Privy Council Appeal No. 105 *of* 1936

The Attorney-General of Ontario - - - - - - *Appellant*

v.

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

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

v.

The Attorney-General of Ontario - - - - - - *Respondent*

Consolidated Appeals

In the matter of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact The Dominion Trade and Industry Commission Act, 1935

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JANUARY, 1937

Present at the Hearing:

LORD ATKIN.
LORD THANKERTON.
LORD MACMILLAN.
LORD WRIGHT (*Master of the Rolls*)
SIR SIDNEY ROWLATT.

[*Delivered by* LORD ATKIN].

This is an appeal and cross-appeal from a judgment of the Supreme Court on a reference by the Governor-General in Council dated 5th November, 1935, asking whether The Dominion Trade and Industry Commission Act was *ultra vires* of the Parliament of Canada. The unanimous answer of the Supreme Court which was expressed to be directed only to those sections of the Act upon which they had the benefit of argument was that sections 14, 18 and 19 were *ultra vires*, that sections 16 and 17 were not *ultra vires*: and that sections 20, 21 and 22 so far as they were applicable to such of the enactments or to offences created by such of the enactments enumerated in section 2 (*h*) as might be *intra vires* were not *ultra vires*. The Board were invited in argument to deal with sections 23-26 inclusive which are not referred to in the judgment of the Supreme Court presumably because no argument upon them was addressed to the Court. Except on one point, viz., as to validity of sections 18 and 19 their Lordships

agree with the judgment of the Supreme Court and the reasons given by the Chief Justice with which the other learned judges concurred. Sections 15 (2), 16, 17 and 20 appear to be legitimate provisions for ascertaining whether criminal acts have been committed. Section 22 (*a*) was said to take out of the control of the law officers of the Province the conduct of the criminal proceedings referred to in the section. If so, it was said to encroach upon section 92 (14) the Administration of Justice in the Province. A similar objection was made to the latter part of section 20. The answer in respect of both sections is that the contention is based upon a construction of the section which the words do not bear. Nothing in the section gives either the Attorney-General of Canada, or the Director of Public Prosecutions any authority other than to commence proceedings in accordance with the law of the Province and thereafter to give such assistance to the authorities of the Province as is within the existing rights of persons in such case, and as may be acceptable to the authorities. Sections 23 to 26 appear to define the power of the Commission, and to give them no rights of interfering with rights or property in the Province, except possibly powers under section 26 which are of like validity with the powers given by the valid Dominion Acts there referred to.

The only remaining question is as to the validity of sections 18 and 19, which is the subject matter of the cross-appeal, and in this matter only their Lordships find themselves in disagreement with the judgment of the Supreme Court.

Section 18 (1) provides that the words "Canada Standard" or the initials "C.S." shall be a national trade mark and the exclusive property in, and the right to the use of such trade mark is thereby declared to be vested in His Majesty in the right of the Dominion. By subsection (2) such national trade mark as applied to any commodity pursuant to the provisions of that Act or any other Act of the Parliament of Canada is to constitute a representation that such commodity conforms to the requirements of a specification of a commodity standard established under the provisions of any Dominion Act. By section 19 (1) any producer or manufacturer or merchant is given permission to apply the national trade mark to any commodity provided it conforms to the appropriate statutory specification and by subsection (2) it is made an offence to apply the mark to any commodity in violation of the prescribed conditions.

There exists in Canada a well established code relating to trade marks created by Dominion statutes, to be found now in R.S.C. 1927, c. 201, amended by S.C. 1928, c. 10. It gives to the proprietor of a registered trade mark the exclusive right to use the trade mark to designate articles manufactured or sold by him. It creates therefore a form of property in each Province and the rights that flow therefrom. No one has challenged the competence of the Dominion to pass such legislation. If

challenged one obvious source of authority would appear to be the class of subjects enumerated in 91 (2), the Regulation of Trade and Commerce, referred to by the Chief Justice. There could hardly be a more appropriate form of the exercise of this power than the creation and regulation of a uniform law of trade marks. But if the Dominion has power to create trade mark rights for individual traders, it is difficult to see why the power should not extend to that which is now a usual feature of national and international commerce —a national mark. It is perfectly true as is said by the Chief Justice that the method adopted in section 18 is to create a civil right of a novel character. Ordinarily a trade mark gives rights only when used in connection with goods manufactured or sold by the person who has the right to use the mark. A trade mark "in gross" would be an anomaly. And it obviously is not contemplated that the Crown should have any proprietary interest in the goods to which the mark vested in the Crown is to be applied. But there seems no reason why the legislative competence of the Dominion Parliament should not extend to the creation of juristic rights in novel fields, if they can be brought fairly within the classes of subjects confided to Parliament by the constitution. The substance of the legislation in question is to define a national mark, to give the exclusive use of it to the Dominion so as to provide a logical basis for a system of statutory licences to producers, manufacturers and merchants. To vest the "exclusive property" in the mark in His Majesty is probably no more than to vest "the use of" the mark in His Majesty. It may afford a useful civil protection for the mark when it is violated in Canada by persons who have not violated the somewhat restricted prohibition of the penal subsection (which only applies to persons who "apply" the mark to commodities) or violated abroad, where the penal provisions of the law of Canada could not be applied at all. It may be noticed that section 53 of R.S.C. c. 201 appears to afford protection in Canada to trade marks owned by foreign associations though held by them "in gross." For the reasons above given the legislation appears to their Lordships to be within the competence of the Dominion Parliament. No appeal was directed to the Board as to the answer to section 14. Their Lordships therefore will humbly advise His Majesty that the appeal be dismissed and the cross-appeal be allowed and that the answers be varied as to sections 18 and 19 by stating that the sections are not *ultra vires*, and by adding that as to sections 23 to 26 inclusive these sections are not *ultra vires*.

(40355—3A) Wt. 8136—2 175 2/37 P. St. G. 338

In the Privy Council

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THE ATTORNEY-GENERAL OF CANADA AND OTHERS

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THE ATTORNEY-GENERAL OF ONTARIO

DELIVERED BY LORD ATKIN.

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