

been used in acts of state relating to trade and commerce. Article v. of the Act of Union enacted that all the subjects of the United Kingdom should have 'full freedom and intercourse of trade and navigation' to and from all places in the United Kingdom and the colonies'; and article vi. enacted that all parts of the United Kingdom from and after the union, should be under the same prohibitions, restrictions and regulations of trade. Parliament has at various times since the Union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the articles of Union. Thus the acts for regulating the sale of intoxicating liquors notoriously vary in the two kingdoms. So with regard to acts relating to bankruptcy, and various other matters.

"Construing, therefore, the words 'regulation of trade and commerce,' by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion Parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance in a single province, and, therefore, that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the Legislature of Ontario by No. 13, sect. 92."

Analogies from Liquor Trade Decisions.

This question has also been discussed many times in other cases, notably in *Russell vs. Regina*, 7 Appeal Cases, 829; *Hodge vs. Regina*, 9, Appeal Cases, 117; *Dominion License Act*, 4 Cartwright, 342; *Attorney-General of Ontario vs. Attorney-General of Dominion*, 1896; Appeal Cases, 348, and the *Manitoba License Act*, Appeal Cases, 1902, p. 73, which refer to the prohibition and regulation of the liquor traffic. There is no question but that the liquor business is one of the trades of the country, but the Temperance Act, which provides for the prohibition of the sale of intoxicating liquors, wherever it is brought into effect by a local vote, was held good, not under the clauses relating to trade and commerce, but under the general clause, and the *Liquor License Act* which did regulate the liquor business throughout the Dominion could not be sustained under the trade and commerce clause.

The *Manitoba Liquor Act*, which was really a Provincial Prohibition Act, was held not to encroach on the powers of the Dominion Parliament under the trade and commerce clause, although it was declared in that case that in its practical working it must interfere with Dominion revenue, and indirectly, at least, with business operations outside the province, and the act was upheld.

Limitations of Dominion's Powers.

The study of these cases makes it difficult to come to the conclusion that the regulation of trade and commerce intended by the framers of the British North America Act included the regulation of a trade that might be carried on in more than one province.

If it is admitted that any individual trade may be thus regulated, and the holding as to ancillary legislation as applied in the case of the *Attorney-General vs. the Grand Trunk Railway*, Appeal Cases, 1907, p. 65, is good, then the Dominion Parliament could place all the important business of the country under its control, and override any power the province might have in relation to such businesses, even in those departments in which they are given exclusive power to legislate, because, if the Dominion Parliament can legislate as to who may engage in the business of insurance, even in one province thereof, and oblige insurers to put up securities to meet their liabilities, and supervise their investments, why may it not legislate in the same way as to the lumbering business, the mining business, the importing and exporting trade, and in fact any business that may be carried on in all the provinces, or which in its ramifications may cover more than one province? I cannot believe it was intended to give any such power to the Dominion Parliament.

Judge Clement, in his work, at page 203, remarks:

"It is somewhat curious that, at least since the Parsons case, all the cases in which this clause has been considered are cases in which Provincial Acts have been attacked as infringing upon it; and in none of them has the attack been successful."

Not only does it appear to me that no such regulation of trade as is attempted by the act in question was intended by the framers of the British North America Act, but I am of opinion that the business in question is not a trade at all within the meaning of the word as used in section 91. Wharton's Law Lexicon defines trade as traffic, commerce, exchange of goods for other goods, or for money, all wholesale trade. All buying in order to sell again by wholesale may be reduced to three sorts, the home trade, the foreign trade for consumption, and the carrying trade.

"Offences against trade are: (1) Smuggling; (2) Frauds by bankrupts; (3) Cheating; (4) Monopoly."

In the Parsons' case VII. Appeal Cases at page 111, Sir Montagu Smith, speaking for the Council, says:—

Is Insurance Trade?

"A question was raised which led to much discussion in the courts below, and at this bar, viz.:—Whether the business of insuring buildings against fire was a trade. This business, when carried on for a profit, may, no doubt, in some sense of the word, be called a trade. But contracts of indemnity made by insurers can scarcely be called trading contracts, nor were insurers who made them held to be 'traders' under the English bankrupt laws; they have been made subject to these laws by special description. Whether the business of fire insurance properly falls within the description of a 'trade' must, in their lordships' view, depend upon the sense in which the word is used in the particular statute to be construed; but in the present case their lordships do not find it necessary to rest their decision on the narrow ground that the business of insurance is not a trade."

It has been assumed in some of the later cases that in the Parsons' case the Privy Council held that the business of insurance was a trade, and that the Insurance Act was *intra vires*, but the quotation above will show that the question as to whether insurance was a trade was not decided, and on the other point, the words are at page 114:—

"Assuming this act" (the Insurance Act) "to be within the competency of the Dominion Parliament."