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In the Privy Council.

No. 58 of 1931.

ON APPEAL

FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

BETWEEN :

JOHN FARQUHAR LYMBURN, ATTORNEY-GENERAL FOR THE PROVINCE OF ALBERTA, AND JAMES JOSEPH FRAWLEY - - - (*Defendants*) *Appellants*

AND

ALBERT HENRY MAYLAND AND MERCURY OILS LIMITED - - - - - - - (*Plaintiffs*) *Respondents*

AND

THE ATTORNEY-GENERAL OF CANADA, THE ATTORNEY-GENERAL OF ONTARIO, AND THE ATTORNEY-GENERAL OF QUEBEC - - *Interveners.*

A.-G. OF CANADA

CASE OF THE INTERVENER THE ATTORNEY-GENERAL OF CANADA.

RECORD.

1. This is an appeal from a judgment of the Appellate Division of the Supreme Court of Alberta, dated 23rd April, 1931. p. 43.

2. The appeal arises out of an action commenced on the 10th day of March, 1931, in which the respondents sought a declaration of their rights and an injunction restraining the appellants from proceeding with certain investigations pursuant to the Security Frauds Prevention Act, 1930, and from examining the respondent Mayland and from examining into the affairs of the respondent Mercury Oils Limited pursuant to the said statute. In the alternative the respondents sought an injunction restraining the appellants from proceeding with the said investigations and examinations save in respect of such matters and within such limits as the court p. 3.

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RECORD. thought proper and lawful. The respondents further sought an interim injunction and an order setting aside certain summonses and delegations of authority and directions upon which the proposed examinations and investigations were based, and damages.

p. 31. 3. The application for an interim injunction was by consent referred by Ives, J., of the Trial Division to the Appellate Division, and on the argument before the Appellate Division it was agreed that if the court should come to the conclusion that the appellants had no authority to proceed with the examinations and investigations the application should be treated as a motion for final judgment.

p. 44. 4. The Appellate Division gave judgment unanimously for the respondents declaring that section 9 of the Security Frauds Prevention Act, being chapter 8 of the Statutes of Alberta, 1930, had no application to the respondent, Mercury Oils Limited, and that the appellants therefore had no authority for the investigation proposed.

pp. 38–43. 5. Harvey, C.J., in his reasons for judgment concurred in by the remaining members of the court held that certain provisions of the Security Frauds Prevention Act, notably section 20 thereof, were *ultra vires* as being in relation to criminal law, but he thought that those provisions were severable from the sections in question in this action.

6. The learned Chief Justice, however, held that section 9 of the Act had no application to the respondent, Mercury Oils Limited, because that corporation was a Dominion company. He said :

p. 42, l. 2. " If the legislature is limited in its right to obtain information from Dominion Companies it certainly cannot authorize the Attorney General or any other person to obtain information without limitation as section 9 purports to do, apart altogether from its inquisitorial and oppressive features.

Moreover, as is pointed out, under the Dominion Companies Act (sec. 120) provision is made for investigation into the affairs of Dominion Companies at the instance of the Secretary of State and in 1930, the year when the Security Frauds Prevention Act was passed, amendments were made to the Companies Act imposing additional burdens on companies as regards its records, thus adding to what such an investigation would disclose."

On the 5th of May, 1931, leave to appeal to the Privy Council was granted by the Appellate Division of the Supreme Court of Alberta.

7. On the 29th day of June, 1931, on a petition to His Majesty in Council, the Attorney General of Canada was granted leave to intervene in the appeal and to lodge a case and to be heard in argument.

8. The Attorney General of Canada is interested in the subject-matter of the appeal in so far as it raises the question whether the Security Frauds Prevention Act, 1930, or any provision thereof or the regulations enacted thereunder are *ultra vires* of the legislature of the Province of Alberta.

Upon this question the Attorney-General prays leave to refer to the case filed by the respondents, and will respectfully submit that the appeal should be dismissed for the reasons stated by the Chief Justice of Alberta and for the following

REASONS.

1. Because the said Security Frauds Prevention Act is *ultra vires* since it is not in relation to any matter coming within the classes of subjects assigned to the provincial legislature by section 92 of the British North America Act, 1867.

2. Because the said Act is *ultra vires* since it is legislation in relation to criminal law and procedure in criminal matters, a subject assigned exclusively to Parliament by section 91, ss. 27 of the British North America Act, 1867.

3. Because the said Act is *ultra vires* since it relates to a subject matter already dealt with by Parliament by the provisions of the Criminal Code relating to false pretences and fraud and fradulent dealing with property, sections 404–406 and 412–444, and moreover is inconsistent therewith.

4. Because section 9 of the said Act is *ultra vires* since it is legislation in relation to criminal law and procedure in criminal matters.

5. Because the said section 9 is *ultra vires* since it is inseverable from provisions of the said Act which are in relation to criminal law and procedure.

6. Because section 9 is *ultra vires* since it is repugnant to section 5 of the Canada Evidence Act.

7. Because the said section 9 is *ultra vires* since it purports expressly to authorize an investigation into a subject-matter which is beyond the competence of the provincial legislature.

8. Because the said Act is *ultra vires* since it is legislation in relation to the regulation of trade and commerce which is a subject assigned exclusively to Parliament by section 91, ss. 2.

9. Because the said Act is *ultra vires* since it provides in effect for the appointment of judges contrary to the provisions of section 96 of the British North America Act, 1867.

F. P. VARCOE.

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