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JAMES D. LAFFERTY.....APPELLANT;

*April 4.

AND

*May 7.

WILLIAM A. LINCOLN.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF THE
NORTH-WEST TERRITORIES.

Constitutional law—British North America Act, 1867—Provincial legislative jurisdiction—“Alberta Act,” 4 & 5 Edw. VII. c. 3 (D.)—Con. Ord. N.W.T. (1898), c. 52—6 Edw. VII. c. 28 (Alta.)—Medical profession—Practising without license—Criminal law—Practice—Special leave to appeal—R.S.C. (1906), c. 139, s. 37 (c).

The “Medical Profession Act,” 6 Edw. VII. ch. 28 (Alta.) is *intra vires* of the legislative jurisdiction of the Legislature of Alberta and a member of the College of Physicians and Surgeons of the North-West Territories may be validly convicted thereunder for the offence of practising medicine, surgery, etc., for gain and reward, in the Province of Alberta, without complying with its requirements as to registration and license, notwithstanding that the College of Physicians and Surgeons of the North-West Territories had not been previously dissolved and abolished by order of the Governor in Council, in conformity with the provisions of sec. 16(3) of “The Alberta Act.”

Dobie v. The Temporalities Board (7 App. Cas. 136) distinguished.

APPEAL from the judgment of the Supreme Court of the North-West Territories, in banc, Harvey and Stuart JJ. dissenting, on a case stated, whereby the conviction of the respondent by the police magistrate of the City of Calgary, Alta., for an offence under the “Medical Profession Act,” 6 Edw. VII. ch. 28, of the statutes of Alberta (1906), was quashed and the said

*PRESENT:—Fitzpatrick C.J. and Girouard, Idington Maclellan and Duff JJ.

Act declared *ultra vires* of the Legislative Assembly of the Province of Alberta.

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The case stated by the police magistrate for the opinion of the Supreme Court of the North-West Territories, was as follows:—

CASE STATED.

"This is a case stated for the opinion of this court pursuant to section 900 of the Criminal Code, 1892, and the amendments thereto, on the application in writing to me by said appellant (respondent in the Supreme Court of Canada).

"The appellant (Lincoln) was, on the 20th day of December, A.D. 1906, tried before me, Crispin E. Smith, police magistrate in and for the City of Calgary, in the Province of Alberta, upon an information laid before me by James D. Lafferty, the said respondent (now appellant), for that he, the said appellant, William A. Lincoln, on the thirteenth day of December, A.D. 1906, did in the City of Calgary, in the Province of Alberta, unlawfully practice medicine for gain, he the said William A. Lincoln not being then a registered person pursuant to "The Medical Profession Act," chapter 28 of the statutes of the Province of Alberta (1906), contrary to the provisions of said Act.

"Upon the hearing of said charge the following facts were established and proven before me.

"1. That on the third day of October, A.D. 1906, pursuant to and in accordance with the provisions of said "The Medical Profession Act," a council of the College of Physicians and Surgeons of the Province of Alberta referred to in said Act was duly elected

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and on the 18th day of October, 1906, a registrar was duly appointed and a book on and since said date has been kept known as the "Alberta Medical Register," as provided by said Act.

"2. That the name of said William A. Lincoln was not entered and did not appear in the said "Alberta Medical Register," and that the said William A. Lincoln was an unregistered person within the meaning of said "The Medical Profession Act."

"3. That the said William A. Lincoln did on the said thirteenth day of December, 1906, practice medicine for gain in said City of Calgary.

"4. That the name of the said William A. Lincoln was on the 18th day of May, A.D. 1906, duly entered and thereafter remained in the book or register provided by "The Medical Profession Ordinance," chapter 53 of the Consolidated Ordinances of the Territories, 1898, and the amendments thereto.

"5. That there was at and prior to the date of said offence, and thereafter at the date of said information, a duly elected council of "The College of Physicians and Surgeons of the North-West Territories," and a duly appointed registrar, also the book or register, all as provided by said ordinance.

"6. That "The College of Physicians and Surgeons of the North-West Territories," the association incorporated by said ordinance had not been dissolved or abolished by any order of the governor in council.

"Upon the said facts proven before me on the 20th day of December, 1906, I did on said last mentioned date find the said William A. Lincoln guilty of the offence, in said information charged, and did thereupon convict him of said offence, and did order and adjudi-

cate him to pay forthwith the sum or penalty of one dollar and two dollars costs, subject to the opinion of said court.

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"1. The appellant (Lincoln) submits that the said "The Medical Profession Act" of the Province of Alberta is *ultra vires* of the legislature of said province, and that the same is not and never has been in force in said province.

"2. That in any case sections 66 to 69 both inclusive of said Act, are *ultra vires* of said provincial legislature.

"3. That all persons registered under the provisions of the said "The Medical Profession Ordinance," including those so registered since the 9th day of May, 1906, are entitled to practice medicine for gain within said Province of Alberta without being registered under the provisions of the said "The Medical Profession Act."

"4. That for registration purposes said "Medical Profession Act" has no force or effect and does not in that respect come into operation until the said corporation, "The College of Physicians and Surgeons of the North-West Territories," has been abolished and dissolved by order of the Governor in Council.

"The questions submitted for the opinion of the court are:

"(a) Is the said "The Medical Profession Act," *intra vires* of the Legislature of the Province of Alberta?

"(b) Is the said Act in force since the 9th day of May, A.D. 1906?

"(c) Are sections 66 to 73 inclusive, *intra vires* of said legislature?

"(d) Are said sections in force in said province since May 9th, 1906?

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(e) Do the provisions in said "Medical Profession Act," respecting registration come into force before the said corporation, "The College of Physicians and Surgeons of the North-West Territories," has been abolished and dissolved by order of the Governor in Council?

"(f) Are persons registered since May 9th, 1906, under the provisions of the said "The Medical Profession Ordinance," entitled to practice medicine for gain within the Province of Alberta without having been registered under the said "The Medical Profession Act" of said province?

"(g) Since the 9th day of May, 1906, and until dissolved and abolished by order of the Governor in Council, does the said association incorporated as "The College of Physicians and Surgeons of the North-West Territories," continue for any purpose or with any powers within the Province of Alberta other than to arrange for and effect the payment of its debts and liabilities and the division and disposition and transfer of its property?

"(h) Does registration since May 9th, 1906, in accordance with the provisions of "The Medical Profession Ordinance of the North-West Territories," entitle the persons so registered to all the rights and privileges provided by said ordinance?

"The said conviction is to be affirmed or quashed in accordance with the opinion of the court on said questions.

"Given under my hand this 20th day of December, A.D. 1906, at the City of Calgary, in said Province of Alberta.

"CRISPIN E. SMITH,
Police Magistrate."

Special leave for the appeal was granted, on motion by *Chrysler K.C.* (*Haydon*, contra), by the full court, under the provisions of the "Supreme Court Act," R.S.C. (1906), ch. 139, sec. 37(c), on the 19th of February, 1907.

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The circumstances of the case and questions at issue on the appeal are stated in the judgments now reported.

Woods, Deputy Attorney-General of Alberta, and *Young* for the appellant.

J. A. Allen, for the respondent.

THE CHIEF JUSTICE.—The appeal is allowed with costs. I agree in the opinion of Mr. Justice Maclellan.

GIROUARD J.—I agree in the opinion of my brother Maclellan.

IDINGTON J.—This is an appeal from the judgment of the Supreme Court of the North-West Territories upon a case stated by the police magistrate of the City of Calgary arising out of the prosecution and conviction of the respondent under the provisions of the Medical Professions Act, ch. 28, of the statutes of Alberta.

The sole questions raised are whether or not the prohibition in the said statute against practising medicine without being registered in accordance with the terms of that statute, and the imposition of a penalty for breach of such prohibition are *intra vires* the powers of the Legislature of Alberta.

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The Provinces of Alberta and Saskatchewan were carved out of the North-West Territories by Acts passed by the Dominion Parliament.

Prior to the passing of said Acts, the "Medical Professions Ordinance," ch. 52 of the Consolidated Ordinances of the North-West Territories, prohibited any one from practising medicine within the North-West Territories unless registered in accordance with the provisions of that Ordinance.

A prior Ordinance created a corporation known as the "College of Physicians and Surgeons of the North-West Territories," and this "Medical Professions Ordinance," ch. 52, I have referred to, continued the said corporation, and declared that all persons, registered members of such college under the provisions of the ordinance, should be a body corporate under the name of the "College of Physicians and Surgeons of the North-West Territories," and should have perpetual succession, etc., as therein provided.

To this college was confided the keeping of the register of medical practitioners, and many powers were given it in the way of examining candidates for admission, and admitting when passed to registration, and in other ways regulating the conduct of members of the medical profession.

When the provinces in question were being created it was found necessary to anticipate the dissolution of that corporation and similar corporations. Their existence as corporations would have continued as a matter of course. It seemed an obviously probable thing that a provincial body of the same character, and possibly endowed with the same powers, might in the course of time advantageously be created by each of the new legislatures for each province. It was

quite obvious also that, if that should take place, it was desirable the functions of the corporation, with territorial jurisdiction, so to speak, should cease. It no doubt was apprehended that in such event dissolution of the old territorial corporations could not be brought about by either province, and possibly could not be provided for by legislation of the Dominion Parliament. It seems likely that to provide for this difficulty was all that was within the intention of Parliament in enacting sub-sec. 3 I am about to refer to.

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It certainly would fall within the usual powers given to provinces of the Dominion; to regulate the practice of medicine; to regulate the practice of law, or other like professions; to fix the standards of qualification entitling such persons to practice; to prohibit others respectively not so qualified from practising; and if need be, to carry into effect such powers, to create colleges or such other corporations as the Legislature might deem proper.

These ample powers were certainly given and exist under sub-sec. 1, sec. 16 of the Alberta Act, unless the contention set up by respondents and upheld by the Supreme Court of the North-West Territories be correct. That contention is this, that sub-sec. 3 of said Act restricts this power of sub-sec. 1. Sub-sec. 3 reads as follows:—

3. All societies or associations incorporated by or under the authority of the Legislature of the North-West Territories existing at the time of the coming into force of this Act which include within their objects the regulation of the practice of or the right to practice any profession or trade in the North-West Territories, such as the legal or the medical profession, dentistry, pharmaceutical chemistry and the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council and each of such societies shall have power to arrange for and effect the payment of

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its debts and liabilities, and the division, disposition or transfer of its property.

It is to be noted that the corporation alone and what is enacted relative to its creation, continuation and dissolution is all this refers to. It does not refer to the numerous other legislative enactments found in chapter 52 above cited. It is urged that the words "shall continue" in this sub-section cannot be given effect to unless the powers given by the consolidated Ordinance, chapter 52, are to be held as continued in full force and effect at least until the Governor in Council shall have dissolved the corporation created as above and continued thereunder.

It seems to me that we must, in this as in many other cases, test this pretention by finding whether it lies or not within the general purview of the Alberta Act to reserve to this college, instead of the Legislature, this regulating power. Why should there be such an anomaly as withholding from these provinces the right to legislate upon such a wide field for legislative action as implied in this contention?

It does not appear that there existed any reason for the making of this distinction.

It certainly could not be contended that the Dominion Parliament had intended to reserve to itself, if it could, the right to alter the Medical Professions Act. Where is the legislative power supposed to rest if not in the newly created Legislature?

If it is replied that Parliament only intended the continuation as a temporary expedient, then what body would we expect to have power to determine the period of its existence?

The Governor in Council is given the power to dissolve the corporations in question, but the executive

is not given the power to amend the provision of the Act in any respect.

This sub-sec. 3, when we look at it in the light of these considerations, obviously was designed to provide for the dissolution of these corporations, and the transfer of their property to some similar body.

It describes the class and, of abundant caution, needlessly but I think harmlessly, uses the words "shall continue" from which so very much is sought to be drawn by way of implication.

It was urged by respondent's counsel we should not find by implication the power to legislate that is claimed to have been given the Legislature.

It is not by implication at all that the power is given the Legislature. Section 16, sub-sec. 1 gives it clearly and explicitly in the power to alter existing laws save those thereby excluded unless restricted by sub-sec. 3. And all that was urged against giving an interpretation that rests upon mere implication is applicable to the interpretation by respondent's counsel of this sub-sec. 3. Not a word or line of it expressly provides such a restriction as has been suggested.

It is mere implication that the alleged restriction rests upon.

It is implication too of a far fetched kind. There is not the slightest reason why the continuation for a temporary purpose, of a corporate existence, that is intended to subserve a public and not a private interest, should imply that the duties intrusted to it as such are to extend and continue beyond the necessities of such temporary purpose. And moreover less so when, as I conceive, the temporary purpose was simply to await the action of the newly created legislatures or legislature.

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It was but a vessel to carry to some other place or sphere of action the seeds of a possibly regenerated activity that was designed and nothing more.

It had fulfilled its functions and was only to be prepared for death in a decent and respectable manner.

The appeal should be allowed with costs here and in the court below if insisted upon.

MACLENNAN J.—Appeal from the judgment of the Supreme Court of the North-West Territories, setting aside a conviction of the respondent for practising medicine for gain within the Province of Alberta, without registration under the Medical Profession Act of Alberta, ch. 28 of the statutes of 1906.

Before the Alberta Act, statute of Canada, 4 & 5 Edw. VII. (1905), ch. 3, establishing a new province out of what before was the North-West Territories, there existed a corporation called “The College of Physicians and Surgeons of the North-West Territories,” the members of which, and those admitted from time to time by the council of the said corporation, had the exclusive right to practice medicine, surgery, etc., for gain and reward within the limits of the territories. That corporation was incorporated by the legislature of the territories, and had been in existence for many years. The ordinance made practice contrary to its provisions illegal and punishable by fine not exceeding \$100.

On the 20th day of July, 1905, the “Alberta Act” (Canada) was passed and, by section 3, declared that the British North America Act, 1867, should apply to the new province in the same way and to the same extent as to the provinces theretofore comprised in

the Dominion, as if Alberta had been one of them, except so far as varied "*by this Act,*" and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more, and not the whole of the said provinces.

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By section 16(1) provision is made for a continuance within the new province of all laws, orders and regulations in force at the passing of the Act, until repealed, abolished or altered by the proper authority, that is, either by Parliament or by the newly created legislature.

Sec. 16 (3) provides that all societies or associations incorporated by or under the authority of the Legislature of the North-West Territories existing at the time of the coming into force of this Act, which include within their objects the regulation of the practice of, or the right to practice any profession or trade in the North-West Territories, such as the legal or medical professions, dentistry, pharmaceutical chemistry and the like, shall continue, subject, however, to be dissolved and abolished by order of the Governor in Council, and each of such societies shall have power to arrange for and effect the payment of its debts and liabilities, and the division, disposition or transfer of its property.

The Alberta statute makes provision for the medical professions in the new province very similar to those of the "Territories Act," but confined to the province. It enacts and directs that all qualified members of the territories' college are qualified for membership in the new one, and that any who might be in arrears for annual fees would, on paying their fees to the old college, be qualified for membership in the new.

It provides for the admission and registration of persons who were not members of the old college, on compliance with certain rules and regulations, and

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forbids practice for reward within Alberta without registration, under a penalty.

Section 16(3) is what is relied on to support the judgment. It is said that the Act expressly provides that the associations mentioned are *to continue*, and that the meaning of that must be that until the Governor in Council dissolves the old college, the Legislature can make no provision for medical education or practice within the province.

I cannot assent to that view. It was to continue until it was dissolved by the Governor in Council, which might be at any time. It was not continued for active operation, but only for winding up, paying its debts and liabilities, if any, and the division and disposition of its property.

It is obvious that, unless provision was made for something to take the place of such societies, a most inconvenient state of things would result whenever the Governor in Council exercised the power vested in him. The Governor in Council could make no such provision. It is not pretended that Parliament could do so, and unless the province could do so no other power could but the Imperial Parliament.

There is nothing in the Act limiting in any way the jurisdiction over property and civil rights in the province, and the incorporation of companies with provincial objects conferred by the 93rd section of the British North America Act, 1867.

The Act does not assume to amend or alter or deal in any way with the Territorial Act, or with the corporation thereby incorporated. It deals solely with individuals. It says, no person shall practice for reward within the province without certain prescribed qualifications, and if he do he shall be liable to a pen-

alty. The Act of Parliament says it shall continue, and so it does. As a corporation it has not been interfered with nor affected in the slightest degree.

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Great reliance was placed in the court below on *Dobie v. The Temporalities Board* (1), but that was a very different case from the present. The "Temporalities Act" was one which had been passed by the Province of Canada and which after the British North America Act, 1867, could not have been validly enacted by either Ontario or Quebec. Parliament could have passed it, because it concerned persons and trusts and property in both provinces. And the Quebec Act assumed to amend it in express terms.

In the present case, however, the Act, which has been held invalid, does not interfere in the slightest degree with the "Territorial Act," or with the property or rights of the college incorporated thereby. It simply says no one shall practise medicine for reward in Alberta after the passing of this Act without a particular qualification.

I agree with the conclusion and reasons of Stuart J. in the court below, and am of opinion that the appeal should be allowed and the conviction confirmed.

DUFF J.—I concur for the reasons stated by His Lordship Mr. Justice Idington.

Appeal allowed with costs.

Solicitor for the appellant: *James Muir.*

Solicitor for the respondent: *J. A. Allan.*