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* Feb. 3, 4.
* Jun. 17.

IN THE MATTER OF A REFERENCE AS TO WHETHER THE PARLIAMENT OF CANADA HAD LEGISLATIVE JURISDICTION TO ENACT THE NATURAL PRODUCTS MARKETING ACT, 1934, BEING CHAPTER 57 OF THE STATUTES OF CANADA, 1934, AND ITS AMENDING ACT, THE NATURAL PRODUCTS MARKETING ACT AMENDMENT ACT, 1935, BEING CHAPTER 64 OF THE STATUTES OF CANADA, 1935.

Constitutional law—The Natural Products Marketing Act, 1934, 24-25 Geo. V, c. 57, as amended in 1935 by 25-26 Geo. V, c. 64—Constitutional validity—Regulation of trade.

The Natural Products Marketing Act, 1934, and *The Natural Products Marketing Act Amendment Act,* 1935, are *ultra vires* of the Parliament of Canada.

In effect, these statutes attempt and, indeed, profess, to regulate in the provinces of Canada, by the instrumentality of a commission or commissions appointed under the authority of the statute, trade in individual commodities and classes of commodities. The powers of regulation vested in the commissions extend to external trade and matters connected therewith and to trade in matters of interprovincial concern; but also to trade which is entirely local and of purely local

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

concern. Regulation of individual trades, or trades in individual commodities in this sweeping fashion, is not competent to the Parliament of Canada and such a scheme of regulation is not practicable "in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the provincial legislatures" (*Board of Commerce* case, [1922] 1 A.C. 191, at 201). The legislation is not valid as an exercise of the general authority of the Parliament of Canada under the introductory words of section 91, B.N.A. Act, to make laws "for the peace, order and good government of Canada."

REFERENCE by His Excellency the Governor General in Council to the Supreme Court of Canada, in the exercise of the powers conferred by s. 55 of the *Supreme Court Act* (R.S.C., 1927, c. 35), of the following question: Is *The Natural Products Marketing Act,* 1934, as amended by *The Natural Products Marketing Act Amendment Act,* 1935, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

The Order in Council referring the question to the Court reads as follows:

The Committee of the Privy Council have had before them a report, dated 31st October, 1935, from the Minister of Justice, referring to the *Natural Products Marketing Act,* 1934, being chapter 57 of the statutes of Canada, 1934, and according to its long title "An Act to improve the methods and practices of marketing of natural products in Canada and in export trade, and to make further provision in connection therewith" and to its amending Act, *The Natural Products Marketing Act Amendment Act,* 1935, being chapter 64 of the statutes of Canada, 1935.

The Minister observes that doubts exist or are entertained as to whether the Parliament of Canada had jurisdiction to enact the said Acts, or either of them, in whole or in part, and that it is expedient that the question should be referred to the Supreme Court of Canada for judicial determination.

The Committee, accordingly, on the recommendation of the Minister of Justice, advise that the following question be referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the *Supreme Court Act,*—

Is *The Natural Products Marketing Act,* 1934, as amended by *The Natural Products Marketing Act Amendment*

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Act, 1935, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

E. J. LEMAIRE,
Clerk of the Privy Council.

The Natural Products Marketing Act, 1934, by s. 3 authorizes the Governor in Council to establish a board, consisting of such number of persons as he may from time to time determine, to be known as the Dominion Marketing Board, to regulate the marketing of natural products as in the Act provided. By s. 2 (*c*) "'marketing' includes buying and selling, shipping for sale or storage and offering for sale." By s. 2 (*e*) as amended "'natural product' includes animals, meats, eggs, wool, dairy products, grains, seeds, fruit and fruit products, vegetables and vegetable products, maple products, honey, tobacco, lumber and such other natural product of agriculture and of the forest, sea, lake or river and such article of food or drink wholly or partly manufactured or derived from any such product, and such article wholly or partly manufactured or derived from a product of the forest as may be designated by the Governor in Council." The powers of the Board are made exercisable in respect of a "regulated product"; and this expression is defined by sec. 2 (*g*) as follows: "regulated product" means a natural product to which a scheme approved under this Act relates, but does not include (i) in case the said scheme relates only to the product of a part of Canada, such product in so far as it is produced outside that part of Canada; (ii) in case the said scheme relates only to the product marketed outside the province of production, such product in so far as it is marketed within the province of production; (iii) in case the said scheme relates only to the product exported, such product in so far as it is not exported. The powers of the Board are set forth in broad terms in par. (*a*) of sec. 4, ss. 1, of the Act as follows: "The Board shall, subject to the provisions of this Act, have power (*a*) to regulate the time and place at which, and to designate the agency through which the regulated product shall be marketed, to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that shall be marketed by any person at any time, and to prohibit the marketing of any of the regulated product of any grade,

quality or class." Then follows a series of paragraphs in which are more specifically described the Board's functions and powers. To exempt from any determination or order any person or class of persons engaged in the production or marketing of the regulated product or any class, variety or grade of such product; to conduct a pool for the equalization of returns received from the sale of the regulated product and to compensate any person for loss sustained by withholding from the market or forwarding to a specified market any regulated product pursuant to an order of the Board, except in specified cases; to compensate any person in respect of any shipment made pursuant to any determination or order of the Board to a country whose currency is depreciated, in relation to Canadian currency, for loss due to such depreciation; to assist by grant or loan the construction or operation of facilities for preserving, processing, storing, or conditioning the regulated product and to assist research work relating to the marketing of such product; to require any or all persons engaged in the production or marketing of the regulated product to register their names, addresses and occupations with the Board, or to obtain a licence from the Board, subject to cancellation for violation of any provision of the Act or regulation made thereunder; to require returns of full information relating to the production and marketing of the natural product from all persons engaged therein and to inspect the books and premises of such persons; to pay the operating and necessary expenses of the Board; to co-operate with any board or agency established to regulate the marketing of any natural product of such province and to act conjointly with any such provincial board or agency. In addition, by sec. 4, ss. 2 to 8, inclusive, the Board is empowered whenever a scheme for regulation by a local board has been approved, to authorize the local board to exercise such of the powers of the Board outlined in s. 4 as may be necessary for the proper enforcement of the scheme of regulation, and at any time to withdraw such authority from the local Board; to require the local Board to furnish full information from time to time relating to the production and marketing of the regulated product and to advise the local board in all matters relating to the exercise of its powers; to impose (whether the Board be exercising the powers conferred by this Act or by provincial legislation or whenever

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the Board or a local board co-operates or acts conjointly with any provincial board or agency) for the purposes of any scheme of regulation, charges and tolls in respect of the marketing of the whole or any part of the regulated product which shall be payable by such persons engaged in the production or marketing of the regulated product as the Board decides to authorize the local board or such provincial board or agency to act as its agent to collect and disburse the charges or tolls imposed; to utilize, or authorize the local board or provincial board or agency to utilize, the fund created by charges or tolls so imposed for the purposes of such scheme of regulation including the creation of reserves; and any charge or toll so imposed by the Board is declared to be a debt due to the Board recoverable by legal action. The "schemes" to which the Act applies are such marketing schemes as are approved by the Governor in Council and s. 5, ss. (4) provides as follows: (4) Before any scheme is approved the Governor in Council shall be satisfied, (*a*) that the principal market for the natural product is outside the province of production; or (*b*) that some part of the product produced may be exported. Under s. 5, ss. (1) schemes may be submitted for approval by a representative number of persons engaged in the production and marketing or the production or marketing of a natural product, or under s. 9 the Minister designated by the Governor in Council to administer the Act may propose a scheme for the marketing or the regulation of the marketing of a natural product in interprovincial or export trade whenever he is satisfied that the trade and commerce in such product is injuriously affected by marketing conditions through the lack of a local board. Section 10 provides that, whenever a scheme of regulation relates to an area of production which is confined within the limits of a province, the Governor in Council may authorize any marketing board or agency established under the law of that province to be, and to exercise the functions of, a local board with reference to the said scheme. Section 11 empowers the Board to exercise any power conferred upon it by or pursuant to provincial legislation with reference to the marketing of a natural product and to authorize the local board to exercise any such power. In point of fact each of the nine provinces in 1934 passed statutes to enable their respective governments to give

effect, in their respective provinces, to the provisions of the Dominion Act and regulations made thereunder. Section 12 authorizes the Governor in Council to regulate or restrict the importation into Canada of any natural product which enters Canada in competition with a regulated product or regulate or restrict the exportation from Canada of any natural product. Part II of the Act (ss. 16 to 26) provides for investigations by the Minister at the request of the Board or upon his own initiative, "into the cost of production, wages, prices, spread, trade practices, methods of financing, management, policies, grading, transportation and other matters in relation to the production and marketing, adaptation for sale, processing or conversion of any natural or regulated product." (s. 17). The term "spread" is defined in s. 16 (*b*) as follows: (*b*) "spread" means and includes: (i) the charge made by any person by way of commission, flat charge or otherwise for selling any natural or regulated product; (ii) the charge made by any person for the storage, conditioning, re-conditioning, packing, wrapping or otherwise preparing for market any natural or regulated product; (iii) the difference or spread between the price at which any natural or regulated product is purchased and the price at which it is sold; (iv) the difference between the price at which any natural or regulated product is purchased and the sale price of the product resulting from the adaptation for sale, processing or conversion of the aforesaid natural or regulated product." Section 22 provides as follows: "22. Every person who, to the detriment or against the interest of the public, charges, receives or attempts to receive any spread which is excessive or results in undue enhancement of prices or otherwise restrains or injures trade or commerce in the natural or regulated product, shall be guilty of an indictable offence and liable to a penalty not exceeding five thousand dollars or to two years' imprisonment, or, if a corporation, to a penalty not exceeding ten thousand dollars." Sections 23 and 24 provide for prosecutions in a manner similar to that provided for in the *Combines Investigation Act*.

* The judgment of the Court was delivered by

DUFF C.J.—Counsel on behalf of the Dominion based his argument in support of the validity of this statute

* *Reporter's note:* Counsel on the argument of this Reference were the same as those mentioned at p. 365.

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upon two grounds. It is argued, first, that it is competent legislation under the general authority "to make laws for the peace, order and good government of Canada"; and, second, it is competent legislation in relation to matters coming within the second of the enumerated heads of section 91—"The regulation of trade and commerce." It will be convenient to discuss first the last mentioned ground.

In substance, we are concerned with sections, 3, 4 and 5 of the statute.

By section 3, the Governor General is empowered to

> establish a Board to be known as the Dominion Marketing Board to regulate the marketing of natural products as hereinafter provided.

By section 4 (1) the Board is invested with power

> (*a*) to regulate the time and place at which, and to designate the agency through which the regulated product shall be marketed, to determine the manner of distribution, the quantity and quality, grade or class of the regulated product that shall be marketed by any person at any time, and to prohibit the marketing of any of the regulated product of any grade, quality or class;

"Marketed" is used in an extended sense as embracing "buying and selling, shipping for sale or storage and offering for sale."

The Board is also empowered,

> (*c*) to conduct a pool for the equalization of returns received from the sale of the regulated product; * * *
>
> (*f*) to require any or all persons engaged in the production or marketing of the regulated product to register their names, addresses and occupations with the Board, or to obtain a licence from the Board, and such licence shall be subject to cancellation by the Board for violation of any provision of this Act or regulation made thereunder;

Section 5 contains provisions for marketing schemes under which the marketing of a natural product, to which the scheme applies, is regulated by a local board under the supervision of the Dominion Board.

For the purposes of the discussion, it will not be necessary further to particularize the enactments of the statute. These enactments, in our opinion, are not enactments within the contemplation of the second head of section 91, "The regulation of trade and commerce" in the sense which has been ascribed to those words by decisions which are binding upon us and which it is our duty to follow.

It was argued by Mr. Rowell that two recent decisions, *Proprietary Articles Trade Association* v. *Attorney-General*

for Canada (1) and the *Aeronautics* Reference (2) manifest a departure by the Judicial Committee of the Privy Council from the principles governing the application of the residuary clause, as well as of this particular enactment which is also couched in very sweeping terms. In view of the argument addressed to us, and, in view of the character of the enactments under consideration, passed as recently as July, 1934, it would appear to be desirable, if not, indeed necessary, to review afresh the decisions and the grounds of the decisions by which this Court has hitherto supposed itself to be governed in the interpretation and application of head no. 2.

The judgment of the Board in *Parsons* case (3) contains the well known elucidation of the words "regulation of trade and commerce" which received the express approval of the Judicial Committee in *Wharton's* case (4). The later cases, in which the Board had to consider the scope of the sphere of jurisdiction designated by head no. 2 are the *Montreal Street Railway* case (5); *A.G. for Canada* v. *A.G. for Alberta* (6); the *Board of Commerce* case (7); *A.G. for B.C.* v. *A.G. for Canada* (8); *Toronto Electric Commissioners* v. *Snider* (9).

The discussion in *Parsons* case (10) has been many times considered and sometimes criticized. It is, we think, worth while to quote it in full (p. 112):

> The words "regulation of trade and commerce," in their unlimited sense are sufficiently wide if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign governments, requiring the sanction of parliament, down to minute rules for regulating particular trades. But a consideration of the Act shews that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the legislature, when conferring this power on the Dominion parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in section 91 would have been unnecessary; as 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

(1) [1931] A.C. 310.
(2) [1932] A.C. 54.
(3) (1881) 7 A.C. 96, at 112 *et seq.*
(4) [1915] A.C. 340.
(5) [1912] A.C. 333.
(6) [1916] 1 A.C. 588.
(7) [1922] 1 A.C. 191.
(8) [1924] A.C. 222.
(9) [1925] A.C. 396.
(10) (1881) 7 A.C. 96.

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"Regulation of trade and commerce" may have been used in some such sense as the words "regulations of trade" in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have been used in Acts of State relating to trade and commerce. Article V of the Act of Union enacted that all the subjects of the United Kingdom should have "full freedom and intercourse of trade and navigation" to and from all places in the United Kingdom and the Colonies; and Article VI enacted that all parts of the United Kingdom from and after the union should be under the *same* "prohibitions, restrictions, and *regulations of trade.*" Parliament has at various times since the Union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the Articles of Union. Thus the Acts for regulating the sale of intoxicating liquors notoriously vary in the two kingdoms. So with regard to Acts relating to bankruptcy, and various other matters.

Construing, therefore, the words "regulation of trade and commerce" by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of interprovincial concern, and it may be that they would include general regulations of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the legislature of Ontario by No. 13 of section 92.

Having taken this view of the present case, it becomes unnecessary to consider the question how far the general power to make regulations of trade and commerce, when competently exercised by the Dominion parliament, might legally modify or affect property and civil rights in the provinces, or the legislative power of the provincial legislatures in relation to those subjects;

The actual decision, it will be observed was that the authority to legislate for the regulation of trade and commerce does not contemplate the power to regulate by legislation the contracts of a particular business or trade in a single province. But the judgment suggests, although it does not decide, that this power of regulation does not extend to the unlimited regulation of particular trades and occupations. On the other hand, there is nothing in the judgment to indicate that the regulation of external trade is excluded from the scope of the authority, nor is there anything to suggest, whatever the precise scope of the power may be, that, when Parliament is legislating with reference to matters strictly within the regulation of trade and commerce, it is disabled from legislating in regard to

matters otherwise exclusively within the provincial authority if such legislation is necessarily incidental to the exercise of its exclusive powers in relation to that subject.

The subject was further elucidated by the judgment of the Judicial Committee in *A.G. for Canada* v. *A.G. for Alberta* (1). There it was held that this authority does not extend to regulation by a licensing system of "a particular trade in which Canadians would otherwise be free to engage in the provinces." Here again there is no suggestion that trade in a particular commodity, in so far as it is external trade or interprovincial trade, is not within the exclusive regulative authority of the Dominion.

It is convenient at this point to revert to the discussion of the subject which occurred in the *Montreal Street Railway* case (2). The judgment of the Board was written by Lord Atkinson, and the Board included Lord Loreburn and Lord MacNaghten. The controversy concerned the validity of an order made by the Board of Railway Commissioners under the authority of a provision of the Dominion Railways Act which required the owners of the Montreal Street Railway, a local work within the meaning of the 10th heading of section 92, and normally subject, exclusively to the control of the provincial legislature, to enter into an agreement with the owners of the Montreal Park and Island Railway which was a railway subject to the exclusive jurisdiction of the Parliament of Canada, and which connected with the street railway, in relation to the rates to be charged by the proprietors of the street railway in respect of through traffic passing over the street railway and the Park and Island Railway.

Admittedly, the legislature of Quebec had no authority to legislate in relation to such a matter as regards the Dominion undertaking, and on various grounds it was contended that the Dominion Parliament necessarily possessed authority to legislate in relation to through traffic and for the provincial railway in respect of such traffic. This authority was said to be bestowed by, *inter alia,* the residuary clause and by head no. 2 of section 91, " The regulation of trade and commerce." It was necessary for the determination of the appeal that their Lordships should pronounce upon both these contentions. They were examined

(1) [1916] 1 A.C. 588. (2) [1912] A.C. 333.

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in a single passage which we now quote. From the judgment in *A.G. for Ontario* v. *A.G. for Canada* (1) their Lordships adduced the following principles as applicable to the case before them:

(1) that the exception contained in s. 91, near its end, was not meant to derogate from the legislative authority given to provincial legislatures by the 16th subsection of s. 92, save to the extent of enabling the Parliament of Canada to deal with matters, local or private, in those cases where such legislation is necessarily incidental to the exercise of the power conferred upon that Parliament under the heads enumerated in s. 91; (2) that to those matters which are not specified amongst the enumerated subjects of legislation in s. 91 the exception at its end has no application, and that in legislating with respect to matters not so enumerated the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to the provincial Legislature by s. 92; (3) that these enactments, ss. 91 and 92, indicate that the exercise of legislative power by the Parliament of Canada in regard to all matters not enumerated in s. 91 ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any classes of subjects enumerated in s. 92; (4) that to attach any other construction to the general powers which, in supplement of its enumerated powers, are conferred upon the Parliament of Canada by s. 91 would not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces; and, lastly, that if the Parliament of Canada had authority to make laws applicable to the whole Dominion in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject upon which it might not legislate to the exclusion of provincial legislation. (1912, A.C. at p. 343).

Their Lordships then proceeded,

The same considerations appear to their Lordships to apply to two of the matters enumerated in s. 91, namely, the regulation of trade and commerce. Taken in their widest sense these words would authorize legislation by the Parliament of Canada in respect of several of the matters specifically enumerated in s. 92, and would seriously encroach upon the local autonomy of the province. In their Lordships' opinion these pronouncements have an important bearing on the question for decision in the present case, though the case itself in which they were made was wholly different from the present case, and the decision given in it has little if any application to the present case. They apparently established this, that the invasion of the rights of the province which the Railway Act and the Order of the Commissioners necessarily involve in respect of one of the matters enumerated in s. 92, namely, legislation touching local railways, cannot be justified on the ground that this Act and Order concern the peace, order and good government of Canada nor upon the ground that they deal with the regulation of trade and commerce.

The general expressions in this passage must, of course, be read in the light of the controversy with which their

(1) [1896] A.C. 491.

Lordships were dealing. They were, as we have seen, discussing the question raised as to the authority of the Dominion in exercise of its powers in regard to regulation of trade and commerce to legislate for a local work or undertaking of the character assigned, *prima facie*, exclusively to the jurisdiction of the province by section 92 (10). But the passage, as was pointed out in this court in *Lawson* v. *Interior Tree Fruit & Vegetable Committee* (1), signalizes the distinction between that which is national in its scope and concern and that which in each of the provinces is of private or local, that is to say, of provincial interest, which must be observed in deciding whether a particular enactment falls within the Dominion authority respecting the regulation of trade and commerce.

In *A.G. for B.C.* v. *A.G. for Canada* (2), the Board dealt with the subject of the regulation of external trade. The question before the Board in that case concerned the authority of the Dominion of Canada to impose customs duties upon alcoholic liquors imported into Canada by the Government of British Columbia for the purpose of sale by that government. It was pointed out in the judgment delivered by Lord Buckmaster; that the imposition of customs duties may have for its object regulation of trade and commerce, or it may have the twofold purpose of regulating trade and commerce and raising money; and it was held that section 125 of the B.N.A. Act, which prohibits the taxation of the property of the Crown, ought not to be so construed and applied as to interfere with the authority of the Parliament of Canada to regulate trade and commerce and to impose customs duties for that purpose.

This decision seems very plainly to involve the proposition that, by an enactment of the Parliament of Canada, trade in a particular commodity or class of commodities may be subjected to regulation through the instrumentality of customs duties.

There is another decision the mention of which ought not to be omitted, viz., the decision of 1885 of the Judicial Committee on the reference concerning the validity of the Dominion Liquor Licence Acts where their Lordships held that a system for the local licensing of the liquor trade was

(1) [1931] S.C.R. 357, at 367. (2) (1924) A.C. 222.

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beyond the competence of the Dominion Parliament to establish.

It would appear to result from these decisions that the regulation of trade and commerce does not comprise, in the sense in which it is used in section 91, the regulation of particular trades or occupations or of a particular kind of business such as the insurance business in the provinces, or the regulation of trade in particular commodities or classes of commodities in so far as it is local in the provincial sense; while, on the other hand, it does embrace the regulation of external trade and the regulation of interprovincial trade and such ancillary legislation as may be necessarily incidental to the exercise of such powers.

There is another class of regulation which has been held to fall within the purview of head no. 2 (*John Deere Plow Co.* v. *Wharton* (1): regulation which is auxiliary to some Dominion measure dealing with matters not falling within section 92, such, for example, as the incorporation of Dominion companies.

Obviously, these propositions do not furnish a complete definition of the authority given by the second subdivision of section 91. Logically, they leave scope for a possible jurisdiction in relation to "general trade and commerce" or in relation to "general regulations of trade applicable to the whole Dominion"—phrases employed in the judgment in Parson's case. Broadly speaking, they have their basis in the consideration mentioned in *Parsons* case (2) arising from the specification of particular subjects in section 91 and from the necessity to limit the natural scope of the words,

> in order to preserve from serious curtailment, if not from virtual extinction, the degree of autonomy, which as appears from the scheme of the Act as a whole, the provinces were intended to enjoy. (*Lawson's* case (3)).

Restrictions upon the natural meaning of the words, in so far as they are dictated by force of such considerations, may properly be accepted as the necessary result of the application of settled principles of construction pursuant to which, from the beginning, it has been recognized that, in considering sections 91 and 92, the language of each must be read in light of the other and in some cases even modified for the purpose of giving effect to the two sections.

(1) [1915] A.C. 330. (2) (1881) 7 A.C. 96.
(3) [1931] S.C.R. 357 at 366.

The necessity for some such restriction seems to be demonstrable by reference to the concluding clause of s. 91 which is in these words:

> Any 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.

In *A.G. for Ontario* v. *A.G. for Canada* (1) it was held that the language of this exception was meant to include all matters enumerated within the sixteen heads of s. 92; and in *A.G. for Canada* v. *A.G. for Ontario* (2) it was laid down and decided that section 91 contains a legislative declaration that legislation upon any matter falling strictly within any of the classes of subjects specially enumerated in s. 91 is not within the competence, as matter of legislation, of a provincial legislature under s. 92.

> Whenever * * * a matter is within one of these specified classes, their Lordships said, legislation in relation to it by a Provincial Legislature is in their Lordships' opinion incompetent.

The decision in *Hodge* v. *The Queen* (3) 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 the 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 Alberta* v. *A.G. for Canada* (4). Such was also, it would appear, the necessary effect of the judgment of the Board on the Reference in 1885 in relation to the Dominion Licensing Acts which has already been mentioned.

It does not seem to admit of serious dispute that, if, regards natural products, as defined by the Act, the provinces are destitute of the powers to regulate the dealing with natural products in respect of the matters designated in section 4 (1), a, the powers of the provinces are much more limited than they have generally been supposed to be. If this defect of power exists in relation to natural products

(1) (1896) A.C. 359.
(2) (1898) A.C. 700, at 715.
(3) (1883) 9 A.C. 117.
(4) [1928] A.C. 475.

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it exists in relation to anything that may be the subject of trade. Furthermore, if the Dominion has power to enact section 4 (1) f, as a provision falling strictly within "the regulation of trade and commerce," then the provinces are destitute of the power to regulate, by licensing persons engaged in the production, the buying and selling, the shipping for sale or storage and the offering for sale, in an exclusively local and provincial way of business of any commodity or commodities. The acceptance of this view of the powers of the provinces would seem to be inconsistent, not only with *Hodge* v. *The Queen* (1), but with the judgment in the *Montreal Street Railway* case (2) as well as with the judgment in the *Board of Commerce* case (3). The judgment in this latter case seems very plainly to declare that in the absence of very special circumstances such as those indicated in the judgment of the Board, such matters as subjects of legislation fall within the jurisdiction of the provinces under section 92.

The enactments in question, therefore, in so far as they relate to matters which are in substance local and provincial are beyond the jurisdiction of Parliament. Parliament cannot acquire jurisdiction to deal in the sweeping way in which these enactments operate with such local and provincial matters by legislating at the same time respecting external and interprovincial trade and committing the regulation of external and interprovincial trade and the regulation of trade which is exclusively local and of traders and producers engaged in trade which is exclusively local to the same authority (*King* v. *Eastern Terminal Elevators* (4)).

It should also be observed that these enactments operate by way of the regulation of dealings in particular commodities and classes of commodities. The regulations contemplated are not general regulations of trade as a whole or regulations of general trade and commerce within the sense of the judgment in Parson's case.

We come now to the judgments in the *Board of Commerce* case and *Snider's* case (5).

In *Snider's* case (5), the view of the Board is stated in the following passage:

(1) (1883) 9 A.C. 117.
(2) [1912] A.C. 33.
(3) [1922] 1 A.C. 191.
(4) [1925] S.C.R. 434.
(5) [1925] A.C. 396.

Nor does the invocation of the specific power in s. 91 to regulate trade and commerce assist the Dominion contention. In *Citizens Insurance Co.* v. *Parsons* (1), it was laid down that the collocation of this head (No. 2 of s. 91), with classes of subjects enumerated of national and general concern, indicates that what was in the mind of the Imperial Legislature when this power was conferred in 1867 was regulation relating to general trade and commerce. Any other construction would, it was pointed out, have rendered unnecessary the specific mention of certain other heads dealing with banking, bills of exchange and promissory notes, as to which it had been significantly deemed necessary to insert a specific mention. The contracts of a particular trade or business could not, therefore, be dealt with by Dominion legislation so as to conflict with the powers assigned to the Provinces over property and civil rights relating to the regulation of trade and commerce. The Dominion power has a really definite effect when applied in aid of what the Dominion Government are specifically enabled to do independently of the general regulation of trade and commerce, for instance, in the creation of Dominion companies with power to trade throughout the whole of Canada. This was shown in the decision in *John Deere Plow Co.* v. *Wharton* (2). The same thing is true of the exercise of an emergency power required, as on the occasion of war, in the interest of Canada as a whole, a power which may operate outside the specific enumerations in both ss. 91 and 92. And it was observed in *A.G. for Canada* v. *A.G. for Alberta* (3), in reference to attempted Dominion legislation about insurance, that it must now be taken that the authority to legislate for the regulation of trade and commerce does not extend to the regulation, for instance, by a licensing system, of a particular trade in which Canadians would otherwise be free to engage in the provinces. It is, in their Lordships' opinion, now clear that, excepting 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.

It is quite obvious that their Lordships are here not dealing with the regulation of external trade or the regulation of trade in matters of interprovincial concern. For our present purpose, it seems sufficient to say that their Lordships deemed it necessary or expedient for the purpose of dealing with an argument addressed to them to discuss the scope of the power conferred by head no. 2 of section 91; and that, on any conceivable construction of the words, it would appear to be impossible consistently with them to support the authority of the statute under consideration.

As to the decision on the *Aeronautics Reference* (4) and the *Radio Reference* (5), it does not seem necessary to enter upon a minute analysis of the judgments in those cases. The decision on the *Radio Reference* (5) proceeded on two grounds: first, for the reasons fully explained in the judg-

(1) (1881) 7 A.C. 96, at 112.
(2) [1915] A.C. 330, at 340.
(3) [1916] 1 A.C. 588, at 596.
(4) [1932] A.C. 54.
(5) [1932] A.C. A.C. 304.

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ment, the legislation in question (being legislation for giving effect to an international obligation binding upon Canada) was within the ambit of the powers conferred by the residuary clause; and, second, that instruments employed in radio transmission fall within the class of undertakings which, by the combined operation of head no. 10 of section 92 and head no. 29 of section 91, are within the exclusive jurisdiction of Canada. In the last mentioned judgment it was pointed out that the decisions in the *Aeronautics Reference* (1) proceeded mainly upon the application of section 132. The subject-matters of the enactments and regulations actually or hypothetically considered in those two cases have no sort of resemblance to the subject matter of this legislation.

There is nothing in either of these judgments to justify an inference that their Lordships intended to overrule the long series of their own decisions hereinbefore mentioned; or the reasons upon which those decisions were founded.

There is one further observation which, perhaps, ought not to be omitted although it may be a mere corollary of what has already been said. Legislation necessarily incidental to the exercise of the undoubted powers of the Dominion in respect of the regulations of trade and commerce is competent although such legislation may trench upon subjects reserved to the provinces by section 92, but it cannot, we think, be seriously contended that sweeping regulation in respect of local trade, such as we find in this enactment, is, in the proper sense, necessarily incidental to the regulation of external trade or interprovincial trade or both combined.

The scheme of this statute in respect of its essential enactments would not appear to be practicable as a legislative scheme.

in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the provincial legislatures

to quote from the judgment of the Judicial Committee *in Re the Board of Commerce Act* (2).

Turning now to the contention that this statute is a valid exercise of the power of Parliament under the introductory clause of section 91, there is a preliminary observation to be made. This argument has been pressed upon us in

(1) [1932] A.C. 54.

(2) [1922] 1 A.C. 191, at 201.

support of six of the statutes which have been referred to us for consideration. These are the statutes relating to the *Minimum Wages,* to *Limitation of Hours of Work,* to a *Weekly Rest Day;* to *Employment and Social Insurance;* to *Farmers' Creditors Arrangements* and to the statute immediately under consideration, the *Natural Products Marketing Act.* The discussion which follows was written with special reference to the first three of these statutes; the argument upon the reference relating to them being that, apart altogether from the circumstance that the subject matters of the enactments are subjects of international agreements in respect of which international obligations have been assumed, they are dealt with in aspects which do not fall under section 92 and can only be the subject matter of legislation under the initial clause of section 91. What follows, however, in substance pertains to the argument as presented in support of all the statutes mentioned and it has been thought convenient to produce it in this place.

It is important not to lose sight of the language of the statute itself. The initial words of section 91 empower

> the Queen by and with the advice and consent of the Senate and the House of Commons 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 this Act assigned exclusively to the legislatures of the provinces.

By section 92,

> in each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects

enumerated. These classes of subjects include (No. 13) Property and Civil Rights in the Province.

By section 94,

> Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any province unless and until it is adopted and enacted as law by the legislature thereof.

Section 94, it will be observed, has no application to Quebec.

Language could not be more plain or, indeed, more explicit to declare that the subjects, Property and Civil Rights,

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are not subjects assigned to the Parliament of Canada under the initial words of section 91.

We are not concerned with the enumerated subjects assigned to Parliament under the second limb of that section; or with the concluding paragraph of the section which, as the Courts have recognized, has obviously no application to the first limb of the section, which alone is now pertinent.

It is settled by the decisions of the Judicial Committee that the phrase "Property and Civil Rights" is used in the "largest sense," subject, of course, to the limitations arising expressly from the exception of the enumerated heads of section 91, and impliedly from the specification of subjects in section 92.

It is to be observed, said the Board in *Citizens Insurance Co.* v. *Parsons* (1), that the same words, "civil rights," are employed in the Act of 14 Geo. 3, c. 83, which made provision for the Government of the Province of Quebec. Section 8 of that Act enacted that His Majesty's Canadian subjects within the province of Quebec should enjoy their property, usages, and other civil rights, as they had before done, and that in all matters of controversy relative to property and civil rights resort should be had to the laws of Canada, and be determined agreeably to the said laws. In this statute the words "property" and "civil rights" are plainly used in their largest sense; and there is no reason for holding that in the statute under discussion they are used in a different and narrower one.

The legislation admittedly affects civil rights and interferes with, and controls, and regulates the exercise in every one of the provinces of the civil rights of the people in those provinces; but it is said that the real subject matter of the legislation is not these civil rights, which are controlled and regulated, but something else.

The initial clause of section 91 has been many times considered. There is no dispute now that the exception which excludes from the ambit of the general power all matters assigned to the exclusive authority of the legislatures must be given its full effect. Nevertheless, it has been laid down that matters normally comprised within the subjects enumerated in section 92 may, in extraordinary circumstances, acquire aspects of such paramount significance as to take them outside the sphere of that section.

The argument is mainly supported by two sentences in the judgment of the Board in *A.G for Ontario* v. *A.G. for Canada* (2). The judgment of the Board in that case was

(1) (1881) 7 A.C. 96, at 111. (2) [1896] A.C. 348.

directed to the answers to be given to certain questions submitted by the Governor General in Council to this Court, all of which questions immediately concerned the jurisdiction of a provincial legislature in respect of the prohibition of certain phases of the liquor traffic. The two sentences occur in the discussion of the seventh question which relate to the jurisdiction of the Ontario Legislature to enact a section of a statute of that Province entitled "An Act respecting local option in the matter of liquor selling." In the course of that discussion, their Lordships dealt with the general authority given to the Parliament of Canada under the first of the introductory enactments of section 91 which is quoted above, and their Lordships observed,

* * * to those matters which are not specified among the enumerated subjects of legislation, the exception from s. 92, which is enacted by the concluding words of s. 91, has no application; and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to provincial legislatures by s. 92. These enactments appear to their Lordships to indicate that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject enumerated in s. 92 upon which it might not legislate, to the exclusion of the provincial legislatures.

Their Lordships proceeded, in the two sentences which are now mainly relied upon,

Their Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest of the Dominion. But great caution must be observed in distinguishing between that which is local and provincial, and therefore within the jurisdiction of the provincial legislatures, and that which has ceased to be merely local or provincial, and has become matter of national concern, in such sense as to bring it within the jurisdiction of the Parliament of Canada.

It seems to us right, if these two sentences are to be properly understood, that they should be read with the preceding sentences; and experience seems to shew that there

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has been a disposition not to attend to the limits implied in the carefully guarded language in which the Board expressed itself. It has been assumed, apparently, that they lay down a rule of construction the effect of which is that all matters comprised in any one of the enumerated subdivisions of section 92 may attain "such dimensions as to . . . cease to be merely local or provincial" and become in some other aspect of them matters relating to the "peace, order and good government of Canada" and subject to the legislative jurisdiction of the Parliament of Canada.

The difficulty of applying such a rule to matters falling within the first subdivision, for example, of section 92, which relates to the amendment of the provincial constitutions "notwithstanding anything in this Act," must be very great. On the face of the language of the statute, the authority seems to be intended to be absolute. In other words, it seems to be very clearly stated that matters comprised within the subject matter of the constitution of the province "except as regards the office of Lieutenant-Governor" are matters local and provincial, and that they are not matters which can be comprised in any of the classes of subjects of section 91.

Then the decision in the *Montreal Park & Island Railway v. City of Montreal* (1) seems to be final upon the point that local works and undertakings, subject to the exceptions contained in subdivision no. 10 of section 92 and matters comprised within that description, are matters local and provincial within the meaning of section 92 and excepted from the general authority given by the introductory enactment of section 91.

The same might be said of the solemnization of marriage in the province. Marriage and divorce are given without qualification to the Dominion under subdivision 26 of section 91, but the effect of section 92 (12), it has been held, is to exclude from the Dominion jurisdiction in relation to marriage and divorce the subject of solemnization of marriage in the province. It is very difficult to conceive the possibility of solemnization of marriage, in the face of this plain declaration by the legislature, assuming aspects which would bring it within the general authority of the

(1) [1912] A.C. 333.

Dominion in relation to peace, order and good government, in such fashion, for example, as to enable the Dominion to prohibit or to deprive of legal effect a religious ceremony of marriage. The like might be said of no. 2, Taxation within the Province; the Borrowing of Monies on the Sole Credit of the Province; Municipal Institutions in the Province; and the Administration of Justice, including the constitution of the Courts and Procedure in Civil Matters in the Courts.

In the *Manitoba Licence Holders* case (1), Lord Macnaghten, speaking for a Board which included Lord Hobhouse, Lord Davey, Lord Robertson and Lord Lindley, said that, in their Lordships' view, it was doubtful if the Canada Temperance Act could be sustained as valid legislation by the Dominion on the assumption that the matter of statute was comprised within section 13.

* * * a careful perusal of the judgment (in *A.G. for Ontario* v. *A.G. for the Dominion* (2)), leads to the conclusion that, in the opinion of the Board, the case fell under No. 16 rather than under No. 13. And that seems to their Lordships to be the better opinion (3).

The judgment proceeds:—

Indeed, if the case is to be regarded as dealing with matters within the class of subjects enumerated in No. 13, it might be questionable whether the Dominion Legislature could have authority to interfere with the exclusive jurisdiction of the province in the matter.

Lord Davey, who took part in this judgment, was a member of the Board which pronounced the judgment containing the two sentences under discussion.

As we have said, Lord Watson's language is carefully guarded. He does not say that every matter which attains such dimensions as to effect the body politic of the Dominion falls thereby within the introductory matter of section 91. But he said that "some matters" may attain such dimensions as to affect the body politic of the Dominion and, as we think the sentence ought to be read having regard to the context, in such manner and degree as may "justify the Canadian Parliament in passing laws for their regulation or abolition. . . ." So, in the second sentence, he is not dealing with all matters of "national concern" in the broadest sense of those words, but only those which are matter of national concern "in

(1) [1902] A.C. 73. (2) [1896] A.C. 348.
(3) [1902] A.C. 78.

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such sense" as to bring them within the jurisdiction of the Parliament of Canada.

The application of the principle implicit in this passage must always be a delicate and difficult task. That is shewn by reference to the history of the Canada Temperance Act. The prohibitory clauses of the legislation undoubtedly do affect civil rights directly but, in *Russell v. The Queen* (1), the Board took the view that the real subject matter of the legislation was not property and civil rights, but matter connected with public order and having a close relation to the criminal law. It was likened to "laws which place restrictions on the sale or custody of poisonous drugs, or of dangerously explosive substances . . . on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence . . . to violate these restrictions. . . ." It was described as "legislation . . . relating to public order and safety," and belonging to the class of "Laws . . . for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment. . . ."

Unfortunately, on this point, the case was unargued, Mr. Benjamin conceding that the enactments would have fallen within the general authority of the Dominion if it had been brought into force immediately throughout every part of the Dominion. The difficulty has been pointed out more than once of reconciling this decision with the subsequent decision of a very powerful Board in the Dominion Liquor Licence case, in which an Act of the Dominion Parliament regulating by licence the sale of liquor throughout the Dominion was held to be *ultra vires* notwithstanding the following preamble:

> Whereas it is desirable to regulate the traffic in the sale of intoxicating liquor, and it is expedient that the law respecting the same should be uniform throughout the Dominion, and that provision should be made in regard thereto for the better preservation of peace and order;

And, in the judgment of Lord Watson in *A.G. for Ontario* v. *A.G. for Canada* (2) it is observed (p. 362):

> The judgment of this Board in *Russell* v. *Regina* (2) has relieved their Lordships from the difficult duty of considering whether the Canada Temperance Act of 1886 relates to the peace, order and good government of Canada, in such sense as to bring its provisions within the competency of the Canadian Parliament.

(1) (1881) 7 A.C. 829. (2) [1896] A.C. 348.

Russell v. *The Queen* (1) has been explained in a more recent decision and we shall come to that in a moment. The point we are now concerned with is this: The question whether the prohibition and the regulation of the right to manufacture or deal in intoxicating liquors throughout the Dominion could, by reason of its analogy to legislation regulating or suppressing the sale of poisonous drugs or explosives, the manufacture and sale of poisonous drugs and explosives, and the connection between the matters dealt with and public order and the criminal law, be justified as legislation within the initial clause of section 91 is a question in respect of which the great judges who had to consider the cases we have mentioned found themselves in doubt and difficulty. Lord Watson's admonition to the courts to observe "great caution" in considering such matters is one that will not be lightly disregarded by prudent judges. The words of the passage in Lord Watson's judgment in themselves are not intended, obviously, to provide a test for determining in any given case whether a matter falling within "Property and Civil Rights" in the province has acquired such aspects as to take it out of the classes of subjects dealt with in section 92. The interpretation of Lord Watson's language in this sense by the judgment of the Board in *Montreal* v. *Montreal Street Railway* (2) is, if we may say so, fully justified by that judgment when read as a whole. We may add that Lord Macnaghten, who wrote the judgment in the *Manitoba Licence Holders* case (3), was also a member of the Board who decided the *Montreal* case (2). In performing the very difficult task of deciding upon such questions, the courts must have regard to the provisions of the B.N.A. Act as a whole and to the practical application of the introductory enactment of section 91 in the decisions of the courts. In considering these decisions, it is important to read what is said in the light of the thing that was decided; and it is fundamental that the interpretation and application of sections 91 and 92 of the B.N.A. Act cannot be controlled by particular expressions used in a judgment torn from their context and given the broadest meaning of which the words are capable without any reference

(1) (1881) 7 A.C. 829. (2) [1912] A.C. 333.
(3) [1902] A.C. 73.

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to that context or to the particular controversy to which the language was directed.

The necessity for Lord Watson's admonition becomes more clear when we recall that there is only one case in which the Judicial Committee has held that legislation with regard to matters which were admittedly *ex facie* civil rights within a province, had by reason of exceptional circumstances acquired aspects and relations bringing them within the ambit of the introductory clause. That case is *Fort Frances Pulp & Power Co.* v. *Manitoba Press* (1).

Before dealing with the *Fort Frances* case (1), it will be necessary to refer to two other decisions, in the *Board of Commerce Act* case (2) and in *Toronto Electric Commissioners* v. *Snider* (3).

In the Board of Commerce case the Judicial Committee had to consider legislation by which a Dominion Board was constituted and empowered, broadly speaking, to inquire into, and prohibit, profiteering and practices in connection therewith in dealings in the necessaries of life. In particular, the Board had authority to regulate the prices of such necessaries of life.

The question arose upon a case stated as to the validity of an order made by the Board regulating the prices of ready made clothing in certain establishments in Ottawa. The validity of the order was attacked by the associations of manufacturers concerned and was supported by counsel on behalf of the Board and of the Dominion. The litigation raised the concrete question *inter partes* as to the legality of the particular order; and the answer to that question turned upon the answer to the question concerning the validity of the legislation, which it was, therefore, essential to determine. The statute was supported on various grounds and, among others, on the ground that in the year 1919, when it was enacted, the evils of hoarding and high prices in respect of the necessaries of life had attained such dimensions "as to affect the body politic of Canada." Nobody denied the existence of the evil. Nobody denied that it was general throughout Canada. Nobody denied the importance of suppressing it. Nobody denied that it prejudiced and seriously prejudiced the well being of the

(1) [1922] A.C. 695. (2) [1922] 1 A.C. 191.
(3) [1925] A.C. 396.

people of Canada as a whole, or that in a loose, popular sense of the words it "affected the body politic of Canada." Nevertheless, it was held that these facts did not constitute a sufficient basis for the exercise of jurisdiction by the Dominion Parliament under the introductory clause in the manner attempted. The Board said that in special circumstances, such as those of a great war, the interest of the Dominion in the matters might conceivably become of such paramount and overriding importance as to lie outside the heads of section 92 and not be covered by them. But it is, they held, quite another matter to say that under normal circumstances, general Canadian policy can justify interference, on the scale of the statutes than in controversy, with the property and civil rights of the inhabitants of the provinces.

It has already been observed that circumstances are conceivable, such as those of war or famine, when the peace, order and good government of the Dominion might be imperilled under conditions so exceptional that they require legislation of a character in reality beyond anything provided for by the enumerated heads in either s. 92 or s. 91 itself. Such a case, if it were to arise, would have to be considered closely before the conclusion would properly be reached that it was one which could not be treated as falling under any of the heads enumerated. Still, it is a conceivable case, and although great caution is required in referring to it, even in general terms, it ought not, in the view their Lordships take of the British North America Act, read as a whole, to be excluded from what is possible. For throughout the provisions of that Act there is apparent the recognition that subjects which would normally belong exclusively to a specifically assigned class of subject may, under different circumstances and in another aspect, assume a further significance. Such an aspect may conceivably become of paramount importance, and of dimensions that give rise to other aspects. This is a principle which, although recognized in earlier decisions, such as that of *Russell* v. *The Queen* (1), both here and in the Courts of Canada, has always been applied with reluctance, and its recognition as relevant can be justified only after scrutiny sufficient to render it clear that the circumstances are abnormal. In the case before them, however important it may seem to the Parliament of Canada that some such policy as that adopted in the two Acts in question should be made general throughout Canada, their Lordships do not find any evidence that the standard of necessity referred to has been reached, or that the attainment of the end sought is practicable, in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the Provincial Legislatures (2).

The reluctance of the Courts to give effect to such arguments as that now under consideration is illustrated also in *Snider's case* (3). The legislation in question there was

(1) (1881) 7 A.C. 829. (2) [1922] 1 A.C. 191, at 200.
(3) [1925] A.C. 396.

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framed for the purpose of dealing with industrial disputes and authorized the Minister of Labour to take steps to convene, in the case of such a dispute, a Board composed of a representative of the workmen, a representative of the employer, and a third person to be nominated by the Minister of Labour himself. The Act prohibited a strike or lock-out pending the consideration of a dispute by the Board. The importance of the matters dealt with by the statute, the fact that the statute was making a provision for meeting a condition which prevailed throughout the whole of Canada and for dealing with industrial disputes which, in many and, indeed, most cases, would affect people in more than one province, the fact that the machinery provided had proved to be a valuable instrument in the interests of industrial peace, were not disputed. Nevertheless, the Board negatived the existence of

> the general principle that the mere fact that Dominion legislation is for the general advantage of Canada, or is such that it will meet a mere want which is felt throughout the Dominion, renders it competent if it cannot be brought within the heads enumerated specifically in section 91.

The judgment of the Board proceeds:—

> No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of s. 91, conferring general powers in relation to peace, order and good government simply because such cases are not otherwise provided for. But instances of this, as was pointed out in the judgment in *Fort Frances Pulp & Power Co.* v. *Manitoba Free Press* (1) are highly exceptional. Their Lordships think that the decision in *Russell* v. *The Queen* (2) can only be supported to-day, not on the footing of having laid down an interpretation, such as has sometimes been invoked in the general words at the beginning of s. 91, but on the assumption of the Board, apparently made at the time of deciding the case of *Russell* v. *The Queen* (2), that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded an analogous. It is plain from the decision in the *Board of Commerce* case (3) that the evil of profiteering could not have been so invoked, for Provincial Powers, if exercised, were adequate to it. Their Lordships find it difficult to explain the decision in *Russell* v. *The Queen* (4) as more than a decision of this order upon facts, considered to have been established at its date rather than upon general law.

The principle enunciated in this last paragraph had been applied in the *Fort Frances* case (1), the authority of which

(1) [1923] A.C. 695.
(2) (1881) 7 A.C. 829.
(3) [1922] 1 A.C. 191.
(4) [1932] A.C. 71.

seems to be recognized in the judgment in the *Aeronautics Reference* (1).

On behalf of the Dominion it is argued that the judgment in the *Aeronautics* case (1) constitutes a new point of departure. The effect of that judgment, it seems to be argued, is that if, in the broadest sense of the words, the matters dealt with are matters " of national concern " matters which " affect the body politic of the Dominion," jurisdiction arises under the introductory clause. One sentence is quoted from the judgment in the *Aeronautics* case (1) which we will not reproduce because we do not think their Lordships can have intended in that sentence to promulgate a canon of construction for sections 91 and 92. We see nothing in the judgment in the *Aeronautics* case (1) to indicate that their Lordships intended to detract from the judicial authority of the decisions in the *Combines* case (2) and *Snider's* case (3).

In the *Aeronautics* case (1), it is true, their Lordships called attention to the circumstance that, by section 132, the Dominion possesses powers to legislate in relation to matters which, in the domestic sense, would fall within section 92 when these matters have become affected by an international obligation by which Canada is bound; and in the subsequent case, reported in the same volume of the Appeal Cases, the *Radio Reference* (4), it was held that matters affected by an obligation arising under an international arrangement, not falling within section 132, but constituted in virtue of powers acquired in course of the recent constitutional developments, would fall within the general authority of section 91 because such international obligations were not comprehended within any of the specific subjects enumerated within section 91 or section 92; and in the *Aeronautics* case (1), as already observed, the authority of the decision in the *Fort Frances* case (5) is expressly recognized. The judgments in the *Combines* case (2), the *Fort Frances* case (5), *Snider's* case (3), obviously have no reference to legislation dealing with matters of civil right

(1) [1932] A.C. 71.
(2) [1922] 1 A.C. 191.
(3) [1925] A.C. 396.
(4) [1932] A.C. 305.
(5) [1923] A.C. 695.

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from the international point of view. We are bound, in our view, by the decisions in the *Combines* case (1) and in *Snider's* case (2) as well as by the decision in the *Fort Frances* case (3), and, consistently with those decisions, we do not see how it is possible that the argument now under discussion can receive effect.

To summarize: in effect, this statute attempts and, indeed, professes, to regulate in the provinces of Canada, by the instrumentality of a commission or commissions appointed under the authority of the statute, trade in individual commodities and classes of commodities. The powers of regulation vested in the commissions extend to external trade and matters connected therewith and to trade in matters of interprovincial concern; but also to trade which is entirely local and of purely local concern.

Regulation of individual trades, or trades in individual commodities in this sweeping fashion, is not competent to the Parliament of Canada and such a scheme of regulation is not practicable

> in view of the distribution of legislative powers enacted by the Constitution Act, without the co-operation of the provincial legislatures

to quote from the judgment of the Judicial Committee in the *Board of Commerce* case (4).

The legislation, for the reasons given, is not valid as an exercise of the general authority of the Parliament of Canada under the introductory words of section 91 to make laws "for the peace, order and good government of Canada."

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(1) [1932] 1 A.C. 191.
(2) [1925] A.C. 396.
(3) [1923] A.C. 695.
(4) [1922] 1 A.C. 191 at 201.