8, 1954

In the Privy Council.

No. 23 of 1952.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN

THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL FOR ALBERTA and THE ATTORNEY GENERAL FOR PRINCE EDWARD ISLAND ... (*Intervenants*) *Appellants*

AND

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... (*Defendant*) *Respondent*

AND

THE ATTORNEY GENERAL FOR NEW BRUNSWICK, ex. rel. S.M.T. (EASTERN) LTD., a duly incorporated Company (*Plaintiff*) *Respondent*

AND

THE ATTORNEY GENERAL OF CANADA, AND OTHERS (*Intervenants*) *Respondents.*

RECORD OF PROCEEDINGS

LAWRENCE JONES & CO.,
Winchester House,
Old Broad Street, E.C.2,
Solicitors for the Attorneys-General of Ontario, Alberta and Prince Edward Island.

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Solicitors for the Attorney-General of Canada.

BLAKE & REDDEN,
17 Victoria Street, S.W.1,
Solicitors for Israel Winner, the Canadian National Railway Company and the Canadian Pacific Railway Company.

NORTON, ROSE, GREENWELL & CO.,
116 Old Broad Street, E.C.2,
Solicitors for the Attorney-General of New Brunswick.

In the Privy Council.

No. 23 of 1952.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN

THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL FOR ALBERTA and THE ATTORNEY GENERAL FOR PRINCE EDWARD ISLAND ...(*Intervenants*) *Appellants*

AND

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... (*Defendant*) *Respondent*

AND

THE ATTORNEY GENERAL FOR NEW BRUNSWICK ex. rel. S.M.T. (EASTERN) LTD., a duly incorporated Company (*Plaintiff*) *Respondent*

AND

THE ATTORNEY GENERAL OF CANADA, AND OTHERS (*Intervenants*) *Respondents.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

In the Privy Council.

No. 23 of 1952.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN

THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL FOR ALBERTA and THE ATTORNEY GENERAL FOR PRINCE EDWARD ISLAND ...(*Intervenants*) *Appellants*

AND

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... (*Defendant*) *Respondent*

AND

THE ATTORNEY GENERAL FOR NEW BRUNSWICK ex. rel. S.M.T. (EASTERN) LTD., a duly incorporated Company (*Plaintiff*) *Respondent*

AND

THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL FOR QUEBEC, THE ATTORNEY GENERAL FOR NOVA SCOTIA, THE ATTORNEY GENERAL FOR NEW BRUNSWICK, THE ATTORNEY GENERAL FOR BRITISH COLUMBIA, CANADIAN NATIONAL RAILWAY COMPANY, CANADIAN PACIFIC RAILWAY COMPANY, MACCAM TRANSPORT COMPANY and CARWIL TRANSPORT LIMITED ... ...(*Intervenants*) *Respondents*

— AND BETWEEN —

ISRAEL WINNER (doing business under the name and style of MACKENZIE COACH LINES) *Defendant*, and CANADIAN NATIONAL RAILWAY COMPANY and CANADIAN PACIFIC RAILWAY COMPANY ... ...(*Intervenants*) *Appellants*

AND

S.M.T. (EASTERN) LIMITED (*Plaintiff*) and the ATTORNEYS GENERAL OF CANADA, ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK, BRITISH COLUMBIA, PRINCE EDWARD ISLAND and ALBERTA, MACCAM TRANSPORT LIMITED and CARWIL TRANSPORT LIMITED ... ...(*Intervenants*) *Respondents.*

(Consolidated Appeals)

RECORD OF PROCEEDINGS

In the Supreme Court of New Brunswick, Chancery Division.

No. 1. Writ of Summons, 17th September, 1949.

No. 1.

Writ of Summons.

IN THE SUPREME COURT OF NEW BRUNSWICK.
CHANCERY DIVISION.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

GEORGE THE SIXTH, by the Grace of God, of Great Britain, and the British Dominions beyond the Seas, King, Defender of the Faith, etc.

To Israel Winner of Lewiston in the State of Maine, one of the United States of America.

WE COMMAND YOU that within ten days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of S. M. T. (Eastern), Limited, a company duly incorporated under and by virtue of The New Brunswick Companies Act with head office in the City of Saint John in the said Province;

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS The Honourable Charles D. Richards, Chief Justice of New Brunswick, the 17th day of September, A.D. 1949.

N.B. This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the date of such date, and not afterwards.

ENDORSEMENTS ON WRIT OF SUMMONS.

The Plaintiff's claim is for :

1.—An injunction restraining the Defendant from picking up and letting down passengers within the Province of New Brunswick in his public motor buses running between St. Stephen, New Brunswick, and the Nova Scotia border.

2.—For damages arising out of the Defendant's enbussing and debussing passengers within the Province of New Brunswick since August 1st, 1949.

3.—For an accounting to ascertain such damages.

4.—Costs of this action.

5.—Such further and other relief as to this Honourable Court may seem just.

This writ was issued by Gilbert, Ritchie & McGloan, whose place of business and address for service is 94 Prince William Street, Saint John, N.B., solicitors for the Plaintiff, whose head office is in the City of Saint John and Province of New Brunswick.

In the Supreme Court of New Brunswick, Chancery Division.

No. 1. Writ of Summons, 17th September, 1949—*continued.*

No. 2.

Statement of Claim.

No. 2. Statement of Claim, 18th October, 1949.

IN THE SUPREME COURT OF NEW BRUNSWICK.
CHANCERY DIVISION.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

Writ of Summons issued the 17th day of September, A.D. 1949.

STATEMENT OF CLAIM.

VENUE

SAINT JOHN.

The Plaintiff says that :

1.—The Plaintiff is a company incorporated under and by virtue of The New Brunswick Companies Act and is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation over the highways of the Province of New Brunswick.

2.—The Plaintiff holds licences granted by The Motor Carrier Board of the Province of New Brunswick to operate public motor buses between St. Stephen, New Brunswick, and the City of Saint John, New Brunswick, over Highway Route No. 1 and between the said City of Saint John and the Nova Scotia border over Highway Route No. 2, for the purpose of carrying passengers and goods for hire or compensation.

In the Supreme Court of New Brunswick, Chancery Division.

No. 2. Statement of Claim, 18th October, 1949— *continued.*

3.—The Plaintiff by its public motor buses maintains a daily passenger service over the routes set out in paragraph 2 hereof.

4.—The Defendant, who resides at Lewiston in the State of Maine, one of the United States of America, is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation under the name and style of MacKenzie Coach Lines.

5.—On the 17th day of June, 1949, the said Motor Carrier Board granted a licence to the Defendant, permitting him to operate public motor buses from Boston in the State of Massachusetts through the Province of New Brunswick on Highways Nos. 1 and 2 to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to enbus or debus passengers in the said Province of New Brunswick after August 1st, 1949.

6.—The Defendant by his motor buses maintains a daily passenger service over the routes set out in paragraph 5 hereof.

7.—Since August 1st, 1949, the Defendant has continually enbussed and debussed passengers within the said Province of New Brunswick, contrary to the said order, dated the 17th day of June, 1949, and has declared his intention of so doing until stopped by legal process.

8.—Unless the Defendant is restrained from enbussing and debussing passengers within the Province of New Brunswick, irreparable damage and harm will be done to the Plaintiff.

9.—It is impossible to calculate in money the damage suffered by the Plaintiff by reason of the Defendant enbussing and debussing passengers within the Province of New Brunswick as it is unknown to the Plaintiff how many passengers the Defendant enbuses or debuses in the Province of New Brunswick or where such passengers board or leave his motor buses.

10.—The Plaintiff claims :

(a) An injunction against the Defendant, his servants or agents restraining him and them from enbussing and debussing passengers within the Province of New Brunswick in his public motor buses running between St. Stephen, N.B., and the Nova Scotia Border.

(b) A declaration that the Defendant has no legal right to enbuss or debuss passengers within the Province of New Brunswick.

(c) An accounting of fares received for the carriage of passengers within the Province of New Brunswick.

(d) Damages.

(e) Such other and further relief as to the Court may seem just.

(f) Costs of this action.

DATED the 18th day of October, A.D. 1949.

GILBERT, RITCHIE & McGLOAN,
Plaintiff's Solicitors.

C. F. INCHES,
of Counsel for Plaintiff.

To: J. MARK NEVILLE, Fredericton, N.B.
Defendant's Solicitor.

No. 3.

Statement of Defence and Counter-claim.

In the Supreme Court of New Brunswick, Chancery Division.

No. 3. Statement of Defence and Counter-claim, 1st December, 1949.

IN THE SUPREME COURT OF NEW BRUNSWICK.
CHANCERY DIVISION.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

10 STATEMENT OF DEFENCE.

The Defendant says that:

1.—He admits the allegations contained in paragraphs (1) to (6) inclusive of the Plaintiff's Statement of Claim.

2.—As to paragraph (7) of the said Statement of Claim—

(a) he admits that since August 1st, 1949, he has continually enbussed and debussed passengers within the Province of New Brunswick and that it is his intention to continue to do so unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor
20 Carrier Act and amendments thereto, or by any other applicable statute or law;

(b) he intends to carry passengers not only from points without the Province of New Brunswick to points within the said Province and vice versa, but also, in connection with and incidentally to his international and interprovincial operations, to carry passengers from points within the said Province to destinations also within the said Province, unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor Carrier Act and
30 amendments thereto, or by any other applicable statute or law.

3.—As to paragraphs (8) and (9) of the said Statement of Claim, he admits that he is operating in competition with the Plaintiff herein but puts the Plaintiff upon strict proof of damage alleged to have been suffered by the Plaintiff.

4.—His operation of public motor buses is primarily international and interprovincial, over the routes more particularly described in paragraph (5)

In the Supreme Court of New Brunswick, Chancery Division.

No. 3. Statement of Defence and Counter-claim, 1st December, 1949—*continued.*

of the Plaintiff's Statement of Claim, but that incidentally to such international and interprovincial operation, he operates and intends to continue to operate public motor buses intraprovincially in accordance with and subject to his allegations contained in paragraph (2) hereof.

COUNTERCLAIM.

The Defendant repeats the allegations contained in his Statement of Defence and claims :

1.—A declaration that his operations constitute an undertaking connecting the Province of New Brunswick with another Province of Canada, viz., the Province of Nova Scotia, and extending into states of the United States of America, beyond the limits of the Province of New Brunswick, within the meaning of Section 10 (a) of Section 92 of The British North America Act.

2.—A declaration that his said operations are not prohibited by or subject in any way to the provisions of The Motor Carrier Act and amendments thereto, or by or to any other applicable statute or law.

3.—A declaration that 13 George VI Chapter 47 (1949) is ultra vires of the legislature of the Province of New Brunswick.

4.—Such other and further relief as to the Court may seem just.

5.—Costs of this action.

DATED the 1st day of December, A.D. 1949.

J. MARK NEVILLE,
Defendant's Solicitor.

To : The Plaintiff herein, Messrs. Gilbert, Ritchie & McGloan, its solicitors and C. F. Inches, K.C.,
Counsel for the said Plaintiff.

No. 4.

Reply and Defence to Counter-claim.

In the Supreme Court of New Brunwick, Chancery Division.

No. 4. Reply and Defence to Counter-claim, 8th December, 1949.

IN THE SUPREME COURT OF NEW BRUNSWICK.
CHANCERY DIVISION.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

REPLY.

The Plaintiff says that :

1.—As to paragraphs 2 (b) and 4 of the Defendant's Statement of Defence

(a) the Plaintiff admits the Defendant's intention as set out in the said paragraph 2 (b) ;

(b) the Plaintiff denies that the Defendant's operation of public motor buses is primarily international and interprovincial, but admits that the Defendant's operation of public motor buses includes enbussing passengers in one province or state, and debussing such passengers in another province or state.

DEFENCE TO COUNTERCLAIM.

2.—The Plaintiff repeats the allegations contained in the Plaintiff's statement of claim and in paragraph 1 (b) of his reply, and says that the Defendant is not entitled to the relief claimed in the Defendant's counterclaim and that the said counterclaim is bad in law and discloses no cause of action, for the reasons set forth in the Plaintiff's statement of claim, and because 13 Geo. VI Chap. 47 (1949) is intra vires the legislature of the Province of New Brunswick.

DATED the 8th day of December, A.D. 1949.

GILBERT, RITCHIE & McGLOAN,
Plaintiff's Solicitors.

C. F. INCHES,
of Counsel for Plaintiff.

To : J. Mark Neville, Fredericton, N.B.,
Defendant's Solicitor, and Nigel B. Tennant, K.C., Saint John, N.B.,
Counsel for Defendant.

In the Supreme Court of New Brunswick, Chancery Division.

No. 5. Order of Hughes J., raising questions of law for the opinion of the Appellate Division, 17th January, 1950.

No. 5.

Order of Hughes, J., raising questions of Law for the opinion of the Supreme Court of New Brunswick, Appellate Division.

IN THE SUPREME COURT OF NEW BRUNSWICK.
CHANCERY DIVISION.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

Upon hearing Nigel B. Tennant, K.C., of counsel for the Defendant herein and upon hearing Adrian B. Gilbert, K.C., of counsel for the Plaintiff herein and upon reading a copy of the pleadings herein exhibited to me by the above named counsel, IT IS ORDERED that the questions of law hereinafter more particularly set forth be raised for the opinion of the Supreme Court of New Brunswick, Appellate Division, and that in the meantime, all further proceedings in this action be stayed.

AND IT IS FURTHER ORDERED that for the purpose of the said opinion, the facts relevant to the issue or issues to be determined shall be deemed or taken to be as follows :

1.—The Plaintiff is a company incorporated under and by virtue of the New Brunswick Companies' Act and is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation over the highways of the Province of New Brunswick.

2.—The Plaintiff holds licenses granted by The Motor Carrier Board of the Province of New Brunswick to operate public motor buses between St. Stephen, New Brunswick, and the City of Saint John, New Brunswick, over Highway Route No. 1 and between the said City of Saint John and the Nova Scotia border over Highway Route No. 2, for the purpose of carrying passengers and goods for hire or compensation.

3.—The Plaintiff by its public motor buses maintains a daily passenger service over the routes set out in paragraph (2) hereof.

4.—The Defendant, who resides at Lewiston in the State of Maine, one of the United States of America, is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation under the name and style of MacKenzie Coach Lines.

5.—(a) On the 17th day of June, 1949, on the application of the Defendant the said Motor Carrier Board granted a license to the Defendant,

permitting him to operate public motor buses from Boston in the Commonwealth of Massachusetts through the Province of New Brunswick on Highways Nos. 1 and 2 to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to enbus or debus passengers in the said Province of New Brunswick after August 1st, 1949.

(b) At the time of making the said application, the Defendant challenged the validity of 13 George VI Chapter 47 (1949), and the Motor Carrier Act, 1937 as affected thereby, as being ultra vires of the Legislature of the Province of New Brunswick.

(c) That the said Motor Carrier Board made no specific ruling on the Defendant's challenge as set out in sub-paragraph (b), but acted under the said 13 George VI Chapter 47 (1949).

6.—The Defendant by his motor buses maintains a regular passenger service over the routes set out in paragraph 5 (a) hereof.

7.—Since August 1st, 1949 the Defendant has continually enbused and debused passengers within the Province of New Brunswick and it is his intention to continue to do so unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor Carrier Act, 1937 and amendments thereto, or by any other applicable statute or law ;

8.—The Defendant intends to carry passengers not only from points without the Province of New Brunswick to points within the said Province and vice versa, but also, in connection with and incidental to his operations as more particularly described in paragraph (9) hereof, to carry passengers from points within the said province to destinations also within the said province, unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by the Motor Carrier Act, 1937 and amendments thereto, or by any other applicable statute or law.

9.—(a) The business and undertaking of the Defendant, generally referred to in paragraph (4) hereof consists of the operation of motor buses for the carriage of passengers and goods for hire or compensation between the City of Boston in the Commonwealth of Massachusetts and the Town of Glace Bay in the Province of Nova Scotia and between intermediate points.

(b) That the said business and undertaking is conducted by the Defendant over that portion of its route which lies between the said City of Boston and the Town of Calais, Maine, under a certificate granted by Interstate Commerce Commission (a Federal commission of the United States of America having jurisdiction inter alia, over inter-state transportation), permitting the defendant to carry passengers and their baggage, as a motor carrier, as follows :—

" Passengers and their baggage, and express and mail, in the same vehicle with passengers, in seasonal operations from the 1st day of May to

In the Supreme Court of New Brunswick, Chancery Division.

No. 5. Order of Hughes J., raising questions of law for the opinion of the Appellate Division, 17th January, 1950— *continued.*

the 15th day of December, both inclusive, over a regular route between Boston, Mass., and a point on the United States–Canada Boundary line north of Calais, Maine: From Boston over U.S. Highway 1 to Portland, Maine, thence over Maine Highway 3 via Auburn, Augusta, and Belfast, Maine, to Ellsworth. Maine (also from Augusta, Maine over Maine Highway 100 to Newport, Maine, thence over U.S. Highway 2 to Bangor, Maine, thence over U.S. Highway 1 to Ellsworth), thence over U.S. Highway 1 to Franklin Road, Maine, thence over Maine Highway 182 to Cherryfield, Maine (also from Franklin Road over U.S. Highway 1 to Cherryfield), thence over U.S. Highway 1 to Calais, Maine, and thence over bridge to the United States–Canada boundary line and return over the same routes.

Service is authorized to and from all intermediate points."

(c) Subsequently and in addition, Interstate Commerce Commission, has permitted the Defendant to carry passengers and their baggage as a motor carrier, as follows:

"Passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers, in a seasonal operation extending from the first of May to the 15th of December, inclusive, of each year, over alternate regular routes for operating convenience only in connection with said carrier's presently authorize regular route operations.

Between Portland, Maine, and Kittery, Maine: From Portland over Maine Turnpike to Kittery, and return over the same route.

Between Bangor, Maine, and Calais, Maine: From Bangor over Maine Highway 9 to Calais, and return over the same route.

Service is not authorized to or from intermediate points."

(d) The Motor Carrier Board of the Province of New Brunswick, on the 17th of June, 1949, on the application of the Defendant as set forth in paragraph 5 hereof, purported to license the operation of the Defendant, in the Province of New Brunswick, as follows:

"Israel Winner doing business under the name and style of 'MacKenzie Coach Lines,' at Lewiston in the State of Maine is granted a license to operate public motor buses from Boston in the State of Massachusetts, through the Province of New Brunswick on Highways Nos. 1 and 2, to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to enbus or debus passengers in the said Province of New Brunswick after August 1, 1949."

(e) The Board of Commissioners of Public Utilities for the Province of Nova Scotia has purported to approve the Defendant's operations in the Province of Nova Scotia over the following routes:

"(a) New Brunswick Border to Glace Bay, via Route No. 4—Wentworth Valley and Truro.....302 miles;

(b) New Brunswick Border to Glace Bay, via Route No. 2—Parrsboro and Truro.....319 miles;

(c) New Brunswick Border to Glace Bay, via Route No. 6—Pugwash, Wallace, Pictou and New Glasgow.....292 miles;

(d) Truro to Halifax.....64 miles (3 miles of which is within the corporate limits of the Town of Truro and City of Halifax)."

(f) Subsequently the said Board of Commissioners of Public Utilities for the Province of Nova Scotia amended the certificate granted to the Defendant as set out in sub-paragraph (e) hereof as follows :

" Operation of this route is permitted To Be Suspended from January 12th, 1949 until May 1st, 1949."

(g) The Defendant in fact, operates as a public motor carrier between the City of Boston aforesaid, the Town of Glace Bay aforesaid and intermediate points, in accordance with the timetable, a copy of which is hereunto annexed marked " A," between the 1st day of May and the 15th day of December in each year, the period of time covered by the certificates granted by the Interstate Commerce Commission.

(h) Between December 15th and May 1st of each year, the Defendant proposes to operate as a public motor carrier as aforesaid, between the Provinces of New Brunswick and Nova Scotia, connecting with New England Greyhound Lines, Inc., a company authorized by the Interstate Commerce Commission to operate as a public motor carrier between Calais, Maine and Boston, Massachusetts throughout the entire year.

(j) Incidentally to its operations as aforesaid, the Defendant proposes to pick up, within the Province of New Brunswick, passengers and their baggage having a destination also within the Province of New Brunswick.

The questions for the opinion of the court are :

1.—Are the operations or proposed operations of the Defendant within the Province of New Brunswick, or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act, 1937 and amendments thereto, or orders made by the said Motor Carrier Board ?

2.—Is 13 George VI Chapter 47 (1949) intra vires of the legislature of the Province of New Brunswick ?

And It Is Further Ordered that after the said questions shall have been answered by the Appellate Division of the Supreme Court of New Brunswick, then the matter shall be referred back to the Supreme Court, Chancery Division, for further proceedings, subject to such rights of appeal as may be available to either of the parties hereto ; And It Is Further Ordered that the making of this order shall be without prejudice to the Plaintiff's right to the relief claimed in its statement of claim ;

And It Is Further Ordered that factums to be used in the Supreme Court of New Brunswick, Appellate Division, herein be exchanged between the parties simultaneously on or before the 4th day of February, 1950, and be filed with the Registrar of the Supreme Court on or before the said date ; and further that the costs of this application shall be costs in the cause.

Dated the 17th day of January, A.D. 1950.

PETER J. HUGHES,
J.S.C. Ch. D.

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GENERAL INFORMATION

PURCHASING TICKETS: Passengers should always purchase tickets before boarding bus to avoid unnecessary delay.

REFUNDS: Refunds on unused portions of tickets will be made only through the main office, address MacKenzie Coach Lines, 116 Middle Street, Lewiston, Maine.

RESERVATIONS: Definite seat reservations will be made only when tickets have actually been purchased. Tentative reservations may be made by telephone or otherwise at the passenger's risk. Such tentative reservations must be confirmed by ticket purchase at least twelve (12) hours before leaving time of coach from originating terminal. Reservations can not be guaranteed on stop-over privileges or on the sale of tickets at intermediate stations and same is subject to the limitation of seating capacity of motor coach passing through such points. In case of insufficient seating capacity of any schedule passengers will be placed on coach in order of their booking.

CHILDREN'S FARES: Children under five (5) years of age when accompanied by adult passenger and not occupying a seat to the exclusion of other passengers will be carried free. Children under five (5) years of age occupying seats to the exclusion of other passengers and children five (5) years and under 12 years of age will be charged one-half (½) of the adult fare.

ANIMALS: Dogs, cats and other live animals will not be carried.

SCHEDULES: MacKenzie Coach Lines endeavor to strictly maintain all schedules shown but these schedules are not guaranteed. Connections are not guaranteed and are subject to change without notice.

BAGGAGE: 60 pounds of baggage or property not exceeding $25 in value will be carried without charge for each adult passenger and 30 pounds of baggage or property, not exceeding $12.50 in value will be carried without charge for each child traveling on a half fare ticket. Baggage exceeding the free weight or value allowance will be carried only in accordance with Tariff Conditions governing such baggage.

CUSTOMS: Owing to customs regulations, baggage cannot be checked across the International Boundary. It may, however, be checked to the nearest port of exit where it must be claimed by the passenger and arrangements made for examination by customs office.

Passengers are expected to attend to their baggage personally during Customs inspection. In selling a ticket and providing accommodations for a passenger, MacKenzie Coach Lines assumes that passenger will observe the laws of both the United States and Canada in regard to contraband.

IMMIGRATION: Passengers enroute to Canada who intend to return to the United States should be careful to carry with them any available documentary evidence such as birth certificate where native born, naturalization certificate where naturalized, or affidavits certifying to their continued residence in the United States since prior to October 1, 1906, regardless of whether any record of their entry exists or not as would be likely to establish their identity to the satisfaction of the Canadian and United States Immigration Officers whose duties require them to examine all passengers entering the United States from Canada, or Canada from the United States.

Passengers should also carry a sufficient amount of money.

LOST ARTICLES: Persons desiring to recover lost articles should communicate with the main office of the company at address shown.

RESPONSIBILITY: In selling tickets over routes of other carriers, MacKenzie Coach Lines acts only as selling agent and is not responsible beyond its own lines except as such responsibility may be imposed by law.

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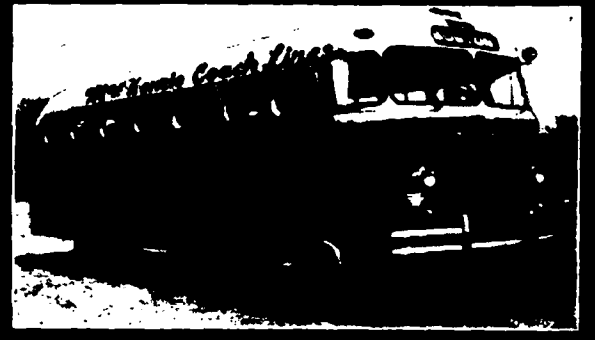
MacKenzie Coach Lines

"THE *Thru* LINE"



BOSTON, MASS.
PORTSMOUTH, N.H.
PORTLAND, ME.
LEWISTON
BANGOR
ST. STEPHEN, N. B.
ST. JOHN
MONCTON
AMHERST, N. S.
HALIFAX
NEW GLASGOW
PORT HAWKESBURY
ST. PETER
SYDNEY
GLACE BAY

MACKENZIE COACH LINES
116 Middle St., Lewiston, Me.

MACKENZIE COACH LINES

Joseph Winner, Genera Manager — **Daylight Saving Time When in Effect** — 116 Middle Street, Lewiston, Maine

BOSTON BANGOR—ST. STEPHEN—AMHERST—HALIFAX—GLACE BAY

READ DOWN	5-1-49	READ UP
Note 2 · 305 · Dly · PM	Run Numbers	Note 1&2 · 102 · Dly · AM / 204 · Dly · AM / Note 2 · 306 · Dly · PM
	Lv **Boston, Mass.** (EDT) Ar	11 00
	Everett	10 40
	Malden	10 37
	Lynnfield	10 27
	Newburyport, Mass	9 40
	Hampton, N. H.	9 23
	Portsmouth, N. H.	9 08
	Ar **York, Me.** Lv	8 55
	Lv **York, Me.** Ar	8 50
	Ogunquit	8 39
	Wells	8 23
	Kennebunk	8 17
	Biddeford	8 03
	Portland	7 35
2 08	Gray	7 10
2 50	Ar **Auburn** Lv	6 45
3 20	Lv **Auburn** Ar	6 25
3 25	Lewiston	6 20
3 58	Winthrop	5 55
4 18	Augusta	5 38
4 40	Waterville	5 20
5 15	Pittsfield	4 50
5 26	Newport	4 29
6 05	Ar **Bangor** Lv	3 40
6 15	Lv **Bangor** Ar	3 30
6 55	Ellsworth	2 50
7 40	Millbridge	2 05
7 45	Cherryfield	2 00
8 00	Ar **Columbia Falls** Lv	1 45
8 15	Lv **Columbia Falls** Ar	1 30
8 40	Machias	1 06
9 10	Whiting	12 35
9 50	Perry	11 55
10 25	Calais, Me.	11 20
11 30	Ar **St. Stephen, N.B.** Lv	11 15
12 01	Lv **St. Stephen, N.B.** Ar	11 15
12 30	‡St. Andrews	10 45
1 05	St. George	10 16
1 20	Pennfield	9 55
2 11	Spruce Lake	9 06
2 25	Ar **St. John** Lv	8 50
2 45	Lv **St. John** Ar	8 30
3 35	Hampton	7 45
3 40	Norton	7 40
4 15	Sussex	7 10
4 50	Petitcodiac	6 35
5 25	Ar **Moncton** Lv	5 55
5 30	Lv **Moncton** Ar	5 55
5 40	Fox Creek	5 45
5 [illegible]	Memramcook	5 35
6 [illegible]	Dorchester	5 17
6 25	Sackville, N. B.	5 02
6 35	Ar **Amherst, N. S.** Lv	4 50
7 05	Lv **Amherst** Ar	
	Springhill	
	Southampton	
	Parrsboro	
	[illegible] River	
	[illegible] Islands	
	Economy	
	Lass River	
	Great Village	
	Glenholme	
	Ar **Truro** Lv	
	Lv **Truro** Ar	
	Brookfield	
	Stewiacke	
	Shubenacadie	
	Milford	
	Enfield	
	Waverley	
	Bedford	
11 55	Halifax	
7 05	Lv **Amherst** Ar	4 [illegible]
7 35	Springhill	3 [illegible]
7 59	Oxford	3 [illegible]
8 28	Pugwash	2 [illegible]
8 47	Wallace	2 [illegible]
9 08	Tatamagouche	2 [illegible]
9 30	River John	1 [illegible]
10 06	Pictou	1 [illegible]
	Alma	
	Westville	12 [illegible]
	Stellarton	12 [illegible]
10 35	Ar **New Glasgow** Lv	12 45
10 35	Lv **New Glasgow** Ar	12 15
	Kenzieville	11 45
	Antigonish	11 15
11 45	Ar **South River** Lv	11 07

Continued top of next column

READ DOWN	5-1-49	READ UP
203 · Dly · PM	Run Numbers (Continued)	204 · Dly · PM
12 10	Lv **South River** Ar	10 58
	Heatherton	10 50
	Tracadie	10 44
	Monastry	10 41
	Havre Boucher	10 28
1 10	Mulgrave	10 15
1 30	Port Hawkesbury	9 50
	Cleveland	9 33
	Grand Anse	9 18
	River Bourgeoise	9 09
2 10	Ar **St. Peter** Lv	9 00
2 20	Lv **St. Peter** Ar	8 50
	Irish Cove	8 20
	Big Pond	8 05
3 40	Ar **Sydney** Lv	7 35
3 50	Lv **Sydney** Ar	7 30
4 20	Ar **Glace Bay, N. S.** Lv	6 50

Note 1: From May 1st to June 25th and from September 15th to December 15th, this trip will leave Halifax at 12 00 noon, arriving in Boston 11 00 a.m.

Note 2: These trips will operate on these schedules from June 25th to September 15th. **Note 3:** 11 55 a.m. arrival into Halifax from May 1st to June 25, and from September 15th to December 15th. (EDT)—Eastern Daylight Time. (ADT)—Atlantic Daylight Time. ‡—Will enter St. Andrews on request.

A.M. time (12 00 midnight to 11 59 noon) is shown in light face type.

P.M. time (**12 00** noon to **11 59** night) is shown in **bold face type.**

No. 6.

Notice of Intervention by the Attorney-General for New Brunswick.

In the Supreme Court of New Brunswick, Appeal Division.

No. 6. Notice of Intervention by Attorney General for New Brunswick, 20th February, 1950.

IN THE SUPREME COURT OF NEW BRUNSWICK,
APPEAL DIVISION.

Between

S.M.T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

10 NOTICE OF INTERVENTION.

The Attorney General hereby gives notice of his intention to intervene in this action.

DATED 20th day of February, 1950.

J. EDWARD HUGHES,
Counsel for Attorney General,
Intervenant.

No. 7.

Agreement enlarging questions of Law raised for opinion of the Appellate Division.

No. 7. Agreement enlarging questions of law raised for opinion of Appellate Division, 21st March, 1950.

20 IN THE SUPREME COURT,
APPELLATE DIVISION.

Between

S.M.T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

Pursuant to oral agreement between Counsel for the Plaintiff and for the Defendant herein, made during the course of argument before the Supreme Court, Appellate Division, on the 24th day of February, A.D. 1950,
30 it is hereby formally agreed that the first question of law raised for the opinion of the Appellate Division by order of His Lordship, Mr. Justice

In the Supreme Court of New Brunswick, Appellate Division.

No. 7. Agreement enlarging questions of law raised for opinion of Appellate Division. 21st March, 1950— *continued.*

Hughes, dated the 17th day of January, A.D. 1950, be enlarged so as to read as follows :

"1. Are the operations or proposed operations of the Defendant within the Province of New Brunswick or any part or parts thereof as above set forth prohibited or in any way affected by the provisions of The Motor Carrier Act, 1937, and amendments thereto or orders made by the said Motor Carrier Board or by sections 6, 53, or other provisions of The Motor Vehicle Act and amendments thereto or by regulation No. 13 or by any other regulation promulgated under the provisions of The Motor Vehicle Act ? "

DATED this 21st day of March, A.D. 1950.

ADRIAN B. GILBERT,
Of Counsel for the Plaintiff.

NIGEL B. TENNANT,
Of Counsel for the Defendant.

No. 8. Formal Judgment, 1st May, 1950.

No. 8.

Formal Judgment answering questions raised for opinion of Appellate Division.

IN THE SUPREME COURT OF NEW BRUNSWICK,
APPEAL DIVISION.

Monday, May 1st, 1950.

Between

S.M.T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

FROM CHANCERY DIVISION UPON AN ORDER RAISING QUESTION OF LAW FOR APPELLATE DIVISION.

UPON HEARING in February Session last, Mr. N. B. Tennant, one of His Majesty's Counsel, of Counsel for the Defendant, in support of Defendant's views on questions of law referred to the Court, and upon hearing Mr. C. F. Inches, one of His Majesty's Counsel, and Mr. A. B. Gilbert, one of His Majesty's Counsel, of Counsel for the Plaintiff, in support of the Plaintiff's views thereon, the Court, having taken time to consider,

DOTH NOW ORDER that the several questions submitted be answered as follows :

1. " Are the operations or proposed operations of the Defendant within the Province of New Brunswick or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act (1937) and amendments thereto, or orders made by the said Motor Carrier Board ?"

Answer : " Yes, prohibited, until the Defendant complies with the provisions of the Act."

2. " Is 13 George VI Chapter 47 (1949) intra vires of the legislature of the Province of New Brunswick ? "

Answer : " Yes, in respect of this Defendant." (Richards, C.J., and Hughes, J. answering simply " Yes.")

3. " Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, Chapter 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act ? "

Answer : " Yes, until the Defendant complies with the provisions of the Act, and the Regulations made thereunder."

And the Court DOTH FURTHER ORDER that the Plaintiff shall have the costs of the application.

By the Court,
H. LESTER SMITH,
Registrar.

No. 9.

Reasons for Judgment.

(*a*) RICHARDS, C.J.

The Facts in this case and the questions of law to be determined are fully stated in the judgment of my brother Harrison.

The substantial issue in the case is the question as to the validity of certain Acts of the Province of New Brunswick, namely, (1) The Motor Carrier Act, 1937, and particularly the amendment of 1949 : and (2) certain sections of The Motor Vehicle Act 1934, and amendments. It is necessary to discuss only The Motor Carrier Act, as it is agreed the same principles are involved in respect of the particular sections cited of The Motor Vehicle Act.

The Defendant says that the Motor Carrier Act is ultra vires of the Province of New Brunswick, and he bases his main argument upon sub-section (10) (a) of Section 92 of the British North America Act. He says that his undertaking comes within the exception mentioned in item (a) of that sub-section. Sub-section (10) of Section 92 reads as follows :

In the Supreme Court of New Brunwick, Appellate Division.

No. 9. Reasons for Judgment.

(a) Richards C.J.— *continued.*

(10) Local works and undertakings other than such as are of the following classes :

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.

(b) Lines of steamships between the Province, and any British or foreign country.

(c) Such works as, although wholy situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the Provinces.

The Defendant says that his bus line is an undertaking that connects the Province of New Brunswick with the Province of Nova Scotia and also extends beyond the Province of New Brunswick into the State of Maine. It follows therefore that by virtue of head 29 of Section 91 of the British North America Act the Defendant's undertaking comes exclusively within the jurisdiction of the Parliament of Canada, citing *C. P. R. Co.* v. *Attorney General for British Columbia* (1950) 66 T.L.R. 34 (P.C.).

The Plaintiff says that the general words " other works and undertakings " in sub-section (10) (a) must be considered *ejusdem generis* with the preceding words in sub-section (10) (a) and that they do not include a bus line. The basis of this view seems to be that to make the " undertaking " come within item (a) there must be some physical thing as part of the " undertaking " connecting the provinces or extending beyond the province. The Plaintiff says : " The only busline that could be comprehended by the general words would be one that actually constructed, as part of its undertaking, the highways over which its buses travel." I am unable to accept this view. The position, I think, is clearly stated in *Attorney General for Quebec* v. *Attorney General for Canada* (1932) A.C. 304. (*Radio Reference case*) where Viscount Dunedin said, p. 315 :

> " ' undertaking ' is not a physical thing, but is an arrangement under which of course physical things are used."

and referring to the facts in that case added :

> " The undertaking of broadcasting is an undertaking connecting the province with other provinces and extending beyond the limits of the province."

In the same way it would seem that the operation of a bus line may be regarded as an undertaking.

But there is, I think, a definite answer to the contention of the Defendant on this point. The *ejusdem generis* rule must be applied to the principal clause of sub-section (10) and the words " local works and undertakings " must be inserted after the word " such ", making the principal clause to read : " Local works and undertakings other than such *local works and undertakings* as are of the following classes." The result is that the works and

undertakings referred to in clause (a) would also be local works and undertakings but such as connected the province (in which it has locus) with another province or provinces, or extending beyond the limits of the province. Those undertakings which were entirely local (within the Province) would come within provincial jurisdiction ; those that extended beyond the province would, by virtue of Section 91 (29), be transferred to Dominion jurisdiction, but they are all works and undertakings which have their origin and situs within the province. That is an essential element. A consideration of clauses (b) and (c) supports this conclusion.

It follows therefore that the Defendant does not come within the exceptions under (10) (a) of Section 92. The Defendant has no office, no place of business, no organization, no situs in the province. His office or place of business is at Lewiston, in the State of Maine. How can it be said that his undertaking extends beyond the limits of the province ? It extends from the State of Maine into the Province of New Brunswick.

It is necessary now to consider whether the legislation in question falls within Section 91 or Section 92 of the B.N.A. Act and the principles which apply in determining that question. In *Citizens Insurance Company* v. *Parsons* (1881) 7 A.C. 96, at p. 109, the general method of approach is thus stated :

> " The first question to be decided is whether the act impeached in the present appeal falls within any of the classes of subjects enumerated in Section 92, and assigned exclusively to the legislatures of the provinces : for if it does not, it can be of no validity, and no other question would then arise. It is only when an act of the Provincial Legislature prima facie falls within one of these classes of subjects that the further questions arise, viz., whether notwithstanding this is so, the subject of the act does not also fall within one of the enumerated classes of subjects in Section 91, and whether the power of the Provincial Legislature is or is not thereby overborne."

The Plaintiff says, first, that the object of The Motor Carrier Act is to regulate the transportation by motor vehicle of goods and passengers in the Province so as to insure safe and efficient service, and to obtain by license fees a revenue to compensate the Province for the use of the roads ; that the Act deals exclusively with traffic within the Province. I think the Act may be held to come within the following sub-sections of Section 92 :

(9) Licenses in order to the raising of a revenue for provincial purposes ;

(10) Local works and undertakings ;

(13) Property and civil rights in the Province.

The general principle respecting the control and regulation of traffic on the highways is clearly dealt with by the Supreme Court of Canada in *Provincial Secretary of P. E. I.* v. *Egan* (1941) S.C.R. 396. Duff, C.J.C., said, p. 310 :

> " I do not find any difficulty in dealing with the present case. Primarily, responsibility for the regulation of highway traffic, including authority to prescribe the conditions and the manner of

In the Supreme Court of New Brunswick, Appellate Division.

No. 9. Reasons for Judgment.

(a) Richards C.J.— *continued.*

the use of motor vehicles on highways and the operation of a system of licenses for the purpose of securing the observance of regulations respecting these matters in the interest of the public generally, is committed to the local Legislatures."

Rinfret J. at p. 321 said :

> " The provincial legislation in question in this case is, in pith and substance, within the classes of subjects assigned to the provincial legislatures ; it is licensing legislation confined to the territory of Prince Edward Island."

Again, in a more recent case, *Beauport* v. *Quebec Railway, Light and Power Company* (1945) S.C.R. 16, the railway company had been declared by Dominion Statute to be a work for the general advantage of Canada. Subsequently it began to operate a bus service. Based apparently upon the view that the bus service could not be severed from the railway undertaking, it was held that the bus service also came under Dominion jurisdiction. In that case Rinfret, C.J.C., while holding that the bus service came under Dominion control, said p. 24 :

> " The province has the control of its highways (*Provincial Secretary of Prince Edward Island* v. *Egan*). It has to maintain them and to look after the safety and convenience of the public by regulating and controlling the traffic thereon."

And Hudson, J., dissenting, also said, p. 35 :

> " The right to license, regulate and control traffic on streets and highways within a province lies with the legislature of such province."

It is suggested that the operation or undertaking of the Defendant may come within Dominion jurisdiction, particularly " trade and commerce " under Section 91. It is necessary, therefore, to consider the relation of the legislation to Section 91. The distribution of legislative jurisdiction between the Dominion and the Provinces was considered by the Privy Council in *Attorney General for Canada* v. *Attorney General for British Columbia* (1930) 99 L. J. P. C. 20. Following is a summary of certain propositions stated on page 23 of the judgment :

(1) Dominion legislation, so long as it strictly relates to subjects expressly enumerated in Section 91, is of paramount authority even though it trenches upon matters assigned to the Provinces by Section 92. (*Tennant* v. *Union Bank of Canada*, (1894) A.C. 31) ;

(2) The general power of the Dominion by Section 91, in supplement of the power to legislate upon matters expressly enumerated must be strictly confined to matters of national importance, and must not touch upon subjects enumerated in Section 92 unless these matters have attained such dimensions as to affect the body politic of the Dominion. (*Attorney General for Ontario* v. *Attorney General for Canada* (1894) A.C. 189) ;

(3) The Dominion may legislate upon matters, which, though otherwise within provincial jurisdiction, are necessarily incidental to effect legislation by the Dominion upon matters enumerated in Section 91. (*Attorney General for Ontario* v. *Attorney General for Canada*, supra.);

(4) There can be a domain in which Provincial and Dominion jurisdiction may overlap; in which case neither legislation will be ultra vires if the field is clear; but if the field is not clear and the two legislations meet, the Dominion legislation must prevail. (*Grand Trunk Railway of Canada* v. *Attorney General for Canada* (1907) A.C. 65).

The question was before the Privy Council in a later case, *Attorney General for Alberta* v. *Attorney General for Canada* (1943) A.C. 356, where it was held that:

> " legislation coming in pith and substance within one of the classes specially enumerated in s. 91 is beyond the legislative competence of the provincial legislatures under s. 92. In such a case it is immaterial whether the Dominion has or has not dealt with the subject by legislation, or to use other well-known words, whether that legislative field has or has not been occupied by the legislation of the Dominion Parliament. The Dominion has been given exclusive legislative authority as to ' all matters coming within the classes of subjects ' enumerated under 29 heads, and the contention that, unless and until the Dominion Parliament legislates on any such matter, the provinces are competent to legislate is, therefore, unsound; "

This statement seems to qualify somewhat proposition No. 4 in *Attorney General for Canada* v. *Attorney General for British Columbia*, supra. It indicates that when the subject matter is one which in *pith and substance* is within Section 91 it matters not whether the field has or has not been occupied by the Dominion, the Dominion still has exclusive jurisdiction. However, this statement is again qualified by the following proviso:

> " There were, however, cases in which matters which were only incidental or ancillary to the main subject which was within the exclusive legislative powers of the Dominion Parliament were dealt with by the provincial legisaltion in the absence of Dominion legislation."

On two grounds the present case may be distinguished. First, the legislation in question does not, in pith and substance, come within Section 91: in that sense it comes within Section 92. In the *Egan* case Rinfret, J., said, p. 321:

> " The provincial legislation in question in this case is in *pith and substance* within the class of subjects essential to the provincial legislation."

In the Alberta case above referred to the legislation in question was the Debt Adjustment Act of Alberta, and it was held that the Act constituted

In the Supreme Court of New Brunswick, Appellate Division.

No. 9. Reasons for Judgment.

(*a*) Richards C.J.— *continued.*

" a serious and substantial invasion of the exclusive legislative powers of the Parliament of Canada in relation to bankruptcy and insolvency."

Again, it will be recalled that in the Beauport case the basis for bringing the bus service under Dominion jurisdiction seemed to be the fact that it could not reasonably be considered separate from the railway undertaking.

However, as set forth above, the legislation in question is entirely local in character. It relates to traffic within the Province. Only incidentally does it affect traffic passing through the Province. It is conceivable, of course, that motor-bus traffic might reach a stage where, as in the case of railways, Dominion legislation, with appropriate safeguards for provincial rights, would become necessary. In the meantime jurisdiction would remain in the Provinces.

In my view the legislation in question is within the competence of the Legislature of the Province of New Brunswick. The answers to the questions submitted should be : To the first question—" Yes, prohibited, until the Defendant complies with the provisions of the Act." To the second question—" Yes." To the third question—" Yes, until the Defendant complies with the provisions of the Act, and the regulations made thereunder."

The Plaintiff shall have the costs of the application.

April 28, 1950.

(*b*) Harrison J.

(*b*) HARRISON, J.

In this action the Plaintiff claimed :

(a) An injunction against the Defendant, his servants or agents, restraining him and them from enbussing and debussing passengers within the Province of New Brunswick in his public motor buses running between St. Stephen, N.B. and the Nova Scotia Border.

(b) A declaration that the defendant had no legal right to enbus or debus passengers within the Province of New Brunswick.

(c) An accounting of fares received for the carriage of passengers within the Province of New Brunswick.

(d) Damages.

(e) Such other and further relief as to the Court may seem just.

(f) Costs of this action.

When the action was set down for trial the parties requested that certain questions of law be referred to the Court of Appeal under the provisions of Order 34, and Hughes, J., made an order accordingly as follows :

> " Upon hearing Nigel B. Tennant, K.C., of counsel for the Defendant herein and upon hearing Adrian B. Gilbert, K.C., of counsel for the Plaintiff herein and upon reading a copy of the pleadings herein exhibited to me by the above named counsel, IT IS ORDERED that the questions of law hereinafter more particularly set forth be raised for the opinion of the Supreme Court

of New Brunswick, Appellate Division, and that in the meantime, all further proceedings in this action be stayed.

AND IT IS FURTHER ORDERED that for the purpose of the said opinion, the facts relevant to the issue or issues to be determined shall be deemed or taken to be as follows :

1.—The Plaintiff is a company incorporated under and by virtue of The New Brunswick Companies Act and is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation over the highways of the Province of New Brunswick.

2.—The Plaintiff holds licenses granted by The Motor Carrier Board of the Province of New Brunswick to operate public motor buses between St. Stephen, New Brunswick, and the City of Saint John, New Brunswick, over Highway Route No. 1 and between the said City of Saint John and the Nova Scotia border over Highway Route No. 2, for the purpose of carrying passengers and goods for hire or compensation.

3.—The Plaintiff by its public motor buses maintains a daily passenger service over the routes set out in paragraph (2) hereof.

4.—The Defendant, who resides at Lewiston in the State of Maine, one of the United States of America, is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation under the name and style of MacKenzie Coach Lines.

5.—(a) On the 17th day of June, 1949, on the application of the Defendant, the said Motor Carrier Board granted a license to the Defendant, permitting him to operate public motor buses from Boston in the Commonwealth of Massachusetts through the Province of New Brunswick on Highways Nos. 1 and 2 to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to enbus or debus passengers in the said Province of New Brunswick after August 1st, 1949.

(b) At the time of making the said application, the Defendant challenged the validity of 13 George VI, Chapter 47 (1949), and The Motor Carrier Act, 1937 as affected thereby, as being ultra vires of the Legislature of the Province of New Brunswick.

(c) That the said Motor Carrier Board make no specific ruling on the Defendant's challenge as set out in sub-paragraph (b), but acted under the said 13 George VI, Chapter 47 (1949).

6.—The Defendant by his motor buses maintains a regular passenger service over the routes set out in paragraph (5) hereof.

7.—Since August 1st, 1949 the Defendant has continually enbussed and debussed passengers within the Province of New Brunswick and it is his intention to continue to do so unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited

In the Supreme Court of New Brunswick, Appellate Division.

No. 9. Reasons for Judgment.

(b) Harrison J.— *continued.*

by The Motor Carrier Act (1937) and amendments thereto, or by any other applicable statute or law.

8.—The Defendant intends to carry passengers not only from points without the Province of New Brunswick to points within the said Province and vice versa, but also, in connection with and incidental to his operations as more particularly described in paragraph (9) hereof, to carry passengers from points within the said province to destinations also within the said province, unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by the Motor Carrier Act (1937) and amendments thereto, or by any other applicable statute or law.

9.—(a) The business and undertaking of the Defendant, generally referred to in paragraph (4) hereof consists of the operation of motor buses for the carriage of passengers and goods for hire or compensation between the City of Boston in the Commonwealth of Massachusetts and the Town of Glace Bay in the Province of Nova Scotia and between intermediate points.

(b) That the said business and undertaking is conducted by the Defendant over that portion of its route which lies between the said City of Boston and the Town of Calais, Maine, under a certificate granted by Interstate Commerce Commission (a Federal commission of the United States of America having jurisdiction, inter alia, over interstate transportation), permitting the Defendant to carry passengers and their baggage, as a motor carrier, as follows :

> ' Passengers and their baggage, and express and mail, in the same vehicle with passengers, in seasonal operations from the 1st day of May to the 15th day of December, both inclusive, over a regular route between Boston, Mass., and a point on the United States-Canada Boundary line north of Calais, Maine : From Boston over U.S. Highway 1 to Portland, Maine, thence over Maine Highway 3 via Auburn, Augusta, and Belfast, Maine, to Ellsworth, Maine (also from Augusta, Maine, over Maine Highway 100 to Newport, Maine, thence over U.S. Highway 2 to Bangor, Maine, thence over U.S. Highway 1 to Ellsworth), thence over U.S. Highway 1 to Franklin Road, Maine, thence over Maine Highway 182 to Cherryfield, Maine (also from Franklin Road over U.S. Highway 1 to Cherryfield), thence over U.S. Highway 1 to Calais, Maine, and thence over bridge to the United States-Canada boundary line and return over the same routes.
>
> Service is authorized to and from all intermediate points.'

(c) Subsequently and in addition, Interstate Commerce has permitted the Defendant to carry passengers and their baggage as a motor carrier, as follows :

> ' Passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers, in a seasonal operation

extending from the first of May to the 15th of December, inclusive of each year, over alternate regular routes for operating convenience only in connection with said carrier's presently authorized regular route operations,

Between Portland, Maine, and Kittery, Maine: From Portland over Maine Turnpike to Kittery, and return over the same route.

Between Bangor, Maine, and Calais, Maine: From Bangor over Maine Highway 9 to Calais, and return over the same route.

Service is not authorized to or from intermediate points.'

(d) The Motor Carrier Board of the Province of New Brunswick, on the 17th of June, 1949, on the application of the Defendant as set forth in paragraph (5) hereof, purported to license the operation of the Defendant, in the Province of New Brunswick, as follows:

'Israel Winner doing business under the name and style of "MacKenzie Coach Lines," at Lewiston in the State of Maine is granted a license to operate public motor buses from Boston in the State of Massachusetts, through the Province of New Brunswick on Highways Nos. 1 and 2, to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to enbus or debus passengers in the said Province of New Brunswick after August 1st, 1949.'

(e) The Board of Commissioners of Public Utilities for the Province of Nova Scotia has purported to approve the Defendant's operations in the Province of Nova Scotia over the following routes:

'(a) New Brunswick Border to Glace Bay, via Route No. 4—Wentworth Valley and Truro .....302 miles;

(b) New Brunswick Border to Glace Bay, via Route No. 2—Parrsboro and Truro .....319 miles;

(c) New Brunswick Border to Glace Bay, via Route No. 6—Pugwash, Wallace, Pictou and New Glasgow.....292 miles;

(d) Truro to Halifax ..... 64 miles;

(3 miles of which is within the corporate limits of the Town of Truro and City of Halifax).'

(f) Subsequently the said Board of Commissioners of Public Utilities for the Province of Nova Scotia amended the certificate granted to the Defendant as set out in sub-paragraph (e) hereof as follows:

'Operation of this route is permitted To BE SUSPENDED from January 12th, 1949 until May 1st, 1949.'

(g) The Defendant, in fact, operates as a public motor carrier between the City of Boston aforesaid, the Town of Glace Bay aforesaid, and intermediate points, in accordance with the timetable, a copy of which is hereunto annexed marked "A," between the 1st day of May and the

15th day of December in each year, the period of time covered by the certificate granted by the Interstate Commerce Commission.

(h) Between December 15th and May 1st of each year, the Defendant proposes to operate as a public motor carrier as aforesaid, between the Provinces of New Brunswick and Nova Scotia, connecting with New England Greyhound Lines, Inc., a company authorized by the Interstate Commerce Commission to operate as a public motor carrier between Calais, Maine and Boston, Massachusetts throughout the entire year.

(j) Incidentally to its operations as aforesaid, the Defendant proposes to pick up within the Province of New Brunswick, passengers and their baggage having a destination also within the Province of New Brunswick.

The questions for the opinion of the Court are :

1.—Are the operations or proposed operations of the Defendant within the Province of New Brunswick or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act (1937) and amendments thereto, or orders made by the said Motor Carrier Board ?

2.—Is 13 George VI, Chapter 47 (1949) ultra vires of the legislature of the Province of New Brunswick ?

AND IT IS FURTHER ORDERED that after the said questions shall have been answered by the Appellate Division of the Supreme Court of New Brunswick, then the matter shall be referred back to the Supreme Court, Chancery Division, for further proceedings, subject to such rights of appeal as may be available to either of the parties hereto ; AND IT IS FURTHER ORDERED that the making of this order shall be without prejudice to the Plaintiff's right to the relief claimed in its Statement of Claim ; "

At the hearing before the Court of Appeal another question was added :

3.—Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, Chapter 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act.

The sections of The Motor Carrier Act (1937) which are referred to read as follows :

" 2. (1) (e) ' Motor Carrier ' means a person, firm or company that operates or causes to be operated in the provinces a public motor bus or a public motor truck.

(f) ' Public Motor Bus ' means a motor vehicle plying or standing for hire by, or used to carry, passengers at separate fares."

" 4. The Board may grant to any person, firm or company a license to operate or cause to be operated public motor buses or public motor trucks over specified routes or between specified points."

" 5. (3) In determining whether or not a license shall be granted, the Board shall give consideration to the transportation service

being furnished by any railroad, street railway or licensed motor carrier, the likelihood of proposed service being permanent and continuous throughout the period of the year that the highways are open to travel and the effect that such proposed service may have upon other transportation services.

(4) If the Board finds from the evidence submitted that public convenience will be promoted by the establishment of the proposed service, or any part thereof, and is satisfied that the applicant will provide a proper service, an order may be made by the Board that a license be granted to the applicant in accordance with its finding upon proper security being furnished.

(5) No license shall be issued to a motor carrier unless there is filed with the Board—

(a) A liability insurance policy or bond satisfactory to the Board . . . ."

" 11. Except as provided by this Act, no person, firm or company shall operate a public motor bus or public motor truck within the Province without holding a license from the Board authorizing such operations and then only as specified in such license and subject to this Act and the Regulations."

" 12. (3) Upon the recommendation of the Board, the Governor in Council may order that the provisions of this Act shall not apply to a motor vehicle used, or being used as a public motor bus or a public motor truck for a specified purpose not otherwise exempt from such provisions."

" 17. (1) The Board may from time to time make regulations fixing the schedules and service, rates, fares and charges of licensed motor carriers, prescribing forms, fixing the fees payable to the Province, requiring the filing of returns, reports and other data and generally make regulations concerning motor carriers and public motor buses and public motor trucks as the Board may deem necessary or expedient for carrying out the purposes of this Act and for the safety and convenience of the public . . . ."

Section 19 provides penalties for violation of the Act by fine and imprisonment.

Sections of The Motor Vehicle Act and Regulations thereunder which are referred to read as follows :

" 6. (1) Except as provided in Sections 14, 16, 20 and 23 of this Act, and except in the case of any motor vehicle used exclusively as an ambulance or by a fire department for protection against fires, every owner of a motor vehicle, trailer or semi-trailer

In the Supreme Court of New Brunswick, Appellate Division.

No. 9. Reasons for Judgment.

(b) Harrison J.— *continued.*

intended to be operated upon any highway in New Brunswick shall, before the same is so operated, apply to the Department for and obtain the registration thereof."

" 53. No motor vehicle shall be used or operated upon a highway unless the owner shall have complied in all respects with the requirements of this Act, nor where such highway has been closed to motor traffic under the provisions of the Highway Act."

Regulation 13 : " No person operating a motor vehicle as a public carrier between fixed termini outside the Province shall operate such motor vehicle on the highways of the Province unless the operator is in possession of a permit issued by the Department setting forth the conditions under which such motor vehicle may operate and after payment of such fees as the Minister may determine fair and equitable."

The question involved in this case may be stated briefly as follows :

The Defendant, a citizen of the State of Maine, U.S.A., desires to operate a system of motor buses from Massachusetts, through Maine, and through New Brunswick, to Nova Scotia, and claims to make use of the New Brunswick highways and to compete with New Brunswick bus lines and other means of transportation by transporting passengers and goods to or from any point in New Brunswick from and to points outside the province, and also by transporting passengers and goods between points wholly within the province, without being subject to New Brunswick laws regulating motor bus traffic within the province and without payment of the license fees required from motor buses operating wholly within the province.

This claim is made on the ground that, under the provisions of the B.N.A. Act, only the Parliament of Canada can make laws affecting undertakings such as that of the Defendant, and that, in the absence of such laws, the Provincial legislation and regulations regarding motor buses and license fees payable by the same, cannot affect the Defendant.

The New Brunswick Acts claimed to be ultra vires insofar as they would affect the Defendant are The Motor Carrier Act, Acts of Assembly (1937) Cap. 43 and amendments, and certain sections of The Motor Vehicle Act, Acts of Assembly (1934) Cap. 20 and amendments, as above set out.

The argument for the Defendant, put shortly, is that the Defendant's undertaking is one that connects New Brunswick with Nova Scotia and also extends beyond the limits of New Brunswick to the United States and therefore falls within sub-section (10) (a) of Section 92 of the B.N.A. Act which reads as follows :

" 92. In each Province, the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say :

(10) Local works and undertakings other than such as are of the following classes :

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the Provinces, or extending beyond the limits of the Province.

(b) Lines of steamships between the Province and any British or foreign country.

(c) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the Provinces."

Under the *Beauport* Case (1945) S. C. R. 16, this sub-section (10) transfers the exclusive jurisdiction over the Defendant's undertaking to the Parliament of Canada, and it is not subject to the New Brunswick Acts in question. Moreover, as the Parliament of Canada has not legislated on the subject of motor bus traffic the Defendant is not subject to any Canadian laws.

The secondary argument is that the Defendant's undertaking falls within the exclusive jurisdiction of the Parliament of Canada by reason of sub-section (2) of Section 91 of the B. N. A. Act dealing with " The regulation of Trade and Commerce."

To my mind it must be conceded that if this undertaking comes within the provisions of sub-section (10) (a) of Section 92, then, under the decision in the *Beauport* case, the Defendant's contention is correct and, insofar as the Acts in question affect the Defendant, they would be ultra vires.

The same result does not necessarily follow if the regulation of the Defendant's undertaking in one aspect comes within the Trade and Commerce sub-section of Section 91, while in another aspect it comes within one or more of the Provincial powers enumerated in Section 92. The doctrine of the unoccupied field might then be applied.

Dealing with the first argument: Sub-section (10) of Section 92 deals entirely with " *local* works and undertakings." The grammatical reading of sub-section (10) must imply the words " local works and undertakings " after the word " such " in the first line. Those works and undertakings which are excepted from the provincial jurisdiction are " local works and undertakings " which connect the province with any other or extend beyond the limits of the province.

" Local " means local within the province of New Brunswick, the province with which we are dealing. The Defendant has no office or location of any kind in New Brunswick; and his timetable annexed to the Judge's Order, shows his only office to be at Lewiston, Maine. The Defendant's undertaking is local in the State of Maine; it is not local in New Brunswick.

The decision of the Privy Council in the *Radio* case (1932) 2 D. L. R. 81 does not conflict with this opinion. The Committee there were dealing with the power of the Dominion to regulate and control radio communications,

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No. 9. Reasons for Judgment.

(b) Harrison J.— *continued.*

including the transmission and reception of such communications. Insofar as they were dealing with radio stations in Canada, these would be local in all the provinces and therefore would come within Section 92 (10). Insofar as the Act applied to Radio systems outside Canada, the authority for the legislation would not come from Section 92 (10) but from Section 91—either under s. 91 (2) Regulation of Trade and Commerce—or under the residual powers in the Parliament of Canada.

In *Toronto Corporation* v. *Bell Telephone Co.* (1905) 44 L. J. P. C. 22 ; 1905 A. C. 52, the headnote states ;

> " It is not competent to a provincial legislature to impose conditions precedent to the exercise of powers conferred by the Dominion Parliament upon an undertaking which extends beyond the limits of the province, such undertaking being under the exclusive jurisdiction of the Dominion Parliament."

This was a decision in regard to the powers of a Dominion Company authorized to operate telephone service throughout the Dominion, which therefore fell within Section 92 (10) (a). This case has no application to the case at Bar which concerns a foreign citizen seeking to make use of New Brunswick highways in order to transport passengers and goods over them for hire or gain without compliance with provincial laws of general application.

Similarly *Tuscan Collieries* v. *McDonald* (1928) L. J. P. C. 21 dealt with two railway lines, one of them wholly within the province of Alberta but both operated by the C. N. R. as part of its transcontinental system and it was held that " having regard to the way in which the railway is operated . . . . it is in fact a railway connecting the Province of Alberta with others of the Provinces and therefore within Section 92 (10) (a) of the Act of 1867."

The *Beauport* case deals only with matters falling within Section 92 (10) and does not necessarily apply to a case where the legislation comes within one of the enumerated powers in Section 92, while in another aspect falling within the Trade and Commerce clause of Section 91.

In my opinion the Defendant's undertaking does not come within sub-section (10) of Section 92.

The next question is whether these New Brunswick Acts are ultra vires in whole or in part, because, insofar as they affect the Defendant, they attempt to regulate trade and commerce, a matter within the exclusive jurisdiction of the Parliament of Canada.

The first inquiry is as to whether the New Brunswick Motor Carrier Act—to deal with it because the same reasoning will apply to the Motor Vehicle Act—comes within any of the enumerated powers given to the provinces by Section 92. What is the pith and substance of The Motor Carrier Act ?

It is an Act governing traffic by motor carriers within the province—the object being to ensure safe transportation and, by limiting the number of licensed carriers, to enable those obtaining licenses to provide efficient service ; also to obtain by license fees some revenue to compensate the province for the use of its roads.

The Motor Carrier Act deals entirely with traffic within the province. For that reason it comes within sub-sections (13) " Property and civil rights," and (16) " Matters of a merely local or private nature " of Section 92.

In *Shannon* v. *Lower Mainland Dairy Products Board* (1938) A. C. 708, dealing with a scheme to set up a provincial marketing board with power to establish schemes for the control and regulation within the province of the transportation, packing, storage and marketing of any natural products and with power to fix and collect license fees, it was held that this was legislation dealing with a particular business within the province and was therefore valid under Section 92 (13). The judgment states at p. 718 :

> " It is apparent that the legislation in question is confined to regulating transactions that take place wholly within the province and are therefore within the sovereign powers granted to the legislature in that respect by Section 92 of the B. N. A. Act."

In the *Natural Products Marketing* Case (1936) S. C. R. 398 Duff, C.J., said at p. 411 :

> " The decision in *Hodge* v. *The Queen* that it is competent to a province to regulate by a local licensing system the trade in liquor seems incompatible with the contention that such local regulation of trade in particular commodities is strictly within any of the classes of matters comprehended under the general words ' the regulation of trade and commerce,' and this was the view taken by the Board in the case of *A-G for Alta.* v. *A-G for Canada* (1928) A. C. 475."

The judgment in *Snyder's* Case (1925) A. C. 396 stated at p. 410 :

> " It is, in their lordships' opinion, now clear that, except so far as the power can be invoked in aid of capacity conferred independently under other words in S. 91, the power to regulate trade and commerce cannot be relied on as enabling the Dominion Parliament to regulate civil rights in the provinces."

The Motor Carrier Act and The Motor Vehicle Act regulate transportation by motor vehicles insofar as such vehicles make use of provincial highways. These highways are maintained at the expense of the Province and the Province has a right to regulate the use of them and impose charges for such use. For that reason and because the Province has control over the land within its borders, the regulation of vehicular traffic comes within Section 92 (16) and also 92 (13).

In *Provincial Secretary of P. E. I.* v. *Egan* (1941) 3 D. L. R. at p. 305, Duff, C.J.C., at p. 310 said :

> " I do not find any difficulty in dealing with the present case. Primarily, responsibility for the regulation of highway traffic, including authority to prescribe the conditions and the manner of the use of motor vehicles on highways and the operation of a

In the Supreme Court of New Brunswick, Appellate Division.

No. 9. Reasons for Judgment.

(b) Harrison J.— *continued.*

system of licenses for the purpose of securing the observance of regulations respecting these matters in the interest of the public generally, is committed to the local Legislatures."

Rinfret, J. at p. 321 said :

" The provincial legislation in question in this case is, in pith and substance, within the classes of subjects assigned to the provincial Legislatures ; it is licensing legislation confined to the territory of Prince Edward Island."

" The right of building highways and of operating them within a Province, whether under direct authority of the Government, or by means of independent companies or municipalities, is wholly within the purview of the Province (*O'Brien* v. *Allen* (1900), 30 S.C.R. 340), and so is the right to provide for the safety of circulation and traffic on such highways. The aspect of that field is wholly provincial, both from the point of view of the use of the highway and of the use of the vehicles. It has to do with the civil regulation of the use of highways and personal property, the protection of the persons and property of the citizens, the prevention of nuisances and the suppression of conditions calculated to make circulation and traffic dangerous."

In the *Beauport* case, Rinfret, J. stated at p. 24 :

" The province has the control of its highways (*Provincial Secretary of P.E.I.* v. *Egan* (1941) 3 D.L.R. 305 ; S.C.R. 396). It has to maintain them and to look after the safety and convenience of the public by regulating and controlling the traffic thereon."

If the Province has the right to regulate motor vehicle traffic within its own borders that must include the right to prohibit such traffic when deemed necessary or expedient.

There are no provisions in the Acts under discussion which discriminate against the Defendant. The Acts have general application to all motor carriers.

In *A-G. for Canada* v. *A-G. for B.C.* (1930) A.C. 111 the Privy Council stated as one proposition established under the B.N.A. Act, at p. 118 :

" There can be a domain in which Provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet, the Dominion legislation must prevail."

An example of this is *A-G. of Ontario* v. *A-G. for Canada* (1894) A.C. 189 in which a provincial act respecting assignments and preferences by insolvent persons was held to be valid under Section 92 (13) of the B.N.A. Act although the judgment stated at pp. 200, 201 :

" It may be necessary for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the provincial legislature. Their

Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the provincial legislature would doubtless then be precluded from interfering with this legislation inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that such subjects as might properly be treated as ancillary to such a law and therefore within the powers of the Dominion Parliament are excluded from the legislative authority of the provincial legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence."

In *A-G. for Alberta* v. *A-G. for Canada* (1943) A.C. 356 it is stated at p. 370 :

"It follows that legislation coming in pith and substance within one of the classes specially enumerated in s. 91 is beyond the legislative competence of the provincial legislatures under s. 92. In such a case it is immaterial whether the Dominion has or has not dealt with the subject by legislation, or to use other well-known words, whether the legislative field has or has not been occupied by the legislation of the Dominion Parliament. The Dominion has been given exclusive legislative authority as to ' all matters coming within the classes of subjects ' enumerated under 29 heads, and the contention that, unless and until the Dominion Parliament legislates on any such matter, the provinces are competent to legislate is, therefore, unsound."

The specific decision in that case was that the Debt Adjustment Act (Alberta) 1937 was legislation in relation to insolvency, a subject over which the Parliament of Canada has exclusive jurisdiction under Section 91 (21). The *Beauport* case similarly dealt with a case where the Dominion Parliament had exclusive jurisdiction by virtue of Section 92 (10) coupled with Section 91 (29).

Those cases do not apply to the legislation before us. This legislation deals primarily with motor vehicle traffic within the Province. In pith and substance these Acts come within provincial powers. Incidentally they affect through traffic that is traffic passing through the Province to outside points. That is an ancillary matter and when the Parliament of Canada legislates regarding such traffic such legislation will prevail over the provincial acts. Until that time, however, the provincial legislation is effective regarding vehicles engaged in such through traffic. The case of *Lymburn* v. *Mayland* (1932) 2 D.L.R. 6 is to be noted in this connection. The Privy Council in that case held that the Security Frauds Prevention Act (1930) of Alberta was intra vires and applied to companies incorporated under the Dominion Companies Act, and say at p. 9 :

"A Dominion company constituted with powers to carry on a particular business is subject to the competent legislation of the province as to that business and may find its special activities completely paralyzed, as by legislation against drink, traffic, or by

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No. 9. Reasons for Judgment.

(b) Harrison J.—*continued.*

the laws as to holding land. If it is formed to trade in securities there appears no reason why it should not be subject to the competent laws of the province as to the business of all persons to trade in securities."

As to the system of licensing motor carriers it is sufficient to quote from the judgment in *Shannon* v. *Lower Mainland Dairy Products Board* (cited above) at p. 721 as follows:

"If regulation of trade within the province has to be held valid, the ordinary method of regulating trade, i.e., by a system of licenses, must also be admissible. A license itself merely involves a permission to trade, subject to compliance with specified conditions . . . . But if licenses are granted it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province, or for both purposes."

In *A-G. for Alberta* v. *A-G for Canada* (1939) A.C. 117 the Judicial Committee lay down a principle as follows, at p. 130:

"The next step in a case of difficulty will be to examine the effect of the legislation."

The effect of the legislation before us if fairly and properly administered, as must be assumed, would seem to be altogether beneficial. The legislation has general application and is directed towards promoting public safety and public convenience.

Even if the Acts in question should be held ultra vires in respect of a Canadian national carrying on an undertaking local in Canada for transporting passengers and goods between provinces, it does not follow that the Defendant can raise the same defence. As a foreign national it is enough that the Province has made certain laws regarding vehicular traffic within its boundaries. These laws the Defendant is bound to comply with until they are superseded by Dominion legislation. In the meantime so far as foreign nationals are concerned they have no status to ask that such laws be declared ultra vires.

The answers to the questions submitted therefore are:

To the first question—"yes, prohibited, until the Defendant complies with the provisions of the Act." To the second question—"yes, in respect of this Defendant." To the third question—"yes, until the Defendant complies with the provisions of the Act, and the Regulations made thereunder."

The Plaintiff shall have the costs of this application.

(c) Hughes J.

(c) HUGHES, J.

The Plaintiff is a company incorporated under and by virtue of The New Brunswick Companies Act and operates motor buses for the carriage of passengers and goods for hire or compensation over the highways of the Province of New Brunswick.

The Defendant resides at Lewiston in the State of Maine and operates motor buses for the carriage of passengers and goods for hire under the name and style of MacKenzie Coach Lines. On June 17th, 1949 the Motor Carrier Board granted a license to the Defendant permitting him to operate public motor buses from Boston in the Commonwealth of Massachusetts through the Province of New Brunswick on highways Nos. 1 and 2 to Halifax and Glace Bay in the Province of Nova Scotia and return, but not permitting him to take on passengers or goods, or to discharge passengers or goods in New Brunswick.

The Defendant refuses to recognize said restriction and alleges that the attempt to impose such a restriction is beyond the power of the said Board and that it is ultra vires of the Legislature of the Province of New Brunswick to grant to the Board the power to do so.

The Plaintiff brought this action claiming an injunction against the Defendant, his servants and agents restraining him and them from enbussing and debussing passengers within the Province of New Brunswick, and for a declaration that the defendant has no right to enbus and debus passengers within the Province of New Brunswick and for the relief. By the agreement of counsel questions have been submitted to this Court for an opinion. These questions have been argued before us with great care and learning. I have considered them from the various view points submitted. I have had the opportunity of reading the Judgment of Mr. Justice Harrison. In his judgment he has stated the facts at length. I need not dwell upon them. I agree in all respects with the reasons which he has expressed with the exception of the penultimate paragraph upon which I express no opinion.

The following are the questions submitted :

1.—Are the operations or proposed operations of the Defendant within the Province of New Brunswick or any part or parts thereof as above set forth, prohibited, or in any way affected by the provisions of The Motor Carrier Act (1937) and amendments thereto, or orders made by the said Motor Carrier Board ?

2.—Is 13 George VI Chapter 47 (1949) intra vires of the Legislature of the Province of New Brunswick ?

3.—Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, Chapter 20 of the Acts of 1934 and amendments, or under section 6 or 53 or any other sections of the Motor Vehicle Act ?

In my opinion the questions shall be answered as follows :

Question No. 1—Answer : Yes, prohibited unless the defendant complies with the provisions of the Act.

Question No. 2—Answer : Yes.

Question No. 3—Answer : Yes, prohibited unless the Defendant complies with the provisions of the Act and the regulations made thereunder.

In the Supreme Court of New Brunswick, Appellate Division.

No. 10. Order granting special leave to Appeal to the Supreme Court of Canada, 8th May, 1950.

No. 10.

Order granting Special Leave to Appeal to the Supreme Court of Canada.

IN THE SUPREME COURT OF NEW BRUNSWICK.
APPEAL DIVISION.

April Session, 14th George VI
Monday, May 8th, 1950.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

UPON HEARING this day Mr. N. B. Tennant, one of His Majesty's Counsel, of counsel for the Defendant, in support of a Motion for Special Leave to Appeal to the Supreme Court of Canada from a Judgment of this Court pronounced on the first day of May instant in respect of certain questions of law raised for the opinion of the Court of Appeal pursuant to an Order made by Hughes, J. on the seventeenth day of January last, and Mr. L. McC. Ritchie, one of His Majesty's Counsel, of counsel for the Plaintiff, and Mr. J. E. Hughes, of counsel for the Attorney General, not opposing said Motion, the Court DOTH NOW ORDER that Leave to Appeal to the Supreme Court of Canada be granted.

By the Court,
H. LESTER SMITH,
Registrar.

No. 11. Order, approving Bond and settling Case, 20th May, 1950.

No. 11.

Order approving Bond and settling Case on Appeal to the Supreme Court of Canada.

IN THE SUPREME COURT OF NEW BRUNSWICK.
APPELLATE DIVISION.

Between

S. M. T. (EASTERN), LIMITED, a duly incorporated company ... *Plaintiff*

and

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Defendant.*

UPON HEARING H. H. Gunter, of counsel for the Defendant herein and E. Neil McKelvey, of counsel for the Plaintiff herein consenting hereto, I DO ORDER that the Bond in the penal sum of Five Hundred Dollars

($500.00) entered into on the 19th day of May, A.D. 1950 in which the United States Fidelity and Guaranty Company is Obligor and the above-named Plaintiff, S. M. T. (Eastern) Limited is Obligee, conditioned that the above-named Defendant, Israel Winner, shall effectually prosecute his appeal to the Supreme Court of Canada in this action and do pay such costs and damages as may be awarded against him by the Supreme Court of Canada, BE and the same is hereby approved and allowed as good and sufficient security for the Plaintiff's said costs and damages.

AND I DO FURTHER ORDER that the following shall constitute and form the case on appeal to the Supreme Court of Canada, namely,

1. Writ of Summons, herein.
2. All pleadings herein.
3. A certain Order made by His Lordship, Mr. Justice Peter J. Hughes on the 17th day of January, A.D. 1950 raising for the opinion of the Supreme Court of New Brunswick, Appellate Division, certain questions of law in connection with the above entitled action.
4. A certain agreement between counsel for the Plaintiff and the Defendant herein, dated the 21st day of March, A.D. 1950, extending and enlarging the questions of law raised for the opinion of the Supreme Court of New Brunswick, Appellate Division, as aforesaid.
5. Notice of intention of Attorney-General of New Brunswick to intervene, dated the 20th day of February, A.D. 1950.
6. Judgment of the Supreme Court of New Brunswick, Appellate Division, answering the beforementioned questions.
7. The reasons for Judgment delivered by His Lordship, Chief Justice C. D. Richards.
8. The reasons for Judgment delivered by His Lordship, Mr. Justice W. Henry Harrison.
9. The reasons for Judgment delivered by His Lordship, Mr. Justice Peter J. Hughes.
10. Order of the Supreme Court of New Brunswick, Appellate Division, granting Special Leave to Appeal.
11. Bond on Appeal.
12. Order settling case on appeal to the Supreme Court of Canada and approving Bond.
13. Registrar's Certificate re do.
14. Solicitor's Certificate.
15. Form of Notice to be served upon Attorney-General of Canada and Attorney-General of New Brunswick, pursuant to Rule 19 of the Rules of the Supreme Court.

In the Supreme Court of New Brunswick, Appellate Division.

No. 11. Order, approving Bond and settling Case, 20th May, 1950—*continued.*

AND I DO FURTHER ORDER that the costs of this application be costs in the said Appeal.

DATED the 20th day of May, A.D. 1950.

PETER J. HUGHES,
J. S. C. App. Div.

Consented to :
NIGEL B. TENNANT,
Of Counsel for Defendant.

Consented to :
E. NEIL McKELVEY, 10
Of Counsel for Plaintiff.

In the Supreme Court of Canada.

No. 12. Form of notice to be served upon the Attorney General of Canada and the Attorney General of New Brunswick, July, 1950.

No. 12.

Form of Notice to be served upon the Attorney-General of Canada and the Attorney General of New Brunswick.

IN THE SUPREME COURT OF CANADA.

Between

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... (*Defendant*) *Appellant*

and

S. M. T. (EASTERN) LIMITED, a duly incorporated company 20
(*Plaintiff*) *Respondent.*

TAKE NOTICE that an Appeal has been taken to the Supreme Court of Canada by the Appellant herein to be heard at the next session of the Court to be held at the City of Ottawa on the 3rd day of October, A.D. 1950 from a judgment of the Supreme Court of New Brunswick, Appellate Division, rendered on the 1st day of May, A.D. 1950 wherein the said Appellate Division answered certain questions involving the validity of the Motor Carrier Act (1937) 1 Geo. VI ch. 43 (New Brunswick) and Amendments thereto including in particular an Amendment enacted in 1949 being 13 Geo. VI ch. 47 (New Brunswick) and likewise involving the validity of The Motor 30 Vehicle Act 24 Geo. V. ch. 20 (New Brunswick) and Amendments thereto, including in particular Sections 6 and 53 of the said Act and Regulation 13, promulgated thereunder, the Appellant herein having contended and

contending that the said Acts and Regulation are ultra vires of the Legislature of the Province of New Brunswick in that they purport to prohibit the operation of Motor Carriers connecting the Province with other Provinces or extending beyond the limits of the Province within the meaning of Section 92 (10) (a) of the B.N.A. Act and further in that they purport to regulate Trade and Commerce within the meaning of Section 91 (2) of the B.N.A. Act.

DATED at Saint John, N.B., this day of July, A.D. 1950.

Of Counsel for Appellant.

To Attorney General of Canada and Attorney General of New Brunswick and Messrs. Gilbert, Ritchie & McGloan,
Respondent's Solicitors.

In the Supreme Court of Canada.

No. 12. Form of notice to be served upon the Attorney General of Canada and the Attorney General of New Brunswick —*continued.*

No. 13.
Formal Judgment of the Supreme Court of Canada.

No. 13. Formal Judgment, 22nd October, 1951.

IN THE SUPREME COURT OF CANADA.

Monday, the 22nd day of October A.D. 1951.

Present :

The Right Honourable THE CHIEF JUSTICE OF CANADA.
The Honourable Mr. Justice KERWIN.
The Honourable Mr. Justice TASCHEREAU.
The Honourable Mr. Justice RAND.
The Honourable Mr. Justice KELLOCK.
The Honourable Mr. Justice ESTEY.
The Honourable Mr. Justice LOCKE.
The Honourable Mr. Justice CARTWRIGHT.
The Honourable Mr. Justice FAUTEUX.

Between

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... ... *Appellant*

and

THE ATTORNEY GENERAL FOR NEW BRUNSWICK and S. M. T. (EASTERN) LIMITED, a duly incorporated company ... *Respondents*

and

THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL FOR QUEBEC, THE ATTORNEY GENERAL FOR NOVA SCOTIA, THE ATTORNEY GENERAL FOR BRITISH COLUMBIA, THE ATTORNEY GENERAL FOR ALBERTA, THE ATTORNEY GENERAL FOR PRINCE EDWARD ISLAND, THE CANADIAN NATIONAL RAILWAY COMPANY, THE CANADIAN PACIFIC RAILWAY COMPANY, THE MACCAN TRANSPORT COMPANY and THE CARWIL TRANSPORT LIMITED ... ... *Intervenants.*

In the Supreme Court of Canada.

No. 13. Formal Judgment, 22nd October, 1951— *continued.*

THE APPEAL of the above named Appellant from the Judgment of the Supreme Court of New Brunswick, Appellate Division, pronounced in the above cause on the 1st day of May, in the year of Our Lord, 1950, answering the several questions submitted as follows :

" 1. Are the operations or proposed operations of the Defendant within the Province of New Brunswick or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act (1937) and amendments thereto, or orders made by the said Motor Carrier Board ? "

" Answer : Yes, prohibited, until the Defendant complies with the provisions of the Act."

" 2. Is 13 George VI Chapter 47 (1949) intra vires of the legislature of the Province of New Brunswick ? "

" Answer : Yes, in respect of this Defendant." (Richards, C.J., and Hughes, J., answering simply " Yes.")

" 3. Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, Chapter 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act ? "

" Answer : Yes, until the Defendant complies with the provisions of the Act, and the Regulations made thereunder."

which questions were raised for the opinion of the said Supreme Court of New Brunswick, Appellate Division, having come on to be heard before this Court on the 6th, 7th, 8th and 9th days of February in the year of Our Lord, 1951, in the presence of Counsel as well for the Appellant as the Respondents and the Intervenants, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said Appeal should stand over for judgment and the same coming on this day for judgment ;

THIS COURT DID ORDER AND ADJUDGE that the said Appeal should be and the same was allowed and that the said judgment of the Supreme Court of New Brunswick, Appellate Division, should be and the same was reversed and set aside ;

AND THIS COURT, proceeding to render the judgment which should have been rendered by the said Supreme Court of New Brunswick, Appellate Division, DID ORDER AND ADJUDGE that the answer to such parts of the questions submitted as it is considered necessary to answer for the disposition of the issues properly raised in the pleadings is as follows :

" 1. It is not within the legislative powers of the Province of New Brunswick by the statutes or regulations in question, or within the powers of The Motor Carrier Board by the terms of the licence granted by it, to prohibit the Appellant by his undertaking from bringing passengers into the Province of New Brunswick from outside said province and permitting them to alight, or from carrying passengers from any point in the province to a point outside the limits thereof, or from carrying passengers along the route traversed by its buses from place to place in New Brunswick, to which passengers stop-over privileges have been

extended as an incident of the contract of carriage ; but except as to passengers to whom stop-over privileges have been extended as aforesaid it is within the legislative powers of the Province of New Brunswick by the Statutes and Regulations in question, and within the powers of the Motor Carrier Board by the terms of the licence granted by it, to prohibit the Appellant by his undertaking from carrying passengers from place to place within the said Province incidentally to his other operations."

In the Supreme Court of Canada.

No. 13. Formal Judgment. 22nd October, 1951—*continued.*

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the Appellant is entitled as against the Respondent, S. M. T. (Eastern) Limited, to his costs of the hearing before the Supreme Court of New Brunswick, Appellate Division, and to two-thirds of his costs of the Appeal to this Court.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the Motion by the Appellant to vary the terms of the Order of this Court granting leave to Canadian National Railway Company and Canadian Pacific Railway Company to intervene, stand dismissed without costs, and that there be no costs of other motions to add any intervenant.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that there be no costs for or against the Attorney General for New Brunswick or any intervenant.

PAUL LEDUC,
Registrar.

No. 14

Reasons for Judgment.

No. 14. Reasons for Judgment.

(*a*) THE CHIEF JUSTICE :

(*a*) The Chief Justice

The Plaintiff-Respondent is a company incorporated under and by virtue of The New Brunswick Companies Act and is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation over the highways of the Province of New Brunswick. It holds licences granted by The Motor Carrier Board of the Province of New Brunswick to operate public motor buses between St. Stephen, New Brunswick, and the City of Saint John, New Brunswick, over Highway Route No. 1 and between the said City of Saint John and the Nova Scotia border over Highway Route No. 2, for the purpose of carrying passengers and goods for hire or compensation. It maintains a daily passenger service over those routes.

The Appellant, who resides at Lewiston in the State of Maine, one of the United States of America, is in the business (inter alia) of operating motor buses for the carriage of passengers and goods for hire or compensation under the name and style of MacKenzie Coach Lines.

On the 17th day of June, 1949, on the application of the Appellant, The Motor Carrier Board granted him a licence permitting him to operate public motor buses from Boston in the Commonwealth of Massachusetts through the Province of New Brunswick on Highways Nos. 1 and 2 to

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(a) The Chief Justice—*continued.*

Halifax and Glace Bay in the Province of Nova Scotia and return "but not to embus or debus passengers in the said Province of New Brunswick after August 1, 1949."

At the time of making the said application, the Defendant challenged the validity of the statute of New Brunswick 13 Geo. VI, c. 47 (1949) and The Motor Carrier Act, 1937, as affected thereby, as being *ultra vires* of the Legislature of the Province of New Brunswick. The Motor Carrier Board made no specific ruling on the Defendant's challenge, but acted under the said statute.

The Appellant, by his motor buses, maintains a regular passenger service over the routes above-mentioned, but, since August 1st, 1949, he has continually embussed and debussed passengers within the Province of New Brunswick, and it is his intention to continue to do so unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor Carrier Act, 1937, and amendments, or by any other applicable statute or law.

The Appellant further intends to carry passengers not only from points without the Province of New Brunswick but points within the said province, and vice versa, but also in connection with and incidental to his operations, to carry passengers from points within the said province unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor Carrier Act, 1937, and amendments thereto, or by any other applicable statute or law.

The business and undertaking of the Appellant consists of the operation of motor buses for the carriage of passengers and goods for hire or compensation between the City of Boston in the Commonwealth of Massachusetts and the Town of Glace Bay in the Province of Nova Scotia and between intermediate points. Such business and undertaking is conducted by the Appellant over that portion of its route which lies between the City of Boston and the Town of Calais, Maine, under a certificate granted by Interstate Commerce Commission (a Federal Commission of the United States of America having jurisdiction over inter-state transportation), permitting the Appellant to carry passengers and their baggage, as a motor carrier, in seasonal operations from the 1st day of May to the 15th day of December, both inclusive, over a regular route between Boston, Mass., and a point on the United States-Canada boundary line north of Calais, Maine, and thence over the bridge to the United States-Canada boundary line and return over the same routes; service being authorized to and from all intermediate points.

Subsequently and in addition, Inter-state Commerce Commission has permitted the Appellant to carry passengers and their baggage, as a motor carrier, and express, mail and newspapers in the same vehicle with passengers, in a seasonal operation extending from the 1st of May to the 15th of December, inclusive, of each year, over alternate regular routes for operating convenience only in connection with said carrier's presently authorized regular route operations.

The Motor Carrier Board of the Province of New Brunswick, on the 17th of June, 1949, on the application of the Appellant, purported to licence the operation of the Appellant in the Province of New Brunswick as follows:

Israel Winner doing business under the name and style of " MacKenzie Coach Lines," at Lewiston in the State of Maine is granted a licence to operate public motor buses from Boston in the State of Massachusetts, through the Province of New Brunswick on Highways Nos. 1 and 2, to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to embus or debus passengers in the said Province of New Brunswick after August 1st, 1949.

The Board of Commissioners of Public Utilities for the Province of Nova Scotia has purported to approve the Appellant's operations in the Province of Nova Scotia over routes from the New Brunswick border to Glace Bay, via Route No. 4, Wentworth Valley and Truro ; via Route No. 2, Parrsboro and Truro ; via Route No. 6, Pugwash Wallace, Pictou and New Glasgow ; and also from Truro to Halifax (three miles of each route is within the corporate limits of the Town of Truro and City of Halifax) ; save that the certificate granted by that Board permittted to suspend operation from January 12th, 1949, until May 1st, 1949.

The Appellant, in fact, operates as a public motor carrier between the City of Boston and the Town of Glace Bay and intermediate points, in accordance with a published time-table, copy of which was filed in the record.

Moreover, between December 15th and May 1st of each year, the Appellant proposes to operate as a public motor carrier between the provinces of New Brunswick and Nova Scotia, connecting with New England Greyhound Lines, Inc., a company authorized by the Inter-State Commerce Commission to operate as a public motor carrier between Calais, Maine and Boston, Massachusetts.

Incidental to its operations as aforesaid, the Appellant proposes to pick up within the Province of New Brunswick passengers and their baggage having a destination also within the Province of New Brunswick.

The Respondent brought this action complaining that since August 1st, 1949, the Appellant has continually embused and debused passengers within the Province of New Brunswick, contrary to his licence, and he has declared his intention of so doing until stopped by legal process ; and it was the assertion of the Respondent that, unless the Appellant was restrained from so doing, irreparable damage and harm would be done to the latter. Wherefore the Respondent claimed an injunction against the Appellant, his servants or agents, restraining him and them from embussing and debussing passengers within New Brunswick, in his public motor buses running between St. Stephen, New Brunswick, and the Nova Scotia border, accompanied by a declaration that the Appellant had no legal right to do so, and asking for an accounting of fares received for the carriage of passengers within the Province of New Brunswick together with damages and costs.

By a Statement of Defence, the Appellant stated that his operation

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(a) The Chief Justice—*continued.*

of public motor buses was primarily international and interprovincial within the meaning of Section 92 (10) (a) of The British North America Act ; and he asked for a declaration that his operations were not prohibited by or subject in any way to the provisions of The Motor Carrier Act and amendments thereto, or by or to any other applicable statute or law ; and the declaration that 13 Geo. VI, c. 47 (1949) is *ultra vires* of the Legislature of the Province of New Brunswick.

The case having come for hearing before Hughes, J., in the Chancery Division of the Supreme Court of New Brunswick, the learned Judge ordered that certain questions of law be raised for the opinion of the Supreme Court of New Brunswick (Appellate Division) and that, in the meantime, all further proceedings in this action be stayed.

The questions for the opinion of the Appellate Division were as follows :

1. Are the operations or proposed operations of the Defendant within the Province of New Brunswick, or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act, 1937 and amendments thereto, or orders made by the said Motor Carrier Board ?

2. Is 13 George VI, c. 47 (1949) *intra vires* of the Legislature of the Province of New Brunswick ?

And it was further ordered that after the said questions had been answered, then, the matter should be referred back to the Supreme Court Chancery Division for further proceedings, subject to such rights of appeal as may be available to either of the parties, the whole without prejudice to the Respondent's right to the relief claimed in its Statement of Claim.

Subsequently at the hearing before the Court of Appeal another question was added as No. 3 :

Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, c. 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act ?

The Attorney General of New Brunswick intervened in the action. After hearing, the Appellate Division answered as follows to the several questions submitted :

To Question No. 1 : Yes, prohibited, until the Defendant (Appellant) complies with the provisions of the Act.

To Question No. 2 : Yes, in respect of this Defendant (Appellant), Richards, C.J., Hughes, J., answering simply " Yes."

To Question No. 3, as it became after the question had been amended by Hughes, J., on the 31st of March, 1950 : Yes, until the Defendant (Appellant) complies with the provisions of the Act, and the Regulations made thereunder.

From that decision, the Appellant now appeals to this Court.

Richards, C.J., stated that, in his opinion, the Appellant did not come within the exceptions under Section 92 (10) (a) because he had no office or place of business, or organization, or situs, in the Province of New Brunswick ; his office or place of business was at Lewiston, in the State of

Maine, and it could not be said, therefore, that his undertaking extended beyond the limits of the province. He then proceeded to consider whether the legislation in question fell within Section 91, or Section 92, of The British North America Act, and, after having referred to a certain number of cases, he came to the conclusion that the legislation in question was entirely local in character, related to traffic within the province, only incidentally affected traffic passing through the province, and, in his view, the legislation was within the competence of the Legislature of New Brunswick.

Harrison, J., took practically the same view and that, in his opinion, the Defendant's undertaking did not come under Section 92 (10) (a). To his mind, the province had the right to regulate motor vehicle traffic within its own borders and that included the right to prohibit such traffic when deemed necessary or expedient.

However, he further added that, even if the Acts in question should be held *ultra vires* in respect of a Canadian national carrying on an undertaking locally in Canada for transporting passengers and goods between provinces, it did not follow that the Appellant could raise the same defence. The Appellant, being a foreign national, was bound to comply with the laws regulating vehicular traffic within the provinces' boundaries, until they were superseded by Dominion legislation; and foreign nationals, insofar as they were concerned, had no status to ask that such laws be declared *ultra vires*.

Hughes, J., sitting as a member of the Appellate Division, concurred in the answers given by Richards, C.J.

It is to be noted that this is an ordinary case and not a reference.

Questions of law were submitted to the Appellate Division for the purpose of securing its opinion, after which, as stated in the Order of Hughes, J. itself, the matter was to be referred back to the Supreme Court Chancery Division for further proceedings and with the object of enabling the trial Judge to decide the case.

Under no interpretation of the procedure to be followed could the case be transformed into a reference, which, alone, the Legislature of New Brunswick had the power and the authority to submit to the Courts. The decision on the questions of law was useful only to the extent that it could be used for the purpose of deciding the case as, otherwise, the questions were quite unnecessary.

The conclusions of the Plaintiff-Respondent in its Statement of Claim were merely that an injunction should issue against the Defendant-Appellant, his servants or agents, restraining him and them from embussing and debussing passengers within the Province of New Brunswick in his public motor buses running between St. Stephen, New Brunswick, and the Nova Scotia border, and a declaration that the Defendant-Appellant had no legal right to embus or debus passengers within the Province of New Brunswick, with a consequential demand for an accounting, and damages. That is all that the Plaintiff-Respondent asked for and all that he can get in the present case.

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(a) The Chief Justice—*continued.*

The basis of that claim is evidently the so-called licence issued to the Appellant on the 17th of June, 1949, by The Motor Carrier Board of the Province of New Brunswick, which has been already reproduced above.

One would look in vain to any of the provisions of The Motor Carrier Act, 1937, and its amendments, or to the Statute 13, Geo. VI, c. 47 (1949), of New Brunswick, or to Regulation 13 of The Motor Vehicle Act, c. 20, of the Acts of 1934 and amendments, or to Sections 6 or 53, or any other sections of The Motor Vehicle Act, for any prohibition affecting the Appellant, " restraining him from embussing and debussing passengers within the Province of New Brunswick in his public motor buses running between St. Stephen, New Brunswick, and the Nova Scotia border " (to use the very words of the conclusions of the Respondent), or for anything affecting " his legal right to embus or debus passengers within the Province of New Brunswick " (also a conclusion of the Respondent's Statement of Claim). When once it is granted that the Appellant holds, as he does, a licence to operate his motor buses through the Province of New Brunswick, on Highways Nos. 1 and 2, to Halifax and Glace Bay, in the Province of Nova Scotia and return, nothing can be found in either The Motor Vehicle Act or The Motor Carrier Act, 1937, restraining him from embussing or debussing passengers in the province.

Indeed, what the Plaintiff-Respondent wishes the Courts to enjoin is based and can find any foundation only on the qualification inserted in the Appellant's licence by The Motor Carrier Board.

If, therefore, such qualification is illegal and, in fact, ultra vires, because it is not authorized by the two Acts themselves, it follows that it must disappear from the licence and there is nothing left on which the action of the Respondent can be maintained.

For the authority of The Motor Carrier Board to insert such a qualification in the licence of the Appellant, one must look, of course, to An Act Respecting Motor Carriers (c. 43, Acts of Assembly, 1 Geo. VI (1937), passed April 2nd, 1937), whereby the Board was constituted.

By that Act, the Board is given the power to grant to any person, firm or company, a licence to operate or cause to be operated, within the province, public motor buses or public motor trucks over specified routes and between specified points.

Section 5 (3) of the Act specifies that :

" In determining whether or not a licence shall be granted, the Board shall give consideration to the transportation service being furnished by any railroad, street railway, or licensed motor carrier, the likelihood of proposed service being permanent and continuous throughout the period of the year that the highways are open to travel and the effect that such proposed service may have upon other transportation services."

And Section 5 (4) adds :

" If the Board finds from the evidence submitted that public convenience will be promoted by the establishment of the proposed service, or any part thereof and is satisfied that the Applicants will provide a proper

service, an order may be made by the Board that a licence be granted to the applicant in accordance with its finding upon proper security being furnished."

Section 11 should also be referred to. It reads thus :

" Except as provided by this Act, no person, firm or company shall operate a public motor bus or public motor truck within the Province without holding a licence from the Board authorizing such operations and then only as specified in such licence and subject to this Act and its Regulations."

The three sections just quoted are the only ones to which the Court was referred as affording authority to The Motor Carrier Board to insert in the Appellant's licence the restriction therein mentioned.

Moreover, Section 22 of An Act Respecting Motor Carriers states that " the provisions of this Act shall be deemed to be in addition to the provisions of The Motor Vehicle Act." By force of the regulations made under authority of The Motor Vehicle Act " no person operating a motor vehicle as a public carrier between fixed termini outside the Province shall operate such motor vehicle on the highways of the Province unless the operator is in possession of a permit issued by the Department setting forth the conditions under which such motor vehicle may operate and after payment of such fees as the Minister may determine fair and equitable " (Regulation No. 13). And that is the regulation specially mentioned in Question No. 3 submitted to the Appellate Division. It would seem, of course, that, if Regulation 13 governs the operations of the Appellant—and no reason was advanced why it should not—the permit which is to be issued to the Appellant " setting forth the conditions under which such motor vehicle may operate " is the permit mentioned in that Regulation 13. If it were not so, one would speculate as to the reason for referring to that regulation in the questions submitted.

It cannot be that, if the permit which the operator of a motor vehicle, as a public carrier, must secure in order to operate such a motor vehicle on the highways of the province, is to be issued by the Department and to set forth the conditions under which such motor vehicle may operate after payment of such fees as the Minister may determine fair and equitable, the intention of the Legislature would be that, by application of The Motor Carrier Act, the Board would have anything to do with that permit. The two Acts, as enacted in Section 22 of The Motor Carrier Act, must be interpreted together and it stands to reason that the Legislature cannot have had in view that the Board may set forth conditions which the Department has not decreed.

But, moreover, Regulation 13 of The Motor Vehicle Act comes under the title of " Non-Residents " and it specifically provides for a person operating a motor vehicle as a public carrier, between fixed termini outside the province, who intends to operate such motor vehicles on the highways of the province. It says that, in such a case, the permit must be issued by the Department and that it is in that permit that the conditions under which such motor vehicle may operate are to be set forth. On the other

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hand, Section 4 of An Act Respecting Motor Carriers only deals with the power of the Board to grant to any person, firm or company, a licence to operate or cause to be operated within the province public motor buses or public motor trucks.

Whichever way the two sections are contrasted, it does not leave any room for doubt that, in the case of a non-resident, Regulation No. 13 must prevail, as it is a special enactment referring, in terms, to non-residence, while the other Section 4 of The Motor Carrier Act is a general provision, in terms, dealing with persons, firms or companies operating only within the province.

On the record as it stands, it is to be assumed (as no reference whatever is made to it), that the Appellant has complied with Regulation No. 13, or, at all events, it must be decided that, if the Appellant needs a permit, it is to be issued to him under Regulation No. 13 of The Motor Vehicle Act and that he has nothing to do with the licence provided for by Section 4 of the Motor Carrier Act. Indeed, it was not in any way within the competency of the Board to issue to him, a non-resident, a permit or licence under Section 4.

The consequence is that the licence upon which the Plaintiff-Respondent relied to ask the Court to issue an injunction against the Appellant, restraining him from embussing and debussing passengers, was issued wholly without a shadow of authority.

But there is yet another objection to the validity of the licence issued to the Appellant, and it is this : That the restriction inserted by the Board in the licence which it issued has nothing to do with highway legislation proper. It does not deal with schedules, or service, or rates, or fares, or charges, or forms, or fees, as provided for in Section 17 (1) of The Motor Carrier Act ; it does not deal in any way with highways in stipulating that the Appellant will not be entitled to embus or debus his passengers within the territory of New Brunswick ; it is nothing more than an attempt to regulate or control the business of the Appellant.

The object of such a restriction has not been explained, nor is it apparent. It was suggested by Counsel for the Respondent himself that it had in view the prevention of competition by the Appellant against the Respondent. If so, of course, it is not highway legislation but something which may come under the heading of " Commerce " (and, in the present case, of commerce by an international undertaking), but it has surely nothing to do with traffic. As was suggested, if necessary, it would be quite possible for the Appellant to own, along the lines of his motor buses, certain vacant property where his passengers could embus or debus. Yet, the restriction inserted in his licence would prohibit this.

It was argued that, if the Board really had competency to issue a licence to the Appellant, notwithstanding the terms of Regulation 13 under The Motor Vehicle Act, it could find some authority for what it has done in somewhat general terms in Sections 5 (3) or 11 of The Motor Carrier Act ; but that argument forgets altogether the rules of interpretation of statutes—that words must be understood in accord with the subject matter of the statute.

As put by Maxwell, on Interpretation of Statutes, 9th Ed., by Sir Gilbert Jackson, at page 55, the words of a statute are to be understood in the sense in which they harmonize with the subject of the enactment and the object which the legislature has in view :

"Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. It is not because the words of a statute, or the words of any document, read in one sense will cover the case, that that is the right sense. Grammatically, they may cover it ; but, whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied (Brett, M.R., *Lion Insurance Co.* v. *Tucker* (1883), 53 L.J.Q.B. 189)."

And, at page 63, the following occurs :

"WORDS IN ACCORD WITH INTENTION.

It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing truly enough all that the Legislature intended, they frequently express more, in their literal meaning and natural force ; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular ; that is, they must be understood as used with reference to the subject-matter in the mind of the Legislature, and limited to it"

In the present case, however wide may be the general terms implied in Sections 5 (3), 5 (4) or 11, they must be read as being restricted to the subject of highway circulation and cannot be extended to the subject of commercial competition or some other similar objects.

Under such a rule of interpretation, it is not possible to say that the restriction inserted by the Board, in the Appellant's licence, was justified by the terms of The Motor Carrier Act and it must, therefore, be considered as *ultra vires.*

For those two reasons, both because the permit required by the Appellant was within the jurisdiction of the Department and of the Minister and did not come under the competency of the Motor Carrier Board, and also because, even if it did, that Board exceeded its authority and dealt with a matter with which it was in no way concerned, we must

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come to the conclusion that the licence issued by the Board to the Appellant is invalid.

That being so, it disposes of the Plaintiff-Respondent's action and claim and, with due respect, I find all the other questions irrelevant.

To the questions submitted by the learned trial Judge, I would therefore answer :

1. The operations or proposed operations of the Defendant-Appellant, within the Province of New Brunswick or any part or parts thereof, as above set forth, are not prohibited or in any way affected by the provisions of The Motor Carrier Act, 1937, and amendments thereto. On the contrary, such operations or proposed operations are specially provided for in Regulation 13 made under authority of The Motor Vehicle Act. The attempt to restrict them in the order made by the Motor Carrier Board is illegal and *ultra vires.*

As the only foundation for the Plaintiff-Respondent's action is this illegal restriction and, indeed, the complete lack of authority in the Motor Carrier Board to issue the licence at all is sufficient to decide the present case between the parties, it becomes immaterial to pass upon the validity of the two acts of the Legislature of New Brunswick.

As I said, the object of submitting these legal questions to the Appellate Division of the Supreme Court of New Brunswick being limited to the purpose of deciding the case, it is therefore sufficient for that purpose to come to the conclusion that the licence can in no way support the conclusions of the Statement of Claim and it is unnecessary to go further.

Consequently, I decline to answer the second and third questions. The Statute 13 Geo. VI, c. 47 (1949), referred to in Question No. 2 does appear to me to be *intra vires*, for I fail to see how the amendment to Section 4 of the said chapter, as amended by c. 37 of 3 Geo. VI (1939), introduced by 13 Geo. VI (1949), c. 47, can have any bearing on the case. The amendment in question consisted merely in striking out the word " and " in the fourth line thereof and substituting therefor the word " or," and in striking out the words " within the province," being the last three words of the said section.

The result of that amendment is, therefore, that Section 4 thereafter read :

" The Board may grant to any person, firm or company, a licence to operate or cause to be operated public motor buses or public motor trucks over specified routes and between specified points."

As originally enacted by The Motor Carrier Act, 1937, Section 4 read (without repeating the whole of it) :

" . . . . a licence to operate or cause to be operated within the province public motor buses . . . ."

By the amendment of c. 37, 3 Geo. VI (1939), the words " within the Province " were struck out, where they originally stood, and were added at the end of the section, so that it afterwards read :

" The Board may grant to any person, firm or company a licence to operate or cause to be operated public motor buses or public motor trucks over specified routes and between specified points within the province."

The effect of the amendment by c. 47 of 13 Geo. VI (1949), was that the words " within the Province," being the last three words of the said section, were struck out.

I must confess that I do not see the difference, for, in my opinion, the section, as amended, has exactly the same effect as it had before. Notwithstanding the deletion of the words " within the Province," at the end of the section, the latter continues to be susceptible of meaning and application only to the operations within the province, and the Courts would be extremely loath to give it any other meaning, for the legislation adopted by the Legislature of New Brunswick must necessarily be understood to be limited to the territory of New Brunswick, as that Legislature could not possibly be considered as having attempted to legislate upon operations outside the province.

As for Question No. 3 :

" Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, Chapter 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act ? "

I have already expressed my opinion that none of these sections prohibits the Appellant's operation in New Brunswick. On the contrary, they provide for the manner in which these operations may be carried out in that province. Indeed, Section 7 (2) specifies that a foreign vehicle which has been registered theretofore outside of the province need only " exhibit to the Department the Certificate of Title of Registration, or other evidence of such former registration as may be in the applicant's possession or control or such other evidence as will satisfy the Department that the applicant is the lawful owner of the vehicle." It follows, by necessary implication, that this requirement will be held sufficient and that the foreign motor vehicle will then obtain the necessary registration to operate upon any highway in New Brunswick, as provided for by Section 6 (1).

Section 53 goes no further than to say that " no motor vehicle shall be used or operated upon a highway unless the owner shall have complied in all respects with the requirements of this Act." Of course, it adds that no operation can be carried on " where such highway has been closed to motor traffic under the provisions of the Highway Act," which is not only proper but natural.

Then, Regulation 13, as we have seen, specifies that " No person operating a motor vehicle, as a public carrier, between fixed termini outside the Province shall operate such motor vehicle on the highways of the Province unless the operator is in possession of a permit issued by the Department setting forth the conditions under which such motor vehicle may operate and after payment of such fees as the Minister may determine fair and equitable." This, of course, is not prohibition. It is only regulation which assumes that, provided the conditions set forth in Regulation 13 are complied with by the Appellant, he will receive the permit to operate on the highways of New Brunswick. To that extent, of course, the

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(*a*) The Chief Justice— *continued.*

proposed operations of the Appellant are affected ; and that is, in fact, the effect of the answer given by the Appellate Division of the Supreme Court of New Brunswick that all that the Appellant has to do is to comply with the provisions of The Motor Vehicle Act and the Regulations made thereunder, and, after he has done so, he may operate on the highways of New Brunswick.

All that the Appellant had to do, if he had not done so already (and it was assumed at Bar that he had complied with it), is to apply to the Department for a permit which will set forth the conditions under which his motor vehicles may operate and pay such fees as the Minister may determine fair and equitable. But, as I have mentioned before, when once he has that permit, or if he has it already, such permits issued by the Department with the approval of the Minister does away entirely with the obligation of getting a licence from the Motor Carrier Board under Section 4 of The Motor Carrier Act, 1937. Regulation 13 under The Motor Vehicle Act applies specifically to foreign owners who are already registered in their own province or country, while Section 4 of The Motor Carrier Act is a general enactment which does not concern the foreign owners. It is quite clear that a vehicle owned by a non-resident, so far as the obligation to obtain a licence is concerned, is particularly dealt with in The Motor Vehicle Act, more especially Regulations 8, 9 and 13 under that Act, and not by The Motor Carrier Act.

All that we have to do on the present appeal is to give our answers to the questions submitted by the trial Judge to the Appellate Division of the Supreme Court of New Brunswick and then, after the questions have been answered, to refer the matter back to the Supreme Court Chancery Division for further proceedings, presumably so that the trial Judge shall deal with the case in accordance with those answers.

In the Appellate Division the Court ordered that the Plaintiff-Respondent should have the costs of its application. As the present answers are contrary to those that were given in the Appellate Division and as they are in favour of the Defendant-Appellant, I presume that, on the present Appeal, it should be said that the Appellant shall have his costs both in this Court and in the Appellate Division.

The result of my Judgment is that it is unnecessary to pass upon the interventions of the Attorney General of Canada, of the Attorneys General of New Brunswick, Nova Scotia, Ontario, Quebec, Alberta, Prince Edward Island and British Columbia, as well as those of the Canadian National Railway Company, the Canadian Pacific Railway Company, the Maccam Transport Limited and the Carwill Transport Limited. They were interested only in the question of the constitutionality of the New Brunswick Acts. As it happens, in my respectful view, the Court is not called upon to decide that question, in order to dispose of the present litigation ; and it is well within the usual practice of the Judicial Committee of the Privy Council to avoid deciding any other question than that which is necessary to settle the difficulty between the parties. To support that practice, it is sufficient to refer to the Judgment of the Judicial Committee in *Regent Taxi*

and Transport Co. v. *La Congregation des Petits Freres de Marie,* 1932, A.C. 295.

The result would show that, unfortunately, all these intervenants were mobilized to no purpose, except perhaps that this Court has been privileged in listening to very interesting arguments on the question of the constitutionality of a province adopting legislation such as is contained in The Motor Vehicle Act and The Motor Carrier Act of New Brunswick. It is, of course, a satisfaction that this Court should be relieved of the obligation to decide such a moot question. We should not suppose that the intervenants expected to be granted costs in this matter. They were appearing merely to defend their respective constitutional rights and in those cases it is usual not to grant costs to the intervenants.

Of course, in view of the result, neither the Appellant nor the Respondent could legitimately obtain an order for costs against either of the intervenants. That also disposes of the motion of the Respondent praying that this Court should review its former decision that there should be no costs either for or against the railway companies of their intervention. The motion will, therefore, stand dismissed without costs.

(*b*) KERWIN, J.: (*b*) Kerwin J.

This is an appeal by Israel Winner, doing business under the name and style of MacKenzie Coach Lines, against a decision of the Appellate Division of the Supreme Court of New Brunswick in respect of certain questions of law propounded for its opinion before trial by an order of Hughes, J. The action was brought by S.M.T. (Eastern) Limited for an injunction restraining Winner from picking up and letting down passengers within New Brunswick in his motor buses running between points in the United States and the Province of Nova Scotia over routes in New Brunswick between St. Stephen and the Nova Scotia border, and also for other relief.

Subsequent to the order of Hughes, J., the Attorney General of New Brunswick intervened. The Appellate Division answered the questions in favour of the Plaintiff-Respondent but granted leave to the Defendant to appeal to this Court. Pursuant to orders made by this Court or a Judge thereof, the Attorney General of Canada, the Attorneys General of several of the provinces, Canadian National Railway Company and Canadian Pacific Railway Company, and two transport companies, intervened and were represented on the argument. On the opening thereof, in order to obviate certain difficulties that might otherwise arise, it was arranged that, with the consent of the Attorney General of New Brunswick, he ex rel the Plaintiff company, should be added as a party Plaintiff *nunc pro tunc* by order of the Supreme Court of New Brunswick, and that has been done.

By agreement of Counsel made prior to the hearing before the Appellate Division, the questions for consideration were enlarged. No evidence was given but the matter has been argued on an agreed statement of facts contained in the order of Hughes, J., and from this statement the circumstances giving rise to the questions may be summarized as follows:

The Appellant, Winner, resides in the State of Maine in the United

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(*b*) Kerwin J.— *continued.*

States of America and operates his coach lines for the carriage of passengers and goods for hire or compensation between Boston, Massachusetts, and Glace Bay, Nova Scotia, and intermediate points. So far as his business and undertaking in the United States are concerned, he operates under certificates granted by the Interstate Commerce Commission (a federal commission of the United States). So far as the Province of New Brunswick is concerned, he holds himself out as a carrier of passengers and goods (a) from outside the province to points along his route in the province; (b) from points within the province to points outside the province; and (c) between points in the province when such carriage is incidental to his international or interprovincial operations. In view of the argument before us, I take (c) to mean not only that he will carry passengers and goods between points in the province as an incident to stop-over privileges in connection with the through passage from points outside to those within the province and from points inside to those outside the province, but also that he will carry all passengers and goods between those points. He applied to the Motor Carrier Board of New Brunswick for a licence to operate public motor buses from St. Stephen, New Brunswick, through New Brunswick to the Nova Scotia border, which licence was granted but on a condition the validity of which he challenges, viz., that he was not to embus or debus passengers in New Brunswick. In fact, he operates his bus line so as to attract and carry out the carriage of passengers described in (a), (b) and (c), and proposes to continue doing so unless halted by judicial process.

The Plaintiff company is incorporated under and by virtue of the New Brunswick Companies' Act and is in the business (*inter alia*) of operating motor buses for the carriage of passengers and goods for hire or compensation over the highways of the Province of New Brunswick. It holds licences granted by the Motor Carrier Board to operate public motor buses between St. Stephen and Saint John, New Brunswick, over highway route No. 1 and between Saint John and the Nova Scotia border over highway route No. 2 for the purposes of carrying passengers and goods for hire or compensation. Routes 1 and 2 are the ones used by Winner.

As amended, the questions submitted for the opinion of the Appellate Division are as follows:—

"1. Are the operations or proposed operations of the Defendant within the Province of New Brunswick or any part or parts thereof as above set forth prohibited or in any way affected by the provisions of The Motor Carrier Act, 1937, and amendments thereto or orders made by the said Motor Carrier Board?

2. Is 13 Geo. VI, c. 47 (1949) *intra vires* of the legislature of the Province of New Brunswick?

3. Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, c. 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act?"

In my view it is unnecessary to detail the provisions of The Motor Carrier Act or The Motor Vehicle Act since, if the relevant provisions of

these Acts are validly enacted and are applicable to Winner, they authorize what has been done by the Board in affixing the condition to the licence granted him. The important matter is whether the Legislature of New Brunswick is competent so to authorize the Board so far as Winner is concerned.

Prior to 1904, the title to the soil and freehold of highways in New Brunswick was vested in the owners of lands abutting on the highways. That year, by 4 Ed. VII, c. 6, Section 4, the soil and freehold were vested in His Majesty. This enactment was repealed in 1908 and, by R.S.N.B. 1927, c. 25, Section 29, His Majesty released any right he might have under the 1904 Act, and the title to the soil and freehold was re-vested in the abutting owners. In my opinion the same ultimate result would follow in provinces where the title is in the Crown. In either case, I take it to be indisputable that highways, generally speaking, fall within " Property and Civil Rights in the Province " under Section 92, head 13 of the British North America Act. The public right of passage over highways is in all the members of the public, whether residents of the particular province or any other, or of a foreign country, and subsists whether the fee is in the Crown or abutting owners. That right may be interfered with in some respects by provincial legislatures and no question is raised as to its power to require every public motor carrier to register provincially and carry provincial licence plates. No claim is made to differentiate between residents of New Brunswick on the one hand and, on the other, residents of other provinces, or aliens. So far as residents of the Dominion outside New Brunswick are concerned, it appears inadvisable to pass any comment on the opinion expressed by two members of this Court in *Accurate News and Information Act Reference*, 1938, S.C.R. 100, at 132. Now, as then, I find it unnecessary to deal with the matter. It is also unnecessary to express any view as to aliens but, when that time does arrive, the decisions of the Judicial Committee in *Cunningham* v. *Tomay Homma*, 1903, A.C. 151, and *Brooks-Bidlake and Whitall Ltd.* v. *A.G. for B.C.*, 1923, A.C. 450, will require consideration.

The claim of the Appellant, the Attorney General of Canada, and the Railways, is founded upon the exclusive power of Parliament to legislate in relation to " Works and Undertakings connecting the Province with any other or others of the provinces, or extending beyond the limits of the province." It is, of course, settled that the effect of this and other exceptions in head 10 of Section 92 of the British North America Act, is to transfer the excepted works and undertakings to Section 91 and thus to place them under the exclusive jurisdiction and control of Parliament in accordance with the final clause of Section 91 :—

" And the matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

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(b) Kerwin J.— *continued.*

Montreal v. *Montreal Street Railway,* 1912, A.C.333 at 342. Contrary to what had been alleged to be the effect of this decision, it was held by the Judicial Committee in *Re Regulation and Control of Radio Communication in Canada,* 1932, A.C.304 at 315 that " ' Undertaking ' is not a physical thing but is an arrangement under which, of course, physical things are used."

For the Respondent and those supporting it, it was argued that if it cannot be said Winner had a work and undertaking connecting the province with any other or others of the provinces or extending beyond the limits of the province, he could not possibly come within the exception. This contention in my opinion is not sound and, where necessary, " and " must be read " or." That, I think, follows from the decision in the Radio case but, if not, it should now be so declared.

Another argument, which was given effect to in the Appellate Division was that since Winner is a resident of the United States of America he could have no local work or undertaking in New Brunswick and that, therefore, his organization could not be a work or undertaking connecting the province with any other or others of the provinces or extending beyond the limits of the province within 92 (10) (a). Emphasis is placed upon " Local " and " such " in the opening words of head 10, " Local Works and Undertakings other than such as are of the following classes," and it is said that the connecting or extending works or undertakings later mentioned in (a) must be such as have their genesis in the province. In my opinion there is nothing to indicate that the primary location must be so situate.

The latest expression of opinion upon head 10 of section 92 appears in the decision of the Judicial Committee in the Empress Hotel case, *C.P.R.* v. *A.G. for B.C.*, 1950, A.C.122, where it is stated at 142 :—" The latter part of the paragraph (10(a)) makes it clear that the object of the paragraph is to deal with means of interprovincial communication. Such communication can be provided by organizations or undertakings, but not by inanimate things alone." Whether at some time in the future, under circumstances not now envisaged, " undertaking " will be restricted to means of communication need not concern us at present since it is patent that the term includes the business or organization of the Appellant.

The Appellant holds himself out as well in New Brunswick as in Nova Scotia and the United States as a carrier of passengers and goods interprovincially, internationally, and intraprovicially. Arguments of convienence and expediency may be advanced to indicate either that regulation by a province of such things as rates and stopping places for people desiring to travel from one point in New Brunswick to another on through buses would not interfere with the regulation by the Dominion of rates and stopping places for through traffic ; or, on the other hand, that it would be inconvenient, for instance, for a through bus to stop for a passenger and the driver to find after proceeding some distance that the passenger desired merely to go to another point in New Brunswick.

However, it is sufficient to state that in my opinion the interprovincial and international undertaking of the Appellant falls clearly within Section 92 (10) (a) of the British North America Act but that the carriage of

passengers or goods between points (a) and (b) in New Brunswick is not necessarily incidental to the Appellant's undertaking connecting New Brunswick with any other, or others, of the provinces or extending beyond the limits of the province, except as to such carriage in connection with stop-over privileges extended as an incident of the contract of through carriage.

The questions put are very broad as they refer; to the provisions of The Motor Carrier Act, 1937, and amendments thereto; to orders made by the Motor Carrier Board; to "Sections 6 or 53 or any other sections of The Motor Vehicle Act," c. 20 of the statutes of 1934 and amendments; and to Regulation 13 issued under the latter Act. Furthermore, the questions as settled by Hughes J. were added to merely on the consent of counsel. That is really attempting to do what only the Governor General in Council or Lieutenant Governor in Council are authorized to do. It is inadvisable in such a proceeding as this to attempt to deal with all the provisions of either Act or orders or regulations made thereunder, and in fact many of them were not even referred to in argument.

The questions should be answered by stating that the New Brunswick Statutes and Regulations in question and the licence issued by the Motor Carrier Board to the Appellant are legally ineffective to prohibit the Appellant by his undertaking from bringing passengers into the province from outside the province and landing such passengers in the province, or from carrying passengers from any point in the province to a point outside the limits thereof. They are also ineffective to prohibit the transportation of passengers between points in the province, to which passengers stop-over privileges have been extended as an incident of a contract of carriage.

The appeal should be allowed, the order of the Appeal Division set aside, and the questions answered as above. The Appellant is entitled as against the Respondent, S.M.T. (Eastern) Limited, to his costs of the hearing before the Appeal Division and to two-thirds of his costs of the appeal to this Court. The motion by the Appellant to vary the terms of the order of this Court granting leave to Canadian National Railway Company and Canadian Pacific Railway Company to intervene was abandoned and it will, therefore, stand dismissed without costs. There will be no costs of other motions to add any intervenant. There will be no costs for or against the Attorney-General of New Brunswick or any intervenant.

(c) TASCHEREAU, J.:

In his action the Plaintiff-Respondent claims that the Defendant has no legal right to embus or debus passengers within the Province of New Brunswick, and prays for an injunction to restrain him from doing so.

The Defendant, who resides at Lewiston, Maine, is in the business of operating motor buses for the carriage of passengers and goods. On the 17th of June, 1949, The Motor Carrier Board granted him a licence permitting him to operate public motor buses from Boston, Mass., through the Province of New Brunswick, on highways Nos. 1 and 2 to Halifax and Glace Bay, in

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(c) Taschereau J. — *continued.*

the Province of Nova Scotia, and return, but not to embus or debus passengers in the said Province of New Brunswick after August 1, 1949. It is his contention in his statement of defence and counterclaim, that his operation of buses is primarily international and interprovincial, and that incidentally he may therefore embus and debus passengers within the Province of New Brunswick, and also carry passengers from points within the Province to destinations also within the province. He claims that his operations constitute an " undertaking " connecting the Province of New Brunswick with another Province of Canada, and extending into the United States of America, within the meaning of s. 92 (10) (a) of the British North America Act. He asks for a declaration that his operations are not prohibited by or subject in any way to the provisions of The Motor Carrier Act, and that 13 Geo. VI, c. 47 (1949) under which the definitions of " public motor bus " and " public motor truck " were altered to include interprovincial and international motor carriage, be declared ultra vires of the Legislature of the Province of New Brunswick.

Pursuant to the Rules of the Supreme Court of New Brunswick, Mr. Justice Hughes of the Supreme Court of New Brunswick before whom the matter came, ordered, on the 17th of January, 1950, that certain questions of law should be referred to the Supreme Court of New Brunswick, Appellate Division, prior to the trial of the action. The questions submitted for the opinion of the Court of Appeal were the following :

" 1. Are the operations or proposed operations of the Defendant within the Province of New Brunswick, or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act (1937) and amendments thereto, or orders made by the said Motor Carrier Board ?

2. Is 13 Geo. VI c. 47 (1949) *intra vires* of the legislature of the Province of New Brunswick ? "

And on the 21st day of March, 1950, the submission to the Appellate Division was enlarged, and the following question was added :

3. Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, c. 20 of the Acts of 1934 and amendments, or under Sections 6 or 53 or any other sections of The Motor Vehicle Act ?

The Court of Appeal, on the 1st of May, 1950, gave the following answers :

1. " Yes, prohibited, until the Defendant complies with the provisions of the Act."

2. " Yes, in respect of this Defendant." (Messrs. Richards, C.J., and Hughes, J., answering simply " Yes ").

3. " Yes, until the Defendant complies with the provisions of the Act and the regulations made thereunder."

The main question to be decided is the interpretation of subsection 10 of Section 92 of the B.N.A. Act, which reads as follows :

" 92. In each Province the Legislature may exclusively make laws in

relation to matters coming within the classes of subjects next hereinafter enumerated ; that is to say :—

10. Local Works and *Undertakings* other than such as are of the following classes :—

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and *undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province :*

(b) Lines of steam ships between the province and any British or foreign country :

(c) Such works as, although wholly situate within the province, are before or after their execution declared by the parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces."

It is beyond dispute, that the operations of the Appellant are an " undertaking " within the meaning of the section. As Lord Dunedin expressed it in the *Radio Reference*, 1932, A.C.304, at 315, they constituted " an arrangement, under which physical things were used." I cannot agree with the proposition that the Appellant's " undertaking " does not come within subsection (10) of Section 92. It is argued that the " works and undertakings " excluded from the provincial jurisdiction, are those which connect the province with any other, or extend beyond the limits of the province, and are " local " which means within the Province of New Brunswick. As the Appellant has no office or location of any kind in New Brunswick, it would follow that it is not " local." It is my opinion that it is not necessary, in order to fall within the scope of the section, that the " undertaking " have its " origin and situs within the province," and that the Appellant should have an office or place of business therein. It is I think sufficient to bring the matter within federal jurisdiction, that the bus line operates as it does in the present case, from the United States, through New Brunswick and Nova Scotia, whether the origin of the " undertaking " be in New Brunswick or not. As long as such " undertaking " *connects* the Province of New Brunswick with any other province, or extends beyond the limits of the province, 92 (10) (a) applies. As it has been said by Lord Reid in the *Empress Hotel* case, 1950, A.C. 122 at 142, the purpose of the section :

> " is to deal with means of interprovincial communication. Such communication can be provided by organizations or undertakings, but not by inanimate things alone."

As to the submissions of the Respondent concerning the ownership of the highways and the status of the Appellant who is a " foreign national," I agree with what has been said by my brother Rand.

There remains a further question to be determined. If, as I think, the operations of the Appellant are an " undertaking " which as such fall under federal control, it does not follow that the provinces may not enact legislation relating to all that is not interprovincial traffic, or " incidental "

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thereto. Interprovincial communications are not of provincial concern, and therefore the Appellant may without the authorization of the Province of New Brunswick, debus a passenger coming from the United States, in the limits of the province, and embus a passenger in New Brunswick whose destination is outside the province and *vice versa*, and also extend stop-over privileges as an incident of the operations. But the embussing of passengers at a point within the province to another point also within the province, presents an entirely different situation. This is not " interprovincial communication," and I cannot see how it can be said that it is " incidental " to the undertaking from which it is severable. It is traffic of a local nature, which falls under provincial jurisdiction.

It is probable that conflicts will arise between both, federal and provincial jurisdictions, but the courts are not legislative bodies. Their duty is to apply the law as they believe it has been enacted. The co-operation of the Central Government and the provinces, is therefore essential, in order to arrive at a satisfactory result. As it has been said by Lord Atkin, in *A.G. for British Columbia* v. *A.G. for Canada*, 1937, A.C. 377 at 389.

> " It was said that as the Provinces and the Dominion between them possess a totality of complete legislative authority, it must be possible to combine Dominion and Provincial legislation so that each within its own sphere could in co-opertion with the other achieve the complete power of regulation which is desired. Their Lordships appreciate the importance of the desired aim. Unless and until a change is made in the respective legislative functions of Dominion and Province it may well be that satisfactory results for both can only be obtained by co-operation. But the legislation will have to be carefully framed, and will not be achieved by either party leaving its own sphere and encroaching upon that of the other."

This conclusion which I have reached does not mean, that even if federal control may be exercised over interprovincial operations as indicated, the control of the roads and highways and the regulation of traffic, does not remain within the jurisdiction of the provinces. *Provincial Secretary of P.E.I.* v. *Egan*, 1941, S.C.R. 396.

As the present appeal is not a reference, this Court should not, I think, be called upon to answer questions which are not essential for the determination of the case. I therefore agree with my brother Locke as to the answer that should be given.

I would therefore allow the appeal and direct the judgment of the Appeal Division to be modified accordingly. The order as to costs should be as proposed by my brother Kerwin.

(d) Rand J.

(*d*) RAND, J. :

This appeal raises the question of the extent and nature of the provincial jurisdiction over highways of New Brunswick. As now constituted, the action is brought by S.M.T. Company Limited as relator

on behalf of the Attorney General. That company is a carrier of passengers by bus under a licence to operate on named highways which include one running from St. Stephen near the international boundary bordering the state of Maine, through the cities of Saint John and Moncton and on to the boundary with Nova Scotia. The Appellant, Winner, is an American citizen of Maine, who conducts a bus line which for some time prior to 1949 had been operating between Boston and Halifax over the highway mentioned. In June, 1949, he was granted a licence under The Motor Carrier Act for the operation of his buses, subject to the restriction that no passengers could be set off or taken on in the province. The result was that only an operation across the province was authorized. In disregard of that limitation, he is taking up and setting down passengers without reference to originating point or destination.

The statutory provisions applicable to highway and bus operations in New Brunswick are contained in two statutes, The Motor Vehicle Act and The Motor Carrier Act. The former provides generally for the registration of every motor vehicle using the highways and, by s. 58 for the making of regulations dealing, among other things, with fixing fees, classifying vehicles, regulating the size, weight, equipment or loads to be permitted, the speed and handling of traffic, and the operation of vehicles of other provinces or of foreign countries. Among the regulations made are :

"9—4. Any commercial vehicle, except a passenger bus, owned by a non-resident and duly and fully registered and licensed in his home province, state or country, used only for interntaional and interprovincial transportation but not for intra-provincial transportation may be operated on the highways of New Brunswick without registration and licensing in the province."

"13—8. No person operating a motor vehicle as a public carrier between fixed termini outside the province shall operate such motor vehicle on the highways of the province unless the operator is in possession of a permit issued by the department setting forth the conditions under which such motor vehicle may operate and after payment of such fees as the Minister may determine fair and equitable."

The Motor Carrier Act, as its name implies, deals with the business of public carriage on the highways. By s. 2 (1) (f) as amended, a public motor bus is defined to mean :

> " A motor vehicle plying or standing for hire by, or used to carry, passengers at separate fares."

As enacted in 1937, the clause read :

" Public Motor Bus " means a motor vehicle plying or standing for hire by, or used to carry, passengers at separate fares to, from or in any part of the province.

This was amended in 1939 by striking out the words " to, from or in any part of the province," and substituting therefor : " from any point within the province to a destination also within the province " : in 1949 this last clause was struck out. By Section 3, the members of the Board of

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(*d*) Rand J. —*continued.*

Commissioners of Public Utilities are constituted a board for the purposes of the Act; sub-section (3) endows the Board in relation to motor carriers with all the jurisdiction vested in it in respect of common carriers; sub-section (4) provides:

> "The Board may grant to any person, firm or company a licence to operate or cause to be operated public motor buses or public motor trucks over specified routes and between specified points within the province."

Sub-sections (3) and (4) of Section 5 provide that in determining whether a licence shall be granted, the Board shall give consideration to services furnished by railroads, street railways, or motor carriers, the likelihood of the proposed service being permanent and continuous, and its effect on other services. If found to be in the public interest, the service may be licensed on security being furnished.

Section 8 regulates the abandonment or discontinuance of any service authorized; Section 11 limits public bus or truck operation to that specified in the licence; 17 (1) empowers the Board to fix schedules, rates, fares and charges, to fix fees payable to the province, to prescribe forms, to require the filing of returns, and generally to do what is considered necessary or expedient for the safety and convenience of the public; and by Section 21, every licensed carrier is to be deemed a public utility.

These provisions appear to me to be broad enough to empower the Board to restrict the licence as it did.

The two statutes exhibit clearly two different matters of regulation, that is, of highways as such and of services carried on by means of vehicles using them. The primary jurisdiction of the province in the field of the former is unchallenged; equally so is that over uncomplicated local services. The substantial contention is that under Section 92, head 10 (a) of the British North America Act, there is here an undertaking, including all four classes of services, that is, traffic between points in the United States and points in New Brunswick, between United States points and Canadian points involving trans-provincial services through New Brunswick, between points in New Brunswick and points in other provinces, and finally between points in New Brunswick alone, which in its entirety is beyond provincial control.

Mr. Inches, for the relator, and Mr. Carter, for the Attorney General of New Brunswick, supported by the Attorneys General of all of the provinces represented except, in certain respects, the Attorney General of Nova Scotia, assert the right of the province to regulate and control without restriction all traffic of this nature on the highways, regardless of origin or destination. That authority is based primarily on what is said to be the ownership of the highways, which, as claimed, is as extensive in its legislative consequences as that of other public property of the province, to which it is assimilated. The Attorney General for Nova Scotia, on the other hand, represented by Mr. MacDonald, distinguishes between local and other carriage. Agreeing that the undertaking of Winner is not

within head 10 (a), he concedes that international, interprovincial and transprovincial movements fall severally within the residual powers of Section 91.

The claim made for provincial control, is, in my opinion, excessive. The first and fundamental accomplishment of the constitutional Act was the creation of a single political organization of subjects of His Majesty within the geographical area of the Dominion, the basic postulate of which was the institution of a Canadian citizenship. Citizenship is membership in a state ; and in the citizen inhere those rights and duties, the correlatives of allegiance and protection, which are basic to that status.

The Act makes no express allocation of citizenship as the subject-matter of legislation to either the Dominion or the provinces ; but as it lies at the foundation of the political organization, as its character is national, and by the implication of head 25, Section 91, " Naturalization and Aliens," it is to be found within the residual powers of the Dominion : *Canada Temperance* case, 1946, A.C. 193, at 205. Whatever else might have been said prior to 1931, the Statute of Westminster, coupled with the declarations of constitutional relations of 1926 out of which it issued, creating, in substance a sovereignty, concludes the question.

But incidents of status must be distinguished from elements or attributes necessarily involved in status itself. British subjects have never enjoyed an equality in all civil or political privileges or immunities as is illustrated in *Cunningham* v. *Tomay Homma*, 1903, A.C. 151, in which the Judicial Committee maintained the right of British Columbia to exclude a naturalized person from the electoral franchise. On the other hand, in *Bryden's* case, 1899, A.C. 580, a statute of the same province that forbade the employment of Chinamen, aliens or naturalized, in underground mining operations, was found to be incompetent. As explained in Homma's case, that decision is to be taken as determining :

> " that the regulations there impeached were not really aimed at the regulation of metal mines at all, but were in truth devised to deprive the Chinese, naturalized or not, of the ordinary rights of the inhabitants of British Columbia and, in effect, to prohibit their continued residence in that province, since it prohibited their earning their living in that province."

What this implies is that a province cannot, by depriving a Canadian of the means of working, force him to leave it : it cannot divest him of his right or capacity to remain and to engage in work there : that capacity inhering as a constituent element of his citizenship status is beyond nullification by provincial action. The contrary view would involve the anomaly that, although British Columbia could not by mere prohibition deprive a naturalized foreigner of his means of livelihood, it could do so to a native-born Canadian. He may, of course, disable himself from exercising his capacity or he may be regulated in it by valid provincial law in other aspects. But that attribute of citizenship lies outside of those civil rights

committed to the province, and is analogous to the capacity of a Dominion corporation which the province cannot sterilize.

It follows, a fortiori, that a province cannot prevent a Canadian from entering it except, conceivably, in temporary circumstances, for some local reason as, for example, health. With such a prohibitory power, the country could be converted into a number of enclaves and the " union " which the original provinces sought and obtained disrupted. In a like position is a subject of a friendly foreign country ; for practical purposes he enjoys all the rights of the citizen.

Such, then, is the national status embodying certain inherent or constitutive characteristics, of members of the Canadian public, and it can be modified, defeated or destroyed, as for instance by outlawry, only by Parliament.

Highways are a condition of the existence of an organized state : without them its life could not be carried on. To deny their use is to destroy the fundamental liberty of action of the individual, to proscribe his participation in that life : under such a ban, the exercise of citizenship would be at an end. A narrower constitutional consideration arises. Civil life in this country consists of inextricably intermingled activities and relations within the legislative jurisdiction of both Parliament and Legislature ; and deprivation of the use of highways would confound matters appertaining to both. To prevent a person from engaging in business at a post office or a customs house or a bank by forbidding him the use of highways is, so far, to frustrate a privilege imbedded in Dominion law. These considerations are, I think, sufficient to demonstrate that the privilege of using highways is likewise an essential attribute of Canadian citizenship status.

The province is thus seen to be the quasi-trustee of its highways to enable the life of the country as a whole to be carried on ; they are furnished for the Canadian public and not only or primarily that of New Brunswick. Upon the province is cast the duty of providing and administering them, for which ample powers are granted ; and the privilege of user can be curtailed directly by the province only within the legislative and administrative field of highways as such or in relation to other subject-matter within its exclusive field. The privilege of operating on the highway now enjoyed by Winner so far constitutes therefore the equivalent of a right-of-way.

With these considerations in mind, the approach to the controversy before the Court becomes clearer. Head 10 of Section 92 reads :

> " 10. Local works and undertakings other than such as are of the following classes :—
>
> (a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province :
>
> (b) Lines of steam ships between the province and any British or foreign country :

(c) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces."

What is an " undertaking " ? The early use of the word was in relation to services of various kinds of which that of the carrier was prominent. He would take into his custody or under his care either goods or persons, and he was said then to have " assumed " or " undertaken," on terms, their carriage from one place to another ; to that might be added the obligation to accept and carry, drawn on himself by a public profession : and the service, together with the means and organization, constituted the undertaking. This is generalized for the purposes of head 10 by Lord Dunedin in the Radio case : " ' Undertaking ' is not a physical thing but is an arrangement under which of course physical things are used," language used by way of contrasting " works " with " undertakings." But it is or can be of an elastic nature and the essential consideration in any case is its proper scope and dimensions.

One characteristic of carriage is the entirety of the individual service, that is to say, from point A to point B : to be broken down at provincial boundary lines destroys it and creates something quite different : even a trans-provincial movement is an inseverable part of a larger entity. Under the ban imposed here, interprovincial and international trade on highways would be seriously interfered with if not in large measure destroyed.

It was argued that the expression " works and undertakings " should be read conjunctively, and that whatever else might be said of an organized bus service, it could not be called a " work." But in the interpretative attitude of the Judicial Committee as expressed in *Edwards* v. *Attorney General of Canada*, 1930, A.C. 124, and as exemplified in the *Radio* case, 1932, A.C. 304, the modes of works and undertakings within head 10 (a) await the developments of the years ; and the specific enumerations, buttressed by the general considerations of provincial and dominion scope, are sufficient to warrant a disjunctive construction, although obviously in some cases both may be satisfied. Indeed the question would seem to be concluded by the language of Lord Dunedin in the *Radio* decision at p. 315.

Carriage by motor vehicle ranges from an individual passenger or a carton of goods carried for reward in a private automobile to a highly organized fleet of buses or trucks covering the country from East to West. Within this expanse all degrees of service might be provided ; and we can visualize interprovincial carrier units and local units brought under one ownership and direction with the total operations integrated into a system, the initial form of which might have been either. Even though local services should be limited to those incidental to the others, the multiplication of units, say, over different interprovincial routes could cover a great part of a province, and the incidental be converted into the principal. Local transport has come to furnish a multiplicity of short range accommodations to the immediate necessities of modern life, especially in the larger centres of population : it has in fact become more or less incidental to employment

and to community life generally. Its services have thus taken on characteristics distinguishing them from long distance carriage of any form.

What is denoted by the words of 10 (a) is, *ex facie*, an interprovincial or an international function; no attempt has been made to show any necessary bond in fact or in legislative administration between either of them and the local feature here; and in determining in any case what can properly be taken to be embraced within an undertaking, created as Winner's has been, the interwoven character of legislative distribution under Sections 91 and 92 of the Act of 1867 becomes significant.

The analogy of railways and telegraphs was pressed upon us. These works are specifically named, and it is the clear implication that their total functioning was to be under a single legislature. But even they are limited to essential objects: *Attorney General for British Columbia* v. *C.P.R.*, 1950, A.C. 122, in which a hotel operated by the company was held not to be part of the railway. There is toward them also a notion of fixity and determinateness that, although somewhat elusive, underlies the restriction of a declaration of dominion advantage under paragraph 10 (c) to a "work." But the building-up of an aggregate of services into a unity of operation introduces considerations of a different nature.

The judgment of this Court in *Quebec Railway* v. *Beauport*, 1945, S.C.R. 16, is not in *pari materia*. There, an original railway work declared to be for the general advantage of Canada was subsequently authorized to carry on bus services; those with which the proceedings were concerned had been integrated with the railway and tramway services; and the identity of the original work and undertaking had been maintained.

Whatever may be said of the physical instruments of transportation *per se*, the function of carriage is an essential element of trade and commerce; it has no other *raison d'etre*. As an arterial system, from its trunk lines to the minutest ramifications, in the circulation of persons and goods it furnishes the moving life of trade and commerce.

The question before us, then, is analogous to that presented in *Lawson* v. *Committee*, 1931, S.C.R. 357, in which Duff, J. (later C.J.) at p. 366, said:

> "The scope which might be ascribed to head 2 Section 91 (Trade and Commerce) has necessarily been limited, in order to preserve from serious curtailment, if not from virtual extinction, the degree of autonomy . . . . the provinces were intended to possess."

That necessity exists in the automotive field of carriage, and the lines of limitation are indicated by those laid down for trade and commerce.

Assuming then that the international and interprovincial components of Winner's service are such an undertaking as head 10 envisages, the question is whether, by his own act, for the purposes of the statute, he can annex to it the local services. Under the theory advanced by Mr. Tennant, given an automobile, an individual can, by piecemeal accumulation, bring within paragraph 10 (a) a day-to-day fluctuating totality of operations of the class of those here in question. The result of being able to do so could

undoubtedly introduce a destructive interference with the balanced and co-ordinated administration by the province of what is primarily a local matter; and the public interest would suffer accordingly. There is no necessary entirety to such an aggregate and I cannot think it a sound construction of the section to permit the attraction, by such mode, to Dominion jurisdiction of severable matter, that otherwise would belong to the province.

But if, in relation to those primary components, the service is not such an undertaking, then, for the reasons given, it comes under the Dominion regulation of Trade and Commerce. In any case it would fall within the residual powers.

It follows that the province, in the absence of any justifying consideration relating to highway administration or other sufficient exclusive provincial matter, was without power, having admitted these buses to the highways, to prevent them from setting down or taking up either international or interprovincial traffic. On the other hand, it could forbid the taking up or setting down of passengers travelling solely between points in the province.

The judgment of the Appeal Division, holding against Winner on all points, was in the form of giving answers to questions referred to it by the trial judge as follows:

> " 1. Are the operations or proposed operations of the Defendants within the Province of New Brunswick or any part or parts thereof as above set forth, prohibited or in any way affected by the provisions of The Motor Carrier Act (1937) and amendments thereto, or orders made by the said Motor Carrier Board ?
>
> 2. Is 13 Geo. VI c. 48 (1949) *intra vires* of the legislature of the province of New Brunswick ?
>
> 3. Are the proposed operations prohibited or in any way affected by Regulation 13 of The Motor Vehicle Act, c. 20 of the Acts of 1934 and amendments, or under Section 6 or 53 or any other sections of The Motor Vehicle Act ? "

As can be seen, they distribute both statutes, and in doing so, they go beyond the actual issues raised by the pleadings. It would be virtually impossible either to anticipate all conceivable points of impact of the statutes directly or indirectly on Winner's operations or to deal with them by any other than general answers. The real issue is whether he can be restrained from taking up and setting down passengers in New Brunswick : the answer to that is : only when it is done in the course of carriages which in their entirety begin and end at points in New Brunswick.

I would allow the appeal and direct the judgment of the Appeal Division to be modified accordingly. The Appellant, Winner, is entitled to two-thirds of his costs in this Court and all of his costs in the Appeal Division. The motion of the Respondent to review the order that there be no costs either for or against the intervenant railways is dismissed without costs. No other costs are allowed.

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(e) Kellock J.

(e) KELLOCK, J.:

When the appeal was opened, the Court raised the question as to the right of the Respondent company to sue. In answer, reference was made to the decision of the Appeal Division of New Brunswick in *New Brunswick Power Co.* v. *Maritime Transit* (1937) 12 M.P.R. 152. It would appear that that decision proceeded on the view that the holder of a licence under The Motor Carrier Act was in a position analogous to the holder of a franchise of market or ferry, and that the Court in deciding that case had not had its attention called to the decision of the House of Lords in *Institute of Patent Agents* v. *Lockwood,* 1894 A.C. 347, and to the view expressed by Eve, J. in *Attorney General* v. *Premier Line,* 1932 1 Ch. 303 at 313. Without deciding the question thus raised, it was arranged that an application would be made to the Court of New Brunswick to add the Attorney General ex rel the company Respondent as Plaintiff in the action. That has now been done, and the proceedings amended accordingly.

The appeal comes to this Court upon answers given by the Appeal Division to certain questions of law referred to that Court by an order of the Court of first instance on the footing of a statement of facts set out in the order of reference. From these facts it appears that the Appellant is in the business of operating a line of motor buses for the carriage for hire of passengers and goods from Boston in the State of Massachusetts, through the Province of New Brunswick to Halifax and Glace Bay in the Province of Nova Scotia. On the 17th day of June, 1949, he was granted a licence by the Motor Carrier Board of New Brunswick permitting these operations insofar as that province was concerned, but it was provided that he should not take up or put down passengers within the said province after August 1st of the said year. The Appellant ignored the above condition and has continued since August 1st, 1949, to take up and let down passengers within the province, regardless of whether such traffic originated within or without the province, or was destined to points within or without the province.

It is the contention of the Appellant that his operations constitute an " undertaking " connecting the Province of New Brunswick with another province of Canada or extending beyond the limits of the province within the meaning of Section 92 (10) (a) of the British North America Act, and that, accordingly, such operations are not the subject of regulation by the legislature of New Brunswick. It is to be observed that the Appellant cannot rely on any Dominion legislation such as was in question in *Toronto* v. *Bell Telephone Co.*, 1905 A.C. 52. The essence of the opposing contention is that, while the Appellant may have his buses and operators for those buses, his undertaking cannot be said to include the right to use the highways of the province. It is said that such right is a common law right bestowed on the Appellant as a member of the public in New Brunswick under the laws of that province, and that the control of that right is a matter within the jurisdiction of the provincial legislature.

In the Court below, Richards, C.J., while accepting the view that the bus line of the Appellant might otherwise be regarded as an " undertaking " within the meaning of Section 92 (10) (a), thought it could not be so regarded because, in his view, it is only local works and undertakings which have their " origin and situs within the province " which come within the purview of the section, and therefore, as the Appellant has " no office, no place of business, no organization, no situs " within the province, his operations do not come within the contemplation of the section. While the Appellant's undertaking " extends from the State of Maine into the Province of New Brunswick," the learned Chief Justice thought it could not be said that it " extends beyond the limits of the province." Not coming, in his opinion, within the provisions of Section 92 (10) (a), the learned Chief Justice was of opinion that the provincial legislation here in question was *intra vires*, being entirely local in character in relation to traffic within the province, and only incidentally affecting traffic passing through the province. Harrison J. expressed similar views. In the opinion of that learned Judge, the province has the right not only to regulate but also to prohibit motor vehicle traffic. He was further of opinion that, in any event, the Appellant, as a foreign national, had no status entitling him to question the validity of the legislation. Hughes, J. agreed with the answers given to the questions by the other members of the Court, but gave no reasons.

In my opinion, the fact that the Appellant is an alien does not affect his right to challenge the legislation in question. As stated by Lord Reading in *Porter* v. *Freudenberg*, 1915 1 K.B. 857 at 869 :

> " Alien friends have long since been, and are at the present day, treated in reference to civil rights as if they were British subjects, and are entitled to the enjoyment of all personal rights of a citizen."

Reference may also be made to *Johnstone* v. *Pedlar*, 1921 2 A.C. 262.

With respect to the main ground upon which the Respondents rest their case, namely, the contention that control of the use of provincial highways is a matter of civil rights within the province, I find it impossible to agree. I find nothing in Section 92 of the British North America Act which authorizes a province to shut itself off from any other province by denying entry to it to persons presenting themselves at its borders from other provinces or another country.

In the words of Lord Coleridge in *Bailey* v. *Jamieson*, 1876 1 C.P.D. 329 at 332, " The common definition of a highway that is given in all the text-books of authority is, that it is a way leading from one market-town or inhabited place to another inhabited place which is common to all the Queen's subjects." It therefore appears at once that the right to the use of a highway is a right vested in the " subject " who is entitled to the exercise of that right throughout the kingdom. As the preamble to the British North America Act states that the constitution of Canada was intended to be similar in principle to that of the United Kingdom, this

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(e) Kellock J.— *continued.*

right, belonging equally to all Canadian subjects of His Majesty, is one which would normally be within the jurisdiction of Parliament unless another disposition has been made by the British North America Act. The only provision of that statute which is pointed to for such a result is head 13 of Section 92, but the mere statement of the nature of the right is sufficient to exclude it from the class of civil rights within the province.

With respect to the operation of a bus line of the nature of that here in question, I cannot accept the view of the statute taken in the Court below. Such an undertaking is, in my opinion, one falling within the terms of Section 92 (10) (a) and therefore, a subject matter of legislation exclusively within the jurisdiction of Parliament. The very object of the provision, to employ the words of Lord Reid in the *Empress Hotel* case, 1950 A.C. 122 at 142 :

> " is to deal with means of interprovincial communication. Such communication can be provided by organizations or undertakings, but not by inanimate things alone."

While this language was not there applied to circumstances similar to those in question in the case at bar, I would so apply it. The operation of an undertaking of the character contemplated by the section may not, therefore, be prevented by provincial legislation such as that in question. The question remains, however, as to whether the whole, and if not, what part, of the Appellant's operations may properly be regarded as falling within " other Works and Undertakings *connecting* the province with any other or others of the provinces or extending beyond the limits of the province," as those words are employed in Section 92 (10) (a). In my opinion it is only the " through " as distinct from the " local " carriage which may be so regarded.

It is with means of " *interprovincial* " communication only, that the section deals, and therefore it is only the carriage of passengers or goods from a point outside the province to points within the province or beyond the province, and from a point within the province to points beyond the province, which may properly be regarded as " interprovincial," or " connecting," to use the statutory language. Unlike aerial navigation, or radio, which, from their very nature, are not divisible from the local or interprovincial or international standpoints, local carriage by bus is severable and forms no necessary part of the interprovincial or international undertaking with which Section 92 (10) (a) is concerned. The words, " Lines of ships " and " railways," as used in the section, no doubt include all traffic carried by such means, but that is because these undertakings are specifically mentioned and, being mentioned, include everything normally understood by those words. I do not think, however, that there is any compelling reason for regarding such an undertaking as is here in question as including the purely local carriage of traffic, and, in the absence of such reason, I think there are considerations which dictate the contrary view.

As pointed out by the Respondents, local carriage of traffic by bus has become, over wide areas, an essential public service, and, unless regulated to prevent excessive competition, the section of the public

dependent upon such service will often suffer. Such regulation would be impossible if any person, merely because he operates across a provincial boundary, perhaps at no great distance away, could compete with a purely local undertaking, free from any local control. It is past question, in my opinion, that a local legislature may, as a purely local matter, authorize the granting of exclusive transport franchises within the province in the interests of the inhabitants intended to be served. Just as an interprovincial or international bus line is withdrawn from provincial control, an intra-provincial bus line is, by the same statutory provision, placed within the exclusive jurisdiction of the provincial legislatures.

If the carriage of purely local traffic is to be considered as part of the undertaking of a through bus line, there would seem to be no reason why such local traffic could not be carried by buses which do not leave the province at all, as well as by through buses. As already pointed out, the " undertaking " with which the statute deals is the organization under which the " inanimate things," the buses, operate. The undertaking is not to be identified with the buses. If, therefore, a connecting undertaking is to be regarded as including local as well as through carriage, it is difficult to see why such an undertaking may not also carry its local traffic by a bus which does not go outside the province at all, wherever such a mode of operation is conducive to the efficient management of the undertaking.

Again, if it be suggested that the word " undertaking " is to take its colour from such a word as " railways " in the section, I would see no reason why, in respect of local carriage, the undertaking of a " connecting " bus line should be confined to buses paralleling its through line and would not also include branch lines throughout the province.

As I have already said, " railways " is specifically used in the statute and includes everything normally understood by that word. But unlike a railway which has its own right of way, buses operate on public highways and must share the way thereby furnished with others. It is the " connecting " undertaking which alone is committed to Dominion jurisdiction, while the local undertaking is at the same time committed to that of the provinces. To my mind, it would leave little to the latter, in the case of undertakings of the characteristics of that here in question, if the ambit of a through undertaking were cast as large as that for which the Appellant contends. I therefore think that full effect can be given to that which is in the contemplation of the section with respect to the two different kinds of undertakings by giving to it the meaning indicated.

Accordingly, in my opinion, the Appellant, although not subject to the provincial control here asserted insofar as his through operations are concerned, can not claim the same exemption with respect to his purely local carriage. There is no doubt an area in which provincial legislation may affect the operation of even a bus line confined to " through " business; *Provincial Secretary* v. *Egan*, 1941 S.C.R. 396 at 415. It is impossible, however, to define that area apart from specific cases as they arise. In arriving at my conclusion I have not found it necessary to consider Section 91 (2) of the British North America Act, upon which the Respondents did not found any argument.

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(e) Kellock J.— *continued.*

The questions here put are broad enough to cover many matters which are not shown to be in any way in issue in this litigation. The Court is not to be called upon to answer, in litigation of this character, general questions the answers to which are not required for the purpose of enabling the Court charged ultimately with the duty of disposing of the litigation to determine the actual issues. It will therefore be sufficient for the purposes of the case at bar to declare that the provincial legislation here in question is not competent to prevent the Appellant's undertaking from bringing passengers into the province of New Brunswick from the United States of America or another province of Canada and permitting such passengers to alight in the said province, or from picking up passengers in the province to be carried out of the same.

I agree with the order as to costs proposed by my brother Kerwin.

(f) Estey J. (*f*) ESTEY, J. :

In an action between S.M.T. (Eastern) Limited and Israel Winner, doing business under the name and style of MacKenzie Coach Lines, three questions were answered by the Supreme Court, Appeal Division, in the Province of New Brunswick. From the Judgment embodying the answers, leave to appeal to this Court was granted. As of February 7th, 1951, the Attorney General of New Brunswick, ex relatione S.M.T. (Eastern) Limited, was added a party as " from the institution " of the action.

The Appellant Winner operates a passenger bus service between Boston in the State of Massachusetts and Halifax and Glace Bay in the Province of Nova Scotia and the question here raised is the right of the Province of New Brunswick to prohibit his embussing and debussing of passengers within that province.

The Appellant has, at all relevant times, purchased a licence as required under The Motor Vehicle Act of New Brunswick (1934—24 Geo. V, c. 20 and amendments thereto). He has also been granted a licence by The Motor Carrier Board under the provisions of The Motor Carrier Act of that province (1937—1 Geo. VI, c. 43 and amendments thereto), the provisions of which are expressly " deemed to be in addition to those of The Motor Vehicle Act."

Prior to the amendment of 1949 the definition of " Public Motor Bus " read :

> " 2 (1) (f). ' Public Motor Bus ' means a motor vehicle plying or standing for hire by, or used to carry, passengers at separate fares from any point within the province to a destination also within the province."

Section 4 of the same Act read at that time :

> " 4. The Board may grant to any person firm or company a licence to operate or cause to be operated public motor buses or public motor trucks over specified routes and between specified points within the province."

The amendment of 1949 (13 Geo. VI. c. 47) struck out all the words in Section 2 (1) (f) after the word " fares " and in Section 4 the words " within the province." The intent and purpose and, indeed, the effect of these amendments was to enable The Motor Carrier Board to prohibit the embussing and debussing of passengers, as it did in granting a licence to the Appellant on June 17, 1949, of which the material portion reads :

> " Israel Winner doing business under the name and style of ' MacKenzie Coach Lines ' at Lewiston in the State of Maine is granted a licence to operate public motor buses from Boston in the State of Massachusetts, through the province of New Brunswick on Highways Nos. 1 and 2, to Halifax and Glace Bay in the province of Nova Scotia and return, but not to embus or debus passengers in the said province of New Brunswick after August 1, 1949."

It is the contention of the province that The Motor Carrier Board, in imposing the restrictions contained in the licence, acted within its powers, and the legislation granting to it those powers is *intra vires* of the province.

The Appellant submits that his passenger bus service is an undertaking within the meaning of Section 92 (10) (a) of the British North America Act, therefore subject to Dominion legislation, and, in so far as the province seeks to restrict or prohibit his passenger bus service, its legislation is either *ultra vires* of the province or inoperative as against him. Section 92 (10) (a) reads as follows :

> " 92. In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated ; that is to say :
>
> * * * *
>
> 10. Local works and undertakings other than such as are of the following classes :
>
> (a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province : "

The word " local " in the foregoing Section 92 (10) (a), with great respect, cannot be restricted in its scope and meaning as held by the learned judges of the Appellate Court. The section read as a whole indicates that included in the phrase " local works and undertakings " are activities other than, as well as those which were initiated or have their head offices in the province. It is rather the scope of the operations that determines the legislative jurisdiction.

The submission on behalf of the Attorney-General of New Brunswick that the words in Section 92 (10) (a) " or extending beyond the limits of the province," must be restricted to an extension into some portion of what is now the Dominion of Canada, although it finds support in a reading of Section 92 (10) (a) and (b) together, does not otherwise find such support as

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to justify its acceptance. Sub-paragraph (b) is restricted to " Lines of Steamships." Even the words " or other ships " are not included. It makes no mention of railways, canals and telegraphs, nor are they elsewhere similarly dealt with. Yet there can be no doubt that the possibility of railways, canals and telegraphs extending into the United States must have been present to those associated with the drafting of the British North America Act. In fact, at least one province contemplated the building of such a railway prior to Confederation. It seems difficult to conclude that this possibility was not provided for by the insertion of the unrestricted language just quoted. If there be an overlapping with respect to lines of steamships between (a) and (b) that, I think, must be attributed to abundant caution in relation to some matter present to the draftsmen in respect of lines of steamships.

As to the meaning of " works and undertakings " under Section 92 (10) (a), Lord Reid, in *C.P.R.* v. *A.G. for British Columbia* (*Empress Hotel* case), 1950, A.C. 122 at 142, stated :

> " The latter part of the paragraph makes it clear that the object of the paragraph is to deal with means of interprovincial communication. Such communication can be provided by organizations or undertakings, but not by inanimate things alone. For this object the phrase " lines of steamship " is appropriate. That phrase is commonly used to denote not only the ships concerned but also the organization which makes them regularly available between certain points."

In the *Radio* case, 1932, A.C. 304, at 315, Plaxton 137 at 147, Viscount Dunedin, in referring to Section 92 (10) (a), stated :

> " ' Undertaking ' is not a physical thing, but is an arrangement under which of course physical things are used."

The Appellant's organization under which he operates his bus service is, within the foregoing, an arrangement connecting New Brunswick and Nova Scotia. This arrangement, together with his equipment, constitutes a works and undertaking within the meaning of Section 92 (10) (a).

There is no question but that the highways are subject to the exclusive legislative jurisdiction of the provinces. *Provincial Secretary of Prince Edward Island* v. *Egan*, 1941, S.C.R. 396.

At the hearing there was some discussion as to the ownership of the highways in New Brunswick. Whatever the precise position may be in regard to their ownership, whether the province holds them as trustee for the public or whether the right of passage is in the nature of a public easement, for the purpose of this litigation it is sufficient that the province possesses, within the meaning of the British North America Act, complete legislative jurisdiction over its highways.

The Appellant, once within the province, has a right to pass and repass his buses over the provincial highways without regard to his citizenship or residence, upon his compliance with competently enacted provincial legislation. The province has not, at any time, disputed his right in this

connection and he, on his part, has, by the purchase of the necessary licences, indicated a clear intention to comply with such legislation. In fact, he has, and his right to do so is not here in question, carried passengers, from points outside, through the province to points beyond it.

In respect of the embussing and debussing of international and interprovincial passengers within the province, while the contracts for their transportation are made both within and without the province, in every case such contracts are performed in part within and in part without the province. They constitute an inherent and important part of the Appellant's works and undertaking and give to it that essential characteristic that, in the scheme of the British North America Act, places the Appellant's bus service, by virtue of Section 92 (10) (a), under the legislative jurisdiction of the Dominion. While it was contended by certain of the Attorneys General that the province possesses the power to prohibit an international and interprovincial bus to pass and repass upon its highways no authority was cited to that effect. The Dominion of Canada was created by the British North America Act as " one Dominion under the name of Canada " (Section 3) ; and there shall be " one Parliament for Canada " (Section 17). Moreover, there is but one Canadian citizenship and, throughout, the British North America Act contemplates that citizens, and all others who may be for the time being in Canada, shall enjoy freedom of passage throughout the Dominion, subject to compliance with competent provincial legislation.

There remains for consideration the embussing and debussing by the Appellant of intraprovincial passengers. Immediately the 1949 licence was issued he contended the prohibition was *ultra vires* of the province and has since carried on his business in complete disregard thereof. His position was that he had a right to carry on his international and interprovincial bus service and, as " incidental " thereto, to embus and debus, including intraprovincial, passengers. He did not intimate what he included in the word " incidental," but it would appear that he at least meant the embussing and debussing of intraprovincial passengers along his route in New Brunswick.

In support of his contention Counsel directed our attention to railways and telegraphs. These works and undertakings are quite different in character. The owners of the former provide the roadbed and tracks, the latter the wire and poles, and both provide all other facilities necessary to their respective operations. The Appellant's works and undertaking consist of his buses and the arrangement under which they are operated. As such, his works and undertaking are designed and developed to operate upon the provincial highways, which must be located, constructed, maintained and controlled by the province. The essential difference is that, while railways and telegraphs operate upon their own property, the Appellant operates his bus service upon the highways maintained and controlled by the province. The factors that militate against a practical severance of the intraprovincial railway and telegraph businesses are not,

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(*f*) Estey J. —*continued.*

to an important degree, present in the Appellant's bus service as he has developed it, or as it would be in the ordinary course of such a business. Moreover, from the point of view of the province, it constitutes the utilization of its highways for a purely provincial purpose and, if permitted upon main highways, would go far to destroy the system under which the province has deemed it advisable, if not necessary, to licence the carriage of passengers and goods by buses.

The Appellant's essential business is the international and interprovincial carriage of passengers. His buses and the arrangement under which he operates constitute his works and undertaking, all of which are subject to legislative jurisdiction of parliament, and if he enters the province and complies with competent provincial legislation, as already stated, the highways must be available to him. Whenever he seeks to utilize the highways for the further purpose of the carriage of intraprovincial passengers he is outside the scope of his works and undertaking, under 92 (10) (a). If, therefore, he desires to enter into the bus business of carrying intraprovincial passengers, he must comply with competent provincial legislation in relation thereto.

It should be noted that in this litigation we are not concerned with a body corporate, created and granted certain powers by the Parliament of Canada with respect to which other considerations may arise, but rather with an individual whose works and undertaking are the international and interprovincial carriage of passengers.

There may, in the future, be important questions as to what particular circumstances may constitute international, interprovincial or intraprovincial passengers. These questions must, of course, be decided as they arise, but it does seem necessary to intimate here that the Appellant would be entitled to accord to international and interprovincial passengers stop-over privileges, as that term is understood in systems of transportation, without their being regarded as intraprovincial passengers, as they embus and debus within the province.

The hearing of this appeal has been restricted to the right of the Appellant to carry passengers. The questions appear to have been drafted in broader terms than necessary to determine the issues now raised in this litigation. Indeed, it would appear to be a sufficient answer to all of the questions to say that provincial legislation, in so far as it prohibits the embussing or debussing of international and interprovincial passengers, is *ultra vires* the province. In particular, the amendment of 1949 to The Motor Carrier Act, in so far as it makes provision therefor, is *ultra vires*. The same may be said of Regulation 13 and Section 58 of The Motor Vehicle Act under which it is authorized.

I agree with my brother Kerwin's disposition of costs.

(*g*) Locke J.

(*g*) LOCKE J.:

The Appellant is a carrier of passengers and freight for reward, operating motor buses from Boston, Massachusetts, to Glace Bay, Nova Scotia. In traversing the Province of New Brunswick *en route* these vehicles stop

in a number of places between St. Stephen and Sackville. The Appellant asserts that as such a carrier he is entitled to bring passengers from the United States and from the Province of Nova Scotia into the Province of New Brunswick, to carry passengers from the latter province to the United States or to Nova Scotia and " in connection with and incidentally to his international and interprovincial operations " to carry passengers from one point in New Brunswick to another. Both in his pleadings and in the factum filed before us the Appellant has made it plain that he does not claim an unqualified right to carry passengers from one point to another within the province, except to the extent above indicated. This I understand to mean that he may extend stop-over privileges to his passengers, as is commonly done by railway companies: thus, by way of illustration, a person travelling from Boston to Sackville might stop over at St. Stephen and at Saint John and be carried between these points, and from the latter point to Sackville under the contract of carriage. The question to be determined is whether by legislation the Province of New Brunswick can lawfully prevent the carrying on of these activities.

Heading 10 of Section 92 of the British North America Act, in so far as it affects this matter, reads:

> " Local works and undertakings other than such as are of the following classes:
>
> (a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province."

The operations of the Appellant consist of the daily operation of motor buses between the above-mentioned points, these running in accordance with a published time table, carrying passengers and their luggage and freight in both directions. A time table, made part of the material submitted with the questions to the Court, under the heading " Index of Stations and Agents " lists a number of places in New Brunswick between St. Stephen and Sackville where these are maintained, and this affords the only evidence as to the extent of the business carried on within the province, other than the stated fact that the motor buses are operated in the above-mentioned manner.

The word " undertaking " is, in the absence of a statutory definition, and there is none, to be given its commonly accepted meaning as being a business undertaking or enterprise and, in my opinion, it is beyond doubt that the Appellant's business falls within this description. I think it equally clear that it connects the province of New Brunswick with another of the provinces and extends beyond the limits of the province. It is not a physical connection that is referred to (*In re The Regulation and Control of Radio*, 1932, A.C. 304, at 315). Richards, C.J.A. and Harrison, J., were both of the opinion that the Appellant's business was not such an undertaking, since they considered that, in order to fall within the class of matters referred to in subheading (a), it was necessary that the undertaking

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(g) Locke J. —*continued.*

should be local in its nature. As the learned Chief Justice expressed it, the works and undertakings referred to are those " which have their origin and situs within the province." Mr. Justice Harrison considered that, as the Defendant had no office or location of any kind in New Brunswick and the time table showed his office to be at Lewiston, Maine : " the undertaking was ' local ' in the State of Maine. It is not local in New Brunswick."

The opening phrase of heading 10 is clearly capable of the construction given to it by these learned Judges, namely, that it is to be interpreted as if it read :

> " Local works and undertakings other than such local works and undertakings as are of the following classes."

The matter, however, appears to me to be concluded by authority. In *A.G. for British Columbia* v. *C.P.R.*, 1906, A.C. 204, and in *Toronto Corporation* v. *C.P.R.*, 1908, A.C. 54, it was held by the Judicial Committee that heading 10 (a) applied to the undertaking of that company. In *Luscar Collieries* v. *McDonald*, 1927, A.C. 295, it was held that the subsection applied to the undertaking of the Canadian Northern Railway Company. The undertakings of these companies cannot be described as " local " in the sense that that term has been construed by the learned Judges of the Appeal Division, so that I think it must be taken either that subheading (a) refers to undertakings other than such as are merely local in their nature and extent, or that a " local " undertaking includes one such as that of the Appellant, which carries on its enterprise in whole or in part within the boundaries of the province.

Section 91 declares the power of Parliament to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by the Act assigned exclusively to the Legislatures of the provinces and :

> " that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated."

In *City of Montreal* v. *Montreal Street Railway*, 1912, A.C. 333, at 342, Lord Atkinson, in delivering the Judgment of the Judicial Committee, said that the effect of heading 10 of Section 92 was to transfer the excepted works mentioned in subheadings (a), (b) and (c) of it into Section 91, and thus to place them under the exclusive jurisdiction and control of the Dominion Parliament. This applies with equal force to the excepted undertakings, in my opinion. It is thus for Parliament to say whether these activities of the Appellant may be carried on or prohibited.

This is, in my opinion, decisive of the question as to the right of the province to prevent the Appellant from bringing passengers into the province and permitting them to alight and transporting passengers therefrom. There remains the question as to the right of the Appellant to engage in what may properly, in my opinion, be described as the local business of

carrying passengers other than those entering the province upon his buses, or leaving it in that manner, from place to place within the province. Whether these operations also fall within the exclusive jurisdiction of Parliament must be decided by determining the exact nature of the undertakings excepted from provincial jurisdiction by subheading 10 (a). These are undertakings connecting the province with another province or extending beyond the provincial limits. The Appellant's enterprise is, I think, correctly described in the statement of defence as an international and interprovincial operation. It is properly a part of such an operation to afford to passengers brought into the province, or those who embark upon the buses to be carried out of the province, what are commonly called stop-over privileges of the nature above referred to as an incident of the contract of carriage. I consider, however, that the carrying on of a purely local passenger business of the nature above referred to is not a part of, or reasonably incidental to, the operation of an undertaking of this nature. It is not every activity that the person engaged in the undertaking may decide to carry on in connection with its operation that falls within the exception. The establishment of restaurants at various places in New Brunswick through which the buses of the Appellant pass might be an aid to the financial success of the undertaking, but such operations would not, in my view, be part of the undertaking excepted from the provincial jurisdiction. I think a purely local passenger business of the above mentioned nature is in no different position. The distinction between an undertaking such as this and that of the railway companies is that in the case of the latter it is an essential of the operation that there should be railway stations established at regular intervals along the line and large expenditures incurred for that purpose, and that there be facilities afforded for the carriage of both passengers and freight between these stations as a necessary part of an effective railway operation. These considerations do not, in my opinion, apply to an undertaking such as that of the Appellant.

This matter has been brought before us by special leave to appeal granted by the Appeal Division. Two of the questions were submitted for the opinion of that Court by an order of Hughes, J. made in the Chancery Division of the Supreme Court, and a third question as to whether the operations of the Appellant were prohibited or affected by the provisions of The Motor Carrier Act, 1937, as amended, and The Motor Vehicle Act, as amended, or by the regulations made under the last mentioned statute, was added by consent of Counsel for the parties. The claim of the Plaintiff S.M.T. (Eastern) Ltd. against the Defendant in the action, the present Appellant, was that while the Appellant had obtained a licence from the Motor Carrier Board, this would not permit him " to embus or debus passengers in the said Province of New Brunswick after August 1, 1949," that the Defendant had in spite of this continued to embus and debus passengers within the province and intended to continue to do so, whereby the Plaintiff had suffered and would thereafter suffer damage. By the

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(g) Locke J. —*continued.*

statement of defence it was admitted that the Appellant had and intended to continue to permit passengers to alight within the province and to enter the buses within the province in connection with, and incidentally to, his international and interprovincial operations, and by counterclaim the Defendant sought a declaration that his undertaking was within the exception contained in subheading 10 (a) of Section 92 of the British North America Act, that his operations were not prohibited by, or subject to, " The Motor Carrier Act and amendments thereto or by any other applicable statute or law," and that the statute 13 Geo. VI, c. 47 (1949) is *ultra vires* the legislature of the province. The defence to the counterclaim repeated the allegations in the statement of claim, denied that the Defendant's operations were primarily international and interprovincial, demurred on the ground that the counterclaim disclosed no cause of action and said that the 1949 statute was *intra vires*. The Plaintiff did not plead to, or raise any issue as to, that part of the claim advanced in the counterclaim in which a declaration was asked that the Defendant's operations were not prohibited by, or subject in any way to the provisions of The Motor Carrier Act and amendments or by any other applicable statute. No attack had been made upon The Motor Vehicle Act or the regulations passed under that Act by the counterclaim. The Motor Carrier Act of New Brunswick is a statute containing some 22 sections, while there are 92 sections to The Motor Vehicle Act and a lengthy series of regulations. I do not think we should be asked to deal with constitutional questions of such great importance in this manner. This is not a reference to a provincial court for its opinion by the Lieutenant-Governor in Council of a province under a statute such as the Constitutional Questions Determination Act of other provinces; rather are we asked, at least by the third question, to decide issues not defined in the pleadings because counsel for the respective parties request it.

I think it is well to remember what was said by Sir Montague Smith in *Citizens' Insurance Company of Canada* v. *Parsons*, 1881, 7 A.C. 96 at 109, that in performing the difficult duty of deciding questions arising as to the interpretation of Sections 91 and 92 we should decide each case which arises as best we can, without entering more largely upon an interpretation of the statute than is necessary fo the decision of the particular question in hand. The particular questions to be determined in the present matter are as to whether by legislation of the province an undertaking such as that of the Appellant may be prohibited from bringing passengers into the Province of New Brunswick from the United States and from Nova Scotia and permitting them to alight: from admitting passengers to its buses to be carried out of the province, and to carry passengers along the route traversed by its buses from place to place in New Brunswick to whom stop-over privileges have been extended as an incident of the contract of carriage. The answer to each of these questions is, in my opinion, in the negative. This is sufficient, in my opinion, to dispose of the issues properly raised by the pleadings in this action. I think no further answer should be made.

I agree with the order as to costs proposed by my brother Kerwin.

(*h*) CARTWRIGHT, J. :

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(*h*) Cartwright J.

This is an appeal brought pursuant to special leave granted by the Appellate Division of the Supreme Court of New Brunswick from a judgment of that Court answering certain questions of law, said to arise in this action, raised for its opinion by order of Hughes, J.

The agreed statement of facts, the questions and the answers given are sufficiently set out in the reasons of other members of the Court and do not require repetition.

With great respect, I think that the procedure followed in this case has proved inconvenient and that the questions in issue between the parties could have been more satisfactorily dealt with if the action had been tried and judgment given leaving any party dissatisfied to appeal if so advised. It is not the duty of the Court in an action to decide questions of law, however interesting or important, except such as require to be determined to enable the Court to pronounce judgment. To make a complete answer to questions 1 and 3 it would be necessary to examine every provision of The Motor Carrier's Act, of the orders of the Motor Carrier Board and of The Motor Vehicle Act and to state as to each of such provisions whether it affects the operations or the proposed operations of the Appellant and if so in what way, although, in this action, as to most of them no question appears to arise at all.

Our first task seems to me to be to ascertain from the pleadings and the assumed facts what questions of law properly arise for determination at this stage of the proceedings.

The Plaintiffs in the action are now the Attorney General of New Brunswick ex relatione S.M.T. (Eastern) Ltd. and the said S.M.T. (Eastern) Ltd.

Paragraphs 5, 6 and 7 of the Statement of Claim read as follows :

> " 5. On the 17th day of June, 1949, the said Motor Carrier Board granted a licence to the Defendant, permitting him to operate public motor buses from Boston in the State of Massachusetts through the Province of New Brunswick on Highways Nos. 1 and 2 to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to embus or debus passengers in the said Province of New Brunswick after August 1, 1949.
>
> 6. The Defendant by his motor buses maintains a daily passenger service over the routes set out in paragraph 5 hereof.
>
> 7. Since August 1, 1949, the Defendant has continually embussed and debussed passengers within the said Province of New Brunswick, contrary to the said order, dated the 17th day of June, 1949, and has declared his intention of so doing until stopped by legal process."

In the prayer for relief the Plaintiffs claim :

> " (a) An injunction against the Defendant, his servants or agents restraining him and them from embussing and

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(*h*) Cartwright J.—*continued.*

debussing passengers within the Province of New Brunswick in his public motor buses running between St. Stephen, N.B., and the Nova Scotia border.

(b) A declaration that the Defendant has no legal right to embuss or debuss passengers within the Province of New Brunswick.

(c) Such other and further relief as to the Court may seem just."

The Plaintiff company also claims damages and an accounting.

In its Statement of Defence the Appellant admits paragraphs 5 and 6 of the Statement of Claim. Paragraphs 2 and 4 of the Statement of Defence read as follows :

" 2. As to paragraph (7) of the said Statement of Claim—

(a) he admits that since August 1, 1949, he has continually embussed and debussed passengers within the Province of New Brunswick and that it is his intention to continue to do so unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor Carrier Act and amendments thereto, or by any other applicable statute or law ;

(b) he intends to carry passengers not only from points without the Province of New Brunswick to points within the said province and *vice versa*, but also, in connection with and incidentally to his international and interprovincial operations, to carry passengers from points within the said province to destinations also within the said province, unless and until it shall have been declared by some court of competent jurisdiction that such operations are prohibited by The Motor Carrier Act and amendments thereto, or by any other applicable statute or law.

4. His operation of public motor buses is primarily international and interprovincial, over the routes more particularly described in paragraph (5) of the Plaintiff's Statement of Claim, but that incidentally to such international and interprovincial operation, he operates and intends to continue to operate public motor buses intraprovincially in accordance with and subject to his allegations contained in paragraph (2) hereof."

By way of counterclaim the defendant asks :

" 1. A declaration that his operations constitute an undertaking connecting the Province of New Brunswick with another province of Canada, viz., the Province of Nova Scotia, and extending into states of the United States of America, beyond the limits of the Province of New Brunswick, within the meaning of Section 10 (a) of Section 92 of The British North America Act.

2. A declaration that his said operations are not prohibited by or subject in any way to the provisions of The Motor Carrier Act and amendments thereto, or by or to any other applicable statute or law.

3. A declaration that 13 George VI Chapter 47 (1949) is *ultra vires* of the legislature of the Province of New Brunswick.

4. Such other and further relief as to the Court may seem just."

Nowhere in the pleadings or in the statement of admitted facts does any suggestion appear that the Appellant has failed to comply with any requirement of the Statutes of New Brunswick or the orders made thereunder dealing with the use of the highways, such as, for example, enactments prescribing the maximum weight and size of buses, the system of brakes or the carrying of insurance ; and it appears to me that we must deal with the questions on the assumption that the Appellant has fulfilled all the conditions precedent to the granting of whatever licences he requires to permit his buses to use the highways of New Brunswick.

On this assumption the only question which properly arises for determination is whether the restriction contained in the licence of the 17th June, 1949, granted by The Motor Carrier Board to the Appellant is effective. In saying this, I have not overlooked the wide terms of paragraph 2 of the prayer for relief in the counterclaim, quoted above, or the fact that the Attorney General for New Brunswick has been added as a party plaintiff *nunc pro tunc*, and may therefore, I assume, be regarded as a defendant in the counterclaim. In my view, in the circumstances of this case the Appellant is not entitled to a declaratory judgment as to what is the law of New Brunswick and as to how far it affects his operations, vide *Smith* v. *Attorney General for Ontario*, 1924, S.C.R. 331. All the rights of the Appellant which are in issue in this action will be sufficiently defined by an answer to the question mentioned in the first sentence of this paragraph, and it is unnecessary to enter upon a discussion of the wider questions of law sought to be raised by the counterclaim.

I agree with my brother Rand that the relevant statutory provisions, if valid, are broad enough to empower the Board to restrict the licence as it did, and the answer to the question must therefore turn on whether it was within the powers of the legislature of New Brunswick to so provide.

In the assumed circumstances of this case, set out above, I am in agreement with those members of the Court who hold that the New Brunswick statutes and regulations in question and the licence issued by the Motor Carrier Board, referred to above, are legally ineffective to prevent the Appellant by his undertaking from bringing passengers into the Province of New Brunswick from the United States of America or from another province of Canada and permitting such passengers to alight in New Brunswick, or from picking up passengers in New Brunswick to be carried out of the province or from transporting between points in the province passengers to whom stop-over privileges have been extended as an incident

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(*i*) Fauteux J.

of a contract of through carriage ; because in so far as they purport so to do they are *ultra vires* of the legislature of New Brunswick. I would so declare and would also declare that no further answer to the questions submitted is required I would dispose of the costs as proposed by my brother Kerwin.

(*i*) FAUTEUX, J. :

Pursuant to licences granted by the Motor Carrier Board of the Province of New Brunswick, the Respondent, a company incorporated under the laws of the province, operates, within the province only and over certain routes motor buses for the carriage of passengers and goods for hire.

The Appellant, a resident of Lewiston, in the State of Maine, conducts like operations between Boston, in the Commonwealth of Massachusetts, and the town of Glace Bay, in the Province of Nova Scotia, and between intermediate points, including points within the Province of New Brunswick. As to the part of these operations on routes beyond the Canadian border, the Appellant holds a permit issued by the Interstate Commerce Commission, a United States federal body having jurisdiction, *inter alia*, over interstate transportation. With respect to the other part of the operations, carried on routes within the Province of New Brunswick, the Appellant did, on the 17th of June, 1949, obtain from the Motor Carrier Board of the province a licence in the following terms :

> " Israel Winner doing business under the name and style of ' MacKenzie Coach Lines,' at Lewiston in the State of Maine, is granted a licence to operate public motor buses from Boston in the State of Massachusetts, through the Province of New Brunswick on Highways Nos. 1 and 2, to Halifax and Glace Bay in the Province of Nova Scotia and return, *but not to embus or debus passengers in the said province of New Brunswick after August* 1, 1949."

Having, before the issuance of such a licence, challenged the validity of The Motor Carrier Act, 1937, as amended by 13 Geo. 6, c. 47 (1949), the Appellant, thereafter, consistently ignored and refused to comply with the restrictions above underlined in the licence. And he equally declared his intention to continue to do so until it shall have been judicially found that such operations are prohibited by The Motor Carrier Act and amendments thereto, or by any other applicable statute or law. In effect, and under such a licence, the only right granted to the Appellant is to go across the Province of New Brunswick with passengers already embussed but with no right to embus or debus passengers in the province.

This attitude and these actions of the Appellant gave, at first, rise to a claim by the Respondent asking for (1) a declaration that the Appellant had no legal right to do what his permit prohibited him from doing, (2) an injunction to restrain him from carrying on such operations, and (3) damages and to a counterclaim by the Appellant for a declaration that his operations, actual or proposed, being primarily international and interprovincial, came within the purview of sub-section 10 (a) of Section 92 of the British North

America Act and, as such, beyond control by provincial legislation related to such undertakings carried on wholly within the province.

Eventually, and in the course of these proceedings, three questions of law having been stated, they were subsequently answered, by the Supreme Court (Appellate Division) of the Province of New Brunswick, in a judgment now before this Court for review.

The essential point decisive of the present issue is whether or not, and, if in the affirmative, in what measure, the above described transportation business of the Appellant constitutes an undertaking within the meaning of Section 92 (10) of the B.N.A. Act and, as such, not only excluded from the provincial legislative field but by force of Section 91 (29) included amongst the classes of subjects exclusively within the legislative authority of Parliament.

Section 92 (10) reads :

> " 10. Local works and undertakings other than such as are of the following classes :—
>
> (a) Lines of steam or other ships, railways, canals, telegraphs, and other *works and undertakings* connecting the province with any other or others of the provinces, or extending beyond the limits of the province ;
>
> (b) Lines of steam ships between the province and any British or foreign country ;
>
> (c) Such works as although wholly situate within the province are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces."

The time table and the index of stations, relative to the Appellant's operations, indicate that his bus line extends from New Brunswick into Nova Scotia and into the United States of America. It also shows that it joins points in New Brunswick to points in Nova Scotia.

In the light of what was said by Viscount Dunedin *In re Regulation and Control of Radio Communication in Canada*, 1932, A.C. 304, the conclusion that the operation of the bus line of the Appellant is an undertaking within the meaning of the word in the subsection and that it is an undertaking which connects one province to another is, with deference, inescapable.

The fact that the highways, over which the motor buses of the Appellant must travel, are not part of his undertaking is not more material in the present case than the fact that the space, in which the material transmitted by radio has to travel, was not part of the undertaking, was material in the *Radio* case. In the judgment of the Judicial Committee rendered in the latter, it was stated, at page 315, that " ' undertaking ' is not a physical thing, but is an arrangement under which of course physical things are used." And it was also declared that " the undertaking of broadcasting is an undertaking connecting the province with other provinces and extending beyond the limits of the province."

On the alleged factual premises that the Appellant has no office, no place of business, no organization, no situs in the Province of New

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(*i*) Fauteux J.— *continued.*

Brunswick but only in Lewiston, Maine, it was suggested that his undertaking is not local in the sense of the local undertakings excepted by the subsection. It may be stated, at first, that it appears in the material found in the record, that while what is described as the " main office " of the Appellant is situated in Lewiston, Maine, the latter has, equally, agencies at several strategic points on the bus line he operates, particularly in the Provinces of New Brunswick and Nova Scotia, and that he also maintains one office in Halifax and another in Sydney. I cannot think that the point from which an undertaking is partly or wholly managed or directed may become the decisive element in the consideration of the question. The subsection is not related to the situs of management of the undertaking but to the larger field—the one which may connect—in which the undertaking is actually operated. In each of the two or more provinces covered by an undertaking, it may, with equal accuracy, be said that the undertaking connects the province to the other province or provinces. An interpretation of the sub-section which would make this proposition well-founded only in the province where the undertaking has its origin and situs, and ill-founded in the other province or provinces, would fatally and completely nullify the purpose the subsection was meant to achieve. For, and assuming that identical legislation would be adopted in all these provinces by local legislative action, such legislation could be declared *ultra vires* in the province of origin and situs of the undertaking, and *intra vires* in all the others. In the result, the overall control by legislative and executive action, which, in proper cases, the B.N.A. Act contemplates, would not be achieved. That " the object of the paragraph " (10 (a)) " is to deal with means of inter-provincial communication," and that " Such communication can be provided by organizations *or* undertakings but not by inanimate things alone " is affirmed by the judgment of the Judicial Committee in *C.P.R.* v. *A.G. for British Columbia*, 1950, A.C. 122.

In the measure in which it is interprovincial, the public transportation service of the Appellant undoubtedly constitutes consequently an undertaking coming within the meaning of Section 92 (10) (a) and, as such, is within the classes of subjects transferred into Section 91. Thus, the carrying of passengers by the Appellant (a) from outside the Province of New Brunswick to points along his route in the province, and (b) from points within the province to points beyond the province, and (c) between points in the province as an incident to stop-over privileges related to the operations mentioned in (a) and (b), having this interprovincial character, comes therefore within dominion jurisdiction as such.

However, and as described at the very beginning of these reasons, the actual and proposed operations of the Appellant include, in addition to this interprovincial service, the transportation of passengers between intermediate points within the Province of New Brunswick. And the question arises whether this latter traffic, in essence exclusively local, should be dealt with in this case as necessarily incidental to what constitutes the interprovincial undertaking of the Appellant, and be thus equally declared to come under the exclusive control of Parliament. I see no reason why it should. In law, it has by itself none of the features which, considered alone, would bring it

within the meaning of Section 92 (10) (a). In fact, such local transportation is not a necessary incident to the interprovincial service of the Appellant. The operations carried on by S.M.T. (Eastern) Ltd., the Respondent, sufficiently indicate that such local service is in itself a complete undertaking. It is true that both the interprovincial and local services may merge in one undertaking. This, however, is no reason to ignore the legal premises on which the issue must be determined and, further, to conclude that either the local or the interprovincial part of the whole service must be considered as a necessary incident of the other. These local operations remain within provincial control.

The above conclusions are, in my view, sufficient to dispose of the real issue which arose in this case.

There is no need to re-state here all that was said in the other reasons with respect to the difference, in pith and substance, between The Motor Carrier Act and The Motor Vehicle Act of the Province of New Brunswick. In brief, the former is related to the public service of transportation while the latter deals with vehicles and their operations, and the material principle laid down in *Provincial Secretary of P.E.I.* v. *Egan*, 1941, S.C.R. 396, remains unaffected.

I equally agree with the views that the question related to the nature of the right to the use of a public highway, and the fact that the Appellant is an alien, do not affect adversely the above conclusions as to the main issue.

I would, therefore, agree with my brother Locke as to the answers that should be given.

The appeal should be allowed and the reasons of the judgment of the Appellate Division of the Supreme Court of New Brunswick modified accordingly.

As to costs, I agree with the order proposed by my brother Kerwin.

No. 15.

Order in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

The 29th day of July, 1952.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.	MISS HORSBRUGH.
EARL DE LA WARR.	MR. BUCHAN-HEPBURN.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 24th day of July 1952 in the words following, viz. :—

In the Privy Council.

No. 15. Order in Council granting Special Leave to Appeal, 29th July, 1952—*continued.*

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) the Attorney General for Ontario (2) the Attorney General for Alberta (3) the Attorney General for Prince Edward Island (Intervenants) in the matter of an Appeal from the Supreme Court of Canada between Israel Winner doing business under the name and style of MacKenzie Coach Lines (Defendant) Appellant and S.M.T. (Eastern) Ltd. a duly incorporated Company and the Attorney General for New Brunswick ex. rel. S.M.T. (Eastern) Ltd. (Plaintiffs) Respondents and the Attorney General of Canada and the Attorneys General for Ontario, Quebec, Nova Scotia, British Columbia, Prince Edward Island and Alberta and Canadian National Railway Company, Canadian Pacific Railway Company. Maccam Transport Company and Carwil Transport Limited (Intervenants) setting forth (amongst other matters): that the Petitioners desire special leave to appeal from a Judgment of the Supreme Court of Canada dated the 22nd October 1951 reversing a judgment of the Supreme Court of New Brunswick (Appeal Division) dated the 1st May 1950: that the questions involved in the Appeal affect the powers of the Provinces to legislate with regard to the use of Provincial highways by persons carrying on transport and other undertakings outside the Province concerned and as to the construction of Section 92 (10) (a) of the British North America Act: that Israel Winner carried on the business of operating motor buses for the carriage of passengers and goods for hire under the name and style of MacKenzie Coach Lines: that on the 17th June 1949 the Motor Carrier Board of the Province of New Brunswick on the application of Winner purported to licence his operation in the Province of New Brunswick as follows:—'Israel Winner doing business under the name and style of MacKenzie Coach Lines, at Lewiston in the state of Maine is granted a licence to operate public motor buses from Boston in the State of Massachusetts, through the Province of New Brunswick on Highways Nos. 1 and 2, to Halifax and Glace Bay in the Province of Nova Scotia and return, but not to embus or debus passengers in the said Province of New Brunswick after August 1, 1949': that the action was brought by S.M.T. (Eastern) Limited complaining that Winner had continually embussed and debussed passengers within the Province of New Brunswick contrary to his licence and claiming an injunction an account of fares and damages. that Winner by his defence stated that his operation of motor buses was primarily international and inter-provincial and so came within Section 92 (10) (a) of The British North America Act and asked for a declaration that his operations were lawful and that the New Brunswick Statute 13 Geo. VI c. 47 (1949) was *ultra vires* the Legislature of the Province of New Brunswick: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Supreme Court of Canada dated the 22nd October 1951 and for further or other relief:

" AND WHEREAS by virtue of the aforesaid Order in Council there was also referred unto this Committee a humble Petition of Israel Winner (doing business under the name and style of MacKenzie Coach Lines) (Defendant) and Canadian National Railway Company and Canadian Pacific Railway Company (Intervenants) in the matter of the same Appeal humbly praying Your Majesty in Council to grant them special leave to appeal from so much of the said Judgment of the Supreme Court of Canada dated the 22nd October 1951 as holds that the Legislature of New Brunswick and the Motor Carrier Board may lawfully prohibit intra-provincial bus operations which are incidental to inter-provincial or international bus undertakings and that the Appeals may be consolidated and heard upon the same Record and for further and other relief:

" THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petitions into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Attorney General for Ontario the Attorney General for Alberta and the Attorney General for Prince Edward Island to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 22nd day of October 1951 (2) that leave ought also to be granted (on condition of depositing in the Registry of the Privy Council the sum of £400 as security for costs) to Israel Winner and Canadian National Railway Company and Canadian Pacific Railway Company to appeal from so much of the said Judgment of the Supreme Court of Canada dated the 22nd October 1951 as holds that the Legislature of New Brunswick and the Motor Carrier Board may lawfully prohibit intra-provincial bus operations which are incidental to inter-provincial or international bus undertakings (3) that the Appeals ought to be consolidated and heard together upon the said Record and (4) that the authenticated copy under seal of the Record produced upon the hearing of the Petitions ought to be accepted as the Record proper to be laid before Your Majesty on the hearing of the consolidated Appeals."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

F. J. FERNAU.

In the Privy Council.

No. 23 of 1952.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL FOR ALBERTA and THE ATTORNEY GENERAL FOR PRINCE EDWARD ISLAND ...(*Intervenants*) *Appellants*

AND

ISRAEL WINNER, doing business under the name and style of MACKENZIE COACH LINES ... (*Defendant*) *Respondent*

AND

THE ATTORNEY GENERAL FOR NEW BRUNSWICK ex. rel. S.M.T. (EASTERN) LTD., a duly incorporated Company (*Plaintiff*) *Respondent*

AND

THE ATTORNEY GENERAL OF CANADA AND OTHERS ...(*Intervenants*) *Respondents.*

RECORD OF PROCEEDINGS

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(A60179)