

In the Privy Council.

No. 36 of 1931.

ON APPEAL

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

IN THE MATTER OF A REFERENCE BY HIS HONOUR THE LIEUTENANT-
GOVERNOR-IN-COUNCIL AS TO THE VALIDITY OF CERTAIN SECTIONS OF
THE INSURANCE ACT OF CANADA.

BETWEEN :

THE ATTORNEY GENERAL OF QUEBEC - - - *Appellant*

AND

THE ATTORNEY GENERAL OF CANADA - - - *Respondent*

AND

BELDING - CORTICELLI LIMITED, THE MASSEY
HARRIS COMPANY OF CANADA LIMITED,
THE ABITIBI POWER AND PAPER COMPANY
LIMITED, THE MONARCH KNITTING COMPANY
LIMITED, MOORE CORPORATION LIMITED, and
THE ATTORNEY GENERAL FOR THE PROVINCE
OF ONTARIO - - - - - *Interveners.*

AND BETWEEN

THE ATTORNEY GENERAL OF CANADA - - - *Appellant*

AND

THE ATTORNEY GENERAL OF QUEBEC - - - *Respondent*

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BELDING - CORTICELLI LIMITED, THE MASSEY
HARRIS COMPANY OF CANADA LIMITED,
THE ABITIBI POWER AND PAPER COMPANY
LIMITED, THE MONARCH KNITTING COMPANY
LIMITED, MOORE CORPORATION LIMITED, and
THE ATTORNEY GENERAL FOR THE PROVINCE
OF ONTARIO - - - - - *Interveners.*

**CASE OF THE ATTORNEY GENERAL OF
CANADA.**

1. The appeal and cross appeal herein are from the answers given by the Court of King's Bench for the Province of Quebec (Appeal Side) to certain questions referred to that Court by the Lieutenant-Governor of

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p. 23.

CASE OF THE
A.-G. OF CANADA

RECORD. Quebec with respect to the constitutional validity of a requirement of the Insurance Act of Canada that non-Canadian natural persons or companies take out a federal license before doing insurance business within the Dominion and of taxation imposed by the Special War Revenue Act of the Dominion on premiums paid by persons resident in Canada for the insurance of property situate in Canada against risks other than marine risks, with non-Canadian underwriters not licensed under the provisions of the Insurance Act of the Dominion.

pp. 4 & 5. **2.** The reference was made pursuant to the provisions of Chapter 7 of the Revised Statutes of Quebec, 1925, by Order-in-Council dated the 11th May, 1929. 10

pp. 6 & 7. **3.** Notice of the Reference was served on the Attorney General of Canada, who appeared by Counsel, and, after argument, the Court delivered opinions from which both parties have appealed directly to His Majesty in His Privy Council.

pp. 62 & 63. **4.** These direct appeals are authorized by the above mentioned Chapter 7 of the Revised Statutes of Quebec, 1925, as amended by 18 George V, Chapter 13 and were allowed by orders of the Court appealed from dated the 22nd October, 1930.

pp. 64 & 65. **5.** The sections of the Dominion Insurance Act the validity of which is questioned are as follows :— 20

“ 11. It shall not be lawful for,

(a) any Canadian Company; or,

(b) any alien, whether a natural person or a foreign company,

within Canada to solicit or accept any risk, or to issue or deliver any receipt or policy of insurance, or to grant, in consideration of any premium or payment, any annuity on a life or lives, or to collect or receive any premium, or, except as provided in section one hundred and twenty-nine of this Act, to inspect any risk or adjust any loss, or to advertise for or carry on any business of insurance, or to prosecute or maintain any suit, action or proceeding, or to file any claim in insolvency relating to such business, unless under a license from the Minister granted pursuant to the provisions of this Act.” 30

“ 12. It shall not be lawful 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 of soliciting or accepting any risk or issuing or delivering any interim receipt or policy of insurance, or granting, in consideration of any premium or payment, any annuity on a life or lives, or of collecting or receiving any premium, or, except as provided in section one hundred and twenty-nine of this Act, of inspecting any risk or adjusting any loss, or of carrying on any business of or relating to insurance, or of 40

prosecuting or maintaining any suit, action or proceeding, or filing any claim in insolvency relating to such business, unless under a license from the Minister granted pursuant to the provisions of this Act.

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PENALTIES AND FORFEITURES.

“ 65. Any Canadian company, or any alien, whether a natural person or a foreign company, who, except under a license from the Minister granted pursuant to the provisions of this Act, within Canada,

- (a) solicits or inspects any risk; or
- (b) issues or delivers any receipt or policy of insurance; or
- 10 (c) grants in consideration of any premium or payment any annuity on a life or lives; or
- (d) collects or receives any premiums; or
- (e) except as provided in section one hundred and twenty-nine of this Act, inspects any risk or adjusts any loss; or
- (f) advertises for or carries on any business of insurance; or
- (g) prosecutes or maintains any suit, action or proceeding, or files any claim in insolvency relating to the business of insurance;

shall be guilty of an offence and liable upon indictment or upon summary conviction, to a penalty not exceeding one hundred dollars; and moreover, 20 in the case of an alien who is a natural person, to imprisonment for any term not exceeding six months: Provided, however, that nothing in this section shall apply to an individual alien acting on behalf of a provincial company which has not obtained a license from the Minister under this Act.

“ 66. Any British company or British subject not resident in Canada who, except under a license from the Minister granted pursuant to the provisions of this Act, immigrates into Canada for the purpose of

- (a) opening or establishing any agency for the transaction of any business of or relating to insurance; or
- (b) soliciting or inspecting any risk or issuing or delivering any 30 interim receipt or policy of insurance; or
- (c) granting in consideration of any premium or payment any annuity on a life or lives; or
- (d) collecting or receiving any premium; or
- (e) except as provided in section one hundred and twenty-nine of this Act, inspecting any risk or adjusting any loss, or carrying on any business of or relating to the business of insurance; or
- (f) prosecuting or maintaining any suit, action or proceeding or filing any claim in insolvency relating to the business of insurance;

shall be guilty of an offence and liable upon indictment or summary 40 conviction to a penalty not exceeding one hundred dollars; and moreover,

RECORD. in the case of a natural person, to imprisonment for any term not exceeding six months; Provided however, that nothing in this section shall apply to a British subject acting on behalf of a provincial company which has not obtained a license from the Minister under this Act."

The words "Canadian company," "British company" and "foreign company" are defined in section 2 of the Act as follows:—

"(g) 'British company' means a company incorporated under the laws of Great Britain, Ireland or of any British possession, other than the Dominion and provinces of Canada, for the purpose of carrying on the business of insurance, and having the faculty or capacity under its Act or other instrument of incorporation to carry on such business throughout Canada;" 10

"(i) 'Canadian company' means a company incorporated under the laws of Canada for the purpose of carrying on the business of insurance, excluding however any British or foreign company which becomes incorporated under the provisions of this Act by reason merely of obtaining a license from the Minister as herein authorized;"

"(r) 'foreign company' means a company incorporated under the laws of any foreign country for the purpose of carrying on the business of insurance, and having the faculty or capacity under its Act or other instrument of incorporation to carry on such business throughout Canada;" 20

Section 129 of the Act is as follows:—

"129. Notwithstanding anything in this Act contained, any person may insure his property, or any property in which he has an insurable interest, situated in Canada with any British or foreign unlicensed insurance company or underwriters, and may also insure with persons who reciprocally insure for protection only and not for profit; and any property insured or to be insured under the provisions of this section may be inspected and any loss incurred in respect thereof adjusted: Provided such insurance is effected outside of Canada and without any solicitation whatsoever directly or indirectly on the part of such company, underwriters or persons by which or whom the insurance is made; and provided further that no such company, underwriters or persons shall within Canada advertise their business in any newspaper or other publication or by circular mailed in Canada or elsewhere, or maintain an office or agency therein for the receipt of applications or the transaction of any act, matter or thing relating in any way to their said business. 30 40

2. Every person so insuring property situated in Canada shall make a return to the Superintendent giving the location and a brief description of the property insured, the amount of the insurance, and whether insured in Lloyds, or some similar association, or in mutuals, reciprocal or other class of insurers, such return to be made

by delivering or mailing it in a registered letter addressed to the Superintendent not later than the first day of March in each year for the year ending on the preceding thirty-first day of December.

3. Blank forms for such statements shall be supplied by the Superintendent.

4. Default in compliance with the requirements of subsection 2 of this section by the insured shall subject him to a penalty of ten dollars for each day during which default continues, recoverable and applicable in the manner prescribed in subsection 2 of section sixty-four of this Act.

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5. If under the provisions of any other Act of the Parliament of Canada the said person is required to make a return to the Minister containing substantially the same information as that required by subsection 2 of this section, the Minister may, on the recommendation of the Superintendent, waive compliance with the requirements of the said subsection. 1917, c. 29, s. 129; 1923, c. 55, s. 1.

6. The sections of the Special War Revenue Act are 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,

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(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;

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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.

2. For the purposes of this section every corporation carrying on business in Canada shall be deemed to be a person resident in Canada.

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20. Every person to whom section sixteen of this Act applies shall on or before the thirty-first day of December in each year make a return in writing to the Superintendent stating the names of the companies, societies of underwriters or associations with whom the

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insurance was effected by him or on his behalf, the amount of such insurance and the net cost thereof in each case.

21. Every person who fails or neglects to make the return required by the last preceding section or pay to the Minister within the time limited by section sixteen hereof the tax thereby imposed, shall incur a penalty of fifty dollars for each and every day during which such default continues."

7. The questions referred to the Court are as follows :—

" 1. Is a foreign or British insurer, who holds a license under the Quebec Insurance Act to carry on business within the Province, obliged to observe and subject to sections 11, 12, 65 and 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer? 10

2. Are sections 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 license to carry on business in the Province and any other case? "

8. The Court was composed of the Honourable Justices Allard, Tellier, Howard, Bernier and Bond, and their answers are as follows :— 20

p. 24, l. 14.

(a) To the first part of the first question Mr. Justice Allard answered in the affirmative;

p. 24,
ll. 20 & 25.

Mr. Justice Howard and Mr. Justice Bond answered in the affirmative as to foreign insurers; Mr. Justice Howard expressed doubt as to non-Canadian British insurers and Mr. Justice Bond answered negatively as to them;

p. 24,
ll. 17 & 22.

Mr. Justice Tellier and Mr. Justice Bernier answered in the negative;

p. 24, l. 15.

(b) To the second part of the first question Mr. Justice Allard answered in the negative; 30

p. 24,
ll. 21 & 25.

Mr. Justice Howard and Mr. Justice Bond answered in the negative as to foreign insurers; Mr. Justice Howard did not answer expressly as to non-Canadian British insurers and Mr. Justice Bond answered affirmatively as to them;

p. 24,
ll. 17 & 22.

Mr. Justice Tellier and Mr. Justice Bernier answered in the affirmative;

p. 24, l. 34
to p. 25, l. 5.

To the second question all five Judges expressed the opinion that the taxing clauses involved were *intra vires* of the Dominion Parliament.

9. The power of the Provinces to legislate with respect to insurance contracts was recognized by the Judicial Committee in the cases of *Citizens Insurance Company of Canada v. Parsons* and *Queen Insurance Company* 40

v. *Parsons*, 7 Appeal Cases, 96, wherein it was held that the power so to legislate was not inconsistent with the power resident in the Dominion Parliament to enact a general law requiring insurance companies to obtain a license from the Minister of Finance.

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“But it by no means follows that because the Dominion Parliament has alone the right to create a corporation to carry on business throughout the Dominion that it alone has the right to regulate its contracts in each of the Provinces.” (p. 116).

10 “The Statute of the Dominion Parliament enacts a general law applicable to the whole Dominion requiring all insurance companies, whether incorporated by Foreign, Dominion or Provincial authority to obtain a license from the Minister of Finance, to be granted only upon compliance with the conditions prescribed by the Act. Assuming this Act to be within the competency of the Dominion Parliament as a general law applicable to foreign and domestic corporations, it in no way interferes with the authority of the legislature of the Province of Ontario to legislate in relation to the contracts which corporations may enter into in that Province.” (Page 114.)

It is submitted that this decision recognized the disjunction between
20 two distinct questions. One, the regulation of the contracts of insurance companies, and the other, the supervision of the companies by way of license and inspection.

10. The question of the validity of the requirement of the Dominion Insurance Act with respect to provincially incorporated companies and to those incorporated by a foreign state was dealt with in the *Insurance Case* (1916) 1 A.C. 588. Two questions were then submitted :

“1. Are ss. 4 and 70 of the Insurance Act, 1910, or any and what part or parts of the said sections, ultra vires of the Parliament of Canada ? ”

30 “2. Does s. 4 of the Insurance Act, 1910, operate to prohibit an insurance company incorporated by a foreign State from carrying on the business of insurance within Canada, if such company does not hold a license from the Minister under the said Act and if such carrying on of the business is confined to a single Province ? ”

The decision said with respect to the application of the said sections to provincially incorporated companies :—

40 “Where a Company is incorporated to carry on the business of insurance throughout Canada, and desires to possess rights and powers to that effect operative apart from further authority, the Dominion Government can incorporate it with such rights and powers, to the full extent explained by the decision in the case of *John Deere Plow Co. v. Wharton* (1915) A.C. 330. But if a company seeks only

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provincial rights and powers and is content to trust for the extension of these in other provinces to the Governments of those provinces, it can at least derive capacity to accept such rights and powers in other provinces from the province of its incorporation, as has been explained in the case of the *Bonanza Company*, (1916) A.C. 566." (page 597).

In answer to the second question the Committee said :

" The second question is, in substance, whether the Dominion Parliament has jurisdiction to require a foreign company to take out a license from the Dominion Minister, even in a case where the company desires to carry on its business only within the limits of a single province. To this question their Lordships' reply is that in such a case it would be within the power of the Parliament of Canada, by properly framed legislation, to impose such a restriction. It appears to them that such a power is given by the heads in s. 91 which refer to the regulation of trade and commerce and to aliens. This question also is therefore answered in the affirmative." (page 597). 10

11. The next decision bearing on the constitutionality of the Act was the *Reciprocal Insurance Case* (1924) A.C. 328. This decision has little bearing on the matters involved herein for the reason that the questions submitted related wholly to the contracts of Reciprocal Insurance. They do not refer in any way to the authority necessary to admit an alien reciprocal exchange to operate in Canada. The question involved here was, however, referred to in the following extract :— 20

" 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 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 subsection of section 12 ascribes an inadmissible meaning to the word " immigrate " which, if governing the interpretation of sub-s. 1, would extend the scope of s. 12 to matters obviously not comprised 30 40

within the subject of immigration; and that sub-s. 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 subsection of s. 12 as an enactment passed in exercise of it." RECORD.

Subsection 2 of section 12 was as follows :

10 " 2. A company shall be deemed to immigrate into Canada within the meaning of this section if it sends into Canada any document appointing, or otherwise appoints, any person in Canada its agent for any of the purposes mentioned in sub-section one of this section."

This subsection was repealed in 1924 by the Statute 14-15 George V, chapter 50 section 1.

So far, therefore, as the issue involved in the present reference is concerned, the Reciprocal Insurance Case leaves the question where it was left by the Insurance Case of 1916.

12. It is submitted on behalf of the Attorney General of Canada that the legislation in question should be upheld, the appeal dismissed and the
20 cross appeal allowed for the following among other

REASONS

1. Because it is within the power of the Parliament of Canada, by properly framed legislation, to require aliens, whether natural persons or foreign companies, to become licensed, as a condition of carrying on the business of insurance in Canada.
2. Because sections 11, 12 and 65 of the Insurance Act constitute legislation properly framed to that end.
3. Because the powers of the Parliament of Canada to legislate with respect to the carrying on of business in Canada by subjects of His Majesty, whether natural persons or companies, who
30 are not Canadian subjects, are as full and complete as its powers to legislate with respect to the carrying on of business in Canada by aliens whether natural persons or foreign companies, subject only to the provisions of the Colonial Laws Validity Act, 28 and 29 Vict. ch. 63.
4. Because the above mentioned sections of the Insurance Act are not repugnant to any Imperial Act applying to the Dominion.
5. Because sections 16, 20 and 21 of the Special War Revenue Act are expressly authorized under the third head of the enumerated
40 powers of the Parliament of Canada in section 91 of the British North America Act.

6. Because the purchase of insurance outside of Canada against risks in Canada is as fitting an occasion for a tax under the authority of Dominion Legislation as the importation into Canada of any other commodity purchased outside of Canada.
7. Because of the reasons given in their respective judgments by Mr. Justice Allard and Mr. Justice Howard as to the first question and by all five Judges below as to the second question.

LOUIS S. ST. LAURENT.

C. P. PLAXTON.

In the Privy Council.

No. 36 of 1931.

*On Appeal from the Court of King's Bench for the
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IN THE MATTER of a Reference by His Honour
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Validity of certain sections of The Insurance
Act of Canada.

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CASE OF THE ATTORNEY GENERAL
OF CANADA.

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