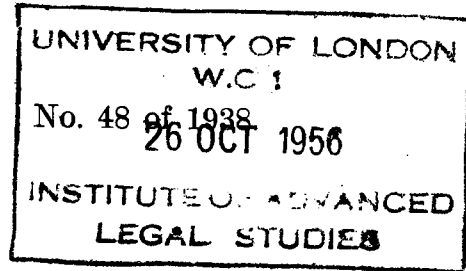


46, 1938



In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA. 44886

IN THE MATTER of THREE BILLS passed by the LEGISLATIVE ASSEMBLY OF THE PROVINCE OF ALBERTA at the 1937 (Third Session) thereof, entitled respectively :—

- 10 "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 —

20 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 OF THE RESPONDENTS

THE CHARTERED BANKS OF CANADA.

RECORD.

1. The Chartered Banks of Canada are the incorporated banks governed by the Bank Act of Canada, 24-25 George V. (1934), Chapter 24. Their names are listed in Schedule A to the Act. They 30 are concerned in this appeal with the questions raised as to the

CHARTERED BANKS

constitutional validity of two of the Bills referred to the Supreme Court of Canada: Bill No. 1 "An Act respecting the taxation of "Banks", and Bill No. 8 "An Act to amend and consolidate the "credit of Alberta Regulation Act." They have taken no part in the controversy with regard to Bill No. 9 "An Act to ensure the "publication of accurate news and information."

p. 9. **2.** The question referred to the Supreme Court of Canada as to each Bill is whether the Bill or any of the provisions thereof is, and in what particular or particulars or to what extent, *intra vires* of the legislature of the Province of Alberta. 10

pp. 130-176. **3.** The unanimous opinion of the Supreme Court (Duff, C.J., Cannon, Davis, Kerwin and Hudson, JJ.) was that the question in each case should be answered in the negative.

p. 5. **4.** The Order of Reference dated 2nd November 1937 (P.C. 2749) refers to a number of statutes which the Government of Alberta, since its advent to office in September 1935, has secured to be enacted by the Alberta Legislature which are more or less directly related to the declared policy of the Government of inaugurating "a new economic order" upon the principles or plan of the theory known as "Social Credit." 20

p. 18. **5.** Three of these, passed on August 6th 1937 at the second session of the Legislature in that year (1) "The Credit of Alberta "Regulation Act" Chapter 1; (2) "The Bank Employees Civil Rights "Act", Chapter 2, and (3) "The Judicature Amendment Act 1937", Chapter 5, were disallowed by Order in Council dated August 17th 1937. (P.C. 1985).

pp. 9-18. **6.** Following the disallowance the Legislative Assembly met for the third time in 1937 and on 5th October, 1937, passed the three Bills which are the subject of this reference to the Supreme Court. They were reserved by the Lieutenant-Governor for the signifi- 30
cation of the Governor-General's pleasure. The Bills were designed to further the same policy of the Alberta Government.

p. 85. **7.** The main Act relating to Social Credit is The Alberta Social Credit Act 1937 (1st Session), Chapter 10, being "An Act respecting "the issuance and use of Alberta Social Credit." It repealed, by Section 49, two earlier Acts dealing with the same subject (1) The Social Credit Measures Act, 1936 (1st Session), Chapter 5 and (2), The Alberta Credit House Act, 1936 (2nd Session), Chapter 1,
p. 103, l. 27.

entitled "An Act to provide the people of Alberta with additional
"credit."

8. The judgment of the Chief Justice of Canada and Davis J.,
carefully reviews this Act (cap. 10) which they describe as the
"central measure." They refer to many declarations throughout p. 130, l. 29.
the enacting provisions and in the preamble and say:—

10 "These declarations enable us to affirm with certainty (1) that the evil as p. 133, l. 24.
"the Legislature conceives it with which the statute is intended to grapple is
"the inability of the people of Alberta to attain to a proper standard of living
"by reason of the inadequate supply or the unfair distribution of purchasing
"power; and (2) that, broadly speaking, the enactments in the statute are
"designed, to employ the phraseology of the authors of the legislation, to
"equate purchasing power or effective demand with productive capacity; and
"moreover, it is easily susceptible of demonstration by reference to the provi-
"sions of this statute in detail and to those of the cognate legislation that
"these measures proceed upon this fundamental postulate, viz., that the
"economic ills which they aim at curing arise primarily from financial causes
"and, particularly, from the circumstance that bank credit, which constitutes
20 "in the main, in point of volume, the circulating medium of payment and
"exchange in this country, is issued through private initiative for private
"profit. And, speaking in general terms, the statute sets up the machinery of
"a financial system which is to be administered by statutory authority and
"the predominant function of which is to provide a form of credit designated
"as 'Alberta Credit' which is to be made accessible to consumers and others
"through the channels created by the Act, and which is to circulate as a
"medium of exchange and payment."

* * * * *

30 "Our conclusion is that it is not within the power of the Province to p. 138, l.
"establish statutory machinery with the functions for which this machinery
"is designed and to regulate the operation of it. Weighty reasons could be
"urged for the conclusion that, as subject matter of legislation, in part at least,
"it comes within the field designated by 'Currency' (No. 14 of section 91).
"We think the machinery in its essential components and features comes
"under head No. 15, Banks and Banking; and if the legislation is not strictly
"within the ambit of No. 14 or No. 15, or partly in one and partly in the
"other, then we are satisfied that its subject matter is embraced within
"category No. 2, Trade and Commerce, and that it does not come within
"section 92."

Hudson, J., concurs with the views thus expressed. Canon, J., and p. 175, l. 27.
Kerwin, J., did not find it necessary to discuss this Act. p. 164, l. 24.

p. 111. **9.** The Legislature assumed to exercise a direct control over the chartered banks of Canada by the three disallowed Acts. The first of these, The Credit of Alberta Regulation Act, 1937 (2nd Session), Chapter 1 contained the following recitals:—

“Whereas Bank deposits and Bank Loans in Alberta are made possible
 “mainly or wholly as a result of the monetization of the credit of the People
 “of Alberta, which credit is the basis of the credit of the Province of Alberta;
 “and

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

“Whereas it is expedient that the business of banking in Alberta shall be
 “controlled with the object of attaining for the people of Alberta the full
 “enjoyment of property and civil rights in the Province.”

p. 112, l. 3.
 p. 112, l. 8.

Under this Act a Banker and every employee of a Banker was required to apply for and obtain a license within twenty-one days from 6th August, 1937, when the Act was assented to and came into force, Section 3 (1). Failure to become licensed subjected the Bank and its employees to heavy penalties, (Sections 5 and 6) and 20 incapacitated the Bank from commencing or maintaining any action or other proceeding in any Court (Section 7). After the application for but before the issue of the license, directorates of five persons were to be constituted, three to be appointed by the Alberta Social Credit Board and two by the Bank, to supervise, direct and control the Bank for the purpose of preventing any act “constituting a
 “restriction or interference, either direct or indirect, with full enjoy-
 “ment of property and civil rights by any person within the
 “Province.”

p. 112, l. 29.

p. 114, l. 22.
 p. 113, l. 17.

p. 115, l. 20.
 p. 116, l. 14.

10. By the second of the disallowed Acts, The Bank 30 Employees Civil Rights Act, Chapter 2, bank employees, while unlicensed, for any reason whatsoever, were incapable of bringing or maintaining or even of defending any action having for its object the enforcement of any claim either in law or equity.

p. 119.

11. The third of the disallowed Acts, The Judicature Amend-
 ment Act, 1937, Chapter 5, prohibited, unless permission of the
 Lieutenant-Governor in Council was obtained, actions to test the
 constitutional validity of any enactment of the Legislature.

12. Bill No. 1, "An Act Respecting the Taxation of Banks", if p. 9.
it became an Act, would subject every bank transacting business in
Alberta to an annual tax of one-half of 1% on its paid up capital p. 10, l. 1.
and 1% on its reserve fund and undivided profits (Section 3).

13. Chartered Banks, along with electric light, express, gas,
grain, insurance, land, loan, power, street and electric railway,
telegraph, telephone and trust companies transacting business in
Alberta, are taxed under the Corporations Tax Act, R.S.A., 1922,
Cap. 29, which deals with companies of the above classes under
10 separate heads the tax imposed being regulated by the number of
branches, the population of the communities served, the income
derived in the Province, or by other means adapted to adjust the
tax to the company's provincial business, and thereby keep the tax
"within the Province."

14. In 1932 taxes payable by corporations were substantially
increased but the principle of taxation remained the same.
Section 4 of the Corporations Tax Act which governs the taxation of
chartered banks was then amended to read:—

20 "4. (1) Every bank transacting business in Alberta shall pay to the
"Minister the following taxes, that is to say:—

"(a) In respect of its main branch, office or agency in Alberta where the
"total number of branches, offices and agencies of the bank in
"Alberta is:—

"(i) more than thirty, a tax of four thousand dollars;

"(ii) more than fifteen and less than thirty, a tax of three thousand
"dollars;

"(iii) less than fifteen, a tax of two thousand dollars.

30 "(b) In respect of branches, offices or agencies in Calgary, Edmonton,
"Lethbridge, Medicine Hat and Red Deer, not taxed under
"clause (a) hereof, five hundred dollars.

"(c) In respect of every branch, office or agents in Alberta not taxed
"under clauses (a) and (b) hereof, two hundred dollars.

15. The only tax payable by chartered banks for 1936 to the
Province of Alberta was under Section 4 as amended in 1932 and
was:—

Bank.	Branches. in Alberta.	Total Tax.	Average per Branch.
Bank of Montreal	48	\$15,500	\$321
The Bank of Nova Scotia	9	4,800	533
The Bank of Toronto	10	4,100	410
The Canadian Bank of Commerce	49	16,300	332
The Royal Bank of Canada	52	16,900	325
The Dominion Bank	3	3,000	1,000
Banque Canadienne Nationale	5	2,800	560
Imperial Bank of Canada	21	8,800	419
	197	\$72,200	

16. On 14th April, 1937, the Legislature by Chapter 57, Section 2 (first session) further amended Section 4 by adding, at the end of Sub-section 1, a new clause (d) imposing an additional "tax of one-tenth of one per cent. on the paid up capital of the "Bank."

17. This levied a tax on the paid up capital of banks incorporated by the Dominion and transacting business throughout 20 Canada. It is submitted that this method of taxation carries the tax outside the Province. It results in the following additional tax:—

Bank.	Paid-up Capital.	New Tax.	Average per Branch.
Montreal	\$36,000,000	\$36,000	\$750
Nova Scotia	12,000,000	12,000	1,333
Toronto	6,000,000	6,000	600
Commerce	30,000,000	30,000	612
Royal	35,000,000	35,000	673
Dominion	7,000,000	7,000	2,333
Nationale	7,000,000	7,000	1,400
Imperial	7,000,000	7,000	333
	\$140,000,000	\$140,000	

18. Bill No. 1 entitled "An Act Respecting the Taxation of "Banks," passed on 5th October, 1937, if it becomes an Act, will require every bank transacting business in Alberta to pay annually, in addition to the taxes above referred to under Section 4, a tax of one-half of one per centum on the paid up capital, and a tax of one per centum on the reserve fund and undivided profits of the Bank (Section 3). The tax was payable for 1937 on the sixtieth day after the Act came into force, and in subsequent years on the first day of April (Section 5). A penalty of 5% of the tax is added for default and thereafter 1% per month (Section 6). p. 10. p. 10, l. 10.

19. Banks must make such returns to the Minister as he may from time to time prescribe, verified by the oaths (Section 7). For default as to the return, the bank and the person who should verify it are liable to a penalty of \$20 a day, and the bank also is liable to pay a tax of double the amount of the tax (Section 8). The Minister may levy the tax and penalties by distress warrant under his hand addressed to the Sheriff (Section 9). p. 10, l. 18. p. 10, l. 26. p. 10, l. 31.

20. The paid up capital reserve fund and undivided profits of the Banks for 1937 according to official returns under The Bank Act and the proposed additional tax under Bill No. 1 are as follows :

Bank.	Paid-up Capital.	Reserve Fund.	Undivided Profits.	Proposed Tax.
Montreal	\$36,000,000	\$38,000,000	\$1,935,033	\$579,350
Nova Scotia	12,000,000	24,000,000	711,629	307,116
Toronto	6,000,000	9,000,000	843,565	128,435
Commerce	30,000,000	20,000,000	665,394	356,653
Royal	35,000,000	20,000,000	1,609,554	391,095
Dominion	7,000,000	7,000,000	592,699	110,926
Nationale	7,000,000	5,000,000	227,860	87,278
Imperial	7,000,000	8,000,000	607,242	121,072
	\$140,000,000	\$131,000,000	\$7,192,976	\$2,081,925

30 Assuming the number of branches remains the same, the total annual tax on Banks transacting business in Alberta, if Bill No. 1 becomes an Act, is as follows :—

Bank.	Tax on Branches.	1937. 1st. Session.	1937. 3rd. Session.	Total Tax 1937.	Average per Branch.
Montreal	\$15,500	\$36,000	\$579,350	\$630,850	\$13,142
Nova Scotia	4,800	12,000	307,116	324,016	36,002
Toronto	4,100	6,000	128,435	138,535	13,853
Commerce	16,300	30,000	356,653	402,953	8,223
Royal	16,900	35,000	391,095	442,995	8,519
Dominion	3,000	7,000	110,926	120,926	40,309
Nationale	2,800	7,000	87,278	97,078	19,415
Imperial	8,800	7,000	121,072	136,872	6,518
Total	\$72,200	\$140,000	\$2,081,925	\$2,294,225	

p. 147, l. 28.

p. 147, l. 30.

p. 147, l. 35.

p. 147, l. 38.

p. 149, l. 3.

p. 150, l. 14.

21. The Chief Justice and Davis J. in their discussion of Bill No. 1 pointed out that if a tax of one-half of one per cent. on paid-up capital and one per cent. on reserves and undivided profits was applied in other provinces on a scale varying with the business done in the province or the population of the province, "the total levy charged upon its" (the bank's) "business throughout the Dominion would amount to an annual impost of $6\frac{1}{4}$ per cent. upon its paid-up capital and $12\frac{1}{2}$ per cent. upon each of the other funds, 20 "the reserves and the undivided profits." In their opinion it required "no demonstration to show that such a rate of taxation "must be prohibitive in fact and must be known to the Alberta "Legislature to be prohibitive." In their view "the tax upon the "banks is of proportions which have no parallel in the Alberta "system of taxation." They considered that it is "plain on the face "of the Bill that the purpose of it 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." Finally they said:— 30

"The specific ground on which, in our opinion this legislation is invalid "is: It is not competent to the provinces of Canada, by the exercise of their "powers of taxation, to force banks which are carrying on business under the "authority of the Bank Act to discontinue business; and taxation by one "province on a scale which, in a practical business sense, is manifestly "prohibitive is not a valid exercise of provincial legislative authority under "section 92. Such legislation, though in the form of a taxing statute, is "directed to' the frustration of the system of banking established by the "Bank Act, and to the controlling of banks in the conduct of their business."

22. Cannon J. reached the conclusion that the Bill, despite its form, does not seek to raise revenue for provincial purposes but in its true character aims by erecting a prohibitive barrier to prevent the banks from conducting their legitimate business in Alberta and that such purpose and effect must be declared *ultra vires*. p. 158, l. 24.

23. Kerwin J. said that the sequence of events after the disallowance of the three Acts is so significant that he could find no escape from the conclusion that instead of being a taxing enactment, Bill No. 1 is merely a part of the legislative plan to prevent the operation within the province of the 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. p. 166, l. 22.

24. Hudson J. thought it was clear that the three Bills submitted were part of one legislative scheme and he concurred in the reasons of the Chief Justice for holding Bill No. 1 was beyond the legislative competence of the Legislature. p. 175, l. 29.

25. Bill No. 8 entitled "An Act to Amend and Consolidate the Credit of Alberta Regulation Act" is the subject of the second question. It is quite plain not only from the preamble of the Act but also from its enacting provisions that it is part of the general scheme of legislation. As pointed out by the Chief Justice and Davis J., it is a licensing statute not in the sense that it imposes taxation by way of license but in the sense that the licensing authority is used for the purpose of regulating the institutions to which the statute relates. It follows closely the provisions of The Alberta Social Credit Act 1937, 1st Session, Chapter 10, above discussed, which was disallowed. It relates to credit institutions and professes to exclude from its operations "transactions which are banking within the meaning of the word 'banking' as used in sub-head 15 of section 91 of The British North America Act 1867", but as pointed out by the Chief Justice and Davis J. if effect is given to these words they completely destroy everything which precedes in the definition of "Business of dealing in Credit" as employed in the statute. It is plain that notwithstanding the exception the Act is one in relation to banking or alternatively is in relation to trade and commerce within the meaning of section 91 (2) of The British North America Act. The Chief Justice and Davis J. were of the opinion it was *ultra vires* for the reasons that induced them to hold the Alberta Social Credit Act 1937, 1st Session, Chapter 10, was *ultra vires*. p. 11.
p. 143, l. 10
p. 12, l. 11.
p. 146, l. 8.
p. 150, l. 14.

p. 171, l. 33. Kerwin J. was of opinion that the Bill was an attempt to regulate and control every bank and the business of banking and that the concluding phrase of Clause (b) of Section 2 excluding transactions which are banking within the meaning of that word as used in 91 (15) of The British North America Act and the language of Section 7 which provides that the Act shall not be so construed as to authorize the doing of any act or thing not within the legislative competence of the Legislature could have no effect if, upon a consideration of the entire legislation, the conclusion is reached that the subject matter dealt with is beyond the powers of the 10 enacting authority. He answered question 2 in the negative.

p. 174, l. 13.

p. 174, l. 17. Crocket J. agreed with Kerwin J. and Hudson J. agreed with the reasons given by the Chief Justice for holding the Bill to be beyond the legislative competence of the province.

p. 175, l. 31.

The Chartered Banks of Canada submit the answers of the Supreme Court of Canada are correct and should be affirmed for the following amongst other

REASONS.

1. Because the proposed legislation is not within any of the enumerated heads of legislative jurisdiction 20 assigned to the provinces by Section 92 of the British North America Act.
2. Because it falls under Section 91 head (2) The Regulation of Trade and Commerce or (14) Currency and Coinage, or (15) Banking Incorporation of Banks and the issue of paper money, or (18) bills of exchange and promissory notes, or (20) Legal Tender, all of which are under the exclusive jurisdiction of Parliament.
3. Because the Bills are not to raise revenue or to regulate provincial civil rights but to compel banks to submit 30 to provincial regulation and control or cease transacting business in the Province.
4. Because the taxation proposed by Bill No. 1 is not "direct" or "within the Province" or for the "raising of a revenue for provincial purposes."
5. Because taxing paid up capital, reserve fund and undivided profits of banks transacting business

throughout Canada and abroad carries the tax outside the Province.

6. Because the taxation is on such a scale that if adopted generally banks would be rendered unable to transact the business for which they are incorporated by the Dominion.
7. Because the effect of such taxation would be to destroy or nullify the status, capacity and powers of the banks in Alberta.
- 10 8. Because Bill No. 8 deals with matters of national importance assigned to the Dominion and is in direct conflict with Dominion legislation under Section 91 (15) particularly in relation to the powers and duties of Shareholders and Directors.
9. Because the control of credit transactions in the manner proposed by Bill No. 8 is "banking" and is in conflict with the Bank Act and the Bank of Canada Act passed by Parliament.
- 20 10. Because the licensing provisions of Bill No. 8 are not for the purpose of "raising revenue for provincial purposes" but are directed to the control of the business of banking.
11. Because the opinions of the Judges of the Supreme Court of Canada are right for the reasons assigned.

W. N. TILLEY.

R. C. McMICHAEL.

A. W. ROGERS.

In the Privy Council.

**ON APPEAL
FROM THE SUPREME COURT OF CANADA.**

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— AND —

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CANADA and THE ATTORNEY GENERAL
OF BRITISH COLUMBIA - Respondents**

**CASE OF THE RESPONDENTS
THE CHARTERED BANKS OF CANADA.**

LAWRENCE JONES & Co.,
Lloyd's Building,
Leadenhall Street,
London, E.C.3.