

7,1932

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In the Privy Council.

No. 84 of 1931.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

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IN THE MATTER OF A REFERENCE AS TO THE  
JURISDICTION OF PARLIAMENT TO REGULATE AND  
CONTROL RADIO COMMUNICATION.

BETWEEN :

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

AND

THE ATTORNEY - GENERAL OF CANADA, THE  
ATTORNEY - GENERAL OF ONTARIO, THE  
ATTORNEY - GENERAL OF NEW BRUNSWICK,  
THE ATTORNEY-GENERAL OF MANITOBA, THE  
ATTORNEY-GENERAL OF SASKATCHEWAN, THE  
ATTORNEY-GENERAL OF ALBERTA AND THE  
CANADIAN RADIO LEAGUE - - - - *Respondents.*

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CASE OF THE RESPONDENT, THE  
ATTORNEY-GENERAL OF CANADA.

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1. This is an appeal by special leave given on August 11th, 1931, from the judgment of the Supreme Court of Canada announced on the 30th day of June, 1931, answering the questions referred to the said Court for hearing and consideration by order of His Excellency the Governor General in Council, dated the 18th day of February, 1931, P.C. 372, pursuant to the provisions of section 55 of the Supreme Court Act, touching the relative powers under the British North America Act, 1867, of the Parliament of Canada in relation to the regulation and control of radio communication.

RECORD.

p. 54.

p. 26.

RECORD.  
p. 7, l. 25.

2. The questions so referred were :

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

p. 3.

3. The Minute of Council recited that the Government of the Province of Quebec had questioned the jurisdiction of Parliament to regulate and control radio communication, and that that Government had submitted questions to the Court of King's Bench of the Province whether the Radiotelegraph Act R. S. C. 1927, chap. 195, in whole or in part, was within the jurisdiction of the Dominion and whether a certain legislative scheme projected by the Government of the Province for the regulation and control of certain radio communication was within the jurisdiction of the Province. 10

p. 4.

4. The Minute of Council further referred to certain treaties and international agreements, viz., the International Radiotelegraph Convention, 1927 (Washington), the North American "short wave" agreement (1929), an informal arrangement between Canada and the United States *re* aircraft (1930), the International Convention for Safety of Life at Sea (1929); also to the negotiations between Canada and the United States commenced in 1927 for the division between the two countries of the 96 channels comprising the broadcast band, the report of a Royal Commission on radio broadcasting made in 1929, and the report of a special committee on Empire broadcasting made at the Imperial Conference, 1930. These treaties, agreements and documents were printed in a supplement to the Case in the Supreme Court, together with the International Radiotelegraph Convention (Berlin 1906), the International Radiotelegraph Convention (London 1912) and a certain exchange of notes respecting ship to shore stations. 20 30

pp. 5-6.

5. The Minute of Council further referred to the facts that there were in Canada 60 coast stations, one long distance coast station, 22 direction-finding stations, 17 radio beacons, 8 radio telephone stations, 319 ship stations, 9 public commercial stations, 131 private commercial stations, 700 experimental amateur stations, 155 government stations operated for the purposes of defence, airmail, aircraft and forestry, 67 broadcasting stations, and 472,531 broadcast receiving stations; these all being operated subject to the regulation and control of the Dominion Government under the Radiotelegraph Act, R. S. C. 1927, chap. 195. 40

p. 7, l. 14.

6. The Minute of Council further referred to a memorandum of explanation of the principles underlying radio communication prepared by Mr. J. W. Bain, Radio Engineer, Department of Marine, which memorandum was annexed to the Minute of Council.

7. In 1906 the first International Wireless Convention was adopted at Berlin by 30 countries. In 1912 a second Convention was adopted at London by 43 countries, and in 1927 a third Convention was adopted at Washington by 70 countries.

8. The principal objects of the International Convention of 1927 and regulations annexed thereto are :

- 10 (a) The division of that part of the electro-magnetic spectrum which is capable of use in radio transmission into bands of frequencies which are allocated to particular services, namely, point to point communication, ships and aircraft, navigation, broadcasting, experimentation, etc.;
- (b) The classification of waves according to type and the determination of the type to be used for each purpose;
- (c) The establishment of common rules for international communication;
- (d) The control by means of national licensing systems of all transmitting apparatus;
- (e) The establishment of national standards for the measurement of radio waves and securing adherence to such standards.

20 9. The North American "short wave" agreement, 1929, was entered into between Canada, the United States, Cuba and Newfoundland and had for its object the allocation to and exclusive use by each of the several countries, of certain frequencies known as "short waves" (1,500 kc/s to 6,000 kc/s) appropriated by the Washington Convention for mobile services, experimental and amateur uses and general communication.

10. The Safety of Life at Sea Convention, 1929, provides for the compulsory equipment of ships with radio apparatus and was signed by the principal maritime nations of the world.

30 11. The informal arrangement made between Canada and the United States in 1930 in connection with the use of radio by aircraft provided in effect that each country in substance agreed not to permit the use of certain frequencies so that such might be available by the other country for use by and in connection with aircraft.

12. An informal international arrangement exists between Canada and the United States for the operation of emergency and other ship calls on certain frequencies.

40 13. The negotiations entered into in 1927 between Canada and the United States with the object of dividing between the two countries the total number of channels (96) in that band of frequencies appropriated by the International Convention of 1927 to the service of broadcasting (550 kc/s to 1,500 kc/s) have not resulted in any agreement, but at present Canada is making use of 17 channels of which 6 are used exclusively by Canada and 11 by both countries.

RECORD.

14. The Royal Commission appointed in December 1928 to examine into the broadcasting situation in Canada reported in September, 1929. The principal recommendation of the Royal Commission was that broadcasting should be conducted by a national company by means of a system of high power stations the nucleus of which should be seven 50,000 watt stations.

15. Radio communication has been the subject of legislation by Parliament since 1905 and the present legislation is contained in the Revised Statutes of Canada 1927, chap. 195. The scheme of the present legislation and regulations is to require all transmitting and receiving apparatus to be licensed. 10

16. The argument of the reference took place on the 6th, 7th and 8th days of May, 1931. Counsel representing the provinces of Quebec, Ontario, New Brunswick, Manitoba, Saskatchewan and Alberta, as well as counsel for the Dominion and counsel for the Canadian Radio League were heard.

17. Counsel for the Canadian Radio League supported the contentions of the Dominion.

18. The relevant provisions of the British North America Act are as follows: 20

“ 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; 30 that is to say,—

2. The Regulation of Trade and Commerce.

3. The raising of Money by any Mode or System of Taxation.

5. Postal Service.

7. Militia, Military and Naval Service and Defence.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals. 40

12. Sea Coast and Inland Fisheries.

17. Weights and Measures.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces."

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

10 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes :—

- (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
- 20 (b) Lines of Steam Ships between the Province and any British or Foreign Country;
- (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

13. Property and Civil Rights in the Province.

16. Generally all Matters of a merely local or private Nature in the Province."

30 " 132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries."

21. The answers of the Chief Justice and of the respective Judges were as follows :

The Chief Justice : Question No. 1—In view of the present state of p. 27. radio science as submitted, yes. Question No. 2—No answer.

Newcombe, J. : Question No. 1 should be answered in the affirmative. p. 27. Question No. 2—No answer.

40 Rinfret, J. : Question No. 1—Construing it as meaning jurisdiction p. 27. in every respect, the answer is in the negative. Question No. 2—The answer should be ascertained by the reasons certified by the learned Judge.

Lamont, J. : Question No. 1—Not exclusive jurisdiction. Question p. 27. No. 2—The jurisdiction of Parliament is limited as set out in the learned Judge's reasons.

RECORD.

- p. 27. Smith J. : Question No. 1 should be answered in the affirmative. Question No. 2—No answer.
- p. 29, l. 37. 22. Anglin, C.J.C. decided that the question of Dominion jurisdiction should be answered generally in the affirmative on the ground that the subject matter did not fall within any of the provisions of section 92 of the British North America Act. He held further that the Dominion had wide powers over the subject matter under the following heads of section 91 :
- 5. Postal Service.
  - 7. Militia, Military and Naval Service, and Defence.
  - 9. Beacons, Buoys, Lighthouses, and Sable Island. 10
  - 10. Navigation and Shipping, and
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.
- and the provisions of subsection 10 of section 92 respecting telegraphs.
- p. 31, l. 35. 23. Newcombe, J., proceeding upon the assumption that radio communication in Canada was practically Dominion wide, that the broadcasting of a message in a province or in a territory of Canada had its effect in making the message receivable as such and also effective by way of interference, not only within the local political area within which the transmission originated but beyond for distances exceeding the limits of a province, considered that the subject had a Dominion aspect or at least an overlapping relation capable of being worked as incidental or ancillary with respect to certain of the enumerated heads of section 91, namely : 20
- 2. The Regulation of Trade and Commerce.
  - 5. Postal Service.
  - 7. Militia, Military and Naval Service, and Defence.
  - 9. Beacons, Buoys, Lighthouses, and Sable Island.
  - 10. Navigation and Shipping.
  - 11. Quarantine and the Establishment and Maintenance of Marine Hospitals, and 30
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.
- p. 33, l. 30. Further he held that the Dominion had all the legislative powers necessary or proper for performing the obligations of Canada or of any province arising under the International Radiotelegraph Convention 1927 (Washington), the North American Short Wave Agreement 1929, and other international agreements. In any case, he thought that the subject matter fell within the Dominion field because it could not be regarded as provincial because it was not a matter of property and civil rights in the province or of a merely local or private nature in the province. 40
- p. 34.

24. Smith, J. decided that the subject matter did not fall within heads 13 and 16 of section 92 and therefore fell within the general jurisdiction assigned to the Dominion. He also thought that the Dominion had general or almost general jurisdiction under clause (a) of subsection 10 of section 92 relating to telegraphs. RECORD.  
pp. 51-52.

25. Lamont, J., while deciding that the Dominion jurisdiction was not exclusive, nevertheless decided that the transmission of radio communication must be regarded as Dominion because of the necessity for International control. He did, however, distinguish between transmission and reception, holding that receiving apparatus might be regarded as a local work under section 10 and section 92, subject to this jurisdiction being overborne by competent Dominion jurisdiction ancillary or incidental to any of the enumerated heads of section 91. pp. 36-37.

26. Rinfret, J. held that the Dominion did not have jurisdiction *in every respect*, either as a result of section 132 or of the specific heads of section 91 relied on. He held that the subject matter was primarily provincial as a result of heads 13 and 16 of section 92, subject only to the powers over the subject which the Dominion has under heads 2, 5, 7, 9, 10, 12 and 29 of section 91. pp. 33-47.

20 The Attorney-General of Canada submits that the first question should be answered in the affirmative, for the following amongst other

### REASONS.

1. Because the regulation and control of radio communication relates to the peace, order and good government of Canada and is not a subject which falls within any of the enumerated heads of section 92.
2. Because the entire subject is expressly assigned to the Dominion under section 91 (29) and section 92 (10a) relating to telegraphs connecting provinces or extending beyond the limits of a province. 30
3. Because Parliament has ample and exclusive jurisdiction over the subject matter under the following heads of section 91 :
  2. The Regulation of Trade and Commerce.
  3. The raising of Money by any Mode or System of Taxation.
  5. Postal Service.
  7. Militia, Military and Naval Service, and Defence.
  9. Beacons, Buoys, Lighthouses, and Sable Island.
  10. Navigation and Shipping.
  11. Quarantine and the Establishment and Maintenance of Marine Hospitals. 40
  12. Sea Coast and Inland Fisheries.
  17. Weights and Measures.

4. Because Parliament has also jurisdiction under section 132 of the British North America Act. Existing international conventions and agreements create obligations necessitating the regulation and control of radio communication throughout Canada in the fullest possible sense.
5. Because radio communication is a matter of national importance affecting Canada as a whole and is not a matter of a local or private nature in each of the provinces.
6. Because the reasons assigned for an affirmative answer by Anglin, C.J.C., Newcombe and Smith, JJ., should be adopted. 10

W. N. TILLEY.

F. P. VARCOE.

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