PROVINCIAL LABOUR LEGISLATION AND DOMINION RAILWAY COMPANIES

In Bora Laskin's article on Collective Bargaining in Ontario in the November issue of the REVIEW, the statement is made that the Ontario Collective Bargaining Act

> could not, of course, reach those industries which fall within the exclusive legislative authority of the Parliament of Canada by virtue of section 91 (29) and section 92 (10) of the B.N.A. Act.

Mr. Laskin apparently believes that legislation concerning collective bargaining between companies operating transport or communication agencies which extend beyond the bounds of any one province must be enacted by the Parliament of Canada. Opinions have been expressed from time to time that the provincial Legislatures have no power to enact laws for the protection of persons employed by railway companies, minimum wage laws, laws limiting hours and so on. Is there any judicial authority for this view?

The new Quebec Public Service Employees Disputes Act is declared to apply, *inter alia*, to the transmission of messages by telephone or telegraph and to transport and navigation, but it expressly excludes railways which are "under the jurisdiction of the Parliament of Canada." Are "lines of railway" within Dominion jurisdiction and "lines" of telegraphs or of telephones not?

Noteworthy, too, is the comment of the Saskatchewan Commission on Employer-Employee Relations, December 1, 1943, that provincial legislation with respect to collective bargaining cannot affect railways, express companies and air-line companies. It is significant, however, that the Railway Association of Canada feared that such legislation might apply to its constituent companies. The weight of authority seems to lie with the companies.

In *Bonsecours* v. *C.P.R.*, [1899] A.C. 367, the Judicial Committee held that

> the B.N.A. Act, whilst it gives the legislature control of the appellant's railway, *qua* railway, to the Parliament of the Dominion, does not declare that the railway shall cease to be part of the province in which it is situated or that it shall, in other respects, be exempted from the jurisdiction of the provincial legislatures.

In *Great West Saddlery Company* v. *The King*, [1921] 2 A.C. at p. 117, it was pointed out that in the *Bonsecours* case it had been

held that "the railway company was not exempted from the obligation of a provincial law applicable to all land owners without distinction". Can it be considered exempt from a law applicable to all employers?

As regards workmen's compensation, for example, there appears to be no distinction between a railway or shipping company and other employers. The Ontario Workmen's Compensation for Injuries Act was held in 1890 to be—

> not legislation respecting such local works and undertakings as are excepted from the legislative jurisdiction of the provinces by art. 10 of s. 92 of the B.N.A. Act. It touches civil rights in the provinces. (17 S.C.R. 316).

Again, in [1920] A.C. 184, in a case arising from the loss outside territorial waters of the British Columbia crew of a C.P.R. steamship, Lord Haldane stated the position in these words:

> No doubt for some purposes the law sought to be enforced affects the liberty to carry on its business of a Dominion railway company to which various provisions of s. 91 of the B.N.A. Act of 1867 apply. But for other purposes, with which the Legislature of British Columbia had jurisdiction to deal under s. 92, it was competent to that Legislature to pass laws regulating the civil duties of a Dominion railway company which carried on business within the Province and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 within the jurisdiction of the province.

Similarly, in a Manitoba case, the Judicial Committee, through Duffy J., distinguished between the Dominion Railway Act which

> was passed by Parliament in exercise of its jurisdiction over that subject. The Workmen's Compensation Act is an Act passed by the Province of Manitoba in exercise of its jurisdiction over civil rights imposing upon employers certain responsibilities and giving employees certain rights in respect of injuries arising out of industrial accidents. The enactments deal with different subject-matter, although the circumstances of a particular case may bring it within the scope of both enactments, in which case, if a conflict arises, it is the Dominion legislation which prevails. But such conflicts arise only incidentally, and the fact that they do arise is not a legitimate ground for implying words of exception in one of the sections of the Provincial statute, excluding from its application cases in which the Dominion Act does not apply. *McColl* v. *C.P.R. Co.*, [1923] A.C. 126.

In 1924, the Supreme Court of Canada (Duff J.) stated the position thus:

> By the decisions of the Lords of the Judicial Committee in *Workmen's Compensation Board* v. *Canadian Pacific Railway* and in *McColl* v. *Canadian Pacific Railway Co.*, the proposition was settled beyond con-

> troversy that notwithstanding the terms of s. 91 of the B.N.A. Act . . . the province has jurisdiction to provide for payment of compensation to workmen injured by industrial accidents and to require railway companies and shipping companies to contribute to a fund provided for the purpose of furnishing the means of paying such compensation; and that such legislation may have full operation and impose binding obligations upon such companies so long as the Dominion does not in exercise of the authority mentioned enact legislation which conflicts with and overrides that of the province. (*Sincennes-McNaughton Lines, Ltd.* v. *Bruneau*, [1924] S.C.R. 168).

If the result of a Workmen's Compensation Act is, in Lord Haldane's words, "a statutory condition of the contract of employment," is that not the result also of a law requiring an employer to pay a minimum rate of wages or to limit the hours of his workmen?

A law relating to freedom of association (a civil right in itself) or collective bargaining is a law imposing a condition on the employer *qua* employer, a law, then, dealing with civil rights. Such a statute must surely be within the provincial field.

A difficult problem might arise if a provincial statute required railway companies to follow certain procedure in order to arrive at collective agreements with the Dominion-wide unions of men engaged in operating trains. Happily, this problem is not likely to arise since these workers are not in need of such statutory protection. Their bargaining procedure has been established for many years.

There is no such problem in connection with some other classes of employees of transport and communication agencies: workers on the construction or repair of lines or buildings, office workers, telephone operators, hotel and restaurant workers, and so on. Both with respect to collective bargaining and to wages and hours, these workers would seem to be within the scope of provincial legislation.

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