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IN THE MATTER OF A REFERENCE AS TO THE
 APPLICABILITY OF THE MINIMUM WAGE
 ACT OF SASKATCHEWAN TO AN EMPLOYEE
 OF A REVENUE POST OFFICE.

Constitutional Law—Minimum Wages—Legislative Jurisdiction—Provincial Statute—Postal Service—Employee of a Revenue Post Office—Temporarily Engaged by Postmistress—Whether Employment Subject to Provincial Minimum Wage Act—Post Office Act R.S.C. 1927, C. 161—Civil Service Act, R.S.C. 1927, C. 22—Minimum Wage Act. Sask., R.S.S.1940, C. 310—British North America Act, SS. 91, 92.

Mrs. Graham, postmistress of a revenue Post Office at Maple Creek, Saskatchewan, engaged temporarily one Leo Fleming to work in the Post Office exclusively in connection with the work of the Post Office. The postmistress was prosecuted under the Saskatchewan Minimum Wage Act for paying to Fleming an amount less than the minimum wages prescribed by an Order made under the Act. Her conviction for violation of the Act was affirmed by the Court of Appeal. As the case was not appealable to the Supreme Court of Canada the Governor-in-Council referred the matter to the Court under section 55 of the Supreme Court Act.

Held: The employee became employed in the business of the Post Office of Canada and therefore part of the Postal Service. His wages were, as such, within the exclusive legislative field of the Parliament of Canada and 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.

Held: It is not competent to a provincial legislature to legislate as to hours of labour and wages of Dominion servants.

REFERENCE by His Excellency the Governor General in Council (P.C. 3945, dated October 1, 1947) to the Supreme Court of Canada in the exercise of the powers conferred by section 55 of the Supreme Court Act (R.S.C. 1927, C. 35) of the following question: Was the Saskatchewan Court of Appeal right in holding in its decision in *Williams v. Graham* that the Minimum Wage Act, Chapter 310 of the Revised Statutes of Saskatchewan, 1940, was applicable to the employment of Leo Fleming in the Post Office at Maple Creek, Saskatchewan.

The Order in Council referring this question to the Court is as follows:—

Whereas the Civil Service Commission appointed Mrs. Margaret Ellen Mary Graham, Postmistress of the Post Office at Maple Creek, Saskatchewan on July 10, 1930;

* Present:—Rinfret C.J. and Taschereau, Rand, Kellock, Estey and Locke JJ.

And whereas it was Mrs. Graham's duty as Postmistress, under direction, to take charge of the Post Office, to collect, safeguard and account for the revenue of the office, to hire, supervise and control the staff and issue such instructions as might be necessary to secure prompt and expeditious handling of mail matter, to deal with complaints concerning the service given by the office and make adjustments when found desirable or necessary and to perform other related work as required;

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And whereas Mrs. Graham, as Postmistress, took charge of the Post Office at Maple Creek, which at all relevant times has been in a public building that is the property of His Majesty in right of Canada;

And whereas Mrs. Graham's remuneration as Postmistress consisted of a percentage of the revenue derived from the sale of articles of postage stamp issue and money order commissions collected from the public and certain other allowances based on the revenue of the office or the work performed and out of amounts so received, Mrs. Graham was required to pay assistants and to furnish stationery and twine;

And whereas pursuant to the contract of employment so established, Mrs. Graham employed one, Leo Fleming, in the Maple Creek Post Office during the month of December, 1946 exclusively in connection with the work of the Post Office;

And whereas upon an information and complaint dated January 22, 1947, laid by J. H. Williams on behalf of the Government of Saskatchewan, Mrs. Graham was charged, under The Minimum Wage Act, Chapter 310 of the Revised Statutes of Saskatchewan, 1940, with paying Leo Fleming less than the minimum wages fixed pursuant to that Act;

And whereas on February 20, 1947, Mrs. Graham was convicted by a police magistrate of the alleged offence and sentenced to pay a fine of \$25.00 and costs and, in default, ten days' imprisonment and was further ordered to pay to the Provincial Deputy Minister of Labour, on behalf of the said Leo Fleming, such sum as might be found owing under the said Act;

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And whereas an Appeal from the said conviction was taken to the Saskatchewan Court of Appeal by way of stated case and was dismissed by an unanimous Judgment of the said Court;

And whereas an Appeal does not lie to the Supreme Court of Canada from the said decision of the Saskatchewan Court of Appeal;

And whereas there are between 11,000 and 12,000 Post Offices and Sub Post Offices in Canada in which Postmasters are employed on terms similar to those applicable to Mrs. Graham;

And whereas the Minister of Justice is informed by the Postmaster General that, if the laws of the various provinces relating to hours of employment and minimum wages are applicable to persons employed in the post offices by Postmasters, the cost of operation of the postal service in certain provinces will be increased or the service in such provinces will have to be reduced;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and under and by virtue of Section 55 of the Supreme Court Act, Chapter 35 of the Revised Statutes of Canada, 1927, is pleased to refer and doth hereby refer the following question to the Supreme Court of Canada for hearing and consideration;

QUESTION

Was the Saskatchewan Court of Appeal right in holding in its decision in *Williams v. Graham* that The Minimum Wage Act, Chapter 310 of the Revised Statutes of Saskatchewan, 1940, was applicable to the employment of Leo Fleming in the Post Office at Maple Creek, Saskatchewan?

A. D. P. HEENEY,

Clerk of the Privy Council.

The respective Attorneys-General of the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskat-

chewan were, pursuant to order of The Right Honourable The Chief Justice of Canada, notified of the hearing of the Reference.

F. P. Varcoe, K.C. and *W. R. Jackett* for the Attorney-General of Canada.

C. R. Magone, K.C. and *E. H. Silk, K.C.* for the Attorney-General of Ontario.

J. C. Treleaven, K.C. for the Attorney-General of Saskatchewan.

H. J. Wilson, K.C. for the Attorney-General of Alberta.

Thomas D. Macdonald, K.C. and *L. D. Currie, K.C.* for the Attorney-General of Nova Scotia.

THE CHIEF JUSTICE:—His Excellency the Governor General in Council on the recommendation of the Minister of Justice and under and by virtue of Section 55 of the *Supreme Court Act* has been pleased to refer to this Court for hearing and consideration the following question:—

Was the Saskatchewan Court of Appeal right in holding in its decision in *Williams v. Graham* that the Minimum Wage Act, Chapter 310 of the Revised Statutes of Saskatchewan, 1940, was applicable to the employment of Leo Fleming in the Post Office at Maple Creek Saskatchewan?

This question arose as a result of the conviction of Mrs. Margaret Ellen Mary Graham, the Postmistress at Maple Creek, Saskatchewan, for paying Leo Fleming, a young man she engaged to assist her during the month of December, 1946, in the Post Office at Maple Creek, less than the minimum wages fixed pursuant to *The Minimum Wage Act* of that province. The conviction of Mrs. Graham was affirmed by the Court of Appeal for Saskatchewan.

The Civil Service Commission, under the provisions of the *Civil Service Act*, chap. 22, R.S.C. 1927, appointed Mrs. Graham as Postmistress of the Post Office at Maple Creek on July 10, 1930. Her remuneration as Postmistress consisted of a percentage of the revenue derived from the sale of articles of postage stamp issue and money order commissions collected from the public and certain other allowances based on the revenue of the office or the work performed and, out of the amounts received, she was required

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to pay assistants and to furnish stationery and twine. As already stated, during the month of December, 1946, Mrs. Graham employed Leo Fleming to assist her in the Maple Creek Post Office, exclusively in connection with the work of the Post Office. The Post Office is in a public building that is the property of His Majesty in right of Canada.

The duties of a Postmaster Grade 2, a rank similar to that held by Mrs. Graham, are set out by the "Classification of the Statutes of Canada, 1919, 2nd Session. Under the heading "Definition of Class" it is stated:—

To have general charge of an accounting post office
 to provide, supervise, and pay the necessary staff of employees.

By Section 6 of the *Post Office Act*, R.S.C. 1927, chap. 161, provision is made for the appointment by the Governor in Council of an officer "who shall be called the Deputy Postmaster General", and sub-section 2 of the same section further provides that "such other officers, clerks and servants as are necessary for the proper conduct of the business of the Department may be employed in the manner authorized by law."

Section 7, para. (w) authorizes the Postmaster General to "make and alter rules and orders for the conduct and management of the business and affairs of the Department and for the guidance and government of the postmasters and other officers, clerks and servants of the post office in the performance of their duties."

In a book entitled "Useful Information for Postmasters in charge of Post Offices on the Revenue Basis", issued by authority of the Postmaster General, there is this very important paragraph:—

8. Assistants—Every Postmaster should appoint an assistant so that the office will not be left without a qualified person to perform the duties during his own necessary absence. Assistants must not be under 16 years of age and must subscribe to the oath of office. Subject to age limit, satisfactory character and ability, the Postmaster may employ his own staff, and must engage such assistants as are actually required to satisfactorily carry on the work and adequately serve the public.

Fleming, as assistant, would therefore have to take the oath of office above referred to and which is set out in Section 16 of the Act:—

16. Any officer designated by the Postmaster General may require any postmaster or assistant in any post office, mail contractor or other

person in the employment or service of, or undertaking to perform any duty or work for the Canada Post Office, to make and sign before him an oath or declaration in the following form, or to a like effect, that is to say:—

I, (insert the name of the person and the capacity in which he is employed in or by the Canada Post Office), do solemnly and sincerely promise and swear (or declare), (if the person is one entitled to declare instead of taking an oath in civil cases) that I will faithfully perform all the duties required of me by my employment in the service of the Post Office of Canada, and will abstain from everything forbidden by the laws and regulations for the establishment and government of the Post Office of Canada.

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It is quite evident that Mrs. Graham's appointment necessarily carried with it the authority "to provide, supervise and pay the necessary staff of employees", and that it was within her competence to engage Fleming to assist her. The relevant section of the *Act* governing employees in the Postal Service is sub-sec. (c) of sec. 2 which provides:—

2. In this Act, unless the context otherwise requires,

(c) 'employed in the Canada Post Office' applies to any person employed in any business of the Post Office of Canada.

It is not necessary to decide whether Fleming became an employee of His Majesty, or whether there existed between him and His Majesty the relationship of master and servant. Under the statutory provisions quoted above Fleming in the course of his duties as assistant to Mrs. Graham became a person employed in the business of the Post Office of Canada and part of the Postal Service. As such, he was subject to the exclusive control of the Federal Parliament.

By Section 91, sub-sec. 5 of the *British North America Act*, the exclusive legislative jurisdiction with reference to "Postal Service" is conferred on Parliament. No question of ancillary or incidental legislation arises here, and it is not necessary for the Court to inquire whether the field is or is not already occupied by the Dominion. Postal Service is exclusively within the jurisdiction of the Parliament of Canada and any encroachment on the subject by provincial legislation must be looked upon as being *ultra vires*, whether Parliament has or has not dealt with the subject by legislation.

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Such is the effect of what was said by Lord Maugham delivering the judgment of the Judicial Committee of the Privy Council in *The Debt Adjustment Act Reference* (1):

It follows that legislation coming in pith and substance within one of the classes specially enumerated in s. 91 is beyond the legislative competence of the provincial legislatures under s. 92. In such a case it is immaterial whether the Dominion has or has not dealt with the subject by legislation or to use other well-known words, whether that legislative field has or has not been occupied by the legislation of the Dominion Parliament. The Dominion has been given *exclusive* legislative authority as to "all matters coming within the classes of subjects" enumerated under 29 heads, and the contention that, unless and until the Dominion Parliament legislates on any such matter, the provinces are competent to legislate is, therefore, unsound.

It has been held by this Court *In the Matter of Legislative Jurisdiction over hours of labour* (2), that Parliament can legislate as to labour of servants of the Dominion, and that as a rule a province has no authority to regulate the hours of employment of the servants of the Dominion Government. I am of opinion that the same thing must be said of the wages of persons "employed in the business of the Post Office of Canada."

Having arrived at that conclusion, I find it unnecessary to discuss in detail the provisions of *The Minimum Wage Act* of Saskatchewan. It is sufficient to say that either the *Act* is not binding upon His Majesty because it is not so expressed (see in *Re Silver Bros., Ltd.*, (3)) or, if it is intended to apply to His Majesty in right of the Dominion, it is *ultra vires*.

For these reasons I am of opinion that the question submitted should be answered in the negative.

TASCHEREAU J.:—By Order of His Excellency the Governor General in Council, the following question was referred to this Court for consideration pursuant to section 55 of the *Supreme Court Act*.

Was the Saskatchewan Court of Appeal right in holding in its decision in *Williams v. Graham* that the Minimum Wage Act, Chapter 310 of the Revised Statutes of Saskatchewan, 1940, was applicable to the employment of Leo Fleming in the Post Office of Maple Creek, Saskatchewan.

The facts that give rise to this Reference are the following: Mrs. M. Graham is postmistress of the Town of Maple Creek in the Province of Saskatchewan, and she

(1) [1943] A.C. 356 at 370.

(3) [1932] A.C. 514 at 521.

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

has held that position for nearly fifteen years. One Leo Fleming who was temporarily unemployed, was hired by Mrs. Graham to work as a mail-sorter during the Christmas period at a salary which was satisfactory to both. Mrs. Graham was prosecuted under the *Minimum Wage Act* (a Saskatchewan statute), the charge being that she did fail to pay to Fleming the minimum wages prescribed by an Order made under the *Act*. She was found guilty and fined \$25 and costs.

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The matter reached the Court of Appeal by way of a stated case, and Gordon, J.A. who heard the case confirmed the conclusions arrived at by Police Magistrate Thompson. As the charge was laid under the Provincial Summary Convictions Act of Saskatchewan, there is no appeal to this Court and, therefore, the matter has been brought here by way of Reference for final determination. Gordon, J.A. held that Fleming was not under the direction or control of the Post Office authorities, that he was not employed pursuant to any statute, but merely as the servant of Mrs. Graham, and that the *Act* applied.

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Mrs. Graham was appointed postmistress under the *Civil Service Act* of 1918, and her duties were the following: "To take charge of the post office, to collect, safeguard and account for the revenue of the office, to hire, supervise and control the staff and issue such instructions as might be necessary to secure prompt and expeditious handling of mail matter, to deal with complaints concerning the service given by the office and make adjustments when found desirable or necessary and to perform other related work as required." She had no salary, but her remuneration was on a commission basis, and it was her obligation to pay personally her assistants.

The relevant provisions of the *Minimum Wage Act* are that the Board may by order define classes of employment, fix a minimum wage which shall be paid to full time employees in any class of employment, and that any person who fails to comply with any of the provisions of the *Act* shall be guilty of an offence and liable on summary conviction, to a fine not exceeding \$100. The order of the Minimum Wage Board was made applicable to Maple

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Creek where the post office is located, and it is because she failed to pay Fleming the sum of \$16 per week as ordered, that Mrs. Graham was prosecuted and convicted.

It is submitted on behalf of the Attorney General of Canada that Mrs. Graham and Fleming were at all relevant times, *in the Postal Service* of Canada which is within the exclusive legislative jurisdiction of Parliament, and that as a consequence, the *Minimum Wage Act* of Saskatchewan can have no application, and further that Mrs. Graham employed Fleming in the course of her employment as a servant of His Majesty and the *Minimum Wage Act* of Saskatchewan is not expressed to be binding on His Majesty.

Under the *B.N.A. Act* (sec. 91, para. 5) "Postal Service" is within the "exclusive" legislative jurisdiction of the Parliament of Canada. The *Post Office Act*, which is Chapter 161 of the Revised Statutes of Canada, was enacted pursuant to the above mentioned authority, and section 2, para. (c) reads as follows:—

(c) "employed in the Canada Post Office" applies to any person employed in any business of the Post Office of Canada.

Section 6 provides that the Governor in Council may appoint an officer who shall be called the Deputy Postmaster General, and that such other persons, clerks and servants as are necessary for the proper conduct of the business of the Department may be employed *in the manner authorized by law*. It is provided in section 7, para. (w) and (x) that the Postmaster General may make regulations for the conduct and management of the business and affairs of the Department, and section 65 reads as follows:—

65. Postmasters whose compensation is not fixed by law may be paid by a percentage on the amount collected by them, or by such salary and allowances as the Postmaster General, having due regard to the duties and responsibilities assigned in respect to each post office, by regulation determines in each case.

Rules and orders which have force and effect as if they formed part of the *Act* have been made and the following are of particular interest:—

8. ASSISTANTS.—Every Postmaster should appoint an assistant so that the office will not be left without a qualified person to perform the duties during his own necessary absence.

Assistants must not be under 16 years of age and must subscribe to the oath of office.

Subject to age limit, satisfactory character and ability the Postmaster may employ his own staff, and must engage such assistants as are actually required to satisfactorily carry on the work and adequately serve the public.

It is common ground that Fleming was appointed assistant and was paid by Mrs. Graham, but I do not think that this can affect the issue. Although paid in such a way, it remains that Fleming was in the "Postal Service". He was a part of the organization created by Parliament to handle mail, and he was also, as section 2 para. (c) of the *Act* says, "a person employed in any business of the Post Office of Canada". The fact that he was paid by Mrs. Graham does not change the nature of the functions that he was called upon to perform. As provided by section 6, para. 2, he was a person employed in the manner authorized by law pursuant to "instructions" (para. 8) where it is said that every postmaster "should appoint an assistant". The mode of payment adopted in the present case is a matter of internal administration, and the contractual relationship of Fleming's employment does not mean that he was not an "employee in the Canada Post Office".

It follows that the fixing of the wages of the Postal employees, is a matter in pith and substance "Postal Service Legislation", upon which the provinces may not legislate without invading a field "exclusively" assigned to the Dominion. (*Reference as to Hours of Labour in Industrial Undertakings* (1)).

It has been suggested that in the absence of a law passed by the Dominion of Canada, in relation to the Postal Service which is inconsistent with the provisions of the said Minimum Wage Act, the Act applies to employees and employers in the circumstances of this case. It is further submitted that there is no Dominion legislation fixing the minimum wage to be paid to employees in the position of the said Leo Fleming.

I am of the opinion that this argument cannot prevail. We have not to deal with the theory of the "occupied field". We are confronted with a question of "competence" to legislate in matters "falling strictly within any of the classes specially enumerated in section 91 of the B.N.A. Act". Here, this "competence" does not exist. As Lord

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Herschell said in *Attorney-General for the Dominion of Canada v. Attorneys-General for the Provinces of Ontario et al.*, (Fisheries case) (1):—

In any view the enactment is expressed that laws in relation to matters falling within any of the classes enumerated in s. 91 are within the "exclusive" legislative authority of the Dominion Parliament. Whenever, therefore, a matter is within one of these *specified classes*, legislation in relation to it by a Provincial Legislature is in their Lordships' opinion *incompetent*. It has been suggested, and this view has been adopted by some of the judges of the Supreme Court, that although any Dominion legislation dealing with the subject would override provincial legislation, the latter is nevertheless valid, unless and until the Dominion Parliament so legislates. Their Lordships think that such a view does not give their due effect to the terms of s. 91, and in particular to the word "exclusively". It would authorize, for example, the enactment of a bankruptcy law or a copyright law in any of the provinces unless and until the Dominion Parliament passed enactments dealing with those subjects. Their Lordships do not think this is consistent with the language and manifest intention of the British North America Act.

Vide also *John Deere Plow Co. Ltd. v. Wharton* (2).

In *Attorney-General for Alberta v. Attorney-General for Canada* (The Debt Adjustment Act Reference) (3), Viscount Maugham expressed his views as follows at page 370:—

It follows that legislation coming in pith and substance within one of the classes specially enumerated in s. 91 is beyond the legislative competence of the provincial legislatures under s. 92. In such a case *it is immaterial* whether the Dominion has or has not dealt with the subject by legislation, or to use other well-known words, whether that legislative field has or has not been *occupied* by the legislation of the Dominion Parliament. The Dominion has been given *exclusive* legislative authority as to "all matters coming within the classes of subjects" enumerated under 29 heads, and the contention that, unless and until the Dominion Parliament legislates on any such matter, the provinces are competent to legislate is, therefore, unsound.

In a very recent case, the *Alberta Bill of Rights Act Reference* (4), Viscount Simon said at page 10:—

But in any event, it appears to their Lordships to be impossible to hold that it is beyond the business covered by the word "Banking" to make loans which involve an expansion of credit. Legislation which aims at restricting or controlling this practice must be beyond the powers of a provincial Legislature. It is true, of course, that in one aspect provincial legislation on this subject affects property and civil rights, but if, as their Lordships hold to be the case, the "pith and substance" of the legislation is "Banking" (the phrase "pith and substance" can be traced back to Lord Watson's judgment in *Union Colliery Co. of B.C. v. Bryden*, (1899) A.C. 580) this is the aspect that matters and Part II is beyond the powers of the Alberta Legislature to enact.

(1) [1898] A.C. 700 at 715.

(2) [1915] A.C. 330 at 337.

(3) [1943] A.C. 356.

(4) [1947] 4 D.L.R. 1.

The result is that the Minimum Wage Act of the Province of Saskatchewan is not applicable to the employment of Leo Fleming in the post office at Maple Creek, and that the Court of Appeal erred when it held in its decision in *Re Williams v. Graham* that it did.

The interrogatory should therefore be answered in the negative.

The judgment of Rand and Locke JJ. was delivered by

RAND J.:—This is a reference by the Governor-in-Council of a question arising out of a conviction in the Province of Saskatchewan of a postmistress for failing to pay to an assistant taken into the post office for the month of December, 1946, the minimum wage prescribed by the *Minimum Wage Act* of Saskatchewan under its application by the Minimum Wage Board.

The precise relationship of the postmistress both to the Crown and to the employee is of importance. We have no evidence of the circumstances of the engagement of the latter, but the material facts generally seem to be clear. The postmistress was appointed to the post office at Maple Creek under the *Civil Service Act*, 1918. Her duties are stated to be: "To take charge of the post office, to collect, safeguard and account for the revenue of the office, to hire, supervise and control the staff and issue such instructions as might be necessary to secure prompt and expeditious handling of mail matter, to deal with complaints concerning the service given by the office and make adjustments when found desirable or necessary and to perform other related work as required". Her remuneration was based upon a percentage of the revenue of the office, including commissions on the sale of stamps and money orders, and she was required to pay assistants and to furnish stationery and twine.

Pursuant to this duty, she engaged an assistant to work during the month of December, 1946, exclusively in the work of the post office. For that month he was paid a sum less than the minimum prescribed under the provincial *Act*. Her conviction for a violation of the *Act* was affirmed by the Court of Appeal.

From the provisions of the *Post Office Act*, it seems to be clear that the staff of the postal service includes persons

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carrying out duties of the service who are not, in a direct contractual sense, employees of the Crown. In section 2 (c), "Employed in the Canada post office" is defined as applying to any person employed in any business of the post office of Canada. By section 7 (g) regulations are authorized to provide for security being given by any "officer, employee, clerk or servant *employed by or under the Postmaster-General, or by any one employed in the Canada post office, or by any one performing, whether with or without authority, any business of the post office of Canada*". The distinction between being "employed by or under the Postmaster-General" and being "employed in the Canada post office" is significant. Subsection (w) of the same section empowers the making of rules and orders for the conduct and management of the business and affairs of the department and for the guidance and government of the postmasters and other officers, clerks and servants "of the post office". Section 10 provides for the investigation of complaints or the suspected misconduct on the part of "any person *employed in the Canada post office or performing duties in or in connection with any post office*"; and the General Superintendent and others may "suspend from his duties, during the pleasure of the Postmaster-General, any person *employed in any post office*" pending investigation. By section 16, "Any officer designated by the Postmaster-General may require any postmaster or assistant in any office, mail contractor or *other person in the employment or service of, or undertaking to perform any duty or work for the Canada post office*" to take an oath "That I will faithfully perform all the duties required by me by my *employment in the service of the post office of Canada*". Finally, section 107 provides that "every officer, clerk and person *employed in the postal service of Canada* shall be deemed and held to be employed in the prevention of smuggling and for the enforcement of the revenue laws of Canada". I take these provisions to envisage different classes of persons actually engaged in carrying on the work of the postal service. The Act provides for contracts for the conveyance of mail, and it may be that the relation created is that of independent contractor; but apart from that case, it would seem that every person participating immediately in the service comes within the language

“person employed in the Canada post office”. Under a general classification of civil servants approved by section 10 of chapter 10 of the Statutes of Canada, 1919, 2nd Session, the duties of a postmaster of Grade 2 offices, the rank of that at Maple Creek, were defined as including:—

To have general charge of an accounting post office; . . . to provide, supervise and pay the necessary staff of employees; . . .

Whether the wages of such persons are a charge upon the money receivable by the postmaster is not clear.

This view was confirmed by section 23, first enacted in 1925 as an amendment to the *Civil Service Act*, 1918:—

23. When it has been determined by the Governor in Council that any post office, the employees of which do not come under this Act, is to be brought hereunder, any person then employed in such office, who,

- (a) has had at least two years' postal experience, one of which was in the office in question; and
- (b) was, at the commencement of his service, within the limits of age prescribed by the Commission; and
- (c) satisfies the Commission that he possesses the necessary qualifications;

shall be considered eligible for appointment to any position in such office without competitive examination: Provided, however, that any person employed in any such post office on the twenty-seventh day of June, one thousand nine hundred and twenty-five, shall be eligible for appointment, even though he was not, at the commencement of his employment, within the limits of age prescribed by the Commission.

The *Civil Service*, for the purposes of the *Act*, means all “civil positions under and persons in the civil employ of His Majesty”; from this employees of government railways and ships are excluded, and in 1932 a like exclusion was made of postmasters in revenue post offices, the revenue from which did not exceed \$3,000 per annum. It could therefore, be only persons not “in the civil employ of His Majesty” but still “employees of” any post office who could be brought into the *Civil Service* under section 23.

We were told on the argument and it is stated in the preamble to the Order-in-Council of reference, that the mode of employment exemplified at Maple Creek is widespread; and its usefulness in meeting public convenience seems evident. As in the present case, during the Christmas season there is a great increase in the volume of mail matter handled, and special help is unavoidable. It might well be considered undesirable that such temporary members of the staffs of thousands of small offices be engaged as full fledged Crown employees or be dealt with otherwise than locally.

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The assistant, therefore, entered immediately into the service of the department and became subject to all of the responsibilities provided by law for persons so employed. If the postmistress were not in the Civil Service, but had entered into a contract by which the postal work at Maple Creek could be said to have been farmed out to her as an independent contractor, it might be that any person taken on was engaged in her service. But here she is acting as a government employee; and as she has not undertaken to carry out personally all the postal work at Maple Creek, it cannot be said that the assistant is helping her to do her own work. Once the assistant is engaged, the limited contractual relation of the postmistress to him is supplemented by that of her authority in the post office; he becomes an employee of the Crown for all purposes except remuneration and breach of the engagement. But the latter undoubtedly subjects him to the disciplinary powers of the service including immediate dismissal for cause.

Does, then, the fact that the postmistress is solely responsible for the remuneration, in substance to be paid out of what is allowed her, establish the relation of employer and employee within the meaning of the provincial *Act*? In that statute, the word "employer" includes "Every person, firm or corporation, agent, manager or representative, contractor, sub-contractor or principal and every other person having control or direction of one or more employees or who is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees". "Employee" conversely embraces "any person employed in a shop, factory or other premises to which this Act from time to time applies; and for the purpose of this section, the expression 'person employed in a shop, factory or other premises' includes an employee whose duties or part of whose duties are performed outside of the shop, factory or other premises of the employer but in connection with the operation of the business of the employer". Section 4 empowers the Board to define classes of employment; to determine the number of hours of work in a week which shall constitute a normal work week for employees in any class of employment; to fix the minimum wage for the normal work week;

to fix the period in any day within which the hours of work of employees in any class of employment shall be confined; and to deal with other particulars of the employment as is deemed desirable for the just treatment of employees.

Section 9 authorizes the entrance and inspection of any premises to which the *Act* applies; the inspection and examination of books, payrolls and other records of any employer relating to wages, hours of labour of any "of his employees, or the conditions of their employment"; it obliges the employer to furnish statements respecting wages of all "of his employees, hours of labour and conditions of employment"; to make full disclosure, production or delivery of all records, documents or other writings, and to give information relating to the profit and loss of the employer.

Acting under its powers, the Board by an order declared the *Act* to apply "to every employer and every employee in the town of Maple Creek", introduced the normal work week prescribed by section 3, and fixed the minimum wage for the general class in which the assistant would be included at \$16 a week.

I take this legislation to aim at the regulation of the business, occupation or employment in which the work of the employee for which the minimum wage is prescribed is carried out, and which, as well as the employer, is for such purposes within the legislative control of the province. In the case before us, the postmistress has neither business nor service of her own into which the employee is or can be introduced; and the actual employment to which the employee is committed is beyond provincial jurisdiction. The condition for the application of the statute is, therefore, absent. Were the post office operated as a private provincial business, I have no doubt that in the circumstances here the proprietor would be bound by the *Act* as employer and the postmistress as his agent.

I read the decision of both the magistrate and the Court of Appeal to be on the footing that the postmistress was charged as employer and not as "agent, manager, representative" who, by the definition clause, in addition to the employer, are brought within the penalties of the *Act*. But I take the statute in this respect to mean that the agent is

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liable so far only as an alter ego of the employer, and if the latter is outside of the statute, there can be no infringement of its provisions by the agent.

The provincial law, then, deals with the employment of an employee in the business of the employer; here the person charged as employer has in fact no business; the actual work for which the wages are earned is done in the service of the Crown; the Crown in these features of the postal administration is not amenable to provincial legislation; and the postmistress is subject to the provisions of the provincial law neither as employer nor as agent of the employer. I would, therefore, answer the question as follows: Assuming the Saskatchewan Court of Appeal had before it all the factual matter placed before this Court, it erred in holding that the *Minimum Wage Act* of Saskatchewan was applicable to the employment of Leo Fleming in the post office in Maple Creek in that province.

KELLOCK J.:—Under the provisions of the *Civil Service Act*, R.S.C., 1927, cap. 22, one, Margaret Ellen Mary Graham, was appointed postmistress of the post office at Maple Creek, Saskatchewan, on July 10, 1930. This post office was on a revenue basis, which means that the remuneration of the postmistress consisted of a percentage of the revenue derived from the sale of postage stamps, commissions on money orders and other allowances based on the revenue received and the work performed. As provided by the "Classification of the Civil Service", 1919, approved by 10-11 Geo. V, Second Session, cap. 10, section 42, such a postmaster is required "to provide, supervise, and pay the necessary staff of employees". The post office itself was located in a public building, the property of His Majesty in right of Canada. During the month of December, 1946, Mrs. Graham engaged one, Leo Fleming, to work in the post office exclusively in connection with the work of the office.

Upon an information and complaint dated January 22, 1947, Mrs. Graham was charged under the *Minimum Wage Act*, R.S.S., 1940, cap. 310, with paying Leo Fleming less than the minimum wages fixed pursuant to that Act and on February 20th following she was convicted of the alleged offence, which conviction was upheld upon appeal to the

Court of Appeal. His Excellency the Governor General-in-Council has been pleased to refer to this court the question as to whether or not the Court of Appeal was right in holding that the *Minimum Wage Act* was applicable to Fleming's employment.

Under the provisions of section 91 of the *B.N.A. Act*, paragraph 5, "Postal Service" is a matter within the exclusive legislative jurisdiction of parliament. Under the authority thus conferred, the *Post Office Act*, R.S.C., 1927, 161, was enacted. Section 4 provides for the setting up of a Post Office Department for the superintendence and management, under the direction of the Postmaster General, of the postal service of Canada. By section 6, sub-section 2, it is provided that officers, clerks and servants in addition to the Deputy Postmaster General may be employed "in the manner authorized by law". By section 7, paragraph (w), the Postmaster General is authorized to "make and alter rules and orders for the conduct and management of the business and affairs of the Department and for the guidance and government of the postmasters and other officers, clerks and servants of the post office in the performance of their duties", and by paragraph (x) of the same section he may "make such regulations as he deems necessary for the due and effective working of the post office and postal business and arrangements, and for carrying this *Act* fully into effect".

Under the powers so given the Postmaster General issued "general instructions relating to post offices on the revenue basis". Paragraph 8 reads as follows:

8. Assistants—Every postmaster should appoint an assistant so that the office will not be left without a qualified person to perform the duties during his own necessary absence. Assistants must not be under sixteen years of age and must subscribe to the oath of office. Subject to age limit, satisfactory character and ability, the postmaster may employ his own staff and must engage such assistants as are actually required to satisfactorily carry on the work and adequately serve the public.

The oath of office above referred to is set out in section 16 of the *Act*, which requires an assistant in any post office to swear that he "will faithfully perform all the duties required of me by my employment in the service of the post office of Canada . . ." By section 2 (c) it is provided that "employed in the Canada Post Office" applies to any person employed in any business of the Post Office of

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Canada. It would therefore appear that Fleming, when engaged by the postmistress, under her obligation so to do, as above set out, was employed "in the manner authorized by law" under section 6 (2). Further, by the provisions of section 7, paragraph (b) the Postmaster General is authorized to "remove or suspend any . . . servant of the post office". By paragraph (q) of the same section he is authorized to make regulations for security to be given by any one employed in the Canada Post Office. By section 10 also, certain other postal department officers are given power to inquire into complaints or suspected misconduct or mismanagement on the part of any person "employed in the Canada Post Office" and to suspend any such person during the pleasure of the Postmaster General pending such investigation and by section 17, sub-section 3, provision is made by which employees in post offices may, from time to time, be examined on the work of the office.

In my opinion it is clear that under these statutory provisions, a person engaged as was Fleming, became a servant of the Crown. The fact that he was paid directly by the postmistress, although indirectly by the Crown, did not affect his status as an immediate servant of the Crown and subject to its control.

It is against this background that the provisions of the provincial statute are to be considered. The title of the *Act* is "An Act Respecting Minimum Wages, Hours of Employment and Conditions of Labour in Shops, Factories and Other Premises". By section 2 (2) "employee" is defined as any person employed in a shop, factory or other premises "to which this Act from time to time applies"; and by subsection 3 "employer" includes every person, firm or corporation, agent, manager, representative, contractor, sub-contractor or principal and every other person having control or direction of one or more employees or who is responsible directly or indirectly, in whole or in part, for the payment of wages to or the receipt of wages by one or more employees. The first branch of this definition would, taken literally, apply to the Crown.

By clause (c) of subsection 7 of section 2, "other premises" means a place to which the *Act* may from time to time be made applicable under the authority of subsection 2 of section 3, which authorizes the Minimum Wage

Board with the approval of the Lieutenant Governor-in-Council to declare that the provisions of the *Act* shall apply to "any industry, business, trade or occupation". By section 5 the Board is required to determine what wages are edquate from the standpoint of the cost of living and as to what are reasonable hours of labour for employees, and by section 6, subsection 1 (f) the Board may fix the period in any day within which the hours of work of employees in any class of employment shall be confined. Paragraph (h) of the subsection authorizes the Board to fix minimum periods for meals, and by paragraph (i) the Board may fix the minimum age at which employees may be employed. Section 9 authorizes any person designated by the Minister of Labour to enter and inspect premises, books, payrolls and records relating to wages, hours or conditions of employment. It requires the employer to make returns under oath as to these same matters and to produce books and documents relating to profit and loss and operating costs. The section also requires employees to produce the books and records of their employer and to make disclosure with respect to wages, hours and conditions of employment. By section 10 every employer is required to keep in his premises a register of the names and addresses, the working hours and the actual earnings of all employees and on request to produce the same. By section 11 the employer is prohibited from discharging any employee because he has testified, or is about to testify, in any investigation or proceedings relative to the enforcement of the Act. Section 12 prohibits an employer from discharging an employee who has been in his service continuously for three months or more except on a week's written notice but the section is not to apply where the master has certain specific grounds for discharge. Section 17 provides for fine and imprisonment for failure to comply with any of the provisions of the Act.

By order effective the second of January, 1946, the Board, with the approval of the Lieutenant Governor-in-Council, under the provisions of subsection 2 of section 3 of the *Act*, extended the *Act* to "all industries, businesses, trades or occupations of whatsoever nature" except agriculture and domestic service. By a further order of the Board effective July 22, 1946, made under the provisions of section 6, made

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applicable to "every employer and employee in . . . Maple Creek," it was provided that every employee, with certain exceptions not relevant here, should be paid a minimum wage of \$16 a week, the normal work week being set at 48 hours.

Assuming that the post office at Maple Creek comes within the definition of "other premises" in clause (c) of subsection 7 of section 2, which involves the further assumption that "an industry, business, trade or occupation" includes a post office, it is impossible in my opinion to construe the statute as applicable to Fleming's employment. It is sufficient to say that it is not competent to a provincial legislature to legislate as to hours of labour of Dominion servants; *Reference as to Hours of Labour in Industrial Undertakings* (1). The statute must therefore be read as completely inapplicable; *Gauthier v. The King* (2).

I would therefore answer in the negative the question referred.

ESTEY J.:—By Order in Council dated October 1, 1947, (P.C. 3945), His Excellency the Governor General-in-Council, under section 55 of *The Supreme Court Act, 1927 R.S.C., c. 35*, referred the following question to this Court:

Was the Saskatchewan Court of Appeal right in holding in its decision in *Williams v. Graham* that The Minimum Wage Act, Chapter 310 of the Revised Statutes of Saskatchewan, 1940, was applicable to the employment of Leo Fleming in the Post Office at Maple Creek, Saskatchewan?

The Saskatchewan Court of Appeal in that case affirmed the conviction of Mrs. Margaret Ellen Mary Graham, the postmistress at Maple Creek, Saskatchewan, for paying to one Leo Fleming, engaged by her as an assistant during the month of December 1946 in the Post Office at Maple Creek, an amount less than the minimum wages prescribed by an order made under *The Minimum Wage Act* of that province.

The *Saskatchewan Minimum Wage Act* is described by counsel for Saskatchewan as an Act that "aims to establish a floor for wages, a ceiling for hours and practical machinery for the supervision of the same." Under this *Minimum Wage Act* a Minimum Wage Board is set up with power to define classes of employment and, subject to certain exceptions not material hereto, fix the hours of labour, the

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

(2) 56 S.C.R. 176.

minimum wage for employees, the number or proportion of employees who may be classified as apprentices, learners or inexperienced employees or as part time employees, as well as other similar provisions.

The employer is required to keep certain records which may, as provided in the *Act*, be subject to examination, and to supply information as requested "in any way relating to the profit and loss and the production and operating costs of the business carried on by or under the control or direction of the employer." These and other relevant provisions are enacted to assist the board as provided in section 5 to "ascertain what wages are adequate to furnish the necessary cost of living to employees and what are reasonable hours of labour for employees."

Counsel for the Dominion does not question the competency of the province under the *B.N.A. Act*, s. 92 (13) (Property and Civil Rights) to enact this *Minimum Wage Act*, but does contend that it is not applicable to, or that the Postal Service is not subject to, the provisions of this provincial legislation.

Section 91 (5) of the *B.N.A. Act* provides:

91. . . . it is hereby declared that . . . the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

(5) Postal Service.

This section 91 (5) vests in the Parliament of Canada the exclusive power to legislate with respect to the Postal Service. As stated by Lord Maugham in *Attorney-General for Alberta v. Attorney-General for Canada* (1):

In such a case it is immaterial whether the Dominion has or has not dealt with the subject by legislation, or to use other well-known words, whether that legislative field has or has not been occupied by the legislation of the Dominion Parliament.

See also *Attorney-General for Canada v. Attorney-General for Ontario* (2); *Madden v. Nelson* (3); *Reference re Waters and Water-Powers* (4).

If, therefore, the said employment of Fleming was within the "Postal Service" as that term is used in the *B.N.A. Act*, his employment was subject to Dominion legislation only.

(1) [1943] A.C. 356 at 370.

(2) [1898] A.C. 700 at 715.

(3) [1899] A.C. 626.

(4) [1929] S.C.R. 200 at 213.

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The phrase "Postal Service" does not appear to have been generally used prior to Confederation, but the business of the Post Office as then conducted, the use of the phrase "Postal business and arrangements" in the *Post Office Act* (Can. 22 Vict., c. 31, s. 14 (16)), indicate that the Imperial Parliament in adopting the phrase "Postal Service",—a phrase of the widest import—in the *B.N.A. Act*, section 91 (5), intended that it should be construed as sufficiently comprehensive to include all the accommodations and facilities provided by the Post Office.

The Parliament of Canada has under the respective *Post Office Acts* (now 1927 R.S.C., c. 161, s. 4) placed the superintendence and management of the Postal Service of Canada under the Post Office Department, which is itself under the direction of the Postmaster General.

Section 6 of the *Post Office Act* provides for the appointment of the Deputy Postmaster General by the Governor in Council, and then continues:

6. (2) Such other officers, clerks and servants as are necessary for the proper conduct of the business of the department may be employed in the manner authorized by law.

The Postal Service is a branch of the public service and appointments thereto have been made by the Civil Service Commission under the provisions of the *Civil Service Act*, (1927 R.S.C., c. 22). Mrs. Graham was herself appointed postmistress at Maple Creek on July 10, 1930, by the Civil Service Commission of Canada, her salary "to be based on revenue return, plus usual commissions."

The Parliament of Canada by statute (1919 S. of C., 2nd Sess., c. 10) ratified and confirmed "the classes of positions including the several rates of compensation in the classification of the Civil Service of Canada signed by the Commission and dated the 1st day of October, nineteen hundred and nineteen." This classification and amendments thereto are adopted by section 10 of the *Civil Service Act*, (1927 R.S.C., c. 22). It is provided in this classification that the remuneration of a postmistress in a Grade 2 office shall be an allowance based on the revenue of the office and a commission on the sale of stamps, the handling

of postal notes, money orders and related business, and then after specifying certain of her duties as postmistress, this classification continues:

. . . to provide, supervise, and pay the necessary staff of employees . . .

Mrs. Graham's appointment, therefore, carried with it the authority and responsibility to employ, supervise and pay the necessary staff of the Post Office at Maple Creek. Fleming was employed by Mrs. Graham, acting under her authority as set out in the classification ratified by the Parliament of Canada as aforesaid, as a member of the staff of the Post Office at Maple Creek during the Christmas rush. This was the only purpose of his employment. He was therefore "employed in the Canada Post Office" within the meaning of 2 (c).

2. In this Act, unless the context otherwise requires,

(c) "employed in the Canada Post Office" applies to any person employed in any business of the Post Office of Canada.

While so employed Fleming was under the immediate supervision of Mrs. Graham as postmistress, but his work was that of a Post Office employee as defined in the *Post Office Act*, and the regulations thereunder (section 7 (w) and (x)). Moreover, he was subject to the inspection, supervision and suspension provided for in that *Act* and in particular section 10 thereof.

Whether Fleming by virtue of his employment was a member of the Civil Service, or just what may be his precise contractual position in relation to the department or the Postmaster General, we are not here concerned. It is sufficient for the determination of the present issue that he is employed in the Postal Service.

With great respect for those who entertain an opinion to the contrary, Fleming so employed was under and subject to the provisions of the Post Office authorities and was employed in the Postal Service and therefore within the exclusive legislative field of the Parliament of Canada. Even if it be correct that the Parliament of Canada has not enacted legislation with respect to hours of work and minimum wages, it is not, as explained in the above mentioned authorities, with respect to the Postal Service within the competence of the legislature of the province to do so.

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In this view the workmen's compensation, taxation and other cases cited during the exhaustive presentation of this case do not assist the contention of the province. Even if the fixing of hours of employment and minimum wages were deemed to be but legislation necessarily incidental or ancillary these cases are distinguishable; the former because they deal with employees of corporations formed under Dominion statutes and not with respect to the Postal Service or employees of the Government of Canada, and the latter because the imposition of the tax, to adopt the language of Sir Louis Davies, (later Chief Justice), in *Abbott v. City of St. John* (1), and adopted by the Privy Council in *Caron v. The King* (2), and *Forbes v. Attorney-General of Manitoba* (3); Plaxton, 259, "does not attempt to interfere directly with the exercise of Dominion power." It cannot be said that the imposition of minimum wages and maximum hours relative to employees in the Post Office does not attempt to interfere directly with the exercise of Dominion power in respect to the Postal Service.

The question submitted should be answered in the negative.

Question answered in the negative.

Solicitors for the Attorney-General of Canada: *F. P. Varcoe* and *W. R. Jackett*.

Solicitors for the Attorney-General of Ontario: *C. R. Magone* and *E. H. Silk*.

Solicitor for the Attorney-General of Saskatchewan: *J. L. Salterio*.

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

Solicitor for the Attorney-General of Nova Scotia: *Thomas D. Macdonald*.

(1) (1908) 40 S.C.R. 597 at 606.

(3) [1937] A.C. 260.

(2) [1924] A.C. 999.