1963

*Feb. 11, 12, 13
Oct. 1

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, Local 16 - 601 (*Plaintiff*) — APPELLANT;

AND

IMPERIAL OIL LIMITED (*Defendant*) ..... — RESPONDENT;

AND

ATTORNEY-GENERAL OF BRITISH COLUMBIA (*Intervenant*) .. — RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Constitutional law—Labour law—Trade unions prohibited from using membership fees for political purposes—Whether legislation ultra vires of Provincial Legislature—Labour Relations Act, R.S.B.C. 1960, c. 205, s. 9(6) [*en. 1961, c. 31, s. 5*].

Section 9(6)(*c*)(i) of the Labour Relations Act, R.S.B.C. 1960, c. 205, enacted by 1961 (B.C.), c. 31, s. 5, prohibits a trade union from contributing to, or expending on behalf of, a political party, or a candidate for political office, directly or indirectly, moneys deducted from an employee's wages under check-off (whether statutory pursuant to a collective agreement), or paid to it as a condition of membership in the trade union. Section 9(6)(*d*) prohibits an employer from making any deduction from wages of an employee on behalf of a trade union unless the trade union delivers to the employer a statutory declaration that it is complying with and will continue to comply with s. 9(6)(*c*). Section 9(6)(*e*) provides that any moneys deducted from the wages of an employee and paid to a trade union that does not comply with this subsection are the property of the employee, and that the trade union is liable to the employe for any moneys so deducted.

The plaintiff, a local unit of a trade union, was certified, under the provisions of the *Labour Relations Act*, as the bargaining agent for a group of employees of the defendant company. Under the provisions of the collective agreement between the plaintiff and the defendant, the latter agreed to honour written assignments of wages given by employees in that group in favour of the plaintiff and to remit to the plaintiff each month the amount collected. Following the enactment of subs. (6) of s. 9 of the Act, the defendant advised the plaintiff that it could no longer honour the written assignments unless the plaintiff supplied it with the form of statutory declaration required by para. (*d*). The plaintiff refused to supply this and sued the company to compel it to honour the assignments, contending and seeking a declaration that paras. (*c*), (*d*) and (*e*) of subs. 6 were

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

ultra vires of the Legislature of British Columbia. The trial judge's decision that the statutory provisions under attack were *intra vires* of the provincial legislature was affirmed by the unanimous judgment of the Court of Appeal. An appeal from that judgment was brought to this Court.

Held (Cartwright, Abbott and Judson JJ. dissenting): The appeal should be dismissed.

Per Taschereau, Fauteux, Martland and Ritchie JJ.: The *Labour Relations Act* materially affected the civil rights of individual employees by conferring upon certified trade unions the power to bind them by agreement and the power to make agreements which compel membership in a union. Such legislation falls within the powers of the provincial legislature to enact, as being labour legislation, and, therefore, relating to property and civil rights in the province. The legislation under attack here did nothing more than to provide that the fee paid as a condition of membership in such an entity by each individual employee cannot be expended for a political object which may not command his support. That individual was brought into association with the trade union by statutory requirement. The same legislature which required this could protect his civil rights by providing that he cannot be compelled to assist in the financial promotion of political causes with which he disagrees. Such legislation was, in pith and substance, legislation in respect of civil rights in the province.

The question in issue was not as to the right to engage in political activity, but as to the existence of an unfettered right to use funds obtained in certain ways for the support of a political party or candidate. A trade union, when it becomes certified as a bargaining agent, becomes a legal entity (*International Brotherhood of Teamsters, Etc., Local 213 v. Therien*, [1960] S.C.R. 265). When the legislature clothes that entity with wide powers for the exaction of membership fees, by methods which previously it did not, in law, possess, it can set limits to the objects for which funds so obtained may be applied.

Reference re Alberta Statutes, [1938] S.C.R. 100; *Switzman v. Elbling and Attorney-General of Quebec*, [1957] S.C.R. 285, discussed.

Per Ritchie J.: The addition of subs. (6) to s. 9 of the Act, was directed towards ensuring that legislative machinery involving the adjustment of civil rights which was created for the regulation of relations between employers and employees should not be used for the collection of political party funds or in such manner as to curtail the fundamental political rights of any individual employee. Just as it was within the power of the province under s. 92(13) of the *British North America Act* to create this legislative machinery for the the purpose of furthering the cause of industrial peace so it was within its power to control its use for the same purpose.

The impugned legislation did not in any sense preclude a trade union from indulging in political activity or from collecting political party funds from its members. Its effect on political elections, if any, could only be characterized as incidental and this would not alter the fact that the amendment was a part and parcel of legislation passed "in relation to" labour relations and not "in relation to" elections either provincial or federal.

Per Cartwright, Abbott and Judson JJ., *dissenting*: The subject-matter of the legislation in question concerned political and constitutional

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

rights, not property and civil rights. Clause (c) had no relationship whatever to trade union action designed to promote collective bargaining, to change conditions of employment or the contract of employment. Its sole object and purpose was to prevent trade unions from making political contributions out of their own moneys.

The control of political behaviour did not fall within the field of labour relations and was not within the provincial power. The legislation in question was legislation in relation to federal elections, a field exclusively within the Dominion power.

Per Cartwright J., *dissenting*: The effect of the impugned legislation in the known circumstances to which it was to be applied was a virtually total prohibition of the expenditure by a trade union of any of its funds to further the interests of any political party or candidate in a federal election; it was the prohibition of, *inter alia*, a political activity in the federal field which prior to the enactment was lawful in Canada. The argument that this prohibition of an heretofore lawful and indeed normal political activity in regard to federal elections is ancillary, or necessarily incidental, to any of the provisions of the *Labour Relations Act* which are within the provincial power was unacceptable.

Per Abbott J., *dissenting*: Under our constitution, any person or group of persons in Canada is entitled to promote the advancement of views on public questions by financial as well as by vocal or written means. Accordingly, any individual, corporation, or voluntary association such as a trade union, is entitled to contribute financially to support any political activity not prohibited by law.

Whatever power a provincial legislature may have to regulate expenditures for provincial political activities, it cannot legislate to regulate or prohibit contributions made to assist in defraying the cost of federal political or electoral activities. Similarly, Parliament itself cannot legislate to regulate or prohibit financial contributions for provincial political or electoral purposes except to the extent that such regulation or prohibition is necessarily incidental to the exercise of its powers under s. 91 of the *British North America Act*.

Subsection 6(c) of s. 9 of the *Labour Relations Act*, could not be supported as being in relation to property and civil rights in the province within s. 92(13) of the *British North America Act*, nor could it be said to be in relation to matters of a merely local or private nature in the province.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], dismissing an appeal from a judgment of Whittaker J. Appeal dismissed, Cartwright, Abbott and Judson JJ., dissenting.

F. R. Scott, Q.C., and *T. R. Berger*, for the plaintiff, appellant.

T. E. H. Ellis, Q.C., for the defendant, respondent.

D. McK. Brown, Q.C., and *A. Fouks*, for the Attorney-General of British Columbia.

[1] (1962), 38 W.W.R. 533, 33 D.L.R. (2d) 732.

C. J. D. Taylor, Q.C., for the Attorney General of Saskatchewan.

The judgment of Taschereau, Fauteux and Martland JJ. was delivered by

MARTLAND J.:—Prior to its amendment in 1961, s. 9 of the *Labour Relations Act*, R.S.B.C. 1960, c. 205, contained, *inter alia*, the following provisions:

9. (1) Every employer shall honour a written assignment of wages to a trade-union certified under this Act, except where the assignment is declared null and void by a Judge or is revoked by the assignor.

* * *

(3) Except where an assignor of wages revokes the assignment by giving the employer written notice of the revocation, or except where a Judge declares an assignment to be null and void, the employer shall remit at least once each month, to the trade-union certified under this Act and named in the assignment as assignee, the fees and dues deducted, together with a written statement containing the names of the employees for whom the deductions were made and the amount of each deduction.

On March 27, 1961, the *Labour Relations Act Amendment Act, 1961*, (B.C.), c. 31, came into effect. It made a number of amendments to provisions of the *Labour Relations Act*, among which was the addition to s. 9 of a new subs. (6), which provides as follows:

(6) (*a*) No employer and no one acting on behalf of an employer shall refuse to employ or to continue to employ a person and no one shall discriminate against a person in regard to employment only because that person refuses to make a contribution or expenditure to or on behalf of any political party or to or on behalf of a candidate for political office.

(*b*) No trade-union and no person acting on behalf of a trade-union shall refuse membership to or refuse to continue membership of a person in a trade-union, and no one shall discriminate against a person in regard to membership in a trade-union or in regard to employment only because that person refuses to make or makes a contribution or expenditure, directly or indirectly, to or on behalf of any political party or to or on behalf of a candidate for political office.

(*c*) (i) No trade-union and no person acting on behalf of a trade-union shall directly or indirectly contribute to or expend on behalf of any political party or to or on behalf of any candidate for political office any moneys deducted from an employee's wages under subsection (1) or a collective agreement, or paid as a condition of membership in the trade-union.

(ii) Remuneration of a member of a trade-union for his services in an official union position held by him while seeking election or upon being elected to public office is not a violation of this clause.

(*d*) Notwithstanding any other provisions of this Act or the provisions of any collective agreement, unless the trade-union delivers to the employer who is in receipt of an assignment under subsection (1) or who

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Martland J.

is party to a collective agreement, a statutory declaration, made by an officer duly authorized in that behalf, that the trade-union is complying with and will continue to comply with clause (*c*) during the term of the assignment or during the term of the collective agreement, neither the employer nor a person acting on behalf of the employer shall make any deduction whatsoever from the wages of an employee on behalf of the trade-union.

(*e*) Any moneys deducted from the wages of an employee and paid to a trade-union that does not comply with this subsection are the property of the employee, and the trade-union is liable to the employee for any moneys so deducted.

The issue in the present case is as to the constitutional validity of paras. (*c*), (*d*) and (*e*) of subs. (6), and primarily we are concerned with para. (*c*), as paras. (*d*) and (*e*) must stand or fall with it.

The appellant is a local unit of the Oil Chemical and Atomic Workers International Union and was certified, under the provisions of the *Labour Relations Act*, as the bargaining agent for a group of employees of the respondent company at its refinery at Ioco, British Columbia. Under the provisions of the collective agreement between the appellant and the respondent company, the company had agreed to honour written assignments of wages given by employees in that group in favour of the appellant and to remit to the appellant each month the amount collected.

Following the enactment of subs. (6) of s. 9 of the Act, the respondent company advised the appellant that it could no longer honour the written assignments unless the appellant supplied it with the form of statutory declaration required by para. (*d*). The appellant refused to supply this and sued the respondent company to compel it to honour the assignments, contending and seeking a declaration that paras. (*c*), (*d*) and (*e*) of subs. (6) were *ultra vires* of the Legislature of the Province of British Columbia. Notice was given to the respondent the Attorney-General of British Columbia (hereinafter referred to as "the respondent"), who intervened in the proceedings. The position of the respondent company throughout the proceedings has been that it is precluded from honouring the assignments without having received the required statutory declaration, so long as the legislation in question remains in effect. It has taken the position that it is substantially in the position of a stakeholder, with no interest in the proceedings and prepared to abide by the result.

The learned trial judge held that the statutory provisions under attack were *intra vires* of the Legislature of the Province of British Columbia. This decision was affirmed by the unanimous judgment of the Court of Appeal of British Columbia[1] and it is from that judgment that the present appeal is brought.

The appellant contends that the clauses in question are *ultra vires* of the Legislature of the Province of British Columbia, on the ground that the authority to enact them is not to be found within any of the subsections of s. 92 of the *British North America Act*; that they relate to the subject of federal elections and that they seek to curtail the fundamental rights of Canadian citizens essential to the proper functioning of parliamentary institutions. It is argued that they affect the political activity of trade unions, the right of which to engage in such activity is beyond the powers of a provincial legislature to curtail.

The submission of the respondent is that the legislation in question is a limitation only of the power to use certain specified funds for particular purposes by trade unions; that this limitation is valid legislation in respect of the field of labour relations and that the Legislature of British Columbia has the authority to enact it as being within the field of property and civil rights in the province, within s. 92(13) of the *British North America Act*.

That the field of legislation in relation to labour relations in a province is within the sphere of provincial legislative jurisdiction is established beyond doubt in the case of *Toronto Electric Commissioners v. Snider*[2]. This is not disputed by the appellant, which, however, contends that the clauses in question are not in respect of labour relations at all.

In order to determine these issues it is necessary to consider the provisions of the *Labour Relations Act* as a whole and, in particular, to consider the true purpose and effect of those clauses which are under attack.

The object of this Act, which is similar to like statutes in other provinces of Canada, may be summarized in the words

[1] (1962), 38 W.W.R. 533, 33 D.L.R. (2d) 732.

[2] [1925] A.C. 396.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Martland J.

of MacDonald J., in *Re Labour Relations Board (Nova Scotia)*[1]:

> To my mind the object of the Act is to facilitate collective bargaining and stabilize industrial relations by enabling a union to establish before the Board its ability to represent a group of employees; and, with this controversial question settled, to require the employer, upon notice from the union, to negotiate with it and (with the aid of conciliation services), to promote the conclusion of an agreement which shall be legally enforceable; and generally to ensure a greater measure of industrial peace to the public. Certification is, of course, not necessary for collective bargaining, but the policy of the Act undoubtedly is to promote it as a means to more orderly bargaining.

The instrument for collective bargaining on behalf of employees is a trade union, which is defined, in s. 2(1) of the Act, as follows:

> "trade-union" means a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization or association of employees within the Province, that has as one of its purposes the regulation in the Province of relations between employers and employees through collective bargaining, but does not include any organization or association of employees that is dominated or influenced by an employer;

While it is theoretically possible for a collective agreement to be made with an uncertified trade union, it is only possible for a trade union to become the bargaining agent for a unit of employees who are not all members of the union by obtaining certification under the Act. It is clear that the Act is primarily concerned with the procedures necessary to obtain certification and for collective bargaining after certification has been obtained.

Those procedures materially affect the rights of employees in any unit suitable for collective bargaining and of their employer, who is compelled to bargain collectively with a certified trade union. The primary purpose of the Act is, therefore, to spell out the respective rights and obligations of the employer, the employee and the certified trade union, each of which is subject to its mandatory powers.

A trade union, as defined in the Act, may obtain certification for a group of employees, in accordance with the statutory requirements. It may apply for certification if it claims to have as members in good standing a majority of the employees in that group.

[1] (1952), 29 M.P.R. 377 at 396.

When a trade union has been certified by the Labour Relations Board, it has exclusive authority to bargain collectively on behalf of the unit and to bind the individuals in that unit by a collective agreement. It can require an employer to enter into collective bargaining, with a view to the making of a collective agreement, and such an agreement, when made, is binding, not only upon the trade union which has entered into the agreement, but also upon every employee covered by the agreement. Every person who is bound by a collective agreement is obligated, by the Act, to do everything he is required to do and to refrain from doing anything that he is required to refrain from doing by the provisions of the collective agreement.

The position is, therefore, that a trade union can, under the provisions of the Act, become the bargaining agent for all the employees within a particular unit, irrespective of the individual wishes of the minority of employees within that group, and that it can then bind each of such employees by the collective agreement which it makes. It is placed in a position to persuade those employees within the group, who were not members of the union, to seek membership, for it is now their bargaining agent, entering collective agreements on their behalf. In some instances the form of the collective agreement which it makes may compel their contribution to its funds, whether they are members or not. But this is not all. Section 8 of the Act provides as follows:

> 8. Nothing in this Act shall be construed to preclude the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade-union, or granting a preference of employment to members of a specified trade-union, or to preclude the carrying-out of such provisions.

Where a collective agreement contains a provision of the kind contemplated in this section, membership in the trade union becomes a condition of employment within the group of employees in question and loss of membership automatically involves loss of employment. A person seeking employment in such a group, or desiring to remain as an employee within it, has no alternative but to obtain membership in the trade union which is its bargaining agent, and, for that purpose, to pay to it such dues as are imposed as a condition of membership in it.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Martland J.

I now propose to consider the provisions of the clauses in question in this case. The appellant's attack is mainly upon clause (*c*)(i), which prohibits a trade union from contributing to, or expending on behalf of, a political party, or a candidate for political office, directly or indirectly, moneys deducted from an employee's wages under the check-off (whether statutory or pursuant to a collective agreement), or paid to it as a condition of membership in the trade union.

Clause (*c*)(i) deals first with funds obtained by the check-off, which is imposed under the statute by the provisions of s. 9(1). This right of check-off was created by the statute and granted as a statutory privilege to the trade union. The legislature which conferred that statutory right could also take it away again and, if the right can be eliminated entirely, in my opinion it is equally possible for the legislature to apply limitations in respect of the exercise of the power thus created.

The second method is by check-off authorized by a collective agreement. Again, as already pointed out, the right of a trade union to bind all employees in a specific group, whether members of the union or not, by the collective agreement which it negotiates is one which is conferred by the Act, and the legislature which conferred it could also eliminate it. It seems to me that if the legislature can eliminate that right entirely it can also impose limitations in respect of its use.

Finally, there is the provision as to membership dues paid by an employee to a trade union as a condition of his membership in it. This is the point on which counsel for the appellant concentrated a good deal of his argument. Membership fees paid to a trade union were, he contended, its own property, which, as a voluntary association, it is entitled to disburse in such manner as its own constitution permits and as the majority of its membership decides; a trade union is entitled to engage in political activities as a free association of individuals and, therefore, within the limits previously mentioned, could disburse its funds for such purposes, and any attempted interference with such powers by a provincial legislature would be an interference with the democratic process in Canada and, therefore, beyond its powers.

This argument would have considerable force as applied to a purely voluntary association. However, the position of a trade union, which has been certified as a bargaining agent under the Act, is substantially different and every association within the definition of a trade union in the Act is empowered to seek certification. Such a union has, as a result of certification, ceased to be a purely voluntary association of individuals. It has become a legal entity, with the status of a bargaining agent for a group of employees, all of whom are thereby brought into association with it, whether as members, or as persons whom it can bind by a collective agreement, even though not members. It must, as their agent, deal with the members of the group which it represents equitably. It is clothed with a power to make binding agreements which can compel membership in it as a condition of employment. I find it difficult to regard as a free, voluntary association of individuals an entity which, by statute, is clothed with a power to require membership in it, and the consequent payment of dues to it as the price which must be paid by an individual for the right to be employed in a particular employment group.

The *Labour Relations Act* has materially affected the civil rights of individual employees by conferring upon certified trade unions the power to bind them by agreement and the power to make agreements which will compel membership in a union. Such legislation falls within the powers of the Legislature of the Province of British Columbia to enact, as being labour legislation, and, therefore, relating to property and civil rights in the province. The legislation which is under attack in the present proceedings, in my opinion, does nothing more than to provide that the fee paid as a condition of membership in such an entity by each individual employee cannot be expended for a political object which may not command his support. That individual has been brought into association with the trade union by statutory requirement. The same legislature which requires this can protect his civil rights by providing that he cannot be compelled to assist in the financial promotion of political causes with which he disagrees. Such legislation is, in pith and substance, legislation in respect of civil rights in the province.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Martland J.

Considerable reliance was placed by the appellant on the judgment of Chief Justice Duff in respect of the Alberta *Act to Ensure the Publication of Accurate News and Information*[1]. In that judgment, which was concurred in by Davis J., Chief Justice Duff dealt with the right of public discussion under the constitution established by the *British North America Act* and the authority of the Parliament of Canada to legislate for the protection of that right. He said, at p. 134:

> The question, discussed in argument, of the validity of the legislation before us, considered as a wholly independent enactment having no relation to the *Alberta Social Credit Act*, presents no little difficulty. Some degree of regulation of newspapers everybody would concede to the provinces. Inded, there is a very wide field in which the provinces undoubtedly are invested with legislative authority over newspapers; but the limit, in our opinion, is reached when the legislation effects such a curtailment of the exercise of the right of public discussion as substantially to interfere with the working of the parliamentary institutions of Canada as contemplated by the provisions of *The British North America Act* and the statutes of the Dominion of Canada.

It may be noted, in passing, that he did not decide whether or not the particular legislation which was before him exceeded the limits which he had defined.

The test stated is as to whether legislation effects such a curtailment of the exercise of the right of public discussion as substantially to interfere with the working of the parliamentary institutions of Canada. The appellant, in this case, contends that the legislation in issue does effect such a curtailment in respect of the right of association for political purposes.

The legislation, however, does not affect the right of any individual to engage in any form of political activity which he may desire. It does not prevent a trade union from engaging in political activities. It does not prevent it from soliciting funds from its members for political purposes, or limit, in any way, the expenditure of funds so raised. It does prevent the use of funds, which are obtained in particular ways, from being used for political purposes.

The question in issue here is not as to the right to engage in political activity, but as to the existence of an unfettered right to use funds obtained in certain ways for the support

[1] [1938] S.C.R. 100 at 132.

of a political party or candidate. I think it is clear that, if such legislation were required, a provincial legislature could prevent the contribution of trust funds for such a purpose and that, equally, it could prevent the use by a corporation, created under provincial law, of funds derived from the sale of its bonds or shares for such a purpose. A trade union, when it becomes certified as a bargaining agent, becomes a legal entity (*International Brotherhood of Teamsters Etc., Local 213 v. Therien*[1]). When the legislature clothes that entity with wide powers for the exaction of membership fees, by methods which previously it did not, in law, possess, it can set limits to the objects for which funds so obtained may be applied. Legislation of this kind is not, in my view, a substantial interference with the working of parliamentary institutions.

Reference was also made to the decision of this Court in *Switzman v. Elbling and Attorney-General of Quebec*[2]. In that case it was held that the *Act Respecting Communistic Propaganda* of the Province of Quebec was *ultra vires* of the Legislature of that Province. The majority of the Court decided the issue on the basis that the legislation in question was in respect of criminal law and, therefore, within the exclusive competence of the Parliament of Canada. Three members of the Court decided that the legislation was not within any of the powers ascribed to the provinces and that it constituted an unjustifiable interference with freedom of speech and expression essential to the democratic form of government established in Canada.

One of the three judges, Rand J., stated the issue at p. 305:

> The ban is directed against the freedom or civil liberty of the actor; no civil right of anyone is affected nor is any civil remedy created. The aim of the statute is, by means of penalties, to prevent what is considered a poisoning of men's minds, to shield the individual from exposure to dangerous ideas, to protect him, in short, from his own thinking propensities. There is nothing of civil rights in this; it is to curtail or proscribe those freedoms which the majority so far consider to be the condition of social cohesion and its ultimate stabilizing force.

In my opinion, the present situation is quite different. What the Legislature has provided here is that, though the

[1] [1960] S.C.R. 265, 22 D.L.R. (2d) 1.
[2] [1957] S.C.R. 285, 7 D.L.R. (2d) 337.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Martland J.

civil rights of employees in the Province may be curtailed by enabling a trade union to bargain for them, to make agreements on their behalf, to enter collective agreements which may make union membership a condition of their employment and to collect membership fees by a system of check-off, they cannot be required, by the payment of union dues, to contribute to a political party or candidate selected for them by the trade union itself.

The appellant submitted that, even if the legislation were to be considered as, in pith and substance, designed to safeguard the fundamental right of an individual to support the party of his own choice, it would still be *ultra vires* of a provincial legislature. It was contended that only the Canadian Parliament could legislate in relation to individual political freedom. The submission was that, as a provincial legislature could not legislate to derogate from such rights, conversely it could not legislate for their protection.

I do not agree with this contention. It is the very fact that provincial legislation, in some instances, has apparently sought to derogate from fundamental political freedoms which has led to the expression of the view by some members of the Court, in cases such as the *Alberta Press* case and *Switzman v. Elbling and Attorney General of Quebec,* that it could not be regarded as falling within the sphere of property and civil rights in the province, within s. 92 of the *British North America Act*. The same reasoning does not apply to legislation which seeks to protect certain civil rights of individuals in a province from interference by other persons also in that province. Legislation of that kind appears to me to be legislation in respect of civil rights within the province.

The appellant also contended that the enactment by the Parliament of Canada of s. 36 of c. 26, Statutes of Canada 1908, *An Act to amend the Dominion Elections Act,* which provision was repeated in s. 10 of the *Dominion Elections Act,* 1920 (Canada), c. 46, and again in s. 9 of the *Dominion Elections Act,* R.S.C. 1927, c. 53, but repealed in 1930, showed that the legislation in question here must have been an encroachment on the field reserved to the Parliament of Canada. That section provided:

> 36. No company or association other than one incorporated for political purposes alone shall, directly or indirectly, contribute, loan,

advance, pay or promise or offer to pay any money or its equivalent to, or for, or in aid of, any candidate at an election, or to, or for, or in aid of, any political party, committee, or association, or to or for or in aid of any company incorporated for political purposes, or to, or for, or in furtherance of, any political purpose whatever, or for the indemnification or reimbursement of any person for moneys so used.

The argument was that this section clearly indicates that legislation regarding contributions to federal political parties is a matter outside the sphere of provincial legislation. But the section did not enable an association or company to make contributions for political purposes. It, in terms, forbade them. It does not follow that without that provision every association and company did have the legal right to make such contributions. The right of any association or company to do so would depend upon the scope of its lawful authority, which, in certain cases in any event, would depend upon the powers which had been conferred upon them by provincial legislation.

For these reasons, in my opinion, the appeal should be dismissed. The Attorney-General of British Columbia advised that no order as to costs is asked for. The position of the respondent, Imperial Oil Limited, in these proceedings has already been described. No submission was made on its behalf with respect to the constitutional validity of the legislation in question. In view of these circumstances I do not think there should be any order as to costs in favour of this respondent. There should be no order as to costs in favour of or against the intervenant, the Attorney General of Saskatchewan.

CARTWRIGHT J. (*dissenting*):—The facts and the relevant statutory provisions are set out in the reasons of other members of the Court.

I agree with the reasons and conclusion of my brother Judson and wish to add only a few words.

This appears to me to be a case in which it is particularly desirable to recall the words of Sir Montague Smith in *Citizens Insurance Company of Canada v. Parsons*[1], when, speaking of the duty of the courts to define in the particular

[1] (1881), 7 App. Cas. 96.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Cartwright J.

case before them the limits of the powers of Parliament and of the provincial legislatures, he said at p. 109:

> In performing this difficult duty, it will be a wise course for those on whom it is thrown, to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute (i.e. the British North America Act) than is necessary for the decision of the particular question in hand.

The question to be decided is whether the enactment of clause (*c*)(i) of subs. 6 of s. 9 of the *Labour Relations Act* is within the powers of the provincial legislature. The clause is an absolute and unconditional prohibition of the contribution by a trade union to any political party or any candidate for political office of any moneys paid to the union as a condition of membership. It may well be that the Court could take judicial notice of the fact that moneys so paid make up practically the whole of the income of a trade union, but in the case before us there is uncontradicted evidence that, generally speaking, this is so as regards trade unions in British Columbia and that moneys so paid to the appellant union made up more than 99.8 per cent of its total revenue for the year 1960, the year preceding the issue of the writ.

The effect of the impugned legislation in the known circumstances to which it is to be applied is a virtually total prohibition of the expenditure by a trade union of any of its funds to further the interests of any political party or candidate in a federal election; it is the prohibition of, *inter alia*, a political activity in the federal field which prior to the enactment was lawful in Canada.

The prohibition, if valid, would be operative even if the forbidden contribution were approved and directed by a unanimous vote of all the members of the union concerned.

I find myself unable to accept the argument that this prohibition of an heretofore lawful and indeed normal political activity in regard to federal elections is ancillary, or necessarily incidental, to any of the provisions of the *Labour Relations Act* which are within the provincial power.

I would dispose of the appeal as proposed by my brother Judson.

ABBOTT J. (*dissenting*):—I am in agreement with the reasons of my brother Judson and I desire to add only a

few brief comments. In *Switzman v. Elbling and Attorney-General of Quebec*[1]—as my brother Judson has pointed out—three judges of the Court held that the legislation there in question constituted an unjustifiable interference with the freedom of speech and expression essential under the democratic form of parliamentary government established in Canada.

In the *Switzman* case, I expressed the view that the parliamentary institutions established in Canada by the *British North America Act* were those institutions as they existed in the United Kingdom in 1867. In the *Reference re Alberta Statutes*[2] Sir Lyman Duff pointed out that those institutions contemplated a parliament and provincial legislatures working under the influence of public opinion and public discussion, and he expressed the opinion that any attempt to abrogate or suppress the exercise of such right of public debate and discussion was beyond the competence of a provincial legislature. With that view I am in agreement.

Parliamentary institutions as they existed in the United Kingdom in 1867 included the right of political parties to function as a means, whereby persons who broadly speaking share similar views as to what public policy should be, can seek to make those views prevail. It is common knowledge that political activities in general, and the conduct of elections in particular, involve legitimate and necessary expenditures by political parties and candidates, for the payment of which no provision is made out of public funds. That this is so is implicit in the terms of the *Canada Elections Act,* 1960 (Canada), c. 39.

The right to join and to support a political party and the right of public debate and discussion fall within that class of rights categorized by Mr. Justice Mignault in his *Droit Civil Canadien,* vol. 1, p. 131, as *droits publics,* and in my opinion, under our constitution, any person or group of persons in Canada is entitled to promote the advancement of views on public questions by financial as well as by vocal or written means. It follows that any individual, corporation, or voluntary association such as a trade union, is entitled to contribute financially to support any political activity not prohibited by law.

[1] [1957] S.C.R. 285, 7 D.L.R. (2d) 337.
[2] [1938] S.C.R. 100, 2 D.L.R. 81.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Abbott J.

Whatever power a provincial legislature may have to regulate expenditures for provincial political activities, in my opinion it cannot legislate to regulate or prohibit contributions made to assist in defraying the cost of federal political or electoral activities. Similarly, for the reasons which I expressed in the *Switzman* case, in my view Parliament itself cannot legislate to regulate or prohibit financial contributions for provincial political or electoral purposes except to the extent that such regulation or prohibition is necessarily incidental to the exercise of its powers under s. 91 of the *British North America Act*.

The legislative purpose of subs. 6(*c*) of s. 9 of the British Columbia *Labour Relations Act* is clear and unambiguous. That purpose is to prohibit political contributions made directly or indirectly by one class of voluntary organization—a trade union—out of moneys received as a condition of membership, whether or not there is a check-off. Legislation of this character cannot be supported as being in relation to property and civil rights in the province within head 13 of s. 92 of the *British North America Act*, nor can it be said to be in relation to matters of a merely local or private nature in the province. In my opinion, it is clearly *ultra vires*.

I would dispose of the appeal as proposed by my brother Judson.

JUDSON J. (*dissenting*):—The appellant union sued Imperial Oil Limited for specific performance of the provisions in its collective agreement relating to the right of check-off. The company defended on the ground that certain amendments to the British Columbia *Labour Relations Act* enacted in 1961 prevented it from giving effect to these provisions. The union claimed that these amendments were beyond the powers of the legislature. The learned trial judge dismissed the action and his dismissal was affirmed on appeal. The defendant company, whose position is that of a stakeholder, has, throughout these proceedings, submitted its rights to the Court and the burden of the defence has been assumed by the Attorney-General of British Columbia. In this Court, of all those who were notified, only the Attorney General of Saskatchewan has filed a factum and

he supports the appellant union in its claim that the legislation is *ultra vires*.

The 1961 legislation seeks to make the right of check-off for union dues dependent upon the union's refraining from making contributions to a political party or to a candidate for political office. It was enacted by 1961 (B.C.), c. 31, s. 5, as an addition to s. 9 of the *Labour Relations Act*, R.S.B.C. 1960, c. 205. Before the amendment s. 9 contained 5 subsections, which read:

> 9. (1) Every employer shall honour a written assignment of wages to a trade-union certified under this Act, except where the assignment is declared null and void by a Judge or is revoked by the assignor.
>
> (2) An assignment pursuant to subsection (1) shall be substantially in the following form:—
>
> To [*name of employer*].
>
> Until this authority is revoked by me in writing, I hereby authorize you to deduct from my wages and to pay to [name of the certified trade-union] fees in the amounts following:—
>
> (1) Initiation fees in the amount of $
>
> (2) Dues of $ per
>
> (3) Except where an assignor of wages revokes the assignment by giving the employer written notice of the revocation, or except where a Judge declares an assignment to be null and void, the employer shall remit at least once each month, to the trade-union certified under this Act and named in the assignment as assignee, the fees and dues deducted, together with a written statement containing the names of the employees for whom the deductions were made and the amount of each deduction.
>
> (4) If an assignment is revoked, the employer shall give a copy of the revocation to the assignee.
>
> (5) Notwithstanding subsections (1), (2) and (3), there shall be no financial responsibility on the part of an employer for fees or dues of an employee unless there are sufficient unpaid wages of that employee in the employer's hands.

With the legislation in this form no one disputes that there was nothing to prevent a trade union from giving financial support to a political party or a candidate for political office and that for this purpose it could use the money it received from the check-off of union dues or paid as a condition of membership. The moneys belonged to the union and it had the right to apply them as it wished, in accordance with its constitution.

The amendments of 1961 were introduced by the enactment of a new subsection (6), which was added to s. 9. This new subsection reads:

> (6) (*a*) No employer and no one acting on behalf of an employer shall refuse to employ or to continue to employ a person and no one

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Judson J.

shall discriminate against a person in regard to employment only because that person refuses to make a contribution or expenditure to or on behalf of any political party or to or on behalf of a candidate for political office.

(*b*) No trade-union and no person acting on behalf of a trade-union shall refuse membership to or refuse to continue membership of a person in a trade-union, and no one shall discriminate against a person in regard to membership in a trade-union or in regard to employment only because that person refuses to make or makes a contribution or expenditure, directly or indirectly, to or on behalf of any political party or to or on behalf of a candidate for political office.

(*c*) (i) No trade-union and no person acting on behalf of a trade-union shall directly or indirectly contribute to or expend on behalf of any political party or to or on behalf of any candidate for political office any moneys deducted from an employee's wages under subsection (1) or a collective agreement, or paid as a condition of membership in the trade-union.

(ii) Remuneration of a member of a trade-union for his services in an official union position held by him while seeking election or upon being elected to public office is not a violation of this clause.

(*d*) Notwithstanding any other provisions of this Act or the provisions of any collective agreement, unless the trade-union delivers to the employer who is in receipt of an assignment under subsection (1) or who is party to a collective agreement, a statutory declaration, made by an officer duly authorized in that behalf, that the trade-union is complying with and will continue to comply with clause (*c*) during the term of the assignment or during the term of the collective agreement, neither the employer nor a person acting on behalf of the employer shall make any deduction whatsoever from the wages of an employee on behalf of the trade-union.

(*e*) Any moneys deducted from the wages of an employee and paid to a trade-union that does not comply with this subsection are the property of the employee, and the trade-union is liable to the employee for any moneys so deducted.

The questioned clauses in this legislation are (*c*), (*d*) and (*e*).

After the amendments came into force the company demanded a statutory declaration provided for in clause (*d*) and when the union refused to supply it, it ceased to make the usual deductions of union dues.

Clause (*c*) is framed in the widest terms. Political contributions are prohibited from moneys derived from the check-off and moneys paid as a condition of membership whether or not there is a check-off. This strikes at everything except a voluntary collection for political purposes made outside the machinery of the Act and the collective agreement.

The legislation has been held to be *intra vires* as legislation in relation to property and civil rights in the province

under s. 92(13) of the *British North America Act*. The Attorney-General for British Columbia supports the judgment under appeal as a valid exercise of the provincial power on two grounds: (a) that it assures every individual who is a member of a trade union the right to refrain from supporting any political party without fear of discrimination; and (b) that it prevents money collected by check-off and as a condition of union membership being diverted from the support of normal union activity in the field of labour relations to the more remote field of political activity. He further submits that no intention to hinder the operations of any political party can be imputed to the legislature, that the legislation does not interfere with the right of an individual to engage in political activity either alone or in association with others, and that it is directed to freeing a union member from any obligation to make political contributions of which he disapproves.

On the other hand, the union attacks the legislation on 5 grounds:

1. The matters dealt with in these subsections do not fall within the field of labour relations but are in relation to the political activity of trade unions.
2. The legislation is legislation in relation to federal elections.
3. The legislation seeks to curtail fundamental rights of Canadian citizens guaranteed by the *British North America Act* essential to the proper functioning of Parliamentary institutions.
4. Even if the legislation should be considered in pith and substance legislation designed to safeguard "the fundamental right of the individual to give his support to the party of his choice", (as held in the Courts below), it is still *ultra vires* the Province.
5. A trade union, being formed by the voluntary association of its members, does not lose its freedom of choice in political matters by reason of the fact that certain of its activities may be validly regulated by provincial statutes.

The issues are not as clear-cut as might at first sight appear. The problem of the use of union funds is entangled with the machinery of the Act relating to collection of dues and with the powers of compulsory representation which the union acquires under the Act when it is certified as a unit that is appropriate for collective bargaining. But it also has a political aspect. The union constitution on file discloses that this local has financial obligations to the international union and also to the Canadian Labour Congress and the British Columbia Federation of Labour. The con-

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Judson J.

stitution of the New Democratic Party was also filed and it provides for affiliated membership open to trade unions and other groups. It follows from this that the local cannot take this statutory declaration even if it refrains itself from making any political contributions because the prohibition is against direct or indirect contributions. This leaves the only possible participation in political activity requiring financial contributions to the voluntary collection outside the framework of the Act and the collective agreement.

In my opinion, the union's submission that the matters dealt with in the questioned clauses do not fall within the field of labour relations but are in relation to the political activity of trade unions is an accurate characterization of this legislation. The subject-matter of the legislation concerns political and constitutional rights, not property and civil rights. Section (*c*) has no relationship whatever to trade union action designed to promote collective bargaining, to change conditions of employment or the contract of employment. Its sole object and purpose is to prevent trade unions from making these contributions out of their own moneys. The legislation does the following:

(*a*) It prohibits trade unions using initiation fees and membership dues, whether paid by payroll deductions (*i.e.* checked off), or directly to the union, for political purposes (Section 9(6) (*c*)).

(*b*) It prohibits an employer from honouring his checkoff arrangements with a trade union unless he receives a statutory declaration showing that the money being checked off is not being used for political purposes, and will not be used for such purposes in the future (Sec. 9(6) (*d*)).

(*c*) It confers a right of action upon an individual trade union member against his trade union, allowing him to recover all of the money checked off against his wages, whenever his trade union uses it for political purposes contrary to the legislation (Section 9(6) (*e*)).

(*d*) It makes it an offence, punishable by a fine of $250 or more, for a trade union to spend initiation fees or membership dues collected from its members, for political purposes (under s. 60 of the *Labour Relations Act* any violation of the Act is punishable as an offence).

The leading feature of the legislation is the prohibition, found in clause (*c*), of political contributions by trade unions. The provisions in clauses (*d*) and (*e*) are merely ancillary. They are designed to secure obedience to the prohibition laid down by clause (*c*). Therefore, in the case at

bar, in deciding whether the plaintiff was obliged to deliver a statutory declaration under clause (*d*), the Court must determine the validity of clause (*c*).

In my opinion, it would be a grave and unwarranted extension of principle to hold that the decision in *Toronto Electric Commissioners v. Snider*[1] enables the province to control and curtail the political contributions of the trade union. Any such extension would be in direct conflict with the fundamental basis of the decision in this Court in *Switzman v. Elbling and Attorney-General of Quebec*[2], where all the judges in the majority were of the opinion that the legislation there in question was outside the provincial power. Five members of the Court held that it was outside the provincial power because it was legislation in relation to criminal law. Three held that it was not within any of the powers specifically assigned to the provinces and that it constituted an unjustifiable interference with freedom of speech and expression essential under the democratic form of government established in Canada.

I am also of the opinion that this legislation is directly related to elections, including federal elections. Its purpose is not a general restriction on the disposition of funds of trade unions. The provincial legislature has no power to restrict the right of any person or organization within the province to make contributions at federal elections and to federal candidates. There was at one time such a restriction in the Dominion legislation. The *Dominion Elections Act*, 1920, contained the following provision:

> No unincorporated company or association and no incorporated company or association other than one incorporated for political purposes alone shall, directly or indirectly, contribute, loan, advance, pay or promise or offer to pay money or its equivalent to, or for, or in aid of, any candidate at an election or to, or for, or in aid of any political party, committee or association, or to, or for, or in aid of any company incorporated for political purposes, or to, or for, or in furtherance of any political purpose whatever, or for the indemnification or reimbursement of any person for money so used.

This provision became s. 9 of the *Dominion Elections Act*, 1927, and was repealed in 1930. The *Canada Elections Act*, 1960, c. 39, contemplates in terms broad enough to include

[1] [1925] A.C. 396.
[2] [1957] S.C.R. 285, 7 D.L.R. (2d) 337.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Judson J.

a trade union the making of contributions to and expenditures on behalf of political parties and candidates for political office. This provincial legislation is really a re-enactment against trade unions in British Columbia of the former prohibition contained in the *Dominion Elections Act* and repealed in 1930. This is sufficient to characterize the legislation and to put it beyond provincial competence.

I am confining my reasons for judgment to the two first grounds put forward by the appellant, namely, that the control of political behaviour does not fall within the field of labour relations and is not within the provincial power, and secondly, that this legislation is legislation in relation to federal elections, a field exclusively within the Dominion power.

I would allow the appeal with costs throughout against Imperial Oil Limited. The appellant is entitled to the following relief:

(1) A declaration that clauses (*c*), (*d*) and (*e*) of subsection 6 of section 9 of the *Labour Relations Act,* as amended by the *Labour Relations Act Amendment Act, 1961* are ultra vires the Legislature of the Province of British Columbia.

(2) Specific performance of the provisions of the Collective Agreement made between the parties requiring the respondent Imperial Oil Limited to honour assignments of wages to the appellant by employees of the said respondent and to remit them to the appellant.

RITCHIE J.:—The circumstances giving rise to this appeal and the relevant provisions of the *Labour Relations Act,* R.S.B.C. 1960, c. 205, have been set out and analyzed in the reasons for judgment of my brother Martland with which I am in full agreement. As has been indicated in those reasons, each trade union to which the Act applies is a potential bargaining agent capable, when so certified by the Labour Relations Board, of being clothed with the exclusive authority to bargain collectively on behalf of a group of employees some of whom may not be union members and to bind each individual in that group by the terms and conditions of a collective agreement negotiated by it with their employer which may include a provision making membership in the trade union a condition of employment.

These provisions of the *Labour Relations Act* which make it possible for a certified trade union, without regard to the

wishes of any dissentient minority within the unit for which it is certified, to enter into a collective agreement requiring the individuals composing such a minority to pay trade union dues as a condition of employment, are a part of the legislative machinery created by the Province of British Columbia, for the limited purpose of regulating within that province the relations between employers and employees through collective bargaining.

It is widely accepted that such regulation is greatly facilitated by a single representative being authorized to speak effectively and with finality at the bargaining table on behalf of all the employees concerned and in so far as it may be necessary, in order to achieve this end, to limit the civil rights of a minority of those represented by such authority it is within the legislative competence of the provincial legislature to do so (see *Toronto Electric Commissioners v. Snider*[1]). In my opinion, it is also within the power of the province to so amend its legislation as to ensure that any such limitation on the civil rights of an individual is not employed for any purpose other than that for which it was imposed.

Even if it were not for the enactment of s. 9(6)(*c*) and (*d*), it would appear to me to be highly unlikely that the provisions of the Act which make it possible for union dues to be collected as a condition of employment were intended to be used for the purpose of facilitating the collection of political party funds in such manner as to have a possible effect on federal elections.

It was, however, possible under this Act before the amendment of 1961, for moneys paid by an employee as a condition of employment to be used without his consent for the support of a political party in which he did not believe and for the internal arrangements made by an employer in order to comply with the "check-off" to be used for the purpose of assisting in the collection of political contributions to a party to which the employer was opposed.

The addition of subs. (6) to s. 9 of the Act in 1961 was, in my opinion, directed towards ensuring that legislative machinery involving the adjustment of civil rights which was created for the regulation of relations between em-

[1] [1925] A.C. 396 at 403.

1963

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 16-601 v. IMPERIAL OIL LTD. AND A.-G. OF BRITISH COLUMBIA

Ritchie J.

ployers and employees should not be used for the collection of political party funds or in such manner as to curtail the fundamental political rights of any individual employee.

I am of opinion that just as it is within the power of the province under s. 92(13) of the *British North America Act* to create this legislative machinery for the purpose of furthering the cause of industrial peace so it is within its power to control its use for the same purpose.

The impugned legislation does not, in my view, have the effect of in any sense precluding any trade union from indulging in political activity or from collecting political party funds from its members, but the relations between a trade union and the political party of its choice differ fundamentally in character and purpose from the relations between the employees in the unit which it represents and their employer, and as it is for the regulation of this latter relationship that this legislative machinery has been established it appears to me to be within the sphere of provincial jurisdiction to so amend the *Labour Relations Act* as to recognize this difference in express terms.

Even if it could be said that the legislation under attack (s. 9(6), (*c*) and (*d*)) had any effect on political elections such an effect could, in my view, only be characterized as incidental and this would not alter the fact that the amendment in question is a part and parcel of legislation passed "in relation to" labour relations and not "in relation to" elections either provincial or federal.

The legislation here under attack has the effect of ensuring that associations which have been given a controlling power over their members by provincial legislation are not to be permitted to use that power for the purpose of compelling such members to support a political party not of their own choice.

For all these reasons, as well as for those stated by Martland J., I am of opinion that the enactment of s. 9(6) (*c*) and (*d*) of the *Labour Relations Act Amendment Act, 1961*, (B.C.), c. 31, was within the legislative competence of the legislature of that province and I would accordingly dispose of this appeal in the manner proposed by Martland J.

Appeal dismissed, CARTWRIGHT, ABBOTT *and* JUDSON JJ. *dissenting.*

Solicitors for the plaintiff, appellant: Shulman, Tupper, Worrall & Berger, Vancouver.

Solicitors for the defendant, respondent: Buell, Ellis, Sargent & Russell, Vancouver.

Solicitor for the Attorney-General of British Columbia: D. McK. Brown, Vancouver.