

In the Privy Council.

8,1440

C.V.B.

No. 107 of 1938.

ON APPEAL

FROM THE SUPREME COURT OF ALBERTA
(APPELLATE DIVISION)

BETWEEN

THE BOARD OF TRUSTEES OF THE LETHBRIDGE
NORTHERN IRRIGATION DISTRICT and L. C.
CHARLESWORTH, Official Trustee of the Lethbridge Northern
Irrigation District (Defendants) *Appellants,*

AND

THE INDEPENDENT ORDER OF FORESTERS (*Plaintiff*) *Respondent,*

AND

THE ATTORNEY GENERAL OF CANADA *Intervener.*

CASE FOR THE APPELLANTS
CASE FOR THE RESPONDENT
CASE FOR THE INTERVENER
RECORD OF PROCEEDINGS

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For the Respondent and the Intervener.

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No. 107 of 1938 W.C.1.

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

BETWEEN

THE BOARD OF TRUSTEES OF THE LETHBRIDGE
NORTHERN IRRIGATION DISTRICT AND L. C.
CHARLESWORTH, OFFICIAL TRUSTEE OF THE
LETHBRIDGE NORTHERN IRRIGATION DISTRICT
(Defendants) Appellants
AND
THE INDEPENDENT ORDER OF FORESTERS
(Plaintiff) Respondent
AND
THE ATTORNEY GENERAL OF CANADA - - - *Intervener.*

CASE FOR THE ATTORNEY GENERAL OF
CANADA.

RECORD.

1. This is an appeal from a judgment of the Supreme Court of Alberta, p. 41, l. 14.
Appellate Division, dated the 23rd May 1938, dismissing by a majority
of three judges to one the Appellants' appeal from the judgment, dated p. 11, l. 20.
the 29th October 1937, of Mr. Justice Ewing, whereby it was declared that
the Provincially Guaranteed Securities Proceedings Act insofar as it
relates to this case and The Provincial Guaranteed Securities Interest Act,
being chapters 11 and 12 respectively of the Statutes of Alberta 1937, were
ultra vires of the legislature of Alberta.

10 2. The latter Act purported to reduce by one-half the interest on
securities guaranteed by the Province of Alberta, and the former Act p. 43, l. 38-
purported to prevent any proceedings in Alberta for recovering directly or p. 44, l. 14.
indirectly money due on such securities without the consent of Lieutenant-
Governor-in-Council.

RECORD.

3. The constitutional validity of the Acts depends on the provisions of the British North America Act of which the material provisions are as follows :

“ 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 Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say—

“ 1. The Public Debt and Property.
.....

“ 4. The borrowing of Money on the Public Credit.
.....

“ 19. Interest.
..... 20

“ 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 exclusively to the Legislatures of the Provinces.

“ 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
.....

“ 3. The borrowing of Money on the sole Credit of the Province.
..... 30

“ 8. Municipal Institutions in the Province.
.....

“ 13. Property and Civil Rights in the Province.

“ 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.
..... 40

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

4. The validity of the Acts may also be affected by the fact that the Parliament of Canada has passed an Interest Act, chapter 102 of the Revised Statutes of Canada, 1927, which contains in section 2 a provision (originating in pre-confederation legislation except in New Brunswick where it was introduced by chapter 18 of the Statutes of Canada, 1875) that :

10 “ 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.”

5. The question arose in an action by the Respondent to recover pp. 3-9.
 arrears of interest and to enforce a judgment obtained in respect of previous
 arrears. The interest claimed was due according to the tenor of debentures
 issued by the appellant Board and guaranteed by the Province of Alberta.
 Payment had been demanded in Toronto in the Province of Ontario where
 the debentures were held and where, amongst other places, interest was
 payable. Payment was refused, but half the amount was tendered, the
 appellant Board justifying the refusal by the Provincial Guaranteed
 Securities Interest Act. The appellant Board also relied on the Provincially
 20 Guaranteed Securities Proceedings Act as barring the claim based on the
 previous judgment as well as the claim to interest.

6. Mr. Justice Ewing and the judges of the Appellate Division were
 unanimous in holding that the Provincial Guaranteed Securities Interest
 Act is ultra vires the Legislature of Alberta as legislation on a subject
 expressly reserved to the Parliament of Canada. Mr. Justice Ford,
 however, thought that the Provincially Guaranteed Securities Proceedings
 Act is valid as not being an invasion of any Dominion legislative field and
 as not being in conflict with the Interest Act of Canada. The other judges
 held this Act also to be invalid. In Mr. Justice Ewing's view it derogated
 30 from rights in respect of interest and was in conflict with section 2 of the
 Interest Act of Canada nor was the Act saved because the prohibition of
 proceedings was not absolute. The majority of the judges in the Appellate
 Division held the two Acts to be complimentary parts of a single legislative
 plan which is ultra vires the Legislature of Alberta. Mr. Justice McGillivray
 further thought that even if the Provincially Guaranteed Securities Pro-
 ceedings Act is not to be regarded as just in aid of the other act, the word
 “ exact ” in section 2 of the Interest Act of Canada made it invalid insofar
 as it is an obstacle to prevent the collection of interest.

7. The Attorney General of Canada respectfully submits that the
 40 Provincial Guaranteed Securities Interest Act deals entirely with matter
 coming within the subject of interest over which the Parliament of Canada
 has exclusive legislative authority; that therefore the Act cannot be
 justified under any of the heads of section 92 of the British North America
 Act; that the Act is none the less dealing with the subject of interest
 because it purports to affect only the interest on certain specified securities;

RECORD. that the Act is also invalid in that it affects contractual rights of the Respondent outside the Province of Alberta; and that if, contrary to the Attorney General of Canada's submission, the Act could otherwise be considered as coming within any of the heads of section 92 it cannot be validly enacted because the Parliament of Canada has occupied the field.

p. 13,
ll. 17-41. 8. The Attorney General of Canada further respectfully submits that in considering the validity of the Provincially Guaranteed Securities Proceedings Act all the circumstances leading up to its enactment (which are set out in Mr. Justice Ewing's judgment) are to be taken into account, and they show that the clear and sole purpose of the Act is to make effective the other Act, and if this Act is ultra vires the subsidiary Act should also be held to be ultra vires of the Legislature of Alberta. 10

p. 50,
ll. 20-38.
p. 16, l. 33-
p. 17, l. 36. 9. Whether or not the two Acts are read together as parts of a single legislative plan the Attorney General of Canada submits that section 2 of the Interest Act of Canada vests in the Respondent the right to enforce the Appellant's obligation to pay interest at the agreed rate, and that the Legislature of Alberta cannot by purporting to legislate under head 14 of section 92 or otherwise effectively bar or clog the exercise of that right. In his submission it is the duty of the provincial courts to enforce the laws of Canada and, just as provincial legislation cannot interfere with Dominion companies so as to prevent them exercising the powers conferred on them by Dominion law, so provincial legislation cannot render nugatory the right given to the Respondent by valid Canadian legislation to exact interest from the Appellants at the rate agreed between them. The principles laid down by Mr. Justice Masten in *Ottawa Valley Power Company v. Hydro Electric Power Commission* reported in (1937) Ontario Reports 265 at page 309 and quoted in part in Mr. Justice Ford's judgment are, in the Attorney General of Canada's submission, sound principles which were properly applied by Mr. Justice Ewing in the present case. 20

10. The Attorney General of Canada therefore submits that the judgment of the Appellate Division is right and should be affirmed for the following amongst other 30

REASONS

1. Because the Provincial Guaranteed Securities Interest Act is legislation on the subject of interest over which the British North America Act vests exclusive legislative authority in the Parliament of Canada.
2. Because the Provincial Guaranteed Securities Interest Act is not legislation in relation to any matter coming within the classes of subjects in relation to which the Legislature of Alberta may make laws. 40
3. Because the Provincial Guaranteed Securities Interest Act conflicts with the Interest Act of Canada.

4. Because the rights of the Respondent under the securities in question are rights in Ontario which cannot be affected by the Legislature of Alberta.
5. Because the Provincially Guaranteed Securities Proceedings Act is ancillary to the Provincial Guaranteed Securities Interest Act and if the latter is ultra vires the former is also ultra vires.
6. Because the Legislature of a province has no power to prevent or impede the enforcement of the laws of Canada or rights acquired under such laws.
- 10 7. Because by the Provincially Guaranteed Securities Proceedings Act the Legislature of Alberta seeks under colour of legislation on civil procedure to make effective legislation on the subject of interest which is ultra vires the Legislature.
8. Because the Provincially Guaranteed Securities Proceedings Act conflicts with the Interest Act of Canada.
9. Because of the other reasons given by Mr. Justice Ewing and the majority of the Appellate Division.

FRANK GAHAN.

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LETHBRIDGE NORTHERN IRRIGA-
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WORTH, OFFICIAL TRUSTEE OF
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(Defendants) Appellants

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