

75, 1948

No. 13 of 1948.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR SASKATCHEWAN

UNIVERSITY OF LONDON
L.S.

-3 OCT 1956

BETWEEN

THE LABOUR RELATIONS BOARD OF
SASKATCHEWAN

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AND

JOHN EAST IRON WORKS LIMITED

Respondent

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AND

THE ATTORNEY GENERAL OF SASKATCHEWAN,
THE ATTORNEY GENERAL OF ONTARIO,
THE ATTORNEY GENERAL OF NOVA SCOTIA,
and THE ATTORNEY GENERAL OF CANADA

Interveners.

Case

FOR THE INTERVENER THE ATTORNEY GENERAL OF
CANADA.

RECORD.

1. This is an appeal by leave of the Court of Appeal for Saskatchewan from a judgment of that Court given on the 15th December, 1947, whereby the Court ordered that certain orders made by the Appellant against the Respondent should be quashed. p. 16.

2. The question raised by this appeal is whether certain provisions of the Trade Union Act, 1944 (Saskatchewan), are within the powers conferred on the Provincial Legislature of Saskatchewan by the British North America Act, 1867. The principal provision of the Trade Union Act, 1944, here in question is section 5 (e) which empowers the Appellant to require employers to re-instate in their employment discharged employees, if the Appellant should decide that the employers have discharged the employees in contravention of the Act, and to order the employers to pay to the discharged employees any monetary loss which the Appellant should decide that the employees have suffered by reason of such discharge. In the Court of Appeal the Respondent contended that the provisions of the Trade Union Act conferring this power on the Appellant conflicted with sections 96, 99 and 100 of the British North America Act, and therefore were ultra vires. The Court of Appeal upheld this contention. The Attorney General intervenes by leave to support this holding of the Court of Appeal.

3. Sections 96, 99 and 100 of the British North America Act provide as follows :—

“ 96. The Governor General shall appoint the judges of the superior, district, and county courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

“ 99. The judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons.

“ 100. The salaries, allowances, and pensions of the judges of the superior, district and county courts (except the Courts of Probate in Nova Scotia and New Brunswick) and of the Admiralty Courts in cases where the judges are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada.” 10

4. The members of the Appellant Board are not appointed by the Governor General, they do not hold office during good behaviour, and their salaries and pensions are not fixed or provided by the Parliament of Canada.

5. The effect of section 96 of the British North America Act was considered by the Judicial Committee in *O. Martineau and Sons Ltd. v. Montreal City* [1932] A.C. 113. The following passage is cited from the judgment of the Board in that case delivered by Lord Blanesburgh :— 20

“ On the other hand, in a British Columbia case in 1890—*Burl v. Tunshall* (1890) 2 B.C.R. 12—it was held by Drake J. that while it was within the competence of the Province to create mining Courts and to fix their jurisdiction, it was not within its competence to appoint any officers thereof with other than ministerial powers. The learned judge, in the course of his judgment, referring to s. 96 of the Act, observes, as their Lordships think with reason : ‘ It is true that the language used in that section is limited to the judges of the superior, district and county courts in each Province, and it might be contended that these Courts having been expressly named, all other Courts were excluded. If this were so, the Provincial legislature would only have to constitute a Court by a special name to enable them to avoid this clause. But in the section itself, after the special Courts thus named, the Courts of Probate in Nova Scotia and New Brunswick are excepted from the operation of the clause, thus showing that s. 96 was intended to be general in its operation ’ ” [1932] A.C. at pages 121-2. 30

The following passages are cited from the judgment of the Board delivered by Lord Atkin in *Toronto Corporation v. York Corporation* [1938] A.C. at pages 425-6 and at page 427 :— 40

“ The first question touches a matter of first importance to the people of Canada. While legislative power in relation to the constitution, maintenance and organisation of Provincial Courts of Civil Jurisdiction, including procedure in civil matters, is confided to the Province, the independence of the judges is protected by provisions that the judges of the Superior, District and County Courts shall be appointed by the Governor General (s. 96 of the British North America Act, 1867), that the judges of the Superior

Courts shall hold office during good behaviour (s. 99), and that the salaries of the judges of the Superior, District and County Courts shall be fixed and provided by the Parliament of Canada (s. 100) These are three principal pillars in the temple of justice and they are not to be undermined.

* * * * *

10 “ It is difficult to avoid the conclusion that, whatever be the definition given to Court of Justice, or judicial power, the sections in question do purport to clothe the Board [The Ontario Municipal Board] with the functions of a Court, and to vest in it judicial powers . . . It is primarily an administrative body ; so far as legislation has purported to give it judicial authority that attempt must fail. It is not validly constituted to receive judicial authority ; so far, therefore, as the Act purports to constitute the Board a Court of Justice analogous to a Superior, District or County Court, it is pro tanto invalid, not because the Board is invalidly constituted, for as an administrative body its constitution is within the Provincial powers, nor because the Province cannot give the judicial powers in question to any Court, for to a Court complying with the requirements of ss. 96, 99 and 100 of the British North America Act the Province may entrust such judicial duties as it thinks fit ; but 20 because to entrust these duties to an administrative Board appointed by the Province would be to entrust them to a body not qualified to exercise them by reason of the sections referred to.”

6. In reliance upon these and other authorities the Respondent contended successfully before the Court of Appeal that the Trade Union Act purported to give judicial authority to the Appellant, that the Appellant was not validly constituted to receive such authority, that the Appellant was a tribunal analogous to the Superior, District and County Courts referred to in section 96, and that as a Court it did not comply with the 30 requirements of sections 96, 99 and 100.

7. The powers exercised by the Appellant against the Respondent were those conferred by section 5 (e) of the Trade Union Act, which provides as follows :—

“ 5. The Board shall have power to make orders :

* * * * *

(e) requiring an employer to reinstate any employee discharged contrary to the provisions of this Act and to pay such employee the monetary loss suffered by reason of such discharge.”

40 Section 8 (1) (e) of the Act provides that it shall be an unfair labour practice for any employer to discriminate in regard to hiring or tenure of employment with a view to discouraging membership in or activity in or for a labour organisation.

Section 9 is in these words :—

“ 9. A certified copy of any order or decision of the Board shall within one week be filed in the office of a registrar of the Court of King’s Bench and shall thereupon be enforceable as a judgment or order of the Court, but the Board may nevertheless rescind or vary any such order.”

8. The facts of the case can be stated shortly :—

p. 55, l. 14.

(A) On the 15th May, 1947, the Respondent dismissed some six employees from its employment.

p. 12, l. 12.

(B) The United Steel Workers of America, a trade union, complained that in dismissing these employees the Respondent had been guilty of an unfair labour practice within the meaning of section 8 (1) (e) of the Trade Union Act, 1944, and they applied to the Board for orders requiring the Respondent to reinstate the employees and to pay them the monetary loss suffered by them by reason of their discharge.

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p. 12, l. 9.

(C) On the 10th, 11th and 12th June, 1947, the trade union's applications were heard by the Appellant. During the course of the hearing the Trade Union withdrew its application in respect of one of the six employees.

p. 53, l. 39.

(D) Both the trade union and the Respondent appeared by Counsel before the Appellant and called evidence.

p. 63, l. 1.

(E) The Appellant found that the Respondent had discriminated against each of the five employees in regard to tenure of employment with a view to discouraging membership in or activity in or for the United Steel Workers of America, and had discharged them contrary to the provisions of the Trade Union Act, 1944.

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pp. 53-4.

(F) On the 8th July, 1947, the Appellant issued Orders requiring the Respondent to reinstate each of the five employees and to pay each the sum of \$200·80, that being in the Appellant's judgment the monetary loss suffered by reason of the discharge.

pp. 6-7.

(G) On the 6th November, 1947, the Respondent filed a notice of motion in the Court of Appeal for Saskatchewan, giving notice of the Respondent's intention to move the Court for an Order that the Appellant's Orders be quashed. The Notice stated six grounds of the application, of which one was that sections 5 (e) and 9 of the Trade Union Act were beyond the powers of the legislature of Saskatchewan.

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pp. 16-17.

9. On the 15th December, 1947, the Court of Appeal (Martin C.J. and Gordon, Macdonald and Anderson JJ.) gave judgment on the Respondent's motion holding that section 5 (e) of the Trade Union Act was beyond the powers of the Legislature of Saskatchewan.

10. The reasons for the judgment of the Court, delivered by the Chief Justice, are set out at pages 17 to 29 of the Record. The Chief Justice drew attention to the Courts established for Saskatchewan by Acts of the Provincial Legislature. These include the Court of King's Bench created in 1916 in succession to the Supreme Court of Saskatchewan. The last-mentioned Court was established in 1907, two years after the creation of the Province, in succession to the Supreme Court of the North-West Territories established by the North-West Territories Act of 1886. The 1886 Act conferred on the Supreme Court of the North-West Territories the same jurisdiction as that enjoyed by the Superior Courts of England, and the same jurisdiction was conferred on the Supreme Court of Saskatchewan, when that Court was established, and later on the Court of King's Bench. The 1907 and the 1916 Acts also provided for the establishment of a District Court in the Province. The Chief Justice

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observed that these Courts generally speaking have the same jurisdiction as the Courts named in section 96 of the British North America Act, 1867, and that the Courts named in section 96 have always had jurisdiction in connection with the enforcement of contracts of hiring and the award of damages for the breach of such contracts. He referred to early cases in which the Superior Courts of England had made orders for specific performance of contracts of service but observed that in later times this jurisdiction had not been exercised because the relationship between master and servant was of so personal a character that such contracts

10 could not be specifically enforced with any real hope of success. He concluded that the Provincial Legislature by enacting section 5 (e) of the Trade Union Act, 1944, and empowering the Appellant to require an employer to reinstate an employee and to pay the employee compensation for monetary loss had conferred upon the Appellant judicial functions which are exercised by the Courts, the judges of which are appointed by the Governor General under section 96 of the British North America Act, and that section 5 (e) was therefore ultra vires. The Court directed that the Orders made by the Appellant under that section ordering the Respondent to reinstate the five employees and to pay them compensation

20 for monetary loss should be quashed.

11. The Appellant applied to the Court of Appeal for leave to appeal to His Majesty in Council on the 31st December, 1947. The application was heard by the Chief Justice and Gordon and Anderson JJ., and leave to appeal was granted. The Chief Justice in his reasons for granting leave rejected an argument that the appeal related to a criminal cause or matter. pp. 31-32.

This Intervener will contend that the decision of the Court of Appeal directing that the Orders made by the Appellant should be quashed was right and should be affirmed for the following

REASONS

- 30 (1) BECAUSE section 5 (e) of the Trade Union Act, 1944, purports to confer judicial authority on the members of the Appellant Board.
- (2) BECAUSE 5 (e) purports to confer on the members of the Appellant Board the jurisdiction of a Superior Court, a District Court or a County Court, or of a tribunal analogous thereto.
- (3) BECAUSE the members of the Appellant Board are not appointed by the Governor General, because their tenure of office is not during good behaviour, and because
- 40 their salaries, allowances and pensions are not fixed or provided by the Parliament of Canada.
- (4) BECAUSE the Appellant Board is not validly constituted to receive the powers conferred on it by section 5 (e).
- (5) BECAUSE section 5 (e) read alone, or read with the provisions of section 9 of the same Act, is in conflict with the provisions of sections 96, 99 and 100 of the British North America Act, 1867.
- (6) FOR the reasons given in the judgment of the Court of Appeal.

In the Privy Council.

ON APPEAL

from the Court of Appeal for Saskatchewan.

BETWEEN
THE LABOUR RELATIONS
BOARD OF SASKATCHEWAN *Appellant*
AND
JOHN EAST IRON WORKS
LIMITED *Respondent*
AND
THE ATTORNEY GENERAL
OF SASKATCHEWAN, THE
ATTORNEY GENERAL OF
ONTARIO, THE ATTORNEY
GENERAL OF NOVA SCOTIA,
and THE ATTORNEY GENERAL
OF CANADA *- Interveners.*

Case

FOR THE INTERVENER THE ATTORNEY
GENERAL OF CANADA.

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
*Solicitors for THE ATTORNEY
GENERAL OF CANADA.*

In the Privy Council.

No. 13 of 1948.

ON APPEAL FROM THE COURT OF APPEAL FOR
SASKATCHEWAN.

IN THE MATTER of The Trade Union Act, Statutes
of Saskatchewan, 1944 (second session), Chapter 69,
and amendments thereto ;

AND

IN THE MATTER of certain orders made by The
Labour Relations Board of Saskatchewan.

BETWEEN

THE LABOUR RELATIONS BOARD
OF SASKATCHEWAN APPELLANT

AND

JOHN EAST IRON WORKS,
LIMITED RESPONDENT

AND

THE ATTORNEY-GENERAL OF
ONTARIO

THE ATTORNEY-GENERAL OF
NOVA SCOTIA and

THE ATTORNEY-GENERAL OF
SASKATCHEWAN ... INTERVENANTS.

CASE OF THE INTERVENANT
THE ATTORNEY-GENERAL OF NOVA
SCOTIA.

BURCHELLS,

9 Bishopsgate, E.C.2,

Solicitors for the Intervenant

THE ATTORNEY-GENERAL OF NOVA SCOTIA.