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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
No. 48 of 1938. LEGAL STUDIES

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF **44883**
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

FOR THE RESPONDENT THE ATTORNEY GENERAL OF CANADA.

A.-G. OF CANADA

RECORD.

p. 10, l. 14.

1. This is an appeal by the Attorney General of the Province of Alberta from a judgment of the Supreme Court of Canada pronounced on Friday, 4th March, 1938, declaring *ultra vires* each of three Bills duly passed by the Legislative Assembly of the Province of Alberta at its third Session in the year 1937. The said three Bills are entitled respectively :

Bill No. 1. "An Act respecting Taxation of Banks";

Bill No. 8. "An Act to Amend and Consolidate the Credit of Alberta Regulation Act"; and

Bill No. 9. "An Act to Ensure the Publication of Accurate News and Information."

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p. 177, l. 1.

2. The appeal is brought under Order in Council granting special leave to appeal to His Majesty in Council dated 16th May, 1938.

p. 8, l. 9.

3. The Lieutenant-Governor of Alberta withheld his assent to the said three Bills and reserved the same on 5th October, 1937, for the signification of the pleasure of the Governor General in Council, under sections 90, 55 and 57 of the British North America Act, the effect of which is that when a Bill passed by the Provincial House or Houses is presented to the Lieutenant-Governor of the Province for assent, the latter may reserve it for the signification of the Governor-General's pleasure and that a Bill so reserved has no force unless and until within one year from the date on which it was presented to the Lieutenant-Governor for assent, the Lieutenant-Governor signifies to the House or Houses of the Legislature or by proclamation that it has been assented to by the Governor-General in Council.

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p. 5, l. 1.

4. The judgment of the Supreme Court was pronounced upon a Reference under an Order of His Excellency the Governor General of Canada in Council of date 2nd November, 1937, pursuant to which the Bills were referred to the Court for hearing and consideration under section 55 of the Supreme Court Act.

p. 5, l. 12.

In this Order in Council it is stated that it has been and is the avowed object of the present Governor of the Province of Alberta to inaugurate in the Province "a new economic order" upon the principles or plan of the theory known as Social Credit and that such Government has secured the enactment by the Provincial Legislature of certain Statutes more or less directly related to the policy of effectuating that object. A certain number of Statutes are then mentioned, which are all found printed in the Record.

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p. 9, l. 14.

5. The full text of each Bill will be found in the Record of Proceedings at pages 9 to 19 thereof. During the course of the argument they were conveniently referred to as "The Bank Taxation Bill," "The Credit Regulation Bill," and "The Press Bill."

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p. 9, l. 14.

Bill No. 1, The Bank Taxation Bill, in form purports to provide, *inter alia*, that every bank transacting business in Alberta shall annually pay to the Province, in addition to all other taxes payable to it,

(a) a tax of $\frac{1}{2}$ per cent. on the paid up capital of the bank, and

(b) a tax of 1 per cent. on the reserve fund and undivided profits of the bank to be ascertained annually on 31st March.

Bill No. 8, The Credit Regulation Bill, professes to amend and consolidate a previous Credit Regulation Act enacted by the Legislature of Alberta at its second Session in 1937. This previous Act was disallowed by Order of the Governor General in Council on 17th August, 1937. The preamble of Bill 8 is as follows :

10 “ WHEREAS the extent to which property and civil rights in the Province may be enjoyed depends upon the principles governing the monetization of credit and the means whereby such credit is made available to the Province and to the People collectively and individually of the Province.”

It then proceeds to re-enact for all purposes pertinent hereto the provisions of the disallowed Act section by section, and for the most part in identical language, except that throughout for the expressions “ bank ” and “ banking ” or “ business of banking ” in the disallowed Act, there was substituted the expressions “ credit institution ” and “ business of dealing in credit.”

In form, this Credit Regulation Bill purports to introduce a compulsory licencing system for credit institutions, there being excepted the Bank of Canada.

20 Obviously the licences are for the purpose of regulation and not for revenue, the principal object being to secure an undertaking from the credit institutions to refrain from acting in a manner which might restrict or interfere, either directly or indirectly, with the full enjoyment of property and civil rights of any person in the province. Licences are to be issued by the Provincial Credit Commission, operating under control of the Social Credit Board of Alberta, and local directorates are to be appointed, the majority of each directorate by the Social Credit Board, to supervise, direct and control the policy of dealing in credit of the Institution for the purpose of preventing any act by such Institution constituting a
30 restriction or interference with the full enjoyment of property and civil rights by any person in the Province.

The Commission may at any time without notice suspend, revoke or cancel the licence of any credit institution which commits a breach of its undertaking, and in case of any such suspension, revocation or cancellation the Commission may fix a higher fee for renewal or issuing a new licence, not exceeding one thousand times the previous fee.

A violation of the provisions of the Bill or of any regulations made under it or carrying on without a licence is punishable by a penalty of \$10,000·00 per day.

40 Power is given to the Provincial Credit Commission, with the approval of the Lieutenant-Governor in Council, to make regulations not inconsistent with the Bill, *inter alia*,—

(e) prescribing the privileges, terms, conditions, limitations and restrictions to be granted to or observed by an licensee;

RECORD.

p. 15, l. 6.

(f) prescribing the conditions upon which licences may be issued and providing for the revocation, suspension or withholding of licences.

p. 11, l. 31.

A "credit institution" is defined in section 2 as follows:—

(a) "Credit Institution" means a person or corporation whose business or any part of whose business is the business of dealing in credit ;

p. 12, l. 1.

and "business of dealing in credit" is defined as:—

(b) "Business of dealing in Credit" means all business transactions in the Province of a credit institution or any other person except The Bank of Canada, whereby credit is created, issued, lent, provided or dealt in by means of bookkeeping entries, in any case and at any time when the aggregate amount of all credit so created, issued, lent, provided or dealt in is in excess of the total amount of legal tender in the possession of the credit institution so creating, issuing, lending, providing or dealing in such credit; and includes the following transaction relating to any credit so created, issued, lent, provided or dealt in, namely, the "payment of cheques or other negotiable instruments made, drawn or paid in by customers, the making of advances and the granting of overdrafts; but does not include transactions which are banking within the meaning of the word 'banking' as used in subhead 15 of section 91 of The British North America Act, 1867." 10 20

p. 13, l. 33.

p. 85, l. 20.

By various of its sections the administration of Bill No. 8 is linked up with the Main Social Credit Measure, the Alberta Social Credit Act, chap. 10, 1937, (First Session) under which the Social Credit Commission and the Social Credit Board are created and which will be referred to more fully hereinafter.

p. 15, l. 14.

As to Bill No. 9, The Press Bill, the preamble, which is important, reads as follows: 30

p. 15, l. 22.

"WHEREAS it is expedient and in the public interest that the newspapers published in the Province should furnish to the people of the Province Statements made by the authority of the Government of the Province as to the true and exact objects of the policy of the Government and as to the hindrances to of difficulties in achieving such objects, to the end that the people may be informed with respect thereto."

p. 16, l. 9.

In form this Bill purports to provide that any newspaper published in Alberta shall, when required to do so by the Chairman of the Alberta Social Credit Board, publish any statement furnished by the Chairman correcting or amplifying any statement relating to any policy or activity of the Government which may have been published by the newspaper within the preceding thirty-one days. 40

The newspaper is also bound to furnish on demand of the Chairman of the Social Credit Board,— RECORD.

“ a return in writing setting out every source from which any information emanated as to any statement contained in any issue of the newspaper published within sixty days of the making of the requirement and the names, addresses and occupations of all persons by whom such information was furnished to the newspaper, and the name and address of the writer of any editorial article or news item contained in any such issue of the newspaper as aforesaid.” p. 17, l. 8.

10 Heavy penalties are provided for breach of the provisions of the Bill, including fines, and prohibition of,— p. 17, l. 29.

(a) the publication of such newspaper either for a definite time or until further order; p. 17, l. 23.

(b) the publication in any newspaper of anything written by any person specified in the order;

(c) the publication of any information emanating from any person or source specified in the order.

6. In view of the importance attached by the Supreme Court Judges to the Alberta Social Credit Act, chap. 10 1937 (First Session) which is the central measure of the new economic system referred to in the Order of Reference, it is deemed useful to summarize it here. pp. 130-143.

20 The preamble of this Act contains three paragraphs, and is as follows :—

“ WHEREAS the Province of Alberta being endowed with great natural wealth and being inhabited by a virile, intelligent and industrious people is capable of producing in abundance, wealth both capital and consumptive, in ample quantities for the needs and advancement of its people; and p. 85, l. 26.

30 Whereas the people of Alberta, rich in natural wealth and resources both actual and potential, are yet heavily in debt and have been unable to acquire and maintain a standard of living such as is considered by them to be both desirable and possible; and p. 85, l. 30.

Whereas the existing means or system of distribution and exchange of wealth is considered to be inadequate, unjust and not suited to the welfare, prosperity and happiness of the people of Alberta.” p. 86, l. 1.

40 After a series of definitions in section 2, of which the first defines “ Alberta credit,” the Act, Part I, section 3, provides for the creation of a Board, the members of which are named and who it is understood were all members of the Alberta Legislative Assembly; their successors are to be appointed from time to time by the Legislative Assembly. This Board, p. 86, l. 9. p. 88, l. 1.

“ shall be deemed to be a Committee appointed by the Legislative Assembly ” p. 88, l. 29.

and its powers and duties are elaborately set out in detail in section 3, ss. (3). p. 88, l. 8.

RECORD.

- p. 89, l. 6. By section 4 of the Act provision is made for the appointment by the Social Credit Board of a Commission, which it is declared, shall be a body corporate. The duties of the Commission are set out in section 5, which contains 9 subsections. This section provides that,
- p. 89, l. 24.
- p. 89, l. 25. “ there is hereby created an account in the Treasury of the Province of Alberta to be known as the Provincial Credit Account.”
- and the Commission is to determine each year,
- p. 89, l. 28. “ the value of the unused capacity of industries and people of Alberta for the production of wanted goods and services, which amount shall be credited to the provincial credit account.” 10
- p. 89, l. 30. and at the end of each year the amount in this Provincial Credit Account which has not been drawn upon during the year is to be written off.
- p. 90, l. 4. The Commission is also to determine the retail discount rate (section 5 (2)) and is given authority to make advances of “ Alberta Credit ” to certain persons for certain purposes, “ Alberta Credit ” being defined in section 2 as,
- p. 86, l. 9. “ The unused capacity of the industries and people of the Province of Alberta to produce wanted goods and services.”
- Subsection 8 of section 5 provides as follows :—
- p. 91, l. 5. “ 8. The Commission shall have authority, with the approval of the Board, to take any necessary steps which may be required to establish and maintain a reserve of financial credit sufficient to assure that Treasury Credit Certificates shall always be honoured in terms of currency in the extra-Provincial market.” 20
- p. 91, l. 25. Then Part II, section 7, provides for the issue of “ Treasury Credit Certificates ” to such extent as may be required for,—
- “ the purpose of increasing the purchasing power of the consumers of Alberta as to make such purchasing power conform to the productive capacity of the people of the Province for the production and delivery of wanted goods and services, which capacity is declared to be the measure of Alberta Credit.” 30
- p. 91, l. 31. Section 8 states that it is the intent and purpose of the Act,
- “ to provide that all extra provincial debits be paid in Canadian currency where it is desired by the other parties.”
- p. 92, l. 1. Sections 9, 10, 11 and 12 give authority to all persons in the Province, to the Government, and to municipal corporations to accept Alberta Credit or transfers of Alberta credit as valid payments and it should be especially noted that by section 10 the Lieutenant-Governor in Council may, on the advice of the Social Credit Board, order
- p. 92, l. 5. “ that all claims against the Province for the payment of any money out of any appropriation of public money made by the Legislative Assembly for the purpose of providing for the payment of any grants or allowances, or any claim or any class or description of 40

claim payable within the Province specified by the order, shall be satisfied by the transfer to such person of an amount of Alberta Credit, . . . provided that in the case of contractual obligations all parties agree to the above terms.” RECORD.

Section 13 states that Treasury Credit Certificates shall be available for providing,

- (a) a discount on prices to consumers at retail; p. 92, l. 34.
- (b) Government services;
- (c) Interest free loans;
- 10 (d) debt payments;
- (e) export subsidies;
- (f) Provincial consumers' dividend;
- (g) such other purposes as the Lieutenant-Governor in Council at the request of the Board may by order so declare.

Section 14 provides for the fixing by the Commission of the retail discount rate to be changed from time to time. This retail discount rate is to be that percentage which unused productive capacity bears to total productive capacity and subsections (2), (3), (4) and (5) contain elaborate rules for the determination of this retail discount rate. p. 93, l. 7. p. 93, l. 10.

20 Section 15 provides for the application of the retail discount rate, namely, it p. 94, l. 3.

“ shall be applicable to purchases of goods and services from retailers . . . made by consumers who are natural persons, provided that such purchases are made for the personal use of the consumers or their respective families, and not made for resale trade or manufacture.”

and “ retailer ” is defined by section 2 to mean,

- (i) any person who,— p. 87, l. 9.
 - 30 (a) sells by retail any goods, wares or merchandise, to persons who are the ultimate consumers thereof, for consumption or use by the purchaser and member of his family or his household;
 - (b) provides any service to persons for the benefit or enjoyment of the person who is provided therewith and the members of his family or household; and
 - (ii) any person who sells any dwelling house, whether with or without the land forming the site thereof to any person other than a person who purchases the same for resale.”

and “ services ” are defined as meaning,—

- 40 “ passenger, transportation, distribution to homes of gas and electricity for light, heat, power and telephone transmission, rentals of homes, services of amusement and other such services to ultimate consumers, as are rendered under the regulations of their respective trade and professional associations.” p. 87, l. 23.

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- p. 94, l. 7. By ss. 2 and 3 of section 15 the retailer who grants a discount is compensated by a discount voucher.
- p. 94, l. 16. Section 16 provides that agreements may be made by retailers, wholesalers and primary producers with the Commission,
 (a) in the case of retailers, in order to qualify them to dispense the retail discount and reap the benefits thereof; and
 (b) in the case of the wholesalers, manufacturers and primary producers, in order to qualify them to dispense their goods and services to the retailers, and to share with them the benefits of increased trade under said regulations. 10
- and every contract shall bind the contractor to comply with such regulations as to cost as may be prescribed by agencies authorized by law. The retailers contract shall provide that, if required by the Commission, the retailer shall deal only with wholesalers, manufacturers, primary producers and purveyors of services who have entered into a similar contract with the Commission.
- p. 95, l. 7. Section 17 provides for settlement for discount allowances and that the credit house and its branches in the Province shall accept discount vouchers from a retailer and credit his account with the amount thereof if deposited by him. All these vouchers so credited are to be charged by the house or its branches to the Treasury Credit Certificate Account and Treasury Credit Certificates will be issued to reimburse the branches. 20
- p. 95, l. 30. Section 18 provides that there shall be a provincial consumers dividend paid every month to every person entitled to Alberta Credit and we go back to section 2, para. (j) which sets out and defines the persons entitled to receive Alberta Credit, these including almost every one of 21 years of age resident and domiciled in the Province who is a British subject. Each branch of the Credit House paying dividends is provided by the Credit House with Treasury Credit Certificates sufficient to meet the amount of dividends it has to disburse, and the branch in turn issues "credit vouchers" 30
- p. 95, l. 34. to the recipients of the dividends in payment thereof.
- p. 98, l. 20.
- p. 96, l. 3. Under ss. 4 of section 18 the Social Credit Board may establish classifications of persons entitled to receive dividends having regard to any circumstances relating to purchasing power and production or economic conditions.
- p. 96, l. 25. Part III, being sections 19-26, provides for the establishment of the Alberta Credit House and its branches, the same to be a department of provincial administration and a body corporate. In addition to branches the Credit House by section 30 is to have a clearing house. Under sections 25 and 26 the Credit House is to open deposit accounts of currency, securities, credit vouchers, transfers of Alberta Credit and discount vouchers. It can convert currency and negotiable instruments on demand into Alberta Credit. It is to issue "credit vouchers" in payment of dividends. A customer having Alberta credit on deposit with a branch may draw against it by means of an instrument in a form to be prescribed by the Commission, which must be presented for delivery to the branch. 40
- p. 97, l. 32.
- p. 97, l. 13.

Part IV, sections 27-32, deals with Treasury Credit Certificates and RECORD. the accounting for the same as between branches of the Credit House, while p. 98, l. 10. sections 30 and 31 provide for the clearing house.

Section 32 provides for payments in currency when they have to be p. 99, l. 31. made.

Part V, sections 33-35, entrusts the Commission with the duties of preventing undue expansion of credit, as well as eliminating contraction of credit. In Canada this is a state function performed by the Bank of Canada, a corporation controlled by the Government of Canada. The existing p. 100, l. 14. methods of controlling credits through open markets operations and the p. 100, l. 20. discount rate are to be adopted to maintain a balanced credit structure. A fund is to be raised to retire Treasury Credit Certificates when there is an p. 100, l. 24. unduly expended credit condition. For the purpose of this fund not more than one-fourth of the Provincial revenues in each year over the amount required to balance the normal budget estimates for the year shall be set aside. In addition the Commission may establish a negative retail discount rate which appears to be an amount to be added by the retailer to the retail price to consumers.

Part VI contains some general provisions of which the most important p. 102, l. 30. are sections 42 (1) and 50.

42 (1) For the purpose of giving effect to the intent and purpose of this Act, upon the request of the Board the Lieutenant Governor in Council may by order in council, alter, and/or supplement with new provisions any of the provisions of this Act, for the purpose of providing for matters arising out of the operation of this Act for which no expressed provision is made : Provided such change is not contrary to the policy of this Act.

50. No provision of this Act shall be so construed as to authorize p. 103, l. 30. the doing of any act or thing which is not within the legislative competence of the Legislative Assembly.

At the Second Session of the Alberta Legislature held in 1937 a short p. 116, l. 21. amending Act to the above Statute was passed, and it is only necessary to mention briefly two of its provisions : Firstly, we have a definition given of " Social Credit," which is,

"(n) 'social credit' is the power resulting from the belief p. 117, l. 8. inherent within society, that its individual members in association can gain the objectives they desire."

Secondly, the " function " of the Social Credit Board is defined as follows :—

40 (7) It shall be the function of the Board, and it is hereby p. 117, l. 18. empowered with the approval of the Lieutenant Governor in Council to do such acts and things as it may from time to time deem proper, for the purpose of promoting, conserving and enhancing the social credit of the Province; and for that purpose the Board may expend

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any moneys appropriated by the Legislative Assembly for the expenses of the Board in such manner as the Board in its discretion considers necessary for the discharge of the said functions.”

After the Court pronounced judgment herein, another Session of the Alberta Legislature was held early in 1938. At that Session the Alberta Social Credit Act, above summarized, was repealed.

Doc. 35.

7. The relevant sections of the British North America Act are sections 91 and 92. The full text of these sections are produced in the appendix to the factum of the Attorney General of Canada filed in the Supreme Court at pp. 84-86 thereof. But the classes of subjects therein enumerated, 10 which appear to be of particular relevance in consideration of the Bills referred, are as follows :

“ Sec. 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 20 Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

.....

2. The Regulation of Trade and Commerce.

.....

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

..... 30

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

.....

27. The Criminal Law . . .

.....

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 exclu- 40 sively to the Legislatures of the Provinces.

Sec. 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

.....
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.
.....

10 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
.....

11. The Incorporation of Companies with Provincial objects.
.....

13. Property and Civil Rights in the Province.

20 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.

16. Generally all Matters of a merely local or private Nature in the Province.”

30 8. An identical question was asked of the Courts by the Governor General in Council, as to legislative competence, in regard to each Bill, namely :—Is the Bill or any of the provisions thereof and in what particular or particulars, or to what extent, *intra vires* of the legislature of Alberta? p. 9, l. 1.

9. The Reference has been deemed advisable, *inter alia* because of the avowed object of the Social Credit Government of Alberta to inaugurate in Alberta “ a new economic order ” on the principles or plan of the theory known as Social Credit. This avowed object or policy was noted in the Order of Reference by the Governor General in Council above referred to. p. 5, l. 1. p. 5, l. 12.

40 10. At the opening of the hearing and before argument—on 11th January, 1938—Counsel for Alberta moved that certain of the material submitted in the factum and the appendix thereto filed on behalf of the Attorney General of Canada be ordered struck out. The Court, having heard argument on this motion, took time for consideration and decided that it would hear Counsel on the Reference, reserving in the meantime all

RECORD. questions raised by the motion. There is no reference to this motion in the reasons for judgment, except by Kerwin J. who says :—

p. 167, l. 13.

“ In the factum of the Attorney General of Canada appears a great mass of material, some of which was referred to on the argument. The admissibility and relevancy of a great part of it was objected to, but the Court heard what Counsel desired to say upon the subject without determining the issues raised. None of it was relied upon by counsel for the Provincial Attorney-General. Some of this material is of such a character that it is clearly relevant and admissible while other parts are just as clearly irrelevant and inadmissible. However, it is unnecessary to determine the exact line that separates the one class from the other since, after a detailed examination of the provisions of the Bill itself, I have arrived at the conclusion that the Bill *in toto* is *ultra vires* of the Provincial Legislature.” 10

p. 128, l. 1.

11. The Court composed of six members (Duff C.J., Cannon, Crocket, Davis, Kerwin and Hudson JJ.) after hearing Counsel and taking time for consideration, on 4th March, 1938, handed down four reasons for judgment, unanimously holding each of the three Bills *ultra vires* of the Legislature of Alberta *in toto*, and certified to His Excellency its unanimous opinion accordingly. The Reasons for Judgment are set out in full in the Record at pages 130 to 175 thereof. 20

12. An examination of the Reasons for Judgment discloses the following findings by the members of the Court :—

As to the general scheme of legislation alleged, it was held :—

(a) the three Bills are part of one general scheme of legislation of which the central measure is the Alberta Social Credit Act;

(per Duff C.J. and Davis J. at p. 130, l. 17, p. 143, l. 23, p. 148, l. 40; and Hudson J. at p. 175, l. 29.)

and the Bank Taxation Bill and the Press Bill are also part of the single legislative plan; 30

(per Crocket & Kerwin JJ. at p. 166, l. 24 and p. 175, l. 14.)

(b) in order to ascertain the object and effect of the three Bills it is proper to look at the history of the legislation passed in furtherance of the general design;

(per Duff C.J. & Davis J. at p. 130, l. 17. Hudson J. concurring at p. 175, l. 27.)

(c) in essence the Alberta legislative scheme is one to set up a new form of credit and currency within a single province;

(per Hudson J. at p. 176, l. 17.)

As to the Alberta Social Credit Act, chap. 10, 1937, it was held :—

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(a) as a result of a detailed and “ searching analysis ” of this Act there is no room for doubt as to its objects, the evil with which it is intended to grapple can be affirmed with certainty;

(per Duff C.J. & Davis J. at p. 133, l. 24. Hudson J. concurring at p. 175, l. 27.)

(b) this Statute sets up the machinery of a financial system, the predominant function of which is to provide a form of credit designated as “ Alberta Credit ” accessible to consumers and others through the channels created by the Act which is to circulate in Alberta as a medium of exchange and payment;

(per Duff C.J. & Davis J. at p. 133, l. 39. Hudson J. concurring at p. 175, l. 27.)

(c) from a scrutiny of the provisions of the Act and declarations quoted it is of the essence of the whole legislative plan that there be a substitution generally in internal commerce, of Alberta credit for bank credit and legal tender, as the circulating medium in Alberta;

(per Duff C.J. & Davis J. at p. 135, l. 44. Hudson J. concurring at p. 175, l. 27.)

(d) on the authority of the *Fisheries Case* (1898) A.C. at p. 715 and of *A.G. for Ontario v. A.G. for Canada* (1896) A.C. 348 at p. 359 as interpreted in *Great West Saddlery v. The King* (1921) 2 A.C. at p. 99, a comparison of the general character and nature of the subjects enumerated in section 91, especially trade and commerce, currency and coinage, banks and banking, and legal tender, with the subjects included in section 92, suggests (1) that credit (including credit in the novel form of Social Credit) as a medium for effecting the exchange of goods and services and (2) the machinery for issuing and circulating it are among the matters assigned to the Dominion under section 91 and not intended to be assigned to the provinces under any of the categories of section 92;

(per Duff C.J. & Davis J. at p. 137, ll. 12–34. Hudson J. concurring at p. 175, l. 27.)

(e) it is not within the power of the province to establish statutory machinery, with the functions for which this machinery is designed, and to regulate the operation of it. The subject matter comes in part, at least, within the field designated by currency sec. 91 (14), and in its essential components and features it comes under head No. 15, banks and banking, and even if not strictly within the ambit of either (14) or (15) or partly in one and partly in the other, it does come within No. 2, Trade and Commerce, and in any event it does not come within section 92;

(per Duff C.J. & Davis J. at p. 138, ll. 1–11, Hudson J. concurring at p. 175, l. 27).

RECORD.

(f) the system of administration, management, and circulation of credit provided by this Act (if and in so far as it does not fall within the denomination "currency") constituted a system of "banking" within the intendment of section 91, and the Statute is concerned with "banking" in that sense;

(per Duff C.J. & Davis J. at p. 139, l. 5, Hudson J. concurring at p. 175, l. 27).

p. 139, l. 30.

(g) this legislation, if not in respect of banking or currency, would appear to be concerned with regulation of trade and commerce rather than with property and civil rights or matters merely local or private in the Province. Various decisions of this Board are then referred to and the opinion expressed that there is no kind of analogy between the legislation under review in any of those cases and the Social Credit Act. After developing that point, it is stated that this legislation attempts to effect a radical reorganization of the whole system of trade and commerce within the Province by the institution of a novel system of credit for the present financial system under which the operations of trade and industry and commerce are now conducted. The conclusion that this legislation is concerned with regulation of trade and commerce rather than with property and civil rights or matters local or private in the Province is fortified by reference to the general nature of other classes of subjects assigned to the Dominion. An inspection of the structure and language of sections 91 and 92 and a comparison of the subjects of the two sections reveal no justification for the assumption that the subject matter of this legislation belongs to any type of matters which it could have been intended to commit to the legislative jurisdiction of a single province.

p. 140, l. 23.

p. 140, l. 35.

p. 140, l. 43.

p. 141, l. 14.

(per Duff C.J. & Davis J. at p. 141, l. 15; Hudson J. concurring at p. 175, l. 27). 30

(h) section 91 of the British North America Act allots exclusive legislative authority to the Dominion in all matters coming within 91 (2) the regulation of trade and commerce; (14) currency and coinage; (15) banks, the incorporation of banks and the issue of paper money; (16) savings banks; (18) bills of exchange and promissory notes; (19) interest; and (20) legal tender, and read together these have a cumulative effect much greater than if the individual headings are taken separately, so read they strongly reinforce the reasons already given against the validity of the Social Credit Act.

(per Hudson J. at p. 175, l. 34). 40

p. 175, l. 31. As to these findings Hudson J. states that the Act has been the subject of a searching analysis by my Lord the Chief Justice and concurs in his reasons for holding that it is beyond the powers of the legislature, while Crocket & Kerwin JJ. say that it is unnecessary for them to detail the provisions of the Act as that has been done in the opinion delivered by my

p. 164, l. 25.

Lord the Chief Justice. An examination of its provisions leaves no doubt in their minds that the Act is an attempt to regulate and control Banks and Banking as those terms are used in head 15 of section 91 of the British North America Act.

As to Bill No. 8, the Credit Regulation Bill, it was held :—

(a) this Bill is *ultra vires* as being part of the one scheme and on a narrow ground, namely, as being ancillary to and dependent upon the Alberta Social Credit Act, which in itself is *ultra vires* :

(per Duff C.J. & Davis J. at p. 143, ll. 22-23; Hudson J. concurring at p. 176, l. 19).

(b) the Bill is also *ultra vires* on the broad ground as being legislation in relation to banking;

(per Duff C.J. & Davis J. at p. 143, l. 25; Hudson J. concurring at p. 176, l. 19; Crocket & Kerwin JJ. at p. 169, l. 31; Cannon J. concurring at p. 159, l. 1).

(c) alternatively, this Bill is legislation in relation to the regulation of trade and commerce within the meaning of section 91 (2) of the British North America Act and is, therefore, *ultra vires* ;

(per Duff C.J. & Davis J. at p. 143, l. 27 and p. 146, l. 32; Hudson J. concurring at p. 176, l. 19).

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(d) this Bill has no reasonable application to businesses other than the business of banking and the "credit" covered is banking credit, a construction of the provisions of the Bill which would enable it to embrace other institutions would be strained;

(per Duff C.J. & Davis J. at p. 145, ll. 4, 35 and 43; Hudson J. concurring at p. 176, l. 19; Crocket & Kerwin JJ. at p. 176, l. 31; Cannon J. concurring at p. 158, l. 43).

(e) section 7 of Bill 8 (which is in identical terms with section 50 of the Alberta Social Credit Act) namely, that no provision of the Act is to be construed as authorizing the doing of any Act or thing not within the legislative competence of the Alberta Legislative Assembly cannot save a Statute which as a whole is *ultra vires*;

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(per Duff C.J. & Davis J. at p. 146, l. 38 and p. 142, l. 25; Hudson J. concurring at p. 176, l. 19; Crocket & Kerwin JJ. at p. 172, l. 12; Cannon J. concurring at p. 158, l. 43).

(f) the phrase or final member at the end of section 2, clause (b) would have the effect of destroying everything which precedes it in the definition and must be disregarded as a repugnancy emptying the definition of all meaning;

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(per Duff C.J. & Davis J. at p. 146, l. 8; and Hudson J. concurring at p. 176, l. 19).

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and the Courts will not presume an intention to enact a meaningless Statute, and this final member was added in an effort to save the Bill which on the proper construction of its other provision is unconstitutional;

(per Crocket & Kerwin JJ. at p. 172, l. 6; Cannon J. concurring at p. 158, l. 43).

citing *The King v. Nat Bell Liquors* (1922) 2 A.C. 128, and distinguishing it from the statement of Lord McNaughton in *A.G. for Manitoba v. Manitoba License Holders Association* (1902) A.C. p. 73 at p. 79, the principle being expressed by Viscount Haldane in *A.G. for Manitoba v. A. G. for Canada* (1925) A.C. p. 561 and finally by Lord Atkin speaking for the Judicial Committee in the *Natural Products Marketing Case, A.G. for B.C. v. A.G. for Canada* (1937) A.C. p. 377, at the foot of p. 388. 10

As to Bill No. 1, the Bank Taxation Bill, it was held :—

(a) in its true character and effect this Bill relates to the incorporation of banks and the controlling of banks in the conduct of their business, and this is *ultra vires* of any province;

(per Duff C.J. & Davis J. at p. 148, l. 7 and p. 150, l. 14 and; Hudson J. concurring at p. 176, l. 19; Crocket & Kerwin JJ. at p. 165, l. 8). 20

(b) although in form relating to taxation, in effect the legislation is prohibitive and the rate of taxation is prohibitive in fact and must have been known to the Alberta Legislature to be prohibitive; such legislation is not within the powers of the provinces; taking the population of Alberta in round figures at 800,000 and that of the Dominion at 10,000,000, the rate of the first figure to the second is expressed by a fraction of 2/25ths. The annual tax, therefore, in the case of a bank such as the Bank of Montreal, which carries on business in every province of Canada as well as many other places in North America and elsewhere, of $\frac{1}{2}$ of 1 per cent. upon the paid-up capital may be regarded as a charge of 2/25ths of its total business, and in respect of the reserve and undivided profit, 1 per cent. borne by the same part of its business. If the bank were subject to such a levy in each of the provinces on a scale varying with the business done in the province or the population of the province, the total levy charged upon its business throughout the Dominion would be the annual impost of $6\frac{1}{4}$ per cent. on the paid-up capital and $12\frac{1}{2}$ per cent. upon each of the other funds of reserve and undivided profits, and it requires no demonstration to show that such a rate of taxation must be prohibitive. Judges will take judicial notice of facts known to intelligent persons generally, and any suggestion that the profits of banking as carried on in Canada could be such as to enable banks to pay taxes to the provinces of such magnitude, having regard to their other burdens such as municipal rates levied upon them in 30 40

Canada as well as taxes paid in foreign countries, would be incontinently rejected by anybody possessing the most rudimentary acquaintance with affairs. The tax is of proportions which have no parallel in the Alberta system of taxation;

(per Duff C.J. & Davis J. at p. 147; Hudson J concurring at p. 176, l. 19; Cannon J. at p. 158, l. 24; Crocket & Kerwin JJ. at p. 166, l. 25).

(c) This Bill would be simply incomprehensible were it not for its obvious relation to the general scheme of legislation;

10 (per Duff C.J. & Davis J. at p. 148, l. 43; Hudson J. concurring at p. 176, l. 19).

and it is part of a single legislative plan, the other legislation, namely, the Social Credit Act and the disallowed Acts, being all *ultra vires*;

(per Crocket & Kerwin JJ. at p. 166, l. 16).

(d) it is plain on the face of the Bill that its purpose is not to raise a revenue for provincial purposes, and equally plain that taxation of this character throughout Canada, if operative, would completely frustrate the purposes of the Bank Act;

20 (per Duff C.J. & Davis J. at p. 149, l. 3; Hudson J. concurring at p. 176, l. 19).

it is an indirect means of destroying powers given by the Parliament of Canada;

(per Cannon J. at p. 158, l. 30).

and is designed to prevent the operation within Alberta of those banking institutions which have been called into existence and given the necessary powers to conduct their business by the only proper authority, the Parliament of Canada;

(per Crocket & Kerwin JJ. at p. 166, l. 24).

30 (e) *Bank of Toronto v. Lambe* is distinguishable, as the Quebec Tax there had no sort of resemblance to the Alberta tax now under consideration, taxation of such a magnitude as to crush banks out of existence was there put as a bare possibility and was not a sufficient reason for denying the provinces the right of taxation in a legitimate way;

(per Duff C.J. & Davis J. at p. 149, l. 8).

40 (f) in none of the three cases decided by the Judicial Committee, namely, *Caron v. The King* (1924) A.C. 999, in which *Abbott v. City of St. John* (1908) 40 S.C.R. 597, was approved, in *Forbes v. A.G. for Manitoba* (1937) A.C. at p. 60, *Bank of Toronto v. Lambe* (1887) 12 A.C. at p. 575, nor in the *Abbott* case, was it suggested that the Statutes under scrutiny were not true taxing

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enactments, the same cannot be said for this Bill, and it is governed by the *Reciprocal Insurers Case* (1924) A.C. 328, and *In re The Insurance Act of Canada* (1932) A.C. p. 41, and is *ultra vires*;

(per Crocket & Kerwin JJ. at p. 164, l. 8).

(g) it is not competent to the Provinces of Canada by the exercise of the powers of taxation to force Banks to discontinue business; taxation by one province on a scale manifestly prohibitive is not a valid exercise of provincial legislative authority under section 92; such legislation though in form a taxing statute is "directed to" (*Wharton's case* (1915) A.C. 343) the frustration of the system of banking established by the Bank Act and to the controlling of Banks in the conduct of their business; 10

(per Duff C.J. & Davis J. at p. 150, l. 15; Hudson J. concurring at p. 176, l. 19).

As to the Press Bill it was held:—

(a) this Bill is *ultra vires* as part of the general scheme and also as being ancillary and dependent upon the Alberta Social Credit Act;

(per Duff C.J. & Davis J. at p. 150, l. 37; Hudson J. concurring at p. 176, l. 23; Crocket & Kerwin JJ. at p. 175, l. 4). 20

(b) the Bill is *ultra vires* in that it invades the domain of criminal law and trenches upon the exclusive legislative jurisdiction of the Dominion in this regard, as well as being in conflict with sections 130–136 of the Criminal Code of Canada;

(per Cannon J. at p. 161, l. 8).

(c) the law protecting the right of public discussion existed at the time of the enactment of the British North America Act, and also as far as Alberta is concerned on the date when the Alberta Act came into force, 1st September, 1905; 30

(per Duff C.J. & Davis J. at p. 152, l. 43).

(d) the Parliament of Canada has authority to legislate in regard to the press for the protection of its own constitution, citing *Fort Frances Pulp and Paper Co. Ltd. v. Manitoba Free Press Co. Ltd.* (1923) A.C., p. 695;

(per Duff C.J. & Davis J. at p. 157, l. 34).

(e) any attempt to abrogate the right of public debate or to suppress the traditional forms of the exercise of the right in public meeting and through the press would be incompetent to the legislature of any one province as being repugnant (1) to the provisions of the British North America Act establishing Parliament as the 40

legislative organ of the people of Canada, and (2) to Dominion legislation enacted pursuant to the legislative authority given by those provisions, citing the *Great West Saddlery v. The King* (1921) 2 A.C. at p. 122, adopted in *Caron v. The King* (1924) A.C. at pp. 1005-1006;

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(per Duff C.J. & Davis J. at p. 151, l. 44).

10 (f) although there is a field in which provincial legislation affecting the press would be *intra vires*, the limit of that field is reached when the legislation effects such a curtailment of the exercise of the right of public discussion as substantially to interfere with the working of the Parliamentary institutions of Canada, such a limitation is necessary "in order to afford scope" (*Bank of Toronto v. Lambe*) for the working of such Parliamentary institutions; in this region of constitutional practice it is not permitted to a provincial legislature to do indirectly what cannot be done directly, *Great West Saddlery v. The King* (1921) 2 A.C. at p. 100;

(per Duff C.J. & Davis J. at p. 152, l. 17).

20 (g) the legislation now under consideration manifestly places in the hands of the Chairman of the Social Credit Commission autocratic powers which, it may well be thought, could, if arbitrarily wielded, be employed to frustrate in Alberta these rights of the Crown and the people of Canada as a whole. We do not, however, find it necessary to express an opinion upon the concrete question whether or not this particular measure is invalid as exceeding the limits indicated above;

(per Duff C.J. & Davis J. at p. 153, l. 15).

(h) the mandatory and prohibitory provisions of this Bill are *ultra vires* as interfering with the free working of the political organization of the Dominion;

30 (per Cannon J. at p. 162, l. 24).

13. The Attorney General of Canada humbly submits that the judgment of the Supreme Court of Canada, and the answers to the three questions referred to it are correct and should be affirmed, and that the appeal therefrom ought to be dismissed for the reasons stated in the Reasons for Judgment delivered by the Judges of the Supreme Court and for the following amongst other

REASONS

As to Bill No. 8, The Credit Regulation Bill,—

40 1. Because this Bill trenches upon Banking and the Incorporation Banks, a subject within the exclusive legislative authority of the Parliament of Canada under section 91 (15) of the British North America Act, 1867.

2. Because it is legislation in relation to the regulation of trade and commerce, a subject matter within the exclusive legislative authority of the Parliament of Canada under section 91 (2) of the British North America Act.
3. Because it does not come within any of the classes of subjects enumerated in section 92.
4. Because the legislation is in conflict with Dominion legislation, especially the Bank Act.
5. Because it is legislation forming part of one general and illegal legislative plan, and also is ancillary to and dependent upon the Alberta Social Credit Act. 10
6. Because the general scheme itself and the Alberta Social Credit Act are *ultra vires* of any provincial legislature as trenching upon the exclusive legislative authority of Parliament in respect of Banking and the Incorporation of Banks, the issue of paper money, currency, legal tender, bills of exchange.
7. Because the general scheme itself and the Alberta Social Credit Act are *ultra vires* as trenching upon the exclusive legislative authority of Parliament in respect of the Regulation of Trade and Commerce under Section 91 (2) of the British North America Act. 20
8. Because the general scheme itself and the Alberta Social Credit Act do not come within any of the classes of subjects enumerated in Section 92 and constitute legislation of national importance for the peace, order and good government of Canada.
9. Because this legislation is in conflict with Dominion legislation especially the Bank Act and the Bank of Canada Act.
10. Because the control and freedom of the press, and the subject matter of this Bill are neither property and civil rights in the province nor matters of a merely local or private nature in the province, nor otherwise subject to provincial jurisdiction. 30

As to the Bank Taxation Bill it is *ultra vires* :—

11. Because the subject matter of this Bill is not “taxation” in the province, in order to the raising of a revenue for provincial purposes, under section 92 (2) of the British North America Act.
12. Because its purpose and unavoidable effect is to expel the Banks from Alberta.
13. Because it is legislation respecting Banks and the Incorporation of Banks, a subject matter within the exclusive legislative competence of the Parliament of Canada. 40

14. Because it is not "direct" taxation within the meaning of section 92 (2) of the British North America Act.
15. Because it is not taxation "within the province," within the meaning of section 92 (2) of the British North America Act.
16. Because this legislation is part of the general and illegal legislative plan and is intended to perfect the Social Credit plan, and is therefore *ultra vires*, reasons 5 to 9 inclusive above applying to it.

As to the Press Bill, it is *ultra vires* :—

- 10 17. Because it is part of the one general and illegal legislative plan and it is ancillary to and dependent upon the Alberta Social Credit Act, which is *ultra vires*, and therefore reasons 5 to 9 inclusive apply.
18. Because this Bill is legislation relating to the peace, order and good government of Canada and matters of concern to Canada as a whole and to Canadian citizens in each of its provinces.
19. Because the Bill is legislation in respect of criminal law, a subject matter within the exclusive and paramount legislative authority of the Parliament of Canada under section 91 (27) of the British North America Act.
- 20 20. Because the Bill is legislation in relation to undertakings connecting the province with other provinces or extending beyond the limits of the province, and in relation to newspapers circulating outside the limits of the province.
21. Because this Bill is legislation respecting incorporation of companies with Dominion objects insofar as it relates to Dominion Companies owning and publishing Alberta newspapers.
- 30 22. Because this Bill attributes to an officer of the Alberta Government power only to be exercised by the Superior Court or a judge thereof.
23. Because as to each of the Bills the Attorney General of Canada will also rely on all of the other reasons and grounds appearing in the factum filed in his behalf in the Supreme Court of Canada.

AIME GEOFFRION.

J. BOYD McBRIDE.

C. P. PLAXTON.

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 NEWS-
PAPERS' ASSOCIATIONS ; THE ALBERTA
PRESS ; THE CHARTERED BANKS OF
CANADA, and THE ATTORNEY GENERAL
OF BRITISH COLUMBIA, *Respondents.*

CASE

FOR THE RESPONDENT THE ATTOR-
NEY GENERAL OF CANADA.

CHARLES RUSSELL & CO.,

37, Norfolk Street, Strand, W.C.2.

Solicitors for the Attorney General of Canada.