IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT, R.S.C. 1952, C. 152, AND AS TO ITS APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED.

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*Jan. 25, 26, 27, 28
*Jun. 28

Constitutional law—Validity and applicability of the Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152, ss. 1 to 53 inclusive.

Part I of the *Industrial Relations and Disputes Investigation Act*, R.S.C. 1952, c. 152, deals with labour relations and provides for collective bargaining, certification and revocation thereof, unfair labour practices, strikes, lockouts and conciliation proceedings. Its application is restricted by s. 53 which states that Part I "applies in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada including but not so as to restrict the generality of the foregoing, (*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada". Other paragraphs specify other works, undertakings and businesses to which Part I applies.

Held (Per Kerwin C.J., Taschereau, Kellock, Estey, Cartwright, Fauteux and Abbott JJ.): Ss. 1 to 53 inclusive of the Act (on which alone argument was heard) are *intra vires* the Parliament of Canada, and their application will depend upon the circumstances of any particular case.

Per Rand J.: The Act is valid if applied to works and undertakings within ss. 91(29) and 92(10) of the *B.N.A. Act*. But crews of vessels engaged in strictly local undertakings or services and locally organised stevedores are outside the scope of the Act.

Per Locke J.: Sections 1 to 53 inclusive of the Act are *intra vires*, except as to employees engaged upon or in connection with the works, undertakings or businesses operated or carried on for or in connection with shipping, the activities of which are confined within the limits of a province, or upon works, undertakings or businesses of which the main or principal part is so confined.

The Eastern Canada Stevedoring Company Ltd., incorporated under the Companies Act of Canada, 1934, supplied stevedoring and terminal services in Toronto consisting exclusively "of services rendered in connection with the loading and unloading of ships, pursuant to contracts with seven shipping companies to handle all loading and unloading of their ships arriving and departing during the season." All these ships were operated on regular schedules between ports in Canada and ports outside of Canada.

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*PRESENT: Kerwin C.J. and Taschereau, Rand, Kellock, Estey, Locke, Cartwright, Fauteux and Abbott JJ.

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Held (Rand J. dissenting and Locke J. dissenting in part): The Act applied in respect of employees in Toronto of the Company employed upon or in connection with the operation of the work, undertaking or business of the Company as described in the Order of Reference.

Per Rand J. (dissenting): On the evidence submitted, the Act did not apply to the employees of the Company.

Per Locke J. (dissenting in part): The Act applied to the stevedores, as defined in the Order of Reference, but not to the office staff of the Company.

REFERENCE by His Excellency the Governor General in Council (P.C. 1785, dated November 18, 1954) to the Supreme Court of Canada.

F. P. Varcoe, Q.C., D .W. Mundell, Q.C. and *R. W. McKimm* for the Attorney General of Canada.

C. R. Magone, Q.C. for the Attorney General of Ontario.

L. E. Beaulieu, Q.C. for the Attorney General of Quebec.

H. J. Wilson, Q.C. and *J. J. Frawley, Q.C.* for the Attorney General of Alberta.

A. W. Roebuck, Q.C. and *D. R. Walkinshaw, Q.C.* for the Brotherhood of Railway and Steamship Clerks.

F. A. Brewin, Q.C. for District 50, United Mine Workers of America.

N. L. Mathews, Q.C. and *Beatrice E. Mathews* for the Eastern Canada Stevedoring Co. Ltd.

THE CHIEF JUSTICE:—His Excellency the Governor General-in-Council has referred the following questions of law to this Court for hearing and consideration:—

(1) Does the Industrial Relations and Disputes Investigation Act, Revised Statutes of Canada, 1952, Chapter 152, apply in respect of the employees in Toronto of the Eastern Canada Stevedoring Co., Ltd., employed upon or in connection with the operation of the work, undertaking or business of the company as hereinbefore described?

(2) Is the Industrial Relations and Disputes Investigation Act, Revised Statutes of Canada, 1952, Chapter 152, *ultra vires* of the Parliament of Canada either in whole or in part and, if so, in what particular or particulars and to what extent?

Certain facts and circumstances are recited in the Order of Reference, the relevant ones being now set out.

The Eastern Canada Stevedoring Co. Ltd., which was incorporated under *The Companies Act of Canada, 1934*, c. 33, furnishes stevedoring and terminal services for certain

shipping companies in the ports of Halifax, St. John, Montreal, Mont Louis, Rimouski and Toronto. In Toronto it owns Shed Number 10 and leases Shed Number 4 and during the navigation season in 1954—approximately April to November—its operations consisted exclusively of services rendered in connection with the loading and unloading of ships, pursuant to contracts with seven shipping companies to handle all loading and unloading of their ships arriving and departing during that season. All these ships were operated on regular schedules between ports in Canada and ports outside of Canada.

The Company's business in Toronto consists in rendering the following services. The Company on notification of the pending arrival of ships makes such preparations as are necessary for unloading and loading such ships, including the taking on of necessary employees. It also receives delivery of cargo from the tailboards of trucks or from railway car doors and holds it in its sheds for loading. With respect to unloading, when the ship has arrived, and been secured by its crew alongside the Company's sheds, the Company opens the hatches (if this is not done by the crew) and removes the cargo from the hold to the dock and there delivers it to consignees at the tailboards of trucks or at railway car doors or places the cargo in the Company's sheds. The cargo placed in the sheds is immediately, or during the next few days, delivered by the Company as required to the tailboards of trucks or to railway car doors. In these operations the Company uses the ship's winches and booms for raising and lowering the slings; it furnishes pallets necessary for lifting and piling the cargo and machines for towing and lifting cargo on the dock and in the sheds; and in cases of cargo too heavy for the ship's winches and booms it uses land cranes obtained by it. With respect to loading, the operations are substantially similar except that they are reversed, the last act of loading being the securing of the hatch covers if this is not done by the crew of the ship. In unloading the Company checks the cargo against the ship's manifest as it is unloaded and for loading it checks the cargo as it is received to assist in preparation of the ship's manifest. Forms of contracts entered into by the Company in 1954, which are typical of all such contracts entered into by it for providing these services, are annexed to the Order-in-Council.

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In Toronto the Company has the following employees: officers, office staff, superintendents, foremen, longshoremen, checkers and shedmen. The four last-mentioned groups are commonly referred to in the port of Toronto as "stevedores". During loading and unloading the Company has at the dock a management representative, superintendents and walking-bosses, and stevedores. The duties of these stevedores are as follows. The longshoremen work in gangs under the foremen. In unloading some remove hatch covers if necessary and work in the hold to place the cargo in slings; some are winch operators and signalmen operating the ship's hoists; and some work on the dock to sort and pile cargo in the sheds except where immediate delivery is taken by the consignee or carrier. In loading the operation is reversed, the cargo being taken from the sheds and stowed in the hold by longshoremen whose last act is, if necessary, to secure the hatch covers and winches and booms. The shedmen in general deliver cargo from the sheds to the tailboards of trucks or to railway car doors or receive cargo at those points and place it in the sheds and sometimes re-arrange the cargo in the sheds. The checkers check the incoming cargo against the ship's manifest and check outgoing cargo for preparation of the ship's manifest. The unloading and loading of a ship is performed under the direction and authority of the ship's officers. The orders of the ship's officers are given to the supervisory personnel of the Company who direct the work of the stevedores.

In 1953 the Brotherhood of Railway and Steamship Clerks, Freighthandlers, Express and Station Employees, as the bargaining agent for a bargaining unit, consisting of all employees of the Company in the port of Toronto, save and except non-working foremen, persons above the rank of foreman, office staff and security guards, was granted conciliation services by the Minister of Labour for Canada and subsequently entered into a collective agreement with the Company, pursuant to the Canadian Act. On June 17, 1954, a further collective agreement was entered into by the Company and the Brotherhood. On June 15, 1954, the United Mine Workers of America applied to the Ontario Labour Relations Board for certification as the bargaining agent of the same employees, and that Board decided it had

jurisdiction to hear the application for certification and to deal with it on its merits. The Brotherhood applied to the Supreme Court of Ontario for an order quashing that decision, or, in the alternative, for an order prohibiting the Board from taking proceedings with respect to the application. The Attorney General of Ontario intervened and notified the Attorney General for Canada that in those proceedings the constitutional validity of the Canadian Act, the long title of which is an Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes, would be brought in question. The order of reference was made in order to settle the dispute and obtain the opinion of this Court as to the jurisdiction of Parliament to enact the statute.

The Industrial Disputes Investigation Act of 1907 applied generally to a large number of important industries in Canada and it was held by the Judicial Committee in *Toronto Electric Commissioners* v. *Snider* (1), that that Act was not within the competence of Parliament, as it was clearly in relation to property and civil rights in the Provinces, a subject reserved to the Provincial Legislatures by s. 92, s-s. 13 of the *British North America Act*. Since then the Act has been re-cast and is now found in the form submitted to us for consideration.

As its name indicates, the present Act deals with labour relations and the sections in Part I provide, in a pattern now familiar, for collective bargaining, certification and revocation thereof, unfair labour practices, strikes, lockouts, conciliation proceedings. S. 2 (1) (i) reads:—

> 2. (1) In this Act,
>
> .....
>
> (i) 'employee' means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include
>
> (i) a manager or superintendent, or any other person who, in the opinion of the Board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations, or
>
> (ii) a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity.

(1) [1925] A.C. 396.

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However, the Act is restricted in its application by the first section in Part II, s. 53:—

53. Part I applies in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province.

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

The sections in Part I are thus specifically restricted in general terms to any work, undertaking or business that is within the legislative authority of the Parliament of Canada. The enumeration in paragraphs (*a*) to (*h*) inclusive is not to restrict "the generality of the foregoing", but, taking in order the subjects listed, the matters coming within paragraph (*a*), subject to a reservation hereafter mentioned, are referable to Head 10 of s. 91 of the *British North America Act*, "Navigation and Shipping"; the matters within paragraphs (*b*) and (*c*) are referable to Head 10 of s. 92 and, therefore, by virtue of Head 29 of s. 91, are within the exclusive legislative authority of Parliament; those within paragraph (*d*) are referable to Head 13 of s. 91 "Ferries between a Province and any British or Foreign Country or between Two Provinces"; those within paragraph (*g*) are referable to Head 10 (*c*) of s. 92 and again, therefore, by Head 29 of s. 91, within the exclusive legislative authority of Parliament; paragraphs (*e*) and (*f*) have been placed

under the jurisdiction of Parliament by judicial interpretation and (*h*) is merely an omnibus paragraph. The reservation is that in some particulars a provincial legislature has jurisdiction over ferries or ships plying only between points within the limits of the province, but even there questions may arise in connection with particular employees because the power to control the class of subjects falling within "Navigation and Shipping" is to be widely construed. *Paquet* v. *Corporation of Pilots for and Below the Harbour of Quebec* (1); *City of Montreal* v. *Montreal Harbour Commissioners* (2), particularly at 312.

It is not to be presumed that Parliament intended to exceed its powers. *McLeod* v. *Attorney-General for New South Wales* (3); *Attorney-General for Ontario* v. *Reciprocal Insurers* (4), and, therefore, the Act before us should not be construed to apply to employees who are employed at remote stages, but only to those whose work is intimately connected with the work, undertaking or business. In pith and substance the Act relates only to matters within the classes of subjects within the specific heads of s. 91 of the *British North America Act*. Cases may develop, depending upon their particular circumstances, where it will be necessary to determine the applicability of the statute under review, but that is not a question as to the validity of its provisions.

It was contended that any meaning to be given the words "or in connection with the operation of any" in s. 53 would include the employees of the Empress Hotel in *Canadian Pacific Railway Company* v. *Attorney General for British Columbia* (5). However, there it was held that the hotel was not part of the railway works and undertaking of the railway company connecting British Columbia with other provinces, within the meaning of Head 10 (*a*) of s. 92 of the *British North America Act*, so as to be excepted from provincial legislative authority and brought within the Dominion legislative power by virtue of Head 29 of s. 91, but was a separate undertaking. Similarly it was also held that the hotel did not fall within the definition of "railway" in s-s. 21 of s. 2 of the Railway Act, 1927, and, accordingly,

(1) [1920] A.C. 1029.
(2) [1926] A.C. 299.
(3) [1891] A.C. 455 at 457.
(4) [1924] A.C. 328 at 345-46.
(5) [1950] A.C. 122.

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was not "declared to be a work for the general advantage of Canada", within the meaning of s. 6 (*c*) of the 1927 Act. That decision has no relevancy to the present discussion.

If the words complained of had not been inserted it might have been contended that it was necessary that employees should be actually employed *upon* a work, undertaking or business. In *John Pigott and Sons* v. *The King* (1), the phrase "upon any public work" in the Exchequer Court Act dealing with the liability of the Crown was construed in that sense and it was found necessary to amend that enactment. As amended it was considered in *The King* v. *Schrobounst* (2). The decision of the High Court of Australia in *Australian Steamships, Limited* v. *Malcolm* (3), is significant in the present connection, notwithstanding the difference between the constitutions of Australia and Canada and the following statement by Isaacs J. at p. 331 is particularly appropriate:—

> Now, it is evident to me that to leave outside the sphere of control, with respect to inter-State and foreign trade and commerce, all but the mere act of supply or commodity or service would practically nullify the power.

It is emphasized that the first question asks whether the Act applies "in respect of employees in Toronto of the Eastern Canada Stevedoring Co. Ltd. employed upon or in connection with the operation of the work, undertaking or business of the Company", as described in the Order-in-Council. That description is that the Company's operations for the year 1954 "consisted *exclusively* of services rendered in connection with the loading and unloading of ships, pursuant to contracts with seven shipping companies to handle all loading and unloading of their ships arriving and departing during that season. All these ships were operated on regular schedules between ports in Canada and ports outside of Canada". In connection with the first question, the fact that the Company by its charter has power "to carry on a general dock and stevedoring business in all its branches" does not require us to consider the possibility of such a power being used, or indeed the possibility of anything except the facts as they are presented to us. The circumstance that the Company is an organization independent of

(1) (1916) 53 Can. S.C.R. 626. (2) [1925] S.C.R. 458.
(3) (1914-15) 19 C.L.R. 298.

the steamship companies with which it contracted, does not, in my opinion, affect the matter, and I find it difficult to distinguish the employees we are considering from those, engaged in similar work, employed directly by a shipping company whose ships ply between Canadian and foreign ports. The question whether employees of other independent organizations engaged in furnishing services are covered by the Act should be left until the occasion arises. The employees of the Company in Toronto, as they were engaged in the year 1954, are part and parcel of works in relation to which the Parliament of Canada has exclusive jurisdiction to legislate.

Construing the Act in the manner indicated it applies in respect of employees in Toronto of Eastern Canada Stevedoring Co. Ltd. employed upon or in connection with the operation of its work, undertaking or business, as described in the Order-in-Council, including persons employed to do skilled or unskilled manual, clerical or technical work, but excluding those referred to in (i) and (ii) in s. 2 (1) (i) of the Act. The first question submitted should be answered in the affirmative.

The second question should be answered in the negative so far as sections 1 to 53 inclusive of the Act are concerned. These are the only sections as to which argument was adduced and nothing is said as to any of the others.

TASCHEREAU J.—The Governor in Council, by Order in Council of the 18th day of November, 1954, (P.C. 1954-1785) referred the following questions to this Court for hearing and consideration:—(See p. *supra*).

The material facts essential for the consideration of this submission are taken from the above mentioned Order in Council. The Eastern Canada Stevedoring Co., Ltd. is a company incorporated under The Companies' Act of Canada, Statutes of Canada, 1934, c. 33. The operations of the company consist in furnishing stevedoring and terminal services for certain shipping companies in the ports of Halifax, St. John, Toronto, Montreal, Mont Louis and Rimouski. In Toronto, the company owns one shed and leases another shed on the piers in the port. The company receives delivery of cargo from the tailboards of trucks or railway car doors,

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and holds it in its sheds for loading. As to unloading, when the ship has been secured by the crew alongside the company's shed, the hatches are opened by the company or by the crew, and the company removes the cargo from the hold to the dock, and there delivers it to consignees at the tailboards of trucks or at railway car doors, or places the cargo in the company's sheds from which it is delivered without delay.

On the 10th of June, 1953, the Brotherhood of Railway and Steamship Clerks, Freighthandlers, Express and Station Employees, entered into a collective agreement with the company, pursuant to the *Industrial Relations and Disputes Investigation Act, Revised Statutes of Canada, 1952, c. 152,* and on the 17th of June, 1954, a further collective agreement was executed by the said Brotherhood to be in effect until the 11th day of June, 1955.

On the 15th of June, 1954, District 50, United Mine Workers of America filed an application before the Ontario Labour Relations Board for certification as the bargaining agent of the employees of the company. By Order dated the 14th day of September, 1954, the Labour Relations Board of Ontario found that the *Labour Relations Act, Revised Statutes of Ontario, 1950, c. 194,* applied to the company; it also found that it had jurisdiction to accept the application and to deal with it on its merits. It was ordered that a representative vote should be taken of employees of the company in the bargaining unit.

The Brotherhood of Railway and Steamship Clerks, Freighthandlers, Express and Station Employees moved before the Supreme Court of Ontario for an Order quashing the decision of the Ontario Labour Relations Board, or in the alternative, for an Order prohibiting the Board from taking further proceedings. In order to expedite the final disposition of the legal questions involved in the proceedings in the Supreme Court of Ontario, the present reference was made by the Governor in Council.

I think that it is better to dispose first of the second question, as to whether the Federal Industrial Relations and Disputes Investigation Act is *ultra vires* of the Parliament of Canada, and if so to examine next if the Act applies in respect of the employees in Toronto of the Eastern Canada Stevedoring Co., Ltd.

The Attorney General for Canada, the Brotherhood of Railway and Steamship, the Eastern Canada Stevedoring Co., Ltd., contend that the Act is within the powers of the Federal Parliament, while the Attorney General for Ontario, the Attorney General for Quebec, the Attorney General for Alberta, and the United Mine Workers of America submit that it is *ultra vires*.

The contention is that the provincial legislatures have exclusive power to make laws in relation to matters coming within the following classes of subjects, pursuant to the B.N.A. Act, s. 92:—

13. Property and civil rights in the province.
16. Generally all matters of a merely local or private nature in the province.

It would follow that the Industrial Relations and Disputes Investigation Act is an invasion of the exclusive legislative jurisdiction of the provinces to legislate in relation to property and civil rights, because the "true nature and character of the law," or, "its pith and substance," is legislation affecting those civil rights,

The Industrial Relations and Disputes Investigation Act was originally enacted in 1907 (6 and 7 Edward VII, c. 20), but in 1925 it was held invalid by the Judicial Committee (*Toronto Electric* v. *Snider* (1)) as being legislation on a matter of provincial concern. The Act was amended in the same year (Statutes of Canada, 1925, 15 and 16 Geo. V. c. 14) in order to limit the application of the Act to a more restricted number of labour disputes. Finally, in 1948 (Statutes of Canada, 11 and 12 Geo. VI, Vol. 1, c. 54) the former legislation was repealed and a new Act was enacted to provide for the investigation, conciliation and settlement of industrial disputes.

The legislation of 1907 which was declared *ultra vires* by the Privy Council, was of a very wide general application, and its primary object was directed to the prevention of settlement of strikes and lock-outs in mines and industries connected with public utilities. It provided that upon a dispute occuring between employers and employees, in any of a large number of important industries in Canada, the Minister of Labour for the Dominion might appoint a Board

(1) [1925] A.C. 396.

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of Investigation and Conciliation, and the Board was empowered to summon witnesses, inspect documents and premises and was to try and bring about a settlement. If no settlement resulted, they were to make a report with recommendations as to the fair terms, but the report was not to be binding upon the parties. After reference to the Board, a lock-out or strike was to be unlawful. It was held that the Act was not within the competence of the Parliament of Canada under the British North America Act It was the opinion of the Judicial Committee that the legislation was in *relation to property and civil rights in the provinces,* a subject reserved to the provincial legislatures by s. 92, s-s. 13, and was not within any of the overriding powers of the Dominion Parliament specifically set out in s. 91. It was further said that the Act could not be justified under the general power in s. 91, to make laws "for the peace, order and good government of Canada", as it was not established that there existed in the matter any emergency which put the national life of Canada in an anticipated peril.

The new law is quite different and its application is limited by section 53. This section reads as follows:—

53. Part I applies in respect of employees *who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada* including, but not so as to restrict the generality of the foregoing,

(*a*) works, undertakings or businesses operated or carried on for or in connection with *navigation and shipping,* whether inland or maritime, including the operation of ships and transportaton by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

Generally, I think that the Industrial Relations and Disputes Investigation Act may be justified by head 10 of s. 91 of the British North America Act, which gives to the Parliament of Canada exclusive jurisdiction on *Navigation and Shipping*. Regulation of employment of stevedores is, I believe, an essential part of navigation and shipping and is essentially connected with the carrying on of the transportation by ship. Even if incidentally the law may affect provincial rights, it is nevertheless valid if it is, as I think, in relation to a subject within the federal legislative power under s. 91.

As it was said by Lord Haldane in *The City of Montreal* v. *Montreal Harbour Commissioners* (1): "Now, there is no doubt that the power to control *navigation and shipping* conferred on the Dominion by s. 91, is to be widely construed", and he further adds: "The terms on which these powers are given are so wide, as to be capable of allowing the Dominion Parliament to restrict very seriously the exercise of *proprietary rights.*"

In *Paquet* v. *The Corporation of Pilots for and below the Harbour of Quebec* (2), the Judicial Committee held that it was for the Dominion and not for the provincial legislature to deal exclusively with the subject of pilotage, *including the earnings of pilots.* Lord Haldane expressed the views of the Committee in the following language:—

> Navigation and shipping form the tenth class of the subjects enumerated as exclusively belonging to the Dominion in s. 91 of the Act, and the second class in the section, the regulation of trade and commerce, is concerned with some aspects at least of the same subject. Whether the words "trade and commerce", if these alone had been enumerated subjects, would have been sufficient to exclude the Provincial Legislature from dealing with pilotage, it is not necessary to consider, because, in their Lordships' opinion, the introduction into s. 91 of the words "navigation and shipping" puts the matter beyond question. It is, of course, true that the class of subjects designated as "property and civil rights" in s. 92 and there given exclusively to the Province would be trenched on if that section were to be interpreted by itself. But the language of s. 92 has to be read along with that of s. 91, and the generality of the wording of s. 92 has to be interpreted as restricted by the specific language of s. 91, in accordance with the well-established principle that subjects which in one aspect may come under s. 92 may in another aspect that is made dominant be brought

(1) [1926] A.C. 312. (2) [1920] A.C. 1029.

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within s. 91. That this principle applies in the case before their Lordships they entertain no doubt, and it was, therefore, in their opinon, for the Domnion and not for the Provincial Legislature to deal exclusively with subject of pilotage after confederation, notwithstanding that the civil rights and the property of the Corporation of Pilots of Quebec Harbour might incidentally, if unavoidably, be seriously affected.

In the *Minimum Wage Act of Saskatchewan* (1), it was held by this Court that the wages of an employee of a Postal Service of Canada were within the exclusive legislative field of the Parliament of Canada, and that any encroachment by provincial legislation on that subject must be looked upon as being *ultra vires* whether or not Parliament has or has not dealt with the subject by legislation.

This last case is very similar to the one at bar, and I have no doubt that, if it is not competent to a provincial legislature to legislate as to hours of labour and wages of Dominion servants, it is not within its power to legislate as to industrial disputes of employees on a subject matter coming within the jurisdiction of the Parliament of Canada under s. 91.

This however, cannot be construed as excluding the provincial jurisdiction over certain matters, as for instance *inland shipping,* which is not always of federal concern. The Industrial Relations and Disputes Investigation Act applies to employees who are employed *upon or in connection with* the operation of any work, undertaking or business, *that is within the legislative authority of the Parliament of Canada,* and it would therefore be *inoperative* if applied beyond this limited sphere. But this would not make the law *ultra vires.*

The words *"in connection with"* found in s. 53, must not of course be given too wide an application. But, I think it quite impossible to say in the abstract, what is and what is not *"in connection with"*. It would be overweening to try and foresee all possible cases that may arise. I can imagine no general formula that could embrace all concrete eventualities, and I shall therefore not attempt to lay one down, and determine any rigid limit. Each case must be dealt with separately.

I would therefore answer the second question in the negative.

(1) [1948] S.C.R. 248.

As to the first question, I believe that it should be answered in the affirmative. The transportation of goods by water by means of ships, is an operation entirely dependent on the services of the stevedores of the company and both are so closely connected that they must be considered as forming part of the same business.

Moreover, it is common ground that the operations of the Eastern Canada Stevedoring Company in Toronto during the relevant navigation season consisted exclusively of services rendered *in connection with* the loading and unloading of ships pursuant to contracts with seven shipping companies to handle all loading and unloading of their ships arriving and departing during that season. All these ships were operated on regular schedules between *ports in Canada and ports outside of Canada.* It is, therefore, my opinion that this is exclusively of federal concern under head 10 of s. 91, and also head 10 of s. 92 of the B.N.A. Act.

In *Harris* v. *Best Ryley & Co.* (1), (7 Asp. M.C. 274) Lord Esher said:—

> Loading is a joint act of the shipper or charterer and of the ship owner, neither of them is to do it alone but it is to be the joint act of both . . . by universal practice the shipper was to bring the cargo alongside so as to enable the ship owner to load the ship . . . it is then the duty of the ship owner to be ready to take such cargo on board and to store it on board. The stowage of the cargo is the sole act of the ship owner.

It is therefore my view that the Industrial Relations and Disputes Investigation Act applies in respect of the employees in Toronto of the Eastern Canada Stevedoring Co., Ltd.

The first interrogatory should be answered in the affirmative, and the second in the negative.

RAND J.:—The questions put to the Court arise out of *The Industrial Relations and Disputes Investigation Act* whose object is to mitigate and so far as possible avoid in advance disruptive effects to trade, commerce, transportation and other matters caused by conflicts between employers and employees resulting in strikes and lockouts.

(1) (1892) 7 Asp. M.C. 272 at 274.

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The statute does this by furnishing the machinery and procedure for negotiation and conciliation looking to agreement between the principals concerned. This latter ordinarily relates to the terms of the employment, but it is not always so.

The right to strike and to lockout are undoubtedly civil rights, but, directly or indirectly, they are exercised as auxiliary to other rights. Legislation such as that before us is directed to the public interest in the activities which the employment serves and at the same time there is an interest related to the civil rights. The primary matter of the legislation is the actual or prospective work stoppages affecting vital national concerns, but the civil rights involved, though secondary, are undoubtedly substantive. In determining its true nature and character, the considerations to be taken into account include those public interests; and consequences are pertinent, both of the underlying matters, here the stoppages of work, as well as of the legislation itself. Where the interests lie within the same legislative jurisdiction little or no difficulty is presented; but where that is not so, questions of some nicety may arise; and it is the latter feature which furnishes the principal matter for decision here.

The specific application of the statute is provided by s. 53. This is a comprehensive assertion of parliamentary power over this aspect of employment in relation to many activities. The enumeration has two main groups, "works and undertakings" allocated by s. 91(29), and "works, undertakings and businesses carried on for or in connection with navigation or shipping" under s. 91(10); and it will facilitate conclusions on both of the questions put to the Court to deal first with these groups in that order.

The background is furnished by several rulings of the Judicial Committee. In *Toronto Electric Commissioners* v. *Snider* (1), the original of the present statute passed in 1907 was held to be *ultra vires*. Its subject matter was industrial disputes throughout Canada arising out of employment in mines and industries connected with public utilities. The legislation was found to be enacted in relation to civil rights as committed exclusively to the provinces.

(1) [1925] A.C. 396.

That judgment was delivered in January of 1925. In June of the same year a Reference was made to this Court on a convention adopted by the International Labour Conference of the League of Nations limiting hours of labour in industrial undertakings, and questions were put as to the competence of legislature and Parliament over that matter. The answers were to the effect that the subject generally was within the provincial field, but that it was not competent to the legislatures to give the force of law to the proposed provisions in relation to servants of the Dominion Government or to legislate for those parts of Canada not within the boundaries of a province. In the opinion given by Duff J. it was said:—

> It is now well settled that the Dominion, in virtue of its authority in respect of works and undertakings falling within its jurisdiction, by force of section 91, no. 29, and section 92, no. 10, has certain powers of regulation touching the employment of persons engaged on such works or undertakings.

And that

> if servants of the Dominion Government egaged in industrial undertakings as defined by the convention are within the scope of its provisions, then the Dominion Parliament is the competent authority also to give force of law to those provisions as applicable to such persons.

The references to Dominion Government industries and to undertakings within s. 91(29), are to be viewed in the light of an observation by Lord Haldane on the abridged scope of Trade and Commerce in the judgment of five months earlier and the subsequent dissent from it. The convention being restricted to industrial labour, no canvass of certain matters raised in the present reference was called for.

There followed the rulings in 1937 on the Weekly Rest in Industrial Undertakings Act, 1935, The Minimum Wages Act, 1935, and The Limitation of Hours of Work Act, 1935, (1). All three enactments were held to be *ultra vires* on the same ground as in *Snider*. Lord Atkin sums up, without comment, the 1925 Reference opinion in these words:—

> The answers to the Reference, . . . were that the legislatures of the provinces were the competent authorities to deal with the subject matter, save in respect of Dominion servants, and the parts of Canada not within the boundaries of any province.

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

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But works and undertakings within 91(29) present features of overriding importance. For example, three systems of railways extend from the Atlantic to the Pacific; for them Canada is a single area in which provincial lines are for most purposes obliterated: on them, hours of labour, qualification and classification of employees, working conditions, wages, and other items of like nature, with uniformity, in general, unavoidable, are so bound up with management and operation that a piecemeal provincial regulation would be intolerable. Out of them strikes are generated which the authority responsible for the services must have the means of coping with. Provincial laws of contract may apply to formal features of individual engagements; but these play small part in large scale employment. Labour agreements, embodying new conceptions of contractual arrangements are now generally of nation-wide application, and as we know, strike action may become immediately effective throughout the systems.

In these undertakings, as in other subjects of s. 91, civil rights are necessarily embodied, and the question is not of their existence but their extent. In *Grand Trunk Railway Company* v. *Attorney General for Canada* (1), the Judicial Committee sustained the authority of Parliament to prohibit the Railway Company from contracting against liability for personal injury to their employees, which means that it can legislate in relation to the terms of employment. In *Snider* (*supra*) it was said:—

> Whatever else may be the effect of this enactment, it is clear that it is one which could have been passed, so far as any province was concerned, by the provincial legislature under the powers conferred by s. 92 of The British North Amercia Act. . . . It did no more than what a provincial legislature could have done under head 15 of s. 92 when it imposed punishment by way of penalty in order to enforce the new restrictions on civil rights.

This language, however appropriate to the general legislation then being considered, is quite unrealistic as applied to these undertakings.

As to them, and subject to what is said hereafter as to incidental matters, the provisions of the Act before us are, in my opinion, within the competency of Parliament. It was argued by Mr. Varcoe that the relations dealt with are

(1) [1907] A.C. 65.

so far implicated in management as to be exclusively within that jurisdiction; but it is unnecessary to say more than that provincial legislation, in relation to them, is inoperable.

The items of the second group present more difficulty. "Navigation and Shipping" has not been the subject of adjudication that throws much light on the issues here. Immediately associated with it in s. 91 are "(9), Beacons, Buoys, Lighthouses and Sable Island", and "(11), Quarantine and the Establishment and Maintenance of Marine Hospitals" and the latter as an exception to the generality of 92(7) gives some indication of its scope. Head (13) deals with ferries between a province and any British or foreign country or between two provinces and (29), in conjunction with 92(10), takes in (*a*) and (*b*) of the latter, Lines of Steam or other ships connecting the province with any other province or extending beyond the limits of the province or between the province and any British or foreign country.

It is of some pertinency that, until the Statute of Westminster, 1931, legislative power to deal with shipping in Canada was subject to the Merchant Shipping Act of 1854 and its successor of 1894. Under s. 735 of the latter any of its provisions could, with the approval of Her Majesty, be repealed by the legislature of a British possession as to ships registered there. Through the effect of the Merchant Shipping (Colonial) Act of 1869 and the Interpretation Act, 1889, Parliament was the appropriate legislature in Canada for that purpose. From 1873 onward statutes dealing with registration seamen, pilotage, carriage, liability and like matters, subjects of the Merchant Shipping Acts, were passed. In 1906 they were consolidated in c. 113, and culminated in The Shipping Act of 1934 enacted for the first time unrestrained by imperial legislation. The circumstance that "Navigation and Shipping" was committed to the Dominion by s. 91, apart from any question of imperial policy, is to be ascribed to the special character of these subjects and to their international as well as national implications; and the parliamentary enactments of the past seventy-five years, in their uniform and extended application to all shipping, evidence at least no incompatibility with settled provincial administration.

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In this background, fortified by the view expressed by Lord Haldane in *Montreal* v. *Harbour Commissioners* (1), the power is to be construed widely. For general purposes, the merchantile marine of this country, as one of its great national agencies, is placed under dominion control. It has become an instrument of world wide service, vital to our economic life. But s. 91 itself in heads (13) and (29) indicates some limitation to the widest scope of the words of head (10), and its reconciliation with local regulation is examined hereafter. The only authority cited bearing on the questions put is *Paquet* v. *Corporation of Pilots for Quebec* (2), which confirms the power of Parliament over pilotage fees. But from what has been mentioned it seems to be indubitable that as to matters relating to the mode of engagement, the qualifications, discipline and government of crews, exclusive legislative authority resides in Parliament.

The tests of the scope of dominion powers as they touch incidentally upon civil rights are difficult of precise formulation. In *Grand Trunk Railway Company* v. *Attorney General of Canada* (*supra*) Lord Dunedin asks whether the dealing with a civil right there was "truly ancillary to railway legislation". The fact that the prohibition would tend, as argued by the company, to negligence on the part of employees, was taken, if true, to be conclusive that the prohibition was ancillary Other expressions have been used: "necessarily incidental"; in the *Local prohibition case* (3); "incidentally"; *Ladore* v. *Bennett* (4). These phrases assume that legislation on a principal subject matter within an exclusive jurisdiction may include as incidents subordinate matters or elements in other aspects outside that jurisdiction. The instances in which this power has been upheld seem to lead to the conclusion that if the subordinate matter is reasonably required for the purposes of the principal or to prevent embarrassment to the legislation, its inclusion to that extent is legitimate. This may be no more than saying that the incidental has a special aspect related to the principal. Actual necessity need not appear as the contracting out case shows; it is the appropriateness,

(1) [1926] A.C. 299 at 312.
(2) [1920] A.C. 1029.
(3) [1896] A.C. 348 at 360.
(4) [1939] A.C. 468.

on a balance of interests and convenience, to the main subject matter or the legislation. I do not construe the words "in connection with" in the opening paragraph of s. 53 as to local matter to go beyond what can be annexed to federal legislation within the meaning of these phrases.

The facts underlying the first question show that the company concerned was incorporated under The Companies Act and is authorized to operate throughout Canada. Its services include loading and unloading cargo, storage and handling connected with the receipt and delivery of goods, and generally terminal services of transportation both by vessel and by railway. At Toronto it controls two sheds on the docks at which its work for the navigation season of 1954, April to November, was confined to water traffic between Canada and foreign countries carried on ships owned by certain steamship companies and running on regular schedules. I take this latter to mean that the traffic was that of "lines of ships" within s. 92(10(*a*) and (*b*). Whether the working staff is engaged on terminal work during the rest of the year does not appear.

As this work is clearly within the scope of the undertakings of carriage, is it significant to legislative competency that it may be carried on by the company at any wharf or port regardless of the class of the shipping service? There is nothing in the facts shown inconsistent with the company's supplying services at any other wharf and for local shipping. The company may, at any time, organize a pool of stevedores from which men would be despatched to one wharf today and to another tomorrow, and employees could be switched from one to the other at the company's pleasure. All the company undertakes is to "stevedore" the ships, but by what particular persons is a matter of indifference. At other ports in the same or in any other province, the same situation would be present. At each the activities are, in an important sense, local and make up at least a quasi-undertaking. Are its employees, as they were engaged in Toronto in 1954, amenable, in respect of labour relations, to dominion law?

The provincial position is this: the heads of Navigation and Shipping and Lines of Ships as dominion undertakings assume that in local organizations such as the company here

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labour relations are under provincial authority; the charges and the hours of work for and other terms of the services rendered, as local conditions to which all shipping is subject, are analogous to those of taxes, insurance, workmen's compensation, supplies, repairs and facilities for terminal services generally. The provinces might adopt policies on labour deemed to be of local advantage but burdening to shipping and dominion trade; but unreasonable action of this sort is not to be anticipated, and that possibility is equally applicable to industrial production for foreign trade. In fact the Dominion regulates the goods of trade and commerce and the shipping that serves them which come into existence under the terms of provincial regulation of labour.

Against this is to be weighed the national interest on which the consequences of a strike directly impinge. Legislative authority over a subject may carry with it responsibility for dealing with its disruption. If the interest, say, of the Dominion in maintaining shipping in relation to foreign trade and commerce is so affected, the question is whether ss. 91 and 92 contemplate such an interference to be subject to the provincial interest in the civil rights involved, or whether the former is such as to confer authority to deal with the cause as ancillary to the dominion power.

This latter would mean an extension of dominion jurisdiction to the internal relations of an independent organization specializing in a limited function employed not as a permanently annexed or incorporated segment of dominion undertakings but as a local agency furnishing terminal services generally for which the steamship companies contract currently. The mere fact here that the company's activity during the shipping season of 1954 was confined to certain steamships is not a controlling circumstance for the reasons already mentioned. Parliament could, I will assume, require that all loading and unloading of ships in dominion undertakings be done by employees of the ship, but it has not done so.

The legislative scope over dominion undertakings extends clearly to all features of the ship. The requirements of structure and machinery are subject to special regulations. But the employees of a dockyard or of an engineering company employed generally in that work, because of being

under an engagement to repair all the ships of a dominion line, would not thereby be brought under the Act. That local cost is one of the provincial conditions under which the vessel operates. Various needs of the undertakings call for services the furnishing of which has become specialized locally; and when unloading is performed by an independent organization, can a fractional portion of its employees be split off and annexed to dominion labour control? A divided authority would become hopelessly confused as the employees were allocated to local or federal service. This is illustrated by analogous example: must a general protective agency, because it serves banks, be treated in any degree in respect of labour relations as performing a service ancillary to banking? Would a general delivery service engaging with an express company to make local deliveries be drawn fractionally within the dominion orbit? These considerations show that, from the standpoint of practicability, the entire organization must be taken to be under a single legislative control including such auxiliary staff as office workers.

The dominion interest affected by a strike of stevedores may undoubtedly be of great importance; but in the absence of annexation of the local labour to exclusively dominion shipping, and except as to situations in which local service is merely incidental to its primary function, I am unable to treat its employee relations as ancillary to dominion power over shipping: to the civil rights involved, the dominion interest must be taken to be subordinate.

The scope of Shipping has its counterpart in the regulation of Trade and Commerce. It is now settled that jurisdiction under head 91(2) extends at least to the regulation of interprovincial and international trade and to as yet undefined general regulation throughout the Dominion but not to the regulation of particular trades within the provinces. But it is not a merely auxiliary power where civil rights are affected: Duff C. J. in *Reference re Alberta Statutes* (1):

> It is clear now, however, from the reasons for judgment (in *Attorney General for Ontario* v. *Attorney General for Canada,* (1937) A.C. 377) that the regulation of Trade and Commerce must be treated as having full independent status as one of the enumerated heads of s. 91.

(1) [1938] S.C.R. 100 at 121.

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But in their unrestricted sense, the words, "Regulation of Trade and Commerce" were early found to be such that circumscription became necessary in order, as was said by Duff J. in *Lawson* v. *Interior Tree, Fruit and Vegetable Committee* (1):

> to preserve from serious curtailment, if not from virtual extinction, the degree of autonomy which as appears from the scheme of the Act, the provinces were intended to possess.

And for the same purpose I find here a like necessity in delineating the field of Shipping.

In both s. 91(13) and s. 92(10) and (16) works, undertakings and local services within provincial authority are contemplated, and the scope of Shipping must similarly be accommodated to strictly provincial subjects. In the case of a local ferry or service on, say, a lake wholly within a province, its existence, the regulation of schedules, tariffs and matters unrelated to marine features, mark out a provincial control consistent with the general regulation of Shipping. The government and management of the ship, including qualifications and discipline of the crew, and all matters relating to navigation, remain with Parliament: but the civil rights of crews must be considered.

Shipping is not confined to the large sense of undertakings such as "lines of ships" it may be fluid both in routes and functions. Single ships may be engaged in interprovincial or foreign commerce today, otherwise than incidentally, and local trade tomorrow: they may be carriers of goods for their owners or for the public: they may compose fishing fleets as in the Maritime provinces and British Columbia with employees in incidental activities. They have their home port in a province. In these, as in strictly local undertakings, the local interest is paramount and the civil rights of the crews prima facie find their regulation in provincial law.

The jurisdiction to exercise the machinery provided by the Act must include the power to adjust, compulsorily if necessary, the civil rights involved. Can Parliament, then, prescribe the terms of settlement for striking seamen engaged in these local services? The case of *Paquet* makes

(1) [1930] S.C.R. 357 at 366.

clear its power to fix the fees for pilotage and the remuneration to the pilot, but this is a constitutive feature of navigation rather than of shipping. But it would, in my opinion be an unwarranted encroachment on provincial powers to extend the scope of Shipping in the application of s. 53 to crews of vessels engaged in strictly local undertakings or services, including fishing fleets and craft engaged primarily in intraprovincial carriage. Subject to that limitation the dominion authority under 91(10) comprehends all Shipping.

No attempt was made to adduce evidence that the organization of labour, either in relation to the crews of local shipping or to terminal services, had become so exclusive and consolidated, so uniform in action, and so implicated in trade and shipping as to bring about a new and dominating national interest in those matters. If that had been so, its relation to residual powers as well as to Shipping would have had to be examined.

Items (*g*) and (*h*) of s. 53 remains:—

> (*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and
>
> (*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

The former, so far as the works themselves are likewise undertakings, would be such as yield some mode of service of a public or quasi-public nature. I see no distinction to be made between them and dominion works and undertakings generally. Undertakings, existing without works, do not appear in 92(10) (*c*) and cannot be the subject of such a declaration.

Item (*h*) seems to envisage matters falling within the residuary power of s. 91. No illustration of subject matter was offered on the argument and what might well come within it, "radio", is already mentioned in item (*f*). Nor is it evident that except in extraordinary circumstances could "business" be brought within that power. The general considerations already mentioned would be relevant; but until something more precise of the nature of the possible matters or business appears little more can be said.

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Then the opening language of s. 53 speaks of any "business" within the authority of Parliament. This would include banking or businesses undertaken by the Dominion government. The latter being property of the Dominion within s. 91(2), the terms and conditions of employment as well as the activities themselves lie within parliamentary regulation, whether carried on through the means of an agency or a corporation or by a department.

Banking, the incorporation of banks and the issue of paper money come under s. 91(15). It would be incompatible with that power with its national interest and responsibility that the qualifications, classifications, hours of labour, wages and salaries of employees, related as they are to the earning charges of interest, etc., or the procedure to obtain agreement on them, should not lie within the regulation of Parliament.

The argument before us confined itself to the validity of ss. 1 to 53 inclusive and I deal with no others.

My answers are, therefore:—

To the first question: On the evidence before the Court No;

To the second question: The Act in general and as to incidental matters is intra vires subject to the limitations indicated in the reasons.

KELLOCK J.:—The questions referred to this court concern the validity of *The Industrial Relations and Disputes Investigation Act,* R.S.C., 1952, c. 152, and the applicability of that statute to the employees at Toronto of the Eastern Canada Stevedoring Company Limited.

This legislation is rested, by those contending for its validity, upon the powers conferred upon Parliament by the introductory words of s. 91 to make laws for the peace, order and good government of Canada, and upon heads 2, 10 and 29 of that section as well as head 10 of s. 92. On the other hand, it is contended that the subject matter of the legislation is within the ambit of heads 13 and 16 of s. 92 and not affected by any of the enumerated heads of s. 91.

In support of this latter contention there was invoked, not unnaturally, the decision of the Judicial Committee in *Snider* v. *Toronto Electric Commissioners* (1). The legislation there under consideration, however, was of general application and it is precisely because of the limited application of the legislation here in question that questions which were in no way raised or considered by the Judicial Committee in *Snider's* case are presented. It will be convenient to consider, in the first place, whether the present legislation is authorized by any of the enumerated heads of s. 91. If that be so, s. 92 becomes inapplicable, notwithstanding that the subject matter of the legislation inevitably affects matters otherwise within that section.

The essential provisions of Part I of the statute are to be found in s. 7 and following. They deal with such matters as certification of bargaining agents and its effects; negotiation of collective bargaining agreements; conciliation proceedings for the prevention or settlement of strikes and lockouts, including the constitution of conciliation boards, their reports and the enforcement thereof. The earlier sections of the statute contain provisions dealing respectively with the rights of employer and employee to join a trade union or an employer's organization, and what are described in the statute as "unfair labour practices."

It is provided by s. 54 that Part I shall apply to any corporation established to perform any function or duty on behalf of the Government of Canada and with respect to the employees of such corporation except such as may be excluded by Order-in-Council. Subject to s. 54, the following section provides that Part I shall not apply to Her Majesty in right of Canada or her employees. By reason of this last mentioned section, it would appear that the employees referred to in the previous section are, in the contemplation of the statute, employees of Her Majesty in the right of Canada notwithstanding that their immediate employer is a corporation. It was not contended in argument that s. 54 is to be otherwise construed. In this view, nothing more need be said as to the section, as it is past question that government employees are exclusively subject to federal jurisdiction; Reference re *Legislative Jurisdiction Over Hours of Labour* (2).

(1) [1925] A.C. 396. (2) [1925] S.C.R. 505.

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Apart from government employees, the application of Part I is provided for by s. 53, which it is not necessary to restate. In my view, the words "in connection with" in the second line of s. 53, as well as in paragraph (a), are not to be construed in a remote sense but as limited to persons actually engaged in the operation of the work, undertaking or business which may be in question. Just what are the proper limits in this connection of the word "employees" in the section must be left for determination in particular cases as they arise. For example, person performing merely casual services upon or in connection with a Dominion "undertaking" would not necessarily fall within the ambit of that word as used in s. 92(10). In *Attorney General for Ontario* v. *Winner* (1), the word "undertaking" was used by the Judicial Committee interchangeably with "enterprise". It has also been defined as "an arrangement under which physical things are used"; the *Radio* case (2). In the *Empress Hotel* case (3), Lord Reid equated "undertakings" with "organizations." In referring to the object in view in the enactment of s. 92(10) (*a*), namely, dealing with means of interprovincial communication, he said, at p. 142:

> Such communication can be provided by organizations or undertakings, but not by inanimate things alone. For this object, the phrase 'line of ships' is appropriate: that phrase is commonly used to denote not only the ships concerned but also the organization which makes them regularly available between certain points.

In *Winner's* case the Judicial Committee considered that a line of buses operating between points in the United States and Canada was analogous to a line of steamships providing similar communication. In their Lordships' view, as expressed by Lord Porter at p. 572, "As in ships so in buses it is enough that there is a connecting undertaking."

In my opinion the legislative jurisdiction vested in Parliament to make laws in relation to works and undertakings of the character excepted by s. 92(10) from the legislative jurisdiction of the provinces, involves jurisdiction to legislate with respect to the persons engaged in the operation of such undertakings and the manner in which and the conditions under which such operations are carried out. This view is in accord with the judgment of this court in *The*

(1) [1954] A.C. 541.
(2) [1932] A.C. 304 at 315.
(3) [1950] A.C. 122.

Hours of Labour Reference (1), and I consider the legislation here under consideration belongs in the same category as that which was there in question.

For present purposes it is not necessary to consider whether, so far as s. 92(10) is concerned, such legislation as the present would fall within the exclusive jurisdiction of Parliament or whether, as this court considered with respect to the legislation before the court in 1925, provincial legislation covering the same ground would be operative in the absence of Dominion legislation. In the present instance, the field is occupied. It may be pointed out, however, that in the Reference as to the Dominion legislation considered by the Judicial Committee in their judgment reported in 1937, A.C., 326, Lord Atkin referred to the decision of this court in 1925 without expressing either approval or disapproval, merely stating that the advice given in 1925 "appeared to have been accepted, no further steps being taken on the part of Parliament until the enactment of the legislation of 1935." It may also be pointed out that the character of the legislation considered by this court in 1925 and by the Judicial Committee in 1937 was, unlike the statute here in question, of general application.

On the other hand, in *C.P.R.* v. *Bonsecours* (2), the Judicial Committee had to consider for the purposes of that case the extent of the power conferred upon Parliament by s. 92(10). In the view of their Lordships, as expressed by Lord Watson at p. 372:

> The Parliament of Canada has, in the opinion of their Lordships, *exclusive* right to prescribe regulations for the construction, repair, and alteration of the railway, and for its *management*, and to dictate the constitution and powers of the company; . . .

If the matters dealt with by the legislation in question on this Reference can therefore be said to fall within the scope of management of the undertakings excepted by s. 92(10), there would be no room for provincial legislation on the same subject matter with relation to such an undertaking, whether the field had or had not been occupied. The power conferred upon a provincial legislature by No. 8 of s. 92 is, as stated by Lord Watson in 1896 A.C., 348 at 364, simply the power "to create a legal body for the management of

(1) [1925] S.C.R. 505. (2) [1899] A.C. 367.

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municipal affairs," and in *Toronto Electric Commissioners* v. *Snider* (2), Viscount Haldane considered that the subject matter of the industrial relations legislation there in question fell within the scope of such management.

Regulation of the relations between operator and operative engaged upon a Dominion undertaking is, in any event, within the federal power even on the basis that, in the absence of Dominion legislation, provincial legislation may find scope for operation; *Grand Trunk Railway* v. *Attorney General of Canada* (2). It may also be noted that in the Reference re *Waters and Water-Powers* (3), Duff J., as he then was, speaking for the court, said at p. 214:

> . . . 'railway legislation, *strictly so-called*' (in respect of such railways), is within the *exclusive* competence of the Dominion, and such legislation may include, inter alia (Canadian Pacific Ry. v. Corporation of the Parish of Notre Dame de Bonsecours, 1899, A.C., 367), regulations for the construction, the repair and the alteration of the railway and for its management.

Coming to the statute of 1952, s. 53 contains, in my opinion, a legislative pronouncement that each and every of the works, undertakings and businesses described in the lettered paragraphs are works, undertakings and businesses within the exclusive legislative jurisdiction of Parliament and their enumeration is not to restrict the generality of the works, undertakings or businesses within that legislative authority.

Leaving aside for the moment par. (*a*) of s. 53, it is clear, in my opinion, that paragraphs (*b*), (*c*), (*d*), and (*g*) deal with works and undertakings described in s. 92(10) of the *British North America Act* save as to the words "or undertakings" in (*g*), which are not to be found in s. 92(10). As to paragraphs (*e*) and (*f*), the decision of this court in *Johannesson* v. *West St. Paul* (4), and that of the Judicial Committee in the *Radio* case (5), establish the jurisdiction of Parliament. No question arises under par. (*h*) in view of its language.

Upon the view expressed above as to the jurisdiction of Parliament on a subject matter of the nature of that here in question in relation to a Dominion undertaking, it would follow, on the basis of s. 92(10) taken alone, that in the

(1) [1925] A.C. 396.
(2) [1907] A.C. 65.
(3) [1929] S.C.R. 200.
(4) [1952] 1 S.C.R. 292.
(5) [1932] A.C. 304.

case of a provincial railway, for example, a similar jurisdiction vests in the legislatures of the provinces by virtue not only of s. 92(10) but by virtue of heads 13 and 16 of that section, within which jurisdiction legislation of this character would be comprised were it not ousted in the case of Dominion undertakings by force of head 10. What is true with relation to Dominion railways, on the one hand, and purely local railways, on the other, would also be true in the case of a Dominion line of ships as opposed to a purely provincial line. But when one comes to the subject matter of shipping, it is necessary to consider any enumerated head of s. 91 which deals with that subject matter for the reason that any matter coming within such an enumerated head is not to be deemed to come within any head of jurisdiction assigned to the provincial legislatures by s. 92. This brings me, therefore, to a consideration of s. 91(10), "Navigation and Shipping," which, as pointed out by Viscount Haldane in *Montreal* v. *Montreal Harbour Commissioners* (1), is to be given a wide interpretation.

Prior to the passing of *The British North America Act* in 1867, there had been passed in the United Kingdom, *The Merchant Shipping Act* c. 104, of 1854, which continued to apply to Canada after 1867, as did subsequent legislation on this subject matter, until the Statute of Westminster in 1931. By s. 6 of that statute the Board of Trade was constituted the department to undertake "the general superintendence of matters relating to merchant ships and seamen". By s. 2, the expression "ship" was, in the absence of a contrary context, to include "every description of vessel used in navigation not propelled by oars." The statute dealt, inter alia, with such matters as ownership, measurement and registry of British ships, certifiction apprenticeship, engagement, wages, health, accommodation and discipline of seamen, safety and prevention of accidents and pilotage.

In 1894 the earlier legislation was consolidated by the *Merchant Shipping Act,* 57 and 58 Victoria, c. 60. By virtue of s. 735 of that statute, a provision contained also in earlier legislation (s. 547 of the Act of 1854), read with the

(1) [1926] A.C. 299 at 312.

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Merchant Shipping (Colonial) Act of 1869 and the *Interpretation Act* of 1889, the Parliament of Canada was the appropriate legislature for purposes of repeal of such enactments with respect to ships registered in Canada.

From 1873 onward, Parliament enacted various shipping statutes and these were consolidated in the *Revised Statutes of Canada*, 1906, c. 113. They cover much the same matters as are to be found in the Merchant Shipping Acts of the United Kingdom, including certification of masters and mates; apprenticeship; shipping masters and shipping offices; engagement of crew and agreements with members of the crew not only of ships engaged in international and interprovincial trade but also in the case of those operating entirely on inland waters; wages; discipline and conduct of masters and crew. It would therefore seem that such matters were uniformly deemed both before and after Confederation to be included within the head "Navigation and Shipping".

Head 13 of s. 91, "Ferries between a Province and any British or Foreign Country or between two Provinces" must also be considered. The limitation in this head of jurisdiction to international and interprovincial ferries would appear to vest in the provincial legislatures jurisdiction with regard to purely local ferries. The current understanding of a "ferry" at the time of the passing of the *British North America Act* was expressed by Kindersley V.C., in *Letton* v. *Gooden* (1), as follows:

> A ferry has been said to be the continuation of a public highway across a river or other water for the purpose of public traffic from the termination of the highway on the one side to its recommencement on the other side;

In the words of Lord Parker of Waddington in *Hammerton* v. *Dysart* (2).

> A ferry may thus be regarded as a link between two highways on either side of the water, or as part of a continuous highway crossing the water.

I think, therefore, that while the granting of franchises (re *International and Interprovincial Ferries* (3)) as well as such matters as schedules, rates and control of traffic using the ferry may well be included in the jurisdiction to

(1) (1866) L.R. 2 Eq. 123 at 130. (2) [1916] 1 A.C. 57 at 79.
(3) [1905] 36 Can. S.C.R. 206.

legislate with regard to ferries, the jurisdiction of Parliament under s. 91(10) with regard to "Navigation and Shipping" is not otherwise encroached upon by the jurisdiction conferred with respect to ferries. It would seem that provincial legislation dealing with ferries has been enacted in accord with the above view. Reference may be made, for example, to R.S.O., 1952, c. 135; R.S.Q., 1941, c. 76, ss. 123-126; R.S.N.S., 1954, c. 98. In my opinion, therefore, such matters as wages, hours of labour, and agreements relating to conditions of labour upon ships, whether operated in local or interprovincial or international waters, are within the exclusive jurisdiction of Parliament.

The question therefore arises as to whether the work of stevedoring falls within head 10 of s. 91. In my opinion, this head of jurisdiction extends to all matters connected with a ship as an instrument of navigation and transport of cargo and passengers. The jurisdiction must extend to stowage and, in my opinion, to loading and discharge also, which operations have been traditionally the responsibility of the ship and carried out under the direction of the master.

Coming to the employees of the Eastern Canada Stevedoring Company, Limited, the Order of Reference states that the operations of the company in Canada during the navigation season of 1954 consisted *exclusively* of services rendered in connection with the loading and unloading of ships, all of which were operated on regular schedules between ports in Canada and ports outside of Canada. It is on the footing of the continuance of this situation that the question is to be considered, and I construe the situation thus disclosed as indicating that the ships in question fall within the words "Lines of Steam or other Ships . . . ", jurisdiction with respect to which is vested in the Dominion by s. 92(10) (*a*) and (*b*). There would be no difficulty, in my opinion, in holding, on the footing of s. 92(10) alone, that the undertaking of an interprovincial or international line of ships would include such operations as loading and discharge of cargo and passengers, as would also be true in the case of a Dominion railway or a line of planes or buses. However, as the jurisdiction of Parliament with respect to "Navigation and Shipping" includes, as already mentioned,

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loading and discharge of all shipping whether engaged in local or interprovincial or international waters, the provincial jurisdiction conferred by s. 92(10) is subject thereto.

It may well be as a matter of construction of the Order of Reference that the employees referred to in the first question are the employees of the classes referred to in the collective agreement which was the subject of the order of the Ontario Relations Board of the 14th of September, 1954, namely, "all employees of the respondent in the port of Toronto save and except non-working foremen, persons above the rank of foreman, office staff and security guards", with regard to whom the dispute between the unions referred to in the Order of Reference arose. If, however, the order-in-council is not to be construed as confined to the named classes, I would be of opinion that all the employees of the company in question are to be regarded as part of the "organization" or "arrangement" under which the lines of ships here concerned are "made available", although in the employ of an employer other than the proprietors of those lines, just as, in my opinion, would be the case with employees of the undertaking of a Dominion railway.

My answer to the first question is, therefore, in the affirmative and to the second, that the *Industrial Relations and Disputes Investigation Act*, R.S.C., 1952, c. 152, construed as above, is *intra vires* of Parliament save as to ss. 56 and following, as to which I express no opinion, no argument having been addressed to the court with regard to these sections.

ESTEY J.:—The two questions submitted to this Court are set out in full in the judgment of my Lord the Chief Justice.

It will be more convenient to deal at the outset with the second question, or the competence of the Parliament of Canada to enact the *Industrial Relations and Disputes Investigation Act* (R.S.C. 1952, c. 152). The Parliament of Canada, in 1907, enacted what may be described as the forerunner of the legislation here in question under the title *Industrial Disputes Investigation Act* (S. of C. 1907, c. 20). The purpose and object of this enactment was the settlement of industrial disputes arising between employers and

employees. In 1925 this statute was declared *ultra vires* in *Toronto Electric Commissioners* v. *Snider* (1). Labour and labour relations, under this decision, were classified as property and civil rights and, therefore, by virtue of s. 92(13) of the *B.N.A. Act,* subject to provincial legislation, except in so far as the Parliament of Canada had power to legislate in respect to its own employees and under the particular headings of s. 91.

In the same year this Court held, in *Reference re Hours of Labour* (2), that legislation in relation to hours of labour was "generally within the competence of the legislatures of the provinces," subject to certain exceptions and, in particular, "in relation to servants of the Dominion Government," or those parts of Canada not included within the boundaries of a province. The formal answers contained no reference to s. 91, or to any other exceptions, but in the course of his opinion Sir Lyman Duff (later C.J.) stated at p. 511:

> It is now settled that the Dominion, in virtue of its authority in respect of works and undertakings falling within its jurisdiction, by force of section 91, no. 29, and sec. 92, no. 10, has certain powers of regulation touching the employment of persons engaged on such works or undertakings. The effect of such legislation by the Dominion to execution of this power is that provincial authority in relation to the subject matter of such legislation is superseded, and remains inoperative so long as the Dominion legislation continues in force.

In 1906 the Privy Council held that legislation enacted by Parliament preventing railways subject to its jurisdiction from "contracting out" of liability to pay damages for personal injury to their servants was intra vires. *Grand Trunk Railway of Canada* v. *Attorney-General of Canada* (3).

In 1935 Parliament enacted the *Weekly Rest and Industrial Undertakings Act,* the *Minimum Wages Act* and the *Limitation of Hours of Work Act,* all of which were declared to be ultra vires. *Attorney-General for Canada* v. *Attorney-General for Ontario et al* (4). 1937 A.C. 326; Plax. 278. In Plaxton at p. 293 it is stated:

> It was admitted at the bar that each statute affects property and civil rights within each province and that it was for the Dominion to establish that nevertheless the statute was validly enacted under the legislative powers given to the Dominion Parliament by the British North America Act, 1867.

(1) [1925] A.C. 396.
(2) [1925] S.C.R. 505.
(3) [1907] A.C. 65; 1 Cam. 636.
(4) [1937] A.C. 326; Plax. 278.

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In *Reference Minimum Wage Act of Saskatchewan* (1), 1948 S.C.R. 248, this Court held that employees of the Government engaged in the postal service were subject to Dominion legislative jurisdiction.

These authorities establish that there is a jurisdiction in the Parliament of Canada to legislate with respect to labour and labour relations, even though these relations are classified under Property and Civil Rights within the meaning of s. 92(13) of the *B.N.A. Act* and, therefore, subject to provincial legislation. This jurisdiction of Parliament to so legislate includes those situations in which labour and labour relations are (*a*) an integral part of or necessarily incidental to the headings enumerated under s. 91; (*b*) in respect to Dominion Government employees; (*c*) in respect to works and undertakings under ss. 91(29) and 92(10); (*d*) in respect of works, undertakings or businesses in Canada but outside of any province.

If, therefore, a system of collective bargaining and statutory provisions for settlement of disputes in labour relations are to be made available to employers and employees within the legislative jurisdiction of Parliament, that body alone can enact the appropriate legislation. Parliament, therefore, in 1948 (S. of C. 1948, c. 54) first enacted the *Industrial Relations and Disputes Investigation Act,* the validity of which is here in question. Part I thereof recognizes the right of employees and employers to organize and prohibits certain unfair labour practices, makes provisions for collective bargaining as between employer and employee and for the settlement of labour disputes in works, undertakings and businesses. Then in Part II, entitled "Application and Administration," Parliament obviously intended to restrict the application of the statute to those works, undertakings and businesses over which it possesses legislative jurisdiction. It is, of course, not the intent with which Parliament passes legislation, but rather the effect thereof that must determine whether it be competently enacted. *Attorney-General of Manitoba* v. *Attorney-General of Canada* (2). Section 53(*a*), being the first section in Part II, provides, in part:

> 53. Part I applies in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business

(1) [1948] S.C.R. 248.

(2) [1929] 1 A.C. 260 at 268.

that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

The subparas. (*b*) to (*h*) inclusive which follow it, as in (*a*), describe certain works, undertakings or businesses which are in effect, said to be subject to the legislative authority of the Parliament of Canada. These subparas. have not been inserted, as in the *War Measures Act of 1914*, to cover what Duff J. (later C.J.) described as "marginal instances" (*Re Gray* (1)) but rather, as Mr. Varcoe suggested, to indicate or illustrate more precisely what Parliament had in mind in enacting the general provision in the opening language of s. 53. Subparas. (*b*), (*c*), (*d*) and (*g*) would appear to apply to ss. 92(10) (read in association with s. 91(29)) and 91(13). Subparas. (*e*) and (*f*) have to do with aerodromes, aircraft and lines of air transportation and radio broadcasting stations and no doubt are included because of the decisions in *Reference re Control of Aeronautics* (2), *Reference re Radio Communication* (3) and *Johannesson* v. *Rural Municipality of West St. Paul* (4), which held these works and undertakings to be subject to the legislative jurisdiction of the Parliament of Canada. Subpara. (*h*) provides: "any work, undertaking or business outside the exclusive legislative authority of the legislature of any province." This latter is a general provision which at least includes those parts of Canada outside of the provinces, as well as any work, undertaking or business which is not included under either s. 92 or any one of the enumerated heads of s. 91 and, therefore, subject to the legislative jurisdiction of the Parliament of Canada.

Subpara. (*a*) was particularly attacked in the course of the hearing of this appeal. It refers to "works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, . . . " The precise meaning of this phrase "navigation and shipping," as used in s. 91(10), is not easy of determination, but it would appear clear that whatever may be included under this heading

(1) (1918) 57 Can. S.C.R. 150 at 168.

(2) [1932] A.C. 54.

(3) [1932] A.C. 304.

(4) [1952] 1 S.C.R. 292.

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applies equally whether the work, undertaking or business be otherwise subject to the legislative jurisdiction of either Parliament or a provincial legislature. It is appropriate, therefore, that in this subpara. Parliament should adopt comprehensive language to make it clear that its provisions apply to labour and labour relations in respect of navigation and shipping, whether the work, undertaking or business be inland or maritime, and to the operation of ships and transportation by ship anywhere in Canada. This subpara. so construed does not enlarge the meaning or effect of "navigation and shipping," as that phrase is used in s. 91(10).

Mr. Magone particularly emphasized the words "upon or in connection with" in the opening words of s. 53 and "on for or in connection with" as they appear in s. 53(*a*). He contended that these words are so wide and comprehensive as to include not only matters which may form an integral part or be necessarily incidental to a work, undertaking or business over which the Parliament of Canada has legislative jurisdiction, but would extend to any activity, however slightly or remotely it may be connected with a given work, undertaking or business. It may be conceded that in their widest import there is much in such a contention, but these words must be read and construed in association with the other language of the section and, indeed, with that of the Act as a whole. When so read I do not think they could be construed to include more than that which would form an integral part or be necessarily incidental to the work, undertaking or business that was within the legislative competence of Parliament.

This construction of subpara. (*a*) and the words "upon or in connection with" in the opening part of s. 53 finds support in the intent and purpose of Parliament and is to be preferred upon the basis that it ought not to be assumed that Parliament intended to enact legislation beyond its competence. *Valin* v. *Langlois* (1); *Hewson* v. *Ontario Power Co.* (2); *Reference Section 31, Municipal District Act of Alberta* (3). Moreover, the language of Cleasby J. is appropriate:

> And I have found myself compelled in a case of great difficulty to resort to the simple and well-grounded means of ascertaining what ought

(1) (1879) 5 App. Cas. 115. (2) (1905) 36 Can. S.C.R. 596 at 602.
(3) [1943] S.C.R. 295 at 312.

to be regarded as the real subject-matter of legislation; and in this way have come to the conclusion that nothing but Admiralty jurisdiction was operated upon.

Gunnestad v. *Price* (1).

When regard is had to the real subject-matter of subpara. (*a*), only that which may be properly classified under the heading "Navigation and Shipping" is dealt with.

It may well be that difficult and important questions may arise as to whether a particular work, undertaking or business may be subject to the legislative jurisdiction of Parliament or a legislature. Such problems are unavoidable under the *B.N.A. Act*. Moreover, it is possible that in the course of time it may be necessary to construe particular sections, but in a reading of the Act as a whole it would appear that properly construed it would apply only to those works, undertakings and businesses which are within the legislative competence of Parliament. It is a statute the effect of which is not to create new or further encroachments upon property and civil rights, or any other of the enumerated heads of s. 92, but rather it is, in pith and substance, an enactment which provides to those works, undertakings and businesses (subject to the legislative jurisdiction of Parliament) collective bargaining and a method for the negotiation and settlement of labour problems between the employer and the employee. It is this feature of this statute that distinguishes it from the *Industrial Disputes Investigation Act* of 1907, declared, as aforesaid to be ultra, vires in 1925.

Then with respect to the first question, or whether the *Industrial Relations and Disputes Investigation Act* applies in respect of the employees in Toronto of the Eastern Canada Stevedoring Co. Ltd., the facts, as disclosed in the preamble of the order in council, indicate that the Eastern Canada Stevedoring Co. Ltd. (hereinafter referred to as the company) confined its activity in Toronto to the performance of its obligations under contracts with seven shipping companies "to stevedore the vessel (s) of the" owners, agents or charterers that may be parties to the respective contracts. The phrase "to stevedore the vessel (s)" means all loading and unloading of these vessels or ships, all of

(1) [1875] L.R. 10 Ex. 65 at 72.

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which operate on regular schedule between ports in Canada and ports outside of Canada. This work is carried on under the authority and supervision of the ships' officers and payment therefor is received from ship owners or charterers thereof. The company maintains sheds on the docks for both the storage of goods to be shipped and of those to be delivered after unloading. At Toronto its employees are officers, office staff, superintendents, foremen, longshoremen, checkers and shedmen. The last four are referred to as and included in the contract under the words "stevedores."

These ships or vessels so owned and "operated on regular schedules between ports in Canada and ports outside of Canada" are "Lines of Steam Ships between the Province and any British or Foreign Country" within the meaning of s. 92(10) (*b*) and, therefore, by virtue of s. 91(29), to be regarded as within one of the enumerated heads of s. 91 and subject to the exclusive legislative jurisdiction of the Parliament of Canada. *City of Montreal* v. *Montreal Street Railway* (1); the *Winner* case (2), at 568. If, therefore, the work of stevedoring, as performed under the foregoing contracts, is an integral part or necessarily incidental to the effective operation of these lines of steam ships, legislation in relation thereto can only be competently enacted by the Parliament of Canada.

That the work of the stevedores is an integral part would seem to follow from the fact that these lines of steam ships are engaged in the transportation of freight and the loading and unloading thereof, which would appear to be as necessary to the successful operation thereof as the enbussing and debussing of passengers in the *Winner* case, supra. The loading would, therefore, be an integral part of the operation of these lines of steam ships and, therefore, subject to the legislative jurisdiction of Parliament.

The foregoing is founded upon the construction of the *B.N.A. Act*. The fact that under other statutes stevedores have not always been regarded as seamen and have not always had a lien upon the ship for their wages does not in any way detract from the foregoing. However, history does assist to this extent—that the loading and unloading of

(1) [1912] A.C. 333 at 342. (2) [1954] A.C. 541.

ships have always been regarded as the duty and responsibility of the owner or charterer and to this extent it is of assistance in holding that the work of unloading and loading is an essential part of the transportation of freight in vessels. *Lewis on Shipping; Busby* v. *Winchester* (1), affirmed (2). The fact that a portion of the stevedores' work is on land as well as on the ship does not detract from the foregoing because that which is done on land is as essential a part as that on the ship in respect to loading and unloading.

The fact that the stevedores here in question were employees of the Eastern Canada Stevedoring Co. Ltd. is not conclusive of, if, indeed, material to a consideration of the question whether they are subject to the legislative jurisdiction of the Parliament of Canada or the legislature of a province. *Reference re Minimum Wage Act of Saskatchewan* (3); *Canadian Pacific Railway Co. v. A. G. for British Columbia and A. G. for Canada* (4). Such a question must be resolved by a consideration of the nature and character of the services in relation to the works and undertakings of the lines of steam ships here in question. This is not, therefore, a case such as *Toronto Corporation* v. *Bell Telephone Company of Canada* (5), where a company incorporated under legislation of the Parliament of Canada possessed powers, the exercise of which was being interfered with under provincial legislation.

It will be observed that the first question is asked in respect to the employees in Toronto. These are enumerated in the order in council and, other than stevedores, are officers, office staff and superintendents. In determining what legislative body may have legislative jurisdiction in respect to these parties it is important to observe that the services they render on behalf of the Eastern Canada Stevedoring Co., Ltd. are exclusively in connection with the loading and unloading of the ships pursuant to the contracts already mentioned. It must be obvious that their work, so restricted, is equally as essential to the loading and unloading as that of the stevedores who do the actual physical work. It is important to observe that it is the work or undertaking that passes in its entirety, by virtue of the

(1) 27 N.B.R. 231.
(2) (1890) 16 Can. S.C.R. 336.
(3) [1948] S.C.R. 248.
(4) [1950] A.C. 122.
(5) [1905] A.C. 52.

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provisions of s. 92(10) (*b*) and s. 91(29), to the Parliament of Canada and in this connection the words of Lord Reid are apt:

> For this object the phrase 'lines of ships' is appropriate: that phrase is commonly used to denote not only the ships concerned, but also the organization which makes them regularly available between certain points.

Canadian Pacific Railway Co. v. *Attorney-General of British Columbia* (1).

I would answer the first question "Yes"; the second question "The Industrial Relations and Disputes Investigation Act is intra vires the Parliament of Canada."

LOCKE J.:—The question referred to the Court and the terms of s. 53 of the *Industrial Relations and Dispute Investigation Act* (c. 152, R.S.C. 1952) are stated in other opinions to be delivered in this matter.

The facts set out in the Order in Council, so far as they are relevant to the questions, appear to me to be as follows: Eastern Canada Stevedoring Co. Ltd. was incorporated by letters patent under the provisions of the Dominion Companies Act, its activities consisting of supplying stevedoring and terminal services for certain shipping companies in several Canadian ports, including Toronto. At Toronto, where the dispute arose which resulted in the making of this reference, the services consisted during the navigation season of 1954 of loading and unloading cargoes of ships operating on regular schedules between ports in Canada and ports outside of Canada, pursuant to contracts made with seven shipping companies. The company owns one shed and leases one shed on the piers in the Port of Toronto. On notification of the pending arrival of ships, it makes such preparations as are necessary for unloading and loading them, including the taking on of necessary employees. When a ship has arrived at the pier and is secured alongside, its employees open the hatches, if this has not been done by the crew, and remove the cargo to be unloaded from the hold to the dock and there deliver it to the consignees, either at the tail boards of trucks or railway car doors. Cargo of which immediate delivery is not taken by the consignee is placed in the company's sheds and delivery subsequently taken from there by the consignees in trucks

(1) [1950] A.C. 122 at 142.

or railway cars. It receives delivery of outgoing cargo to be shipped from the tail boards of trucks or railway car doors and holds it in its sheds for loading. In the operations of loading and unloading, the company uses the ships' winches and booms for raising and lowering the slings and furnishes pallets necessary for lifting and piling the cargo and machines for towing or lifting cargo on the dock and in the sheds, and in the case of cargo too heavy for the ship's winches and booms it uses land cranes obtained by it. The last act of loading, being the securing of the hatch covers, is performed by the company's employees, if this is not done by the crew of the ship. As the cargo is unloaded, it is checked against the ship's manifests, and when loading they check the cargo, as received to assist in the preparation of the ship's manifests. In the performance of this work, the company employs foremen, longshoremen, checkers and shed men, groups of employees commonly referred to in the Port of Toronto as stevedores.

In addition to the stevedores, the company has other employees described in the Order in Council as officers, office staff, superintendents and walking bosses. Other than to say that during loading and unloading the company has at the dock a management representative, superintendents and walking bosses, the functions of these persons are not defined. The definition of employee in the Act excludes managers or superintendents or persons who, in the opinion of the Board established to administer Part 1 of the Act, exercise management functions, and I assume that the officers referred to, as well as the superintendents, are not among the employees referred to in Question 1. As to those described as walking bosses, I propose to consider the matter on the footing that they perform the same or similar functions to those of the foremen in charge of the gangs of stevedores referred to in the collective agreement of June 17, 1954, mentioned in the Order in Council and are properly classified as stevedores. The office staff, in the absence of any definition of their functions, I will assume to be those engaged in carrying on the accounting work and other office work incident to the carrying on of the undertaking.

The duties of the stevedores are stated to include, in addition to the actual carrying and loading and unloading, the operation of winches and sorting and piling cargo in the

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sheds. The loading and unloading of the ships is performed under the direction and authority of the ship's officers whose orders are given to the supervisory personnel of the company, who direct the work of the stevedores.

S. 53 limits the application of Part I of the Act to employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada. That expression is defined to include:—

> (*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada.

The answer to be made to the first question depends, in my opinion, upon whether legislation of this nature is, in substance, in relation to navigation or shipping, within the meaning of Head 10 of s. 91 of the *British North America Act,* or in relation to a subject matter referred to in Head 29.

From the description of the services rendered by the stevedores, it appears to me to be clear that they are as essential to the carrying on of large scale shipping operations as are the services rendered by the crews of ships. Successful operation of steamship lines for the carriage of goods of necessity involves the loading of cargo from the docks and its stowage and the discharge of it onto docks at the point of destination and, in the case of operations of any considerable magnitude, I think it is evident that the performance of this work by the ships' crew would be impractical.

Parliament has, in the exercise of the authority vested in it by Head 10, assumed to regulate in many respects the relations between those operating vessels and their employees, and to define their respective duties. In this respect, the Canadian legislation after Confederation, included many of the provisions to be found in the *Merchant Shipping Act of 1854* (Imp. 17-18 Vict. c. 104) and in the earlier legislation in England which preceded that Act (5-6 Wm. IV, c. 19; 7-8 Vict. c. 112; 8-9 Vict. c. 116, and the *Mercantile Marine Act 1850,* 12-14 Vict. c. 93). Thus in 1872, by an *Act respecting the Shipping of Seamen in Nova Scotia* (c. 39), Shipping Masters in that province

were directed to perform certain duties in connection with the hiring of seamen and the formalities to be performed in making such engagements were prescribed. By *The Seamen's Act 1873*, made applicable to the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia only, various provisions were made regulating the engagement of seamen and apprentices on ships, defining in a variety of respects the terms of contracts of employment and defining the rights of seamen to enforce payment of their wages, these being generally of the same nature as those contained in Part III of *The Merchant Shipping Act of 1854*. These matters were also dealt with in *The Seamen's Act* (c. 74, R.S.C. 1886), *The Canada Shipping Act* (c. 186, R.S.C. 1927) and in c. 44 of the Statutes of 1934 which repealed earlier Acts and the Merchant Shipping Acts 1894 to 1928, in so far as they were part of the law of Canada, and a number of earlier Canadian statutes.

The Act now appears as c. 29, R.S.C. 1952. Part III bears the sub-heading "Seamen" and contains most precise directions on a variety of matters affecting the relationship between employers engaged in shipping and their employees. The manner in which seamen may be employed in all ports in Canada and elsewhere is defined and certain required terms of agreements of employment are specified, both for foreign going and home-trade ships: the manner of discharge is prescribed, the rights of seamen in regard to wages declared and provisions for discipline made and punishments prescribed for such breaches of contract as desertion or wilful disobedience.

The regulation of the relationship between persons engaged in shipping and those employed by them at sea has thus, for a very long time indeed, been recognized as necessary for the effective regulation by statute of the operation of ships. The fact that this is so supports the view that the regulation of the relations between ship owners and those employed to assist, either on board ship or on land, in performing functions, such as loading and unloading, essential to the carriage of goods, is legislation in relation to shipping within the ordinary meaning of that expression. The right of Parliament to legislate in regard to the form and as to certain provisions of contracts of employment entered into at ports in Canada has not, so far as I am

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aware, ever been questioned and could not, in my opinion, be successfully questioned. The reason, I think, must be that it has been universally recognized that, at least in regard to seamen employed upon ships of the nature of those described in s. 92(10) (*a*) and (*b*), these were matters falling within the jurisdiction of the Dominion under Head 10.

The position of those employees described as stevedores whose duties are above detailed is to be considered apart from those classified as office workers. To these latter, different considerations apply. As shown by the documents referred to in the reference, the Eastern Canada Stevedoring Co. Ltd. furnishes stevedoring services under contracts with vessel owners, charterers of vessels or shipping agents representing the owners or charterers. The stevedores are employed by the company and paid by it and the relationship of master and servant exists only as between them. If the stevedores were employed by the owners or charterers and were carried as members of the crew of the ship, it is my opinion that, for the reasons I have above enumerated, provisions similar to those contained in the Act in question, if embodied in the *Canada Shipping Act,* would be intra vires Parliament. Does the fact that while they perform this function which, in my view, is an integral part of carrying on the activity of shipping, their services are supplied by the Stevedoring Company renders such legislation beyond the powers of Parliament?

While the question as to the power of Parliament and Provincial legislatures, respectively, in regard to employees' relations has been considered in certain aspects, both by the Judicial Committee and by this Court, I do not think the questions to be determined here are concluded by authority.

In the *Reference in the Matter of Legislative Jurisdiction over Hours of Labour* (1), Duff J. (as he then was) who delivered the judgment of the Court, said that legislative jurisdiction touching the subject matter of the Convention was primarily vested in the provinces under the head of jurisdiction numbered 13 in s. 92 "Property and Civil

(1) (1925) S.C.R. 505.

Rights", or under the 16th Head "Local and Private Matters within the Provinces", or under both heads. A qualification to this general proposition was said to be that, as a rule, the province has no authority to regulate the hours of employment of the servants of the Dominion Government.

This passage from the opinion in this reference was referred to by Lord Atkin in delivering the judgment of the Judicial Committee in *Attorney General for Canada* v. *Attorney General for Ontario* (1), without further comment than to say that this advice appeared to have been accepted. The statutes under consideration in the latter reference were *The Weekly Rest in Industrial Undertakings Act 1934, The Minimum Wages Act 1935* and *The Limitation of Hours of Work Act 1935* of the Parliament of Canada and, speaking generally, as to the three Acts Lord Atkin said (p. 350) that, normally, the legislation came within the class of subjects assigned by s. 92 exclusively to the legislatures of the provinces, namely Property and Civil Rights in the Province.

Some general statements in earlier cases require consideration. The exclusive jurisdiction of Parliament in regard to railways falling within the description in s. 92(10) (*a*) and (*c*) was referred to in the judgment of Lord Watson in *C.P.R.* v. *Bonsecours* (2), in the following terms:—

> Accordingly, the Parliament of Canada has, in the opinion of their Lordships, exclusive right to prescribe regulations for the construction, repair, and alteration of the railway, and for its management, and to dictate the constitution and powers of the company.

A statement more closely in point occurs in the judgment in the Contracting-out Case: *Grand Trunk Railway* v. *Attorney General for Canada* (3), where Lord Dunedin said in part (p. 68):—

> It seems to their Lordships that, inasmuch as these railway corporations are the mere creatures of the Dominion Legislatures—which is admitted—it cannot be considered out of the way that the Parliament which calls them into existence should prescribe the terms which were to regulate the relations of the employees to the corporation. It is true that, in so doing, it does touch what may be described as the civil rights of those employees. But this is inevitable, and, indeed, seems much less violent in such a case where the rights, such as they are, are, so to speak, all *intrafamiliam,* than in the numerous cases which may be figured where the civil rights of outsiders may be affected.

(1) [1937] A.C. 326 at 347. (2) [1899] A.C. 367, 372.
(3) [1907] A.C. 65.

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In *Paquet* v. *Pilots' Corporation (Quebec)* (1), the Corporation sued to recover from a pilot in Quebec Harbour his earnings as received under the terms of its statute of incorporation under the laws of the Province of Canada prior to Confederation. While the main question to be determined was as to whether the rights of the Pilots' Corporation under the statute of the Province of Canada by which it was incorporated survived, in view of the provisions of the *Canada Shipping Act* (R.S.C. 1906, c. 113) and an amendment to that Act (c. 48, S.C. 1914), the question as to whether these sections of the Dominion statute were *intra vires* was considered. Included in the powers vested in all pilotage authorities by s. 433 of the Act was the power to fix and alter the mode of remunerating the pilots and the amount of such remuneration. Viscount Haldane, delivering the judgment of the Judicial Committee, said that the introduction into s. 91 of the words "Navigation and Shipping" put the matter beyond question.

There is also to be considered a passage from the opinion of Duff J. (as he then was) in the 1925 Reference (2), which reads:—

> It is now settled that the Dominion, in virtue of its authority in respect of works and undertakings falling within its jurisdiction, by force of section 91, no. 29, and sec. 92, no. 10, has certain powers of regulation touching the employment of persons engaged on such works or undertakings. The effect of such legislation by the Dominion to execution of this power is that provincial authority in relation to the subject matter of such legislation is superseded, and remains inoperative so long as the Dominion legislation continues in force. There would appear to be no doubt that, as regards such undertakings—a Dominion railway, for example —the Dominion possesses authority to enact legislation in relation to the subjects dealt with in the draft convention. The only Dominion legislation on this subject to which our attention has been called is to be found in sec. 287 of the Railway Act of 1919, which confers authority on the Board of Railway Commissioners to make orders and regulations concerning the hours of duty of persons employed on railway subject to the jurisdiction of the Board, with a view to the safety of the public and of such employees. It is understood that no orders or regulations have been made in execution of this power; and in view of the fact that this enactment, creating this unexecuted power, appears to be the only Dominion legislation in existence on the subject matter of the draft convention, the primary authority of the province in relation to that subject matter remains, subject to the qualification mentioned, unimpaired and unrestricted.

(1) [1920] A.C. 1029.

(2) [1925] S.C.R. 505 at 511.

The matter referred to did not expressly arise in the reference.

In the present case, Parliament has legislated by the Act under consideration, so that the question of an unoccupied legislative field does not arise. Since, however, the combined effect of head 29 of s. 91 and head 10 of s. 92 is, *inter alia,* that legislation in relation to railways connecting a province with any other or others of the provinces is exclusively within the powers of Parliament, the statement in the concluding sentence of the passage quoted is to be contrasted with what was said by Lord Watson in *Union Colliery Ltd.* v. *Bryden* (1), that the abstinence of the Dominion Parliament from legislating to the full limit of its powers could not have the effect of transferring to any provincial legislature the legislative power assigned to the Dominion by s. 91. It is also to be noted that in *C.P.R.* v. *Attorney General for British Columbia* (2), their Lordships refrained from expressing any opinion as to whether, if the Empress Hotel was part of the railway within Head 10(*a*) or (*c*) of s. 92, the provincial legislation would be effective.

The main purposes of *The Industrial Relations and Disputes Investigation Act* may be summarized as being the prevention of unfair labour practices, the setting up of machinery for the selection and certification of bargaining agents to represent employees and to facilitate collective bargaining, the settlement of disputes by conciliation proceedings and the prevention of strikes and lockouts for defined periods to enable such proceedings to be taken, the imposition of penalties for offences declared by the Act, and the provision of administrative machinery to facilitate its effective operation.

The first question is as to whether the Act applies in respect of the employees in Toronto of the Eastern Canada Stevedoring Co. Ltd. employed upon or in connection with the work, undertaking or business of the company as above described.

As to the stevedores, while the passages from the judgments of the Judicial Committee in the Bonsecours, Contracting-Out and Paquet's cases tend to support an affirmative answer, they are not, in my opinion, decisive upon the

(1) [1899] A.C. 588. (2) [1950] A.C. 122.

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issue raised in this part of the first question. The question of jurisdiction as to matters affecting the relations between railway companies and their employees was not one of the questions under consideration in *Bonsecours's* case and what was said by Lord Watson was not directed to that subject. The passage from the opinion delivered by Lord Dunedin in the *Contracting-Out* case, to which I have referred, should not, I think, be construed as meaning that it was due alone to the fact that the railway companies concerned had been incorporated by or under the provisions of Dominion statutes that Parliament was empowered to legislate in regard to the relations between the companies and their employees, since this would be to disregard the effect of Head 29 of s. 91 and Head 10(*a*), (*b*) and (*c*) of s. 92. As to *Paquet's* case, the work of pilots requiring them, as it does, to take an active part in the navigation of the ship, legislation affecting their relations with the ship owner or charterer falls so clearly under Head 10 that a contrary view seems untenable. I have reached my conclusion rather upon the ground that, upon the facts stated in the reference, it appears that the loading and unloading of cargo are part and parcel of the activities essential to the carriage of goods by sea, and that, as in the case of the seamen, legislation for the regulation of the relations between employers and employees is, in pith and in substance, legislation in relation to shipping.

Assuming as I do that the office staff referred to in paragraph 5 of the Order in Council consists of those employees who are engaged in the accounting or other office work incidental to the carrying on of the undertaking of the Eastern Stevedoring Co. Ltd., it is my opinion that the Act does not apply to them.

As I have indicated, it is my opinion that the question as to whether the provisions of the Act apply to a class of employees depends upon whether the services rendered are in relation to a matter as to which Parliament has jurisdiction. The office staff are not "employed upon" any such work, in my opinion. The following words "in connection with" should, I think, be construed as referring to services rendered by employees which by their very nature are necessarily incidental to activities subject to the legislative

control of Parliament, such as the services of those operating the winches who, in this occupation, are included in the designation of stevedores. The services rendered by the office staff cannot, in my judgment, be so classified.

The second question is as to whether the Act is *ultra vires* the Parliament of Canada, either in whole or in part.

The opening words of s. 53, as above stated, declare it to be applicable to persons employed upon or in connection with:—

> any work, undertaking or business that is within the legislative authority of the Parliament of Canada.

including those enumerated in subparagraphs (*a*) to (*h*) inclusive.

Fields of legislation assigned to Parliament by heads 1 to 28 inclusive of s. 91 contain no reference to works, undertakings or businesses as such. By reason, however, of head 29, certain works and undertakings referred to in s. 92(10) are made subject to the legislative authority of Parliament. These, it will be noted, are all included in the specific enumeration in the subparagraphs of s. 53.

Construing the word "work" as including a commercial enterprise, the words "work, undertaking or business" within the legislative authority of Parliament do not define a legislative field since there is no commercial business, enterprise, undertaking or business in this country that is not subject in some respects to the legislative authority of Parliament (as by way of illustration under the Income Tax Act), and also to the legislative authority of the province or provinces in which its activities are carried on (*John Deere Plow* v. *Wharton* (1)).

Some meaning should be assigned, however, to the language quoted and I have come to the conclusion that it should be construed as referring to enterprises, undertakings or businesses engaged in activities which fall within the legislative authority of Parliament under s. 91.

A more difficult question arises from the fact that by subparagraph (*a*) Part 1 is declared to apply in respect of employees engaged upon or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in

(1) [1915] A.C. 343.

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Canada. The word "inland" thus includes the operation of a shipping undertaking carried on exclusively within the limits of a province.

The fact that ferries between a province and any British or foreign country or between two provinces are assigned to the legislative jurisdiction of Parliament by head 13 of s. 91 at least indicates that ferries operating between points entirely within one province are excluded from the jurisdiction in relation to shipping in head 10. Further, head 29 of s. 91 refers to the classes of subjects expressly excepted in the enumeration of the classes of subject assigned exclusively to the legislatures of the provinces, and the enumeration in subparagraphs (*a*), (*b*) and (*c*) of head 10 of s. 92 does not include the undertakings of persons engaged in shipping activities confined within the limits of a province or the main or principal part of whose undertakings are so confined. In the latter classification I would include persons residents of ocean ports in Canada engaged in deep sea fishing, part of whose activities are carried on beyond the three mile limit.

I have come to the conclusion that, as to the latter, the exclusive power to make laws in relation to the industrial relations between employers and those employed in carrying on or assisting in carrying on their shipping activities is in the province.

Other than as to s. 53 I express no opinion as to whether Part II of the Act is within the powers of Parliament, since no argument was addressed to us as to the other sections in that Part of the statute.

For these reasons, I would answer the questions referred to us as follows:—

1. (*a*) As to stevedores, as defined in the order of reference: Yes.

   (*b*) As to the office staff referred to: No.

2. As to Part I thereof and as to s. 53: No, except as to employees engaged upon or in connection with works, undertakings or businesses operated or carried on for or in connection with shipping the activities of which are confined within the limits of a province, or upon works, undertakings or businesses of which the main or principal part is so confined.

CARTWRIGHT J.:—The questions referred to this Court for hearing and consideration and the facts relevant thereto are sufficiently stated in the reasons of other members of the Court. It will be convenient to deal first with the second of the questions submitted to us.

It will be observed that Part I of the Act provides a basis for negotiation and collective agreement between employees and their employers as to methods, terms and conditions of employment, provides against unfair labour practices which might result in industrial unrest, provides methods and procedure for settling grievances between employees and their employers and makes strikes or lockouts unlawful in certain circumstances. While there are numerous differences of varying importance between the terms of the statute referred to us for consideration and those of the Industrial Disputes Investigation Act 1907, as amended, which was held, in *Toronto Electric Commissioners* v. *Snider* (1), to be *ultra vires* of Parliament, the cardinal difference relevant to the question of constitutional validity is that the application of Part I of the statute before us is strictly limited.

The first step is to determine to what employees Part I of the Act applies and this depends upon the construction of s. 53 which reads as follows:—

53. Part I applies in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislatve authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(1) [1925] A.C. 396.

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(*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

It is, I think, axiomatic that if words in a statute of Parliament (or of a legislature) are fairly suceptible of two constructions of which one will result in the statute being *intra vires* and the other will have the contrary result the former is to be adopted. With this in mind the words "in connection with" appearing in the second line of the section must be understood as meaning "connected in such manner with the operation of the work, undertaking or business referred to that the legislation contained in Part I of the Act when applied to the employees so described is in substance legislation in relation to the operation of such work, undertaking or business or necessarily incidental (to use the words of Lord Watson in *Attorney-General for Ontario* v. *Attorney-General for Canada* (1)) or truly ancillary (to use the words of Lord Dunedin in *Grand Trunk Railway* v. *Attorney-General for Canada* (2)) thereto." The words "in connection with" in the second line of clause (*a*) must be similarly construed with the result that clause (*a*) is to be understood as making Part I of the Act applicable to employees who are employed in works, undertakings or businesses operated or carried on in such manner that the legislation contained in Part I when applied to the employees so described is in substance legislation in relation to navigation and shipping whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada or legislation necessarily incidental or truly ancillary thereto.

Clause (*a*) so construed by its plain words makes Part I applicable to all employees who are employed *inter alia* in the operation of ships and transportation by ship anywhere in Canada and so to those employed for such purpose by the owners of a line of ships operated on inland waters wholly within the limits of one province. The power to make laws in relation to such a line of ships appears to be committed exclusively to the Provincial Legislature by s. 92 (10), for the excepting words of s. 92 (10) (*a*) are not apt to describe

(1) [1896] A.C. 348 at 360. (2) [1907] A.C. 65 at 68.

such a purely intra-provincial line. However by the combined effect of s.91 (10) and the concluding words of s. 91 there must be taken to be excepted from such provincial power to make laws in relation to navigation or shipping, subjects in relation to which exclusive legislative authority is committed to Parliament. In my view the actual operation of ships and the performance of such acts as are essential parts of "transportation by ship" fall within the words "navigation and shipping" in s. 91 (10) and so within the jurisdiction of Parliament even in the case of a purely intra-provincial line of ships.

The remaining clauses of s.53 do not appear to me to present difficulty. They describe works, undertakings and businesses in relation to all of which the exclusive legislative authority of Parliament extends by force of the words of s.91 and the decisions in *In re Regulation and Control of Radio Communication* (1) and *Johannesson* v. *West St. Paul* (2).

I realize that there may be cases in which it will be difficult to determine whether Part I is applicable to a particular group of employees but such difficulties are inherent in any federal system and must be left to be dealt with as they arise.

Having concluded that the proper construction of s.53 is as set out above, it follows that the whole of Part I of the Act is *intra vires*. Its application is limited to matters in the exclusive jurisdiction of Parliament and consequently it is without significance that it interferes with matters such as contractual relationships between employees and employers in the province, which would otherwise fall within the jurisdiction of the provincial legislatures. As was said by Lord Atkin in *Proprietary Articles Trade Association* v. *Attorney-General for Canada* (3).

> If then the legislation in question is authorized under one or other of the heads specifically enumerated in s. 91, it is not to the purpose to say that it affects property and civil rights in the Provinces. Most of the specific subjects in s. 91 do affect property and civil rights but so far as the legislation of Parliament in pitch and substance is operating within the enumerated powers there is constitutional authority to interfere with property and civil rights.

(1) [1932] A.C. 304. (2) [1952] 1 S.C.R. 292.
(3) [1931] A.C. 310 at 326, 327.

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While we are indebted to counsel for full and able arguments on the matters with which I have dealt above, nothing was said in argument as to the sections of the Act which follow s.53. I concur in what I understand to be the view of the majority of the Court that it is not desirable that we should express an opinion as to such sections without the benefit of argument and that if it is desired that we should deal with these sections counsel should be given an opportunity of presenting argument in regard to them.

Turning now to the first question referred to us, it will be observed that paragraph 2 of the recitals in the order of reference reads as follows:

> That the operations of the Company in Toronto during the navigation season in 1954—approximately April to November—consisted exclusively of services rendered in connection with the loading and unloading of ships pursuant to contracts with seven shipping companies to handle all loading and unloading of their ships arriving and departing during that season. All these ships were operated on regular schedules between ports in Canada and ports outside of Canada.

While this paragraph refers to the year 1954 it seems to me that our answer to the first question should be based on the assumption that the operations of the Company are as therein described. On this assumption it is my opinion that Part I of the Act when applied to employees who are employed in the operation of the undertaking of the Company is legislation in relation to shipping and not merely legislation incidental or ancillary thereto. The actual loading and unloading of ships is, in my view, an integral part of shipping.

It has been suggested that Part I of the Act may not be applicable to the office staff of the Company employed in Toronto. It will be observed that the members of the office staff were excluded from the operation of the Order of the Ontario Labour Relations Board of September 14, 1954, annexed to the Order of Reference and, perhaps for this reason, little information is given to us as to their duties. It appears to me, however, to be a reasonable assumption that the performance of their duties is necessary to the functioning of the Company and on such assumption I am of opinion that Part I would apply to them equally with those employees who are directly engaged in the work of physically moving cargo. The work of the office staff is, on the

assumption made above, an integral part of the operations of the Company considered as a whole and the sole purpose of such operations is the loading and unloading of ships plying between ports in Canada and ports outside of Canada.

For the above reasons I would answer the questions referred to us as follows:—

Question (1): Yes.

Question (2): Sections 1 to 53, inclusive, of the Industrial Relations and Disputes Investigation Act, R.S.C. 1952 Cap. 152, are *intra vires* of the Parliament of Canada. As to the remainder of the Act, for the reasons above set out, I wish to reserve my opinion until we have heard further argument.

FAUTEUX J.:—As to the validity. The provisions of the *Industrial Relations and Disputes Investigation Act,* R.S.C. 1952, c. 152, hereinafter referred to as the Act, indicate, when viewed comprehensively, that the Act aims mainly at the maintenance or securement of peaceful labour relations between employers and employees, the promotion of conditions favourable to settlement of labour disputes or, more precisely, at peaceful labour operations within this limited field of works, undertakings and businesses as to which the regulation by law is, under the *B.N.A. Act,* committed to the legislative authority of Parliament. Indeed and subject to a later comment as to ss. 54 to 71 inclusive, the will of Parliament to thus circumscribe the scope of application of the Act is made explicit, at first, in the opening phrase of the provisions of s. 53 reading:—

> 53. Part (1) applies in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including . . .

and again in the provisions under head (*h*) of the section. It is also to be necessarily implied from the general nature of the matters enumerated in the section under heads (*a*) to (*g*) inclusively, all of which come within such circumscribed area, either for the reason that they are referable to heads 10 or 13 of s. 91, or to head 10 of s. 92, and thus, by force of head 29 of s. 91, again to s. 91 of the *B.N.A. Act* or because, by binding judicial interpretation of the latter,

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(*In Re Regulation and Control of Radio Communication in Canada* (1); *Johannesson and the Rural Municipality of West St. Paul and the Attorney-General of Manitoba and the Attorney-General of Canada* (2), they were declared to be within the legislative authority of Parliament.

These considerations, relevant particularly to the interpretation of the Act, may conveniently be completed with the immediate examination and determination of two arguments advanced in support of the submission of invalidity:

(i) It was suggested that the words "or in connection with" appearing at first in the opening phrase of the section and again under head (*a*) thereof reading:—

> (*a*) Works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada.

may very well be construed as extending the application of the Act to persons not engaged in "any work, undertaking or business that is within the legislative authority of the Parliament of Canada"; with the alleged consequence that, failing the effectiveness of the limitation, placed on the application of the Act in order not to offend against the decision of the Judicial Committee in *Toronto Electric Commissioners* v. *Snider* (3), the Act, for that reason alone, would be to that extent, if not in its entirety, *ultra vires*. Whatever be, in this respect, the construction given to the provisions under head (*a*), considered out of the context of the section in which they are inserted, is not material for the provisions under heads (*a*) to (*h*), construed as they should be with the whole section, are all clearly controlled by the opening phrase thereof; hence, the operation of any of the provisions under the various heads of s. 53 which may by interpretation cover a field extending beyond the scope indicated in the governing phrase, is restricted by the latter and, to that extent, these provisions become ineffective. Being then considered, the governing phrase of the section shows that the limitative feature, therein expressed by the words "that is within the legislative authoirty of the Parliament of Canada", is directly related to "any work, undertaking or business", whether it be one "upon which" an

(1) [1932] A.C. 304.
(2) [1952] 1 S.C.R. 292.
(3) [1925] A.C. 396.

employee, within the meaning of s. 2(i), is employed, or whether it be one "in connection with the *operation* of which" —and not in connection with which— he is employed. *In Lawson* v. *The Wallasey Local Board* (1), the expression "anything in connection with this contract" was, in effect, held by Denman J., as he then was, to mean: anything *"part of or necessarily connected with the contract"*. Under a like construction, consistent with the limiting feature in the governing phrase, the employment therein referred to would then be employment upon such work, undertaking or business that is within the legislative authority of the Parliament of Canada or *employment as to part of or necessarily connected with the operation of such work, undertaking or business.* Hence the effectiveness of the limitation is unaffected by the words "in connection with" appearing in the governing provision of the section and, therefore, under the controlled provisions of head (*a*).

(ii) It is also argued that the closing words of the provisions under head (*a*) i.e., "anywhere in Canada" extend the application of the Act to shipping activities exclusively intraprovincial and that, on the view—with which I agree—that there is no power in Parliament to deal with such local activities, the Act would be, to that extent, *ultra vires.* Again, however, such provisions must be construed with the whole section and, controlled as they are by the governing phrase thereof, must then be held to be inoperative beyond the scope therein indicated. Hence against the effectiveness of the limitation remains unaffected.

The enunciation of the principle of limitation with a consequential duty for the Courts to pronounce as to the operation or the application of the Act in each of the cases as they may arise, appears to be a prudent, practical and yet valid legislative technique to adopt, in a Federal state, in relation to such a wide embracing and complex matter. The possible difficulties there may be in the judicial determination of each case leave untouched the true character of the limitation, the enactment of which clearly manifests the will of Parliament to legislate within its own field. And constitutionally, this will must be held to have been validly implemented in the Act if, as it must now be considered, the

(1) (1883) L.R. 11 Q.B.D. 229 at 239.

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Act thus construed is, as submitted on behalf of the Attorney-General of Canada particularly, legislation truly *in relation to* classes of subjects within the legislative competence of Parliament.

Obviously, for the effectuation of its aim, i.e., peaceful labour operations in these works, undertakings and businesses within the above description, Parliament had to and did effectively assume, under the Act, the regulation of certain civil rights of employers and employees engaged in such field. Hence the submission of invalidity based on this legal effect of the provisions of the Act. That "Most of the specific subjects in s. 91 do affect property and civil rights . . ." has already been pointed out by Lord Atkin in *Proprietary Articles Trade Association* v. *Attorney-General of Canada* (1); and, as he goes on to say, ". . . but so far as the legislation of Parliament in pith and substance is operating within the enumerated powers, there is constitutional authority to interfere with property and civil rights." In the *Labour Conventions* case (2), it was admitted at bar that once it is shown, as here, that a statute of Parliament affects property and civil rights, it is for the central authority to establish that nevertheless the statute is validly enacted under its legislative powers and this admission was acted upon in the matter by Lord Atkin who delivered the judgment for the Judicial Committee. Amongst other methods, such burden may be discharged in certain cases by showing that the impugned legislation is, of necessity, legislation incidental to the power to legislate in relation to one or more of the subjects within its own legislative competence. In *Toronto Electric Commissioners* v. *Snider* (*supra*), the statute considered, which was the predecessor to the Act, did, in a like matter and in a manner substantially similar, interfere with property and civil rights of employers and employees. There was, however, as to the application of the legislation, no limitation of a character such as the one found in the present Act. Ultimately, the question considered was whether this interference constituted the purpose of the legislation or was it merely incidental to other purposes within the legislative competence of Parliament. It being found that either the evidence adduced in the record or the statute itself manifested no

(1) [1931] A.C. 310 at 327. (2) [1937] A.C. 326.

purpose other than the one indicated by the legal effect of its provisions, i.e., interference with property and civil rights, the legislation was declared *ultra vires*. Under the present legislation however, the limitation, resting moreover in its essence formally on constitutional grounds, evidences a purpose other than the one indicated by the legal effect of its provisions, i.e., the promotion of peaceful labour operations in works, undertakings and businesses strictly within the legislative competence of Parliament. And while a like conclusion may not be reached in all of the cases where a similar pattern of legislative action is adopted, in the present matter I think that ". . . the legislation of Parliament in pith and substance is operating within the enumerated powers . . ." of Parliament. The right of Parliament to assume regulation touching the employment of persons engaged in works and undertakings falling within its jurisdiction, has already been considered and affirmed judicially. (*Paquette and another* v. *Corporation of Pilots For and Below the Harbour of Quebec and Attorney-General of Canada* (1) (1920) A.C. 1029; *In the Matter of Legislative Jurisdiction Over Hours of Labour* (2)) (1925) S.C.R. 505.

With respect to ss. 54 to 71 inclusive of the Act, no argument was made; and following precedents adopted in like circumstances in this Court, nothing is said.

As to the applicability. Stevedoring is an operation "part of or necessarily connected with" the operation of shipping. It is the business in which the Eastern Canada Stevedoring Company Limited, in Toronto, is engaged and this with respect to ships operated on regular schedules between ports in Canada and ports outside of Canada. As this is, under head 10 of s. 91 and head 10 of s. 92 of the B.N.A. Act, of federal concern exclusively, the Act applies to the company and such employees thereof who, qualifying as such under s. 2 (i) of the Act, are engaged in stevedoring operations.

For these reasons, I would answer the questions referred to us as follows:—

Question (1): Yes.

Question (2): No, subject to the reserve indicated as to ss. 54 to 71 inclusive.

(1) [1920] A.C. 1029. (2) [1925] S.C.R. 505.

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VALIDITY AND APPLICABILITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT

ABBOTT J.:—The Governor in Council, by Order in Council of November 18, 1954, referred the following questions to this Court for hearing and consideration:—(See p. *supra*).

The relevant facts are set out in the preamble to the Order in Council, and briefly are as follows.

The Eastern Canada Stevedoring Co., Ltd., provides stevedoring services at the port of Toronto for companies operating ships exclusively in foreign trade. Its services consist of the loading and unloading of the cargo of these ships and include storing for short periods, cargo which is about to be loaded or which has just been taken from the ship. The ship's officers have the direction and authority over the loading and unloading of cargo, and the stevedoring services are provided under the terms of a contract with the shipowners, the stevedoring company having no contractual or other relationship with the shippers or consignees.

The Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152, was originally enacted in 1907 and was an Act of general application. Following the decision of the Judicial Committee in *Toronto Electric Commissioners* v. *Snider* (1), the Act was amended to restrict its application to what might be described generally as "federal activities". The present Act, which in its essential features is the same as the 1925 Act, was passed in 1948 and is c. 54 of the Statutes of that year.

The general purpose of the Act is indicated by the long title, which reads:—"An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes". It provides a basis for negotiation between employers and employees as to terms and conditions of employment, contains provisions designed to eliminate unfair labour practices, provides methods and procedure for settling grievances and makes strikes and lockouts unlawful except under special circumstances.

The Act is divided into two Parts; Part I which contains the operative provisions and Part II which deals with application and administration.

(1) [1925] A.C. 396.

Section 53, which purports to limit the application of Part I to works, undertakings and businesses within the legislative authority of Parliament, reads as follows:—

53. Part I applies in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing.

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

and in respects of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

It seems clear that the loading and unloading of ships (often referred to as stevedoring when done by men who are not members of the ship's crew) is an essential part of the transportation of goods by water. As such, in my opinion, it comes within the exclusive legislative authority of Parliament under head 10 of s. 91 of the British North America Act "Navigation and Shipping", which term, as Viscount Haldane said in the *Montreal Harbour Commissioners Case* (1), is to be widely construed. I should add, however, that in my view, except in such aspects as may relate to the navigation of the vessel, the combined effect of heads 10, 13 and 29 of s. 91 and head 10 of s. 92 is to exclude from federal jurisdiction shipping which is purely local in character such as a ferry or a line of ships operating wholly within the limits of one province.

(1) [1926] A.C. 299 at 312.

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VALIDITY AND APPLICABILITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT,

Abbott J.

The right to strike and the right to bargain collectively are now generally recognized, and the determination of such matters as hours of work, rates of wages, working conditions and the like, is in my opinion a vital part of the management and operation of any commercial or industrial undertaking. This being so, the power to regulate such matters, in the case of undertakings which fall within the legislative authority of Parliament lies with Parliament and not with the Provincial Legislatures.

Since in my view the undertaking or business of Eastern Canada Stevedoring Co., Ltd., is one which is clearly within the legislative authority of Parliament, I would answer the first question in the affirmative.

I am also of opinion that s. 53, which I have quoted, does limit the application of Part I of the Act to works, undertakings and businesses which are within the legislative authority of Parliament. It remains to be determined in each individual case, of course, whether a particular work, undertaking or business is, in fact, within such authority.

I would answer the second question referred in the negative.