In the Privy Council.

No. 48 of 1938.

ON APPEAL FROM 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

"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.

BETWEEN

THE ATTORNEY-GENERAL OF ALBERTA - *Appellant*

AND

THE ATTORNEY-GENERAL OF CANADA; THE CANADIAN PRESS AND NEWSPAPERS' ASSOCIATIONS; THE ALBERTA PRESS; THE CHARTERED BANKS OF CANADA and THE ATTORNEY-GENERAL OF BRITISH COLUMBIA - - - - - - - - - *Respondents.*

CASE OF THE ATTORNEY-GENERAL OF ALBERTA.

1. This is an appeal from a Judgment of the Supreme Court of Canada (Duff C.J., Cannon, Crocket, Davis, Kerwin and Hudson JJ.) dated 4th March, 1938, on a reference to them by the Governor-General of Canada under Section 55 of the Supreme Court Act (Revised Statutes of Canada 1927 c. 35). The subject of the reference and of this appeal is the power of the Legislature of the Province of Alberta to enact three specified Bills which had been presented to the Lieutenant-Governor of Alberta for assent on 5th October, 1937, and reserved by him for the signification of the Governor-General's pleasure.

Record. p. 128. p. 8.

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Record. p. 5.

2. By Order in Council dated 2nd November, 1937, the Governor-General referred the following questions to the Supreme Court of Canada for hearing and consideration :—

p. 9, l. 1, *et seq.*

" 1. Is Bill No. 1, entitled ' An Act respecting the Taxation of Banks ' or any of the provisions thereof and in what particular or particulars or to what extent *intra vires* of the Legislature of the Province of Alberta ? "

" 2. Is Bill No. 8, entitled ' An Act to amend and Consolidate the Credit of Alberta Regulation Act ' or any of the provisions thereof and in what particular or particulars or to what extent *intra vires* of the Legislature of the Province of Alberta ? "

" 3. Is Bill No. 9, entitled ' An Act to ensure the Publication of Accurate News and Information ' or any of the provisions thereof and in what particular or particulars or to what extent *intra vires* of the Legislature of the Province of Alberta ? "

p. 129, l. 23, *et seq.*

3. By the Judgment of the Supreme Court dated 4th March, 1938, the unanimous opinion of the Court on each of the three questions propounded was that it should be answered in the negative.

4. The Appellant respectfully submits that the Judgment was wrong in respect of the answer to each question and that on the true construction of the relevant provisions of the British North America Act 1867 and of the Bills themselves the Bills were within the domain of provincial legislation: Moreover the Appellant respectfully submits that the Supreme Court arrived at their conclusions by an inadmissible method since, as will hereinafter appear, they judged the validity of the Bills in question by reference to other and independent enactments of the Alberta Legislature and treated the various Bills or enactments as one legislative scheme.

5. It is necessary, first, to set out briefly the scope of the disputed Bills.

p. 9, l. 14.

Bill No. 1, entitled " *An Act respecting the Taxation of Banks* " (hereinafter called the " Bank Taxation Bill ").

This Bill applied to every corporation or joint stock company other than the Bank of Canada incorporated for the purpose of doing banking or savings bank business and transacting such business in the Province. The Bill imposed upon every such Bank an annual tax, in addition to any tax payable under any other Act, of (A) $\frac{1}{2}$ per cent. on the paid-up capital and (B) 1 per cent. on the reserve fund and undivided profits.

Default on payment of tax was to be visited with penalties, and payment of either tax or penalty could be enforced by distress and sale of goods and chattels, or by action for civil debt. The tax was declared to be payable to the Provincial Secretary on behalf of His Majesty for the use of the Province. Record.

Bill No. 8, entitled "*An Act to Amend and Consolidate the Credit of Alberta Regulation Act* 1937" (hereinafter called the "Credit Regulation Bill"). p. 11, l. 14.

This Bill applied to "credit institutions," that is persons or corporations whose business was that of dealing in credit. Such business was defined as meaning all business transactions in the Province of any person other than the Bank of Canada whereby credit was created or dealt in by means of bookkeeping entries at a time or in a case where the aggregate amount of all such credit was in excess of the total amount of legal tender in the possession of the credit institution concerned, but such business was declared not to include transactions which are banking within the meaning of the word "banking" in Section 91 (15) of the British North America Act 1867.

The Bill required credit institutions carrying on business in the Province to take out licences from the Provincial Credit Commission constituted by Section 4 of the Alberta Social Credit Act (now repealed). Applications for licences were to be accompanied by an undertaking signed by the Applicant to refrain from acting or assisting or encouraging any person to act in a manner which restricts or interferes with the property and civil rights of any person in the Province. A breach of this undertaking might be visited by the Provincial Credit Commission with suspension or revocation of the licence, subject to a right of appeal to the Social Credit Board constituted by the above-mentioned Social Credit Act.

Before a licence was granted to a credit institution, one or more Local Directorates were to be appointed to supervise direct and control the policy of the institution's dealing in credit for the purpose of preventing any act constituting a restriction or interference with full enjoyment of property and civil rights by any person within the Province. A Local Directorate was to consist of a majority appointed and removable by the Social Credit Board and a minority appointed and removable by the credit institution.

Carrying on the business of dealing in credit in the Province without a licence involved a penalty of 10,000 dollars for each day of breach.

Record. But it was expressly provided that no provisions of the Act should be so construed as to authorise the doing of any act or thing which is not within the legislative competence of the Provincial Legislature.

p. 15, l. 14. Bill No. 9, entitled "*An Act to ensure the Publication of Accurate News and Information*" (hereinafter called "the Press Bill").

This Bill applied to newspapers or periodicals published in the Province. Where any such paper had published a statement relating to any policy or activity of the Provincial Government, the proprietor, editor, publisher or manager was to be bound, when so required by the Chairman of the Social Credit Board, to publish in the paper a statement of no greater length than and of equal prominence and type with the previous statement. The object of the Chairman's statement was to be the correction or amplification of the previous statement and it was to be stated that it was published by his direction.

The Bill further provided that the proprietor, editor, publisher or manager of a paper should be obliged on requisition of the Chairman of the Social Credit Board to divulge the particulars of every source of information upon which any statement appearing in his paper was based.

Any contravention of the provisions of the Bill was liable to be punished by money penalties and might entail the suspension of the paper or part of its material.

6. The Factums of the Attorney-General of Canada and other parties concerned to be heard against the validity of the Bills were not filed until January 5th and 6th, 1938. There were four of these Factums and in them, with one exception, the Bills were attacked as a group instead of separately. The Factums, moreover, included a great deal of material in the form of evidence (such as quotations from books, pamphlets, speeches and broadcast addresses by persons connected more or less intimately with the Government of the Province) by reference to which it was, among other things, contended that all the Bills formed part of a scheme of which
p. 85, l. 20. the central measure was a statute entitled the "*Alberta Social Credit Act.*" This was an Act which had received the assent of the Lieutenant-Governor of Alberta on April 14th, 1937, and had been later amended by
p. 116, l. 21. an Act assented to on August 6th of that year. The Act had not been referred to the Supreme Court for an opinion as to its validity, and, assuming the existence of the power of disallowance, was subject to be disallowed at the time when the reference was argued and decided in the Supreme Court. On April 8th last the Act was repealed by the Alberta Legislature (1938 c. 4).

7. Upon receipt of the Factums challenging the validity of the Bills notice was given on behalf of the Appellant that at the opening of the hearing the Supreme Court would be asked to determine, by way of preliminary to the argument of the questions submitted, whether the evidential material which the Factums contained was properly before the Court, whether the intention of members of the Legislative Assembly by which the Bills had been adopted was relevant to the questions submitted for the Court's opinion and how, if it was, all the facts relevant to ascertaining such an intention should be brought before the Court.

8. The Court was moved to this effect at the beginning of the argument of the reference on January 11th, and it was contended that the evidential material submitted *ex parte* in the Factums should be ordered to be struck out, as had been done in an earlier reference similar to the present one: *Re Water Powers*, October 8th, 1928, unreported on this point, but referred to in *Bell Telephone Co.* v. *T. H. & B. Railway* (1932) S.C.R. 54. The Court, however, indicated its view that the points raised might be more conveniently dealt with after argument had been heard on the questions referred to it for its opinion, and the hearing proceeded accordingly.

9. Much of the argument against the Bills took the form of an attack upon the validity of the *Alberta Social Credit Act.* It was contended that the Bills must have been passed by the Legislative Assembly with the intention of giving effect to the same ideas as were expressed in the Act, and that, since the Act was invalid, the Bills should also be held to be so. For the same purpose the Bills were sought to be connected with certain repealed and disallowed statutes, which were asserted to have been beyond the competence of the Legislature.

10. On behalf of the Appellant it was submitted that since no reference had been made to the Court with regard to the *Alberta Social Credit Act*, its validity was neither in issue nor relevant. Counsel for the Province did not discuss the question of the validity of its provisions and were not invited to do so by the Court, but in the course of their argument they renewed the application made at the commencement of the hearing and contended that as the scope and effect of the Bills in question clearly appeared from their terms, no reference to other legislation was justified or required.

11. The opinions subsequently delivered by the Judges of the Court on the questions submitted do not deal with the objections thus raised on the part of the Appellant, but the reasons for the conclusions they express against the validity of the Bills are based in large measure on their view of the invalidity of the *Alberta Social Credit Act.*

Record.

The opinions of the Judges of the Supreme Court on the several questions may be shortly stated as follows :—

p. 130. **12.** A. *Bank Taxation Bill.* Duff C.J. (whose judgment was concurred
p. 130, l. 29. in by Davis J.) prefaced his judgment on all three questions with a detailed review of the provisions of the Alberta Social Credit Act, which he described as " the central measure." This Act, he concluded, was *ultra vires* the Province as being legislation concerning Banks and Banking (British North America Act 1867 Section 91 (15)) or alternatively Currency (Section 91 (14)) or alternatively Trade & Commerce (Section 91 (2)) and not concerning Property and Civil Rights in the Province (Section 92 (13)) or Matters merely Local or Private in the Province (Section 92 (16)). The Bill itself, in his view, imposed taxation " on a scale which in a practical business sense is manifestly prohibitive " : it was therefore legislation directed to controlling the banks in the conduct of their business by forcing upon them a discontinuance of business. His view of the effect of this legislation was " greatly strengthened by the obvious relation of the Bill " to the scheme of legislation to which the Alberta Social Credit Act belonged. Apart from that it would be " simply incomprehensible." The purpose of the Bill was not therefore to raise a revenue for provincial purposes and such legislation, though in the form of a taxing statute, was in reality legislation about Banks and Banking and not within Section 92.

p. 153, l. 18. Cannon J. agreed with the learned Chief Justice that the Bill, despite its form, did not seek to raise a revenue for provincial purposes but in its true character aimed by erecting a prohibitive barrier to prevent the Banks from conducting business in Alberta. This was *ultra vires* since the Province could not use its special powers as an indirect means of destroying powers given by the Parliament of Canada.

p. 163. Kerwin J. (with whom Crocket J. concurred) stated that, after examining the Alberta Social Credit Act, he had no doubt that it was an attempt to regulate and control Banks and Banking within the meaning of Section 91 (15). He then referred to certain other Provincial Statutes which had been disallowed by the Governor-General and said that he could draw no other conclusion than that the Bill in question was part of a " single legislative plan." It was not a taxing enactment but part of a legislative plan to prevent the operation within the Province of banking institutions created by and deriving powers from the Parliament of Canada.

p. 175, l. 27. Hudson J. agreed with the reasons of the learned Chief Justice. The three Bills were part of one legislative scheme, the central measure of which was the Alberta Social Credit Act.

p. 143, l. 9. B. *Credit Regulation Bill.* Duff C.J. (with whom Davis J. concurred) held that since the Bill could only take effect through the machinery of

the Social Credit Act, which he held to be *ultra vires*, it must necessarily be "inoperative." Also it was plain from its preamble and provisions that it was part of the general scheme of legislation of which the Social Credit Act was really the basis, and was *ultra vires* as being ancillary to and dependent upon it. Finally it was legislation in relation to Banking or, alternatively, the Regulation of Trade and Commerce within the meaning of Section 91 (2). The "credit" with which the Bill was concerned was essentially banking credit, notwithstanding the exclusion of banking transactions by the definition clause which exclusion, in the view of the learned Judge, must necessarily be rejected as repugnant. Record.

Cannon J. agreed with the reasons and conclusions of Kerwin J. on this Bill. p. 158, l. 40.

Kerwin J. (with whom Crocket J. concurred) thought that the business transactions with which the Bill was concerned were "banking" within the meaning of Section 91 (15), and that the "Credit institutions" aimed at must be banks. In his view it was impossible to give any effect to the exclusion of "banking" transactions from the definition of "business of dealing in credit" or to Clause 7 of the Bill which enacted that it should not authorise anything beyond the proper legislative competence of the Province. p. 166, l. 36.

Hudson J. agreed with the reasons of the learned Chief Justice. p. 176, l. 19.

C. *Press Bill.* Duff C.J. (with whom Davis J. concurred) held the Bill to be part of the "general scheme of Social Credit legislation, the basis of which is the Alberta Social Credit Act." The Bill presupposed as a condition of its operation the validity of that Act: since it was *ultra vires*, ancillary and dependent legislation must fall with it. The learned Chief Justice considered other possible grounds for the invalidity of the Bill, but did not express any decided opinion upon them. p. 150, l. 27, *et seq.*

Cannon J. thought that the Bill dealt with the regulation of the Press in Alberta not from the point of private wrongs or civil injuries of individuals, but from the point of public wrongs or crimes. As such, he thought that it invaded the domain of criminal law and trenched upon the exclusive legislative jurisdiction of the Dominion. It was an attempt by the Provincial Legislature to amend the Criminal Code in this respect and to deny the advantage of Section 133 (*a*) to the Alberta newspaper publishers. The Federal Parliament was the sole authority to curtail, if deemed expedient and in the public interest, the freedom of the press. p. 159, l. 5, *et seq.*

Kerwin J. (with whom Crocket J. concurred) held that the Bill was part of the same legislative plan as the Social Credit Act, and the part must suffer the fate of the whole. p. 174, l. 17, *et seq.*

Hudson J. agreed with this view. p. 175, l. 27.

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13. The Appellant submits that these judgments are wrong so far as the conclusions as to the invalidity of the Bills are based upon the provisions which the Bills severally contain, and are also wrong in basing any conclusion as to the validity of the Bills on the provisions of the *Alberta Social Credit Act* or any other provincial legislation whether then in force or not.

14. The Appellant first submits that the rules which apply to the interpretation of a statute cannot vary according to the purpose for which the Court is considering the Statute: it is not to be interpreted according to one set of rules in order to apply its provisions as a valid enactment and by another in order to determine whether or not it is within the competence of the legislature by which it has been enacted. It follows, in the Appellant's submission, that to ascertain what it has in fact enacted nothing outside the terms of the statute itself should be considered except for the purpose of resolving an ambiguity or imprecision in the expressions used in it.

15. The Appellant further submits that the power of a provincial legislature in Canada to pass a given measure cannot vary from time to time, so that if the specific provisions the measure contains might have been enacted at one time, they must be capable of being validly enacted at any other; contemporaneous or other events cannot affect the provincial legislative jurisdiction. In particular such jurisdiction cannot be effected by the political or economic views or intentions of any one or more members of the legislative body or of their advisers.

16. The Appellant further submits that one of two statutes on different subjects cannot properly be held invalid by combining a finding that the other is *ultra vires* with an inference that a common intention underlies both. In the circumstances of this hearing it became particularly undesirable to attach any importance to such an inference considering that statements of fact in support of the inference had been made by one of the parties to the dispute and the other had been given no opportunity to meet them.

17. Finally the Appellant submits that when, as here, what is in question is the validity of Bills which have been passed by a provincial legislative assembly and are awaiting the signification of the Governor-General's pleasure, it is not proper to measure legislative competence by any considerations as to the policy or intentions of members of the legislative assembly or that assembly itself. When a Bill is reserved the King or the Governor-General is an essential part of the legislature; it has no mind or policy except what the words of the enactment express.

18. The Province of Alberta is constituted by the Alberta Act 1905 of the Parliament of Canada (4 and 5 Edward VII, c. 3), under the powers

conferred upon this Parliament of Canada by the British North America Act 1871 (34 and 35 Vic. c. 28). By virtue of section 3 of the former Act the legislative powers of the Province are the same as those of the original Provinces under the British North America Act 1867. Record.

19. In the Appellant's submission the provisions of the Bills in question are clear and unambiguous, requiring no reference to other legislation for the purpose of their interpretation, and are such that the Bills, if assented to by the Governor-General, would clearly be within the legislative field assigned to provincial legislatures in Canada under the terms of the *British North America Act*, 1867.

20. The Bank Taxation Bill, in the Appellant's submission, contains no reference and bears no relation whatever to the *Alberta Social Credit Act*; it is a measure by which if assented to there would be imposed on banks a direct tax within the Province falling under the second head in section 92 of the *British North America Act*. Such a measure cannot, from the point of view of legislative competence, be distinguished from the Quebec taxing Act which was upheld in *Bank of Toronto* v. *Lambe* [1887] 12 App. Cas. 575. The Appellant submits that it is not possible for a Court to draw a line between valid and invalid taxing statutes by reference to a standard of taxation determining whether the tax is prohibitive or not in the eyes of the Court, since, in his submission, the appropriate and necessary tax burden to be imposed is a matter of policy to be determined by the organs entrusted with power to enact taxing legislation and not by judicial tribunals. Moreover a tax cannot be regarded as prohibitive in one Province that has imposed it because it might or would be crippling if imposed by everyone of the other Provinces that have not imposed it.

21. The validity of the *Credit Regulation Bill* standing alone and independently of the *Alberta Social Credit Act* depends, in the Appellant's submission, upon whether or not it constitutes legislation with respect to banks and banking or the regulation of trade and commerce, which are both matters exclusively within the competence of the Dominion Parliament under Section 91 of the *British North America Act*, and the Appellant submits that it is clear from the terms of the Bill that it does not in any way trench upon either of these legislative fields. It does not relate to banking since it expressly excludes banking transactions from its field of operation, and these words of exclusion must be given effect to. It does not regulate trade or commerce in creating a credit licensing system for the purpose of enabling the inhabitants of the Province more fully to enjoy their property and civil rights therein.

22. The *Press Bill* has, in the Appellant's submission, been erroneously held invalid by reference to the *Alberta Social Credit Act*; independently of that Act its validity is left undertermined by all the Judges of the Supreme Court except Cannon J. The Appellant submits that he was wrong in

Record.

holding that it deals with a subject which falls under the head of criminal law in Section 91 of the *British North America Act*, and that, contrary to the view he expresses, its provisions are clearly within the provincial legislative field as relating to " Property and Civil Rights in the Province."

23. The *Bank Taxation Bill* affords no ground at all for connecting it with the *Alberta Social Credit Act*. On the other hand the *Credit Regulation Bill* and the *Press Bill* do admittedly contain some provisions giving some, if slight, ground for the view that there is a connection between these Bills and the *Alberta Social Credit Act*. This latter Act set up a Social Credit Board and named its chairman, and also set up a Provincial Credit Commission. Upon this Board and Commission the *Credit Regulation Bill* purports to confer certain powers, and by the *Press Bill* certain powers are conferred upon the Chairman of the Board by virtue of his office. In the Appellant's submission, however, these provisions cannot in any way have the result of causing either of the Bills to depend for their validity on the *Alberta Social Credit Act*.

24. Even if it be granted that some of the provisions of that Act were *ultra vires* the Alberta Legislature, the Appellant submits that the provisions which constitute the Provincial Credit Commission and the Social Credit Board and appoint its chairman are clearly *intra vires*. He submits, moreover, that even if these latter provisions are themselves invalid, neither of the Bills should on that account be held to exceed the jurisdiction of the Legislature ; that the non-existence of an individual or organ upon which a legislative measure purports to confer powers cannot affect the validity, though it may affect the effective operation, of the measure.

25. The Appellant therefore submits that the judgment of the Supreme Court was wrong and should be reversed, for the following amongst other

REASONS.

(1) BECAUSE the *Bank Taxation Bill* would if assented to be *intra vires* as imposing direct taxation within the Province under Section 92 (2) of the *British North America Act*, 1867.

(2) BECAUSE the *Credit Regulation Bill* would if assented to be *intra vires* as a regulation of a particular kind of business carried on within the Province in the exercise of the powers conferred on the Province by Section 92 (13) and (16) of that Act not of those conferred on the Dominion by Section 91 (2) or (14) or (15) or any other powers conferred by that section.

(3) BECAUSE the *Press Bill* would if assented to be *intra vires* as an exercise of the powers conferred on the Province by the same clauses of Section 92, not of those conferred on the Dominion by Section 91 (27) or any other clause of that section.

(4) BECAUSE there is no ground afforded either by the provisions of the Bills themselves or any of them or by other matter (if any) which may properly be referred to for treating any of the Bills as ancillary to or dependent upon the *Alberta Social Credit Act* or any general scheme of legislation.

(5) BECAUSE the scope and effect of a legislative measure is to be ascertained by an examination of its actual provisions and it is only when expressions used in it are ambiguous or imprecise that reference may be made to extraneous material.

(6) BECAUSE the competence of a provincial legislature constituted under the *British North America Act*, 1867, to pass a statute in given terms cannot vary from Province to Province or from time to time: or be affected by policies or intentions of members of the Legislature.

(7) BECAUSE a statute expressed in unambiguous and precise terms cannot properly be held invalid on the grounds that another statute of the same legislature is invalid and that a common intention underlies both.

(8) BECAUSE no conclusion against validity on such grounds can in any event be properly based on statements of fact supporting an inference of common intention adduced by one party to the dispute which the other party has been afforded no opportunity to contradict or explain.

(9) BECAUSE in the case of a reserved Bill the King or the Governor-General is an essential part of the Provincial legislature and it is therefore impossible to deduce any intention in the mind of the legislature from the course of conduct followed by the legislative assembly or the avowed policy of the Provincial Government of the time being.

O. M. BIGGAR.

CYRIL RADCLIFFE.

J. J. FRAWLEY.

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