Privy Council Appeal No. 40 of 1923.

The Attorney-General of Ontario - - - - - *Appellant*

v.

The Reciprocal Insurers having no licences under the Dominion Insurance Act and others - - - - - *Respondents.*

Adam Craigon - - - - - - - - *Appellant*

v.

The King - - - - - - - - *Respondent.*

Ellis Elliott Otte - - - - - - - - *Appellant*

v.

The King - - - - - - - - *Respondent.*

(Consolidated Appeals)

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 25TH JANUARY, 1924.

Present at the Hearing:

Viscount Haldane.
Lord Buckmaster.
Lord Shaw.
Lord Sumner.
Mr. Justice Duff.

[*Delivered by* Mr. Justice Duff.]

Availing himself of the provisions of the provincial statute, chapter 85, R.S.O. 1914. the Lieutenant-Governor of Ontario on the 10th May, 1922, referred to the Appellate Division of the Supreme Court of Ontario three separate questions in the following terms:—

> Question One.—Is it within the legislative competence of the Legislature of the Province of Ontario to regulate or license the making of reciprocal contracts by such legislation as that embodied in the Reciprocal Insurance Act, 1922?

Question Two.—Would the making or carrying out of Reciprocal Insurance Contracts licensed pursuant to the Reciprocal Insurance Act, 1922, be rendered illegal or otherwise affected by the provisions of Sections 508c and 508d of the Criminal Code as enacted by Chapter 26 of the Statutes of Canada 7-8 Geo. V, in the absence of a license from the Minister of Finance issued pursuant to Section 4 of the Insurance Act of Canada 7-8 Geo. V, Chapter 29 ?

Question Three.—Would the answers to questions one or two be affected, and if so how, if one or more of the persons subscribing to such reciprocal insurance contracts is :—

(A) A British subject not resident in Canada immigrating into Canada ?

(B) An alien ?

The two Dominion statutes mentioned in the second of these queries were passed on the same day, the 20th September, 1917 (cap. 29, 7-8 Geo. V.), one entitled The Insurance Act, 1917, and the other (cap. 26, 7-8 Geo. V), entitled " An Act to Amend the Criminal Code respecting insurance." The question whether the first section of the last-mentioned of them, a section professing to bring into force an amendment of the Criminal Code designated as Section 508c, was competently enacted, is the most important question with which their Lordships are concerned on this appeal, and it will be convenient to discuss that question first. It was answered in the affirmative by the Appellate Division.

These two statutes, which are complementary parts of a single legislative plan, are admittedly an attempt to produce by a different legislative procedure the results aimed at by the authors of the Insurance Act of 1910, which in *Attorney-General for Canada* v. *Attorney-General for Alberta*, 1916, 1 A.C., 588, was pronounced *ultra vires* of the Dominion Parliament.

The Insurance Act of 1917 empowers the Minister of Finance to grant licenses to companies, authorizing them to carry on in Canada the business of insurance, except marine insurance, subject to the provisions of the statute and to the terms of the license. Any company, other than a company already incorporated under the authority of the Dominion Parliament, when licensed under the statute, becomes, and is deemed to be, a company incorporated under the laws of Canada. The Minister is also authorized to grant licenses to associations of individuals formed upon the plan known as Lloyd's and to associations formed for the purpose of exchanging reciprocal contracts of indemnity upon the plan known as inter-insurance ; and in such cases all the provisions and requirements of the statute regulating the business of licensed companies are deemed, so far as applicable, to be terms and conditions of the license. No provision is made by the statute for licensing individuals or for licensing firms or unincorporated associations other than those falling within the two classes just mentioned.

The enactments of the statute include provisions touching the requirements with which applicants for licenses must comply, the terms of licenses, the conditions of their cancellation and

suspension, and a comprehensive system of regulations controlling licensees in relation to the form and terms of contracts of insurance and the business of insurance generally, including, *inter alia*, regulations governing the salaries, allowances and commissions of directors and agents, and the investment of the funds of such companies; to all of which provisions, in so far as applicable, unincorporated associations of the two classes above mentioned, that have received licenses, are subject.

In the Insurance Act itself there is no enactment of general application requiring persons carrying on the business of insurance to become licensed under it. Provisions of limited application upon the subject are found in Sections 11 and 12, by which it is declared to be unlawful for any Dominion Company or for any alien, whether a natural person or foreign company, to solicit or accept any risk, to issue or deliver any receipt or policy of insurance, to carry on any business of insurance or to do any of a number of other acts therein enumerated in relation to any such business unless licensed under the Act; and by Section 12, it is declared to be unlawful for any British company or for any British subject not resident in Canada to immigrate into Canada for the purpose of opening or establishing any office or agency for the transaction of any business of or relating to insurance, or doing any of the acts declared to be unlawful by Section 11. Penalties are imposed, for example by Sections 84 and 187, in respect of infringements of the Act.

Broadly speaking, therefore, under the Insurance Act any company, whether British, foreign or Canadian, incorporated for the purpose of carrying on the business of insurance, and any unincorporated association falling within either of the two classes mentioned, may become licensed upon observing the requirements of the Act, and as licensees such company thereupon becomes subject to the provisions of the Act, which, as regards such licensees, receive obligatory force by virtue of the penal clauses already referred to and of the liability of licenses to cancellation for non-observance of statutory requirements. But the provisions of the statute contain nothing making it compulsory for any private individual or any unincorporated firm or association to become licensed as a condition of lawfully carrying on or transacting any business of insurance.

It is obvious that, in the absence of some such compulsory enactment, directed against such individuals and unincorporated bodies, the scheme of regulation embodied in the Insurance Act could only be incompletely effectual, and accordingly the authors of the legislation resorted to the expedient of bringing the necessary prohibitions and penalties into force in the form of an amendment to the Criminal Code. That amendment, which is designated as Section 508c of the Criminal Code, is in the following words:—

(1) "Everyone shall be guilty of an indictable offence who, within Canada, except on behalf or as agent for a company thereunto duly licensed by the Minister of Finance or on behalf of or as agent for or as a member of

an association of individuals formed upon the plan known as Lloyd's or of an association of persons formed for the purpose of inter-insurance and so licensed solicits or accepts any insurance risk, or issues or delivers any interim receipt or policy of insurance, or grants in consideration of any premium or payment any annuity on a life or lives, or collects or receives any premium for insurance, or carries on any business of insurance or inspects any risk, or adjusts any loss, or prosecutes or maintains any suit, action or proceeding, or files any claim in insolvency relating to such business, or receives directly or indirectly any remuneration for doing any of the aforesaid acts.

(2) " Anyone convicted of any such offence shall for a first offence be liable to a penalty of not more than fifty dollars or less than twenty dollars, and in default of payment, to imprisonment with or without hard labour for a term of not more than three months or less than one month, and for a second or any subsequent offence to a penalty of not more than one hundred dollars or less than fifty dollars, and, in addition thereto to imprisonment with hard labour for a period of not more than six months or less than three months.

(3) " All information or complaints for any of the aforesaid offences shall be laid or made within one year after the commission of the offence.

(4) " One-half of any pecuniary penalty mentioned in this section shall, when recovered, belong to His Majesty, and the other half thereof to the informer.

" Provided that nothing in this section contained shall be deemed to prohibit or affect or to impose any penalty for doing any of the acts in this Section described: —

" (A) By or on behalf of a company incorporated under the laws of any Province of Canada for the purpose of carrying on the business of insurance.

" (B) By or on behalf of any society or association of persons thereunto specially authorised by the Minister of Finance or the Treasury Board.

" (C) In respect of any policy or risk of life insurance issued or undertaken on or before the thirtieth day of March, one thousand eight hundred and seventy-eight, by or on behalf of any company which has not since the last-mentioned date received a license from the Minister of Finance.

" (D) In respect of any policy of life insurance issued by an unlicensed company to a person not resident in Canada at the time of the issue of such policy.

" (E) In respect of the insurance of property situated in Canada with any British or foreign unlicensed insurance company or underwriters, or with persons who reciprocally insure for protection and not for profit, or the inspection of the property so insured, or the adjustment of any loss incurred in respect thereof if the insurance is effected outside of Canada without any solicitations whatsoever directly or indirectly on the part of the company, underwriters or persons by which or by whom the insurance is made.

" (F) Solely in respect of marine or inland marine insurance.

" (G) In respect of any contract entered into or any certificate of membership or policy of insurance issued, before the twentieth day of July, one thousand eight hundred and eighty-five by any assessment life insurance company."

It will be observed that by force of paragraph (A) of the proviso, provincial incorporated companies are under no disability. Prohibited acts. though criminal offences when done

by an individual on behalf of himself or of an unlicensed unincorporated association or on behalf of an unlicensed company other than a provincial company, are treated as innocent when done on behalf of a provincial company, or (in virtue of paragraph (B)) when done on behalf of a society or association under the special authority of the Minister of Finance or of the Treasury Board. Such acts, by force of paragraph (F), are likewise innocent when done solely in respect of marine insurance. Subject to these exceptions (the remaining paragraphs of the proviso are of no relevancy) the effect of the enactment, briefly summarized, is that anybody who does, in Canada, any of the acts enumerated, is guilty of an indictable offence unless he is acting on behalf of a company licensed under the Insurance Act or on behalf of or as a member of an association so licensed ; and the necessary consequence is that, subject, of course, to the same exceptions, if the enactment be legally operative, contracts of insurance, if lawfully effected, and any business of insurance, if lawfully transacted, are brought, after the passing of the Act, under the dominion of the system of regulations governing licensees under the Insurance Act ; and to that extent withdrawn from provincial control.

In *The Attorney-General for Canada* v. *The Attorney-General for Alberta* (*supra*), it was decided by this Board that it was not competent to the Dominion to regulate generally the business of insurance in such a way as to interfere with the exercise of civil rights in the provinces.

The provisions relating to licenses in the Insurance Act of 1910, which by this judgment was declared to be *ultra vires*, and the regulations governing licenses under the Act and applicable to contracts and to the business of insurance, did not, in any respect presently material, substantially differ from those now found in the legislation of 1917 : but the provisions of the statute of 1910 derived their coercive force from penalties created by the Insurance Act itself.

The distinction between the legislation of 1910 and that of 1917, upon which the major contention of the Dominion is founded, consists in the fact that Section 508C is enacted in the form of an amendment to the statutory criminal law, and purports only to create offences which are declared to be indictable, and to ordain penalties for such offences. The question now to be decided is whether, in the frame in which this legislation of 1917 is cast, that part of it which is so enacted can receive effect as a lawful exercise of the legislative authority of the Parliament of Canada in relation to the criminal law. It has been formally laid down in judgments of this Board, that in such an enquiry the courts must ascertain the "true nature and character" of the enactment (*Citizens' Insurance Company* v. *Parsons*, 7 A.C. 96), its "pith and substance" (*Union Colliery Company* v. *Bryden*, 1899 A.C., 580) ; and it is the result of this investigation, not the form alone, which the statute may have assumed under the hand of the draughtsman, that will determine within which

of the categories of subject matters mentioned in Sections 91 and 92 the legislation falls; and for this purpose the legislation must be "scrutinised in its entirety" (*The Great West Saddlery Company* v. *The King*, 1921, 2 A.C., 117). Of course, where there is an absolute jurisdiction vested in a legislature, the laws promulgated by it must take effect according to the proper construction of the language in which they are expressed. But where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature is really doing. Upon this principle the Board proceeded in 1878, in *The Attorney-General for Quebec* v. *The Queen Insurance Company*, 3 A.C., 1090, where a statute of Quebec (39 Vic., cap. 7), which took the form of a licensing Act, enacted under the authority of Section 92 (9) of the Confederation Act, was held to be in its true character a Stamp Act and an attempt to impose a tax which was an indirect tax, in contravention of the limitation to which the provincial powers of taxation are subject under the second head of that section. The principle is recognised in *Russell* v. *The Queen*, 7 A.C., 829, and in *Citizens Insurance Company* v. *Parsons* (*supra*), and in 1899, conformably to this doctrine, it was held, in the well-known case of *The Union Colliery Company* v. *Bryden*, 1899 (*supra*) that a statutory regulation, professedly passed for governing the working of coal mines, which admittedly "might be regarded as establishing a regulation applicable" to the working of such mines, and which, "if that were an exclusive description of the substance of it," was "within the competency of the provincial legislature by virtue either of Section 92, No. 10, or Section 92, No. 13," must be classed, its "true character," its "pith and substance" being ascertained, as legislation in relation to the subject of "aliens and naturalisation," a subject exclusively within the Dominion sphere of action. The general doctrine was later applied in *John Deere Plow Company* v. *Wharton*, 1915, A.C. 330, and again in *The Great West Saddlery Company* v. *The King* (*supra*).

A judgment of the Supreme Court of the United States delivered in 1918 in *Hammer* v. *Dagenhat*, 247 U.S., 251, illustrates the operation of the principle. By the constitution of the United States the regulation of commerce between the States is committed to Congress, and this authoritiy, it was decided in a series of decisions of the Supreme Court, includes the power to prohibit the transmission, through the channels of inter-state commerce, of any particular class of articles of commerce. The statute of Congress, which the Supreme Court had to consider in the case mentioned, prohibited "the transportation in inter-state commerce" of manufactured goods the product of a factory in which within thirty days prior to their removal therefrom children of certain specified ages had been employed or permitted to work. The authority to enact this statute was rested upon the grounds that the power of Congress in relation to inter-

state commerce is an unqualified power, including, as already mentioned, the authority to prohibit the transport of any articles of commerce of any description whatever in interstate commerce, and that, the legislation impugned, being *ex facie* within the terms of the power, it was not competent to any judicial tribunal to enquire into the purpose, or the ultimate or collateral effects, of the enactment. In the course of the judgment delivered by Mr. Justice Day, on behalf of the majority of the Court, holding that the statute could not be supported as legislation regulating interstate commerce within the true intendment of "the commerce clause," it is said :—

> "A statute must be judged by its natural and reasonable effect . . .
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> "We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations and not by an invasion of the powers of the States. This court has no more important function than that which devolves upon it, the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties entrusted to it by the Constitution.
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> "In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labour of children in factories and mines within the States, a purely state authority . . . The far-reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of Government be practically destroyed."

It is not seriously disputed that the purpose and effect of the amendment in question are to give compulsory force to the regulative measures of the Insurance Act, and their Lordships think it not open to controversy, that in purpose and effect Section 508C is a measure regulating the exercise of civil rights. But, on behalf of the Dominion, it is argued that, although such be the true character of the legislation, the jurisdiction of Parliament, in relation to the criminal law, is unlimited, in the sense, that in execution of its powers over that subject matter, the Dominion has authority to declare any act a crime, either in itself or by reference to the manner or the conditions in which the act is done, and consequently that Section 508C, being by its terms limited to the creation of criminal offences, falls within the jurisdiction of the Dominion.

The power which this argument attributes to the Dominion is, of course, a far-reaching one. Indeed, the claim now advanced is nothing less than this, that the Parliament of Canada can assume exclusive control over the exercise of any class of civil rights within the provinces, in respect of which exclusive jurisdiction is given to the provinces under Section 92, by the device of declaring those persons to be guilty of a criminal offence, who in the exercise of such rights, do not observe the conditions imposed by the Dominion. Obviously the principle contended

for ascribes to the Dominion the power, in execution of its authority under Section 91 (27), to promulgate and to enforce regulations controlling such matters as, for example, the Solemnization of Marriage, the practice of the learned professions and other occupations, Municipal Institutions, the operation of Local Works and Undertakings, the Incorporation of Companies with exclusively provincial objects—and superseding provincial authority in relation thereto. Indeed, it would be difficult to assign limits to the measure, in which, by a procedure strictly analogous to that followed in this instance, the Dominion might dictate the working of provincial institutions, and circumscribe or supersede the legislative and administrative authority of the provinces.

Such a procedure cannot, their Lordships think, be justified, consistently with the governing principles of the Canadian constitution, as enunciated and established by the judgments of this Board. The language of Sections 91 and 92 (which establish "interlacing and independent legislative authorities," *Great West Saddlery Company* v. *The King* (*supra*)), being popular rather than scientific, the necessity was recognised, at an early date, of construing the words describing a particular subject matter by reference to the other parts of both sections. As Sir Montague Smith observed, in a well-known passage in the judgment in *Citizens Insurance Company* v. *Parsons*, 7 A.C., at p. 109. "The two sections must be read together and the language of one interpreted and, where necessary, modified by that of the other." The scope of the powers received by the Dominion under Item 27, Section 91, is not to be ascertained by obliterating the context, in which the words are placed, in disregard of this rule. It will be sufficient to refer briefly to one or two of the cases which illustrate this.

Her Majesty in Council, in 1885, referred to the Judicial Committee the question of the competence of the Canadian Parliament to pass a statute of 1883 known as "The Liquor Licence Act." That Act, by its preamble, recited that it was desirable to regulate the traffic in the sale of intoxicating liquors, and that it was expedient that provision should be made in regard thereto, "for the better preservation of peace and order." The statute provided for a licensing system, and prohibited, among other things, the sale of liquor by unlicensed persons, and imposed penalties by way of fine and imprisonment, including, as the penalty for a second or subsequent offence, imprisonment at hard labour in the common jail. In the course of the argument the view was advanced that the statute could be regarded as an exercise of the jurisdiction of the Dominion in relation to the criminal law; nevertheless the statute was held to be *ultra vires* as a whole. The Insurance Act of 1910, Section 70, imposed penalties still more stringent upon persons infringing the prohibition of Section 4 against engaging in the business of insurance, without first obtaining a licence under the Act. The penal provisions of the statute were appealed to, on the argument

before this Board in *The Attorney General for Alberta* v. *The Attorney-General for Canada* (*supra*), as imparting to it the character of criminal law within the meaning of Section 91 : the contention was rejected. Again, in 1922, the question of the authority of the Parliament of Canada to enact certain sections of the Combines and Fair Prices Act (9–10 Geo. V., cap. 45) came before the Board in *Re Board of Commerce Act*, 1922, 1 A.C., 191, and the Board had to consider whether Section 22 of the Act had the effect of bringing the provisions in question under the denomination of criminal law. That section expressly declared that contravention of the Act should be an indictable offence, punishable, upon indictment or summary conviction, by fine or imprisonment, or both : and their Lordships, by their judgment, laid it down that it was not competent to the Dominion Parliament "to interfere with a class of subject committed exclusively to the provincial legislatures and then to justify this by enacting ancillary provisions designated as new phases of Dominion criminal law, which require a title to so interfere as the basis of their application." Indeed, on any other hypothesis, the greater part of the judgment in *Russell* v. *The Queen* (*supra*) would be quite beside the question then before the Board, a remark which would equally apply to the elaborate judgment delivered by Lord Watson on the *Local Option Reference*, 1896 A.C., 348, and to the lengthy arguments to which the Board listened on the hearing of that appeal. In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under Section 91 (27), appropriate to itself, exclusively, a field of jurisdiction, in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid. 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 *The Liquidators of the Maritime Bank* v. *The Receiver-General of New Brunswick*, 1892, A.C., 437, 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 *The Great West Saddlery Company* v. *The King*, 1921, 2 A.C., at p. 100, "rendered in general principle co-ordinate governments."

Their Lordships think it undesirable to attempt to define, however generally, the limits of Dominion jurisdiction under Item 27 of Section 91 ; but they think it proper to observe, that what has been said above does not involve any denial of the authority of Parliament to create offences merely because the legislation deals with matters which, in another aspect, may fall under one or more of the subdivisions of the jurisdiction entrusted to the provinces. It is one thing, for example, to declare

corruption in municipal elections, or negligence of a given order in the management of railway trains, to be a criminal offence and punishable under the Criminal Code ; it is another thing to make use of the machinery of the criminal law for the purpose of asuming control of municipal corporations or of provincial railways

Their Lordships now turn to the examination of the question arising on the first of the interrogatories submitted to the Appellate Division, which concerns the validity of legislation of the character of the Ontario Act (12-13 Geo. V, cap. 62) therein mentioned, which by its terms is only to come into force on proclamation to that effect by the Lieutenant-Governor in Council. This Act, as its name imports, is a statute dealing with reciprocal contracts of insurance. The practice of forming groups, for the purpose of exchanging such contracts of insurance, appears to have originated in the United States and to prevail widely there and in Canada. Such groups, described as exchanges in the Act, are usually composed of persons having some common interest, as owners of a particular class of property, for example, or dealers in the same kinds of commodities. The contracts are effected, and the business incidental to them transacted, through the agency of an attorney, who is empowered by each subscriber individually to act for him in making such contracts with other members of the exchange. The exchange, as a whole, undertakes no obligation, the attorney, who receives a commission for his services, in every case acting for the subscriber as an individual, and the obligation of the subscriber being his own individual obligation.

At the date on which the statute of 1922 was assented to, there were, by virtue of the Ontario Insurance Act (R.S.O., cap. 183), certain prohibitions in force in Ontario which are qualified by that statute. By Section 98 of the Ontario Insurance Act, the transacting or undertaking of insurance (other than guarantee insurance by certain companies), except by a corporation duly registered under Section 66 of that Act, was forbidden, and a penalty was imposed on every person contravening this prohibition. Sections 3 and 4 of the statute of 1922 limit the scope of the prohibition by enacting, first, that it shall be lawful for any person to exchange with other persons, in Ontario or elsewhere, reciprocal contracts of indemnity or interinsurance, and that no person shall be deemed to be an insurer, within the meaning of the Ontario Insurance Act, by reason of exchanging such contracts with other persons under the provisions of the Act. The making of reciprocal contracts of indemnity or interinsurance, through an attorney as intermediary, is expressly sanctioned by Section 5. And, by Sections 6 and 7, the Superintendent of Insurance is empowered, upon fulfilment of specified conditions, to grant licences to exchanges, each of which is required to maintain a reserve of specified amount in the hands of its attorney. By Section 14, anyone is forbidden to act as an attorney in the exchange of such contracts, except under the sanction of a licence

issued under the Act. And, by Section 15, authority is given for the cancellation or revocation of such licences, for non-fulfilment of the statutory conditions.

It is alleged, upon two grounds, that this statute is illegal. It is said, first, that it is extra-territorial in its operation; and, secondly, that it assumes to deal with subjects, not assigned to the provinces, the subject of aliens and that of Dominion companies. Their Lordships find nothing in the language of the statute which necessarily gives to its enactments an extra-territorial effect. The enabling provisions of Sections 3 and 4 appear to be designed to exempt the transactions to which they relate from the above-mentioned prohibitions of the Ontario Insurance Act, and the terms of the statute as a whole are, in their Lordships' judgment, capable of receiving a meaning, according to which, its provisions whether enabling or prohibitive, apply only to persons and acts within the territorial jurisdiction of the Province. In their opinion it ought to be interpreted in consonance with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactments to such persons and acts.

As to the second ground of attack, it is only necessary to observe that contracts of insurance form the subject of the statute, a subject peculiarly within the sphere of provincial control. It is true that its provisions may incidentally affect aliens and Dominion companies who are, or may wish to become, subscribers to an interinsurance exchange; it is nevertheless not a statute in relation to aliens, as such, or Dominion companies as such. It is unnecessary and undesirable to attempt to say how far, if at all, the Dominion in execution of its powers in relation to the subjects of aliens and Dominion companies may dictate the rules governing contracts of insurance, to which an alien or a Dominion company may be a party. Nothing in Section 91 of the British North America Act, in itself, removes either aliens or Dominion companies from the circle of action which the Act has traced out for the provinces. Provincial statutes of general operation on the subject of civil rights *prima facie* affect them. It may be assumed that legislation touching the rights and disabilities of aliens or Dominion companies might be validly enacted by the Dominion in some respects conflicting with the Ontario statute, and that in such cases the provisions of the Ontario statute, where inconsistent with the Dominion law, would to that extent become legally ineffective; but this, as their Lordships have before observed, is no ground for holding that the provincial legislation, relating as it does to a subject matter within the authority of the province, is wholly illegal or inoperative (*McColl* v. *C.P.R. Company,* 1923 A.C., at p. 135.

It follows from what has been said that the answer to the first question is in the affirmative, and the answer to the second, in the negative. The provisions of 508D have not been specifically referred to, since they do not in their terms purport to prohibit, even upon conditions, the making of the contracts described in

the question, and the reference to that section, their Lordships were informed on the argument, was inserted in the question by mistake.

In view of the terms of the third question it is necessary to notice a contention of the respondents that Section 508C can receive a limited effect as applying to aliens within the meaning of Section 11 (*b*) of the Insurance Act, 1917, and to companies and natural persons not aliens immigrating into Canada within the meaning of Section 12, and a parallel contention as to the effect of Sections 11 and 12.

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, and, subject to the proviso which is not here material, being general in its terms, is in their Lordships' opinion invalid in its entirety. Assuming that it would be competent to the Dominion Parliament, under its jurisdiction over the subject of aliens, to pass legislation expressed in similar terms, but limited in its operation to aliens, their Lordships think it too clear for discussion that Section 508C is not an enactment on the subject of aliens (just as the Ontario statute of 1922 is not an enactment on that subject) ; and that the language of the clause in question cannot be so read as to effect by construction such a limitation of its scope. Such a result could only be accomplished by introducing qualifying phrases, indeed, by re-writing the clause and transforming it into one to which the legislature has not given its assent.

It follows that the third question must be answered in the negative, but with this qualification, that, in so answering it, their Lordships do not express any opinion as to the competence of the Dominion Parliament, by virtue of its authority in relation to aliens and to trade and commerce, to enact Sections 11 and 12 (1) of the Insurance Act. This, although referred to on the argument before their Lordships' Board, was not fully discussed and since it is not directly raised by the question submitted, their Lordships, as they then intimated, consider it inadvisable to express any opinion upon it. Their Lordships think it sufficient to recall the observation of Lord Haldane, in delivering the judgment of the Board in *Attorney-General of Canada* v. *Attorney-General of Alberta* (*supra*), to the effect that legislation, if properly framed, requiring aliens, whether natural persons or foreign companies, to become licensed, as a condition of carrying on the business of insurance in Canada, might be competently enacted by Parliament (an observation which, it may be added, applies also to Dominion Companies), and to remark that the second sub-section of Section 12 ascribes an inadmissible meaning to the word " immigrate," which, if governing the interpretation of sub-section (1), would extend the scope of Section 12 to matters obviously not comprised within the subject of immigration ; and that sub-section (2) is therefore not competently enacted under the authority of the Dominion in relation to that subject. Their Lordships do not

think it proper to discuss the limits of that authority, or to intimate any opinion upon the point whether any, or, if any, what effect can be given to the first sub-section of Section 12 as an enactment passed in exercise of it.

It is unnecessary to say more upon the subject of the appeal of the Attorney-General, but the appeals by Adam Craigon and Ellis Elliott Otte must be mentioned. These two appellants were, each of them, convicted of two several offences under Section 508c of the Criminal Code. The charges were laid as the result of a suggestion which arose when the reference first came on for hearing before the Appellate Division, that the questions submitted could be more conveniently dealt with, if concrete cases involving those questions were at the same time before the Court. Facts having been admitted before the magistrate establishing in each case the offence charged, and the defendants having been found guilty, the magistrate reserved for the opinion of the Divisional Court the question of the constitutional validity of Section 508c. This question was answered conformably to the opinions given in answer to the second question submitted under the reference. The Attorney-General of Canada was no party to these prosecutions, which were initiated in response to the suggestion above mentioned, and with the purpose of facilitating the consideration of those questions.

On the 27th March, 1923, special leave to appeal to His Majesty in Council from the judgment of the Appellate Division on the reference was granted on the application of the Attorney-General for Ontario, and in order that their Lordships might be in possession of all the materials before the Court of Appeal, leave to appeal from the judgment of the Appellate Division on the cases stated by the magistrate was at the same time given, and all these appeals were consolidated.

In view of the circumstances in which the charges were laid and the convictions obtained, it is, their Lordships conceive, unnecessary to make any disposition of these appeals, and their Lordships will at present tender to His Majesty no advice concerning them.

It must, moreover, be understood that in the special circumstances the order of their Lordships granting special leave to appeal to these last-named appellants involved no decision as to the power of the Parliament of Canada to enact Section 1025 of the Criminal Code, or as to the meaning and effect of that Section; whether or not, for example, it would, if effectively enacted, constitute a bar to an appeal from a conviction for an offence created by a statute alleged to be *ultra vires*. And on neither of these points do their Lordships give any opinion.

Their Lordships will humbly advise His Majesty to discharge the order of the Appellate Division of the 29th day of December, 1922, in so far as it sets forth the answers of that Court to the three questions submitted by the Order-in-Council of the 10th day of May, 1922; and to substitute therefor the several answers to the said questions which have been already indicated. There will be no costs of this appeal.

In the Privy Council.

THE ATTORNEY-GENERAL OF ONTARIO

v.

THE RECIPROCAL INSURERS HAVING NO LICENCES UNDER THE DOMINION INSURANCE ACT AND OTHERS.

ADAM CRAIGON

v.

THE KING.

ELLIS ELLIOTT OTTE

v.

THE KING.

[*Consolidated Appeals.*]

DELIVERED BY MR. JUSTICE DUFF.

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