

UNIVERSITY OF LONDON
W.C.1

26 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

No. 45 of 1939.

30586

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA APPELLATE DIVISION.

BETWEEN

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

AND

THE INDEPENDENT ORDER OF FORESTERS (a body
corporate) (*Suppliant*) - - - - - *Respondent.*

CASE FOR THE RESPONDENT.

1. This is an appeal from a judgment of the Supreme Court of Alberta, Appellate Division, dated the 5th April, 1939, dismissing the Appellant's appeal from a judgment dated the 11th day of February, 1939, of Shepherd J. whereby it was ordered and adjudged that the Provincial Securities Interest Act, 1937, was *ultra vires* of the Legislature of the Province of Alberta, and that the Respondent was entitled to recover its costs.

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p. 39, l. 30.
p. 9, l. 15.

2. The only question raised by the appeal is the constitutional validity of the Provincial Securities Interest Act. The facts are not in dispute and appear from the Petition of Right by which the Respondent sought a declaration that the Act was *ultra vires* the Legislature of Alberta, the admissions contained in the Statement of Defence, the joint admissions made before trial and the certified copy of an Order in Council mentioned in the admissions.

p. 3.
p. 5, l. 21.
p. 6, l. 20.
p. 44.

3. The facts so established are as follows:—The Respondent a body corporate with its head office at Toronto, Ontario, and licensed to do business in Alberta under the Alberta Insurance Act, 1926, is the bearer, *bona fide* holder and owner of debentures of the Province of Alberta in the aggregate principal sum of \$373,000. The debentures were of various series due for

p. 3, ll. 11-16.
p. 3, ll. 17-19.
p. 4, ll. 17-35.

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p. 4, ll. 1-5. redemption at various dates from 1936 to 1967 and bearing interest at $4\frac{1}{2}$, 5, $5\frac{1}{2}$ or 6 per centum per annum. They were all properly issued in accordance with Section 4 of the Provincial Loans Act, being Chapter 42 of the Revised Statutes of Alberta, 1922, and were all executed at Edmonton, Alberta, before the 14th April, 1937, under the authority of Orders-in-Council similar to that of which a certified copy was produced at the trial (which related to the issue due for redemption on the 1st January, 1947) in form similar to the form of debenture annexed to the Order-in-Council. The Respondent duly presented the interest coupons for \$36,245, which had become payable since the 1st June, 1936, at the principal office in Toronto, Ontario, of the Imperial Bank of Canada, being one of the places where according to their tenor the principal and interest of the debentures are payable, but payment of the full interest was refused. Payment of one-half of such interest was, however, tendered to and refused by the Respondent. The Appellant sought to justify such tender by alleging that the provision with respect to interest in the debentures were amended by Section 3 of the Provincial Securities Interest Act so as to make only \$18,122.50 due to the Respondent.

p. 12, ll. 18-36.
 p. 6, ll. 30-31.
 p. 6, ll. 29-30.
 p. 6, ll. 32-37.
 p. 44.

p. 46, l. 15.
 p. 6, ll. 21-27.

p. 6, ll. 27-28.
 p. 5, l. 29-
 p. 6, l. 3.

4. The material parts of the Act, which received the Royal Assent and came into operation on the 14th April, 1937, are as follows :—

“ 2. In this Act, unless the context otherwise requires, 20
 ‘ securities ’ means all debentures heretofore issued by the Province, all stock heretofore issued by the Province, all treasury bills issued by the Province, and all saving certificates issued by the Province.”

“ 3. (1) Notwithstanding any stipulation or agreement as to the rate of interest payable in respect of any security, on, from and after the 1st 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 6 per centum, the rate of interest shall be 3 per centum; 30

“ Where the security bears interest at the rate of $5\frac{1}{2}$ per centum, the rate of interest shall be $2\frac{3}{4}$ per centum;

“ Where the security bears interest at the rate of 5 per centum, the rate of interest shall be $2\frac{1}{2}$ per centum;

“ Where the security bears interest at the rate of $4\frac{1}{2}$ per centum, the rate of interest shall be $2\frac{1}{4}$ per centum;

.....

“(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.”

5. The validity of the Act depends on the provisions of the British North America Act. By Section 91 (Head 19) the authority of the Parliament of Canada to make laws for the peace, order and good government of Canada includes, notwithstanding anything in the Act, exclusive authority over the subject of interest; and by Section 92 the Legislature in each province may
10 exclusively make laws in relation to (Head 3) the borrowing of money on the sole credit of the Province, in relation to (Head 13) property and civil rights in the Province, in relation to (Head 14) the administration of justice in the Province, including procedure in civil matters in the provincial courts, and generally in relation to (Head 16) all matters of a merely local or private nature in the Province.

6. The Petition of Right was heard before the Honourable Mr. Justice Shepherd on the 2nd February, 1939, and by his judgment dated the 11th February, 1939, the Act was declared to be *ultra vires* the Legislature of Alberta. The judgment is reported in [1939] Western Weekly Reports,
20 volume 1, page 275, and [1939] Dominion Law Reports, volume 2, page 53.

7. In his reasons for judgment the learned Trial Judge reviews the history of the Act pointing out that a similar Act passed in 1936, dealing not only with the direct obligations of the Province but with certain debentures guaranteed by the Province and prohibiting any action in any Court in the Province in respect of securities affected by it, had been held wholly *ultra vires* the Legislature of Alberta; that this Act was replaced in 1937 by the Act now in question and the Provincial Guaranteed Securities Interest Act dealing respectively with the direct and indirect obligations of the Province and reducing the rate of interest by approximately one-half. This latter
30 Act had also been declared *ultra vires* the Legislature of Alberta but, Mr. Justice Shepherd points out, the Appellant argues that these decisions are not applicable to the present case because the rights of the Crown were not there involved. The learned Judge rejects this argument on the ground that the Crown in the right of the Province is bound by the terms of the British North America Act which explicitly assigns to the Parliament of Canada exclusive legislative authority in respect of interest, and the impeached statute is one in respect of interest. He therefore holds the Provincial Securities Interest Act to be *ultra vires* the Legislature of Alberta

RECORD.

for this reason and for the further reason that the Respondent's right is a civil right outside the Province from which provincial legislation cannot derogate.

8. An appeal by the Appellant was heard on the 5th April, 1939, by the Honourable Justices Ford, Tweedie and Howson who unanimously decided that the Appellate Division was bound by its own previous decisions to hold that the Act is legislation in relation to interest. In their view it therefore did not assist the Appellant that the proper law of the contracts is that of Alberta, nor could they hold the Act *intra vires* under Head 3 of Section 92 of the British North America Act relating to "the borrowing of money on the sole credit of the Province." Effect could not be given to arguments based on Heads 13 and 16 of Section 92 or seeking to restrict the Dominion power as to interest in view of the Court's previous decisions. Accordingly the appeal was dismissed with costs. The judgment is reported in [1939] Western Weekly Reports, volume 1, page 700, and [1939] Dominion Law Reports, volume 2, page 671.

9. The cases which the Courts below held to determine the question so far as they are concerned, and which the Respondent submits were rightly decided, are :—

Independent Order of Foresters v. Board of Trustees of Lethbridge Northern Irrigation District [1937] 1 Western Weekly Reports, 414; [1937] 2 Dominion Law Reports, 109.

Independent Order of Foresters v. Board of Trustees of Lethbridge Northern Irrigation District (No. 2.) [1938] 2 Western Weekly Reports, 194; [1938] 3 Dominion Law Reports, 89, affirming a decision reported in [1937] 3 Western Weekly Reports, 424; [1937] 4 Dominion Law Reports, 398.

Crédit Foncier Franco-Canadien v. Ross [1937] 2 Western Weekly Reports, 353; [1937] 3 Dominion Law Reports, 365.

10. The Appellant seeks to uphold the Act on the ground, amongst others, that, in the words of Lord Tomlin in *Attorney-General for Canada v. Attorney-General for British Columbia* at [1939] Appeal Cases, 118 :—

"There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires* if the field is clear, but if the field is not clear and the two legislations meet, the Dominion legislation must prevail."

The Respondent respectfully submits, however, that this principle, even if otherwise applicable, cannot apply because the Parliament of Canada has passed the Interest Act, being Chapter 102 of the Revised Statutes of Canada, 1927, Section 2 of which is as follows :—

“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.”

11. The Respondent respectfully submits that the appeal should be
10 dismissed for the following amongst other

REASONS.

1. Because the Provincial Securities Interest Act, 1937, in its true character is interest legislation which by Section 91 (Head 19) of the British North America Act is within the exclusive legislative authority of the Parliament of Canada.
2. Because even if the Act could be said in the absence of Dominion legislation on the subject to come within one or more of the Heads of Section 92 of the British North America Act, it is *ultra vires* of the provincial Legislature because it conflicts with
20 Section 2 of the Interest Act of Canada.
3. Because the Act is legislation affecting property and civil rights outside the Province of Alberta, whereas the Legislature of Alberta has under Section 92 (Head 13) of the British North America Act power to make laws only in relation to property and civil rights in the Province.
4. Because the Act is not one dealing with contracts wholly subject to local law and therefore supportable under Section 92 (Head 13) “Property and Civil Rights in the Province” and Section 92 (Head 16) “Generally all matters of a merely local or private
30 nature in the Province.”
5. Because the power of the Parliament of Canada to legislate in relation to interest is not confined to fixing what shall be the legal rate of interest apart from express agreement or express provincial enactment and the passing of usury laws restricting the charging of interest throughout the Dominion or any part

thereof but extends to the whole field of interest, its rate as well as its enforcement.

6. Because of the other reasons contained in the judgment of Mr. Justice Shepherd and in the cases on which the judgment of the Appellate Division is based.

G. H. STEER,
FRANK GAHAN.

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CHARLES RUSSELL & CO.,

37, NORFOLK STREET,

STRAND, W.C.

ST. CLEMENTS PRESS LTD., Day and Night Company Printers, Kingsway,
W.C.2, and 74, Coleman Street, E.C.2 - - - Holborn 7600.