

IN THE PRIVY COUNCIL.

COUNCIL CHAMBER, WHITEHALL, S.W.1.

Thursday, 23rd July, 1931.

Present:

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

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

T H I R D D A Y.

MR ST. LAURENT: My Lords, may I just say one word with respect to the retention in the consolidation of the Criminal Code of section 507, which was 508, which has been declared ultra vires by the 1924 Reference to the Board. My instructions are that this came about as the result of a misunderstanding between the Commission instructed as to the consolidation of the statutes and the Department of Justice, and that it has remained there by inadvertence rather than otherwise. The second point which was mentioned was the proposal now before the Canadian Parliament to increase the rate of taxation provided for by section 16 of the Special War Tax Act. I am instructed that the Bill providing for this possible increase in taxation contains a proviso that it is not to come into force except by proclamation, and that it was stated by the Minister of Finance, when the Bill was being considered in the House, that there was litigation pending to determine whether or not this was valid taxation, and that this provision was inserted into the Bill so that it might not come into effect until a Judgment was rendered, and then only if, under the Judgment rendered, it was proper that such taxation should be enacted. As to the rate itself, the Minister then accepted an amendment to the proposal that instead of it being fixed at 15 per cent it should be such rate, not lower than 5 per cent and not exceeding 15 per cent, as might be fixed by the proclamation when the Act was put into force. May I ask your Lordships' attention to sections 5 and 45 of 9 and 10 Edward VII, chapter 32, the Insurance Act which was considered in the 1916 Reference. These two sections, in my submission, do show that the license was subject to the terms of the Act. This Act has been repealed and revised by the 1917 Act, but it is for the purpose of enabling your Lordships to see what were the provisions of the Insurance Act which was being considered when

Lord Haldane made the statement upon which we rely. Section 5 provides : "The Minister, as soon as any company applying for a license has deposited in his hands the securities hereinafter mentioned, and has otherwise conformed to the requirements of this Act, shall, subject to the provisions hereinafter contained, issue the license". In our submission, that requires the Minister to ascertain, before the license, that the applicant had up to that point complied with all the requirements of the Act. Section 45, subsection 1, provides for the appointment of a superintendent to inspect and ascertain whether the provisions of the Act were being complied with by the licensed insurers, and subsection 2 of section 45 provides: "In the case of any violation of any of the provisions of this Act by a company licensed thereunder to carry on business within Canada, or in the case of failure to comply with any of the provisions of its charter or Act of incorporation by any Canadian company so licensed, it shall be the duty of the Superintendent to report the same to the Minister, and thereupon the Minister may, in his discretion, withdraw the company's license or may refuse to renew the same or may suspend the same for such time as he may deem proper".

LORD MACMILLAN: The third subsection is important.

MR ST. LAURENT: "The issue by a company of policies not authorized by its license shall be deemed a violation of the provisions of this Act within the meaning of the preceding subsection".

LORD MACMILLAN: Every policy must contain the statutory condition, otherwise you have violated the statute?

MR ST. LAURENT: Yes, my Lord. At that time there were no minute directions as to the policies, as are to be found in the Act at the present time. This was the next observation I

wished to put before your Lordships. With regard to the view taken by the Judges who pronounced against the right of the Dominion in the Province of Quebec, in my reading of the Judgment the same view was entertained before your Lordships in the Province of Ontario, so that the vice which was found in this legislation was that it introduced control or sought to introduce control, by Federal Authority, over the terms and conditions of the policies written by underwriters. That was under sections 91, 115, 123, 134 and 135 of the Act. Not all those provisions were in the statute when it was being considered by this Board in 1916. Section 91 of the present Act was section 95 of the Act of 1910 in substantially the same form.

LORD ATKIN: Those are life policies?

MR ST. LAURENT: Yes, my Lord; it deals with life policies.

The enactment of those provisions followed the Report of the Royal Commission which has been appointed to investigate matters of insurance, and with regard to which the Commissioners, after expressing their view as to the respective jurisdiction of the Dominion and of the Province, concurred in recommending as follows. It is quite short, if your Lordships wish to have it as a matter of historical interest explaining how this was first enacted. "These considerations point to the expediency in the public interest of such legislative action by the Dominion and the Province as will secure" etc. (reading extract).

LORD ATKIN: I am not sure that the view of the Dominion is not a little overstated.

MR ST. LAURENT: This was 1907.

VISCOUNT DUNEDIN: This is not authority.

MR ST. LAURENT: No, my Lord, I am not citing it to your Lordships as such, but as explaining it.

VISCOUNT DUNEDIN: We have to deal with the statutes as they are.

MR ST. LAURENT: Yes, my Lord.

VISCOUNT DUNEDIN: Not with what people thought they were doing when they made them. You might just as well read the debates in the House of Parliament.

LORD ATKIN: Are you saying that what we ought to infer is not an intention to control the contract, but simply a desire to make the contract uniform? Is that the distinction?

MR ST. LAURENT: Yes, my Lord.

VISCOUNT DUNEDIN: You may say that if you like, but I deprecate reading out of a report of a gentleman who had to do with the making of the Act to show what he meant by it. As I say, you might as well read the debates in the Houses of Parliament to show what the Act means. We have to deal with the Act as it is, and nothing else. You may comment as much as you like upon the Act, but I entirely deprecate a citation like that being read.

MR ST. LAURENT: It was only because, my Lord, it was the Report of a Commission which had been appointed to investigate.

VISCOUNT DUNEDIN: We have to deal with the Act of Parliament as it is, and that has been said again and again.

MR ST. LAURENT: Section 91 dealing with the insurance contract is substantially section 95 of the Statute of 1910, section 115, of the present Act, which deals with fraternal benefit societies, and is substantially a consolidation of various provisions which go back to the Act of 1885, chapter 49, sections 5, 6, 7, 8, 9 and 11. Section 123 of the present Act, which deals with fire insurance and contains certain provisions which are to apply to insurance contracts issued by insurance companies licensed, was not enacted until 1924. Section 134 of the present Act which deals with the powers to extend insurance, or sickness insurance, was enacted in 1917 by chapter 29. Your Lordships will perhaps allow me to draw

your attention to subsection 4 of section 134. It is at the foot of page 75 of the book. I submit it was an attempt to meet the situation that that might be looked upon as outside the legislative jurisdiction of the Dominion. "Any of the foregoing terms or provisions which are inconsistent with terms or provisions required to be contained in the policy by the law of the province in which the policy is issued, shall not, to the extent to which they are so inconsistent, be required to be contained in the policy".

LORD BLANESBURGH: Theoretically, that would not help us very much with regard to transactions within the province if the Dominion legislature is not entitled to interfere at all. If this was valid, it would enable it to make laws for the province in respect of matters not in conflict with the then provincial law. Would that be within its power if it had not any right to intervene at all?

MR ST. LAURENT: Possibly not.

LORD BLANESBURGH: The principle may be the same in relation to both, though one sees the purpose of this clause.

MR ST. LAURENT: Yes, my Lord. I referred to it as illustrating my submission that this was done for the purpose of endeavouring to secure uniformity in the insurance business throughout Canada, and not as an assertion of a desire to trench upon provincial jurisdiction. Then section 135 was not enacted until 1923, by chapter 55, section 3. That deals with the business of automobile insurance.

Now may I just very briefly sum up the position which we submit to your Lordships. In our submission, the Dominion has jurisdiction in regard to taxation for Dominion purposes, and it has jurisdiction to a certain extent over Dominion companies and over aliens. We also submit that it has some jurisdiction over persons immigrating into Canada

LORD BLANESBURGH: The jurisdiction with regard to immigration is no less than over aliens, so far as the words are concerned.

MR ST. LAURENT: By this definition, the province may also legislate with regard to immigrants, whilst they may not do so with regard to aliens. Under the 1916 Judgment we submit that the Dominion has power by properly framed legislation to control the activities of aliens in relation to the subject matter of insurance at least to the extent of requiring them to obtain a license to carry on such business. We submit that by analogy the Dominion would have the same jurisdiction over Dominion companies - your Lordships remember the interpolation of Mr Justice Duff in the 1924 Judgment - and we submit that on the proper construction of section 95 of the British North America Act it would have the same jurisdiction with regard to immigrants.

LORD RUSSELL: I am not sure, down to this point, that there is any real dispute between the parties.

MR ST. LAURENT: No, my Lord; down to this point there probably is not a real dispute.

LORD ATKIN: All you are saying now is it is the same jurisdiction in these respects?

MR ST. LAURENT: To do it by properly framed legislation.

LORD ATKIN: To the extent of requiring them to have licenses.

MR ST. LAURENT: The next point is perhaps the contentious point. Our next submission is that the legislation under review is properly framed, at least in so far as they merely prohibit the three classes affected from carrying on the business of insurance without first obtaining a license. The vice, if any, in any of these sections would be contained in the words "pursuant to the provisions of this Act", which apparently necessitates examining the Act to see upon what terms the

license is to be granted. It is submitted that at least those sections of the Act which regulate the conditions antecedent to the issue of the license, and which regulate the status and capacity of the proposed licenses, are within the ambit of Federal jurisdiction. We submit that it is within the Federal jurisdiction to see which of these three classes of persons shall be licensed to carry on insurance business, and, after they have been licensed, to subject them to inspection for the purpose of determining how long they may be allowed to continue in that business. The sections to which objection might be taken are those which may be held to go beyond the mere regulation of status.

LORD BLANESBURGH: In your view, their power with regard to immigrants is no less extensive than with regard to aliens?

MR ST. LAURENT: Yes, my Lord. I would put that upon the ground often repeated by this Board, that all legislative powers are to be found somewhere in Canada, and that such is a power which would properly belong to a self-governing dominion; and as regards immigrants equal powers are given both to the Federal and to the Provincial, with paramount authority given to the Federal Parliament.

VISCOUNT DUNEDIN: Would you tell me what you think about this. You are saying now practically that pursuant to this Act, when you look at the Act some of the sections may be wrong and some may be right. Is that to be left undetermined, or must not these sections that we are asked to give an opinion upon be judged just as they are, which brings in the whole Act, and not parts of it?

MR ST. LAURENT: The questions submitted do, of course, refer to the validity of these sections as drawn, but this is the fourth time your Lordships have had before you the matter of

drawing the line of demarcation between the Federal and Provincial jurisdiction with regard to the business of insurance.

VISCOUNT DUNEDIN: It is not drawing a line of demarcation; it is drawing a statute.

MR ST. LAURENT: The whole purpose of the reference and the litigation, and the importance of it in fact, is not that it be held that the Dominion has such jurisdiction, and the Province only such jurisdiction, but that it be ascertained what jurisdiction each has, so that each may deal only within its own province.

VISCOUNT DUNEDIN: That may more or less come out in the opinion. I am putting to you at present that once you are driven to admit, and for the moment I ask you to hypothesise that you are driven to admit, that large portions of the actual Act are beyond the powers of the Dominion, are not we bound to say that sections 11 and 12 as they stand are unconstitutional?

MR ST. LAURENT: Well, my Lord, the pith and substance of the Act is an Act to control the status and powers.

VISCOUNT DUNEDIN: I quite understand in giving judgment we might say certain things that will enable you to draw for the Dominion a better Act in the future, but we are not going to do it in this Judgment; of that you may be quite certain.

MR ST. LAURENT: Our submission is that the pith and substance of this Act is to control by way of license who shall do insurance business of these three classes of persons.

LORD RUSSELL: If the view entertained is that the license as contemplated by this Act is one which introduces the element of control in contracts in the province, there is no other license contemplated by sections 11 or 12 at all?

MR ST. LAURENT: No, my Lord.

LORD RUSSELL: If that is all, they must be bad. You want us to

redraft the section?

MR ST. LAURENT: No, my Lord; but these other sections, few in number, which deal with the contract, are in our submission severable from the Act, in the pith and substance of the Act.

LORD RUSSELL: You cannot sever them from section 11 or section 12, because the license has to be a license granted pursuant to the provisions of this Act.

MR ST. LAURENT: Yes, my Lord.

LORD RUSSELL: I do not see how you can shake that.

LORD ATKIN: I am not at all sure - I thought it was part of your argument - whether a license granted pursuant to the provisions of this Act means more than that what you call the condition precedent must be performed. That is the way in which the license should be granted. The jurisdiction of the Act afterwards is this, that if a license is granted, then if in fact the provisions of the Act are violated the license can be withdrawn. I am not quite so sure - I do not know whether it is in your favour or not - whether or not you say that a man must first of all have a license granted pursuant to the provisions of this Act, and then words incorporating all the provisions of the Act. The statute imposes obligations upon persons who are licensed, does it not?

MR ST. LAURENT: Sections 91, 115, 123, 134 and 135, are drawn in rather an embarrassing form, because the first line is:

"It shall be a condition of the license of every Company licensed under this Act to carry on the business of life insurance whether such condition be expressed" -----

LORD RUSSELL: To that extent, that is a statutory provision as to the form of the license.

LORD ATKIN: That is, section 91 so drawn is a little embarrassing?

MR ST. LAURENT: They are drawn in that form. These sections are by the statute intended to be conditions of the license.

whether expressed in the license or not.

LORD MACMILLAN: Surely a license granted pursuant to a statute must be a license entailing the consequences which the statute imposes.

LORD RUSSELL: Section 134 says: "whether such condition be expressed in the license or not".

LORD ATKIN: Once you have them in the license, there is no doubt if you incorporate the sections in the license then you are heading that way.

MR ST. LAURENT: These sections incorporate them in the license by their own force.

LORD BLANESBURGH: Whether expressly or by reference.

MR ST. LAURENT: The license itself does not incorporate them; it is merely a license under the terms of the Act.

LORD RUSSELL: It looks as if you must be wholly good or wholly bad.

LORD BLANESBURGH: It is like the express on "beneficial owner" in conveyancing; it implies all sorts of covenants you find in the statute.

MR ST. LAURENT: The sections of the Act would in themselves be severable. The very purpose of the Act is to require by means of the licensing system, on the determination by Federal Authority, that a person shall be empowered to do insurance business.

LORD MACMILLAN: The questions are not quite framed with that outlook, are they?

MR ST. LAURENT: No, my Lord. The questions were submitted by the Province of Quebec with respect to the validity, regarding a license, of this provision, and its validity regarding British subjects not resident in Canada.

LORD BLANESBURGH: Are not you seriously embarrassed by this, which I think was rather brought to our notice by your opponent,

that to utilise the control over licenses for the purpose of imposing upon them this strict obligation which is not imposed upon other people, is not jurisdiction exercised by the Province of Canada really in conjunction with aliens, but is exercised with regard to some other purpose altogether? That argument becomes much stronger with regard to immigrants.

MR. ST. LAURENT: We submit to the finding of this Board there is the possibility of controlling even with respect to insurance.

LORD BLANESBURGH: You get Lord Haldane again.

MR ST. LAURENT: And that re-affirmed in 1924 and extended in 1924 to Dominion companies.

LORD RUSSELL: You say you get this in Lord Haldane's statement in 1916?

MR ST. LAURENT: In 1916; and it is in the 1924. It is stated there for analogous reasons that the same jurisdiction would exist with respect to Dominion companies.

VISCOUNT DUNEDIN: I think in all truth you are really using the word "immigrate" in the sence of "come", and not in the sence in which it was originally put there.

MR ST. LAURENT: Yes, my Lord.

VISCOUNT DUNEDIN: Some people use picturesque expressions.

I remember an old Scotch lady who talked of her young friend, who was a bank clerk, that he emanated from the bank every afternoon at 4 o'clock.

LORD BLANESBURGH: A native-born Canadian returning to Canada to spend the evening of his days in the old home is, in regard to insurance, to be put in a worse position than any other Canadian citizen?

MR ST. LAURENT: Unless what he was doing would come within the proper interpretation of "immigrants into Canada" he

would not. The question as to whether the returning Canadian would be immigrating into Canada for the purpose of carrying on business would be a fact which would have to be determined by the Courts.

VISCOUNT DUNEDIN: I think you have given us a very fair summary.

MR. ST. LAURENT: There is nothing further that I can usefully add, my Lord.

MR. TILLEY: My Lords, I do not know that I can really add anything to what has been said. There is just one point that my learned friend was making that possibly should be referred to. He said that there had been four cases before this Board, and really on each occasion it has been an effort to see how little need be taken out of the Insurance Act to make the rest good; and that seems to be the object here. This legislation is insurance legislation; it is not legislation with regard to aliens, it is not legislation with regard to immigration. The language of the statute is not "immigrants", but "immigration", and the Dominion by amendment made to section 4, merely striking out such companies as it saw it could not control with regard to insurance, wants it held to have insurance jurisdiction, that is as to the condition of the policies, over the other companies. If there is to be uniformity of contract with regard to insurance it must, we submit, be brought about by the united action of the different provinces. My Lords, the situation as it stands is embarrassing to insurers, and for that reason it would be very desirable that the difficulties should be solved as soon as possible, because they are in doubt about their actual insurance contracts, and about the propriety of renewing. Large concerns like the Massey-Harris Company are in that position, and the whole matter is in such a state of doubt as to validity that it leaves matters in a most embarrassing position at the moment.

VISCOUNT DUNEDIN: There is one question I want to ask both of you. This is not controversial at all. If you look at page 7 of the Record you will find in the notice to the Attorney General of Canada a reference there to a third question. That is not taken any notice of by any of the Judges, and I do not think it is at all necessary to, but I want to know what you say about that. Nobody has said anything about that third question.

MR ST. LAURENT: That is a misprint, my Lord; it is only part of the second question; there should not be any "3".

VISCOUNT DUNEDIN: I understand now.

MR. TILLEY: It is all part of section 2.

VISCOUNT DUNEDIN: Then I wanted to ask if you could give me the date at which there was the first legislation dealing with insurance in the provinces. In one of the cases it came out at a very early period; Ontario did it, but I suppose Quebec did it too. Can you give me the date of the first provincial legislation? It is merely with a view to seeing how soon they got at it, so to speak.

MR TILLEY: There was pre-confederation legislation, and then after confederation I think the Dominion and the Province of Ontario started at about the same time to carry on.

VISCOUNT DUNEDIN: The Province of Ontario we have. I wondered if Quebec had done the same thing.

MR TILLEY: I do not know about Quebec.

MR LANCIOT: I think in the statutes of 1888 there will be a reference to the original Act.

VISCOUNT DUNEDIN: Their Lordships will consider the advice that they will humbly tender to His Majesty with regard to this matter.

MR LANCIOT: My Lord, I have now the date upon which the Quebec legislation came into force. The first general Act was passed in 1908; it is chapter 69 of the statutes of that year; and

it was preceded, since confederation, by various Acts which only touch the subject partly. In Quebec this Statute of 1909 is the first statute of general import.

VISCOUNT DUMEDIN: Just the same practically as Ontario.

MR LANCOTE: Your Lordship will find that as it now stands in the Revised Statutes of Quebec for 1925, chapter 240. All these statutes were passed after the big investigation which took place in New York in respect of the New York Insurance Company.

VISCOUNT DUMEDIN: Thank you.
