Privy Council Appeal No. 38 *of* 1931.

IN THE MATTER OF A REFERENCE AS TO THE RESPECTIVE LEGISLATIVE POWERS UNDER THE BRITISH NORTH AMERICA ACT, 1867, OF THE PARLIAMENT OF CANADA AND THE LEGISLATURES OF THE PROVINCES IN RELATION TO THE REGULATION AND CONTROL OF AERONAUTICS IN CANADA.

The Attorney-General of Canada - - - - - *Appellant*

v.

The Attorney-General of Ontario and others - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND OCTOBER, 1931.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT DUNEDIN.
LORD ATKIN.
LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.

[*Delivered by* THE LORD CHANCELLOR.]

This appeal raises an important question as between the Dominion and the Provinces of Canada regarding the right to control and regulate aeronautics, including the granting of certificates to persons to act as pilots, the inspection and licensing of aircraft, and the inspection and licensing of aerodromes and air-stations. The question is whether the subject is one on which the Dominion Parliament is alone competent to legislate, or whether it is in each Province so related to provincial property and civil rights and local matters as to exclude the Dominion from any (or from more than a very limited) jurisdiction in respect of it.

The Supreme Court of Canada has decided the question in its several branches adversely to the claims of the Dominion, and has held in effect that while the Dominion has a considerable field of jurisdiction in the matter under various heads of section 91 of the British North America Act, 1867, there is also a local field of jurisdiction for the Provinces, and that the Dominion jurisdiction does not extend so far as to permit it to deal with the subject in the broad way in which it has attempted to deal with it in the legislation under consideration.

During the sittings of the Peace Conference in Paris at the close of the European War, a Convention relating to the regulation of aerial navigation, dated the 13th October, 1919, was drawn up by a Commission constituted by the Supreme Council of the Peace Conference. That Convention was signed by the representatives of the Allied and Associated Powers, including Canada, and was ratified by His Majesty on behalf of the British Empire on the 1st June, 1922. It is now in force between the British Empire and seventeen other States.

With a view to performing her obligations as part of the British Empire under this Convention, which was then in course of preparation, the Parliament of Canada enacted the Air Board Act, Chapter 11, Statutes of Canada, 1919 (1st Session), which, with an amendment thereto, was consolidated in the Revised Statutes of Canada, 1927, under the title of the Aeronautics Act, Chapter 3. It is to be noted, however, that the Act does not by reason of its reproduction in the Revised Statutes take effect as a new law. The Governor-General in Council, on the 31st December, 1919, pursuant to the Air Board Act, issued detailed "Air Regulations" which, with certain amendments, are now in force. By the National Defence Act, 1922, the Minister of National Defence thereafter exercised the duties and functions of the Air Board.

By these Statutes and the Air Regulations, and the amendments thereto, provision is made for the regulation and control in a general and comprehensive way of aerial navigation in Canada, and over the territorial waters thereof. In particular, section 4 of the Aeronautics Act purports to give the Minister of National Defence a general power to regulate and control, subject to approval by the Governor in Council (with statutory force and under the sanction of penalties on summary conviction), aerial navigation over Canada and her territorial waters, including power to regulate the licensing of pilots, aircraft, aerodromes, and commercial services; the conditions under which aircraft may be used for goods, mails and passengers, or their carriage over any part of Canada; the prohibition (absolute or conditional) of flying over prescribed areas; aerial routes, and provision for safe and proper flying.

Their Lordships were told during the course of the argument that no Provincial Legislature had passed any such legislation, but that this had not prevented the progress of aeronautical development in the Provinces. It appears, for example, that in

Ontario there has been established subject to these Regulations one of the most complete survey services in the Empire, and that it is working most harmoniously. Their Lordships are not aware that any practical difficulty has arisen in consequence of the general control of flying being in the hands of the Dominion, but at a conference at Ottawa between representatives of the Dominion Government and of the several Provincial Governments in November, 1927, a question was raised by the representatives of the Province of Quebec as to the legislative authority of the Parliament of Canada to sanction regulations for the control of aerial navigation generally within Canada—at all events in their application to flying operations carried on within a Province —and it was agreed that the question so raised was proper to be determined by the Supreme Court of Canada. Thereupon four questions were referred by His Excellency, the Governor-General in Council, under an Order dated the 15th April, 1929, to the Supreme Court for hearing and consideration, pursuant to section 55 of the Supreme Court Act, R.S.C. 1927, c. 35, touching the respective powers under the British North America Act, 1867, of the Parliament and Government of Canada and of the Legislatures of the Provinces in relation to the regulation and control of aeronautics in Canada.

The determination of these questions depends upon the true construction of Sections 91, 92 and 132 of the British North America Act. Section 132 provides as follows :—" The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof as part of the British Empire towards foreign countries arising under treaties between the Empire and such foreign countries." It is not necessary to set out at length the familiar sections 91 and 92 which deal with the distribution of legislative powers. Section 91 tabulates the subjects to be dealt with by the Dominion, and section 92 the subjects to be dealt with exclusively by the Provincial Legislatures, but it will not be forgotten that section 91, in addition, authorises the King by and with the advice and consent of the Senate and House of Commons of Canada 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, and further provides that any matter coming within any of the classes of subjects enumerated in the section shall not be deemed to come within the classes of matters of a local and private nature comprised in the enumeration of classes of subjects assigned by section 92 exclusively to the Legislatures of the Provinces.

The four questions addressed to the Court are as follows :—

" 1. Have the Parliament and Government of Canada exclusive legislative and executive authority for performing the obligations of Canada, or of any Province thereof, under the

Convention entitled 'Convention relating to the Regulation of Aerial Navigation?'

2. Is legislation of the Parliament of Canada providing for the regulation and control of aeronautics generally within Canada, including flying operations carried on entirely within the limits of a Province, necessary or proper for performing the obligations of Canada, or of any Province thereof, under the Convention aforementioned within the meaning of section 132 of the British North America Act, 1867?

3. Has the Parliament of Canada legislative authority to enact, in whole or in part, the provisions of section 4 of the Aeronautics Act, chapter 3, Revised Statutes of Canada, 1927?

4. Has the Parliament of Canada legislative authority to sanction the making and enforcement, in whole or in part, of the regulations contained in the Air Regulations, 1920, respecting:—

(*a*) The granting of certificates or licences authorising persons to act as pilots, navigators, engineers or inspectors of aircraft and the suspension or revocation of such licences;

(*b*) The regulation, identification, inspection, certification, and licensing of all aircraft; and

(*c*) The licensing, inspection and regulation of all aerodromes and air stations?"

We sympathise with the view expressed at length by Mr. Justice Newcombe, which was concurred in by the Chief Justice, as to the difficulty which the Court must experience in endeavouring to answer questions put to it in this way. It is true that the advisability of propounding for the consideration of the Court abstract questions or questions involving considerations of debatable fact is, to say the least, doubtful; and it is undesirable that the Court should be called upon to express opinions which may affect the rights of persons not represented before it or touching matters of such a nature that its answers must be wholly ineffectual with regard to parties who are not and who cannot be brought before it—for example, foreign governments. Their Lordships agree, however, with both these learned judges that the position must be accepted as expounded by Lord Haldane in *the Attorney-General of British Columbia* v. *the Attorney-General of Canada*, 1914, A.C., at page 162, where he says:—

> "The business of the Supreme Court of Canada is to do what is laid down as its duty by the Dominion Parliament, and the duty of the Judicial Committee, although not bound by any Canadian statute, is to give to it as a Court of review such assistance as is within its power. Nevertheless, under this procedure, questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the question of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class their Lordships have occasionally found themselves unable to answer all the questions put to them and have found it advisable to limit and guard their replies."

The difficulty in the present case is accentuated by the comprehensive nature of the questions. For example, Question 1 refers to the obligations of Canada under the Convention. That Convention contains forty-three articles and sixteen annexes, many of which contain a large number of sections dealing with hundreds of details relating to the marking of aircraft, certificates of airworthiness, lights, signals and rules of air traffic, visibility, maps, warnings and so forth. It would be extremely difficult for this Board to deal with every one of these many hundreds of topics in detail. So too, with regard to Question 3, which asks whether the Parliament of Canada has legislative authority to enact in whole or in part the provisions of Section 4 of the Aeronautics Act. That section refers to a great number of topics, numbering nearly a hundred in all; take, for example, (*f*), the prohibition of navigation of aircraft over such areas as may be prescribed, either at all times or at such times or on such occasions only as may be specified in the regulation, and either absolutely or subject to such exceptions or conditions as may be so specified. To deal with each one of these numerous alternatives would be impossible. The Board certainly has no desire, nor do they conceive it to be part of their function to act as draftsmen for Canadian Acts of Parliament. The Canadian parliamentary draftsmen are far more familiar with Canadian legislation than this Board is, and their Lordships cannot conceive it to be the wish of anybody that Acts of Parliament passed by the Senate and Commons of Canada should be referred wholesale to this Board in order to determine without reference to particular facts whether or not it was competent for Parliament to pass upon the hundred and one matters for which they have legislated.

The Supreme Court felt, as their Lordships feel, the difficulty first of appreciating the questions and then of answering them. This is shown by the form of the answers as returned on the judgment now under review. To Question 1 as framed (note the words "as framed"), the Court unanimously answered "No." The Chief Justice in his judgment says: "I agree with the view of my brother Smith that if the question is to be answered in the affirmative the word 'paramount' must be substituted for 'exclusive.' It might also be better to insert the words 'as part of the British Empire, towards foreign countries' immediately after the word 'thereof,' so as definitely to limit the question and answer to the very matter dealt with by s. 132." To Question 2 the answer of the majority of the Court was: "Construing the word 'generally' in the question as equivalent to 'in every respect' the answer is 'No.'" To Question 3 the answer of the majority of the Court was "Construing the question as meaning, 'is the section mentioned, as it stands, validly enacted?' the answer is 'No,' but if the question requires the Court to consider the matters in the enumerated subheads of s. 4 of the Statute as severable fields of legislative jurisdiction, then the answers are to be ascertained from the individual opinions or

reasons certified by the Judges." To Question 4 the answers are to be ascertained from the individual opinions or reasons certified by the Judges. Mr. Justice Duff, in his opinion, which was concurred in by Rinfret and Lamont, JJ., went into the matter with very great particularity, as will appear by the following quotation. Referring to Question 4, subhead (*b*), he says: " Regulations 3, 4, 124 (2), and 10 would be invalid. Regulations 5 and 6 would be valid. Regulations 7, 8, 9, 11, 15, 16 and 17 are subsidiary regulations, which would be valid if associated with a valid principal regulation. Sub-sections (1) and (3) of Regulation 12 would be valid, and sub-section (2) of that regulation invalid."

The soundness of these answers is challenged in the present appeal except in the case of the answer to the second question which the Board was expressly informed was not submitted for review. In the case for the appellant the Attorney-General of Canada says that he " does not consider it to be desirable or necessary to press for a review on the present appeal of the answer given by the Supreme Court of Canada to Question 2. The argument on behalf of the Attorney-General of Canada on the present appeal and the terms of this case will accordingly be confined to Questions 1, 3 and 4." Their Lordships were, however, informed by the learned Counsel who conducted the appeal on behalf of the Dominion that " when the Dominion decided to omit a discussion with regard to Question 2 from its factum and from its case before this Board, it was not because it was adopting the answer and saying ' this is accepted, and on the assumption that this view as to 2 is right, tell us the answers to the others only.' It was merely that the question had provoked a great deal of discussion in the Supreme Court at Ottawa as to what its precise meaning was and what was the effect of the word ' generally ' as used in it; whether it meant ' in every respect ' or whether it meant ' speaking broadly ' . . . . All that sort of thing took place in the Supreme Court at Ottawa, and it was thought that might be avoided here by submitting Questions 1, 3 and 4, and asking your Lordships to pass upon those, because answers to those would, in the view of the Dominion, solve the questions and really be a sufficient answer to Question 2," and he added, " there is one element only that need be referred to, namely, military aircraft. They are not under the Convention at all and the Act deals with military aircraft. Therefore, it could not possibly be said that the Convention was a justification for the whole Air Board Act and the Regulations which go with it in respect of military aircraft, and therefore the answer technically would be ' No.' "

This being the position when the matter was argued before the Board, their Lordships think that the clearest way in which to express their opinion would be to answer the questions immediately and then to give their reasons for these answers; but before doing so, it is necessary to point out that their Lordships

are not concerned with any theoretical matters. They conceive themselves to be asked specific questions about specific legislation.

To Question 1, and retaining the word "exclusive," the Board's answer is "Yes."

To Question 3, their answer is also "Yes."

To Question 4, their answer is again "Yes."

Before discussing the several questions individually, it is desirable to make some general observations upon sections 91 and 92, and 132.

With regard to sections 91 and 92, the cases which have been decided on the provisions of these sections are legion. Many inquests have been held upon them, and many great lawyers have from time to time dissected them.

Under our system, decided cases effectively construe the words of an Act of Parliament and establish principles and rules whereby its scope and effect may be interpreted. But there is always a danger that in the course of this process the terms of the Statute may come to be unduly extended and attention may be diverted from what has been enacted to what has been judicially said about the enactment.

To borrow an analogy; there may be a range of sixty colours, each of which is so little different from its neighbour that it is difficult to make any distinction between the two, and yet at the one end of the range the colour may be white, and at the other end of the range black. Great care must therefore be taken to consider each decision in the light of the circumstances of the case in view of which it was pronounced, especially in the interpretation of an Act such as the British North America Act, which was a great constitutional charter, and not to allow general phrases to obscure the underlying object of the Act, which was to establish a system of government upon essentially federal principles. Useful as decided cases are, it is always advisable to get back to the words of the Act itself and to remember the object with which it was passed.

Inasmuch as the Act embodies a compromise under which the original Provinces agreed to federate, it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected. The process of interpretation as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of sections 91 and 92 should impose a new and different contract upon the federating bodies.

But while the Courts should be jealous in upholding the Charter of the Provinces as enacted in section 92 it must no less be borne in mind that the real object of the Act was to give the central Government those high functions and almost sovereign

powers by which uniformity of legislation might be secured on all questions which were of common concern to all the Provinces as members of a constituent whole.

While the decisions which the Board has pronounced in the many constitutional cases which have come under their consideration from the Dominion must each be regarded in the light of the facts involved in it, their Lordships recognise that there has grown up round the British North America Act a body of precedents of high authority and value as guides to its interpretation and application. The useful and essential task of taking stock of this body of authority and reviewing it in relation to the original text has been undertaken by this Board from time to time and notably, for example, in the cases of *the Attorney-General of Ontario* v. *the Attorney-General for Canada and others*, 1896, A.C., 348; *the Attorney-General of Canada* v. *the Attorney-General of Ontario and others*, 1898, A.C. 700; *the City of Montreal* v. *the Montreal Street Railway*, 1912, A.C. 333, and in the same year, *the Attorney-General of Ontario and others* v. *the Attorney-General of Canada and another*, 1912, A.C. 571. In all these four cases the scope of the two sections was carefully considered, but it is not necessary to cite them at length because so recently as last year this Board reviewed them in the case of *the Attorney-General of Canada* v. *the Attorney-General of British Columbia and others*, 1930, A.C. 111, and laid down four propositions relative to the legislative competence of Canada and the Provinces respectively as established by the decisions of the Judicial Committee. These propositions are as follows :—

1. The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in section 91, is of paramount authority, even though it trenches upon matters assigned to the Provincial Legislature by section 92.

2. The general power of legislation conferred upon the Parliament of the Dominion by section 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in section 92, as within the scope of Provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion.

3. It is within the competence of the Dominion Parliament to provide for matters which though otherwise within the legislative competence of the Provincial Legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in section 91.

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

Their Lordships particularly emphasize the second and third of these categories, and refer to the remarks made by Lord Watson in *the Attorney-General for Ontario* v. *the Attorney-General for Canada and others*, 1896, A.C., 348 at page 361, where

he says:—"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 interests 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." Further, their Lordships desire to refer to the case of *Fort Frances Pulp and Power Co.* v. *the Manitoba Free Press and others* 1923, A.C. 695, where it was held that the Canadian War Measures Act, 1914, and certain Orders in Council made thereunder during the War were *intra vires* of the Dominion. Lord Haldane there said at page 704: "The general control of property and civil rights for normal purposes remains with the Provincial Legislatures. But questions may arise by reason of the special circumstances of the national emergency which concern nothing short of the peace, order and good government of Canada as a whole." These remarks must again be taken subject to the situation then prevailing, for he adds on page 706: "It may be that it has become clear that the crisis which arose is wholly at an end, and that there is no justification for the continued exercise of an exceptional interference which becomes *ultra vires* when it is no longer called for. In such a case, the law as laid down for the distribution of powers in the ruling instrument would have to be invoked."

It is obvious, therefore, that there may be cases of emergency where the Dominion is empowered to act for the whole. There may also be cases where the Dominion is entitled to speak for the whole, and this not because of any judicial interpretation of sections 91 and 92, but by reason of the plain terms of section 132, where Canada as a whole, having undertaken an obligation, is given the power necessary and proper for performing such obligation.

During the course of the argument, learned Counsel on either side endeavoured respectively to bring the subject of aeronautics within section 91 or section 92. Thus, the appellant referred to section 91, Item 2 (The Regulation of Trade and Commerce); Item 5 (Postal Services); Item 9 (Beacons); Item 10 (Navigation and Shipping). Their Lordships do not think that aeronautics can be brought within the subject of Navigation and Shipping, although undoubtedly to a large extent, and in some respects, it might be brought under the Regulation of Trade and Commerce, or the Postal Services. On the other hand, the respondents contended that aeronautics as a class of subject came within Item 13 of section 92 (Property and Civil Rights in the Provinces) or Item 16 (Generally all matters of a merely local and private nature in the Provinces). Their Lordships do not think that aeronautics is a class of subject

within Property and Civil Rights in the Provinces, although here again, ingenious arguments may show that some small part of it might be so included.

In their Lordships' view, transport as a subject is dealt with in certain branches both of section 91 and of section 92, but neither of those sections deals specially with that branch of transport which is concerned with aeronautics.

Their Lordships are of opinion that it is proper to take a broader view of the matter rather than to rely on forced analogies or piecemeal analysis. They consider the governing section to be section 132, which gives to the Parliament and Government of Canada all powers necessary and proper for performing the obligations towards foreign countries arising under treaties between the Empire and such foreign countries. As far as section 132 is concerned, their Lordships are not aware of any decided case which is of assistance on the present occasion. It will be observed, however, from the very definite words of the section, that it is the Parliament and Government of Canada who are to have all powers necessary or proper for performing the obligations of Canada, or any Province thereof. It would therefore appear to follow that any Convention of the character under discussion necessitates Dominion legislation in order that it may be carried out. It is only necessary to look at the Convention itself to see what wide powers are necessary for performing the obligations arising thereunder. By Article 1 the high contracting parties recognise that every Power (which includes Canada) has complete and exclusive sovereignty over the air space above its territory; by Article 40, the British Dominions and India are deemed to be States for the purpose of the Convention.

The following appear to be among the principal obligations undertaken by Canada as part of the British Empire under the stipulations of the Convention :—

1. The obligation not to permit (except by special and temporary authorization or under a special convention) the flight above its territory of an aircraft which does not possess the nationality of a contracting State, and indirectly, registration being the only means by which nationality is acquired, the obligation to require registration of any aircraft owned by a Canadian national and intended to be flown. (Arts. 5, 6 and 7.)
2. The obligation to see that no discrimination is made between its private aircraft (*see* Art. 30) and those of the other contracting States in regard to prohibition of flying over certain areas of its territory and that the locality and extent of the prohibited areas are published and notified beforehand to the other contracting States. (Art. 3.)

3. The obligation to require all aircraft engaged in international navigation to bear their nationality and registration marks as well as the name and residence of the owner, in accordance with Annex A. (Art. 10.)

4. The obligation to require every aircraft engaged in international navigation to be provided, in accordance with the conditions laid down in Annex B, with a certificate of airworthiness issued or rendered valid by the State whose nationality it possesses, i.e. in the case of Canadian aircraft by the Dominion. (Art. 11.)

5. The obligation to require the commanding officer, pilots, engineers and other members of the operating crew of every aircraft to be provided, in accordance with the conditions laid down in Annex E, with certificates of competency and licences issued by the State whose nationality the aircraft possesses, i.e. in the case of Canadian aircraft by the Dominion. (Art. 12.)

6. The obligation to see that no wireless apparatus is carried on any aircraft without a special licence issued by the State whose nationality the aircraft possesses, i.e. in the case of Canadian aircraft without a special licence issued by the Dominion, and that no such apparatus is operated except by members of the crew provided with a special licence for the purpose; also to require every aircraft used in public transport and capable of carrying ten or more persons to be equipped with sending and receiving wireless apparatus. (Art. 14.)

7. The obligation to exempt foreign aircraft within Canada from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security. (Art. 18.)

8. The obligation to require every aircraft engaged in international navigation to be provided with the documents specified in Art. 19.

9. The obligation to afford aircraft of contracting States, within Canada, the same measures of assistance for landing, particularly in case of distress, as national aircraft. (Art. 22.)

10. The obligation to require every aerodrome within Canada, which is open to public use by national aircraft, to extend the same facilities to aircraft of all the other contracting States under the same tariff of charges. (Art. 24.)

11. The obligation to require every aircraft flying within Canada and every national aircraft, wherever it

may be, to comply with the regulations contained in Annex D, relative to the rules as to lights and signals and air traffic.

12. The obligation to prohibit the carriage by aircraft, in international navigation, of explosives and of arms and munitions of war, and to prohibit foreign aircraft from carrying such articles between any two points within Canada.

Canada also undertakes to observe the regulations contained in a great number of Annexes. Annex A deals in many sections with the marking of aircraft; Annex B with certificates of air-worthiness; Annex C with log books; Annex D with lights, signals and rules for air traffic; Annex E with minimum qualifications necessary for obtaining certificates as pilots; Annex F with maps and ground markings; Annex G has eight parts dealing with meteorological information, visibility, messages, radio-telephony, synoptic charts, skeleton maps, information on aerodromes, warnings, ground signals; and Annex H with customs.

It is therefore obvious that the Dominion Parliament, in order duly and fully to "perform the obligations of Canada or of any Province thereof" under the Convention, must make provision for a great variety of subjects. Indeed, the terms of the Convention include almost every conceivable matter relating to aerial navigation, and we think that the Dominion Parliament not only has the right, but also the obligation, to provide by statute and by regulation that the terms of the Convention shall be duly carried out. With regard to some of them, no doubt, it would appear to be clear that the Dominion has power to legislate, for example, under section 91 (2), for the regulation of Trade and Commerce, and under (5) for the Postal Services, but it is not necessary for the Dominion to piece together its powers under section 91 in an endeavour to render them co-extensive with its duty under the Convention when section 132 confers upon it full power to do all that is legislatively necessary for the purpose.

To sum up, having regard (*a*) to the terms of section 132; (*b*) to the terms of the Convention which covers almost every conceivable matter relating to aerial navigation; and (*c*) to the fact that further legislative powers in relation to aerial navigation reside in the Parliament of Canada by virtue of section 91 (2) (5) and (7), it would appear that substantially the whole field of legislation in regard to aerial navigation belongs to the Dominion. There may be a small portion of the field which is not by virtue of specific words in the British North America Act vested in the Dominion; but neither is it vested by specific words in the Provinces. As to such small portion it appears to the Board that it must necessarily belong to the Dominion under its power to make laws for the peace, order and good government of Canada. Further their Lordships are influenced by the facts that the subject of aerial navigation and the

fulfilment of Canadian obligations under section 132 are matters of national interest and importance ; and that aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion.

For these reasons their Lordships have come to the conclusion that it was competent for the Parliament of Canada to pass the Act and authorize the Regulations in question, and that Questions 1, 3 and 4, which alone they are asked to answer, should be answered in the affirmative.

Their Lordships will accordingly humbly advise His Majesty that this appeal should be allowed.

In the Privy Council.

THE ATTORNEY-GENERAL OF CANADA

v.

THE ATTORNEY-GENERAL OF ONTARIO AND OTHERS.

(*Aeronautics Reference.*)

DELIVERED BY THE LORD CHANCELLOR.

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