

5, 1932

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.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE TRIAL DIVISION OF THE SUPREME COURT OF ALBERTA.			
1	Statement of Claim - - - - -	10th March 1931	3
2	Notice of Motion for interim injunction - - - - -	- - - - -	14
3	Affidavit of Charles Thomas Biggs and Exhibit " B " attached - - - - -	12th March 1931	14
4	Affidavit of James Wilfred Cochrane - - - - -	23rd March 1931	30
5	Order of Ives J. referring application for interim injunction to the Appellate Division - - - - -	20th March 1931	31

* P 33878 80 6/31 E & S

A

No.	Description of Document.	Date.	Page.
	IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.		
6	Notes of argument of Plaintiffs - - - - -	- - - - -	32
7	Memorandum of cases on behalf of the Defendants - - - - -	- - - - -	37
8	Reasons for judgment of Harvey C.J. (concurring in by Walsh and Clarke JJ.) - - - - -	2nd April 1931 - - -	38
9	Formal Judgment - - - - -	23rd April 1931 - - -	43
10	Order granting conditional leave to appeal to His Majesty in Council - - - - -	5th May 1931 - - -	45
11	Order granting final leave to appeal to His Majesty in Council - - - - -	11th May 1931 - - -	46

APPENDIX.

No.	Description of Document.	Date.	Page.
12	The British North America Act, 1867 30-31 Vict. ch. 3 Secs. 91, 92 and 96 - - - - -	29th March 1867 - - -	47
13	The Companies Act (Canada) R. S. C. 1927 ch. 27 sec. 120 - - - - -	1927 - - - - -	50
14	The Companies Act Amending Act 1930 Statutes of Canada, 20-21 George V. chapter 9, Secs. 33 and 34 - - - - -	30th May 1930 - - -	51
15	The Alberta Companies Act 1929 Statutes of Alberta, 19 George V. chapter 14, Secs. 133-152	20th March 1929 - - -	52
16	The Companies Act 1929, Amendment Act 1930, Statutes of Alberta, 20 Geo. V. chapter 12, Secs. 17-28 - - - - -	3rd April 1930 - - -	59
17	The Security Frauds Prevention Act 1930, Statutes of Alberta, 20 George V. chapter 8 - - - - -	3rd April 1930 - - -	60
18	Regulations made pursuant to The Security Frauds Prevention Act - - - - -	- - - - -	76
19	The Canada Evidence Act, R. S. C. 1927, chapter 59, Sec. 5 - - - - -	1927 - - - - -	83
20	An Act to amend the Criminal Code, Statutes of Canada, 20-21 Geo. V. chapter 11, Sec. 5 - - -	30th May 1930 - - -	84

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.

RECORD OF PROCEEDINGS.

No. 1.

Statement of Claim.

IN THE TRIAL DIVISION OF THE SUPREME COURT OF ALBERTA.

Judicial District of Calgary.

Between

ALBERT HENRY MAYLAND and MERCURY OILS LIMITED *Plaintiffs*

and

JOHN F. LYMBURN and JAMES J. FRAWLEY - - *Defendants.*

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 1.
Statement
of Claim,
10th March
1931.

1. The plaintiff Mayland is an Oil Operator and is a large share-
10 holder in and a director and the President of the plaintiff company,
Mercury Oils Limited. He resides in the City of Calgary, in the Province
of Alberta. The defendant Lymburn is the Attorney General for Alberta and
the defendant Frawley is a barrister and the solicitor to the Attorney General
the defendant Lymburn. Each of the said defendants resides in the
City of Edmonton in the said Province. The plaintiff Company, Mercury
Oils Limited, is a Company duly incorporated by Letters Patent pursuant

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

to the provisions of the Dominion Companies Act with its Head Office in the City of Calgary in the Province of Alberta. The Company, Mill City Petroleums Limited, which will hereinafter be referred to, is a Company duly incorporated by Letters Patent pursuant to the provisions of the Dominion Companies Act with its Head Office in the City of Calgary, in the Province of Alberta. The company, Solloway, Mills & Company Limited which will hereinafter be referred to is a company duly incorporated by Letters Patent pursuant to the provisions of The Dominion Companies Act with its Head Office in the City of Toronto in the Province of Ontario. The plaintiff company, Mercury Oils Limited, is the owner of the controlling interest of the shares in Mill City Petroleums Limited. 10

2. On the 25th day of February, 1931, the plaintiff, A. H. Mayland was served with a document, reading as follows:—

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation conducted by the Attorney General for the Province of Alberta, under The Security Frauds Prevention Act, 1930, into Mercury Oils Limited and Mill City Petroleums.

To A. H. Mayland, Esq.,
300 Lancaster Building,
Calgary, Alberta. 20

YOU ARE COMMANDED to attend before me at the office of Mr. J. J. Frawley, Land Titles Building, Calgary, Alberta, on Thursday, the 26th day of February, 1931, at the hour of 10 o'clock in the forenoon, and so from day to day until the completion of the above Investigation, to give evidence thereat and also to bring with you and produce, at the time and place aforesaid, all books of account, correspondence, and records of every description in your possession or control relating to the above matters. 30

DATED at the City of Edmonton, in the Province of Alberta, this 25th day of February, A.D. 1931.

JOHN FARQUHAR LYMBURN,
Attorney General for Alberta.

Per "J. J. FRAWLEY,"
His Representative.

Your failure to obey this order, or the disclosure by you of any evidence given or information obtained at such Investigation, or the name of any witness examined or sought to be examined, is an offence punishable by a fine of not more than \$1,000 and not more than six months' imprisonment. 40

Other Directors of the plaintiff company and directors and officers of Solloway, Mills & Company, Limited, and Mill City Petroleums

Limited were served with documents in similar form on or about the same date.

3. Pursuant to the said document the plaintiff Mayland and the others mentioned in the last preceding paragraph, attended at the Land Titles Office in the City of Calgary, at the office of the said defendant Frawley on the 25th day of February, at the hour of ten o'clock in the forenoon. The Attorney General for the Province of Alberta was not present, but the defendant Frawley was present and purported to be empowered to proceed with the investigation. The plaintiffs demanded
10 delivery of the authority by which the said defendants purported to conduct such investigation and the defendant Frawley produced as his authority two documents, reading as follows :

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

—
No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation, conducted by the Attorney General for the Province of Alberta under The Security Frauds Prevention Act, 1930, into Mill City Petroleums Limited.

I HEREBY APPOINT James Joseph Frawley, Solicitor to the Attorney General of the Province of Alberta, my representative
20 and delegate to him all authority vested in me under The Security Frauds Prevention Act, 1930, to conduct the above investigation.

DATED at the City of Edmonton, in the Province of Alberta, this Thirteenth day of December A.D. 1930.

J. F. LYMBURN,
Attorney General.

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation, conducted by the Attorney General for the Province of Alberta under The Security Frauds Prevention Act, 1930, into Mercury Oils Limited.
30

I HEREBY APPOINT James Joseph Frawley, Solicitor to the Attorney General of the Province of Alberta, my representative and delegate to him all authority vested in me under The Security Frauds Prevention Act, 1930, to conduct the above investigation.

DATED at the City of Edmonton, in the Province of Alberta, this Seventeenth day of February, A.D. 1931.

J. F. LYMBURN,
Attorney General.

4. The plaintiffs objected that the notice to attend with which they
40 had been served was invalid; that the Defendant Lymburn and the said defendant Frawley had no authority to conduct the said investigation

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 1.
Statement
of Claim,
10th March
1931—*con-
tinued.*

and that the defendants were otherwise without jurisdiction over the plaintiffs or either of them and without jurisdiction to proceed with the investigation.

5. The said Defendant Frawley adjourned the proposed investigation or examination until the 6th day of March, 1931, and again until the 16th day of March, 1931.

6. On Thursday the 5th day of March, 1931, the defendant Frawley produced to the Plaintiffs, a document reading as follows :

PROVINCE OF ALBERTA.

Before the Attorney General.

10

IN THE MATTER of Section 9 of The Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930.

Pursuant to the provisions of Section 9 of The Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930, I do hereby appoint James Joseph Frawley, Solicitor to the Department of the Attorney General, my representative and delegate to him authority to examine any person, company, property or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against the said Act or of the Regulations made thereunder has been, is being or is about to be committed. 20

DATED at the City of Edmonton, in the Province of Alberta, this Third day of March, A.D. 1931.

J. F. LYMBURN,
Attorney General.

7. On Thursday the 5th day of March, 1931, the defendant Frawley served upon the Plaintiff Mayland the following document :—

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of Section 9 of the Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930. 30

To A. H. Mayland,
300 Lancaster Building,
Calgary, Alberta.

YOU ARE COMMANDED to attend before me at my office in the Land Titles Building, Calgary, Alberta, on Monday the Sixteenth day of March, 1931, at the hour of 10 o'clock in the forenoon, and so from day to day until the completion of the proceedings herein, to give evidence and also to bring with you and produce, at the time and place aforesaid, all books of account, 40

correspondence and records of every description in your possession or control relating to the matters being enquired into herein.

DATED at the City of Edmonton, in the Province of Alberta, this Fourth day of March, A.D. 1931.

JAMES JOSEPH FRAWLEY,
Representative of the Attorney General.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

10 Your failure to obey this order, or the disclosure by you of any evidence given or information obtained herein, or the name of any witness examined or sought to be examined, is an offence punishable by a fine of not more than \$1,000 and not more than six months imprisonment.

8. On the 5th day of March, 1931, the plaintiffs' solicitor, received the following letter from the defendant Frawley, written as solicitor to the Attorney General.

Department of the Attorney General,
Alberta.

EDMONTON, March 4, 1931.

Dear Sir :

Re : Mercury and Mill City Investigation.

20 I regret the delay that has been occasioned in replying to your letter of the 27th ult.

I enclose for your information form of delegation of authority which was yesterday signed by the Attorney General and a copy of a subpoena which is to be served upon your client, Mr. A. H. Mayland.

We considered the matter carefully and came to the conclusion that, while the form of delegation upon which I intended to proceed was not invalid, it could have been misleading in that it referred to two particular companies and to no other.

30 When the matter again comes up on the 16th inst. I propose to continue under the delegation signed yesterday.

In view of the general language of the delegation of authority and by way of particulars to you, I feel bound to inform you formally that the object of my investigation is to enquire into all phases of a certain transaction between Solloway Mills & Company Limited and A. H. Mayland respecting the exchange of certain shares and the assumption by Mayland of a certain underwriting agreement entered into between Solloway Mills & Company Limited and Mill City Petroleums Limited.

40 I also purpose enquiring into an item appearing on the Mercury Oils Limited Balance Sheet as at December 31st, 1930. The item I refer to is one of \$401,527.74, being investment in the shares of other companies. Another item corollary thereto is \$129,212.46, being loss on investments.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

Regarding your contemplated action, I am instructed to inform you that the Department does not consider it advisable to make any arrangement in regard thereto. Consequently, unless I am sooner restrained, I propose proceeding with the examination of witnesses on the 16th inst. at 10 a.m.

Yours truly,

J. J. FRAWLEY,

Solicitor to the Attorney General.

A. A. McGillivray, Esq., K.C.,
803 Lancaster Building,
Calgary, Alberta.

10

Encls.

9. On the 26th day of February, the defendants caused to be served on the said Mercury Oils Limited, two directions reading as follows :

Edmonton, Alberta,
1931 Feb. 26 P.M. 2.50.

Mercury Oils Ltd.,
300 Lancaster Building,
Calgary, Alta.

Pursuant to authority vested in me under section twelve of 20
Security Frauds Prevention Act you are hereby directed to hold
in your possession and in their present status any and all shares
in Mercury Oils Ltd., standing in the name of James Cochrane
or James Cochrane as trustee for Solloway Mills and Company
Ltd., or in your possession in anywise connected with the transaction
whereby certain shares in Mill City Petroleum were exchanged
for certain shares in Mercury Oils Ltd. by and between Solloway
Mills and Co. Ltd., on the one hand and A. H. Mayland on the
other hand on behalf of either or any of them.

J. F. LYMBURN,

Attorney General, Province of Alberta.

30

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation conducted by the Attorney
General for the Province of Alberta, under The Security Frauds
Prevention Act, 1930, into Mercury Oils Limited and Mill City
Petroleum Limited.

To Mercury Oils Limited,
300 Lancaster Building,
Calgary, Alberta.

40

Pursuant to Section 12 of The Security Frauds Prevention
Act, being Chapter 8 of the Statutes of Alberta, 1930, YOU ARE
HEREBY REQUIRED AND DIRECTED to hold all funds or securities

in the name of James Cochrane or James Cochrane as Trustee for Solloway, Mills & Company, Limited, and in particular, all such securities of Mercury Oils Limited, presently on deposit with you, or under your control, or lodged with you for safe-keeping, or which may hereafter become under your control, or become lodged with you for safe-keeping, or become on deposit with you, until further order.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

AND FURTHER TAKE NOTICE that the above direction shall apply to securities in process of transfer by you as Transfer Agent.

10 DATED at the City of Edmonton, in the Province of Alberta, this 26th day of February, A.D. 1931.

Sgd. J. F. LYMBURN,
Attorney General.

Neither of the said directions above recited have been cancelled or withdrawn.

10. The shares of Mercury Oils Limited are dealt in on the stock exchanges in Vancouver, British Columbia, and in Toronto, Ontario, and elsewhere in Canada and the United States. Shares referred to in the directions set out in the preceding paragraph have been purchased by third parties who have presented the same for registration at the transfer office of Mercury Oils Limited in Vancouver and at its head office at Calgary, Alberta, but the plaintiff Mercury Oils Limited has been unable by reason of compliance with the said directions to effect registration of such shares or to re-deliver the same to the owners thereof.

11. The plaintiff Mercury Oils Limited has been threatened with damage actions by reason of its compliance with the said Directions.

12. Mill City Petroleums Limited, Mercury Oils Limited, and A. H. Mayland are not now and never were brokers or engaged in the brokerage business. The said Solloway, Mills & Company Limited is not now and was not at the time of the transactions referred to in the letter of the defendant Frawley, dated March 5th, 1931 carrying on business as brokers in the Province of Alberta.

13. The defendant Lymburn before instituting the investigation or examination and authorizing the defendant Frawley to summons witnesses was in duty bound to satisfy himself that there was reasonable ground for concluding that some fraudulent act or offence against the Security Frauds Prevention Act, 1930, or its regulations had been, was being or was about to be committed, the which the defendant Lymburn utterly failed to do, and improperly delegated to the defendant Frawley, the powers and authorities hereinbefore set out with instructions to proceed with such investigations or examinations, the which the defendant Frawley proposes to do unless restrained by this Honourable Court.

14. The said conduct of the defendant Lymburn and the defendant Frawley and their proposed investigation with the consequent publicity

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

*No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.*

attaching thereto has brought and will bring the plaintiff Mayland and the plaintiff company into disrepute in the eyes of the public and has caused and will cause them to be held up to the scorn and contempt of the members of the public as being a person and corporation whose conduct had been prima facie fraudulent and contrary to law and has served to depress and will serve to depress the market price of the shares in the capital stock of the plaintiff company and has injured each of the said plaintiffs in his and its business reputation and standing in the City of Calgary in the Province of Alberta and elsewhere throughout Canada.

15. The said investigations or examinations are not being conducted 10
nor is it intended by the Defendants that they shall be conducted with
a view to attaining the proper and legitimate aims of the said The
Security Frauds Prevention Act, 1930.

16. The said investigations or examinations are being wrongfully
conducted with a view to obtaining discovery for private individuals
and the said directions are wrongfully made to tie up assets for the
benefit of private individuals.

17. The transactions relative to the items appearing in the Mercury
Oils Limited balance sheet referred to in the sixth paragraph of the letter
of the defendant Frawley set out in paragraph eight hereof, were 20
consummated prior to the enactment of The Security Frauds Prevention
Act, 1930.

18. The plaintiffs claim that the defendant Lymburn and/or the
defendant Frawley have no authority to conduct the proposed examinations
or investigations on the following grounds :—

(a) Any summons issued pursuant to the provisions of Section 9
of the Security Frauds Prevention Act, 1930, must give notice
of the fraudulent act or offence against The Security Frauds
Prevention Act, 1930, or the regulations which has been, is being,
or is about to be committed in respect of which any proposed 30
examinations or investigation is to be held, and the summonses
herein are defective in this respect.

(b) The plaintiff is called to appear as a witness in two
investigations at the same time.

(c) The documents hereinbefore set out purporting to delegate
authority to the Defendant Frawley, are insufficient to authorize
the defendant Frawley to proceed with his proposed examination
in that neither of the said documents set out any fraudulent act
or any offence against The Security Frauds Prevention Act, 1930,
or its regulations which has been, is being or is about to be 40
committed in respect of which such proposed investigation is to
be held.

(d) There is no authority under the provisions of the said
The Security Frauds Prevention Act for the examination into

the affairs of companies incorporated by Letters Patent under The Dominion Companies Act.

(e) There is no authority under the provisions of the said The Security Frauds Prevention Act for the examination into the affairs of companies incorporated by Letters Patent under The Dominion Companies Act where such companies do not carry on a brokerage business and then only in respect of such brokerage business.

10 (f) There is no authority under the provisions of the said Act for an examination or an investigation unlimited in scope into the affairs of various companies or persons without such examination being restricted to a fraudulent act or an offence against the Security Frauds Prevention Act or of the regulations thereunder of which due notice is given to such companies or persons.

(g) The said The Security Frauds Prevention Act, 1930, does not apply to any matters save such as arise from the sale of securities.

20 (h) The said The Security Frauds Prevention Act, 1930, applies only to the sale of securities in continued and successive sales.

(i) The said The Security Frauds Prevention Act, 1930, applies only to trading in securities.

(j) The said The Security Frauds Prevention Act, 1930, applies only to transactions by brokers in securities while acting as brokers.

(k) The said The Security Frauds Prevention Act, 1930, is ultra vires of the Provincial legislature and of no force and effect.

30 (l) That paragraphs 9, 10, 11 and 12 of The Security Frauds Prevention Act, 1930, are ultra vires of the Provincial legislature and of no force and effect.

(m) The said The Security Frauds Prevention Act, 1930, is ultra vires of the Provincial legislature by reason of the fact that it is legislation dealing with criminal law and procedure and in conflict with the Canada Evidence Act, and so beyond the legislative competency of the Provincial legislature.

(n) The said The Security Frauds Prevention Act, 1930, is ultra vires of the Provincial legislature by reason of the fact that it interferes with the regulation of trade and commerce.

40 (o) The Security Frauds Prevention Act, 1930, is ultra vires of the Provincial Legislature by reason of the fact that it is in conflict with the provisions of the Companies Act, being Chapter 27 of the Revised Statutes of Canada, 1927, and amendments thereto.

(p) The Security Frauds Prevention Act 1930 is ultra vires of the Provincial Legislature by reason of the fact that it is legislation dealing with peace, order and good government of Canada and so beyond the legislative competency of the Provincial Legislature.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

—
No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

In the
Trial
Division of
the Supreme
Court of
Alberta.

No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

(q) By reason of the facts set out in paragraphs 13, 14, 15 and 16, the Defendants are making an illegal and improper use of any powers that they may have under the provisions of the Security Frauds Prevention Act 1930.

(r) There is no power under the Security Frauds Prevention Act, 1930, to investigate into transactions consummated prior to the enactment of the said Statute.

(s) The said The Security Frauds Prevention Act, 1930, is ultra vires of the Provincial legislature because it provides for the appointment of judges contrary to the provisions of Section 96 10 of the British North America Act, 1867.

(t) The said Defendants are unlawfully appointed as and unlawfully propose to function as judges.

(u) The said The Security Frauds Prevention Act, 1930, is ultra vires of the Provincial Legislature in that it interferes with the status and powers of Dominion Companies incorporated under the Dominion Companies Acts.

(v) The defendant Lymburn failed to satisfy himself as by law required that any fraudulent act or offence against the Security Frauds Prevention Act, 1930, or its regulations had been, was 20 being or was about to be committed.

(w) The defendant, Lymburn has wrongfully delegated his quasi judicial function referred to in the preceding paragraph to the defendant Frawley.

(x) The Directions set out are invalid in that they interfere with the business and operations, status and powers of Dominion companies in a manner not permitted by law.

(y) There is no authority under the provisions of The Security Frauds Prevention Act, 1930, for the issue of the said Directions.

(z) The said Directions preclude the defendant Mercury Oils 30 Limited from registering the shares referred to in such Directions or making delivery thereof, thus interfering with civil rights which have arisen and remain in force outside the Province of Alberta.

(aa) The defendants have no authority to exercise any of the powers they seek to exercise as aforesaid since the exercise of such powers are not confined to property and civil rights within the Province nor solely to matters of merely local or private nature within it.

(bb) The Security Frauds Prevention Act, 1930, is *ultra vires* in that it is not confined to property and civil rights within the 40 Province nor directed solely to matters of merely local or private nature within it.

The Defendants and each of them dispute the Plaintiffs' claim.

19. The Plaintiffs say that unless the defendants are restrained by injunction as prayed for in the prayer for relief that the Plaintiffs will suffer irreparable injury.

The Plaintiff therefore claims :

1. A Declaratory Judgment declaring the Plaintiffs rights in accordance with the Judgment of the Court on the foregoing.

2. An injunction restraining the Defendant Lymburn and the defendant Frawley from proceeding with the said investigations and from examining the plaintiff Mayland and from examining into the affairs of the Plaintiff Mercury Oils Limited.

10 3. In the alternative to the prayer in Clause 2 of the Prayer for Relief, an Injunction restraining the defendants and each of them from proceeding with the said investigations and examinations save in respect of such matters and within such limits as the Court is of the opinion is proper and lawful.

4. An Interim Injunction restraining the defendants and each of them from proceeding with the said investigation and from examining the Plaintiff Mayland and from examining into the affairs of the Plaintiff Mercury Oils Limited until the trial of this action.

20 5. In the alternative to the prayer in Clause 4 of the prayer for Relief, an interim injunction until the trial of this action restraining the defendants and each of them from proceeding with the said investigations and examinations save in respect of such matters and within such limits as the Court is of the opinion is proper and lawful.

5. An Order setting aside the said summonses and said delegations of authority and the said Directions which are set out in the Statement of Claim.

6. Damages against each Defendant in the sum of \$25,000.00 for each Plaintiff.

7. Costs.

8. Such further and other relief as to this Honourable Court may seem meet.

30 DATED at the City of Calgary, in the Province of Alberta, this 10th day of March, A.D. 1931, and DELIVERED by Messrs. McGillivray, Helman, Mahaffy and Smith, Barristers, 804 Lancaster Building, Calgary, Alberta, Solicitors for the Plaintiffs, whose address for service in this action is in care of their solicitors.

ISSUED out of the office of the Clerk of the Supreme Court of Alberta, Judicial District of Calgary, at the City of Calgary, this 10th day of March, A.D. 1931.

V. R. JONES,
Clerk of the Court.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

—
No. 1.
Statement
of Claim,
10th March
1931—con-
tinued.

No. 2.

Notice of Motion for interim injunction.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 2.
Notice of
Motion for
interim
injunction.

TAKE NOTICE that a Motion will be made on behalf of the Plaintiffs before the presiding Judge in Chambers at the Court House in the City of Calgary on Monday the 16th day of March, A.D., 1931, at 10 o'clock in the forenoon or as soon thereafter as the Motion can be heard for an Interim Injunction restraining the Defendants and each of them from proceeding with the investigation referred to in the Statement of Claim herein, and from examining the Plaintiff Mayland and from examining into the affairs of the Plaintiff Mercury Oils Limited, until the trial of this action, and alternatively for an Interim Injunction until the trial of this action restraining the Defendants and each of them from proceeding with the investigations and examinations referred to in the said Statement of Claim save in respect of such matters and within such limits as the Court is of the opinion is proper and lawful. 10

AND TAKE NOTICE that in support of such Motion will be read the affidavit of Charles Thomas Biggs, filed herein, and such further and other material as Counsel may advise.

McGILLIVRAY, HELMAN, MAHAFFY & SMITH,
Solicitors for the Plaintiffs. 20

To John F. Lymburn, Esq., K.C., and
James J. Frawley, Esq.,
Defendants.

No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931.

No. 3.

Affidavit of Charles Thomas Biggs.

I, CHARLES THOMAS BIGGS, of the City of Calgary, in the Province of Alberta, Secretary, make oath and say :

1. I am the Secretary of Mercury Oils Limited.
2. Now shown to me and marked Exhibit " A " to this my affidavit is a true copy of the statement of claim that was issued on the 10th day of March, 1931, out of the Supreme Court of Alberta, Judicial District of Calgary. 30
3. The Plaintiff Mayland is an Oil Operator and is a large shareholder in and a director and the President of the plaintiff company, Mercury Oils Limited. He resides in the City of Calgary, in the Province of Alberta.
4. I am informed by the solicitors for the plaintiffs herein and verily believe that the defendant Lymburn is the Attorney General for Alberta and the defendant Frawley is a barrister and the solicitor to the Attorney General, the defendant Lymburn, and that each of the said defendants resides in the City of Edmonton, in the said Province. 40

5. The plaintiff company, Mercury Oils Limited, is a Company duly incorporated by Letters Patent pursuant to the provisions of The Dominion Companies Act with its Head Office in the City of Calgary, in the Province of Alberta.

6. I am informed by the solicitors for the plaintiffs and verily believe that the company, Mill City Petroleums Limited, is a Company duly incorporated by Letters Patent pursuant to the provisions of The Dominion Companies Act with its Head Office in the City of Calgary, in the Province of Alberta, and that the company, Solloway Mills and Company Limited is likewise a Company duly incorporated by Letters Patent pursuant to the provisions of The Dominion Companies Act with its Head Office at the City of Toronto, in the Province of Ontario.

7. The plaintiff company, Mercury Oils Limited, is the owner of 489,878 shares in Mill City Petroleums Limited.

8. I am informed by A. H. Mayland and verily believe that on the 25th of February, 1931, he was served with a document reading as follows :

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation conducted by the Attorney General for the Province of Alberta under The Security Frauds Prevention Act, 1930, into Mercury Oils Limited and Mill City Petroleums Limited.

To A. H. Mayland, Esq.,
300 Lancaster Building,
Calgary, Alberta.

YOU ARE COMMANDED to attend before me at the office of Mr. J. J. Frawley, Land Titles Building, Calgary, Alberta, on Thursday, the 26th day of February, 1931, at the hour of 10 o'clock in the forenoon, and so from day to day until the completion of the above investigation, to give evidence thereat and also to bring with you and produce, at the time and place aforesaid, all books of account, correspondence, and records of every description in your possession or control relating to the above matters.

DATED at the City of Edmonton, in the Province of Alberta, this 25th day of February, A.D., 1931.

JOHN FARQUHAR LYMBURN,
Attorney General for Alberta.

Per J. J. FRAWLEY,
His representative.

Your failure to obey this order, or the disclosure by you of any evidence given or information obtained at such Investigation, or the name of any witness examined or sought to be examined, is an offence punishable by a fine of not more than \$1,000 and not more than six months' imprisonment.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

—
No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—con-
tinued.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—con-
tinued.

9. I am informed by other directors of the plaintiff company, Mercury Oils Limited, and verily believe that they were served with similar documents, and I am informed by A. H. Mayland and verily believe that officers of Solloway Mills and Company Limited and Mill City Petroleums Limited were served with documents in similar form on or about the same date.

10. I was present at the office of the defendant Frawley on the 25th day of February, 1931, at the hour of ten o'clock in the forenoon when the plaintiff A. H. Mayland and other directors in Mercury Oils Limited appeared before him. The Attorney General for the Province of Alberta was not present. A true copy of the proceedings as they took place before the defendant Frawley as supplied to the solicitors for the plaintiffs by the Court Reporters is now shown to me and marked Exhibit " B " to this my affidavit. 10

11. In the course of the said proceedings the defendant Frawley produced two documents as his authority for conducting the said investigation, and I am informed by the solicitors for the plaintiffs and verily believe that the said documents read as follows :

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation, conducted by the Attorney General for the Province of Alberta under The Security Frauds Prevention Act, 1930, into Mill City Petroleums Limited. 20

I HEREBY APPOINT James Joseph Frawley, Solicitor to the Attorney General of the Province of Alberta, my representative and delegate to him all authority vested in me under The Security Frauds Prevention Act, 1930, to conduct the above investigation.

DATED at the City of Edmonton, in the Province of Alberta, this Thirteenth day of December, A.D., 1930.

J. F. LYMBURN,
Attorney General. 30

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of an Investigation, conducted by the Attorney General for the Province of Alberta under The Security Frauds Prevention Act, 1930, into Mercury Oils Limited.

I HEREBY APPOINT James Joseph Frawley, Solicitor to the Attorney General of the Province of Alberta, my representative and delegate to him all authority vested in me under The Security Frauds Prevention Act, 1930, to conduct the above investigation.

DATED at the City of Edmonton, in the Province of Alberta, this Seventh day of February, A.D., 1931. 40

J. F. LYMBURN,
Attorney General.

12. As appears from the said proceedings marked Exhibit "B," the plaintiffs objected to the jurisdiction of the said defendant Frawley to conduct the said proceedings as set out in the said exhibit.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

13. The said defendant Frawley adjourned the proposed investigation or examination until the 6th day of March, 1931, and I am informed by the solicitors for the plaintiffs and verily believe that he again adjourned it until the 16th day of March, 1931.

—
No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—*con-
tinued.*

14. I am informed by the solicitors for the plaintiffs that on the 5th day of March, 1931, A. A. McGillivray, Esquire, K.C., received a letter purport-
10 ing to be from J. J. Frawley, reading as follows:—

Department of the Attorney General
Alberta

Edmonton, March 4, 1931.

Dear Sir :

Re : Mercury and Mill City Investigation.

I regret the delay that has been occasioned in replying to your letter of the 27th ult.

I enclose for your information form of delegation of authority which was yesterday signed by the Attorney General and a copy of
20 a subpoena which is to served upon your client, Mr. A. H. Mayland.

We considered the matter carefully and came to the conclusion that, while the form of delegation upon which I intended to proceed was not invalid, it could have been misleading in that it referred to two particular companies and to no other.

When the matter again comes up on the 16th inst. I propose to continue under the delegation signed yesterday.

In view of the general language of the delegation of authority and by way of particulars to you, I feel bound to inform you formally
30 that the object of my investigation is to enquire into all phases of a certain transaction between Solloway Mills & Company Limited and A. H. Mayland respecting the exchange of certain shares and the assumption by Mayland of a certain underwriting agreement entered into between Solloway Mills & Company Limited and Mill City Petroleum Limited.

I also purpose enquiring into an item appearing on the Mercury Oils Limited Balance Sheet as at December 31st 1930. The item I refer to is one of \$401,527.74, being investment in the shares of other companies. Another item corollary thereto is \$129,212.46, being loss on investments.

40 Regarding your contemplated action, I am instructed to inform you that the Department does not consider it advisable to make any

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—con-
tinued.

arrangement in regard thereto. Consequently, unless I am sooner restrained, I propose proceeding with the examination of witnesses on the 16th inst. at 10 a.m.

Yours truly,
J. J. FRAWLEY,
Solicitor to the Attorney General.

A. A. McGillivray, Esq., K.C.,
803 Lancaster Building,
Calgary, Alberta,

Encls.

10

15. I am informed by the said solicitors and verily believe that enclosed in the said letter were two documents, reading as follows :

PROVINCE OF ALBERTA.

Before the Attorney General.

IN THE MATTER of Section 9 of The Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930.

Pursuant to the provisions of Section 9 of The Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930, I do hereby appoint James Joseph Frawley, Solicitor to the Department of the Attorney General, my representative and delegate to him authority to examine any person, company, property or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against the said Act or of the Regulations made thereunder has been, is being or is about to be committed. 20

DATED at the City of Edmonton, in the Province of Alberta, this Third day of March, A.D., 1931.

J. F. LYMBURN,
Attorney General.

PROVINCE OF ALBERTA.

Before the Attorney General.

30

IN THE MATTER of Section 9 of the Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930.

To A. H. Mayland,
300 Lancaster Building,
Calgary, Alberta.

YOU ARE COMMANDED to attend before me at my office in the Land Titles Building, Calgary, Alberta, on Monday the Sixteenth day of March, 1931, at the hour of 10 o'clock in the forenoon, and so from day to day until the completion of the proceedings herein, to give evidence and also to bring with you and produce, at the time 40

and place aforesaid, all books of account, correspondence and records of every description in your possession or control relating to the matters being enquired into herein.

DATED at the City of Edmonton, in the Province of Alberta, this Fourth day of March, A.D. 1931.

JAMES JOSEPH FRAWLEY,
Representative of the Attorney General.

10 Your failure to obey this order, or the disclosure by you of any evidence given or information obtained herein, or the name of any witness examined or sought to be examined, is an offence punishable by a fine of not more than \$1,000.00 and not more than six months imprisonment.

16. I am informed by A. H. Mayland that on the 5th day of March, 1931, he was served with a document similar to the one last above set out.

17. On the 26th day of February, 1931, there was served on me as Secretary of Mercury Oils Limited, two directions reading as follows :

Edmonton, Alberta,
1931 Feb. 26 PM 2 50

20 Mercury Oils Ltd.,
300, Lancaster Building,
Calgary, Alta.

30 Pursuant to authority vested in me under section twelve of Security Frauds Prevention Act you are hereby directed to hold in your possession and in their present status any and all shares in Mercury Oils Ltd., standing in the name of James Cochrane or James Cochrane as trustee for Solloway Mills and Company Limited, or in your possession in anywise connected with the transaction whereby certain shares in Mill City Petroleum were exchanged for certain shares in Mercury Oils Ltd., by and between Solloway Mills and Co., Ltd., on the one hand and A. H. Mayland on the other hand on behalf of either or any of them.

J. F. LYMBURN,
Attorney General, Province
of Alberta.

PROVINCE OF ALBERTA.

Before the Attorney General.

40 IN THE MATTER of an Investigation conducted by the Attorney General for the Province of Alberta, under The Security Frauds Prevention Act, 1930, into Mercury Oils Limited and Mill City Petroleums Limited.

To Mercury Oils Limited,
300 Lancaster Building,
Calgary, Alberta.

Pursuant to Section 12 of The Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930, YOU ARE HEREBY

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—con-
tinued.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—con-
tinued.

REQUIRED AND DIRECTED to hold all funds or securities in the name of James Cochrane, or James Cochrane as Trustee for Solloway, Mills & Company, Limited, and in particular, all such securities of Mercury Oils Limited, presently on deposit with you, or under your control, or lodged with you for safe-keeping, or which may hereafter become under your control, or become lodged with you for safe-keeping, or become on deposit with you, until further order.

AND FURTHER TAKE NOTICE that the above direction shall apply to securities in process of transfer by you as Transfer Agent.

DATED at the City of Edmonton, in the Province of Alberta, 10
this 26th day of February, A.D., 1931.

(Sgd.) J. F. LYMBURN,
Attorney General.

18. On the 27th day of February, 1931, Mercury Oils Limited received a letter purporting to be from the defendant Frawley reading as follows :

Department of the Attorney General,
Alberta.
Land Titles Building,
Calgary, Alberta,
February 27, 1931. 20

Mercury Oils Limited,
c/o Bennett, Hannah & Sanford,
Barristers,
Lancaster Building,
Calgary.

Dear Sirs :

Re : Mill City-Mercury Investigation

Confirming my telephone conversation with you to-day, you may consider any and all Stop Orders which have been served upon you in this matter suspended insofar as such Stop Orders may affect the 30
shares of Mercury stock listed on the attached sheet.

To make the situation perfectly clear, the purpose and intention of the Attorney General's Stop Orders are to prevent any further dealing in the Mercury stock involved in this investigation from and after the date upon which the said Stop Orders were received by you.

Yours truly,

J. J. FRAWLEY,
Solicitor to the Attorney General.

JJF/O
Encl. 40

The list attached to the said letter of the 27th of February, 1931, released from the operation of the above Directions only a portion of the shares affected by such Directions.

19. After the statement of claim herein was issued and served on the defendant Frawley, the plaintiff, Mercury Oils Limited, received from the defendant Frawley a letter reading as follows :

Land Titles Building,
Calgary, Alberta,
March 10, 1931.

Mercury Oils Limited,
300 Lancaster Building,
Calgary.

10 Dear Sirs :

Re : Pending Investigation by myself under
Security Frauds Prevention Act, and Stop
Orders issued thereunder.

I am instructed to advise you that you may consider withdrawn any and all Stop Orders issued to you herein, and you may consider your Company released from the effect thereof.

Yours truly,
(Sgd.) J. J. FRAWLEY,
Solicitor to the Attorney General.

20 JJF/O

20. From my knowledge as Secretary of Mercury Oils Limited I verily believe that shares in Mercury Oils Limited are dealt in on the Stock Exchange at Vancouver, British Columbia and generally traded in throughout Canada. Shares set out in the said Directions as modified have been purchased by third parties who have presented the same for registration at the office of the Company in Calgary, and I am informed by our transfer office in Vancouver and verily believe that shares referred to in the Directions as modified have likewise been presented by third parties for registration in Vancouver, British Columbia. Owing to the compliance by Mercury Oils
30 Limited with the said Directions as modified they were unable to effect registration of such shares or re-deliver the same to the owners thereof until the receipt from the defendant Frawley of the said letter of the 10th day of March, 1931, referred to in Paragraph 19 hereof.

21. Mercury Oils Limited has been threatened with damage actions by reason of its compliance with such directions.

22. Mercury Oils Limited is not now and never was engaged in the brokerage business.

23. I am informed by A. H. Mayland and verily believe that he is not now and never was a broker or engaged in the brokerage business. I am
40 informed by James W. Cochrane, the President of Mill City Petroleums Limited, and verily believe that Mill City Petroleums Limited is not now and never was engaged in the brokerage business. I am also informed by the said James W. Cochrane and verily believe that he was at one time an officer of Solloway Mills and Company Limited and that Solloway Mills

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

—
No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—*con-
tinued.*

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 3.
Affidavit
of Charles
Thomas
Biggs,
12th March
1931—con-
tinued.

and Company Limited is not now and was not at the time of the transactions referred to in the letter of the defendant Frawley dated the 5th of March, 1931, carrying on business as brokers in the Province of Alberta.

24. I am informed by A. H. Mayland and verily believe that the said investigations or examinations are being wrongfully conducted with a view to obtaining discovery for private individuals, and the said Directions are wrongfully made to tie up assets for the benefit of private individuals. By reason of the foregoing I verily believe that the said investigations or examinations are not being conducted nor is it intended by the defendants that they shall be conducted with a view to attaining the proper and legitimate aims of The Security Frauds Prevention Act, 1930. 10

25. The proposed examination of the plaintiff A. H. Mayland and the investigation into the affairs of Mercury Oils Limited has been given publicity in the newspapers in the City of Calgary, and I verily believe that such proceedings are bringing the plaintiff Mayland and the plaintiff company into disrepute in the eyes of the public and has caused and will cause them to be held up to the scorn and contempt of the members of the public as being a person and corporation whose conduct has been prima facie fraudulent and contrary to law, and I verily believe that both of the plaintiffs will be injured in his and its business reputation and standing in the City of Calgary, in the Province of Alberta, and elsewhere throughout Canada by reason of the said proceedings. 20

26. I verily believe that unless the defendants are restrained by injunction that the defendants intend proceeding with the said investigation and intend to otherwise interfere with the status and powers of Mercury Oils Limited and that the plaintiffs will suffer irreparable injury by reason thereof.

SWORN before me at the City of Calgary, }
in the Province of Alberta, this 12th } CHARLES T. BIGGS.
day of March, A.D. 1931. }

30

W. J. MILLICAN.

A Commissioner for Oaths in and for
the Province of Alberta.

Exhibit " B. "

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

PROVINCE OF ALBERTA.

Before the Attorney-General.

IN THE MATTER OF an Investigation conducted by the Attorney-General for the Province of Alberta under The Security Frauds Prevention Act, 1930, into

No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs.

MILL CITY PETROLEUMS LIMITED.

MERCURY OILS LIMITED.

Investigation held before J. J. Frawley, Esq., Representative of the
10 Attorney-General, at the Land Titles Office, in the City of Calgary, Province
of Alberta, on the 27th day of February, A.D. 1931.

GEORGE H. TAYLOR, Esq.

Official Court Reporter.

In the Trial Division of the Supreme Court of Alberta, Judicial District
of Calgary.

No.....

A. H. MAYLAND vs. LYMBURN et al.

This is Exhibit " B " referred to in the affidavit of Charles Thomas
Biggs sworn before me this 12 day of March A.D. 1931.

W. J. MILLICAN,

20

A Commissioner for Oaths
in and for the Province of
Alberta.

Mr. MCGILLIVRAY : I am appearing for Mr. A. H. Mayland who has
been subpoenaed to attend before you this morning in the matter of an
investigation conducted by the Attorney General for the Province of Alberta
under the Security Frauds Prevention Act, 1930, into Mercury Oils Limited
and Mill City Petroleum Limited. Mr. Hannah is here representing
Mercury Oils Limited and Mr. O'Rourke, Mill City Petroleum Limited.

First of all I ask you to produce the authority under which you act.

30

Mr. FRAWLEY : Are there any other appearances ?

Mr. MCGILLIVRAY : I think not.

Mr. FRAWLEY : I produce to Mr. McGillivray and for other Counsel,
two authorizations to conduct an investigation in respect to the matter of
Mill City Petroleum Limited, dated at Edmonton the 13th day of December
A.D. 1930, and signed by J. F. Lymburn, Attorney-General, and another
one in the matter of Mercury Oils Limited, dated at Edmonton, the 7th
of February 1931, signed by J. F. Lymburn.

(Documents in question are now marked Exhibits " A " and
" B. ")

40

Mr. MCGILLIVRAY : I desire to place on record that the authority
produced by you does not give you the authority to issue subpoenas, to issue

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs—
continued.

the subpcenas you have or to proceed with the investigation in the fashion which your summonses would indicate you intend to proceed. I assert that the authority which you have or the authorities which you have produced purport to give you greater authority than the Statute under which the Attorney-General purports to act permits by his delegating to you. I also desire to place on record that the Act under which the Attorney General purports to act in purporting to give you authority is *ultra vires*.

Mr. FRAWLEY: May I interrupt you, in connection with the first suggestion that the authority is not sufficiently ample in scope, if I take that to be your objection, just so that I may consider my position in the event that you do or do not take proceedings to restrain me whether it might be advisable to make some amendment to this form. Perhaps you might tell me in what manner you feel the authority is not sufficiently ample in respect to the investigation upon which I am going to embark. 10

Mr. MCGILLIVRAY: I have no hesitancy in saying in my judgment the Attorney General has no authority under the Act, nor did the Legislature ever intend he should have authority to give you a blanket warrant to go on a fishing expedition into the affairs of corporate bodies or individuals in this country.

I also desire to place on record regardless of the form of the written authority given to you by the Attorney General that he, the Attorney General, has no authority under the Act to give you any such power. 20

I also desire to place on the record that you have no authority under his authorization nor has he authority under the Act to delegate to any person the power of inquiry into any matters other than the sale of securities, which is the subject matter contemplated by the Legislature in the passing of that Act.

Now having put these observations upon the record, without conceding that you have jurisdiction, in fact taking the position that you have no jurisdiction, I suggest that this whole matter be allowed to stand until the interested parties may have time to take such action against you or otherwise as they may think wise. I suggest for your consideration that you might think it wise to enlarge this whole matter until say the 6th of March 1931. 30

Mr. FRAWLEY: I am taking it that you are asking, without prejudice, for an adjournment?

Mr. MCGILLIVRAY: It is suggested to me, I may say, that it might be more convenient for all concerned to give ample time to enlarge it to the 11th of March.

Mr. FRAWLEY: Of course, the matter has been to some extent delayed already and it was expected I would embark upon the investigation during the latter days of this week. Now I am being asked, just as a Court would be asked, to grant an adjournment for the convenience of Counsel to properly consider the matter and that I am certainly going to do. But I would like to have it disposed of as soon as possible, in keeping with that. 40

Mr. MCGILLIVRAY : May I suggest in view of the fact that speaking for Mr. A. H. Mayland, whom I represent, and I presume the same applies to the others who have been subpoenaed here, individuals and corporate bodies, that Mr. Mayland only received his notice yesterday afternoon. He has no desire to delay this investigation. On the contrary it was his intention to leave the City of Calgary to-night to proceed to Honolulu on a holiday. He desires, however, to remain here to clear this matter up once and for all and to determine precisely what your powers are. Although he is anxious to have that done, at the same time he is desirous and I, as his
 10 Counsel, am desirous, that proper consideration be given to this whole matter, bearing in mind amongst other things consideration will be given as to whether or not the Act is *intra vires* or *ultra vires* and bearing in mind the fact it is already tested in the Province of British Columbia and is presently before the Appellate Division of that Province for consideration, at least, a similar act, and a similar position being taken that it is *ultra vires*.

It would seem to me it would be indeed a strange proceeding if there was any haste about this inquiry being proceeded with. I would suggest that the Court of Appeal in British Columbia are in doubt as to whether or not a similar Act is *intra vires* as evidenced by their reserving judgment
 20 for some considerable period and it is still being delayed, it occurs to me that perhaps a two weeks' enlargement until the 11th of March is not an unreasonable period of time to allow Counsel to give consideration to what steps they shall take.

Mr. FRAWLEY : Far be it from me to be unreasonable but I suggest that the delay in British Columbia is caused by the fact that the Court there considers its judgments all at once when they have a number of judgments to deliver and that may be one of the reasons for the delay in the Solloway-Mills judgment. But I do not want to be unreasonable at all. It seems to me if you are going to elect to proceed and restrain me this
 30 proceeding might be taken long before the 10th of March. It is true, beginning on a Friday we are not going to get very far, because I imagine this will take two days.

Mr. MCGILLIVRAY : My suggestion is that there be an enlargement until the week beginning the 16th of March.

Mr. FRAWLEY : The week beginning the 9th of March surely ?

Mr. MCGILLIVRAY : I would like your consideration of this in an absolutely judicial way as I have no doubt I will. These Companies have been functioning for a long time. I do not know what your inquiries will be. But whatever the subject matter of your inquiry be it is something that
 40 I am engaged at the beginning of next week in the Court of Appeal here in this City. That may be of no moment. Other Counsel are also busy men, more busy than I probably. But clients are entitled, in my submission, to such time as Counsel think is reasonably necessary to the proper consideration of this Act and other matters that will engage their attention in this inquiry. It may be that their determination will be to appear before

*In the
 Trial
 Division of
 the Supreme
 Court of
 Alberta.*

No. 3.
 Exhibit B
 to affidavit
 of Charles
 Thomas
 Biggs—
continued.

In the
Trial
Division of
the Supreme
Court of
Alberta.

No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs—
continued.

you and proceed with the Inquiry. That is conceivable, although as I view the matter at the present, scarcely so. I see no advantage to the Attorney General or to the general public in not allowing such a period of time that there may be no criticism that everyone has had all the time they desire to amply prepare their brief, if proceedings are taken against you, then they must be prepared with some care, launched in our Courts, service effected upon you, and all this takes time, as you are well aware by reason of your experience at the Bar before you became the Representative of the Attorney General.

Mr. FRAWLEY : I do not want to be unreasonable at all and I am anxious to give you all the time in the world you think is proper to prepare for this examination or any other proceeding. 10

Mr. MCGILLIVRAY : What would be of very great interest to you and another reason why this examination should not be proceeded with in the meantime is that you will have the judgment and so will Counsel or any Court before whom these matters come, the benefit of the judgment of the Appeal Court of British Columbia.

Mr. FRAWLEY : Yes, I would like to have that.

Mr. MCGILLIVRAY : It is to be expected that would be handed down before the 16th of March. I may tell you I have a wire from Mr. Farris, who is Counsel, urging upon the Court of Appeal of British Columbia that the Act is *ultra vires*, I had a wire from him this morning stating that the judgment is still reserved. He hopes for success and I speak, subject to correction, that I think he expects it will be handed down before a very great time. 20

Mr. FRAWLEY : I will try and find out something about it.

Mr. MCGILLIVRAY : I suggest that there could be no good purpose in declining our request for an adjournment until—not an adjournment, I will not concede you have the authority—but you do enlarge, is my request, until the 16th of March. For my part I shall ask no further adjournment beyond that date unless some reasons that do not now appear arise in the meantime. 30

Mr. FRAWLEY : Do you want the same thing, does the same thing apply to you Mr. Hannah?

Mr. HANNAH : Yes.

Mr. FRAWLEY : And you, Mr. O'Rourke.

Mr. O'ROURKE : Yes.

Mr. FRAWLEY : I think I had better take the matter of the extent of the enlargement into consideration. There will certainly be an enlargement until the 9th of March. As to whether or not your request will be granted in its entirety I think I had better take that under consideration and let you know within 24 hours. 40

Mr. O'ROURKE : I cannot be here on the 10th of March and I shall be very busy on the 9th on behalf of my Company.

Mr. FRAWLEY: Certainly I would like to meet the convenience of Counsel. Better let it stand at that. And I will let you know within twenty-four hours as to the enlargement to the 16th. At the moment I do not see much difference to beginning on the 9th to beginning on the 16th particularly in view of the representations you make with regard to this British Columbia judgment. I do not know of any way of hurrying the British Columbia Courts, but I will take steps to-day, through the Attorney General at Victoria to see what can be done towards getting that judgment, because we should have that. I do not want to leave it in the air and I suggest you
 10 let it remain that way for the time being and I will let you all individually know.

Mr. O'ROURKE: Cannot you compromise and fix it for the 12th?

Mr. MCGILLIVRAY: May I just add this word? Mr. Hannah informs me that there is a meeting of the Mercury Oils Limited and Mill City Petroleum Limited on the 10th day of March. Now I assume these investigations, this investigation is being conducted and you as Crown Officer, not desiring to interfere with the functions of any corporate body, that you may be inquiring into, and that being so, and it being open to minority shareholders, whom I assume you are not in any wise serving, or their solicitors,
 20 to take any steps they like with respect to such corporate bodies, through the medium of the Court which have served us so well for centuries that you would not think of holding this investigation at a time that would interfere with the holding of these meetings which have already been called prior to these notices from you that it was intended to hold this investigation.

Mr. FRAWLEY: It is the Annual Meeting of Mill City Oils?

Mr. O'ROURKE: Yes, the annual meeting and a special meeting called for the 10th of March.

Mr. FRAWLEY: Would it not strike you as perhaps advisable to arrange for the adjournment of that meeting? Till the conclusion of this
 30 investigation?

Mr. O'ROURKE: I do not see any reason for adjourning the meeting. There is no complaint against Mill City Petroleum and why should that Company cease to function?

Mr. FRAWLEY: I do not know what complaint there may be, the Attorney General has received some advice that has warranted him in instructing me to conduct this investigation. Mill City Oils is involved in this investigation and it does strike me it might be advisable if I am to enlarge this investigation to a date some two weeks hence, that the annual meeting of Mill City Oils could be very well adjourned. I do not know.

40 Mr. O'ROURKE: We have not any power to adjourn it.

Mr. FRAWLEY: I do not think it is going to matter one iota but it would be in the interests of regularity that there should be no complications.

Mr. O'ROURKE: It would not be any complication. A Company holding its Annual Meeting and receiving a balance sheet and appointing directors and receiving the report of the President.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

—
No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs—
continued.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

*No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs—
continued.*

Mr. FRAWLEY: Obviously there cannot be any question of that at all and if that is all that is going to happen at the meeting I do not know, then why not have that very formal matter stand, say, two weeks?

Mr. O'ROURKE: The worst of it is I cannot say anything in the matter at all. But there is only one power in the world that can adjourn that meeting and that is a majority of the shareholders.

Mr. FRAWLEY: That is true. I do not know enough of the intricacies of the controlling power of Mill City but I am making the suggestion very mildly, it does not matter to me but it occurs to me it might be in the interests of everybody. What do you say Mr. McGillivray? 10

Mr. MCGILLIVRAY: I think it should become clear soon, both to the Attorney General of this Province and to yourself that he is not concerned with nor given authority under this Act, to be concerned with, the functioning of a corporate body under powers given to them by either the Dominion Parliament or the Legislature of this Province and that what they might do at any given meeting in accordance with the wish of the majority is precisely none of his business nor of yours. But that if he has reason to believe there be fraud or a breach of the Act, if the Act be a good one, then he may inquire into it and there his authority begins and ends. But when he purports to step in on behalf of people not having put enough money into a corporate body and not capable of controlling it and letting this Act become an instrument for oppression and blackmail on the part of minorities then the time has come when majorities are going to assert themselves and our respectful submission to you is that you are not in the least concerned with these matters. But inasmuch as I suppose men will be attending to other business at that time, the Legislature has given them authority under several Acts to carry on, that you should not force any investigation on. We are asking you for a reasonable period of time till the 16th of March when the minorities may be represented and everybody else. 20 30

Mr. FRAWLEY: I am bound to suggest to you that it does seem, on the face of things, although there is no desire on the part of the Attorney General or me, as his representative, to interfere with the functioning of Mill City Petroleums, but in the carrying out of its Annual Meeting there may be circumstances which would warrant that meeting being postponed. I think for that reason and I may as well tell you that your request for this enlargement, that this meeting being held, the extent of the enlargement will have to be taken into consideration.

Mr. MCGILLIVRAY: If that meeting should be postponed it is the majority of the shareholders that will postpone it and if the minority is being oppressed by it being held the Courts of this country are open to them where they will pay the costs if they fail. Take that into consideration from your point of view in whether or not you will grant the adjournment is in my respectful submission, subversive of the very end this Act is aimed at. 40

Mr. FRAWLEY : It may be quite improper for me to suggest it but I throw it out as a suggestion that we had better let things remain in status quo and if it is necessary and vital that the meetings be held and any resolution which you may have in mind be put through, it may be I have no power to stop it.

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

Mr. MCGILLIVRAY : No, and I am submitting you have no right whatever to consider it. Your functions under the Act are clear.

No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs—
continued.

Mr. FRAWLEY : If my authority to hold the investigation is held to be proper it seems to me that in the interests of everybody things should remain as they are now until it is completed.

Mr. O'ROURKE : There is no one in this room has any power to even consider that request of the Attorney General.

Mr. FRAWLEY : The notices have all been sent out ?

Mr. O'ROURKE : Yes. It rests under the Company Law of Canada and it rests with the majority of the shareholders.

Mr. FRAWLEY : The directors have called a meeting or decided upon the date of the meeting and notices have been sent out ?

Mr. O'ROURKE : They have been sent out ten days ago.

Mr. FRAWLEY : All right. It may be anything I have to say is quite idle. I will let Mr. McGillivray, Mr. Hannah and Mr. O'Rourke know within twenty-four hours when this hearing will be proceeded with. I will be here until the first of next week.

Now there is another matter that I would like to say. Under this Act, supposing there is the authority, and, of course, as I am bound to do, there is power to issue what is known as a stop-order under Section 12. It is my purpose to see to it that a stop-order is issued under Section 12 requiring the transfer agent of the Mercury Oils Limited, I believe that they do their own transfer work, that they have no separate outside person, that the transfer agent for Mercury Oils Limited hold any further securities filed with it for transfer of a particular kind, those securities which have been described to me as securities standing in the name of James Cochrane or James Cochrane as trustee for Solloway-Mills & Company Limited. I want, under Section 12, those securities held just as they are in the hands of the Transfer Agent of Mercury Oils Limited.

Mr. HANNAH : What securities are those ?

Mr. FRAWLEY : They belong to Cochrane or to Cochrane in trust for Solloway-Mills which are being sold by him I understand.

Mr. HANNAH : Shares ?

Mr. FRAWLEY : Mercury shares, yes.

Mr. MCGILLIVRAY : You will, of course, make such orders as you see fit.

Mr. FRAWLEY : I want it understood that the enlargement of these proceedings will not affect any such order that may be made in that

*In the
Trial
Division of
the Supreme
Court of
Alberta.*

*No. 3.
Exhibit B
to affidavit
of Charles
Thomas
Biggs—
continued.*

connection. But I would not want anybody to feel after leaving this room and finding the stop-order that they have been misled.

Mr. MCGILLIVRAY: We have heard about the stop-order from you for the first time this minute.

Mr. FRAWLEY: I understand. It is to be no part of the enlargement of these proceedings you see.

I, George H. Taylor, Official Court Reporter, hereby certify that I attended at the above investigation and took faithful shorthand notes and that the writing on the sheets annexed hereto is a true and faithful transcript of my shorthand notes to the best of my ability. 10

Dated at the City of Calgary, in the Province of Alberta, this 26th day of February A.D. 1931.

(Sgd.) GEORGE H. TAYLOR,
Official Court Reporter.

*No. 4.
Affidavit
of James
Wilfred
Cochrane,
23rd March
1931.*

No. 4.

Affidavit of James Wilfred Cochrane.

IN THE TRIAL DIVISION OF THE SUPREME COURT OF ALBERTA.

Judicial District of Calgary.

Between

ALBERT HENRY MAYLAND and MERCURY OILS LIMITED - *Plaintiffs* 20

and

JOHN F. LYMBURN and JAMES J. FRAWLEY - - - *Defendants.*

I, JAMES WILFRED COCHRANE, of the City of Calgary in the Province of Alberta, Manager make Oath and say as follows:—

(1) That I am the Manager at the City of Calgary aforesaid, of Solloway, Mills & Company Limited, being the Company referred to in the letter dated the 4th day of March, 1931, to the solicitor of the plaintiffs, written by the defendant Frawley, set out in paragraph 8 of the Statement of claim herein, and am familiar with the transaction between the said Solloway, Mills & Company, Limited and the said A. H. Mayland mentioned in the said letter. 30

(2) That the said transaction was an isolated trade in shares of Mill City Oils Limited by or on behalf of the owner, the said owner being the said Solloway, Mills & Company, Limited, for the said owner's account, and that such trade was not made in

the course of continued and successive transactions of a like character, and was not made by a person whose usual business is trading "in" securities.

(3) That the said Solloway, Mills & Company Limited had for some time before the said transaction ceased trading in securities and was not at the time of the said transaction trading in securities.

10 SWORN at the City of Calgary }
in the Province of Alberta }
this 23rd day of March, A.D. }
1931, Before me

(Sgd.) LEO. H. MILLER.

A Commissioner for Oaths in and for the
Province of Alberta.

(Sgd.) JAMES W. COCHRANE.

*In the
Trial
Division of
the Supreme
Court of
Alberta:*

No. 4.
Affidavit
of James
Wilfred
Cochrane,
23rd March
1931—*con-
tinued.*

No. 5.

**Order of Ives, J. referring application for interim injunction to the
Appellate Division.**

IN THE TRIAL DIVISION OF THE SUPREME COURT OF ALBERTA.

Judicial District of Calgary.

20 Before the Honourable Mr. Justice Ives in Chambers.

Court House, Calgary, Alberta.

Friday the 20th day of March, 1931.

Between

ALBERT HENRY MAYLAND and MERCURY OILS LIMITED - *Plaintiffs*
and

JOHN F. LYMBURN and JAMES J. FRAWLEY - - - *Defendants.*

30 UPON THE APPLICATION of the plaintiffs for an interim injunction in the terms mentioned in the Notice of Motion herein filed on the 12th day of March, 1931, and upon the defendant Frawley appearing and consenting for himself and his co-defendant.

IT IS ORDERED that the said application be and the same is hereby referred to the Appellate Division of the Supreme Court of Alberta.

Entered this 20th day of March, 1931.

V. R. JONES,
Clerk of the Court.

W. C. IVES, J.

No. 5.
Order of
Ives, J.,
referring
application
for interim
injunction
to Appellate
Division,
20th March
1931.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 6.
Notes of
Argument of
Plaintiffs.

No. 6.

Notes of Argument of Plaintiffs.

This is an application for an interim injunction which has been referred to the Appellate Division by the Honourable Mr. Justice Ives. The Statement of Claim was issued on the 10th day of March, 1931, by the above named applicants as plaintiffs against the above named respondents as defendants. The statement of claim, notice of motion for the interim injunction, the affidavit in support of the motion, a copy of the proceedings before the defendant Frawley which is an exhibit to the said affidavit and the order referring the motion to this Court are contained in an appendix filed with these notes of argument. 10

The action is brought in respect of a proposed investigation to be held by the defendant Frawley pursuant to authority delegated to him by the defendant Lymburn under the provisions of The Security Frauds Prevention Act, 1930, and an injunction is sought to restrain the investigation from proceeding further. In addition to the injunction damages are asked against the defendants in respect of certain directions that have been given by them. The action is brought against the defendants in their individual capacity and not against them in their official capacity as officials of the Crown or Government. 20

The facts appear in the statement of claim and the affidavit in support of the motion and the exhibits thereto.

The applicants contend that they are entitled to an injunction as asked for because :—

(A) THE PROPOSED INVESTIGATION IS NOT AUTHORIZED BY THE SECURITY FRAUDS PREVENTION ACT, 1930.

From the material it will be seen that by letter dated the 4th of March, 1931, from the defendant Frawley to the solicitor for the applicants, the object of the investigation is two fold; firstly, to enquire into all phases of a certain transaction between Solloway Mills and Company Limited and A. H. Mayland respecting the exchange of certain shares and the assumption by Mayland of a certain underwriting agreement entered into between Solloway Mills and Company Limited and Mill City Petroleums Limited; and secondly, to enquire into an item in the balance sheet of Mercury Oils Limited as of December 31st, 1930, the item being one for \$401,527.74, being investment in the shares of other companies, and another item corollary thereto of \$129,212.46, being loss on investments. 30

The material also discloses that the applicants, and also Mill City Petroleums Limited are not brokers nor engaged in the brokerage business and that the Company, Solloway Mills and Company Limited, was not at the time of the alleged transaction engaged in the brokerage business. 40

It is quite clear that the transaction first above referred to which is sought to be investigated relates to a single isolated purchase by Mayland from Solloway Mills and Company Limited of a block of shares in Mill City Petroleums Limited and the assumption by Mayland of an

underwriting agreement of Solloway Mills and Company Limited in Mill City Petroleums Limited.

With regard to the second object of the investigation above set out, this relates to investments made by an Oil Company in conducting its ordinary business affairs.

It is submitted that neither of these transactions come within the scope of The Security Frauds Prevention Act, 1930.

An examination of the Act will serve to indicate that the Act was passed for the purpose of regulating persons and corporations engaged
 10 in the brokerage business by way of selling securities in continued and successive sales or trading in securities and for the control of brokers by Stock Exchanges. The Act further deals with trading on Stock Exchanges. It is submitted that any investigation held under the statute must be confined to an investigation of brokers or the sale of shares in continued and successive acts, or trading in securities or to stock Exchanges.

In considering this aspect of the argument, attention is directed to the title of the statute which reads: "An Act for the prevention of fraud in connection with the sale of securities."

The title of the statute is of great importance in determining the
 20 scope of the enactment.

See Volume 27, Halsbury, pp. 117-18. *Black Diamond Oil Fields v. Carpenter*, 9 W.W.R., 158.

Part 1 of the statute deals with the registration of directors and salesmen.

Part 3 deals with the auditing of brokers' books and the control of Exchanges over brokers.

Part 4 deals with the regulation of trading on Exchanges, in the main restricting so-called "short sales."

Part 2, it is submitted, does not contain any language which would
 30 in any way widen the scope of the statute as shown by the title and the other parts.

A further argument indicating the scope of the Act is that the title and the remedies provided by the statute show that it was intended only to deal with the prevention of future frauds and that the examination of past frauds was only permitted so as to enable the investigator to prevent future frauds in the sale of securities. The investigation in this case could not conceivably have any such object. A reference to the transactions with respect to which the proposed investigation is sought to be held will show
 40 that they relate to matters which have been entirely completed and are at an end and that there is no future fraud to which the proposed investigation could relate.

(B) IT IS SUBMITTED THAT THE ACT IS ULTRA VIRES IN THAT IT INTERFERES WITH THE STATUS AND CAPACITIES OF COMPANIES INCORPORATED BY LETTERS PATENT UNDER THE DOMINION COMPANIES ACT.

If the Act can be so construed that the provisions with respect to investigations are not to apply to Dominion companies, then it is submitted

*In the
 Appellate
 Division of
 the Supreme
 Court of
 Alberta.*

—
 No. 6.

Notes of
 Argument of
 Plaintiffs—
continued.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 6.
Notes of
Argument of
Plaintiffs—
continued.

that the defendants have no right to conduct the investigation sought, as it is an investigation into the affairs of Dominion companies. If the Act authorizes the investigation of Dominion companies and the interference with the registration and delivery of the shares of such companies, it is *ultra vires*.

The applicants refer to :

In re Manitoba Sale of Shares Act, [1929] A.C. 260; (1929), 1 W.W.R., 136.

Lukey v. Ruthenian Farmers' Elevator Co., (1924), S.C.R., 56.

John Deere Plow Company v. Wharton, [1915], A.C. 330; 84 L.J.P.C., 64.

Great West Saddlery v. The King, [1921], 2 A.C. 91; 90 L.J.P.C., 102.

Royalite Oil Company v. The Province of Alberta, (1931) 1, W.W.R. 484.

Furthermore the Dominion Parliament has already invaded the field by Section 120 of The Dominion Companies Act, Revised Statutes of Canada, 1927, Ch. 27, providing for the appointment by the Secretary of State for inspectors to inspect the affairs of a company, to examine under oath and compel production of documents relating to the affairs of the company, and by Section 5 of Chapter 11 of the Statutes of Canada, 1930, Section 231 (a) of the Criminal Code was added, which is in terms almost identical with Section 14 of The Security Frauds Prevention Act, 1930.

In re Fisheries Act, [1930] A.C. 111; (1929), 3 W.W.R., 449.

Russell v. The Queen, 7 A.C. 829; 51 L.J.P.C., 77.

Attorney General of Ontario v. Attorney General of Canada, 63 L.J.P.C., 59.

Hoffar v. C.C.M.T. Ass'n. Ltd., (1929), 1 W.W.R., 557. Leave to appeal refused (1929) S.C.R., 180.

Rex v. Gurvin, 7 W.L.R., 783.

(C) THE SECURITY FRAUDS PREVENTION ACT, 1930, DEALS WITH CRIMINAL LAW AND PROCEDURE.

Under this argument reference is made to Section 9 of The Security Frauds Prevention Act, 1930, which takes away the claim of privilege in respect to any document, record or thing asked for, given or produced on the ground of incrimination.

Section 12, subsection (c) contemplates the investigation being used for future criminal proceedings.

Section 14 deals with a matter which has been dealt with under the Criminal Code as above set out.

Section 20 creates a new offence for fraudulent acts.

Section 21 shows that use may be made of the Act for the purpose of obtaining discovery in criminal cases.

Section 22 provides for the arrest of persons guilty of offences against similar statutes in other Provinces and sets out a complete procedure with regard to such arrears and the issue of warrants for the purpose of effecting such arrests.

By reason of the foregoing matters it is submitted that when one examines the "pith and substance" of the statute, that the statute is

one which relates to criminal law and procedure and therefore not within the jurisdiction of the Provincial Legislature.

See

Proprietary Articles Trade Association v. Attorney General of Canada, [1931] A.C. 310, 47 T.L.R. 250.

Attorney General for Ontario v. Hamilton Street Railway, [1903], A.C. 524; 72 L.J.K.B., 105.

Rex v. Leonard, (1921), 1 W.W.R. 1099.

Russell v. The Queen, 7 A.C. 829; 51 L.J.P.C., 77 at p. 81.

10 *Taylor v. Mackintosh*, (1924), 3 W.W.R. 97.

Rex v. Magee, 40 C.C.C., 10.

In re Churchill, (1919), 2 W.W.R., 541.

Re Race-Tracks and Betting, 49 O.L.R., 339.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

—
No. 6.
Notes of
Argument of
Plaintiffs—
continued.

(D) STATUTE BEING USED FOR AN INDIRECT MOTIVE.

As has been pointed out, the whole purpose of the statute is to prevent the sale of fraudulent securities. It is clear from the material that the statute is not being used for this purpose at all but must be being used for the purpose of securing information for dissatisfied shareholders in respect of a completed transaction or for the purpose of tying up funds and assets
20 for third parties.

If the examination is not being conducted for the reasons before suggested, then the only other purpose for which it can be said to be conducted is in order to obtain discovery for a proposed criminal charge which, it is submitted, must be an improper motive.

(E) SUMMONSES ARE DEFECTIVE.

It will be seen that two summonses have been issued; one is set out in paragraph 2 of the statement of claim and one in paragraph 7 of the statement of claim. Neither of the summonses advise the plaintiffs of what fraudulent act or offence against the Security Frauds Prevention
30 Act or the regulations has been, is being or is about to be committed. The particulars contained in the letter from the defendant Frawley above mentioned also gives no information as to in what respect the transactions are alleged to be wrongful. As a result of the foregoing the defendants can in no way defend themselves at the hearing, nor can they be prepared to answer any case that is seemingly made out against them. When it is remembered that the investigator can make important findings of fact with respect to fraud which are subsequently taken as prima facie evidence in other proceedings and to which publicity may be given, the importance of enabling the accused to properly defend themselves becomes apparent.
40 The investigation in this case seems to be conducted on the basis that the only person interested in the investigation is the investigator, and that the person whose conduct it is sought to impune has no interest in the proceedings.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 6.
Notes of
Argument of
Plaintiffs—
continued.

It is submitted that in this regard the steps taken in these proceedings are defective as being contrary to natural justice and that such notice must be given to any person or company whose conduct is investigated so as to give him or it an opportunity of defending himself or itself and meeting the accusations.

See 4 Halsbury's Laws of England, 416.

Gray v. Allison, 25 T.L.R., 531.

Fisher v. Kean, 49 L.J. Ch., 11.

23 Halsbury's Laws of England, 327.

Li Hong Mi v. Attorney General of Hong Kong and others, 89 L.J.P.C., 60. 10

Board of Education v. Rice, [1911] A.C. 179; 80 L.J.H.L., 796 (Lord Loreburn at p. 798.)

Willis v. Gipps, 5 Moore P.C., 379; 13 E.R., 536.

Smith v. The Queen, 47 L.J.P.C., 51 at p. 57.

Lapointe v. L'Association de Bienfaisance, etc., 75 L.J., P.C., 73.

Money v. Leach, 3 Burr, 1742; 97 E.R., 1075.

See compelling answers as "in action" 9 (3).

(F) THE DELEGATIONS OF AUTHORITY ARE INVALID.

It is submitted that a delegation of authority to a representative under The Security Frauds Prevention Act must relate to some named 20 fraudulent act or offence against the Act or its regulations which is to be investigated. A blanket roving inquisition is not authorized by the statute. By analogy with respect to the issue of general warrants the following cases are cited :

Money v. Leach, 3 Burr, 1742; 97 E.R., 1075.

Caudle v. Seymour, 10 L.J.M.C., 1930.

(G) FAILURE TO ACT JUDICIALLY.

It is submitted that before submitting the applicants to the ignominy of an investigation, the Attorney General or his delegate must be satisfied of the prima facie existence of a fraudulent act or other breach of the Act. 30

By reason of the indirect motive which is activating the defendants, as set out in the affidavit in support of the application, it is submitted that it is clear that no proper judicial enquiry has been made before issuing the summonses and hence the proceedings are defective.

See Hetherington v. Security Export Co., 94 L.J.P.C., 1.

(H) THE DEFENDANTS HAVE BEEN APPOINTED JUDGES CONTRARY TO LAW.

Section 96 of the British North America Act provides :

“ The Governor General shall appoint the judges of the superior, district and county courts in each province except those of the courts of probate in Nova Scotia and New Brunswick.” 40

Attorney General for Ontario v. Attorney General for Canada, (1925), 1 W.W.R., 1131.

Scott v. Attorney General for Canada, (1923), 3 W.W.R., 929.

Munro and Downey, 19 O.L.R., 249.
In re Small Debts Recovery Act, (1917), 3 W.W.R., 698.
Colonial Investment and Loan Company v. Grady, 24 D.L.R., 176.
In re The Board of Commerce Act and The Combines and Fair Prices Act,
 1919, [1922] 1 A.C. 191; (1922) 1 W.W.R., 20.

*In the
 Appellate
 Division of
 the Supreme
 Court of
 Alberta.*

CONCLUSION.

It is to be remembered that this is an application for an interim injunction and that it is not necessary to dispose finally of all the questions above set out. It is submitted that it is just and convenient that the investigation be stayed until the important questions raised by the statement of claim have been disposed of after trial in the usual way and that the balance of convenience is entirely in favour of the granting of the interim injunction asked for.

No. 6.
 Notes of
 Argument of
 Plaintiffs—
continued.

No. 7.

Memorandum of Cases on behalf of the Defendants.

1. Act does not interfere with status of Dominion Company.
Citizens Insurance Company v. Parsons, 7 A.C. 96, 113, 117.
Colonial Building and Investment Association v. The Attorney General of Quebec, 9 A.C. 157, 166.
 20 *Canadian Pacific Railway Company v. Bonsecours* [1899] A.C. 367, 372, 373.
John Deere Plow Company, Ltd., v. Wharton [1915] A.C. 330, 340.
Royalite Oil Company, Ltd., v. The Attorney General of Alberta, (1931) 1 W.W.R. 484.
Toronto Electric Commissioners v. Snider [1925] A.C. 396.
Rex v. Barlow (1922) 3 W.W.R. 1195.
Rex v. Gebhardt (1926) 2 W.W.R. 235.
2. Is not Criminal Legislation.
 30 *Regina v. Wason*, 17 O.A.R. 221.
Re Clement, 33 C.C.C. 119, 121, 122, 124.
Attorney General of Manitoba v. Rosenbaum (1929) 1 W.W.R. 148.
3. Act in terms (Sec. 9) applies to past transactions.
West v. Gwynne (1911) 2 Ch. 1, 4, 11.
4. Action for damages or injunction does not lie against Attorney General.
See Security Frauds Prevention Act, Sec. 17 (2) and 18.
Robertson's Civil Proceedings by and against the Crown, p. 123.

No. 7.
 Memo-
 randum of
 Cases on
 behalf of the
 Defendants.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 7.
Memo-
randum of
Cases on
behalf of the
Defendants
—continued.

- The Queen v. Lords of the Treasury*, L.R. 8 Q.B. 387, 394.
London County Council v. The Attorney General [1902], A.C. 165,
 168, 169.
Mackenzie-Kennedy v. Air Council (1927), 2 K.B. 517, 521, to
 523.
Attorney General for Ontario v. Toronto Recreation Club, 8 O.L.R.
 440, 443, 444.
Attorney General for Ontario v. Hargrave, 11 O.L.R. 530, 535.
Orpen v. Attorney General for Ontario, 56 O.L.R. 327, 337.
Rattenbury v. Land Settlement Board (1928), 2 W.W.R. 475, 477, 10
 478.
Re Carey (1920), 3 W.W.R. 329.
5. No material to justify an interlocutory injunction.
Kerr on Injunctions, 6th Edition, pages 6, 17, 24.
Mogul Steamship v. McGregor, 15 Q.B.D. 476, 484 to 487.
Playter v. Lucas, 51 O.L.R. 492.
 6 *C.E.D. (Ontario)*, pages 11 and 12.
 5 *C.E.D. (Western)*, 711.
C.P.R. v. C.N.R., 5 A.L.R. 407.

No. 8.
Reasons for
Judgment
of Harvey,
C.J. (con-
curred in by
Walsh and
Clarke, JJ.),
2nd April
1931.

No. 8.

20

Reasons for Judgment of Harvey, C.J. (concurring in by Walsh and Clarke, J.J.).

The Plaintiff Mayland is the President of the Plaintiff Company which is incorporated under the Companies' Act of the Dominion and which owns a controlling interest in the shares of Mill City Petroleum Limited, a company similarly incorporated.

The Defendant Lymburn is the Attorney General of the Province and the Defendant Frawley is an officer of his Department, who has been named by him as his representative under Section 9 of "The Security Frauds Prevention Act 1930" for the purpose of holding investigations.

Frawley has given notices of intention to hold, and to witnesses to attend on, investigations respecting, or as the documents state "into" the two companies named. 30

The action is brought to restrain the holding of the investigations and for damages.

This is an application for an interim injunction to enjoin the defendants from proceeding with the investigation until the trial, which by leave has been referred to this Division.

It is contended that the investigation into the affairs of the Dominion Companies mentioned is not authorized and that if the Act in question purports to authorize it it is ultra vires, at least as respects Dominion Companies. 40

The Act in question is divided into 5 parts, Parts I, III and IV with captions "Registration of Brokers and Salesmen," "Audit, Accounts, Information" and "Regulation of Trading," respectively, Part V has the caption "General Provisions" and amongst other things prescribes penalties for breach of any provision of the Act. Part II with which we are immediately concerned has the caption "Investigation and Action by the Attorney General" and apparently is intended to have a bearing directly or indirectly on the other parts of the Act.

The first sub-section of Section 9, the first section of this Part, under 10 which the proposed investigation is sought to be supported is as follows :

" (1) The Attorney General, or any person or persons to whom
 " as his representative or representatives he may in writing delegate
 " such authority, may examine any person, company, property or
 " thing whatsoever at any time in order to ascertain whether any
 " fraudulent act, or any offence against this Act or of the Regulations
 " has been, is being, or is about to be committed, and for such
 " purpose shall have the same power to summon and enforce the
 " attendance of witnesses and compel them to give evidence on oath
 " and to produce documents, records and things as is vested in the
 20 " Supreme Court or a Judge thereof for the trial of civil cases, save
 " that the provisions of rules of court or of law relating to the
 " service of subpoenas upon and to the payment of conduct money
 " or witness fees to witnesses shall not apply and save further that
 " no person shall be entitled to claim any privilege in respect of any
 " document, record or thing asked for, given or produced, on the
 " ground that he might be incriminated or exposed to a penalty or
 " to civil litigation thereby, and no evidence given shall be privileged
 " except under The Alberta Evidence Act and The Canada Evidence
 " Act, and save further that no provisions of The Alberta Evidence
 30 " Act shall exempt any bank or any officer or employee thereof
 " from the operation of this section."

It is contended on behalf of the Defendants that this section confers power on them to go into any one's home or office and require any person there to give evidence on oath and not merely that but to compel any person to come to them at his own expense and produce anything required and answer on oath to whatever may be asked. The section certainly seems wide enough to support this view.

It would seem that power is intended to be given to the Attorney General or his representative to summon from the most distant part of the 40 Province anyone he sees fit. There is no suggestion that he need have any ground for suspicion that the person summoned has done or is likely to do anything improper. By sub-sect. (3) if the person summoned fails to go to the place to which he is summoned without reasonable excuse, or if having gone he refuses to answer any question, when such answer could be required in an action, not merely does that failure or refusal, without more, warrant the Attorney General or his representative finding that the person

*In the
 Appellate
 Division of
 the Supreme
 Court of
 Alberta.*

No. 8.
 Reasons for
 Judgment
 of Harvey,
 C.J. (con-
 curred in by
 Walsh and
 Clarke, JJ.),
 2nd April
 1931—con-
 tinued.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 8.
Reasons for
Judgment
of Harvey,
C.J. (con-
curred in by
Walsh and
Clarke, JJ.),
2nd April
1931—con-
tinued.

has been guilty of a fraudulent act, but it also constitutes an offence for which he may be fined \$1,000. and imprisoned for six months. Then, if having submitted to examination, while the Attorney General or his representative may disclose all the information given yet if he so much as whispers a word of it or even discloses the fact that he has been examined, he commits an offence (sub-sec. 4) and is liable to the penalty mentioned. And if he does it a second time the fine may be doubled.

Of course, it is not to be presumed that responsible Minister of the Crown or perhaps his representative will be anything but fair, though such things have happened in history, but section 17 (3) seems loaded in his favour for it provides that in actions in Court, while costs may be given in his favour, they may not be given against him even in favour of an innocent party. It does not, however, compel the Court to give costs in his favour as it might. 10

Mr. Frawley admits that the provisions are very drastic and one cannot fail to agree with him in this view. But that, of course, does not settle the question of jurisdiction to pass the legislation.

Under the British North America Act the legislature is given power to make laws respecting "property and civil rights" and surely a law which abolishes civil rights is one respecting civil rights. 20

It is a matter of such common knowledge that the Court may notice it judicially, that in recent years there has been much speculation in stocks and shares and that in this and other Provinces there have been prosecutions on brokers for frauds in connection with the sales of securities and that convictions and imprisonments have resulted. That, however, has all been under the Dominion Criminal law though it may be that assistance has been given by the aid of such Statutes as the one under consideration, which Mr. Frawley states is a uniform Act existing in different Provinces, in their departure from the traditions of English Criminal jurisprudence opposed to all rules requiring persons to furnish evidence to incriminate themselves. 30

It is, however, for the Legislature and not the Courts to consider whether the end justifies the means, so long as the means are within its legislative authority. But it is contended that the Act is ultra vires and reference is made to several sections, notably section 20, which provides by sub-sec. (1) as follows :

" 20.—(1) Every person who violates any provision of this
" Act or the Regulations designated as an offence, or who does any
" fraudulent act not punishable under the provisions of The Criminal
" Code of Canada, shall be liable upon summary conviction thereof 40
" to a penalty of not more than one thousand dollars for a first
" offence, nor two thousand dollars for a second or subsequent
" offence, and in case of either a first or a subsequent offence either
" in default of payment of any penalty imposed, or in addition to
" such penalty, to imprisonment for a term not exceeding six
" months."

In *Regina v. Wason* (1890) 17 O.A.R. 221, it was held that a Statute declaring certain acts frauds and prescribing penalties for their commission was within the legislative competence of a Provincial legislature and that decision has, I think, always been recognized as authoritative.

That would seem to cover Section 20 so far as it is limited to breaches of specified provisions of the Act but I can see no justification whatever for the declaration that all fraudulent acts, not punishable by the Code are offences.

The Criminal Code sets out, under the caption "Fraud and fraudulent dealing with property", in Sections 412 to 444 inclusive, a large number of fraudulent acts which are punishable as crimes. In addition there are other offences such as obtaining property by false pretences, not included, which could properly be deemed fraudulent acts.

The Statute in question defines the expression "fraudulent act" as including, in addition to its ordinary meaning, a variety of other acts set out under 8 heads and then Section 20, after specifically declaring a breach of any of the provisions of the Statute an offence, makes also all other fraudulent acts not comprised in the foregoing or in the provisions of the Criminal Code, offences and punishable, not because that is necessary to make effective any provincial law, but as far as we can see, because and only because, they are wrong. That is usurping a function which is expressly vested in the Dominion Parliament and the section is in that respect, I think, clearly ultra vires. Section 22 also in part 5, at least, seems to deal with Criminal procedure, which like Criminal law, is not within the legislative competence of a Province.

But these provisions are, I think, severable from those under consideration and the whole Act would not, therefore, fall by reason of their invalidity.

But though Section 9 may be within the authority of the Province it does not follow that it may not require a limited application and that it may not be ultra vires in its application to Dominion Companies as was held in *The Great West Saddlery case* in [1921] 2 A.C. 91 in respect to Provincial legislation then under consideration.

The limitation of a Province's right to legislate with respect to Dominion Companies was considered only a few weeks ago by this Division in *In re Royalite Oil Co.*, 1931, 1 W.W.R. 484. It was pointed out there that such a Company cannot be prevented by Provincial legislation from exercising the powers conferred on it by its Dominion Charter but that it can be compelled to submit to competent general provincial legislation. It was shown that it could be required to furnish information relating to its affairs of which it was reasonable that the public dealing with it should have knowledge.

It was held, however, that there was a limitation on the information which the legislature could require and that a provision which authorized the Registrar to demand information without qualification could not apply to a Dominion Company because as it was there said (p. 501) the legislature "cannot delegate an unfettered discretion which it does not itself possess."

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 8.
Reasons for
Judgment
of Harvey,
C.J. (con-
curred in by
Walsh and
Clarke, J.J.),
2nd April
1931—con-
tinued.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 8.
Reasons for
Judgment
of Harvey,
C.J. (con-
curred in by
Walsh and
Clarke, JJ.),
2nd April
1931—con-
tinued.

That would seem to apply with equal force to the provisions of Section 9 now under consideration. 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. 10

In the *Royalite Oil Company* case we held that certain provisions respecting prospectuses of the Provincial Act were inapplicable to Companies incorporated under the Dominion Act, which contained provisions relating to the same subject though the ground of our decision on that point was more limited than that they covered the same field.

If, however, the right of the Dominion to legislate respecting Dominion trading Companies is to be supported as coming within the subject "The Regulation of Trade and Commerce" of Section 91 of the British North America Act, which seems to be the effect of the later decisions of the Privy Council, commencing with *John Deere Plow Company v. Wharton* [1915] A.C. 330, then the logical deduction would seem to be that the Province's right to legislate with respect to them must be as limited as in the case of any other matter exclusively assigned to the Dominion by Section 91. 20

Even as regards Dominion Railways which come under Dominion jurisdiction, not by reason of being included in Section 91, but rather by reason of being excluded from Section 92, it has been expressly held that Provincial legislation that is essential railway legislation cannot apply to them. As, for instance, it was held in *Madden v. Nelson and Fort Sheppard Ry.* [1899] A.C. 626, that a Provincial Statute declaring Dominion Railways liable for injury to cattle in the absence of proper fences, was ultra vires and in *C.P.R. v. Rex* [1907] 38 S.C.R. 476, a provision making a railway company liable for damages caused by the emission of sparks from railway locomotives in the absence of fire guards and other precautions, was held invalid, as being railway legislation, notwithstanding that it was clear that the object of the Act was the prevention of prairie fires and not the regulation of the railway. 30

It, however, is not necessary to decide the question whether this legislation is inapplicable to Dominion Companies on the ground that it is in a field not open to the Province either as Company legislation into which a Provincial Legislature may not enter or as being closed by reason of the Dominion having occupied it by its own legislation on the subject of investigations, for either of which no doubt, and especially the latter, much could be said, since it seems to fall squarely under the much narrower 40

ground, above referred to and decided in the *Royalite Oil Company* case of an attempt to give unlimited authority to gather information when the legislature itself has only a limited right to information.

It was contended on the argument that the Court cannot grant an injunction against the Attorney General, he being a Minister of the Crown and that specifically by Section 18, it is forbidden. That section also provides that no action shall lie but it was not contended that this action was not maintainable and I did not understand Mr. Gray to contend that the section would apply to a case of want of jurisdiction.

10 It appears to me, however, to be of little consequence because there is no doubt that the Court has power to make a declaration as to the validity of the legislation and a declaration that a Minister of the Crown or his representative has no authority will no doubt be quite as effective as a restraining order would be, certainly where, as in this case, nothing could be accomplished, even if the declaration of the Court were not accepted.

It was agreed on the argument that if the Court should come to the conclusion which I have indicated appears to me to be the correct one, the motion should be treated as a motion for final judgment.

20 In the result there should be judgment for the Plaintiffs, declaring that section 9 of the Act has no application to the companies mentioned and that the defendants, therefore, have no authority for the investigation proposed.

The Plaintiffs are entitled to costs, to be taxed under Column 5.

HORACE HARVEY, C.J.

Calgary, April 2nd, 1931.

In the Appellate Division of the Supreme Court of Alberta.

No. 8.
Reasons for Judgment of Harvey, C.J. (con-
curred in by Walsh and Clarke, J.J.),
2nd April 1931—con-
tinued.

No. 9.

Formal Judgment.

IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Before :

30 THE HONOURABLE THE CHIEF JUSTICE.
THE HONOURABLE MR. JUSTICE WALSH.
THE HONOURABLE MR. JUSTICE CLARKE. { Court House,
Calgary, Alberta,
Monday, the 23rd day
of April, 1931.

Between

ALBERT HENRY MAYLAND and MERCURY OILS LIMITED

(Plaintiffs) Applicants

and

JOHN F. LYMBURN and JAMES J. FRAWLEY - *(Defendants) Respondents.*

40 UPON THE APPLICATION of the plaintiffs for an interim injunction restraining the defendants and each of them from proceeding with the investigation referred to in the statement of claim and from examining

No. 9.
Formal
Judgment,
23rd April
1931.

*In the
Appellate
Division of
the Supreme
Court of
Alberta.*

No. 9.
Formal
Judgment,
23rd April
1931—con-
tinued.

the plaintiff, Mayland, and from examining into the affairs of Mercury Oils Limited until the trial of this action and alternatively for an interim injunction until the trial of this action restraining the defendants and each of them from proceeding with the investigations and examinations referred to in the said statement of claim save in respect of such matters and within such limits as the Court was of opinion was proper and lawful, which application was referred by order of the Honourable Mr. Justice Ives dated the 20th day of March, 1931, to this Court; upon reading the notice of motion, the statement of claim, the affidavit of Charles Thomas Biggs filed and the exhibits therein referred to, the affidavit of 10 James Wilfred Cochrane, and upon hearing counsel for the plaintiffs, for the defendants, for Mill City Petroleums Limited mentioned in the statement of claim and for Solloway Mills and Company Limited mentioned in the statement of claim;

And this Court having been pleased to direct that the said application should stand over for judgment and the same having this day come on for judgment;

THIS COURT DOTH ADJUDGE AND DECLARE :

1. That Section 9 of The Security Frauds Prevention Act, being Chapter 8 of the Statutes of Alberta, 1930, has no application to the 20 plaintiff, Mercury Oils Limited and to Mill City Petroleums Limited and Solloway Mills and Company Limited, the companies mentioned in the plaintiffs' statement of claim, and that the defendants have no authority to proceed with the examinations and investigations referred to in the statement of claim.

2. That in accordance with the agreement between Counsel on the Argument, there be final judgment in favour of the plaintiff declaring as aforesaid.

3. That the defendants should and do pay to the plaintiffs the costs incurred by the plaintiffs as well in the Trial Division as in this Court, 30 such costs to be taxed on Column 5.

ENTERED this 6th day of May, 1931.

V. R. JONES.
Registrar of the Appellate
Division of the Supreme Court
of Alberta at Calgary.

No. 10.

Order granting conditional leave to appeal to His Majesty in Council.
 IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.
 Judicial District of Calgary.

*In the
 Appellate
 Division of
 the Supreme
 Court of
 Alberta.*

Between

ALBERT HENRY MAYLAND and MERCURY OILS LIMITED - *Plaintiffs*
 and

JOHN F. LYMBURN and JAMES J. FRAWLEY - - - *Defendants.*

No. 10.
 Order
 granting
 conditional
 leave to
 appeal to
 His Majesty
 in Council,
 5th May
 1931.

Before :

10 THE HONOURABLE HORACE HARVEY,
 Chief Justice of Alberta. }
 THE HONOURABLE MR. JUSTICE CLARKE. } Edmonton, Tuesday,
 THE HONOURABLE MR. JUSTICE MITCHELL. } the 5th day of
 THE HONOURABLE MR. JUSTICE LUNNEY. } May, 1931.

UPON the application of the defendants made at Calgary, on Monday,
 the 20th day of April, 1931, which application was adjourned to this date;

AND UPON reading the pleadings and proceedings herein;

AND UPON hearing Counsel for the defendants, as well as for the
 plaintiffs;

20 AND IT APPEARING that the question involved in the proposed appeal
 is one which by reason of its great general or public importance ought
 to be submitted to His Majesty in Council for decision;

IT IS ORDERED that the defendants have leave to appeal to His
 Majesty in Council upon the following conditions; (a) THAT the defendants
 within twenty days from the date hereof enter into good and sufficient
 security to the satisfaction of this Court in the sum of \$2,500.00 for the
 due prosecution of the appeal and for the payment of all such costs as
 may become payable to the plaintiffs in the event of the defendants
 not obtaining an Order granting them leave to appeal; or of the appeal
 30 being dismissed for non-prosecution, or of His Majesty in Council ordering
 the defendants to pay the plaintiffs' costs of the appeal. (b) THAT the
 defendants within the period of twenty-five days from the date hereof
 take the necessary steps for the purpose of procuring the preparation
 of the record and the despatch thereof to England on or before the 30th
 day of May, 1931.

ENTERED at the City of Calgary, in the Province of Alberta, the
 6th day of May, 1931.

(Sgd.) V. R. JONES,
 Registrar.

In the
Appellate
Division of
the Supreme
Court of
Alberta.

No. 11.

Order granting final leave to appeal to His Majesty in Council.

IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.
Judicial District of Calgary.

No. 11.
Order
granting
final leave
to appeal
to His
Majesty in
Council,
11th May
1931.

Between

ALBERT HENRY MAYLAND and MERCURY OILS LIMITED - *Plaintiffs*

and

JOHN F. LYMBURN and JAMES J. FRAWLEY - - - *Defendants.*

Before

THE HONOURABLE HORACE HARVEY, Chief Justice
of Alberta,
THE HONOURABLE MR. JUSTICE CLARKE,
THE HONOURABLE MR. JUSTICE MITCHELL,
THE HONOURABLE MR. JUSTICE LUNNEY.

} the 11th day of
May 1931.

10

UPON motion made this day to this Court by Counsel on behalf of the Defendants for a Final Order admitting their Appeal herein to His Majesty in Council, from the Judgment of this Honourable Court pronounced on the 2nd day of April, A.D. 1931, and entered on the 6th day of May, A.D. 1931.

AND UPON reading the Order granting Conditional Leave to appeal herein, dated the 5th day of May, A.D. 1931, the Certificate of the Registrar of this Court, dated the 11th day of May, A.D. 1931, of compliance with the said Order, and it being shown that the preparation of a copy of the Record has been completed and dispatched by the Registrar of this honourable Court to the Registrar of the Privy Council, London, England;

20

AND UPON hearing counsel for the Defendants and for the Plaintiffs.

THIS COURT DOTH ORDER that Final leave to Appeal to His Majesty in Council as applied for, be granted.

By the Court,

(SEAL)

V. R. JONES,

30

Registrar of the Appellate Division of the Supreme Court of Alberta, at Calgary.

ENTERED this 11th day of May, 1931.

(SEAL)

V. R. JONES,

Registrar at Calgary.



APPENDIX.

No. 12.

British North America Act, 1867.

30 & 31 Victoria, Chapter 3.

* * * * *

Appendix.

No. 12.
British
North
America
Act, 1867,
30 & 31 Vict.
Cap. 3.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

10 **91.** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
- 20 3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
- 30 11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the issue of paper money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
- 40 20. Legal Tender.

Appendix.
 ———
 No. 12.
 British
 North
 America
 Act, 1867,
 30 & 31 Vict.
 Cap. 3—
continued.

21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalisation and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries. 10
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the classes of Subjects enumerated in this Section shall not be deemed to come within the class of Matters of a local or private nature comprised in the Enumeration of the classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in 20 relation to Matters coming within the classes of Subjects next hereinafter enumerated; that is to say,—

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers. 30
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal 40 Purposes.
10. Local Works and Undertakings other than such as are of the following Classes :—
 - A. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting

the Province with any other or others of the Provinces, or extending beyond the Limits of the Province :

B. Lines of Steam Ships between the Province and any British or Foreign Country :

c. Such works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

Appendix.
—
No. 12.
British
North
America
Act, 1867,
30 & 31 Vict.
Cap. 3—
continued.

- 10 11. The Incorporation of Companies with Provincial Objects.
- 12. The Solemnization of Marriage in the Province.
- 13. Property and Civil Rights in the Province.
- 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
- 15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
- 20 16. Generally all Matters of a merely local or private Nature in the Province.

* * * * *

VII. JUDICATURE.

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

* * * * *



No. 13.

Appendix.

No. 13.
The Com-
panies Act
(Canada),
R.S.C., 1927,
Chapter 27.

The Companies Act (Canada) Revised Statutes of Canada, 1927. Chapter 27.

* * * * *

Inspection.

120. The Secretary of State may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as he may direct in the case of,

- (a) any company having a share capital, on the application of shareholders holding such proportion of the issued stock of the company as in the opinion of the Secretary of State warrants the application; 10
- (b) a corporation not having a share capital, on the application of such number of the persons on the corporation's register of members as in the opinion of the Secretary of State warrants the application.

(2) The application shall be supported by such evidence as the Secretary of State may require for the purpose of showing that the applicants have good reason for and are not actuated by malicious motives in requiring, the investigation; and the Secretary of State may, before appointing an inspector, require the applicants to give security 20 for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable on 30 summary conviction to a fine not exceeding twenty dollars in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Secretary of State, and a copy of the report shall be forwarded by the Secretary of State to the company and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(7) The report shall be written or printed, as may be directed.

(8) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Secretary of State directs the 40 same to be paid by the company, which the Secretary of State is hereby authorised to do.

* * * * *

No. 14.

The Companies Act Amending Act, 1930. Statutes of Canada, 1930. 20-21 George V.
Chapter 9.

[Assented to 30th May 1930.]

* * * * *

33. Sections one hundred and eighteen and one hundred and nineteen of the principal Act are hereby repealed and the following is substituted for section one hundred and eighteen :—

10 **118.**—(1) A register of transfers shall be provided in which shall be entered the particulars of every transfer of shares in the capital of the company.

(2) The register of transfers shall be kept by the Secretary or by such other officer or officers as may be specially charged with that duty or by such other agent or agents as may from time to time be appointed for the purpose by the Company.

2) (3) Unless otherwise provided in the letters patent or by-laws of the company the register of transfers may be kept at the chief place of business of the company or at such other office or place as may from time to time be appointed by the directors, and one or more branch registers of transfers may be kept at such office or offices of the company or other place or places in the Dominion of Canada or elsewhere as may from time to time be appointed by the directors.

30 (4) Unless the register of transfers is kept at the chief place of business of the company a book or books shall be kept at such chief place of business of the company or at the place within Canada where one of the branch transfer offices is kept in which shall be entered a copy of the particulars of every transfer of shares in the capital of the company, but entry of the particulars of the transfer of shares in the capital of the company in a register or branch register of transfers kept elsewhere than at such chief place of business of the company shall for all purposes of Part I of this Act be a complete and valid transfer.

(5) Such register and books during reasonable business hours of every day except Sundays and holidays shall, at the places where they are respectively authorised by this section to be kept, be open for the inspection of shareholders and creditors of the company and their personal representatives and of any judgment creditor of a shareholder, any of whom may make extracts therefrom.

Appendix.

No. 14.
The Companies Act
Amending
Act, 1930
(Canada),
Statutes of
Canada.
20-21
Geo. V.,
Chapter 9.

Appendix.

No. 14.
The Companies Act
Amending
Act, 1930
(Canada),
Statutes of
Canada.
20-21
Geo. V.,
Chapter 9—
continued.

34. The principal Act is hereby amended by inserting immediately after section one hundred and eighteen the following section:—

119.—(1) Every company shall cause to be kept proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the chief place of 10 business of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta.
19 Geo. V.
Chapter 14.

No. 15.

The Alberta Companies Act 1929. 19 George V. Chapter 14.

[Assented to March 20, 1929.]

* * * * *

PART VIII.

FOREIGN COMPANIES.

133. For the purposes of this Part, the expression—

(a) “Business” means such lawful objects and purposes for which a 20 foreign company is established as are within the legislative authority of the Province, and includes the sale of its shares or debentures by or on behalf of the company, but does not include the business of banking, the construction and operation of a railway, or the business of insurance.

(b) “Carry on business” does not apply to a foreign company which has no resident agent or representative or no warehouse, office, or place of business in the Province.

Division (1)—Registration

134.—(1) Every foreign company which carries on business in the 30 Province shall be registered under this Act within thirty days after commencing to carry on business in the Province, and shall, except as herein-after provided, comply with the requirements of this Part.

(2) A foreign company heretofore licensed or registered under any former Companies Act or Ordinance shall be deemed to be registered under this Act if its name is on the register of such companies or is restored thereto pursuant to section 159.

(3) A foreign company which does not carry on business for gain may be exempted, with the approval in writing of the Attorney General, from all or any of the provisions of this Act.

(4) A foreign company which is not duly incorporated by or under a Statute, Act, or Ordinance of the province, state, or country where the company was formed shall not be registered or carry on business in the Province.

135.—(1) Every foreign company required to be registered under this Act shall file with the Registrar a statement according to Form 12 in the second schedule, specifying—

- (a) the name of the company;
- (b) the province, state, or country where the company was incorporated;
- (c) the date of incorporation;
- (d) full particulars of the charter and regulations of the company and all amendments thereto;
- (e) the period (if any) fixed by its charter for the duration of the company;
- (f) the extent (if any) to which the liability of members of the company is limited under its charter;
- (g) the principal business of the company;
- (h) the authorized, subscribed, and paid-up capital of the company and the shares (if any) into which it is divided;
- (i) the full address of the head office of the company outside the Province;
- (j) the full address of the head office of the company within the Province;
- (k) the full name, address, and occupation of the person appointed as the attorney of the company as provided by section 142; and
- (l) such other information as the Registrar may require.

(2) The statement shall declare that the company is a valid and subsisting corporation and legally authorized to transact business under its charter, and shall be duly executed by the company under its common seal (if any), and two directors or officers of the company shall make a statutory declaration on behalf of the company, verifying the particulars set forth in the statement.

(3) (a) The statement shall be accompanied by a copy of the charter and regulations of the company, verified in manner satisfactory to the Registrar.

(b) If the company proposes to sell any of its shares or debentures in the Province, the statement shall also be accompanied—

- (i) by official copies of any license or other form of authority which the company is required to obtain under the laws of the province, state, or country of its incorpora-

Appendix.
—
No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta.
19 Geo. V.,
Chapter 14
—continued.

Appendix.
 —
 No. 15.
 The Alberta
 Companies
 Act, 1929,
 Statutes of
 Alberta.
 19 Geo. V.,
 Chapter 14
 —continued.

tion before it is permitted to offer for subscription or sale any of its shares or debentures, and of the material filed on the application for the license or other form of authority, except in so far as the Registrar dispenses with such material or

(ii) where the company is not required to obtain any such license or form of authority, by a statement in lieu of prospectus according to Form 4 or Form 5 in the second schedule, subject only to such changes as the facts may demand.

10

(c) Where any document required to be filed under this section is not in the English language, the Registrar may require a translation thereof, notarially certified.

(d) Clause (b) shall not apply to a company constituted as a private company under its charter and regulations.

136.—(1) Upon receipt of the statement and other documents prescribed and of the proper fees, the Registrar shall register the company and issue under his seal of office a certificate of registration, which shall set forth—

(a) the corporate name of the company;

20

(b) the place where the head office of the company without the Province is situate;

(c) the place where the head office of the company in the Province is situate;

(d) the name, address, and occupation of the attorney of the company;

(e) the authorized and paid-up capital of the company;

(f) the time of the existence of the company if incorporated for a limited period; and

(g) where the liability of shareholders in the company is limited, that 30 the company is limited, or where under its charter the name of the company has “non-personal liability” as the last words, and its objects and powers do not extend beyond the objects and powers of a specially limited company, and the liability of its shareholders does not exceed the liability of shareholders in a specially limited company that the company is specially limited.

(2) The Registrar shall publish the certificate at the cost of the company in *The Alberta Gazette*.

137.—(1) A certificate of registration given by the Registrar in 40 respect of a foreign company shall, so long as it remains in force, be conclusive evidence that the company has been registered under this Act.

(2) The expression “certificate of registration” in this section includes an amended or supplementary certificate issued under section 144 and a license or certificate of registration issued to a foreign company under any former Companies Act or Ordinance.

138.—(1) The Lieutenant Governor in Council may suspend or revoke the registration of a company for good cause or for failure to comply with any requirement of this Part, and may also remove or cancel a suspension or revocation, subject to any conditions which may be deemed proper.

(2) No suspension or revocation shall affect the rights of any creditor of the company.

(3) Notice of any suspension or revocation, or removal or cancellation thereof, shall be published by the Registrar at the cost of the company in *The Alberta Gazette*.

10 **139.**—(1) A foreign company which ceases to carry on business in the Province or ceases to exist shall file with the Registrar notice to that effect and such further evidence as he may require, and thereupon the Registrar may strike the name of the company off the register and cancel its registration.

(2) A notice that the registration of a company has been cancelled shall be published by the Registrar at the cost of the company in *The Alberta Gazette*.

20 (3) The registration of a company which has been cancelled by reason of its ceasing to carry on business in the Province may be revived by the Registrar upon the company filing such documents as he requires, and upon payment of the proper fees. The Registrar may issue a fresh certificate of registration and require such publication in *The Alberta Gazette* as he thinks advisable.

140. Subject to the provisions of this Act and the laws of the Province, a foreign company registered under this Act may within the Province carry on business in accordance with its certificate of registration, and for that purpose exercise the powers contained in its charter and regulations.

Division (2)—Duties and Obligations.

141. Every foreign company to which this Part applies shall—

30 (a) Paint or affix, and keep painted or affixed, its name on the outside of its head office and every other office or place in which its business is carried on in the Province, in a conspicuous position, in letters easily legible; and

(b) Have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

40

142.—(1) Every foreign company to which this Part applies shall have an attorney in the Province resident in the city or place where the head office or place of business of the company in the Province is situate, and authorized by the company to accept service of process in all suits

Appendix.

—
No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta.
19 Geo. V.,
Chapter 14
—continued.

Appendix.
—
No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta.
19 Geo. V.,
Chapter 14
—continued.

and proceedings by or against the company within the Province, and on its behalf therein to receive all lawful notices to the company.

(2) (a) The first attorney shall be appointed by the company in the statement filed by it under section 135, and where the attorney for any reason ceases to act as such or the company desires to change the attorney, the company shall forthwith file a notice according to Form 13 in the second schedule, executed under its common seal (if any), and stating the full name, address, and occupation of a new attorney appointed by it.

(b) Where the attorney is a member of a firm or the manager for the company in the Province, any other member of the firm or any assistant manager for the company in the Province, named in the statement or notice, may be appointed an alternative attorney for the purposes aforesaid. 10

(3) Every attorney shall in the presence of a witness sign the statement or notice wherein he is so appointed as evidence of his consent to act as such attorney.

(4) It is hereby declared that such service and notification as aforesaid shall be legal and binding on the company.

(5) Notice of the appointment of a new attorney shall be published 20 by the Registrar in *The Alberta Gazette* at the cost of the company.

143. Every foreign company registered under this Act shall give prompt notice to the registrar of any change—

- (a) in the address of its head office within or without the Province; and
- (b) in its directors.

144.—(1) Every foreign company registered under this Act shall file with the Registrar a verified copy of any amendment to its charter or regulations within one month after the date when the amendment takes effect.

(2) A foreign company registered under this Act shall not, without the approval of the Registrar, signified in writing, use in the Province any name or title save that under which it is registered. 30

(3) The Registrar may issue a new or supplementary certificate of registration in respect of any amendment as aforesaid, and may require a notice thereof to be published in *The Alberta Gazette* at the cost of the company, and any former certificate to be surrendered.

145.—(1) Every foreign company to which this Part applies shall file with the Registrar a copy of any prospectus inviting subscriptions in the Province for any of its shares or debentures, and such prospectus shall 40 state the province, state, or country in which the company was incorporated, and sections 83 and 84 or 85 shall, *mutatis mutandis*, apply to every prospectus filed under this section.

(2) Clauses (b), (c), and (d) of subsection (4) of section 84 and of subsection (3) of section 85 shall, *mutatis mutandis*, apply to every foreign company to which this Part applies.

Appendix.
—
No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta.
19 Geo. V.,
Chapter 14
—continued.

146.—(1) A company registered under this Act shall on or before the first of March in each year during the continuance of such registration make a statement to the Registrar, verified by affidavit, containing, as of the thirty-first day of December preceding, a summary of the following particulars, that is to say :

- (a) The corporate name of the company ;
- 10 (b) The place where the head office of the company is situated ;
- (c) The place or places where or from which the undertaking of the company is carried on ;
- (d) The name, residence and post office address of the president, the secretary and the treasurer of the company ;
- (e) The name, residence and post office address of each of the directors of the company ;
- (f) The date upon which the last annual meeting of the company was held ;
- 20 (g) The amount of the capital of the company and the number of shares into which it is divided, and the part of such capital which can fairly be said to be used in the transaction of business in the Province ;
- (h) The number of shares subscribed for and allotted ;
- (i) The amount of stock (if any) issued free from call, or if none is so issued the fact shall be stated ;
- (j) The amount issued subject to call ;
- (k) The number of calls made on each share ;
- (l) The total amount of calls received ;
- (m) The total amount of calls unpaid ;
- 30 (n) The total amount of shares forfeited ;
- (o) The total amount of shares which have never been allotted or subscribed for ;
- (p) The total amount for which shareholders of the company are liable in respect of the unpaid stock held by them ;
- (q) In a concise form such further information respecting the affairs of the company as the directors may consider expedient.

(2) The summary in the next preceding subsection mentioned shall be verified by the affidavit of the president and secretary ; or if there is no president, or he is unable to make the same, by affidavit of the secretary and one of the directors ; or if there is no secretary, or he is unable to make such affidavit, by the affidavit of the president and one of the directors ; or if there is neither a president nor secretary, or they are both unable to make such affidavit, by the affidavit of two of the directors ; and if the president or secretary does not make or join in the affidavit, the reason therefor shall be stated in the substituted affidavit.

Appendix.

No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta.
19 Geo. V.,
Chapter 14
—continued.

(3) Whenever it appears to the Lieutenant Governor in Council from the information contained in paragraph (g) of subsection (1), that the tax otherwise payable by the foreign company in respect of its authorized capital under section 18 of *The Corporations Taxation Act*, is unjust or oppressive, the Lieutenant Governor in Council may reduce the amount of such tax.

(4) The Registrar may at any time require the company to supply such further and other information as shall seem to him to be reasonable and proper.

(5) Any company making default in complying with the provisions of this section shall be liable on summary conviction to a penalty of twenty dollars for each and every day during which default continues; and every director, manager, secretary, agent, traveller or salesman of such company other than a Dominion company who transacts within the Province any business whatever for such company shall be guilty of an offence under this Act. 10

147. The provisions of sections 87 to 97 shall apply to every foreign company registered under this Act which creates any mortgage included within those provisions and comprising property of the company situate within the Province. 20

Division (3)—Disabilities and Penalties.

148.—(1) Any foreign company required by this Act to become registered other than a Dominion company shall not while unregistered be capable of commencing or maintaining any action or other proceeding in any Court in respect of any contract made in whole or in part in the Province in the course of or in connection with business carried on without registration contrary to the provisions of section 134 hereof.

(2) In any action or proceeding, the burden of showing that it is registered shall be upon the company.

149.—(1) Any foreign company registered under this Act may sue and be sued in its corporate name; and, if not prohibited from so doing by its charter and regulations, may acquire and hold lands in the Province by gift, purchase or as mortgagees or otherwise, as fully and freely as private individuals; and may sell, lease, mortgage or otherwise alienate the same. 30

(2) A foreign company required by this Act to become registered shall not, while unregistered, be capable of acquiring or holding lands or any interest therein in the Province, or of registering any title thereto under *The Land Titles Act* :

Provided that nothing herein contained shall affect the power of any foreign company to hold lands as trustee under any mortgage or trust deed given to secure any securities guaranteed by the Province, or to hold lands received in consequence of such mortgage or trust deed, or shall affect any mortgage or trust deed so given. 40

150. Every foreign company registered under this Act shall, subject to the provisions of its charter and regulations and of this Act, have and may exercise all the rights, powers and privileges by this Act granted to and conferred upon companies.

151. No license fee shall be imposed by the council of any city, town, village or municipal district upon any company registered under this Act.

152. This Act shall not apply to the corporation known as "The Governor and Company of Adventurers of England trading into Hudson's Bay."

10

* * * * *

Appendix.
—
No. 15.
The Alberta
Companies
Act, 1929,
Statutes of
Alberta,
19 Geo. V.,
Chapter 14
—continued.

No. 16.

The Companies Act, 1929, Amendment Act, 1930. Statutes of Alberta 1930.
20 George V. Chapter 12.

[Assented to April 3, 1930.]

* * * * *

17. Sections 134 (1), (2) and (3), 135 (1), 137 (1), 144 (2) and 148 (1) of the said Act are amended by striking out the word "Act" where it occurs therein, and substituting therefor the word "Part."

18. Section 134 of the said Act is amended as to subsection (1) thereof, by adding after the word "Province" where it occurs for the second time, the words "or if such company began to carry on business in the Province before the thirty-first day of March, one thousand, nine hundred and thirty, within thirty days of that date."

19. Section 138 of the said Act is amended as to subsection (1) thereof, by adding after the word "company" the words "other than a dominion company."

20. Section 139 of the said Act is amended by striking out subsection (2) thereof.

21. Section 140 of the said Act is amended by inserting after the word "Act" where it occurs for the second time, the words "and not otherwise empowered so to do."

22. Sections 141, 142 (1) and 145 (1) and (2) of the said Act are amended by striking out the words "to which this Part applies" and substituting therefor the words "required to be registered under this Part."

23. Sections 143, 144 (1), 146 (1) and 147 of the said Act are amended by striking out the words "registered under this Act" and substituting therefor the words "required to be registered under this Part."

No. 16.
The Com-
panies Act,
1929,
Amendment
Act, 1930
(Alberta),
Statutes of
Alberta,
20 Geo. V.,
Chapter 12.

Appendix.
 No. 16.
 The Companies Act,
 1929,
 Amendment
 Act, 1930
 (Alberta),
 Statutes of
 Alberta.
 20 Geo. V.,
 Chapter 12
 —continued.

24. Section 145 of the said Act is amended by adding thereto the following new subsection :

“(3) Nothing in this Act shall apply to any dominion company so as to affect its right to do business in the Province.”

25. Section 146 of the said Act is amended as to subsection (5) thereof, by adding after the words “this section” the words “or of section 134.”

26. Section 149 of the said Act is amended as to subsection (1) thereof, by adding after the word “may” where it occurs for the second time the words “subject to the provisions of subsection (2),” and as to subsection (2) thereof by striking out the words “A foreign company required by this Act to become registered shall not,” and substituting therefor the following :
 “No corporation (including a foreign company) which is not registered under the provisions of this Part or of Part III or otherwise authorised so to do by Act of the Province shall.”

27. The third schedule to the said Act is amended—

(a) by striking out paragraphs 5, 6, 7 and 8 and substituting therefor the following :

“5. Foreign companies shall pay such fees for registration as may be prescribed by the Lieutenant Governor in Council;” and

(b) by striking out of paragraph 9 thereof the words “or foreign company.”

28. This Act shall come into force on the day upon which it is assented to.

No. 17.
 The Security
 Frauds
 Prevention
 Act, 1930
 (Alberta),
 Statutes of
 Alberta.
 20 Geo. V.,
 Chapter 8.

No. 17.

The Security Frauds Prevention Act, 1930. Statutes of Alberta. 20 George V. 1930. Chapter 8.

An Act for the prevention of fraud in connection with the sale of securities.

[Assented to April 3, 1930.] 30

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows :

1. This Act may be cited as “*The Security Frauds Prevention Act, 1930.*”

2. In this Act—

(a) “Broker” shall mean every person other than a salesman who engages either for the whole or part of his time directly or through an agent in the business of trading in securities and shall include a company, and such officials of a company or

partnership which trades in securities as may be designated by the Regulations, and shall include a security issuer except where the context clearly indicates the contrary.

(b) "Company" means any incorporated corporation, association or other organisation.

(c) "Fraud" "fraudulent" and "fraudulent act" shall, in addition to their ordinary meaning, include—

(i) any intentional misrepresentation by word, conduct or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;

(ii) any promise or representation as to the future which is beyond reasonable expectation and not made in good faith;

(iii) any fictitious or pretended trade in any security;

(iv) the gaining or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable and unreasonable;

(v) any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser or the vendor of any security as to the nature of any transaction or as to the value of such security;

(vi) the making of any material false statement in any application, information, material or evidence submitted or given to the Attorney General, his representative or the Registrar under the provisions of this Act or the Regulations; or in any prospectus or return filed with the Provincial Secretary;

(vii) the violation of any provision of this Act or of the Regulations relating to trading in securities;

(viii) generally any artifice, agreement, device or scheme, or course of conduct or business to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law and anything specifically designated in the Regulations as coming within the meaning of this definition;

(d) "Person" shall mean an individual, partnership, association, syndicate, and any unincorporated organization.

(e) "Registrar" shall mean the person appointed by the Lieutenant Governor in Council to act as Registrar under the provisions of this Act and the Regulations.

(f) "Regulations" shall mean the Regulations made from time to time by the Lieutenant Governor in Council under the provisions of this Act.

(g) "Salesman" shall mean every person employed, appointed or authorized by any broker or company to trade in securities whether directly or through sub-agents.

Appendix.

No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

10

20

30

40

Appendix.

No. 17.
The Secur-
ity Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

- (h) "Security" shall include—
- (i) any document, instrument or writing commonly known as a security; or
 - (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings, or royalties of any person or company; or
 - (iii) any document constituting evidence of an interest in an association of legatees or heirs; or
 - (iv) any document constituting evidence of an interest in any option given upon a security; or
 - (v) any document designated as a security by the regulations.
- (i) "Security issuer" shall include a company or person, other than an individual, trading in securities of its own issue and not trading generally in other securities.
- (j) "Trade" or "Trading" shall include any solicitation or obtaining of a subscription to, disposition of, transaction in, or attempt to deal in, sell or dispose of a security or interest in or option upon a security for any valuable consideration whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, and any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing or specifically designated as "trade" or "trading" in the Regulations.

PART I.

REGISTRATION OF BROKERS AND SALESMEN.

3. (1) No person shall—
- (a) trade in any security unless he is registered as a broker or salesman of a registered broker; or
 - (b) act as an official of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he, or the partnership, or company is registered as a broker; or
 - (c) act as a salesman of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he is registered as a salesman of a partnership or company which is registered as a broker—

and such registrations have been made in accordance with the provisions of this Act and the Regulations, and any violation of this section shall constitute an offence.

(2) With the approval of the Attorney General, any partnership or company may be registered as a broker, whereupon the partnership or company may trade in securities, and the members and officials of the partnership, and the officials of the company other than branch managers or salesmen of the partnership or company, may act as such without separate registration, and the provisions of this Act, and of the regulations relating to registered persons or companies, shall be deemed to apply to such partnership or company.

(3) Registration shall not be required in respect of any of the following
10 classes of trades or securities :

- (a) A trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorised trustee or assignee, an interim or official receiver or a custodian under *The Bankruptcy Act*, a receiver under *The Judicature Act* or a liquidator under *The Companies Act, 1929*, or *The Winding-Up Act of the Dominion of Canada*.
- (b) An isolated trade in a specific security by or on behalf of the owner, for the owner's account, where such trade is not made
20 in the course of continued and successive transactions of a like character, nor by a person whose usual business is trading in securities.
- (c) A trade where one of the parties is a bank, loan company, trust company or insurance company, or is an official or employee, in the performance of his duties as such, of His Majesty in right of the Dominion or any Province or territory of Canada or of any municipal corporation, or public board or commission in Canada or is registered as a broker under the provisions of this Act.
- (d) A trade by or for the account of a pledgee or mortgagee for the
30 purpose of liquidating a *bona fide* debt by selling or offering for sale or delivery in good faith in the ordinary course of business a security pledged in good faith as security for such debt.
- (e) The distribution, issuance or sale by a Company exclusively to the holders of its securities of capital stock, bonds or other securities as a stock dividend or other distribution out of earnings or surplus, or in the process of a *bona fide* reorganisation of the company, or of additional capital stock where no commission or other remuneration is paid or given in connection therewith.
40
- (f) The exchange by or on account of one company with another company of its own securities in connection with a consolidation, amalgamation or merger of either company.
- (g) A trade in good faith by an actual prospector of a security issued by him for the purpose of financing a prospecting expedition, or for the purpose of disposing of any of his interest in a

Appendix.

—
No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta,
20 Geo. V.,
Chapter 8—
continued.

Appendix.

No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

- mining claim or property staked by or wholly or partly owned by him.
- (h) Securities in which trust funds may lawfully be invested in Alberta.
 - (i) Securities secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the securities secured thereby or where all of the securities secured thereby are sold at the one time.
 - (j) Negotiable promissory notes or commercial paper maturing not more than a year from the date of issue. 10
 - (k) Securities evidencing indebtedness due under any contract made pursuant to the provisions of any statute of any Province of Canada providing for the acquisition of personal property under conditional sale contracts.
 - (l) Securities issued by a person or company organised exclusively for educational, benevolent, fraternal, charitable, or recreational purposes and not for pecuniary profit, where no part of the net earnings thereof enure to the benefit of any security holder.
 - (m) Any class of trade or security specifically exempted from the application of subsections (1) and (2) of this section by the Regulations. 20
 - (n) Securities traded by a company with its employees who are not induced by expectation of employment or continued employment.
 - (o) The issuance of its own securities by a private company.

4.—(1) Unless the Attorney General otherwise directs the Registrar may after the receipt by him of any application for registration cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called “the Register”, the name and address for service of such applicant, whereupon such applicant shall be deemed to be registered as a broker or salesman as the case may be. 30

(2) The Registrar may cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Attorney General.

(3) Registrations shall expire, and may be changed or renewed as the Regulations shall provide.

5.—(1) Every application under this Act or the Regulations shall be made in writing upon the forms provided by the Registrar, and shall be accompanied by the fee prescribed by the Regulations and such bond as may be required. 40

(2) Every applicant, whether domiciled in Alberta or not, shall state in every application an address for service in Alberta, and all notices under this Act or the Regulations and all legal process issued by or on behalf of any person or company shall be sufficiently served for all purposes if posted by registered mail to the applicant at the latest address for service so stated,

and in the case of a non-registered Company where the officials are registered to the latest address of the person registered as the senior official of such company in Alberta.

(3) The Registrar may from time to time and shall when so directed by the Attorney General require any further information or material to be submitted by any applicant or any registered person or company within a specified time limit and may require verification by affidavit or otherwise of any matter then or previously submitted.

10 6.—(1) Every applicant for registration as a broker shall before registration submit a bond by the applicant or the person or company he represents, as the Registrar may require, such bond to be in the sum of five hundred dollars and in such form and upon such condition as the Regulations shall prescribe.

(2) The Registrar may and when so directed by the Attorney General shall require any applicant or any registered person or company within a specified time limit to deliver a bond by a surety company approved by the Attorney General or any other bond in such form and upon such condition as the Regulations shall prescribe, and in such amount as the Regulations or the Attorney General shall require.

20 (3) The Registrar may and when so directed by the Attorney General shall require a new bond of the kind mentioned in subsections (1) or (2) to be filed within a specified time limit.

7.—(1) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby, as a debt to His Majesty in right of the Province of Alberta, when there has been filed with the Registrar the Attorney General's certificate that the broker in respect of whose conduct the bond is conditioned, or any official of the broker, has, in connection with a trade in a security, been—

30 (a) in the case of the bond mentioned in subsection (1) of section 6—

- (i) charged with any criminal offence; or
- (ii) found upon investigation by the Attorney General or his representative to have committed a fraudulent act; or

(b) in the case of the bond mentioned in subsection (2) of section 6—

- (i) convicted of a criminal offence; or
- (ii) convicted of an offence against any provision of this Act or the Regulations; or
- (iii) enjoined by the Supreme Court or a Judge thereof otherwise than by an interim injunction; or
- 40 (iv) a party to civil proceedings in the Courts as a result of which final judgment has been given against such person, company or official in connection with a trade in a security where such judgment is based upon a finding of fraud.

Appendix.

—
No. 17.
The Security Frauds Prevention Act, 1930 (Alberta), Statutes of Alberta.
20 Geo. V—
Chapter 8
continued.

Appendix.

No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

(2) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby, as a debt to His Majesty in right of the Province of Alberta, when there has been filed with the Registrar a certificate signed by the Attorney General that proceedings by or in respect of the broker or salesman in respect of whose conduct the bond is conditioned have been taken under *The Bankruptcy Act*, or by way of winding up.

(3) The Attorney General may assign any bond forfeited under the provisions of subsections (1) or (2), or may pay over any moneys recovered thereunder to any person, or to the clerk of the Supreme Court in trust for such persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company, as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in the Regulations or in any special order of the Lieutenant Governor in Council. 10

8.—(1) The Attorney General may order that—

- (a) any application for registration, renewal, or change of registration shall or shall not be granted for any reason which he may deem sufficient; or that 20
- (b) the application of any person for registration shall not be granted where it appears that such person proposes to use or is using a trading name other than his own, or that of his partner, where such trading name is apt to lead the public to believe it is that of a business firm of longer established standing in Alberta, or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable; or that
- (c) any temporary entry in the register shall be made, suspended or cancelled for any reason which he may deem sufficient; or that 30
- (d) any registration shall be reduced to a temporary registration, or suspended, or cancelled upon—
 - (i) any proceedings being taken by or in respect of the broker under *The Bankruptcy Act* or by way of winding up; or
 - (ii) suspension from any stock exchange of any broker or any representative upon any stock exchange of any broker; or
 - (iii) institution of criminal proceedings against the broker or any official of the broker; or 40
 - (iv) conviction of the broker or an official of the broker of an offence against this Act or the Regulations; or that
- (e) the registration of any broker or salesman shall be suspended for any period or cancelled by reason of default in filing a

bond when required under the provisions of subsections (2) and (3) of section 6; or that

(f) the registration of any broker or salesman shall be suspended as provided in section 10—

and no order of the Attorney General shall be subject to review in any way in any court.

(2) The Registrar upon receiving any order of the Attorney General suspending or cancelling any registration shall cause immediate entry thereof to be made in the register, whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the broker or salesman concerned.

(3) Notwithstanding any order of the Attorney General a further application may be made upon new or other material, or where it is clear that material circumstances have changed.

Appendix.
No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

PART II.

INVESTIGATION AND ACTION BY THE ATTORNEY GENERAL.

9.—(1) The Attorney General, or any person or persons to whom as his representative or representatives he may in writing delegate such authority, may examine any person, company, property or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or of the Regulations has been, is being, or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Supreme Court or a Judge thereof for the trial of civil cases, save that the provisions of rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses shall not apply and save further that no person shall be entitled to claim any privilege in respect of any document, record or thing asked for, given or produced, on the ground that he might be incriminated or exposed to a penalty or to civil litigation thereby, and no evidence given shall be privileged except under *The Alberta Evidence Act* and *The Canada Evidence Act*, and save further that no provisions of *The Alberta Evidence Act* shall exempt any bank or any officer or employee thereof from the operation of this section.

(2) When the Attorney General, or his representative, is about to examine or is examining any person or company under this section the Attorney General may appoint an accountant or other expert to examine documents, records, properties and matters, and report thereon to him.

(3) The failure without reasonable excuse of any person or company to furnish information required by the Registrar under Part I within the time limited, or the failure without reasonable excuse of any person summoned for examination under subsection (1) to appear or his refusal to give evidence or to answer any question, where the evidence or answer

Appendix.
 —
 No. 17.
 The Secur-
 ity Frauds
 Prevention
 Act, 1930
 (Alberta),
 Statutes of
 Alberta.
 20 Geo. V.,
 Chapter 8—
continued.

could be required in an action, or the failure without reasonable excuse or refusal of any person or company to produce anything shall constitute an offence and shall also be *prima facie* evidence upon which—

- (a) the Attorney General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it relevant; or
- (b) the Supreme Court, or a Judge thereof, may grant an interim or permanent injunction; or
- (c) a police magistrate may base a conviction for an offence against this Act or the Regulations.

10

(4) Disclosure by any person other than the Attorney General, his representative or the Registrar, without the consent of any one of them, of any information or evidence obtained or the name of any witness examined or sought to be examined under subsection (1) shall constitute an offence.

10. If the Attorney General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the Regulations, has been, is being, or is about to be committed, the Attorney General—

- (a) may where a registered broker, company or salesman is in 20 his opinion concerned therein, order that the broker, company or salesman and any other registered broker, company or salesman connected with the same organisation, be suspended from registration for any period not exceeding ten days; or
- (b) may where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 11 or otherwise under this Act or the Regulations; or
- (c) may give notice of the fraudulent act to the public by 30 advertisement or otherwise or to any individual by letter or otherwise, whenever he deems it advisable.

11.—(1) The Supreme Court or any judge thereof is hereby empowered upon the application of the Attorney General, where it is made to appear upon the material filed or evidence adduced that any fraudulent act, or any offence against this Act or the Regulations has been, is being or is about to be committed may by order enjoin—

- (a) any registered broker, company or salesman or any person or company implicated with any of them in the same matter from trading in any security whatever absolutely or for 40 such period of time as shall seem just, and any such injunction shall *ipso facto* suspend the registration of any registered person or company named in the order during the same period; or

- (b) any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts absolutely or for such period of time as shall seem just.
- (2) The application of the Attorney General under subsection (1) may be made without any action being instituted, either—
- (a) by an *ex parte* motion for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause (b) hereof is sooner heard and determined; or
- (b) by an originating notice of motion, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction.

10

20

(3) Any information, evidence, exhibit or thing obtained by the Attorney General or his representative or the Registrar under the provisions of this Act or the Regulations, or copies thereof, or statement that a person or company is or is not registered or other data concerning registration certified by the Attorney General or the Registrar without proof of the office or signature of the person certifying, shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution and, in proceedings under this section only, the evidence of a witness may be used against him notwithstanding anything in *The Alberta Evidence Act* contained.

12.—(1) The Attorney General may—

- (a) when he is about to examine or during or after the examination of any person or company under the provisions of section 9; or
- (b) when he is about to apply for or has applied for or has obtained an injunction interim or otherwise against any person or company under the provisions of section 11; or
- (c) where criminal proceedings which in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the accused are about to be or have been instituted against any person—

30

40

in writing or by telegram direct any person or company having in Alberta on deposit or under control or for safe keeping any funds or securities of the person or company so to be or actually examined, enjoined or charged, to hold such funds or securities or direct the person or company so to be or actually examined, enjoined or charged to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safe keeping, or to hold all funds or securities of clients or others in his possession or control in trust for any interim receiver, custodian, trustee,

Appendix.

—
No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

Appendix.
—
No. 17.
The Secur-
ity Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

receiver or liquidator appointed under the provisions of *The Bankruptcy Act, The Judicature Act, The Companies Act, 1929, or The Winding-up Act of the Dominion of Canada*, or until the Attorney General in writing revokes such direction or consents to release any particular fund or security from such direction, and failure without reasonable excuse by any person or company to comply with any such direction shall constitute an offence :

Provided that no such direction shall apply to funds or securities in a stock exchange clearing house nor to securities in process of transfer by a transfer agent unless such direction expressly so states, and in the case of a bank, loan or trust company the direction shall only apply to the offices, branches or agencies thereof named in the direction. 10

(2) Any person or company in receipt of a direction given under subsection (1), if in doubt as to the application of such direction to any funds or security, or in case of a claim being made thereto by any person or company not named in such direction, may apply to the Supreme Court or a judge thereof who may direct the disposition of such funds or security and may make such order as to costs as may seem just.

(3) In any of the circumstances mentioned in clauses (a), (b) or (c) of subsection (1), the Attorney General may in writing or by telegram notify any Registrar of Land Titles or other proper officer that proceedings are being or are about to be taken which may affect land belonging to the person or company referred to in the said notice which notice shall be registered against the lands mentioned therein and shall have the same effect as the registration of a certificate of *lis pendens*, save that the Attorney General may in writing revoke or modify such notice. 20

(4) The Attorney General, whenever His Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of sections 6 and 7 may take such proceedings as he shall see fit under *The Bankruptcy Act, The Judicature Act, The Companies Act, 1929, or The Winding-up Act of the Dominion of Canada* for the appointment of an interim receiver, custodian, trustee, receiver or liquidator as the case may be. 30

PART III.

AUDIT, ACCOUNTS, INFORMATION.

13.—(1) In this Part—

- (a) "Brokers' Auditor" shall mean an accountant whose name is on the panel of accountants approved by an executive committee.
- (b) "Exchange Auditor" shall mean an accountant who shall have practised as such in the Province for not less than five years and who is employed by the executive committee. 40
- (c) "Executive Committee" shall include the board of directors, managing committee or other governing committee of a stock exchange in Alberta.

(2) Every executive committee shall from time to time select a panel of accountants, each of whom shall have practised as such in Alberta for not less than five years and shall be known as a brokers' auditor, and shall also employ an exchange auditor.

(3) The executive committee shall allot to each brokers' auditor the persons or companies, whether members of or represented upon the exchange, which are to be audited by him, and all of the expenses of every audit are to be paid to the brokers' auditors by the executive committee, subject to full repayment forthwith by the person or company audited, and until such repayment is made the executive committee shall have a lien upon the seat belonging to or controlled by the person or company so indebted to the executive committee.

(4) Every brokers' auditor shall in each year audit the assets and liabilities as at a permanent date in each year fixed by the executive committee and prepare a balance sheet showing the position as at such date of the business and affairs of each person or company allotted to him, and shall also in each year make a like audit and prepare a like balance sheet as of a date designated by the executive committee, such last mentioned date to be not earlier than four months nor later than eight months from the permanent date in such year, and shall also make such further audit and prepare such further statements and make such further reports as such auditor may think advisable or as the executive committee may direct; no warning or notice shall in any way be given of any audit, other than that of the permanent date.

(5) The executive committee of a stock exchange may at any time require any brokers' auditor upon the panel of accountants of the exchange to make any general or special audit or report upon the whole or any aspect of the business or affairs of any person or company who is or has been a member of or in any way represented upon the exchange.

(6) Every brokers' auditor, for the purpose of any audit under the provisions of this section shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence, and records of every description of the person or company being audited, and any person or company withholding, destroying, concealing or refusing to give any information or thing reasonably required by the auditor for the purpose of his audit, shall be guilty of an offence.

(7) Every brokers' auditor during or upon the completion of every statement and audit under the provisions of this section shall send a copy of every report whether interim or final to the exchange auditor and shall in addition specially report to such auditor any particular information which may be required under the by-laws, rules or regulations of the exchange, and any further information which the brokers' auditor deems it to be in the public interest so to report, and the exchange auditor shall summarize all information so received, and report thereon to the executive committee for scrutiny, identifying the person or company affected thereby by number only until the executive committee decides to take action in respect of any

Appendix.

No. 17.
The Security Frauds
Prevention
Act, 1930
(Alberta),
Statutes of
Alberta.
20 Geo. V.,
Chapter 8—
continued.

Appendix.
 No. 17.
 The Secur-
 ity Frauds
 Prevention
 Act, 1930
 (Alberta),
 Statutes of
 Alberta.
 20 Geo. V.,
 Chapter 8—
continued.

such person or company, or until the exchange auditor thinks it advisable in the public interest or in the interests of the exchange to disclose such name to the executive committee and the exchange auditor may in any report make such recommendations as he thinks advisable.

(8) Any person designated in writing by an executive committee may examine under oath any member of the exchange or any officer of any company represented thereon, or any associate or employee of any such person or company upon any matter arising out of any report of a brokers' auditor and for the purposes of such inquiry the person so designated shall have all the powers which a representative of the Attorney General may exercise 10 under section 9 hereof.

(9) Any executive committee may in writing, require any person or company whose affairs have been audited or are being audited to alter, supplement or replace any system of book or record keeping in any manner and to comply with any recommendation made by the exchange auditor, and any requirement of such executive committee.

(10) Failure by any person or company, a member of or represented upon any stock exchange, to comply with any requirement of the executive committee of the exchange, or any person designated by it under subsection (8) hereof, shall constitute an offence and shall entitle the executive committee 20 to suspend such person or member representing such company for such period as the said committee shall determine.

(11) No action shall lie against any stock exchange, executive committee or any member thereof, or any person designated by it under subsection (8) hereof, or against any brokers' or exchange auditor in respect of any act or proceeding, under the provisions of this section.

(12) Every broker not subject to audit under the preceding sections of this Part, shall file with the registrar annually, and at such other times as the Registrar may require, a certificate satisfactory to the Registrar as to the financial position of the broker, signed by the broker or by two of the partners 30 or officials thereof, and by an independent accountant approved by the Registrar, and in addition thereto the Registrar may at any time require, a financial statement in any form, from the broker, certified as aforesaid, and failure, without reasonable excuse, to comply with the provisions of this section or the requirements of the Registrar thereunder shall constitute an offence.

PART IV.

REGULATION OF TRADING.

14.—(1) Whenever a person, or a member or employee of a partnership, or a director, officer or employee of a corporation, after he, or the 40 partnership or corporation, has contracted as a broker with any customer to buy and carry upon margin any securities of any incorporated or unincorporated company or undertaking either in Canada or elsewhere, and while

such contract continues, sells or causes to be sold, securities of the same company or undertaking for any account in which—

- (a) he; or
- (b) his firm or a partner thereof; or
- (c) the corporation or a director thereof—has a direct or indirect interest, if the effect of such sale shall otherwise than unintentionally be to reduce the amount of such securities in the hands of the broker or under his control in the ordinary course of business below the amount of such securities which he should be carrying for all customers, any such contract with a customer shall at the option of such customer be void, and the customer may recover from the broker all moneys paid with interest thereon or securities deposited in respect thereof, and the broker shall be guilty of an offence.

10

(2) The customer may exercise such option by a registered letter to that effect addressed to the broker at his address for service in this Province.

15. Every broker who has acted as an agent for a customer shall promptly send or deliver to each customer for whom any security has been bought or sold by the broker, a written confirmation of the transaction, setting forth—

20

- (a) the quantity and description of the security;
- (b) the name of the person or company from or to or through whom the security was bought or sold;
- (c) the day, and name of the stock exchange upon which the transaction took place—

and failure, without reasonable excuse, to comply herewith shall constitute an offence.

30

16. Every stock exchange shall keep a record showing the time at which each transaction on such exchange took place and shall supply to any customer of any member of such exchange, upon production of any written confirmation of any transaction with any such member, particulars of the time at which such transaction took place and verification or otherwise of the matters set forth in such confirmation, but the exchange shall not be bound to comply with this section after the expiration of two years from the date of any such transaction.

PART V.

GENERAL PROVISIONS.

17.—(1) A judge of the Supreme Court in exercising any of the powers conferred upon such judge by this Act shall be deemed so to act as a judge of such court and not as *persona designata*.

40

(2) The Attorney-General shall in all proceedings under this Act or the Regulations be deemed to be acting as the representative of His Majesty in the right of the Province of Alberta, and not as *persona designata*.

Appendix.
 —
 No. 17.
 The Security Frauds
 Prevention
 Act, 1930
 (Alberta),
 Statutes of
 Alberta.
 20 Geo. V.,
 Chapter 8—
continued.

(3) The provisions of *The Judicature Act* and so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, shall apply to every proceeding before the Supreme Court or a judge thereof under the provisions of this Act, save that service of notices and other legal process shall be in accordance with subsection (2) of section 5 and save that costs may be awarded to but not against the Attorney General.

18. No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the Regulations where such person is the Attorney General or his representative, or the Registrar or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a judge thereof made under the provisions of this Act. 10

19. The Lieutenant Governor in Council may make and from time to time amend, alter or repeal regulations not inconsistent with this Act for the better carrying out of the provisions of this Act for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in Alberta for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in *The Alberta Gazette*. 20

20.—(1) Every person who violates any provision of this Act or the Regulations designated as an offence, or who does any fraudulent act not punishable under the provisions of *The Criminal Code of Canada*, shall be liable upon summary conviction thereof to a penalty of not more than one thousand dollars for a first offence, nor two thousand dollars for a second or subsequent offence, and in case of either a first or a subsequent offence either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months. 30

(2) The provisions of subsection (1) shall be deemed to apply, *mutatis mutandis*, to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding twenty-five thousand dollars.

(3) Where any company is convicted under this Act the magistrate may direct that, in default of payment of the penalty imposed, proportionate parts thereof shall be paid by such officers, directors, officials or employees of the company, and in such amounts as he shall designate, having regard to their respective degrees of culpability, and in default of payment by any person so designated the magistrate may impose a penalty of imprisonment for a term not exceeding six months. 40

(4) No proceedings under this section shall be instituted except with the consent or under the direction of the Attorney General. Appendix.

21. Where in consequence of an investigation under Part II of this Act, any person or company has been— No. 17.
The Security Frauds Prevention Act, 1930 (Alberta), Statutes of Alberta.
20 Geo. V., Chapter 8—
continued.

- (a) convicted of a criminal offence; or
 (b) convicted of an offence against any provision of this Act or the Regulations; or
 (c) enjoined by the Supreme Court or a judge thereof otherwise than by an interim injunction; or
 10 (d) examined, and documents, records, properties or matters have been examined by an accountant or other expert appointed by the Attorney General—

the Attorney General may certify in writing as to the costs of the investigation and shall be entitled to take such proceedings as are available to a judgment creditor for the collection from such person or company of the sum set forth in such certificate, which sum shall be a debt to His Majesty in right of the Province of Alberta.

22.—(1) Where a police magistrate or justice of another province issues a warrant for the arrest of any person on a charge of violating any provision of *The Security Frauds Prevention Act* or any similar statute of that Province, any police magistrate or justice of Alberta within whose jurisdiction that person is or is suspected to be may upon satisfactory proof of the handwriting of the police magistrate or justice who issues the warrant make an endorsement thereon in the form prescribed by the Regulations, and a warrant so endorsed shall be sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all police constables within the territorial jurisdiction of the police magistrate or justice so endorsing the warrant to execute it within that jurisdiction, and to take 30 the person arrested thereunder either out of or anywhere in Alberta and to rearrest such person anywhere in Alberta.

(2) Any police constable of Alberta or of any other province of Canada who is passing through Alberta having in his custody a person arrested in another Province under a warrant endorsed in pursuance of subsection (1) hereof shall be entitled to hold, take and rearrest the accused anywhere in Alberta under such warrant without proof of the warrant or the endorsement thereof.

23. *The Security Frauds Prevention Act, 1929*, is hereby repealed.

24. This Act shall come into force upon a date to be fixed by 40 Proclamation of the Lieutenant Governor in Council.

Appendix.

No. 18.
Regulations
made pur-
suant to
The Secur-
ity Frauds
Prevention
Act.

Interpreta-
tion sections
of Act
apply.
Act.

Non-
brokerage.

Official.

Security.

Trade,
trading.

No. 18.

Regulations made pursuant to The Security Frauds Prevention Act.

PART I.

DEFINITIONS.

1. The interpretation provisions of the Act, as extended or amended from time to time by regulation, shall apply to these regulations.

2. "Act" shall mean The Security Frauds Prevention Act, 1929.

3. "Non-brokerage" as applied to a company or un- 10
incorporated organization means that registration is sought to authorize trading in securities of its own issue and not general trading with the public in other securities.

4. "Official" wherever used in the Act and regulations shall include the president, vice-president, secretary, treasurer, general manager, department and branch office managers, and all other officers acting in a similar capacity whether so designated or not.

5. "Security" in addition to the definition contained in clause (h) of Section 2 of the Act shall, without in any way 20
restricting the generality of such definition, include any bond, debenture, share, stock, note, unit, unit certificate, any participation certificate, certificate of share or interest, pre-organization certificate or subscription, certificate of share or interest in a trust estate or association, profit-sharing agreement or certificate, certificate of interest in an oil, gas or mining lease, claim or royalty voting trust certificate, collateral trust certificate, income or annuity contract not issued by an insurance company, bankers' share, trustees' share, investment contract, investment participating bond, or investment trust debenture, 30
bond, debenture, share, stock note, unit or certificate bond upon any security whether any of the foregoing relate to a person, proposed company or company, as the case may be.

6. "Trade" or "trading," in addition to the definition contained in clause (i) of Section 2 of the Act, shall, without in any way restricting the generality of such definition, include participation as a floor trader in any transaction in a security upon the floor of any stock exchange, and also any receipt by a broker or salesman of an order to buy or sell a security, whether the order is received over the telephone or in person and whether 40
the recipient receives such order as a broker or salesman or on behalf of a broker.

PART II.

EXEMPTIONS.

- 7.** Subsections (1) and (2) of Section 3 of the Act shall not apply to any person in respect to any of the following classes of trades or securities :
- Exemptions. Securities sold at one time. Non-trading employees' transactions.
- (1) Securities secured by mortgage upon real estate or tangible personal property where all of the securities secured thereby are sold at the one time.
- (2) Trades in securities which may occasionally be transacted by employees of a registered broker (whether individual, partnership or company) where such employees do not usually sell securities to the public and have been temporarily designated by the Registrar as "non-trading" employees, either individually or as a class.

Appendix.

No. 18.
Regulations made pursuant to The Security Frauds Prevention Act—continued.

PART III.

REGISTRATION, ETC.

- 8.** The forms of application shall be as prescribed from time to time by the Registrar, and shall be printed in triplicate, each set being numbered, the various classes of forms being printed on paper of different colours as indicated below :
- Forms of application. 20
- Broker (Brokerage) (Individual, partnership or company or official thereof). Triplicate Blue - Form A.
- Broker (Non-brokerage) (Company, unincorporated organization or official of either). Triplicate Brown - Form B.
- 30 Salesman - - - Triplicate Salmon - Form C.

- 9.** The bonds mentioned in subsection (1) of Section 6 of the Act, hereinafter called "\$500 bonds," and the bonds mentioned in subsection (2) of the said section, hereinafter called "surety bonds" shall be in Forms D and E, respectively, attached to these regulations, and shall be conditioned as therein set forth and printed in the sets and colours of paper indicated below :
- Forms of bonds.

\$500 Bond - - - Duplicate Gray - Form D.
Surety Bond - - - Triplicate Green - Form E.

Appendix. Request for
forms.
—
No. 18.
Regulations
made pur-
suant to
The Secur-
ity Frauds
Prevention
Act—con-
tinued.

Fees.

10. Every request for registration shall be made by letter to the Registrar, enclosing a certified cheque, money order or postal note, made payable to the Provincial Treasurer of Alberta, for the fee, which shall be \$5 in the case of a salesman whose employer is or is to be registered, and \$25 in all other cases, and shall state whether registration is sought for brokerage trading as an individual, partnership, company or official thereof, or for non-brokerage trading as a company, unincorporated organization, or official thereof, or for trading as a salesman, and the salesman shall also state the name and address of his employer and whether the employer has applied or will apply for registration. 10

Provided that in the year 1929, the fee payable on registration, except in the case of a salesman whose employer is or is to be registered, shall be such proportion of the sum of \$25 as the number of months remaining of the period of registration bears to the whole of the said year.

Provided further, that the minimum fee hereunder shall be \$10.

Return of
forms.

11. The Registrar shall cause a receipt, together with proper forms, to be sent to every applicant forthwith, including in the case of every applicant other than a salesman, the \$500 bond forms, and in the case of a salesman whose employer has not applied for registration, or is in the opinion of the Registrar unlikely to do so, the surety bond forms, and the applicant shall, when the application forms are completed and the bonds executed, return to the Registrar the application in duplicate and an original bond. 20

Employers
may ask for
registration
of em-
ployees.

12. Applicants for registration whose officials or employees must also be registered as brokers or salesmen may in the letter mentioned in Regulation 10 make application on behalf of such officials or employees, naming them, and may enclose a single cheque to cover all fees, setting forth in the letter the amount paid by each, but the forms shall be completed by each official or employee. 30

Receipt of
applica-
tions.

13. Application forms completed for registration shall be deemed to have been first received by the Registrar on the date of receipt stamped thereon in his office, and he shall forthwith send one of the duplicate applications to the Attorney General, and satisfy himself that all questions have been properly answered and that any bond has been properly executed. 40

Registra-
tions of
applica-
tions.

14.—(a) The Register shall consist of an alphabetically indexed book in which sheets may readily be inserted comprising four separate parts and indices, Part I and Part II

being for brokers, Part III for salesmen and Part IV for suspensions and cancellations.

(b) In Parts I and II shall be entered the names of brokers or such officials as must be registered separately, together with the application number, the latest address for service and other matters, and where the person registered is an official, the name of the organization, partnership or company he represents and the name and address of the senior official in Alberta.

10 Salesman. (c) In Part III shall be entered the name of each salesman, his application number, the name of his employer, the salesman's latest address for service, and other matters.

Suspensions and cancellations. (d) In Part IV shall be entered the name of the broker or salesman whose registration is suspended or cancelled, the application number, the date of the order of suspension or cancellation, by whom it was made, and the termination of the suspension and the fact of such suspension or cancellation, shall also be indicated by writing the word "suspended" or "cancelled," as the case may be, in red ink opposite the name in the broker's or salesman's part of the Register, and upon the termination of such suspension all entries in the Register relating thereto shall be ruled out in green ink.

20

Temporary entries. **15.** Where a temporary entry is authorized the proper particulars shall be entered in the Register, followed by a capital "T," which shall be ruled out in green ink when the entry is made a full registration.

Lists of officials and employers. **16.** Where officials or salesmen of any registered broker are also registered, a complete list of such officials or salesmen, with their application numbers, shall be kept with the file of such registered broker and such list shall be kept up to date by the brokers employing them.

30

Files. **17.** The application and other papers of each applicant shall be filed in accordance with the application number, and the name of every applicant, with the application number and of every partnership or company, non-brokerage or brokerage, of which an official is separately registered, with cross-references to the name of such official, shall be entered alphabetically in a general index book.

Disposition of fees. **18.** The Registrar shall cause all cheques, money orders and postal notes to be deposited with the Provincial Treasurer daily to the credit of the General Revenue Fund.

40

Refunds. **19.** The Registrar shall, where any application is refused, make a refund to the applicant of the amount of the fee which accompanied the application, but no refund shall be made where there has been a temporary registration.

Appendix.

No. 18.
Regulations
made pursuant to
The Security Frauds
Prevention
Act—continued.

Appendix.
—
No. 18.
Regulations
made pur-
suant to
The Secur-
ity Frauds
Prevention
Act—con-
tinued.

Lapse of registration. **20.** Registration under the Act shall lapse on the 31st day of December.

Changes. **21.** Every registered person or company shall apply by letter to the Registrar for—

(a) change in registration whenever any change takes place in the members of the partnership or directors or officials of the company set forth in the latest application form on record, giving full particulars of the change, and enclosing an alteration fee of \$1 by certified cheque, money order or postal note; or

Renewals. (b) renewal of registration on or before the 21st day of December, giving full particulars of any change which there will be on the 31st day of December, in the facts set forth in the latest application form on record, and enclosing the proper fee as upon a first application—

and the Registrar shall cause such change in or renewal of registration to be made, unless in his opinion such changes have or will have occurred as have altered or will alter the circumstances in respect of which registration was previously granted so materially that an entirely new application is required, in which case the Registrar shall so notify the applicant, who shall thereupon proceed as if upon a new application, and a salesman who has changed his employer shall always be required to make a new application.

Change of saleman's employer material.

Registration not to be advertised, etc.

22. No registered person or company shall hold himself or itself out as registered, either directly or indirectly, nor exhibit to any of the public any letter, receipt or copy thereof received from the Registrar, nor advertise the registration in any way, save to state to inquirers the name in which such registration stands and the number of the application form sent to the Registrar, and any violation of this regulation shall constitute an offence.

Designation of non-trading employee may be cancelled.

23. The Registrar may, with the approval of the Attorney General or his representative, designate as "non-trading" any employee or class of employees of a registered broker (whether an individual, partnership or company) not usually selling securities to the public, but such designation shall be temporary only and shall be cancelled at any time as to any employee or class of employees whenever the Registrar or the Attorney General or his representative is satisfied that any such employee or member of any such class of employees should be required to apply for registration as a salesman, whereupon notice thereof with proper application forms shall be sent to the employer.

FORM D.

\$500 BOND UNDER THE SECURITY FRAUDS PREVENTION ACT, 1929.

KNOW ALL MEN BY THESE PRESENTS that I/We.....

(insert the name of individual, partners)

(or company, as the case may be)

of the.....of.....in the.....of
....., Obligor, am/are/is held and firmly bound unto His
10 Majesty the King in the right of the Province of Alberta, Obligee, in the
penal sum of Five hundred Dollars (\$500) to be paid to the said Obligee
or to his heirs, successors or assigns, for which payment well and truly to
be made, I/we the said Company bind my/our/its sel , my/our heirs,
executors and administrators (its successors and assigns) firmly by these
presents.

SEALED with my/our seal , and dated this.....
day of....., 19.....

SEALED with the corporate seal of the Obligor, attested by the hands
of its proper officers in that behalf, and dated this.....day of
20, 19.....

WITNESS :

NOW THE CONDITION of the above written obligation is such that if the
said Obligor shall at all times hereafter well and truly comply with the
provisions of the criminal law in force in the Province of Alberta and with
the provisions of The Security Frauds Prevention Act, 1929, and the regula-
tions made thereunder, and if the Obligor be not charged at any time here-
after with any criminal offence, nor be found by the Attorney General of
Alberta or his representative upon investigation under the said Act to have
30 committed any fraudulent act, then the above written obligation shall be
void, but otherwise shall be and remain in full force and virtue, and shall
be forfeit in the manner provided by the provisions of Section 7 of the said
Act.

SIGNED SEALED AND DELIVERED }
in the presence of }

Appendix.

No. 18.
Regulations
made pur-
suant to
The Secur-
ity Frauds
Prevention
Act—con-
tinued.

Appendix. FORM E.

No. 18. Regulations made pursuant to The Security Frauds Prevention Act—continued.

SURETY BOND UNDER THE SECURITY FRAUDS PREVENTION ACT, 1929.

KNOW ALL MEN BY THESE PRESENTS, that.....

(full corporation name)

of the.....of.....in the.....of....., is held and firmly bound unto His Majesty the King in the right of the Province of Alberta, in the penal sum of..... 10 to be paid to His said Majesty or to his heirs, successors or assigns, for which payment well and truly to be made, the said Company binds itself, its successors and assigns firmly by these presents.

SEALED with the corporate seal of the said Company attested by the hands of its proper officers in that behalf, and dated this..... day of.....19.....

WITNESS :

NOW THE CONDITION of the above written obligation is such that if 20 upon and after registration as a..... under The Security Frauds Prevention Act, 1929, and Regulations made thereunder, shall at all times hereafter well and truly comply with the provisions of the criminal law in force in the Province of Alberta and with the provisions of the said Act and Regulations, and if the said..... 30 be not convicted at any time hereafter of any criminal offence, and if the said..... be not convicted at any time hereafter of any offence against any provision of the said Act or the Regulations, and if the said..... be not enjoined under the said Act by the Supreme Court or a Judge thereof, otherwise than by an interim injunction, then the above written obligation shall be void, but otherwise shall be and remain in full force and virtue and shall be forfeit in the manner provided by the provisions of Section 7 of the said Act.

SIGNED, SEALED, AND DELIVERED } in the presence of }



No. 19.

The Canada Evidence Act.

Revised Statutes of Canada, 1927, Chapter 59.

* * * * *

5. No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

10 (2) If with respect to any question a witness objects to answer upon the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the act of any provincial legislature, the witness would therefore have been excused from answering such question, then although the witness is by reason of this Act, or by reason of such provincial act, compelled to answer, the answer so given shall not be used or receivable in evidence against him in any criminal trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence.

* * * * *

Appendix.

No. 19.
The Canada
Evidence
Act.
R.S.C. 1927,
chap. 59.

Appendix.

No. 20.

No. 20.
An Act to
amend the
Criminal
Code.
20-21 Geo.
V., ch. 11
(Canada).

An Act to Amend the Criminal Code.
Statutes of Canada, 1930, 20-21 George V, Chapter 11.

[Assented to 30th May, 1930.]

* * * * *

5. The said Act is further amended by adding immediately after section two hundred and thirty-one thereof the following :—

“ 231A. Every person is guilty of an indictable offence and liable to seven years imprisonment, who, being an individual, or a member or employee of a partnership, or a director, officer or em- 10
ployee of a corporation, where he or the partnership, or corporation is employed as a broker by any customer to buy and carry upon margin any shares of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, thereafter sells or causes to be sold shares of such company or undertaking for any account in which

- (a) he, or
- (b) his firm or a partner thereof, or
- (c) the corporation or a director thereof

has a direct or indirect interest, if the effect of such sale shall other- 20
wise than unintentionally be to reduce the amount of such shares in the hands of the broker or under his control in the ordinary course of business below the amount of such shares which the broker should be carrying for all customers.”

* * * * *

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.*

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,

17, Victoria Street,

Westminster, S.W.1.

For the Appellants.

LAWRENCE JONES & Co.,

Lloyds Building,

Leadenhall Street, E.C.3.

For the Respondents.