THE ATTORNEY GENERAL OF NOVA SCOTIA, ... APPELLANT;

AND

THE ATTORNEY GENERAL OF CANADA, ... RESPONDENT,

AND

LORD NELSON HOTEL COMPANY LIMITED, ... INTERVENANT.

1950

*May 25, 26
*Oct. 3

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA EN BANC

Constitutional Law—Jurisdiction, Delegation of—Whether Federal Parliament or Provincial Legislature can transfer powers vested exclusively in the one to the other—The British North America Act, 1867, ss. 91, 92 and 94.

Held: (Affirming the judgment of the Supreme Court of Nova Scotia *en banc*) that the contemplated legislation of the Legislature of the Province of Nova Scotia, Bill No. 136 entituled "An Act Respecting the Delegation of Jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and vice versa" if enacted, would not be constitutionally valid since it contemplated delegation by Parliament of powers, exclusively vested in it by s. 91 of the *British North America Act,* to the Legislature of Nova Scotia; and delegation by that Legislature of powers, exclusively vested in Provincial Legislatures under s. 92 of the Act, to Parliament.

The Parliament of Canada and each Provincial Legislature is a sovereign body within its sphere, possessed of exclusive jurisdiction to legislate with regard to the subject matters assigned to it under s. 91 or s. 92, as the case may be. Neither is capable therefore of delegating to the other the powers with which it has been vested nor of receiving from the other the powers with which the other has been vested.

C.P.R. v. *Notre Dame de Bonsecours* [1899] A.C. 367 per Lord Watson and Lord Davey, during the argument as quoted by Lefroy in *Canada's Federal System,* 1913, p. 70 note 10(*a*), followed.

Hodge v. *The Queen* 9 App. Cas. 117; The Chemical Reference [1943] S.C.R. 1, distinguished.

APPEAL from a judgment of the Supreme Court of Nova Scotia *en banc,* Doull J., dissenting, (1), answering in the negative some certain six questions put to that Court by the Governor in Council in the matter of a

(1) [1948] 4 D.L.R. 1.

*PRESENT: Rinfret C.J., and Kerwin, Taschereau, Rand, Kellock, Estey and Fauteux JJ.

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Reference as to the constitutional validity of Bill No. 136 of the adjourned meeting of the 2nd Session of the 43rd General Assembly of the Legislature of Nova Scotia, entitled "An Act Respecting the Delegation of Jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and Vice Versa".

J. A. Y. MacDonald K.C. and *L. H. McDonald* for the Attorney General of Nova Scotia.

F. P. Varcoe K.C. and *A. J. MacLeod* for the Attorney General of Canada.

C. R. Magone K.C. for the Attorney General of Ontario.

John C. Osborne for the Attorney General of Alberta.

THE CHIEF JUSTICE:—This is a reference by the Lieutenant Governor in Council of the Province of Nova Scotia, submitting to the Supreme Court of that Province the question of the constitutional validity of a Bill, Number 136, entitled "An Act respecting the delegation of jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and *vice versa*."

By virtue of this Bill, if it should come into force, by proclamation, as therein provided, the Lieutenant Governor in Council, may from time to time delegate to and withdraw from the Parliament of Canada authority to make laws in relation to any matter relating to employment in any industry, work or undertaking in respect of which such matter is, by section 92 of *The British North America Act, 1867,* exclusively within the jurisdiction of the Legislature of Nova Scotia. It provides that any laws so made by the Parliament of Canada shall, while such delegation is in force, have the same effect as if enacted by the Legislature.

The Bill also provides that if and when the Parliament of Canada shall have delegated to the Legislature of the Province of Nova Scotia authority to make laws in relation to any matter relating to employment in any industry, work or undertaking in respect of which such matter is, under the provisions of *The British North America Act, 1867,* exclusively within the legislative jurisdiction of such

Parliament, the Lieutenant Governor in Council, while such delegation is in force, may, by proclamation, from time to time apply any or all of the provisions of any Act in relation to a matter relating to employment in force in the Province of Nova Scotia to any such industry, work, or undertaking.

Finally, the Bill enacts that if and when the Parliament of Canada shall have delegated to the Legislature of the Province of Nova Scotia authority to make laws in relation to the raising of a revenue for provincial purposes by the imposing of a retail sales tax of the nature of indirect taxation, the Lieutenant Governor in Council, while such delegation is in force, may impose such a tax of such amount not exceeding three per cent (3%) of the retail price as he deems necessary, in respect of any commodity to which such delegation extends and may make regulations providing for the method of collecting any such tax.

The provisions of the Bill, therefore, deal with employment in industries, works, or undertakings, exclusively within the legislative jurisdiction in the one case of the Legislature of the Province of Nova Scotia and in the other case within the exclusive legislative jurisdiction of the Parliament of Canada, and it also deals with the raising of revenue for provincial purposes by means of indirect taxation.

In each of the supposed cases either the Parliament of Canada, or the Legislature of Nova Scotia, would be adopting legislation concerning matters which have not been attributed to it but to the other by the constitution of the country.

The Supreme Court of Nova Scotia *en banc,* to which the matter was submitted, answered that such legislation was not within the competence of the Legislature of Nova Scotia, except that Doull J. dissented and expressed the opinion that the Bill was constitutionally valid, subject to the limitations stated in his answers. I agree with the answers given by the majority of the Judges in the Supreme Court *en banc.*

The Parliament of Canada and the Legislatures of the several Provinces are sovereign within their sphere defined

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by *The British North America Act*, but none of them has the unlimited capacity of an individual. They can exercise only the legislative powers respectively given to them by sections 91 and 92 of the Act, and these powers must be found in either of these sections.

The constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled. It is part of that protection that Parliament can legislate only on the subject matters referred to it by section 91 and that each Province can legislate exclusively on the subject matters referred to it by section 92. The country is entitled to insist that legislation adopted under section 91 should be passed exclusively by the Parliament of Canada in the same way as the people of each Province are entitled to insist that legislation concerning the matters enumerated in section 92 should come exclusively from their respective Legislatures. In each case the Members elected to Parliament or to the Legislatures are the only ones entrusted with the power and the duty to legislate concerning the subjects exclusively distributed by the constitutional Act to each of them.

No power of delegation is expressed either in section 91 or in section 92, nor, indeed, is there to be found the power of accepting delegation from one body to the other; and I have no doubt that if it had been the intention to give such powers it would have been expressed in clear and unequivocal language. Under the scheme of the *British North America Act* there were to be, in the words of Lord Atkin in *The Labour Conventions Reference* (1), "watertight compartments which are an essential part of the original structure."

Neither legislative bodies, federal or provincial, possess any portion of the powers respectively vested in the other and they cannot receive it by delegation. In that connection the word "exclusively" used both in section 91 and in section 92 indicates a settled line of demarcation and it does not belong to either Parliament, or the Legislatures,

(1) [1937] A.C. 326.

to confer powers upon the other. (*St. Catharine's Milling Co.* v. *The Queen,* (1), by Strong J.; *C.P.R.* v. *Notre Dame de Bonsecours Parish* (2)).

Delegations such as were dealt with *In re Gray* (3) and in *The Chemical Reference* (4), were delegations to a body subordinate to Parliament and were of a character different from the delegation meant by the Bill now submitted to the Court.

I need hardly add that these reasons apply only to the questions as put and which ought to be answered in the negative. The appeal should be dismissed with costs.

KERWIN J.:—I agree with the majority of the Supreme Court of Nova Scotia *en banc* that Bill No. 136 of the adjourned Meeting of the Second Session of the Forty-third General Assembly of the Legislature of Nova Scotia, intituled "An Act respecting the Delegation of Jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and vice versa" would not be constitutionally valid if enacted into law and that the answer to each of the six questions submitted to the Court by the Lieutenant Governor in Council is in the negative.

At the outset it should be emphasized that we are not concerned with delegation in the sense in which that expression is used in the *Chemicals Reference Case* (4), or in the sense that it may be said that a provincial legislature in its various municipal Acts delegates to municipal authorities power to enact by-laws and regulations. Nor are we dealing with a provincial statute stating, as some do, that certain parts of the *Criminal Code* shall apply.

In the provincial courts expressions may be found favouring the view pressed upon us in this case. So far as this Court is concerned, Davies J. does say in *Ouimet* v. *Bazin* (5): "As to the power of the Dominion Parliament to delegate its powers I have no doubt." This statement was *obiter* and if it means more than that Parliament could delegate as it did in the *Chemicals Reference case,* it is

(1) [1887] 13 Can. S.C.R. 577 at 637.
(2) [1899] A.C. 367,—per Lord Watson and Lord Davey—See Lefroy's *Canada's Federal System,* 1913, p. 70 note 10(*a*).
(3) [1918] 57 Can. S.C.R. 150.
(4) [1943] S.C.R. 1.
(5) (1912) 46 Can S.C.R. 502 at 514.

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contrary to what had already been said in *Citizen's Insurance Co.* v. *Parsons* (1), by Taschereau J. at 317: "But the Federal Parliament cannot amend the *British North America Act,* nor give, either expressly or impliedly to the local legislatures, a power which the Imperial Act does not give them. This is clear, and has always been held in this court to be the law", and by Gwynne J. at 348. The point was not decided in *Ouimet* v. *Bazin.*

As to the Judicial Committee, a suggestion to the effect now contended for, made by counsel in *C.P.R.* v. *Corporation of the Parish of Notre Dame de Bonsecours* (2), was dismissed by Lord Watson and Lord Davey as follows, according to the verbatim report of the argument referred to in Lefroy's *Canada's Federal System,* 1913, page 70, note 10(*a*):—

Lord Watson:

The Dominion cannot give jurisdiction, or leave jurisdiction, with the province. The provincial parliament cannot give legislative jurisdiction to the Dominion parliament. If they have it, either one or the other of them, they have it by virtue of the Act of 1867. I think we must get rid of the idea that either one or the other can enlarge the jurisdiction of the other or surrender jurisdiction. To which Lord Davey adds: or curtail.

In *Lord's Day Alliance of Canada* v. *Attorney General for Manitoba* (3), the Judicial Committee affirmed the Court of Appeal for Manitoba and held that a Manitoba statute of 1923 providing that it should be lawful to run or conduct Sunday excursions to resorts within the province was *intra vires.* This statute was passed in pursuance of the exception in the Dominion *Lord's Day Act* making it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." It was held that the Manitoba statute was merely permissive, their Lordships adopting what Duff J. had said in *Ouimet* v. *Bazin* at page 526.

At page 394 of the Lord's Day Alliance report, their Lordships say:—

In this view of the matter it becomes unnecessary for their Lordships to consider, as some of the learned judges of the Court of Appeal have done, whether such Provincial legislation as that now in question may be justified as being in effect Dominion legislation by delegation or reference. They prefer, without saying more on that matter, to justify it on the grounds they have set forth.

(1) (1880) 4 Can. S.C.R. 215.
(2) [1899] A.C. 367.
(3) [1925] A.C. 384.

The Court of Appeal judgment is found in [1923] 3 D.L.R. 495, and at page 507, Fullerton J.A., after stating that it was strenuously maintained that the Dominion Parliament could not delegate its authority to legislate, stated that this was inconceivable,—referring to *in Re Gray* (1); but it should be noted that in the *Gray case* there was an entirely different matter under consideration. Dennistoun J.A. at 510, referring to counsel's argument that the Dominion could not delegate the power to the provinces of enacting or repealing criminal law states that it would not seem to him that there was any delegation. However, while he deemed it unnecessary to deal further with the point, he stated that there were many recorded instances of regulating delegated powers in Canada but the examples he gives are in the same class as *in Re Gray* or similar thereto. As has been pointed out, the Judicial Committee declined to deal with the argument.

The reasons of their Lordships in *In Re The Initiative and Referendum Act* (2) are instructive. The actual decision was that the *Initiative and Referendum Act* of Manitoba was invalid since it would compel the Lieutenant Governor to submit a proposed law to a body of voters totally distinct from the Legislature of which he was the constitutional head and would render him powerless to prevent the same becoming an actual law as approved by those voters. However, in delivering the judgment on behalf of the Committee, Viscount Haldane, after referring to the analogy between the British Constitution and that of Canada, and disposing of the question in the manner indicated, proceeds at page 945 to state that he would not deal finally with another difficulty that those who contended for the validity of the Act in question had to meet but thought it right to advert to it. After pointing out that a body with a power of legislation on the subjects entrusted to it so ample as that enjoyed by a Provincial Legislature could while preserving its own capacity intact seek the assistance of subordinate agencies as had been done in *Hodge* v. *The Queen* (3). Viscount Haldane continues:—"but it does not follow that it (i.e. a Provincial

(1) (1918) 57 Can. S.C.R. 150
(2) [1919] A.C. 935.
(3) 1883) 9 App. Cas. 117.

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Legislature) can create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence."

The *British North America Act* divides legislative jurisdiction between the Parliament of Canada and the Legislatures of the Provinces and there is no way in which these bodies may agree to a different division. The fact that section 94 was considered necessary to provide in certain contingencies for the uniformity in some of the provinces of laws relating to property and civil rights and court procedure, indicates that an agreement for such a delegation as is here contended for was never intended. To permit of such an agreement would be inserting into the Act a power that is certainly not stated and one that should not be inferred. The appeal should be dismissed with costs.

TASCHEREAU J.:—In August, 1947, the Attorney-General of Nova Scotia introduced in the House of Assembly for the Province, Bill No. 136 which was read a first time and ordered to be read a second time upon a future day. This Bill reads as follows:

BE IT ENACTED by the Governor and Assembly as follows:

1. This Act may be cited as The Delegation of Legislative Jurisdiction Act.

2. The Governor in Council may, by proclamation, from time to time delegate to and withdraw from the Parliament of Canada authority to make laws in relation to any matter relating to employment in any industry, work or undertaking in respect of which such matter is, by Section 92 of The British North America Act, 1867, exclusively within the legislative jurisdiction of this Legislature and any laws so made by the said Parliament shall, while such delegation is in force, have the same effect as if enacted by this Legislature.

3. If and when the Parliament of Canada shall have delegated to the Legislature of this Province authority to make laws in relation to any matter relating to employment in any industry, work or undertaking in respect of which such matter is, under the provisions of The British North America Act, 1867, exclusively within the legislative jurisdiction of such Parliament, the Governor in Council, while such delegation is in force, may, by proclamation, from time to time apply any or all the provisions of any Act in relation to a matter relating to employment in force in this Province to any such industry, work or undertaking.

4. If and when the Parliament of Canada shall have delegated to the Legislature of this Province authority to make laws in relation to the raising of a Revenue for Provincial Purposes by the imposing of a retail sales tax of the nature of indirect taxation, the Governor-in-Council while such delegation is in force, may impose such a tax of such amount not exceeding three per cent (3%) of the retail price as he

deems necessary, in respect of any commodity to which such delegation extends and may make regulations providing for the method of collecting any such tax.

5. This Act shall come into force on, from and after, but not before, such day as the Governor-in-Council orders and declares by proclamation.

The validity of this proposed legislation was submitted to the Supreme Court of Nova Scotia, and the majority of the Court were of the opinion that the Bill was not constitutionally valid, and answered the six questions in the negative. The questions put to the Court under and by virtue of Chapter 226 of the Revised Statutes of Nova Scotia, 1923, were the following:—

1. Is the said Bill constitutionally valid or in part, and if in part, in what respect?

2. Is it within the competence of the Parliament of Canada to delegate to the Legislature of Nova Scotia authority to impose a tax in the nature of indirect taxation, as referred to in Section 4 of the said Bill?

3. In the event of such a delegation being made, is it competent for the Legislature of Nova Scotia to impose such a tax?

4. Is it within the competence of the said Parliament to delegate to the said Legislature authority to make laws in relation to employment matters otherwise within the exclusive legislative jurisdiction of such Parliament as referred to in Section 3 of said Bill?

5. Is it within the competence of the said Legislature to delegate or to empower the Governor in Council to delegate authority to such Parliament to make laws in relation to employment matters otherwise within the exclusive legislative jurisdiction of such Legislature, as referred to in Section 2 of the said Bill?

6. In the event of such a delegation as is referred to in Sections 2 and 3 of the said Bill being made, is it within the competence of (*a*) the said Legislature, and (*b*) the said Parliament, respectively, to make laws in relation to such employment matters?

These questions, although limited to indirect taxation and to laws in relation to employment matters, cover a much wider field. For if it is within the powers of Parliament and of the Legislatures to confer upon each other by consent, a legislative authority which they do not otherwise possess, to deal with the subject matters found in the questions submitted, the same powers would naturally exist to enact laws affecting all the classes of subjects enumerated in Sections 91 and 92 of the *B.N.A. Act.* I may say at the outset that I am of the opinion that the conclusion arrived at by the Supreme Court of Nova Scotia is right.

The *British North America Act, 1867,* and amendments has defined the powers that are to be exercised by the

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Dominion Parliament and by the Legislatures of the various provinces. There are fields where the Dominion has exclusive jurisdiction, while others are reserved to the provinces. This division of powers has received the sanction of the Imperial Parliament, which was then and is still the sole competent authority to make any alterations to its own laws. If Bill 136 were *intra vires,* the Dominion Parliament could delegate its powers to any or all the provinces, to legislate on commerce, banking, bankruptcy, militia and defence, issue of paper money, patents, copyrights, indirect taxation, and all other matters enumerated in Section 91; and on the other hand, the Legislatures could authorize the Dominion to pass laws in relation to property and civil rights, municipal institutions, education, etc. etc., all matters outside the jurisdiction reserved to the Dominion Parliament. The powers of Parliament and of the Legislatures strictly limited by the *B.N.A. Act,* would thus be considerably enlarged, and I have no doubt that this cannot be done, even with the joint consent of Parliament and of the Legislatures.

It is a well settled proposition of law that jurisdiction cannot be conferred by consent. None of these bodies can be vested directly or indirectly with powers which have been denied them by the *B.N.A. Act,* and which therefore are not within their constitutional jurisdiction.

This question has often been the subject of comments by eminent text writers, and has also been definitely settled by numerous authoritative judicial pronouncements.

Lefroy *Canada's Federal System* (1913 at p. 70) cites the words of Lord Watson on the argument in *C.P.R.* v. *Bonsecours* (1):—

> The Dominion cannot give jurisdiction, or leave jurisdiction, with the province. The provincial parliament cannot give legislative jurisdiction to the Dominion parliament. If they have it, either one or the other of them, they have it by virtue of the Act of 1867. I think we must get rid of the idea that either one or the other can enlarge the jurisdiction of the other or surrender jurisdiction. To which Lord Davey adds: "or curtail."

Clement *"The Law of the Canadian Constitution"* 3rd ed., dealing with the same subject, says at page 380:—

> It is equally clear upon authority that a federal statute cannot enlarge the ambit of provincial authority as fixed by the British North America Act.

(1) [1899] A.C. 367.

And he states at page 382:—

But, it is conceived, there is nothing in all this to give any countenance to the notion that by Canadian legislation, federal or provincial or both, a readjustment of the respective spheres of legislative authority as fixed by the British North America Act can be brought about; that, for example, the Dominion parliament can confer upon a provincial assembly any power of legislation not possessed by such assembly under the imperial statute. No such constituent power has been given by the Act to either legislature. It is not covered by any affirmative words and is radically repugnant to the principle underlying the use of the mutually restrictive word "exclusive" as applicable to the two competing groups of class-enumerations. Provincial legislation which, *ex hypothesi,* requires federal legislation to support it is not legislation at all.

In *The Citizens' and The Queen Ins. Cos.* v. *Parsons* (1), Mr. Justice Taschereau expresses his views as follows:—

The Constitutional Act does not, as I read it, bear an interpretation inevitably leading to such anomalous consequences; the powers of the federal authority cannot, to such an extent, be dependent upon the consent and good-will of the provincial authorities.

And at page 317, he says:—

But the Federal parliament cannot amend the *British North America Act,* nor give, either expressly or impliedly, to the local legislatures, a power which the Imperial Act does not give them. This is clear and has always been held in this court to be the law.

And, in the same case, at page 348, Mr. Justice Gwynne also says:—

How the species of legislation which appears upon the statute books, upon the subject of insurance and insurance companies, came to be recognized (by which it would seem as if the parliament and the legislatures had been attempting to make among themselves a partition of jurisdiction, for which the *B.N.A. Act* gives no warrant whatever), I confess appears to me to be very strange, for it surely cannot admit of a doubt that *no act* of the Dominion Parliament can give to the local legislatures over any subject which, by the *B.N.A. Act,* is placed exclusively under the control of parliament, and as the parliament cannot by Act or acquiescence transfer to the local legislatures any subject placed by the *B.N.A. Act* under the exclusive control of parliament, so neither can it take from the local legislatures any subject placed by the same authority under *their* exclusive control.

In *St. Catharines Milling Co.* v. *The Queen* (2), Mr. Justice Strong as he then was, says:—

That Parliament has no power to divest the Dominion in favour of the Provinces of a legislative power conferred on it by the British North America Act is, I think, clear.

(1) (1881) 4 Can. S.C.R. 215 at 314.

(2) (1887) 13 Can. S.C.R. 577 at 637.

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More recently in *Rex* v. *Zaslavsky* (1), the Saskatchewan Court of Appeal held as follows:—

A Province cannot enlarge the jurisdiction of Parliament or surrender jurisdiction belonging exclusively to the Province. Since the control and regulation of sales and purchases of live stock and live stock products lies entirely within provincial boundaries it is *ultra vires* and a conviction under the Act will be quashed.

The Manitoba Court of Appeal in *Rex* v. *Brodsky et al* (2), held as follows:—

Neither the Dominion nor the Province can delegate to each other powers they do not expressly possess under the *B.N.A. Act*.

The Alberta Supreme Court in *Rex* v. *Thorsby Traders Ltd.* (3), without delivering written reasons, stated that they followed *Rex* v. *Zaslavsky* cited *supra*.

All these authorities show clearly to my mind that Bill No. 136 is *ultra vires* and that the argument of the appellants cannot prevail.

It is submitted on behalf of the appellants that in numerous cases the Judicial Committee of the Privy Council and the Courts of this country have admitted the principle of delegation of powers. In support of that proposition the following cases have been cited to the Court: *Hodge* v. *The Queen* (4), *In Re Gray* (5), *Shannon* v. *Lower Mainland Dairy Products Board* (6), *Chemicals Reference* (7).

These cases differ fundamentally from the present one. There is no doubt, as it has been very often recognized by the Courts, that Parliament or a provincial legislation may in certain cases delegate some of its powers.

For instance, in the *Gray* case, Mr. Justice Anglin said at page 176:—

A complete abdication by Parliament of its legislative functions is something so inconceivable that the constitutionality of an attempt to do anything of the kind need not be considered. Short of such an abdication, any limited delegation would seem to be within the ambit of a legislative jurisdiction certainly as wide as that of which it has been said by incontrovertible authority that it is "as plenary and as ample * * * as the Imperial Parliament in the plenitude of its powers possessed and could bestow."

(1) [1935] 3 D.L.R. 788; 64 Can. C.C. 106.
(2) [1936] 1 D.L.R. 578.
(3) [1936] 1 D.L.R. 592.
(4) (1883) 9 App. Cas. 117.
(5) 57 Can. S.C.R. 150.
(6) [1938] A.C. 708.
(7) [1943] S.C.R. 1.

In *Shannon* v. *Lower Mainland Dairy Products Board* (1) at page 722 Lord Atkin said:

> The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lieutenant-Governor in Council, or to give him powers of further delegation. This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the constitution has granted legislative powers. Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act.

But we are not dealing here with a similar situation. In the *Gray* case, the delegation was given by Parliament to the Executive Government. In the *Hodge* and *Shannon* cases, the delegation was to authorize Boards of Commissioners to enact regulations. In the *Chemicals* case, the delegation was to the Governor in Council, who by regulation appointed a controller of chemicals. In all these cases of delegation, the authority delegated its powers to subordinate Boards for the purpose of carrying legislative enactments into operation.

It is true that in *Ouimet* v. *Bazin* (2), Mr. Justice Davies said:—

> As to the power of the Dominion Parliament so to delegate its power, I have no doubt.

I agree with Chief Justice Chisholm of the Supreme Court of Nova Scotia that this observation is an *"obiter"* which is not concurred in by the other members of the Court who heard the appeal, and with respect I may say, that it is not founded upon any authority.

In Clement, *"Canadian Constitution"* cited *supra,* at pages 380, 381 and 382, the learned author deals with this subject and does not contest the right of a sovereign Legislature to delegate to a subordinate body some part of its legislative functions and, as the Parliament of Canada and the Assemblies of the several Provinces are all sovereign Legislatures within their respective spheres, the right to so delegate is beyond question. And, not only can a sovereign Legislature delegate part of its legislative functions, but it may also confer power upon a subordinate agency to make regulations for the better

(1) [1938] A.C. 708.

(2) (1912) 46 Can. S.C.R. 502.

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carrying out in detail of the enactment. But the learned author proceeds to say that there is nothing in all this to give countenance to the notion that a readjustment of the respective spheres of legislative authority, as fixed by the *British North America Act,* can be brought about.

Lefroy in *"Legislative Power in Canada"* at page 242, expresses the view with which I agree, that the Federal Parliament cannot amend the British North America Act, nor either expressly or impliedly take away from, or give to, the provincial Legislatures a power which the Imperial Act does, or does not give them; and he adds that the same is the case, *mutatis mutandis,* with the Provincial Legislatures. At page 689, the same author adds that within the area and limits of subjects mentioned in Section 92 of the British North America Act, the provincial Legislatures are supreme and have the same authority as the Imperial Parliament or the Dominion would have under like circumstances, to confide to a municipal institution or body of its own creation, authority to make by-laws or regulations as to subjects specified in the enactment and with the object of carrying the enactment into operation and effect. This proposition rests upon the language and decision of the Judicial Committee of the Privy Council in *Hodge* v. *The Queen,* cited *supra.*

It will be seen therefore that as a result of all these authorities and pronouncements, Parliament or the Legislatures may delegate in certain cases their powers to subordinate agencies, but that it has never been held that the Parliament of Canada or any of the Legislatures can abdicate their powers and invest for the purpose of legislation, bodies which by the very terms of the *B.N.A. Act* are not empowered to accept such delegation, and to legislate on such matters.

It has been further argued that as a result of the delegation made by the Federal Government to the Provinces, the laws enacted by the Provinces as delegatees would be federal laws and that they would, therefore, be constitutionally valid. With this proposition I cannot agree. These laws would not then be enacted "with the advice and consent of the Senate and House of Commons", and would not be assented to by the Governor General, but by

the Lieutenant Governor, who has no power to do so. Moreover, as already stated, such a right has been denied the Provinces by the *B.N.A. Act*.

If the proposed legislation were held to be valid, the whole scheme of the Canadian Constitution would be entirely defeated. The framers of the *B.N.A. Act* thought wisely that Canada should not be a unitary state, but it would be converted into one, as Mr. Justice Hall says, if all the Provinces empowered Parliament to make laws with respect to *all matters* exclusively assigned to them. Moreover, it is clear that the delegation of legislative powers by Parliament to the ten Provinces on matters enumerated in Section 91 of the *B.N.A. Act* could bring about different criminal laws, different banking and bankruptcy laws, different military laws, different postal laws, different currency laws, all subjects in relation to which it has been thought imperative that uniformity should prevail throughout Canada.

For the above reasons, I have come to the conclusion that this appeal should be dismissed.

RAND J.:—This appeal is from a majority judgment of the Supreme Court of Nova Scotia in which negative answers were given to certain questions referred to it by the Lieutenant-Governor in Council. They arise out of a bill introduced into the Provincial Legislature which purports to authorize the delegation of certain legislative power to Parliament and the acceptance and exercise of the converse delegation from Parliament; and their purpose is to obtain the opinion of the Court on the competency of Legislature and Parliament to such delegation. Both the questions and the text of the bill are set out in the reasons of other members of the Court and I will not repeat them.

The considerations pertinent to the answers to be given are to be found in the circumstances of the creation and evolution of constitutional self-goverment under the British Crown. The devolution of legislative power in the administration of the Empire, issuing in the Commonwealth relations of today, evolved a characteristic polity through the investment, either under the prerogative or

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by statute of the Imperial Parliament, of jurisdiction in local legislative bodies. By the Confederation Act of 1867, that jurisdiction and its concomitant executive authority were committed to Parliament and Legislature in as plenary and ample manner "as the Imperial Parliament in the plenitude of its power * * * could bestow"; *Hodge* v. *The Queen* (1). The essential quality of legislation enacted by these bodies is that it is deemed to be law of the legislatures of Canada as a self-governing political organization and not law of the Imperial Parliament. It was law within the Empire and is law within the Commonwealth; but it is not law as if enacted at Westminster, though its source of authority is derived from that Parliament.

The distinction between the status of such a legislature and a delegate arises from the difference between an endowment by a paramount legislature of an original, self-responsible, and exclusive jurisdiction to enact laws, subject, it may be, to restrictions and limitations, and the entrustment of the exercise of legislative action to an agency of the entrusting authority. The latter is a present continuing authority to effect provisions of law which are attributed to the delegating power. The difference between these conceptions is of substance, a difference lying in the scope and nature of the powers conferred and retained.

The extent of delegation depends upon the language of the grant, but the full original powers are retained: *Huth* v. *Clarke* (2); Wills J. at page 395:—

> Delegation, as that word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself * * * It is never used, by legal writers, so far as I am aware, as implying that the delegating person parts with his powers so as to denude himself of his rights. If it is correct to use the word in the way in which it is used in the maxim as generally understood, the word "delegate" means little more than an agent.

Whether the authority of sub-delegation is conferred depends likewise on the language of the grant in the framework of the circumstances: *The Chemicals Reference* (3). That Canadian legislatures may delegate has long been settled: *Hodge* v. *The Queen, (supra)*.

(1) (1883) 9 App. Cas. 117 at 132.
(2) (1890) 25 Q.B.D. 391 at 395.
(3) [1943] S.C.R. 1.

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Notwithstanding the plenary nature of the jurisdiction enjoyed by them, it was conceded that neither Parliament nor Legislature can either transfer its constitutional authority to the other or create a new legislative organ in a relation to it similar to that between either of these bodies and the Imperial Parliament. On the former, the observation of Lord Watson in the argument in *C.P.R.* v. *Notre Dame de Bonsecours* (1), as reported in Lefroy, *Canada's Federal System* (1913) p. 70 note 10(*a*):—

> The Dominion cannot give jurisdiction or leave jurisdiction with the Province. The provincial parliament cannot give legislative jurisdiction to the Dominion parliament. If they had it, either one or other of them, they have it by virtue of the Act of 1867. I think that we must get rid of the idea that either one or other can enlarge the jurisdiction of the other or surrender jurisdiction.

seems to me, if I may say so, to be incontrovertible; and the latter is settled by the judgment of the Judicial Committee in *The Queen* v. *Burah* (2). There are to be kept in mind, also, certain conditions to the procedure of enactment such as, for example, the participation in legislation of the Sovereign through the Lieutenant-Governor as exemplified in *In re The Initiative and Referendum Act* (3), and the provisions of sections 53 and 54 of the Act of 1867 dealing with taxation and the appropriation of the public revenue by Parliament.

On the argument, discussion as to the precise delegate, whether the Legislature as such or the individuals comprising it, tended to confuse the issue raised by the proposed bill. The language of the latter leaves us in no doubt of what is intended: it is the Legislature of the Province or Parliament acting as such which is intended to exercise the delegated authority, and on this footing the questions are to be answered.

Can either of these legislative bodies, then, confer upon the other or can the latter accept and exercise in such a subsidiary manner legislative power vested in the former? They are bodies of co-ordinate rank; in constitutional theory, legislative enactment is that of the Sovereign in Parliament and in Legislature, to each of which, as legislative organs of a federal union, has been given exclusive authority over specified matters in a distribution of total

(1) [1899] A.C. 367.
(2) (1877) 3 App. Cas. 889.
(3) [1919] A.C. 935.

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legislative subject-matter. Delegation has its source in the necessities of legislation; it has become an essential to completeness and adaptability of much of statutory law; but if one legislature is adequate, by its own action, to enactment, so, surely, is the other; in the proposed bill, there is no suggestion of authorizing Parliament, as delegate, in turn to sub-delegate to agencies of its own, and the practical ground of delegation is absent. But even where the broadest authority is intended, can we seriously imagine the Imperial Parliament, in the implication of the power to delegate, intending to include delegation by and to each other? These bodies were created solely for the purposes of the constitution by which each, in the traditions and conventions of the English Parliamentary system, was to legislate, in accordance with its debate and judgment, on the matters assigned to it and on no other. To imply a power to shift this debate and this judgment of either to the other is to permit the substance of transfer to take place, a dealing with and in jurisdiction utterly foreign to the conception of a federal organization.

So exercising delegated powers would not only be incompatible with the constitutional function with which Nova Scotia is endowed and an affront to constitutional principle and practice, it would violate, also, the interest in the substance of Dominion legislation which both the people and the legislative bodies of the other provinces possess. In a unitary state, that question does not arise; but it seems to be quite evident that such legislative absolutism, except in respects in which, by the terms express or implied of the constituting Act, only one jurisdiction is concerned, is incompatible with federal reality. If a matter affects only one, it would not be a subject for delegation to the other; matters of possible delegation, by that fact, imply a common interest. Dominion legislation in relation to employment in Nova Scotia enacted by the legislature may affect interests outside of Nova Scotia; by delegation Nova Scotia might impose an indirect tax upon citizens of Alberta in respect of matters arising in Nova Scotia; or it might place restrictions on foreign or interprovincial trade affecting Nova Scotia which impinge on interests in Ontario. The incidence of laws

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of that nature is intended by the constitution to be determined by the deliberations of Parliament and not of any Legislature. In the generality of actual delegation to its own agencies, Parliament, recognizing the need of the legislation, lays down the broad scheme and indicates the principles, purposes and scope of the subsidiary details to be supplied by the delegate: under the mode of enactment now being considered, the real and substantial analysis and weighing of the political considerations which would decide the actual provisions adopted, would be given by persons chosen to represent local interests.

Since neither is a creature nor a subordinate body of the other, the question is not only or chiefly whether one can delegate, but whether the other can accept. Delegation implies subordination and in *Hodge* v. *The Queen*, (*supra*), the following observations (at p. 132) appear:—

> Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.
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> * * *
>
> It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into his own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for Courts of Law, to decide.

Subordination, as so considered, is constitutional subordination and not that implied in the relation of delegate. Sovereign states can and do confer and accept temporary transfers of jurisdiction under which they enact their own laws within the territory of others; but the exercise of delegation by one for another would be an incongruity; for the enactments of a state are of its own laws, not those of another state.

Subordination implies duty: delegation is not made to be accepted or acted upon at the will of the delegate; it is ancillary to legislation which the appropriate legislature thinks desirable; and a duty to act either by enacting or by exercising a conferred discretion not, at the particular time, to act, rests upon the delegate. No such duty could be imposed upon or accepted by a co-ordinate legislature

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and the proposed bill does no more than to proffer authority to be exercised by the delegate solely of its own volition and, for its own purposes, as a discretionary privilege. Even in the case of virtually unlimited delegation as under the Poor Act of England, assuming that degree to be open to Canadian legislatures, the delegate is directly amenable to his principal for his execution of the authority.

In another aspect the proposal is equally objectionable. Would it be within constitutional propriety for the representatives both of the Sovereign and of the people of Nova Scotia, to appropriate their legislative ritual to the enactment of a law not of Nova Scotia, but of Canada? Acting as a subordinate body, the recital in the usual formula of enactment would be false; and the Lieutenant-Governor as well as the members of the Legislature could decline to participate in such roles.

The argument, in relation to taxation, seemed to assume a power in the Dominion to tax for interests or purposes local to Nova Scotia which by a delegation to that province could be more appropriately exercised; but the language of Lord Atkin in the *Unemployment Insurance Reference* (1), would appear to reject such a view.

The practical consequences of the proposed measure, a matter which the Courts may take into account, entail the danger, through continued exercise of delegated power, of prescriptive claims based on conditions and relations established in reliance on the delegation. Possession here as elsewhere would be nine points of law and disruptive controversy might easily result. The power of revocation might in fact become no more feasible, practically, than amendment of the Act of 1867 of its own volition by the British Parliament.

I would, therefore, dismiss the appeal with costs.

KELLOCK J.:—All of the questions which are the subject matter of the reference dealt with by the judgment in appeal involve the one question as to the competence either of Parliament or a provincial Legislature to delegate, one to the other, authority to enact legislation exclusively within the power of the delegating authority under the terms of the British North America Act. In my opinion,

(1) [1937] A.C. 326 at 366.

the point does not lend itself to extended discussion. Under the statute the powers committed to Parliament and to the Provincial Legislatures respectively are, as already stated, exclusive. If therefore Parliament, for example, were to purport to authorize a Provincial Legislature to exercise legislative jurisdiction assigned exclusively to the former, any exercise of such authority by the latter would in fact be an attempt "to make laws" in relation to a matter "assigned exclusively" to Parliament, and consequently prohibited to the Provincial Legislature. In the same way, if a Provincial Legislature purported to authorize Parliament to legislate with respect to any of the matters enumerated in section 92, and Parliament attempted to act upon such authorization, it would similarly be attempting to "make laws" in relation to a matter assigned exclusively to the Provinces.

During the argument in *C.P.R.* v. *Notre Dame* (1), Lord Watson, with the apparent approval of Lord Davey, said:

> The Dominion cannot give jurisdiction, or leave jurisdiction with the province. The provincial parliament cannot give legislative jurisdiction to the Dominion parliament. If they have it, either one or the other of them, they have it by virtue of the Act of 1867. I think we must get rid of the idea that either one or the other can enlarge the jurisdiction of the other or surrender jurisdiction.

(see Lefroy, *Canada's Federal System,* 1913, p. 70, Note).

The same view had been earlier expressed by Strong J., as he then was, in *St. Catharines Milling Company* v. *The Queen* (2).

Davies J. as he then was, in *Ouimet* v. *Bazin* (3), indicated perhaps a contrary view at page 513, but in *Lord's Day Alliance of Canada* v. *Attorney General for Manitoba* (4), the Judicial Committee explained the real basis of provincial Lord's Day legislation as not involving any delegation of legislative jurisdiction by the Dominion, and for that reason the Committee refrained from dealing with the question now under discussion.

Counsel for the Attorney General for Ontario in his argument referred to the language of Lord Phillimore in *Caron* v. *The King* (5), where, in referring to taxation powers of

(1) [1899] A.C. 367.
(2) 13 Can. S.C.R. 577 at 637.
(3) (1912) 46 Can. S.C.R. 502.
(4) [1925] A.C. 384.
(5) [1924] A.C. 999 at 1004.

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Parliament and the provincial legislatures respectively, his Lordship quoted from an earlier judgment of the Committee in *Bank of Toronto* v. *Lambe* (1), as follows:

> Their Lordships adhere to that view, and hold that, as regards direct taxation within the province to raise revenue for provincial purposes, that subject falls wholly within the jurisdiction of the provincial legislatures.

Lord Phillimore continued:

> Both sections of the Act of Parliament must be construed together; and it matters not whether the principle to be applied is that the particular provision in head 2 of s. 92 effects a deduction from the general provision in head 3 of s. 91, or whether the principle be that head 3 of s. 91 is confined to Dominion taxes for Dominion purposes.
>
> The only occasion on which it could be necessary to consider which of these two principles was to guide, would be in the not very probable event of the Parliament of Canada desiring to raise money for provincial purposes by indirect taxation. It might then become necessary to consider whether the taxation could be supported, because the power to impose it, given by head 3 of s. 91, had not been taken out of the general power by the particular provision, or because though not given by head 3, it was given as a residual power by the other parts of s. 91. But no such question arises now.

In considering the power of Parliament "to raise money for provincial purposes by indirect taxation", Lord Phillimore was not considering that power as the subject matter of delegation from a provincial legislature at all, such legislature having no such power.

Appellant's contention would appear to be contrary to the whole theory of the Constitution Act under which, to adopt the language of the Quebec Resolutions, the central government was to be "charged" with matters of common interest to the whole country, and the local governments "charged" with the control of local matters in their respective sections. The effect of the statute is that each is "charged" with their respective responsibilities to the exclusion of the other.

Counsel for the appellants sought to avoid the above conclusion by contending that if either Parliament or a provincial legislature should act under a power delegated by the other, such act would not be the act of a legislature but that of *personae designatae,* their act being in reality that of the delegating authority.

In my opinion, this contention is really not open upon the questions submitted, for the reason that in the questions themselves, as well as in Bill No. 136, the delegation

(1) (1887) 12 App. Cas. 575.

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is invariably described as a delegation to "the Legislature of Nova Scotia" or to "Parliament". In the contemplation of the questions, both the Provincial Legislature and Parliament, in purporting to exercise the delegated power, would be acting in the character of Legislature and Parliament respectively and as though each were exercising an additional head of jurisdiction written into section 91 or 92, rather than as mere groups of individuals. I therefore follow the course indicated by the Judicial Committee in the *Lord's Day Alliance case* (*supra*) where it is pointed out at page 389 that it is more than ordinarily expedient in the case of a reference such as this that the court should refrain from dealing with questions other than those which are in express terms referred to it. I would therefore dismiss the appeal.

ESTEY J:.—Bill No. 136 entitled "An Act Respecting the Delegation of Jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and vice versa" was introduced into the Legislature of the Province of Nova Scotia on August 26, 1947. After its first reading the bill was referred, under R.S. of N.S., 1923, c. 226, to the Supreme Court of Nova Scotia for an opinion as to its constitutional validity. The majority of the learned Judges, Mr. Justice Doull dissenting, expressed the opinion that it was beyond the jurisdiction of the Province to enact such legislation.

The Parliament of Canada and the Provincial Legislatures are created by and derive their respective legislative jurisdictions from the *British North America Act*. Within their respective legislative jurisdictions these legislative bodies possess complete legislative power. This includes the power to delegate legislative authority respectively to the Governor and Lieutenant Governor-in-Council and to subordinate bodies of their own creation. *Hodge* v. *The Queen* (1). *In Re Gray* (2). *Fort Frances Pulp and Power Company* v. *Manitoba Free Press Company* (3). *Shannon* v. *Lower Mainland Dairy Products Board* (4). *Chemicals Reference,* (5).

(1) (1883) 9 App. Cas. 117; 1 Cam. 333.
(2) (1918) 57 Can. S.C.R. 150.
(3) [1923] A.C. 695; 2 Cam. 302.
(4) [1938] A.C. 708; Plaxton 379.
(5) [1943] S.C.R. 1.

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In this reference it is submitted that the principle of delegation should be extended in order that the Parliament of Canada may delegate legislative power to the Provincial Legislatures and, in turn, that the Provincial Legislatures may delegate legislative power to the Parliament of Canada.

In *Huth* v. *Clarke* (1), Wills J. discusses delegation as between legislative bodies and, in part, states:

> Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself.

The fact that each of these legislative bodies—the Parliament of Canada and the Provincial Legislatures—as delegator would retain all of its legislative jurisdiction and might revoke the authority delegated does not detract from, nor militate against, the conclusion that, in so far as the legislative body as delegatee purports to exercise the delegated authority, it is acting under a jurisdiction to legislate given to it by the delegator. The Parliament of Canada, in so far as it seeks to delegate to a Provincial Legislature authority to legislate, thereby purports to enlarge the legislative jurisdiction of that Legislature. The same is true when a Provincial Legislature seeks to delegate its authority to legislate to the Parliament of Canada. It is beyond the jurisdiction of these respective bodies to give legislative jurisdiction one to the other.

> The Dominion cannot give jurisdiction, or leave jurisdiction, with the province. The provincial parliament cannot give legislative jurisdiction to the Dominion parliament. If they have it, either one or the other of them, they have it by virtue of the Act of 1867. I think we must get rid of the idea that either one or the other can enlarge the jurisdiction of the other or surrender jurisdiction.—Lord Watson in Lefroy's *Canada's Federal System,* 1913 ed., p. 70 1 Note 10(*a*).

Moreover, the provisions of the British North America Act contemplate these legislative bodies will, at all times, in the exercise of their sovereign jurisdiction, act as principals. There is no express provision nor is there any under which it could be reasonably implied that these bodies were intended to act as agents one for the other.

(1) (1890) 25 Q.B.D. 391 at 395.

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Bill 136, in so far as it provides for the delegation of Provincial legislative powers or the reception of legislative powers from the Parliament of Canada, is beyond the jurisdiction of the Province to enact.

The appeal should be dismissed with costs.

FAUTEUX J.:—The true question is whether or not it is within the competence of the Parliament of Canada and within the competence of the Legislature of a province to exchange between themselves or transfer to one another, directly or indirectly, temporarily and from time to time, a legislative authority they both possess only by virtue of the British North America Act, 1867 (hereinafter referred to as the Act) and which each, to the exclusion of the other, can exercise only with respect to certain classes of subjects.

The suggestion of delegation running through Bill 136, in reference to such transfer of legislative authority or the method therein devised to achieve such transfer does not, in my respectful view, go to the essence of the question involved. For, and it may be at once stated, the word "delegate" is not only an inadequate but a confusing designation of what the Bill purports to authorize. In the concept of delegation: the acceptation of the delegation is imperative and not permissive; the delegatee does not make laws but by-laws, orders, rules or regulations; and such a subordinate legislation is, of its nature, ancillary to the statute which delegates the power to make it. As to the method to achieve the purpose of the Bill, it may be sufficient to say that in as much as it purports, in effect, to constitute Parliament a legislative agent of the Legislature of a province and the Legislature of a province the legislative agent of Parliament, it is incompatible with the normal operation of the Act.

The British North America Act, 1867 is the sole charter by which the rights claimed by the Dominion and the provinces respectively can be determined. No one has ever contended that a direct or indirect transfer of legislative authority—whatever be the name used to designate such transfer—is provided for in express terms under the Act, nor can it be implied without doing violence to the

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intent of the draftsman, to what is expressed in it and to the weight of judicial pronouncements available in the matter.

What induced the Imperial Parliament to pass the Act must be found in the recitals in its preamble. Briefly, it is as therein indicated: the desire of the provinces of Canada, Nova Scotia and New Brunswick to be federally united into one Dominion under the Crown; the expectation that such union would be conducive to the welfare of the provinces and to the promotion of the interests of the British Empire; the necessity to provide, on the establishment of the union, for the constitution of legislative authority and to declare the nature of executive government. This desire of the provinces to be united and the conditions upon which such union was agreed by them had been previously expressed in the Quebec and London Resolutions. In both it is stated that:

> * * * the system of government best adapted under existing circumstances to protect the diversified interests of the several provinces and secure efficiency, harmony and permanency in the working of the union is a general government charged with matters of common interest to the whole country and local governments for each of the Canadas, and for the provinces of Nova Scotia and New Brunswick, charged with the control of local matters in their respective sections * * *

Speaking to the point, Lord Atkin, in *Attorney General for Canada* v. *Attorney General for Ontario* (1), said:

> No one can doubt that this distribution (of powers) is one of the most essential conditions, probably the most essential condition, in the inter-provincial compact to which the British North America Act gives effect.

In the result, each of the provinces, enjoying up to the time of the union, within their respective areas, and *quoad* one another, an independent, exclusive and over-all legislative authority, surrendered to and charged the Parliament of Canada with the responsibility and authority to make laws with respect to what was then considered as matters of common interest to the whole country and retained and undertook to be charged with the responsibility and authority to make laws with respect to local matters in their respective sections. This is the system of government by which the Fathers of Confederation intended—and their intentions were implemented in the

(1) [1937] A.C. 326 at 351.

Act—to "protect the diversified interests of the several provinces and secure the efficiency, harmony and permanency in the working of the union."

The suggestion that this distribution of legislative authority, enacted by the Imperial Parliament, under the then "existing circumstances", could now be altered by Parliament or the Legislature of a province by transfer, exchange, or delegation, is repugnant to the very intent manifested in the above Resolutions ultimately implemented under the Act.

It is difficult to conceive that the provinces, so strongly desirous of retaining for themselves the legislative authority they then had with respect to local matters in order to continue, each of them, to attend to its own diversified interests, would have, at the same time, entertained the idea of giving to Parliament any kind of legislative authority—subordinate or original—with respect to such matters. Equally it is difficult to accept that the provinces, merging in Parliament so much of their legislative authority as was then considered necessary to properly attend to matters of common interest to the whole country, intended that such legislative authority should in turn be retransferred by Parliament, in part or temporarily, to the Legislature of one of the provinces, when it was so clearly intended that it should be shared and exercised at any and all times, in Parliament, by the people of all the provinces of the union, through a pre-determined proportion of representatives for each of the provinces. I am unable to imagine that what Bill 136 purports to authorize was ever intended by the Imperial Parliament.

Turning to what is expressed in the Act. It is convenient to say, at first, that the appellant did not suggest that the legislative authority of Parliament and of the Legislatures of the provinces respectively, can be transferred the one to the other, but contended it could be delegated the one to the other. What Bill 136 purports to authorize is not, for the reasons above indicated, a delegation within the ordinary meaning of the word but, in my views, a temporary and indirect transfer. Assuming, how-

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ever, that it could be a delegation, there can be no doubt that the express terms of sections 91 and 92 and the necessary implication flowing from the enactment of section 94 prohibits such delegation.

While the two former sections provide for a distribution of legislative powers between Parliament and the Legislatures of the provinces, they go further and bar one from entering the legislative field assigned to the other. This distribution, and the prohibition which is a necessary corollary of it, constitute a peculiar feature of the Act with respect to the right of delegation and calls for different considerations in applying it. Each of these legislative bodies, equally sovereign within its own field, has the right to delegate its legislative authority to a subordinate body, for,—as was done under the *War Measures Act*—generally, the right to delegate is tacitly included in the right to legislate and, within one's own field, is not denied under the Act. Beyond their respective spheres, both Parliament and the Legislatures are powerless and each is specially denied the legislative powers given to the other. In these circumstances, I fail to see, firstly, how in the absence of express terms, one could assume the right to accept delegation and, secondly, how one could claim the right to make a delegation of powers to one which, in express terms, is barred from exercising them. Either one of these conclusions would justify the statement that such right to delegate is excluded under the Act, for delegation implies a delegator capable to delegate and a delegatee capable to accept. Legislative jurisdiction cannot be assumed or be given by consent. Had it been the intention of the Imperial Parliament to give to one legislative body the right to delegate to the other, the word "exclusively" in both sections would have been omitted. In the context, this word is without object unless it is to debar one legislative body from exercising any kind of legislative authority with respect to matters within the jurisdiction of the other.

Section 94 of the Act makes an exception to the rigidity of the rule related to the distribution of legislative powers

and gives Parliament a relative power of legislation for uniformity of laws in three of the provinces of the union. It reads:—

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

The presence of the above provisions in the Act clearly indicates that the right of one of the legislative bodies to delegate to the other, cannot be implied under the Act; otherwise, the section would be useless.

The complete review of the judicial pronouncements and their appreciation, made by Chief Justice Chisholm of the Supreme Court of Nova Scotia, and the various comments made with respect to some of these pronouncements by other members of this Court, dispense with repetition and establish that the weight of authority is against the views expounded on behalf of the appellant.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the Attorney General of Nova Scotia: *J. A. Y. MacDonald.*

Solicitor for the Attorney General of Canada: *F. P. Varcoe.*

Solicitor for the Attorney General of Ontario: *C. R. Magone.*

Solicitor for the Attorney General of Alberta: *H. J. Wilson.*