ONTARIO BOYS' WEAR LIMITED AND OTHERS (PLAINTIFFS) ..... } APPELLANTS;

AND

THE ADVISORY COMMITTEE, APPOINTED PURSUANT TO THE PROVISIONS OF THE INDUSTRIAL STANDARDS ACT AND THE SCHEDULE FOR THE MEN'S AND BOYS' CLOTHING INDUSTRY FOR THE PROVINCE OF ONTARIO, AND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO (DEFENDANTS) ..... } RESPONDENTS;

AND

THE TOLTON MANUFACTURING CO., LTD. (PLAINTIFF).

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*May 29, 30, 31.
*June 1.
*Oct. 3.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Industry and Labour—Constitutional Law—The Industrial Standards Act, R.S.O. 1937, c. 191—Constitutional validity of the Act and of regulations made thereunder—Sufficiency, for compliance with the Act and regulations, of proceedings taken for creation of a schedule under the Act—Validity of the schedule.

Appellants called in question the constitutional validity of *The Industrial Standards Act*, R.S.O. 1937, c. 191, and regulations made pursuant thereto, and claimed that, in any event, a certain schedule, purporting to have been established pursuant to the Act, and which was approved by the Minister of Labour and on his recommendation declared to be in force by the Lieutenant-Governor in Council, of wages and hours and days of labour for the Men's and Boys' Clothing Industry for the Province of Ontario, and which purported to confer upon the Advisory Committee appointed pursuant to the provisions of said Act and

PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

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schedule, *inter alia,* the power to collect certain assessments of money from appellants and other manufacturers engaged in the industry and to administer and enforce the schedule, was illegal, void and *ultra vires,* because (so it was alleged) certain proceedings and conditions required for the creation of the schedule were not properly taken or observed.

Held: The said Act and regulations were not *ultra vires;* and they were sufficiently complied with in the creation of the schedule in question. Judgment of the Court of Appeal for Ontario, [1943] O.R. 526, affirming judgment of Mackay J., [1942] O.R. 518, dismissing appellants' action, affirmed.

Dealing specifically with questions raised, this Court held as follows:

The giving to the Industry and Labour Board of its powers under s. 5 (*c*) and (*e*) of the Act is not *ultra vires* the provincial legislature.

The said Board in exercising its powers under the Act is not a court of justice analogous to a superior, district or county court; it would seem to be merely an administrative body, but, in any event, it does not come within the intendment of s. 96 of the *B.N.A. Act.*

Clause (*l*) of s. 7 of the Act (as to assessment of and collection from employers and employees) and clauses 16 and 17 of the regulations (as to collection of assessments from employees by, and remittance by, employers) cannot be said to authorize the imposition of an indirect tax. If the assessment be a tax, it is a direct tax. Assessment may be justified as a fee for services rendered by the Province or by its authorized instrumentalities under the powers given to provincial legislatures by s. 92 (13) and (16) of the *B.N.A. Act* (*Shannon* v. *Lower Mainland Dairy Products Board,* [1938] A.C. 708).

The Act, regulations and schedule are not *ultra vires* as encroaching upon a field occupied by the Dominion in the *Combines Investigation Act* (R.S.C. 1927, c. 26, as amended); the legislature would have authority to enact anything which is found in the schedule; and such legislation (and therefore the combined effect of the Act, regulations and schedule) cannot be said to be a "combine" within the meaning of the Dominion Act.

The notice in the present case (described in the judgment) convening the conference of the employers and employees in the industry for the purpose mentioned in s. 6 of the Act, was sufficient in point of form; and the extent and manner of notification (publication of the notice in three Toronto newspapers and notification, giving date of the conference and calling attention to the newspaper advertisements, to employers named in a list on file in the Department of Labour, and to various union representatives) was, in the circumstances (set out in the judgment), sufficient. As long as the Minister of Labour and his officers act in good faith, all such matters must be left to their discretion. They were justified in proceeding upon notice to those employers whose names appeared on the departmental list and to the officials of various unions who, in the industrial standards officer's opinion, represented the great majority of the employees engaged in the industry.

The Minister and his officers were also justified in omitting custom tailors from the conference. It was quite apparent that in the view of the industrial standards officer (and in the view of the trade) custom tailors did not come within the industry as designated and defined. Even if that were not so, under clause *f* of s. 7 of the Act the schedule could and did classify employers by omitting custom tailors from the industry.

As to objection to the procedure taken in the carrying on of the conference: By the first branch of s. 8 of the Act, it was the prerogative of the Minister, and his alone, to determine whether a schedule was agreed to by a proper and sufficient representation of employers and employees; and such a determination is not reviewable by the courts.

The fixing by the schedule of different minimum rates of wages in two areas or sections of the province (the schedule providing that minimum rates fixed to apply in certain counties might be 12½% less in the rest of the province) was not unauthorized. By s. 4 (2) of the Act, the zone designated by the Minister (in this case the whole of the province) could be divided into separate zones by the conference. This was done and, within the meaning of said s. 4 (2), the Minister, by his approval of the schedule submitted to him, approved such division, whereupon the area as divided was "deemed to be the designated * * * zones for the industry affected".

APPEAL from the judgment of the Court of Appeal for Ontario (1) dismissing the present appellants' appeal from the judgment of Mackay J. (2) dismissing their action, in which action they claimed: that *The Industrial Standards Act,* R.S.O. 1937, c. 191 (as amended in 1939, c. 21) and regulations made pursuant thereto, were *ultra vires,* and that, in any event, a certain schedule, purporting to have been established pursuant to the Act, and which was approved by the Minister of Labour and on his recommendation declared to be in force by the Lieutenant-Governor in Council on or about April 1, 1939, of wages and hours and days of labour for the Men's and Boys' Clothing Industry for the Province of Ontario, and which purported to confer upon the defendant (the respondent the Advisory Committee appointed pursuant to the provisions of the said Act and schedule), *inter alia,* the power to collect certain assessments of money from appellants and other manufacturers engaged in the industry and to administer and enforce the schedule, was illegal, void and *ultra vires,* because (so it was alleged) certain proceedings and conditions required for the creation of the schedule

(1) [1943] O.R. 526; [1943] 3 D.L.R. 474; 80 C.C.C. 99.
(2) [1942] O.R. 518; [1942] 3 D.L.R. 705; 78 C.C.C. 191.

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were not properly taken or observed; an injunction to restrain the defendant (the said Advisory Committee), its servants, etc., from proceeding with certain prosecutions brought under the Act and from attempting to collect from appellants any sums of money whatever alleged to be owing under the said schedule and from enforcing or attempting to enforce the said Act, regulations and schedule against appellants; and damages for legal expenses incurred in defending the prosecutions and for loss of time and travelling expenses incurred.

The questions involved and the facts from which they arise are stated in the reasons for judgment in this Court now reported and in the judgments at trial and on appeal above cited.

Leave to appeal to this Court was granted by the Court of Appeal for Ontario.

By an order of Mackay J. in the Supreme Court of Ontario, the Attorney-General for Ontario was added as a party defendant (reserving to him "all just exceptions and rights").

A. G. Slaght K.C. and *C. H. Howard* for the appellants.

J. L. Cohen K.C. for the respondent The Advisory Committee.

C. R. Magone K.C. for the respondent The Attorney-General for Ontario.

The judgment of the Court was delivered by

KERWIN J.—Originally this was an action against the Advisory Committee appointed pursuant to the provisions of *The Industrial Standards Act*, R.S.O. 1937, c. 191, and of what is known as the Schedule for the Men's and Boys' Clothing Industry for the Province of Ontario. The action, as framed, was an attack on the Act as being *ultra vires* the provincial legislature. It was tried before Mr. Justice Roach and dismissed (1). The Tolton Manufacturing Co. Limited, one of the plaintiffs, then withdrew from the action by filing a notice of discontinuance. The remaining plaintiffs appealed to the Court of Appeal for Ontario who gave them leave to amend their statement of

(1) [1940] O.R. 301; [1940] 3 D.L.R. 383; 74 C.C.C. 252.

claim as they might be advised in order to raise specifically the claim that the regulations and schedule were invalid as not being in conformity with the Act (1). Amendments were duly made and at the second trial the Attorney-General for Ontario, by his consent and at his instance, was added as a party defendant. After a lengthy hearing, the action was dismissed by Mr. Justice Mackay (2) and an appeal from that judgment was dismissed (3). It is from such dismissal that the present appeal is taken.

At the conclusion of Mr. Slaght's argument, the Court intimated that it would be unnecessary to hear counsel for the respondents upon any of the questions raised as to *The Industrial Standards Act* being beyond the competence of the Ontario Legislature. These and the other questions raised will appear as the Act and regulations are examined and a statement made as to what was done thereunder.

By subsection 1 of section 4 of the Act, the Minister of Labour may from time to time designate the whole of the province, or any part or parts thereof, as a zone or zones for any business, calling, trade, undertaking and work of any nature whatsoever and any branch thereof and any combination of the same which he may designate or define as an industry for the purposes of the Act.

Subsection 2 provides:—

> (2) Any area so designated as a zone may be enlarged or reduced or divided into separate zones by the representatives of employers and employees in any conferences to be held as hereinafter provided and upon the approval of the Minister, the area as enlarged, reduced or divided, shall be deemed to be the designated zone or zones for the industry affected.

The effect of section 6 is that if, under section 4, the Minister shall have designated a zone, he may, upon the petition of representatives of employers or employees in any industry within that zone, authorize an industrial standards officer (for the appointment of whom provision is earlier made) to convene a conference of the employers and employees in such industry for the purpose of investi-

(1) [1941] O.R. 79; [1941] 2 D.L.R. 541.
(2) [1942] O.R. 518; [1942] 3 D.L.R. 705; 78 C.C.C. 191.
(3) [1943] O.R. 526; [1943] 3 D.L.R. 474; 80 C.C.C. 99.

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gating and considering the conditions of labour and the practices prevailing in such industry and for negotiating in respect to any of the matters enumerated in section 7.

By section 7, this conference may submit to the Minister in writing a schedule of wages and hours and days of labour for the industry affected. This schedule may deal with a number of matters listed in the section. All of these matters need not be detailed, but, because of the argument addressed to the Court on behalf of the appellants, it is important to notice that by clause (*f*) the schedule may "classify the employees and employers and separately provide for each classification with respect to any of the matters which may be dealt with in such schedule", and that by clause (*l*) the schedule may, subject to the approval of The Industry and Labour Board (hereafter called the Board) "and with respect only to an interprovincially competitive industry" assess employers only or employers and employees in any such industry to provide revenue for the enforcement of the schedule. Provision is made for the appointment of the Board by another statute known as *The Department of Labour Act,* R.S.O. 1937, c. 69, as amended.

By section 8 of *The Industrial Standards Act,* if, in the opinion of the Minister, the schedule of wages and hours and days of labour submitted by the conference is agreed to by a proper and sufficient representation of employers and employees, he may approve thereof; and upon his recommendation the Lieutenant-Governor in Council may declare such schedule to be in force. By section 13, the Lieutenant-Governor in Council may make such regulations not inconsistent with the Act as he may deem necessary for carrying out the provisions of the Act and for the efficient administration thereof. Certain powers are given throughout the Act to Advisory Committees whose appointment by the Minister for every zone or group of zones to which any schedule applies is provided for by section 14. A right of appeal to the Board is given any employer or employee aggrieved by the decision of an Advisory Committee. Penalties are provided for violation by any employer or any employee of the provisions of any relevant schedule.

The Lieutenant-Governor in Council duly promulgated regulations. Under clause 9 thereof the Board may require any employer to pay it the arrears of wages owing to any employee or employees according to the provisions of any schedule, and the Board may, at its discretion, direct that the whole, or any part, of such wages be either forfeited to the Crown or paid out to the employees entitled thereto. By clause 16, whenever any schedule requires the employees in any industry to pay an assessment on their wages to the Advisory Committee appointed to administer such schedule, every employer of any such employees, as the agent of such Advisory Committee, shall collect by deduction or retention of wages the amount of such assessment. Clause 17 provides that every such employer shall remit the amount so collected to the Advisory Committee.

Pursuant to subsection 1 of section 4 of the Act, the Minister, on November 7th, 1938, designated and defined as the Men's and Boys' Clothing Industry, for the purposes of the Act, all work performed in connection with the entire or partial manufacture or production anywhere in the Province of Ontario of all men's, boys' and youths' pants, coats, vests or suits of every type and description, manufactured from cross-bred serges, flannels of all kinds, worsted and cotton and wool mixtures,—with certain exceptions. The only exception relevant to the argument presented to us is "the manufacture of clothing by merchant tailors employing or giving employment to no more than four workmen (including any working employer, his partner or partners) manufacturing clothing to order for individual customers according to individual sizes, measurements or specifications". At the same time the Minister designated the whole of the Province of Ontario as a zone for the said industry.

All objections to the sufficiency of the petition to the Minister, referred to in section 6 of the Act, to authorize an industrial standards officer to convene a conference of the employers and employees in the industry, were abandoned and we therefore need not examine the steps leading to the presentation of the petition to the Minister. In pursuance of such petition, the Minister, on November 17th, 1938, authorized Mr. Louis Fine, an industrial standards officer,

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to convene such a conference. Sometime in December, 1938, or early in January, 1939, the Board designated the industry an interprovincially competitive industry. Mr. Fine, in the name of the Minister, caused to be published on January 6th, 1939, in three Toronto newspapers, a notice that a conference of the employers and employees engaged in the industry (describing it fully) within a zone described as the whole of the province, was summoned to meet at 10 a.m. on Monday, January 16th, 1939, in Committee Room No. 1, Parliament Buildings, Toronto, for the purpose of investigating and considering the conditions of labour and the practices prevailing in the industry and for negotiating and submitting to the Minister a schedule of wages and hours and days of labour. Notice was further given that such schedule might contain provisions for the levying of an assessment upon the employers and employees for the purpose of administering the schedule and that, subject to the approval of the Board and Minister, the Lieutenant-Governor in Council might declare that such schedule should be binding upon all employers and employees. This is a very complete and very comprehensive notice and I can find no substance in the somewhat general complaint that it was not sufficient in point of form.

It should here be explained that the Act and its forerunner had been in force for some time and that the industrial standards officer had throughout the intervening years been in touch with employers in the men's and boys' clothing industry and with representatives of union employees engaged therein. There was on file in the Department a list of a great number of such employers. Notices of the date of the conference and calling attention to the advertisements were sent to these employers and to various union representatives. It was strenuously argued that these notices were not sufficient because not every employer was notified and only some representatives of employees. While, as pointed out above, counsel withdrew his objection to the sufficiency of the petition to the Minister, which by the first part of section 6 of the Act may be made by representatives of employers or employees, he pointed out that when, by the next part of section 6 the Minister may authorize an industrial standards officer to convene a con-

ference, it is to be a conference "of the employers and employees in such industry". From this, he argued, employers and employees must be notified, if not individually, at least in a more comprehensive manner than was done.

Such, however, is not the proper construction of the section. As long as the Minister and his officers act in good faith (and that is not questioned), all such matters must be left to their discretion. The Minister and his officers were justified in proceeding upon notice to those employers whose names appeared on the departmental list and to the officials of various unions who, in Mr. Fine's opinion, represented the great majority of the employees engaged in the industry. Furthermore, as to the employees, it appears that the matter of a proposed schedule had been the subject of keen interest and discussion at the meetings of the union locals and that those in attendance thereat authorized the union officials to appear at the conference on their behalf.

The Minister and his officers were also justified in omitting custom tailors from the conference. It is quite apparent that in the view of the officer (and, it may be said, in the view of the trade), custom tailors in whose establishments a garment is made by one person do not fall within the description of merchant tailors who "manufacture" clothing by their employees doing only one or more particular operations on a garment. Even if that were not so, under clause (*f*) of section 7, the schedule could and did classify employers by omitting custom tailors from the industry.

On January 16th a number of persons attended at the designated committee room and the meeting was adjourned to January 19th. On that day a committee was selected with full power to consider the matters mentioned in the notice. The general meeting adjourned without any definite date being fixed. The committee met on various dates until on February 7th its members decided that a plenary session of the conference would be held on February 8th and informed the parties they represented to that effect. On February 8th the conference reconvened and agreed to a schedule. Strenuous objection was raised to this method of procedure, but by the first branch of

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section 8 of the Act it was the prerogative of the Minister, and his alone, to determine whether a schedule was agreed to by a proper and sufficient representation of employers and employees. Such a determination is not reviewable by the courts, as has been held in many cases, a recent example of which is *The King* v. *Noxzema Chemical Company of Canada Ltd.* (1). The Minister exercised that prerogative, approved the agreed schedule (which was also approved by the Board), and, upon his recommendation, the Lieutenant-Governor in Council declared it to be in force.

The schedule fixes the number of hours for a regular working week. It also fixes minimum rates of wages which are to apply in the Counties of Ontario, York, Peel, Halton and Wentworth, and provides that in the rest of the province the minimum rates might be 12½ per centum less. The fixing of different rates in these two areas or sections of the province was objected to as unauthorized. The Chief Justice of Ontario states that this matter was not made the subject of special argument before the Court of Appeal, but before this Court the point was pressed and we have had the benefit of a complete argument. The Minister designated the whole of the province as a zone, but by subsection 2 of section 4 of the Act that zone could be divided into separate zones by the conference. This was done and, within the meaning of the same subsection, the Minister, by his approval of the schedule submitted to him, approved such division, whereupon the area as divided was "deemed to be the designated * * * zones for the industry affected". The objection fails.

Having reached the conclusion that the Act and regulations were complied with, there remains but to deal with the arguments as to constitutionality. Under section 5 (*c*) of the Act, the Board may, with the concurrence of the proper Advisory Committee, make an order amending the provisions of any schedule and, under section 5 (*e*), the Board may, with reference to any industry declared by it to be interprovincially competitive, approve or withhold approval of the provisions in a schedule with reference to

(1) [1942] S.C.R. 178.

the collection of revenue from employers and employees in the industry. The authorities are clear that there is nothing in the *British North America Act* to prohibit what is described by the appellants to be a delegation by the legislature of jurisdiction and authority to the Board to override and nullify many of the things previously done by the conference, the Minister and Order in Council.

As to the objection that, to quote appellants' factum:—

> The Board (constituted by Provincial authority) is given the same powers as a Court, being power to exercise judicial functions. This is *ultra vires*. (*City of Toronto* v. *Township of York*, [1937] O.R. 177, at 180, and in the Privy Council at [1938] A.C. 415.),

it is sufficient to point out that the Board, whatever it may be, is certainly not a court of justice analogous to a superior, district or county court. In my view it is merely an administrative body, but, in any event, it does not "come within the intendment of section 96 of the *British North America Act*". *Reference re Adoption Act, etc.* (1).

Nor can the contention prevail that section 7 (*l*) of the Act and clauses 16 and 17 of the regulations authorize the imposition of an indirect tax. If the assessment be a tax, it is a direct tax within the meaning of the decisions of the Judicial Committee and of this Court; and, in any event, it may be justified as a fee for services rendered by the Province or by its authorized instrumentalities under the powers given provincial legislatures by section 92 (13) and 92 (16) of the *British North America Act*. *Shannon* v. *Lower Mainland Dairy Products Board* (2).

The last argument of the appellants on this branch of the case is that "The Statute, regulations and schedule are also *ultra vires* because they encroach upon a field occupied by the Dominion in the *Combines Investigation Act*, R.S.C. 1927, c. 26, as amended". As Kellock, J.A., points out, the legislature would undoubtedly have authority to enact anything which is found in the schedule and I agree with him that such legislation (and therefore the combined effect of the Act, regulations and schedule) cannot be said to be a "combine" within the meaning of the Dominion Act.

(1) [1938] S.C.R. 398, at 415. (2) [1938] A.C. 708.

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These conclusions render it unnecessary to consider the question as to whether or not the Advisory Committee was a proper party defendant. The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *German, Howard & Rapoport.*

Solicitor for the respondent The Advisory Committee: *J. L. Cohen.*

Solicitor for the respondent The Attorney-General for Ontario: *C. R. Magone.*