes.

To the second part, No.

E. EDWIN HOWARD,
J.K.B.

No. 15.

Reasons for Judgment of Howard J.

HOWARD, J. : As was pointed out by Counsel at the argument at bar, those who carry on the business of insurance in Canada fall into five classes, viz. :—

1o. Natural persons who are British subjects residing in Canada, whether individuals or unincorporated groups;

2o. Companies incorporated by one of the Provinces of Canada;

3o. Companies incorporated by or under the authority of the Dominion of Canada;

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4o. British underwriters, whether natural persons or incorporated companies, not of Canadian citizenship or origin;

5o. Foreign underwriters, whether natural persons or incorporated companies.

For many years following Confederation, the Dominion asserted unquestioned authority over all these classes of underwriters to the extent that they were not allowed to engage in the business of insurance anywhere in Canada without first obtaining from the Dominion a license to do so and conforming to the manifold requirements of the Dominion Insurance Act in force at the time.

In course of time the authority of the Dominion under the B.N.A. Act to require an underwriter of the first mentioned class to obtain a license from the Dominion, as a condition precedent to doing insurance business in Canada, was successfully challenged. A few years later, the Privy Council held that it was also *ultra vires* of the Dominion to compel a company incorporated by one of the provinces to take out a Dominion license and to comply with the provisions of the Insurance Act of Canada before undertaking insurance contracts in Canada.

Although the authority of the Dominion in respect of underwriters of the three remaining classes has been under consideration by our highest courts, it has not as yet been definitely passed upon. The Dominion continues to assert the right to require such underwriters to take out Dominion licenses and to conform to the provisions of the Insurance Act, while some of the provinces, including Quebec, take the position that a British or a foreign insurer who has obtained a license from a particular province to carry on the business of insurance in that province, needs no further authority, and in particular does not need a license from the Dominion to enable it to do such business; in other words, they challenge the authority of the Dominion to require such underwriter to obtain a license from the Dominion, and otherwise, to comply with the provisions of the Insurance Act.

It is in this connection that the following questions are now submitted to this Court:

> " 1o. Is a foreign or British insurer, who holds a license under the Quebec Insurance Act to carry on business within the province, obliged to observe and subject to sections 11, 12, 65 and 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer?
>
> " 2o. Are sections 16, 20 and 21 of the Special War Revenue Act within the legislative competence of the Parliament of Canada?
>
> " 3o. Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the provincial law a license to carry on business in the province and any other case? "

Sections 11 and 12 of the Insurance Act, which are often referred to as the licensing sections, read 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 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.

" 12. 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 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."

Sections 65 and 66 impose penalties for violations of sections 11 and 12 respectively, making such violations, offences and rendering an offender liable, upon indictment or summary conviction, to a fine and, in the case of a natural person, to imprisonment as well.

Counsel for the Attorney General of Quebec point out that the question as to the validity of these licensing sections of the Insurance Act has already been dealt with, though not expressly decided, by the Privy Council (*in re Attorney General of Canada* and *Attorney General of Alberta* [1916], 1 A. C. 588, and *in re Reciprocal Insurance Reference* [1924], A.C. 328), but that it has since been squarely presented to the Court of Appeals of Ontario by the Government of that province (*in re Insurance Contracts*, 2 D.L.R. 1926, p. 204) and that that Court has decided in effect that the said sections are *ultra vires* of the Parliament of Canada. In this I am unable to agree with the learned Counsel, for I consider that the question submitted to the Ontario Court of Appeals is essentially different from that

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which we are now called upon to answer. As already seen, this Court is asked whether sections 11, 12, 65 and 66 of the Insurance Act are within the legislative competence of the Parliament of Canada, whereas the question submitted to the Court of Appeals of Ontario included sections 134 and 134A (now 135) of the Act. As a matter of fact, the reference to the Ontario Court in its original form did not mention sections 11, 12, 65 and 66 at all, but related exclusively to sections 134 and 134A, and it was submitted in that form to the Dominion Government for the purpose of acquainting that Government with the proposed reference and giving it an opportunity to intervene and maintain the validity of the impugned sections. The Dominion Government did not accept that invitation, and the question was subsequently altered to include the licensing sections of the Insurance Act, without further notice to the Dominion Government. That indicates, what moreover, otherwise appears to be the fact, that the challenge of the Province of Ontario was to the competence of the Parliament of Canada to issue licenses containing such conditions as those set out in sections 134 and 135, rather than to its competence to enact the licensing sections of the Act, which alone are mentioned in the reference to this Court. The remarks of Mr. Justice Masten, who spoke for the majority of the members of the Court, confirms that statement. See especially pages 220 and 221 of the report, 2 D.L.R., 1926, where His Lordship, after conceding that the Dominion has authority to require a foreign underwriter, whether an incorporated company or a natural person, to obtain a Dominion license as a necessary condition of its commencing business in Canada, continues :

> " 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."

The attention of the Court of Appeals of Ontario was directed, not to the validity of the provisions of the Insurance Act (sections 11 and 12) which prescribe the conditions with which the foreign underwriter must comply in order that he may commence doing insurance business in Canada, but to the validity of the provisions of the Act which conceivably may purport to control the way he conducts his business in Canada after he gets permission to begin.

But, even if the question included in the present reference were in every respect to the same effect as those submitted to the Ontario Court of Appeals, I am bound to say—and I do so with all respect—that I do not think that we should consider the judgment of that Court of binding authority or even as a guide, for the simple reason that there was in fact an equal division of judicial opinion on that reference, Mr. Justice Middleton concurred with Masten, J.A., but Chief Justice Latchford and Smith, J.A.

took the opposite view, holding that the sections of the Insurance Act involved in the Reference were *intra vires* of the Dominion, while Riddell, J.A. frankly stated that he had not arrived at a definite conclusion on the question submitted but that, in order that a judgment might be delivered, he concurred with Masten, J.A. with whose opinion he was inclined to agree (see page 208 of the report).

For these reasons, following the rule mentioned by Mr. Justice Masten, that in questions such as that now under consideration, a Court should limit its answers strictly to the questions submitted, I shall confine attention to the sections of the Insurance Act mentioned in the Reference, without taking into consideration other sections of the Act which might possibly encroach upon the legislative domain of the Province of Quebec.

The question being thus restricted, the greater part of the argument on behalf of the Attorney-General of Quebec is disposed of by the judgment of the Privy Council in *re Attorney General of Canada and Attorney General of Alberta*, already cited, in which it was held that it was within the power of the Parliament of Canada, by properly framed legislation, to require a foreign underwriter to obtain a Dominion License before doing any business of insurance in Canada. The decision of the Court on the point was delivered by Lord Haldane in a much quoted paragraph, as follows :—

> " The second question is, in substance, whether the Dominion Parliament has jurisdiction to require a foreign company to take out a license from the Dominion Minister, even in a case where the company desires to carry on its business only within the limits of a single province. To this question their Lordships' reply is, that in such a case, it would be within the power of the Parliament of Canada, by properly framed legislation, to impose such a restriction. It appears to them, that such a power is given by the heads in s. 91, which refer to the regulation of trade and commerce and to aliens. This question also is therefore answered in the affirmative." [1916] 1 A.C., p. 597.

The matter was again referred to in the " Reciprocal Insurance Reference " and, though the judgment in that case has no direct bearing on this reference, since it dealt exclusively with contracts of reciprocal insurance, the following paragraph is worth quoting, because it re-affirms the opinion expressed by Lord Haldane : [1924] A.C., p. 347.

> " 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 sections 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

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Lord Haldane, in delivering the judgment of the Board in *Attorney General of Canada* v. *Attorney General of Alberta* (*supra*), 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)."

Indeed, that the Dominion has authority to require a foreign insurer to take out a Dominion licence, as a condition of its doing business in Canada, is admitted in so many words by the Attorney General of Quebec (see his factum, page 9, lines 21 and seq.).

Referring again to Mr. Justice Masten's judgment (p. 212) *mutatis mutandis*, the present inquiry is, by the decision in the Reciprocal Insurance case, narrowed to this question : is the legislation of the Dominion referred to in question 1 " properly framed " so as to be competently enacted? And here I appear to part company with the learned jurist, for my answer to this question must be in the affirmative.

The legislation under attack, as it now stands, does not affect either of the classes of insurers concerning which we have authoritative decisions against the pretensions of the Dominion but applies only to companies incorporated under Dominion authority, foreign underwriters and British, as distinguished from Canadian, underwriters.

It may be noted parenthetically that, although section 11 of the Act applies to Canadian companies, group 3 of our classification—as well as to aliens, Canadian companies are not included in this reference. Evidently, the Province of Quebec is not concerned about the regulations which the Dominion may impose upon companies incorporated by itself, or it recognizes that the Dominion has uncontrolled power to require such companies to obtain Dominion licenses on such conditions as Parliament may choose to impose. Be that as it may, Dominion control over Canadian companies is not now in controversy, the reference being confined to the last two groups of our classification—British underwriters not of Canadian origin or residence, and alien insurers, whether natural persons or foreign companies.

Returning now to the question which we have to answer, let us first consider the validity of this legislation in its application to foreign (not British) underwriters.

The Attorney-General of Canada takes his stand upon the provisions of the B. N. A. Act which give the Dominion exclusive legislative authority in respect of " The Regulation of Trade and Commerce " (Sec. 91, No. 2) and " Naturalization and Aliens " (Sec. 91, No. 25), while the Attorney-General for Quebec relies upon the provision which assigns to the provinces the rights to legislate with regard to " Property and Civil Rights within the Province " (Sec. 92, No. 13).

It is a well-established rule of interpretation of statutes that a special enactment prevails over one that is general in its terms and scope. As

between " Trade and Commerce " and " Property and Civil Rights," there seems to be little to choose in that respect, for both are broad and general. But the case is different with regard to " Aliens." That is, to my mind, specific and definite : at any rate no one can question that it is less general than " Property and Civil Rights," and, therefore, especially since it is backed by the power to control trade and commerce generally, and the fact that the residuum of legislative authority belongs to the Dominion, it gives authority to the Dominion to legislate with regard to aliens who seek to enter and do business in Canada, even to the extent of encroaching upon the Provincial Legislative field of Property and Civil Rights within the Province. That was held in effect *in re Citizens Insurance Company and Parsons*, [1881], 7 A.C. p. 96, and it follows from the decision in *Union Colliery* and *Brydon* [1899], A.C. p. 581, where it was held *ultra vires* of the Province of British Columbia to forbid the employment of Chinese in mines, showing that the Dominion alone is competent to deal with the civil rights of aliens in that way.

> " The subject of ' naturalization ' seems *prima facie* to include the power of enacting what shall be the consequences of naturalization, or, in other words, what shall be the rights and privileges pertaining to residents in Canada after they have been naturalized." (Lord Watson, at p. 586.)

From which it manifestly follows that legislation which determines what an alien must do to obtain permission to enter Canada and carry on business here, and what will be his duties as well as his privileges while carrying on business in Canada, is properly framed legislation. And I do not know of any reason for differentiating between an alien individual and an alien corporation.

There is, to my mind, no logical principle which would justify distinguishing between the granting of a license to an alien insurer on condition that he shall pay fees, furnish security for the due performance of his contracts, and submit his business to inspection, and the granting of the license on condition that only certain kinds of contracts may be entered into by him in Canada.

The license is no more than an agreement between the Dominion and the alien insurer, whereby the latter is permitted to begin to do business in Canada, and, if the alien insurer does not like the conditions exacted by the Dominion for its license, it need not accept them, but the license will not issue; if it does accept them, it may enter the Provinces of Canada on the understanding that it will offer the citizens only certain sorts of contracts. That, to my mind, is not an interference with property or civil rights in any province which the alien company may enter. The citizen of that province will find that, when he plans to take out a policy with the foreign company, he will be asked to agree to certain conditions in the policy. He has no " civil right " to demand another sort of contract from the company with different conditions, whether the conditions contained

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No. 15. Reasons for Judgment of Howard, J. —*continued.*

in the policy were inserted by the company of its own volition, or at the request of the Dominion.

The only restriction so far placed upon the Dominion's exercise of its licensing power is that resulting from the judgment in the *Insurance Act Reference* of 1916, where it was held that the Dominion cannot regulate by a licensing system a particular trade in which citizens of the respective provinces would otherwise be free to engage. As section 11 of the Act now stands, it affects only a particular set of people—aliens—over whom the Dominion unquestionably has jurisdiction, and does not, in my opinion, affect the particular trade of insurance in the sense submitted on behalf of the Attorney-General of Quebec.

I concur in the opinion of Smith, J.A., in the Ontario Reference case, when he says :—

> " 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 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. Section 134 (4) so provides, though in my view this would be the case without this subsection."

In short, the Provinces are left by these sections, as now framed, in full possession of the legislative field of property and civil rights.

It follows that, if the Dominion has the right to exact these conditions before granting a license, it is *intra vires* in imposing penalties upon the licensee for failing to comply with the conditions. Once the general power of the Dominion to legislate as it has done in the section now under consideration is admitted, one must also admit its power to impose penalties for non-compliance with the legislation, and that without any regard to whether the licensee holds a Provincial license or not.

At the argument at the bar, sections 134 and 135 were referred to as though the conditions therein contained applied to all classes of insurance. It is interesting to note that, while the Act purports to apply to the major branches of insurance—life, fire, marine—and to more than a score of what are generally considered minor branches, these sections 134 and 135 apply to only three of the minor branches, namely, accident, sickness and automobile insurance. No attempt is made to impose a complete set of conditions in respect of any of the other kinds of insurance.

Sections 80 *et seq.*, deal with policies of insurance in general, but I fail to find therein anything that could be construed as an encroachment upon the provincial field of civil rights. Section 91 deals particularly with life insurance and provides that every policy that the licensee shall issue in Canada shall contain in substance certain stated provisions, some of which do indeed go into the details of the contract and to that extent might be

objectionable. But, as I have said, I consider that the Dominion has authority to impose even such conditions upon an alien who seeks permission to enter Canada to carry on the business of insurance here. That applies also to section 115, which deals very briefly with fraternal benefit societies licensed to do life insurance in Canada.

Fire insurance companies are dealt with in Part IV of the Act, of which section 123 sets out the conditions of the license from the Dominion to carry on that class of insurance. Here also there appears to be no encroachment upon the Provincial field, except perhaps with regard to proofs of loss (paragraph c) and that, in my opinion, must give way to Provincial law in case of conflict.

As we have seen, section 134 deals exclusively with accident and sickness insurance and contains a long list of conditions to be included in the policies issued by the licensee. But any possible conflict with Provincial law in that regard is avoided by the following express exception :—

> "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."

As Mr. Justice Smith says, it was not necessary to insert that exception, for it should be read into all such provisions of the Insurance Act.

Section 135 deals at length with automobile insurance and, singularly enough, the exception just quoted from 134 does not appear in 135. The reason for omitting it is not apparent, but the omission does not make any difference.

None of the other branches of insurance are expressly dealt with in the Act.

If I have correctly grasped the scope of the argument made on behalf of the Attorney-General of Quebec, there is no objection to said section 11 *per se*, but that it is objectionable because, and in so far as it indirectly, through other sections of the Act, purports to control, by imposing conditions, etc., the contracts into which the licensee may enter in Canada. On the principle involved in the maxim, "*Inclusio Unius fit exclusio alterius*," it follows that, in any case, section 11 is not *ultra vires* the Parliament of Canada with regard to all the classes of insurance in respect of which there are no conditions imposed by the Act. It would also seem to follow that it is *intra vires* in respect of accident and sickness insurance, in view of the exception quoted. So the argument against the Dominion authority to enact these sections is restricted to those branches or classes of insurance in respect of which conditions are imposed by other sections of the Act—life, fire and automobile insurance. This Court, therefore, could not in any case, hold section 11 to be *ultra vires* altogether but at most, could so hold only in respect of these special classes of insurers. But, as already intimated, my own view is that the section does not directly or indirectly interfere with civil rights at least beyond the authority conferred by the B.N.A. Act upon the Parliament of Canada.

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No. 15. Reasons for Judgment of Howard, J. —*continued.*

The case of British insurers—Section 12 of the Act—is, perhaps, more difficult. If they are " aliens " within the meaning of the B.N.A. Act, the same answer must be given in respect of said section 12, as in respect of section 11. I do not think that, when the Act was passed, any jurisconsult would have given it as his opinion that British subjects were meant to be included in the term " aliens." But it is equally true that, when the Act was passed, the words " qualified persons," as applied to membership in the Canadian Senate, were not intended to include women, and yet the Privy Council decided quite recently that those words should be interpreted in a more modern sense, that is, the enlarged view which now obtains with regard to the political status of women. Their Lordships say : " The B.N.A. Act planted in Canada a living tree, capable of growth and expansion within its natural limits " (*Edwards & al*, and *Attorney-General of Canada, et al.*), and so they proceed to give the words then under consideration the meaning which, in their opinion, attaches to them at the present time, rather than to construe them as they would have been construed at the time the Act was passed.

Why should the word " aliens " not be treated in the same way? As a matter of fact, it has been interpreted as giving the Dominion Parliament authority to exclude from Canada British subjects coming from other Dominions of the Empire, notably in the case of the Sikhs and other Indians who a few years ago sought to enter Canada by way of British Columbia.

So far as I know, the point has not yet been authoritatively decided, but meanwhile the Dominion assumes, rightly or wrongly, that it has authority to treat British subjects who are not citizens of Canada, as aliens.

Again, if that be true with regard to natural persons, why not of incorporated companies?

For these considerations, I should be disposed to answer the second part of the first question submitted in the affirmative.

As to the second question, I concur in the answers given by my learned colleagues, and the reasons advanced for them, which I need not repeat.

The said sections 16, 20 and 21 of the Special War Revenue Act are expressly authorized under section 91, paragraph 3 of the B. N. A. Act, whereby the Dominion has full and uncontrolled powers of taxation, direct and indirect, to the extent even that it can at its discretion levy taxes that are discriminatory.

All it purports to do by the sections of the Special War Revenue Act that are attacked is to impose a tax upon Canadians who insure with underwriters who are not licensed by the Dominion to carry on business in Canada. Here the power is exercised openly and directly in a tax act, and not incidentally or indirectly in a statute that deals generally with another subject or subjects.

The Dominion of Canada levies customs duties upon the prices of goods and commodities imported into Canada, and it seems to be equally fitting that a tax should be imposed upon the price paid by Canadians for insurance

covering property or persons in Canada effected with underwriters outside of Canada. It may be that the tax is aimed at the foreign insurer—that it is an indirect method of striking at him—but the motive that inspires the legislation is of no effect; its validity depends entirely upon whether or no the Parliament of Canada has power to enact it.

To the second question, part 1, I should, therefore, answer in the affirmative, and in the negative to part 2.

E. EDWIN HOWARD,
J.K.B.

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10 **No. 16.**

Answers given by Bond J.

TO THE FIRST QUESTION :—

Yes—as to Foreign Insurers, for the sections relating to them are constitutional.

No—as to British Insurers, for the sections relating to them are unconstitutional.

TO THE SECOND QUESTION :—

To the first part—Yes.

To the second part—No.

20 W. L. BOND,
J.K.B.

No. 17.

Reasons for Judgment of Bond J.

Two questions are submitted for opinion :—

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

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

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

Without repeating at length the formal terms of the sections of the Insurance Act referred to, it may be sufficient to say that section 11 of the Act makes it unlawful for any alien, whether a natural person or a foreign company, within Canada to solicit or accept any risks, issue or deliver

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No. 17. Reasons for Judgment of Bond, J.— *continued.*

receipts or policies of insurance, collect or receive premiums, inspect risks or adjust losses, advertise for or carry on any insurance business, etc., unless under a license from the Minister granted pursuant to the provisions of the Act.

Section 12 declares that 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 an office or agency for the transaction of any business relating to insurance, etc., unless under a license from the Minister granted pursuant to the provisions of the Act.

Sections 65 and 66 provide penal sanctions for the violation of sections 11 and 12.

Dealing with the first question, it is important to note, at the outset, that a question very similar in terms has already been touched upon in connection with the former Insurance Act of 1910 by The Supreme Court of Canada (48 S.C.R. 260), and also by the Judicial Committee of the Privy Council (1916, A.C. 588 and also 25 K.B. 187). In that case (*In re The Attorney-General for Canada* v. *The Attorney-General for Alberta, et al.*) the question arose over the validity of certain sections of the Insurance Act of 1910 resembling, in effect, the sections now under consideration in the present Act, but wider in their scope, inasmuch as they included certain classes of underwriters, being natural persons. British subjects residing in Canada, partnerships and associations of a similar character, and also provincial companies. As the decision of the judicial Committee of the Privy Council held these former sections to be *ultra vires* of the Dominion Parliament inasmuch as they extended to persons not falling within the jurisdiction of that Parliament, the Act now under consideration has eliminated these classes of insurers just named, from the category of those to whom the Act is now made applicable.

The present Act, by its terms, is made applicable only to Canadian companies, aliens, and to British companies or non-resident British individuals, and it is sought to justify the terms of the present Act by nvoking, in favour of the jurisdiction of the Dominion Parliament, subsection 2 (the Regulation of Trade and Commerce) and subsection 25 (Naturalization and Aliens) of section 91 of the British North America Act.

In the case of *The Attorney-General for Canada* v. *The Attorney-General for Alberta, etc., supra*, Viscount Haldane, in delivering the judgment of the Judicial Committee of the Privy Council, said :—

> " Their Lordships think, that as the result of these decisions, it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation by a licensing system of a particular trade in which Canadians would otherwise be free to engage in the Provinces."

But, at a later stage in his judgment, in dealing with the second question then submitted, he spoke as follows :—

> " The second question is, in substance, whether the Dominion Parliament has jurisdiction to require a foreign company to take

out a license from the Dominion Minister, even in a case where the company desires to carry on its business only within the limits of a single province.

" To this question their Lordships' reply is that in such a case, it would be within the power of the Parliament of Canada, by properly framed legislation, to impose such a restriction. It appears to them that such a power is given by the heads in section 91, which refer to the regulation of trade and commerce and to aliens."

The matter again came before the Judicial Committee of the Privy Council in " *In re Reciprocal Insurance Reference* " (1924, A.C. 328), where Mr. Justice Duff said (p. 347) :—

" Their Lordships do not express any opinion as to the competence of the Dominion Parliament, by virtue of its authority in relation to aliens and to trade and commerce, to enact sections 11 and 12 (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 of Canada* vs. *Attorney-General of Alberta* (*supra*), 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."

The matter has since been further considered by the Appellate Division of the Ontario Supreme Court (*Re Insurance Contracts*, 1926, 2 D.L.R. 204). That case, however, turned largely, not upon the right to do business, but the method in which such business may be done. This latter may fairly be considered the subject of civil rights in the Province—a subject which is reserved for the jurisdiction of the Provincial Legislatures. In this last-named case there was a difference of opinion among the Judges. Riddell, Middleton and Masten, JJ.A., reached the conclusion that Dominion Legislation, having for its object the regulation of Insurance contracts within a Province under the guise of legislating for the regulation of trade and commerce, and under its power of control over aliens, is *ultra vires*, where the provisions in regard to the regulation of such contracts, in the form of conditions precedent to the issue of a license to Dominion and British and foreign companies and aliens, are not necessarily incidental to its powers to regulate trade and commerce and over aliens.—Mr. Justice Riddell only agreed *dubitante*, Latchford, C. J., and Smith, J.A. dissented.—In order to support what I stated above—to the effect that this case turned not so much upon the right to do business as the method in which such business might be done, reference may be made to the judgment of Masten, J.A.,

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who delivered the judgment of the majority of the Court. At page 221 he spoke as follows :—

> " 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 ".

The decision of the Appellate Division of the Ontario Supreme Court *re Insurance Contracts*, 1926, 2 D.L.R. 204, takes into consideration a number of features that are not before this Court upon the present reference; for example, the Ontario Court had to deal with the effect of section 134 of the Act, which is a lengthy section dealing with conditions in policies of various classes of insurance, and rights and disabilities flowing therefrom or incidental thereto.

All these, as pointed out by Masten, J.A. in the passage above quoted, are subsequent to the Dominion License, and are details of contracts made with citizens in a Province, and thus relate to civil rights in the Province.

As pointed out by Mr. Justice Masten, page 212, it is a well recognized rule, that in the discussion of questions like the present, the Court ought to limit its answers strictly to the questions submitted; and the sections under consideration in the present enquiry, namely sections 11 and 12, are sections which relate solely to the right to commence business, and this Court is not concerned (for the present, at least) with the question as to whether there may be other sections in the Insurance Act which may conceivably trench upon the civil rights of the inhabitants of the Provinces, by further treating of the *method* in which such business may be done.

Reference should also be made to the case of *Matthew* vs. *Guardian Insurance Company*, where the Supreme Court of Canada treated the Insurance Act, and the sections in question, as being free from doubt as to their validity (45 D.L.R., 32).

The following observation is also in point :—

> " But the Dominion has a special jurisdiction in relation to insurance jurisdiction touching, that is to say, the rights of foreign countries and foreigners generally to engage in the business of Insurance in Canada."

Per Duff, J., In Reference to Validity of the *Combines Act Investigation*, 1929 (C.L.R., at p. 417).

In view of the foregoing holdings and especially the observations of Viscount Haldane and Mr. Justice Duff, I should say that the right of the

Dominion Parliament, in principle, to enact such legislation as is contained in sections 11 and 12, under the terms of the sections of the British North America Act invoked, is sufficiently well established; and there only remains to be considered the question whether such legislation as is contained in the said sections 11 and 12 is—to use the expression of Viscount Haldane—" properly framed."

It was objected, on behalf of the Attorney-General of Quebec, that this is not " alien legislation," or legislation dealing with aliens, because it does not appear in an " alien " Act, but is introduced into the Insurance Act for the purpose of appropriating jurisdiction.

But, if the Dominion Parliament has the right to deal with the matter at all, it seems to me to be of little moment what vehicle is employed, if the intent is to restrict the rights of aliens in connection with the business of insurance.

The " Alien Act "—" *An Act respecting British Nationality, Naturalization and Aliens* "—(R.S.C., 1927, Chapter 138), might be amended so as to include in its terms the provisions of section 11 (*b*) of the Insurance Act, as well as the provisions of section 65, in so far as relates to aliens. But the Insurance Act is equally convenient, if not more so, for the purpose, and while the " Alien Act " might contain an enumeration of the various restrictions placed upon aliens in connection with various classes of business, these restrictions may equally well be inserted in the provisions of the particular Acts dealing with these various businesses in which restrictions are provided. Precedents to that effect may be found, for instance, in the Bank Act, and in the Railway Act, in both of which are incorporated restrictions upon the rights of aliens as Directors. (R.S.C., 1927, Chapter 12, section 20 (3), & R.S.C., 1927 chapter 170, section 113 (3).—)

I should therefore conclude, in respect to this objection, that if the right otherwise exists, the particular Act in which the right is exercised is of little importance, provided it be correctly expressed or framed.

It is further contended on behalf of the Attorney-General of Quebec, that this is not alien legislation, because it applies only to one class of business, or to quote from the Factum of the Attorney-General of Quebec (p. 9) :—

> " In other words, it is not a statute passed with respect to the disabilities of all aliens which would prevent them from doing business generally in Canada without a license, but is an obvious attempt on the part of the Dominion Parliament to intrude into the business of insurance which is committed to the legislative jurisdiction of the province under section 92 of the B. N. A. Act."

The answer to this objection, it seems to me, is that since the Dominion Parliament has authority—as it undoubtedly has—to legislate respecting aliens, it is by no means necessarily bound to exercise that power to its utmost limits at one time. I can see no good reason why it should not, in the exercise of its discretion, legislate as and when it seems desirable and, as in the case of Banks and Railway Companies in the past, so it now

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proposes to impose restrictions upon aliens, in respect to the trade or commerce of Insurance.

I should consider such legislation to be alien legislation even though it does apply, on this occasion, so as to affect initially, a subject which also falls, subsequently and in another aspect, within the legislative authority of the province, that is to say, the exercise of civil rights within the province.

The Act in question does not purport to touch provincially incorporated companies, nor Canadian incorporated underwriters—as was the case in the Act of 1910—but confines its application, in so far as sections 11 and 65 are concerned, to companies and aliens over whom it asserts, on authority, a jurisdiction.

The legislation in question does not appear to me to infringe upon principle; it does not purport to regulate a particular trade in which Canadians might otherwise be free to engage; but what it does enact is that *aliens* shall not engage in the business of insurance except under certain conditions, and the right to so enact would certainly seem to flow from the right conceded to the Dominion Parliament to legislate in respect to trade and commerce, and aliens, by properly framed enactments.

I would therefore conclude that sections 11 and 65 are constitutional, and a foreigner is obliged to observe and is subject to the provisions of the same. But I expressly refrain from any opinion as to whether or not other sections of the Act (*e.g.*, section 134) are *ultra vires*, inasmuch as they are not before this Court on this Reference.

I do not think that my conclusion is in any way opposed to the principles laid down in the case of *The Citizens Insurance Company* v. *Parsons* (7 A.C. 96), for the Province is not debarred from legislating in respect to these alien insurers *quoad* the Province, provided such legislation be not inconsistent with the provisions in this respect of the Dominion Act as to the right to do business at all. (See observations of Duff, J., "*In re*: *Reciprocal Insurance Legislation*," 1924, 1. D.L.R., pp. 801 and following).

I would distinguish however, (on purely legal grounds), sections 12 and 66, which relate to any British company or a British subject not resident in Canada.

As I have attempted to point out before, the jurisdiction of the Dominion Parliament, in my opinion, rests upon the combined effect of the two subsections of section 91 of the British North America Act dealing respectively, with trade and commerce, and aliens—and this opinion is fortified by the intimation above quoted from the observations of Viscount Haldane and Mr. Justice Duff.

But in the case of British insurers, one of the essential elements is lacking. The only definition of an alien that is applicable, is that contained in the Naturalisation Act (R.S.C. 1927, Chapter 138, section 2), namely: " a person who is not a British subject," and, consequently, in so far as the jurisdiction of the Dominion Parliament is based upon the right to legislate in respect to aliens, it fails at this point. It is contended however, apparently, that the introduction into sections 12 and 66 of the words

" To immigrate into Canada for the purpose, etc.," brings the sections within the purview of section 95 of the British North America Act. It seems to me, however, that such an unnatural use of words in an Insurance Act cannot create a jurisdiction which would not otherwise exist.

The second subsection of section 12 ascribes an inadmissible meaning to the word " immigrate " which, if governing the interpretation of subsection (1), would extend the scope of section 12 to matters obviously not comprised within the subject of immigration. Per Duff, J., *In re*: *Reciprocal Insurance Legislation*, 1924, 1 D.L.R., P.C., at page 803.

In the case of aliens, I should say that there was clearly intended legislation in respect to aliens in connection with insurance. But I can see no reasonable connection between the subject of immigration and the subject of insurance.

As was said by Mr. Justice Newcombe (Reference *In re : Validity of the Combines Investigation Act*, 1929, C.L.R., at p. 423) :—

> " The principle is illustrated by a remark of Lord Dunedin in the *Grand Trunk Railway Company of Canada* vs. *Attorney-General of Canada*, which may be applied *mutatis mutandis*; his Lordship said :—
>
> ' Accordingly, the true question in the present case does not seem to turn upon the question whether this law deals with a civil right—which may be conceded—but whether this law is truly ancillary to Railway legislation.' "

As Mr. Justice Duff said (*In re*: *Reciprocal Insurance Reference*, [1924], A.C. 328) :—

> " In accordance with the principle inherent in these decisions, their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under section 91 (27), appropriate to itself, exclusively, a field of jurisdiction in which apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid."

I would apply the same principles to sections 12 and 66, and would say that the Dominion Parliament is not entitled to appropriate to itself a jurisdiction in regard to civil rights in the Province by the use of words having a strained and unnatural construction. As Mr. Justice Duff further pointed out, the true nature of an enactment must be considered,— its pith and character and its substance rather than its form.

The section in question, in substance, notwithstanding its form, is an enactment regulating the business of insurance, in respect to a class over whom, not being aliens, the Dominion Parliament has no jurisdiction, for it fails to come within the scope of any power or combinations of powers confided to it.

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No. 17. Reasons for Judgment of Bond, J.— *continued.*

I therefore reach the conclusion in respect to sections 12 and 66, that they are not covered by the provisions of the British North America Act relating to trade and commerce, and aliens, nor are they covered by the provisions of the Act relating to immigration properly so-called, and are therefore *ultra vires*, or, in the terms of the question, unconstitutional as regards such insurer.

As regards the second question, it deals with the legislative competence of the Parliament of Canada to impose a tax in respect to insurance effected with unlicensed British or foreign companies, and others. It seemed to be conceded at the argument that this question, to a large extent, depended upon the answer to the first question; and, to that extent, I agree that the Special War Revenue Act may well be made applicable to all coming within the scope of the authority of the Dominion Parliament.

I am, however, quite unable to distinguish between the case of an insurer who has obtained or is bound to obtain, under the provincial law, a license to carry on business in the Province, and any other case; and I should answer the second question by saying, that sections 16, 20 and 21 of the Special War Revenue Act are within the legislative competence of the Parliament of Canada, and that there is no difference between the case of an insurer who has obtained or is bound to obtain, under the Provincial law, a license to carry on business in the Province, and any other case. The sections fall clearly under the express authorisation of section 91 (3) of the British North America Act.

I would therefore, answer the questions thus :

FIRST QUESTION :—

Yes—as to Foreign Insurers, for the sections relating to them are constitutional.

No—as to British Insurers, for the sections relating to them are unconstitutional.

SECOND QUESTION :—

To the first part—Yes.

To the second part—No.

W. L. BOND,
J.K.B.

In the Court of King's Bench.

No. 18.

No. 18. Motion of the Attorney-General of Quebec for leave to appeal to His Majesty in Council, 20th October 1930.

Motion of the Attorney-General of Quebec for leave to appeal to His Majesty in Council.

That he be allowed to appeal from the judgment rendered herein on the 28th June 1930 by this Honourable Court to His Majesty's Privy Council.

Québec, October 20th, 1930.

CHARLES LANCTÔT,
Solicitor for the Attorney General of Quebec.

To Mr. LOUIS ST. LAURENT, K.C.,
Solicitor for the Attorney-General
of Canada.

Take notice that the above motion will be presented to the Court of King's Bench (Appeal Side) sitting at the Court House in Montreal, on Tuesday, the 21st day of October, 1930, at 10 o'clock a.m., or so soon as counsel may be heard.

Québec, October 20th, 1930.

CHARLES LANCTÔT,
Solicitor for the Attorney-General of Quebec.

No. 19.

No. 19. Motion of the Attorney-General of Canada for leave to cross-appeal to His Majesty in Council, 20th October 1930.

Motion of the Attorney-General of Canada for leave to cross-appeal to His Majesty in Council.

That in view of the appeal herein by the Attorney-General of Quebec to His Majesty's Privy Council from the judgment rendered herein on the 28th June 1930, by this Honourable Court, he be allowed to enter a cross-appeal to His Majesty's Privy Council from the said judgment.

Quebec, October 20th, 1930.

LOUIS ST. LAURENT,
Solicitor for the Attorney-General of Canada.

To Mr. CHARLES LANCTÔT, K.C.,
Solicitor for the Attorney-General
of Quebec.

Take notice that the above motion will be presented to the Court of King's Bench (Appeal side) sitting at the Court House in Montreal, on Tuesday, the 21st day of October 1930, at 10 o'clock a.m. or so soon as Counsel may be heard.

Quebec, October 20th, 1930.

LOUIS ST. LAURENT,
Solicitor for the Attorney-General of Canada.

In the Court of King's Bench.

No. 20. Order granting the Attorney-General of Quebec leave to appeal to His Majesty in Council, 22nd October 1930.

No. 20.

Order granting the Attorney-General of Quebec leave to appeal to His Majesty in Council.

CANADA.

PROVINCE OF QUEBEC.

DISTRICT OF MONTREAL. IN THE COURT OF KING'S BENCH.
(Appeal Side.)

JUDGMENT.

Montreal, this twenty-second day of October, year one thousand nine hundred and thirty.

Present : The Honourable Mr. Justice DORION.
do. TELLIER.
do. HOWARD.
do. BERNIER.
do. GALIPEAULT.

In the matter of a reference to the Court of King's Bench (Appeal Side) of questions as to the validity of certain sections of the Insurance Act of Canada, and as to the validity of section 1 of ch. 47 of the Dominion Statutes 1922, providing for a tax upon every resident of Canada who insures property in Canada with a British or foreign underwriter not licensed under the provisions of the Insurance Act.

The Court :

Upon the motion of the Attorney-General of Quebec acting for and in behalf of His Majesty in the rights of the Province of Quebec, for a leave to appeal to His Majesty's Privy Council;

Motion granted and the Attorney-General of Quebec acting as aforesaid is allowed to appeal to His Majesty's Privy Council, from the judgment rendered herein on the 28th day of June, 1930, by this Court.

C. E. DORION,
J. C. B. R.

No. 21.

Order granting the Attorney-General of Canada leave to cross-appeal to His Majesty in Council.

CANADA.
PROVINCE OF QUEBEC.
DISTRICT OF MONTREAL. IN THE COURT OF KING'S BENCH.
(Appeal Side.)

JUDGMENT.

Montreal, this twenty-second day of October, year one thousand nine hundred and thirty.

Present: The Honourable Mr. Justice DORION.
do. TELLIER.
do. HOWARD.
do. BERNIER.
do. GALIPEAULT.

In the matter of a reference to the Court of King's Bench (Appeal Side) of questions as to the validity of certain sections of the Insurance Act of Canada, and as to the validity of section 1 of Ch. 47 of the Dominion Statutes, 1922, providing for a tax upon every resident of Canada who insures property in Canada with a British or foreign underwriter not licensed under the provisions of the Insurance Act;

The Court:

Upon the motion of the Attorney-General of Canada acting for and in behalf of His Majesty in the rights of the Dominion of Canada for leave to enter a cross appeal to His Majesty's Privy Council;

Motion granted and the Attorney-General of Canada acting as aforesaid is allowed to enter a cross appeal to His Majesty's Privy Council, from the judgment rendered herein on the 28th day of June, 1930, by this Court.

C. E. DORION,
J. C. B. R.

Statutes.

No. 22. The Insurance Act, Revised Statutes of Canada, 1927, Chap. 101. (Extracts.)

STATUTES.

No. 22.

THE INSURANCE ACT, Revised Statutes of Canada, 1927
Chapter 101

PART I

GENERAL

License

* * * * * * * * * *

Business not to be carried on without license.

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 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.

British company.

12. 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 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.

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PENALTIES AND FORFEITURES.

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Person or Company doing insurance business without a license to be guilty of an offence.

65. 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,

(*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

(*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 insurance; or

(*g*) prosecutes or maintains any suit, action or proceeding, or files any claim in insolvency relating to the business of insurance;

Penalty.

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.

As to British company or British subject.

66. Any British company or British subject not resident in Canada who, except under a licence 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 transaction 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 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;

Penalty.

shall be guilty of an offence and liable upon indictment or summary conviction to a penalty not exceeding one hundred

Statutes.

No. 22. The Insurance Act, Revised Statutes of Canada, 1927, Chap. 101. (Extracts)—*continued.*

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.

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No. 23. The Special War Revenue Act, Revised Statutes of Canada, 1927, Chap. 179. (Extracts.)

No. 23.

THE SPECIAL WAR REVENUE ACT, Revised Statutes of Canada, 1927. Chapter 179

Short title.

SHORT TITLE.

1. This Act may be cited as the Special War Revenue Act.

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PART III.

INSURANCE PREMIUMS OTHER THAN LIFE.

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Tax on insurance with unlicensed British or foreign company or with unlicensed inter-insurance associations.

16. 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 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 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.

Residence of corporation.

2. For the purposes of this section every corporation carrying on business in Canada shall be deemed to be a person resident in Canada.

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Returns.

20. Every person to whom section sixteen of this Act applies shall on or before the thirty-first day of December in each year make a return in writing to the Superintendent stating the names of the companies, societies of underwriters or associations 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.

Penalty.

21. Every person who fails or neglects to make the return required by the last preceding section or pay to the Minister within the time limited by section sixteen hereof the tax thereby imposed, shall incur a penalty of fifty dollars for each and every day during which such default continues.

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In the Privy Council.

No. 36 of 1931.

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

IN THE MATTER OF A REFERENCE BY HIS HONOUR THE LIEUTENANT GOVERNOR IN COUNCIL AS TO THE VALIDITY OF CERTAIN SECTIONS OF THE INSURANCE ACT OF CANADA.

BETWEEN

THE ATTORNEY GENERAL OF QUEBEC
Appellant

AND

THE ATTORNEY GENERAL OF CANADA
Respondent

AND BETWEEN

THE ATTORNEY GENERAL OF CANADA
Appellant

AND

THE ATTORNEY GENERAL OF QUEBEC
Respondent.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street,
London, S.W.1.
For the Attorney General of Quebec, Appellant on the Main Appeal and Respondent on the Cross Appeal.

CHARLES RUSSELL & Co.,
37, Norfolk Street,
Strand, W.C.2.
Respondent on the Main Appeal and Appellant on the Cross Appeal.

EYRE AND SPOTTISWOODE, LTD., EAST HARDING STREET, E.C.4.