In the Privy Council.

No. 100 of 1936.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada 1935.

BETWEEN

THE ATTORNEY-GENERAL OF CANADA - - *Appellant*

AND

THE ATTORNEYS-GENERAL of the PROVINCES of ONTARIO, QUEBEC, NEW BRUNSWICK, BRITISH COLUMBIA, MANITOBA, ALBERTA and SASKATCHEWAN - - - - - *Respondents.*

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In the Privy Council.

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BETWEEN

THE ATTORNEY-GENERAL OF CANADA - - *Appellant*

AND

THE ATTORNEYS-GENERAL of the PROVINCES of ONTARIO, QUEBEC, NEW BRUNSWICK, MANITOBA, BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN - - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

No. 1

Order of Reference by the Governor-General in Council

No. 1. Order of Reference by the Governor-General in Council, 5th November 1935.

P.C. 3454

CERTIFIED *to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 5th November,* 1935.

The Committee of the Privy Council have had before them a report, dated 31st October, 1935, from the Minister of Justice, referring to the following Acts contained in the Statutes of Canada, 1935, namely—

The Weekly Rest in Industrial Undertakings Act, cap. 14;
The Minimum Wages Act, cap. 44; and
The Limitation of Hours of Work Act, cap. 63,

which were respectively passed, as appears from the recitals set out in the preambles of the said Acts, for the purpose of enacting the necessary legislation to enable Canada to discharge certain obligations declared to have

No. 1. Order of Reference by the Governor-General in Council, 5th November 1935—*continued.*

been assumed by Canada under the provisions of the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919, and to which Canada, as part of the British Empire, was a signatory, and also under certain draft conventions concerning (*a*) the application of the weekly rest in industrial undertakings, (*b*) the creation of minimum wage fixing machinery, and (*c*) the limitation of hours of work in industrial undertakings, respectively adopted by the International Labour Conference in accordance with the relevant Articles of the said Treaty.

The Minister observes that doubts exist or are entertained as to whether the Parliament of Canada had jurisdiction to enact the said Acts or any of them either in whole or in part, and that it is expedient that such questions 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 questions be referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act,—

1. Is The Weekly Rest in Industrial Undertakings Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

2. Is the Minimum Wages Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

3. Is The Limitation of Hours of Work Act, 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.

No. 2

Order of Supreme Court of Canada for Inscription of References and Directions

No. 2. Order of Supreme Court of Canada for Inscription of References and Directions, 14th November 1935.

IN THE SUPREME COURT OF CANADA

BEFORE: The Right Honourable the Chief Justice of Canada

THURSDAY, the 14th day of November, A.D. 1935.

IN THE MATTER of the questions referred to the Supreme Court of Canada as to whether the Parliament of Canada had legislative jurisdiction to enact

(*a*) Section 498A of the Criminal Code, being Chapter 56 of the Statutes of Canada, 1935;

(*b*) The Dominion Trade and Industry Commission Act, 1935, being Chapter 59 of the Statutes of Canada, 1935;

(*c*) The Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935;

No. 2. Order of Supreme Court of Canada for Inscription of References and Directions, 14th November 1935 —*continued.*

(*d*) The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935;

(*e*) 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.

UPON the application of the Attorney-General of Canada for directions as to the inscription for hearing of the cases relating to the questions herein referred by His Excellency the Governor General in Council, for hearing and consideration by the Supreme Court of Canada pursuant to the provisions of section 55 of the Supreme Court Act, R.S.C. 1927, chapter 35; upon hearing read the Orders in Council, dated November 5, A.D. 1935, Nos. P.C. 3451, 3452, 3453, 3454 and 3460, respectively, setting forth the said questions; upon hearing read the affidavits of Charles P. Plaxton filed herein; and upon hearing what was alleged by counsel for the Attorney-General of Canada, and for the Attorneys-General of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island, Manitoba, British Columbia, Saskatchewan and Alberta respectively; the Attorney-General of the Province of Nova Scotia not being represented on such application, by counsel, although duly notified.

IT IS ORDERED that the said References be inscribed for hearing at the present sittings of this Honourable Court and be heard the 15th day of January, A.D. 1936.

AND IT IS FURTHER ORDERED that the respective Attorneys-General of the several Provinces of Canada be notified of the hearing of the argument upon the said References by sending to each of them by registered letter on or before the 1st day of December, A.D. 1935, a Notice of Hearing of the said References together with a copy of this Order.

AND IT IS FURTHER ORDERED that one printed Case for all of the said References be filed on or before the 1st day of December, A.D. 1935, and that three copies thereof be delivered to the Ottawa Agents of the Attorneys-General of the several Provinces of Canada.

AND IT IS FURTHER ORDERED that the Attorney-General of Canada and the Attorneys-General of the several Provinces of Canada be at liberty to file separate factums of their respective arguments on each of said References, on or before the 10th day of January, A.D. 1936, and that the said Attorneys-General be at liberty to appear personally or by counsel upon the hearing of the said References.

(Sgd.) L. P. DUFF,
C.J.

No. 3.
Notice of Hearing, 18th November 1935.

No. 3

Notice of Hearing

IN THE SUPREME COURT OF CANADA

IN THE MATTER of the questions referred to the Supreme Court of Canada as to whether the Parliament of Canada had legislative jurisdiction to enact

(*a*) Section 498A of the Criminal Code, being Chapter 56 of the Statutes of Canada, 1935;

(*b*) The Dominion Trade and Industry Commission Act, 1935, being Chapter 59 of the Statutes of Canada, 1935;

(*c*) The Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935;

(*d*) The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; The Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935;

(*e*) 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.

TAKE NOTICE that the References herein have by order of the Right Honourable the Chief Justice of Canada, dated the 14th day of November, A.D. 1935, been inscribed for hearing at the present sittings of the Supreme Court of Canada, and to be heard on the 15th day of January, A.D. 1936; and you are hereby notified of the hearing of the said References pursuant to the terms of the said Order, copy of which is hereto annexed.

Dated at Ottawa, the 18th day of November, A.D. 1935.

W. STUART EDWARDS,
Solicitor for the Attorney-General of Canada.

To : The Attorneys-General
of the several Provinces of Canada.

No. 4. Factum of the Attorney-General of Canada.

No. 4

Factum of the Attorney-General of Canada

PART I

STATEMENT OF CASE

1. By Order of His Excellency the Governor-General in Council, dated November 5th, A.D. 1935 (P.C. 3454), the following questions were referred to the Supreme Court of Canada for hearing and consideration pursuant to section 55 of the Supreme Court Act:

(1) Is the Weekly Rest in Industrial Undertakings Act, or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada?

(2) Is The Minimum Wages Act, or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada?

(3) Is The Limitation of Hours of Work Act, or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada?

2. The full text of each one of the three Acts referred to in the said questions is to be found in the official prints thereof attached to this Factum pursuant to the direction of the Right Honourable the Chief Justice of Canada.

These Acts were respectively passed, as appears from the recitals set out in the preamble of each of them, and as the Order of Reference in terms recites (Record, p. 1, l. 15 to p. 2, l. 9), for the purpose of enacting the necessary legislation to enable Canada to discharge certain obligations assumed by Canada under the provisions of the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919, and to which Canada, as part of the British Empire, was a signatory, and also under certain draft conventions concerning (*a*) the application of the weekly rest in industrial undertakings (Record, pp. 146, 147, 148; p. 149, ll. 1 to 13); (*b*) the creation of minimum wage-fixing machinery (Record, p. 153, ll. 29 to 37; pp. 154, 155, 156, ll. 1 to 29); and (*c*) the limitation of hours of work in industrial undertakings (Record, pp. 161, ll. 27 to 36; pp. 162 to 167, p. 168, ll. 1 to 30), respectively adopted by the International Labour Conference in accordance with the relevant Articles of the said Treaty.

3. The said Treaty of Peace was concluded in the name of the British Empire as one of the High Contracting Parties, forming, along with the United States of America, France, Italy and Japan, the group of powers described in that Treaty as the Principal Allied and Associated Powers. It was signed on behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, by five British plenipotentiaries, and in respect of each of the self-governing Dominions and of India, as separate signatories, by

No. 4. Factum of the Attorney-General of Canada—*continued.*

plenipotentiaries representing the Dominions and India respectively. For this purpose full powers were issued by His Majesty to his various plenipotentiaries, on the advice, in the case of the Canadian plenipotentiaries, of His Majesty's Government in Canada. (*See* app. to this factum, pp. 31–34.)

The Treaty was ratified by Germany on the one hand and by three of the Principal Allied and Associated Powers on the other hand, including His Majesty, and came into force on the date of the Procès Verbal of the deposit of such ratifications pursuant to Art. 440, the 10th January, 1920. (*See* Imperial Order in Council, 9th February, 1920, app. to this factum, p. 39, l. 17 to p. 40, l. 10.) The Treaty was so ratified by His Majesty the King only after it had received the separate approval of the Dominion Parliaments, and when, such approval having been obtained, the several Dominion Governments had by Orders in Council advised His Majesty to ratify on their behalf. The approval of the Senate and House of Commons of Canada was signified by Resolutions dated the 2nd and 4th September, 1919. (*See* app. to this factum, p. 39, ll. 1–13.) Thereupon, by Order of His Excellency the Governor-General in Council, dated September 12th, 1919, His Majesty was advised to approve, accept, confirm and ratify the said Treaty of Peace for and in respect of the Dominion of Canada.

By the Treaties of Peace Act, 1919, cap. 30 of the Statutes of Canada, 1919 (2nd session) (Record, pp. 144, l. 10 to 145, l. 10), the Governor in Council was empowered to make such appointments, establish such offices, make such Orders in Council, and do such things as appear to him to be necessary for carrying out the said Treaty, and for giving effect to any of its provisions.

4. In virtue of the terms of Art. 1 of Part I of the said Treaty of Peace, embodying the covenant of the League of Nations, and of the annex to the said Part, Canada, as a signatory of the said Treaty, became one of the original members of the League of Nations; and in virtue of Art. 387 in the Labour Part (Part XIII) of the said Treaty, became an original member of the International Labour Organization.

5. The three Draft Conventions referred to in paragraph 2 above (the authentic texts of which will be found in the Record at pages 146 to 149; 153 to 156 and 161 to 168, respectively) represent, *pro tanto*, the detailed working out of a policy to which Canada, as a signatory of the Treaty of Peace, and as a member of the International Labour Organization constituted under Part XIII of the said Treaty, had already assented in general terms and pledged itself to endeavour to secure and maintain.

Art. 23 of the Treaty of Peace provides, in part :—

> " Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :
>
> (*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial

relations extend, and for that purpose will establish and maintain the necessary international organizations."

The principles and methods agreed upon by the members of the League for the fulfilment of the obligation assumed by them in general terms under Art. 23 (*a*) are formally outlined in the provisions of the Constitution of the International Labour Organization.

The Constitution of the Organization, embodied in Part XIII of the said Treaty, is prefaced by a preamble which recites that universal peace " can be established only if it is based upon social justice " ; that " conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled," and that " an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week . . . . and the provision of an adequate living wage," amongst other specified reforms.

Section II of the Constitution (consisting solely of Art. 427 known as the Labour Charter) carries a stage further the declaration of the general policy of the Organization. In this Article, the High Contracting Parties (for which term may now be read the Members of the Organization) declare, in part, as follows :—

" The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section 1 and associated with that of the League of Nations.

" They recognize that differences of climate, habits, and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

" Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance :—

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

* * *

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

No. 4. Factum of the Attorney-General of Canada—*continued.*

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

* * *

"Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world."

6. The Hours of Work (Industry) Convention, adopted by the General Conference of the International Labour Organization at its first annual meeting (1919), provided, by Art. 17, that as soon as the ratifications of two Members of the International Labour Organization had been registered with the Secretariat, the Secretary-General of the League of Nations should so notify all the Members of the Organization, and, by Art. 18, that this Convention should come into force at the date on which such notification was issued by the Secretary-General of the League of Nations, and it should then be binding only upon those Members which had registered their ratifications with the Secretariat, and thereafter should come into force for any other Member at the date on which its ratification was registered with the Secretariat.

The Weekly Rest (Industry) Convention, adopted by the General Conference of the International Labour Organization at its 3rd session (1921), provided, by Art. 9, that this Convention should come into force at the date on which the ratifications of two Members of the Organization had been registered by the Secretary-General, and thereafter for any Member at the date on which its ratification had been registered with the Secretariat, and, by Art. 10, that as soon as the ratifications of two Members of the Organization had been registered with the Secretariat, the Secretary-General of the League of Nations should so notify all Members of the League of Nations and likewise notify them of the ratifications communicated subsequently by other Members of the Organization.

The Minimum Wage Fixing Machinery Convention, adopted by the General Conference of the International Labour Organization at its 11th session (1928), provided, by Art. 7, that it should come into force twelve months after the date on which the ratifications of two Members of the Organization had been registered with the Secretary-General, and thereafter for any Member twelve months after the date on which its ratification had been registered, and, by Art. 8, that as soon as the ratifications of two Members of the Organization had been registered with the Secretariat, the Secretary-General of the League of Nations should also notify all Members of the Organization and likewise notify them of the registration of ratifications communicated subsequently by other Members of the Organization.

Two ratifications of each of the said Conventions having been registered and notification of such registration given to the other members of the

International Labour Organization, including Canada, by the Secretary-General of the League of Nations (Record, pp, 149, l. 15 to 150, l. 26; pp. 157 and 158; p. 169), the said Conventions came into force in accordance with the respective provisions thereof on the following dates, respectively :—

The Hours of Work (Industry) Convention on the 13th June, 1921;
The Weekly Rest (Industry) Convention on the 19th June, 1923; and
The Minimum Wage Fixing Machinery Convention on the 14th June, 1930.

7. The Senate and House of Commons of Canada, by Resolutions, approved of each of the said Draft Conventions (Record, pp. 150, ll. 28 to 38; 159, ll. 1 to 11; 170, ll. 1 to 12). By Orders of His Excellency the Governor-General in Council, dated March 1st, 1935, P.C. 543 and P.C. 544 (Record, pp. 151 and 170); and April 12th, 1935, P.C. 934 (Record, p. 159), it was ordered that the said Conventions, respectively, be confirmed and approved, and that formal communication thereof be made to the Secretary-General of the League of Nations. The deposit of these instruments of ratification of the said Convention with the Secretariat of the League of Nations is evidenced by Procès Verbaux, dated March 21st, 1935 (Record, pp. 153, ll. 1 to 27; 172) and April 25th, 1935 (Record, p. 161, ll. 1 to 25), executed by the Acting Legal Adviser of the Secretariat of the League of Nations.

8. The Weekly Rest in Industrial Undertakings Act, which gave effect to the Draft Convention of the International Labour Conference on that subject, adopted in 1921, received the Royal Assent on April 4th, 1935, and, by s. 9, came into force three months thereafter: i.e. on July 4th, 1935. The Act applies to industrial undertakings as defined in Art. 1 of the Draft Convention (Record, p. 146, ll. 20 to 38), and requires employers to grant a rest period of at least twenty-four consecutive hours in every seven days to all employees, with the exception of persons who hold positions of supervision or management or who are employed in a confidential capacity. The rest period is, wherever possible, to be granted to the whole staff simultaneously, and to coincide with the Lord's Day as defined by the Lord's Day Act, R.S.C. 1927, c. 123. The Governor in Council may make regulations authorizing total, or partial exceptions and, in so doing, is to have special regard to proper humanitarian and economic considerations and to consult with responsible associations of employers or workers, if any. Such regulations are also to provide, as far as possible, for compensatory periods of rest for the suspension or diminution made, except where agreements of customs already make such provision, and for the communication of the regulations and amendments thereof to the International Labour Office at Geneva.

Where the weekly-rest day given does not coincide with the Lord's Day, the employer must make known the days and hours of rest by notices posted in conspicuous places in the establishment or other convenient place or in any other manner determined by the regulations. The Act repeals

No. 4. Factum of the Attorney-General of Canada—*continued.*

s. 5 (2) of the Lord's Day Act which provided that the prohibition of employment (other than emergency employment) on the Lord's Day without a compensatory rest day during the following week should not apply to any employee engaged in an industrial process in which the regular day's labour of such employee does not exceed eight hours. Nothing in the Weekly Rest in Industrial Undertakings Act is to be construed as affecting the operation of any provision of the Lord's Day Act as thus amended.

A fine not exceeding $100 nor less than $20 may be imposed on any employer who violates or fails to comply with any provision of the Act.

9. The Minimum Wages Act, which received the Royal Assent on June 28th, 1935, is designed to give effect to the provisions of the Draft Convention concerning the creation of minimum wage-fixing machinery adopted by the International Labour Conference in 1928. By s. 4 (1), the Governor in Council, on the recommendation of the Minister of Labour, may create and by regulation provide for the operation, by or under the Minister, of machinery whereby minimum rates of wages can be fixed for workers in specified rateable trades. Employers and workers concerned are to be associated in the operation of such machinery in such manner as the Governor in Council may by regulation determine, but in any case in equal numbers and on equal terms. "Rateable trades" are defined in accordance with the terms of the Convention as "those trades or parts of trades (in particular, home-working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low." "Trade" includes manufacture and commerce and "worker" includes any employed person not under 16 years of age. By s. 4 (2), Minimum wages so fixed are to be binding on employers and workers concerned so as not to be subject to abatement by means of individual agreement, or, except with the general or particular authorization of the Minister, by collective agreement.

By s. 5, the Governor in Council, on the recommendation of the Minister which is to be made after the Minister has consulted or caused consultation as the Convention requires, may by regulation declare which trades or parts of trades are those rateable trades to which the minimum wage-fixing machinery shall be applied. Such trades are to be known as specified rateable trades. The machinery is to be applied only in rateable trades after the Minister has consulted or caused consultation as required by the Convention, and has declared, by regulation of his Department, the nature and form of, and the methods to be followed in the operation of, the machinery as it is to be applied to that particular trade. By s. 12, s. 4 (1) and s. 5 are not to come into force until proclaimed by the Governor in Council. The reason for this provision presumably resides in the fact that the Minimum Wage Fixing Machinery Convention provides by Art. 7, that this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered (Record, p. 23, 155 ls. 24 to 25), and, Canada's ratification having been registered on April 25th, 1935 (Record, p. 15, ls. 1 to 25), the said Convention will not come into force in respect of Canada until April 25, 1936.

Other provisions of the Act came into force on the date the Act received the Royal Assent. By s. 6, the Governor in Council, when satisfied that the trade and commerce or the public revenue of Canada is being injuriously affected by the absence of uniform minimum rates of wages or that workers throughout Canada are being oppressed by reason of the insufficiency of the wages being paid to them to enable them to maintain a suitable standard of living, may, by regulation, fix uniform minimum wages or fair and suitable rates of wages in the trade concerned and provide or indicate the necessary machinery for enforcing observance and for punishing non-observance of such regulation.

By s. 7, the Governor in Council is further empowered to make regulations enabling the Minister or his nominee to permit any employer or employers to pay wages at less than the minimum rate to workers who, by reason of age, infirmity or inexperience, are incapable of doing the work of a competent worker, or to authorise any person, including an officer or employee of any provincial government, to act as inspector or supervisor in connection with the enforcement of the Act; ensuring that employers and workers concerned are informed of the minimum rates of wages in force; prescribing the procedure for making orders as to wages effective; providing that whenever minimum rates have been fixed by one of the two methods laid down in the Act, the rates so fixed shall apply to employers and workers engaged in that trade in lieu of the minimum rates fixed in that trade by the other method provided in the Act; granting to any board, commissioner, etc., authorized under the Act to fix the minimum wages the powers of a Commissioner under the Inquiries Act; empowering the Minister to permit delays to enable the orderly and proper application of the Act to industry and commerce and all necessary consultation and arrangement with relation thereto to be made; and making such other provision as, being consonant with the Convention, is necessary to enforce the Act and carry out its true intent and meaning.

By s. 8, the Minister, or his nominee, with the powers conferred by the Inquiries Act, may, at any time, on the application of representatives of employers or workers, conduct an inquiry as to the minimum rates of wages required to enable a worker to maintain a suitable standard of living.

By s. 3 (1) an employer in a trade for which minimum wages have been fixed who is convicted of paying or agreeing to pay to any worker a wage less than the rate fixed is liable to a penalty not exceeding $5,000.

By s. 9, a worker in the trade who has been paid less than the minimum rate may recover the difference as an ordinary debt; but on a prosecution of an employer for paying less than the fixed minimum wage, the Court, in addition to imposing a penalty, may order payment to the employee concerned of the amount due.

By s. 10, every person who fails or omits to comply with the Act or regulations is liable, if the offence is one for which no other penalty is prescribed, to a fine not exceeding $50.

By s. 11, nothing in the Act is to be construed as relieving any employer from the obligation to pay any minimum wages fixed by or under any

No. 4. Factum of the Attorney-General of Canada—*continued.*

provincial statute if such minimum wages are higher than the relevant minimum wage fixed under the Dominion Act.

10. The Limitation of Hours of Work Act, which gives effect to the Draft Convention of the International Labour Conference limiting hours of work in industrial undertakings, adopted in 1919, received the Royal Assent on July 5th, 1935, and, by s. 15, came into force three months thereafter: i.e. on October 5th, 1935. By s. 2, the Act applies to industrial undertakings as defined in Art. 1 of the Convention (Record p. 162, ll. 9 to 27). By s. 3, industries in which only members of the same family are employed are excluded, and the Governor in Council is authorized to define the line of division separating industry from trade and commerce and agriculture for the purpose of determining the employers to whom the Act applies. Section 3 establishes an 8-hour day and 48-hour week for persons in the specified industries except by s. 4, in the case of those who hold positions of supervision or management, or who are employed in a confidential capacity. By s. 5, where, by law, custom or agreement between employers' and workers' organizations, or, where no such organizations exist, between employers' and workers' representatives, the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the Governor in Council or by agreement between such organizations or representatives but in no case may the daily limit be exceeded by more than one hour.

By s. 6, where persons are employed in shifts they may be employed for more than 8 hours per day and 48 per week if the average number of hours over a period of three weeks does not exceed that limit. By s. 7, the limit of hours may also be exceeded in case of accident, actual or threatened, or of urgent work to be done to machinery or plant, or in case of *vis major* but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking.

By s. 8, in continuous processes carried on by a succession of shifts the limit of hours may also be exceeded provided that the number of working hours does not average more than 56 per week, but such regulation of hours must in no case affect any rest day which may be secured by the law of Canada to the workers in such processes in compensation for the weekly rest day.

By s. 9, the Governor in Council may, in exceptional cases where it is recognized that the daily limit of hours of work cannot be applied and agreements between workers' and employers' organizations to increase the daily limit have been made, give effect to such agreements provided that the average number of hours per week covered by such an agreement does not exceed 48. To this provision there is a further proviso that where such agreements embodying the principle of the 8-hour day have been made prior to December 31st, 1934, between a railway company and any employees' organization, the provisions of such agreement relating to hours of employment are to be continued in effect for three months from the date of the coming into force of the Act.

By s. 10, whenever the Governor in Council after consultation as required by the Convention (i.e., with the employers' and workers' organizations concerned, if any) is satisfied that the work or any class of work in any industrial undertaking or any class of industrial undertaking is preparatory or complementary so that it must necessarily be carried on outside the limits laid down for the general working of an establishment, or is essentially intermittent as when it does not require the worker to be continuously occupied, or must necessarily be performed in variable periods of employment, or is seasonal or subject to intervals of discontinuance or variations in the supply of raw materials, or exceptional owing to pressure of work for the time being, he may, by regulation, except all or any employment at such work or class of work in such undertaking or class of undertakings. Such regulations are to provide that fair and humane conditions of labour with relation to hours of work shall prevail in such excepted employment and that any regulation made by reason of pressure of work shall be temporary. Whenever practicable, the maximum additional hours permitted are to be fixed by the regulations and in such case the rate of pay for overtime is not to be less than one and one-quarter times the regular rate.

By s. 11, employers must post notices showing the hours of work in conspicuous places or notify them by such other method as may be approved by the Governor in Council. The hours must be so fixed that the duration of the work does not exceed the limits prescribed by the Act and when so notified may not be changed except in a manner approved by the Governor in Council. Rest intervals not reckoned as part of the working hours are to be notified in the same way. Employers must keep overtime records in prescribed form.

By s. 13, an employer who violates or fails to comply with the Act or regulations is punishable on summary conviction for each offence by a fine not exceeding $100.

By s. 14, nothing in the Act is to be construed as relieving any employer from any obligation under any provincial statute establishing shorter hours of work than those established by the Dominion Act.

PART II

Submission of the Attorney-General of Canada

11. The Attorney-General of Canada will contend, for the reasons hereinafter set forth, that The Weekly Rest in Industrial Undertakings Act; The Minimum Wages Act; and The Limitation of Hours of Work Act, are in their entirety within the legislative powers of the Parliament of Canada.

(1) In virtue of its exclusive legislative power under s. 132 of the British North America Act, 1867, or/and of its general power conferred by s. 91 of the said Act to make laws for the peace, order and good government of Canada, to perform the obligations of Canada under, and as a signatory of, the Treaty of Peace signed at Versailles on June 28th, 1919,

No. 4. Factum of the Attorney-General of Canada—*continued.*

and also under the several Draft Conventions duly ratified by Canada as a Member of the International Labour Organizations as hereinbefore mentioned;

(2) In virtue of its general power conferred by s. 91 of the British North America Act to make laws for the peace, order and good government of Canada, in relation to the subject matter of the said Acts;

(3) In virtue of its exclusive legislative authority in relation to the regulation of trade and commerce; and

(4) In virtue of its exclusive legislative authority in relation to the criminal law.

PART III

ARGUMENT

12. *Labour conventions, once brought into force by ratification, become binding international engagements.*—Draft conventions adopted by the International Labour Conference, pursuant to provisions of Part XIII of the Treaty of Peace, once they have come into force by ratification, are as fully binding international engagements as any other multipartite international instruments. They belong to that class of international compacts known as agreements between governments, members of the International Labour Organization; but in the eye of international law there is no essential difference between such agreements and treaties concluded between heads of states in accordance with the traditional diplomatic procedure: Oppenheim, International Law, 3rd ed., Vol. 1, pp. 664, 665, 666; Westlake, International Law, Pt. I, p. 290; Pitt Cobbett's Leading Cases on International Law, 4th ed., Vol. 1, p. 331; Hudson, International Legislation, Vol. 1 (1919–1921), pp. xv, xli; Research in International Law, Pt. III, Law of Treaties (Harvard Law School, 1935), pp. 686, 687, 710–722.

Draft conventions so adopted are distinguishable not only in the respect above mentioned from ordinary diplomatic treaties or conventions but also in other important respects. Their main distinguishing characteristics, derived from the provisions of the Treaty of Peace, may be enumerated as follows:

1. An ordinary draft international treaty is prepared at a meeting of plenipotentiaries who are individual representatives of the contracting States; but draft conventions are adopted by conferences which are not purely governmental in composition: that is to say, the General Conference of representatives of members of the International Labour Organization is composed of four representatives of each of the members of whom two are required to be government delegates and the two other delegates representing, respectively, employers and workpeople of the member and chosen in agreement with the industrial organizations, if such exist, which are most representative of the employers or workpeople as the case may be. Art. 389.

2. For the procedure of negotiation and signature by plenipotentiaries, the constitution of the International Labour Organization substitutes (1) adoption of a draft convention by the International Labour Conference by a majority of two-thirds of the votes cast by the delegates present; and (2)

authentication of the same by the signature of the President of the Conference and the Director of the International Labour Office: Art. 405, pars. 2 and 4.

3. A draft convention, once adopted by the Conference, constitutes an instrument that is not only ready for ratification but that all the governments of the States, members of the Organization, whether represented at the Conference or not and whether some or all of their representatives voted against the adoption of the proposals in question, are legally bound (1) to bring within twelve, or at most eighteen, months, from the closing of the session of the Conference, before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action, and (2) if the consent of such authority or authorities to ratification be obtained, to communicate the formal ratification of the convention to the Secretary General and take such action as may be necessary to make effective the provisions of such convention. In this respect draft conventions differ radically from normal diplomatic treaties or conventions: Art. 405, par. 7.

4. Draft conventions also differ from the vast majority of diplomatic conventions in that they represent the detailed working out of a policy to which the members of the International Labour Organization have already assented to in general terms by the acceptance of its constitution. This policy consists of the principles and methods of social justice affecting labour and conditions of labour enunciated in Article 23 (*a*) and Sections I and II of Part XIII of the Treaty of Peace. There thus exists in respect of such draft conventions as are merely an application of the general principles so set forth, even before their ratification, a degree of obligation which has no equivalent in the case of diplomatic conventions: Art. 23 (*a*) and Sections I and II of Part XIII.

5. Ratification of a draft convention brings into operation in respect of members ratifying the procedure provided by Articles 411 to 420 of the Treaty of Peace for mutual supervision, complaint and sanctions to secure the effective observance of any such convention. There is no analogy for this in the case of diplomatic conventions in the traditional form.

13. *Canada possesses the treaty-making as well as the treaty-performing power.*—In the case of Canada, the Dominion Parliament and Government have always possessed plenary power to perform the obligations of Canada, or of any Province thereof, arising either under

(*a*) an Imperial Treaty,

Sec. 132 of the B.N.A. Act, 1867;

In re The Regulation and Control of Aeronautics in Canada (1932) A.C. 52; (Convention relating to the Regulation of Aerial Navigation);

Attorney-General for British Columbia v. *Attorney-General for Canada* (1924) A.C. 203; 63 S.C.R. 293: (The Japanese Treaty of 1911);

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The King v. *Stuart* (1925) 1 D.L.R. 12: (The Migratory Birds Convention of 1916 between Great Britain and the United States);

In re Nakane (1908) 13 B.C.R. 370: (The Anglo-Japanese Treaty of 1906); or

(*b*) under a convention or agreement between governments of which Canada is a signatory;

Sec. 91 of B.N.A. Act, 1867 (residuary power);

In re Regulation and Control of Radio Communication in Canada: (International Radio Telegraph Convention, 1927);

and this, even though the Dominion legislation necessary to give effect to any such treaty or convention trenches upon matters which would normally fall within the exclusive legislative jurisdiction of the Provinces.

But, whilst the Dominion is thus vested with full legislative and executive authority to implement such treaties or conventions so far as Canada is concerned, the British North America Act is silent with regard to the treaty-making power and it is not among those powers expressly delegated to the Governor General by his Commission. (See prefix to Statutes of Canada, 1930, 2nd Sess. pp. xix to xxiii.)

14. The prerogative of making treaties with foreign states is, under the law of the British Constitution, enjoyed solely by the Crown as the representative of the nation in the conduct of foreign affairs. In the exercise of this power, whether in respect of the United Kingdom or of other parts of the Empire, or of the Empire as a whole, the Sovereign possesses an absolute discretion, but he acts, or until recent times acted, solely upon the advice of his British Ministry or of the Secretary of State for Foreign Affairs, unfettered by any direct supervision, parliamentary or otherwise: (6 Halsbury's Laws of England, 2nd ed., pp. 503, 520; Blackstone's Comm. Book 1, p. 257; Keith's Responsible Government in the Dominions, Rev. 2nd ed., Vol. 2, p. 842).

The " prerogative " has been authoritatively defined as being " nothing else than the residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown " : (Dicey, Law of the Constitution, 8th ed., p. 420; quoted with approval by the House of Lords in *Attorney-General* v. *de Keyser's Royal Hotel* (1920) A.C. 508, 526, 527) but under the long established conventions of the Constitution the prerogative is in fact exercised by the Sovereign on the advice of his responsible ministers. It has, accordingly, become customary for writers on constitutional law to speak of the King's prerogatives as having been transferred to the Ministry. Dicey says, " We may use the term ' prerogative ' as equivalent to the discretionary authority of the executive " (ibid supra, p. 421) and Ridges similarly observes that, " The prerogative is no longer the personal prerogative of the King, but the privilege of the executive " : (Ridges' Constitutional Law of England, 4th ed., p. 157). If this conception of the prerogative be clearly kept in view, namely, that,

whilst exercised in the name of the Crown, it is now in reality the prerogative of the King's responsible advisers, then no difficulty can arise in regard to its distribution or the locality of the power to exercise or otherwise deal with it. For it is not now sufficient to say that the prerogative of the King has become the privilege of his Ministry. Under present circumstances, it has become the privilege not of any single one of the King's ministries but of the respective ministries of the British self-governing States, the prerogative in each Dominion accompanying the associated legislative power: see, e.g., *British Coal Corporation* v. *The King* (1935) A.C. 500.

15. This appears to be the logical and essential consequence of the resolutions embodied in the Report of the Imperial Conference of 1926. The United Kingdom and the Dominions, in respect of their position and mutual relations, are there defined as "autonomous communities within the British Empire, equal in status and in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Equality of status, so far as Great Britain and the Dominions are concerned, is thus declared to be the root principle governing their inter-imperial relations; and this must imply a co-ordinate distribution of executive, as well as legislative, power. Any doubt, if doubt there could be, that this is so is put at rest not only by the provisions of the Statute of Westminster, 1931, Imp. St. 22 Geo. V, c. 4, as regards the removal of extraneous legal fetters upon the powers of the Dominion Parliaments (see, e.g., *British Coal Corporation* v. *The King* (1935) A.C. 500) but by the explicit enunciation in the said report of these principles, namely :—

1. "It is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs."

2. "Consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion"; and

3. "It is essential as a consequence of the equality of status existing among the members of the British Commonwealth of Nations, that the Governor General of a Dominion is the representative of the Crown holding, in all essential respects, the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain."

Nobody can deny that a treaty or convention negotiated for a Dominion by its own plenipotentiary or representatives is a "matter appertaining to the affairs of that Dominion."

16. As regards the prerogative of the Crown to make treaties, the resolution on the treaty-making power contained in the Report of the Imperial Conference of 1923, and the additional rules and explanations

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set out in the reports of the Imperial Conferences of 1926 and 1930 constitute a code of rules which are intended to regulate the exercise of this prerogative. They leave no room for doubt that Canada and the other Dominions have acquired, at least so far as British constitutional practice is concerned, the treaty-making power, and have acquired it without any constitutional limitation of any kind except only the conventional duty of prior consultation in the case of treaties which may affect the interests of other parts of the Empire: (11 Halsbury's Laws of England, 2nd ed., pp. 32, 81; Anson's Law and Custom of the Constitution, 4th ed., (1935) Vol 2, Part II, pp. 88, 89). So that, just as in the United Kingdom the exercise of this prerogative became under the convention of the British Constitution the privilege of the executive so, also, under the conventions or understandings which have come to form so important an element of the general constitutional law of the British Commonwealth of Nations, or by what Lord Watson in *Cooper* v. *Stuart*, 14 A.C. 286, 296, calls "the silent operation of constitutional principles," the exercise of this prerogative, in respect of Canada, has become the privilege of the executive government of Canada. This development illustrates one very important respect in which the constitution conferred by the British North America Act is, within the meaning of the preamble of that Act, "a constitution similar in principle to that of the United Kingdom," and "planted in Canada a living tree capable of growth and expansion within its limits," a constitution which "Like all written Constitutions . . . has been subject to development through usage and convention": *Edwards* v. *Attorney-General for Canada* (1930) A.C. 124, 136, per Lord Sankey L.C.

17. It only remains to observe that the transfer of the treaty-making power to the executive Government of Canada has not involved in the smallest degree any invasion of, or derogation from, the legislative jurisdiction of any of the provinces. It is a power which always has been legally vested in His Majesty and to the exercise of which provincial legislative jurisdiction always has been subject. The power to advise His Majesty in regard to treaty engagements affecting Canada has been transferred from Westminster to Ottawa: that is all.

18. *Labour Conventions are within scope of treaty-making power.*—There is no legal limitation of the power of the Crown to make treaties: 1 Bl. Com. p. 257; 6 Halsbury, Laws of England, 2nd ed., pp. 503, 520. Its power to make treaties in respect of Canada must no doubt be exercised, in Willoughby's expression, "with constitutional *bona fides*" (Willoughby, Constitution of the United States, pp. 569 et seq.)—that is to say, in respect of matters which are properly the subject of negotiation and agreement with foreign countries, matters of imperial or national and international concern; it could not, it is apprehended, be exercised, consistently with the structure and spirit of the Constitution, for the purpose of usurping powers under the device of treaty negotiation. Subject to this qualification, the range of matters with reference to which Canada may enter into valid international engagements would appear to be

unlimited. In this respect, the British North America Act gives " 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 " : *The Aeronautics Reference*, 1932 A.C. 54, 70, 71. This view of the treaty-making power is in harmony with that expressed by the present Chief Justice of Canada in the *Reference re Employment of Aliens* (1922) 63 S.C.R. 293, 330, where, in dealing with the scope of s. 132 of the British North America Act, he said :—

" The authority given by s. 132 is an authority to deal with subjects of Imperial and National concern as distinguished from matters of strictly Dominion concern only."

The view stated above is also supported by recent pronouncements of the Judicial Committee. In the *Aeronautics Reference*, 1932, A.C. 54, Lord Sankey, L.C., delivering the opinion of the Board, said at pp. 73 and 77 :

p. 73.

" There may . . . be cases where the Dominion is entitled to speak for the whole, and this is not because of any judicial determination of s. 91 and s. 92, but by reason of the plain terms of s. 132 where Canada, as a whole, having undertaken an obligation, is given the power necessary and proper for performing that obligation.

* * *

p. 77.

" 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 or by regulation that the terms of the Convention shall be duly carried out . . . The subject of aerial navigation and the fulfillment of Canadian obligations under s. 132 are matters of national interest and importance."

In the *Radio Communication Reference*, 1932, A.C. 304, where the Board was called upon to deal with an agreement between governments of which Canada was a signatory, Lord Dunedin, in rejecting the contention that legislative jurisdiction in respect of the stipulation of the Convention which did not fall within any of the enumerated heads of s. 91 belonged to the Provinces under heads 13 and 16 of s. 92, said at pp. 312 and 313 :—

" Canada as a Dominion is one of the signatories to the convention. In a question with foreign powers the persons who might infringe some of the stipulations in the convention would not be the Dominion of Canada, as a whole, but would be individual persons residing in Canada. These persons must so to speak be kept in order by legislation and the only legislation that can deal with them all at once is Dominion legislation. This idea of Canada as a Dominion

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being bound by a convention equivalent to a treaty with foreign powers was quite unthought of in 1867. It is the outcome of the gradual development of the position of Canada *vis-à-vis* to the mother country Great Britain, which is found in these later days expressed in the Statute of Westminster. It is not, therefore, to be expected that such a matter should be dealt with in explicit words in either s. 91 or s. 92. The only class of treaty which would bind Canada was thought of as a treaty by Great Britain, and that was provided for by s. 132. Being, therefore, not mentioned explicitly in either s. 91 or s. 92, such legislation falls within the general words at the opening of s. 91 which assign to the Government of the Dominion the power 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.' In fine, though agreeing that the Convention was not such a treaty as is defined in s. 132, their Lordships think that it comes to the same thing. . . ."

p. 313.

"The result is in their Lordships' opinion clear. It is Canada as a whole which is amenable to the other powers for the proper carrying out of the convention; and to prevent individuals in Canada infringing the stipulations of the convention it is necessary that the Dominions should pass legislation which should apply to all the dwellers in Canada."

19. It is submitted that the provisions of the Treaty of Peace, referred to in paragraph 5 above, render it plainly manifest that the three labour conventions now in question relate to matters not of provincial, not merely of national, but also of international concern and importance. These conventions import benefits as well as obligations for Canada *vis-à-vis* the other States which have ratified them. Canada, industrially, is in the vanguard of nations; it is indeed, ranked as one of the eight states of the world of "chief industrial importance" on criteria determined by the Council of the League of Nations. (I.L.O. Off. Bulletins, Oct. 10, 1934, and April 30, 1935.) Canadian workers probably enjoy a higher standard of living than those of most countries. This means that, in international trade, countries having a lower standard of wages and conditions for their workers are able more effectively to compete with Canada. It follows that any action taken to increase the standards of living in other countries which are in competition with Canada must be of material benefit to the Dominion as a whole. It is impossible, therefore, to class these labour conventions among the matters of purely local or domestic concern. The provisions of the Treaty of Peace show, on the contrary, that Canada as a part of the British Empire definitely agreed that the regulation of labour conditions by Conventions between the States signatories is a matter of international concern. No undertaking could be more explicit in that regard than that embodied in Art. 23 (*a*) of the League Covenant. Moreover,

the fact that the International Labour Organization has been set up by the Treaty for the promotion of international agreements upon matters considered by the signatories to be of international concern affords, it is submitted, conclusive evidence that conventions drawn up and adopted by the Conference in relation to such matters are proper for international agreement, and that the ratification of any such Convention by any member, such as Canada, constitutes a *bona fide* exercise of the treaty-making power.

20. *Article* 405, *par.* 9, *of Treaty of Peace does not apply to Canada.*— The said paragraph, generally known as the Federal States' clause, provides:

> " In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case."

In the case of recommendations, apart from submission to " the competent authorities " (Art. 405, par. 5), the duty of members of the International Labour Organization is simply one of informing the Secretary-General of the action taken (Art. 405, par. 6). On the other hand, in the case of draft conventions, once the approval of the competent authority is given, the State is under a duty to ratify (Art. 405, par. 7), and the completion of ratification involves, as indicated in para. 11 above, the acceptance of weighty obligations *vis-à-vis* other States, members, ratifying it. By electing therefore to treat draft conventions as recommendations, federal States avoid these responsibilities which rest on other members of the International Labour Organization.

Said par. 9 appears to have had its origin in a compromise between the British and American proposals which were before the Commission set up for drafting the constitution of the International Labour Organization in 1919. It is said to have been specifically designed to meet the case of the United States of America whose delegation had been advised by their constitutional experts that, without an alteration in their constitution and their system of government, the Federal Government could not enter into binding engagements in regard to many of the matters which would probably form the subject of labour conventions: see, " The origins of the International Labour Organization " by James T. Shotwell (1934) Vol. II, pp. 361–364.

It is to be observed that the language of par. 9 is deliberately restrictive. The reference is to federal States " the power of which to enter into conventions on labour matters is subject to limitations " and the discretion conferred on the governments of such states only extends to " draft conventions to which such limitations apply." It is submitted that, whatever may be the position under the constitution of the United States, the said paragraph has no application to Canada. Canada is no doubt a federal state, but it is not a federal state whose power to enter into conventions on labour matters is subject to any limitation whatever.

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Its power in this respect is certainly not subject to any limitation when such matters have become (as clearly they have become in virtue of the provisions of the Treaty of Peace) matters of international, as well as of national, concern and importance.

The sub-Committee of the Commission on International Labour Legislation of the Paris Peace Conference which was charged with the duty of drafting the provisions of Part XIII for the Treaty of Peace had before it the written opinion of the Rt. Hon. C. J. Doherty, Minister of Justice and one of the Canadian plenipotentiaries at the Peace Conference, as to interpretation of said par. 9 in relation to Canada: (The Origins of the International Labour Organization (1934) Vol. I, p. 155.) Mr. Doherty's opinion which is published in the work above cited was as follows:—

> "The provision of Article 19 (i.e., of the constitution of the International Labour Organization and Art. 405 of the Treaty of Peace) with reference to ratification by Federal States, to which Sir Malcolm calls your attention, would, I think, find no application to Canada. Though she is a Federal State, and though matters will in all probability be dealt with in conventions made in pursuance of the one now under consideration, upon which matters the power of legislation would ordinarily belong to the Legislatures of the Provinces, Article 132 of the British North America Act seems wide enough in so far as legislation may be necessary even as regards such matters, to confer upon the Parliament of Canada all the legislative power necessary or proper for performing the obligations of Canada or of any province under such conventions."

21. *The Parliament of Canada is the competent authority to consent to ratification of labour conventions and to perform obligations thereunder.*— Art. 405 of the Treaty of Peace by par. 5 requires each of the members of the International Labour Organization to bring the draft convention "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action" and by par. 7 "In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention." On one view, suggested by the words of par. 5, "for the enactment of legislation or other action," the Provinces may no doubt be authorities competent to enact legislation which would give effect to draft conventions whenever and to the extent the subject matter falls within the scope of provincial legislative jurisdiction, as the Supreme Court of Canada decided in the *Reference* re *Legislative Jurisdiction over Hours of Labour*, 1925 S.C.R. 505. But, on another view based upon an interpretation of said par. 5 in light of said par. 7, they are not, in respect at any rate of draft conventions, the authorities contemplated by Art. 405 of the treaty as competent to consent to ratification. They have no power to ratify any such convention nor can they even by conjoint legislative

action " speak for Canada as a whole." It is clear that under the British North America Act there is only one authority competent to do that. " These relations, which affect Canada as an entirety, fall within s. 91," [or s. 132] " because in their fullness they extend beyond what s. 92 can really cover. The kind of power adequate for dealing with them is only to be found in that part of the constitution which establishes power in the State as a whole. For it is not one that can be reliably provided for by depending on collective action of the legislatures of the individual Provinces agreeing for the purpose " : *Fort Frances Pulp and Power Co.* v. *Manitoba Free Press Co.* (1923) A.C. 695, 704. Nor is the judgment of the Supreme Court of Canada in the Reference *re* Legislative Jurisdiction over Hours of Labour inconsistent with this view. That judgment was confined to a pronouncement on the interpretation of par. 5 of Art. 405 of the Treaty of Peace. The Court took care to reserve its opinion upon the interpretation of par. 7 of said Art. 405. The present Chief Justice of Canada, who delivered the judgment of the Court said (1925 S.C.R., pp. 305, 510) :—

> " No question is submitted as to the duty of the member arising under the succeeding clauses of the same article in the event of the competent authority or authorities giving its or their consent to the recommendation or draft convention; and upon this no opinion is expressed."

It is submitted, therefore, that, in so far as any other than executive action is required, the two Houses of Parliament of Canada are, with respect to draft conventions, not only the authorities but the only authorities competent to approve or disapprove any such convention with a view to its being decided whether Canada should or should not ratify it.

The following reasons support this submission :—

First, it is an inherent and essential feature of the scheme of government established by the British North America Act that in respect of foreign relations the Dominion Government is the exclusive representative and embodiment of the entire sovereignty of the Dominion in its united character for to foreign nations, and in our intercourse with them, provinces and provincial governments and even the internal adjustment of federal power, are unknown, and the only authority of those nations are permitted to deal with is the authority of the Dominion as a unit. " The essential feature of a federation," said Dr. Keith in the first edition of his work on Responsible Government in the Dominions, 1909, pp. 134–135, " is, that for external purposes it should be regarded as a unity. This is the case with the Canadian federation . . . In the all-important matter of foreign relations and treaty obligations the Canadian Government is supreme : section 132 of the British North America Act, 1867, gives the government and the Parliament full power to take whatever steps are necessary for the carrying out of any treaty obligation incumbent on Canada or on any province . . . So all treaties in which Canada takes part are concluded for the Dominion as a whole." Thus, the federal

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power is placed in a position to implement its treaty obligations without being subject to the vacillations or regional differences of the provinces.

Secondly, read together, paragraphs 5 and 7 of Art. 504 of the Treaty of Peace place the Government of Canada under an obligation to bring a draft convention before the authority which can consent to ratify, and this authority, in so far as any other than executive action is required, is indubitably the two Houses of the Parliament of Canada.

Thirdly, if the consent of the two Houses of the Parliament of Canada to ratification of a draft convention be obtained, par. 7 of said Art. 405 places the Government of Canada under an obligation to ratify the Convention, and once ratified, the Convention becomes binding upon Canada as a whole, not merely in virtue of its own terms, but also in virtue of the obligation arising under said par. 7 of Art. 405 of the Treaty of Peace, and, therefore, arising out of a treaty between the Empire and foreign countries.

Fourthly, even if the draft conventions in question be not treaties within the purview of sec. 132 of the British North America Act, they are none the less treaties or conventions internationally binding upon Canada as a whole, and the Dominion Parliament is competent to enact the legislation necessary to perform the obligations undertaken by Canada under the said conventions in virtue of its residuary power under sec. 91 of the British North America Act to make laws for the peace, order and good government of Canada.

It is further submitted that, irrespective of the interpretation of par. 5 of said Art. 405 of the Treaty of Peace, the Crown, advised in such manner as our constitution requires, effectively ratified the said labour conventions, and Canada thereupon became bound to perform all the obligations arising under the said conventions and the legislation now in question was validly enacted in execution of such obligations.

22. *The Acts in question are laws for the peace, order and good government of Canada.*—It is submitted that, entirely apart from the existence of any treaty obligation to enact the legislation necessary to make effective the provisions of the three draft conventions referred to, the three Acts in question in this Reference may be justified as laws for the peace, order and good government of Canada. In the *Aeronautics Reference,* (1932) A.C. 54, and in the *Radio Reference* (1932) A.C. 304, the second proposition enunciated by the judgment of the Board in *Attorney-General for Canada* v. *Attorney-General for British Columbia,* (1930) A.C. 111, 118, was approved and applied. The proposition is :—

> " The general power of legislation conferred upon the Parliament of the Dominion by s. 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 s. 92, as within the scope of provincial legislation, unless these matters have attained such dimensions as to effect the body politic of the Dominion."

To this may be added the following recent pronouncements of the Judicial Committee as to the nature and scope of the legislative powers confided to the Dominion Parliament by s. 91 of the British North America Act:

First, " While the Courts should be jealous in upholding the charter of the Provinces as enacted in s. 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 " : *The Aeronautics* 10 *Reference* (1932) A.C. 70, 71; applied in *The Radio Reference* (1932) A.C. 304.

Secondly, " Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order and good government of Canada, or as being one of the specific subjects enumerated in s. 91 of the British North America Act, their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully Sovereign State " : *Croft* v. *Dunphy* (1933) A.C. 156, 163.

The provisions of the Treaty of Peace referred to in para. 5 above, 20 indicate that the various States signatories, including Canada, recognized in the most solemn fashion that the establishment of humane conditions of labour, both in their own countries and in all countries to which their commercial and industrial relations extend, was an indispensable means of securing the permanent peace of the world. They specified, among the measures considered to be of special and urgent importance, the following :—

> " (1) The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.
>
> " (2) The adoption of an eight hours day or a forty-eight hours 30 week as the standard to be aimed at where it has not already been attained; and
>
> " (3) The adoption of a weekly rest of at least twenty-four hours which should include Sunday wherever practicable."

Not only so; but upon each of these topics a draft convention was subsequently adopted by the International Labour Conference with a view to securing the establishment among the industrial communities of the world of uniform conditions of labour in relation to such matters. Considerable progress towards the attainment of the object in view has been made. As of October, 1935 (excluding for the present purpose Canada's ratifications), 40 the Minimum Wage Fixing Machinery Convention had been ratified by seventeen countries; the Hours of Work (Industry) Convention by twenty-one countries; and the Weekly Rest (Industry) Convention by twenty-six countries: (see appendix to this factum, p. 52, ll. 5 to 37.

These matters, being precisely those which form the subject matter of the three Acts now in question, have, therefore, become not merely of national but of international concern and importance, and they have attained

No. 4. Factum of the Attorney-General of Canada—*continued.*

such dimensions as to affect the body politic of the Dominion. As a consequence they have ceased to be matters of a merely local or private nature from a provincial point of view, or of property and civil rights in the province.

23. *The said Acts are laws for the regulation of trade and commerce.*—The decisions upon the judicial interpretation of the power of the Dominion Parliament to make laws for " the regulation of trade and commerce ", are referred to in para. 15 of the Factum on behalf of the Attorney-General of Canada in the Reference concerning s. 498A of the Criminal Code. Their effect may be summed up in the statement of Duff, J. in *Lawson* v. *Interior Tree, Fruit and Vegetable Committee of Direction*, 1931 S.C.R. 257, 371 that : " The more recent cases leave entirely untouched the view embodied in the passage quoted from *Parsons Case* (1881) 7 A.C. 96, and expressly adopted in *Wharton's Case* (1915) A.C. 330, that foreign trade and trading matters of interprovincial concern are among the matters included within the ambit of head 2 of s. 91 ". It is submitted that the three Acts now in question are, in pith and substance, laws for the regulation of trade and commerce.

First, because this legislation tends to equalize in an international way (as contemplated by the undertaking embodied in Art. 23 (*a*) of the Treaty of Peace) the fundamental conditions of production under which the foreign trade and commerce of Canada is carried on. It fulfils objectively a function comparable to that which the tariff by a subjective determination fulfils, in that the design and effect of such legislation is to induce the establishment and maintenance of like conditions for labour by other countries with lower standards of wages and living conditions and thereby to enable Canadian industries and workmen more effectively to compete with such countries in the world markets.

Secondly, because, from a national point of view, the design and effect of such legislation is to establish uniform conditions for productive labour as a general regulation of the trade and commerce of Canada as a whole.

The necessity for securing, in the interest of fostering the trade and commerce of Canada along fair competitive lines, the establishment of uniform conditions of labour not only throughout Canada but also in the countries with which Canada competes in foreign markets was stressed in the Report of the Royal Commission on Price Spreads. Pertinent extracts from the report will be found in the appendix to this factum (p. 53).

24. *Ancillary provisions within competence of Parliament.*—It is submitted that if the three Acts now in question have been validly enacted in other respects (as is confidently submitted), the ancillary provisions contained in each Act providing penalties for violations of the Act or the regulations made thereunder, were validly enacted in the exercise of the exclusive legislative authority of the Dominion Parliament in relation to the criminal law.

25. It will, therefore, be submitted on behalf of the Attorney-General of Canada that The Weekly Rest in Industrial Undertakings Act, The Minimum Wages Act; and The Limitation of Hours of Work Act, are not, nor is any part thereof, *ultra vires* of the Parliament of Canada; and that each of the questions referred to this Honourable Court herein should, accordingly, be answered, without qualification, in the negative.

N. W. ROWELL,
L. S. ST. LAURENT,
C. P. PLAXTON.

APPENDIX TO FACTUM.

No. 1.

CORRESPONDENCE AND DOCUMENTS RELATIVE TO THE REPRESENTATION OF CANADA AT THE PEACE CONFERENCE AND TO THE RATIFICATION OF THE TREATY OF PEACE WITH GERMANY.

CORRESPONDENCE BETWEEN THE PRIME MINISTER OF CANADA AND THE PRIME MINISTER OF THE UNITED KINGDOM RESPECTING THE REPRESENTATION OF CANADA AT THE PEACE CONFERENCE, 27TH OCTOBER, 1918, TO 3RD NOVEMBER, 1918.

Telegram from the Prime Minister of the United Kingdom to the Prime Minister of Canada

Sir ROBERT BORDEN, LONDON, October, 27th, 1918.
Ottawa.

27th October, 1918. I think that you ought to be prepared to start without delay for Europe, if the Germans accept the terms of the armistice which we shall propose after our meeting at Versailles this week, as the Peace Conference will in that event probably open within a few weeks, and this will have to be preceded by inter-allied conferences of at least equal importance. It is, I think, very important that you should be here in order to participate in the deliberations which will determine the line to be taken at these conferences by the British delegates.

LLOYD GEORGE.

Telegram from the Prime Minister of Canada to the Prime Minister of the United Kingdom.

Rt. Hon. DAVID LLOYD GEORGE, OTTAWA, 29th October, 1918.
10, Downing Street,
London.

October 29th. There is need of serious consideration as to representation of the Dominions in the peace negotiations. The press and people

No. 4. Factum of the Attorney-General of Canada—*continued.*

of this country take it for granted that Canada will be represented at the Peace Conference. I appreciate possible difficulties as to representation of the Dominions, but I hope you will keep in mind that certainly a very unfortunate impression would be created and possibly a dangerous feeling might be aroused if these difficulties are not overcome by some solution which will meet the national spirit of the Canadian people. We discussed the subject to-day in Council and I found among my colleagues a striking insistence which doubtless is indicative of the general opinion entertained in this country. In a word, they feel that new conditions must be met by new precedents. I should be glad to have your views.

BORDEN.

Telegram from the Prime Minister of the United Kingdom to the Prime Minister of Canada.

LONDON, November 3, 1918.

Sir ROBERT BORDEN,

Ottawa.

3rd November. Your telegram reached me while in Paris. I fully understand the importance of the question that you raise. It makes me impressed all the more with the importance of your coming immediately to Europe, for practically it is impossible to solve by correspondence the many difficult problems which it raises and which you fully appreciate. Also on many questions now coming under consideration I should value your advice greatly. It will, I earnestly hope, be possible for you to sail at once.

D. LLOYD GEORGE.

CORRESPONDENCE BETWEEN THE ACTING PRIME MINISTER IN OTTAWA AND SIR ROBERT BORDEN IN LONDON RESPECTING THE REPRESENTATION OF CANADA AT THE PEACE CONFERENCE, DECEMBER, 4, 1918, TO JANUARY 4, 1919.

Telegram, dated December 4, 1918, *from the Acting Prime Minister, Ottawa, to Sir Robert Borden, London.*

Council to-day further considered Canadian representation at Peace Conference and is even more strongly of opinion than when you left, that Canada should be represented. Council is of opinion, that in view of war efforts of Dominion other nations entitled to representation at Conference should recognize unique character of British Commonwealth composed of group of free nations under one sovereign and that provision should be made for special representation of these nations at Conference, even though it may be necessary that in any final decisions reached they should speak with one voice; that if this is not possible then you should form one of whatever delegation represents British Commonwealth. It surely is not contemplated that each nation at war should have exactly same numerical

representation as Great Britain and France. Should not representation be to some extent commensurate with war efforts? Would you like Order in Council passed or any other official action taken declaring attitude of Government on question of Canadian representation at Conference? If so, please cable.

Telegram, dated London, January 2, 1919, *from Sir Robert Borden to the Acting Prime Minister, Ottawa.*

In Cabinet to-day I took up question of representation of the Dominion and spoke very frankly and firmly as to Canada's attitude. My proposal which I consider the most satisfactory solution that is practicable and which was accepted by the Cabinet is as follows :—

First, Canada and the other Dominions shall each have the same representation as Belgium and other small allied nations at the Peace Conference.

Second, as it is proposed to admit representatives of Belgium and other small allied nations only when their special interests are under consideration, I urged that some of the representatives of British Empire should be drawn from a panel on which each Dominion Prime Minister shall have a place.

I pointed out that Canada has no special interest such as South Africa, Australia and New Zealand, in respect of additional territory and that the basis of representation accorded to small allied nations would, therefore, be unsatisfactory from Canadian point of view. I emphasized the insistence of Canada on this recognition and I urged that the British Empire has the right to define the constitutional relations between the nations which compose it and their consequent right to distinctive representation. It is anticipated that British Empire will have five representatives entitled to be present at all meetings of Conference. I expressed my strong opinion that it would be most unfortunate if these were all selected from the British Islands. Probably three will be named and two others selected from the panel for each meeting. The panel will comprise both British and Dominion Ministers. No public announcement can be made until these proposals have been communicated to Allied Governments and accepted. I shall be glad to have views of Council. My proposal really gives to Dominions fuller representation than that accorded to small allied nations such as Belgium.

Telegram, dated Ottawa, January 4, 1919, *from the Acting Prime Minister to Sir Robert Borden.*

If Peace Conference in its composition is to express spirit of democracy for which we have been fighting, as Council thinks it should, small allied nations like Belgium which have fought with us throughout war should be entitled to representation throughout whole Conference, even if limited to one member, and if this were agreed proposal that Canada should have same representation as Belgium, and other small allied nations, would be satisfactory, but not otherwise. Canada has had as many casualties as the United States and probably more actual deaths. Canadian people would

No. 4. Factum of the Attorney-General of Canada—*continued.*

not appreciate five American delegates throughout the whole Conference and no Canadian entitled to sit throughout Conference, nor would they appreciate several representatives from Great Britain and Canada none. There will be great disappointment here if you are not full member of Conference. We fully appreciate that you are doing everything in your power to secure suitable representation for Canada.

Telegram, dated Ottawa, January 16, 1919, *from Acting Prime Minister to Sir Robert Borden (in Paris).*

Announcement as to Canadian representation at Peace Conference most favourably received. Hearty congratulations on success of your efforts in this regard.

BRITISH EMPIRE DELEGATION—THE DOMINIONS AS PARTIES AND SIGNATORIES TO THE VARIOUS PEACE TREATIES.

Memorandum circulated by Sir Robert Borden on behalf of the Dominion Prime Ministers.

(1) The Dominion Prime Ministers, after careful consideration, have reached the conclusion that all the treaties and conventions resulting from the Peace Conference should be so drafted as to enable the Dominions to become Parties and Signatories thereto. This procedure will give suitable recognition to the part played at the Peace Table by the British Commonwealth as a whole and will at the same time record the status attained there by the Dominions.

(2) The procedure is in consonance with the principles of constitutional government that obtain throughout the Empire. The Crown is the supreme executive in the United Kingdom and in all the Dominions, but it acts on the advice of different Ministries within different constitutional units; and under Resolution IX of the Imperial War Conference, 1917, the organization of the Empire is to be based upon equality of nationhood.

(3) Having regard to the high objects of the Peace Conference, it is also desirable that the settlements reached should be presented at once to the world in the character of universally accepted agreements, so far as this is consistent with the constitution of each State represented. This object would not be achieved if the practice heretofore followed of merely inserting in the body of the convention an express reservation providing for the adhesion of the Dominions were adopted in these treaties; and the Dominions would not wish to give even the appearance of weakening this character of the peace.

(4) On the constitutional point, it is assumed that each treaty or convention will include clauses providing for ratification similar to those in the Hague Convention of 1907. Such clauses will, under the procedure proposed, have the effect of reserving to the Dominion Governments and legislatures the same power of review as is provided in the case of other contracting parties.

(5) It is conceived that this proposal can be carried out with but slight alterations of previous treaty forms. Thus—

(*a*) The usual recital of Heads of State in the Preamble needs no alteration whatever, since the Dominions are adequately included in the present formal description of the King, namely, " His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India."

(*b*) The recital in the Preamble of the names of the Plenipotentiaries appointed by the High Contracting Parties for the purpose of concluding the treaty would include the names of the Dominion Plenipotentiaries immediately after the names of the Plenipotentiaries appointed by the United Kingdom. Under the general heading " The British Empire " the sub-headings " the United Kingdom," " The Dominion of Canada," " The Commonwealth of Australia," " the Union of South Africa," etc., would be used as headings to distinguish the various plenipotentiaries.

(*c*) It would then follow that the Dominion Plenipotentiaries would sign according to the same scheme.

(6) The Dominion Prime Ministers consider, therefore, that it should be made an instruction to the British member of the Drafting Commission of the Peace Conference that all treaties should be drawn according to the above proposal.

Hotel la Perouse,
Paris,
12th March, 1919.

ORDER IN COUNCIL OF APRIL 10, 1919, AUTHORIZING ISSUANCE OF FULL POWERS TO CANADIAN PLENIPOTENTIARY DELEGATES.

AT THE GOVERNMENT HOUSE AT OTTAWA.

P.C. 800.

THURSDAY, the 10th day of April, 1919.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

His Excellency the Governor General in Council, on a report from the Acting Secretary of State for External Affairs, stating that it is expedient, in connection with the Peace Congress, to invest fit persons with full powers to treat on the part of His Majesty the King in respect of the Dominion of Canada with persons similarly empowered on the part of other States, is pleased to order and doth hereby order that His Majesty the King be humbly moved to issue letters patent to each of the following named persons:—

The Right Honourable Sir Robert Laird Borden, a member of His Majesty's Most Honourable Privy Council, G.C.M.G., K.C., M.P., Prime Minister of the Dominion of Canada;

No. 4. Factum of the Attorney-General of Canada—*continued.*

The Right Honourable Sir George Eulas Foster, a member of His Majesty's Most Honourable Privy Council, G.C.M.G., M.P., Minister of Trade and Commerce of the Dominion of Canada;
The Honourable Arthur Lewis Sifton, K.C., M.P., Minister of Customs and Inland Revenue of the Dominion of Canada;
The Honourable Charles Joseph Doherty, K.C., M.P., Minister of Justice of the Dominion of Canada;

naming and appointing him as Commissioner and Plenipotentiary in respect of the Dominion of Canada, with full power and authority as from the first day of January, 1919, to conclude with such plenipotentiaries as may be vested with similar power and authority on the part of any powers or states, any treaties, conventions or agreements in connection with the said Peace Congress, and to sign for and in the name of His Majesty the King in respect of the Dominion of Canada everything so agreed upon and concluded and to transact all such other matters as may appertain thereto.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

LETTER FROM PRIME MINISTER OF CANADA TO PRIME MINISTER OF UNITED KINGDOM, DATED PARIS, APRIL 16, 1919, RESPECTING ISSUANCE OF FULL POWERS TO CANADIAN PLENIPOTENTIARY DELEGATES.

P.C. File No. 13.

BRITISH DELEGATION,
PARIS, April 16, 1919.

Dear Mr. LLOYD GEORGE,—I enclose a copy of a telegram which I sent on the 9th instant to the Acting Prime Minister at Ottawa, respecting the authority for the issuance of Full Powers to the Canadian Plenipotentiaries. We considered that Full Powers issued by the King should be based upon formal action by the Canadian Government; and accordingly the Order in Council proposed in the telegram has been passed.

A certified copy of the Order in Council will be sent from Ottawa to His Majesty's Government at London. When it reaches the Foreign Office some appropriate step should be taken to link it up with the Full Powers issued by the King to the Canadian plenipotentiaries and with the papers connected therewith, in order that it may formally appear in the records that these Full Powers were issued on the responsibility of the Canadian Government.

Yours faithfully,
(Sgd.) R. L. BORDEN.

The Right Hon. D. LLOYD GEORGE, M.P.,
Prime Minister and First Lord of the Treasury,
British Delegation, Paris.

[Enclosure in letter of April 16, 1919, from Sir Robert Borden to Mr. Lloyd George.]

No. 4. Factum of the Attorney-General of Canada—*continued.*

Copy of Telegram, dated April 9, 1919, from Sir Robert Borden to Acting Prime Minister, Ottawa.

The treaties concluded at the Peace Conference will be signed in respect of Canada by Canadian plenipotentiaries. Under international practice their Full Powers are issued by the King, but such issuance should be based upon formal action by Canadian Government authorizing it. Order in Council should therefore be passed at once and cabled as well as mailed to Colonial Secretary. In order to provide for any eventuality, such as return of one or more of us before signature takes place, Full Powers should be issued to each Minister here. Order in Council should be in following terms which have been drawn up in conformity with terms of Full Powers usually issued. Begins :—

"Whereas in connection with the Peace Congress it is expedient to invest fit persons with full powers to treat on the part of His Majesty the King, in respect of the Dominion of Canada, with persons similarly empowered on the part of other States;

Therefore His Excellency the Governor in Council, on the recommendation of the Secretary of State for External Affairs, is pleased to order and doth hereby order that His Majesty the King be humbly moved to issue Letters Patent to each of the following named persons :—

The Right Honourable Sir Robert Laird Borden, P.C., G.C.M.G., K.C., M.P., Prime Minister of the Dominion of Canada.

The Right Honourable Sir George Eulas Foster, P.C., G.C.M.G., M.P., Minister of Trade and Commerce of the Dominion of Canada.

The Honourable Arthur Lewis Sifton, K.C., M.P., Minister of Customs of the Dominion of Canada.

The Honourable Charles Joseph Doherty, K.C., M.P., Minister of Justice of the Dominion of Canada.

naming and appointing him as Commissioner and Plenipotentiary in respect of the Dominion of Canada with Full Power and Authority as from the first day of January, nineteen hundred and nineteen, to conclude with such Plenipotentiaries as may be vested with similar Powers and Authority on the part of any Powers or States any Treaties, Conventions, or Agreements in connection with the said Peace Congress, and to sign for and in the name of His Majesty the King, in respect of the Dominion of Canada, everything so agreed upon and concluded, and to transact all such other matters as may appertain thereto."

FULL POWERS ISSUED TO CANADIAN PLENIPOTENTIARY.

(Sgd.) GEORGE R.I.

George, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, etc., etc., etc. To all and singular to whom these Presents shall come, Greeting !

No. 4. Factum of the Attorney-General of Canada—*continued.*

Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion between Us and the Powers and States in connection with the forthcoming Peace Congress,

We have judged it expedient to invest fit person with Full Power, to conduct the said discussion on Our Part in respect of Our Dominion of Canada : Know ye, therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection, of our Right Trusty and well-beloved Councillor Sir Robert Laird Borden, Knight Grand Cross of our Most Distinguished Order of St. Michael and St. George, one of our Counsel learned in the law, etc., etc., etc., Member of the Parliament of Canada, Prime Minister of the Dominion of Canada, have named, made, constituted and appointed, as We do by these Presents name, make, constitute and appoint him, Our Undoubted Commissioner, Procurator, and Plenipotentiary, in respect of Our Dominion of Canada; Giving to him all manner of Power and Authority to treat, adjust, and conclude with such Ministers, Commissioners, or Plenipotentiaries, as may be vested with similar Power and Authority on the part of any Powers or States as aforesaid, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our Name in respect of Our Dominion of Canada everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy as We Ourselves could do, if personally present.

Engaging and Promising, upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator, and Plenipotentiary in respect of our Dominion of Canada, shall, subject if necessary to Our Approval and Ratification, be agreed to, acknowledged and accepted by Us in the fullest manner, and that We will never suffer either in the whole or in part any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our Power.

In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the first day of January, in the Year of Our Lord, One Thousand Nine Hundred and Nineteen and in the Ninth Year of Our Reign.

CORRESPONDENCE BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED KINGDOM RESPECTING THE RATIFICATION OF THE TREATY OF PEACE WITH GERMANY, JULY 4, 1919, TO SEPTEMBER 19, 1919.

Telegram from the Secretary of State for the Colonies to the Governor-General.

LONDON, July 4th, 1919.

It is hoped German treaty may be ratified by three of the Principal Allied and Associated Powers and by Germany before end of July.

No. 4. Factum of the Attorney-General of Canada—*continued.*

Telegram from the Governor-General to the Secretary of State for the Colonies.

OTTAWA, July 9th, 1919.

Following from Prime Minister. Your message July 4th respecting ratification of Peace Treaty with Germany. I am under pledge to submit the Treaty to Parliament before ratification on behalf of Canada. No copy of Treaty has yet arrived and Parliament has been prorogued. Kindly advise how you expect to accomplish ratification on behalf of whole Empire before end July.

Telegram from the Secretary of State for the Colonies to the Governor-General.

LONDON, July 23, 1919.

Following for your Prime Minister. Begins:

I have now consulted with Prime Minister and the Cabinet with reference to your most secret telegram of July 9. Our view is that early ratification, especially now that Germany has ratified, is of the highest importance. In the British constitution there is nothing which makes it necessary for the King to obtain the consent of Parliament before ratifying Treaty. With perfect constitutional propriety the King can ratify on the advice of his Ministers. For a treaty of this far-reaching importance, and one embracing the whole Empire, the King certainly ought only to act at the instance of all his constitutional advisers—the Dominion Ministries as well as that of the United Kingdom. But inasmuch as Dominion Ministers participated in peace negotiations, and side by side with Ministers of the United Kingdom signed preliminaries of treaty, we hold that His Majesty if he now ratified the Treaty for the whole Empire would have the same constitutional justification in doing so in respect of Dominions as he has in respect of the United Kingdom. The King by a single act would bind the whole Empire, as it is right that he should so, but that act would represent the considered judgment of his constitutional advisers in all self-governing States of the Empire, because it would be merely giving effect to an international pact which they had all agreed to.

We realize at the same time the difficulty in which you are placed by your pledge to Parliament. We are willing, in order to meet this difficulty, to delay ratification (which if we alone were concerned we should desire to effect immediately) as long as we possibly can in order to give you time to lay treaty before your Parliament. The question is how long will this take? At an early date could you not have a special meeting of Parliament, solely for the submission of the Treaty, and if so how soon might this approval be expected? It would be impossible in our opinion without the gravest consequence to delay ratification until the late autumn.

I am communicating with the Governments of South Africa, New Zealand and Australia explaining urgency, and begging them to submit treaty to their Parliaments without delay, if they feel bound to do so before assenting to its ratification. Ends.

(Sgd.) MILNER.

No. 4. Factum of the Attorney-General of Canada—*continued.*

Telegram from the Governor-General to the Secretary of State for the Colonies.

OTTAWA, July 29, 1919.

Following from my Prime Minister. Begins: Your secret telegram of July 23 has been carefully considered by Cabinet, and it seems to us that there is considerable doubt whether under modern constitutional practice the King should ratify without first obtaining the approval of Parliament. We think that in accordance with recent practice and authorities such approval should be obtained in the case of treaties imposing any burden on the people, or involving any change in the law of the land, or requiring legislative action to make them effective or affecting the free exercise of the legislative power, or affecting territorial rights.

On the other point we fully agree that the King in ratifying the treaty ought only to act at the instance of all his constitutional advisers throughout the Empire but we do not entirely understand the suggestion that in the case of the Dominion the signature of the Dominion plenipotentiaries is equivalent to the tendering of advice to ratify. Do you regard this as holding good in the case of the signature of United Kingdom plenipotentiaries?

We propose to call special session on September 4 for purpose of presenting treaty to Parliament, and I am confident we can ratify within a week thereafter. Please cable whether this meets your views.

Telegram from the Governor-General to the Secretary of State for the Colonies.

OTTAWA, August 1, 1919.

Following from my Prime Minister. Begins: As we have to give thirty days' notice of summoning Parliament I hope we have immediate reply to my telegram of July 29 respecting ratification of Peace Treaty.

Telegram from the Secretary of State for the Colonies to the Governor-General.

LONDON, 2nd August, 1919.

Summoning of Parliament. I strongly advise your giving notice to summon immediately. In view of severe pressure being put upon us from Paris to ratify at earliest possible date, it is impossible to promise that we shall be able to keep back ratification till the eleventh of September. But I will certainly do my best, and I feel pretty confident that the argument for that amount of delay would be irresistible if we could count on Canadian approval by that date.

(Signed) MILNER.

Telegram from the Governor-General to the Secretary of State for the Colonies.

OTTAWA, August 4, 1919.

Following message from Prime Minister for you. Your message reached me yesterday afternoon and this morning Parliament has been summoned

for Monday, 1st September. I cannot emphasize too strongly the unfortunate results which would certainly ensue from ratification before Canadian Parliament has had an opportunity of considering Treaty.

Telegram from the Secretary of State for the Colonies to the Governor-General.

LONDON, August 12, 1919.

Urgent.

Re your cypher telegram August 4. The Government of Union of South Africa has convened special Session of Parliament to consider Peace Treaty with Germany. They are of opinion that it will be very desirable to secure uniformity in dealing with this question, and have asked me to submit suggestions as to form in which Peace Treaty should receive in Dominions Parliamentary approval, that is, whether motion should be submitted to Parliament for that purpose, or whether approval should take form of Bill on lines of that submitted to Parliament here. I have answered to the effect that matter is, of course, one for decision of local Government, but that best course, in my opinion, would be to obtain approval of Treaty by Resolution of both Houses and that if, as is probable, legislation on lines of British Bill is required in order to give effect to Treaty, this could follow later.

British Bill, it is important to bear in mind, is not a Bill to ratify Treaty, but to empower the Government to take necessary steps to carry out these provisions of Treaty which require legislative authority.

Paris is putting severe pressure upon us to ratify at the earliest possible date, and ratification by the French expected September 2nd or 3rd.

I should be grateful if you will inform me that procedure will be adopted by your Government. My reason for suggesting Resolution of both Houses is that this procedure might enable ratification to take place without the delay that might be involved in obtaining parliamentary powers for carrying out Treaty.

If, as I hope, procedure by resolution will be adopted, I assume that on receiving cable to the effect that such resolution has been passed, there will be no objection to His Majesty immediately ratifying.

Other Dominions I have telegraphed in the same sense.

(Sgd.) MILNER.

Telegram from the Governor-General to the Secretary of State for the Colonies.

OTTAWA, August 23, 1919.

Your telegram of August 12 respecting parliamentary approval of Treaty of Peace with Germany. Canadian Government propose to proceed by way of resolution of both Houses in order to expedite the matter. Legislation giving effect to the Treaty will be introduced later.

No. 4. Factum of the Attorney-General of Canada—*continued.*

Telegram from the Governor-General to the Secretary of State for the Colonies.

OTTAWA, 12th September, 1919.

Most urgent.

Following Order in Council approved to-day. Begins :—

AT THE GOVERNMENT HOUSE AT OTTAWA.

12th September, 1919.

PRESENT :

THE GOVERNOR-GENERAL IN COUNCIL.

WHEREAS, at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (including a protocol annexed thereto between the Allied and Associated Powers and Germany) was concluded and signed on behalf of His Majesty, for and in respect of the Dominion of Canada, by plenipotentiaries duly authorized for that purpose by His Majesty on the advice and recommendation of the Government of the Dominion of Canada.

AND WHEREAS the Senate and House of Commons of the Dominion of Canada have by resolution approved of the said Treaty of Peace;

AND WHEREAS it is expedient that the said Treaty of Peace be ratified by His Majesty for and in respect of the Dominion of Canada;

Now, therefore, the Governor-General in Council, on the recommendation of the Secretary of State for External Affairs, is pleased to order and doth hereby order that His Majesty the King be humbly moved to approve, accept, confirm and ratify the said Treaty of Peace, for and in respect of the Dominion of Canada. Ends.

(Sgd.) DEVONSHIRE.

Telegram from the Secretary of State for the Colonies to the Governor-General.

LONDON, September 19, 1919.

Most satisfactory to know that Treaty of Peace with Germany has been approved by Canadian Parliament. As matters have turned out and owing to unforeseen delays on the part of other powers, British Empire will probably be in position to ratify as soon as any other two of the principal Allied and Associated Powers. Parliaments of the Union of South Africa and New Zealand have also approved, and I hope soon to receive telegram announcing that Australian Parliament has approved.

(Sgd.) MILNER.

No. 2

RESOLUTION OF THE SENATE AND HOUSE OF COMMONS OF CANADA APPROVING OF THE TREATY OF PEACE SIGNED AT VERSAILLES JUNE 28th, 1919

(Passed by the Senate of Canada on September 4th, 1919, and by the House of Commons of Canada on September 11th, 1919.)

Resolved, That it is expedient that Parliament do approve the Treaty of Peace between the Allied and Associated Powers and Germany (and the Protocol annexed thereto), which was signed at Versailles on the twenty-eighth day of June, nineteen hundred and nineteen, a copy of which has been laid before Parliament, and which was signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named, and that this House do approve of the same.

No. 3

ORDER OF HIS MAJESTY IN COUNCIL, DATED 9TH FEBRUARY, 1920, AS TO TERMINATION OF WAR WITH GERMANY

AT THE COURT OF BUCKINGHAM PALACE, THE 9th DAY OF FEBRUARY, 1920

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS by the Termination of the Present War (Definition) Act, 1918, it is provided that His Majesty in Council may declare what date is to be treated as the date of the termination of the present war, and that the date so declared shall be as nearly as may be the date of the exchange or deposit of ratifications of the treaty or treaties of peace, and that His Majesty may also similarly declare what date is to be treated as the date of the termination of war between His Majesty and any particular State;

AND WHEREAS at Versailles on the twenty-eighth day of June, nineteen hundred and nineteen, a treaty of peace between the Allied and Associated Powers and Germany was signed on behalf of His Majesty;

AND WHEREAS by the said treaty of peace it was provided that a procès-verbal of the deposit of ratifications should be drawn up as soon as the treaty had been ratified by Germany on the one hand and by three of the principal Allied or Associated Powers on the other, and that from the date of the said procès-verbal the treaty would come into force between the high contracting parties who had ratified it;

AND WHEREAS the said treaty having been ratified by Germany and three of the principal Allied and Associated Powers, including His Majesty, such a procès-verbal as aforesaid has been drawn up dated the tenth day of January, nineteen hundred and twenty;

No. 4. Factum of the Attorney-General of Canada—*continued.*

AND WHEREAS treaties of peace with other belligerents not having yet been ratified it is desirable to declare the date which is to be treated as the date of the termination of war with Germany before declaring the date which is to be treated as the date of the termination of the present war,—

NOW, THEREFORE, HIS MAJESTY, by and with the advice of His Privy Council, is pleased to Order, and it is hereby ordered, that the said tenth day of January shall be treated as the date of the termination of war between His Majesty and Germany.

(S'd) ALMERIC FITZROY.

Vide *Canada Gazette*, Vol. 53, Extra, March 29th, 1920.

No. 4

Extract from Summary of Proceedings of Imperial Conference, 1923

IX.—NEGOTIATION, SIGNATURE AND RATIFICATION OF TREATIES

The principles governing the relations of the various parts of the Empire in connection with the negotiation, signature and ratification of Treaties seemed to the Conference to be of the greatest importance. Accordingly it was arranged that the subject should be fully examined by a Committee, of which the Secretary of State for Foreign Affairs was Chairman. The Secretary of State for the Colonies, the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa and Newfoundland, the Minister of External Affairs of the Irish Free State and the Secretary of State for India as Head of the Indian Delegation, served, on this Committee. With the assistance of the Legal Adviser to the Foreign Office, Sir C. J. B. Hurst, K.C.B., K.C., the following Resolution was drawn up and agreed to :—

> " The Conference recommends for the acceptance of the governments of the Empire represented that the following procedure should be observed in the negotiation, signature and ratification of international agreements.
>
> " The word ' treaty ' is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between Heads of States, signed by plenipotentiaries provided with Full Powers issued by the Heads of the States, and authorizing the holders to conclude a treaty."

I.

" 1. *Negotiation.*

" (*a*) It is desirable that no treaty should be negotiated by any of the governments of the Empire without due consideration of its

possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

" (*b*) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other governments of the Empire likely to be interested are informed, so that, if any such government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.

" (*c*) In all cases where more than one of the governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those governments before and during the negotiations. In the case of treaties negotiated at International Conferences, where there is a British Empire Delegation, on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilized to attain this object.

" (*d*) Steps should be taken to ensure that those governments of the Empire whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested.

" 2. *Signature.*

" (*a*) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the government of that part. The Full Power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear.

" (*b*) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the governments concerned.

" (*c*) As regards treaties negotiated at International Conferences, the existing practice of signature by plenipotentiaries on behalf of all the governments of the Empire represented at the Conference should be continued, and the Full Powers should be in the form employed at Paris and Washington.

" 3. *Ratification.*

" The existing practice in connection with the ratification of treaties should be maintained.

II.

" Apart from treaties made between Heads of State, it is not unusual for agreements to be made between governments. Such agreements, which are usually of a technical or administrative character, are made in the names of the signatory governments,

No. 4. Factum of the Attorney-General of Canada—*continued.*

and signed by representatives of those governments, who do not act under Full Powers issued by the Heads of the States: they are not ratified by the Heads of the States, though in some cases some form of acceptance or confirmation by the governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations the governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and if so, steps should be taken to ensure that the government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views."

The Resolution was submitted to the full Conference and unanimously approved. It was thought, however, that it would be of assistance to add a short explanatory statement in connection with part I (3), setting out the existing procedure in relation to the ratification of Treaties. This procedure is as follows:—

(*a*) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the government of that part:

(*b*) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the governments of those parts of the Empire concerned. It is for each government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that government.

No. 5

Extract from Summary of Proceedings of Imperial Conference, 1926

VI.—INTER-IMPERIAL RELATIONS.

All the questions on the Agenda affecting Inter-Imperial Relations were referred by the Conference to a Committee of Prime Ministers and Heads of Delegations, of which Lord Balfour was asked to be Chairman. The members of the Committee included the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Newfoundland, the Vice-President of the Executive Council of the Irish Free State, the Secretary of State for India, as head of the Indian Delegation, the Secretary of State for Foreign Affairs, and the Secretary of State for Dominion Affairs. Other Ministers and members of the Conference attended particular meetings.

The report of this Committee is printed *in extenso* below. It was unanimously adopted by the Conference on the 19th November and was published on the following day. In approving it, the Conference placed on record the great debt of gratitude which it owed to Lord Balfour for the

services which he had rendered by presiding over the work of this Committee, and its hope that the Report would prove of permanent value and help to all parts of the British Empire.

* * *

I.—INTRODUCTION.

We were appointed at the meeting of the Imperial Conference on the 25th October, 1926, to investigate all the questions on the Agenda affecting Inter-Imperial Relations. Our discussions on these questions have been long and intricate. We found, on examination, that they involved consideration of fundamental principles affecting the relations of the various parts of the British Empire *inter se*, as well as the relations of each part to foreign countries. For such examination the time at our disposal has been all too short. Yet we hope that we may have laid a foundation on which subsequent Conferences may build.

II.—STATUS OF GREAT BRITAIN AND THE DOMINIONS.

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

* * *

The rapid evolution of the Overseas Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon

No. 4. Factum of the Attorney-General of Canada—*continued.*

negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations.

* * *

(b) *Position of Governors-General*

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General as His Majesty's representative in the Dominions. That position, though now generally well recognized, undoubtedly represents a development from an earlier stage when the Governor-General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

(c) Operation of Dominion Legislation.

* * *

On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State representatives that they desired to elucidate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that " the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada."

On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

* * *

V.—Relations with Foreign Countries

From questions especially concerning the relations of the various parts of the British Empire with one another, we naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolution of the Imperial Conference of 1923 on the subject of the negotiation, signature, and ratification of treaties. But it seemed desirable to examine the working of that Resolution during the past three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

(a) *Procedure in Relation to Treaties*

We appointed a special Sub-Committee under the chairmanship of the Minister of Justice of Canada (The Honourable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee, on whose report the following paragraphs are based, found that the Resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined however in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

Negotiation.

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed

No. 4. Factum of the Attorney-General of Canada—*continued.*

by a plenipotentiary authorized to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

Form of Treaty.

Some treaties begin with a list of the contracting countries and not with a list of Heads of States. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annex to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term " British Empire " with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their being covered by the term " British Empire." This practice, while suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States and, if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order: Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as recommended is attached as an appendix to the Committee's report.

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King. In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence gives expression underlies all international conventions.

In the case of some international agreements the Government of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a Treaty between Heads of States should be avoided.

Full Powers.

The plenipotentiaries for the various British units should have full powers issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign. It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Government to advise the issue of full powers on their behalf to the plenipotentiary appointed to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

Signature.

In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature.

Coming into Force of Multilateral Treaties.

In general, treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connection with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

We think that some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired. We would also recommend that the various Governments of the Empire should make it an instruction to their representatives at International Conferences to be held in future that they should use their best endeavours to secure that effect is given to the recommendations contained in the foregoing paragraphs.

No. 4. Factum of the Attorney-General of Canada—*continued.*

(b) *Representation at International Conferences.*

We also studied, in the light of the Resolution of the Imperial Conference of 1923 to which reference has already been made, the question of the representation of the different parts of the Empire at International Conferences. The conclusions which we reached may be summarized as follows :—

1. No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In the case of such conferences all members of the League are invited, and if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I.1. (*c*) of the Treaty Resolution of 1923.

2. As regards international conferences summoned by foreign Governments no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening Government.

(*a*) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to secure invitations which will render such representation possible.

(*b*) Conferences of a political character called by a foreign Government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire desires to be represented, three methods of representation are possible :—

(i) By means of a common plenipotentiary or plenipotentiaries, the issue of full powers to whom should be on the advice of all parts of the Empire participating.

(ii) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of representation employed at the Washington Disarmament Conference of 1921.

(iii) By separate delegations representing each part of the Empire participating in the conference. If, as a result of consultation, this third method is desired, an effort must be made to ensure

that the form of invitation from the convening Government will make this method of representation possible.

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be facilitated by its participation in the conclusion of the treaty, as, for instance, by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.

(c) *General Conduct of Foreign Policy.*

We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It was frankly recognized that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain. Nevertheless, practically all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders. A particular instance of this is the growing work in connection with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington. We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. In the light of this governing consideration, the Committee agreed that the general principle expressed in relation to Treaty negotiations in Section V (a) of this Report, which is indeed already to a large extent in force, might usefully be adopted as a guide by the Governments concerned in future in all negotiations affecting foreign relations falling within their respective spheres.

No. 6.

EXTRACT FROM SUMMARY OF PROCEEDINGS OF IMPERIAL CONFERENCE, 1930.

(*g*) APPOINTMENT OF GOVERNORS-GENERAL.

The Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 declared that the Governor-General of a Dominion is now the " representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that

No. 4. Factum of the Attorney-General of Canada—*continued.*

he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government."

The Report did not, however, contain any recommendation as to the procedure to be adopted henceforward in the appointment of a Governor-General, and the Conference felt it necessary to give some consideration to this question.

Having considered the question of the procedure to be observed in the appointment of a Governor-General of a Dominion in the light of the alteration in his position resulting from the Resolutions of the Imperial Conference of 1926, the Conference came to the conclusion that the following statements in regard thereto would seem to flow naturally from the new position of the Governor-General as representative of His Majesty only.

1. The parties interested in the appointment of a Governor-General of a Dominion are His Majesty the King, whose representative he is, and the Dominion concerned.

2. The constitutional practice that His Majesty acts on the advice of responsible Ministers applies also in this instance.

3. The Ministers who tender and are responsible for such advice are His Majesty's Ministers in the Dominion concerned.

4. The Ministers concerned tender their formal advice after informal consultation with His Majesty.

5. The channel of communication between His Majesty and the Government of any Dominion is a matter solely concerning His Majesty and such Government. His Majesty's Government in the United Kingdom have expressed their willingness to continue to act in relation to any of His Majesty's Governments in any manner in which that Government may desire.

6. The manner in which the instrument containing the Governor-General's appointment should reflect the principles set forth above is a matter in regard to which His Majesty is advised by His Ministers in the Dominion concerned.

(*h*) THE SYSTEM OF COMMUNICATION AND CONSULTATION IN RELATION TO FOREIGN AFFAIRS

Previous Imperial Conferences have made a number of recommendations with regard to the communication of information and the system of consultation in relation to treaty negotiations and the conduct of foreign affairs generally. The main points can be summarized as follows :—

(1) Any of His Majesty's Governments conducting negotiations should inform the other Governments of His Majesty in case they should be interested and give them the opportunity of expressing their views, if they think that their interests may be affected.

(2) Any of His Majesty's Governments on receiving such information should, if it desires to express any views, do so with reasonable promptitude.

(3) None of His Majesty's Governments can take any steps which might involve the other Governments of His Majesty in any active obligations without their definite assent.

The Conference desired to emphasize the importance of ensuring the effective operation of these arrangements. As regards the first two points, they made the following observations :—

(i) The first point, namely, that of informing other Governments of negotiations, is of special importance in relation to treaty negotiations in order that any Government which feels that it is likely to be interested in negotiations conducted by another Government may have the earliest possible opportunity of expressing its views. The application of this is not, however, confined to treaty negotiations. It cannot be doubted that the fullest possible interchange of information between His Majesty's Governments in relation to all aspects of foreign affairs is of the greatest value to all the Governments concerned.

In considering this aspect of the matter, the Conference have taken note of the development since the Imperial Conference of 1926 of the system of appointment of diplomatic representatives of His Majesty representing in foreign countries the interests of different Members of the British Commonwealth. They feel that such appointments furnish a most valuable opportunity for the interchange of information, not only between the representatives themselves but also between the respective Governments.

Attention is also drawn to the resolution quoted in Section VI of the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926, with regard to the development of a system to supplement the present system of inter-communication through the official channel with reference not only to foreign affairs but to all matters of common concern. The Conference have heard with interest the account which was given of the liaison system adopted by His Majesty's Government in the Commonwealth of Australia, and recognized its value. Their attention has also been called to the action taken by His Majesty's Government in the United Kingdom in the appointment of representatives in Canada and the Union of South Africa. They are impressed with the desirability of continuing to develop the system of personal contact between His Majesty's Governments, though, of course, they recognize that the precise arrangements to be adopted for securing this development are matters for the consideration of the individual Governments with a view to securing a system which shall be appropriate to the particular circumstances of each Government.

(ii) As regards the second point, namely, that any of His Majesty's Governments desiring to express any views should express them with reasonable promptitude, it is clear that a negotiating Government cannot fail to be embarrassed in the conduct of negotiations if the observations of other Governments who consider that their interests may be affected are not received at the earliest possible stage in the negotiations. In the absence

No. 4. Factum of the Attorney-General of Canada—*continued.*

of comment the negotiating Government should, as indicated in the Report of the 1926 Conference, be entitled to assume that no objection will be raised to its proposed policy.

No. 7

LIST OF RATIFICATIONS OF THE THREE DRAFT LABOUR CONVENTIONS REFERRED TO IN THIS REFERENCE.

Based on Chart of the Progress of Ratifications, issued by the International Labour Office, October, 1935.

Hours of Work (Industry) Convention, No. 1.

Ratified by 22 countries as follows :—

Argentina	Czechoslovakia	Portugal	
Belgium	Dominican Rep.	Roumania	
Bulgaria	Greece	Spain	
Canada	India	Uruguay	
Chile	Lithuania	Austria	Conditional
Colombia	Luxemburg	France	
Cuba	Nicaragua	Italy	
		Latvia	

Weekly Rest (Industry) Convention, No. 14.

Ratified by 27 countries as follows :—

Belgium	Finland	Nicaragua
Bulgaria	France	Poland
Canada	Greece	Portugal
Chile	India	Roumania
China	Irish Free State	Spain
Colombia	Italy	Sweden
Czechoslovakia	Latvia	Switzerland
Denmark	Lithuania	Uruguay
Estonia	Luxemburg	Yugoslavia

Minimum Wage-Fixing Machinery Convention, No. 26.

Ratified by 18 countries as follows :—

Australia	France	Mexico
Bulgaria	Germany	Nicaragua
Canada	Great Britain	Norway
Chile	Hungary	South Africa
China	Irish Free State	Spain
Colombia	Italy	Uruguay

No. 8

No. 4. Factum of the Attorney-General of Canada—*continued.*

EXTRACTS FROM REPORT OF ROYAL COMMISSION ON PRICE SPREADS.

P.105.

Underlying the detailed proposals as to remedial measures made by the Royal Commission as the recognition of two general considerations, the first of which is:

"The need of greater uniformity in Canadian labour conditions, labour legislation, and labour law administration."

P.106.

It is now a commonplace of economic thought that the significance of the wage-earner is not confined to his activities as a producer. Production cannot continue without profitable markets; business activity of every sort ceases without prosperous buyers. Despite the importance of certain export markets, our own workers constitute the biggest market for Canadian products. On the stability of their income and purchasing power depend the profits of business enterprise. On their standard of living rests the possibility of commercial prosperity.

P. 107.

For the protection of the worker and of the fair employer against unfair competition, and for the protection of the state and society generally, most governments have found it necessary to set by law minimum standards of employment terms and conditions. These may not be able, without limit, to improve the conditions of all labour but, if wisely drafted, they are demonstrably able to set a bottom level below which unrestrained economic and other forces may not push labour. They are in no sense a questionable interference with "natural economic laws." They are simply a modification of the institutional framework within which these forces work. The game goes on as before, but the rules have been improved and the state, as referee, promises to enforce them.

The game, however, is often wider than the jurisdiction of any single legislature. The products of Ontario factories must compete with those of Quebec and, to the extent that trade is free, with the products of other factories throughout the world. It is necessary, therefore, in drafting and enforcing labour laws, to give due consideration to the standards of legislation and enforcement elsewhere, especially in competing jurisdictions. Some jurisdictions, in fact, by the toleration of unremedied abuses, foster what might be called unfair regional competition. Except for such proper variations as "climatic conditions and the imperfect development of industrial organization or other special circumstances" may demand, it is necessary for labour legislation and enforcement to be substantially uniform in all the different jurisdictions or regions from which employers compete. It is for this reason that we need greater uniformity of labour conditions in Canada itself and should endeavour to co-operate more effectively with the International Labour Organization which was set up to facilitate the achievement of such uniformity on a world basis.

No. 5. Factum of the Attorney-General of Ontario.

No. 5.

Factum of the Attorney-General of Ontario.

By Order-in-Council dated the 5th day of November, 1935, His Excellency the Governor-General of Canada referred to the Supreme Court of Canada for hearing and consideration, pursuant to the authority of Section 55 of the Supreme Court Act, the following questions :

(1) Is the Weekly Rest in Industrial Undertakings Act, or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada ?

(2) Is the Minimum Wages Act, or any of the provisions thereof and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada ?

(3) Is the Limitation of Hours of Work Act, or any of the provisions thereof, and in what particular or particulars or to what extent, ultra vires of the Parliament of Canada ?

The Dominion Parliament claims jurisdiction to enact the above legislation, mainly on the following grounds.

(1) On Article 23, and Article 427 of the Treaty of Peace signed at Versailles, on the 28th day of June, 1919, which Treaty was confirmed by the Treaty of Peace Act, 1919 (Dominion).

(2) On Draft Conventions agreed upon at a General Conference of the International Labour Organizations of the League of Nations, in accordance with various provisions of Part XIII, the Labour sections, of the Treaty of Peace.

(3) On the ratification of such Draft Conventions by the Parliament of Canada and

(4) On the power vested in the Parliament and Government of Canada to carry out " treaty obligations " by Section 132 of the British North America Act.

Section 132 of the British North America Act is as follows :

" SECTION 132."

" 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 contended that the constitutionality of these legislative enactments, carrying into effect draft conventions, cannot be supported or justified under the power given Parliament by Section 132 of the British North America Act.

(1) Article 23 of the Peace Treaty simply means that members of the League of Nations will endeavour to secure and maintain fair

and humane conditions of labour and will establish and maintain the necessary organizations for that purpose, but this is made subject to the qualification that the same is " subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon."

(2) Then comes Article 427, and this article merely contains a general enunciation and declaration that the high contracting parties recognize that the well being, physical, moral and intellectual, of industrial wage earners is of supreme international importance, and have framed permanent machinery, to further this great end.

Article 427 merely announces a proposal, or a pious hope and it goes on further and indicates nine goals as being desirable to reach—the adoption of an eight hour day—a weekly rest—abolition of child labour—and so on.

Then the article concludes by saying " without claiming that these methods and principles are either complete or final, the high contracting parties are of opinion that they are well fitted to guide the policy of the League of Nations : and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage earners of the world."

No obligation on the part of the Parliament of Canada can be found in these articles to enact weekly rest in Industrial undertakings, Minimum Wage or Limitation of Hours of work, legislation.

It is only the obligation which creates the jurisdiction in favour of the Parliament of Canada.

No binding obligation, such as is required by Section 132, of the British North America Act, as a result of treaties with foreign countries, can be found in these two articles.

What gives jurisdiction to the Parliament of Canada under Section 132 is the obligation of Canada towards foreign countries, not to any class of the population of Canada.

There is nothing binding, but a goal has been shown to the members as being desirable.

(3) There is, however, a further element to consider in these cases and that is the draft Conventions that have been ratified by the Parliament of Canada.

Article 23 of the Peace Treaty is made " subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon."

The Conventions which are to be agreed upon are defined in Part XIII, the Labour Part of the Peace Treaty.

The recital of Part XIII, the Labour part of the Treaty, recites that conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled : and an improvement of these conditions is urgently required (e.g.) the

No. 5. Factum of the Attorney-General of Ontario—*continued.*

regulation of hours of work, including the establishment of a minimum working day and week, etc.

This Labour part of the Peace Treaty provides for,—

(1) The organization of a general labour conference of representatives of the members of the League.

(2) An International Labour office.

(3) Procedure in dealing with recommendations and draft Conventions.

Article 405 is the important one, because it is therein stated how and in what manner recommendations and draft conventions are compiled, and also the duties and obligations resting on the members in reference to the same. Article 405 states, therefore, how it is done,—

" When the conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals shall take the form,—

(*a*) of a recommendation to be submitted to the members for consideration, with a view to effect being given to it by national legislation or otherwise, or

(*b*) of a draft international convention for ratification by the members."

It is provided that a majority of two-thirds votes cast by the delegates shall be necessary—and so forth—

Then it is said in the Article 405,—

" Each of the members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action."

And further it is stated in Article 405,—

" In the case of a draft convention, the member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary General and will take such action as may be necessary to make effective the provisions of such Convention."

AND FURTHER

" If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the member."

The subject matter in these Acts is not even called a Convention.

(1) It is a Draft Convention.

(2) It is something which is suggested to the various members of the International Labour Conference for the purpose of their calling it to the attention of the authority or authorities within whose competence the matter lies, to take any action regarding it as they see fit.

(3) The character of the Treaty engagements under Article 405, extend only to the obligation to bring these draft conventions and recommendations before the competent authority.

The provisions of this Article and of Part XIII of the Treaty impose no obligation on the Parliament of Canada to enact into law any convention or recommendation.

Any adoption or ratification by the Parliament of Canada does not arise out of the obligations of the Treaty, but is purely a voluntary act on the part of its member.

The obligation, if there is one to enact legislation, arises out of the ratification—not by reason of a pledge, or promise to an opposite party such as is found in a true treaty.

The text of Article 405 was interpreted by Mr. Justice Duff in the *Hours of Labour Case*—(1925) S.C.R. 505, who says at p. 510,—

> " It seems very clear that the duty arising under this clause is not a duty to enact legislation or to promote legislation; it is an undertaking simply to bring the recommendations or draft Conventions before the competent authorities."

Then also at p. 512,—

> " The obligation is simply in the nature of an undertaking to bring the recommendation or draft Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action."

In view of this, it is quite clear that the Dominion obligations will be fully discharged by bringing each of the proposals adopted by the conference to the attention of the authority or authorities within whose competence the matter lies for the enactment of legislation or other action.

These draft Conventions are merely suggestions, an earnest wish on the part of the League of Nations, and not a Treaty obligation within the provisions of Section 132.

They are more like formulas, or declarations of good intention, than of reciprocal terms of a contract or agreement such as is found in a true treaty.

The Treaty of Peace and the relevant articles above referred to and particularly Article 405 is not a Treaty at all within the meaning of the word treaty as contemplated in Section 132.

The Treaty of Versailles is truly a treaty in that it brought about peace between warring nations, but various draft conventions adopted

No. 5. Factum of the Attorney-General of Ontario—*continued.*

are different. They are but recommendations to be put in the form of an agreement to be brought before competent authority.

Even although the Dominion Parliament has ratified the draft conventions, any obligation, after such ratification, to enact legislation, arises from the act of ratification, not from any obligation to do so under the treaty.

It is a purely voluntary act on the part of the member.

When so ratified by the Dominion Parliament, they do not fall within what constitutes a treaty as between Canada and foreign countries, and when so ratified take on the " cloak " of a true treaty. If this is so, it means that every year delegates may leave Canada to attend a Labour Conference, pass all sorts of draft conventions covering many matters exclusively within the jurisdiction of the Provinces, and when ratified by the Dominion Parliament, that Parliament, under the authority of Section 132 of the British North America Act, could enact legislation, which would have the effect of completely overthrowing Provincial autonomy.

In effect take on power to transfer from the Provinces the jurisdiction given them and alter the constitution of Canada. Section 132 of the British North America Act gives no such power.

There is a division of power and jurisdiction over matters set out in the British North America Act by Section 91 and Section 92, as between the Parliament of Canada and the Provinces.

The framers of the Treaty quite realized that there are countries in which there would be different jurisdiction as to matters with which the draft conventions might deal.

It was for this reason that provision was made in Article 405 of the Peace Treaty, that recommendations or draft conventions should be brought before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

Until this legislation was enacted in 1935, following the *Hours of Labour Case,* (1925) S.C.R. 505 and *Toronto Electric Commissioners* vs. *Snider,* (1925) A.C. p. 396, these matters were dealt with as matters for the competent authority, namely the Provinces.

When, therefore, the matter has been referred to the competent authority, namely the Provinces, that act exhausts the obligation imposed by Article 405.

Whether these Draft Conventions are accepted and ratified by the Dominion Parliament or not is not the question, the point is the giving to the Parliament of Canada jurisdiction and power, under the cloak of a " treaty making power " under Section 132, which the British North America Act does not give to that Parliament, and that is what is attempted to be done in these cases.

Any such jurisdiction contended for by the Dominion in these cases under the power given in Section 132, means changing the constitution at the behest of men coming from all parts of the world.

It is difficult to appreciate that the Canadian delegates when they signed the Treaty of Peace, did so, having in their minds that by so doing, draft

conventions could be prepared, which when ratified by the Dominion Parliament, would give that Parliament jurisdiction under Section 132 over matters of purely Provincial concern, and would have the effect of taking some powers from the Provinces and transferring them to the Dominion Parliament.

In view of the provisions of Article 405, it is strongly suggested that no such thought was in the minds of these delegates, but on the contrary, express provision was made in that article that these draft conventions be placed before the competent authority.

Draft Conventions and recommendations are not treaties within Section 132 of the British North America Act, nor have they been held so to be.

The question was discussed in two cases :

In re the Regulation and Control of Aeronautics in Canada, (1932), A.C. p. 54, (October, 1931),

AND

In re Regulation and Control of Radio Communications in Canada, (1932), A.C. p. 304. (February, 1932).

But in these cases there were special treaties—not mere draft conventions standing alone.

In regard to Aerial navigation, the Treaty had been signed in 1920 with a large number of foreign powers, and was ratified by His Majesty on behalf of the British Empire on June 1st, 1922.

It was at the time of the hearing of the case in force between the British Empire and seventeen other States.

Further, the summing up given by their Lordships positively excludes the interpretation of their judgment as being based entirely on the treaty-making power contained in Section 132.

This is what they say—p. 77 :

" To sum up, as regards :

(*a*) To the terms of Section 132.

(*b*) To the terms of the convention which covers almost every conceivable matter relating to aero-navigation, and

(*c*) To the fact that further legislative powers in relation to aero-navigation resides in the Parliament of Canada by virtue of Section 91, item 2, 5 and 7, it would appear that substantially the whole field of legislation in regards to aero-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 that 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 fact that the subject of aero-navigation and the fulfilment of Canadian obligations under Section 132

No. 5. Factum of the Attorney-General of Ontario—*continued.*

are matters of national interest and importance; and that aerial navigation is a class of subject which has obtained 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."

By use of the words " for these reasons " it shows that their Lordships considered :

Sec. 91 (2) The regulation of trade and commerce.
Sec. 91 (5) Postal Service.
Sec. 91 (7) Militia, military and naval service and defence—

Being all matters within the exclusive jurisdiction of the Dominion Parliament.

THE RADIO CASE.

There was a Convention containing some 24 Articles signed at Washington, November 25th, 1927, and annexed are some 34 regulations that deal with a great variety of subjects.

There is also an agreement between Canada, United States, Newfoundland, Cuba and other North American nations relative to the assignment of frequencies on the North American continent, effective March 1, 1929, this being a Treaty.

So that in the Radio case there also, as in the Aeronautics case, is a binding agreement or Treaty.

A different state of affairs from the cases of these draft conventions is now under consideration.

Further, it is contended that this case was not decided on the ground that the Dominion had jurisdiction by virtue of Section 132, but because Radio was found to be included in

(a) Telegraphs;

(b) Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.

Both of the above subject matters are by Clause 10 of Section 92 of the British North America Act expressly excluded from the Provincial field.

And further it is contended that their Lordships in this case really based the jurisdiction of the Dominion on the pre-eminent claims of Section 91, not Section 132, as appears from the following words on page 317 :

" As their Lordships' views are based on what may be called the pre-eminent claims of Section 91 . . . "

Neither the Aeronautics or the Radio case decide that the Dominion Parliament has jurisdiction to enact legislation to make effective draft conventions based on Section 132 of the British North America Act.

But on the contrary, in these cases, even where there was a treaty, not a mere draft convention as in these cases, the decisions were based on pre-eminent Dominion jurisdiction which brought the subject matter dealt with under some of the enumerated heads of Section 91 of the British North America Act. Section 91 of the British North America Act enumerates the subjects over which the Dominion has exclusive power to legislate.

As there is no power under Section 132 of the British North America Act to enact such legislation—Does the subject matter of the legislation fall under any of the specified heads of Section 91 ?

The subject matter of this legislation does not fall under any of the specified heads of Section 91. It does fall, however, under Section 92 :

Head 13. Property and Civil Rights in the Province.

And possibly

Head 16. Generally all matters of a merely local or private nature in the Province.

Judicial authority supports this.

(1) *In the matter of legislative jurisdiction over Hours of Labour.* (1925), S.C.R. p. 505.

In this case it was held that the matter of labour in industrial undertakings in Canada is primarily within the competence of Provincial legislatures, but Parliament can legislate as to labour in territories not yet organized into, or forming part of a Province, and also as to labour of servants of the Dominion.

This case has not been distinguished or over-ruled in either the Radio or the Aviation case or any other case.

(2) *Toronto Electric Commissioners* v. *Snider,* (1925), A.C. 396.

In this case the Industrial Disputes Investigation Act was under review. Lord Haldane in this case says at p. 401 :

" The primary object of the Act was to enable industrial disputes between any employer in Canada and any one or more of his employees, as to ' matters or things affecting or relating to work done or to be done by him or them, or as to the privileges, rights and duties of employers or employees (not involving any such violation thereof as constitutes an indictable offence) ' relating to wages or remuneration, or hours of employment : sex, age or qualifications of employees, and the mode, terms and conditions of employment."

And at page 403, says :

" Whatever else may be the effect of this enactment, it is clear that it is one which could have been passed, so far as any Province was concerned, by the Provincial Legislature, under the powers conferred by Section 92 of the British North America Act.

" For its provisions were concerned directly with civil rights of both employers and employed in the Province."

No. 5. Factum of the Attorney-General of Ontario—*continued.*

CONCLUSIONS

(1) The constitutional capacity of Canada, in view of the above and the duties arising under the Treaty, to give effect to international labour conventions, having regard to the provisions of Article 405 of the Treaty, does not rest on the treaty-making power under Section 132 of the British North America Act.

(2) Nor does the constitutional capacity of Canada rest upon any of the particular subject matter set out in the enumeration in Section 91 of the British North America Act.

(3) The subject matter is exclusively vested in the Provinces under section 92 (13) of the British North America Act.

The only constitutional capacity left to the Dominion Parliament is the general power reserved at the beginning of Section 91 to make laws for the peace, order and good government of Canada.

It appears that the intention of the original scheme of the British North America Act as founded upon the views of the men responsible for the Act in reference to this power to legislate for the peace, order and good government of Canada was as follows:

"The true principle of Confederation lay in giving to the Central Government all the principles and powers of sovereignty, and that the subordinate or individual states should have no such power but those expressly bestowed upon them.

"We should thus have a powerful, central legislature, and a decentralized system of minor legislatures for local purposes." (Parliamentary debates on the subject of Confederation, 1865, pages 100–2.)

Lord Carnarvon's views as expressed in the House of Lords when the Act was introduced in 1867 were as follows:

"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 retain for each Province full 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 will be seen, under the 91st Clause, that the classification is not intended to 'restrict the generality' of the powers previously given to the Central Parliament, and that those powers extend to all laws made 'for the peace, order and good government of the Confederation'—terms which, according to all precedent, will, I understand, carry with them an ample measure of legislative authority." (References, Sir Arthur Harding, the fourth Earl of Carnarvon, Oxford, 1925, vol. 1, page 305.)

It would appear from this that the intention was made abundantly plain that the Federation itself would be competent to decide what matters were of national, as distinct from "purely local" importance.

This interpretation has been interfered with by judicial interpretation.

In *Russell* v. *the Queen* 7 A.C. 829, the Judicial Committee upheld a Federal Temperance Act, prohibiting, except under restrictive limitations, the liquor traffic throughout Canada. Lord Watson said at page 361 :

" Their Lordships do not doubt that some matters, in their origin local and provincial, may attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for the 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 Legislature, and that which has ceased to be merely local or provincial, and has become of national concern, in such sense to bring it within the jurisdiction of the Parliament of Canada."

This opinion seems to support the view that if a Federal Act were requisite for the ' peace, order and good government ' of the Dominion, it was intra vires of the Federal Legislature, even though it might affect incidentally ' property and civil rights ' granted exclusively to the Province.

This position did not long survive by reason of a series of decisions beginning with *Hodge* v. the *Queen* 9 A.C. 117, *Attorney-General for the Dominion* v. *Attorney-General for Alberta*, (1916), 1 A.C. 588, *In re Board of Commerce Act*, (1919), 1922), A.C. 191, and *Toronto Electric Commissioners* v. *Snider*, (1925), A.C. 396.

This last case whittled down the meaning of the words " peace, order and good government " and definitely relegated the words to the position of a reserve power to be used only when there was a national emergency such as war, a calamity, a pestilence or a famine.

Lord Haldane in that case said their Lordships did not think it now open to them to treat *Russell* v. *the Queen* as having established the general principle that the mere fact that Dominion legislation is for the general advantage of Canada or expect that it will meet a mere want which is felt throughout the Dominion, renders it competent, if it cannot be brought under the headings enumerated specifically in Section 91.

This leaves the legal situation apparently entirely divorced from the historical intentions of 1867, the " subjects of general interest," and " questions that are of common import " as expressed by Lord Carnarvon.

In the Snider case the Judicial Committee seemed to believe that they must put some meaning on the words ' peace, order and good government of Canada,' ' general interest ' and ' common import,' and they decided that these words confined the general residuary power to cases arising out of some national peril, where legislation might be required beyond Provincial control.

Under these decisions therefore the Dominion Parliament would not have constitutional competence to enact the legislation in question, because there is no such national peril as contemplated in these decisions.

A change, however, appears to be evident in the interpretation of this clause.

In re the Regulation and Control of Aeronautics in Canada, (1932), A.C.54.

No. 5. Factum of the Attorney-General of Ontario—*continued.*

In discussing the relation between Sections 91 and 92 Lord Sankey said at pages 70 and 71 :

" 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."

It should be noted that this statement by Lord Sankey is almost word for word from Lord Carnarvon's speech on the Second Reading of the British North America Act on February 19th, 1867, which has been quoted in this factum.

Then on page 77 Lord Sankey, in summing up, after setting up the regard

(*a*) To the terms of Section 132.

(*b*) To the terms of the Convention.

(*c*) To the fact that further legislative powers in relation to aerial navigation reside in the Parliament of Canada by virtue of Section 91, items

(2) The regulation of trade and commerce.

(5) Postal service.

(7) Militia, military and naval service and defence.

And then says :

" Further, their Lordships are influenced by the fact 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 . . . "

This shows a disposition on the part of the Privy Council to go back to the original view as to the jurisdiction of Parliament under peace, order and good government.

And further in this case their Lordships did find in Section 91, under the general power of ' peace, order and good government ' authority to enact legislation which concerned matters of national interest and importance, and which had attained such dimensions as to affect the body politic of the Dominion.

If this interpretation is followed, you do not have to have a war or a pestilence or some national emergency, but a matter of national interest and importance, a matter of common import to all the Provinces, and something that has attained such dimensions as to affect the body politic of the Dominion, in which uniformity of legislation is desirable.

Does the subject matter of the legislation in question fall within this interpretation ?

Probably it does; and some of the reasons that might be advanced for this statement are as follows :

1. This type of social and labour legislation reaches out widely into the economic life, and affects the standards of life of the Canadian people as a whole.

2. It is designed to improve the conditions under which all mankind and the Canadian people may live and work.

3. Economic conditions at present and their conduct are handicapped with having different rates for minimum wages, different hours and control of labour in the different Provinces.

4. If various provincial schemes are adopted instead of a national scheme, it would disturb the equilibrium of industrial relations in the various Provinces.

5. Conditions of living and working of the people of the Dominion is of national concern.

6. It is undesirable that there should be attempts to attract capital to one Province rather than to another and lead to competition among manufacturers and industrial leaders to have their factories where they may obtain labour at the lowest cost, and work labour longer hours.

7. Improvement in the conditions under which all mankind and the Canadian people may live and work, is of common concern to all the people of the Dominion—it is national in its scope and calls for uniform legislation.

8. If it is of national concern, then there should be uniformity of law in hours of toil and cessation from toil, and minimum wages, so that there will be equality as between the Provinces.

The Attorney-General for Ontario submits for the reasons stated herein, and those that will be advanced at the argument of the reference, that the answers to the questions referred should be as follows :—

(1) That insofar as the legislation rests on Section 132 of the British North America Act for its constitutional validity, it is *ultra vires* in whole, as there is no power under that Section given the Parliament of Canada to enact such legislation.

(2) While the subject matter of the legislation is exclusively within the jurisdiction of the Provinces, and therefore is *ultra vires* of the Dominion in whole; that probably the legislation is *intra vires* of the Dominion Parliament under the power conferred by Section 91 of the British North America Act to make laws for the peace, order and good government of Canada.

I. A. HUMPHRIES.

Toronto,
December, 1935.

No. 6. Factum of the Attorney-General of Quebec.

No. 6.

Factum of the Attorney-General of Quebec.

The Governor-General has by eight Orders in Council referred for the consideration and opinion of the Supreme Court the question of the validity of statutes enacted by the Parliament of Canada at its session in the year 1935, two of which are amending acts of legislation passed in 1934, dealing with what are generally known as the Social Service Acts.

The three enactments in the present reference are grouped together under the Order in Council of the 5th of November, 1935, presumably on the ground of some similarity differentiating them from the matters in the other five references.

The Order in Council is as follows :—

" P.C. 3454

" Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 5th November, 1935.

" The Committee of the Privy Council have had before them a report, dated 31st October, 1935, from the Minister of Justice, referring to the following Acts contained in the Statutes of Canada, 1935, namely—

The Weekly Rest in Industrial Undertakings Act, cap. 14;
The Minimum Wages Act, cap. 44; and
The Limitation of Hours of Work Act, cap. 63,

which were respectively passed, as appears from the recitals set out in the preambles of the said Acts, for the purpose of enacting the necessary legislation to enable Canada to discharge certain obligations declared to have been assumed by Canada under the provisions of the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919, and to which Canada, as part of the British Empire, was a signatory, and also under certain draft conventions concerning (*a*) the application of the weekly rest in industrial undertakings, (*b*) the creation of minimum wage fixing machinery, and (*c*) the limitation of hours of work in industrial undertakings, respectively, adopted by the International Labour Conference in accordance with the relevant Articles of the said Treaty.

The Minister observes that doubts exist or are entertained as to whether the Parliament of Canada had jurisdiction to enact the said Acts or any of them either in whole or in part, and that it is expedient that such questions 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 questions be referred to the Supreme

Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act—

1. Is The Weekly Rest in Industrial Undertakings Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

2. Is The Minimum Wages Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

3. Is The Limitation of Hours of Work Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

(Signed) E.-J. LEMAIRE,
Clerk of the Privy Council."

The scope of these three Acts may be briefly stated:

The Weekly Rest in Industrial Undertakings Act and The Limitation of Hours of Work Act comprise "Industrial Undertakings" as therein defined of the widest character.

The first of these provides that an employer shall grant to the whole of his staff in every seven days a rest of twenty-four consecutive hours.

The second, that no person shall employ any person for hours in excess of eight in the day and of forty-eight in the week.

The Minimum Wages Act provides an elaborate machinery for fixing minimum rates of wages in trades declared to be "specified rateable trades" and any employers paying less than such minimum rates are liable to a penalty not exceeding $5,000.

A SHORT ANALYSIS OF EACH ACT FOLLOWS.

I

THE WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT

(25–26 Geo. V, Chap. 14.)

The Act is intituled:

"An Act to provide for a weekly day of rest in accordance with the Convention concerning the application of the Weekly Rest in Industrial Undertakings adopted by the General Conference of the International Labour Organization of the League of Nations, in accordance with the Labour Part of the Treaty of Versailles of 28th June, 1919."

The preamble recites:

"WHEREAS the Dominion of Canada is a signatory, as Part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919; and whereas the said Treaty of Peace was confirmed by the Treaty of Peace Act, 1919; and whereas by Article 23 of the said

No. 6. Factum of the Attorney-General of Quebec—*continued.*

Treaty the signatories thereto each agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty it was declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme importance; and whereas a Draft Convention respecting the application of the weekly rest in industrial undertakings was agreed upon at a General Conference of the International Labour Organization of the League of Nations, in accordance with the relevant Articles of the said Treaty, which said Convention has been ratified by Canada; and whereas it is advisable to enact the necessary legislation to enable Canada to discharge the obligations assumed under the provisions of the said Treaty and the said Convention, and to provide for the application of the weekly rest in industrial undertakings, in accordance with the general provisions of the said Convention, and to assist in the maintenance on equitable terms of interprovincial and international trade: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

.....

Section 2 defines " industrial undertaking " to include :

(*a*) Works for the extraction of minerals from the earth;

(*b*) Industries in which articles are manufactured or demolished; including shipbuilding, electricity or motive power of any kind;

(*c*) Construction or demolition of any building, railway, harbour, canal, drain, telegraphic installation, electrical, gas or water works or other work of construction;

(*d*) Transport of passengers or goods by road or rail.

Section 3.

(1) The whole of the staff in any industrial undertaking shall be granted by the employer in every seven days a rest of twenty-four consecutive hours.

(2).....

(3) The period of rest shall wherever possible be the Lord's Day.

Section 4.

Power of the Governor in Council to make exceptions.

Section 7.

Penalties for violation of any provision of the Act not exceeding $100 and not less than $20.

No. 6. Factum of the Attorney-General of Quebec—*continued.*

II

THE MINIMUM WAGES ACT

(25–26 Geo. V, Ch. 44.)

The Act is intituled:

"An Act to provide for Minimum Wages pursuant to the Convention concerning minimum wages adopted by the International Labour Organization in accordance with the provisions of Part XIII of the Treaty of Versailles and of the corresponding parts of the other treaties of peace."

The preamble is, *mutatis mutandis*, the same as in The Weekly Rest in Industrial Undertakings Act.

Section 2 contains definitions.

(*a*) "Convention" means the draft convention adopted by the International Labour Organization on the 16th of June, 1928.

(*b*) "employer" means an employer in a rateable trade.

(*c*) "minimum rates of wages" means the remuneration, fixed under this Act as payable to workers, whether by way of wages or salary or for piece work, in a rateable trade;

(*e*) "rateable trades" means those trades or parts of trades (in particular, home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and the wages are exceptionally low.

(*f*) "specified rateable trades" means such rateable trades as shall be declared to be those to which the minimum wages rate fixing machinery provided by the Act shall be applied.

Section 3. (1) Minimum rates of wages in specified rateable trades fixed pursuant to the Act shall be paid by employers.

(2) Employers paying less, liable to a penalty not exceeding $5,000.

Sections 4 and 5 provide the machinery for fixing minimum rates of wages.

Section 5 is the only one making any reference to the draft Convention.

Section 6. The Governor in Council in substitution for sections 4 and 5 whenever he is satisfied that—

(*a*) the trade and commerce, or the public revenue is being injuriously affected by the absence of uniform minimum rates of wages, or

(*b*) workers throughout Canada are being oppressed by reason of the insufficiency of the wages being paid to them to enable them to maintain a suitable standard of living,

may fix minimum uniform rates of wages, and provide for punishing their non-observance.

No. 6.
Factum of the Attorney-General of Quebec—
continued.

III

The Limitation of Hours of Work Act.

(25–26 Geo. V, Chap. 63)

The Act is intituled :

" An Act to provide for limiting the Hours of Work in Industrial Undertakings to eight in the day and forty-eight in the week, in accordance with the Convention concerning the application of the principle of the Eight Hour Day or of the Forty-eight Hour Week adopted by the General Conference of the International Labour Organization of the League of Nations, in accordance with the Labour Part of the Treaty of Versailles of 28th June, 1919."

The preamble is the same, *mutatis mutandis*, as in the Weekly Rest in Industrial Undertakings Act and The Minimum Wages Act.

Section 2 defines " industrial undertaking " to include :

(*a*) Mines and similar works.

(*b*) Industries in which articles are manufactured, demolished or transformed; including shipbuilding and electricity or motive power of any kind.

(*c*) Construction, repair or demolition, among others, of any building, railway, harbour, canal, drain, electrical or gas undertaking, waterworks, etc.

(*d*) Transport of passengers or goods.

Section 3.

(1) No person shall employ any person to work in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed for hours in excess of eight in the day and of forty-eight in the week.

Section 5.

Certain exceptions for averaging the hours not exceeding the daily limit by more than one hour.

Sections 6, 7 and 8.

Similar exceptions for persons employed in shifts and in case of accidents.

Section 9.

Powers of Governor in Council in exceptional cases.

Section 10.

Power of the Governor in Council to make regulations in temporary cases.

(2) Such regulations shall provide so that fair and humane conditions of labour, with relation to hours of work, shall prevail in such excepted

employment, and so that any regulation made by reason of pressure of work shall be temporary in character.

(3) Whenever it is practicable the maximum of additional hours permitted under this section shall be fixed by the regulations, and in such case the rate of pay for overtime shall not be less than one and one quarter times the regular rate.

Section 11.

Notice of hours of work.

Section 13.

Penalties.

The distribution of the respective powers of the Dominion and the Provinces under the Constitutional Act is mainly effected by sections 91 and 92 of that Imperial Statute.

Some modification of these respective powers may be brought about by section 132, any effects of which will be hereafter considered.

Sections 91 and 92 of the British North America Act are as follows :—

" VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

" *Powers of the Parliament.*

" 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and 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; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.

No. 6. Factum of the Attorney-General of Quebec—*continued.*

13. Ferries between a Province and any British or Foreign Country or between two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And 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.

"*Exclusive Powers of Provincial Legislatures*

"92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes :

(*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;

(*b*) Lines of Steam Ships between the Province and any British or Foreign Country;

(*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment, for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province."

It will be convenient to make a few observations concerning the ordinary situation as to the respective rights of the Dominion and the Provinces as they have been from time to time distinguished and established by many decisions of the Courts.

The three Acts under consideration restrict the natural liberty of the persons affected by them and particularly interfere with the common right of parties to enter into contracts.

It seems hardly necessary to insist that such measures are necessarily dealing with " Civil Rights " as also with matters which may depend upon conditions which are " local or private."

In *Citizens* v. *Parsons* (1881) 7 App. Cas. at p. 109, their Lordships, referring to 14 Geo. III, Chap. 83, say :—

> " 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."

No. 6. Factum of the Attorney-General of Quebec—*continued.*

It is now well settled that the general powers in s. 91 do not enable the Dominion to trench on the subjects enumerated in s. 92.

Attorney-General for Ontario v. *Attorney-General for the Dominion & Distillers and Brewers Association of Ontario,* (1896) A.C. 348:

> " . . . 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."

Attorney-General for Canada v. *Attorney-General for Alberta* (1916) A.C. 588.

Attorney-General for Canada v. *Attorney-General for British Columbia and others* (1930) A.C. 111, in which the following propositions are stated:

> " (1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s. 91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by s. 92: (see *Tennant* v. *Union Bank of Canada* (1894) A.C. 31.)
>
> " (2) The general power of legislation conferred upon the Parliament of the Dominion by s. 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 s. 92 as within the scope of provincial legislation, unless these matters have attained such dimensions as to affect the body politic of the Dominion: see *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (1896) A.C. 348."

There is no general heading in the enumeration of subjects in section 91 under which the Parliament could interfere with civil rights in such a way as would be necessitated by the statutes now considered.

No. 2 of such subjects " The Regulation of Trade and Commerce " has been frequently invoked by the Dominion Government as justifying

legislation by the Parliament on the subjects in the Provincial sphere under section 92. The contention however has been uniformly unsuccessful.

City of Montreal v. *Montreal Street Railway* (1912) A.C. 333.

Attorney-General for Canada v. *Attorney-General for Alberta* (1916) A.C. 588.

The Toronto Electric Commissioners v. *Snider* (1925) A.C. 396.

Nor can such legislation be supported under No. 27 " The Criminal Law except the Constitution of Courts of Criminal jurisdiction but including the Procedure in Criminal Matters."

Attorney-General for Ontario v. *Reciprocal Insurers et al* (1924) A.C. 328.

Moreover this question is concluded in so far at least as concerns this Court by its judgment on the *Reference respecting legislative jurisdiction over Hours of Labour* (1925) S.C.R. 505.

Nothing in the judgments of the Judicial Committee *in re Aviation* and *in re Radio*, which are hereinafter referred to, have any bearing on the present question.

It hardly can be contended that the Dominion has jurisdiction, under the *residuary clause of section* 91, to enact this legislation, for the subject-matter of the three statutes is not outside that mentioned in section 92 of the British North America Act, nor does it refer to circumstances that imperil the national life.

The supposed authority of Parliament to enact the legislation now in question is based presumably on sec. 132 of the British North America Act as appears from the similar preamble to each of the three statutes.

Section 132 reads :—

> " 132. 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."

The Treaty calling this section into question is the Treaty of Peace of Versailles, signed on the 28th of June, 1919, and requires much consideration. It contains the following provisions :—

" PART I

THE COVENANT OF THE LEAGUE OF NATIONS

The High Contracting Parties,

.....

Agree to this Covenant of the League of Nations.

.....

No. 6. Factum of the Attorney-General of Quebec—*continued.*

Article 23

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

.....

PART XIII

LABOUR

Section I

ORGANIZATION OF LABOUR

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following :

CHAPTER I

ORGANIZATION

Article 387

A permanent organization is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original Members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization.

Article 388

The permanent organization shall consist of :

(1) a General Conference of Representatives of the Members, and,

(2) an International Labour Office controlled by the Governing Body described in Article 393.

.....

CHAPTER II

PROCEDURE

.....

Article 405

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (*a*) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the Members.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention, to each of the Members.

Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

No. 6. Factum of the Attorney-General of Quebec—*continued.*

In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

The above Article shall be interpreted in accordance with the following principle :—

In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

.....

Article 416.

In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

.....

Article 427.

The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

They recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance :—

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight hour day or a forty-eight hour week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the high contracting parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world."

A draft Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week was adopted by the General Conference of the International Labour Organization of the League of Nations at its first session, 29th of October-November, 1919. (Record p. 161.)

A draft Convention concerning the application of the weekly rest in industrial undertakings was adopted by the General Conference of the International Labour Organization of the League of Nations at its third session, 25th of October, 1921. (Record p. 146.)

A draft Convention concerning the creation of minimum wage fixing machinery was adopted on the 16th of June, 1928, by the International Labour Conference at its eleventh session. (Record p. 153.)

The Governor General referred to the Supreme Court of Canada by Order in Council, dated the 12th of January, 1925, the following questions :

> " (1) What is the nature of the obligation of the Dominion of Canada as a member of the International Labour Conference, under the provisions of the Labour Part (Part XIII) of the Treaty of

No. 6. Factum of the Attorney-General of Quebec—*continued.*

Versailles and of the corresponding provisions of the other Treaties of Peace, with relation to such draft conventions and recommendations as may be from time to time adopted by the said Conference under the authority of and pursuant to the aforesaid provisions?

"(2) Are the Legislatures of the provinces the authorities within whose competence the subject-matter of the said draft convention (copy of which is herewith submitted) in whole or in part lies and before whom such draft convention should be brought, under the provisions of Article 405 of the Treaty of Peace with Germany, for the enactment of legislation or other action?

"(3) If the subject-matter of the said draft convention be, in part only, within the competence of the legislatures of the provinces, then in what particular or particulars, or to what extent, is the subject-matter of the draft convention within the competence of the legislatures?

"(4) If the subject-matter of the said draft convention be, in part only, within the competence of the legislatures of the provinces, then in what particular or particulars, or to what extent, is the subject-matter of the draft convention within the competence of the Parliament of Canada?"

Judgment was delivered by Mr. Justice Duff (now Chief Justice Duff), on the 18th of June, 1925. (C.L.R., 1925, p. 511.)

The following are the answers to the questions:—

"*To the first question:* the obligation is simply in the nature of an undertaking to bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

"*To the second question:* yes, in part.

"*To the third question:* the subject-matter is generally within the competence of the legislatures of the provinces, but the authority vested in these legislatures does not enable them to give the force of law to provisions such as those contained in the draft convention in relation to servants of the Dominion Government, or to legislate for those parts of Canada which are not within the boundaries of a province.

"*To the fourth question:* the Parliament of Canada has exclusive legislative authority in those parts of Canada not within the boundaries of any province, and also upon the subjects dealt with in the draft convention in relation to the servants of the Dominion Government."

Pursuant to this judgment the Government of the Dominion brought the three draft conventions above mentioned before the Government of the Province of Quebec.

No legislation was passed or other action taken by the Legislature or the Government of the Province of Quebec concerning the said conventions.

As stated by the Chief Justice of the Supreme Court the obligation of Canada on receiving a draft convention adopted by the International Labour Conference is "simply an undertaking to bring it before the authority within whose competence the matter lies for the enactment of legislation or other action."

This the Dominion Government accordingly did, recognizing that the subject-matter of each of these conventions was clearly one within the exclusive legislative authority of the Provinces. There was no obligation on the part of the Province to enact any legislation and as it did not do so the matter was at an end under the express words in Art. 405 of the Treaty : "if the draft convention fails to obtain the consent of the authority or "authorities within whose competence the matter lies, no further obligation "shall rest upon the member."

Read in its entirety and as construed in the Radio judgment of the Privy Council, the Aviation judgment of that Board merely amounts to this : that the jurisdiction of the Dominion was justified under its power to implement obligations under a treaty or a convention : Section 132 of the British North America Act.

In the Radio judgment it is stated that a convention or a treaty of Canada stands in effect on the same footing as a treaty of the British Empire, though, in that case, the jurisdiction is based on the peace, order, and good government clause and not on section 132.

Neither of these judgments have any other effect on the present question, and the Supreme Court's judgment quoted above stands unchallenged.

The only new event since that judgment has been the ratification by Canada of the Convention.

It is submitted that this does not change the position that the Convention so ratified remains subject to the clauses quoted above of the Treaty, and that therefore the obligations under the convention do not become obligations of Canada further than as described in Article 405 of the Treaty.

FOR THE ABOVE REASONS and such argument as may be made at the hearing of the reference the Attorney-General of Quebec submits that each of the three Acts referred is *ultra vires* of the Parliament of Canada.

CHARLES LANCTOT,
AIMÉ GEOFFRION.

No. 7. Factum of the Attorney-General of New Brunswick.

No. 7.

Factum of the Attorney-General of New Brunswick.

PART ONE.

STATEMENT OF FACTS.

This matter comes before the Supreme Court of Canada as a result of a reference made by the Committee of the Privy Council on the recommendation of the Minister of Justice as set out in the Record herein on Pages One and Two, inscribed for hearing before the said Court on the Fifteenth day of January, A.D. 1936, by order of the Rt. Hon. The Chief Justice of Canada, bearing date the Fourteenth day of November, A.D. 1935, as appears in the Record on Page Two, pursuant to Section 55 of the Supreme Court Act, R.S.C. 1927, Chapter 35.

PART TWO.

GROUNDS OF OBJECTION.

The Province of New Brunswick associates itself with the grounds of objection set out in the Factum of the Province of Quebec and endorses and adopts the stand taken by that Province in opposing the validity of the said referred legislation.

PART THREE.

ARGUMENT.

The Province of New Brunswick associates itself with the argument contained in the factum of the Province of Quebec and endorses, adopts and relies upon such argument and authorities as are contained in said Factum, with respect to the legislation involved in this reference.

DONALD V. WHITE,
Counsel for the Attorney-General of New Brunswick.

No. 8. Factum of the Attorney-General of Manitoba.

No. 8.

Factum of the Attorney-General of Manitoba.

In appearing upon this Reference the Province of Manitoba is interested in ascertaining what is the proper constitutional authority, whether Dominion or Provincial, which has the legislative jurisdiction to enact these statutes.

For this purpose, the Attorney-General of Manitoba desires to make the following submissions, namely:

(1) The legislation cannot be justified as an exercise of the legislative power of the Dominion Parliament under Section 132 of The British North

America Act, 1867, regarding the implementing of treaty obligations: *In the matter of Legislative Jurisdiction over Hours of Labour*, 1925 S.C.R. 505.

(2) Articles 23, 405 and 427 of the Treaty of Versailles do not impose any obligation on the Dominion Parliament to enact into law the different draft conventions or recommendations which may from time to time be adopted by the General Conference of the International Labour Organization of the League of Nations. Said Articles merely provide an undertaking on the part of each member to bring the recommendations or draft conventions before the proper authorities. This being the extent of the obligation, it does not justify legislation on the part of the Dominion Parliament to give effect to any such recommendations or draft conventions under the authority of Section 132 of The British North America Act, 1867. The Dominion Government's obligation will be satisfied if the different recommendations or conventions are brought before the competent authorities, which, in the case of the matters dealt with by these particular enactments, are the provincial legislatures.

(3) The legislation cannot be justified by reference to the decisions of the Judicial Committee of the Privy Council in what are known as the Aviation and Radio cases, namely:

In re The Regulation and Control of Aeronautics in Canada, 1932 Appeal Cases, 54;

In re Regulation and Control of Radio Communication in Canada, 1932 Appeal Cases, 304.

In the Radio Case the Judicial Committee of the Privy Council based its judgment inter alia upon the distributive powers given by Section 91 of that Act to the Dominion Parliament.

In both of these cases there was a binding treaty or convention, which Canada was under obligation to implement.

The Attorney-General of Manitoba will rely upon any portion or portions of the factums filed by the other provinces which relate to Section 132 of The British North America Act, 1867, or to any alleged jurisdiction on the part of the Dominion Parliament to implement treaties, whether stated to be conferred by The British North America Act, 1867, or otherwise.

The Attorney-General of Manitoba reserves the right to appeal from any judgment which is rendered herein.

W. J. MAJOR,
Attorney-General of Manitoba.

Winnipeg, January 6th, 1936.

No. 9. Factum of the Attorney-General of British Columbia.

No. 9.

Factum of the Attorney-General of British Columbia.

It is submitted that the Acts above named are ultra vires the Parliament of Canada for the following reasons :

First : The subject-matters fall within the sphere of provincial jurisdiction particularly subsections (13) and (16) of section 92 of the British North America Act.

See : *Answers of the Supreme Court of Canada to certain questions* submitted by His Excellency the Governor-General relating to legislative jurisdiction : Reported Supreme Court of Canada Reports 1925.

Second : The power of the Parliament of Canada to enact these statutes must come if at all from section 132 of the Constitution or from the general words in section 91 relating to Peace, Order and good government. As the legislation purports to be enacted pursuant to the Conventions which Canada has ratified it no doubt would be considered that the powers fall under the general words of 92 rather than 132. See : *In re Radio Communication in Canada*, 1932, 101 L.J.P.C. 94. This however is an immaterial question. Lord Dunedin in the above case said : " In fine though agreeing that the Convention was not such a treaty as is defined by section 132 their Lordships think that it comes to the same thing."

The preamble to each Act recites that the purpose is " to enact the necessary legislation to enable Canada to discharge the *obligations* assumed under the provisions of the Treaty and the said Convention."

It is submitted that there is *no obligation* assumed either under the Treaty or the Convention for the following reasons :—

1. The Treaty only obligates the members of the League " subject to and in accordance with the provisions of the international Conventions existing or hereinafter agreed upon." Article 23.

2. The relevant article about the Conventions is *Article* 405. The procedure under this article is as follows :

(1) The conference of the League by a two-thirds vote adopts the draft Convention.

(2) A certified copy is then communicated to each member of the League.

(3) Each member undertakes within one year to " bring the recommendation or the draft Convention before the *authority or authorities within whose competence* the matter lies for the enactment of legislation *or other action*."

It is to be noted that a " recommendation " is heretofore defined as one " to be submitted to the members for consideration with a view to effect being given to it by national legislation or otherwise." Presumably therefore a draft Convention is to be dealt with when brought before " the authority or authorities " not necessarily by legislation but by giving " *consent* " under the words " or other action." This appears to be so by the next step.

(4) " In the case of a draft convention the member will if it *obtains consent of the authority* or authorities within whose competence the matter lies communicate the formal ratification of the convention to the Secretary-General, and will take such action as may be necessary to make effective the provisions of such convention."

(5) If the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies *no further obligation* shall rest upon the member.

(6) If in the case of a Federal State the power of which to enter into conventions on labour matters is subject to limitations it shall be in *the discretion of the Government* to treat a draft convention to which such limitations apply as a *recommendation* only and the provisions of this Article with respect to recommendations shall apply." It is to be noted that " if on a recommendation no legislative or other action is taken to make a recommendation effective no further obligation shall rest on a member."

3. From the foregoing analysis it appears :—

(1) That in the case of a convention dealing with a subject-matter falling within one of the enumerated heads of 92, the obligation of Canada is to bring the convention before the provincial authorities. There is no duty to enact or promote legislation : see Judgment of Duff, J., in " The Answers of the Supreme Court " above cited as reported 1925 S.C.R.

(2) That if the provincial authorites do not enact legislation or take other action, viz., give their consent, the obligation of the Dominion is ended. See Duff, J., as above cited.

(3) If the provinces give their consent then there is " formal ratification " by Canada as the member and this is communicated to the League, and Canada then may " take such action as may be necessary to make effective the provisions of such convention."

(4) Under these conditions it would appear that Canada would have power to make good its obligations by legislation if the provinces did not do so.

4. It is submitted however that the circumstances here are different :—

(1) While there is a recital that Canada has ratified the convention it does not appear that the preliminary consent has been obtained from the provinces. It is submitted that the consent must be from *all* the provinces, and is a condition precedent to ratification.

No. 9. Factum of the Attorney-General of British Columbia—*continued.*

(2) Ratification without such consent is not in accordance with Article 405 and consequently is not a Ratification imposing the obligations of the section.

(3) In any event Canada is " a federal State the power of which to enter into conventions on labour matters is subject to limitations."

Therefore there is a *discretion* in the Canadian Government to treat the draft Convention as a recommendation. The consequence follows according to Article 405 that if on the recommendation being made no legislative action is taken by the provinces to make the recommendation effective no further obligation rests on Canada.

It is submitted that this discretion may be exercised after formal ratification by Canada as it is only after ratification that any obligation arises necessitating the provided relief.

It is submitted that this provision was inserted to meet just such a case as the present so that the federal authority shall not be compelled by any treaty obligation to exercise what otherwise would be provincial powers. It is submitted that with a *discretion* to treat the Convention only as a recommendation it cannot be asserted that a *voluntary* failure to exercise the discretion imposes an obligation.

Third : These draft Conventions were adopted by the International Labour Conference at Washington D.C. in 1919. Under section 405 they were to be brought to the attention of the proper authorities within one year or 18 months at the most. The writer is unaware of any substantial or general compliance with these Conventions as such by the members of the League and it is submitted that after 15 years there is no obligation on any one member. The obligation if it ever existed has lapsed.

In presenting these submissions on behalf of the Attorney-General it is desired to point out that the objections are not to the merits of the legislation but only to the attempt of the Dominion to invade the domain of provincial jurisdiction. In this connection it is pointed out that in 1921 the Province of British Columbia enacted not only the foregoing draft Conventions but others of a similar character which were submitted to the Province. The enactments provided that they would come into operation by proclamation when similar legislation was effective in the other provinces. In the meantime social legislation has been enacted in British Columbia as to many subjects far in advance of these draft Conventions.

Respectfully submitted.

J. W. DE B. FARRIS,

Of Counsel for the Attorney-General of British Columbia.

London.

December the 20th 1935.

No. 10.

Factum of the Attorney-General of Alberta.

STATEMENT OF FACTS.

The Order of Reference by the Governor-General in Council re the above mentioned Statutes will be found at pages 1 and 2 of the Record. The preamble to each of said Statutes refers to Articles 23 and 427 of The Treaty of Peace, signed at Versailles on June 28th, 1919, said Articles being found at pages 15 and 163 respectively of The Treaty. The preamble to each Statute also refers to a draft convention with respect to the matters dealt with by each Statute respectively agreed upon at a General Conference of the International Labour Organization of the League of Nations. These conventions will be found in the Record at the following pages :—

Draft convention concerning the application of The Weekly Rest at page 146.
Draft convention concerning the creation of Minimum Wage fixing machinery at page 153.
Draft convention limiting the hours of work in Industrial Undertakings at page 161.

These draft conventions have been approved by resolution of the Senate and House of Commons and ratified by Orders of the Governor-General in Council.

ARGUMENT.

I.

The preamble of each of the said Statutes indicates that Parliament, to some extent at least, was relying on Section 132 of The British North America Act in passing these Acts. This section reads as follows :

> " 132. 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 submitted that this Section has no application to any of the three conventions above referred to. They are not treaties between the British Empire and foreign countries, although they came about, no doubt, as a result of the Provisions incorporated in Part XIII of the Treaty of Peace. On the other hand, if they are to be considered treaties within the meaning of said Section 132, any legislative authority given to Parliament to implement the obligations contained in them, presupposes that Canada has proceeded properly and legally in ratifying the said Conventions and imposing obligations on Canada. If the Statutes in question are within the legislative authority of Parliament under Section 91 of the British North America Act, no reference need be made to Section 132; on the other hand,

No. 10. Factum of the Attorney-General of Alberta—*continued.*

if such legislation properly comes within one of the subsections of Section 92, it is submitted that the Provinces cannot be deprived of their jurisdiction by Canada ratifying these conventions unless the procedure outlined by the Treaty is strictly followed. This procedure is outlined in Article 405 found at page 158 of the Treaty where the following appears :—

> " Each of the Members undertakes that it will . . . bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.
>
> In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.
>
> If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.
>
> In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case."

It is submitted that the obligations of Canada under these provisions is to submit the conventions to the Provinces for their consent before ratification (assuming the matters are within the legislative competence of the provincial legislatures). Canada's alternative course, as such a federal State as is referred to in the quotation above, would be to treat the draft conventions as recommendations only, in which case no further obligation rests on her.

See *In the matter of Legislative Jurisdiction over hours of Labour* (1925), S.C.R. 505.

II.

Even if Canada has effectively ratified the said conventions, it is submitted the validity of the Statutes in question must be determined by reference to Sections 91 and 92 of The British North America Act and that Section 132 has no application to legislation of this nature. It is submitted that the radio case, *In re The Regulation and Control of Radio Communication in Canada* (1932) A.C. 304, is distinguishable by reason of the international aspect of the legislation in question on that reference. Lord DUNEDIN says at page 312 :— . . . " In fine, though agreeing that the convention was not such a treaty as is defined in Section 132, their Lordships think that it comes to the same thing. On August 11th, 1927, the Privy Council

of Canada, with the approval of the Governor-General, chose a body to attend the meeting of all the powers to settle international agreements as to wireless. The Canadian body attended and took part in deliberations. The deliberations ended in the convention with general regulations appended being signed at Washington on November 25th, 1927, by the representatives of all the powers who had taken part in the Conference, and this convention was ratified by the Canadian Government on July 12th, 1928. The result is, in their Lordships' opinion, clear. It is Canada as a whole which is amenable to the other powers for the proper carrying out of the convention; and to prevent individuals in Canada infringing the stipulations of the convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada . . . "

Article 2 of the Convention provided in part as follows:

> " (1) The contracting Governments undertake to apply the provisions of the present convention in all radio communication stations established or operated by the contracting governments and open to the international service of public correspondence . . ."

Obviously such co-operation was necessary in order to have successful international radio communication and the Judicial Committee upheld the legislation in part as being legislation " for the peace, order and good government of Canada " under Section 91, the legislation not coming under any of the specified heads of Section 91 or Section 92. It is submitted that the Committee had in mind certain definite obligations towards foreign countries which Canada had undertaken and that there are no such definite obligations in any of the conventions above referred to. There are no obligations in said conventions a breach of which would affect directly a foreign country as a breach of the Radio Convention would. It is submitted therefore that the Statutes in question can not be upheld for the same reasons the Radio Statute was upheld, that is, for the reasons appearing on pages 312 and 313 of the Report (1932 A.C.).

It is submitted, therefore, on behalf of the Province of Alberta, that the validity of the three Statutes in question herein must be determined without reference to the conventions but the Province makes no other representation as to validity or otherwise of said Statutes.

DATED at Edmonton, Alberta, the 30th day of December, 1935.

JOHN W. HUGILL,
W. S. GRAY,
Of Counsel for the Province of Alberta.

No. 11. Factum of the Attorney-General of Saskatchewan.

No. 11.

Factum of the Attorney-General of Saskatchewan.

In appearing upon this Reference the Province of Saskatchewan is interested in ascertaining what is the proper constitutional authority, whether Dominion or Provincial, which has the legislative jurisdiction to enact these statutes.

For this purpose, the Attorney-General of Saskatchewan desires to make the following submissions, namely:

(1) The legislation cannot be justified as an exercise of the legislative power of the Dominion Parliament under Section 132 of the British North America Act, 1867, regarding the implementing of treaty obligations: *In the matter of Legislative Jurisdiction over hours of labour*, (1925), S.C.R. 505.

(2) Articles 23 and 427 of the Treaty of Versailles referred to in the preamble to the Acts do not impose any obligation on the Dominion parliament to enact into law the different draft conventions or recommendations which may from time to time be adopted by the General Conference of The International Labour Organization of the League of Nations. This is merely an undertaking on the part of each member to bring the recommendations or draft conventions before the proper authorities. This being the extent of the obligation, it does not justify legislation on the part of the Dominion Parliament to give effect to any such recommendations or draft conventions under the authority of Section 132 of the British North America Act, 1867. The Dominion Government's obligation will be satisfied if the different recommendations or conventions are brought before the competent authorities, which, in the case of the matters dealt with by these particular enactments, are the provincial legislatures.

(3) The legislation cannot be justified by reference to the decisions of the Judicial Committee of the Privy Council in what are known as the Aviation and Radio cases, namely:

Re Aerial Navigation, Attorney-General of Canada v. *Attorney-General of Ontario* (1932) 1 D.L.R. 58; (1932) A.C. 54;

Re Regulation and Control of Radio Communication: Attorney-General of Quebec v. *Attorney-General of Canada*, (1932) A.C. 305; (1932) 2 D.L.R. 81; 101 L.J.P.C. 94.

In both these cases there was a binding treaty or convention, which Canada was under obligation to implement. In the case of hours of labour, weekly period of rest, and minimum wages, however, there are no definite or binding obligations upon Canada in relation to foreign countries pursuant to Sections 23 and 427 of the peace treaty. Accordingly the Dominion Parliament cannot legislate with respect to these matters by virtue of its power of implementing treaties conferred by Section 132 of the British North America Act, 1867.

In the *Radio Case* the Judicial Committee of the Privy Council based its judgment *inter alia* upon the distributive powers given by Section 91 of

that Act to the Dominion Parliament. The subject-matter of the three Acts now under consideration cannot be justified upon similar grounds.

The Attorney-General of Saskatchewan will rely upon such portion or portions of the factums filed by the other provinces so far as they relate to Section 132 of the British North America Act, 1867, or to any alleged jurisdiction on the part of the Dominion Parliament to implement treaties, whether stated to be conferred by the British North America Act, 1867, or otherwise.

The Attorney-General of Saskatchewan reserves the right to appeal from any judgment which is rendered herein.

SAMUEL QUIGG,
of Counsel for the
Attorney-General of Saskatchewan.

Regina, January 6th, 1936.

No. 12.

Formal Judgment

IN THE SUPREME COURT OF CANADA

Wednesday, the seventeenth day of June, A.D. 1936.

PRESENT:

THE RIGHT HONOURABLE SIR LYMAN P. DUFF, P.C., G.C.M.G., C.J.C.
THE HONOURABLE MR. JUSTICE RINFRET
THE HONOURABLE MR. JUSTICE CANNON
THE HONOURABLE MR. JUSTICE CROCKET
THE HONOURABLE MR. JUSTICE DAVIS
THE HONOURABLE MR. JUSTICE KERWIN.

IN THE MATTER of a Reference as to whether The Weekly Rest in Industrial Undertakings Act, being Chapter 14 of the Statutes of Canada, 1935; the Minimum Wages Act, being Chapter 44 of the Statutes of Canada, 1935; and The Limitation of Hours of Work Act, being Chapter 63 of the Statutes of Canada, 1935, are *ultra vires* of the Parliament of Canada.

WHEREAS by Order in Council of His Majesty's Privy Council for Canada, bearing date the fifth day of November, in the year of our Lord, one thousand nine hundred and thirty-five (P.C.3454), the important questions of law hereinafter set out were referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927, chapter 35 :—

"1. Is the Weekly Rest in Industrial Undertakings Act., or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

No. 12. Formal Judgment, 17th June 1936— *continued.*

2. Is the Minimum Wages Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

3. Is The Limitation of Hours of Work Act, or any of the provisions thereof and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada?

AND WHEREAS the said questions came before this Court for hearing and consideration on the twenty-third, twenty-fourth, twenty-seventh, twenty-ninth, thirtieth and thirty-first days of January, in the year of our Lord, one thousand nine hundred and thirty-six, in the presence of Hon. N. W. Rowell, K.C., Mr. Louis St-Laurent, K.C., Mr. C. P. Plaxton, K.C., and Mr. R. St-Laurent, of counsel for the Attorney-General of Canada; Hon. A. W. Roebuck, K.C., and Mr. I. A. Humphries, K.C., of counsel for the Attorney-General for the Province of Ontario; Mr. Charles Lanctot, K.C., and Mr. Aimé Geoffrion, K.C., of counsel for the Attorney-General of the Province of Quebec; Mr. D. V. White, of counsel for the Attorney-General for the Province of New Brunswick; Hon. G. McG. Sloan, K.C., and Mr. J. W. de B. Farris, K.C., of counsel for the Attorney-General of the Province of British Columbia; Mr. J. Allen, K.C., of counsel for the Attorney-General for the Province of Manitoba; Mr. W. S. Gray, K.C., of counsel for the Attorney-General of the Province of Alberta; and Mr. S. Quigg, of counsel for the Attorney-General for the Province of Saskatchewan; and after due notice to the Attorneys-General for the Provinces of Nova Scotia and Prince Edward Island;

WHEREUPON and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration, and the same having come on this day for determination; the Court hereby certifies to His Excellency the Governor-General in Council, for his information, pursuant to subsection 2 of section 55 of the Supreme Court Act, that the opinion of the Court is as follows :—

> "The Chief Justice, Mr. Justice Davis and Mr. Justice Kerwin are of opinion that (except as to section 6 of the Minimum Wages Act) the statutes are *intra vires;* Mr. Justice Rinfret, Mr. Justice Cannon and Mr. Justice Crocket are of the opinion that the statutes are *ultra vires;*"

and that the reasons for such answers are to be found in the reasons for the answers written by the Chief Justice and concurred in by Mr. Justice Davis and Mr. Justice Kerwin, and in the reasons for the answers written by Mr. Justice Rinfret, Mr. Justice Cannon and Mr. Justice Crocket, copies of which reasons are hereunto annexed.

(Signed) J. F. SMELLIE,
Registrar.

No. 13.

Reasons for Judgment.

No. 13.
Reasons for Judgment.
(a) Duff C.J. (concurred in by Davis and Kerwin JJ.)

(a). The CHIEF JUSTICE.—(Concurred in by Davis and Kerwin JJ.) The validity of the legislation is attacked on various grounds which will be stated presently.

The draft convention respecting minimum wage fixing machinery was adopted by the General Council of the Labour Organization of the League of Nations on the 6th June, 1928, and a copy was communicated to Canada on August 23rd, 1928.

Resolutions declaring it to be " expedient that Parliament do approve of " the draft convention were passed by the House of Commons (on March 15th, 1935) and by the Senate (on April 2nd, 1935).

The draft convention was, under Art. 7 thereof, transformed into a " convention," by the assent of two members of the Labour Organization on the 14th June, 1930. On the 12th April, 1935, the Governor-General, by Order in Council, ordered on behalf of Canada that the convention " be confirmed and approved " and that " formal communication " of this confirmation and approval " be made to the Secretary-General of the League of Nations." On 25th April, 1935, the formal instrument of ratification was deposited with the Secretary of the League of Nations. The statute in controversy was assented to on the 28th of June, 1935, in which there is the following preamble:

Whereas the Dominion of Canada is a signatory, as part of the British Empire, to the Treaty of Peace made between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th day of June, 1919; and whereas the said Treaty of Peace was confirmed by the Treaty of Peace Act, 1919; and whereas by Article 23 of the said Treaty the signatories thereto each agreed that they would endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and by Article 427 of the said Treaty it was declared that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme importance; and whereas a Convention concerning minimum wages was adopted as a Draft Convention by the General Conference of the International Labour Organization of the League of Nations in accordance with the relevant articles of the said Treaty, which said Convention has been ratified by Canada; and whereas it is advisable to enact the necessary legislation to enable Canada to discharge the obligations assumed under the provisions of the said Treaty and the said Convention, and to provide for minimum wages in accordance with the provisions of the said Convention, and to assist in the maintenance on equitable terms of interprovincial and international trade: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:—

The immediate question put in precise form is this: Is the statute which, by its preamble, recites the adoption of the draft convention by the General Conference of the Labour Organization and the ratification of that convention by Canada, constitutionally effective, without the assent of the Provinces, to alter the law of those provinces by bringing that law into conformity with the stipulations of the convention so ratified: the matter of these stipulations being, *ex hypothesi*, normally, (and saving certain specific

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

fields of legislation with which we are not concerned) a subject matter of legislation within the exclusive competence of the respective provincial legislatures under Section 92 of the B.N.A. Act?

The principal points now in controversy arise upon these contentions of the Provinces:

First, that the Governor-General in Council has no authority to enter into any international engagement; second, that, since the subject matter of the convention falls within the subdivision of s. 92, which relates to property and civil rights within the Provinces, the assent of the provincial legislatures was an essential condition of a valid ratification under Art. 405 of the Labour Part of the Treaty.

Third, that in view of the character of its subject matter, the Provinces alone are competent to give the force of law to the Convention.

We shall discuss in another place (in the reasons for the answers in the Reference concerning the Natural Products Marketing Act) the contention that the Dominion, independently of her powers in respect of international obligations, possessed authority in the circumstances of the time to enact the statute under the residuary power to make laws for the peace, order and good government of Canada.

As a step preliminary to the examination of the arguments addressed to us in support of these contentions, some brief observations upon the legislative and executive authority of the Parliament and Government of Canada in respect of international agreements may be useful.

An interesting and valuable account was presented in argument of the development of Dominion status within the British Empire or the British Commonwealth of Nations. Stages in that development are marked by the Imperial War Conference of 1917, the proceedings in the negotiation, the signature and the ratification of the Treaty of Versailles and of the Fisheries Treaty of 1923, by the Imperial Conferences of 1923, 1926 and 1930, and finally by the Statute of Westminster, 1931. At the moment it is sufficient to observe—as to status—that two fundamental characteristics of it are defined in unmistakeable words in the Report of the Imperial Conference of 1926:

> . . . we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relations may be readily defined. They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

Great Britain and the Dominions (1) are united by a common allegiance to the British Crown, and (2) are "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs . . . and freely associated as members of the British Commonwealth of Nations."

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

The possession of equality of status with Great Britain in respect of all aspects of external as well as domestic affairs is thus affirmed in language admitting of no dispute as to its intent or effect. This equality of status, as the report later explains, does not necessarily imply identity of function. It does, however, indisputably involve two very definite things. In the legislative sphere (subject to the disabilities imposed expressly or by necessary implication by the B.N.A. Act, and the Statute of Westminster, and to whatever restrictions may be implicit in her position as a member of the British Commonwealth of Nations owing a common allegiance to the Crown) the legislative authority reposed in the Parliament and Legislatures of Canada is plenary and embraces the whole field of external as well as domestic matters; and, in the executive sphere, while the executive authority for Canada is vested in the King, it is exercised according to the advice of the appropriate Canadian Government, and under the control of the appropriate legislature.

As regards legislative authority, this is precisely what is evidenced by the Statute of Westminster. The statute recognizes the common allegiance to the King as the bond uniting Great Britain and the Dominions. Extra-territorial legislative authority is in apt and express terms conferred upon the Dominion Parliaments. But three declarations signalize in a striking way the fundamental dogma of equality. The first is in the preamble, and is concerned with the royal style and title and the succession to the Throne. In respect of these, the preamble declares that no alteration in the law could be made consistently with the constitutional position except with the consent of all. Then there is the declaration that no statute of the United Kingdom should have effect in any Dominion as part of its law without the consent of that Dominion. And lastly, it is declared that nothing in the Act shall be deemed to give to the Parliament of Canada power to amend the B.N.A. Act. These reservations bring into relief the sweeping character of the legislative authority which is possessed by the Parliament of Canada and Legislatures combined.

As repects the executive sphere, the statute does not explicitly speak except in its recognition of the common allegiance to the Crown as the bond of union. In that field, however, the declarations of the Imperial Conferences leave no doubts as to the constitutional position. First, as to the Governor-General. In the report of 1926 his position is defined thus :

> We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General as His Majesty's representative in the Dominions. That position, though now generally well recognized, undoubtedly represents a development from an earlier stage when the Governor-General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.
>
> In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

This declaration of 1926 is repeated in 1930:

> The Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 declared that the Governor-General of a Dominion is now the
>
> representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

As to the particular matter with which we are now concerned, the authority of the Government of Canada in relation to international arrangements, the Reports of the Imperial Conferences for 1923 and 1926 contain most important declarations. In substance, in so far as they are immediately pertinent, they amount to this—the Conferences recommend that the practice initiated in connection with the Halibut Fisheries Treaty of 1923 with the United States shall be continued and that, pursuant to that practice, agreements between Great Britain and a foreign country, or a Dominion and a foreign country, shall take the form of treaties between heads of states (except in the case of agreements between governments), the responsible government being in each case the Government of Great Britain or the Government of the Dominion concerned upon whose advice plenipotentiaries are appointed and full powers granted.

The argument on behalf of some of the Provinces (while conceding equality of status between the Dominions and Great Britain in respect of such matters, and the political responsibility of the Dominion Government in respect of all treaties or agreements to which the Dominion is a party) denies the authority of the Governor-General, acting on the advice of the Canadian Government, to conclude a treaty or an agreement with a foreign state. The prerogative, it is said, resides in the Crown and it is most earnestly contended that the power to exercise this prerogative has never been delegated to the Governor-General of Canada or to any Canadian authority.

With reference to the Report of the Conference of 1926, which in explicit terms recognizes treaties in the form of agreements between governments (to which His Majesty is not, in form, a party), it is said that since an Imperial Conference possesses no legislative power, its declarations do not operate to effect changes in the law, and it is emphatically affirmed that, in point of strict law, neither the Governor-General nor any other Canadian authority has received from the Crown power to exercise the prerogative.

The argument is founded on the distinction it draws between constitutional convention and legal rule; and it is necessary to examine the contention that, in point of legal rule, as distinct from constitutional convention, the Governor-General in Council had no authority to become party by ratification to the convention with which we are concerned.

There are various points of view from which this contention may be considered. First of all, constitutional law consists very largely of established constitutional usages recognized by the Courts as embodying a rule of law. An Imperial Conference, it is true, possesses no legislative authority.

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

But there could hardly be more authoritative evidence as to constitutional usage than the declarations of such a Conference. The Conference of 1926 categorically recognizes treaties in the form of agreements between governments in which His Majesty does not formally appear, and in respect of which there has been no Royal intervention. It is the practice of the Dominion to conclude with foreign countries agreements in such form, and agreements even of a still more informal character—merely by an exchange of notes. Conventions under the auspices of the Labour Organization of the League of Nations invariably are ratified by the Government of the Dominion concerned. As a rule, the crystallization of constitutional usage into a rule of constitutional law to which the Courts will give effect is a slow process extending over a long period of time; but the Great War accelerated the pace of development in the region with which we are concerned, and it would seem that the usages to which I have referred, the practice, that is to say, under which Great Britain and the Dominions enter into agreements with foreign countries in the form of agreements between governments and of a still more informal character, must be recognized by the Courts as having the force of law.

Indeed, agreements between the Government of Canada and other governments in the form of an agreement between Governments, to which His Majesty is not a party, have been recognized by the Judicial Committee of the Privy Council as adequate in international law to create an international obligation binding upon Canada (*Radio Reference*, 1932 A.C. 304). The Convention in question there was the Radio Telegraphic Convention of the 25th November, 1927, which was a convention between the Governments of Great Britain, Canada and other countries. The Convention was concluded "subject to ratification." The ratification was in the following form :

> Whereas a Convention together with General Regulations relating to Radio Telegraphy was signed at Washington on the 25th November, 1927, by the representatives of His Majesty's Government in Canada and of other Governments specified therein, which Convention and General Regulations are word for word as follows :—
>
> His Majesty's Government in Canada having considered the aforesaid Convention together with the General Regulations, hereby confirm and ratify the same and undertake faithfully to perform and carry out the stipulations therein contained, in witness whereof this instrument of ratification is signed and sealed by the Secretary of State for External Affairs for Canada.
>
> ERNEST LAPOINTE,
> For the Secretary of State for External Affairs.
>
> OTTAWA, July 12, 1928.

This ratification, it was held by the Judicial Committee of the Privy Council, was effective, and created a diplomatic obligation binding on Canada which the Parliament of Canada was competent to enforce by legislation.

Ratification was the effective act which gave binding force to the convention. It was, as respects Canada, the act of the Government of Canada alone, and the decision mentioned appears, therefore, to negative

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

decisively the contention that, in point of strict law, the Government of Canada is incompetent to enter into an international engagement.

It is, however, essential in considering the question now before us not to lose sight of the fact that the ratification with which we are concerned on this reference is one professedly effected pursuant to a treaty obligation arising under the Treaty of Versailles; and some reference to the general features of that treaty, well known though they are, is unavoidable.

It is a treaty of peace. It is a treaty between the British Empire and foreign countries. *Prima facie*, therefore, by section 132 of the British North America Act, the Parliament and Government of Canada have "all powers necessary or proper for performing the obligations of Canada . . . as part of the British Empire, towards foreign countries arising under" the Treaty.

By the terms of Article 405, upon ratification of a convention notified to Canada, Canada incurs an obligation to take such action as may be necessary to "make effective" the provisions of the convention. The question whether or not there has been ratification of the convention within the contemplation of the Article will be considered later. The point to be emphasized here is that the obligation to "make effective" the provisions of the convention is a treaty obligation and, *prima facie*, therefore, an obligation in respect of which the Dominion Parliament is invested with the authority bestowed by section 132. The Treaties of Peace Act, 1919, 10 Geo. V, ch. 30, is in the following terms. It is convenient to reproduce the statute in full:

AN ACT FOR CARRYING INTO EFFECT THE TREATIES OF PEACE BETWEEN HIS MAJESTY AND CERTAIN OTHER POWERS.

(Assented to 10th November, 1919).

WHEREAS, at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (including a Protocol annexed thereto), between the Allied and Associated Powers and Germany, a copy of which has been laid before each House of Parliament, was signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named; and whereas, a Treaty of Peace between the Allied and Associated Powers and Austria has since been signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named, and it is expedient that the Governor in Council should have power to do all such things as may be proper and expedient for giving effect to the said Treaties; Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1.—(1) The Governor in Council may make such appointments, establish such offices, make such Orders in Council, and do such things as appear to Him to be necessary for carrying out the said Treaties, and for giving effect to any of the provisions of the said Treaties.

(2) Any Order in Council made under this Act may provide for the imposition by summary process or otherwise, of penalties in respect of breaches of the provisions thereof, and shall be laid before Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act, but may be varied or revoked by a subsequent Order in Council.

(3) Any expense incurred in carrying out the said Treaties shall be defrayed out of moneys provided by Parliament.

2. This Act may be cited as The Treaties of Peace Act, 1919.

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The Governor in Council is, by this statute, the proper authority for authorizing ratification under Article 405. The Parliament of Canada, it will be observed, consists of His Majesty the King, the Senate and the House of Commons (Section 17 B.N.A. Act); and this statute, enacted pursuant to the authority of section 132, in itself empowers the Governor-General in Council to exercise any prerogative concerning foreign relations in order to carry out the stipulations of the Treaty. The Governor-General acts as the delegate of His Majesty as well as the agent of Parliament. *A.G.* v. *Cain* (1). Moreover, section 132 itself invests the Government of Canada, as well as the Parliament of Canada, with all powers necessary or proper for performing the obligations of Canada under a treaty within the scope of that section; and the Governor-General, by his Commission, is authorized and commanded to

> execute * * * all things that shall belong to his said office and to the trust We have reposed in him, according to * * * such laws as are or shall hereafter be in force in Our said Dominion. (6–7 Edw. VII, p. lv).

In virtue of section 132 of the B.N.A. Act and of the Treaties of Peace Act, 1919, the authority of the Governor in Council to authorize ratification, therefore, would seem *prima facie* to be indisputable.

As against this conclusion, two main objections are urged. First, it is said that the legislative authority created by section 132 has no application to matters falling exclusively within the legislative authority of the provinces under the terms of s. 92. Second, it is said that the section is limited in its operation to matters which are properly the subjects of international arrangement, and that such matters as the regulation of the rates of wages, the hours of labour and days of rest are matters of purely domestic concern which do not fall within that category.

To deal first with the second of these objections. First of all, no authority seems to indicate that such matters are excluded from the scope of the prerogative in relation to treaties. Second, the Treaty of Versailles contains, as an integral part of it, the Covenant of the League of Nations. Art. 23 of the Covenant provides *inter alia :*

> Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :
>
> (*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;
>
> (*b*) undertake to secure just treatment of the native inhabitants of territories under their control;
>
> (*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;
>
> * * *

(1) (1896) A.C. 542.

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The Treaty also includes Part 13 which provides for a permanent Labour Organization and section 1 of that Part is in these terms :

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

THE HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following :—

The signatories to the Treaty included almost all the organized states of the world; and the Treaty would appear, especially in view of the parts of it just quoted, to involve a declaration by all these states that matters such as those which are the subject of the convention now in question, are proper subjects for international engagements. Since the Covenant was entered into this view has been acted upon time and again by the nations of the world and it would appear to be scarcely tenable that a treaty dealing with such matters is excluded for that reason alone from the operation of section 132.

Turning to the contention that matters ordinarily falling, as subjects of legislation, within section 92 of the B.N.A. Act are excluded from the ambit of Dominion authority under section 132, it may be said at once that such a view would run counter to well established practice as well as to judicial authority. The Dominion Parliament has, in fact, exercised the powers vested in it for performing obligations arising under such treaties by legislating in relation to matters which otherwise would have fallen within the domain of property and civil rights within the several provinces, and of controlling the management and disposal of the public lands and other property of the Provincial Governments. A signal instance is the statute of 1911 which gave statutory effect to the agreements of the International Waterways Treaty of January 11, 1909 (1911 1-2 Geo. V, ch. 28). By s. 2 of that statute,

the laws of Canada and of the several provinces thereof are hereby amended and altered so as to permit, authorize and sanction the performance of the obligations undertaken by His Majesty in and under the said treaty; and so as to sanction, confer and impose the various rights, duties and disabilities intended by the said treaty to be conferred or imposed or to exist within Canada.

It is not necessary to particularize the terms of the Treaty, but, obviously, the treaty deals with matters that, but for s. 132, would indisputably have come, at the date of the statute (1911) within the exclusive spheres of the provincial legislatures.

Then there is the Japanese Treaty Act (Stats. of Can. 1913, 3–4 Geo. V, ch. 27) which gave statutory effect to the treaty of the 3rd April, 1911, with Japan. By the second section, it is declared that the treaty shall have the force of law in Canada. The first four paragraphs of the first article of the Treaty are these :

> The subjects of each of the High Contracting Parties shall have full liberty to enter, travel and reside in the territories of the other and, conforming themselves to the laws of the country—
>
> 1. Shall, in all that relates to travel and residence, be placed in all respects on the same footing as native subjects.
>
> 2. They shall have the right, equally with native subjects, to carry on their commerce and manufacture, and to trade in all kinds of merchandise of lawful commerce, either in person or by agents singly or in partnership with foreigners or native subjects.
>
> 3. They shall in all that relates to the pursuit of their industries, callings, professions, and educational studies be placed in all respects on the same footing as the subjects or citizens of the most favoured nation.
>
> 4. They shall be permitted to own or hire and occupy houses, manufactories, warehouses, shops, and premises which may be necessary for them, and to lease land for residential, commercial, industrial and other lawful purposes, in the same manner as native subjects.

In 1921, by ch. 49 of the statutes of that year, the legislature of British Columbia passed a statute giving legislative force to certain Orders in Council intended to put into effect a resolution of the legislature of 1902 by which it was resolved

> that in all contracts, leases and concessions of whatsoever kind entered into, issued, or made by the government, or on behalf of the government, provision be made that no Chinese or Japanese shall be employed in connection therewith.

This statute of 1921 was challenged in respect of the competence of the legislature to enact it, and it came before the Judicial Committee in two cases,—*Brooks-Bidlake* v. *A.G. for B.C.* (1) and *A.G. for B.C.* v. *A.G. for Canada* (2). By the decision in the first of these cases, it was held that, as respects Chinese, the statute was valid as an exercise of the functions of the provincial legislature under sec. 92 (5) and sec. 109 of the B.N.A. Act in regulating the management of the property of the province, and in determining whether a grantee or licensee of that property should or should not employ persons of certain races; and that its validity was not affected by the circumstance that exclusive legislative authority respecting naturalization and aliens is vested in the Parliament of Canada by head no. 25 of section 91.

The legislation being valid as regards Chinese, as an exercise of the legislative authority of the province under sections 92 and 109, it was held in the second of the above mentioned decisions to be invalid as regards Japanese, that is to say, the subjects of the Emperor of Japan, because it conflicted with the Japanese Treaty Act. In the absence of the Japanese Treaty and the statute giving it the force of law throughout Canada, the legislation would have been operative in respect of Japanese as well as Chinese, but the powers of the Dominion under section 132, were held to be sufficient to enable the Dominion to lay down a rule, in conformity with its

(1) (1923) A.C. 450.

(2) (1924) A.C. 203.

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obligations under the Japanese Treaty, which the provincial legislature thereby became incompetent to infringe or disregard by the exercise of powers which otherwise it would undoubtedly have possessed under the sections mentioned of the Confederation statute.

The scope and effect of section 132 came again before the Judicial Committee of the Privy Council for consideration in two cases in the year 1932 : first, the *Aeronautics case* (1), and, second, the *Radio* case (2). Each of these cases arose out of a reference to this Court, by the Governor General in Council.

In the first case, the first question submitted was as follows :

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 ? "

That question was unanimously answered in this Court in the negative. The Judicial Committee answered it in the affirmative ; and the parts of their Lordships' judgment which specially relate to that interrogatory are in these words :

There may also be cases where the Dominion is entitled to speak for the whole, and this not because of any judicial interpretation of ss. 91 and 92, but by reason of the plain terms of s. 132, where Canada as a whole, having undertaken an obligation, is given the power necessary and proper for performing that obligation.

* * *

In their Lordships' view, transport as a subject is dealt with in certain branches both of s. 91 and of s. 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 s. 132, which gives to the Parliament and Government of Canada all powers necessary or proper for performing the obligations towards foreign countries arising under treaties between the Empire and such foreign countries. As far as s. 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.

* * *

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 s. 91, item 2, for the regulation of trade and commerce, and under item 5 for the postal services, but it is not necessary for the Dominion to piece together its powers under s. 91 in an endeavour to render them co-extensive with its duty under the Convention when s. 132 confers upon it full power to do all that is legislatively necessary for the purpose. **(1932, A.C. at pp. 73, 74, 76, 77).**

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(1) (1932) A.C. 54. (2) (1932) A.C. 304.

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In the second of these cases, the *Radio* case, Lord Dunedin, speaking for the Board, observed, with reference to the *Aeronautics* case (p. 311) :—

> For this must at once be admitted, the leading consideration in the judgment of the Board was that the subject fell within the provisions of s. 132 of the British North America Act. . .

The tenor of these observations is hardly compatible with the notion that the authority to legislate under s. 132 does not apply to matters which, but for that section, would have fallen within the exclusive legislative jurisdiction of the provinces under other enactments of the B.N.A. Act. The power to legislate for the performance of obligations under treaties within that section is reposed exclusively in the Dominion Parliament, their Lordships declare, and, as their Lordships imply, the language is general and the power in no way depends upon the condition that the matters with which the obligation is concerned shall be matters in respect of which Parliament is invested with jurisdiction under section 91 or any other section of the B.N.A. Act. This view of these observations is confirmed by a perusal of the judgment of Lord Dunedin, delivered on behalf of the Judicial Committee in the *Radio* case, the second of the cases above mentioned. Beginning at p. 311, he says :—

> For this must at once be admitted; the leading consideration in the judgment of the Board was that the subject fell within the provisions of s. 132 of the British North America Act, 1867, which is 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.
>
> And it is said with truth that, while as regards aviation there was a treaty, the convention here is not a treaty between the Empire as such and foreign countries, for Great Britain does not sign as representing the Colonies and Dominions. She only confirms the assent which had been signified by the Colonies and Dominions who were separately represented at the meetings which drafted the convention. But while this is so, the aviation case in their Lordships' judgment cannot be put on one side.
>
> Counsel for the Province felt this and sought to avoid any general deduction by admitting that many of the things provided by the convention and the regulations thereof fell within various special heads of s. 91. For example, provisions as to beacon signals he would refer to head 10 of s. 91—navigation and shipping. It is unnecessary to multiply instances, because the real point to be considered is this manner of dealing with the subject. In other words the argument of the Province comes to this : Go through all the stipulations of the convention and each one you can pick out which fairly falls within one of the enumerated heads of s. 91, that can be held to be appropriate for Dominion legislation; but the residue belongs to the Province under the head either of head 13 of s. 92—property and civil rights, or head 16 —matters of a merely local or private nature in the Province.
>
> Their Lordships cannot agree that the matter should be so dealt with. Canada as a Dominion is one of the signatories to the convention. In a question with foreign powers the persons who might infringe some of the stipulations in the convention would not be the Dominion of Canada as a whole but would be individual persons residing in Canada. These persons must so to speak be kept in order by legislation and the only legislation that can deal with them all at once is Dominion legislation. This idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was quite unthought of in 1867. It is the outcome of the gradual development of the position of Canada vis-à-vis to the mother country Great Britain, which is found in these later days expressed in the Statute of Westminster. It is not, therefore, to be expected that such a matter should be

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dealt with in explicit words in either s. 91 or 92. The only class of treaty which would bind Canada was thought of as a treaty by Great Britain, and that was provided for by s. 132. Being, therefore, not mentioned explicitly in either s. 91 or s. 92, such legislation falls within the general words at the opening of s. 91 which assign to the Government of the Dominion the power 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." In fine, though agreeing that the Convention was not such a treaty as is defined in s. 132, their Lordships think that it comes to the same thing.

* * *

The result is in their Lordships' opinion clear. It is Canada as a whole which is amenable to the other powers for the proper carrying out of the convention; and to prevent individuals in Canada infringing the stipulations of the convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada.

His Lordship proceeds to observe that the view expounded in this passage " is destructive of the view urged by the province as to how the observance of the international convention should be secured."

It seems hardly open to dispute that their Lordships intended to lay down that international obligations, which are strictly treaty obligations within the scope of s. 132, as well as obligations under conventions between governments not falling within s. 132, are matters which, as subjects of legislation, cannot fall within s. 92 and, therefore, must fall within s. 91; and since they do not fall within any of the enumerated subjects of section 91, they are within the ambit of the Dominion power to make laws for the peace, order and good government of Canada. That seems to be the effect of what is said, because, at pp. 311 and 312, their Lordships dealt with the contention, advanced on behalf of the provinces, that legislative authority to deal with and give effect to the convention is vested, as regards matters falling within the enumerated heads of s. 91, in the Dominion Parliament; but that, as regards matters which would normally fall within s. 92, such authority is vested in the provincial legislatures. The contention is rejected, and rejected for the reasons given in the passage quoted, viz., that such matters, as the subjects of an international convention, are matters which concern the Dominion as a whole and, therefore, exclusively within the competence of the Dominion Parliament.

It is, at this point, important to emphasize these two things: First, that by the combined effect of the judgments in the *Aeronautics* case and the *Radio* case, the jurisdiction of the Dominion Parliament in relation to international obligations is exclusive; and, moreover, as such matters are embraced within the authority of Parliament in relation to peace, order and good government, its power is plenary.

It was at one time supposed that s. 132 was the sole source of authority for Parliament in respect of the enforcement of international obligations, as regards matters which, otherwise, would fall within s. 92, and, at the same time, would not fall within any of the enumerated heads of section 91: that, for the purpose of ascertaining the ambit of that authority, one must look to the scope of s. 132 (and the conditions under which that section operates): and that from the language employed it was a legitimate inference

that the jurisdiction did not arise until there was a treaty obligation in existence within the contemplation of the section. Four of the judges of this Court who took part in the judgment in the *Aeronautics* case expressed that view.

Moreover, it was supposed that, as regards matters normally falling within s. 92, the provinces might legislate for the purpose of giving effect to an international obligation. In the *Aeronautics* case, the members of this Court were unanimously of the opinion that, as regards such matters, the jurisdiction of the Parliament of Canada was not exclusive, even though paramount.

It is now plain (as a result of these two decisions of 1932) that the provinces have no jurisdiction to legislate for the performance of such obligations, whether they be obligations within s. 132 or whether they be outside that section and within the scope of the general power to make laws for the peace, order and good government of Canada. Such obligations, we repeat, it is now settled, are not matters within the subjects of s. 92 or the enumerated subjects of s. 91.

It has been contended in respect of Dominion jurisdiction in relation to international matters, under section 132, as well as under the residuary clause (as pointed out in the judgment of Duff J. on the Reference relating to the employment of aliens (Japanese Treaty, 63 S.C.R. 330)) that there are certain fundamental terms of the arrangement upon which the B.N.A. Act was framed which it is difficult to suppose Parliament could in any case disregard; and that it is a necessary inference to be drawn from the B.N.A. Act as a whole as regards such terms that the Dominion cannot, without, at all events, the assistance of the Provinces, legislate in contravention of them, even in the exercise of its authority over international relations. It is not necessary to deal with this contention; it is sufficient to say that the statutes under discussion do not deal with matters excluded from Dominion jurisdiction by any such principle.

We now turn to a consideration of Article 405 and, before discussing the text of that Article, it may be desirable to recall what has been said with regard to the scope of legislative authority vested in the Parliament of Canada and the legislatures of the provinces combined. Subject to the reservations mentioned, the ambit of that legislative authority would appear to embrace any action of the Government of Canada in entering into international arrangements either directly, by way of agreements between governments, or otherwise without the intervention of His Majesty, or, in the case of treaties between heads of states, by plenipotentiaries appointed by His Majesty on the advice of the Canadian Government; and, generally speaking, the conduct of external affairs by that Government. As regards all such international arrangements, it is a necessary consequence of the respective positions of the Dominion executive and the provincial executives that this authority resides in the Parliament of Canada. The Lieutenant-Governors represent the Crown for certain purposes. But, in no respect does the Lieutenant-Governor of a province represent the Crown in respect of relations with foreign governments. The Canadian executive,

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again, constitutionally acts under responsibility to the Parliament of Canada and it is that Parliament alone which can constitutionally control its conduct of external affairs.

As the subject of agreements with foreign countries is not one of the subjects embraced within section 92, or within any of the enumerated heads of section 91, it follows that the authority must rest upon the residuary clause from which Parliament derives its power to make laws for the peace, order and good government of Canada; and it follows from what has already been said that this power is plenary. It is for the Parliament of Canada to determine the conditions upon which such agreements shall be entered into as well as the manner in which they shall be performed and this may be done by antecedent legislation or by legislation taking effect *ex post facto*. These propositions are, indeed, corollaries of the proposition that the power is plenary.

As regards League of Nations matters, the following passage from the last edition of Anson's Law and Customs of the Constitution seems to state the position accurately:

> (1) In all League of Nations matters each of the Dominions (except Newfoundland) is quite independent of the United Kingdom. Its representatives at the League Assembly are not accredited by the King on the advice of the Secretary of State for Foreign Affairs, but by the Governor-General on the advice of his ministers, and they act independently of the British Empire or other Dominion delegates; consultation is, of course, possible but is by no means necessary. Moreover, the Dominions are eligible for seats on the Council, despite the permanent representation thereon of the British Empire in which the Dominions are included. Canada was elected to membership in 1927, then the Irish Free State in 1930, and the Commonwealth in 1933.
>
> (2) The Dominions are in like manner autonomous in relation to the Labour Organization of the League. Further, conventions arrived at under its auspices are ratified by Order of the Governor-General in Council, not by the King, on the advice of the Secretary of State. (pp. 87, 88.)

As regards all these matters, it has never been doubted that it is the executive of Canada which represents Canada or that the executive is entirely under the control of Parliament.

The draft convention now in question was, as we have seen, brought before the House of Commons and the Senate, received the assent of both Houses in the form of resolutions, which resolutions approved the ratification of it, and the legislation now in question was passed for the purpose of giving legislative effect to the stipulations, the operative clauses of the statute being preceded by a preamble in which it was recited that the draft convention has been ratified by Canada. The propriety of this procedure is questioned on the ground that, under the special provisions of Art. 405, and especially those of paragraphs 5 and 7 of the Article, the draft convention should have been submitted to the provincial legislatures.

There can, of course, in view of what has been said, be no dispute that the procedure followed, if we put aside the provisions of Art. 405, was the usual and the proper procedure for entering into agreements with foreign governments. The Governor-General in Council is exclusively invested with the executive authority to assent to an agreement, in the form of an

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agreement between Governments, with the Government of a foreign state. The Parliament of Canada is the legislative body that is exclusively invested with authority to legislate in respect of the creation of obligations through the instrumentality of such agreements. It is the legislative body exclusively invested with power to legislate for giving effect to such obligations. The course of the proceedings, prior to ratification, in which the convention was approved by resolutions of the Senate and the House of Commons respectively, was in accord with the settled general practice of the Canadian Parliament in the ratification of such agreements; and the statute which, in its preamble, declares that the convention has been ratified by Canada, in itself, would constitute sanction by legislative act of that ratification. Executive and legislative authority combined, each playing its appropriate part, according to the usual procedure, in the creation of the obligation and in the enactment of legislation to give effect to it.

On behalf of the Provinces it is said that, granting all this, these proceedings are nevertheless affected with invalidity because they do not conform to the procedure prescribed in Article 405 which requires the draft convention, antecedently to ratification, to be brought before

> the authority or authorities within whose competence the matter lies for enactment of legislation or other action;

and, therefore, it is argued, requires that, in the application of the article to Canada, the competent authorities to which the draft convention must be submitted include the provincial legislatures.

Paragraphs 5 and 7 of Article 405 are in these words:

> Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.
>
> * * *
>
> In the case of a draft convention the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

In considering the contention of the provinces that the competent authorities within the intendment of these paragraphs include the provincial legislatures, it is necessary that the paragraphs be read together. The "Competence" postulated is to enact legislation or to take other "action" contemplated by the Article.

The seventh paragraph imposes upon members two conditional obligations; an obligation, upon the consent of the competent authority or authorities, to ratify; and an obligation, upon the like consent after ratification, "to make effective the provisions of (the) convention" within their territorial jurisdiction. Both these obligations are treaty obligations and the "action," legislative or other, by the competent "authority or

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authorities " which is contemplated by paragraph 5 would seem clearly to include the second of these obligations, if not both of them.

As concerns the second obligation, the answer to the question, What is the constitutional agency responsible for discharging it? would appear to be dictated by section 132 which is once again quoted verbatim :

> 132. 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.

The power to perform the obligations of the Treaty to make the provisions of the convention effective, in so far as it requires legislative action, is by this section vested primarily in the Parliament of Canada. In so far as it requires executive action, it is vested in the Government of Canada. The judgments of the Judicial Committee of the Privy Council in the *Aeronautics* case and the *Radio* case constrain us to hold that jurisdiction to legislate for the purpose of performing the obligation—for bringing the law of the Canadian provinces into harmony with the provisions of the convention, for example—resides exclusively in the Parliament of Canada; and, by parity of reasoning, if not, indeed, as an obvious logical consequence of that proposition, jurisdiction resides, in so far as executive action is required, exclusively in the Government of Canada.

There can be no possible doubt, therefore, that the Parliament of Canada is at least one of the authorities before which the draft convention must be brought in the performance of the duty imposed upon Canada by paragraph 5. The question whether, by force of the Treaties of Peace Act, 1919, the Governor-General in Council is empowered to act as the agent of Parliament in this respect was not discussed and is of no importance, since the assent of both Houses of Parliament and of the Governor-General in Council was admittedly given.

The question remains, Are the provincial legislatures also comprehended under the phrase " authority or authorities within whose competence the matter lies, for the enactment of legislation or other action ? "

At one time we thought that, since by s. 92 the jurisdiction, speaking generally, to legislate in relation to the subjects dealt with by the draft convention would, in the absence of any international agreement and of legislation by the Parliament of Canada under s. 132, fall within the exclusive legislative jurisdiction of the provinces, the provincial legislatures might fairly be said to be included within this description. But we have been forced to the conclusion above expressed that the " legislation or other action " contemplated by paragraph 5 is " action " concerning making " effective the provisions of the convention," and, perhaps, also, action concerning ratification. That seems to me to be the plain reading of this article; and where you have authorities (the Parliament and Government of Canada) which are exclusively invested with the power to take legislative and executive measures for the performance of international obligations, we can see no escape from the conclusion that such are the authorities designated by these paragraphs.

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.).—*continued.*

We were at one time much influenced by the consideration of the importance of obtaining the assent of the provincial legislatures, which would naturally be more conversant with the conditions prevailing in their respective provinces and more capable of estimating the difficulties of giving effect to a given convention therein than the Parliament of Canada could be expected to be; but such considerations, we have been forced to conclude, cannot justify a refusal to give effect to what seems to be the true construction of this article.

Upon the true construction, the provincial legislatures, it seems to me, after a prolonged examination of the question in all its bearings, are not authorities competent to enact legislation or to take executive action for the purposes contemplated by paragraph 5; that is to say, either for making " effective the provisions of the convention," or for ratification.

It will appear, however, from the observations which immediately follow that it is strictly not necessary to decide the question we have just dealt with. My view as to the validity of the legislation can be rested upon another ground.

Mr. Rowell contends as follows :—

General authority to bind Canada by adherence to an international convention containing the substance of the stipulations of that in question is vested in the Government of Canada, and a general authority to legislate for giving effect to any obligation arising from such adherence is vested in the Parliament of Canada : the Parliament of Canada, moreover, is the legislative body which has power to legislate for Canada in relation to the creation, as well as the enforcement, of international obligations : ratification of a convention, therefore, it is argued, which has been authorized by the Government of Canada with the assent of the Houses of Parliament, and in respect of which legislation has been enacted recognizing the ratification and providing for the enforcement of the stipulations of the convention, is one which is diplomatically binding on Canada.

The duty of the member, Canada, under Art. 405, to submit the draft convention to the competent authorities is a duty committed to the Government of Canada. It is committed to the Government of Canada by the Treaties of Peace Act, 1919, a statute indisputably within the jurisdiction of the Dominion under s. 132 of the B.N.A. Act. By that statute, the Governor-General in Council, as we have seen, is entrusted with the performance of that duty. It is the same authority (the Governor-General in Council) who is also entrusted, by force of the same statute, with the duty of ratifying the draft convention upon the assent of the competent authorities. Ratification by the Governor-General in Council would seem to imply a representation that the conditions of the authority to ratify have been fulfilled.

By the Treaties of Peace Act, 1919, Parliament, that is to say, the King in Parliament, imposed upon the Governor-General in Council the responsibility of passing such Orders in Council and doing such acts as to

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

him might appear necessary for carrying out and giving effect to the provisions of the Treaty. Moreover, the statute now under consideration expressly by its preamble declares that the convention has been ratified by Canada. The Governor in Council, in authorizing the ratification, spoke as the agent of Parliament as well as the representative of His Majesty the King. The ratification was accepted by Parliament as a ratification binding upon His Majesty for Canada. It has all the force, therefore, of a ratification authorized by the King in Parliament. Considering the sweeping character of the legislative authority reposed in Parliament and the legislatures combined, and the scope of the powers which consequently devolve upon Parliament in respect of matters outside the Provincial sphere (which matters include the creation as well as the enforcement of international obligations), it would seem that Canada could not be more solemnly committed as to the validity of the ratification in question as a ratification under Art. 405.

Some reference is necessary to the answers given to the interrogatories addressed to this Court in 1925 on a reference in relation to one of the conventions now under consideration—the convention relating to Hours of Labour. We do not enter upon a systematic examination of that decision. The view expressed in the preceding pages as to the effect of the judgments of the Judicial Committee (reported in 1932 Appeal Cases) and its bearing upon the construction of Article 405 require us to consider afresh the question of the " competence " of the provincial legislatures in so far as it is relevant within the meaning of Art. 405 in the light of those decisions. We have already expressed the view that, in effect, they negative the " competence " of the provincial legislatures in the pertinent sense. The view expressed in the last preceding paragraph is, obviously, of course, not affected by what was decided in 1925.

The result is that " The Minimum Wages Act " is valid.

In substance, the foregoing reasoning governs the decision as to the answers to the interrogatories touching the validity of the statutes relating to Weekly Rest in Industrial Undertakings and the Limitation of Hours of Work, which are, therefore, also valid.

To summarize :—

From two main considerations, the conclusion follows that legislative authority in respect of international agreements is, as regards Canada, vested exclusively in the Parliament of Canada.

First, by virtue of section 132 of the British North America Act, jurisdiction, legislative and executive, for the purpose of giving effect to any treaty obligation imposed upon Canada, or any one of the provinces of Canada, by force of a treaty between the British Empire and a foreign country, is committed to the Parliament and Government of Canada. This jurisdiction of the Dominion, the Privy Council held, in the *Aeronautics* case and in the *Radio* case (both reported in 1932 Appeal Cases) is exclusive; and consequently, under the British North America Act, the provinces have no power and never had power to legislate for the purpose of giving effect to an

international agreement: that, as a subject of legislation, is excluded from the jurisdiction envisaged by section 92.

Second, as a result of the constitutional development of the last thirty years (and more particularly of the last twenty years) Canada has acquired the status of an international unit, that is to say, she has been recognized by His Majesty the King, by the other nations of the British Commonwealth of Nations, and by the nations of the world, as possessing a status enabling her to enter into, on her own behalf, international arrangements, and to incur obligations under such arrangements. These arrangements may take various forms. They may take the form of treaties, in the strict sense, between heads of states, to which His Majesty the King is formally a party. They may take, *inter alia*, the form of agreements between governments, in which His Majesty does not formally appear, Canada being represented by the Governor-General in Council or by a delegate or delegates authorized directly by him. Whatever the form of the agreement, it is now settled that, as regards Canada, it is the Canadian Government acting on its own responsibility to the Parliament of Canada which deals with the matter. If the international contract is in the form of a treaty between heads of states, His Majesty acts, as regards Canada, on the advice of his Canadian Government.

Necessarily, in virtue of the fundamental principles of our constitution, the Canadian Government in exercising these functions is under the control of Parliament. Parliament has full power by legislation to determine the conditions under which international agreements may be entered into and to provide for giving effect to them. That this authority is exclusive would seem to follow inevitably from the circumstances that the Lieutenant-Governors of the provinces do not in any manner represent His Majesty in external affairs, and that the provincial governments are not concerned with such affairs: the effect of the two decisions reported in 1932 Appeal Cases is that in all these matters the authority of Parliament is not merely paramount, but exclusive.

The first of the two cardinal questions raised by the contentions of the provinces has two branches, and may be stated thus: Has Parliament authority to legislate for carrying out a treaty or convention or agreement with a foreign country containing stipulations to which effect can only be given by domestic legislation changing the law of the provinces (*a*) in matters committed by the British North America Act (in the absence of any such international agreement) to the legislatures of the provinces exclusively, and (*b*) in relation to such matters where they are *ex facie* of domestic concern only and not of international concern, such, for example (as the provinces argue), as the matters dealt with by the conventions to which effect is given by the statutes now before us: the regulation of wages and of hours of labour.

The claim of Parliament to authority to execute legislative changes in the law of the provinces in such matters naturally arouses concern and misgiving among the authorities charged with responsibility touching the status and rights of the provinces.

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

The view that the exclusive authority of Parliament extends to international treaties and agreements relating to such subjects rests on the grounds now outlined.

(1) As touching the view advanced that the subject matters of the stipulations in the international agreements in question are of exclusively domestic and not at all of international concern: the language of section 132 is unqualified and that section would appear *prima facie* to extend to any treaty with a foreign country in relation to any subject matter which in contemplation of the rules of constitutional law respecting the royal prerogative concerning treaties would be a legitimate subject matter for a treaty; and there would appear to be no authority for the proposition that treaties in relation to subjects, such as the subject matter of the statutes in question are not within the scope of that prerogative. The question whether the language of section 132 is, by necessary implication, subject to some restriction in order to preserve unimpaired radical guarantees evidenced by the B.N.A. Act as a whole is mentioned in the next succeeding paragraph. Legislative authority to give effect to treaties within section 132 remained, of course, after the B.N.A. Act, down to the enactment of the Statute of Westminster, in the Imperial Parliament, although by section 132, it also became and is vested in the Parliament of Canada; but, since the Statute of Westminster, no Act of the Imperial Parliament can have effect in Canada without the consent of Canada. The practice of modern times and, in particular, the provisions of the Covenant of the League of Nations embodied in the Treaty of Versailles would appear to demonstrate that by common consent of the nations of the world, such matters are regarded as of high international as well as of domestic concern and proper subjects for treaty stipulation.

(2) As touching the view that the legislative authority committed to the Parliament and Government of Canada by section 132 (and by the introductory clause of section 91 in relation to international matters) does not extend to matters which would fall exclusively within the legislative jurisdiction of the provinces, in the absence of any international obligation respecting them, it is to be observed: First, section 132 relates *inter alia* to obligations imposed upon any province of Canada by any treaty between the British Empire and a foreign country, Section 132 obviously contemplates the possibility of such an obligation arising as a diplomatic obligation under such a treaty, even although legislation might be necessary in order to attach to it the force of law. In such case, the Parliament and Government of Canada appear to be endowed with the necessary legislative and executive powers. This provision with regard to the obligations of the Provinces taken together with the generality of the language employed in Section 132 would seem to point rather definitely to the conclusion that the view under consideration is not tenable;

Secondly, the established practice of the Parliament of Canada and the decisions of the Courts in relation to that practice do not accord with this view. Statutes giving effect to the International Waterways Treaty (1911) with the United States, and the Treaty with Japan (1913) are instances

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

in which treaties dealing with matters of civil right within the provinces and the management of the public property of the provinces were given the force of law by Dominion statutes. The legislation concerning the Japanese Treaty was held to be valid and to nullify a statute of the Province inconsistent with it by the Judicial Committee of the Privy Council in *Attorney-General for British Columbia* v. *Attorney-General for Canada* (1).

The jurisdiction of Parliament to enforce international obligations under agreements which are not strictly " treaties " within section 132 is co-ordinate with the jurisdiction under this last named section.

It is contended by the Provinces that the Dominion cannot by reason merely of the existence of an international agreement (within section 132 or within the residuary clause) possess legislative authority enabling the Parliament of Canada to legislate in derogation of certain fundamental terms which, it is said, were the basis of the Union of 1867, and are expressly or impliedly embodied in the B.N.A. Act. For the purposes of the present reference, it is unnecessary to make any observation upon this contention further than what has already been said, viz., that the exclusive authority of the Dominion to give the force of law to an international agreement is not affected by the circumstances alone that, in the absence of such an agreement, the exclusive legislative authority of the provinces would extend to the subject matter of it.

The second of the cardinal questions requiring determination concerns the construction and effect of Article 405 of the Treaty of Versailles.

The draft conventions now in question were brought before the House of Commons and the Senate, received the assent of both Houses in the form of resolutions, which resolutions approved the ratification of them, and the statutes in question were passed for the purpose of giving legislative effect to their stipulations the operative clauses of the statute being in each case preceded by a preamble in which it is recited that the draft conventions have been ratified by Canada. The procedure followed, if we put aside the provisions of Article 405, was the usual and proper procedure for engaging in and giving effect to agreements with foreign governments. The propriety of this procedure is questioned on the ground that under the special provisions of Article 405, and especially those of paragraphs 5 and 7 of the Article, it was an essential condition of the jurisdiction of Parliament to legislate for the enforcement of the conventions that the conventions should have been submitted to, and should have received the assent of, the provincial legislatures before the enactment of such legislation by Parliament. Paragraphs 5 and 7 are as follows :

> Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.
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> * * *

(1) (1924 A.C. 203).

No. 13. Reasons for Judgment. (a) Duff C.J. (concurred in by Davis and Kerwin JJ.)—*continued.*

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

These paragraphs must be read together and, reading them together, it would appear that the " competence " postulated is the " competence " to enact legislation or to take other " action " contemplated by the Article.

The obligations upon consent of the competent authority or authorities to ratify and, upon like consent after ratification, " to make effective the provisions of the convention " are both treaty obligations; and the authority or authorities competent to take legislative action where legislative action may be necessary to make the provisions of the convention effective would appear plainly to be included within the authority or authorities before whom it is provided that the draft conventions shall be brought.

It follows from what has been said that this treaty obligation is an obligation within section 132 and, consequently, that the authority to make the convention effective exclusively rests in the Parliament and Government of Canada and, therefore, that the Parliament of Canada is, at least, one of the authorities before which the convention must be brought under the terms of Article 405. The question whether the provincial legislatures are also competent authorities within the contemplation of paragraph 5 would appear to be necessarily determined by the consideration that we are constrained by the decisions of the Judicial Committee of the Privy Council (reported in 1932 A.C. 54 & 304), already referred to, to hold that the authority of Parliament in this matter is exclusive and that the provincial legislatures are not competent to legislate for giving effect to the provisions of any international convention. . . . Strictly, however, important as this question of the " competence " of the Provincial legislatures in the sense of Article 405, is, it is unnecessary to decide it for the purposes of this reference; as will appear from what immediately follows.

The Governor-General in Council is designated by the Treaties of Peace Act, 1919, enacted under the authority of section 132, to take all such measures as may seem to him to be necessary for the purpose of carrying out the Treaties of Peace and for giving effect to the terms of such treaties. He it was, therefore, upon whom devolved the duty of performing the obligation of Canada under Art. 405 to bring the draft conventions before the authority or authorities possessing " competence " under the Constitution of Canada. He it was also on whom devolved the duty to communicate to the League of Nations the ratification by Canada upon the assent of the competent authority or authorities. Moreover, the Parliament of Canada, as we have seen, possessing exclusive jurisdiction in relation to international agreements, the creation as well as the enforcement of them, declared, by the statutes now under examination, that the conventions in question were ratified by Canada. The executive authority, therefore, charged with the duty of acting for Canada in performing the treaty obligations of submitting the conventions to the proper constitutional authorities and of communicating ratification to the League of Nations upon the assent

of those authorities, and His Majesty the King in Parliament have, in effect, combined in declaring that the ratification was assented to by the proper constitutional authorities of Canada in conformity with the stipulations of *Article* 405.

No. 13. Reasons for Judgment. (*a*) Duff C.J. (*concurred* in by Davis and Kerwin JJ.)—*continued.*

That would appear to be sufficient to constitute a diplomatic obligation binding upon Canada to observe the provisions of the conventions.

The answer to the three interrogatories addressed to this Court under this Order of Reference is, therefore, the statutes being *intra vires* in each case, in the negative.

(*b*) RINFRET, J.—For the purpose of giving answers to the questions referred to the Court by His Excellency the Governor-General in Council concerning The Weekly Rest in Industrial Undertakings Act, The Minimum Wages Act and The Limitation of Hours Act, it is well to bear in mind that, apart from any consideration resulting from their aspect as laws intended to carry out the obligations of Canada under Draft Conventions agreed upon at general conferences of the International Labour Office of the League of Nations, the subject-matter of these legislations is undoubtedly one in relation to which, under the Constitution of our Country, the Legislature in each province may exclusively make laws.

(*b*) Rinfret J.

It follows that, in order to support the validity of the Acts, the Attorney-General of Canada had the burden of demonstrating that, in the premises, the subject-matter of the disputed legislation had, for some special reason, been transferred to the jurisdiction of the Parliament of Canada.

The written submission of the Attorney-General of Canada, as it was made to this Court, was that the Acts were within the legislative power of the Parliament of Canada in their entirety in virtue of

(1) its exclusive legislative power under Sec. 132 of the British North America Act;

(2) its general power, conferred by Sec. 91 of the said Act, to perform the obligations of Canada under the several draft conventions duly ratified by Canada as a Member of the International Labour Organization;

(3) its general power to make laws for the peace, order and good government of Canada;

(4) its exclusive legislative authority in relation to the regulation of trade and commerce;

(5) its exclusive legislative authority in relation to the criminal law.

It will only be necessary to consider the provisions contained in numbers 1 and 2 of the submission, for it seems to be evident that the subject-matter of the Acts is not criminal law (and the point was not pressed at the argument).

As for the contention that the legislation may be supported as an exercise of the general power conferred by Sec. 91 to make laws for the peace, order and good government of Canada, or of the exclusive legislative authority in relation to the regulation of trade and commerce, the discussion, both comprehensive and exhaustive of the extent of those powers made by my Lord the Chief Justice in his reasons on the Reference concerning The

No. 13. Reasons for Judgment. (*b*) Rinfret J.—*continued.*

Natural Products Marketing Act relieves me of the necessity of examining these contentions here, for, to my mind, they establish conclusively that the Dominion Parliament cannot rely on these powers in support of the validity of the legislation under submission.

It will only be necessary, therefore, to scrutinize the arguments put forward by the Dominion Government that the Acts are valid as an exercise of the power " necessary or proper for performing the obligations of Canada, or any province thereof . . . towards foreign countries, arising under the Draft Conventions duly ratified by Canada as a Member of the International Labour Organization."

Part XIII of the Treaty of Versailles is entirely devoted to labour questions. Under it, a permanent organization is established for the promotion of the objects set forth in that part. The original members of this organization are the original members of the League of Nations. Canada is such a member.

The permanent organization consists of a General Conference of the representatives of the members and an International Labour Office controlled by a Governing Body.

Meetings of the General Conference are held from time to time at which the Conference adopts proposals taking the form either (*a*) of a recommendation to be submitted to the members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the members.

The procedure is that, after the recommendation or draft convention has been identicated by the President and the Director of the Conference and after it has been deposited with the Secretary General of the League of Nations, the Secretary General is to communicate a certified copy to each of the members.

And then, under Article 405,

" Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

" In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

" In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

" If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

" In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case."

The draft conventions here, by the Dominion Parliament, made the basis of the legislation now submitted to the Court were adopted by the General Conference of the International Labour Organization under the provisions just mentioned.

It should be stated, only for the purpose of accuracy, that, notwithstanding the fact that the proposals were adopted at the first session of the International Labour Conference, at its first annual meeting (29th October–29th November, 1919), it was not until 1935—and, therefore, sixteen years later—that the Dominion Government and the Federal Parliament undertook to take any action in regard to them and to enact legislation in order to carry them out.

Under Article 405 just quoted, a Member undertook to bring a recommendation or a draft convention before the authority or authorities within whose competence the matter lies " within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference." This was not done; but it is claimed that the provision is directory only and that no consequence can follow from the fact that the delay prescribed in the order had long since expired when the Dominion Government took action and the Dominion Parliament undertook to pass this legislation.

In the meantime, however, a fact, to my mind of very great importance, had taken place.

On November 6, 1920, an Order in Council was passed on the report of the then Minister of Justice dealing in part with the obligations of the Dominion of Canada as a Member of the International Labour Conference with relation to the Draft Conventions or Recommendations which may from time to time be adopted by the Conference, so that appropriate legislative and other action may be taken to give effect to them. The opinion expressed by the Minister upon this point was set forth in the Order in Council. That opinion was

" that the provisions of the Labour Part of the Treaty of Versailles do not impose any obligation on the Dominion of Canada to enact into law the different draft conventions or recommendations which may from time to time be adopted by the Conference.

" The obligation as set forth is simply in the nature of an undertaking on the part of each Member to bring the recommendations or draft conventions before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action."

In the opinion of the Minister

" the Government's obligation would be fully carried out if the different conventions and recommendations are brought before the competent authority, Dominion or Provincial, accordingly as it may appear, having regard to the scope and objects, the true nature and character of the legislation required to give effect to the proposals of the conventions and recommendations respectively that they fall within the legislative authority of the one or the other."

This Order in Council of the 6th November, 1920, also embodied the Minister's opinion upon the question whether the provisions of the Draft Convention

No. 13. Reasons for Judgment. (h) Rinfret J.—*continued.*

limiting the hours of work in industrial undertakings came within the legislative competence of the Parliament of Canada or of the Provincial Legislature.

The Minister reported that the proposals of this Convention "involve legislation which is competent to Parliament in as far as Dominion works and undertakings are affected, but which the Provincial Legislatures have otherwise the power to enact and apply generally and comprehensively."

Notwithstanding the view expressed in the Order in Council of November 6, 1920, as doubt existed in certain quarters as to the jurisdiction of the Federal and Provincial authorities respectively, the Committee of the Privy Council of Canada, upon a report dated the 23rd December, 1924, from the Minister of Justice, considered it expedient that the question as to the respective powers of the Parliament of Canada and of the Provincial Legislature in relation to the enactment of the legislation required to give effect to the provisions of the said Draft Convention should be judicially determined; and accordingly the following questions were then referred to the Supreme Court of Canada :—

(1) What is the nature of the obligations of the Dominion of Canada as a member of the International Labour Conference, under the provisions of the Labour Part (Part XIII) of the Treaty of Versailles and of the corresponding provisions of the other Treaties of Peace, with relation to such draft conventions and recommendations as may be from time to time adopted by the said Conference under the authority of and pursuant to the aforesaid provisions ?

(2) Are the legislatures of the provinces the authorities within whose competence the subject-matter of the said draft convention (The Limitation of the Hours of Work Act) in whole or in part lies before whom such draft convention should be brought under the provisions of Article 405 of the Treaty of Peace with Germany, for the enactment of legislation or other action ?

(3) If the subject-matter of the said draft convention be, in part only, within the competence of the legislatures of the provinces, then in what particular or particulars, or to what extent, is the subject-matter of the draft convention within the competence of the legislatures ?

(4) If the subject-matter of the said draft convention be, in part only, within the competence of the legislatures of the provinces, then in what particular or particulars, or to what extent, is the subject-matter of the draft convention within the competence of the Parliament of Canada ?

The report containing the answers of the Court and the reasons for those answers is to be found in 1925 S.C.R., p. 505.

To the first question, the answer was that

"The obligation is simply in the nature of an undertaking to bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action."

To the second question, the answer was

"Yes, in part."

A reference to the reasons will show that the Court was unanimously of opinion that

"Under the scheme of distribution of legislative authority in the British North America Act, legislative jurisdiction touching the subject-matter of this convention is, subject to a

qualification to be mentioned, primarily vested in the provinces. . . This general proposition is subject to this qualification, namely, that as a rule a province has no authority to regulate the hours of employment of the servants of the Dominion Government.

.....

" It is necessary to observe, also, that as regards these parts of Canada which are not included within the limits of any province, the legislative authority in relation to civil rights generally, and to the subject-matter of the convention in particular, is the Dominion Parliament."

The answer to the third question was :—

" The subject-matter is generally within the competence of the legislatures of the provinces, but the authority vested in these legislatures does not enable them to give the force of law to provisions such as those contained in the draft convention in relation to servants of the Dominion Government, or to legislate for these parts of Canada which are not within the boundaries of a province."

The answer to the fourth question was :—

" The Parliament of Canada has exclusive legislative authority in those parts of Canada not within the boundaries of any province, and also upon the subjects dealt within the draft convention in relation to the servants of the Dominion Government."

The conclusion of the unanimous judgment of this Court in the matter was that

" the draft convention ought to be brought before the Parliament of Canada as being the competent legislative authority for those parts of Canada not within the boundaries of any province; and if servants of the Dominion Government engaged in industrial undertakings as defined by the convention are within the scope of its provisions, then the Dominion Parliament is the competent authority also to give force of law to those provisions as applicable to such persons.

" The convention should also be brought before the Lieutenant-Governor of each of the provinces for the purpose of enabling him to bring it to the attention of the Provincial Legislature as possessing, subject to the qualification mentioned, legislative jurisdiction within the province in relation to the subject-matter of the convention."

The reference made in 1925 went no further and, therefore, the opinion then given may be regarded as binding upon this Court, except in so far as it may have been superseded by subsequent pronouncements of the Privy Council in the *Reference concerning the regulation and control of Aeronautics in Canada*, 1932, A.C. 54, and the *Reference concerning the regulation and control of Radio communication in Canada*, 1932, A.C. 304.

On the points that we are now discussing I find it impossible to distinguish between The Limitation of the Hours of Work Act, which was the subject matter of the reference of 1925 to this Court (again submitted in the present reference) and The Weekly Rest in Industrial Undertakings Act, or The Minimum Wages Act.

These conventions are not treaties within the meaning of Sec. 132 of the B.N.A. Act, more particularly as the word was understood at the time of the adoption of the Act by the Imperial Parliament. Moreover, they are not treaties between the Empire and Foreign Countries in respect of which " obligations of Canada or of any province thereof as part of the British Empire towards foreign countries " might have arisen. Consequently, Sec. 132 in terms does not apply to these conventions.

No. 13. Reasons for Judgment. (b) Rinfret J.—continued.

It was decided, however, by the Privy Council on the *Radio Reference* (1), that certain class of conventions, of which Canada as a dominion was one of the signatories, not being mentioned explicitly in either Sec. 91 or Sec. 92 fell within the general words at the opening of Sec. 91 assigning to the Parliament of the Dominion the power 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 their Lordships " in fine, though agreeing that the convention was not such a treaty as is defined in s. 132, thought that it comes to the same thing."

Both in the *Aeronautics* Reference and in the *Radio* Reference, however, the Privy Council, at the same time as it declared that the validity of the legislation could be supported as an exercise of the powers derived from sec. 132 or from the residuary power to make laws for the peace, order and good government of Canada, also came to the conclusion that the subject of aeronautics and the subject of radio came under one or more of the enumerated heads of sec. 91 of the B.N.A. Act, radio, moreover, belonging to such class of subjects as were expressly excepted in the enumeration of the classes of subjects by the Act assigned exclusively to the legislatures of the provinces (91–29).

I will have to make further observations on this point later on.

Another remark to be made in connection with the aeronautics and radio judgments in the Privy Council is that, in the former case, their Lordships were dealing with a treaty convention under sec. 132, and, in the latter case, they were dealing with a convention of a character quite different from those under submission and of which they said that it " comes to the same thing as a treaty."

It would seem to me, therefore, that these two decisions are not authorities upon the question of wherein lies as between the Parliament of Canada and the Legislatures of the Provinces the powers necessary or proper for performing the obligations of Canada or of any province thereof arising out of conventions adopted by the International Labour Conference.

But on the present reference, as I view it, it is not necessary for this Court to enter into the discussion of this last point.

Whether treaty or convention, the questions under consideration in the *Aeronautics* and the *Radio* references were concerned with the validity of legislation enacted for the purpose of performing obligations arising as a result of international agreements already made and the validity whereof was not disputed.

In those references, the question whether the treaty or convention had been properly and competently signed, adopted or ratified was not in question, either in this Court or in the Privy Council.

Now, with deference, I make a very great distinction between the power to create an international obligation and the power to perform it when once it has been created.

(1) 1932, A.C. 304, at p. 312.

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We may leave aside the aeronautics and radio decisions, which were concerned merely with the validity of laws enacted for the purpose of performing foreign obligations, because in the present case what we have mainly to consider is the power to create foreign obligations. On that particular point, that is to say: on that point of where lies the power to create an international obligation, the only decision so far is the judgment of this Court on the reference *In the matter of legislative jurisdiction over hours of labour* (1). I fail to find anything in the subsequent judgments of the Privy Council superseding what was said unanimously by this Court on that subject. The authority, in my humble opinion, is as conclusive as it can be, since that reference was concerned with one of the draft conventions on which the Attorney-General of Canada now seeks to rely in support of the validity of the legislation now submitted to us, and since no substantial distinction in the pertinent sense can be made between the draft convention then under consideration and the two other conventions dealing with The Weekly Rest and The Minimum Wages. With deference, I think the decision of 1925 is certainly binding on this Court and that, as a consequence, it must follow that the obligation of Canada with respect to these draft conventions is simply to bring them before the authority within whose competence the matter lies for the enactment of legislation or other action, or, in the premises, before the legislatures of the provinces, except for the provisions of those draft conventions in relation to servants of the Dominion Government, or in relation to those parts of Canada which are not within the boundaries of a province.

Let it be granted that under the scheme of the British North America Act the provinces of Canada were "federally united into one Dominion"; that the Act provides for one nation, not for several nations; that the provinces have no status in international law, they are not States and are not recognized as such. Let it be conceded from these premises that the Government of Canada is the proper medium for all international relations and that "for international purposes, it should be regarded as a unity" (Keith on Responsible Government in the Dominions, 1919, pp. 134–135). It seems to me that, having regard to the fundamental spirit of the Constitution, a distinction must necessarily be drawn between the competency to discharge international obligations and the competency to enter into them.

While it is, no doubt, perfectly true that "overwhelming convenience—under the circumstances amounting to necessity" (Anglin C.J.C. in the *Radio Reference,* (2) dictates the answers that the performance of obligations, both federal and provincial, arising out of international agreements must be left exclusively to the jurisdiction of the Dominion Parliament, I fail to see the same necessity with regard to the power to create these foreign obligations. When once they have been undertaken, Canada is in honour bound to perform them; but there is no necessity, nor even obligation, to undertake them. If the effect of the undertaking is that a subject of legisla-

(1) 1925 S.C.R. 505. (2) (1931) S.C.R. 541 at pp. 545–546.

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tion within the exclusive jurisdiction of the province will thereby be transferred from that jurisdiction to the jurisdiction of the Dominion Parliament, I consider it to be within the clear spirit of the British North America Act that the obligation should not be created or entered into before the provinces have given their consent thereto. In the particular case that we are now considering, it is my humble view that such was the effect of the judgment of this Court in the matter of the *Reference of* 1925 (1). Such, it seems to me with respect, was the interpretation put by this Court upon the pertinent clause of Article 405 of the Treaty of Peace.

Under the distribution of legislative powers, Property and Civil Rights in the Province were ascribed to the exclusive jurisdiction of the Legislature in each Province.

A civil right does not change its nature just because it becomes the subject-matter of a convention with foreign States. It continues to be the same civil right. When once the convention has been properly adopted and ratified, it is, no doubt, transferred to the federal field for the enactment of laws necessary or proper for performing the obligations arising under the convention. That is, as I understand it, the effect of the decisions of the Privy Council on the *Aeronautics* and *Radio References.* But before the international obligation has been properly and competently created, the civil right under the jurisdiction of the provinces is always the same civil right, and I cannot see where the Dominion Parliament in the British North America Act finds the power to appropriate it for the purpose of dealing with it internationally without having previously secured the consent of the provinces.

In the present cases, we are dealing with Weekly Rest in Industrial Undertakings, Minimum Wages in ordinary contracts of employment and Limitation of Hours of Work, matters which are fundamentally of the competence of the legislatures in each province. But in order to put the point more forcibly, let us assume that the subject matter of the convention was education, a subject in relation to which " in and for each province the legislature may exclusively make laws " (Sec. 93). Can it be said that it would be within the spirit of the Constitution that the Dominion Parliament might acquire exclusive jurisdiction over that very essential subject as a consequence of the fact that the Dominion Government would decide in regard to it to make a convention with a foreign power ?

It might be objected that education would not be regarded as the proper subject matter of a treaty or an international convention as these arrangements are generally understood. Until comparatively recently, neither could it be said that questions affecting The Weekly Rest in Undertakings, The Minimum Wages or the Limitation of Hours of Work would be considered as proper subjects for international conventions.

The treaty-making power is the prerogative of the Crown. In ordinary practice, it is exercised on the recommendation of the Crown's advisers.

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(1) (1925 S.C.R. 505).

In Canada, the practice has grown gradually to enter into international conventions through the medium of the Governnor in Council. It does appear that it would be directly against the intendment of the British North America Act that the King or the Governor-General should enter into an international agreement dealing with matters exclusively assigned to the jurisdiction of the provinces solely upon the advice of the federal Ministers who, either by themselves or even through the instrumentality of the Dominion Parliament are prohibited by the Constitution from assuming jurisdiction over these matters.

I would like to conclude with the words of Lord Watson, in the *Maritime Bank case* (1892 A.C., p. 441):

> " The object of the Act was neither to weld the provinces into one nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy."

It follows from all that I have said that, in my opinion, the draft conventions upon which is based the legislation now submitted to us have not been properly and competently ratified, that they could not be so ratified without the consent of the legislature in each province, both by force of the British North America Act and upon the proper interpretation of Article 405 of the Treaty of Versailles; and that, for that reason, the Acts now submitted are *ultra vires* of the Parliament of Canada; and I, therefore, certify to the Governor-General in Council, for his information, that my opinion is that the questions in relation thereto should be answered in the affirmative.

(c) Cannon J.

(c) CANNON J.—When an Act of Parliament is challenged before this Court as unconstitutional, our duty is to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. Our only power is to announce our considered judgment upon the question. This Court neither approves nor condemns any legislative policy. Our delicate and difficult office is to ascertain and declare whether the legislation is in accordance with or contravention of the provisions of the Constitution. Having done so, our duty ends.

The question is not what power the Federal Government ought to have, but what powers, in fact, have been given to it by the B.N.A. Act. It hardly seems necessary to reiterate that ours is a dual form of government; that in every province there are two governments. We differ radically from nations where all legislative power, without restriction, is vested in a parliament, or other legislative body, subject to no restriction.

It must also be borne in mind that the attainment of a prohibited end may not be accomplished under the pretext of the exercise of powers which are granted. We may accept as established doctrine that any provision in an Act of Parliament ostensibly enacted under power granted by the constitution not naturally and reasonably adapted to the effective exercise of such

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power but solely to the achievement of something plainly within the provincial jurisdiction is invalid and cannot be enforced.

Nor can it help to declare that local conditions throughout the nation have created a situation of national concern; for this is but to say that whenever there is a widespread similarity of local conditions, Parliament may ignore constitutional limitations upon its own powers and usurp those reserved to the provinces.

Until recently there was no suggestion of the existence of any such power in the Federal Parliament. The opinion of the framers of the Constitution, the decisions of the courts and the writings of commentators, deny to the Federal Parliament the authority whereby every provision and every fair implication from the B.N.A. Act may be subverted, the autonomy of the provinces obliterated and the Dominion of Canada converted into a central government exercising uncontrolled police power in every province, superseding all local control or regulation of the affairs of the province. It was never suggested that any power granted by the constitution to Parliament, or necessarily implied, could be used for the destruction of self-government in the provinces. It never occurred to any of the commentators that the general welfare of the Dominion might be served by obliterating the constituent provinces. It seems to be contended that, under the residual power for peace, order and good government, Parliament has power to tear down the barriers, to invade the provincial jurisdiction and to impose Legislative Union for the whole of Canada, subject to no restriction, save such as are self-imposed.

That the provinces agreed only to a Federal Union appears abundantly by a perusal of what was said by Sir J. A. Macdonald, then Attorney-General of Upper Canada, before the Canadian Parliament sitting in the City of Quebec on the 6th February, 1865.

> The third and only means of solution for our difficulties was the junction of the provinces either in a Federal or a Legislative Union. Now, as regards the comparative advantages of a Legislative and a Federal Union, I have never hesitated to state my own opinions. I have again and again stated in the House, that, if practicable, I thought a Legislative Union would be preferable. I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But, on looking at the subject in the Conference, and discussing the matter as we did, most unreservedly, and with a desire to arrive at a satisfactory conclusion, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position—being in a minority, with a different language, nationality and religion from the majority—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada—if I may use the expression—would not be received with favour by her people. We found, too, that though their people speak the same language and enjoy the same system of law as the people of Upper Canada, a system founded on the common law of England, there was as great a disinclination on the part of the various Maritime Provinces to lose their individuality, as political organizations, as we observed in the case of Lower Canada herself. Therefore, we were forced to the conclusion that we must either abandon the idea of union altogether, or devise a system of union in which the separate provincial organizations would

be in some degree preserved. So that those who were, like myself, in favour of a Legislative Union, were obliged to modify their views and accept the project of a Federal Union as the only scheme practicable, even for the Maritime Provinces. Because, although the law of those provinces is founded on the common law of England, yet every one of them has a large amount of law of its own—colonial law framed by itself, and affecting every relation of life, such as laws of property, municipal and assessment laws; laws relating to the liberty of the subject, and to all the great interests contemplated in legislation; we found, in short, that the statutory law of the different provinces was so varied and diversified that it was almost impossible to weld them into a Legislative Union at once. Why, sir, if you only consider the innumerable subjects of legislation peculiar to new countries, and that every one of those five colonies had particular laws of its own, to which its people have been accustomed and are attached, you will see the difficulty of effecting and working a Legislative Union, and bringing about an assimilation of the local as well as general laws of the whole of the provinces. We in Upper Canada understand from the nature and operation of our peculiar municipal law, of which we know the value, the difficulty of framing a general system of legislation on local matters which would meet the wishes and fulfil the requirements of the several provinces.

The whole scheme of Confederation, as propounded by the Conference, as agreed to and sanctioned by the Canadian Government, and as now presented for the consideration of the people and the Legislature, bears upon its face the marks of compromise. Of necessity there must have been a great deal of mutual concession.

As I stated in the preliminary discussion, we must consider this scheme in the light of a treaty.

The Conference having come to the conclusion that a legislative union, pure and simple, was impracticable, our next attempt was to form a government upon federal principles, which would give to the General Government the strength of a legislative and administrative union, while at the same time it preserved that liberty of action for the different sections which is allowed by a Federal Union. And I am strong in the belief that we have hit upon the happy medium in those resolutions, and that we have formed a scheme of government which unites the advantages of both, giving us the strength of a legislative union and the sectional freedom of a federal union, with protection to local interests.

I shall not detain the House by entering into a consideration at any length of the different powers conferred upon the General Parliament as contradistinguished from those reserved to the local legislatures; but any honorable member on examining the list of different subjects which are to be assigned to the General and Local Legislatures respectively, will see that all the great questions which affect the general interests of the Confederacy as a whole, are confided to the Federal Parliament, while the local interests and local laws of each section are preserved intact, and entrusted to the care of the local bodies. As a matter of course, the General Parliament must have the power of dealing with the public debt and property of the Confederation. Of course, too, it must have the regulation of trade and commerce, of customs and excise. The Federal Parliament must have the sovereign power of raising money from such sources and by such means as the representatives of the people will allow. It will be seen that the local legislatures have the control of all local works; and it is a matter of great importance, and one of the chief advantages of the Federal Union and of local legislatures, that *each province will have the power and means of developing its own resources and aiding its own progress after its own fashion and in its own way. Therefore, all the local improvements, all local enterprises or undertakings of any kind, have been left to the care and management of the local legislatures of each province.*

The criminal law too—the determination of what is a crime and what is not and how crime shall be punished—is left to the General Government. This is a matter almost of necessity. It is of great importance that we should have the same criminal law throughout these provinces—that what is a crime in one part of British America, should be a crime in every part—that there should be the same protection of life and property as in another. It is one of the defects in the United States system, that each separate state has or may have a criminal code of its own,—that what may be a capital offence in one state, may be a venial offence, punishable slightly, in another. But under our Constitution we shall have one body of criminal

No. 13. Reasons for Judgment. (c) Cannon J.—*continued.*

law, based on the criminal law of England, and operating equally throughout British America, so that a British American belonging to what province he may, or going to any other part of the Confederation, knows what his rights are in that respect, and what his punishment will be if an offender against the criminal laws of the land. I think this is one of the most marked instances in which we take advantage of the experience derived from our observations of the defects in the Constitution of the neighbouring Republic.

Although, therefore, a legislative union was found to be almost impracticable, it was understood, so far as we could influence the future, that the first act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England. But to prevent local interests from being over-ridden, the same section makes provision, that, while power is given to the General Legislature to deal with this subject, *no change in this respect should have the force and authority of law in any province until sanctioned by the Legislature of that province.*

Sir George Etienne Cartier closed his speech by stating:

So if these resolutions were adopted by Canada, as he had no doubt they would, and by the other Colonial Legislatures, the Imperial Government would be called upon to pass a measure which would have for its effect to give a strong central or general government and local governments which would at once secure and guard the persons, the properties and the civil and religious rights belonging to the population of each section.

The British North America Act, in its preamble, says:

WHEREAS the Province of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

Articles 3 and 4 provided for the proclamation of the Dominion, composed of four provinces Ontario, Quebec, Nova Scotia and New Brunswick; which preserved their identity and never ceased at any time to form distinct and separate governments. The provinces created, by their union, a new power; but it is impossible to say that they owe to it their existence. On the contrary, the provinces created the Dominion.

Lord Carnavon, in the House of Lords, on the second reading of the B.N.A. Act, said:

A legislative union is under existing circumstances impracticable. The Maritime Provinces are ill-disposed to surrender their separate life, and to merge their individuality in the political organization of the general body. It is in their case, impossible, even if it were desirable, by a stroke of the pen to bring about a complete assimilation of their institutions to those of their neighbours. Lower Canada, too, is jealous, as she is deservedly proud, of their ancestral customs and traditions; she is wedded to her peculiar institutions, and will enter this Union only upon the distinct understanding she retains them.

Chief Justice Dorion, who had taken part, as a Member of the Legislature, in the Confederation debates, gave the following opinion quoted at page 143 of Volume III of La Thémis:

There is no difference between the powers of the local and Dominion legislatures within their own sphere. That is the powers of the local legislature within its own sphere are co-extensive with the powers of the Dominion Government within its own sphere. The one is not inferior to the other. I find that the powers of the old legislature of Canada is extended to the local legislatures of the different provinces. We have a government modelled on the British constitution. We have responsible government in all provinces, and these powers are not introduced by legislators, but in conformity with usage. It is founded on the consent and recognition of those principles which guide the British constitution. I do not read that

the new constitution was to begin an entirely new form of government, or to deprive the legislature of any of the powers which existed before, but to effect a division of them, some of them are given to the local legislatures, but I find none of them curtailed.

In substituting the new legislation to the old, the new legislature has, in all those things which are special to the province of Quebec, all the rights of the old legislature, and they must continue to remain in the province of Quebec, as they existed under the old constitution.

And Sandborn, J., said:

The British North America Act of 1867 was enacted in response to the petition of the provinces of Canada, Nova Scotia and New Brunswick, as stated in the preamble of the Act, to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom. The powers of legislation and representative government upon the principle of the British constitution, or, as it has commonly been called, responsible government, were not new to Canada. They had been conceded to Canada and exercised in their largest sense from the time of the Union Act of 1840, and in a somewhat more restricted sense from the Act of 1791 to 1840. The late province of Lower Canada was constituted a separate province by the Act of 1791, with a governor, a legislative council and a legislative assembly, and it has never lost its identity. It had a separate body of laws, both as respects statute and common law, in civil matters no powers that had been conceded were intended to be taken away by the British North America Act of 1867, and none, in fact, were taken away, as it is not the wont of the British government to withdraw constitutional franchises once conceded. This Act, according to my understanding of it, distributed powers already existing to be exercised within their prescribed limits, to different legislatures constituting one central legislature and several subordinate ones, all upon the same model, without destroying the autonomy of the provinces, or breaking the continuity of the respective provinces, in a certain sense, the powers of the federal parliament were derived from the provinces, subject of course, to the whole being a colonial dependency of the British Crown. The provinces of Quebec and Ontario are by the sixth section of the Act, declared to be the same that formerly comprised Upper and Lower Canada. This recognizes their previous existence prior to the Union Act of 1840. All through the Act, these provinces are recognized as having previous existence and a constitutional history upon which the new fabric is based. Their laws remain unchanged, and the constitution is preserved. The offices are the same in name and duties, except as to the office of lieutenant-governor, who is placed in the same relation to the province of Quebec, as that which the governor general sustained to the late province of Canada. I think it would be a great mistake to ignore the past government powers conferred upon and exercised in the province now called Quebec, in determining the nature and privileges of the legislative assembly of this province.

The procedure recommended by the Imperial Conferences in 1926 and 1930 regarding legislation or international agreements by one of the self-governing parts of the Empire which may affect the interests of other self-governing parts, i.e. previous consultation between His Majesty's ministers in the several parts concerned, should be applied by the Central and Provincial governments specially before ratifying any international agreement—not falling under Section 132 of the B.N.A. Act. The only direct legislative authority expressly given to the Parliament and Government of Canada concerning foreign affairs is found in this section and is limited to the performance of the obligations of Canada or any Province thereof arising under treaties between the Empire as a whole and a foreign country. The Imperial Parliament saw to it that Imperial interests would be protected by federal legislation. But to pass legislation—affecting the Provinces—to ratify a treaty or agreement by Canada alone—under an evolution which

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came to pass since Confederation—with a foreign power, previous consultations between the federal and provincial self-governing parts of our Confederation seem to me logical and the only way to preserve peace, order and good government in Canada and save the very roots of the tree to which our constitution has been compared. In order to grow, if it be a growing instrument, it must keep contact with its native soil—and draw from the constituting provinces new force and efficiency.

The provinces agreed to this principle of Legislative Union and the Imperial Parliament granted it to a central Parliament strictly within the ambit of 91; any legislation by this Parliament attempting to legislate uniformly for the whole of Canada on any subject exclusively retained by the Provinces and within the natural and obvious meaning of section 92 must, in my opinion, be *prima facie*, considered as *ultra vires* of the Dominion.

The additions by some decisions to the powers of the Dominion in emergency cases must be applied if at all, with the greatest caution. In the words of Sir John MacDonald, " the scheme must be considered in the light of a treaty " not to be lightly interfered with by way of commentary and gloss.

If any changes are required to face new situations or to cope with the increased importance of Canada as a nation, they may be secured by an amendment to the Act; but neither this Court nor the Privy Council should be called upon to legislate in the matter by treating the constitution as a growing tree confided to their care. We have nothing to do with the growth or with the making of the law in constitutional matters. The Imperial Parliament alone can change what they enacted—or add to it. New branches to acquire the force of law, must be embodied in the statute, not in judgments or commentaries.

The above considerations may be applied, *mutatis mutandis*, to all the acts referred to us for consideration, but I would add a few words with respect to the three acts based on the so-called Geneva Labour Conventions mentioned in Order in Council 3454, being chapters 14, 44 and 63 of the statutes of 1935.

Such labour conventions binding Canada independently from the rest of the Empire do not fall under 132; they were not even contemplated as feasible in 1867 when the B.N.A. Act was passed. Radio and aeronautics are also new matters not existing at that time and had to be dealt with by the Privy Council as outside the enumerated subjects of 91 and 92; and these two decisions must be considered as *arrêts d'espèce* and confined to the subject matters which both had necessarily interprovincial and international aspects.

But the payment of wages for labour, the weekly rest and the rate of wages and length of hours of work were well known subjects in 1867 and they were, by common agreement, reserved by the Imperial Parliament to the Provinces as purely local and private matters of property and civil rights.

Therefore, in the words of section 405 of the treaty of Versailles, Canada as a federal state, has only a " power to enter into convention on labour matters, *subject to limitations* " and the draft convention should have been treated as a " recommendation only." Such recommendation is to be submitted to the members for " consideration with a view to effect being given to it by national legislation or otherwise." The Versailles Treaty recognizes that in certain cases, effect can be given to a labour agreement " otherwise " than by national legislation.

In these cases, it does not appear that either the recommendations or the draft conventions were submitted to the Provinces, i.e., the " authorities within whose competence the matter lies for the enactment of legislation or other action."

To my mind, this is fatal to the validity of the ratification of these labour conventions by the Federal authorities.

As an internal matter, such changes in the respective constitutional powers of the Provinces and of the Central Government cannot be justified by invoking some clauses of the treaty of Versailles. Respect of their property and civil rights was guaranteed by the British Crown to the inhabitants of the original provinces as far back as the treaty of Paris in 1763; this was confirmed by the constitution of 1867 which cannot be changed in this essential part except by an Imperial statute, as plainly set forth in the Act of Westminster of 1931, sec. 7. It is not admissible that the Parliament and the Government of Canada could appropriate these powers, exclusively reserved to the provinces, by the simple process of ratifying a labour convention passed at Geneva with representatives of foreign countries. The framers of our constitution, and the Privy Council by their recent judgments in the *Radio* and *Aeronautics* cases never intended to plant in its bosom the seeds of its own destruction. If such interference with Provincial rights by way of international agreements is admitted as *intra vires* of the central government, we may as well say that we have in Canada a confederation in name, but a legislative union in fact. Uniformity is not in the spirit of our constitution. We have not a single community in this country. We have nine commonwealths, several different communities. This is the fact embodied in the law. It may be wise or unwise, according to the preferences and predilection of every one, but this is the basis of our constitution. Diversity is the basis of our constitution. The federative system was adopted in order to give to the Provinces their autonomy and to secure, specially in Quebec, the rights to their own customs as crystallized in their civil law. No gloss or commentary to be found in judicial pronouncements can alter the constitution of this country. It is a written document which can be amended or added to, only by legislation. No usage or judge made law can be invoked, no practice can be introduced to change the division of powers as set forth in 91 and 92, however desirable or opportune it may seem. If amendments are needed and asked for, they should be granted by the Imperial Parliament.

No. 13. Reasons for Judgment. (c) Cannon J.—*continued.*

In 1867 it was found necessary in order to achieve confederation, to give us a federal form of government, more cumbersome and more expensive though it be, on account of the superior liberty it gives to the people.

This cannot be changed by the indirect way of a labour convention, in furtherance of some pious wish of the treaty of Versailles, at a time when its binding authority and wisdom is universally contested; and, albeit, many years after notification to Canada of these particular so-called draft conventions. The King's prerogative has not been used to do away with the statutory rights of His Canadian subjects.

These are not references to an international tribunal: we are not called upon to determine, in the absence of foreign powers, what effect such a ratification by the Canadian government might have in the international field. But Canada is not an independent sovereign state, and the Parliament of Canada is *not a Parliament of unlimited authority. Every Parliament in Canada—not only the Parliament of the Dominion, but also the Legislature in each province—is necessarily of limited authority, because it has not been given and does not possess the wide, the plenary authority over the whole field of legislation which is possessed by the Parliament of Great Britain or of an independent sovereign state.* Upon the union—upon the creation, not of one Parliament for Canada, but of one central Parliament and four provincial legislatures, each of them—the central Parliament just as much as the others—had limits to its jurisdiction, by the necessity of the case. That affords at once a very strong reason why no one of these parliaments should have jurisdiction over the Constitution of any other of them.

In 1867, when the agreement for entering into this Union was under discussion and being arrived at by the provinces, they wanted to create, and they did create by their agreement and by the statute which followed upon their agreement, a Parliament which was to have a limited jurisdiction, and no power to amend its Constitution.

These are some of the reasons why foreign powers, when dealing with Canada, must always keep in mind that neither the Governor-General in Council, nor Parliament, can in any way, and specifically by an agreement with a foreign power, change the constitution of Canada or take away from the Provinces their competency to deal exclusively with the enumerated subjects of Section 92. Before accepting as binding any agreement under section 405 of the treaty of Versailles, foreign powers must take notice that this country's constitution is a federal, not a legislative union.

I hereby certify that I answer in the affirmative the questions propounded by P.C. 3454.

(d) Crocket J.

(*d*) CROCKET J.—It cannot be doubted that all these statutes, no matter from what point of view they are considered, embody legislation which is directly aimed at the regulation and control of contracts of employment, private as well as public, in every Province of the Dominion, and thus deal in a very real and radical sense with civil rights in all the Provinces of Canada alike. The fundamental question before us, therefore, is: Can any

authority be found within the four corners of the B.N.A. Act for the exercise of such legislative power by the Parliament of Canada?

In my opinion none of the draft conventions of the International Labour Organization of the League of Nations, upon the ratification of which by the Government of Canada it has been sought to justify the enactment of all this legislation, fall within the terms of s. 132 of the B.N.A. Act. That section provides:—

> 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.

The powers granted by this section are strictly limited to the performance of obligations towards foreign countries arising under treaties between the Empire and such foreign countries. Unquestionably the section does not embrace obligations arising under any form of convention or agreement entered into by the Government of Canada with the Government of any other country within the Empire, nor does it contemplate or suggest any form of convention or agreement with the Government of any foreign country other than a treaty in the true sense of the term. As Lord Dunedin pointed out in the *Radio* case, the idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was unthought of in 1867, when the B.N.A. Act was enacted, and the only class of treaty, which would bind Canada, was thought of as a treaty by Great Britain, that is to say, as I understand the reference, a treaty concluded by the Crown in the exercise of its prerogative as the sovereign of a single indivisible Empire on the advice of its constitutional advisers, the Imperial Government of Great Britain. Only by the exercise of this supreme authority could any treaty obligation be imposed on Canada or any other Dominion or dependency of the British Empire towards foreign nations within the intendment of the B.N.A. Act. The executive government and authority of and over Canada were expressly declared by s. 9 of the B.N.A. Act "to continue and be vested in the Queen," s. 2 having already declared that the provisions of the Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland. There can hardly be a doubt that in the minds of the Fathers of Confederation and the framers of the B.N.A. Act the British Empire was visualized only as a single unit and not as a collection or commonwealth of separate nations, each of equal status with the United Kingdom of Great Britain and Ireland, with authority to conclude either treaties, or conventions analogous to treaties, on its own account with any foreign government. For my part I am unable to comprehend how any international convention, to which Canada in its new status, whatever that status may actually be, purports to become a party as a separate government, or any obligation resulting therefrom, can possibly be brought within the terms of s. 132—much less a mere draft convention, such as those of the International Labour Organization of the League of Nations. To my mind there is nothing which the judgment of the Judicial Committee in the

No. 13. Reasons for Judgment. (d) Crocket J.—continued.

Radio case has more decisively settled than this: that if the Government of Canada by its own plenipotentiaries enters into an international convention with the Government of any other country, whether British or foreign, s. 132 cannot be relied upon as empowering the Parliament of Canada to enact legislation for the carrying out of any obligation arising under such a convention, and that, if such legislative power exists at all, it must be found, either under the enumerated heads of s. 91 or the introductory words of that section, the so-called residuary clause.

Even if the Treaty of Versailles were a treaty between the British Empire, as an undivided unit, and those foreign states, whose plenipotentiaries signed it, which I do not think it is, and not a treaty purporting to have been entered into by the self-governing Dominions of the Empire as separate governments, it could not, in my judgment, be said that there was any obligation, for the performance of which the Parliament of Canada was empowered within the terms of s. 132 to enact legislation as pertaining to an obligation imposed by that treaty upon Canada or any Province thereof, as part of the British Empire. The obligation arose directly from a so-called international convention, purporting to have been ratified by Canada as a separate and distinct Government—an idea which is wholly incompatible with the conception of the Dominion of Canada as constituted by the B.N.A. Act.

As regards the residuary clause of s. 91, this empowers the Parliament of Canada

> to make laws for the peace, order and good government of Canada in relation to all matters not coming within the class of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

It will be seen at once that this provision can only be invoked where the real subject-matter of the legislation does not fall within the classes of subjects which are exclusively assigned to the Provinces by s. 92. To meet this obvious and formidable difficulty the learned counsel for the Dominion brought forward the much canvassed double aspect principle, by which, as I understand it, a matter, though it relates in one aspect and in some circumstances to a class of subjects, which is exclusively assigned by s. 92 to the legislative jurisdiction of the Provinces, may nevertheless in another aspect and in other circumstances assume such nation-wide importance as to completely lose its original and normal identity within the purview of s. 92, and thus become at any time a matter falling within the general residuary clause of s. 91.

It was strongly argued that hours of work and the standard of wages and of living had attained such importance as subjects of legislation in Canada as to affect the body politic of the Dominion as a whole and thus to justify the Parliament of Canada in dealing with them in that aspect as matters demanding the intervention of Dominion legislation "for the peace, order and good government of Canada," notwithstanding that the general authority to make laws so plainly excludes all subject-matters coming within the scope of s. 92.

No. 13. Reasons for Judgment. (d) Crocket J.—continued.

No doubt there have been pronouncements in the Privy Council which lend much colour to this argument, but I do not think that they can properly be interpreted as going to such a length as is now contended for. The learned Chief Justice has discussed very fully in dealing with the reference on the Natural Products Marketing Act the argument which was put forward in behalf of the Dominion in this regard and I feel that I can add nothing to what he has said. There is certainly no authoritative decision to the effect that, once it is seen that the real subject matter of a legislative enactment pertains in all its predominant characteristics to the regulation and control of civil rights in the Provinces, it can rightfully be transferred to the legislative jurisdiction of the Parliament of Canada in virtue of the introductory words of s. 91 as a matter of legislation " for the peace, order and good government of Canada " in disregard of the plain and all important proviso that such jurisdiction may be exercised only in relation to matters " not coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces." I cannot refrain from reiterating these cogent observations of Lord Watson in *Attorney-General for Ontario* v. *Attorney-General for Canada*, 1896, A.C., 348 :

> 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.

These observations, it seems to me, present a conclusive answer to the argument which has been so strongly urged upon us in reference to the so-called double aspect principle. They demonstrate at least that the mere fact that Dominion legislation concerning any particular matter may be stated to be for the general advantage of Canada, or that the subject of the legislation has become as much a matter of national as of provincial concern to the several Provinces, is not sufficient to remove that subject from the sphere of s. 92, to which in its normal and domestic aspect it primarily belongs, and transfer it to the jurisdiction of the Parliament of Canada under s. 91. It is true that local works and undertakings may be declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces, and that, when Parliament makes such a declaration with respect to any such local work or undertaking, it may lawfully legislate in relation to it, but that is in virtue of the exceptions which are expressly made in enumerated head, No. 10, of s. 92, and the consequent application of enumerated head, No. 29 of s. 91 to such a work or undertaking.

Nor do I think that any authoritative decision can rightly be interpreted as warranting the conclusion that, once it appears that the real purpose and effect of a Dominion enactment is to interfere with private and

No. 13. Reasons for Judgment. (d) Crocket J.—continued.

civil rights in the Provinces and that in that aspect it consequently falls within the sphere of legislation which has been exclusively reserved for the Provinces, not only by the provisions of s. 92, but by the saving clause in the introduction of s. 91, such an enactment can possibly be justified under the general authority conferred on the Parliament of Canada. If such legislation could be maintained on the ground that it was for the peace, order and good government of Canada, it could only be by ignoring the explicit limitation, which is placed on the so-called general authority by the residuary clause itself with the obvious intention of preventing its application in the very sense now contended for, and thus protecting the Provinces in the full enjoyment of their exclusive legislative rights as permanently guaranteed to them by s. 91.

It may be that in the event of the peace, order and good government of Canada as a whole being so menaced by some outstanding national peril as to render the intervention of the Dominion Parliament necessary as the only adequate means of meeting such an emergency, the Courts will not shrink from holding that such an emergency constitutes a subject-matter of legislation which is quite outside the purview of s. 92 and the limitation which the saving clause of s. 91 imposes on the general authority of the Parliament of Canada to make laws for the peace, order and good government of the country as a whole, but, apart from such considerations, I question very much if there has been any really conclusive judicial recognition of the double aspect principle relied upon. If there be any such conclusive authority, to which we are bound to give effect in this case, then, as was suggested by the Attorney General of Ontario, the Provinces may as well bid adieu to s. 92, reinforced by the saving limitation in the residuary clause of s. 91, as the unassailable charter of their legislative rights.

I entirely concur in the opinion of the learned Chief Justice that there is nothing in the judgment in the *Aeronautics* case of 1931 to indicate that the Lords of the Privy Council intended to detract from the judicial authority of decisions in the *Combines* case and *Snider's* case, and that we are bound by those decisions, as well as the decision in the *Fort Francis* case, to hold that the legislation now in question, considered apart from the question of the performance of obligations arising out of binding international conventions, as distinguished from treaties proper within the meaning of s. 132, cannot be supported as legislation enacted for the peace, order and good government of Canada under the introductory clause of s. 91.

This brings me to a consideration of the further question as to whether the ratification by the Government of Canada of such draft international labour conventions as those of the General Conference of the International Labour Organization of the League of Nations, which themselves imposed no obligation of any kind upon the Government of Canada or any other government represented in that organization to give legislative effect or even to assent to any of them, can itself have the effect of vesting in the

Parliament of Canada legislative jurisdiction which otherwise it would not possess under the B.N.A. Act.

It is said that we must now take it as settled by the decisions in the *Aeronautics* and *Radio* cases that international conventions and all obligations arising therefrom are matters which fall within the general authority of Parliament to make laws for the peace, order and good government of Canada in relation to matters not coming within the classes of subjects exclusively assigned to the Legislatures of the Provinces. If this means that, once the Government of Canada has concluded a convention with the Government of any other country, whether within or without the British Empire, that fact itself operates to exclude the subject-matter of the convention from s. 92, regardless of the fact that that subject-matter admittedly up to the time of the conclusion of the convention came within one or more of the classes of subjects exclusively assigned by that section to the legislative jurisdiction of the Provinces, I do not think that either of these cases, upon which counsel for the Dominion have so much relied, can properly be said to have laid down any such principle.

As to the *Aeronautics* decision, the legislation, which the Judicial Committee there considered, was s. 4 of the Aeronautics Act, c. 3, Revised Statutes of Canada, which reproduced with an amendment the provisions of the Air Board Act, c. 11 of the Statutes of Canada (1919). Lord Sankey L.C., who delivered the judgment of the Board, explained that the Air Board Act was enacted by the Parliament of Canada in 1919 with a view to performing her obligations as part of the British Empire under a convention relating to the Regulation of Aerial Navigation, which was signed by the representatives of the allied and associated powers in the Great War, including Canada, and was ratified by His Majesty on behalf of the British Empire on June 1, 1922, and at the time of the hearing was in force between the British Empire and seventeen other nations. "By article 1," he said,

> the high contracting parties recognize 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 this Convention.

The Lord Chancellor then stated some of the principal obligations undertaken by Canada as part of the British Empire under the stipulations of the convention. Some of these undoubtedly affected civil rights in the Provinces. The real grounds of the decision appear in the following passage, which I reproduce from p. 77 A.C. (1932):—

> To sum up, having regard (*a*) to the terms of s. 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 s. 91, items 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 that 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

No. 13. Reasons for Judgment. (d) Crocket J.—*continued.*

Canada. Further their Lordships are influenced by the facts that the subject of aerial navigation and the fulfilment of Canadian obligations under s. 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.

As Viscount Dunedin, who sat in the *Aeronautics* case, pointed out in delivering the judgment of the Board in the *Radio* case three or four months later, the leading consideration in the judgment of the Board in the earlier case was that the subject fell within the provisions of s. 132 of the B.N.A. Act. Apart from this, however, and the character of the Aerial Navigation convention, it is clear that

the fact that further legislative powers in relation to aerial navigation reside in the Parliament of Canada by virtue of s. 91, items 2, 5 and 7 and (that) it would appear that substantially the whole field of legislation in regard to aerial navigation belongs to the Dominion,

and further,

the facts that the subject of aerial navigation and the fulfilment of Canadian obligations under s. 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,

also influenced their Lordships.

Whichever one of the different reasons assigned by the Board for the decision may have been regarded by their Lordships as the predominating reason, it seems to me that the judgment cannot, in any view, be interpreted as definitely laying down the principle that obligations arising out of all conventions between governments, not falling within the terms of s. 132 of the B.N.A. Act, are matters, which, as subjects of legislation, cannot fall within s. 92, regardless of the form and character of the conventions themselves, and regardless also of whether they wholly or predominantly deal with matters which otherwise would unquestionably fall within one or more of the classes of subjects which that section reserves exclusively for the Provincial Legislatures. That their Lordships did not intend to lay down any uniform rule of such far-reaching consequences is shown by the following passage from the judgment itself:—

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 ss. 91 and 92 should impose a new and different contract upon the federating bodies.*

Nor do I think that the *Radio* case goes to the length which has been suggested. On the latter reference the legislation considered was the Radiotelegraph Act, R.S.C., 1927, c. 195, and the regulations made thereunder, the validity of which the Dominion sought to support on the ground that it was necessary to make provision for performing the obligations of Canada under the Radiotelegraph convention, as well as upon the ground that it was enacted by reason of the expediency of making provision for the regulation of a service essentially important in itself as touching closely the national life and interest.

This convention was the outcome of a meeting of representatives of about 80 countries, including the Dominion of Canada, held in Washington in November, 1927, to settle international agreements on the subject of radiotelegraph communication. The representatives of Canada had been appointed by the Privy Council of Canada with the approval of the Governor General, and the convention was actually signed by these representatives of Canada with the other signatories as plenipotentiaries of the countries named as the high contracting parties. By article 2 the contracting governments undertook to apply the provisions of the convention in all radio communication stations established or operated by the contracting governments and open to the international service of public correspondence, and also to adopt or to propose to their respective Legislatures the measures necessary to impose the observance of the provisions of the convention and the regulations annexed thereto upon individual persons and enterprises authorized to establish and operate radio communication stations and international service, whether or not the stations are open to public correspondence.

The Board, while holding that this convention was not a treaty within the meaning of s. 132 of the B.N.A. Act, did no doubt decide that it was a convention by which Canada must be deemed to have been as firmly bound as if had been entered into as a formal treaty with foreign governments, and that Canada as a whole was amenable to the other signatory powers for the proper carrying out of the convention, for the reason apparently, as Lord Dunedin pointed out in the passage quoted by the learned Chief Justice from the Board's judgment (1) that Canada as a Dominion is one of the signatories to the convention. It is nowhere suggested in the judgment that either the fact of the Government of Canada being a signatory to the convention by its duly accredited plenipotentiaries or the fact of the Government of Canada having afterwards formally ratified the convention, clothed the Parliament of Canada with any legislative authority beyond that which flows from the provisions of the B.N.A. Act.

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(1) (p. 312 A.C. 1932).

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The point of the reference to the subject of international conventions and the changes in the status of the Government of Canada in relation to the Imperial Government was, as I take it, to show that the idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was unthought of in 1867, when the B.N.A. Act was enacted, and that consequently the subject of international conventions could not be expected to be mentioned explicitly in the Imperial statute in either ss. 91 or 92. " The only class of treaty," said Lord Dunedin,

> which would bind Canada was thought of as a treaty by Great Britain, and that was provided for by s. 132. Being, therefore, not mentioned explicitly in either s. 91 or s. 92, such legislation falls within the general words at the opening of s. 91, which assigned to the Government of the Dominion the power 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." In fine, though agreeing that the convention was not such a treaty as is defined in s. 132, their Lordships think that it comes to the same thing,

that is to say, as I understand it, that the fact of international conventions not having been specifically named in s. 92 among the classes of subjects in relation to which the Provinces are authorized to exclusively make laws, that subject necessarily falls within the residuary clause of s. 91 as a matter " not coming within " any of the classes of subjects enumerated in s. 92. This no doubt may, as their Lordships suggest, amount to the same thing as if the Radiotelegraph convention were in fact such a treaty as is defined in s. 132 in the sense that from the Dominion standpoint it makes no practical difference whether the Parliament of Canada derives its power to enact legislation for the carrying out of the stipulations of an international convention from the provisions of s. 132 or from the fact that the legislation is treated as a matter which does not come within the classes of subjects specified in s. 92, and must therefore fall within the residuary clause of s. 91. I do not think, however, that their Lordships intended to lay it down as an infallible rule for the interpretation of either s. 92 or of the residuary clause of s. 91 itself that the fact that a matter demanding legislative action is not mentioned explicitly in s. 92 decisively excludes it from such a comprehensive class of subjects as is specified in No. 13 of that section—Property and Civil Rights.

The rest of the judgment shows that in addition to the fact of the Government of Canada being a signatory to the convention the Board considered the scope of its stipulations to see whether in their main features they dealt with a subject matter which in reality fell within any of the classes of subjects specified in s. 92, or whether they did not predominantly relate to classes of subjects set out in the enumerated heads of s. 91. Discussing the argument of the Province that the convention did not touch the consideration of interprovincial broadcasting, Lord Dunedin says that much the same might have been said as to aeronautics, as it was quite possible to fly without going outside the Province, yet that was not thought to disturb the general view, and that

> the idea pervading that judgment is that the whole subject of aeronautics is so completely covered by the treaty ratifying the convention between the nations, that there is not enough left to give a separate field to the Provinces as regards the subject.

Again, His Lordship says :

But the question does not end with the consideration of the convention. Their Lordships draw special attention to the provisions of head 10 of. s. 92. These provisions, as has been explained in several judgments of the Board, have the effect of reading the excepted matters into the preferential place enjoyed by the enumerated subjects of s. 91.

Their Lordships held that broadcasting fell within the excepted matters as being an undertaking connecting one Province with another, and extending beyond the limits of the Province and therefore came within enumerated head 29 of s. 91. " Once it is conceded," he went on to say,

as it must be, keeping in view the duties under the convention, that the transmitting instrument must be, so to speak, under the control of the Dominion, it follows in their Lordships' opinion that the receiving instrument must share its fate. The receiver is indeed useless without a transmitter and can be reduced to a nonentity if the transmitter closes. The system cannot be divided into two parts each independent of the other.

Their Lordships, moreover, held that broadcasting fell within the description of " telegraphs," which subject is excepted from " local works and undertakings," specified in s. 92 (10), and therefore takes its place in 91 (29). In conclusion, Lord Dunedin said :

As their Lordships' views are based on what may be called the pre-eminent claims of s. 91, it is unnecessary to discuss the question which was raised with great ability by Mr. Tilley—namely, whether, if there had been no pre-eminent claims as such, broadcasting could have been held to fall either within " property and civil rights " or within " matters of a merely local or private nature."

It appears, therefore, to me that, while one of the grounds of the decision in the *Radio* case was the form and nature of the convention itself, the basis of the decision, as put in the judgment itself, was " the pre-eminent claims of s. 91," which, I take it to refer to the fact that the subject matter of that convention fell under one of the enumerated heads of s. 91, viz. : No. 29. For that reason the authority of Parliament in relation to the subject matter of the convention and of the legislation would override the legislative authority of the Provinces in relation thereto, not because of the residuary clause in the introduction of that section, but in virtue of the declaration that,

notwithstanding anything in this Act, the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects

set forth in the 29 enumerated heads of that section, and the closing words of s. 91 as well that,

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.

This, as I read the judgment, is the fundamental basis of the decision. Read in this light, it may truly be said to get back to the words of the B.N.A. Act itself and the object with which it was passed, and thus to avoid the danger to which the Board itself so pointedly called attention in the *Aeronautics* case a few months earlier, of the provisions of such a great constitutional charter being so extended or whittled down in the process

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of judicial interpretation as the years go on as to impose a new and different contract upon the federating bodies than that upon which the whole structure of confederation was erected.

While I agree with the learned Chief Justice that the Government of Canada must now be held to be the proper medium for the formal conclusion of international conventions, whether they affect the Dominion as a whole or any of the Provinces separately, I do not think that this fact can be relied on as altering in any way the provisions of the B.N.A. Act as regards the distribution of legislative power as between the Dominion Parliament and the Provincial Legislatures or as necessarily giving to any matter, which may be made the subject of legislation in Canada, any other meaning or aspect than that which it bears in our original constitution. Whether such a matter is one which falls under the terms of either s. 91 or of s. 92 or of s. 132, must depend upon the real intendment of the B.N.A. Act itself, as gathered from the terms of those sections and the Act as a whole. The original division of legislative power as between the two fields, Dominion and Provincial, has remained inviolate to this day, so far as the Imperial Parliament is concerned. The Statute of Westminster itself provides by s. 7 (1) that,

> Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the B.N.A. Act (1867 to 1930) or to any order, rule or regulation made thereunder.

And by s.s. (3) thereof that,

> The powers conferred by this Act upon the Parliament of Canada or upon the Legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the Legislatures of the Provinces respectively.

Seeing that s. 92 so unequivocally assigns all " matters coming within the classes of subjects " enumerated therein to the exclusive jurisdiction of the Provincial Legislatures, and that the residuary clause of s. 91 is so unequivocally limited to " matters not coming within the classes of subjects " assigned exclusively to the Provincial Legislatures, I cannot understand how in a controversy as to which of the two legislative fields any particular matter belongs we can look at it otherwise than in its normal aspect within the intendment of these two sections as a subject of legislation, either for the Parliament of Canada or for the Provincial Legislatures. In such a controversy the primary duty of the Court is to determine whether the real subject matter of the legislation relates to one or more of the classes of subjects which the Act exclusively assigns to the Provincial Legislatures.

Surely it was never within the contemplation of the Act that the Courts in determining this question should disregard the normal aspect of any matter in its relation to any of these classes of subjects, or that, because through the instrumentality of the Government of Canada in the exercise of its executive authority and functions, it should become the subject matter of an international convention, it should thereby cease to have any relationship to any of the classes of subjects, which the Act has defined as the exclusive prerogative of the Legislatures of the Provinces and should

henceforth be looked at solely from an international point of view. For my part I find it quite impossible to accept such a proposition. If we are not bound by the *Aeronautics* and *Radio* decisions to hold that legislation, which admittedly is directly aimed at the regulation and control of such matters as contracts of employment in respect of the limitation of the hours of labour and the rates of wages in all the Provinces alike, is legislation relating to a matter which falls to the Parliament of Canada under the residuary clause of s. 91, simply because it has become a matter of national as well as of Provincial concern, I can see no logical reason why we are bound to hold that such legislation exclusively vests in the Dominion simply because it relates to a matter which the federal executive has chosen to make a subject matter of an international convention. Both reasons are in my judgment alike irreconcilable with the clear intendment of s. 92 and the residuary clause of s. 91.

As to the suggestion that the fact that s. 92 makes no explicit mention of international conventions necessarily excludes the subject from the ambit of that section and places it in that of the residuary clause, this also in my opinion is wholly inadmissible as being contrary to the plain wording of both sections. Incontrovertibly the residuary clause itself limits the authority of the Dominion Parliament to make laws for the peace, order and good government of Canada to matters which do not come within *the classes of subjects* assigned exclusively by the Act to the Legislatures of the Provinces. No matter, which does come within any of these classes of subjects, can legitimately be brought within the operation of the residuary power. There is but one test for determining its application or non-application to any given subject-matter, viz: Does the matter come within any of the classes of subjects, which the Act has assigned exclusively to the Legislatures of the Provinces? And for the reasons already discussed the given matter must be looked at in its relationship, not to any outside country, but in its relationship to the classes of subjects definitely marked out as the exclusive legislative field of the Provinces. The words of the enactment are " matters not coming within the classes of subjects " assigned exclusively to the Provinces—not " matters not explicitly mentioned in s. 92." Manifestly many matters may not be explicitly mentioned in the classes of subjects assigned to the Provinces and yet unquestionably come within those classes of subjects, particularly such wide and comprehensive classes of subjects as Nos. 13 and 16: Property and Civil Rights and " Generally, all matters of a merely local or private nature."

It seems to me that nothing could be more surely calculated to undermine the whole structure of the confederation compact as expressed in theB.N.A. Act in relation to the distribution of legislative power between the Dominion and Provincial Legislatures than the adoption of such a guide as has been suggested for the interpretation of these all important sections, 91 and 92. It would strip the legislative charter of the Provinces of every vestige of permanency and stability and leave it at all times subject to the will and pleasure of the federal executive.

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The legislation embodied in these three statutes is admittedly legislation which the Parliament of Canada would never have ventured to enact but for the draft conventions of the International Labour Organization of the League of Nations. These conventions are admittedly conventions, to which the Government of Canada was in no manner bound to assent or to formally ratify. They were submitted to the Government of this country as mere draft conventions, and stood as such until 1935, when the Government of Canada chose to approve them, several years after the expiration of the period fixed by article 405 of the Treaty of Versailles for their submission " to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action." It was argued that this provision of article 405 was merely directory. I think its language is clearly mandatory, and that the ratification of the conventions, upon which these three statutes purport to be founded is null and void under the terms of article 405 of the Treaty of Versailles itself. It is, however, to the provisions of the B.N.A. Act, not to terms of the Treaty of Versailles, that we must look for the answers to the questions submitted to us on this reference concerning the constitutionality of these three statutes. In my opinion they are all wholly *ultra vires* of the Parliament of Canada, for the reasons above stated and I would therefore most respectfully answer questions 1, 2 and 3 in the affirmative.

I certify the foregoing to be my opinion upon questions 1, 2 and 3 referred for the consideration of the court with respect to the validity of The Weekly Rest in Industrial Undertakings Act, The Minimum Wages Act and The Limitation of Hours of Work Act, Chapters 14, 44 and 63 of The Statutes of Canada, 1935, with my reasons for my answers thereto.

In the Privy Council.

No. 14.

Order in Council granting special leave to appeal to His Majesty in Council.

No. 14. Order in Council granting special leave to appeal to His Majesty in Council, 26th September, 1936.

AT THE COURT AT BALMORAL

The 26th day of September, 1936

PRESENT

THE KING'S MOST EXCELLENT MAJESTY.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 29th day of July, 1936, in the words following, viz. :—

" WHEREAS by virtue of His Late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Attorney General of Canada in the matter of an Appeal from the Supreme Court of Canada in the matter of a Reference as to whether the

In the Privy Council.

No. 14.
Order in Council granting special leave to appeal to His Majesty in Council, 26th September, 1936 —*continued.*

Weekly Rest in Industrial Undertakings Act being Chapter 14 of the Statutes of Canada 1935; the Minimum Wages Act being Chapter 44 of the Statutes of Canada 1935; and the Limitation of Hours of Work Act being Chapter 63 of the Statutes of Canada 1935 are *ultra vires* of the Parliament of Canada; And humbly praying Your Majesty in Council to order that the Petitioner shall have special leave to appeal from the Judgment of the Supreme Court dated the 17th June 1936 and for such further or other Order as to Your Majesty may appear fit:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and on behalf of the Attorneys General of the Provinces of Ontario Quebec New Brunswick Manitoba British Columbia Alberta and Saskatchewan Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute an Appeal against the Judgment of the Supreme Court of Canada dated the 17th day of June 1936:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

A. H. L. HARDINGE

Statutes and Other Documents.

STATUTES AND OTHER DOCUMENTS.

No. 15.

No. 15.

Treaty of Peace (Versailles) Pages 1 to 171, June 28, 1919.

(Separate document.)

No. 16.

No. 16.

Report of the Royal Commission on Price Spreads, Pages 1 to 506, April 9, 1935.

(Separate document.)

No. 17. The Treaties of Peace Act, 1919, 10 George V. Chapter 30. 10th November 1919.

No. 17.

The Treaties of Peace Act, 1919, 10 George V.

CHAP. 30.

An Act for carrying into effect the Treaties of Peace between His Majesty and certain other Powers.

(Assented to 10th November, 1919.)

Preamble.

WHEREAS, at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (including a Protocol annexed thereto), between the Allied and Associated Powers and Germany, a copy of which has been laid before each House of Parliament, was signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named; and whereas a Treaty of Peace between the Allies and Associated Powers and Austria has since been signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named, and it is expedient that the Governor in Council should have power to do all such things as may be proper and expedient for giving effect to the said Treaties: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Governor in Council to carry out provisions of Treaties.

1.—(1) The Governor in Council may make such appointments, establish such offices, make such Orders in Council, and do such things as appear to Him to be necessary for carrying out the said Treaties, and for giving effect to any of the provisions of the said Treaties.

Orders in Council may be revoked or amended, may impose penalties, and must be laid before Parliament.

(2) Any Order in Council made under this Act may provide for the imposition by summary process or otherwise, of penalties in respect of breaches of the provisions thereof, and shall be laid before Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act, but may be varied or revoked by a subsequent Order in Council.

Expense, how to be paid.

(3) Any expense incurred in carrying out the said Treaties shall be defrayed out of moneys provided by Parliament.

Short title.

2. This Act may be cited as The Treaties of Peace Act, 1919.

No. 18.

No. 18.

The Weekly Rest in Industrial Undertakings Act, Statutes of Canada (1935) 25-26 Geo. V. Chapter 14.

(*Separate document.*)

No. 19.

No. 19.

The Minimum Wages Act, Statutes of Canada (1935) 25-26 Geo. V. Chapter 44.

(*Separate document.*)

No. 20.

No. 20

The Limitation of Hours of Work Act, Statutes of Canada (1935) 25-26 Geo. V. Chapter 63.

(*Separate document.*)

No. 21.

Draft Convention Concerning the Application of the Weekly Rest in Industrial Undertakings.

No. 21. Draft Convention concerning the application of the Weekly Rest in Industrial Undertakings, 25th October–19th November 1921.

LEAGUE OF NATIONS.

INTERNATIONAL LABOUR CONFERENCE

The General Conference of the International Labour Organization of the League of Nations.

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Third Session on 25th October, 1921, and

Having decided upon the adoption of certain proposals with regard to the weekly rest day in industrial employment, which is included in the seventh item of the agenda of the Session, and

Having determined that these proposals shall take the form of a draft international convention,

adopts the following Draft Convention for ratification by the Members of the International Labour Organization, in accordance with the provisions of Part XIII of the Treaty of Versailles and of the corresponding Parts of the other Treaties of Peace:

ARTICLE 1.

For the purpose of this Convention, the term " industrial undertakings " includes:

(*a*) Mines, quarries, and other works for the extraction of minerals from the earth.

(*b*) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind.

(*c*) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.

(*d*) Transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand.

This definition shall be subject to the special national exceptions contained in the Washington Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week, so far as such exceptions are applicable to the present Convention.

Where necessary, in addition to the above enumeration, each Member may define the line of division which separates industry from commerce and agriculture.

ARTICLE 2.

The whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall, except as otherwise provided for by the following Articles, enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours.

This period of rest shall, wherever possible, be granted simultaneously to the whole of the staff of each undertaking.

It shall, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district.

ARTICLE 3.

Each Member may except from the application of the provisions of Article 2 persons employed in industrial undertakings in which only the members of one single family are employed.

ARTICLE 4.

Each Member may authorize total or partial exceptions (including suspensions or diminutions) from the provisions of Article 2, special regard being had to all proper humanitarian and economic considerations and after consultation with responsible associations of employers and workers, wherever such exist.

Such consultation shall not be necessary in the case of exceptions which have already been made under existing legislation.

ARTICLE 5.

Each Member shall make, as far as possible, provision for compensatory periods of rest for the suspensions or diminutions made in virtue of Article 4, except in cases where agreements or customs already provide for such periods.

ARTICLE 6.

Each Member will draw up a list of the exceptions made under Articles 3 and 4 of this Convention and will communicate it to the International Labour Office, and thereafter in every second year any modifications of this list which shall have been made.

The International Labour Office will present a report on this subject to the General Conference of the International Labour Organization.

ARTICLE 7.

In order to facilitate the application of the provisions of this Convention, each employer, director, or manager, shall be obliged :

(*a*) Where the weekly rest is given to the whole of the staff collectively, to make known such days and hours of collective rest by means of notices

posted conspicuously in the establishment or any other convenient place, or in any other manner approved by the Government.

(*b*) Where the rest period is not granted to the whole of the staff collectively, to make known, by means of a roster drawn up in accordance with the method approved by the legislation of the country, or by a regulation of the competent authority, the workers or employees subject to a special system of rest, and to indicate that system.

ARTICLE 8.

The formal ratifications of this Convention under the conditions set forth in Part XIII of the Treaty of Versailles and of the corresponding Parts of the other Treaties of Peace, shall be communicated to the Secretary-General of the League of Nations for registration.

ARTICLE 9.

This Convention shall come into force at the date on which the ratifications of two Members of the International Labour Organization have been registered by the Secretary-General.

It shall be binding only upon those Members whose ratifications have been registered with the Secretariat.

Thereafter, the Convention shall come into force for any Member at the date on which its ratification has been registered with the Secretariat.

ARTICLE 10.

As soon as the ratifications of two Members of the International Labour Organization have been registered with the Secretariat, the Secretary-General of the League of Nations shall so notify all the Members of the International Labour Organization. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organization.

ARTICLE 11.

Each Member which ratifies this Convention agrees to bring the provisions of Articles 1, 2, 3, 4, 5, 6 and 7 into operation not later than 1st January, 1924, and to take such action as may be necessary to make these provisions effective.

ARTICLE 12.

Each Member of the International Labour Organization which ratifies this Convention engages to apply it to its colonies, possessions and protectorates, in accordance with the provisions of Article 421 of the Treaty of Versailles and of the corresponding Articles of the other Treaties of Peace.

ARTICLE 13.

A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 14.

At least once in ten years, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 15.

The French and English texts of this Convention shall both be authentic.

No. 22.

Notification from Secretary-General of Registration of Indian Ratification.

C.I. 54, 1923 V.

LEAGUE OF NATIONS, GENEVA, 7th June, 1923.

SIR,—I have the honour to inform you that the Under-Secretary of State for India has communicated to the Secretary-General the formal ratification by his Government of the Convention concerning the Rights of Association and Combination of Agricultural Workers and the draft Convention concerning the Application of the Weekly Rest Day in Industrial Undertakings, adopted by the International Labour Conference at Geneva at its third session (October 25th–November 19th, 1921).

I have the honour to inform you also that in accordance with Article 406, Part XIII of the Treaty of Versailles, this ratification was registered with the Secretariat on May 11th, 1923.

The text of the ratification has been communicated to the International Labour Office for publication in its " Official Bulletin."

I have the honour to be, Sir,
Your obedient Servant,
For the Secretary-General:
VANHAMEL,
Director of the Legal Section.

The Secretary of State for External Affairs, Canada,
c/o The High Commissioner for Canada,
19, Victoria Street,
London, S.W.

No. 23. Notification of Registration of Ratification by Finland, 6th July 1923.

No. 23.

Notification of Registration of Ratification by Finland.

C.L. 65 1923 V.

LEAGUE OF NATIONS, GENEVA, 6th July, 1923.

SIR,—I have the honour to inform you that the Minister for Foreign Affairs of Finland has communicated to the Secretary-General the ratification by his Government of the Convention concerning the Rights of Association and Combination of Agricultural Workers and of the Convention concerning the Application of the Weekly Rest in Industrial Undertakings, adopted by the International Labour Conference at its third session at Geneva (October 25–November 19, 1921).

I have the honour to inform you also that, in accordance with Article 406, Part XIII of the Treaty of Versailles, this formal ratification was registered with the Secretariat on June 19, 1923.

The text of the ratification has been communicated to the International Labour Office for publication in its *Official Bulletin*.

I have the honour to be, sir,
Your obedient servant,

For the Secretary-General:
VANHAMEL,
Director of the Legal Section.

The Secretary of State for External Affairs,
Canada,
c/o The High Commissioner for Canada,
19 Victoria Street,
London S.W.

No. 24. Resolution of the Senate and House of Commons of Canada approving the Weekly Rest (Industry) Convention, 1921, 8th–19th February 1935.

No. 24.

Resolution of the Senate and House of Commons of Canada Approving the Weekly Rest (Industry) Convention, 1921.

(*Passed by the House of Commons on February* 8, 1935, *and by the Senate on February* 19, 1935.)

That, it is expedient that parliament do approve of the convention concerning the application of the weekly rest in industrial undertakings adopted as a draft convention by the general conference of the International Labour Organization of the League of Nations at its third session in Geneva on the 17th day of November, 1921, reading as follows: (The Resolution then sets out the terms of the Convention as reprinted in this Record at page 146.)

No. 25.

Order of the Governor-General in Council Ratifying Draft Convention Concerning the Application of the Weekly Rest in Industrial Undertakings.

P.C. 543

CERTIFIED *to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 1st March*, 1935.

The Committee of the Privy Council have had before them a report, dated 28th February, 1935, from the Secretary of State for External Affairs, representing, with the concurrence of the Minister of Labour, as follows :—

That on the 31st day of January, 1922, the Secretary-General of the League of Nations communicated to His Majesty's Government in Canada a certified copy of a Convention concerning the application of the weekly rest in industrial undertakings which had been adopted as a draft Convention by the General Conference of the International Labour Organization at its Third Session in Geneva on the 17th day of November, 1921;

That such Convention came into force on the 19th day of June, 1923, in accordance with the provisions of Article 9 thereof; and

That such Convention has in respect of Canada received the approval, by resolution, of the Senate and House of Commons of Canada.

The Secretary of State for External Affairs, therefore, with the concurrence of the Minister of Labour, recommends that the said Convention be confirmed and approved, and that formal communication be made thereof to the Secretary-General of the League of Nations.

The Committee concur in the foregoing recommendation and submit the same for approval.

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

Statutes and Other Documents.

No. 26. Instrument of Ratification by Canada of Convention concerning the application of the Weekly Rest in Industrial Undertakings, 1st March 1935.

No. 26.

Instrument of Ratification by Canada of Convention concerning the Application of the Weekly Rest in Industrial Undertakings, March 1st, 1935.

WHEREAS on the 31st day of January, 1922, the Secretary-General of the League of Nations communicated to His Majesty's Government in Canada a certified copy of a Convention concerning the application of the weekly rest in industrial undertakings which had been adopted as a Draft Convention by the General Conference of the International Labour Organization at its Third Session in Geneva on the 17th day of November, 1921.

His Majesty's Government in Canada having considered the aforesaid Convention, hereby confirm and ratify the same and undertake satisfactorily to perform and carry out the stipulations therein contained. In witness whereof this Instrument of Ratification is signed and sealed by the Secretary of State for External Affairs for Canada.

R. B. BENNETT,
Secretary of State for External Affairs.

(SEAL)

Ottawa, March 1st, 1935.

CERTIFIED to be a true copy of the Instrument of Ratification of the Convention concerning the application of the weekly rest in industrial undertakings which was transmitted to the Canadian Advisory Officer at Geneva for communication to the Secretary-General of the League of Nations, by despatch dated the 1st March, 1935.

O. D. SKELTON,
Under-Secretary of State for External Affairs.

Ottawa, 8th January, 1936.

No. 27.

Proces-Verbal of Canadian Ratification.

LEAGUE OF NATIONS.

PROCES-VERBAL OF THE DEPOSIT OF THE INSTRUMENT OF RATIFICATION BY CANADA OF THE CONVENTION CONCERNING THE APPLICATION OF THE WEEKLY REST IN INDUSTRIAL UNDERTAKINGS,

ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS THIRD SESSION IN GENEVA, ON NOVEMBER 17, 1921.

In execution of the provisions contained in Article 8 of the Convention concerning the Application of the Weekly Rest in Industrial Undertakings, adopted by the International Labour Conference at its Third Session in Geneva, on November 17, 1921, Dr. Walter A. Riddell, M.A., Ph.D., Dominion of Canada Advisory Officer accredited to the League of Nations, presented himself to-day at the Secretariat of the League of Nations in order to proceed to the deposit of the instrument of ratification by His Majesty's Government in Canada of the above-mentioned Convention.

The instrument of ratification having been found after examination, to be in good and due form, has been deposited with the Secretariat of the League of Nations.

In faith whereof the undersigned have drawn up the present Proces-Verbal.

Done in duplicate at Geneva, on the twenty-first day of March, one thousand nine hundred and thirty-five.

H. McKINNON WOOD,
Acting Legal Adviser of the Secretariat.

W. A. RIDDELL.

No. 28.

Draft Convention Concerning the Creation of Minimum Wage Fixing Machinery.

LEAGUE OF NATIONS.

INTERNATIONAL LABOUR CONFERENCE.

The General Conference of the International Labour Organization of the League of Nations,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eleventh Session on 30th May, 1928, and

Statutes and Other Documents.

No. 28. Draft Convention concerning the creation of Minimum Wage Fixing Machinery, 30th May to 16th June 1928—*continued.*

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery, which is the first item on the Agenda of the Session, and

Having determined that these proposals shall take the form of a draft international convention,

adopts, this sixteenth day of June of the year one thousand nine hundred and twenty-eight, the following Draft Convention for ratification by the Members of the International Labour Organization, in accordance with the provisions of Part XIII of the Treaty of Versailles and of the corresponding Parts of the other Treaties of Peace:

ARTICLE 1.

Each Member of the International Labour Organization which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.

For the purpose of this Convention the term "trades" includes manufacture and commerce.

ARTICLE 2.

Each Member which ratifies this Convention shall be free to decide, after consultation with the organizations, if any, of workers and employers in the trade or part of trade concerned, in which trades or parts of trades, and in particular in which home working trades or parts of such trades, the minimum wage fixing machinery referred to in Article 1 shall be applied.

ARTICLE 3.

Each Member which ratifies this Convention shall be free to decide the nature and form of the minimum wage fixing machinery, and the methods to be followed in its operation:

Provided that

(1) Before the machinery is applied in a trade or part of trade, representatives of the employers and workers concerned, including representatives of their respective organizations, if any, shall be consulted as well as any other persons, being specially qualified for the purpose by their trade or functions, whom the competent authority deems it expedient to consult;

(2) The employers and workers concerned shall be associated in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by national laws or regulations;

(3) Minimum rates of wages which have been fixed shall be binding on the employers and workers concerned so as not to be subject to abatement by them by individual agreement, nor, except

with the general or particular authorization of the competent authority, by collective agreement.

ARTICLE 4.

Each Member which ratifies this Convention shall take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable.

A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other legalized proceedings, the amount by which he has been underpaid, subject to such limitation of time as may be determined by national laws or regulations.

ARTICLE 5.

Each Member which ratifies this Convention shall communicate annually to the International Labour Office a general statement giving a list of the trades or parts of trades in which the minimum wage fixing machinery has been applied, indicating the methods as well as the results of the application of the machinery and, in summary form, the approximate numbers of workers covered, the minimum rates of wages fixed, and the more important of the other conditions, if any, established relevant to the minimum rates.

ARTICLE 6.

The formal ratifications of this Convention under the conditions set forth in Part XIII of the Treaty of Versailles and in the corresponding Parts of the other Treaties of Peace shall be communicated to the Secretary-General of the League of Nations for registration.

ARTICLE 7.

This Convention shall be binding only upon those Members whose ratifications have been registered with the Secretariat.

It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organization have been registered with the Secretary-General.

Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

ARTICLE 8.

As soon as the ratifications of two Members of the International Labour Organization have been registered with the Secretariat, the Secretary-General of the League of Nations shall so notify all the Members of the International Labour Organization. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organization.

ARTICLE 9.

A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

ARTICLE 10.

At least once in ten years, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the Agenda of the Conference the question of its revision or modification.

ARTICLE 11.

The French and English texts of this Convention shall both be authentic.

The foregoing is the authentic text of the Draft Convention duly adopted by the General Conference of the International Labour Organization during its Eleventh Session which was held at Geneva and declared closed the 16th day of June 1928.

IN FAITH WHEREOF we have appended our signatures this twenty-second day of June 1928.

The President of the Conference,
CARLOS SAAVEDRA LAMAS.

The Director of the International Labour Office,
ALBERT THOMAS.

No. 29.

Notification of German Ratification.

C.L. 118. 1929 V.

LEAGUE OF NATIONS, GENEVA, June 10, 1929.

SIR,—I have the honour to inform you that the German Consul General at Geneva, has handed to me the formal ratification by his Government of the Convention concerning the creation of minimum wage fixing machinery, adopted by the International Labour Conference at Geneva (May 30–June 16, 1928).

I have the honour to inform you also that, in accordance with Article 406, Part XIII, of the Treaty of Versailles, this formal ratification was registered with the Secretariat on May 30, 1929.

The text of the ratification has been communicated to the International Labour Office for publication in its *Official Bulletin*.

The present notification is made in view of the terms of Article 7 of the above-mentioned Convention.

I have the honour to be, Sir,
Your obedient servant,
For the Secretary-General,

J. A. BUERO,
Legal Adviser of the Secretariat, p.i.

The Secretary of State for External Affairs,
Ottawa.

No. 30. Notification of Ratification by United Kingdom, 9th July 1929.

No. 30.

Notification of Ratification by United Kingdom.

C.L. 139, 1929 V.

LEAGUE OF NATIONS

GENEVA, July 9th, 1929.

SIR,—I have the honour to inform you that His Britannic Majesty's Secretary of State for Foreign Affairs, has forwarded to me the formal ratification by his Government in respect of Great Britain and Northern Ireland of the Convention concerning the creation of minimum wage fixing machinery, adopted by the International Labour Conference at Geneva (May 30–June 16, 1928).

I have the honour to inform you also that, in accordance with Article 406, Part XIII, of the Treaty of Versailles, this formal ratification was registered with the Secretariat on June 14, 1929.

The text of the ratification has been communicated to the International Labour Office for publication in its " Official Bulletin."

The present notification is made in view of the terms of Article 7 of the above-mentioned Convention.

The ratification of this Convention by the Government of the German Reich having been registered on May 30, 1929 (see C.L. 118, 1929, V. of June 10, 1929) the Convention will come into force in accordance with Article 7, twelve months after the date on which the ratification by the British Government was registered by the Secretary-General of the League of Nations.

I have the honour to be, Sir,

Your obedient servant,

For the Secretary-General,

J. A. BUERO,

Legal Adviser of the Secretariat.

The Secretary of State for External Affairs,
Ottawa.

No. 31.

Resolution of the Senate and House of Commons of Canada Approving the Minimum Wage Fixing Machinery Convention, 1928.

(*Passed by the House of Commons on March 15th, 1935, and by the Senate on April 2, 1935.*)

That it is expedient that Parliament do approve of the convention concerning the creation of minimum wage fixing machinery adopted as a draft convention by the general conference of the International Labour Organization of the League of Nations at its eleventh session in Geneva on the 16th day of June, 1928, reading as follows: (The Resolution then sets out the terms of the Convention as reprinted in this Record at page 153).

No. 32.

Order of the Governor-General in Council Ratifying Draft Convention Concerning the Creation of Minimum Wage Fixing Machinery.

P.C. 934

CERTIFIED *to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by The Deputy of His Excellency the Governor-General on the 12th April,* 1935.

The Committee of the Privy Council have had before them a report, dated 2nd April, 1935, from the Right Honourable Sir George H. Perley for the Secretary of State for External Affairs, representing that on the 23rd day of August, 1928, the Secretary-General of the League of Nations communicated to His Majesty's Government in Canada a certified copy of a Convention concerning the creation of minimum wage fixing machinery, which had been adopted as a draft Convention by the General Conference of the International Labour Organization at its Eleventh Session in Geneva on the 16th day of June, 1928;

That such Convention came into force on the 14th day of June, 1930, in accordance with the provisions of Article 7 thereof; and

That such Convention has in respect of Canada received the approval, by resolution, of the Senate and House of Commons of Canada:

The Committee, therefore, on the recommendation of the Right Honourable Sir George H. Perley for the Secretary of State for External Affairs, and with the concurrence of the Minister of Labour, advise that the said Convention be confirmed and approved accordingly and that formal communication be made thereof to the Secretary-General of the League of Nations.

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

Statutes and Other Documents.

No. 33. Instrument of Ratification by Canada of the Convention concerning the creation of Minimum Wage Fixing Machinery, 12th April 1935.

No. 33.

Instrument of Ratification by Canada of the Convention concerning the creation of minimum wage fixing machinery April 12th, 1935.

WHEREAS on the 23rd day of August, 1928, the Secretary-General of the League of Nations communicated to His Majesty's Government in Canada a certified copy of a Convention concerning the creation of minimum wage fixing machinery which had been adopted as a Draft Convention by the General Conference of the International Labour Organization at its Eleventh Session in Geneva on the 16th day of June, 1928.

His Majesty's Government in Canada having considered the aforesaid Convention, hereby confirm and ratify the same and undertake satisfactorily to perform and carry out the stipulations therein contained. In witness whereof this Instrument of Ratification is signed and sealed by the Acting Secretary of State for External Affairs for Canada.

G. H. PERLEY,
Acting Secretary of State for External Affairs.

(SEAL)

Ottawa, 12th April, 1935.

CERTIFIED to be a true copy of the Instrument of Ratification of the Convention concerning the creation of minimum wage fixing machinery, which was transmitted to the Canadian Advisory Officer at Geneva for communication to the Secretary-General of the League of Nations, by despatch dated the 12th April, 1935.

O. D. SKELTON,
Under-Secretary of State for External Affairs.

Ottawa, January 8th, 1936.

No. 34.

Proces-Verbal of Canadian Ratification.

LEAGUE OF NATIONS.

PROCES-VERBAL OF THE DEPOSIT OF THE INSTRUMENT OF RATIFICATION BY CANADA OF THE CONVENTION CONCERNING THE CREATION OF MINIMUM WAGE FIXING MACHINERY.

ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS ELEVENTH SESSION IN GENEVA ON JUNE 16, 1928.

In execution of the provisions contained in Article 6 of the Convention concerning the creation of Minimum Wage Fixing Machinery, adopted by the International Labour Conference at its Eleventh Session in Geneva, on June 16th, 1928, Dr. Walter A. Riddell, M.A., Ph.D., Dominion of Canada Advisory Officer accredited to the League of Nations, presented himself to-day at the Secretariat of the League of Nations, in order to proceed to the deposit of the instrument of ratification by His Majesty's Government in Canada of the above-mentioned Convention.

The instrument of ratification having been found, after examination, to be in good and due form, has been deposited with the Secretariat of the League of Nations.

In faith whereof the undersigned have drawn up the present Proces-verbal.

Done in duplicate at Geneva, on the twenty-fifth day of April, one thousand nine hundred and thirty-five.

H. McKINNON WOOD,
Acting Legal Adviser of the Secretariat.

W. A. RIDDELL.

No. 35.

Draft Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-Eight in the Week.

LEAGUE OF NATIONS.

INTERNATIONAL LABOUR CONFERENCE.

The General Conference of the International Labour Organization of the League of Nations,

Having been convened at Washington by the Government of the United States of America, on the 29th day of October, 1919, and

Having decided upon the adoption of certain proposals with regard to the " application of the principle of the 8-hours day or of

No. 35. Draft Convention Limiting the Hours of Work in Industrial Undertakings, 29th October–29th November 1919—*continued.*

the 48-hours week," which is the first item in the agenda for the Washington meeting of the Conference, and

Having determined that these proposals shall take the form of a draft international convention,

adopts the following Draft Convention for ratification by the Members of the International Labour Organization, in accordance with the Labour Part of the Treaty of Versailles of 28 June, 1919, and of the Treaty of St. Germain of 10 September, 1919:

ARTICLE 1.

For the purpose of this Convention, the term " industrial undertaking " includes particularly:

(*a*) Mines, quarries, and other works for the extraction of minerals from the earth.

(*b*) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding and the generation, transformation, and transmission of electricity or motive power of any kind.

(*c*) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.

(*d*) Transport of passengers or goods by road, rail, sea or inland waterway, including the handling of goods at docks, quays, wharves or warehouses, but excluding transport by hand.

The provisions relative to transport by sea and on inland waterways shall be determined by a special conference dealing with employment at sea and on inland waterways.

The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

ARTICLE 2.

The working hours of persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed, shall not exceed eight in the day and forty-eight in the week, with the exceptions hereinafter provided for.

(*a*) The provisions of this Convention shall not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity.

(*b*) Where by law, custom, or agreement between employers' and workers' organizations, or, where no such organizations exist, between

employers' and workers' representatives, the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the competent public authority, or by agreement between such organizations or representatives; provided, however, that in no case under the provisions of this paragraph shall the daily limit of eight hours be exceeded by more than one hour.

(*c*) Where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week.

ARTICLE 3.

The limit of hours of work prescribed in Article 2 may be exceeded in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of "force majeure," but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking.

ARTICLE 4.

The limit of hours of work prescribed in Article 2 may also be exceeded in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, subject to the condition that the working hours shall not exceed fifty-six in the week on the average. Such regulation of the hours of work shall in no case affect any rest days which may be secured by the national law to the workers in such processes in compensation for the weekly rest day.

ARTICLE 5.

In exceptional cases where it is recognized that the provisions of Article 2 cannot be applied, but only in such cases, agreements between workers' and employers' organizations concerning the daily limit of work over a longer period of time may be given the force of regulations, if the Government, to which these agreements shall be submitted, so decides.

The average number of hours worked per week, over the number of weeks covered by any such agreement shall not exceed forty-eight.

ARTICLE 6.

Regulations made by public authority shall determine for industrial undertakings:

(*a*) The permanent exceptions that may be allowed in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of an establishment, or for certain classes of workers whose work is essentially intermittent.

(*b*) The temporary exceptions that may be allowed, so that establishments may deal with exceptional cases of pressure of work.

These regulations shall be made only after consultation with the organizations of employers and workers concerned, if any such organizations exist. These regulations shall fix the maximum of additional hours in each instance, and the rate of pay for overtime shall not be less than one and one-quarter times the regular rate.

ARTICLE 7.

Each Government shall communicate to the International Labour Office :

(*a*) A list of the processes which are classed as being necessarily continuous in character under Article 4;

(*b*) Full information as to working of the agreements mentioned in Article 5; and

(*c*) Full information concerning the regulations made under Article 6 and their application.

The International Labour Office shall make an annual report thereon to the General Conference of the International Labour Organization.

ARTICLE 8.

In order to facilitate the enforcement of the provisions of this Convention, every employer shall be required :

(*a*) To notify by means of the posting of notices in conspicuous places in the works or other suitable place, or by such other method as may be approved by the Government, the hours at which work begins and ends, and where work is carried on by shifts, the hours at which each shift begins and ends. These hours shall be so fixed that the duration of the work shall not exceed the limits prescribed by this Convention, and when so notified they shall not be changed except with such notice and in such manner as may be approved by the Government.

(*b*) To notify in the same way such rest intervals accorded during the period of work as are not reckoned as part of the working hours.

(*c*) To keep a record in the form prescribed by law or regulation in each country of all additional hours worked in pursuance of Articles 3 and 6 of this Convention.

It shall be made an offence against the law to employ any person outside the hours fixed in accordance with paragraph (*a*), or during the intervals fixed in accordance with paragraph (*b*).

ARTICLE 9.

In the application of this Convention to Japan the following modifications and conditions shall obtain :

(*a*) The term " industrial undertaking " includes particularly—

The undertakings enumerated in paragraph (*a*) of Article 1;

The undertakings enumerated in paragraph (*b*) of Article 1, provided there are at least ten workers employed;

The undertakings enumerated in paragraph (*c*) of Article 1, in so far as these undertakings shall be defined as "factories" by the competent authority;

The undertakings enumerated in paragraph (*d*) of Article 1, except transport of passengers or goods by road, handling of goods at docks, quays, wharves, and warehouses, and transport by hand; and,

Regardless of the number of persons employed, such of the undertakings enumerated in paragraphs (*b*) and (*c*) of Article 1 as may be declared by the competent authority either to be highly dangerous or to involve unhealthy processes.

(*b*) The actual working hours of persons of fifteen years of age or over in any public or private industrial undertaking, or in any branch thereof, shall not exceed fifty-seven in the week, except that in the raw-silk industry the limit may be sixty hours in the week.

(*c*) The actual working hours of persons under fifteen years of age in any public or private industrial undertaking, or in any branch thereof, and of all miners of whatever age engaged in underground work in the mines, shall in no case exceed forty-eight in the week.

(*d*) The limit of hours of work may be modified under the conditions provided for in Articles 2, 3, 4, and 5 of this Convention, but in no case shall the length of such modification bear to the length of the basic week a proportion greater than that which obtains in those Articles.

(*e*) A weekly rest period of twenty-four consecutive hours shall be allowed to all classes of workers.

(*f*) The provision in Japanese factory legislation limiting its application to places employed* fifteen or more persons shall be amended so that such legislation shall apply to places employing ten or more persons.

* *sic.*

(*g*) The provisions of the above paragraphs of this Article shall be brought into operation not later than 1 July, 1922, except that the provisions of Article 4 as modified by paragraph (*d*) of this Article shall be brought into operation not later than 1 July, 1923.

(*h*) The age of fifteen prescribed in paragraph (*c*) of this Article shall be raised, not later than 1 July, 1925, to sixteen.

ARTICLE 10.

In British India the principle of a sixty-hour week shall be adopted for all workers in the industries at present covered by the factory acts administered by the Government of India, in mines, and in such branches of railway work as shall be specified for this purpose by the competent authority. Any modification of this limitation made by the competent authority shall be subject to the provisions of Article 6 and 7 of this Convention. In other respects the provisions of this Convention shall not apply to India, but further provisions limiting the hours of work in India shall be considered at a future meeting of the General Conference.

ARTICLE 11.

The provisions of this Convention shall not apply to China, Persia, and Siam, but provisions limiting the hours of work in these countries shall be considered at a future meeting of the General Conference.

ARTICLE 12.

In the application of this Convention to Greece, the date at which its provisions shall be brought into operation in accordance with Article 19 may be extended to not later than 1 July, 1923, in the case of the following industrial undertakings:

(1) Carbon-bisulphide works,
(2) Acids works,
(3) Tanneries,
(4) Paper mills,
(5) Printing works,
(6) Sawmills,
(7) Warehouses for the handling and preparation of tobacco,
(8) Surface mining,
(9) Foundries,
(10) Lime works,
(11) Dye works,
(12) Glassworks (blowers),
(13) Gas works (firemen),
(14) Loading and unloading merchandise;

and to not later than 1 July, 1924, in the case of the following industrial undertakings:

(1) Mechanical industries: Machine shops for engines, safes, scales, beds, tacks, shells (sporting), iron foundries, bronze foundries, tin shops, plating shops, manufactories of hydraulic apparatus;

(2) Constructional industries: Lime-kilns, cement works, plasterers' shops, tile yards, manufactories of bricks and pavements, potteries, marble yards, excavating and building work;

(3) Textile industries: Spinning and weaving mills of all kinds, except dye works;

(4) Food industries: Flour and grist-mills, bakeries, macaroni factories, manufactories of wines, alcohol, and drinks, oil works, breweries, manufactories of ice and carbonated drinks, manufactories of confectioners' products and chocolate, manufactories of sausages and preserves, slaughterhouses, and butcher shops;

(5) Chemical industries: Manufactories of synthetic colours, glassworks (except the blowers), manufactories of essence of turpentine and tartar, manufactories of oxygen and pharmaceutical products, manufactories of flax-seed oil, manufactories of glycerine, manufactories of calcium carbide, gas works (except the firemen);

(6) Leather industries: Shoe factories, manufactories of leather goods;

(7) Paper and printing industries: Manufactories of envelopes, record books, boxes, bags, bookbinding, lithographing, and zinc-engraving shops;

(8) Clothing industries: Clothing shops, underwear and trimmings, workshops for pressing, workshops for bed coverings, artificial flowers, feathers, and trimmings, hat and umbrella factories;

(9) Woodworking industries: Joiners' shops, coopers' sheds, wagon factories, manufactories of furniture and chairs, picture-framing establishments, brush and broom factories;

(10) Electrical industries: Power houses, shops for electrical installations;

(11) Transportation by land: Employees on railroads and street cars, firemen, drivers, and carters.

ARTICLE 13.

In the application of this Convention to Roumania the date at which its provisions shall be brought into operation in accordance with Article 19 may be extended to not later than 1 July, 1924.

ARTICLE 14.

The operation of the provisions of this Convention may be suspended in any country by the Government in the event of war or other emergency endangering the national safety.

ARTICLE 15.

The formal ratifications of this Convention under the conditions set forth in Part XIII of the Treaty of Versailles of 28 June, 1919, and of the Treaty of St. Germain of 10 September, 1919, shall be communicated to the Secretary-General of the League of Nations for registration.

ARTICLE 16.

Each Member of the International Labour Organization which ratifies this Convention engages to apply it to its colonies, protectorates and possessions which are not fully self-governing:

(*a*) Except where owing to the local conditions its provisions are inapplicable; or

(*b*) Subject to such modifications as may be necessary to adapt its provisions to local conditions.

Each Member shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates, and possessions which are not fully self-governing.

ARTICLE 17.

As soon as the ratifications of two Members of the International Labour Organization have been registered with the Secretariat, the Secretary-General of the League of Nations shall so notify all the Members of the International Labour Organization.

ARTICLE 18.

This Convention shall come into force at the date on which such notification is issued by the Secretary-General of the League of Nations, and it shall then be binding only upon those Members which have registered their ratifications with the Secretariat. Thereafter this Convention will come into force for any other Member at the date on which its ratification is registered with the Secretariat.

ARTICLE 19.

Each Member which ratifies this Convention agrees to bring its provisions into operation not later than 1 July, 1921, and to take such action as may be necessary to make these provisions effective.

ARTICLE 20.

A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the Secretariat.

ARTICLE 21.

At least once in ten years the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention, and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.

ARTICLE 22.

The French and English texts of this Convention shall both be authentic.

No. 36.

Notification of Ratification by Roumania and Greece.

LEAGUE OF NATIONS, GENEVA, June 29, 1921.

No. 36. Notification of Ratification by Roumania and Greece, 29th June 1921.

SIR,—In conformity with Article 406 of the XIIIth Part of the Treaty of Versailles, the Greek Minister for Foreign Affairs and the Roumanian Minister of Labour have notified the Secretary-General of the League of Nations on November 1st, 1920, and on May 31st, 1921, respectively, of their formal ratification of the draft Conventions drawn up at Washington by the International Labour Conference, October 29th–November 29th, 1919; these ratifications were registered by the Secretariat of the League of Nations in accordance with Article 406 of the above-mentioned Treaty, that of Greece on November 18th, 1920, and that of Roumania on June 13th, 1921.

In execution of the final provisions of the draft Conventions adopted at Washington, the Secretary-General of the League of Nations has the honour to inform the Members of the International Labour Organization that the following Labour Conventions between Greece and Roumania came into force on June 13th, 1921 :

A Draft Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week.

A Draft Convention concerning employment of women before and after child-birth.

A Draft Convention concerning employment of* during the night. * *sic.*

A Draft Convention fixing the minimum age for admission of children to industrial employment.

A Draft Convention concerning the night work of young persons employed in industry.

I have the honour to be, Sir,

Your obedient servant,

ERIC DRUMMOND,

Secretary-General.

The Right Honourable,
The Prime Minister of Canada.

No. 37.

No. 37. Resolution of the Senate and House of Commons of Canada approving of the Hours of Work (Industry) Convention 1919, 8th–20th February 1935.

Resolution of the Senate and House of Commons of Canada Approving of the Hours of Work (Industry) Convention, 1919.

(*Passed by the House of Commons on February* 8, 1935, *and by the Senate on February* 20, 1935.)

That, it is expedient that Parliament do approve of the convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week adopted as a draft convention by the general conference of the International Labour Organization of the League of Nations at its first session in Washington on the 28th day of November, 1919, reading as follows: (The Resolution then sets out the terms of the Convention as reprinted in this Record at page 161.)

No. 38.

No. 38. Order of the Governor-General in Council Ratifying Draft Convention Concerning the Limitation of Hours of Work in Industrial Undertakings, 1st March 1935.

Order of the Governor-General in Council Ratifying Draft Convention Concerning the Limitation of Hours of Work in Industrial Undertakings.

P.C. 544.

CERTIFIED *to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 1st March*, 1935.

The Committee of the Privy Council have had before them a report, dated 28th February, 1935, from the Secretary of State for External Affairs, representing, with the concurrence of the Minister of Labour, as follows:—

That on the 15th day of January, 1920, the Secretary-General of the League of Nations communicated to His Majesty's Government in Canada a certified copy of a Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week which had been adopted as a draft Convention by the General Conference of the International Labour Organization at its First Session in Washington on the 28th day of November, 1919;

That such Convention came into force on the 13th day of June, 1921, in accordance with the provisions of Article 18 thereof; and

That such Convention has in respect of Canada received the approval, by resolution, of the Senate and House of Commons of Canada.

The Secretary of State for External Affairs, therefore, with the concurrence of the Minister of Labour, recommends that the said Convention be confirmed and approved, and that formal communication be made thereof to the Secretary-General of the League of Nations.

The Committee concur in the foregoing recommendation and submit the same for approval.

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

No. 39.

Instrument of Ratification by Canada of the Convention limiting the Hours of Work in Industrial Undertakings to eight in the day and forty-eight in the week, March 1st, 1935.

WHEREAS on the 15th day of January, 1920, the Secretary-General of the League of Nations communicated to His Majesty's Government in Canada a certified copy of a Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week which had been adopted as a Draft Convention by the General Conference of the International Labour Organization at its First Session in Washington on the 28th day of November, 1919.

His Majesty's Government in Canada having considered the aforesaid Convention hereby confirm and ratify the same and undertake satisfactorily to perform and carry out the stipulations therein contained. In witness whereof this Instrument of Ratification is signed and sealed by the Secretary of State for External Affairs for Canada.

R. B. BENNETT,
Secretary of State for External Affairs.

(SEAL).

Ottawa, 1st March, 1935.

CERTIFIED to be a true copy of the Instrument of Ratification of the Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week which was transmitted to the Canadian Advisory Officer at Geneva for communication to the Secretary-General of the League of Nations, by despatch dated the 1st March, 1935.

O. D. SKELTON,
Under-Secretary of State for External Affairs.

Ottawa, 8th January, 1936.

Statutes and Other Documents.

No. 40. Proces-Verbal of Canadian Ratification 21st March 1935.

No. 40.

Proces-Verbal of Canadian Ratification.

LEAGUE OF NATIONS

PROCES-VERBAL OF THE DEPOSIT OF THE INSTRUMENT OF RATIFICATION BY CANADA OF THE CONVENTION LIMITING THE HOURS OF WORK IN INDUSTRIAL UNDERTAKINGS TO EIGHT IN THE DAY AND FORTY-EIGHT IN THE WEEK.

ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FIRST SESSION IN WASHINGTON, ON NOVEMBER 28th, 1919

In execution of the provisions contained in Article 15 of the Convention Limiting the Hours of Work in Industrial Undertakings to eight in the day and forty-eight in the week, adopted by the International Labour Conference at its First Session in Washington, on November 28th, 1919, Dr. Walter A. Riddell, M.A., Ph.D., Dominion of Canada Advisory Officer accredited to the League of Nations, presented himself to-day at the Secretariat of the League of Nations, in order to proceed to the deposit of the instrument of ratification by His Majesty's Government in Canada of the above-mentioned Convention.

The instrument of ratification having been found, after examination, to be in good and due form, has been deposited with the Secretariat of the League of Nations.

In faith whereof the undersigned have drawn up the present Proces-verbal.

Done in duplicate at Geneva, on the twenty-first day of March, one thousand nine hundred and thirty-five.

H. McKINNON WOOD,
Acting Legal Adviser of the Secretariat.

W. A. RIDDELL.

No. 41.

Telegram No. 7 from External Affairs to Canadian Advisory Officer.

From *The Secretary of State for External Affairs,*
To *The Canadian Advisory Officer, Geneva.*

OTTAWA, February 27, 1935.

*In connection with ratification of Hours of Work Convention—Washington, 1919, question has arisen as to present status and significance of Article 19 which provides that Members ratifying the Convention must bring it into operation not later than July, 1921.

Similar articles in conventions subsequently adopted are explicitly subject to provisions of formal article fixing date of entry into force for individual countries as date of registration of ratification.

Presume Governing Body or Legal Adviser of I.L.O. has at sometime given opinion on this point. Please cable references.

SECRETARY OF STATE FOR
EXTERNAL AFFAIRS.

No. 41. Telegram No. 7 from External Affairs to Canadian Advisory Officer, 27th February 1935.

*No. 7 Code.

No. 42.

Telegram No. 19 from Canadian Advisory Officer to External Affairs.

Telegram

From *The Canadian Advisory Officer, League of Nations, Geneva,*
To *The Secretary of State for External Affairs, Canada.*

GENEVA, 1st March, 1935.

*No. 19. Your telegram of the 27th February, No. 7, regarding significance of Article XIX, Hours of Work Convention, 1919. The view of legal service of International Labour Office is that sole cause of effect of Article in question was to permit members ratifying before named date to postpone application of Convention until that date. The Article has no application to members ratifying after named date and such members are bound by Convention from the date of registration of their ratification in accordance with provisions of Article XVIII.

In support of this view, two facts are cited, the constant practice of members of organization, many of whom have ratified Conventions after named dates and been considered as bound from date of registration of their ratification, and view of Article in question taken at Conference in 1928 when it was agreed to suppress it as superfluous in future Conventions. The relevant passages from Report of International Labour Office and Report of Standing Orders Committee submitted to that session together with record of approval of changes by Conference will be found in final records of the Eleventh Session of International Labour Conference, Volume I, at pages 305, 595–6 and 605–6. In each of these passages the Article is referred to as (*d*).

CANADIAN ADVISORY OFFICER.

No. 42. Telegram No. 19 from Canadian Advisory Officer to External Affairs, 1st March 1935.

*Most immediate. Code No. 19.

In the Privy Council.

No. 100 of 193

ON APPEAL FROM THE SUPREME COUR
OF CANADA.

IN THE MATTER of a Reference as t
whether the Parliament of Canada had legi
lative jurisdiction to enact the Weekly Re
in Industrial Undertakings Act, being Chapter 1
of the Statutes of Canada 1935; The Minimu
Wages Act, being Chapter 44 of the Statut
of Canada 1935; and the Limitation of Hou
of Work Act, being Chapter 63 of the Statut
of Canada 1935.

BETWEEN:

THE ATTORNEY-GENERAL OF CANAD
Appellant

AND

THE ATTORNEYS-GENERAL of th
PROVINCES OF ONTARIO, QUEBE
NEW BRUNSWICK, BRITISH COLUMBI
MANITOBA, ALBERTA and SASKATCHE
WAN - - - - - *Respondent*

RECORD OF PROCEEDINGS.

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