AS TO CONSTITUTIONALITY OF THE DOMINION INSURANCE ACT.

Judge Leet dismisses case of King vs. Willis, Faber & Co. on Grounds that Dominion Insurance Act is Ultra Vires—First Time Constitutionality of Act has been Directly Attacked.

Judge Leet, sitting as a magistrate at Montreal, on Wednesday of this week dismissed the case of The King vs. Willis Faber & Co.—a case brought under section 60 of the Insurance Act being chapter 34, of the Revised Statutes of Canada.

The accused (a business corporation having its head office in London, England, and a branch office in the city of Montreal, Canada) is charged with having delivered receipts and policies, and having collected premiums for a non-licensed insurance company, viz.; The Lloyds, of London, England.

The following were the facts of the case: The James Walker Hardware Company, Limited, of Montreal, not being satisfied with the rate of insurance they were paying, instructed their brokers, Messrs. Hare & Mackenzie, to see if insurance could not be obtained at a less rate than they were paying. Messrs. Hare & Mackenzie approached the manager of the accused company in Montreal, with the result that an insurance of ten thousand eight hundred and twenty-five pounds was placed with what is known as "The Lloyds," London, which company is not licensed under the Insurance Act.

Three Grounds of Defence.

The accused raised three points of defence: First, that they represented, or were the agents of the insured, and not of the insurer.

Second—That The Lloyds is not a company within the meaning of the Insurance Act.

Third—That the Insurance Act is ultra vires and especially the provisions therein prohibiting any person from delivering receipts, or policies, or collecting or receiving premiums for an insurer who has not been licensed under the Insurance Act.

Judge Leet ruled as follows regarding these:

As to the first point, I am of opinion that it is not good. The head office of the company accused have an agreement in writing with certain members of The Lloyds, copy of which is produced, as exhibit No. 1, for the prosecution. This agreement sets forth the total amount for which the subscribers thereto will become jointly liable, and certain other conditions as to risks, rates and commissions, and contains among others, this clause: "Risks to attach from date of mail or other advice from W. F. & Co., Limited, Montreal, to W. F. & Co., Limited, London."

Messrs. Hare & Mackenzie, who were the insurance brokers for the insured, went to the accused as representing The Lloyds, and through them placed the risk. The receipt and policy were delivered by the accused to Messrs. Hare & Mackenzie, and the premium was paid through Messrs. Hare & Mackenzie to the office of the accused here.

First Point Not Sustained.

It is impossible, therefore, to come to any other conclusion than that whatever the accused did in this matter here, they represented the insurers rather than the insured. Whether they were agents of the insurers in the ordinary sense or not, is immaterial under the wording of the section in question, as there is no doubt that they delivered the receipts and policies and collected the premium for the insurers, who were not licensed under the Insurance Act.

As to the second point, that the insurers are not a "company," within the meaning of the act. By the terms of the policy it is declared "that we, the insurers, do hereby bind ourselves each for his own part, and not one for the other." It was, therefore, contended that this declaration made each one of them individual insurers in such a way that they could not be held to be an association or company.

On looking at the policy, which was produced as exhibit number two of the prosecution, it appears to have been executed by some thirty or more groups of insurers, and there must be over one hundred different names attached. Some of these are individual insurers for a certain amount; others have united themselves into groups whereby each one becomes responsible for one-twelfth, or one-fifteenth or one-tenth, or one-sixteenth, or one-eighth or some such aliquot part of a given sum the total amount aggregating the total sum for which the policy issued.

Decision Against Accused on Second Point Also.

It is also proved that the agreement between the London office of the accused and certain of the members of Lloyds, is signed by some twenty-five or so different parties, some acting for themselves individually, and others as representing one of these groups, the party signing being the attorney of the others of the group, and acting for them.

It was also proved that the accounts kept by the London office of the accused, were kept in some cases with the individual members of the Lloyds, sometimes with a party representing one of these groups.

Inasmuch as the men who wish to become insurers under what is known as "The Lloyds," have, first of all, to become members of the Association known as The Lloyds, and inasmuch as it is shown that for the purpose of taking risks after they have become members, as above mentioned, many associate themselves into groups, the members of which give power of attorney to one of their number to represent them, I am of the opinion that the insurers under the policy in question here not only are a company within the meaning of the Insurance Act, but are several companies.

I am, therefore, against the pretensions of the accused on this second point.

Third Point as to Constitutionality of Insurance Act.

As to the third point: This is one of great importance.

The Insurance Act has been in force in Canada for many years, and so far as I have been able to learn, this is the first time it has been directly attacked.

In the cases of The Citizens' Insurance Company and The Queen's Insurance Company, against Parsons, the question was raised indirectly, but the Lords of the Privy Council expressly refrained from deciding the question, holding that in so far as that case was concerned, the decision need not rest upon that point. The question there was as to the validity of an Act of the Province of Ontario making statutory conditions for fire insurance policies to be issued in that Province, and that as the Dominion Insurance Act did not enter into this field there was no conflict between the two acts.

The relative powers of the Dominion Parliament and the Provincial Legislature under the British North America Act have been the subject of much litigation, and many decisions by the highest court in the Realm,