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No. 34.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF—Three Bills passed by the Legislative Assembly of the Province of Alberta at the 1937 (Third Session) thereof, entitled respectively :

“ An Act Respecting the Taxation of Banks ”;

“ An Act to Amend and Consolidate the Credit of Alberta Regulation Act ”; and

10 “ An Act to Ensure the Publication of Accurate News and Information ”;

and reserved by the Lieutenant Governor for the signification of the Governor-General's pleasure.

FACTUM OF THE ATTORNEY GENERAL FOR ALBERTA ON  
BILL NO. 9 (PRESS BILL).

1. This is a reference by Order of His Excellency the Governor-General in Council (P.C. 2749, dated November 2nd, 1937) pursuant to Section 55 of the Supreme Court Act. By the Order the Court is asked for its opinion upon the question of the competence of the Legislature of Alberta to enact statutes in the terms of certain Bills, among others Bill No. 9, entitled  
20 “ *An Act to Ensure the Publication of Accurate News and Information* ”, passed at the Fifth Session of the Eighth Legislative Assembly of the Province of Alberta, and reserved for the signification of the Governor-General's pleasure on October 5th, 1937.

2. The main provisions of the Bill are very simple. They require any newspaper published in the Province which has printed “ any statement relating to any policy or activity of the Government of the Province ”  
(a) to publish at the request of the Chairman of a statutory Board a statement in correction or amplification of the original statement, and (b) to  
30 supply upon request the names, addresses and occupations of the persons from whom the paper obtained the information upon which the original statement was based. No libel action lies against the newspaper by reason of anything contained in a statement of which the provisions of the Bill require the publication.

3. The section of the Bill dealing with the furnishing of the names, etc. of persons from whom information is obtained is in its terms not restricted to persons who have supplied information forming the basis of statements relating to any policy or activity of the Government of the Province. In the submission of the Attorney General, however, it must nevertheless be construed as so restricted having regard to the recital of the Bill and to its  
40 other provisions. It would not appear in any event that the competence

of the provincial Legislature to enact it would be affected by a choice between a broad and narrow construction of the section.

4. For breach of the provisions of the Bill penalties by way of fine may be imposed upon and recovered from the persons responsible, and in case the guilty person is the proprietor, publisher or manager of a newspaper, the Lieutenant-Governor in Council is empowered to forbid the newspaper to continue publication, or alternatively to forbid the inclusion in further issues of anything written by or based upon information emanating from any individual specified in the order.

5. It is difficult to see any possible ground upon which it can be contended that the enactment of the Bill would in any way exceed the powers of the Legislature of the Province. All that the Bill does is to impose certain civil obligations upon those who are responsible for the publication within the Province of a "newspaper" as the Bill defines that word. 10

6. This definition is substantially the same as that contained in the *Libel and Slander Act*, R.S.A. (1922), c. 101, which has long been in force and has, with respect to newspapers, a field of operation substantially identical with that of the Bill. The chief difference between the two measures is that whereas the newspaper clauses of the Act are generally directed to limiting the rights of members of the public against publishers of newspapers, the Bill operates to impose obligations on such publishers in favour of the provincial administration. 20

7. These obligations are not onerous. The main one is that newspaper publishers are required on request to publish items in amplification or correction of items of a certain class which the Chairman of the Social Credit Board regards as inaccurate or incomplete, and even this obligation is limited: the correcting or amplifying item may not be longer than that which it corrects or amplifies. The only further obligation is that of disclosing, on a like request, the source from which the newspaper obtained the information upon which it based the item. 30

8. The first of these obligations is very closely analogous to the right given a publisher by the *Libel and Slander Act* to escape liability for a libellous statement by the publication of an apology, the chief point of distinction being that the newspaper selects its own form of apology, whereas the form and length of the correcting or amplifying item is dictated to it. The imposition of the second obligation merely reverses the rule as to discovery by virtue of which at common law a newspaper sued for libel is not required to disclose the source from which it obtained the information upon which it founded the libellous item: *Hays v. Weiland*, (1918) 42 O.L.R. 637, *per* Hodgins, J.A. at pp. 642-3. 40

9. It is submitted that the character of the civil remedies afforded by law for the publication of libellous statements is very clearly within the competence of a provincial Legislature and that the provisions of the Bill giving new remedies in respect of the publication of certain misleading statements fall well within the same field. It has never been suggested

that in enacting the *Libel and Slander Act* the Legislature of Alberta exceeded its powers, and legislative competence can clearly not depend upon whether the legislation confers advantages or imposes burdens. It is submitted that if this Bill were *ultra vires*, the *Libel and Slander Act*, insofar as it relates to newspapers, must equally be so.

10. There appears, however, to be no ground upon which it can be contended that the business of newspaper publishing is distinguishable from other businesses upon the conduct of which restrictions have been placed by provincial statutes which have either been supported by the  
 10 Courts or have remained uncontested. Reference may be made by way of example to *Citizens v. Parsons*, (1881) 7 App. Cas. 96 (compulsory clauses of fire insurance policies); *Rex v. Nat Bell Liquors*, (1922) 2 A.C. 128 (storage and export of intoxicating liquors); *Lymburn v. Mayland*, (1932) A.C. 318 (regulation of security salesmen), *Rex v. Arcadia Coal Co. Ltd.*, 26 A.L.R. 348, (1932) 1 W.W.R. 771 (bonding of coal mine operators); *Royal Bank v. Workmen's Compensation Board*, (1936) S.C.R. 560, per Davis, J., at p. 569 (lumbering), and to the numerous statutes referred to in the schedule to this factum.

11. There is, it is submitted, no legislative head mentioned in section  
 20 91 of the *British North America Act*, 1867, under which the legislation in the terms of the Bill could be said conceivably to come, and if that is so, the subject dealt with being property and civil rights within the Province, there remains no ground upon which it can be contended that the enactment of the Bill would be *ultra vires* of the Legislature.

12. The Attorney General for Alberta repeats, with respect to this Bill, without reprinting them, the submissions contained in the other  
 30 factums submitted by him on this reference on the questions (1) of the propriety of the Court's considering the wisdom, policy or expediency of the measure, (2) of the relevance of paragraphs 1 to 3 of the Order of Reference, and (3) of the applicability of the provisions of the Bill to companies incorporated under the laws of Canada. The first two questions are dealt with in the factum on Bill No. 1 (Bank Taxation) and the third in that on Bill No. 8 (Credit Regulation).

13. The Attorney General for Alberta therefore submits that the third question referred to this Court for its opinion should be answered in the affirmative as to all the provisions of the Bill.

O. M. BIGGAR,

W. S. GRAY,

J. J. FRAWLEY,

of Counsel for  
 Attorney-General of Alberta.

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## SCHEDULE.

In addition to numerous statutes relating to the practice of various professions, the Revised Statutes of Alberta, 1922, contain the following among other statutes regulating the conduct of specific businesses :—

Travelling Shows Act, c. 38	
Railway Act, c. 48	
Stallion Enrolment Act, c. 68 (See 1924, c. 23).	
Stock Inspection Act, c. 69.	
Warehouseman's Lien Act, c. 105.	
Hotel Keeper's Act, c. 106 (See 1937, c. 16).	10
Livery Stable Keeper's Act, c. 107.	
Factors Act, c. 147.	
Sale of Eggs Act, c. 153.	
Dairymen's Act, c. 162.	
Water, Electric and Telephone Companies Act, c. 168.	
Sale of Shares Act, c. 169 (See 1930, c. 8).	
Insurance Act, c. 171 (See 1926, c. 31).	
Life Insurance Beneficiaries Act, c. 172 (See 1926, c. 31).	
Mutual Fire Insurance Act, c. 173 (See 1926, c. 31).	
Workmen's Compensation Act, c. 176.	20
Workmen's Compensation Act (Accident Fund), c. 177.	
Thresher's Lien Act, c. 183 (See 1934, c. 28).	
Thresher's Employees Lien Act, c. 184.	
Woodmen's Lien Act, c. 185.	
Factories Act, c. 186 (See 1926, c. 52).	
Theatres Act, c. 188 (See 1927, c. 46).	
Mines Act, c. 190 (See 1930, c. 24).	
Boilers Act, c. 191 (See 1929, c. 31).	
Electrical Property Act, c. 192 (See 1930, c. 43).	
Building Trades Act, c. 193.	30
Produce Merchants' Act, c. 212.	
Tobacco Act, c. 219.	
Liquor Act, c. 226 (See 1924, c. 5).	
Liquor Export Act, c. 227 (See 1924, c. 5).	
Restaurant Act, c. 228.	
Billiard Room Act, c. 229.	

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