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UNIVERSITY OF LONDON
W.C.1.
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INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 45 of 1939.

30585

ON APPEAL FROM THE SUPREME COURT OF ALBERTA (APPELLATE DIVISION).

BETWEEN

HIS MAJESTY THE KING (*Defendant*) *Appellant*,

AND

THE INDEPENDENT ORDER OF
FORESTERS (*Suppliant*) *Respondent*.

CASE OF THE APPELLANT.

1. This is an appeal from the judgment of the Appellate Division of the Supreme Court of Alberta, dated the 5th April, 1939, affirming the judgment of Mr. Justice Shepherd, dated the 11th February, 1939, by which it was declared that the Provincial Securities Interest Act 1937, being chapter 13 of the Statutes of Alberta for 1937, is ultra vires the legislature of the Province of Alberta.

Record.
pp. 39-40.
p. 9.

2. The main question arising on the appeal is whether the said statute, which restricts the rate of interest on debentures, stock, treasury bills, and savings certificates issued by the Province of Alberta, is intra vires of the Provincial Legislature by virtue of heads 3, 13, 14 and 16 of section 92 of the British North America Act ("The borrowing of money on the sole credit of the Province," "Property and Civil rights in the Province," "The Administration of Justice in the Province . . ."), and "Generally all matters of a local or private nature in the Province") or whether it is ultra vires by reason of the reservation to the Dominion Parliament, under head 19 of section 91 of the said Act, of "Interest."

Record.

3. The said Provincial Securities Interest Act, chapter 13 of 1937, after defining "securities" as meaning debentures, stock, treasury bills, and savings certificates issued by the Province, continues thus:—

"3. (1) Notwithstanding any stipulation or agreement as to the rate of interest payable in respect of any security, on, from and after the first day of June, 1936, the rate at which interest shall be payable in respect of any security shall be as follows:

* * * * *

"Where the security bears interest at the rate of" (e.g.) "six per centum, the rate of interest shall be" (e.g.) "three per centum." 10

"(2) No person shall be entitled to recover in respect of any security any interest at a higher rate than the rate hereby prescribed in respect of that security, and the rights of the holder of any security shall be such as are set out in this Act."

4. The Respondent holds a number of debentures issued by the Province payable as to principal and interest at the offices of certain banks not only in the Province but also in Toronto, Montreal and New York City. By the said chapter 13 and by earlier legislation to a similar effect, the rate of interest on these debentures has been reduced or sought to be reduced. The Respondent has demanded payment of the interest at the full rate at Toronto and the Province in reliance upon such legislation has refused to pay at any higher rate than that so reduced. 20

pp. 3-5.

5. The Respondent on the 22nd June, 1938, presented a Petition of Right to the Supreme Court of Alberta claiming a declaration that the said chapter 13 is ultra vires of the Provincial Legislature and payment of the arrears of interest which would fall to be paid if the said chapter 13 were held to be ultra vires.

6. The Appellant in defence relied upon the said chapter 13 and asserted its validity.

p. 9.

7. The case was heard before Mr. Justice Shepherd, who gave judgment on the 11th February, 1939, declaring that the said chapter 13 is ultra vires of the Legislature of the Province. 30

pp. 7-9.

8. In his Reasons for Judgment, Mr. Justice Shepherd held that the statute was invalid as dealing with interest, which in his view was made by head 19 of section 91 of the British North America Act a matter exclusively for the Dominion. He rejected the argument of the now Appellant, the Defendant, that section 2 of the Interest Act of Canada, R.S.C. 1927, chapter 102, does not apply to the Crown. This section runs:—

"Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon." 40

The argument that it does not apply to the Crown was based on section 16 of the Interpretation Act, R.S.C. 192, chapter 1, which reads:—

Record.

“ No provision or enactment in any Act shall affect in any manner whatsoever the rights of His Majesty, his heirs or successors unless it is expressly stated therein that His Majesty shall be bound thereby.”

He also held that the right of the Respondent was a civil right outside the Province, with which the Provincial Legislature could not interfere.

9. The Appellant appealed to the Appellate Division (Justices Ford pp. 10-11.
10 Tweedie and Howson) which on the 5th April, 1939, dismissed the appeal, pp. 39-40.
holding themselves bound by the decisions of the said Division in *Crédit Foncier v. Ross* (1937) 2 W.W.R. 353, and *Independent Order of Foresters v. Lethbridge Northern Irrigation District* (at present the subject of an Appeal No. 107 of 1938, before their Lordships), to hold that the said chapter 13 is ultra vires. The Reasons for Judgment, delivered by Mr. Justice Ford, indicated a belief in their Lordships' minds that there were many points of interest that might have been discussed if they had not felt themselves bound by authority to dismiss the appeal. pp. 39-40.
10. The Appellant humbly submits that the judgments of Mr. Justice pp. 7-9,
20 Shepherd and of the Appellate Division are wrong and ought to be reversed, 39-40.
and judgment entered for the Appellant declaring that the said chapter 13 is intra vires of the Legislature of Alberta, for the following among other

REASONS.

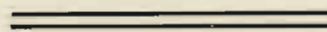
1. Because the Provincial Securities Interest Act, chapter 13 of 1937, is in pith and substance not legislation relating to “ interest ” within the meaning of head 19 of section 91 of the British North America Act, but is legislation relating to property and civil rights in the Province, or to one or more of the other heads of section 92 of the said Act.
2. Because the said chapter 13 deals only with certain specified classes of contract, and the Province may validly legislate in relation to such contracts and in so doing may affect rights to interest without thereby infringing the authority of Parliament.
3. Because even if the said chapter 13 affects the subject of interest, it does not invade the field of “ interest ” allotted to Parliament by the said head 19 of section 91, and there is no Dominion legislation in conflict with it.

4. Because there is no conflict between the said chapter 13 and section 2 of the Interest Act of Canada, which merely removed certain restrictions previously applicable as a matter of general law to interest, and laid down freedom of contract in relation to stipulations for interest, without purporting or attempting to override the functions of the provincial legislatures.
5. Because the said section 2 of the Interest Act of Canada, if it purported to override provincial legislation such as the said chapter 13, would be to that extent ultra vires. 10
6. Because in any case the said section 2 of the Interest Act of Canada does not bind the Crown.
7. Because the said chapter 13 deals only with civil rights within the Province and does not affect rights outside it.
8. Because the rights arising under the debentures in question are rights situate in the Province of Alberta.
9. Because the judgments appealed from are wrong, and ought to be reversed.

D. N. PRITT.

W. S. GRAY.

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