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THE MANITOBA INDUSTRIAL CONDITIONS ACT.

Upon the application of certain employees of the Hydro-Electric Department of the City of Winnipeg, the Minister of Labour for the Dominion, acting under the Lemieux Act, appointed a Board which has made a finding. The city refused to recognise the Board and has also ignored the finding.

The Board of Conciliation in that case was obtained by employees who operate entirely within the Province of Manitoba working for an entirely local organisation, the activities of which have a local effect only. Under the circumstances, according to the decision of the Privy Council in the *Toronto Electric Commissioners* v. *Snider*,[1] the Dominion Parliament would have no power to legislate so as to authorise a Board of Conciliation to exercise any of its jurisdiction in respect of such an application. The judgment of the Privy Council is quite clear that the statute of the Dominion Parliament authorising the Minister of Labour to appoint the Board and authorising the Board to examine the witnesses and the documents is *ultra vires* the Dominion Parliament. In giving its judgment the Privy Council states that it is an enactment which the Provincial Legislature under the powers conferred by section 92 of the B. N. A. Act could have passed. The Provincial Legislature has attempted to meet the difficulty by passing an Act making the Dominion Act applicable to all matters covered by the statute which would be within the exclusive jurisdiction of the Provincial Legislature. It is therefore necessary to examine the Dominion statute and see what are the main features of the powers it confers.

The Act confers powers upon five officials or official bodies: the first being the Governor-General-in-Council, who is given power (a) to appoint a Registrar of Boards of Conciliation, and (b) to make regulations, such regulations to go into force upon publication

[1] [1925] A.C. 396.

in the Canada Gazette and to be laid before Parliament. The second is the Minister of Labour, who (a) is given the general administration of the Act; (b) is made judge of whether the provisions of the Act apply to any application which is made, his decision being made final; (c) has power to appoint a Board; (d) is given power to ask the Board for explanation of its judgment; (e) is given power to make an investigation on his own initiative; (f) can authorise payment of expenses; and (g) makes an annual report to the Governor-General and lays it before Parliament. The third is the Registrar who is given custody of all applications, etc., and is also given power to take proceedings prescribed under any regulations made under the Act,—in other words, to carry out any new laws enlarging the statute through regulations. The fourth is the Board, which has power (a) to enforce attendance of witnesses, to administer oaths, to compel witnesses to give evidence on oath, to compel witnesses to produce books, and to do everything the same as in a court of record in civil cases; (b) to enter buildings; (c) makes a person guilty of contempt of the Board liable to arrest; (d) has power to employ experts to assist the Board. The Board is designated a court—(see section 62 of the Act). The members of the Board who are appointed are therefore members of a court, and the person appointing them (the Minister) is appointing judges of an inferior court. The fifth is the Parliament of Canada. The regulations which are made by the Governor-in-Council and which amount to new legislation are required to be laid before Parliament. In other words, Parliament is given some jurisdiction over these regulations and as they are the regulations made by the Governor-in-Council, can endorse them or not. Being regulations under the Dominion statute, they can be repealed or amended by the Governor-General in Council. Expenses in connection with the carrying out of the Act are to be paid by the Dominion Government (see section 69) and therefore are under the control of the Dominion Parliament which can refuse to vote supply.

The annual report made by the Minister to the Governor-General becomes a Dominion parliamentary paper and is required to be laid before the Dominion Parliament. This gives the Dominion Parliament control over the institution.

It is well to examine the status of the Governor-General under the B. N. A. Act, as well as the Lieutenant-Governor. This is fully dealt with in *Re the Initiative and Referendum Act*,[2] that is to say, the functions of the Lieutenant-Governor are dealt with in that case.

[2] 48 D.L.R. 18; [1919] A.C. 935.

In that case it was clearly pointed out as had been pointed out before in other cases, that the executive government of the Dominion is in the Sovereign represented by the Governor-General. At the same time, the Lieutenant-Governor is as much the representative of His Majesty for all purposes of provincial government as is the Governor-General for all purposes of dominion government. It was also decided in that case, as had been decided before, that the constitution of Canada,—that is, the Dominion as well as the provinces—bears absolute analogy to the British constitution, and as such the Lieutenant-Governor of the provinces as representing the Sovereign is a part of the legislature of the province, therefore the Governor-General of the Dominion as representing the Sovereign in matters within the legislative competency of the Dominion is a part of the Parliament of Canada. According to the British constitution the Sovereign is the supreme executive officer of the state. In practice the exercise of the executive powers vested in the Sovereign is delegated to various political officers who compose the ministry or government, certain of whom are the heads of the principal government offices or departments of state. The action, therefore, of a minister or a head of a government department is the action of the Sovereign, and if, according to the constitution of Canada, a provincial executive act of the Sovereign is required to be performed, it must be done by the Lieutenant-Governor of the province in question acting through his provincial minister. It cannot be done by the Governor-General acting through a Dominion minister. The provincial statute which was passed attempts to invest the executive of the Dominion acting through the Minister of Labour with executive powers affecting matters within the scope of provincial legislation,—that is, attempts to invest the executive head of the Dominion with provincial executive powers, to do which the statute must of necessity detract from the powers of the provincial executive to transfer those powers to the Dominion executive. That is exactly what the Privy Council decided could not be done in the decision in *The Initiative and Referendum Act case* (*supra*) which was submitted to it.

The wishes or commands of the Crown in matters entrusted to its executive authority, either by common law or statute, are made known to the nation or the individuals particularly concerned by means of various orders-in-council, etc. Orders-in-council are the general medium by which the manifold statutory powers conferred upon the Crown are exercised. They are formulated by the various ministers or departments concerned in the particular matter to which the orders relate, and the general policy is determined by the Cabinet. The orders-in-council are therefore

executive acts and are the means whereby the details of legislation are carried out. In other words, they are detailed legislation entrusted by the Parliament to the executive authority, the executive being to that extent a part of the legislative authority of Parliament. If, therefore, provincial legislation leaves details to be carried out by its executive officer, it must be the executive officer of the province who carries out these details and not the executive officer of the Dominion. The legislation in question—that is, the provincial act which makes the dominion statute applicable to matters within the purview of the provincial legislation—is attempting to make a dominion statute the details of which are to be carried out by the dominion executive, applicable to provincial matters. In other words, it attempts to adopt the Lemieux Act as provincial legislation the executive details of which are to be carried out by dominion executive officers. This is *ultra vires* the province. It cannot delegate to a body not a part of the provincial executive, powers belonging to the provincial executive. In other words, it is divesting of its legitimate power of taking part in provincial legislation the provincial representative of the Sovereign. In *The Initiative and Referendmu Act* decision Viscount Haldane, who delivered the judgment of the Privy Council, uses the following language at pp. 943 and 945:

> Moreover, in accordance with the analogy of the British Constitution which the Act of 1867 adopts, the Lieutenant-Governor who represents the Sovereign is a part of the Legislature. . . . It follows that if the Initiative and Referendum Act has purported to alter the position of the Lieutenant-Governor in these respects, this Act was insofar *ultra vires*. Their Lordships are of opinion that the Language of the Act cannot be construed otherwise than as intended seriously to affect the position of the Lieutenant-Governor as an integral part of the Legislature, and to detract from rights which are important in the legal theory of that position. . . . But they think it right, as the point has been raised in the Court below, to advert to it. Sec. 92 of the Act of 1867 entrusts the legislative power in a Province to its Legislature, and to that Legislature only.

If, therefore, the power to make rules and regulations by order-in-council is attempted to be entrusted by the provincial legislature to the Governor-General, it is not only divesting the Lieutenant-Governor of some of his rights as part of the legislature, but it is entrusting to part of the Parliament of Canada the power to legislate for the province. The Privy Council has decided in the matter of this same legislation that the Dominion Parliament—that is to say, no branch of the Dominion Parliament—has any power to legislate in respect of these matters as they affect rights purely local within the province. True enough, the B. N. A. Act provides that the legis-

lature of the province can change its constitution, but the Act also provides that in changing its constitution that change must not affect the Lieutenant-Governor-in-Council. This is an attempt which directly affects the rights and functions of the Lieutenant-Governor-in-Council as the representative of the Sovereign. Moreover this is not an attempt to change the constitution. The constitution remains exactly the same insofar as other matters the subject of legislation are concerned, and the passing of this legislation does not in any way affect the constitution except for the purposes of this Act and in that respect it attempts a distinct violation of the constitution, more especially that feature of the constitution which the B. N. A. Act says distinctly cannot be changed—that is, the status of the Lieutenant-Governor.

The statute invests the Minister of Labour with certain definite functions and gives him judicial power. In other words, it appoints the Minister of Labour a judge. He has to decide whether or not the provisions of the Act apply to any application made and his decision in that respect is final. In creates an inferior tribunal and at the same time appoints the Minister as judge. There is no doubt about it that by the adoption of the Act as a legislative statute the creation of a tribunal could be accomplished by the provincial legislature, but the B. N. A. Act provides distinctly that the appointment of a judge is an executive act, the appointment of judges being always under the British constitution the prerogative of the King, and as the Canadian constitution adopts the analogy of the British constitution, it is also provided in the B. N. A. Act that judges shall be appointed, in the case of superior courts and district and county courts, by the Governor-General-in-Council, and in the case of inferior courts, by the Lieutenant-Governor. The attempt, therefore, to appoint the Minister a judge by the Act, even though it be considered to be a provincial Act, is *ultra vires* the provincial legislature.

The statute authorises the minister who is representing the executive authority to appoint the members of the Board, and creates the Board a court. The Board is not only given all the powers of a court, but is definitely designated a court. It is therefore a court appointed by the Dominion executive, whereas the B. N. A. Act provides specifically that such a court—that is, an inferior court such as a body of this sort obviously is—should be appointed by the Lieutenant-Governor-in-Council and not by the Governor-General, either acting through an order-in-council or through a minister. In other words, the executive act of the appointment of a judge of an inferior court of the province must be the act of the provincial executive.

The provincial Act is *ultra vires* for the further reason that it gives to the Dominion Parliament the power of supervision over provincial legislation. Under the British constitution, in addition to the legal liability for wrongful or criminal acts and to other responsibility to the Crown for the conduct of the executive, the members of the ministry are jointly and severally responsible to Parliament for every legislative and executive act of the Crown. The Minister of Labour whose duty it is to carry out the provisions of this act and on whom, if the legislation be good, the Province of Manitoba has cast the responsibility of carrying out the statute, cannot be made responsible to the Provincial Legislature for his act, which is an act as the Minister of Labour of the Dominion Government and as such he is responsible not alone to the Governor-General as representing the Crown, but to the Parliament of Canada. That being so, the Parliament of Canada is again directly given control over the carrying out of provincial legislation, which is not consistent with either the letter or spirit of the B. N. A. Act.

As stated before, the executive act of the Governor-General as representing the Sovereign in right of the Dominion or of the Lieutenant-Governor as representing the Sovereign in right of the province, is part of the legislative act of either the Parliament of Canada in the one case or the Provincial Legislature in the other case, and the act of the Minister is the act of the Sovereign as represented either through the Governor-General or the Lieutenant-Governor as the case may be. Therefore the executive act which is necessary to carry out the provincial legislation must be the executive act of the representative of the Crown in the province, that is to say, the Lieutenant-Governor, and therefore his minister must be the minister responsible to the Provincial Legislature and not to the Dominion Parliament. An attempt, therefore, to make the minister responsible to the Dominion Parliament is an attempt to detract not only from the rights of the provincial executive but from the rights of the Provincial Legislature. In other words, the Legislature of Manitoba by passing that statute giving power to the Dominion executive to act and requiring him to report to the Dominion Parliament and giving the Dominion Parliament power of control over the minister carrying out the executive acts under provincial legislation, has attempted to abrogate its own powers.—that is, it has attempted not only to divest (as I have said before), the Lieutenant-Governor of the province of his share in the legislation, but to divest itself of its power of control over its own legislation.

This point was decided in *The Initiative and Referendum Act*

case. The language of Viscount Haldane at p. 943 in this respect is as follows:

> The analogy of the British constitution is that on which the entire scheme is founded, and that analogy points to the impropriety, in the absence of clear and unmistakeable language, of construing s. 92 as permitting the abrogation of any power which the Crown possesses through a person who directly represents it.

In this case, endowing the Minister and the Governor-General-in-Council and the Parliament of Canada with the powers which remain only in the Provincial Legislature would be going beyond the powers of the Provincial Legislature; because in doing so, instead of preserving its own capacity intact, it destroys its capacity to control its legislation and attempts to invest the executive and the legislature of the Dominion with those powers.

"The Industrial Conditions Act" of Manitoba provides for just such a case as the one under review, and it is difficult to imagine why the Government of the province does not utilise the machinery which it has available and deal with its own labour problems, instead of permitting a Minister of the Dominion Government to manage its affairs for it; especially as in carrying out the Dominion Act local men are always appointed as members of the Board, and it is highly probable that the individuals chosen by the Dominion executive may not always be acceptable to the government of the day of the province.

When "The British North America Act" was being discussed in the House of Lords, Lord Carnarvon, in explaining the Act, is reported to have said:

> The real object which we have in view is to give to the central government those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions that are of common import to all the provinces, and at the same time to retain for each province so ample a measure of municipal liberty and self-government as will allow and indeed compel them to exercise those local powers which they can exercise with great advantage to the community.

It seems a pity that the Provincial Legislatures do not realise their responsibility in local matters, and that there is not some force which will compel them to attend to their own local affairs so as to force the Dominion Government to deal with matters assigned to it under the Act and not go beyond its legitimate field.

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