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*Oct. 3, 4, 5, 6, 10, 11.
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Apr. 23.

HOME OIL DISTRIBUTORS, LIMITED, AND OTHERS (PLAINTIFFS) ..... APPELLANTS;

AND

ATTORNEY-GENERAL OF BRITISH COLUMBIA, THE COAL AND PETROLEUM BOARD AND ANOTHER (DEFENDANTS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Constitutional law—Provincial Act constituting board to regulate "coal and petroleum industries" within the province—Price-fixing powers given to the board—Whether legislation intra vires of the legislature—The Coal and Petroleum Products Control Board Act, B.C. 1937, c. 8—B.N.A. Act, section 92.

The *Coal and Petroleum Products Control Board Act*, B.C. 1937, c. 8, which provides for the appointment of a board to regulate and control within the province the "coal and petroleum industries" and which more particularly empowers the board, by sections 14 and 15, to fix the prices "at which coal or petroleum products may be sold in the province either at wholesale or retail or otherwise for use in the province," is *intra vires* of the legislature, since the pith and substance of the Act is to regulate particular businesses entirely within the province and such legislation is within the sovereign powers granted to the legislature in that respect by section 92 of the

* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis, Kerwin and Hudson JJ.

B.N.A. Act. *Shannon* v. *Lower Mainland Dairy Products Board* [1938] A.C. 708, followed.

Comments as to when and in what manner a court has the right to interpret legislation by reference to extraneous material; in this case, such material being the evidence taken before, and the report of, a public enquiry under a Royal commission relating to the subject matter of such legislation.

APPEAL from the judgment of the Court of Appeal for British Columbia (1) reversing the judgment of the trial judge, Manson J. (2), and dismissing the appellants' action.

The action was for a declaration that the *Coal and Petroleum Products Control Board Act,* B.C. 1937, c. 8, was *ultra vires* of the legislature, or, alternatively, that each of 19 specified sections thereof was *ultra vires,* and for an injunction restraining the respondent board from fixing sale prices for petroleum products.

J. W. de B. Farris K.C., Reginald Symes and *Thos. Ellis* for the appellants.

G. S. Wismer K.C. (Attorney-General) and *J. P. Hogg* for British Columbia.

F. P. Varcoe K.C. for Attorney-General for Canada.

THE CHIEF JUSTICE.—After a most attentive consideration of the able argument of Mr. Farris, I think our decision in this appeal is governed by the judgment of the Judicial Committee in *Shannon's* case (3).

The appeal should be dismissed with costs.

The judgment of Rinfret and Kerwin JJ. was delivered by

KERWIN J.—The plaintiffs (appellants) brought action against the Attorney-General of British Columbia, Coal and Petroleum Control Board, and Dr. William Alexander Carrothers (the sole member of the Board), for a declaration that the *Coal and Petroleum Products Control Board Act* of British Columbia (chapter 8 of the statutes of 1937), or that certain sections of it, were *ultra vires* the legislature of the province. The plaintiffs also asked a

(1) (1939) 54 B.C.R. 48; [1939] 2 W.W.R. 418.
(2) (1939) 53 B.C.R. 355; [1939] 1 W.W.R. 666.
(3) [1938] A.C. 708.

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declaration that an amending Act of 1938 was *ultra vires* the legislature, and that a certain regulation was *ultra vires* the Board. The trial judge declared sections 14 and 15 of the principal Act to be *ultra vires* the legislature, and certain words in section 42 of the principal Act, as enacted by the amending Act, in so far as they purported to limit the powers of the courts of the province to determine the constitutional validity of the principal Act, to be *ultra vires* the legislature. The defendant Board and the defendant Carrothers were restrained from fixing the price, prices, maximum price or prices, minimum price or prices, at which gasoline or other petroleum products may be sold in British Columbia, either wholesale or retail or otherwise for use in the province, and from making any orders, rules or regulations in respect of such price or prices, and from taking any steps or proceedings to compel the plaintiffs to comply with the provisions of sections 14 and 15 of the principal Act or of any orders, rules or regulations made thereunder with respect to the prices aforesaid.

The defendants appealed to the Court of Appeal for British Columbia and their appeal was allowed and the action dismissed. There was no cross-appeal by the plaintiffs. By special leave of the Court of Appeal the plaintiffs now appeal to this Court.

The principal Act provides for the appointment of a Board with power to regulate and control within the province the "coal and petroleum industries." That expression is stated to include:—

> the carrying-on within the Province of any of the following industries or businesses: The mining of coal; the preparation of coal for the market; the storage of coal; the wholesale and retail distribution and selling of coal; the distillation, refining, and blending of petroleum; the manufacture, refining, preparation, and blending of all products obtained from petroleum; the storage of petroleum and petroleum products; and the wholesale and retail distribution and selling of petroleum products.

Sections 14 and 15, which are the ones declared *ultra vires* the provincial legislature by the trial judge, are as follows:—

> 14. (1) The Board may from time to time, with the approval of the Lieutenant-Governor in Council, fix the price or prices, maximum price or prices, minimum price or prices at which coal or petroleum products may be sold in the Province either at wholesale or retail or otherwise for use in the Province.
>
> (2) Without limiting the generality of the powers conferred by subsection (1), the Board may:—
>
> (*a*) Fix different prices for different parts of the Province;

(*b*) Fix different prices for licensees notwithstanding that they are in the same class of occupation:

(*c*) Fix schedules of prices for different qualities, quantities, standards, grades, and kinds of coal and petroleum products.

15. Where the Board has fixed a price for coal or for petroleum or for any petroleum product, it may, with the approval of the Lieutenant-Governor in Council, declare that any covenant or agreement for the purchase or sale within the Province of coal or petroleum or a petroleum product for use in the Province contained in any agreement in existence at the time of fixing such price shall be varied so that the price shall conform to the price fixed by the Board, and the agreement, subject only to the variation declared by the Board, shall in all other respects remain in full force and effect.

By section 2 of the Act:—

"Petroleum products" includes petroleum, gasoline, naphtha, benzene, kerosene, lubricating-oils, stove oil, fuel oil, furnace-oil, paraffin, and all derivatives of petroleum and all products obtained from petroleum, whether blended with or added to other things or not.

Reading these sections in the light of all the other provisions of the Act, I am of opinion that, to quote the judgment of the Judicial Committee in *Shannon* v. *Lower Mainland Dairy Products Board* (1):—

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 s. 92 of the *British North America Act;*

or to quote again from the same judgment, at page 720:—

The pith and substance of this Act is that it is an Act to regulate particular businesses entirely within the Province and it is therefore *intra vires* of the Province.

In coming to this conclusion I have taken the report of a commissioner appointed by the Lieutenant-Governor in Council as being a recital of what was present to the mind of the legislature, in enacting the principal Act, as to what was the existing law, the evil to be abated and the suggested remedy (*Heydon's Case*) (2). There can, I think, be no objection in principle to the use of the report for that purpose, and Lord Halsbury's dictum in *Eastern Photographic Machine Company* v. *Comptroller General of Patents* (3) is to the same effect. It was argued by counsel for the appellants that the statements in the report were to be taken as facts admitted or proved, but that this cannot be done is quite clear from the authorities, the most recent of which is *Assam Railways and Traders Company* v. *The Commissioners of Inland Revenue* (4).

(1) [1938] A.C. 708, at 718.
(2) (1584) 2 Coke's Rep. 18.
(3) [1898] A.C. 517, at 575.
(4) [1935] A.C. 445.

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I have not considered the provisions of the amending Act which are objected to, and make no comment as to those provisions. The appeal should be dismissed with costs.

CROCKET, J.—Notwithstanding Mr. Farris's ingenious and able argument regarding the integrated character of the oil production, refining and sales industry and the apprehended effect of the impugned legislation upon the profits of that industry as an integrated whole outside the limits of British Columbia, I am unable to discover any substantial or satisfactory reason for holding that the legislation is anything else than what it plainly purports to be, namely, an enactment constituting a board with power to fix maximum and minimum wholesale and retail prices of all coal and petroleum products sold in the Province of British Columbia or for use in that Province. This, in my judgment, the Provincial Legislature clearly had the right to do under the exclusive legislative powers assigned to it by s. 92 of the B.N.A. Act.

The fact that the motive of the Legislature may have been, as was suggested, to empower the Coal and Petroleum Products Board, by fixing an arbitrary maximum price for the sale of gasoline and a minimum price for the sale of crude fuel oil within the Province, to afford some needed protection for the important coal mining industry of the Province against the menacing competition of the sale of the latter product at the then current prices, cannot in my opinion alter the character of the legislation as legislation for purely provincial purposes. Neither can the fact that the legislation was calculated to compel all international or external corporations desiring and authorized to do business within the limits of the Province to alter their methods and policy regarding the allocation of profits as between the gasoline and fuel oil branches of their so-called integrated industry. If they desire to carry on their business in the Province of British Columbia, they must comply with provincial laws in common with all provincial and independent dealers in the same commodities. In my opinion the judgment of the Judicial Committee in *Shannon* v. *Lower Mainland Dairy Products Board* (1) is in all essential points indistinguishable from and decisive of the present appeal.

I think the appeal should be dismissed with costs.

(1) [1938] A.C. 708.

DAVIS J.—This appeal arises out of an action in which the validity of certain legislation of the province of British Columbia, aimed at fixing prices for the sale of gasoline in the province, is sought to be determined.

The statute in question is the *Coal and Petroleum Products Control Board Act*, ch. 8 of the British Columbia statutes of 1937. It is not a revenue Act and there is no compulsion to sell; the impugned legislation provides for fixing prices for sale of coal or petroleum products to the public in the province from time to time by a Board set up by the legislature whose orders are, however, to be subject to approval by the Lieutenant-Governor in Council. The several appellants (plaintiffs) are vendors in the province of petroleum products and the respondents (defendants) are the Attorney-General of the Province, the Board, and Dr. Carrothers, its sole member.

While the appellants claimed in the action a declaration that the whole Act was *ultra vires* the legislature of the province, the trial judge, Manson J., merely declared secs. 14 and 15 to be *ultra vires* and granted an injunction against the Board and Dr. Carrothers restraining them from fixing the price at which gasoline or other petroleum products may be sold in the Province, either wholesale or retail or otherwise, for use in the Province, and from making any orders, rules and regulations in respect of such price or prices and from taking any steps or proceedings to compel the appellants to comply with the provisions of said secs. 14 and 15 of the said Act, or of any orders, rules or regulations made thereunder with respect to the prices aforesaid. From that judgment the Attorney-General for British Columbia and the other defendants, the Board and Dr. Carrothers, appealed to the Court of Appeal for that province. There was no cross appeal by the appellants and therefore only secs. 14 and 15 remained in controversy. The Court of Appeal by a majority allowed the appeal, set aside the judgment at the trial and dismissed the appellants' action. From that judgment, by special leave of the Court of Appeal, the appellants appealed to this Court.

Sections 14 and 15 of the statute are as follows:—

14. (1) The Board may from time to time, with the approval of the Lieutenant-Governor in Council, fix the price or prices, maximum price or prices, minimum price or prices at which coal or petroleum products may be sold in the province either at wholesale or retail or otherwise for use in the province.

(2) Without limiting the generality of the powers conferred by subsection (1), the Board may:—

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(a) Fix different prices for different parts of the province:
(b) Fix different prices for licensees notwithstanding that they are in the same class of occupation:
(c) Fix schedules of prices for different qualities, quantities, standards, grades, and kinds of coal and petroleum products.

15. Where the Board has fixed a price for coal or for petroleum or for any petroleum product, it may, with the approval of the Lieutenant-Governor in Council, declare that any covenant or agreement for the purchase or sale within the province of coal or petroleum or a petroleum product for use in the province contained in any agreement in existence at the time of fixing such price shall be varied so that the price shall conform to the price fixed by the Board, and the agreement, subject only to the variation declared by the Board, shall in all other respects remain in full force and effect.

The appellants' case rests in substance upon the basis that the report of a commissioner appointed November 29th, 1934, by the Lieutenant-Governor in Council of the Province of British Columbia under its *Public Inquiries Act* to inquire (*a*) into matters respecting coal mined in or imported into the province and used for fuel purposes in the province, and (*b*) into matters respecting petroleum products imported into or refined or produced in the province and used or designed for use therein for fuel, lighting and motor vehicles' operation, discloses the true intent and purpose of the subsequent legislation now in question and that the report with all the evidence contained in its three volumes was open to the Court and should be accepted as *prima facie* evidence of the facts for the purpose of a proper understanding of the legislation. Mr. Farris in an unusually powerful argument attacking the legislation made it abundantly plain that his contention was based upon the industry affected by the legislation being what he called " an integrated industry, interprovincial and international " and the legislation an invasion of the Dominion's power to regulate trade and commerce. His contention was that the subject-matter of the impeached legislation was not local or provincial within the competence of the legislature.

Leaving aside any reference to the report of the commissioner and assuming for the moment that it must be excluded, the language of the statutory provisions is itself plain and unambiguous. The Board appointed under the provisions of the Act is empowered from time to time "with the approval of the Lieutenant-Governor in Council" to fix the prices at which petroleum products may be sold—and then follow the limiting words, " in the province " and

"for use in the province"—and where the Board fixes a price it may, with the approval of the Lieutenant-Governor in Council, declare that any covenant or agreement for the purchase or sale—and again the limiting words, "within the province" and "for use in the province"—contained in any agreement in existence at the time of fixing such price shall be varied so that the price shall conform to the price fixed by the Board.

On the face of the legislation it appears that the legislature is dealing solely with the sale within the province for use in the province of petroleum products; legislation in relation to the petroleum industry in its local aspects within the province. There is nothing in the language of the statute which necessarily gives to its enactments an extra-territorial effect.

There is no necessity to refer at any length to the long line of authorities on the constitutional validity or invalidity under the *British North America Act* of this sort of legislation and we are not concerned with whether the legislation appears to us to be commercially fair and reasonable or not. The sole question is whether the provincial legislature had authority to enact such legislation. It is sufficient, I think, to say that the principle to be applied is that so plainly laid down by the Privy Council in the *Board of Commerce* case, (1); the *Fort Frances case* (2); the *Snider* case (3), and in the *Shannon* case (4). Taking the legislation as it stands, alone, secs. 14 and 15 are within the competence of the provincial legislature.

But it is said that if we examine the commissioner's report and the evidence (a part of which only was issued and before the legislature at the time the enactment was made) we shall discover the mischief at which the legislation was aimed and that the real purpose and intent of the legislation was to control the petroleum industry at large and in the State of California particularly, and that the legislation is directed to the control of the industry in its interprovincial and international aspects. Briefly, what is said is that the legislature, with the commissioner's report before it, thought that the large California oil companies having a very limited market in California for their

(1) [1922] 1 A.C. 191.
(2) [1923] A.C. 696.
(3) [1925] A.C. 396.
(4) [1933] A.C. 708.

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fuel oil, due to the warm climatic conditions there, sought a market for their fuel oil in the province of British Columbia and in order to gain that market adopted the policy of dumping their fuel oil into British Columbia for sale at very low prices, with great mischief to the coal industry in British Columbia; but of selling their gasoline, with which there was no natural resource in British Columbia to enter into competition, at exorbitant prices. Upon an examination of the evidence in the elaborate inquiry by the commissioner and of his report it is said that it plainly appears that the hand of the legislature was reaching out far beyond the limits of its own province in an effort to control an integrated industry with wide interprovincial and international activities.

Generally speaking, the Court has no right to interpret legislation by reference to such extraneous material as the evidence taken before and the report of a public inquiry under a Royal Commission. It would be a dangerous course to adopt. The principle was stated by Lord Wright in the *Assam* case, in the House of Lords (1), where, with reference to an attempt to introduce certain recommendations from a report of a Royal Commission to show that the words of the section of a statute there in question were intended to give effect to them, he said:

> But on principle no such evidence for the purpose of showing the intention, that is the purpose or object, of an Act is admissible;

and distinguished the dictum of Lord Halsbury in the *Eastman Photographic* case (2). The statement of Lord Langdale in the *Gorham* case in Moore, 1852 edition, p. 462, was accepted. That statement was this:

> We must endeavour to attain for ourselves the true meaning of the language employed—in the Articles and Liturgy—assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject-matter to which the instruments relate, and the meaning of the words employed.

The furthest the courts have gone recently, I think, is in the case of *Ladore* v. *Bennett* in the Privy Council (3), where Lord Atkin (who had agreed in the House of Lords with the opinion of Lord Wright in the *Assam* case (1)) said:

(1) [1935] A.C. 445, at 458. (2) [1898] A.C. 571.
(3) [1939] A.C. 468.

Their Lordships do not cite this report as evidence of the facts there found, but as indicating the materials which the Government of the Province had before them before promoting in the Legislature the statute now impugned.

That was an action raising a constitutional issue on certain Ontario statutes. There was a complicated piece of municipal legislation whereby the city of Windsor in the province of Ontario and three adjoining municipalities were, on account of their financial difficulties, put into one amalgamated whole. Not only did the parties consent before the Judicial Committee to the report being before their Lordships, but it would be useful, to readily understand the framework of the particular legislation, to have a convenient reference to the problems involved and disclosed by the report.

A rule somewhat wider than the general rule may well be necessary in considering the constitutionality of legislation under a federal system where legislative authority is divided between the central and the local legislative bodies. But even if that be so, the legislation here in question is expressly confined and limited to the sale of the products of the particular industry in, and for use in, the province and must, upon the well settled authorities, be held to be valid legislation.

I have refrained from any mention of an amendment to the statute because I think the above conclusion is inevitable without regard to the amendment. The action did not go to trial until January 16th, 1939. Prior to that, on December 9th, 1938, the legislature amended the statute in question by adding thereto the following as sec. 42:

42. This Act is not intended to implement or carry into effect the recommendations or findings of any report made or to be made by the Commissioner appointed by the Lieutenant-Governor in Council under the "Public Inquiries Act" on the twenty-ninth day of November, 1934; and in construing this Act and in ascertaining its purpose, intention, scope, and effect, no reference shall be made to any such reports; and the Board shall regulate and control the coal and petroleum industries in their Provincial aspects only; and in fixing the price of any product or commodity the Board shall consider only matters that relate to that product or commodity in its Provincial aspect and shall not fix the price of any product or commodity for the purpose of affording protection or assistance to any other product, commodity, or industry, and this Act shall not apply to the importation into or export from the Province of any product or commodity.

The Attorney-General stated to us that during the argument on the interlocutory proceedings for an interim

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injunction counsel for the appellants had contended that the statute was the outcome of the commissioner's inquiry and report and was intended to implement or carry into effect the report and that the real character of the Act was to be gathered from a consideration of the report. The Attorney-General said that the legislature then desired to make a declaration that it had not been its intention to implement or carry into effect any recommendations or findings of the report and that in fixing the price of any product or commodity the Board should consider only matters that relate to the product or commodity in its provincial aspect, and that the Act should not apply to the importation into or export from the province of any product or commodity, and accordingly the legislature passed the above amendment to the statute. The Attorney-General conceded in his argument before us the submission of counsel for the appellants that a legislature cannot support an Act attacked as being *ultra vires* by denying to a citizen access to the courts for purpose of attacking the legislation or by denying to the courts access to the evidence. But he said that the amendment was not in any sense an attempt to deny the appellants any right to attack the constitutional validity of the Act; the amendment was merely to make plain what the intention of the legislature was in view of contentions made during the course of the interlocutory proceedings.

The appeal should be dismissed with costs.

HUDSON J.—The statute in question is clearly on its face within the legislative competence of the British Columbia Legislature. In the case of *Shannon* v. *Lower Mainland Products Company* (1), an Act in many respects similar to the present was upheld by the Judicial Committee. Lord Atkin, in giving the judgment of the Board, repeated what has been the principle of many leading cases, namely, page 720:

> The pith and substance of this Act is that it is an Act to regulate particular businesses entirely within the Province, and it is therefore *intra vires* of the Province.

Mr. Farris, in a very able and exhaustive argument, contended that the Act under consideration in the present

(1) [1938] A.C. 708.

case was designed to affect extra-territorial business, and was not in pith and substance directed to the regulation of particular businesses within the Province.

On examination of the evidence, I am of opinion that the Legislature here at most did no more than take into account extra-territorial marketing conditions and sources of supply in making regulations for the conduct of particular businesses within the Province. In my view, this is something which might be done legitimately. The direct purpose of the Act as expressed was to regulate sales of coal and gasoline taking place within the Province and I think the ultimate object was to do this.

Fortunately we are not concerned with the wisdom or policy of the legislation, and in construing section 91 (2) of the *British North America Act* we are bound by a long series of decisions which preclude us from giving weight to many of the arguments of Mr. Farris, which otherwise might have been very convincing.

Appeal dismissed with costs.

Solicitors for the appellants: *T. E. H. Ellis.*
Solicitor for the respondents: *H. Alan Maclean.*