JOHN D. COUGHLIN ..... APPELLANT;

AND

THE ONTARIO HIGHWAY TRANSPORT BOARD ..... RESPONDENT;

AND

THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL FOR ONTARIO, THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL FOR ALBERTA, THE ATTORNEY GENERAL OF QUEBEC ..... INTERVENANTS.

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ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Constitutional law—Validity of legislation—Whether unconstitutional delegation by Parliament of power to legislate on interprovincial motor carriage—Motor Vehicle Transport Act, 1953-54(Can.), c. 59, s. 3(1), (2)—Ontario Highway Transport Board Act, R.S.O. 1960, c. 273—B.N.A. Act, ss. 91, 92.

In 1954, a licence permitting the inter-provincial transport of goods was issued to the appellant in Ontario, under the *Motor Vehicle Transport Act*, 1953-54 (Can.), c. 59. When informed that the respondent Board intended to hold a hearing to review the terms of the certificate which led to the issue of the licence, the appellant applied for an order prohibiting the Board from proceeding on the ground that the Board was without jurisdiction because the *Motor Vehicle Act*, which confers upon it the jurisdiction which it sought to exercise, was *ultra vires*. The trial judge dismissed the application, and this decision was affirmed by the Court of Appeal. The appellant was granted leave to

*PRESENT: Cartwright, Fauteux, Abbott, Martland, Judson, Ritchie and Spence JJ.

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appeal to this Court. In support of the appeal, it was argued that the terms of the *Motor Vehicle Transport Act*, and particularly s. 3 thereof, constituted an unlawful delegation by Parliament to the provincial legislatures of the power to legislate in relation to the subject matter of inter-provincial motor vehicle carriage, a subject matter wholly within the legislative jurisdiction of Parliament. Counsel for each of the intervenants supported the constitutional validity of the Act.

Held (Martland and Ritchie JJ. dissenting): The appeal should be dismissed.

Per Cartwright, Fauteux, Abbott, Judson and Spence JJ.: By the terms of s. 3 of the *Motor Vehicle Transport Act*, the question whether a person may operate the undertaking of an inter-provincial carrier of goods by motor vehicle within the limits of the province of Ontario is to be decided by a Board constituted by the provincial legislature and which must be guided in the making of its decision by the terms of the statutes of that legislature and the regulations passed thereunder as they may exist from time to time. There is here no delegation of law-making power, but rather the adoption by Parliament, in the exercise of its exclusive power, of the legislation of another body as it may from time to time exist, a course which has been held constitutionally valid by this Court in *A.G. for Ontario v. Scott*, [1956] S.C.R. 137, and by the Court of Appeal for Ontario in *R. v. Glibbery*, [1963] 1 O.R. 232. The respondent Board derives no power from the legislature of Ontario to regulate or deal with the inter-provincial carriage of goods. Its wide powers in that regard are conferred upon it by Parliament, which can at any time terminate them.

Per Martland and Ritchie JJ., *dissenting*: Section 3(2) of the *Motor Vehicle Transport Act* (Can.) is not valid federal legislation. This legislation constitutes an unconstitutional delegation from the federal to the provincial authority of a subject matter reserved to Parliament alone under the *B.N.A. Act*. In enacting the *Motor Vehicle Transport Act*, and particularly ss. 3(2) and 5 thereof, the Parliament of Canada purported to relinquish all control over that subject matter.

Droit constitutionnel—Validité d'un statut—S'agit-il d'une délégation inconstitutionelle par le Parlement du pouvoir de légiférer en matière de transport interprovincial par véhicule à moteur—Loi sur le transport par véhicule à moteur, 1953-54 (Can.), c. 59, art. 3(1), (2)—Ontario Highway Transport Board Act, R.S.O. 1960, c. 273—Acte de l'Amérique du Nord britannique, arts. 91, 92.

En 1954, un permis pour le transport interprovincial de marchandises a été accordé à l'appelant en Ontario en vertu de la *Loi sur le transport par véhicule à moteur*, 1953-54 (Can.), c. 59. Ayant été informé que la régie intimée avait l'intention de réexaminer les termes du certificat en vertu duquel le permis avait été accordé, l'appelant a demandé qu'il soit ordonné à la régie de ne pas procéder pour le motif que la régie était sans juridiction vu que la *Loi sur le transport par véhicule à moteur*, qui lui confère la juridiction qu'elle tente d'exercer, est *ultra vires*. Le juge de première instance a rejeté la requête, et sa décision fut confirmée par la Cour d'appel. L'appelant a obtenu la permission d'en appeler à cette Cour, et soutient que les termes de la

Loi sur le transport par véhicule à moteur, et particulièrement l'art. 3 d'icelle, constituent une délégation illégale par le Parlement aux législatures provinciales du pouvoir de légiférer en matière de transport interprovincial par véhicule à moteur, une matière relevant entièrement de la juridiction législative du Parlement. Les procureurs de chacun des intervenants ont affirmé la validité constitutionnelle de la loi.

Arrêt: L'appel doit être rejeté, les Juges Martland et Ritchie étant dissidents.

Les juges Cartwright, Fauteux, Abbott, Judson et Spence: De par les termes mêmes de l'art. 3 de la *Loi sur le transport par véhicule à moteur,* la question de savoir si une personne peut exploiter une entreprise interprovinciale pour le transport de marchandises par véhicule à moteur dans la province de l'Ontario doit être décidée par une régie créée par la législature provinciale et dont les décisions doivent être basées sur les termes des lois de cette législature et des règlements établis en vertu d'icelles, en vigueur de temps à autre. Il n'y a ici aucune délégation du pouvoir de légiférer. Il s'agit plutôt de l'adoption par le Parlement, dans l'exercice de son pouvoir exclusif, de la législation d'un autre corps telle qu'elle peut exister de temps à autre, ce qui a été jugé constitutionnellement valide par cette Cour dans *A.G. for Ontario v. Scott,* [1956] R.C.S. 137, et par la Cour d'appel de l'Ontario dans *R. v. Glibbery,* [1963] 1 O.R. 232. La régie intimée ne tire aucun pouvoir de la législature de l'Ontario pour réglementer le transport interprovincial de marchandises. Les pouvoirs étendus qu'elle détient à cette égard lui proviennent du Parlement qui peut en tout temps y mettre fin.

Les Juges Martland et Ritchie, *dissidents:* L'art. 3(2) de la *Loi sur le transport par véhicule à moteur* (Can.) n'est pas une législation fédérale valide. Cette législation constitue une délégation inconstitutionnelle de l'autorité fédérale à l'autorité provinciale d'une matière réservée exclusivement au Parlement par l'*Acte de l'Amérique du Nord britannique.* De par les termes mêmes de la loi, et particulièrement des arts. 3(2) et 5 d'icelle, le Parlement du Canada a abandonné tout contrôle sur cette matière.

APPEL d'un jugement de la Cour d'appel de l'Ontario[1], confirmant une décision rejetant une requête pour prohibition. Appel rejeté, les Juges Martland et Ritchie étant dissidents.

APPEAL from a judgment of the Court of Appeal for Ontario[1], dismissing an application for prohibition. Appeal dismissed, Martland and Ritchie JJ. dissenting.

D. K. Laidlaw and *J. H. Francis,* for the appellant.

James J. Carthy, for the respondent.

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[1] [1966] 1 O.R. 183, 53 D.L.R. (2d) 30.

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D. S. Maxwell, Q.C., and *D. H. Aylen*, for the Attorney General of Canada.

F. W. Callaghan, Q.C., for the Attorney General for Ontario.

D. W. Moylan, for the Attorney General of Manitoba.

Gerald LeDain, Q.C., for the Attorney General of Quebec.

Samuel A. Friedman, Q.C., for the Attorney General for Alberta.

The judgment of Cartwright, Fauteux, Abbott, Judson and Spence JJ. was delivered by

CARTWRIGHT J.:—This is an appeal, brought pursuant to leave granted by this Court, from an order of the Court of Appeal for Ontario[1] made on October 14, 1965, affirming an order of Gale C.J.H.C., made on July 15, 1965, dismissing an application of the appellant for an order prohibiting the respondent from proceeding with a hearing to review the terms of the certificates which led to the issue of an extra-provincial operating licence to the appellant. The Court of Appeal gave no written reasons for its decision but we are informed by counsel that it stated its agreement with the reasons of Gale C.J.H.C.

There is no dispute as to any matter of fact. All of the business of the appellant consists of inter-provincial transport of goods and none of its operations involves transport entirely within one province so as to be of an intra-provincial nature. In 1954 a licence was issued to the appellant in Ontario under the *Motor Vehicle Transport Act* (Canada); this licence permits the inter-provincial movement of certain specific types of merchandise and is number X828. The respondent has informed the appellant of its intention to hold a hearing under *The Motor Vehicle Transport Act* (Canada) to review the terms of the certificate which led to the issue of the licence.

The application for prohibition was founded on the ground that the respondent was without jurisdiction because the Act which confers upon it the jurisdiction which it sought to exercise is *ultra vires* of Parliament. That Act is *The Motor Vehicle Transport Act*, Statutes of Canada, 2-3 Eliz. II, c. 59.

[1] [1966] 1 O.R. 183, 53 D.L.R. (2d) 30.

The relevant provisions of the Act are:

Section 2:

In this Act,

(*a*) "extra-provincial transport" means the transport of passengers or goods by means of an extra-provincial undertaking;

(*b*) "extra-provincial undertaking" means a work or undertaking for the transport of passengers or goods by motor vehicle, connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

* * *

(*g*) "local undertaking" means a work or undertaking for the transport of passengers or goods by motor vehicle, not being an extra-provincial undertaking; and

(*h*) "provincial transport board" means a board, commission or other body or person having under the law of a province authority to control or regulate the operation of a local undertaking.

Section 3(1):

(1) Where in any province a licence is by the law of the province required for the operation of a local undertaking, no person shall operate an extra-provincial undertaking in that province unless he holds a licence issued under the authority of this Act.

(2) The provincial transport board in each province may in its discretion issue a licence to a person to operate an extra-provincial undertaking into or through the province upon the like terms and conditions and in the like manner as if the extra provincial undertaking operated in the province were a local undertaking.

Section 5:

The Governor in Council may exempt any person or the whole or any part of an extra-provincial undertaking or any extra-provincial transport from all or any of the provisions of this Act.

While an additional submission was made to Gale C.J. H.C., the only ground in support of the appeal relied upon before us was that the terms of the *Motor Vehicle Transport Act*, and particularly s. 3 thereof, constitute an unlawful delegation by Parliament to the provincial legislatures of the power to legislate in relation to the subject matter of inter-provincial motor vehicle carriage which subject matter was rightly conceded to be wholly within the legislative jurisdiction of Parliament.

Counsel for each of the intervenants supported the constitutional validity of the Act.

The Motor Vehicle Transport Act was assented to on June 26, 1954; pursuant to a proclamation of the Governor in Council issued under s. 7 of the Act it came into force in Ontario on September 15, 1954. At that date the powers as to the regulation of intra-provincial carriage of goods by motor vehicle now exercised by the respondent Board were

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conferred upon the Ontario Municipal Board by *The Public Commercial Vehicles Act,* R.S.O. 1950, c. 304. The respondent Board was created by Statutes of Ontario, 1955, 4 Eliz. II, c. 54, by s. 25 of which the *Public Commercial Vehicles Act,* R.S.O. 1950, c. 304, was amended so that the powers as to the regulation of intra-provincial carriage of goods by motor vehicle theretofore exercised by the Ontario Municipal Board were transferred to the respondent Board.

The rules which guide the Board in the performance of its duties are now contained in the *Public Commercial Vehicles Act,* R.S.O. 1960, c. 139 and Regulations made by the Lieutenant-Governor in Council pursuant to s. 16 of that Act.

From the above brief review of the relevant legislation it will be seen that as matters stand at present the question whether a person may operate the undertaking of an inter-provincial carrier of goods by motor vehicle within the limits of the Province of Ontario is to be decided by a Board constituted by the provincial legislature and which must be guided in the making of its decision by the terms of the statutes of that legislature and the regulations passed thereunder as they may exist from time to time.

Mr. Laidlaw argues that in bringing about this result by the enactment of s. 3 of the *Motor Vehicle Transport Act* Parliament has in substance and reality abdicated its power to make laws in relation to the subject of inter-provincial motor vehicle carriage and unlawfully delegated that power to the provincial legislature.

It is made clear by the judgment of this Court in *Attorney General of Nova Scotia v. Attorney General of Canada*[2], and by the earlier decisions of the Judicial Committee and of this Court collected and discussed in the reasons delivered in that case, that neither Parliament nor a Provincial Legislature is capable of delegating to the other or of receiving from the other any of the powers to make laws conferred upon it by the *British North America Act.* Bill No. 136 of the Legislature of Nova Scotia which was under consideration in that case in terms provided that the Lieutenant-Governor of the Province might:

by proclamation, from time to time delegate to and withdraw from the Parliament of Canada authority to make laws in relation to any matter

[2] [1951] S.C.R. 31, [1950] 4 D.L.R. 369.

relating to employment in any industry, work or undertaking in respect of which such matter is, by Section 92 of *The British North America Act*, 1867, exclusively within the legislative jurisdiction of this Legislature and any laws so made by the said Parliament shall, while such delegation is in force, have the same effect as if enacted by this Legislature.

The difference between such a bill and the Act which we are considering is too obvious to require emphasis.

It is well settled that Parliament may confer upon a provincially constituted board power to regulate a matter within the exclusive jurisdiction of Parliament. On this point it is sufficient to refer to the reasons delivered in the case of *P.E.I. Potato Marketing Board v. H. B. Willis Inc*[3].

In the case before us the respondent Board derives no power from the Legislature of Ontario to regulate or deal with the inter-provincial carriage of goods. Its wide powers in that regard are conferred upon it by Parliament. Parliament has seen fit to enact that in the exercise of those powers the Board shall proceed in the same manner as that prescribed from time to time by the Legislature for its dealings with intra-provincial carriage. Parliament can at any time terminate the powers of the Board in regard to inter-provincial carriage or alter the manner in which those powers are to be exercised. Should occasion for immediate action arise the Governor General in Council may act under s. 5 of the *Motor Vehicle Transport Act*.

In my opinion there is here no delegation of law-making power, but rather the adoption by Parliament, in the exercise of its exclusive power, of the legislation of another body as it may from time to time exist, a course which has been held constitutionally valid by this Court in *Attorney General* for *Ontario v. Scott*[4] and by the Court of Appeal for Ontario in *Regina v. Glibbery*[5].

As has already been stated the point dealt with above was the only one argued before us. In regard to it I am in substantial agreement with the reasons of Gale C.J.H.C. It follows that I would dismiss the appeal.

Before parting with the matter I wish to call attention to the fact that in each of the proclamations whereby the *Motor Vehicle Transport Act* was brought into force in the

[3] [1952] 2 S.C.R. 392, [1952] 4 D.L.R. 146.
[4] [1956] S.C.R. 137, 114 C.C.C. 224, 1 D.L.R. (2d) 433.
[5] [1963] 1 O.R. 232, [1963] 1 C.C.C. 101, 38 C.R. 5, 36 D.L.R. (2d) 548.

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various provinces it is recited that this action had been requested by the Government of the Province concerned. It seems plain that the Government of Canada in co-operation with the Governments of the Provinces concerned has sought to achieve a satisfactory manner of regulating the transport of goods by motor vehicle. Our duty is simply to determine whether as a matter of law the Act of Parliament impugned by the appellant is valid; but it is satisfactory to find that there is nothing which compels us to hold that the object sought by this co-operative effort is constitutionally unattainable.

I would dismiss the appeal with costs but would make no order as to costs in regard to any of the intervenants.

The judgment of Martland and Ritchie JJ. was delivered by

RITCHIE J. (*dissenting*):—This is an appeal from a judgment of the Court of Appeal for Ontario[6] dismissing without reasons an appeal from a judgment rendered by Gale C.J.H.C. (as he then was) whereby he dismissed the application of the present appellant for an order prohibiting the Ontario Highway Transport Board from proceeding with a hearing to review the certificates of public necessity and convenience which led to the issuance of his Extra-Provincial Operating Licence for the Province of Ontario. I have had the benefit of reading the reasons for judgment prepared by the present Chief Justice in which he sets out the relevant statutory provisions and reviews the circumstances giving rise to this appeal, but I do not find it possible to agree with the conclusion which he has reached in confirming the judgments of the Courts below.

The "Extra-Provincial Operating Licence" here in question, which is numbered X828, appears to be signed by the Registrar of Motor Vehicles for the Province of Ontario. It bears the heading: "The Motor Vehicle Transport Act (Canada 1954)—Ontario Department of Transport—Extra-Provincial Operating Licence" and it authorizes the appellant "to operate an extra-provincial undertaking for the transportation of goods...subject to the terms and conditions printed on the back hereof..." The terms and conditions referred to read, in part, as follows:

[6] [1966] 1 O.R. 183, 53 D.L.R. (2d) 30.

THE MOTOR VEHICLE TRANSPORT ACT

Statutes of Canada 1954

1. This Act authorizes the Minister of Transport to licence inter-provincial and international undertakings for the transport of passengers and goods by motor vehicle upon like terms and conditions and in the like manner as if the extra-provincial undertaking were a local undertaking.

2. Licences issued under this Act for the transportation of goods between two or more provinces of Canada or between the province of Ontario and a state of the United States are designated 'extra-provincial operating licences' and the serial number of each licence shall commence with the letter 'X'. The terms and conditions are *that it shall be subject to the provisions of The Public Commercial Vehicles Act (Ontario) and the regulations made thereunder* with the following exceptions: ...

The italics are my own.

The exceptions are not strictly relevant for the purpose of this appeal.

The section of the *Motor Vehicle Transport Act* which is called in question in the present case is s. 3(2) which reads as follows:

3. (2) The provincial transport board in each province may in its discretion issue a licence to a person to operate an extra-provincial undertaking into or through the province under the like terms and conditions and in the like manner as if the extra-provincial undertaking operated in the province were a local undertaking.

The appellant contends that these provisions, when read in conjunction with the *Public Commercial Vehicles Act*, R.S.O. 1960, c. 319 and the regulations made thereunder, constitute a delegation by Parliament to the Provincial executive of the power to exercise control over a connecting undertaking by regulation, which power is expressly stated in the case of *A.G. (Ontario) v. Winner*[7], to be vested in the federal authority exclusively by reason of the provisions of s. 92(10)(*a*) of the *British North America Act*.

In the case of *A. G. (Ontario) v. Winner, supra*, the Privy Council had decided that it was beyond the legislative powers of a province (New Brunswick) to prohibit the operator of an interprovincial bus line from carrying passengers from points outside the province to points within the province and *vice versa* on the ground that no province had jurisdiction to legislate in relation to extra-provincial transport. The matter was succinctly stated by Lord Porter at page 580 where he said:

. . . it is for the Dominion alone to exercise, either by Act or by regulation, control over connecting undertakings.

[7] [1954] A.C. 541, 13 W.W.R. (N.S.) 657, 71 C.R.T.C. 225, 4 D.L.R. 657.

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It appears to me to be of more than passing interest to note that the *Motor Vehicle Transport Act* (Canada) was assented to by Parliament almost exactly four months after the decision in the *Winner* case had been rendered by the Privy Council and that three months later, at the request of the Province of Ontario, a proclamation was issued "declaring the said act to be in force in the said province".

It seems to me that if it is to be held that s. 3(2) of the *Motor Vehicle Transport Act* is valid federal legislation, then the effect of the decision in the *Winner* case has been effectively nullified insofar as the Province of Ontario is concerned.

Before considering the question of whether or not this legislation constitutes a delegation from the federal to the provincial authority of subject matter reserved to Parliament alone under the *British North America Act,* it appears to me to be proper to re-state the proposition, that neither Parliament nor a provincial legislature is capable of delegating its powers to the other, in the language in which it was stated by Chief Justice Rinfret in *A. G. of Nova Scotia v. A. G. of Canada*[8]. The Chief Justice there said at page 34:

> The constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled. It is part of the protection that Parliament can legislate only on the subject matters referred to it by section 91 and that each Province can legislate exclusively on the subject matters referred to it by section 92. The country is entitled to insist that legislation adopted under section 91 should be passed exclusively by the Parliament of Canada in the same way as the people of each Province are entitled to insist that legislation concerning the matters enumerated in section 92 should come exclusively from their respective Legislatures. . .
>
> No power of delegation is expressed either in section 91 or in section 92, nor, indeed, is there to be found the power of accepting delegation from one body to the other; and I have no doubt that if it had been the intention to give such powers it would have been expressed in clear and unequivocal language.

Notwithstanding these observations, it has nevertheless been settled, at least since the case of the *P.E.I. Potato Marketing Board v. H. B. Willis Inc.*[9] (hereinafter referred to as the *P.E.I.* case), that Parliament may

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[8] [1951] S.C.R. 31, [1950] 4 D.L.R. 369.

[9] [1952] 2 S.C.R. 392, [1952] 4 D.L.R. 146.

authorize the Governor-in-Council to empower a provincially-appointed board to regulate a matter which is within the exclusive jurisdiction of Parliament provided that ultimate control over the manner in which such power is to be exercised is retained by the federal authority. The impugned legislation considered in the *P.E.I.* case was section 2 of the *Agricultural Products Marketing Act,* 1949, which read as follows:

2(1) The Governor in Council may by order grant authority to any board or agency authorized under the law of any province to exercise powers of regulation in relation to the marketing of any agricultural product locally within the province, to regulate the marketing of such agricultural product outside the province in interprovincial and export trade and for such purposes to exercise all or any powers like the powers exercisable by such board or agency in relation to the marketing of such agricultural product locally within the province.

(2) The Governor in Council may by order revoke any authority granted under subsection one.

The effect of this legislation was described by Chief Justice Rinfret at page 396 in the following terms:

The effect of that enactment is for the Governor-in-Council to adopt as its own a board, or agency already authorized under the law of a province, to exercise powers of regulation outside the province in interprovincial and export trade, and for such purposes to exercise all or any powers exercisable by such board, or agency, in relation to the marketing of such agricultural products locally within the province. I cannot see any objection to federal legislation of this nature. Ever since *Valin v. Langlois,* (1879) 5 A.C. 115, when the Privy Council refused leave to appeal from the decision of this Court, the principle has been consistently admitted that it was competent for Parliament to "employ its own executive officers for the purpose of carrying out legislation which is within its constitutional authority, as it does regularly in the case of revenue officials and other matters which need not be enumerated". The latter are the words of Lord Atkin, who delivered the judgment of the Judicial Committee in *Proprietary Articles Trade Association et al v. A.G. for Canada et al,* (1931 A.C. 310). The words just quoted are preceded in the judgment of Lord Atkin by these other words:—

'Nor is there any ground for suggesting that the Dominion may not...'

It will be seen, therefore, that on that point the Judicial Committee did not entertain the slightest doubt.

In *The Agricultural Products Marketing Act* of 1949 *that is precisely what Parliament has done.* Parliament has granted authority to the Governor-in-Council to employ as its own a board, or agency, for the purpose of carrying out its own legislation for the marketing of agricultural products outside the province in interprovincial and export trade, two subject-matters which are undoubtedly within its constitutional authority.

The italics are my own.

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It will be seen also from a consideration of the Chief Justice's reasons for judgment, page 395, that he regarded the delegations of authority under the *Agricultural Products Marketing Act* as being "along the same lines" as those passed upon by this Court in the *War Measures Act* cases of *In re Gray*[10] and *The Chemical Reference*[11].

In comparing the *P.E.I.* case with the case of *Attorney General of Nova Scotia v. Attorney General of Canada, supra,* Mr. Justice Taschereau said, at pages 410 and 411:

> Here the issue is entirely different. The Federal legislation does not confer any additional powers to the legislature but vests in a group of persons certain powers to be exercised in the interprovincial and export field. It is immaterial that the same persons be empowered by the legislature to control and regulate the marketing of Natural Products within the Province. It is true that the Board is a creature of the Lieutenant-Governor-in-Council, but this does not prevent it from exercising duties imposed by the Parliament of Canada. (*Valin v. Langlois*).

In the same case, Mr. Justice Rand expressed himself rather more fully in the following terms at pages 414 and 415:

> What the law in this case has done has been to give legal significance called incidents to certain group actions of five men. That to the same men, acting in the same formality, another co-ordinate jurisdiction in a federal constitution cannot give other legal incidents to other joint actions is negated by the admission that the Dominion by appropriate words could create a similar board, composed of the same persons, bearing the same name, and with a similar formal organization, to execute the same Dominion functions. Twin phantoms of this nature must, for practical purposes, give way to realistic necessities. As related to courts, the matter was disposed of in *Valin v. Langlois*. No question of disruption of constitutive provincial features or frustration of provincial powers arises: *both legislatures have recognized the value of a single body to carry out one joint, though limited, administration of trade. At any time the Province could withdraw the whole or any part of its authority. The delegation was, then, effective.*

The italics are my own.

I am unable to conclude that the language of s. 3(2) of the *Motor Vehicle Transport Act* creates a situation in which the principle recognized in *Valin v. Langlois*[12] has any application.

In the *P.E.I.* case, Parliament did nothing more than to authorize the Governor-in-Council to select as an arm of the federal authority any board or agency already estab-

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[10] (1918), 57 S.C.R. 150, 3 W.W.R. 111, 42 D.L.R. 1.
[11] [1943] S.C.R. 1, 79 C.C.C. 1, [1943] 1 D.L.R. 248.
[12] (1879), 5 App. Cas. 115.

lished under provincial law for the regulation of Agricultural Marketing within the province and for the purpose of regulating such marketing extra provincially, to grant to it "any powers like the powers exercisable by such board or agency in relation to the marketing of such agricultural products locally within the province".

The *Agricultural Products Marketing Act*, and particularly s. 2 thereof and the order-in-council made by the Governor-in-Council thereunder, when read together with the provincial legislation, constitute an example of valid co-operation between federal and provincial authorities, and the whole question in the present case is whether the same thing has been achieved by the enactment of s. 3(2) and s. 5 of the *Motor Vehicle Transport Act*.

The difficulty which presents itself to Parliament and to the legislatures in such cases is exemplified in the reasons for judgment of Lord Atkin in *Attorney General for British Columbia v. Attorney General for Canada*[13], where he said:

> Unless and until a change is made in the respective legislative functions of Dominion and Province it may well be that satisfactory results for both can only be obtained by co-operation. *But the legislation will have to be carefully framed, and will not be achieved by either party leaving its own sphere and encroaching upon that of the other.*

The italics are my own.

In light of these observations, it is to be noted that in the case of the *Agricultural Products Marketing Act* the extent to which the provincial powers to regulate were adopted, to be exercised in the extra-provincial field, remained within the control of the Governor-in-Council and in fact the order-in-council granting such authority to the P.E.I. Potato Board was restricted by reference to a selected number of provincially authorized regulations. In my view, the important aspect of this legislation from the point of view of the present case is that the controlling authority under that statute remained at all times in federal hands, with the result that the powers exercisable by the Board in the regulation of extra-provincial marketing are such as may from time to time be authorized by the Governor-in-Council.

[13] [1937] A.C. 377 at 389, 1 W.W.R. 328, 67 C.C.C. 337, 1 D.L.R. 691.

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In the case of the *Motor Vehicle Transport Act*, direct authority has been given to the local board in each province "in its discretion to issue a licence to a person to operate an extra-provincial undertaking into or through the province", and the manner in which that discretion is to be exercised is not limited to such provincial regulations as the Governor-in-Council may designate but is to be exactly the same as if the extra-provincial undertaking were a "local undertaking". In my view the effect of this legislation is that the control of the regulation of licensing of a "connecting undertaking", is turned over to the provincial authority, and in the Province of Ontario this means that the controlling legislation is the *Ontario Highway Transport Act*, R.S.O. 1960, c. 273, and the *Public Commercial Vehicles Act*, R.S.O. 1960, c. 319.

That this is in fact the effect of the legislation is made apparent from a consideration of the Notice of Review of the appellant's operating licence which is brought in question in the present case. It was published in the Ontario Gazette and read as follows:

The Ontario Highway Transport Board Act, 1960

The Ontario Highway Transport Board pursuant to Section 16 of The Ontario Highway Transport Board Act will review the terms of the certificates which led to the issuance of extra-provincial operating licence No. X-828, and has fixed Monday, the 14th day of September, 1964, at 10 a.m. (E.D.S.T.) at its Chambers, 67 College Street, Toronto, Ontario, for that purpose.

At the hearing the applicant will be required to show cause why these certificates should not be amended or revoked by reason of operations contrary to the public interest; the operations are, more specifically—continued disregard of The Motor Vehicle Transport Act (Canada) and The Highway Traffic Act and the regulations pursuant thereto.

The Board may amend or revoke the terms of these certificates.

Although reference is made in the Notice to "continued disregard of *The Motor Vehicle Transport Act* (Canada) and *The Highway Traffic Act*" it is nevertheless clear that the *Ontario Highway Transport Board Act* was the statute pursuant to which the Notice was issued and the hearing was to be held.

There can, in my view, be no objection to Parliament enacting a statute in which existing provincial legislation is incorporated by reference so as to obviate the necessity of re-enacting it verbatim, but in providing for the granting of licences to extra-provincial undertakings in the like

manner as if they were local undertakings, Parliament must, I think, be taken to have adopted the provisions of the provincial statutes in question as they may be amended from time to time. The result is that the granting of such licences is governed by the *Public Commercial Vehicles Act, supra,* pursuant to s. 16 of which the Lieutenant-Governor-in-Council may make regulations

> ...(*q*) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act,...

I can only read this as meaning that the licensing regulations for extra-provincial transport may be governed by decisions made from time to time by the Lieutenant-Governor-in-Council without any control by, or reference to, the federal authority. This is very different from adopting by reference the language used in a provincial statute and, in my opinion, it means that the control over the regulation of licensing in this field has been left in provincial hands.

It is, of course, true that Parliament can at any time terminate the powers of the provincial boards to licence extra-provincial undertakings, but it seems to me that this would entail repealing s. 3(2) of the *Motor Vehicle Transport Act* and it is the constitutionality of that subsection which is here impugned.

It is also suggested that the Governor-in-Council might exercise control by acting under s. 5 of the *Motor Vehicle Transport Act* which reads as follows:

> The Governor-in-Council may exempt any person or the whole or any part of an extra-provincial undertaking or any extra-provincial transport from all or any of the provisions of this Act.

With the greatest respect for those who hold a different view, I do not think that this provision vests any control in the Governor-in-Council of the kind with which he was clothed by the *Agricultural Products Marketing Act.* Under the latter statute control of the regulation of extra-provincial marketing was vested in the Governor-in-Council; whereas under s. 5 of the *Motor Vehicle Transport Act* the powers of the Governor-in-Council are limited to *exempting* any extra-provincial transport from all or any of the provisions of the Act. I do not read this latter section as reserving any power to the Governor-in-Council to nullify the effect of s. 3(2) of the Act by exempting all extra-provincial transport from its provisions, and I am

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therefore of opinion that no control was retained by the federal authority over the unlimited legislative powers which it purported to transfer to the province by the language employed in s. 3(2) of the Act. Presumably, any person or undertaking exempted by the Governor-in-Council from the provisions of the Act, would be without authority to operate in the Province of Ontario, unless and until provision was made for the granting of a federal licence, but this would in no way effect the powers which s. 3(2) purported to confer on the Board to issue licences to persons or undertakings which had not been so exempted.

In my view, therefore, in enacting the *Motor Vehicle Transport Act,* and particularly s. 3(2) and 5 thereof, the Parliament of Canada purported to relinquish all control over a field in which Parliament has exclusive jurisdiction under the *British North America Act,* and left the power to exercise control of the licensing of extra-provincial undertakings to be regulated in such manner as the Province might from time to time determine.

The case of *A. G. for Ontario v. Scott*[14], has been cited in support of the validity of the legislation which is here in question, but in my view the question decided in that case was an entirely different one. The legislation there called in question was the *Reciprocal Enforcement of Maintenance Orders Act,* R.S.O. 1950, c. 334, which provided for registration in the Ontario court of a maintenance order made by a reciprocal state against a resident of Ontario. For the purpose of enforcement of the order, section 5(2) of the Act provided:

> At the hearing it shall be open to the person on whom the summons was served to raise any defence that he might have raised in the original proceedings had he been party thereto but no other defence;...

It was contended that this section amounted to a delegation by the legislature of its power to deal with the civil rights of its citizens, as the defences permitted under the law of England when the provincial act came into force might or might not have been extended or limited by subsequent English legislation. *No question of delegation between federal and provincial authorities of powers conferred by the British North America Act was at issue in this case* and the crux of the matter appears to me to have

[14] [1956] S.C.R. 137, 114 C.C.C. 224, 1 D.L.R. (2d) 433.

been stated by Rand J., speaking on behalf of himself, the Chief Justice, Kellock and Cartwright JJ. at page 141, where he said:

> That the legislation is within head 16, as a local or private matter, appears to me to be equally clear. No other part of the country nor any other of the several governments has the slightest interest in such a controversy and it concerns ultimately property, actual or potential, within Ontario in a local sense.
>
> Given, then, a right so created by the law of Ontario, the action taken in England is merely an initiating proceeding looking to effective juridical action in Ontario for the purposes of which it is a means of adducing a foundation in evidence. In the administration of justice the province is supreme in determining the procedure by which rights and duties shall be enforced and that it can act upon evidence taken abroad either before or after proceedings are begun locally I consider unquestionable.

To the same effect, Mr. Justice Abbott, speaking for himself, Taschereau and Fauteux JJ., said, at pages 147 and 148:

> As to s. 5, it is clearly competent to any province to determine for the purpose of a civil action brought in such province, what evidence is to be accepted and what defences may be set up to such an action. With the greatest respect for the learned judges in the Court below who have expressed the contrary view, the provision contained in s. 5(2) that 'it shall be open to the person on whom the summons was served to raise any defence that he might have raised in the original proceedings had he been a party thereto but no other defence' is not in my opinion a delegation of legislative power to another province or state. It is merely a recognition by the law of the province of the rights existing from time to time under the laws of another province or state, in accordance with the well recognized principles of private international law.

Notwithstanding certain *obiter dicta* in the reasons for judgment of Mr. Justice Rand and Mr. Justice Locke, I consider that the excerpts above quoted accurately reflect the *ratio decidendi* of the case of *A. G. for Ontario v. Scott, supra,* and with all respect for the opinion of others, I do not think that it constitutes an authority supporting the validity of the statute which is here called in question.

Reliance was placed also on the case of *Regina v. Glibbery*[15]. In that case it was contended that the provisions of the *Government Property Traffic Regulations* passed under the authority of the *Government Property Traffic Act,* R.S.C. 1952, c. 324, constituted an unconstitutional delegation of legislative authority by Parliament to the Province of Ontario.

[15] [1963] 1 O.R. 232, [1963] 1 C.C.C. 101, 38 C.R. 5, 36 D.L.R. (2d) 548.

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The accused, Glibbery, was charged with careless driving, contrary to the provisions of s. 60 of the *Highway Traffic Act*, R.S.O. 1960, c. 172, whilst driving his vehicle in the defence establishment of Camp Borden which was government property, and contrary also to the provisions of s. 6(1) of the *Government Property Traffic Regulations* which read as follows:

> No person shall operate a vehicle on a highway otherwise than in accordance with the laws of the province and the municipality in which the highway is situated.

The constitutional argument is referred to in the judgment rendered by Mr. Justice McGillivray on behalf of the Court of Appeal of Ontario where he says at page 235:

> It is submitted however, that this Regulation can only apply to the laws of the Provinces and municipalities as they were in 1952 when the *Government Property Traffic Act* and the Regulations thereunder became law. If "laws of the province" as used in s. 6 is to mean more than that and to mean laws of the Province as they may be amended from time to time then, it is contended, there exists an unconstitutional and invalid delegation of legislative authority by Parliament to the Province.

After observing that he had no doubt that it was intended that the traffic regulations regarding highways upon Dominion property should conform at all times with those on highways in the areas surrounding such property and that such was the intention of the present regulation, Mr. Justice McGillivray went on to say at page 236:

> There is not here any delegation by Parliament to a Province of legislative power vested in the Dominion alone by the *B.N.A. Act* and of a kind not vested by the Act in a Province. Delegation by Parliament of any such power would be clearly unconstitutional: *A.-G. N.S. et al v. A.-G. Can.* 1950 4 D.L.R. 369, 1951 S.C.R. 31. The power here sought to be delegated was not of such a type but was in relation to a matter in which the Province was independently competent. Parliament could validly have spelled out in its own regulations the equivalent of relevant sections of the *Highway Traffic Act* as they existed from time to time but it was more convenient to include them, as has been done, by reference to contemporary legislation in the Province.

It appears to me that as the federal property at Camp Borden was within the Province of Ontario, the *Highway Traffic Act* of that Province would have applied to the highways inside the Camp boundaries had no regulations been enacted by the federal authority, but the federal government, of course, had authority to exercise control by way of regulation over the movement of traffic on its own

property if it saw fit to do so and s. 6(2) of the *Government Property Traffic Act Regulations* makes it plain that the whole of the provincial law was not adopted and that the exercise of control by regulation over the movement of traffic within the Camp area was never relinquished by the federal authority. Section 6(2) reads as follows:

> In this section the expression 'laws of the province and the municipality' does not include laws that are inconsistent with or repugnant to any of the provisions of the Government Property Traffic Act or these regulations.

In my view, therefore, the case of *Regina v. Glibbery* is distinguishable from the present case on the ground that the federal legislation there placed in question related to property within the province in respect to which the province was independently competent to legislate, whereas the matter of extra-provincial transportation rests within the legislative competence of Parliament alone. Even if this were not so, and Parliament had exclusive power to regulate traffic within the boundaries of its own property, the regulations which were passed for that purpose do not constitute a delegation of that power to the provinces because control is clearly retained in the federal authority as is indicated by the last-quoted section of the regulations, whereas under the *Motor Vehicle Transport Act,* Parliament has, in my opinion, relinquished to the province all control over the licensing of extra-provincial transport.

I have no doubt that the legislation here impugned was enacted by the Parliament of Canada with a view to cooperating with the provinces in the field of interprovincial transportation, but in framing the provisions of s. 3(2) and 5 of the *Motor Vehicle Transport Act,* Parliament has, in my opinion, failed to achieve the end which it sought and the authority of the case of the *A.G. v. Winner, supra,* remains as it was before the statute was enacted.

I do not think that anyone would question the desirability and in some cases the necessity of co-operation between the federal and provincial authorities in the carrying out of their respective functions, but if this is to be done, as Lord Atkin said in *A.G. for B.C. v. A.G. for Canada, supra,* "the legislation will have to be carefully framed", and if it results in the federal authority relinquishing to a province

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all control over a sphere allotted to "the exclusive legislative authority of the Parliament of Canada" under the *British North America Act*, then the legislation cannot stand.

The fact that Parliament can at any time repeal the offending sections of the *Motor Vehicle Transport Act* appears to me, with all respect, to be beside the point. The question here at issue is whether the language used by the framers of those sections, when read within the framework of the existing statute itself, has the effect of relinquishing all federal control over the licensing of "a connecting undertaking". I think that it does.

For all these reasons I would allow this appeal and direct that an order of prohibition be made prohibiting the Ontario Highway Transport Board from proceeding with any hearing with respect to the appellant's extra-provincial operating licence. In my opinion, the appellant should have his costs in this Court and in the courts below.

Appeal dismissed with costs, MARTLAND *and* RITCHIE JJ. *dissenting.*

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