

the Privy Council, and while a reading of the reports of these cases without knowing all about the particular local circumstances in each case, makes it sometimes difficult to quite see the harmony of these decisions, and to be certain whether what is sometimes said is in the nature of a decision, or only remarks relating to that particular case, and therefore not of general application, there have, however, been laid down certain principles which I think we may take as settled:

#### **Relative Powers of Dominion and Provinces.**

First—Dominion legislation in reference to the enumerated subjects of section 91, and that which is ancillary and necessary in order to give full effect thereto, is valid against provincial legislation even in those subjects which are exclusively given to the provinces.

Second—Provincial legislation in reference to any of the enumerated subjects of section 92 is valid against Dominion legislation, except under the enumerated subjects of section 91 and what is ancillary thereto, as stated above.

The question of whether a person or firm in Montreal may act as agent or representative there for another person or firm, either within or without the province, is certainly a question of civil rights, and would come under section 92, sub-section 13, but if this question is, as stated above, ancillary and necessary to the enforcement of the statutes in which it is found, it loses its independent character and is validated as a part of an act the purpose of which is covered by section 91, and as to the section of the act in question is, no doubt, necessary for the enforcement of the act, if the purpose of the act is covered by section 91, it must be held good, if the act itself is good.

The first question then to be decided, is, what is the purpose of the act?

#### **Purpose of Insurance Act.**

The purpose of the act is to regulate and supervise the business of insurance in the Dominion of Canada, save certain exceptions, the most important being ocean marine insurance, and in relation to any company incorporated by the Legislature of the province and doing business wholly within that province.

Section 5 of the act enacts that: "No company or person, except as hereinafter provided, shall accept any risk or issue any policy of fire or inland marine insurance, or policy of life insurance, or grant any annuity, on the life or lives, or receive any premium, or carry on any business of life or fire or inland marine insurance in Canada, or prosecute or maintain any suit, action or proceeding, either in law or in equity, or file any claim in insolvency relating to such business, without first obtaining a license from the minister to carry on such business in Canada."

The section under which the complaint is laid, declares that:—

"Every person who

"(a) Delivers any policy of insurance or interim receipt of" or . . .

"(b) Collects any premium in respect of any policy of . . . any life, fire or inland marine insurance company" not provided with the license required as above declared, is liable to a penalty not exceeding fifty dollars and costs and not less than twenty dollars and costs, and in default of payment to imprisonment, with or without hard labor, for a term not exceeding three months, and not less than one month, with higher penalties for subsequent offences.

To obtain the license referred to above, the company

or person must do several things, and among them are the following:—

They must have a name not liable to be confounded with any other company.

They must make a deposit satisfactory to the Treasury Board.

A copy of the charter must be filed and a power of attorney for the agent in Canada.

A statement of its affairs, where its head office is, and where it may be served with process. It must also make annual returns, and so on.

It also declares in what securities the companies may invest their funds, and then imposes penalties on certain officers of the company and other persons, for infractions of the act.

Then there is a Superintendent of Insurance appointed, whose duties are to issue these licenses when the necessary deposits have been made, and the necessary deposits have been filed, to examine and supervise the securities and investments—in general, to see that the companies coming within the purview of the act conform thereto.

There seems to be no attempt to deal with the conditions of policies except as to life insurance. Sections 71, 72 and 73 have some provisions as to the conditions of life insurance policies. The act is entirely designed to regulate the business of insurance in Canada, with some exceptions.

After a careful study of the British North America Act, I am of opinion that if the Insurance Act is *intra vires* of the Dominion Parliament, it must fall under the sub-section 2, section 91, "The Regulations of Trade and Commerce." If not, it is covered by section 92, sub-section 13.

#### **What is Trade and Commerce?**

The first thing to do now, in our enquiry, is to find out the true meaning of the phrase "trade and commerce."

In the Parsons case, which Judge Clement, in his admirable work on the British North America Act, says may be termed the leading case upon this clause, we find the judgment rendered therein, the following:

VII. App. Cas., at page 112:—"The words 'regulation of trade and commerce' in their unlimited sense are sufficiently wide, if uncontrolled by the context and other parts of the act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign governments, requiring the sanction of Parliament, down to minute rules for regulating particular trades. But a consideration of the act shows that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the Legislature when conferring the power on the Dominion Parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in section 91 would have been unnecessary; as, 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

#### **Views of Privy Council.**

"'Regulation of trade and commerce' may have been used in some such sense as the words 'regulation of trade' in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have