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UNIVERSITY OF LONDON
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In the Privy Council.

No. 26 of 1940. INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

Against

IN THE MATTER of a Reference as to the legislative competence of the
Parliament of Canada to enact Bill No. 9 of the Fourth Session,
Eighteenth Parliament of Canada entitled "An Act to amend the
Supreme Court Act."

BETWEEN

10 THE ATTORNEY-GENERAL OF ONTARIO, THE
ATTORNEY-GENERAL OF BRITISH COLUMBIA,
THE ATTORNEY-GENERAL OF NEW BRUNSWICK and THE ATTORNEY-GENERAL OF NOVA
SCOTIA APPELLANTS

AND

THE ATTORNEY-GENERAL OF QUEBEC (*Intervenant*) APPELLANT

AND

20 THE ATTORNEY-GENERAL OF CANADA, THE
ATTORNEY-GENERAL OF MANITOBA and THE
ATTORNEY-GENERAL OF SASKATCHEWAN ... RESPONDENTS.

CASE OF THE APPELLANT (INTERVENANT)
THE ATTORNEY-GENERAL OF QUEBEC.

1.—This is an Appeal by Special Leave from a Judgment of the
Supreme Court of Canada dated the 19th January, 1940, whereby the
Court (Duff, C.J., Rinfret, Kerwin and Hudson, JJ., Crocket and
Davis JJ. dissenting), gave its opinion or answer to a question submitted
to the Court by the Governor-General in Council dated 21st April, 1939,

CASE FOR A.-G.
QUEBEC

pursuant to the provisions of Section 55 of the Supreme Court Act (R.S.C. 1927, chapter 35), that the Parliament of Canada is competent to enact in its entirety a Bill described as Bill No. 9 of the 4th Session of the Eighteenth Parliament of Canada to prohibit appeals from any Court in Canada to His Majesty in Council.

The Attorney-General of Quebec obtained leave to intervene in the appeal by Order of His Majesty dated the 15th May, 1946.

2.—Bill No. 9 is entitled “ An Act to amend the Supreme Court Act,” and reads as follows :—

“ *Bill 9.*

10

“ An Act to amend the Supreme Court of Canada.

“ His Majesty, by and with the advice and consent of the Senate and House of Commons, enacts as follows :—

“ 1.—Section fifty-four of the Supreme Court Act, chapter thirty-five of the Revised Statutes of Canada, 1927, is repealed and the following substituted therefor :—

“ “ 54.—(1) The Supreme Court shall have, hold and exercise, exclusive, ultimate, appellate, civil and criminal jurisdiction within and for Canada ; and the judgment of the Court shall, in all cases, be final and conclusive. 20

“ “ (2) Notwithstanding any royal prerogative or anything contained in any Act of the Parliament of the United Kingdom or any Act of the Parliament of Canada or any Act of the legislature of any province of Canada or any other statute or law, no appeal shall lie or be brought from any court now or hereafter established within Canada to any court of appeal, tribunal or authority by which, in the United Kingdom, appeals or petitions to His Majesty in Council may be ordered to be heard.

“ “ (3) The Judicial Committee Act, 1833, chapter forty-one of the statutes of the United Kingdom of Great Britain and Ireland, 1833, and The Judicial Committee Act, 1844, chapter sixty-nine of the statutes of the United Kingdom of Great Britain and Ireland, 1844, and all orders, rules or regulations made under the said Acts are hereby repealed in so far as the same are part of the law of Canada. 30

“ 2.—Nothing in this Act shall affect any application for special leave to appeal or any appeal to His Majesty in Council made or pending at the date of the coming into force of this Act. 40

“ 3.—This Act shall come into force upon a date to be fixed by proclamation of the Governor in Council published in the Canada Gazette.”

3.—The Attorney-General of Quebec will submit that the said Bill No. 9 is *ultra vires* of the Parliament of Canada in its entirety and particularly in so far as it purports :

- (a) “ To make the judgment of the Supreme Court of Canada final and conclusive in any matter coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces under the British North America Act, Section 92 ; or in any case in which the constitutional validity of any Act of the Parliament of Canada or of the Provincial Legislature is in question ;
- 10 (b) “ To abolish appeals to His Majesty in Council, in civil matters, when such appeals are permitted by Provincial legislation ;
- (c) “ To limit appeals to His Majesty in Council, pursuant to any Act of the Provincial Legislature, in matters assigned exclusively to the provinces.”

4.—Section 92 of the British North America Act provides that, in each Province, the Legislature may exclusively make laws in relation to, amongst others, the following matters :—

- 20 “ (1) The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
- “ (13) Property and civil rights in the Province.
- “ (14) The administration of Justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts.”

5.—In relation to matters coming within the classes of subjects enumerated in Section 92 of the British North America Act, the legislative competency of the Provinces is supreme.

Hodge v. The Queen (1883, 9 A.C., page 107 at page 132).

30 6.—Within such limits, the Legislature of each province continues to be free from the control of the Dominion and as supreme as it was before the passing of the British North America Act.

Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick (1892) A.C. 437.

The Board of Commerce Act (1919) and the Combine and Fair Prices Act (1919)—(1922, I—A.C. 191).

7.—The Statute of Westminster (1931) retained the division of legislative powers between the Dominion and the Provinces, as distributed by the British North America Act.

Statute of Westminster (1931) Section 7 :—

“(1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder ;

“(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces ;

“(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.” 10

8.—Section 129 of the British North America Act provides, that all laws in force at the Confederation “ shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made ; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom, of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.” 20

9.—In the Province of Quebec, the law permitting appeals to His Majesty in Council was enacted prior to the Confederation.

Section 30 of the Judicature Act (Lower Canada, 34 George III (1794), ch. 6) provided :—

“ And be it further enacted by the authority aforesaid, that the judgment of the said court of appeals of this Province, shall be final in all cases where the matter in dispute shall not exceed the sum or value of five hundred pounds sterling ; but in cases exceeding that sum or value, as well as in all cases where the matter in question shall relate to any fee of office, duty, rent, revenue, or any sum or sums of money payable to His Majesty, titles to lands or tenements, annual rents or such like matters or things where the rights in future may be bound, an appeal shall lie to His Majesty in his Privy Council, though the immediate sum or value appealed for, be less than five hundred pounds sterling, provided security be first duly given by the appellant, that he will effectually prosecute his appeal, and answer the condemnation, and also, pay such costs and damages as shall be awarded by His Majesty in his Privy Council, in case the judgment of the said court of appeals of this Province be affirmed, or provided that the appellant agrees and declares in writing at the Clerk’s office of the court appealed from, that he does not object to the judgment given against him, being carried into effect according to law, on which condition he shall give sureties for the costs of the appeal, 30 40

10 “ only, in case the appeal is dismissed, and on condition also that the
 “ appellee shall not be obliged to render and return to the appellant,
 “ more than the net proceeds of the execution, with legal interest on
 “ the sum recovered, or the restitution of the real property ; and of
 “ the net value of the produce and revenues of the real property,
 “ whereof the appellee has been put in possession, by virtue of the
 “ execution, to take place from the day he recovered the sum or
 “ possessed the real property until perfect restitution is made, but
 “ without any damage against the appellee, by reason of such
 “ execution, in case that the judgment be reversed, any law, custom
 “ or usage, to the contrary notwithstanding.”

This law was inserted in the Revised Statutes of Lower Canada 1861, as Sections 52, 53, 54, 55, of chapter 76, of the said statutes.

Similar provisions were re-enacted in the code of civil procedure of the Province of Quebec, which came into force on the 28th of June, 1867, under an Order in Council of the Administrator of the Government of Canada, Sir John Michel, dated the 22nd of June, 1867.

The provisions then in force read as follows :—

20 “ 1178.—An appeal lies to Her Majesty in her Privy Council from
 “ final judgments rendered in appeal or error by the Court of Queen’s
 “ Bench :

“ 1.—In all cases where the matter in dispute relates to any
 “ fee of office, duty, rents, revenue, or any sum of money payable
 “ to Her Majesty ;

“ 2.—In cases concerning titles to lands or tenements, annual
 “ rents and other matters by which the rights in future of parties
 “ may be affected ;

“ 3.—In all other cases wherein the matter in dispute exceeds
 “ the sum or value of five hundred pounds sterling.

30 “ 1179.—Nevertheless, the execution of a judgment of the Court
 “ of Queen’s Bench cannot be prevented or stayed, unless the party
 “ aggrieved gives good and sufficient sureties, within the delay fixed
 “ by the Court, that he will effectually prosecute the appeal, satisfy
 “ the condemnation, and pay such costs and damages as may be
 “ awarded by Her Majesty, in the event of the judgment being
 “ confirmed.

“ The security may be received before one of the judges of the
 “ Court of Queen’s Bench, and the sureties are not bound to justify
 “ their solvency upon real estate.

40 “ 1180.—The appellant may also consent to the judgment being
 “ executed, and in such case may give security only for the costs in
 “ appeal, under the same conditions as under article 1124.

“ 1181.—The execution of any judgment of the Court of Queen’s
 “ Bench cannot be prevented or stayed after six months from the

“ day on which the appeal was allowed, unless the appellant files in the office of the clerk of appeals, a certificate, signed by the clerk of Her Majesty’s Privy Council, or any other competent officer, and stating that the appeal has been lodged within such delay, and that proceedings have been had therein.

“ 1182.—The clerk of appeals of the Court of Queen’s Bench is bound to register any exemplification of a decree of Her Majesty in Her Privy Council, as soon as it is presented to him for that purpose, without requiring any order of the Court of Queen’s Bench to that effect, and to send back the record in the case to the court below, together with a copy of such exemplification which has been registered as above mentioned.” 10

10.—The provisions relating to the said appeals are now contained in the following provisions of the code of civil procedure of the Province of Quebec :—

“ 68.—An appeal lies to His Majesty in His Privy Council from final judgments rendered in appeal by the Court of King’s Bench :

“ 1.—In all cases where the matter in dispute relates to any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty ; 20

“ 2.—In cases concerning titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may be affected ;

“ 3.—In every other case where the amount or value of the thing demanded exceeds twelve thousand dollars.

“ 1249.—The execution of a judgment from which an appeal is taken to His Majesty in His Privy Council cannot be prevented or stayed unless the party aggrieved gives good and sufficient sureties, within the delay fixed by the court which rendered the judgment, or by one of the judges of such court, that he will effectually prosecute the appeal, satisfy the condemnation, and pay such costs and damages as may be awarded by His Majesty, in the event of the judgment being confirmed. 30

“ The security must be received before the clerk of the court which rendered the judgment.

“ The sureties justify their solvency upon the real estate which is described in the bailbond.

“ One surety suffices, if he is the owner of real estate, which he describes equal in value to the amount of the security over and above all charges and hypothecs. 40

“ The clerk who receives such security may order, either on demand or otherwise, the production of the registrar’s certificate, the valuation rolls, and any other documents for the purposes of the

“ security, and is bound to put such questions as he deems advisable
 “ to the sureties. Such questions and the answers thereto may be
 “ taken down in writing.

“ The appellant may, however, exempt himself from furnishing
 “ such security, by depositing an amount equal to that required for
 “ the security, either in money, in bonds of the Dominion or of this
 “ Province, or in municipal debentures, and such moneys, bonds or
 “ debentures are deposited either in the office of the court which
 “ rendered the judgment, or with the sheriff, as the clerk may direct.

10 “ 1250.—The appellant may also consent to the judgment being
 “ executed, and in such case may give security for the costs in appeal
 “ only, under the same conditions as under Article 1214.

“ 1251.—The execution of any judgment appealed from cannot
 “ be prevented or stayed after six months from the day on which the
 “ appeal was allowed, unless the appellant files in the office of the
 “ clerk of the court which rendered the judgment, a certificate signed
 “ by the clerk of His Majesty’s Privy Council, or any other competent
 “ officer stating that the appeal has been lodged within such delay,
 “ and that proceedings have been had therein.

20 “ 1252.—The clerk of the court which rendered the judgment
 “ must register any exemplification of a decree of His Majesty in His
 “ Privy Council as soon as it is presented to him for that purpose,
 “ without requiring any order to that effect from the court which
 “ rendered the judgment, and must send back the record in the case
 “ to the court below, together with a copy of the exemplification which
 “ has been registered as above-mentioned.”

11.—By Section 101 of the British North America Act, the Parliament
 of Canada is granted the power to provide for the Constitution, Maintenance,
 and Organization of a “ General Court of Appeal for Canada.”

30 While the words : “ Constitution, Maintenance and Organization ”
 may be said to be wide enough to include the power to provide for appeals
 to the Supreme Court of Canada, in matters coming within the classes of
 subject enumerated in Section 92, it is submitted that they do not permit
 the Parliament of Canada to limit appeals from that Court to His Majesty
 in Council.

12.—It is submitted that the abolition of appeals to His Majesty in
 Council is a matter concerning “ property and civil rights in the Province,”
 and also “ the administration of justice in the Province, including the
 “ Constitution, Maintenance and Organization of Provincial Courts, both
 40 “ of Civil and of Criminal Jurisdiction, and including Procedure in Civil
 “ Matters in those Courts.”

13.—Moreover it is submitted that the Parliament of Canada cannot,
 in effect, repeal provincial statutes validly passed under Section 92 of the

British North America Act, providing for appeals to His Majesty in Council, from the decisions of Provincial Courts.

Attorney-General for Ontario v. the Attorney-General for the Dominion (1896) A.C. 348.

14.—It is further submitted that the Parliament of Canada cannot claim the right to abolish appeals to His Majesty in Council, upon the ground that it is exclusively vested with the power of enacting laws having extra-territorial operation. By sub-section (2) of Section 2 of the Statute of Westminster power is given to the Parliament of a Dominion, not only to make laws, but also “to repeal or amend any such act, order, rule or regulation, in so far as the same is part of the law of the Dominion.” Under sub-section (2) of Section 7, the provisions of Section 2 above mentioned “shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.” And sub-section (3) of Section 7 further provides that the powers conferred upon the Parliament of Canada or upon the Legislatures of the Provinces is restricted “to the enactment of laws in relation to matters within the competence of the Parliament of Canada, or of any of the Legislatures of the Provinces respectively.”

The right to repeal any Act, order, rule or regulation mentioned in sub-section (2) of Section 2, including the Judicial Committee Acts of 1833–1834, is therefore given to the Provinces to the same extent as to the Dominion.

15.—Legislation abolishing the direct right to appeal to the Judicial Committee of the Privy Council provided by a statute of the Province of Quebec is a virtual repeal of the said statute, which can only have effect in Canada and is not, therefore, a law having extra-territorial operation.

This is also true of the proposed abrogation of the Royal Prerogative, in relation to the granting, not only of appeals from the judgments of any Provincial Court, but also in relation to the granting by the Royal Prerogative, of appeals from judgments of the Supreme Court of Canada.

16.—Since the proposed enactment falls within the classes of subjects which the British North America Act has assigned, exclusively, to the Legislatures of the Provinces; it cannot come under the residuary power of the Dominion Parliament respecting peace, order and good government, as provided by Section 91.

It is submitted by the Attorney-General of Quebec that the opinion given by the majority of the Supreme Court of Canada on the question referred to was wrong and should be reversed, and that the question should be answered by declaring that Bill No. 9 is not either in whole or in part within the legislative competence of the Parliament of Canada for the following amongst other

Non-entire

REASONS.

- (1) Because Bill No. 9 entitled " An Act to amend the Supreme " Court Act " is an act relating to the administration of Justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts, and is therefore *ultra vires* of the Dominion Parliament.
- 10 (2) Because said Bill No. 9 is also an act relating to property and civil rights in the Province and, as such, is within the exclusive competency of the Provinces.
- (3) Because said Bill No. 9 is a Federal enactment tending to repeal, abolish or amend laws of the Province of Quebec in force at the time of the Confederation and is *ultra vires* of the Parliament of Canada.
- (4) Because said Bill No. 9 exceeds the powers granted to the Parliament of Canada by Section 101 of the British North America Act and is therefore *ultra vires* of the Dominion Parliament.
- 20 (5) Because under the British North America Act, the legislative authority of the Provinces in relation to matters coming within the classes of subjects enumerated in Section 92 of the British North America Act, is free from the control of the Dominion and as supreme as it was before the passing of the said Act.
- (6) Because the Statute of Westminster (1931) did not alter the British North America Act, nor did it extend the competence of the Parliament of Canada in relation to matters within the legislative authority of the Provinces.
- 30 (7) Because Bill No. 9 is in conflict with Sections 92, 101 and 129 of the British North America Act.
- (8) Because of the Reasons given by the Honourable Mr. Justice Crocket.

EMERY BEAULIEU.

In the Privy Council.

No. 26 of 1940.

ON APPEAL FROM THE SUPREME COURT OF
CANADA.

IN THE MATTER of a Reference as to the legislative
competence of the Parliament of Canada to enact
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THE ATTORNEY-GENERAL OF MANITOBA
and THE ATTORNEY-GENERAL OF SAS-
KATCHEWAN RESPONDENTS.

CASE OF THE APPELLANT
(INTERVENANT)

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