

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

IN THE MATTER of a Reference as to whether the Parliament of
Canada had legislative jurisdiction to enact The Employment and
Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA - - *Appellant*

AND

THE ATTORNEYS-GENERAL OF THE PROVINCES
OF ONTARIO, QUEBEC, NEW BRUNSWICK,
MANITOBA, BRITISH COLUMBIA, ALBERTA
AND SASKATCHEWAN - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT
OF CANADA.

IN THE MATTER of a REFERENCE as to whether the Parliament
of Canada had legislative jurisdiction to enact The Employment and
Social Insurance Act being Chapter 38 of the Statutes of Canada 1935

BETWEEN

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

AND

THE ATTORNEYS-GENERAL OF THE PROVINCES OF ONTARIO,
QUEBEC, NEW BRUNSWICK, BRITISH COLUMBIA, MANI-
TOBA, ALBERTA AND SASKATCHEWAN - - *Respondents.*

RECORD OF PROCEEDINGS.

No. 1.

Order of Reference by the Governor-General in Council.

P.C. 3453

CERTIFIED to be a true copy of a Minute of a Meeting of the Committee of the
Privy Council, approved by His Excellency the Governor-General on the
5th November, 1935.

The Committee of the Privy Council have had before them a report,
dated 31st October, 1935, from the Minister of Justice, referring to The
Employment and Social Insurance Act, Chapter 38 of the Statutes of
10 Canada, 1935, which was passed for the purposes set out in the recitals
contained in the preamble of the said Act.

The Minister observes that doubts exist or are entertained as to whether
the Parliament of Canada had legislative jurisdiction to enact the said Act,
either in whole or in part, and that it is expedient such question should be
referred to the Supreme Court of Canada for judicial determination.

No. 1.
Order of
Reference
by the
Governor-
General in
Council,
5th Novem-
ber 1935.

No. 1.
Order of
Reference
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5th Novem-
ber 1935—
continued.

The Committee, accordingly, on the recommendation of the Minister of Justice, advise that the following question be referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act,—

Is the Employment and Social Insurance Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

E. J. LEMAIRE,
Clerk of the Privy Council.

No. 2.
Order of
Supreme
Court of
Canada for
Inscription
of Refer-
ences and
Directions,
14th Nov-
ember 1935.

No. 2.

10

Order of Supreme Court of Canada for Inscription of References and Directions.

IN THE SUPREME COURT OF CANADA

Before : THE RIGHT HONOURABLE THE CHIEF JUSTICE OF CANADA.

Thursday the 14th day of November, A.D. 1935.

IN THE MATTER of the questions referred to the Supreme Court of Canada as to whether the Parliament of Canada had legislative jurisdiction to enact :

(a) Section 498A of the Criminal Code, being Chapter 56 of the Statutes of Canada, 1935;

(b) The Dominion Trade and Industry Commission Act, 1935, 20 being Chapter 59 of the Statutes of Canada, 1935;

(c) The Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935;

(d) The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935;

(e) The Natural Products Marketing Act, 1934, being Chapter 57 of the Statutes of Canada, 1934; and its amending Act, the Natural 30 Products Marketing Act Amendment Act, 1935, being Chapter 64 of the Statutes of Canada, 1935.

Upon the application of the Attorney-General of Canada for directions as to the inscription for hearing of the cases relating to the questions herein referred by His Excellency the Governor-General in Council, for hearing and consideration by the Supreme Court of Canada pursuant to the provisions of Section 55 of the Supreme Court Act, R.S.C. 1927, chapter 35; upon hearing read the Orders in Council, dated November 5, A.D. 1935, Nos. P.C.3451, 3452, 3453, 3454 and 3460, respectively, setting forth the

said questions; upon hearing read the affidavits of Charles P. Plaxton filed herein; and upon hearing what was alleged by counsel for the Attorney-General of Canada, and for the Attorneys-General of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island, Manitoba, British Columbia, Saskatchewan and Alberta, respectively; the Attorney-General of the Province of Nova Scotia not being represented on such application, by counsel, although duly notified.

No. 2.
Order of
Supreme
Court of
Canada for
Inscription
of Refer-
ences and
Directions,
14th Nov-
ember 1935
—continued.

IT IS ORDERED that the said References be inscribed for hearing at the present sittings of this Honourable Court and be heard the 15th day of January, A.D. 1936.

AND IT IS FURTHER ORDERED that the respective Attorneys-General of the several Provinces of Canada be notified of the hearing of the argument upon the said References by sending to each of them by registered letter on or before the 1st day of December, A.D. 1935, a Notice of Hearing of the said References together with a copy of this Order.

AND IT IS FURTHER ORDERED that one printed Case for all of the said References be filed on or before the 1st day of December, A.D. 1935, and that three copies thereof be delivered to the Ottawa Agents of the Attorneys-General of the several Provinces of Canada.

AND IT IS FURTHER ORDERED that the Attorney-General of Canada and the Attorneys-General of the several Provinces of Canada be at liberty to file separate factums of their respective arguments on each of said References, on or before the 10th day of January, A.D. 1936, and that the said Attorneys-General be at liberty to appear personally or by counsel upon the hearing of the said References.

(Sgd.) L. P. DUFF,

C.J.

No. 3.

Notice of Hearing.

IN THE SUPREME COURT OF CANADA

IN THE MATTER of the questions referred to the Supreme Court of Canada as to whether the Parliament of Canada had legislative jurisdiction to enact :

(a) Section 498A of the Criminal Code, being Chapter 56 of the Statutes of Canada, 1935;

(b) The Dominion Trade and Industry Commission Act, 1935, being Chapter 59 of the Statutes of Canada, 1935;

(c) The Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935;

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Hearing,
18th Nov-
ember 1935.

No. 3.
Notice of
Hearing,
18th Nov-
ember 1935
—continued.

(d) The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; the Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935;

(e) The Natural Products Marketing Act, 1934, being Chapter 57 of the Statutes of Canada, 1934; and its amending Act, The Natural Products Marketing Act Amendment Act, 1935, being Chapter 64 of the Statutes of Canada, 1935.

TAKE NOTICE that the References herein have, by order of the 10
Right Honourable the Chief Justice of Canada, dated the 14th day of
November, A.D. 1935, been inscribed for hearing at the present sittings
of the Supreme Court of Canada, and to be heard on the 15th day of
January, A.D. 1936; and you are hereby notified of the hearing of the said
References pursuant to the terms of the said Order, copy of which is hereto
annexed.

DATED at Ottawa, this 18th day of November, A.D. 1935.

W. STUART EDWARDS,

Solicitor for the Attorney-General of Canada.

TO :

The Attorneys-General
of the several Provinces of Canada.

20

No. 4.
Factum
of the
Attorney-
General of
Canada.

No. 4.

Factum of the Attorney-General of Canada.

PART I.

STATEMENT OF CASE.

1. By Order of His Excellency the Governor-General in Council, dated
November 5, 1935 (P.C. 3453) (Record p. 3), the following question was
referred to the Supreme Court of Canada for hearing and consideration
pursuant to section 55 of the Supreme Court Act :—

30

Is the Employment and Social Insurance Act, or any of the
provisions thereof and in what particular or particulars or to what
extent, *ultra vires* of the Parliament of Canada?

2. The text of the said Act is contained in an official print thereof
which will be found attached to this factum, pursuant to the direction
of the Right Honourable the Chief Justice of Canada.

3. The said Act contains a preamble and is divided into five parts.

The recitals set out in the preamble which, according to Lord Coke
(4 Inst. 330), is “ the key to open the minds of the makers of the Act and the

mischiefs which they intended to remedy," clearly indicate that the Parliament of Canada considered that the establishment of a National Employment Service and of a National Insurance Fund against unemployment, as well as other forms of Social Insurance, had become needful (1) not only as being essential for peace, order and good government of Canada and for maintaining on equitable terms interprovincial and international trade, but (2) more especially for giving practical effect on the part of Canada, as a signatory of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th June, 1919, to the principles and methods of social justice affecting labour and conditions of labour affirmed and outlined by the said Treaty (Art. 23, Preamble of Part XIII and Art. 427), as being of supreme international importance, in that they are principles and methods which all industrial communities should endeavour to apply, so far as their special circumstances will permit, as an indispensable means of securing the permanent peace of the world.

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continued.

4. Part I (secs. 4 to 9, inclusive) of the Act provides for the administration of the Act by a Commission consisting of three members to be called The Employment and Social Insurance Commission. The Commission is directed, as soon as practicable after appointment, to undertake investigations for the purpose of making proposals to the Governor in Council for the extension of unemployment insurance to employments excepted from the Act, for assisting during unemployment persons who are ordinarily employed in excepted employments or who, though ordinarily employed in insurable employment, are not for the time being entitled to unemployment insurance benefit; and for providing, in co-operation with educational authorities or otherwise, physical and industrial training and instruction for the unemployed with a view to their rehabilitation.

5. Part II (secs. 10 to 14, inclusive) of the Act provides for the organization and administration by the Commission of an employment service for the Dominion of Canada with regional divisions and a central employment office and employment offices within each division. Through the central office in each regional division, the Commission is to exercise direction and control over all the employment offices within that division; the central office will act as a clearing house for information concerning vacancies and applications for employment and the services of such offices are to be co-ordinated by the Commission so that the information obtained in any regional division may be available to workers and employers in other regional divisions.

For central offices in the regions and for employment offices, the Commission may set up local advisory committees consisting in part of members chosen in equal numbers after consultation with employers and after consultation with workers' organizations. The Commission may also authorize loans to workers travelling to places where work is available.

Furthermore, the Commission may request any person to make returns of such information as the Commission may deem necessary for the purposes of the Act, subject to penalty for non-compliance.

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6. Part III (secs. 15 to 38, inclusive) of the Act provides for the establishment of an Unemployment Insurance Fund out of which unemployment insurance benefits will be payable to all persons of the age of sixteen years and upwards who are engaged in any of the specified insurable employments. The said Fund is to be derived partly from moneys provided by Parliament and partly from compulsory contributions by employers and workers. Weekly rates of contribution by employers, in respect of male and female workers of various ages, are prescribed. Such contributions are made payable by means of revenue stamps, which may be authorized by regulation of the Governor in Council, to be affixed to unemployment 10 books or cards, or otherwise as may be prescribed by the Commission. The employer is liable in the first instance to pay the contributions payable by himself and the worker but is authorized to deduct the worker's contribution from wages. The Dominion Government's contribution is fixed at one-fifth of the aggregate amount contributed by employers and workers. The contributions payable by employers and workers are made recoverable as civil debts. The Commission is empowered to make regulations providing for any matters relating to the payment and collection of contributions payable under the Act and for various other specified matters.

The statutory conditions governing the eligibility and ineligibility of 20 insured contributors for the receipt of benefits are elaborately defined. The conditions for the receipt of benefit by an insured contributor are:—

(1) that not less than forty weekly contributions have been paid during the two years immediately preceding the date of claiming benefit;

(2) that he has made application for benefit in the prescribed manner and proves that since the date of the application he has been continuously unemployed; and

(3) that he is capable of, and available for, work but is unable to obtain suitable employment. 30

The unemployment benefit payable to insured persons who fulfil the statutory conditions is \$1 a day or \$6 per week for adult males with proportionate amounts for other classes. Benefit is payable for not more than an aggregate of 78 days of continuous unemployment in any benefit year. Special terms are laid down for contributors who, during any part of the two years, are incapacitated for work or employed in an excepted employment or in business on their own account.

Questions as to the employments and persons covered by the Act and as to rates of contribution are to be decided by the Commission. Machinery is provided for the determination of all claims to benefit and of all questions 40 arising in connection with such claims.

An inspectional service is provided with a view to securing compliance with the Act. An inspector may enter premises, make such examination and inquiry as may be necessary to ascertain if the provisions of the Act are complied with; may examine any person whom he finds in any premises

with reference to matters appertaining to compliance with the Act; and may exercise any powers necessary for carrying the Act into effect.

Penalties are provided for fraudulently obtaining benefit or evading payment and for other violations of the Act or the regulations under it.

7. Part IV (secs. 39 to 41, inclusive) under the heading "National Health" charges the Commission with the duty of collecting information concerning any scheme, actual or proposed, for providing medical, dental, surgical and hospital care, and compensation for loss of earnings due to ill-health or accident, making such information available to persons interested and examining and reporting on schemes on request of any province, municipality or group of persons. In performing this duty the Commission is to co-operate, as far as practicable with any department of the Government of Canada, the Dominion Council of Health and with provinces, municipalities or associations. The Commission may also from time to time submit to the Governor in Council proposals for co-operation by the Dominion in providing any of the benefits aforementioned and may undertake special investigations with regard thereto subject to the approval of the Governor in Council concerning the scope and nature of such investigations.

8. Part V (secs. 42 to 48, inclusive) merely provides for certain administrative details relating to regulations made under the Act, the annual report of the Commission, the submission of reports and recommendations by the Commission to the Governor in Council, disposition of fines imposed under the Act or regulations and audit of the Commission's accounts.

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continued.

PART II.

SUBMISSION OF THE ATTORNEY-GENERAL OF CANADA.

9. The Attorney-General of Canada will contend, for the reasons hereinafter set forth, that The Employment and Social Insurance Act in its entirety is within the legislative powers of the Parliament of Canada in virtue of,

(1) its residuary power to make laws for the peace, order and good government of Canada; and

(2) its exclusive powers (a) to regulate trade and commerce; (b) to raise money by any mode or system of taxation; (c) to appropriate public money for any public purpose; (d) to provide for the collection of statistics; and, incidentally, (e) to enact criminal laws.

PART III.

ARGUMENT.

10. *Relevant provisions of the British North America Act.*—The relevant provisions of the British North America Act appear to be the following:—

"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,

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continued.

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; that is to say,—

- 1. The Public Debt and Property.
- 2. The Regulation of Trade and Commerce.
- 3. The Raising of money by any mode or system of taxation. 10
-
- 6. The Census and Statistics.
-
- 27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters,

“ 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 20 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,—

- . . . :
- 2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.
-
- 13. Property and Civil Rights in the Province. 30
-
- 16. Generally all Matters of a merely local or private Nature in the Province.”

11. *Governing principles of interpretation.*—In the interpretation of the foregoing provisions of the British North America Act, the following propositions relative to the legislative competence of the Parliament of Canada and of the Provincial Legislatures, respectively, were laid down by the Judicial Committee of the Privy Council in *Attorney-General for Canada v. Attorney-General for British Columbia* (1930) A.C. 111, 118, and reaffirmed in the case of *In re Regulation and Control of Aeronautics in Canada* (1932) 40 A.C. 54, 71, 72, as having been established by the decisions of that Board :—

“ (1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s. 91, is of paramount authority, even though it trenches upon

matters assigned to the provincial legislatures by s. 92 : see *Tennant v. Union Bank of Canada* (1894) A.C. 31.

“ (2) The general power of legislation conferred upon the Parliament of the Dominion by s. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion : see *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348.

“ (3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion under a subject of legislation expressly enumerated in s. 91 : see *Attorney-General of Ontario v. Attorney-General for the Dominion* (1894) A.C. 189; and *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348.

“ (4) There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail : see *Grand Trunk Ry. of Canada v. Attorney-General of Canada* (1907) A.C. 65.”

To these propositions may be added the following recent pronouncements as to the nature and scope of the legislative powers confided to the Dominion Parliament by s. 91 of the British North America Act :—

First : “ While the courts should be jealous in upholding the charter of the Provinces as enacted in s. 92, it must no less be borne in mind that the real object of the Act was to give the central Government those high functions and almost sovereign powers by which uniformity of legislation might be secure on all questions which were of common concern to all the provinces as members of a constituent whole.” *The Aeronautics Reference* (1932) A.C. 54, 70, 71:

Secondly : “ Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order and good government of Canada or as being one of the specific subjects enumerated in s. 91 of the British North America Act, their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully Sovereign State.” *Croft v. Dunphy* (1933) A.C. 156, 163.

12. *The Act is a law for the Peace, Order and Good Government of Canada* : It is submitted that The Employment and Social Insurance Act is a law

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for the peace, order and good government of Canada within the scope of the residuary power of the Parliament of Canada,

(a) because unemployment presents characteristics which render it unquestionably a matter of national interest and importance and has attained such dimensions as to affect the body politic of the Dominion;

(b) because unemployment, through the operation of technological developments and other economic causes, has become, from a national and not a merely local or provincial point of view, a seasonal and cyclical condition and in consequence a recurrent problem of national proportions, interest and importance;

(c) because unemployment being a national problem, it is for the Parliament of Canada to determine the best method of coping with it, with a view to averting or diminishing its effects;

(d) because the said Act is, in its pith and substance, designed to deal with unemployment as a national problem to the end of preventing and abating the effects of unemployment; and

(e) because the subject matter of the said Act transcends the scope of provincial legislative authority under s. 92.

13. It is a fact of general public notoriety (of which it is assumed this Honourable Court will take judicial notice: Halsbury's Laws of England, 2nd ed., Vol. 13, p. 622; *Keane v. Mt. Vernon Colliery Company* (1933) A.C. 309, 317, 337) that since 1920 (to refer to no earlier period) the economic life of Canada has been seriously affected by two depressions, namely, those of 1920-1922 and of 1929 to date. The statistics and data published by the Dominion Bureau of Statistics to be found in the appendix to this factum indicate that each of these depressions was attended by a considerable fluctuation of employment and resulting unemployment and that during the latter depression unemployment reached calamitous proportions. Even during the period intervening between 1922 and 1929 the statistics reflect a very considerable seasonal fluctuation of employment and of consequent unemployment. The depression of 1920-1922 was, of course, greatly overshadowed by the depression which commenced towards the end of 1929. The census and other statistical data reflect very forcibly the enormous loss of purchasing power, with its probable attendant reaction upon the depressed trade of the country, which resulted from the abnormal volume of unemployment during the latter depression. The impact of this estimated loss of purchasing power by Canadian wage earners and of conditions arising out of the depression generally upon the economic life of the country is forcibly indicated by the unprecedented expenditures which the Dominion as well as the Provinces and municipalities was required to make for the relief of unemployment and on account of the abnormal conditions incident to the depression. Every possible presumption is to be made in favour of the validity of the Employment and Social Insurance Act: *Valin v. Langlois*, 5 A.C. 115, 118; *Severn v. The Queen*, 2 S.C.R. 70,

103; and, therefore, in the words of Mr. Justice Van Devanter in *Lindsley v. Natural Carbonic Gas Co.* 220 U.S. 61, 78, concerning a challenged statute, "if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed". It is submitted that the said Act was enacted by the Parliament of Canada having regard to the general economic conditions existing in Canada, the facts of which were matters of general public knowledge and, accordingly, within the sphere of judicial notice. Convenient summaries and tables of statistical and other information disclosing facts then available to the Parliament of Canada and in light of which it must be assumed Parliament acted, are included in the appendix to this factum.

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14. By providing for the payment of unemployment insurance benefits to eligible wage earners, the Act should tend to maintain the purchasing power and efficiency of labour through cyclical and seasonal periods of depressed trade and to diminish the effects of such depressions by maintaining a more stable equilibrium between the volume of industrial production and the demand for labour.

20 By providing for the organization and operation of a national employment service and, through the agency of the regional central offices and employment offices, for the collection and distribution of information concerning employers seeking workers and workers seeking employers and for placing insured workers in the various classes of employment, to the end that all available work throughout the country may be found for such workers, the Act should tend to bring the demand for labour and the supply of labour throughout Canada into closer balance and harmony.

30 By empowering the Employment and Social Insurance Commission to require any person to make written returns of information deemed necessary for the purposes of the Act, the Act should enable the Commission to collect and collate exact statistical information as to the social distribution of the population over the various branches of economic activity, the distribution of the wage-earning population by sex and age and the amount of unemployment existing from time to time. These statistics, correlated with other available statistics, ought to reveal in time the factors that threaten to upset the equilibrium of the economic and social system of the country and thereby enable the Dominion Government to concert measures to guard against or avert the threatened danger and to shape the development of the economic system as a whole along lines calculated to produce the maximum degree of stability.

40 15. The subject matter of the Employment and Social Insurance Act transcends the scope of the classes of subjects assigned exclusively to the provinces. While the employment insurance provisions of the Act affect the contract of employment indirectly as any charging or regulating enactment must do, it does not relate to that contract or directly affect its terms or obligations. The Act is thus distinguishable from the Industrial Disputes Investigation Act in which Parliament attempted directly to regulate the contractual rights of employer and employee : *Toronto Electric Commissioners*

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v. *Snider* (1925) A.C. 412. The rights and obligations of employers and employees in insurable employments under The Employment and Social Insurance Act do not grow out of the contract of employment, nor are they made incidents of that contract. The subject matter of the legislation cannot, moreover, be regarded as relating to a matter of a merely local or private nature in the province. The field of unemployment insurance transcends provincial, and even national, boundaries, and has developed international as well as national aspects. Neither does the said Act relate to the business of insurance or to any other trade or business in which an individual is free to engage within a province.

10

16. *Legislative jurisdiction in relation to regulation of trade and commerce.*—If the character of the Employment and Social Insurance Act may be judged from its probable or anticipated effects upon the economic life of the country, then it may well be regarded in the Attorney-General's submission, as a law affecting the regulation of the trade and commerce of Canada, and the Attorney-General of Canada, therefore, relies in support of the said legislation upon head 2 of s. 91 of the British North America Act. It is a general regulation affecting the trade and commerce of Canada as a whole as contra-distinguished from a regulation affecting particular trades. The considerations set out in para. 14 above clearly indicate that the said Act 20 is an Act calculated to stabilize the trade and commerce of Canada by bringing about a more even balance between the volume of industrial production and the demand for labour and by bringing the demand for labour and the supply of labour into closer harmony.

The decisions upon the judicial interpretation of the Dominion Parliament's power to regulate trade and commerce establish that it confers authority for,—

(1) The regulation of the external trade and commerce of Canada : *Citizens Insurance Co. v. Parsons*, 7 A.C. 96, 113; *the Insurance Reference* (1916) 1 A.C. 588, 597; *Attorney-General for 30 British Columbia v. Attorney-General for Canada* (1924) A.C. 222, 225; *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* (1931) S.C.R. 257, 271;

(2) The regulation of trade in matters of interprovincial concern : *Citizens Insurance Co. v. Parsons*, *ibid supra*; *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*, *ibid supra*; *Gold Seal Limited v. Attorney-General of Alberta* (1921) 62 S.C.R. 424; *Attorney-General for Ontario v. Attorney-General for Canada* (1896) A.C. 348, 368, 371; answers to questions 3 and 4 and

(3) The general regulation of trade affecting the whole Dominion : 40 *John Deere Plow Company v. Wharton* (1915) A.C. 330, 340.

Furthermore, the view that the power to regulate trade and commerce can be invoked only in aid of a power Parliament possesses independently of it was definitely repudiated by the Judicial Committee in *Proprietary Articles Trade Association v. Attorney-General for Canada* (1931) A.C. 310, 326.

A brief survey of the decisions above cited will be found in para. 15 of the Factum on behalf of the Attorney-General of Canada in the Reference concerning s. 498A of the Criminal Code.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

17. *The Act provides for raising money by a mode or system of taxation.*—It is submitted that the contributions to the Unemployment Insurance Fund required to be made by employers and employees under the provisions of Part III of the Employment and Social Insurance Act are taxes which the Parliament of Canada is competent to impose in the exercise of its exclusive power to raise money by any mode or system of taxation : (sec. 91 (3) 10 British North America Act). These contributions are imposed (1) under the authority of Parliament ; (2) by a public body ; (3) for a public purpose ; and (4) their payment is rendered enforceable by law. These elements are sufficient, on the authority of the recent decisions, to impart to such contributions the character of taxes : *Lower Mainland Dairy Products Sales Adjustment Committee v. Crystal Dairy Limited* (1933) A.C. 168, 175, 176 ; *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* (1931) S.C.R. 357, 362, 363 ; in *re Grain Marketing Act, 1931* (1931) 2 W.W.R. 146, 153, 154.

18. *Ancillary provisions within competence of Parliament.*—It is sub- 20 mitted that if The Employment and Social Insurance Act be validly enacted in other respects (as is confidently submitted), the ancillary provisions contained in the said Act empowering the Commission to require any person under pain of penalty for non-compliance with its request, to make written returns of such information as the Commission may deem necessary for the purposes of the Act and providing penalties for fraudulently obtaining benefits or evading payment and for other violations of the Act or the regulations made under it, were validly enacted (1) in the exercise of the exclusive legislative authority of the Dominion Parliament in relation to (a) statistics, and (b) criminal law ; or (2) as provisions necessarily or 30 reasonably incidental to effective legislation by the Dominion Parliament upon the subject matter under the other enumerated heads of s. 91 of the British North America Act referred to above. .

19. It will, therefore, be submitted on behalf of the Attorney-General of Canada that The Employment and Social Insurance Act is, in its entirety, within the legislative powers of the Parliament of Canada, and that the question referred to this Honourable Court should, accordingly, be answered, without qualification, in the negative.

N. W. ROWELL,
L. S. ST. LAURENT,
C. P. PLAXTON.

APPENDIX TO FACTUM.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

No. 1.

MEMORANDUM ON UNEMPLOYMENT IN CANADA, 1921-1935. PREPARED
BY THE DOMINION BUREAU OF STATISTICS.

1. There are no official statistics of Unemployment for Canada, except those obtained by the decennial census for 1931 and the partial statistics of unemployment in labour unions published in the *Labour Gazette*. Canada shares this disability with nearly all other countries, except such countries as have Unemployment Insurance Acts in operation. Great Britain is one of the latter, and even there the statistics of unemployment cover only 10 insured persons.

2. In the foregoing paragraph "statistics" is used in contradistinction to "estimates."

3. On the understanding that what the Bureau of Statistics can furnish on current unemployment is an estimate, and that figures supplied must be regarded as such, we have estimates of unemployment in Canada for all occupations (undivided) by months from 1921 to date. This estimate is based upon (1) the monthly replies of firms to the Employment Statistics Division of the Bureau; (2) the number of members in labour unions; (3) the unemployment reported by labour unions; (4) the vacancies reported 20 by Employment exchanges; (5) the permanent placements by Employment exchanges; (6) the population trend; and (7) the behaviour of all those in relation to unemployment as reported by the Censuses of 1921 and 1931. The seven factors are correlated with unemployment and their relative weights ascertained by multiple correlation. The weights as ascertained at the Census of 1921 and 1931 are transferred to the figures reported as ascertained from month to month on the seven bases mentioned. This briefly describes the method of estimating.

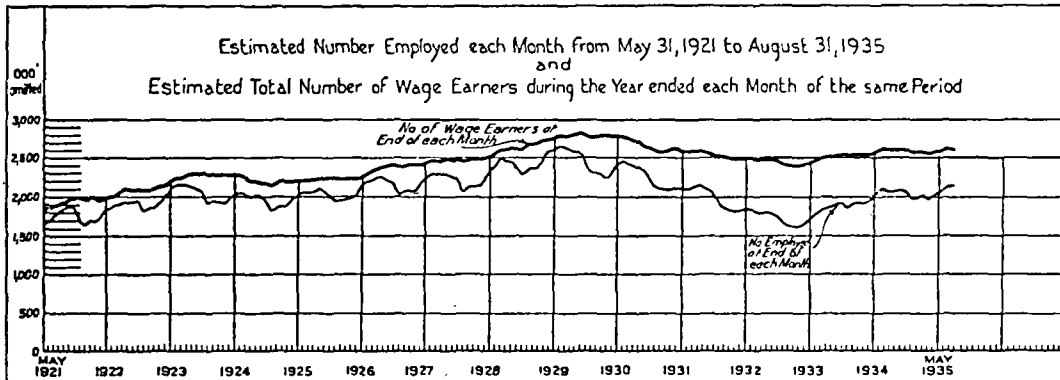
 No. 2.

EXTRACT FROM "MEMORANDUM ON THE VOLUME OF UNEMPLOYMENT SINCE 30
1921," ISSUED BY THE DOMINION BUREAU OF STATISTICS, NOVEMBER, 1933.

In studying the estimates between census years, we observe that there was an average unemployment of 10·7 per cent of the number of wage-earners. This includes unemployment due to all causes, including illness. The probable average per cent idle from lack of work is calculated at 74 per cent of this, an average of 7·9 per cent. In view of the seasonal differences between Canada and England, this per cent is quite consistent with certain findings on the subject in the latter country. The variations largely seasonal can easily be seen in Chart I.

The decade can be divided into three periods, from 1921-26, 1926 to the middle of 1929, and from that date to May 31, 1931. The first of these periods was one of heavy fluctuations in employment but also heavy emigration to the United States in years of shrinkage. The second was one of almost unparalleled increase in employment, attended by heavy immigration including hundreds of thousands of Canadians returning from the United States; also attended by emigration restriction. The third period shows a continuous shrinkage in employment from a very high peak, while immigration persisted for some time and the emigration restrictions were in no way eased. This should throw light upon the manner in which the number of wage-earners kept varying with the number employed—always with a lag, which lag brought about the lowest and highest percentages unemployed according as the volume of employment was expanding or shrinking.

During the period subsequent to 1931 employment declined till April, 1933, since which period it has swung back slowly but consistently with disregard to seasons. That a shrinkage in the number of wage-earners also tended to take place is manifest from the census of 1931 which showed the immigrant population by year of arrival. Thus when compared with the yearly immigration this shows that even before 1931 a far larger proportion of immigrants arriving in 1927-31 departed before the census than was possible to realize from a count of persons reported as emigrating from Canada by the immigration authorities of Great Britain and the United States. . . . There are also various items of information which indicate that large numbers have been leaving cities either to go back to the farm or to emigrate.



CANADA, ALL WAGE EARNERS.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

Estimated Number of Persons not working in each month from December, 1921, to August, 1935, and Per Cent. not working of the Total Number of Wage Earners (000's omitted).

| | Number of Wage Earners. | Number Working. | Number Not Working. | Per cent. Not Working. | |
|---------------------|-------------------------------|--------------------|---------------------------|------------------------------|----|
| 1921. | | | | | |
| May - - - - - | *1,855 | *1,662 | *193 | *10·4 | 10 |
| June - - - - - | — | 1,673 | — | — | |
| July - - - - - | — | 1,751 | — | — | |
| August - - - - - | — | 1,810 | — | — | |
| September - - - - - | — | 1,851 | — | — | |
| October - - - - - | — | 1,872 | — | — | |
| November - - - - - | — | 1,859 | — | — | |
| December - - - - - | 1,999 | 1,685 | 314 | 15·7 | |
| 1922. | | | | | |
| January - - - - - | 1,956 | 1,641 | 315 | 16·1 | 20 |
| February - - - - - | 2,001 | 1,707 | 294 | 14·7 | |
| March - - - - - | 1,983 | 1,680 | 303 | 15·3 | |
| April - - - - - | 1,940 | 1,715 | 225 | 11·6 | |
| May - - - - - | 2,005 | 1,839 | 166 | 8·3 | |
| June - - - - - | 1,980 | 1,853 | 127 | 6·4 | |
| July - - - - - | 2,049 | 1,910 | 139 | 6·8 | |
| August - - - - - | 2,071 | 1,932 | 139 | 6·7 | |
| September - - - - - | 2,121 | 1,941 | 180 | 8·5 | |
| October - - - - - | 2,071 | 1,936 | 135 | 6·5 | |
| November - - - - - | 2,109 | 1,959 | 150 | 7·1 | |
| December - - - - - | 2,115 | 1,808 | 307 | 14·5 | |
| 1923. | | | | | |
| January - - - - - | 2,092 | 1,856 | 236 | 11·3 | 30 |
| February - - - - - | 2,119 | 1,865 | 254 | 12·0 | |
| March - - - - - | 2,142 | 1,906 | 236 | 11·0 | |
| April - - - - - | 2,139 | 1,976 | 163 | 7·6 | |
| May - - - - - | 2,205 | 2,104 | 101 | 4·6 | |
| June - - - - - | 2,250 | 2,162 | 88 | 3·9 | |
| July - - - - - | 2,242 | 2,170 | 72 | 3·2 | |
| August - - - - - | 2,267 | 2,158 | 109 | 4·8 | |
| September - - - - - | 2,305 | 2,132 | 173 | 7·5 | |
| October - - - - - | 2,295 | 2,114 | 181 | 7·9 | |
| November - - - - - | 2,313 | 2,070 | 243 | 10·5 | |
| December - - - - - | 2,292 | 1,918 | 374 | 16·3 | |

* Census figures as at June 1, 1921.

CANADA, ALL WAGE EARNERS—*continued.*

Estimated Number of Persons not working in each Month from December, 1921, to August, 1935, and Per Cent. not working of the Total Number of Wage Earners (000's omitted).

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

| | | Number of Wage Earners. | Number Working. | Number Not Working. | Per cent. Not Working. |
|-------|-----------|-------------------------------|--------------------|---------------------------|------------------------------|
| 1924. | | | | | |
| 10 | January | 2,277 | 1,951 | 326 | 14.3 |
| | February | 2,276 | 1,948 | 328 | 14.4 |
| | March | 2,264 | 1,920 | 344 | 15.2 |
| | April | 2,273 | 1,962 | 311 | 13.7 |
| | May | 2,290 | 2,045 | 245 | 10.7 |
| | June | 2,283 | 2,064 | 219 | 9.6 |
| | July | 2,259 | 2,038 | 221 | 9.8 |
| | August | 2,178 | 1,997 | 181 | 8.3 |
| | September | 2,209 | 2,028 | 181 | 8.2 |
| | October | 2,174 | 2,004 | 170 | 7.8 |
| | November | 2,182 | 1,951 | 231 | 10.6 |
| 20 | December | 2,127 | 1,814 | 313 | 14.7 |
| 1925. | | | | | |
| | January | 2,184 | 1,865 | 319 | 14.6 |
| | February | 2,208 | 1,897 | 311 | 14.1 |
| | March | 2,198 | 1,888 | 310 | 14.1 |
| | April | 2,189 | 1,948 | 241 | 11.0 |
| | May | 2,215 | 2,027 | 188 | 8.5 |
| | June | 2,227 | 2,076 | 151 | 6.8 |
| | July | 2,224 | 2,059 | 165 | 7.4 |
| | August | 2,234 | 2,066 | 168 | 7.5 |
| 30 | September | 2,231 | 2,106 | 125 | 5.6 |
| | October | 2,242 | 2,076 | 166 | 7.4 |
| | November | 2,252 | 2,038 | 214 | 9.5 |
| | December | 2,231 | 1,945 | 286 | 12.8 |
| 1926. | | | | | |
| | January | 2,229 | 1,957 | 272 | 12.2 |
| | February | 2,226 | 1,972 | 254 | 11.4 |
| | March | 2,238 | 1,987 | 251 | 11.2 |
| | April | 2,217 | 2,013 | 204 | 9.2 |
| | May | 2,253 | 2,156 | 97 | 4.3 |
| 40 | June | 2,309 | 2,214 | 95 | 4.1 |
| | July | 2,331 | 2,224 | 107 | 4.6 |
| | August | 2,361 | 2,259 | 102 | 4.3 |
| | September | 2,395 | 2,251 | 144 | 6.0 |
| | October | 2,399 | 2,200 | 199 | 8.3 |
| | November | 2,436 | 2,168 | 268 | 11.0 |
| | December | 2,376 | 2,034 | 342 | 14.4 |

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

CANADA, ALL WAGE EARNERS—*continued.*

Estimated Number of Persons not working in each Month from December, 1921, to August, 1935, and Per Cent. not working of the Total Number of Wage Earners (000's omitted).

| | Number of Wage Earners. | Number Working. | Number Not Working. | Per cent. Not Working. | |
|---------------------|-------------------------------|--------------------|---------------------------|------------------------------|----|
| 1927. | | | | | |
| January - - - - - | 2,394 | 2,073 | 321 | 13.4 | |
| February - - - - - | 2,426 | 2,089 | 337 | 13.9 | 10 |
| March - - - - - | 2,421 | 2,070 | 351 | 14.5 | |
| April - - - - - | 2,433 | 2,163 | 270 | 11.1 | |
| May - - - - - | 2,430 | 2,240 | 190 | 7.8 | |
| June - - - - - | 2,472 | 2,311 | 161 | 6.5 | |
| July - - - - - | 2,458 | 2,286 | 172 | 7.0 | |
| August - - - - - | 2,464 | 2,314 | 150 | 6.1 | |
| September - - - - - | 2,493 | 2,291 | 202 | 8.1 | |
| October - - - - - | 2,477 | 2,276 | 201 | 8.1 | |
| November - - - - - | 2,493 | 2,244 | 249 | 10.0 | |
| December - - - - - | 2,456 | 2,068 | 388 | 15.8 | 20 |
| 1928. | | | | | |
| January - - - - - | 2,489 | 2,126 | 363 | 14.6 | |
| February - - - - - | 2,494 | 2,142 | 352 | 14.1 | |
| March - - - - - | 2,490 | 2,134 | 356 | 14.3 | |
| April - - - - - | 2,504 | 2,196 | 308 | 12.3 | |
| May - - - - - | 2,520 | 2,346 | 174 | 6.9 | |
| June - - - - - | 2,551 | 2,406 | 145 | 5.7 | |
| July - - - - - | 2,623 | 2,494 | 129 | 4.9 | |
| August - - - - - | 2,609 | 2,468 | 141 | 5.4 | |
| September - - - - - | 2,653 | 2,465 | 188 | 7.1 | 30 |
| October - - - - - | 2,627 | 2,414 | 213 | 8.1 | |
| November - - - - - | 2,573 | 2,264 | 309 | 12.0 | |
| December - - - - - | 2,690 | 2,343 | 347 | 12.9 | |
| 1929. | | | | | |
| January - - - - - | 2,693 | 2,370 | 323 | 12.0 | |
| February - - - - - | 2,690 | 2,359 | 331 | 12.3 | |
| March - - - - - | 2,750 | 2,464 | 286 | 10.4 | |
| April - - - - - | 2,753 | 2,580 | 173 | 6.3 | |
| May - - - - - | 2,756 | 2,613 | 143 | 5.2 | |
| June - - - - - | 2,805 | 2,659 | 146 | 5.2 | 40 |
| July - - - - - | 2,777 | 2,649 | 128 | 4.6 | |
| August - - - - - | 2,801 | 2,616 | 185 | 6.6 | |
| September - - - - - | 2,798 | 2,594 | 204 | 7.3 | |
| October - - - - - | 2,832 | 2,577 | 255 | 9.0 | |
| November - - - - - | 2,783 | 2,452 | 331 | 11.9 | |
| December - - - - - | 2,758 | 2,303 | 455 | 16.5 | |

CANADA, ALL WAGE EARNERS—*continued.*

Estimated Number of Persons not working in each Month from December, 1921, to August, 1935, and Per Cent. not working of the Total Number of Wage Earners (000's omitted).

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

| | | Number of Wage Earners. | Number Working. | Number Not Working. | Per cent. Not Working. |
|-------|-----------|-------------------------------|--------------------|---------------------------|------------------------------|
| 1930. | | | | | |
| | January | 2,780 | 2,313 | 467 | 16·8 |
| 10 | February | 2,795 | 2,286 | 509 | 18·2 |
| | March | 2,806 | 2,222 | 584 | 20·8 |
| | April | 2,806 | 2,304 | 502 | 17·9 |
| | May | 2,798 | 2,412 | 386 | 13·8 |
| | June | 2,798 | 2,462 | 336 | 12·0 |
| | July | 2,766 | 2,440 | 326 | 11·8 |
| | August | 2,729 | 2,396 | 333 | 12·2 |
| | September | 2,702 | 2,389 | 313 | 11·6 |
| | October | 2,640 | 2,326 | 314 | 11·9 |
| | November | 2,610 | 2,234 | 376 | 14·4 |
| 20 | December | 2,585 | 2,117 | 468 | 18·1 |
| 1931. | | | | | |
| | January | 2,557 | 2,099 | 458 | 17·9 |
| | February | 2,567 | 2,092 | 475 | 18·5 |
| | March | 2,607 | 2,088 | 519 | 19·9 |
| | April | 2,628 | 2,113 | 515 | 19·6 |
| | May | *2,570 | *2,100 | *470 | *18·3 |
| | June | 2,570 | 2,099 | 471 | 18·3 |
| | July | 2,595 | 2,133 | 462 | 17·8 |
| | August | 2,592 | 2,167 | 425 | 16·4 |
| 30 | September | 2,578 | 2,111 | 467 | 18·1 |
| | October | 2,549 | 2,075 | 474 | 18·6 |
| | November | 2,547 | 2,020 | 527 | 20·7 |
| | December | 2,502 | 1,884 | 618 | 24·7 |
| 1932. | | | | | |
| | January | 2,488 | 1,849 | 639 | 25·7 |
| | February | 2,479 | 1,829 | 650 | 26·2 |
| | March | 2,474 | 1,811 | 663 | 26·8 |
| | April | 2,471 | 1,809 | 662 | 26·8 |
| | May | 2,490 | 1,842 | 648 | 26·0 |
| 40 | June | 2,485 | 1,834 | 651 | 26·2 |
| | July | 2,471 | 1,791 | 680 | 27·5 |
| | August | 2,468 | 1,787 | 681 | 27·6 |
| | September | 2,477 | 1,801 | 676 | 27·3 |
| | October | 2,466 | 1,768 | 698 | 28·3 |
| | November | 2,450 | 1,737 | 713 | 29·1 |
| | December | 2,404 | 1,644 | 760 | 31·6 |

* Census figures as at June 1, 1931.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

CANADA, ALL WAGE EARNERS—continued.

Estimated Number of Persons not working in each Month from December, 1921, to August, 1935, and Per Cent. not working of the Total Number of Wage Earners (000's omitted).

| | Number of Wage Earners. | Number Working. | Number Not Working. | Per cent. Not Working. | |
|---------------------|-------------------------------|--------------------|---------------------------|------------------------------|----|
| 1933. | | | | | |
| January - - - - - | 2,393 | 1,618 | 775 | 32·4 | |
| February - - - - - | 2,393 | 1,615 | 778 | 32·5 | 10 |
| March - - - - - | 2,380 | 1,597 | 783 | 32·9 | |
| April - - - - - | 2,402 | 1,631 | 771 | 32·1 | |
| May - - - - - | 2,429 | 1,691 | 738 | 30·4 | |
| June - - - - - | 2,462 | 1,763 | 699 | 28·4 | |
| July - - - - - | 2,489 | 1,817 | 672 | 27·0 | |
| August - - - - - | 2,501 | 1,843 | 658 | 26·3 | |
| September - - - - - | 2,516 | 1,879 | 637 | 25·3 | |
| October - - - - - | 2,529 | 1,902 | 627 | 24·8 | |
| November - - - - - | 2,537 | 1,913 | 624 | 24·6 | |
| December - - - - - | 2,513 | 1,852 | 661 | 26·3 | 20 |
| 1934. | | | | | |
| January - - - - - | 2,534 | 1,906 | 628 | 24·8 | |
| February - - - - - | 2,549 | 1,935 | 614 | 24·1 | |
| March - - - - - | 2,533 | 1,907 | 626 | 24·7 | |
| April - - - - - | 2,546 | 1,925 | 621 | 24·4 | |
| May - - - - - | 2,582 | 2,014 | 568 | 22·0 | |
| June - - - - - | 2,617 | 2,101 | 516 | 19·7 | |
| July - - - - - | 2,611 | 2,081 | 530 | 20·3 | |
| August - - - - - | 2,604 | 2,062 | 542 | 20·8 | |
| September - - - - - | 2,617 | 2,088 | 529 | 20·2 | 30 |
| October - - - - - | 2,620 | 2,093 | 527 | 20·1 | |
| November - - - - - | 2,611 | 2,068 | 543 | 20·8 | |
| December - - - - - | 2,579 | 1,981 | 598 | 23·2 | |
| 1935. | | | | | |
| January - - - - - | 2,583 | 1,986 | 597 | 23·1 | |
| February - - - - - | 2,594 | 2,021 | 573 | 22·1 | |
| March - - - - - | 2,556 | 1,963 | 593 | 23·2 | |
| April - - - - - | 2,585 | 2,003 | 582 | 22·5 | |
| May - - - - - | 2,597 | 2,049 | 548 | 21·1 | |
| June - - - - - | 2,625 | 2,087 | 538 | 20·5 | 40 |
| July - - - - - | 2,630 | 2,120 | 510 | 19·4 | |
| August - - - - - | 2,603 | 2,150 | 453 | 17·4 | |

No. 3.

THE ESTIMATED LOSS OF PURCHASING POWER REPRESENTED BY THE GROWTH OF UNEMPLOYMENT FROM YEAR TO YEAR IN CANADA SINCE 1929.

PREPARED BY THE DOMINION BUREAU OF STATISTICS.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

“The estimated loss of purchasing power,” as used here, is understood to be the *estimated loss in earnings*—no more. This may be taken as directly proportional to the increase in the number of persons thrown out of work.* Instead of taking the conditions of 1928 as the normal, we believe we should take the average over a number of years. In Canada as well as in other countries like Great Britain, it is conceded that about 11 p.c. of the wage earners are normally unemployed. Any number over this 11 p.c. then, may be considered as thrown out of work by the depression. The average earnings per week worked in the year ended June 1, 1931, may be considered a basis by which to estimate the dollar value of their loss in wages. In this estimate, we are advisedly making no allowance for the changing value of the dollar since the fact that we take one year's rate of earnings as the basis of estimating the loss in earnings automatically takes care of this. The justification for this is seen in the fact that, although the nominal rates of earnings were different in 1921 and 1931 they were the same when allowance was made for the changing value of the dollar. In the estimate we cannot make allowance for changing proportions in age and sex unemployment because this would involve estimates of rates which we regard as poor practice.

The average earnings per full year worked in 1931 was \$1,040.00. This can be multiplied by the number of full years lost by the number of persons idle in excess of 11 p.c.

| | Estimated Number Losing a Full Year | Estimated Number Losing a Full Year in Excess of 11 p.c. | Estimated Loss in Earnings at \$1,040 per Year lost |
|---------------------------------------------|----------------------------------------------|----------------------------------------------------------------------|-----------------------------------------------------------------|
| | | | \$ |
| 1928 - - - - - | 252,083 | 30,566 | — 31,788,640 |
| 1929 - - - - - | 246,667 | 57,539 | — 59,840,560 |
| 1930 - - - - - | 409,500 | 10,856 | 11,290,240 |
| 1931 - - - - - | 490,083 | 207,287 | 215,578,480 |
| 1932 - - - - - | 676,750 | 405,094 | 421,297,760 |
| 1933 - - - - - | 701,917 | 431,096 | 448,339,840 |
| 1934 - - - - - | 570,167 | 286,003 | 297,443,120 |
| 1935 (9 mos.) - - - - - | 548,889 | 195,929 | 203,766,420 |
| 40 Total Loss, 1930 to Sept. 1935 - - - - - | | | 1,597,715,860 |

The above figures refer to wage and salary earners only. In addition to wage-earners there were a number, amounting to 53 per cent of the number of wage-earners, working as employers or otherwise on their own account. We have no means of estimating the loss of earnings (not income) through unemployment on the part of these.

* By using the absolute numbers thrown out of work instead of percentages, we allow for such matters as secular trend.

TABLE OF ANNUAL WEIGHTED INDEXES OF THE PHYSICAL VOLUME OF
MONTHLY AVERAGE

(Reproduced from bulletin on "Recent Economic Tendencies in
June, 1935, with

| No. | Classification. | Annual Average Percent- age Change. | 1919. | 1920. | 1921. | 1922. | 1923. |
|-----|-----------------------------------|-------------------------------------------------|-------|-------|-------|-------|-------|
| 1 | Physical volume of Business - - | +2.14 | 71.3 | 75.0 | 66.5 | 79.1 | 85.5 |
| 2 | INDUSTRIAL PRODUCTION - | +2.44 | 65.5 | 69.9 | 60.4 | 76.9 | 83.8 |
| 3 | Mineral Production - - - | +5.16 | 57.0 | 68.4 | 57.5 | 69.4 | 76.9 |
| 4 | Copper exports - - - | +12.69 | 70.3 | 76.8 | 41.1 | 45.8 | 66.8 |
| 5 | Nickel exports - - - | +4.57 | 100.6 | 92.7 | 14.0 | 50.5 | 83.9 |
| 6 | Lead production - - - | +11.08 | 15.7 | 13.1 | 24.0 | 33.0 | 38.7 |
| 7 | Zinc exports - - - | +16.13 | 8.8 | 4.8 | 15.6 | 37.3 | 21.6 |
| 8 | Gold shipments - - - | +9.66 | 34.7 | 44.6 | 58.6 | 74.3 | 70.2 |
| 9 | Silver shipments - - - | +1.85 | 73.6 | 56.0 | 62.0 | 83.1 | 80.2 |
| 10 | Asbestos exports - - - | -2.46 | 84.2 | 105.0 | 46.0 | 73.3 | 90.9 |
| 11 | Bauxite imports - - - | +6.51 | 40.4 | 80.2 | 29.1 | 29.2 | 90.3 |
| 12 | Coal production - - - | -1.38 | 84.0 | 104.0 | 93.4 | 90.6 | 104.7 |
| 13 | Manufacturing - - - | +1.88 | 71.0 | 70.7 | 60.1 | 75.4 | 86.2 |
| 14 | Foodstuffs - - - | +0.49 | 84.4 | 68.0 | 71.6 | 88.8 | 91.5 |
| 15 | Flour production - - - | +1.39 | 83.1 | 44.2 | 66.5 | 91.1 | 100.6 |
| 16 | Oatmeal production - - - | -6.54 | 214.4 | 88.2 | 142.0 | 72.8 | 109.3 |
| 17 | Sugar manufactured - - - | +0.24 | 80.3 | 71.6 | 69.5 | 102.3 | 77.2 |
| 18 | Cheese exports - - - | -6.03 | 62.7 | 157.6 | 109.6 | 99.7 | 70.0 |
| 19 | Salmon exports - - - | -0.69 | 158.3 | 75.3 | 87.5 | 54.4 | 83.1 |
| 20 | Tobacco - - - | +3.98 | 70.3 | 100.1 | 93.2 | 76.9 | 82.5 |
| 21 | Cigars - - - | -3.93 | 125.7 | 157.9 | 131.9 | 99.6 | 108.0 |
| 22 | Cigarettes - - - | +7.13 | 49.0 | 78.3 | 78.5 | 67.1 | 73.5 |
| 23 | Rubber imports - - - | +8.07 | 33.9 | 58.7 | 40.8 | 46.3 | 63.5 |
| 24 | Boots and shoes output - - - | -1.16 | 114.2 | 101.5 | 86.5 | 99.3 | 104.2 |
| 25 | Textiles - - - | +0.73 | 66.3 | 89.9 | 67.4 | 88.9 | 90.7 |
| 26 | Raw cotton imports - - - | +0.86 | 67.0 | 90.0 | 67.6 | 84.3 | 81.3 |
| 27 | Cotton yarn imports - - - | -0.05 | 84.7 | 122.2 | 80.2 | 115.5 | 109.5 |
| 28 | Wool, raw and yarn, imports - - - | +0.39 | 55.3 | 77.1 | 61.7 | 103.2 | 133.8 |
| 29 | Forestry - - - | +2.36 | 59.5 | 67.9 | 46.5 | 73.4 | 86.8 |
| 30 | Newsprint - - - | +7.61 | 43.1 | 47.2 | 42.3 | 57.8 | 67.4 |
| 31 | Wood pulp exports - - - | -1.41 | 76.6 | 81.6 | 52.5 | 80.0 | 86.9 |
| 32 | Planks and boards exports - - - | -2.44 | 77.1 | 90.1 | 43.2 | 90.1 | 110.8 |
| 33 | Shingles exported - - - | -3.96 | 82.8 | 81.1 | 87.0 | 95.8 | 109.4 |
| 34 | Iron and steel - - - | -0.12 | 67.0 | 73.1 | 47.8 | 54.8 | 85.1 |
| 35 | Steel production - - - | -1.54 | 119.5 | 143.9 | 86.9 | 64.1 | 113.2 |
| 36 | Pig iron production - - - | -3.54 | 111.8 | 132.3 | 80.7 | 52.4 | 118.3 |
| 37 | Iron and steel imports - - - | +1.76 | 62.6 | 71.1 | 46.3 | 55.3 | 68.4 |
| 38 | Automobile production - - - | +0.49 | 48.3 | 51.2 | 33.6 | 52.8 | 77.0 |
| 39 | Coke production - - - | +2.46 | 87.7 | 89.0 | 74.6 | 64.2 | 87.4 |
| 40 | Crude petroleum imports - - - | +9.66 | 54.3 | 51.1 | 67.5 | 74.0 | 67.2 |

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No. 4.

BUSINESS AND AGRICULTURAL FACTORS IN CANADA, BASED ON THE
FOR 1926Canada, 1919-1934" issued by the Dominion Bureau of Statistics,
accompanying charts)No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

| | 1924. | 1925. | 1926. | 1927. | 1928. | 1929. | 1930. | 1931. | 1932. | 1933. | 1934. | No. |
|----|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-----|
| 10 | 84.6 | 90.9 | 100.0 | 106.1 | 117.3 | 125.5 | 109.5 | 93.5 | 78.7 | 79.7 | 94.2 | 1 |
| | 82.4 | 89.7 | 100.0 | 105.6 | 117.8 | 127.4 | 108.0 | 90.4 | 74.0 | 76.8 | 93.6 | 2 |
| | 79.1 | 86.5 | 100.0 | 106.9 | 117.1 | 123.2 | 116.4 | 107.8 | 108.2 | 110.5 | 134.1 | 3 |
| | 86.9 | 96.6 | 100.0 | 114.2 | 162.1 | 211.9 | 209.2 | 166.7 | 236.7 | 214.5 | 281.6 | 4 |
| | 98.3 | 110.1 | 100.0 | 111.0 | 154.4 | 179.2 | 153.0 | 111.2 | 55.2 | 130.3 | 193.0 | 5 |
| | 60.4 | 89.1 | 100.0 | 109.0 | 121.4 | 166.2 | 119.1 | 97.5 | 91.5 | 94.7 | 121.9 | 6 |
| | 37.5 | 43.1 | 100.0 | 89.0 | 88.0 | 96.7 | 113.6 | 139.4 | 107.2 | 108.6 | 165.3 | 7 |
| | 85.6 | 95.4 | 100.0 | 105.5 | 105.4 | 109.7 | 112.2 | 149.8 | 176.0 | 165.9 | 176.3 | 8 |
| | 86.9 | 93.8 | 100.0 | 101.7 | 101.1 | 96.6 | 111.7 | 85.7 | 81.2 | 69.2 | 59.2 | 9 |
| 20 | 76.6 | 97.5 | 100.0 | 94.0 | 89.9 | 100.9 | 73.8 | 49.9 | 30.1 | 63.5 | 58.0 | 10 |
| | 89.3 | 88.9 | 100.0 | 176.1 | 228.2 | 173.7 | 149.4 | 134.0 | 72.5 | 73.0 | 114.5 | 11 |
| | 81.2 | 78.1 | 100.0 | 106.9 | 108.6 | 108.3 | 90.5 | 73.4 | 69.4 | 70.0 | 83.8 | 12 |
| | 84.7 | 92.5 | 100.0 | 100.8 | 113.0 | 117.7 | 98.0 | 84.6 | 74.0 | 79.9 | 93.4 | 13 |
| | 97.3 | 100.1 | 100.0 | 94.9 | 98.2 | 93.8 | 83.1 | 84.1 | 84.3 | 87.4 | 87.6 | 14 |
| | 106.3 | 97.5 | 100.0 | 93.9 | 105.0 | 101.3 | 89.0 | 91.8 | 83.2 | 82.5 | 78.3 | 15 |
| | 233.6 | 134.3 | 100.0 | 63.4 | 103.4 | 62.8 | 73.2 | 114.7 | 64.1 | 34.9 | 38.6 | 16 |
| | 73.5 | 100.7 | 100.0 | 82.8 | 82.9 | 81.0 | 81.3 | 88.9 | 81.9 | 75.7 | 74.7 | 17 |
| | 71.9 | 111.2 | 100.0 | 93.2 | 76.7 | 59.1 | 45.7 | 46.4 | 49.4 | 41.4 | 33.6 | 18 |
| | 130.5 | 134.6 | 100.0 | 106.7 | 112.0 | 113.7 | 83.0 | 92.5 | 91.8 | 99.6 | 76.5 | 19 |
| 30 | 85.9 | 94.1 | 100.0 | 115.5 | 132.2 | 149.3 | 145.2 | 130.5 | 108.8 | 118.0 | 129.1 | 20 |
| | 97.7 | 101.0 | 100.0 | 98.3 | 103.0 | 110.6 | 101.8 | 85.0 | 75.5 | 62.0 | 65.3 | 21 |
| | 81.2 | 91.2 | 100.0 | 121.6 | 142.6 | 164.4 | 161.9 | 147.5 | 121.4 | 139.7 | 155.5 | 22 |
| | 70.5 | 97.4 | 100.0 | 128.3 | 153.5 | 171.3 | 139.4 | 123.3 | 103.4 | 98.3 | 140.2 | 23 |
| | 102.0 | 99.4 | 100.0 | 101.4 | 99.5 | 98.7 | 85.6 | 89.3 | 87.9 | 93.5 | 91.7 | 24 |
| | 73.0 | 87.0 | 100.0 | 100.9 | 100.7 | 97.8 | 74.1 | 72.4 | 73.4 | 97.3 | 111.6 | 25 |
| | 66.7 | 87.3 | 100.0 | 101.9 | 99.7 | 100.6 | 75.0 | 71.1 | 73.7 | 92.8 | 111.9 | 26 |
| | 91.3 | 90.1 | 100.0 | 111.5 | 114.1 | 113.8 | 98.2 | 91.2 | 93.7 | 101.8 | 100.3 | 27 |
| | 99.7 | 84.0 | 100.0 | 91.5 | 101.3 | 77.1 | 60.5 | 67.6 | 64.2 | 120.0 | 114.2 | 28 |
| | 82.5 | 90.9 | 100.0 | 101.2 | 104.0 | 112.7 | 100.9 | 81.6 | 68.1 | 77.8 | 99.6 | 29 |
| 40 | 72.1 | 80.9 | 100.0 | 110.8 | 126.9 | 145.1 | 132.9 | 116.0 | 101.5 | 106.8 | 138.2 | 30 |
| | 77.6 | 94.7 | 100.0 | 84.6 | 86.4 | 83.7 | 76.4 | 62.5 | 45.2 | 60.1 | 60.8 | 31 |
| | 96.0 | 102.0 | 100.0 | 95.6 | 81.3 | 82.3 | 71.2 | 44.4 | 32.2 | 45.5 | 64.0 | 32 |
| | 109.0 | 103.5 | 100.0 | 79.0 | 84.3 | 71.3 | 53.0 | 41.8 | 50.7 | 65.6 | 56.8 | 33 |
| | 68.4 | 82.2 | 100.0 | 96.2 | 132.4 | 139.8 | 89.3 | 50.0 | 31.3 | 35.3 | 59.5 | 34 |
| | 81.2 | 95.2 | 100.0 | 116.5 | 160.1 | 178.1 | 128.6 | 85.2 | 44.2 | 54.2 | 98.0 | 35 |
| | 79.5 | 77.3 | 100.0 | 95.8 | 141.3 | 148.7 | 101.2 | 63.0 | 19.9 | 32.2 | 55.6 | 36 |
| | 56.6 | 73.4 | 100.0 | 116.6 | 156.9 | 164.3 | 111.1 | 59.9 | 35.4 | 32.0 | 49.0 | 37 |
| | 67.8 | 81.8 | 100.0 | 86.4 | 119.3 | 123.3 | 71.8 | 37.1 | 29.0 | 32.0 | 53.3 | 38 |
| | 75.2 | 76.7 | 100.0 | 104.4 | 120.9 | 140.0 | 123.6 | 95.9 | 85.1 | 94.0 | 118.8 | 39 |
| 50 | 81.3 | 75.7 | 100.0 | 116.4 | 144.0 | 180.9 | 175.9 | 176.0 | 152.3 | 158.7 | 184.4 | 40 |

TABLE OF ANNUAL WEIGHTED INDEXES OF THE PHYSICAL VOLUME OF
MONTHLY AVERAGE
(Reproduced from bulletin on "Recent Economic Tendencies in
June, 1935, with

| No. | Classification. | Annual Average Percent- age Change. | 1919. | 1920. | 1921. | 1922. | 1923. | |
|-----|-----------------------------|-------------------------------------------------|-------|-------|-------|-------|-------|----|
| | | | | | | | | 10 |
| 41 | Construction - - - | +0.94 | 56.2 | 75.2 | 70.0 | 92.4 | 85.0 | |
| 42 | Contracts awarded - - - | +1.45 | 55.4 | 75.6 | 68.7 | 92.1 | 85.4 | |
| 43 | Building permits - - - | -0.19 | 54.6 | 67.8 | 67.9 | 93.0 | 84.0 | |
| 44 | Cost of construction - - - | -1.87 | 108.3 | 132.4 | 115.2 | 103.9 | 106.9 | |
| 45 | Electric Power - - - | -9.87 | 44.4 | 49.0 | 41.3 | 51.3 | 66.3 | |
| 46 | DISTRIBUTION - - - | +1.43 | 87.2 | 89.2 | 83.5 | 85.0 | 89.9 | |
| 47 | Trade employment - - - | +2.14 | 101.6 | 102.0 | 92.8 | 90.8 | 92.1 | |
| 48 | Carloadings - - - | -0.35 | 83.4 | 86.8 | 76.8 | 80.9 | 87.4 | |
| 49 | Imports - - - | +0.98 | 71.9 | 86.9 | 74.4 | 79.1 | 92.4 | |
| 50 | Exports - - - | +0.28 | 77.8 | 65.9 | 59.2 | 69.9 | 80.5 | 20 |
| | Agricultural Factors— | | | | | | | |
| 51 | AGRICULTURAL MARKETINGS | +4.47 | 48.1 | 52.6 | 65.2 | 82.6 | 91.4 | |
| 52 | Grain marketings - - - | +5.43 | 38.0 | 47.9 | 63.9 | 83.0 | 92.7 | |
| 53 | Wheat - - - | +6.45 | 34.9 | 46.3 | 55.6 | 82.2 | 93.5 | |
| 54 | Oats - - - | -5.44 | 94.1 | 96.2 | 234.6 | 138.4 | 133.1 | |
| 55 | Barley - - - | +1.87 | 50.3 | 29.4 | 56.2 | 48.7 | 49.0 | |
| 56 | Flax - - - | -4.28 | 46.1 | 75.5 | 114.3 | 60.2 | 74.5 | |
| 57 | Rye - - - | +2.52 | 25.5 | 32.8 | 50.6 | 167.0 | 150.3 | |
| 58 | Live Stock Marketings - - - | -0.34 | 93.3 | 73.4 | 70.9 | 80.9 | 85.3 | |
| 59 | Cattle - - - | -2.22 | 100.4 | 79.2 | 73.0 | 82.0 | 82.8 | 30 |
| 60 | Calves - - - | +3.00 | 68.3 | 64.3 | 60.1 | 73.7 | 71.8 | |
| 61 | Hogs - - - | +2.15 | 79.3 | 58.0 | 59.2 | 71.6 | 86.7 | |
| 62 | Sheep - - - | -0.29 | 134.2 | 122.7 | 143.7 | 153.4 | 125.1 | |
| | ANIMAL PRODUCTS— | | | | | | | |
| 63 | Slaughterings - - - | +2.20 | 89.6 | 73.9 | 66.8 | 77.4 | 84.9 | |
| 64 | Cattle - - - | +1.83 | 84.2 | 82.5 | 65.1 | 75.1 | 76.3 | |
| 65 | Sheep and lambs - - - | +6.18 | 82.9 | 100.2 | 101.4 | 101.1 | 89.3 | |
| 66 | Hogs - - - | +1.78 | 93.9 | 71.5 | 65.0 | 77.0 | 90.5 | |
| 67 | Cold Storage Holdings - - - | +2.28 | 104.6 | 94.2 | 86.4 | 82.8 | 87.6 | |
| 68 | Eggs - - - | +7.27 | 80.2 | 75.5 | 83.4 | 91.6 | 81.9 | 40 |
| 69 | Butter - - - | +5.49 | 80.0 | 94.3 | 85.5 | 83.5 | 105.1 | |
| 70 | Cheese - - - | +3.50 | 42.2 | 64.6 | 36.2 | 45.0 | 36.5 | |
| 71 | Beef - - - | -7.07 | 287.7 | 186.5 | 145.6 | 143.0 | 122.6 | |
| 72 | Pork - - - | -1.29 | 133.8 | 102.5 | 102.3 | 88.2 | 99.9 | |
| 73 | Mutton - - - | -0.69 | 210.1 | 166.4 | 268.5 | 130.9 | 175.2 | |
| 74 | Poultry - - - | +6.81 | 82.0 | 62.8 | 63.2 | 77.7 | 95.0 | |
| 75 | Lard - - - | +1.65 | 67.1 | 69.7 | 57.9 | 57.7 | 67.7 | |
| 76 | Veal - - - | -2.46 | 207.6 | 145.6 | 112.3 | 128.4 | 133.0 | |

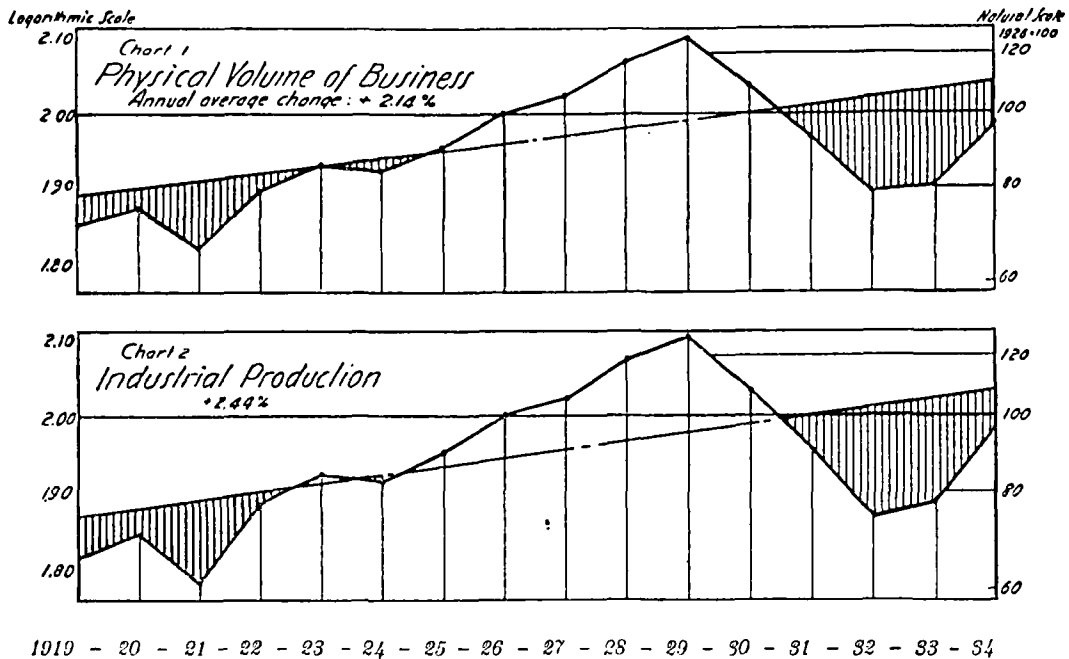
No. 4.
BUSINESS AND AGRICULTURAL FACTORS IN CANADA, BASED ON THE
FOR 1926.

Canada, 1919-1934 " issued by the Dominion Bureau of Statistics,
accompanying charts).

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

| | 1924. | 1925. | 1926. | 1927. | 1928. | 1929. | 1930. | 1931. | 1932. | 1933. | 1934. | No. |
|----|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-----|
| 10 | 79.6 | 82.6 | 100.0 | 118.6 | 133.8 | 164.1 | 129.7 | 91.2 | 43.1 | 28.4 | 35.8 | 41 |
| | 79.1 | 82.8 | 100.0 | 117.8 | 129.7 | 168.5 | 137.0 | 96.3 | 48.2 | 32.7 | 41.9 | 42 |
| | 80.9 | 81.3 | 100.0 | 120.6 | 143.8 | 153.1 | 111.4 | 76.9 | 30.2 | 17.2 | 20.4 | 43 |
| | 103.8 | 101.5 | 100.0 | 99.2 | 101.3 | 105.4 | 102.6 | 96.1 | 88.9 | 83.9 | 85.5 | 44 |
| | 70.3 | 82.8 | 100.0 | 119.1 | 133.3 | 148.0 | 150.0 | 137.5 | 132.7 | 147.2 | 177.3 | 45 |
| | 90.7 | 93.9 | 100.0 | 107.4 | 116.2 | 120.5 | 114.0 | 102.3 | 91.9 | 87.7 | 96.0 | 46 |
| | 92.6 | 95.1 | 99.2 | 107.4 | 116.1 | 126.2 | 127.7 | 123.6 | 116.4 | 112.3 | 119.1 | 47 |
| | 89.7 | 93.7 | 100.0 | 107.5 | 113.3 | 109.0 | 96.8 | 79.9 | 67.3 | 62.1 | 71.6 | 48 |
| | 89.7 | 88.0 | 100.0 | 112.3 | 128.0 | 137.6 | 116.7 | 87.0 | 67.8 | 60.1 | 72.4 | 49 |
| 20 | 83.9 | 96.7 | 100.0 | 99.8 | 110.9 | 101.2 | 83.5 | 67.7 | 59.4 | 61.5 | 73.6 | 50 |
| | 102.5 | 97.2 | 100.0 | 103.6 | 146.7 | 101.1 | 103.0 | 99.0 | 114.3 | 105.1 | 88.5 | 51 |
| | 104.2 | 96.9 | 100.0 | 105.4 | 159.0 | 104.1 | 108.0 | 102.9 | 121.7 | 111.7 | 90.2 | 52 |
| | 101.4 | 93.0 | 100.0 | 109.7 | 164.2 | 108.9 | 114.3 | 104.0 | 133.2 | 120.8 | 98.1 | 53 |
| | 199.2 | 162.4 | 100.0 | 43.5 | 114.0 | 83.1 | 49.5 | 96.5 | 70.8 | 77.5 | 63.2 | 54 |
| | 67.3 | 85.2 | 100.0 | 83.6 | 95.2 | 92.0 | 74.2 | 55.4 | 40.0 | 49.3 | 52.2 | 55 |
| | 123.3 | 140.1 | 100.0 | 76.2 | 154.5 | 25.5 | 52.3 | 48.3 | 28.0 | 30.5 | 3.4 | 56 |
| | 129.1 | 69.8 | 100.0 | 151.9 | 173.6 | 107.9 | 125.0 | 100.3 | 79.9 | 68.9 | 24.5 | 57 |
| | 95.1 | 101.1 | 100.0 | 95.4 | 91.5 | 87.9 | 72.5 | 81.5 | 81.3 | 75.4 | 80.5 | 58 |
| 30 | 87.8 | 96.6 | 100.0 | 92.6 | 87.5 | 81.1 | 62.4 | 67.2 | 60.2 | 61.8 | 71.5 | 59 |
| | 81.3 | 92.0 | 100.0 | 106.6 | 105.4 | 104.4 | 90.8 | 90.5 | 91.8 | 91.8 | 110.8 | 60 |
| | 108.7 | 111.6 | 100.0 | 97.6 | 95.4 | 94.3 | 79.8 | 97.0 | 109.8 | 80.9 | 84.1 | 61 |
| | 107.7 | 95.9 | 100.0 | 105.0 | 103.0 | 121.0 | 118.0 | 141.2 | 138.6 | 138.9 | 141.5 | 62 |
| | 101.7 | 98.2 | 100.0 | 103.1 | 101.8 | 98.8 | 85.4 | 94.1 | 104.0 | 111.5 | 121.6 | 63 |
| | 82.1 | 89.3 | 100.0 | 104.6 | 100.8 | 101.9 | 89.5 | 89.6 | 87.5 | 100.6 | 124.0 | 64 |
| | 89.1 | 83.5 | 100.0 | 111.1 | 114.2 | 129.9 | 126.6 | 168.2 | 171.1 | 186.6 | 185.8 | 65 |
| | 116.0 | 105.5 | 100.0 | 101.5 | 101.6 | 94.1 | 77.5 | 90.8 | 109.6 | 112.8 | 114.6 | 66 |
| | 114.9 | 108.5 | 100.0 | 110.0 | 112.8 | 109.6 | 128.4 | 125.7 | 120.1 | 115.4 | 114.2 | 67 |
| 40 | 85.7 | 89.1 | 100.0 | 96.9 | 102.7 | 129.5 | 146.0 | 215.2 | 176.2 | 156.6 | 108.3 | 68 |
| | 131.1 | 113.0 | 100.0 | 106.0 | 128.6 | 101.5 | 207.5 | 189.0 | 146.7 | 150.5 | 178.7 | 69 |
| | 77.5 | 76.0 | 100.0 | 92.3 | 84.8 | 84.6 | 64.2 | 76.6 | 59.6 | 74.2 | 81.5 | 70 |
| | 121.7 | 126.6 | 100.0 | 135.5 | 108.8 | 112.5 | 113.7 | 75.9 | 75.0 | 85.7 | 105.9 | 71 |
| | 146.1 | 131.7 | 100.0 | 120.7 | 127.4 | 111.2 | 90.8 | 74.8 | 107.9 | 100.4 | 84.5 | 72 |
| | 128.6 | 143.0 | 100.0 | 139.6 | 129.6 | 153.4 | 241.4 | 162.6 | 210.2 | 151.7 | 155.1 | 73 |
| | 101.4 | 133.7 | 100.0 | 145.1 | 128.3 | 145.3 | 193.7 | 113.4 | 214.2 | 127.1 | 191.4 | 74 |
| | 107.0 | 89.6 | 100.0 | 104.7 | 90.6 | 108.6 | 65.4 | 78.3 | 71.6 | 86.4 | 71.1 | 75 |
| | 123.3 | 110.4 | 100.0 | 118.6 | 98.9 | 148.9 | 190.3 | 122.6 | 92.8 | 87.5 | 127.2 | 76 |

No. 4.
 Factum
 of the
 Attorney-
 General of
 Canada—
 continued.



No. 5.

EXTRACTS FROM "CANADA YEAR BOOK, 1934-1935."

p. 232.

SECTION I.—THE LEADING BRANCHES OF PRODUCTION IN 1932.

The total net value of production, as estimated for 1932 by the Dominion Bureau of Statistics, on the basis of statistics compiled by its various branches was \$2,104,900,000. This was less than for any year since 1920, when this survey was instituted. Decreases from the 1931 level were shown in every branch of production except agriculture and the electric power industry and were especially heavy for construction, forestry and manufacturing. Farm yields were generally higher than in 1932, but the average price of farm products was less than in any year in the two preceding decades. The resulting values of farm crops produced in 1932 were less than in any year since 1914.

Manufacturing continued to operate at a comparatively low level of capacity. The value added by the manufacturing process showed a decline of over 20 p.c. from the 1931 level.

Total value of production was 16 p.c. less than in 1931, 35 p.c. less than in 1930, 47 p.c. less than in 1929, 49 p.c. less than in 1928, 46 p.c. less than in 1927 and 42 p.c. less than in 1926. The physical volume of production did not decline to anything like the same extent.

p. 235.

SECTION 2.—THE PROVINCIAL DISTRIBUTION OF PRODUCTION.

No. 4.

Factum
of the
Attorney-
General of
Canada—
continued.

The trend of net production has exhibited considerable variation. In Prince Edward Island there was a decline from 1920 to 1922, followed by substantial recovery until the high point of 1926 was reached, with an almost steady decline to the low point of 1932. In Nova Scotia there was a decline from the high point of 1920 until 1925, a marked increase in 1926, then through a slight decline to the highest point reached since 1920, in 1928, then a gradual falling-off to the low point of 1932. In New Brunswick the highest point was reached in 1920, the next highest in 1926 and the low
10 in 1932, the trend of production in this province being almost level from 1925 to 1930.

In Quebec the decline in 1921 was very severe. During the subsequent period the chief features were a substantial gain in 1923, a minor recession in 1924, and a marked recovery in 1925, continued until 1929, when a high point of \$1,050,000,000 was reached. From then to 1932 the decline was rapid, the 1932 production of \$558,000,000 being a decrease of nearly 19 p.c. under the 1931 figure. The trend in Ontario was almost parallel, the 1932 production of \$885,000,000 being 18 p.c. under that of the previous year.

20 In Manitoba the course of production was most uneven from 1920 to 1926, when for the next two years an increase was registered, culminating in the high of 1928, when goods to the value of \$235,000,000 were produced. Since that time the decline has been rapid, reaching the low value of \$100,000,000 in 1932, this production being 11 p.c. under that of 1931. Saskatchewan exceeded the 1920 production in 1922, 1925 to 1928, when the high point was reached, then registered sharp declines from 1929 to 1931 and in 1932 showed an increase of 42 p.c. over the low point reached in the previous year. The trend in Alberta has not been exactly parallel with that of Saskatchewan, the high point in this province having been reached
30 in 1927, since when a steady decline has occurred, culminating in the low values shown in 1932, when the decline was, however, less than 5 p.c. under the preceding year.

In British Columbia steady increases were registered from 1922 to 1929, with a rapid decline until 1932, when a decline was shown of 23 p.c. under the previous year.

p. 941.

SECTION 4.—NATIONAL WEALTH AND INCOME.

On the basis of the annual Census of Industry and the occupational distribution of the population as ascertained at the Decennial Censuses
40 of 1921 and 1931, the grand total value of the national production in each year from 1920 to 1932 inclusive has been approximately estimated as follows: 1920, \$5,523,000,000; 1921, \$4,215,000,000; 1922, \$4,520,000,000; 1923, \$4,696,000,000; 1924, \$4,643,000,000; 1925, \$5,178,000,000; 1926, \$5,600,000,000; 1927, \$6,101,000,000; 1928, \$6,342,000,000; 1929, \$6,072,000,000; 1930, \$5,150,000,000; 1931, \$4,000,000,000; 1932, \$3,403,000,000.

No. 6.

EXPENDITURES BY DOMINION GOVERNMENT UNDER THE SEVERAL RELIEF ACTS PASSED SINCE THE ENACTMENT OF THE UNEMPLOYMENT RELIEF ACT, 1930.

| | Fiscal Year 1930-31. | Fiscal Year 1931-32. | Fiscal Year 1932-33. | Fiscal Year 1933-34. | Fiscal Year 1934-35. | 1st April, 1935 to 31st Oct. 1935. | Total. |
|-------------------------------------------------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|------------------------------------------|----------------|
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| | cts. | cts. | cts. | cts. | cts. | cts. | cts. |
| <i>Unemployment Relief Act, 1930</i> | 4,431,655 07 | 13,189,843 66 | 548,398 90 | 4,154 86 | 2,500 00 | 3,443 74 | 18,179,996 23 |
| <i>Unemployment and Farm Relief Act, 1931 and Continuance Act, 1932</i> | — | 25,105,671 34 | 17,047,815 70 | 563,876 28 | 52,242 90 | 16,334 03 | 42,785,940 25 |
| <i>Relief Act, 1932</i> | — | — | 19,124,720 42 | 6,948,191 78 | 398,927 66 | 77,059 83 | 26,548,899 69 |
| <i>Relief Act, 1933</i> | — | — | — | 28,382,088 58 | 2,419,951 85 | 430,693 12 | 31,241,733 55 |
| <i>Relief Act, 1934</i> | — | — | — | — | 49,113,684 57 | 942,941 67 | 50,056,626 24 |
| <i>Relief Act, 1935</i> | — | — | — | — | — | *23,448,487 86 | 23,448,487 86 |
| Totals | 4,431,655 07 | 38,295,515 00 | 36,720,935 02 | 35,898,511 50 | 51,987,306 98 | 24,927,960 25 | 192,261,683 82 |

* Includes the following October expenditures that had not gone through Department of Finance books at Oct. 31st :—

| | | | | | | | |
|--------------------------------|---|---|---|---|---|---|----------------------|
| Department of National Defence | - | - | - | - | - | - | \$ 759,257 78 |
| Department of the Interior | - | - | - | - | - | - | 15 00 |
| Department of Public Works | - | - | - | - | - | - | 1,409 47 |
| | | | | | | | <u>\$ 760,632 25</u> |

NOTE.—In addition to the above, expenditures were made under authority of the Wheat Act, 1931, to the amount of \$12,719,900 73.

DEPARTMENT OF FINANCE, OTTAWA,
November 18, 1935.

No. 7.

LOANS MADE BY THE DOMINION GOVERNMENT UNDER AUTHORITY OF ORDERS IN COUNCIL
PASSED PURSUANT TO THE RELIEF ACTS.

| | Fiscal Year 1931-32. | Fiscal Year 1932-33. | Fiscal Year 1933-34. | Fiscal Year 1934-35. | 1st April, 1935 to 31st Oct., 1935. | Total. |
|-----------------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------------------------|---------------|
| | \$ cts. | \$ cts. | \$ cts. | \$ cts. | \$ cts. | \$ cts. |
| Net Loans to Manitoba | 2,788,811 66 | 5,171,903 74 | 2,273,283 23 | 2,874,630 82 | 356,749 12 | 13,465,378 57 |
| " " Saskatchewan | 10,934,341 46 | 7,578,555 56 | 5,469,240 12 | 10,141,014 02 | 5,080,434 86 | 39,203,586 02 |
| " " Alberta | 4,097,740 44 | 1,902,040 99 | 4,050,742 88 | 1,926,475 69 | 7,425,000 00 | 19,402,000 00 |
| " " British Columbia | 4,813,123 88 | 912,636 47 | 1,321,760 48 | 7,966,713 90 | 5,943,445 37 | 20,957,680 10 |
| " " Canadian Pacific Railway Company | — | 1,447,222 71 | 1,000,000 00 | — | — | 2,447,222 71 |
| Totals | 22,634,017 44 | 17,012,359 47 | 14,115,026 71 | 22,908,834 43 | 18,805,629 35 | 95,475,867 40 |

DEPARTMENT OF FINANCE, OTTAWA,
November 18, 1935.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

No. 8.

ESTIMATED TOTAL EXPENDITURES UNDER RELIEF LEGISLATION INCLUDING DOMINION, PROVINCIAL,
MUNICIPAL AND RAILWAY, ETC., DISBURSEMENTS. As at September 30, 1935.

| Act. | Direct Relief Including Dominion Grants-in-Aid. | Provincial and Muni- cipal Public Works and Under- takings. | Provincial care of Homeless Persons. | Relief other than direct Relief in Dried Out Areas. | Federal Projects Railways etc. | Relief Settle- ment. | Totals. |
|-------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------|-----------------------------------------|----------------------------|-------------|
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| The Unemployment Relief Act, 1930 - - - | 10,072,557 | 40,613,661 | — | 1,014,545 | E.27,884,737 | — | 79,585,500 |
| The Unemployment and Farm Relief Act, 1931 - | 22,093,977 | 70,462,000 | — | 1,982,082 | 6,849,708 | — | 101,387,767 |
| The Relief Act, 1932 - | 47,852,481 | 3,076,923 | 2,312,506 | 3,062,000 | 2,107,162 | 1,700,000 | 60,111,072 |
| The Relief Act, 1933 - | 49,611,906 | 12,812,343 | 2,242,000 | 3,020,495 | 7,630,588 | — | 75,317,332 |
| | { A. 26,575,518 | 13,290,000 | 1,240,000 | 5,260,000 | 8,200,000 | 400,000 | 135,142,431 |
| The Relief Act, 1934 - | { B. 24,139,224 | 3,600,000 | 418,000 | 2,500,000 | 4,000,000 | — | 50,401,702 |
| The Relief Act, 1935 - | { C. 56,037,689 | 143,854,927 | 6,212,506 | 16,839,122 | 56,672,195 | 2,100,000 | 501,945,804 |
| | { D. 39,883,702 | | | | | | |
| Totals - - - | 276,267,054 | | | | | | |

A—Expenditures prior to March 31, 1934—Clause 10 of The Relief Act, 1934.

B—Expenditures from April 1, 1934, to July 31, 1934.

C—Expenditures reported by Provinces for statistical purposes—August 1, 1934, to March 31, 1935.

D—Expenditures reported by Provinces for statistical purposes—April 1, 1935, to September 30, 1935.

E—Includes \$25,497,000 advance Railway works on which Dominion paid interest.

2. GROWTH OF UNEMPLOYMENT AS REPORTED BY TEN LEADING COUNTRIES OF THE WORLD, 1927-1935.

| | Unemployment Insurance Statistics. | | | | | Employment Exchange Statistics. | | | | |
|-------|------------------------------------|----------|-------------------------------------|-----------|--------------|---------------------------------|---------|----------|---------|-----------------|
| | Austria. | Belgium. | Great Britain and Northern Ireland. | Italy.† | Netherlands. | Germany. | France. | Hungary. | Norway. | United States.* |
| 1927 | 172,450 | 34,875 | 1,162,170 | 278,484 | 22,868 | 1,353,000 | 33,549 | 13,881 | 23,889 | — |
| 1928 | 156,185 | 27,679 | 1,290,229 | 324,422 | 22,009 | 1,353,000 | 4,834 | 14,715 | 21,759 | — |
| 1929 | 164,509 | 27,293 | 1,262,491 | 300,786 | 27,775 | 1,915,025 | 928 | 15,173 | 19,809 | — |
| 1930 | 208,389 | 74,168 | 1,993,951 | 425,437 | 41,281 | 3,139,455 | 2,514 | 43,592 | 19,353 | 3,947,000 |
| 1931 | 253,368 | 201,076 | 2,716,853 | 734,454 | 96,751 | 4,573,219 | 56,112 | 52,305 | 27,479 | 7,431,000 |
| 1932 | 309,968 | 336,727 | 2,846,395 | 1,006,442 | 177,557 | 5,579,858 | 273,412 | 66,235 | 32,705 | 11,489,000 |
| 1933 | 328,844 | 338,046 | 2,566,768 | 1,018,955 | 176,429 | 4,733,014 | 276,033 | 60,595 | 35,591 | 11,904,000 |
| 1934 | 287,527 | 349,083 | 2,170,819 | 963,677 | 170,681 | 2,657,711 | 342,165 | 52,157 | 35,121 | 10,956,000 |
| 1935† | 283,578 | 324,637 | 2,128,105 | 836,156 | 187,012 | 2,288,959 | 447,789 | 55,118 | 37,331 | 11,444,000 |

* Estimates American Federation of Labor. No figures available 1927-29.
 † Social insurance fund statistics to 1932, employment exchange statistics 1933-35.

‡ The figures for 1935 are an average of the months given.

NOTE.—In the case of France the figures were only partial up till 1932 and in the case of Hungary till 1930. In both cases only the figures subsequent to these dates should be accepted.

No. 4.
Factum
of the
Attorney-
General of
Canada—
continued.

No. 10.

EXTRACT FROM "THREE SOURCES OF UNEMPLOYMENT" BY VLADIMIR
WOYTINSKY.

(STUDIES AND REPORTS, SERIES C (EMPLOYMENT AND UNEMPLOYMENT)
No. 20). INTERNATIONAL LABOUR OFFICE. GENEVA: 1935.

p. 157.

1. The development of employment possibilities in the various countries since the war has not been at all uniform, notwithstanding the fact that three depressions have shaken the economic life of the world during these sixteen years and that each of the depressions has been international in character and spread to a number of countries. 10

The first of these depressions in point of time (1920–1922) was essentially the consequence of demobilization. It began in the United States about the middle of 1920 and spread successively to Great Britain, the Scandinavian countries, Belgium, Italy and a few other countries. France, Germany, the Danubian States and Japan escaped.

When the first wave of depression had passed, there was a spell of reasonable economic activity in most countries. But it was not long before a second depression set in (1926–1927), centring this time in Great Britain and Germany. In Britain this fresh depression was attended by serious social conflicts (the extensive coal strike); in Germany it was connected with the rationalisation of undertakings. This depression spread to the Scandinavian countries (more especially to Norway and Denmark) and to some parts of Eastern Europe (Poland). 20

The period that followed was one of economic recovery, but the boom was not sufficiently marked to absorb all the existing unemployment.

p. 158.

Towards the end of 1929 came the world depression. From the United States, where it first made itself felt, it spread like wildfire throughout the world. Unemployment grew beyond all measure, reaching its peak in the summer of 1932. Since then, employment has improved slightly in most of the industrial countries; there are only a very few countries in which unemployment has continued to spread. 30

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

No. 5.

Factum of the Attorney-General of Ontario.

By Order-in-Council dated the 5th day of November, 1935, His Excellency the Governor-General of Canada referred to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of Section 55 of the Supreme Court Act, the following question :

“ Is the Employment and Social Insurance Act or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada ? ”

No. 5.
Factum
of the
Attorney-
General of
Ontario—
continued.

Dominion Parliament's claim to jurisdiction.

Power is claimed by the Dominion Parliament to enact this legislation,

10 1. By reason of obligations assumed under the provisions of Article 23 and Article 427 of the Treaty of Peace signed at Versailles on the 28th day of June, 1919, which Treaty was confirmed by the Treaty of Peace Act (Dominion) thus giving the Parliament of Canada jurisdiction to enact such legislation under Section 132 of the British North America Act;

2. By reason of the residuary power reserved to the Parliament of Canada to legislate for the peace, order and good government of Canada, as provided for in Section 91 of the British North America Act.

In this case there is no draft convention or convention, and consequently, no order-in-council of the Parliament of Canada ratifying the same, as is found in the *Hours of Labour case*.

20 There is no obligation whatever, under Article 23 or 427, on the Dominion Parliament to pass any such legislation.

Article 23 simply means that members of the League of Nations will endeavour to secure and maintain fair and humane conditions of labour and will establish and maintain the necessary organizations for that purpose, but this is made “ subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon.”

Article 427 merely contains an enunciation and declaration that the high contracting parties recognize that the well-being, physical, moral and intellectual of industrial wage-earners is of supreme international importance, and have framed permanent machinery to further this great end.

30 Article 427 merely announces a proposal, or a pious hope, and it goes on further and indicates nine goals as being desirable to reach—the adoption of an eight-hour day, a weekly rest, etc.—but does not mention unemployment insurance.

40 Thus, the article concludes by saying “ without claiming that these methods and principles are either complete or final, the high contracting parties are of opinion that they are well fitted to guide the policy of the League of Nations, and, that, if adopted by the industrial communities who are the members of the League and safeguarded in practice by an adequate system of inspection, they will confer lasting benefits upon the wage earners of the world.”

No obligation on the part of the Parliament of Canada can be found in these articles to enact unemployment and social insurance legislation.

It is only the obligation which creates jurisdiction in favour of the Parliament of Canada under Section 132 of the British North America Act.

There is no such binding obligation as is so required by that Section.

No. 5.
Factum
of the
Attorney-
General of
Ontario—
continued.

What gives jurisdiction to the Parliament of Canada under Section 132 is the obligation of Canada towards Foreign Countries, not to any class of population.

There is no treaty or binding convention as in Radio or in the Aeronautics case.

There being no constitutional capacity under Section 132, does the subject matter of the legislation fall within any of the enumerated heads of Section 91?

Such legislation as this does not fall under any of those enumerated heads in Section 91. 10

The pith and substance of the legislation deals with relationship between employers and employed and the subject of "compulsory insurance" falls directly within clause 13 of Section 92 of the British North America Act, "Property and Civil Rights in the Province," a matter exclusively within the jurisdiction of Provincial Legislation.

The scheme of the Act is clear as to relating to relationships between employer and employed—the obligation of the employer to pay; the obligation of the employed to pay; the provision giving the employer the right to collect from the employed, the assessment set forth—all are matters dealing with "civil rights" of individuals in the Province affected. 20

This type of legislation is for the Provinces, and for judicial authority, see *In the matter of Legislative Jurisdiction over Hours of Labour*, (1925) S.C.R. 505; *Toronto Electric Commissioners vs. Snider*, (1925) A.C. 396.

CONCLUSIONS.

1. The Parliament of Canada has no constitutional capacity to pass any such legislation under Section 132 of the British North America Act.

2. The subject matter does not fall under any of the enumerated heads of Section 91 as to give the Parliament of Canada jurisdiction.

3. The subject matter, the pith and substance of the legislation, is a matter exclusively within the constitutional jurisdiction of the Provinces. 30

The only constitutional capacity left for the Parliament of Canada is the residuary power reserved to legislate for the peace, order and good government of Canada, as provided by Section 91 of the British North America Act.

In view of the widened interpretation of this clause by Lord Sankey in "*In re the Regulation and Control of Aeronautics in Canada*," (1932) A.C. 54, where he says, at page 70, when discussing the division of powers under Sections 91 and 92:

"But while the Courts should be jealous in upholding the charter of the Provinces as enacted in Section 92 it must no less be borne in mind that the real object of the Act was to give the central 40

government those high functions and almost sovereign powers by which uniformity of legislation might be secured on all questions which were of common concern to all the Provinces as members of a constituent whole."

No. 5.
Factum
of the
Attorney-
General of
Ontario—
continued.

and in view of what has been stated in the factum of the Attorney-General of Ontario in the Hours of Labour, Minimum Wage Reference, which is here adopted, the Parliament of Canada would probably have constitutional capacity to enact this legislation under the "peace, order and good government" section of Section 91.

10 The probable right of the Parliament of Canada to enact such legislation under the above power would appear to be strengthened by reason of the following observations in reference to "Unemployment and Social Insurance":

1. The whole scheme of Unemployment Insurance has a pronounced national aspect.

2. Legislation of this character affects international and inter-provincial trade and the maintenance of equitable relations between Provinces.

20 3. If various Provincial schemes are adopted instead of a national scheme, it would disturb the equilibrium of industrial relations in the various Provinces; Labour would naturally be inclined to go to the Province where such legislation was on the Statute Books, and on the other hand, it is possible that employers would prefer Provinces where they would not be forced to contribute to such a scheme.

4. It is undesirable that there should be attempts to attract capital to one Province rather than another by saying there is unemployment insurance in this Province, but in that Province there is not.

30 The scheme is to have one measure in the national interest, so that there might be freedom of trade uncontrolled so far as legislation is concerned.

The purpose of the legislation is the necessity of having it extend to every part of the Dominion; the necessity to have uniform legislation so that the benefits of the same character may be conferred alike upon all the people of the Dominion in all the Provinces making for uniformity of law for the common good.

The conditions of living and working of the people of Canada is of national concern.

40 The Attorney-General of Ontario submits for these reasons and those which will be advanced at the argument of the reference:

1. That insofar as the legislation rests on the powers given to the Parliament of Canada by Section 132 of the British North America Act for constitutional validity, the same is ultra vires as there is no power in the Parliament of Canada under that Section to enact the legislation.

No. 5.
Factum
of the
Attorney-
General of
Ontario—
continued.

2. That the subject matter dealt with in the legislation is one exclusively within the constitutional capacity of the Provinces, and therefore the legislation is *ultra vires* of the Parliament of Canada in whole, but

3. That probably the legislation is *intra vires* of the Parliament of Canada under the residuary powers given to Parliament by Section 91 of the British North America Act to legislate for the peace, order and good government of Canada.

I. A. HUMPHRIES.

December, 1935.

10

No. 6.
Factum
of the
Attorney-
General of
Quebec.

No. 6.

Factum of the Attorney-General of Quebec.

The question referred as to this Act is as follows :

“ Is the Employment and Social Insurance Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada? ”

A short summary of the provisions of the Act may serve to indicate the ground which it covers.

SUMMARY

Sec. 1. Short title.

20

Sec. 2. Interpretation.

Sec. 3. “ The remainder of this Act may be referred to as follows :

“ Part I, sections four to nine inclusive, relating to the Employment and Social Insurance Commission;

“ Part II, sections ten to fourteen inclusive, relating to Employment Service;

“ Part III, sections fifteen to thirty-eight inclusive, relating to Unemployment Insurance;

“ Part IV, sections thirty-nine to forty-one inclusive, relating to National Health;

30

“ Part V, sections forty-two to forty-eight inclusive, General.”

PART I.

Sec. 4. To establish a Commission called “ The Employment and Social Insurance Commission ” to administer the Act.

PART II.

Sec. 10. The Commission shall organize and manage an employment service for the Dominion of Canada.

PART III.

INSURED PERSONS.

Sec. 15. Persons engaged in employments in Part I of the First Schedule shall be insured against unemployment as provided by the Act.

CONTRIBUTIONS.

Sec. 17. (1) The funds for providing unemployment benefit shall be derived

- (a) from moneys provided by Parliament;
- (b) from contributions by employed persons;
- (c) from contributions by employers.

10

(2) Such persons liable for contributions in accordance with the Second Schedule.

Secs. 19-26. All the conditions of the insurance.

INSPECTION.

Sec. 34. (1) Any person authorized to act as an inspector by the Commission shall have power.

(a) to enter premises where he has reasonable grounds for supposing there are employed persons;

(b)

(c)

20

(d) to exercise such other powers as may be necessary for carrying this Act into effect.

(3) Penalty for delay or obstruction of inspection, \$25.

Sec. 36. There shall be appointed by the Governor in Council "The Employment and Insurance Advisory Committee."

Sec. 38. In addition to the authority otherwise conferred the Commission may make regulations:—

(a) — (h)

(i) punishment for violation of any regulation, not exceeding

30

\$50 and three months imprisonment.

PART IV.

NATIONAL HEALTH.

Secs. 39, 40 and 41.

"It shall be the duty of the Commission"—

To gather and utilize, in co-operation with the Provinces, municipalities and others, statistics and general information as a basis for insurance or otherwise, for medical care or compensation for loss of earnings from ill-health, etc.

40

The determination of the question submitted depends on the true construction of sections 91 and 92 of the British North America Act, 1867, particularly heads 13, 16 and 7 of section 92, and on the interpretation of

No. 6.
Factum
of the
Attorney-
General of
Quebec—
continued.

section 132 of the same Act, and of the relevant provisions of the Treaty of Peace signed at Versailles.

The preamble to the Act suggests three grounds for Dominion jurisdiction :—

- 1° The treaty of Versailles,
- 2° Peace, order, and good government; and
- 3° Interprovincial and international trade, in other words, regulation of trade and commerce.

The first question that arises is : are the matters of the statute included in section 92 of the British North America Act? It is suggested that they 10 obviously are.

Employment services or bureaus, insurance of all sorts, including insurance against unemployment, and health, have always been recognized as being exclusively provincial whether under the head "Property and Civil Rights" or the head "Matters of a merely local or private Nature in the Province."

The attempt in the preamble to the Act to justify it under the head of s. 91 "The Regulation of Trade and Commerce" fails, it is submitted, for more than one reason.

Supposing that employment services or bureaus are a trade, there is 20 no attempt here to regulate that trade; it is merely an attempt by the Dominion to enter into it through a Commission.

Equally there is no attempt to regulate unemployment insurance; there is only the establishment of a Commission that will administer such an insurance under certain conditions and raise the necessary funds therefor, in a certain manner. This is simply an attempt to enter into the business and probably to monopolize it. That is not regulation.

Moreover there is no attempt to regulate health.

For another reason the legislation cannot be justified as "Regulation of Trade and Commerce," : it is that the regulation of a particular trade 30 does not fall within that head nor can it be contended that *the residuary clause of s. 91* or the power of Parliament in respect of criminal law give it support.

The following cases may be referred to :

Attorney-General of Canada v. Attorney-General of Alberta (1916) A.C. 588.

"Their Lordships think that 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 40 provinces."

The Board of Commerce Act, 1919 and The Combines and Fair Prices Act, 1919, (1922) 1 A.C., 191.

The following are passages from the judgment of the Privy Council.

"The second of these Statutes enables the Board established by the first Statute to restrain and prohibit the formation and operation of such trade combinations for production and distribution

in the provinces of Canada as the Board may consider to be detrimental to the public interest, etc.

No. 6.
Factum
of the
Attorney-
General of
Quebec—
continued.

.....
“ No doubt the initial words of section 91 of the British North America Act confer on the Parliament of Canada power to deal with subjects which concern the Dominion generally provided that they are not withheld from the powers of that Parliament to legislate, by any of the express heads in section 92. It may well be that the subjects of undue combination and hoarding are matters in which the Dominion has a great practical interest. In special circumstances, such as those of a great war, such an interest might conceivably become of such paramount and overriding importance as to amount to what lies outside the heads in section 92 but it is quite another matter to say that under normal circumstances general Canadian policy can justify interference with the property and civil rights of the inhabitants of the provinces.

10

.....
“ Nor do the words in section 91 ‘ The Regulation of Trade and Commerce ’ if taken by themselves assist the present Dominion contention.

20

.....
in the case of the Dominion Insurance Act it was held that the authority of the Dominion Parliament to legislate for the regulation of trade and commerce did not, by itself, enable interference with particular trades in which Canadians would be free to engage in the provinces.

“ This result was the outcome of a series of well-known decisions of earlier dates which are now so familiar that they need not be cited.”

30

The first and most important of the purposes of the Act as above mentioned is the provision for a national employment service and insurance against unemployment.

There does not appear to be any difference in principle between insurance against unemployment and fire or other risks.

As far back as the year 1881 in the case of *Citizens v. Parsons*, 7 App. Cas., 96, the head note reads :

“ HELD that :

“ In No. 13 of sec. 92 the words ‘ Property and Civil Rights in the province ’ include rights arising from contract (which are not in express terms included under section 91)

40

“ In No. 2 of section 91 the words ‘ Regulation of Trade and Commerce ’ include political arrangements in regard to trade requiring the sanction of Parliament regulation of trade in matters of interprovincial concern, and, it may be, general regulations of trade affecting the whole Dominion ; but do not include the regulation of the contracts of a particular business or trade such as the business of fire insurance in a single province and therefore do not conflict

No. 6.
Factum
of the
Attorney-
General of
Quebec—
continued.

with the power of property and civil rights conferred by section 92,
No. 13.”

Attorney-General for Ontario v. Attorney-General for the Dominion & Distillers and Brewers Association of Ontario, (1896) A.C., 348 :

“ . . . the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would, in their Lordships’ opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion, there is hardly a subject enumerated in s. 92 upon which it might not legislate, to the exclusion of the provincial legislatures.”

In the case of the Dominion Insurance Act *Attorney-General for Canada v. Attorney-General for Alberta* (1916) 1 A.C. 588 :

Section 4 of the Act provided :

“ In Canada no company or underwriters or other person shall solicit or accept any risk or issue or deliver any receipt or policy of insurance . . . or carry on any business of insurance . . . unless it be done by or on behalf of a company or underwriters holding a licence from the Minister ” (of Finance).

It was said in the judgment :

“ Their Lordships think that Sec. 4 cannot be justified under the head—Regulation of Trade and Commerce—, nor do they think that it can be justified for any such reasons as appear to have prevailed in *Russell v. The Queen*, (7 App. Cas., 829). No doubt the business of insurance is a very important one which has attained to great dimensions in Canada, but this is equally true of other highly important and extensive forms of business in Canada which are today freely transacted under provincial authority. Where the British North America Act has taken such forms of business out of provincial jurisdiction as in the case of banking, it has done so by express words which would have been unnecessary had the argument for the Dominion Government been well founded.”

Referred to with approval in :

Attorney-General for Ontario v. Reciprocal Insurers (1924) A.C. 328.

The following passages from the judgment in this case may be quoted :

“ Their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions

under s. 91, head 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. And indeed to hold otherwise would be incompatible with an essential principle of the Confederation scheme, the object of which, as Lord Watson said in *Maritime Bank of Canada v. Receiver-General of New Brunswick* (1892, A.C. 437; 441), was 'not to weld the Provinces into one or to subordinate the Provincial Governments to a central authority.' 'Within the spheres allotted to them by the Act the Dominion and the Provinces are,' as Lord Haldane said in *Great West Saddlery v. The King* (1921 2 A.C. 91, 100), 'rendered in general principle co-ordinate Governments.' "

10

20

.....
"The enactment in question being in substance, notwithstanding its form, an enactment in regulation of contracts of insurance and the business of insurance, subjects not within the legislative sphere of the Dominion, is in their Lordships' opinion invalid in its entirety."

A still later case that may be referred to is :

Toronto Electric Commissioners v. Snider (1925) A.C. 396.

The head note is :

30

"The Industrial Investigation Act, 1907, of Canada provided that upon a dispute occurring between employers and employees in any of a large number of important industries in Canada the Minister of Labour for the Dominion might appoint a Board of Investigation and Conciliation with the extensive powers mentioned."

HELD that :

40

"The Act was not within the competence of the Parliament of Canada under the British North America Act, 1867. It clearly was in relation to property and civil rights in the provinces, a subject reserved to the Provincial Legislatures by s. 92, sub-s. 13, and was not within any of the overriding powers of the Dominion Legislature specifically set out in s. 91; the Act could not be justified under the general power in s. 91 to make laws 'for the Peace, Order, and good Government of Canada,' as it was not established that there existed in the matter any emergency which put the national life of Canada in unanticipated peril."

In the judgment it was pointed out that :

"Whatever else may be the effect of this enactment, it is clear that it is one which could have been passed, so far as any Province was concerned, by the Provincial Legislature under the powers

No. 6.
Factum
of the
Attorney-
General of
Quebec—
continued.

conferred by s. 92 of the British North America Act. For its provisions were concerned directly with the civil rights of both employers and employed in the Province.”

.....
“ The field for the operation of the Act was made the whole of Canada.

.....
“ It appears to their Lordships that it is not now open to them to treat *Russell v. The Queen* (7 App. Cas. 829) as having established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in s. 91. Unless this is so, if the subject matter falls within any of the enumerated heads in s. 92, such legislation belongs exclusively to Provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of s. 91, conferring general powers in relation to peace, order and good government, simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in *Fort Frances Pulp and Power Co. v. Manitoba Free Press* (1923) A.C. 695, are highly exceptional.” 10

The Attorney-General of Quebec craves leave to refer to the factum he has filed in the Reference (*d*) in which the Treaty of Versailles appears to be invoked as the basis for the authority of Parliament to enact the legislation there in question. As some reliance is perhaps placed on the Treaty for a similar purpose with regard to the Act for discussion in the present Reference, a large part of his argument notably on this, as well as on other points, will be the same as in the other Reference (*d*). 30

There is, however, a difference between the cases in the Reference (*d*) and the one now under consideration, for as stated in the preamble to each of the three Acts, in the former a convention concerning their respective subjects had been arrived at by the General Conference of the International Labour Organization of the League of Nations, and ratified by Canada; whilst there is no evidence of any Convention as a ground for passing the present Act either in the preamble thereto or in the record.

In art. 23 of the Treaty there is a declaration of what the Members of the League will endeavour to realize respecting some phases of labour subject to and in accordance with the provisions of international conventions existing at the time of the coming into force of the Treaty or thereafter to be agreed upon. 40

In the preamble to Part XIII of the Treaty of Peace and in section II thereof (art. 427), there is a general statement of the principles which the

High Contracting parties recognized as "of supreme international importance for the well-being, physical, moral and intellectual, of industrial wage-earners" and there follows in said section II, (page 163 of the Treaty,) nine methods and principles which seem to the High Contracting parties to be of special and urgent importance.

No. 6.
Factum
of the
Attorney-
General of
Quebec—
continued.

Now, of these guiding principles No. 3 provides for a minimum wage, No. 4 for eight hours a day or forty-eight hours a week, and No. 5 for the weekly rest of at least twenty-four hours.

10 It can scarcely be said that the general and very vague aspirations thus set forth in the Treaty constitute in themselves an obligation affording a foundation for the exercise by Parliament of legislative powers which it does not otherwise possess.

The above remarks as to the first purpose of the Act apply perhaps with still more force to the second purpose of the Act as the "other forms of social insurance" is a very vague expression which might cover insurance of many kinds.

Except, however, as any reference to such other forms of social insurance may be found in Part IV, there is nothing enacted in the Act.

20 The preamble to the Act affords an additional argument, if needed, against the endeavour to justify it under section 132 of the British North America Act.

It is not there suggested that obligations exist in favour of foreign countries. The suggestion is merely that obligations exist in favour of labour presumably in Canada.

Section 132 deals with obligations towards foreign countries, and the Dominion owes no obligation to its own citizens except the vague obligation to govern in their best interests.

30 Moreover the treaty does not impose any particular obligation on Canada save that of calling the attention of the competent legislative authority to a convention.

As to the provisions in Part IV of the Act—sections 39–41, respecting health,—the Attorney-General of Quebec submits that health is an exclusive attribute to the provincial legislatures, and moreover these sections refer only to statistics, examination of schemes, and investigations and reports.

Since the subject-matter of the Act falls under some heads of section 92, it cannot come under the power respecting the peace, order, and good government of Canada, unless there is an emergency amounting to national peril, and the statute, which is a permanent one, is not on its face intended to cope with a temporary national peril.

40 FOR THE ABOVE REASONS and the argument which may be advanced at the hearing of the Reference the Attorney-General of Quebec submits that the answer to the question referred must be that the Act in substance so far exceeds the legislative power of the Parliament of Canada that it must, in its entirety, be declared *ultra vires*.

CHARLES LANCTOT,
AIMÉ GEOFFRION.

No. 7.
Factum
of the
Attorney-
General of
New
Brunswick.

No. 7.

Factum of the Attorney-General of New Brunswick.

PART ONE.

STATEMENT OF FACTS.

This matter comes before the Supreme Court of Canada as a result of a reference made by the Committee of the Privy Council on the recommendation of the Minister of Justice as set out in the record herein on Page Three, inscribed for hearing before the said Court on the Fifteenth day of January, A.D. 1936, by order of the Rt. Hon. The Chief Justice of Canada, bearing date the Fourteenth day of November, A.D. 1935, as appears in the record on Page Four, pursuant to Section 55 of the Supreme Court Act, R.S.C. 1927, Chapter 35. 10

PART TWO.

GROUND OF OBJECTION.

The Province of New Brunswick associates itself with the grounds of objection set out in the Factum of the Province of Quebec and endorses and adopts the stand taken by that Province in opposing the validity of the said referred legislation.

PART THREE.

ARGUMENT. 20

The Province of New Brunswick associates itself with the argument contained in the Factum of the Province of Quebec and endorses, adopts and relies upon such argument and authorities as are contained in said Factum, with respect to the legislation involved in this reference.

DONALD V. WHITE,

Counsel for the Attorney-General of New Brunswick.

No. 8.
Factum
of the
Attorney-
General of
Manitoba.

No. 8.

Factum of the Attorney-General of Manitoba.

In appearing upon this Reference the Province of Manitoba is interested in ascertaining what is the proper constitutional authority, whether Dominion or Provincial, which has the legislative jurisdiction to enact this statute. 30

For this purpose, the Attorney-General of Manitoba desires to make the following submissions, namely:

(1) The legislation cannot be justified as an exercise of the legislative power of the Dominion Parliament under Section 132 of The British North America Act, 1867, regarding the implementing of treaty obligations: *In the matter of Legislative Jurisdiction over Hours of Labour*, (1925) S.C.R. 505.

(2) Articles 23, 405 and 427 of the Treaty of Versailles do not impose any obligation on the Dominion Parliament to enact into law the different draft conventions or recommendations which may from time to time be adopted by the General Conference of the International Labour Organization of the League of Nations. Said Articles merely provide an undertaking on the part of each member to bring the recommendations or draft conventions before the proper authorities. This being the extent of the obligation, it does not justify legislation on the part of the Dominion Parliament to give effect to any such recommendations or draft conventions under the authority of Section 132 of The British North America Act, 1867. The Dominion Government's obligation will be satisfied if the different recommendations or conventions are brought before the competent authorities, which, in the case of the matters dealt with by this particular enactment, are the provincial legislatures.

10

(3) The legislation cannot be justified by reference to the decisions of the Judicial Committee of the Privy Council in what are known as the Aviation and Radio cases, namely :

In re The Regulation and Control of Aeronautics in Canada,
1932 Appeal Cases, 54 ;

20

In re Regulation and Control of Radio Communication in Canada,
1932 Appeal Cases, 304.

In the *Radio Case* the Judicial Committee of the Privy Council based its judgment inter alia upon the distributive powers given by Section 91 of that Act to the Dominion Parliament.

In both of these cases there was a binding treaty or convention, which Canada was under obligation to implement.

30

The Attorney-General of Manitoba will rely upon any portion or portions of the factums filed by the other provinces which relate to Section 132 of The British North America Act, 1867, or to any alleged jurisdiction on the part of the Dominion Parliament to implement treaties, whether stated to be conferred by The British North America Act, 1867, or otherwise.

The Attorney-General of Manitoba reserves the right to appeal from any judgment which is rendered herein.

W. J. MAJOR,

Attorney-General of Manitoba.

Winnipeg, January 6th, 1936.

No. 9.

Factum of the Attorney-General of British Columbia.

PART I.

40 The Recitals of this Act declare that it is passed pursuant : first of the obligation assumed by Canada under Articles 23 and 427 of the Treaty of Versailles and second in pursuance of the powers of Canada in virtue of the general words of section 91 and being essential for the Peace Order and Good Government of Canada.

No. 8.
Factum
of the
Attorney-
General of
Manitoba—
continued.

No. 9.
Factum
of the
Attorney-
General of
British
Columbia.

PART II.

On behalf of the Attorney-General of British Columbia it is submitted:—

First: That there are no treaty obligations conferring jurisdiction on the Canadian Parliament to enact this legislation.

Second: That the legislation does not come within the general words of section 91 as to peace order and good government unless it be conceded that unemployment in Canada has become such a national evil as to require the intervention of and control by the Dominion.

10

PART III.

ARGUMENT.

First: It is submitted that there are no obligations arising under the Treaty of Versailles requiring the Dominion to enact this legislation and thereby giving jurisdiction to the federal Parliament. Apparently there has been no *Convention* sanctioned by the League of Nations and *ratified* by Canada dealing with the subject matter of this legislation.

Article 23 of the treaty is made "*Subject* to and in accordance with the provisions of the international conventions existing or hereafter to be agreed upon."

20

Article 427 merely lays down certain methods and principles "to guide the policy of the *League of Nations*." It imposes no separate obligation on the individual members of the League. In any event the section binds no one by agreement. It only makes suggestions and expresses a "pious hope."

Second: It is submitted that the legislation covers subject matters entirely within the sphere of Provincial jurisdiction under section 92, heads (13) and (16) of the British North America Act.

It is well established that the Dominion cannot acquire jurisdiction in such subjects by reciting that it is essential for the peace order and good government of Canada to enact legislation.

Russell v. Queen,

7 A.C. 829 (1882);

Attorney-General Canada v. Attorney-General Alberta,

1916, 1 A.C. 588;

In re Board of Commerce Act,

1922, 1 A.C. 191;

Great West Saddlery Co. v. The King,

1921, 2 A.C. 91;

Toronto Electric Commissioners v. Snider,

1925, A.C. 396;

Fort Francis Pulp and Paper Co. v. Manitoba Free Press,

1923, A.C. 695.

40

The foregoing cases indicate that it is only in circumstances "arising out of some extraordinary peril to the National Life of Canada as a whole

such as the cases arising out of the War where legislation is required of an order that passes beyond the heads of exclusive Provincial competency," that federal power may be invoked under the general words of 91.

No. 9.
Factum
of the
Attorney-
General of
British
Columbia—
continued.

It is conceded on behalf of the Attorney-General of British Columbia that unemployment in Canada is an extraordinary peril to-day existing in Canada, and its solution is beyond the unassisted powers of the provinces. If the National Employment Service of the Unemployment Insurance provisions of the enactment can be shown to be part of a national undertaking dealing with this evil then for this reason and not for the reasons recited in the preamble, it may be that such legislation could be sustained. It is submitted that the burden is entirely on the Dominion to make clear (A) that the legislation is intended for the purpose above conceded, and (B) that the legislation is in fact directed to the mitigation of this existing evil.

Respectfully submitted,

J. W. DE B. FARRIS,

of Counsel for the Attorney-General of the
Province of British Columbia.

London,

20) 22nd December 1935.

No. 10.

Factum of the Attorney-General of Alberta.

STATEMENT OF FACTS.

No. 10.
Factum
of the
Attorney-
General of
Alberta.

The Order of Reference by the Governor-General in Council *re* the Employment and Social Insurance Act will be found at page 3 of the Record, and the question submitted by said Order to the Supreme Court of Canada is—

3) “Is the Employment and Social Insurance Act or any of the Provisions thereof and in what particular or particulars or to what extent *ultra vires* of the Parliament of Canada?”

The Statute in a preamble recites the Treaty of Peace signed at Versailles on June 28th, 1919, the confirmation of the said treaty by the Treaties of Peace Act, 1919, and refers particularly to Articles 23 and 427 of the said Treaty, so that presumably Section 132 of The British North America Act is relied on, in part at least, in support of the validity of the said Statute.

Article 23 in so far as it is relative to this reference reads as follows :

40 “Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :

(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their

No. 10.
Factum
of the
Attorney-
General of
Alberta—
continued.

own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations.”

Article 427 referred to in the preamble, after referring to the machinery set up in the preceding Section I, beginning at page 154 of the Treaty of Peace, sets out certain general principles which should be observed by the Members.

ARGUMENT.

No obligations are imposed on Canada by the Treaty other than possibly moral obligations and it does not appear from the Record that any 10 conventions have been entered into to carry out the principles approved of.

Article 405, found at page 158 of the Treaty, purports to impose obligations in certain events. In the case of a draft convention, a member, if the convention is ratified, agrees to take such action as may be necessary to make effective the provisions of such convention but it is further provided that if, on a recommendation no legislative or other action is taken to make a recommendation effective, no further obligation shall rest upon the member.

It is submitted, therefore, that Section 132 of the British North 20 America Act has no bearing on the question of whether the said Act is valid or not and cannot be considered in determining the correct answer to the question submitted to the Court.

This Section reads as follows :—

“ 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.”

Under this Section, Parliament is given powers necessary or proper for 30 performing the *obligations* of Canada or of any Province.

See In the matter of Legislative Jurisdiction over hours of Labour (1925) S.C.R. 505.

There was no obligation imposed on Canada with respect to the matters dealt with in the Statute under consideration and, therefore, it is submitted, no legislative authority vested in Parliament by Section 132. The Province of Alberta confines its argument relative to this Statute to the proposition just stated and does not propose to make any representations for or against the validity of the Statute under other sections of the British North America 40 Act.

DATED at Edmonton, Alberta, December 29th, 1935.

JOHN W. HUGILL,

W. S. GRAY,

of Counsel for the Province of Alberta.

No. 11.

Factum of the Attorney-General of Saskatchewan.

No. 11.
Factum
of the
Attorney-
General of
Saskatche-
wan.

In appearing upon this Reference the Province of Saskatchewan is interested in ascertaining what is the proper constitutional authority, whether Dominion or Provincial, which has the legislative jurisdiction to enact this statute.

For this purpose, the Attorney-General of Saskatchewan desires to make the following submissions, namely,—

(1) The legislation cannot be justified as an exercise of the legislative power of the Dominion Parliament under Section 132 of the British North America Act, 1867, regarding the implementing of treaty obligations: In the matter of Legislative Jurisdiction over hours of labour, (1925) S.C.R. 505.

(2) Articles 23 and 427 of the Treaty of Versailles referred to in the preamble to the Act do not impose any obligation on the Dominion Parliament to enact into law the different draft conventions or recommendations which may from time to time be adopted by the General Conference of the International Labour Organization of the League of Nations. This is merely an undertaking on the part of each member to bring the recommendations or draft conventions before the proper authorities. This being the extent of the obligation, it does not justify legislation on the part of the Dominion Parliament to give effect to any such recommendations or draft conventions under the authority of Section 132 of the British North America Act, 1867. The Dominion Government's obligation will be satisfied if the different recommendations or conventions are brought before the competent authorities, which, in the case of the matters dealt with by this particular enactment, are the provincial legislatures.

(3) The legislation cannot be justified by reference to the decisions of the Judicial Committee of the Privy Council in what are known as the Aviation and Radio cases, namely,—

Re Aerial Navigation, Attorney-General of Canada v. Attorney-General of Ontario (1932) 1 D.L.R. 58; (1932) A.C. 54;

Re Regulation and Control of Radio Communication: Attorney-General of Quebec v. Attorney-General of Canada, (1932) A.C. 305; (1932) 2 D.L.R. 81; 101 L.J.P.C. 94.

In both of these cases there was a binding treaty or convention, which Canada was under obligation to implement. In the case of employment and social insurance, however, there are no definite or binding obligations upon Canada in relation to foreign countries pursuant to Section 23 and 427 of the peace treaty. Accordingly the Dominion Parliament cannot legislate with respect to this matter by virtue of its power of implementing treaties conferred by Section 132 of the British North America Act, 1867.

In the Radio Case the Judicial Committee of the Privy Council based its judgment *inter alia* upon the distributive powers given by Section 91 of that Act to the Dominion Parliament. The subject-matter of the Act now under consideration cannot be justified upon similar grounds.

No. 11.
Factum
of the
Attorney-
General of
Saskatche-
wan—
continued.

The Attorney-General of Saskatchewan will rely upon such portion or portions of the factums filed by the other provinces so far as they relate to Section 132 of the British North America Act, 1867, or to any alleged jurisdiction on the part of the Dominion Parliament to implement treaties, whether stated to be conferred by the British North America Act, 1867, or otherwise.

The Attorney-General of Saskatchewan reserves the right to appeal from any judgment which is rendered herein.

SAMUEL QUIGG,
of Counsel for the 10
Attorney-General of Saskatchewan.

Regina, January 6th, 1936.

No. 12.
Formal
Judgment,
17th June,
1936.

No. 12.
Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Wednesday, the seventeenth day of June, A.D. 1936.

PRESENT :

THE RIGHT HONOURABLE SIR LYMAN P. DUFF, P.C., G.C.M.G., C.J.C.

THE HONOURABLE MR. JUSTICE RINFRET.

THE HONOURABLE MR. JUSTICE CANNON. 20

THE HONOURABLE MR. JUSTICE CROCKET.

THE HONOURABLE MR. JUSTICE DAVIS.

THE HONOURABLE MR. JUSTICE KERWIN.

IN THE MATTER of a Reference as to whether the Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935, or any of the provisions thereof and in what particular or particulars or to what extent, is *ultra vires* of the Parliament of Canada.

WHEREAS by Order in Council of His Majesty's Privy Council for Canada, bearing date the fifth day of November, in the year of our Lord, one thousand nine hundred and thirty-five (P.C. 3453), the important 30 question of law hereinafter set out was referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, Chapter 35 :—

“ Is the Employment and Social Insurance Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada ? ”

AND WHEREAS the said question came before this Court for hearing and consideration on the thirty-first day of January, and the first and third days of February, in the year of our Lord, one thousand nine hundred and thirty-six, in the presence of Hon. N. W. Rowell, K.C., Mr. Louis St-Laurent, K.C., Mr. C. P. Plaxton, K.C., and Mr. R. St-Laurent, of counsel for the Attorney-General of Canada; Hon. A. W. Roebuck, K.C., and Mr. I. A. Humphries, K.C. of counsel for the Attorney-General for the Province of Ontario; Mr. Charles Lanctôt, K.C., and Mr. Aimé Geoffrion, K.C., of counsel for the Attorney-General of the Province of Quebec; Mr. D. V. 10 White, of counsel for the Attorney-General for the Province of New Brunswick; Hon. G. McG. Sloan, K.C., and Mr. J. W. de B. Farris, K.C., of counsel for the Attorney-General of the Province of British Columbia; Mr. J. Allen, K.C., of counsel for the Attorney-General for the Province of Manitoba; Mr. W. S. Gray, K.C., of counsel for the Attorney-General of the Province of Alberta; and Mr. S. Quigg, of counsel for the Attorney-General of the Province of Saskatchewan; and after due notice to the Attorneys-General for the Provinces of Nova Scotia and Prince Edward Island;

WHEREUPON and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Reference should stand 20 over for consideration, and the same having come on this day for determination; the Court hereby certifies to His Excellency the Governor-General in Council, for his information, pursuant to subsection 2 of section 55 of the Supreme Court Act, that the opinion of the Court is as follows:—

“Mr. Justice Rinfret, Mr. Justice Cannon, Mr. Justice Crocket and Mr. Justice Kerwin are of the opinion that the statute is *ultra vires*; the Chief Justice and Mr. Justice Davis are of the opinion that the statute is *intra vires*.”

and that the reasons for such answers are to be found in the reasons for the answers written by Mr. Justice Rinfret, Mr. Justice Cannon, Mr. Justice 30 Crocket and Mr. Justice Kerwin, and in the reasons for the answers written by the Chief Justice and concurred in by Mr. Justice Davis; copies of which reasons are hereunto annexed.

(Signed) J. F. SMELLIE.

Registrar.

No. 13.

Reasons for Judgment.

(a) *The Chief Justice* (concurred in by Davis J.)—The preamble to the statute is as follows:—

40 WHEREAS the Dominion of Canada was a signatory, as Part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919; and whereas the said Treaty of Peace was confirmed by the Treaties of Peace Act 1919; and whereas, by Article 23 of the said Treaty, each of the signatories thereto agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own

No. 13.
Reasons for
Judgment.
(a) Duff C.J.
(concurred
in by
Davis J.)

No. 13.
Reasons for
Judgment.
(a) Duff C.J.
(concurring
in by
Davis J.)—
continued.

countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance; and whereas it is desirable to discharge the obligations to Canadian Labour assumed under the provisions of the said Treaty; and whereas it is essential for the peace, order and good government of Canada to provide for a National Employment Service and Insurance against unemployment, and for other forms of Social Insurance and for the purpose of maintaining on equitable terms, interprovincial and international trade, and to authorise the creation of a National Fund out of which benefits to unemployed persons throughout Canada will be payable and to provide for levying contributions from employers and workers for the maintaining of the said Fund and for contributions thereto by the Dominion: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— 10

No one of the aims stated in this preamble is illegitimate as an ultimate aim of legislation by the Parliament of Canada. If the subject matter of the enactment is within the ambit of the powers vested in Parliament it is lawful for Parliament to exercise those powers for the attainment of any or all of the objects set forth.

The immediate effect of the statute is to provide, by the means prescribed, a system of unemployment insurance. The essential elements of the scheme are the creation of the Fund—the Unemployment Insurance Fund—which is provided in part from compulsory contributions by employers and employees in the insured employments, and in part by contributions from the Dominion Treasury under the authority of Parliament. The administration of the Fund is entrusted to a Board and unemployment benefits are payable by the Board out of the Fund to designated classes of unemployed persons under prescribed statutory conditions. 20

The exclusive legislative authority of Parliament extends *inter alia* to the subject “The Public . . . Property.” It cannot be doubted, we think, that “property” here is used in its broadest sense, and includes every kind of asset. This legislative authority is exercisable “notwithstanding anything in this Act.” There is always, of course, the qualification, and everything hereinafter said is subject to that qualification, that Parliament is incapable of acquiring jurisdiction over matters within the exclusive competence of the provinces by legislating upon those matters under the pretence of exercising a power which does not embrace within its ambit the real subject matter of the legislation. Subject to that qualification, we know of no authority by which His Majesty’s Courts have jurisdiction to examine, with a view to pronouncing upon its validity, legislation by Parliament in relation to the disposition of the assets committed to its control by section 91, B.N.A. Act. 40

Some reference was made on the argument to sections 102 and 106, B.N.A. Act, but we cannot find anything in those sections which in any way qualifies the authority bestowed by section 91. The phrase in section 106 “shall be appropriated by the Parliament of Canada for the public service” cannot, with propriety, be read, especially in view of the words already mentioned “notwithstanding anything in this Act,” as restricting the discretion of the High Court of Parliament to determine finally what objects

are and what objects are not within the scope of the words "for the public service of Canada."

No. 13.
Reasons for
Judgment.
(a) Duff C.J.
(concurred
in by
Davis J.)—
continued.

It cannot, therefore, we think—and we do not think this was disputed on the argument, although we do not desire to put what we have to say upon any suggested admission—at all events, it cannot, we think, be disputed, even with plausibility, that, in point of strict law, Parliament has authority to make grants out of the public monies to individual inhabitants of any of the provinces, for example, for relief of distress, for reward of merit, or for any other object which Parliament in its wisdom may deem
10 to be a desirable one. The propriety of such grants, the wisdom of such grants, the convenience or inconvenience of the practice of making such grants, are considerations for Parliament alone, and have no relevancy in any discussion before any other Court concerning the competence of Parli-
ment to authorize them.

We are satisfied, therefore, that, if Parliament, out of public monies exclusively, were to constitute a fund for the relief of unemployment and to give to unemployed persons a right to claim unemployment benefits, to be paid out of that fund upon such conditions as Parliament might see fit to prescribe, no plausible argument could be urged against the validity of such
20 legislation.

It seems equally clear that it is exclusively within the discretion of Parliament to determine the manner in which the public assets shall be appropriated and applied for such purposes. The proceeds of any given tax, the sales tax, for example, might be validly appropriated for the purposes of such a fund. The appropriation might be affected antecedently by a direction that all or part of the proceeds of the tax should form such a fund in the hands of the Minister of Finance, or of any agency that might be designated for the purpose. The statute might take the form of requiring the Minister of Finance to pay into the fund monies from time to time
30 provided by Parliament. True, the expectations of the authors of the scheme or of the intended beneficiaries might in any such case be falsified. Future Parliaments might find themselves in a state of financial embarrassment making it impossible to carry out the plan, or, if you like, regardless of the consequent disappointment and suffering, under altered views of policy or duty, abrogate the scheme and discontinue the payment of the benefits. But such possibilities and contingencies have no bearing upon the validity of such an enactment.

By section 35 (2) the statute now before us enacts as follows:—

The Minister of Finance shall also deposit in like manner from time to time out of moneys
40 provided by Parliament an amount equal to one-fifth of the aggregate deposits from time to time made as aforesaid after deducting from the said aggregate deposits any refunds of contributions from time to time made under the provisions of this Act from the Fund.

Some comment was made upon this provision; but the gist of the comment was that the observance of the mandate laid upon the Minister of Finance is necessarily contingent upon some further legislative act making available "monies provided by Parliament."

No. 13.
Reasons for
Judgment.
(a) Duff C.J.
(concurring
in by
Davis J.)—
continued.

The enactment, nevertheless, is an enactment dealing with the public assets of the Dominion; it gives an explicit direction to the Minister of Finance as to the application of "monies provided by Parliament" for the purposes of the statute. The circumstance that the fate of the scheme may be dependent upon the action of future Parliaments is a circumstance which is of no pertinence in a question of the authority of the Parliament to give such a direction.

The real weight of the arguments against the legislation is to be found in the contention that the provisions of the statute are enactments on the subject of "property and civil rights" and not enactments touching any subject falling within the enumerated heads or the introductory words of Section 91, B.N.A. Act. This argument has two branches. First of all, it is said that, as regards compulsory contributions, the legislation creates a compulsory contract between the persons liable to contribute and the Crown, or the Minister of Finance, to whom, in effect, the contributions are payable. Second, it is said, adapting the language of Lord Haldane in delivering the judgment in *Workmen's Compensation Board v. C.P.R.* (1), that the statute attaches statutory terms to contracts of employment; and that this is the real pith and substance of it.

The Dominion contends that the compulsory contributions are contributions which Parliament is competent to exact under the third subdivision of Section 91, by which the exclusive legislative authority of Canada extends to all matters within the subject "The raising of money by any mode or system of taxation." As introductory to an examination of the argument on behalf of the Dominion, some brief general observations on this third subdivision of Section 91 will not be out of place.

The authority, it will be noticed, is an authority to legislate in relation to the raising of money. There is no limitation in those words as respects the purpose or purposes to which the money is to be applied. An enactment, the real purpose of which is to raise "money by any mode or system of taxation," is not examinable by the courts as to its validity by a reference to the motives by which Parliament is influenced, or the ultimate destination of the proceeds of the tax. We speak, of course, subject to the qualification explained above which we shall not restate. There is one express qualification in the B.N.A. Act. That is contained in Section 125 and precludes the taxation of the public property of the Dominion or of the provinces. Reading the words of subdivisions 1 and 3 together, we have no doubt that the words of subdivision 3 necessarily mean that Parliament is empowered to raise money, for the exclusive disposition of Parliament, by any mode or system of taxation.

In passing, it will not be out of place to observe that, reading the words of head no. 3 in this way helps to remove the difficulty which has been suggested in reconciling the language of head no. 3 of section 91 with head no. 2 of section 92, "direct taxation for provincial purposes within the

(1) (1920) A.C. 184.

province." If you read head no. 2 of section 92 with section 126, and by the light of the observations of Lord Watson in *St. Catherine Milling Co. v. The Queen* ⁽¹⁾ there is, we think, solid ground for the conclusion that the words "for provincial purposes" mean neither more nor less than this: the taxing power of the legislatures is given to them for raising money for the exclusive disposition of the legislature. In this view, the subdivision of section 91 which deals with taxation, and section 92 which deals with the same subject, are on different planes and cannot come into conflict.

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Even if to the words "for provincial purposes" in head no. 2
10 of section 92 there be ascribed a more restrictive operation, it seems clear
enough that the power to legislate for taxation under that head, which is
concerned with taxation for the purpose of raising monies for the exclusive
disposition of the local legislature (even assuming, as we say, that in such
disposition the provincial legislature is subject to some additional limitation
imposed by the phrase "provincial purposes") there is nothing in this head
which can conflict with the exclusive authority given by the third head of
section 91 "notwithstanding anything in this Act" to raise money by
any mode or system of taxation for the exclusive disposition of Parliament.
The two enactments are still on different planes. The one is concerned
20 with raising money to be appropriated by the provincial legislatures exclu-
sively, the other is concerned with raising money to be appropriated by
Parliament exclusively for those purposes to which it thinks it advisable to
devote the public assets of the Dominion.

At all events, it seems to be abundantly clear that there is nothing
in either section 91 or section 92 which precludes the Dominion from raising
money by any mode or system of taxation to be expended in the relief of
distress among the inhabitants of any one or more provinces by direct
application for the benefit of the inhabitants as individuals, still less for
raising money to be expended for the relief of the inhabitants of the Dominion,
30 almost all of whom are necessarily inhabitants of the provinces. The
inhabitants of the provinces are taxable by the Dominion in order to raise
moneys for any purpose in the furtherance of which it is competent to the
Dominion to expend such moneys in exercise of its exclusive and plenary
control over the public assets.

It is not improper here, we think, to advert to the character of the legis-
lative powers of Parliament. We have had occasion to observe in connec-
tion with one of the other references that certain negative provisions of
the Statute of Westminster emphasize in the most significant way the
scope and character of these powers. First, there are the Recitals that

40 * * * it is meet and proper to set out by way of preamble to this Act that, inasmuch as
the Crown is the symbol of the free association of the members of the British Commonwealth
of Nations, and as they are united by a common allegiance to the Crown, it would be in
accord with the established constitutional position of all the members of the Commonwealth
in relation to one another that any alteration in the law touching the Succession to the

(1) 14 A.C. 46.

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 Judgment. and that,
 (a) Duff C.J. * * * it is in accord with the established constitutional position that no law hereafter
 (concurring in by the Parliament of the United Kingdom shall extend to any of the said Dominions
 Davis J.)— as part of the law of that Dominion otherwise than at the request and with the consent of
 continued. that Dominion :

Then, there is the enactment, section 7 (1), which, in categorical terms, provides that nothing in the Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, 10 or any order, rule or regulation made thereunder.

Subject to the restrictions in the Statute of Westminster and the British North America Act, and to whatever restrictions may be implied in the status of the Dominion, as owing a common allegiance to the Crown with the other members of the British Commonwealth, the Parliament of Canada is invested with plenary authority to legislate for the peace, order and good government of Canada over the whole field of legislative action, saving only those fields which, by the enactments of the British North America Act, have been withdrawn from it and assigned exclusively to the provincial legislatures. 20

This authority is not a delegated authority, as, for example, that of the legislative bodies of the United States. It is an authority which exists in virtue of the supreme law of the state and is of the same order, subject, of course, to the restrictions mentioned, as the legislative authority of the Imperial Parliament.

The language of subdivision 3 could hardly be broader. " Any mode or system of taxation " leaves in Parliament unlimited discretion so long as the essentials of taxation are present.

By section 17 of the statute now before us, the employed and employer are " liable " to pay contributions in accordance with the provisions of the 30 second schedule of the Act which prescribes the rate of contribution. The payments are to be made by means of revenue stamps and section 18 authorizes the Governor in Council by regulation to provide for the payment of contributions

by means of revenue stamps affixed to or impressed upon books or cards * * * and such stamps and the devices for impressing the same shall be prepared and issued in such manner as may be prescribed by such regulation.

By subsection 2,

* * * the Commission may make regulations providing for any matters relating to the payment and collection of contributions payable under this Act, and in particular for— 40

(a) regulating the manner, times and conditions, in, at and under which payments are to be made;

(b) the entry in or upon unemployment books or cards of particulars of contributions and benefits paid in respect of the persons to whom the unemployment books or cards relate;

(c) the issue, sale, custody, production and delivery up of unemployment books or cards and the replacement of unemployment books or cards which have been lost, destroyed, or defaced; and

(d) the offering of reward for the return of an unemployment book or card which has been lost and for the recovery from the person responsible for the custody of the book or card at the time of its loss of any reward paid for the return thereof.

By section 31, the failure to pay any contribution which an employer or an employee is liable to pay under the Act is constituted an offence punishable by fine or imprisonment or both. By section 35 (1) it is provided :

10 The Minister of Finance shall from time to time deposit in the Bank of Canada, to the credit of the Commission, in an account to be called " The Unemployment Insurance Fund " (hereinafter referred to as " The Fund "), all revenue received from the sale of unemployment insurance stamps and all contributions, if any, paid otherwise than by means of such stamps (including contributions recovered by process of law) under the provisions of this Part of this Act.

20 The Governor-General in Council by section 18 (1) is authorized to make regulations touching the payment and collection of contributions payable under the Act. This section (35 (1)) which in unqualified terms lays upon the Minister of Finance the duty to pay into the Fund " all revenue received from the sale of unemployment insurance stamps and all contributions and all contributions (if any) paid otherwise than by means of such stamps (including those recovered by process of law)" manifests very clearly the intention that the compulsory contributions shall be paid to the government and shall be recoverable by process of law ; although it is left to the Governor-General in Council to make specific provision by regulation for the collection and payment of such contributions.

30 Now let it be observed, in the first place, that on the hypothesis on which we are proceeding, if the monies raised by these compulsory contributions are monies raised " by any mode or system of taxation," these enactments are within the powers of Parliament, but, if the attack upon the legislation is well founded, Parliament has no authority to obtain money in this way. It would appear that, having regard to the nature of the legislative authority vested in Parliament, and to the wide discretion reposed in Parliament touching the manner in which monies are to be raised under subdivision 3, a court ought to observe a high degree of caution in pronouncing upon the invalidity of an enactment, by which monies become by compulsion of law payable by individuals to the Dominion Treasury for a public purpose, on the ground that, in truth, it does not possess its *prima facie* character, that of a taxing statute, but is legislation intending to do what Parliament has otherwise no manner of authority to do. We are disposed to think that something approaching a demonstration ought to be required to lead one to such a conclusion.

40 Let it not be overlooked that we are not here dealing with an attempt on the part of Parliament to do something it has no power to do. We have not before us an attempt under the guise of taxation to regulate insurance contracts, or an attempt under the guise of criminal legislation to regulate insurance contracts, or an attempt under the guise of legislation for the regulation of mines to regulate in relation to aliens. The statute before us has nothing of that character. If we are right in what we have already

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said, it is entirely competent to Parliament to resort, as sources for the provision of the unemployment fund, to taxes levied on employers and employees and to taxes levied "by any mode or system" which Parliament in its discretion may adopt.

We ask ourselves then, What are the indicia in this statute which compel us to conclude that Parliament, instead of resorting to taxation which it had authority to do, has resorted to legislation in regard to civil rights which it had no authority to enact?

The essentials of taxation are present. The contributions are levied by Parliament directly. That the contributions are to be paid by revenue stamps is prescribed by Parliament; but the Governor-General in Council is to regulate payment and collection. Payment is compulsory. Contributions are recoverable by process of law and failure to pay is an offence punishable by fine and imprisonment. The contributions are payable into the public treasury of the Dominion, and are to be paid by the Minister of Finance into a fund which is to be applied as directed by Parliament.

In *Lower Mainland v. Crystal Dairy* (1) Lord Thankerton, speaking for the Judicial Committee of the Privy Council, said:—

In the opinion of their Lordships, the adjustment levies are taxes. They are compulsorily imposed by a statutory Committee consisting of three members, one of whom is appointed by the Lieutenant-Governor in Council, the other two being appointed by the dairy farmers within the district under s. 6 of the Act. They are enforceable by law, and a certificate in writing under the hand of the chairman of the Committee is to be *prima facie* evidence in all Courts that such amount is due by the dairy farmer (s. 11). A dairy farmer who fails to comply with every determination, order or regulation made by Committee under the Act is to be guilty of an offence against the Act (s. 13) and to be liable to a fine under s. 19. Compulsion is an essential feature of taxation: *City of Halifax v. Nova Scotia Car Works, Ltd.* (2). Their Lordships are of opinion that the Committee is a public authority, and that the imposition of these levies is for public purposes. Under s. 22 the Lieutenant-Governor in Council has power to suspend the functions of a Committee, if its operations are adversely affecting the interests of consumers of milk or manufactured products, and the Committee is to report annually to the Minister and to send him every three months the auditor's report on their accounts (s. 12, subs. 2, and s. 8A). The fact that the moneys so recovered are distributed as a bonus among the traders in the manufactured products market does not, in their Lordships' opinion, affect the taxing character of the levies made.

The judgment of the majority of this court in *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction* (3) is to the same effect.

In *Workmen's Compensation Board v. C.P.R.* (4), assessments upon employers, for the purpose of providing an accident fund out of which compensation was payable by the Compensation Board to persons injured by accident in the course of their employment and to dependents in case of death, were held to fall within the denomination "direct taxation" within the meaning of section 92 (2) of the British North America Act.

Subsection 3 of section 17 and subsection 1 of section 33 require notice in this connection. As to the first of these enactments, the subject does

(1) (1933) A.C. 168

(2) (1914) A.C. 992, 998.

(3) (1931) S.C.R. 357 at p. 362.

(4) (1920) A.C. 184.

not appear to admit of extended argument, but we ourselves are unable to perceive any valid reason for holding that the authority to make laws in relation to the "raising of money by any mode or system of taxation" does not embrace the authority to require "A" to pay in the first instance a tax in respect of which "B" is liable, and to give "A" a right to reimbursement from "B" out of "B's" monies in "A's" hands, or otherwise.

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As to section 33, we are disposed to think that the provision in question, although unusual, is not beyond the power of Parliament to enact as an additional means for insuring the payment of contributions by employers and the satisfactory working of the scheme. However that may be, that provision is plainly severable. It is not a necessary part of the legislative scheme. Assuming it to be *ultra vires* and to afford some evidence of an intention on the part of Parliament to legislate for regulating the relations between employer and employee such evidence is not sufficiently powerful to deprive the legislation of its *prima facie* character, which, as we have said, is that of an enactment in respect of the subject matter of head No. 3 of section 91.

There remains the broad contention that the provisions of the statute viewed as a whole disclose a scheme under which a statutory contract arises imposing upon employers and employees a contractual duty to contribute to an insurance fund and conferring upon insured persons contractual rights to be paid unemployment benefits out of that fund when the statutory prerequisites are observed.

In *Workmen's Compensation Board v. C.P.R. Co. (supra)*, it was held, as we have seen, that the assessments levied upon employers in order to provide an accident fund out of which compensation was to be paid to employees injured by accident were in the nature of taxes.

Their Lordships' Board in that case had to consider a section of the Compensation Act under which, where the accident happened on a ship or a railway outside the province, and the workman was a resident of the province, and the nature of the employment was such that the work or service performed by the workman had to be performed both within and without the province, the workman or his dependents should be entitled to recover compensation if the circumstances were such that he would have possessed such a right had the accident happened within the province. It was held that it was competent to the provincial legislature to give such a right of recovery in such circumstances, as a statutory condition of the contract of employment made with a workman resident within the province.

This right, it was said, arises, not out of tort, but out of the workman's statutory contract, and, it was added, their Lordships think it is a legitimate provincial object to secure that every workman resident within the Province who so contracts should possess it as a benefit conferred on himself as a subject of the Province.

The statute also provides that in any case where compensation was payable in respect of an accident happening elsewhere than in the province,

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if the employer had not contributed fully to the accident fund in respect of his workmen engaged in the service in which the accident happened, the employer should pay to the Board the full amount of the compensation payable in respect of the accident, and that the payment of this sum should be enforceable in the same manner as an assessment. As regards this provision, their Lordships observed :

* * * it also appears to them to be within the power of the Province to enact that, if the employer does not fully contribute to the accident fund out of which the payment is normally to be made, the employer should make good to that fund the amount required for giving effect to the title to compensation which the workman acquired for himself and his dependents. 10

The question before their Lordships concerned the competence of the provincial legislature under the powers vested in it by section 92 to enact this legislation. A ship, the property of the C.P.R. Co., had been lost at sea outside Canadian territorial waters, and it was argued on behalf of the respondent company, that the right the legislature professed to give the workman in such circumstances, and the liability the legislation professed to impose upon the owner of the ship, was necessarily a right and a liability having a situs outside the province, and consequently not within the authority of the province to create, in exercise of its jurisdiction concerning "property and civil rights" within the province. This argument was based mainly, if not exclusively, upon the decision of the Judicial Committee in *Royal Bank v. The King* (1). 20

The judgment does not in terms state that the liability of the ship owner, where he has not fully contributed to the accident fund in respect of the employees engaged in the service in which the accident occurred, to make good such contribution in the manner mentioned was a liability arising out of the statutory term attached to the contract. The liability to pay assessments in the first instance is treated as a liability to pay a tax. As to the special duty arising from the failure to keep up his contributions, there seems to be no reason to think it was placed upon any other footing. At p. 192, their Lordships point out that the fundamental question was whether or not 30

a contract of employment made with persons within the province has given a title to a civil right within the province to compensation.

Their Lordships proceed,

The compensation, moreover, is to be paid by the Board and not by the individual employer concerned.

Then their Lordships observe that the C.P.R. Co., carrying on business in the province of British Columbia, is subject to the jurisdiction of the provincial legislature to enact laws within certain limits imposing civil duties upon it. There is no suggestion that the liability under this special provision is of a character different from the civil duty in respect of assess-

(1) (1913) A.C. 283.

ments made for the purpose of providing compensation for employees whose duties are confined to the province.

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10 It will be observed that the real effect of the decision is that these matters—the matter of constituting an accident fund by compulsory contributions from employers carrying on business by the province and employees resident in the province, and by an optional contribution from the provincial government, for the purpose of providing accident benefits for workmen resident in the province injured in the course of their employment—that these matters may, in their provincial aspects and for the purpose of establishing such a scheme of insurance, fall within the legislative authority of the province in relation to taxation, to property and civil rights, and, it may be, in relation to matters merely local and private within the province. Such a scheme it is within the authority of any province to establish. It does not follow that it is within the authority of any province, or all the provinces combined, validly to enact the legislation or, indeed, any part of the legislation necessary to give effect to the system set up by the statute before us.

20 It seems to me to be impossible to escape the conclusion that those parts of the enactment which concern the compulsory contributions are provisions relating to the subject of taxation. As pointed out in the *Crystal Dairy* case, and as appears from *Workmen's Compensation Board v. C.P.R.*, the circumstance that the fund is to be distributed for the benefit of private individuals does not militate against the view that these contributions have the character of taxes. As already observed, the essentials of taxation are indubitably present. Moreover, a provincial enactment providing for such contributions to be paid by revenue stamps to the Dominion Government, and to be collected according to regulations prescribed by the Governor in Council, and to be applied by the Minister of Finance in a manner provided by the statute, would plainly be *ultra vires*.
30 A province has, obviously, no power to pass such an enactment. The Dominion has the power if it is an enactment in relation to taxation.

40 It is of supreme importance at this point to keep in mind the fundamental principle governing the construction of the British North America Act: matters which in one aspect and for one purpose may, as subjects of legislation, fall within subdivisions of s. 92 may, in another aspect, and for another purpose, fall within section 91. A provincial legislature may require such compulsory contributions for the purpose of some scheme of unemployment insurance set up by itself in the exercise of powers of legislation which it possesses. In such a case it would appear from the decisions in the *Workmen's Compensation Board v. C.P.R.*, in the *Crystal Dairy* case and in *Lawson's* case, that such contributions have the character of taxes; and legislation with regard to them would not, therefore, fall within the category of legislation respecting civil rights within the meaning of section 92. But, even assuming that such legislation by a province could be regarded as legislation in relation to civil rights, as adding a statutory term to contracts of employment, it would appear to be extremely

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difficult to classify the enactments requiring the payment of the contributions now in question as belonging to the category of legislation in relation to civil rights within a province, especially in view of the provisions of the statute, already mentioned, under which the Dominion Government is the payee, and the Governor in Council possesses the power to regulate payment and collection of all contributions, and all such contributions are to be applied by the Finance Minister in the manner prescribed by the statute.

We find ourselves unable to conclude that, reading these provisions as a whole, these enactments requiring compulsory payments can be considered as enactments on the subject of property and civil rights within 10 any province or within all the provinces.

Turning now to the provisions of the statute dealing with unemployment benefits. These provisions, again, if found in a scheme of unemployment insurance set up by a province, might be regarded, as similar provisions in *Workmen's Compensation Board v. C.P.R.* were regarded by the Judicial Committee, as having the effect of annexing a statutory term to contracts of employment. But one thing seems to be clear—no single province, nor all the provinces combined, could enact this legislation in the exercise of their powers in regard to civil rights within the respective provinces. The enactments constitute directions for the application of a fund 20 constituted by contributions out of the public funds of the Dominion and no province possesses any authority to legislate in relation to the application of such a fund.

Our conclusion, therefore, is, first, that in its main provisions this statute ought on its true construction to be sustained as a valid exercise of the powers of the Dominion Parliament under subdivisions 1 and 3 of section 91. Second, that as to many of its provisions, they are plainly outside any authority possessed by any province or all the provinces under section 92 and, in so far as they do not fall within the ambit of the subdivisions mentioned, must be embraced within the general authority of the Dominion 30 to make laws for the peace, order and good government of Canada.

We should add that we are unable to agree with Mr. Rowell's contention that this legislation can be supported as legislation under head no. 2 of section 91, or that, in its entirety, it falls within the ambit of the residuary clause as interpreted and applied in recent decisions which are binding upon us.

To summarize :—

The aims stated in the preamble are legitimate, provided, of course, that the enactments themselves are within the ambit of the legislative powers possessed by Parliament. Reading subdivision 1 of section 91 and 40 subdivision 3 together, the proper conclusion is that Parliament has exclusive authority to raise money by any mode or system of taxation for disposition by Parliament for any purpose for which it is competent to Parliament to apply the assets of the Dominion in virtue of subdivision 1. In effect, subdivision 1 endows the High Court of Parliament with full discretionary authority to dispose of the public assets of the Dominion, and

no other court is invested with jurisdiction to examine any purported exercise of that authority with a view to pronouncing upon its validity, subject only to the rule that the courts are always entitled to determine whether, in truth, any given enactment of Parliament professing to be an exercise of a given authority is not really an enactment of that character; but one relating to a subject over which Parliament has no jurisdiction.

The provisions requiring compulsory contributions by employers and employed possess the essential elements of legislation respecting taxation. On their true construction, they have that character because, first, it would
10 not be competent to a provincial legislature to enact them in the context in which they stand, which demonstrates that the contributions are exacted for the purpose of raising monies for exclusive disposition by Parliament; and, second, there is no adequate ground for holding that they are, either in purpose or in immediate effect, outside the ambit of the powers under subdivision 3.

So also as regards the enactments concerning the disposition of the proceeds of the levies upon employers and employed and of the contribution from the Dominion treasury. They are not enactments in respect of property and civil rights in any one province or in all of the provinces.
20 They would not be competent as enactments by any or all of the provincial legislatures, and there is no adequate ground for affirming that these enactments are not legislation in relation to the subjects within the scope of subdivision 1.

It is hardly susceptible of dispute that Parliament could, in the legitimate exercise of its exclusive authority under subdivisions 1 and 3 of section 91, levy taxes for the purpose of raising money to constitute a fund to be expended in conformity with the directions of Parliament, in unemployment benefits, and provide for a contribution to that fund from the Dominion treasury, or to maintain that, in executing these exclusive powers,
30 Parliament is subject to any control by the courts as to the form of the taxation or the incidence of it or as touching the manner or conditions of the payment of benefits.

It is, perhaps, not too much to say that complete discretionary authority respecting the form and incidence of taxation under subdivision 3, and respecting the disposal of all public assets under subdivision 1, are essential to enable Parliament to discharge the responsibilities entrusted to it.

In a word, legislation for raising money for disposition by Parliament under subdivision 3 of section 91, and directing the disposition of it under subdivision 1, is necessarily excluded from the jurisdiction of the provinces
40 by the concluding words of section 91; and there is no sufficient ground for affirming that, in the enactments of this statute, Parliament is not exercising its powers under these subdivisions, or, in other words, that under the guise of doing so it is invading a provincial field from which it is excluded, for the purpose of attaining a result which it has full power to attain by legislating within fields in which it has exclusive authority.

The statute is, therefore, *intra vires* and the answer to the interrogatory addressed to us by the Order of Reference is in the negative.

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(b) RINFRET, J. (concurring in by Cannon J.)—The constitutionality of the Employment and Social Insurance Act (see ch. 38 of the Statutes of Canada 25–26 Geo. V, assented to 28th June, 1935) was referred by the Governor in Council to the Supreme Court of Canada under sec. 55 of the Supreme Court Act.

The statute is entitled “An Act to establish an Employment and Social Insurance Commission, to provide for a National Employment Service, for Insurance against Unemployment, for aid to Unemployed Persons, and for other forms of Social Insurance and Security, and for purposes related thereto.” The preamble refers to the Treaty of Peace 10
made between the Allied and Associated Powers and Germany, signed at Versailles on the 28th day of June, 1919. It states that it is desirable to discharge the obligations to Canadian Labour flowing from articles 23 and 427 of the Treaty, and that it is essential for the peace, order and good government of Canada to adopt such an Act for the purpose of maintaining on equitable terms interprovincial and international trade, to authorize the creation of a National Fund out of which benefits to unemployed persons throughout Canada will be payable and to provide for the levying of contributions from employers and workers for the maintaining of the said fund and for contributions thereto by the Dominion. 20

After making provision for the short title and the interpretation clauses, the Act is divided into five parts. Part I relates to the Employment and Social Insurance Commission, which is thereby brought into existence. Part II relates to Employment service. Part III relates to Unemployment Insurance. Part IV relates to National Health. Part V contains general provisions concerning regulations; the annual report to be submitted by the Commission; all other reports, recommendations and submissions required to be made to the Governor in Council; the disposition of fines; repeal, audit and the coming into force of the Act.

It is followed by three schedules, the first of which defines employment 30
within the meaning of Part III of the Act and enumerates the “excepted employments.” The second schedule fixes the weekly rates of contribution and establishes the rules as to payment and recovery of compulsory payments by employers on behalf of unemployed persons. The third schedule fixes the rates of unemployment benefits.

Under Part I, the Act is to be administered by a Commission consisting of three members to be called the Employment and Insurance Commission, with wide powers of investigation for assisting unemployed persons and for providing to them physical and industrial training and instruction.

Under Part II, the Commission is to organize an Employment Service 40
for the Dominion of Canada. The Act provides for the constitution and management of such Employment service on a very large scale. Regional divisions are established. There is to be in each such division a central employment office and as many employment offices as the Commission will deem expedient and desirable for the purposes of the Act. The Commission is to have the direction, maintenance and control of all employment offices so established. The Commission may make regulations authorizing

advances by way of loans towards meeting the expenses of workers travelling to places where employment has been found for them through an employment office.

Part III of the Act provides for Unemployment Insurance. The persons to be insured against unemployment are defined. The Act regulates the manner in which the funds required shall be collected partly from monies provided by Parliament, partly from contributions by employed persons and by the employers of those persons. But the employer shall, in the first instance, be liable to pay both the contribution payable by himself, and also, on behalf of the employed person, the contribution payable by that person, subject to the right to recover by deduction from the wages or otherwise. The payment of contributions is to be made by means of revenue stamps affixed to or impressed upon books or cards specially prescribed for that purpose. There follows statutory conditions for the receipt of unemployment benefits. One of them is that the person insured shall not be entitled to the benefit until contributions on his behalf have been made for not less than forty full weeks. The manner in which and the conditions under which the contributions are to be paid are defined in numerous sections and subsections.

20 All questions concerning the rights of persons under the Act are to be determined by the Commission. The Commission may employ insurance officers in each regional division; and the Governor in Council is further authorized to designate such number of persons as are necessary in each such division to act as umpires, deputy-umpires, courts of referees, chairmen of those courts, etc., for the purpose of examining and determining all claims for benefit, with elaborate provisions for appeal.

30 Then follow a number of sections dealing with penalties, legal proceedings, civil proceedings by the employee against the employer for neglect to comply with the Act, including the authorization for the Commission to institute proceedings on behalf of the employed person, or for the recovery as civil debts of sums due to the Unemployed Insurance Fund established under the Act.

Inspectors are to be appointed for the purpose of the execution of the Act with power to do all or any of several things, including the right to enter premises other than private dwellings, to make examinations and inquiries, to examine persons and to exercise such other powers as may be necessary to carry the Act into effect.

40 Then come the financial provisions. The revenue from the sale of the stamps and from all contributions are to be deposited from time to time in the Bank of Canada, by the Minister of Finance, to the credit of the Commission, in an account to be called "The Unemployment Insurance Fund." And in a similar way are to be deposited the monies provided by Parliament; and there is to be an Investment Committee of three members consisting of one member nominated by the Government, one by the Minister of Finance, and one by the Governor of the Bank of Canada, to look after the investment of such sums standing to the credit of the Fund as are not required to meet current expenditures.

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In addition to all the above officials, there will be appointed an Advisory Committee, the duties of which are to give advice and assistance to the Commission in relation to the discharge of its functions under the Act and to make reports on the financial condition of the Fund. This Committee shall consist of a Chairman and not less than four, nor more than six, other members. Further, the Commission is given authority to make regulations relating to persons working under the same employer partly in insurable employment and partly in other occupations; also for prescribing the evidence to be required as to the fulfilment of the conditions for receiving unemployment benefits; for prescribing the manner in which claims for unemployment benefit may be made, the proceedings to be followed in the consideration and examination of claims; and also regulations with respect to the references to the central or local committees, and to persons employed on night work and to penalties for the violation of any regulation. 10

Under Part IV, the duties and powers of the Commission are defined with respect to its co-operation in matters of health and health insurance. It may undertake special investigations in regard thereto, subject to the approval of the Governor in Council.

The weekly rates of contribution provided for under the second schedule are graduated according to the class and the wages of the employed person. The weekly contributions are made payable for each calendar week during the whole or any part of which an employed person has been employed by an employer. The payment of contributions both by the employer and by the employee is compulsory. All conditions prescribed for the payment of these contributions including the right of the employer to recover from the employed person the amount of any contributions paid by him on behalf of the employed person are made essential and necessary conditions of the contract of engagement between the employer and the employee. In fact, Part II of the second schedule contains any number of these conditions and provides for further regulations which may be made by the Commission in connection therewith. 20 30

The Court is asked to give its opinion upon the question whether the Act, or any of the provisions thereof, is *ultra vires* of the Parliament of Canada.

The written submission of the Attorney-General of Canada was that the Act in its entirety was within the legislative power of the Parliament of Canada in virtue of

(1) its residuary power to make laws for the peace, order and good government of Canada, and

(2) its exclusive power (a) to regulate trade and commerce, (b) to raise money by any mode or system of taxation, (c) to appropriate public money for any public purposes, (d) to provide for the collection of statistics; and, incidentally, (e) to enact criminal laws. 40

It is unnecessary for me to add anything to what has already been said—and so well been said—by my Lord the Chief Justice in connection with the other References made to the Court at the same time as the present

one (more particularly those concerning the Natural Products Marketing Act, 1934, and the Dominion Trade and Industry Commission Act, 1935), to indicate the reasons why I think that the validity of this legislation cannot be supported as an exercise of the residuary power to make laws for the peace, order and good government of Canada, or as an exercise of the power to regulate trade and commerce.

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(b) Rinfret J.
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Insurance of all sorts, including insurance against unemployment and health insurances, have always been recognized as being exclusively provincial matters under the head "Property and Civil Rights," or under the
10 head "Matters of a merely local or private nature in the Province." By force of the British North America Act, the power to make laws for the peace, order and good government of Canada is given to the Dominion Parliament only "in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces."

The exercise of legislative power by the Parliament of Canada in regard to all matters not enumerated in Section 91 was, by more than one pronouncement of the Judicial Committee of the Privy Council, declared to be "strictly confined to such matters as are unquestionably of Canadian
20 interest and importance" (*Attorney-General for Ontario v. Attorney-General for Canada*) (1); it will be recognized by the Courts "only after scrutiny sufficient to render it clear that circumstances are abnormal . . . such as cases of war or famine" (2); and "instances of these cases . . . are highly exceptional" (3).

In this particular matter, there is no evidence of an emergency amounting to national peril; but, moreover and still more important, the statute is not meant to provide for an emergency. It is not, on its face, intended to cope with a temporary national peril; it is a permanent statute dealing with normal conditions of employment. There was accordingly
30 here no occasion, nor foundation, for the exercise of the residuary power.

Nor is this legislation for the regulation of trade and commerce. It is not trade and commerce as defined by the Privy Council in its numerous decisions upon the subject. It deals with a great many matters which are trade and commerce in no sense of the word, such as the contract of employment, employment service, unemployment insurance and benefit, and health.

The proposition that the Act could be supported in virtue of the powers of the Dominion Parliament derived from Head 6 (Statistics), or Head 27 (Criminal Law) of section 91 need not retain our attention and it
40 was not pressed at the argument.

It may be stated further that the legislation is not based on the Treaty of Peace, although it is referred to in the preamble. In fact, counsel for the Attorney-General of Canada positively stated at bar that he was not relying on any treaty or on section 132 of the British North America Act.

(1) (1896) A.C. 348.

(2) (1922) 1 A.C., p. 200.

(3) (1923) A.C. 695; (1925) A.C. 396.

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There remains, therefore, in the submission made on behalf of the Dominion Government, only two heads that have to be considered in support of the legislation; and they are: "the power to raise money by any mode or system of taxation" (91-3), and "the power to appropriate public moneys for any public purpose."

In truth, these powers were only faintly advanced by counsel for the Dominion in favour of the legislation. Nevertheless, they were referred to, and more particularly as I understand that they were accepted in support of the validity of the Act by my Lord the Chief Justice, I realize that my reasons for holding a different view must be explained as fully, 10 though as concisely, as possible.

The critical question is whether or not the statute is, in its substance, an exercise of those powers to raise money by taxation and to make laws for the disposal of the public property.

At the outset, let us remember the remark of Lord Coke (4 Inst. 330) that the preamble of a statute is "the key to open the minds of the makers of the Act and the mischiefs which they intended to remedy."

The recitals of the preamble have already been referred to. They mention the Treaty of Versailles and the promise of the signatories to endeavour to secure and maintain fair and humane conditions of labour for 20 industrial wage earners. They indicate the desirability of discharging certain obligations to Canadian Labour. They invoke the importance for the peace, order and good government of Canada to provide for a National employment service, for insurance against unemployment and for other forms of social insurance. They allege the necessity of maintaining on equitable terms interprovincial and international trade. They mention the purpose of creating a national fund, out of which benefits to unemployed persons throughout Canada will be payable, and of providing for the levy of contributions from employers and workers for the maintaining of this fund and for contribution thereto by the Dominion. 30

With deference, it seems to me that these recitals clearly indicate that the Parliament of Canada intended primarily to legislate with regard to employment service, to unemployment insurance, and to health matters; that it was not concerned with the public debt and property or with the raising of money by taxation; and that the provisions for levying contributions for the creation of the national fund were nothing more than provisions to enable the carrying out of the true and only purposes of the legislation. The Act is one dealing with and regulating employment service and unemployment insurance. The contributions (or the taxes, if we are to call them so) are mere incidents of the regulation. 40

It is hardly necessary to repeat that, when investigating whether an Act was competently passed by Parliament, the courts must ascertain the "true nature and character" of the enactment, its "pith and substance," and the legislation must be "scrutinized in its entirety" for the purpose of determining within which of the categories of subject-matters mentioned

in sections 91 and 92 the legislation falls (*Citizens Insurance Co. v. Parsons* ⁽¹⁾; *Union Colliery Company v. Bryden* ⁽²⁾; *Great West Saddlery Company v. The King* ⁽³⁾; *Reciprocal Insurers Case* ⁽⁴⁾; *Toronto Electric Commissioners v. Snider* ⁽⁵⁾).

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In my humble view, the subject-matter of the Act is employment service and social insurance, not public debt and property or taxation. The object of the Act, the end sought to be accomplished by it is a scheme for employment service and unemployment insurance; the contributions levied from the employers and employees are only incidents of the proposed
10 scheme, and, in fact, merely means of carrying it into effect. The Act does not possess the character of a taxing statute, but it is legislation intending to do precisely what the title says: to establish an employment insurance commission, to provide for a national employment service, for insurance against unemployment, for aid to unemployed persons, or other forms of social insurance and security and for purposes related thereto.

It being well understood and, in fact, conceded that these are subject-matters falling within the legislative authority of the provinces, the Dominion Parliament may not, under pretext of the exercise of the power to deal with its property, or to raise money by taxation, indirectly accomplish
20 the ends sought for in this legislation. If it were otherwise, the Dominion Parliament, under colour of the taxing power, would be permitted to invade almost any of the fields exclusively reserved by the Constitution to the legislatures in each province.

One of the effects of the Act under submission is, in the language of Lord Haldane, in *Workmen's Compensation Board v. C.P.R.* ⁽⁶⁾, "to attach statutory terms to contracts of employment," and to impose contractual duties as between employers and employees. In its immediate result, the Act creates civil rights as between the former and the latter.

I doubt whether the contribution received from the employee can
30 properly be described as a tax. In fact, it would seem to me to partake more of the nature of an insurance premium or of a payment for services and individual benefits which are to be returned to the employee in proportion to his payments. Be that as it may under all circumstances, the benefits conferred on the employees by the Act are not gifts with conditions attached, which the employees are free to accept or not; the conditions attached to the benefits are made compulsory terms of all contracts in the specified employments, and I deprecate the idea that the Dominion Parliament may use its power of taxation to compel the insertion of conditions of that character in ordinary contracts between employers and employees.

40 It may be that some of the provisions of the Act are not open to objection. But I fail to see how they can be severed from the general scheme organized under the Act or from the powers conferred on the Commission; and the legislation as it stands must undoubtedly fall as a whole.

⁽¹⁾ (1881) 7 App. Cas., p. 96.

⁽²⁾ (1899) A.C. 580.

⁽³⁾ (1921) 2 A.C. 91, at p. 117.

⁽⁴⁾ (1924) A.C. 328 at p. 337.

⁽⁵⁾ (1925) A.C. 396 at p. 407.

⁽⁶⁾ (1920) A.C. 184.

No. 13. In the premises, the Act submitted to the Court is not a mere encroachment on the provincial fields through the exercise of powers allegedly ancillary or incidental to one of the enumerated powers of Section 91; in its pith and substance, it is a direct and unwarranted appropriation of the powers attributed to the legislatures by force of Section 92 of the Constitution.

Reasons for Judgment.
(b) Rinfret J. (concurring in by Cannon J.)
—continued. For these reasons, and also for the reasons given by my brother Kerwin, with whom I entirely concur, I have come to the conclusion that the Employment and Social Insurance Act (chapter 38 of the Statutes of Canada 25–26 Geo. V) is wholly *ultra vires* of the Parliament of Canada; and I certify to the Governor General in Council for his information my opinion that the question in relation thereto should be answered in the affirmative. 10

(c) Crocket J. (c) CROCKET, J.—For the reasons given by my brother Rinfret, I agree that the above statute is wholly *ultra vires* of the Parliament of Canada and shall accordingly answer this question in the affirmative.

I certify the foregoing to be my opinion upon the question referred for the consideration of the Court with respect to the above statute, with my reasons for my answer thereto.

(d) Kerwin J. (concurring in by Cannon J.) (d) KERWIN, J. (Concurring in by Cannon J.)—The Governor General in Council has referred to this Court for hearing and consideration pursuant to section 55 of the Supreme Court Act the following question: “Is the Employment and Social Insurance Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?” 20

Section 1 of the Act merely gives its short title; section 2 is the interpretation section, while section 3 provides that the remainder of the Act may be referred to as follows:

PART I, sections four to nine inclusive, relating to the Employment and Social Insurance Commission;

PART II, sections ten to fourteen inclusive, relating to Employment Service; 30

PART III, sections fifteen to thirty-eight inclusive, relating to Unemployment Insurance;

PART IV, sections thirty-nine to forty-one inclusive, relating to National Health;

PART V, sections forty-two to forty-eight inclusive, General.

The sections included in Part II provide that The Employment and Social Insurance Commission constituted under Part I shall organize an employment service for the Dominion of Canada, and contain supplementary provisions for the collection of information, advances to workers seeking employment, etc. 40

The sections included in Part IV enact that the duties and powers of the Commission under that Part shall be exercised so far as may be found practicable and expedient in co-operation with any department or departments of the Government of Canada, with the Dominion Council of Health,

with any province or any number of provinces collectively, or with any municipality or any number of municipalities collectively, or with associations, or corporations, and provide that it shall be the duty of the Commission to assemble reports, publications, etc., concerning certain schemes or plans for medicinal, dental or surgical care, including medicines, drugs or hospitalization, or compensation for loss of earnings arising out of ill-health, accident or disease.

By themselves the provisions of Part II and of certain portions of Parts IV and V might be unobjectionable, but in my opinion they are so
 10 inextricably interwoven with the powers of the Commission set up under Part I and with the scheme of unemployment insurance referred to in Part III that they must stand or fall according to the validity or otherwise of sections 15 to 38 inclusive which form Part III.

As to Part III serious questions arise. In addition to the arguments of counsel, I have had the advantage of reading the opinion of My Lord the Chief Justice, but with deference I find myself unable to agree with the conclusions expressed therein that this Part of the Act may be justified as an exercise by Parliament of its powers under Head 1 "The Public Debt and Property" and Head 2 "The Raising of money by any mode or system
 20 of taxation" of section 91 of the British North America Act 1867. It is quite true that Parliament, by properly framed legislation, may raise money by taxation and dispose of its public property in any manner that it sees fit. As to the latter point, it is evident that the Dominion may grant sums of money to individuals or organizations and that the gift may be accomplished by such restrictions and conditions as Parliament may see fit to enact. It would then be open to the proposed recipient to decline the gift or to accept it subject to such conditions. As to the first point, it is also
 30 undoubted, I conceive, that Parliament, by properly framed legislation, may raise money by taxation, and this may be done either generally or for the specific purpose of providing the funds wherewith to make grants either before or after the conferring of the benefit.

But in my view, after a careful consideration of all the sections in Part III of the Act, in substance Parliament does not purport to do either of these things. Section 15 provides that the designated persons, referred to as "unemployed persons" shall be insured against unemployment in the manner provided for by the Act. Section 17 enacts that the funds required for providing "unemployment benefit" and for making any other payments which are to be made out of the Unemployment Insurance Fund established later under Part III shall be derived partly from moneys pro-
 40 vided by Parliament, partly from contributions from employed persons and partly from contributions from employers of those persons, which contributions shall be paid by means of revenue stamps or otherwise as may be prescribed by the Commission. Rates of contribution are set forth in the second schedule to the Act, and by ss. 3 of s. 17 except where regulations under the Act otherwise prescribe, the employer shall in the first instance be liable to pay both the contribution payable by himself and also the contribution payable by the employed person with power to the

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J.(concurrent
in by
Cannon J.)
—continued.

employer, subject to regulations, to recover from the employed persons to the amount of the contributions so paid on behalf of the latter by the employer. By section 19 every unemployed insured person who complies with prescribed "statutory conditions" is entitled to receive what is known as an "unemployment benefit." There is a provision by which certain employed persons may be exempted from the provisions of the Act, but subject to that, the individuals covered by this Part are obliged to become insured by means of a statutory condition attached to the contract of employment.

While there are numerous other provisions, I believe I have correctly 10 set forth the marrow of Part III of the Act and I am unable to ascertain in what manner they may be termed an exercise of the power conferred upon Parliament to tax. It occurs to me that if it were otherwise the Parliament of Canada might in connection with any matter whatsoever, by the mere imposition of a tax, confer upon itself authority to legislate upon matters over which the legislature of each province would ordinarily have jurisdiction. This must be understood, of course, as not referring to any power in the legislatures of the various provinces to originate or assist its local scheme by indirect taxation.

That, with this qualification, the subject matter of Part III would 20 ordinarily fall within the ambit of the powers of the provinces within their respective boundaries was not, I think, seriously disputed. It deals with contracts of employment and attaches thereto a statutory condition. It interferes with property and civil rights. A reference particularly to section 15 and to the recitals in the Act indicates that the very pith and substance of this part of the Act deals with unemployment insurance.

In re The Insurance Act of Canada (1) was an appeal from the judgment of the Court of King's Bench (Appeal Side) for the Province of Quebec in answer to the following questions referred to that Court by the Lieutenant-Governor in Council of the Province : 30

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

2. Are ss. 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 licence to carry on business in the Province and any other case?

In delivering the judgment of their Lordships, Viscount Dunedin after referring to *Attorney-General for Canada v. Attorney-General for Alberta* (2), 40 and stating that that decision conclusively and finally settled that regulations as to the carrying on of insurance business were a provincial and not a Dominion matter, concluded: "It really only carried to their logical conclusion the two cases already cited"; the two cases being *Citizens Insurance Company v. Parsons* (3) and *John Deere Plow Company's case* (4).

(1) (1932) A.C. 41.

(2) (1916) 1 A.C. 588.

(3) (1881) 7 A.C. 96.

(4) (1915) A.C. 330.

He then discussed the *Reciprocal Insurers* case ⁽¹⁾, pointing out that the Board had there decided that section 508C of the Criminal Code was not a genuine amendment of the criminal law, but was really an attempt by a soi-distant amendment of the criminal law to subject insurance business in the Province to the control of the Dominion—that which had exactly been determined to be *ultra vires* the Dominion by the judgment of 1916. Their Lordships therefore in the 1931 case decided that the first part of question 1 should be answered in the negative. They then proceeded to the second question and quoted the only section of the Special War Revenue Act that in their opinion needed to be considered. That section was as follows :

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.

The judgment continues :—

Now as to the power of the Dominion Parliament to impose taxation there is no doubt. But if the tax as imposed is linked up with an object which is illegal the tax for that purpose must fall.

On page 53 Viscount Dunedin quoted the following extract from the judgment of the Board in the *Reciprocal Insurers'* case :—

30 . 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 sections under s. 91, head 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.

He then continued :—

40 If instead of the words " create penal sanctions under s. 91, head 27 " you substitute the words " exercise taxation powers under s. 91, head 3," and for the word " criminal " substitute " taxing," the sentence expresses precisely their Lordships' views.

If this be the case where the Court decides that Parliament has colourably invaded the field of provincial jurisdiction, how much more cogent is the reasoning if one comes to the conclusion that the legislation in question does not even purport to be a taxing Act ?

In the present reference that is the conclusion to which I am impelled and it follows that in my view Part III may not be justified under either of the heads of section 91 of the British North America Act to which I have

(1) (1924) A.C. 328.

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—continued.

referred. For the reasons already given the remainder of the Act is in the same position.

Elsewhere in his consideration of other Acts referred at this time to this Court, my Lord the Chief Justice has dealt exhaustively with the powers of Parliament under the residuary clause of s. 91 of the British North America Act and also with the powers of the Dominion under head 2, "The Regulation of Trade and Commerce," of that section. It is unnecessary, therefore, for me to refer to the decisions and I content myself with expressing the opinion that, even if the object aimed at by Part III of the present Act may be praiseworthy and if the desired result might better be obtained by the Dominion than all or some of the provinces acting within their constitutional limitations might accomplish, the matter is not translated from the jurisdiction of the provincial legislature to that of Parliament. In the same way I am unable to see how, in view of the summary of the powers of the Dominion with reference to trade and commerce also given elsewhere by the learned Chief Justice, the matter could be considered as falling within that head of section 91.

For these reasons, and for the reasons given by my brother Rinfret which I have had the opportunity of perusing, I certify to the Governor General in Council for his information my opinion that the Act in toto is *ultra vires* of the Parliament of Canada.

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No. 14.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BALMORAL

The 26th day of September, 1936

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

No. 14.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
26th Sept-
ember, 1936.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 29th day of July 1936 in the words following viz. :—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Attorney-General of Canada in the matter of an Appeal from the Supreme Court of Canada in the matter of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada 1935: And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the

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Judgment of the Supreme Court dated the 17th June 1936 and for such further or other Order as to Your Majesty may appear fit :

*In the
Privy
Council.*

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and on behalf of the Attorneys-General of the Provinces of Ontario, Quebec, New Brunswick, Manitoba, British Columbia, Alberta and Saskatchewan Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute an Appeal against the Judgment of the Supreme Court of Canada dated the 17th day of June 1936 :

No. 14.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
26th Sept-
ember, 1936
—*continued.*

“And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

A. H. L. HARDINGE.

STATUTES AND OTHER DOCUMENTS.

*Statutes
and other
Documents.*

No. 15.

No. 15.

Treaty of Peace (Versailles) pages 1 to 171. June 28th, 1919.

30

(Separate document.)

No. 16.
The Treaties
of Peace
Act, 1919,
10 George V.
chapter 30,
10th Nov-
ember, 1919.

No. 16.

The Treaties of Peace Act, 1919, 10 George V. Chap. 30.

AN ACT FOR CARRYING INTO EFFECT THE TREATIES OF PEACE
BETWEEN HIS MAJESTY AND CERTAIN OTHER POWERS.

(Assented to 10th November, 1919.)

WHEREAS, at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (including a Protocol annexed thereto), between the Allied and Associated Powers and Germany, a copy of which has been laid before each House of Parliament, was signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named: and whereas a Treaty of Peace between the Allies and Associated Powers and Austria has since been signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named, and it is expedient that the Governor in Council should have power to do all such things as may be proper and expedient for giving effect to the said Treaties; Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1.—(1) The Governor in Council may make such appointments, establish such offices, make such Orders in Council, and do such things as appear to Him to be necessary for carrying out the said Treaties, and for giving effect to any of the provisions of the said Treaties.

(2) Any Order in Council made under this Act may provide for the imposition by summary process or otherwise, of penalties in respect of breaches of the provisions thereof, and shall be laid before Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act, but may be varied or revoked by a subsequent Order in Council.

(3) Any expense incurred in carrying out the said Treaties shall be defrayed out of moneys provided by Parliament.

2. This Act may be cited as The Treaties of Peace Act, 1919.

No. 17.

No. 17.

The Employment and Social Insurance Act, Statutes of Canada (1935)
25-26 Geo. V. Chapter 38.

(*Separate document.*)

In the Privy Council.

No. 101 of 1936

ON APPEAL FROM THE SUPREME
COURT OF CANADA.

IN THE MATTER of a Reference as to whether
the Parliament of Canada had legislative
jurisdiction to enact The Employment and
Social Insurance Act, being Chapter 38 of the
Statutes of Canada, 1935.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA
Appellant

AND

THE ATTORNEYS-GENERAL OF THE PRO-
VINCES OF ONTARIO, QUEBEC, NEW
BRUNSWICK, MANITOBA, BRITISH
COLUMBIA, ALBERTA AND SASKATCH-
EWAN - - - - *Respondents.*

RECORD OF PROCEEDINGS.

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