

In the Privy Council.

No. 101 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 Employment and Social Insurance Act, being Chapter 38 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,
MANITOBA, BRITISH COLUMBIA, ALBERTA
AND SASKATCHEWAN *Respondents.*

CASE OF THE RESPONDENT THE ATTORNEY-GENERAL OF ONTARIO.

1. This is an appeal by special leave by the Attorney-General of Canada from the judgment of the majority of the Supreme Court of Canada delivered on the 17th June, 1936, in the matter of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Employment and Social Insurance Act, being Chapter 38 of the Statutes of Canada, 1935. Record.
p. 52.

2. The majority of the Court held that the legislation was *ultra vires* of the Dominion Parliament, on the ground that it was a statute not concerned with public debt or the raising of money by any mode of taxation, but was in its pith and substance one regulating employment service and unemployment insurance, and exclusively within the jurisdiction of a Provincial Legislature. p. 53, l. 24.

3. All members of the Court were of the opinion that such legislation did not fall within the residuary power in the Dominion Parliament to make laws for the peace, order and good government of Canada.

4. The Respondent, the Attorney-General for Ontario, submits that the judgment of the majority of the Court is right to the extent that property

Record.

and civil rights and the regulation of the business of insurance is within the exclusive legislative control of the Provinces but supports the appeal of the Attorney-General for Canada on the ground that the legislation in question is for the peace, order and good government of Canada and is within both the taxing and spending powers of the Parliament of Canada and for other reasons.

The reasons for this submission amongst others that will be advanced at the hearing are as follows :—

(1) Because of the widened interpretation of this clause by Lord Sankey in *In re regulation and control of Aeronautics in Canada*—[1932] 10 A.C. 54 at page 70, and

(2) Because of the reasons set out in the factum of the Attorney-General of Ontario which forms part of the record in this case—wherein it is stated :—

p. 37, l. 10,
et seq.

“ The probable right of the Parliament of Canada to enact such legislation under the above power would appear to be strengthened by reason of the following observations in reference to ‘ Unemployment and Social Insurance ’ :—

“ 1. The whole scheme of Unemployment Insurance has a pronounced national aspect. 20

“ 2. Legislation of this character affects international and interprovincial trade and the maintenance of equitable relations between Provinces.

“ 3. If various Provincial schemes are adopted instead of a national scheme, it would disturb the equilibrium of industrial relations in the various Provinces ; Labour would naturally be inclined to go to the Province where such legislation was on the Statute books, and on the other hand, it is possible that employers would prefer Provinces where they would not be forced to contribute to such a scheme. 30

“ 4. It is undesirable that there should be attempts to attract capital to one Province rather than another by saying there is unemployment insurance in this Province, but in that Province there is not.”

and for the further reasons as set out in the factum of the Attorney-General of Ontario which is part of the record in this case.

A. W. ROEBUCK.

I. A. HUMPHRIES.



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